

SIPP vs SSAS property investment

Using your pension to buy and own commercial property

Rachel Geary & Murray Smith

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Why bother using a pension?

My property is my pension



My property is my pension

- › Meaning “my house is my pension” – you will need cash, downsizing will release cash...
- › Meaning residential buy-to-let – subject to taxes
- › But today’s talk is focussing on commercial property in pensions

Why bother using a pension?

Why not just buy the property?

Pensions should be more tax efficient

- › Tax relief on contributions – individual and company
- › Rental income not taxed
- › Growth in capital value of property not taxed – could be years later
- › 25% tax-free cash when you take benefits (don't have to retire)
- › Pass property down generations, sometimes tax free



Taxation of death benefits

- › The pension is a Trust – you are a Trustee so you control it
- › It's not part of your Estate
- › No Inheritance Tax on death
- › No Income Tax on funds paid on death before age 75
- › Recipient pays Income Tax on funds paid on death after age 75
- › Pensions can be paid to non-dependants – e.g. grown up children
- › ***Pass assets to spouse, partner and younger generations tax free***

Member

- No income tax/CGT in trustees' hands
- Draws a **taxable** pension
- Dies **under 75**
- No IHT

Spouse

- No income tax/CGT in trustees' hands
- Draws a **tax-free** pension
- Dies **over 75**
- No IHT

Successor
(e.g. adult
child)

- No income tax-GT in trustees' hands
- Draws a **taxable** pension
- Dies **under 75**
- No IHT

etc. etc.

Differences when using a pension

- › You don't personally own it – your pension does
- › Think commercial only – residential usually means tax charges
- › Borrowing limit
- › Protected from creditors
- › Professional Trustee input
- › Connected party rules apply

What do SIPP's & SSASs allow, property-wise?

Don't fence me in



What counts as commercial property?

- › Shops
- › Offices
- › Industrial units
- › Warehouses
- › Sports facilities
- › Pubs
- › Halls of residence for students
- › Restaurants
- › Garages
- › Agricultural land
- › Forestry and more

Probably not overseas;
not residential

What is residential property?

Legislation tells us....

Any building suitable for use as a dwelling

Any related land

Any building on such related land

Buildings which are "part" residential

Two examples to look at

Can you tell which property
would be ok in a SSAS?

Part residential – example 1



Part residential – example 2



You can't tell!

**More information on the
layout and occupation
needed**

Parts of properties

- › Shop and flat has inter-connected areas – whole property is residential, including the shop

- › Shop and flat are completely separate – they are treated as separate buildings

- › Land has factory and house – factory is not residential

Usually yes, but can be exceptions

Caretaker flats and flats as part of commercial letting (eg shopkeeper's flat) **may** be tax efficient

Generally, SIPP and SSAS cannot own freehold of commercial properties where this is a residential flat above

Is residential out of the question?

Your company could buy freehold

Then SSAS or SIPP acquires long lease on purely commercial part

Residential part stays in your company

SIPP or SSAS provider would need to be involved early on

Is residential out of the question?



Halls of residence for students

Format must meet legislative requirements to be tax efficient

- › educational establishment identifies property as one of its halls of residence
- › educational establishment involved in placing students in the building
- › students occupying building are limited to single educational establishment



Halls of residence for students

- › building is not broken up into self-contained apartments with one or more bedrooms
- › common living areas or eating/cooking facilities or services provided for use of all occupants
- › individual rooms within property cannot be acquired or disposed of separately

You can still do the things you'd do outside a pension

Borrow
from a
bank

Part
ownership

Group of
investors

Buy own
business
premises

Listed

Buy at
auction

Freehold or
leasehold

Develop
property

Multiple
tenants

Pension
scheme VAT
registration

Help with running – rent collection, lease
renewals, insuring

**Let's look at some of those in
more detail**

Borrowing

Pension
rules limit:
50% of the
net fund
value

Lender's
only
recourse is
the
property

You will
need to
take
account of
costs

Don't
forget
liquidity!

CONNECTED TENANT ISSUES

Leased back to a connected tenant - your company....

Arrangement between trustees and tenant has to be demonstrably arm's length

Often poses a tricky dilemma – payment of rent may be inconvenient but not enforcing the lease would not be arm's length

Failure to act at arm's length can lead to heavy tax charges.....

