AJBell Investcentre

ADVISER GUIDE

SIPP v SSAS

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What is a SSAS?

A SSAS is a 'small self-administered scheme'. It is an occupational pension scheme that can have a maximum of 11 members – the regulations refer to this as a relevant small scheme with "fewer than 12 members", where all members are trustees and decisions are made unanimously. Where these criteria are met, the scheme is exempt from many additional requirements usually associated with occupational pensions in relation to statements of investment principles, costs information to members, governance committees, etc.

It is a trust-based scheme and an individual trust deed will be drawn up for each scheme that is established. Usually a template will be used but it is possible for each SSAS to have a slightly different trust deed and rules.

In practice, SSASs are most commonly used for directors of small businesses to pool their pension funds and make investments in commercial property for the business to operate from, or to make loans to the sponsoring employer. SSASs can also be used for family trusts.

Sponsoring employer

As an occupational scheme, there must be a sponsoring employer who establishes the scheme for the benefit of their employees. As long as the employer has at least one employee, then it is possible for them to establish a SSAS.

Most commonly, the sponsoring employer will be a trading company, but it could also be an investment company, partnership or even a sole trader provided they also had an employee for whom they were setting up the scheme to benefit.

It is also possible to have more than one sponsoring employer associated with one scheme. So, for example, if a couple both have their own businesses, they could both be the sponsoring employers of the same scheme.

Although it is a requirement for a SSAS to be set up by a sponsoring employer, it does not have to have one on a continuing basis. This means if the business is sold or wound up at some point in the future, the link to the sponsoring employer can be removed and the scheme can continue.

Setting up a new scheme

It is the sponsoring employer who establishes the new scheme by completing the establishing trust deed. This deed will set out who the parties are to the scheme, which must include the employer establishing the scheme, the trustees and the scheme administrator. The scheme administrator must then register the scheme with HMRC.

In order to qualify as a relevant small scheme, and avoid extra reporting requirements, all members must be trustees. Since 6 April 2006, there is no longer a requirement to have a professional/independent trustee involved. There must always be at least two trustees, so for one-member schemes another trustee will need to be appointed. This is often the professional trustee, but it can be any other eligible adult.

Most people over the age of 18 are eligible to be a trustee, but there are restrictions on undischarged bankrupts, anyone disqualified as acting as a company director, anyone with unspent convictions for dishonesty or deception, etc.

Although the scheme must be established for the benefit of employees, it is possible for the employer to invite other non-employees to join the scheme. This can be useful to establish family trust arrangements where not all family members are employed by the business.

The role of scheme administrator can be held individually or jointly. The scheme administrator is responsible for complying with the functions and responsibilities of the role under Part 4 of Finance Act 2004. These include registering the scheme with HMRC, paying certain taxes, reporting events, making returns of information to HMRC and providing information to scheme members regarding the lifetime allowance, pension input payments, benefits and transfers.

They must be 'fit and proper' – this definition includes "having sufficient working knowledge of pensions and pension tax legislation to be fully aware and capable of assuming the significant duties and liabilities of the scheme administrator" or employing an adviser with this knowledge (HMRC's Pension Tax Manual PTM153000).

Although it is possible for a business owner to set up a SSAS with no professional trustee or scheme administrator, this should be approached with caution. If the parties concerned are not on top of all the pension rules and reporting requirements, they could inadvertently make an unauthorised payment, or simply not complete the appropriate returns correctly or on time, and end up with fines and/or tax charges.

The trustees have the freedom to name the scheme as they choose. Traditionally this might be the "<name of the company> SSAS" or "<name of the company> Directors Pension Scheme" but it could be the "<family name> Family Pension Trust" or similar if more appropriate.

Once the scheme administrator has registered the scheme with HMRC, they will receive the scheme's pension scheme tax reference (PSTR) number. Only once this is received is the scheme established and able to accept contributions and transfers-in. The registration process with HMRC can take anything from a couple of weeks to several months. HMRC may carry out background checks on the parties involved and will only send out confirmation once it is satisfied. When establishing a SSAS, this should be taken into account if there are any urgent requirements – e.g. transfer values that will expire or investment deadlines. The time taken to establish a SSAS is significantly longer than someone opening a SIPP, where they are merely opening a new arrangement in a well-established scheme.

