

GUIDANCE NOTES FOR LOANS FROM IPS SELF-INVESTED PERSONAL PENSIONS

There is no objection to a SIPP making loans to **third parties** – i.e. persons not connected to members or contributing employers. Such loans should be granted on commercial terms which normally includes being secured by a legal charge over assets of the borrower.

However, loans to members (or those connected to members) are not permitted and any such loans will be taxed as an unauthorised payment (the tax charge is between 55% and 70% of the amount of the loan).

HM Revenue & Customs have a broad definition of a connected party as set out in Section 839 of the Taxes Act. This basically involves the following:

- A wife, husband or relative
- A wife or husband of a relative
- A trustee is connected with a settlor
- A business partner, wife, husband or relative of a business partner
- One company controlling another, or two companies being controlled by the same person (either with or without other connected persons)
- Any member of the pension scheme,
- Any person connected with such a member,
- Any other pension scheme of which a member or connected person is also a member.
- any associated pension scheme

Where a loan is made to an unconnected party, the loan documentation and legal charge should be drafted by a solicitor, and we would need to approve the drafts before all parties sign the documents.

It is very important for us to ensure the borrower is genuinely unconnected and the terms of the loan are commercial. For this reason we ask for relevant information to be provided.

We must take all available legal steps to enforce the repayment of a loan if a borrower breaches the conditions of the loan agreement (i.e. fails to pay interest and/or capital on the due date), ceases to carry on business or becomes insolvent, even if this involves a company being placed into liquidation or an individual being made bankrupt.

We must be able to demonstrate by evidence that the pension scheme trustees are doing the same as any commercial lender would do in similar circumstances. We will therefore require independent expert corroboration in these situations (for example from the borrower's accountant).

Listed Debt Instruments

Loans in the form of securities which are listed or dealt on a recognised stock exchange or offered to the public are not included within the definition of a connected party, even if the member is an employee of the company concerned. For example:

- debentures
- debenture stock
- loan stock
- bonds
- certificates of deposit
- other instruments relating to the owing of monies.

There are therefore no restrictions on such loans.

All loans MUST be made on commercial terms (i.e. the term, interest rate and terms of repayment), and MUST be documented and signed by all parties.

Our standard fee for the work involved with arranging a loan is £250 plus VAT. However, if the work involved results in additional administration not covered by this fee, we reserve the right to charge an extra fee on an hourly basis, in respect of any additional work.

This guidance note is based on our understanding of HM Revenue & Customs regulations at the time of writing and can be subject to change.

March 2010.