



# Commercial Property Transactions

SSAS

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## Small Self-Administered Scheme (SSAS) Commercial Property Transactions

A guide for Trustees (You should also refer to EBS's notes 'Information for Solicitors')

### 1. Commercial Property

Commercial property is land and buildings anywhere in the world that is not residential property. For example, development land, farmland, woodland, factories, warehouses, shops and offices. Commercial property **does not include** residential property let on a commercial basis, such as buy-to-lets and holiday homes.

**Any investment in overseas property should be given very careful consideration - see Appendix 3.**

Other than in relation to the amount of authorised borrowing a SSAS can use to assist in the purchase, HM Revenue & Customs (HMRC) imposes no restrictions on investment in commercial property.

'**Taxable property**' is an HMRC term which includes residential property and tangible moveable property. If the SSAS invests directly or indirectly in residential property, HMRC can impose, through the taxable property rules, severe tax penalties on both the Members and the SSAS. Details of what constitutes residential property for the purposes of the taxable property rules can be found in part 2 of these notes.

**Fixtures and fittings** that are not considered to be part of the fabric of a commercial property could be considered to be taxable property and give rise to tax charges under the taxable property rules, e.g. equipment, plant and machinery, furniture etc. For further insight into what HMRC regards as tangible movable property, please see the relevant page of the HMRC online Stamp Duty Land Tax Manual.

<http://www.hmrc.gov.uk/manuals/sdlmanual/SDLTM04010.htm>

**Please note** that if the SSAS Trustees would like EBS to provide technical assistance in relation to property transactions the EBS property team will be happy to undertake this work. Upon request we will issue a property questionnaire and all work undertaken will be charged on a time cost basis in accordance with the EBS SSAS Fee Schedule.

### 2. Residential Property ('taxable property')

Although investment in residential property is not prohibited under the pension tax rules, there are severe tax penalties on both the SSAS Members and the SSAS for any direct or indirect investment in such property.

Broadly, residential property is a building or structure (or part of a building or structure) that is used or is suitable for use as a dwelling, any related land that is wholly or partly the garden for the building or structure, any related land that is wholly or partly grounds for the residential property and which is used or intended for use for a purpose connected with the enjoyment of the building, and any building or structure on any such related land.

Please note that HMRC will consider whether land adjacent to or close to a residence (including a Member's own residence or the residence of a person connected with a Member) constitutes part of the grounds of the residence. Further details can be found in its published guidance in relation to Capital Gains Tax Private Residence Relief, the relevant part of which can be found on the HMRC website via the following link:

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg64360>

The SSAS Trustees should take great care when considering such investments because what might at first appear to be commercial property might be deemed to be residential property for the purposes of the pension tax legislation.

Residential property also includes: ground rents in relation to residential property; beach huts; hotels and inns, but only where the hotel or inn provides accommodation rights such as timeshares; and any building specified in HMRC regulations as residential property. If the SSAS Trustees own the whole of a hotel or inn or are a part-owner of the whole of the hotel, it will normally be classed as commercial property.

If a building is not currently in use, the previous function of the building should be considered unless the building is redundant and unoccupied (i.e. not currently suitable for use as a dwelling).

The following should **not** constitute residential property:

- A dedicated children's home or institution.
- A students' hall of residence (i.e. leased to a university or college).
- A nursing home.
- A hospital or hospice.
- A prison or similar establishment.
- A shop leased to or to be leased to an unconnected person with an integral flat above, which is or is to be occupied by the person running the shop.
- A residential property, which is an integral part of a commercial property, and which is, or is to be, occupied by an employee who is not a Member of the SSAS or connected with a SSAS Member or with his employer and is required as a condition of employment to occupy the property.
- Any building that is specified in HMRC regulations not to be treated as residential property.

#### **Indirect investment in residential property by way of a vehicle**

'Vehicle' means a person or entity, through whom/which the SSAS holds property, e.g. regulated and unregulated collective investment schemes and unquoted companies. Investment in vehicles that invest in or hold an interest in residential property will give rise to tax penalties unless the vehicle in question satisfies the exemption criteria in the HMRC 'taxable property' rules. A SSAS Technical Note on taxable property is available on request.