Regulation

As an occupational pension scheme, SSASs are regulated by The Pension Regulator (TPR). All schemes with two or more members must be registered with TPR once the PSTR has been received from HMRC. Again, this may take some time to come through and, although contributions can be made before the TPR registration is confirmed, some ceding providers may ask for this before allowing a transfer to the SSAS.

Contributions and tax relief

As an occupational scheme, a SSAS can operate on either a net pay or relief at source basis. In practice though, there will often only be employer contributions paid to the scheme, so no tax relief is claimed (the employer will benefit from Corporation Tax relief if the usual 'wholly and exclusively' rules are met).

The employer can choose to operate net pay, whereby personal contributions are deducted from gross pay before tax if appropriate. This ensures full tax relief is given at the appropriate rate. Alternatively, the scheme administrator can register the scheme for relief at source so personal contributions can be made and basic rate tax claimed from HMRC. This will involve extra administration for the scheme and the relief takes between 7-11 weeks to be received depending on the timing of the contribution. Any higher or additional rate tax payers will still need to claim the additional relief via self-assessment or contacting HMRC.

Each SSAS can operate net pay or relief at source – it cannot operate net pay for some members and relief at source for others.

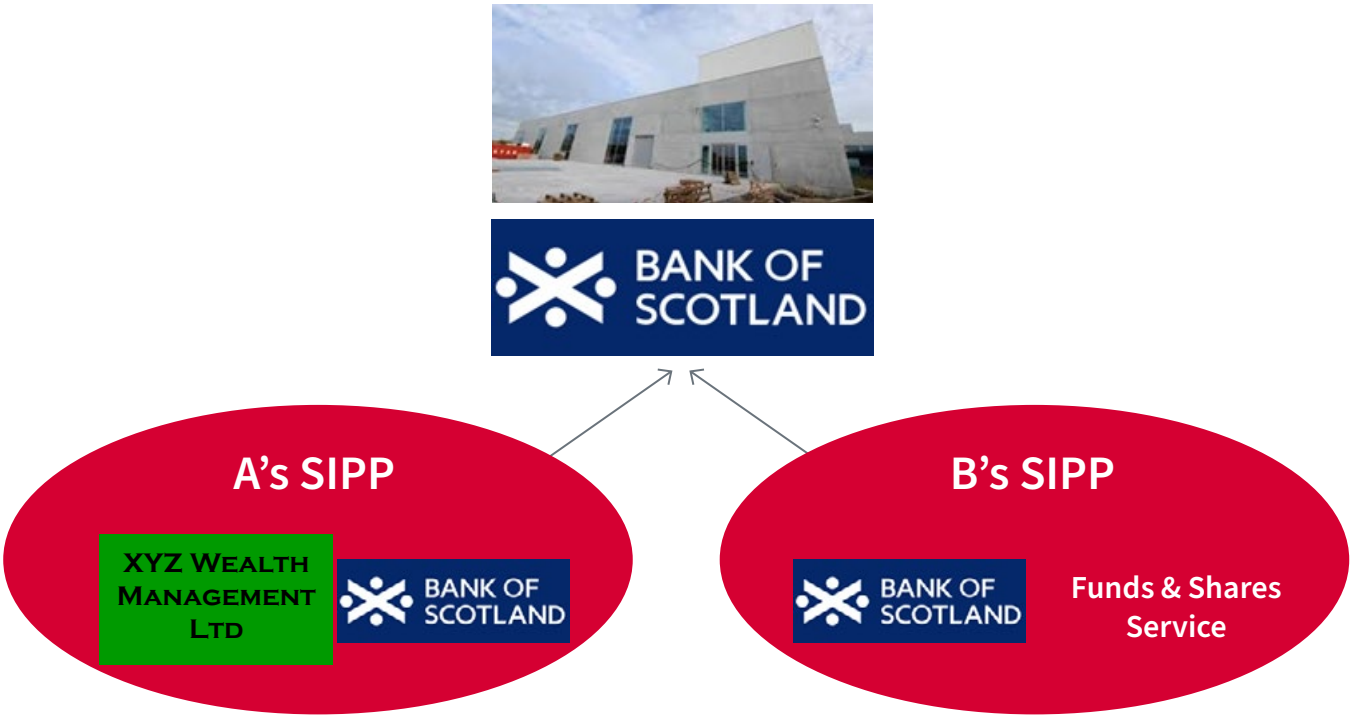
Where the employer invites non-employees to join the scheme (for example, family members) and they wish to make personal contributions, then it may be appropriate to operate relief at source, although the individual can still claim the tax relief from HMRC via self-assessment if the scheme is net pay only.

