

Briefing

# Why do we have a SSAS Allowable Investment Schedule?

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Our SSAS clients frequently ask what investments they can or cannot make within their SSAS. There is indeed a huge range of investments that SSAS trustees can, in theory, choose from. However our experience as a professional trustee and Scheme Administrator suggests that it is wise not to allow certain investments and, in some cases, to conduct in-depth enquiries.

We now publish our SSAS Allowable Investment Schedule. In addition, we administer some SSASs where we do not act as professional trustee. Whilst trustees of these schemes will ultimately be able to make their own decisions about potential scheme investments, we believe they should consider our Allowable Investment Schedule as a useful benchmark for a prudent scheme investment mandate.

## Reasons for having a schedule

### Due skill, care and diligence

As a professional trustee, we are (quite rightly) held to a higher duty of care than lay trustees. So that means we may be more interested in reviewing investment paperwork and conducting due diligence than our co-trustees.

This can appear a strange stance to take for the co-trustees who are 'investing their own money.' However, the funds are also there for their beneficiaries and our experience may provide additional insight to the co-trustees.

On occasion, we may seek professional legal advice for more complex situations before allowing an investment to proceed. The investment provider may well be very keen to secure the additional investment from the pension scheme. However, this stance should not discourage checks to make sure that the

investment can be correctly held by the pension scheme trustees and will likely meet their liquidity requirements, for example.

Whilst we typically leave the members/co-trustees to conduct due diligence on commercial property investments, we would typically seek environmental reports and may insist on an associated indemnity insurance policy, where the report flags up potential contamination risks.

### Taxable Property

One key area that we review for new investments is whether the trustees may end up owning, either directly or indirectly, investments that HM Revenue & Customs (HMRC) will seek to tax. These investments are labelled 'taxable property' and incur punitive tax charges designed to dissuade trustees from agreeing to make such investments. Simple examples of this include cars and buy-to-let homes. These are things that HM Treasury do not want you buying with tax-relieved funds.

Whether or not an investment constitutes purchased taxable property is often very easy to ascertain if the taxable property is being purchased directly, such as cars and buy-to-let homes. There are rules, however, governing indirect ownership of such property. These are designed primarily to stop such investments being owned by a company that is, in turn, owned by the pension scheme.

There are exemptions to indirect holdings, so as to enable genuine investment into companies and similar vehicles where the prime purpose is not to own taxable property.

The rules are very specific, meaning that a lot of potential investment opportunities cannot proceed due to the potential for the trustees ending up owning taxable property indirectly. It can often take some time to establish the situation and can require a detailed look at the investment structure before a determination can be made.

An example of an indirect exemption is if investment is made via a genuinely diverse commercial vehicle (GDCV). By way of illustration, a scheme's purchase of equities in a listed car manufacturing firm outside of the control of the scheme members will be exempt from the tax charges, even though the company's stock (i.e. cars) are technically owned indirectly by its shareholders.

However, other scenarios are less straightforward and require careful investigation. The various underlying factors include the members' collective voting rights in a company's activity, whether the investment vehicle is a Real Estate Investment Trust and even whether the vehicle's main purpose is the holding of animals for sporting purposes (to discourage racehorse syndicates).

### Limitation of losses

Both our SIPP and SSAS are trust-based schemes. This means they are distinct legal entities, run in accordance with the trust deed and rules, with any assets owned by the trustee(s). Obviously, the purpose of the trust is to provide retirement and/or death benefits to the member(s) and their beneficiaries respectively. The trustees have a legal obligation to act in the best interest of the member(s)/beneficiaries at all times.

Investments made by the trustees should not have recourse beyond the funds available to the trustees (additionally, for the SIPP, as available for that particular pension member).

The reason for this is that, otherwise, there might be a call for funds that either a) belong to the professional trustee, even though they do not benefit from investment growth or b) require settlement by individual members, leading to complications concerning additional unplanned and possibly tax inefficient contributions being made or c) are actually attributable to another SIPP member.

For this reason, it is prudent for any investment contract to specify that there can be no recourse beyond the pension scheme or SIPP policy.

### Fraud mitigation

Pension savings are often an individual's greatest source of wealth beyond their home. So there is a risk that fraudsters will try to extract that wealth by encouraging use of sham investments.

The pension industry is aware of a number of investment types that are susceptible to such fraud. It is therefore prudent for us not to allow any investment in those asset types, regardless of how genuine they might look.

Examples of these include some from the following: carbon credits, overseas forestry and storage pod investments.

One key point to note about these investments is that there is no established secondary market in operation (a right to sell your investment back to the issuer is not a true secondary market).

## Recognition of trusts

Finally, we need to make sure that we can plainly and confidently evidence the ownership of scheme assets by the trustees. This is one reason why we take a more vigilant stance on overseas property investments than we do for those in the UK. If the jurisdiction in which the proposed investment is based does not recognise UK trusts (as is the case in, say, Spain), then we will not agree to it.

We have a duty as trustee to look after the interests of the beneficiaries and safeguard their assets. Investing in countries where the trust's ownership would not be recognised would clearly put those interests in jeopardy.

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