### **3. Transactions with Connected Persons**

All commercial property transactions between the SSAS and connected persons must be carried out on 'arm's length' terms at market value otherwise there could be tax consequences for the employer or the Member(s) and the SSAS.

'Connected persons' include the following:

- A Member or a Member's spouse or civil partner.
- A relative of a Member or relative of a Member's spouse or civil partner.
- The spouse or civil partner of a relative of a Member or a Member's spouse or civil partner.
- A trustee of a settlement where the settlor of the settlement is a Member, or someone connected with a Member.
- A person (or that person's spouse or civil partner or relative) who is in partnership with a Member or a Member's spouse or civil partner or relative.
- A company, which is controlled by a Member and/or person connected with a Member.

'Relative' means brother, sister, ancestor or lineal descendant.

For HMRC reporting purposes 'connected person' also includes close companies of which a Member or person connected with a Member is a director.

#### **3.1 In Specie Transfer**

This is where all or part of the assets (which may include commercial property) held under another registered pension scheme for one or more Members are transferred to the SSAS rather than liquidating the assets and transferring the cash proceeds.

##### **Please note**

- The transfer of a commercial property (and any attaching borrowing/mortgage) from one registered pension scheme to another as part of the transfer of a Member's accrued benefits is not normally subject to Stamp Duty Land Tax (SDLT), except in Scotland. Please see the relevant pages of the HMRC online Stamp Duty Land Tax manual via the following links:  
<http://www.hmrc.gov.uk/manuals/sdlmanual/sdlm31800.htm>  
<https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-tax-manual/sdlm31810>
- If VAT applies or is likely to apply to the property, the Trustees of the SSAS receiving the transfer will need to register for VAT and opt to tax the property (see part 10 of these notes). Unless the transfer qualifies as a Transfer of a Going Concern (TOGC), the SSAS receiving the transfer will have to pay VAT on the value of the property and reclaim it later on.

- It is EBS's understanding that HM Land Registry treats a TOGC as a transfer for value and there will normally be a registration charge of between £40 and £910 depending on the value of the property.

### 3.2 Joint Property Investments

It is possible for the Trustees of the SSAS to join together with other pension schemes, individuals or companies (whether connected with any of the Members or not) to purchase commercial property.

All those involved should be party to a formal agreement in relation to the joint property investment or, where a nominee acts as legal owner, a Declaration of Trust, which should confirm the following:

- The SSAS Trustees' interest in the property.
- How and to whom the property may be sold including sales between the joint investors themselves (sales should be at open market value as confirmed in writing by an independent professional surveyor).
- In relation to any borrowing, the Lender only has recourse against each participant to the extent of their interest in the property (this may require a separate loan for each participant but with the Lender retaining its power of sale over the whole of the property) – see part 8 of these notes.
- The consent of any Lender to the arrangements.
- The SSAS Trustees' ability to sell their interest in the property at any time is not unduly fettered in any way.

Unless the management of the property, e.g. rent collection, payment of expenses including VAT (if applicable), is delegated to a professional manager, there will need to be a joint property account and at least one of the SSAS Trustees must be a mandatory signatory on the account.

**Please note** that when considering participation in a joint purchase, the SSAS Trustees must bear in mind that there may be circumstances where it becomes necessary to force a sale of the whole property. For example, where a Member dies and funds are required to pay out death benefits, or where a Member divorces and part or all of the Member's interest in the SSAS Fund (their Contribution Credit) has to be transferred to a pension arrangement for their ex-spouse as part of a Pension Sharing Order.

## 4. Purchase at Auction

The SSAS Trustees should bear in mind that when purchasing a property at auction, any attaching covenants/liabilities will automatically transfer to the Trustees. They should also make sure they only make a bid that can be funded from the cash and readily realisable assets of the SSAS and any borrowing (see part 8) that could be arranged before completion of the purchase is due which is usually within 28 days of the auction.