Group SIPP v SSAS for property purchase

A SSAS can be set up as a one-member scheme (often to make a loan to the sponsoring employer – see below), but it is commonly used for two or more members to pool their pension savings and invest in commercial property. Commercial property can also be purchased via a SIPP, so often there is a decision to be made as to which type of pension is more appropriate.

Under a SSAS, all the assets are pooled, with each member owning a share of all assets within the trust. This split of assets will be determined by the contributions and transfers-in in respect of each member, less any benefits taken or transfers-out. If the scheme is borrowing to fund the property purchase, then only one loan is taken out in the name of the pension scheme. The property itself is held in the name of the trustees as trustees of the pension scheme – the single entity that is the pension scheme holds the entire property, regardless of the number of members in the scheme.

Some providers will offer a group SIPP that operates on a similar basis, but more commonly what is often referred to as a group SIPP is actually a group of SIPPs. Effectively this is two, three, or more SIPPs grouped together to jointly purchase a commercial property. In this instance, each member has their own SIPP, and can hold their own assets separately from other members. If members need to borrow to fund the property purchase, then each member's SIPP will take out a separate loan as appropriate. Any commercial lender will want security, so in practice all members will need to use the same lender as they will all be secured on the same jointly-owned property. Each individual SIPP then purchases a fixed percentage share of the property based on how much they each pay towards the purchase price. The property is held on a tenants-in-common basis between the pension schemes.



There are advantages and disadvantages of each method of property purchase. Both types of schemes can borrow up to 50% of net scheme assets to help fund the purchase. HMRC rules allow schemes to borrow from any source, including a connected party, as long as it is on commercial terms. In practice, it is more likely that a SSAS will be able to borrow from the sponsoring employer than a SIPP borrow from the member or the member's company – but this may vary between SIPP providers.

Under a SSAS, decisions have to be unanimous, so members will need to agree on the investments held, which will include investments other than the property. Depending on the scheme rules, some SSASs will allow notional earmarking of assets, so different members can have different investment portfolios within the SSAS. If this is required, it should be written into the scheme rules when the scheme is established (although it is possible to change later by a deed of amendment if required and all trustees agree).

Under a group of SIPPs arrangement, members will have their own portfolios completely separate from each other – it is only the property that is held jointly. There will usually be more transactions involved in a group of SIPPs, as the rent generally comes into the joint bank account, then into the individual SIPP accounts to pay off any mortgage or to be invested in the individual SIPP.

Fees

When it comes to costs, then obviously these will vary between providers. A SIPP is generally cheaper than a one-member SSAS, and a SSAS with three or more members will generally be cheaper than three SIPPs.

One advantage of a SSAS is that the sponsoring employer can pay the SSAS fees and this is a tax deductible business expense, as it is an occupational scheme set up for the benefit of its employees. Effectively, this will reduce Corporation Tax for the business in the same way that employer contributions do, but if the members have already used up their annual allowance this allows more funds to remain in the pension. This is not possible under a SIPP.

Loans to sponsoring employers

Another advantage of a SSAS is that it can make a loan to the sponsoring employer. A SIPP does not have a sponsoring employer and any loan to the scheme member, or a person or company connected to the member, is automatically an unauthorised payment.

There are five key conditions that have to be met for a loan to a sponsoring employer to be an authorised payment.

These relate to:

- security;
- interest rate;
- term of loan;
- maximum amount of loan; and
- repayment terms.

Security

The loan must be secured with a first charge over property that is of at least equal value to the loan including interest. This could be a commercial property owned by the sponsoring employer, but where there is a mortgage already in place, this cannot be used as no other charge can take priority.

It is possible to use taxable property, such as residential property or plant and machinery, but care is needed. At the point the charge is put in place, an interest is acquired and the scheme is treated as having made an unauthorised payment. However, the amount of the payment will be the amount of consideration given for the interest, plus any fees in connection with the acquisition. Generally there is no consideration given when the charge is put in place, and if the fees are paid by the sponsoring employer, rather than the scheme, then no unauthorised payment charge will occur when the charge is put in place.

However, if the employer defaults on the loan, then the scheme may be forced to call in the charge. At this point, the scheme will acquire rights in the taxable property and the unauthorised payment charge will be based on the value of the property. In practice you want to be very confident that the security will never be called in before using taxable property as security.