Unauthorised payments

- Allowing a connected company to not pay the market rent would typically be classed an ***unauthorised payment*** equal to any shortfall
- Scheme Administrator is legally obliged to report this to HMRC
- Tax charges payable as follows:
 - Unauthorised payment charge: 40%, payable by the company
 - Scheme Sanction charge: 15% - 40%, payable by the Scheme Administrator
 - *Unauthorised payment surcharge?*
- Extreme cases can even lead to de-registration

Unauthorised payments example

- Rent review is due 1 December 2013
- Connected tenant was paying £80,000 per annum
- Client believes the rent is still appropriate and declines to obtain a rental valuation
- Cost saving - **£800**
- Rent continues at £80,000 per annum

- In 2019, HMRC audit : District Valuer determines market rent in 2013 was £85,000 Client has no documentation to evidence £80,000 as being market rate

Tax charges :

- Unauthorised payment charge: $£5,000 \times 6 \times 40\% = \mathbf{£12,000}$, payable by the **company**
- Scheme Sanction charge: $£5,000 \times 6 \times 40\%$, = **£12,000** payable by the **Scheme Administrator**. May be reduced to £4,500
- Plus Costs and Interest from HMRC- **unknown**

Other considerations

**Listed
properties**

**Contamination
risks**

Asbestos

**Energy
Performance
Rating**

Listed properties

- › Higher the grade, higher the risk
- › Even need to consider works carried out a long time ago
- › The authorities could demand the trustees reinstate the property, even if issue arose before scheme purchased it!
- › Potential legal action against trustees, including custodial sentences
- › We consider each case on its merits – often extra documentation & time
- › Should be covered by appropriate insurance – CHECK!!

Energy Performance Certificates

- › EPCs have been compulsory since 1 April 2018.
- › Most properties being bought, sold or let require an EPC rating of E or better before the transaction is begun
- › Some exempt properties – e.g. land, properties to demolished, temporary buildings, listed buildings (usually)
- › Purchase or sale – can proceed with any rating but parties should consider the work needed
- › New lease (renewed/extended leases not so sure) -rating E or better to proceed.
- › Fines for non-compliance
- › We can help by referring to an EPC provider

Contamination and other risks

Be aware of any risks associated with the property:

- › Mining report – subsidence risk
- › Flood report
- › Contaminated land – council may impose action on the trustees
- › Land Registry searches – does seller have legal title? Any restrictions/charges?
- › Check for Restrictive Covenants/Easements/Restrictions (may have expired)

Asbestos

- › It is claimed asbestos is the single greatest cause of work-related deaths
- › Manufacture and supply banned by end of 1999
- › Properties built before 2000 might still have asbestos onsite
- › Duty holder (trustees or tenant) should obtain an asbestos report
- › Follow asbestos management plan
- › Label and monitor all asbestos containing materials and/or arrange for its removal by a specialist



9 steps to property purchase in a pension

1. Assess the financial feasibility
2. Consider whether to take independent financial advice
3. Find suitable professionals – solicitor, surveyor, bank
4. Complete our property purchase questionnaire



9 steps to property purchase in a pension

5. Address any environmental, asbestos or energy performance issues
6. If the property is subject to VAT, decide whether to VAT register
7. Review of legal documents; solicitor arranges exchange of contracts
8. Arrange suitable insurance ahead of completion
9. Lease put in place between pension and tenant (or assigned)

What could go wrong?

Banana skins and bombshells

Banana skins and bombshells

- › Rent arrears
- › Evidence of market rent if let to connected tenant (need a surveyor)
- › Voids
- › Illiquidity and cash flow
- › Connected parties – let to your company or family members
- › Value shifting
- › Residential
- › Tangible moveable property
- › Moving provider

Beware of void periods – example (part 1)

- › ABC Ltd establish a SSAS, pooling the pension wealth of its directors totalling £1million
- › Company's office is worth £1.3 million. Trustees borrow £300k from high street bank to buy the premises from the company
- › Company gets a cash injection of £1.3million and rents the office space from the trustees
- › Rent is an allowable company expense and is tax-free in the hands of the trustees
- › Rental income of £130k p/a comfortably services pension for one of the members and the borrowing repayments

Everyone's happy!

Beware of void periods – example (part 2)

- › Years later, ABC Ltd comes into financial hardship – their market has changed - loss of dividend income for directors
- › Rental payments cannot be made – members' pension growth suffers
- › Borrowing cannot be serviced – bank threaten to call in security
- › Pension payments cannot be met
- › Trustees disagree over whether property should be sold

No-one is happy

Summary

- › Investing in property through a SIPP or SSAS should be tax efficient
- › Pass property to younger generations with little or no tax
- › Think commercial only, but rare types of residential may be allowed. Check in with us in advance.
- › Borrowing to facilitate a bigger/better property
- › Consider VAT registration and employing professionals to manage
- › No special favours to connected tenants, including your own company
- › Resolve any legal, asbestos or environmental issues
- › Remember banana skins and bombshells
- › Give your advisers (including us!) plenty of notice if you are buying

Questions?