## 5. Development/Refurbishment/Improvement

Once the Trustees have acquired a commercial property, they may, having obtained any appropriate planning permissions, develop, refurbish or improve it.

The Trustees' solicitor should provide all necessary documents (including the Joint Contractors Tribunal (JCT) Contract between the builder, the architect and the Trustees and any Warranties), which should limit the liability of the Trustees to the extent of the property or, if necessary to the assets from time to time of the SSAS.

Where the tenant wants to refurbish the property, it should be carried out in accordance with the terms of the lease and paid for by the tenant unless negotiated with the Trustees on commercial terms. The tenant should complete any reinstatement before the lease expires.

**Conversion of commercial property to residential property** may present difficulties for the SSAS Trustees because they must make sure they have sold the property before it is deemed to be **suitable for use as a dwelling** (see part 2 above). Otherwise, the SSAS would hold taxable property and tax penalties would be incurred.

**Please note** that HMRC can sometimes deem property development to constitute trading, which could give rise to tax charges. (See part 13 below).

## 6. Survey and Valuation Report

The SSAS Trustees should appoint an appropriately qualified independent professional surveyor to carry out a survey (preferably a full structural survey) and valuation of the property.

**Please note** that where the purchase or sale of a property is from or to a ‘connected person’ (see part 3 above) and completion has not taken place within 3 months of the date of the surveyor’s valuation, we suggest that the surveyor is asked for a written statement confirming whether his opinion of the property value has changed and if so, that should then be the purchase or sale price. Similar statements should be requested if there are further similar delays to completion. This is because the District Valuer Services (DVS) of the Government’s Valuation Office Agency can become involved in such transactions where that office feels that too little or too much has been paid for a property between connected parties.

If the Trustees need to borrow to buy a property they may need to negotiate with the proposed lender whether or not it would be prepared to accept the Trustees’ surveyor’s report and valuation for its purposes or insist on one from a surveyor on the lender’s approved panel of surveyors.

The surveyor’s report should be addressed to the SSAS Trustees and include (where appropriate):

- An opinion of the open ‘market value’ <sup>1</sup>
- An opinion of the open market rental value
- An environmental risk assessment <sup>2</sup>
- Confirmation whether an asbestos survey is required <sup>3</sup>
- Site plans clearly indicating site boundaries
- Confirmation that the property complies with Equality Act 2010 requirements <sup>4</sup>
- Confirmation that the property, where necessary, meets the fire safety requirements <sup>5</sup>
- A copy of a valid Energy Performance Certificate <sup>6</sup>
- Copies of air-conditioning inspection reports <sup>7</sup>

<sup>1</sup> **Market value** means the price which the interest in the property might reasonably be expected to fetch on a sale in the open market (in accordance with Section 272 of Taxation of Chargeable Gains Act 1992).

### <sup>2</sup> Environmental risk assessment

For the purposes of the Environmental Protection Act 1990, where land is designated as contaminated, and the polluter cannot be found, the “owner or occupier” will be deemed the appropriate person to bear the cost of cleaning up the site or adjacent sites if third party damage is created. The definition of an owner is as follows:

“in relation to any land in England and Wales, means a person (other than a mortgagee not in possession) who, whether in his own right or as *trustee* for any other person is entitled to receive the rack rent of the land, or, whether the land is not let as a rack rent, would be entitled if it were so let.”

[Part IIA of the Environmental Protection Act 1990 section 78A (9)]

Therefore, if the surveyor’s report does not include an environmental risk assessment, we suggest that the Trustees should commission an environmental risk assessment of the property from a suitably qualified professional. An online risk assessment, which incorporates the opinion of an independent consultant regarding the risk of potential liability under Part IIA of the Environmental Protection Act 1990, can be obtained via one of the following websites:

- <http://www.envirocheck.co.uk/reports>
- <http://www.promap.co.uk/maps-and-data/reportslicences/enviroscreen>

### <sup>3</sup> Asbestos regulations

Regulation 4 of the Control of Asbestos Regulations 2012 (‘The Asbestos Regulations’) requires the ‘dutyholder’ to put in place a management plan for all non-domestic properties at risk from asbestos products. All buildings constructed before 1999 are regarded as being a potential risk.