The asset used for security does not have to be owned by the sponsoring employer; it is possible for one of the members to put up personal security. Although residential property can be used, caution would be needed before using the member's main residence as, realistically, you don't want the situation to arise where their business is struggling, so defaults on the loan repayments, and then the member also loses their home. If the member has a buy-to-let property or holiday home that can be used, then this may be an option to consider.

Interest rate

HMRC rules state that all loans must charge interest at least the prescribed rate. The minimum rate is calculated by reference to 1% above the average of the base lending rate of six high street banks specified in regulations (Bank of Scotland, Barclays, HSBC, Lloyds, NatWest and Royal Bank of Scotland). The average rate is rounded to the nearest multiple of ¼%.

In practice, this minimum rate is the same as that charged on unpaid Corporation Tax Self-Assessments and is published on HMRC's website in the CTSA tables entitled 'Interest charged on underpaid quarterly instalment payments', found here.

Whilst there is no maximum interest rate specified in regulations, the loan does need to be commercial, so if the rate the employer wishes to pay is significantly higher than the minimum, then it may need to evidence that it is a commercial rate. This is to avoid directors or senior employees using this as a means of getting tax deductible payments into their pension whilst avoiding the annual allowance.

Term of loan

The loan repayment period cannot be longer than five years from the date the loan is taken out. If the employer gets into financial difficulty, then the loan can be rolled over for a further period of up to five years from the standard repayment date. The loan can only be rolled over once and is not treated as a new loan. This means the maximum amount is not retested and the existing security can continue without the need for new valuations.

The scheme administrator would need evidence of the employer's financial difficulty to grant a rollover (copies of company accounts, etc.).

Amount of loan

The maximum loan the scheme can make is 50% of net assets. This is a one-off test at the date of the loan, so if the value of other assets held drops below after the loan is taken out, this does not automatically result in an unauthorised payment.

Repayment terms

All loans must be repayable at least in equal instalments of capital and interest for each complete year of the loan (a 'loan year').

The amount of capital and interest repayments payable by the end of each loan year must not be less than the 'required amount'.

This is calculated as follows:

[(loan + total interest payable)/total number of loan years] x number of loan years in period

Example

Loan £100,000 for five years. Total interest over the period is £5,000.

[(£100,000 + £5,000)/5] x 1 = **£21,000**
[(£100,000 + £5,000)/5] x 2 = **£42,000**
[(£100,000 + £5,000)/5] x 3 = **£63,000**
[(£100,000 + £5,000)/5] x 4 = **£84,000**
[(£100,000 + £5,000)/5] x 5 = **£105,000**

The figures in bold on the right show the amount required to be paid in total by the end of that loan year. In practice, it may be that more is paid in some years than others, and that payments are made quarterly or monthly. As long as the total payments made at the end of each loan year are of at least the required amount, then no unauthorised payment charge will arise.

Shares in sponsoring employers

Finance Act 2004 allows occupational pension schemes to purchase shares in the sponsoring employer with up to a maximum of 5% of scheme assets invested in each sponsoring employer and an overall maximum of 20% of scheme assets invested in all sponsoring employers. There is no limit on the amount or percentage of company shares the pension scheme can hold.

However, in practice it is unlikely that a SSAS will be able to purchase shares in the sponsoring employer. This is because SSASs are usually set up for the benefit of the people who control the sponsoring employer. Where the SSAS members have control (either individually or jointly), then they are also deemed to have control of the assets of the company. In almost all cases the company will hold taxable property, which means the SSAS would have an indirect holding of taxable property – which would result in unauthorised payment charges.

There is an exemption for assets below £6,000 where the asset is held solely for the purposes of the administration or management of the vehicle that holds it directly. In practice, most companies will own at least some IT equipment – laptops, mobile phones, etc. To meet the exemption, these could not have any personal use whatsoever – which realistically is highly unlikely, and impossible to monitor. There are many other difficulties with holding unquoted shares, not least of which would be getting valuations, but the taxable property issue alone is enough to make most providers shy away from permitting them in their SSAS.

This also demonstrates another way it would be easy for those who decided to go it alone without the involvement of any professional pension trustee/scheme administrator/practitioner to inadvertently make unauthorised payments that result in tax charges from HMRC.

