

FACT SHEET PENSION SCHEME LOAN

The purpose of this fact sheet is to provide you with important information about your pension scheme loan.

In making a loan to your business you must ensure that it is secured at outset by an asset of equal value that is unencumbered. The nature of the asset is flexible; however it is imperative that in the event of default the pension scheme is able to recover its loss.

SECURITY

Where a loan ceases to be secured by any charge at all at any time after the loan is made, an unauthorised payments charge will arise calculated on the amount owing (including interest).

Where no security exists or the asset is not secured as a first charge, there will be an unauthorised payment charge equal to the amount of the loan (including interest). We will require independent verification that the security is unencumbered and equal to the value of the loan made.

Where the business undertakes a transaction which reduces the value of the security, an unauthorised payments charge will apply on the amount of reduction in the charge. If the replacement security is not equal to either the value of the previous security or the amount of the loan still outstanding, an unauthorised payments charge will apply. The charge will be the reduction in value of the charge.

The unauthorised charge will be equal to no less than 40% of the transaction and will be payable to HMRC. For example, QQ Ltd SSAS makes a loan to QQ Ltd of £250,000. QQ Ltd offers a property as security that has a value of £300,000. Six months later QQ sell the property and replace the security with another property worth £200,000. The amount of loan outstanding including interest is £230,000. An unauthorised payments charge will arise on the difference between the value of the security and the amount of the loan outstanding - £30,000 at the rate of 40% resulting in a tax charge of £12,000.

LOAN TERM

The maximum term of the loan is 5 years. HMRC recognises that sometimes loans will be made and the business will sometimes get into financial difficulties during the term of the loan. The loan period can be extended and the loan repayment date may be postponed or "rolled over" for a period up to a further 5 years starting from the standard repayment date. This can only take place once.

REPAYMENT INSTALMENTS

The instalments can be to a maximum of annually in arrears.

For annual instalments, all loans 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. If the loan is for less than a complete year, then the incomplete year is treated as the final year of the loan.

Most loan repayments are repaid monthly or quarterly in arrears, this ensures that the repayments are regular and commercial to the scheme.

INTEREST RATE

The minimum interest rate a scheme may charge is calculated by reference to 1% above the average of the base lending rates of the leading high street banks. Any rate less is considered an unauthorised amount.

The average rate calculated should be rounded up as necessary to the nearest multiple of $\frac{1}{4}\%$. There is no cap on the rate charge but it must be commercial and on arms length terms.

The rate can be variable or fixed for the loan term.

THE LOAN AMOUNT

The amount a loan which can be made to the business is 50% of the aggregate of the amount of the cash sums held and the net market value of the assets of the SSAS valued immediately before the loan is made.

Where, at the time the loan is made it is found to exceed the 50% limit, an unauthorised payments tax charge will be applied to the additional amount.

The 50% limit is applied as at the date the money is loaned 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 was made are to be treated as a new loan made on the date the further advance was made.

UNAUTHORISED PAYMENTS CHARGE & SURCHARGE

There are a number of circumstances where the unauthorised payments charge (UPC) can arise. The UPC is at a rate of 40%, based on the amount of the unauthorised payment. A surcharge threshold is reached if the unauthorised payments percentage reaches 25%.

The rate of the unauthorised payments surcharge is 15%, when added together with the UPC the total tax is 55%. The surcharge is a freestanding tax charge, which means any losses a taxpayer may have cannot be set against the tax charge.

It is very important that in making the loan careful consideration is made to the requirements for repayment and to ensure that the loan is not paid to a business that is ailing, insolvent or unlikely to meet its repayment conditions. The tax consequences of non compliance are very significant.

We act for the trustees, we are registered with HMRC as a Practitioner and will adhere to the event reporting requirements imposed on the Administrator for loans that are defaulted on.

This information is for guidance purposes, which will be subject to change. For further information please contact : The Pensions Service. HMRC, Pension Scheme Services, Yorke House, Castle Meadow Road, Nottingham. NG2 1BG or your Practitioner.