The ‘dutyholder’ is the person responsible for the maintenance and repair of the premises under the terms of the lease. So, in the vast majority of cases the ‘dutyholder’ will be the tenant. If not, the Trustees, as owners, will be the ‘dutyholder’.

In order to prepare a management plan, the 'dutyholder' will first need to arrange for an appropriate asbestos survey to be carried out by a suitably qualified and experienced person or an accredited asbestos surveyor. A list of accredited firms can be found via: [http://www.ukas.com/browse-accredited-organisations/?org\\_type=12](http://www.ukas.com/browse-accredited-organisations/?org_type=12)

**Failure to comply with the Asbestos Regulations may result in the Health and Safety Executive taking action against the 'dutyholder'.**

Details of the duty to manage asbestos can be found on the Health and Safety Executive (HSE) website: <http://www.hse.gov.uk/asbestos/duty.htm>

Unless the tenant has already commissioned an asbestos survey and produced an asbestos management plan, we suggest the SSAS Trustees send the tenant the draft letter at the back of this booklet (Appendix 2).

#### **<sup>4</sup> Equality Act 2010 and discrimination**

Property owners and occupiers are affected by the provisions of the Act which prohibit discrimination in relation to the disposal of property; giving consent to the disposal of property; managing property; providing a service to the public; exercising a public function; and provisions which require 'reasonable adjustments' to be made to assist disabled persons. Equality Act guidance is available on the Government website:

<https://www.gov.uk/government/publications/equality-act-guidance>

#### **<sup>5</sup> Fire safety requirements**

Although the requirements of the Regulatory Reform (Fire Safety) Order 2005 are normally the responsibility of the occupying tenant, the SSAS Trustees should ensure that the property satisfies these requirements before purchasing the property. Please note that fire safety rules are different in Scotland and Northern Ireland. Details are available on the Government website:

<https://www.gov.uk/workplace-fire-safety-your-responsibilities/who-is-responsible>

#### **<sup>6</sup> Energy Performance Certificate**

The SSAS Trustees are responsible for providing an Energy Performance Certificate when they construct, rent out or sell a building.

#### **<sup>7</sup> Air conditioning inspection reports**

Air conditioning systems must be inspected every five years by an energy assessor to make sure they are energy efficient. The person who controls the operation of an air conditioning system is responsible for ensuring inspections are done in accordance with the requirements and reports obtained and passed on to anyone taking over this responsibility. Details are available on the Government website via the following link:

<https://www.gov.uk/get-your-air-conditioning-system-inspected>

## **7. Lease of Commercial Property**

A SSAS may lease a commercial property to anyone including the sponsoring employer, connected employers, a Member's business, a partnership in which the Member is a partner and a person who is connected with the Member, provided it is for business purposes.

Where the lease is with a 'connected person,' it must be on arm's length commercial terms as confirmed in a report by an independent professional surveyor appointed by the SSAS Trustees. The report must also include the surveyor's opinion of the open market rent payable. If the market rent is not paid there could be tax consequences for both the lessee and the SSAS.

**Where a debt, such as the non-payment of rent, is created between a registered pension scheme and a tenant who is a 'connected person', which is not repaid on arm's length terms, the sponsoring employer or Member will be liable to tax of 40% (or possibly even 55%) of the amount of the debt. This is because the debt will then be considered to be a loan and will constitute an 'unauthorised payment' under the pension tax rules. In addition, the SSAS will be subject to a 'scheme sanction charge' of between 15% and 40% of the amount of the debt.**

Although there is no HMRC requirement for an independent professional valuation of the rent payable where the lease is to an unconnected party, the SSAS Trustees, as a matter of prudence, should obtain such a valuation in any case.