Death benefits

Since April 2015, the death benefits under pension schemes have become increasingly generous and any individual nominated by the member under a SIPP or SSAS can receive death benefits in the form of flexi-access drawdown as this is no longer restricted to dependants.

There can be many tax advantages of keeping death benefits in a pension environment as opposed to the lump sum being taken out.

When someone dies over the age of 75, any income taken by the beneficiary is taxed at their appropriate rate of tax. For this reason, it could be tax-efficient to skip generations and leave some of the pension to lower-tax-paying grandchildren rather than children. However, this can raise questions around control, with some members having concerns about young people inheriting large sums.

When a SIPP member dies, their beneficiary must have a pension in their own name to receive the benefits. If they are under 18, then a junior SIPP is an option, with the parent or legal guardian having control until the age of 18. However, once they reach age 18, they have complete control regardless of their parent's wishes.

Whether an adult or child, there has to be a transfer of the deceased's funds from a SIPP to the pension of the beneficiary. Where property is held jointly, the share of the property may be able to be transferred in specie to the beneficiary's SIPP if they wish to continue holding it and it is appropriate for them to do so. Otherwise the property may need to be sold (potentially to the other joint owners). Either way, there will be a change in legal ownership and associated costs.

With a SSAS, these options are also available, but as an alternative the beneficiary could join the SSAS. A child under the age of 18 can join as a beneficiary member, without the requirement to be a trustee. The remaining trustees would be making the decisions over the investments in the SSAS, and the legal guardian (who may also be a trustee) will make any request to take income for the benefit of the child (for example to pay school fees).

A SSAS may also be appropriate for young adult beneficiaries (even if they are trustees). As the request to take benefits will be made to the member trustees, rather than just to the provider the beneficiary could not take all the fund and 'blow it' without the knowledge of the other members. When the request is made this would give the other trustees the opportunity to discuss it with the individual before the funds are withdrawn. This could be of interest for family trusts where all members are related.

Another advantage of SSASs with property involved is that, even though the underlying members/trustees of the SSAS may change, the ownership of the property does not – it is still held by the SSAS trust so there is no change in legal ownership and associated costs.

Transfers and takeovers

It is possible to transfer existing pension benefits to a SSAS in the usual way; you just need to remember that it may take longer to establish the scheme initially and no transfers can be accepted before the scheme has the PSTR from HMRC.

Unfortunately, SSASs have been used in the past by scammers, so have received some bad press. This has made providers more wary of making transfers to a SSAS, especially where there is no recognised pension provider involved. If you are making a transfer to a SSAS, you can expect the ceding provider to ask more questions and carry out more due diligence than if transferring to a recognised scheme. This may include asking for evidence of the earnings link with the sponsoring employer (payslips, etc.) and the reason for transfer.

As well as transferring other pensions to a SSAS, it can be possible to convert an Executive Pension Plan (EPP). This keeps the EPP intact, but effectively the SSAS rules are wrapped around it. This can be useful if there are guaranteed annuity rates or protected lump sums associated with the EPP that would be lost on transfer, as they will be unaffected. Converting an EPP to a SSAS can also boost the value of the SSAS for purposes such as borrowing for property purchase, or to make a loan to the sponsoring employer.

When it comes to transfers out of a SSAS, each member can transfer out individually in the usual way, but if you want to change the provider (or appoint a professional trustee where there wasn't one previously), then this would be a takeover. As the scheme is a distinct entity from any previous provider, trustees and scheme administrators can be removed and appointed via deed. This means a new provider can take over the existing scheme without any transfer needing to take place. If there is property in the scheme this makes it easier than trying to change provider with property in a SIPP where an in specie transfer is necessary.

Summary

SIPP	SSAS
Personal pension	Occupational pension
Master trust (usually)	Individual trust
Member not always trustee	All members are trustees
FCA-regulated	TPR-regulated
Relief at source	Usually net pay (although often only employer contributions are made)
Assets held in individual SIPP arrangement	Assets are pooled
Funds must be transferred out on death (either as a lump sum payment or to another pension)	Beneficiaries can join the scheme or have funds transferred elsewhere
Groups can be formed for property purchase – property held as joint tenants between individual SIPPs	The SSAS holds the property
Cannot make loans to connected parties	Can make loan to sponsoring employer

For more information on SSASs, or to contact one of the AJ Bell Platinum consultants, please see:
ajbellplatinum.co.uk/aj-bell-platinum-ssas

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