

Small Self Administered Scheme (SSAS)

Loanback Guide

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1. INTRODUCTION

A Small Self-Administered Scheme (SSAS) is able to lend money to a participating employer via the loanback facility. This guide summarises the requirements in respect of loans from Scheme to Employer. Please read these notes carefully.

As Scheme Administrator and Professional Trustee, Momentum SSAS Trustees Limited's terms and conditions in relation to the use of loanbacks, as set out in this guide, together with requirements imposed on us by HM Revenue & Customs (HMRC), must be adhered to.

2. SECURITY

Any loan from a SSAS to a participating employer must be secured by a first legal charge over suitable assets. The borrower will therefore need to possess sufficient suitable assets over which the trustees can register a charge.

In line with HMRC legislation, loans should be secured against commercial property where possible so as to minimise the risk of tax charges being applicable in the case of a default event.

If you wish to secure the loan against an asset that is not classed as commercial property, please contact us so we can confirm if the proposed security is acceptable.

Throughout the term of the loan the value of the security must equal or exceed the amount of the loan capital and interest outstanding.

A valuation of the proposed security will need to be provided by a suitably qualified person in advance of the loan being agreed. The valuation must be addressed to the trustees of the SSAS.

3. INTEREST RATES

The interest rate for a loan from a SSAS to a participating employer must be determined on a commercial basis and be at least 1% above the average base rate of the six leading high street banks.

The trustees may require the borrowing company provide evidence that they would be able to borrow on the same terms from a commercial lender directly.

4. TERM OF LOAN

The maximum repayment period of a loan from the date of advance is 5 years. The total amount owing (including interest) must be repaid throughout the term and by the loan repayment date.

HMRC acknowledges that employers may get into financial difficulties during the term of a loan. Accordingly, where an employer experiences genuine difficulties in making repayments and there is an amount of capital or interest outstanding at the end of the loan period, the loan period can be extended and the repayment date may be 'rolled over' for up to 5 years from the initial repayment date.

A loan may only be rolled over once and an unauthorised payment tax charge will be applied to a loan that exceeds the 5 year term and has not been rolled over.

5. MAXIMUM AMOUNT OF LOAN

The maximum amount that can be lent to a participating employer is restricted to a total of 50% of the SSAS' net assets valued immediately before the loan is made. If a loan is found to exceed the 50% limit, an unauthorised payment tax charge will be applied to the excess amount.

The 50% limit is applied immediately before the loan is advanced to the employer. The loan will not be re-tested at a later date if there is a drop in value of the scheme assets unless the terms of the loan are changed.

Any further advances made after the original loan is made will be treated as a new loan.

6. REPAYMENT TERMS

All loans to employers must be repaid in equal instalments of capital and interest for each complete year of the loan, beginning on the date that the loan is made and ending on the last day of the following 12 month period – known as a loan year.

For example, for a 5 year fixed interest loan of £200,000 accruing £40,000 of interest, the repayments required for each year will be as follows.

$(£200,000 + £40,000) / 5 = £48,000$ capital & interest repayment per annum

Payments can be made annually, quarterly or monthly.

7. UNAUTHORISED PAYMENT TAX CHARGES

If a loan fails to meet the criteria outlined in sections 2 – 6 of this guide (the 'key tests') then unauthorised payment tax charges will apply.

The amount of unauthorised payment is calculated separately for each key test but to prevent double charging, if the loan fails on more than one test the unauthorised payment will be the greatest amount calculated under each test. In any case the amount of the unauthorised payment must not exceed the amount of the loan when it was made.

In the event of default the following tax charges will apply:

- Unauthorised Payment Charge - 40% tax charge is payable by the borrower on the amount which is in default;
- Scheme Sanction Charge - 15% tax charge payable by the Scheme, and;
- Unauthorised Payment Surcharge - 15% if the loan is more than 25% of the scheme assets.

The total tax charge could therefore amount to 70% of the original loan advanced.

8. DOCUMENTATION

The loan must be fully documented by a legally binding agreement and the legal charge over the security registered at Companies House and/or the Land Registry as appropriate.

Momentum SSAS Trustees Limited can provide draft loan agreement paperwork, however, a solicitor will need to arrange for this documentation to be executed and to make any amendments where necessary.

Momentum SSAS Trustees Limited do not provide draft legal charge paperwork.

9. DEFAULT EVENTS

Employers should be aware of potential consequences in the event that the borrower defaults on capital or interest payments.

The trustees are required by law to act commercially and take action to recover any amounts outstanding. This means that the trustees would be obliged to:

1. Call in the security by taking possession of the assets charged.
2. Take further legal action as necessary for the recovery of the debt including, if necessary, the appointment of liquidators.

As trustees, members would be required to be party to such action which may cause conflict of interest with the company that is in default.

The costs of taking recovery action must be met by the Scheme.

10. INVESTMENT ADVICE

Momentum SSAS Trustees Limited can only provide details of the legislative requirements regarding loans; we are not authorised or regulated to give financial or investment advice and cannot therefore comment on the suitability of a particular loan as an investment.

Similarly we do not have facilities to credit check potential borrowers and any loans advanced are granted entirely at the member trustee(s) own risk.

We strongly recommend therefore that members consult with their financial adviser before applying for a loan to be made from their SSAS.

11. PROCESS

The first step is to complete and sign our Loan Application form which is available on request.

On receipt of the Loan Application we will assess whether the loan is acceptable, whether the security is suitable for inclusion in a pension scheme and whether you will have sufficient funds in your pension scheme to cover the loan.

If the loan is suitable:

1. We will ask for the member(s) to confirm which solicitor they wish to appoint to represent the trustees.
2. We will contact the solicitor and ask they confirm their requirements so that we may formally appoint them.
3. Once formally appointed, we will provide the solicitors with our draft Loan Agreement document and ask that they arrange the provision of this and the legal charge to the necessary parties for execution.
4. Once the documentation has been fully executed, we shall arrange the payment of the loan to the borrower.
5. We will contact the borrower to arrange for capital and interest repayments to be made at the agreed frequency.

12. TIMESCALES

We make every endeavour to complete all loanback applications within your preferred timescale, however we are reliant on third parties and many factors are outside of our control so we cannot offer any guarantees of completion within a set timescale.

If you wish to proceed please:

1. Complete and sign our Loan Application and return it to us.
2. Provide details of the assets to be charged together with proof of ownership and a current valuation by a suitable qualified and independent professional addressed to the trustees.

If property is used as security we will need a copy of the Title Deeds and a professional valuation addressed to the trustees and carried out by a chartered surveyor within the last 6 months. For other assets please contact us if you are unsure of what details to provide.

3. Provide copies of the last three years accounts for the borrowers.

13. REGULATORY

Momentum SSAS Trustees Limited is a subsidiary of Momentum Pensions Limited and acts as the Scheme Administrator and Professional Trustee of the SSAS.

Momentum Pensions Limited is authorised and regulated by the Financial Conduct Authority.

The company is registered in England and Wales at the following address –

Stafford Court
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