### Empty property rates

After initial void periods have elapsed, empty property in England and Wales is subject to 100% of the basic occupied business rate. For most property, excluding industrial, the void period is three months. For industrial properties, the void period is 6 months. During these initial void periods the rate will be zero.

## 8. Borrowing by the SSAS Trustees

A commercial mortgage may be taken up by the SSAS Trustees to assist with the purchase of commercial property.

The Trustees should ensure that the terms of any borrowing are commercial and prudent with regard to their fiduciary duty in acting in the best interests of the Members. For example, the rent paid to the SSAS should be sufficient to service the borrowing, insurance premiums, etc.

Borrowing (including any needed to cover any VAT liability associated with the property investment) will be 'authorised borrowing' provided it does not exceed 50% of the net market value of the SSAS fund, less any existing borrowing, at the time of the new borrowing.

Where borrowing only relates to certain Members' interests in the SSAS fund, the 50% limit applies to the market value of those interests less any existing borrowing attributable to those interests, at the time of the new borrowing.

The 50% limit applies to any registered pension scheme, not just a SSAS.

### Example 1

A SSAS consists of cash deposits valued at £200,000.

The Trustees want to purchase a commercial property valued at £300,000 (including costs). This will be possible as the SSAS may borrow £100,000 (50% of £200,000), which together with the cash deposits provides the purchase price of £300,000.

### Example 2

A SSAS has assets worth £250,000 and existing borrowing of £50,000.

Although the net asset value of the SSAS is £200,000, the maximum level of new authorised borrowing is 50% of £200,000 = £100,000 less the existing borrowing of £50,000. Therefore, the SSAS may only borrow £50,000 of additional funds.

### Please note

- It is not possible to borrow any VAT liability associated with the purchase on top of the 50% limit.
- Borrowing in excess of the 50% limit will constitute 'unauthorised borrowing' and the SSAS will be subject to a "scheme sanction charge" of 40% on the excess.
- In certain circumstances 'unauthorised borrowing' may also cause HMRC to deregister the SSAS, which would give rise to a 'deregistration charge' of 40% on the total market value of the SSAS assets.
- A SSAS may borrow from anyone, but, if the borrowing is from a 'connected person' and is not on commercial terms similar to those on which a bank would be willing to lend to the SSAS (and documented accordingly, including any legal charge required), it will constitute 'unauthorised borrowing,' which will give rise to a 'scheme sanction charge'.
- Any attempt by the SSAS to exceed the limit on 'authorised borrowing' by circuitous means (such as joining with connected persons who take out much higher levels of borrowing with little or no initial capital input) could give rise to tax penalties.

The Trustees must always bear in mind that any borrowing should not compromise the liquidity needs of the SSAS to pay retirement or death benefits.

## 9. Insurance

The Trustees must ensure that all appropriate insurances are in place as soon as insurance cover is necessary.

## 10. Value Added Tax (VAT)

Where the SSAS Trustees wish to buy commercial property that is subject to VAT and/or develop a property, they will incur 'input tax' on the purchase price and the development costs, which will only be recoverable provided they receive 'output tax' against which it can be offset (e.g. VAT on the rental income). In order to reclaim the 'input tax' the Trustees must register for VAT and 'opt to tax' the supplies of the property under the lease (i.e. the rent will be subject to VAT).

SSAS Trustees should register for VAT as a partnership.

The SSAS Trustees should consult their accountant or VAT adviser regarding the VAT registration of the Trustees and the option to tax where VAT applies to a property transaction.

## 11. Stamp Duty Land Tax

Stamp Duty Land Tax on commercial property purchases in the UK (other than Scotland) is based on a progressive slice system, i.e. the tax will be chargeable on the portion of the purchase price which falls within each tax band.

Details can be found at <https://www.gov.uk/stamp-duty-land-tax/overview>

### Please note:

- Higher amounts of Stamp Duty Land Tax may be payable where two or more property transactions are between the same buyer and seller or between persons connected with either of them and HMRC treats them as a single arrangement or part of a series of linked transactions.
- In specie transfers of property between registered pension schemes as part of the transfer of a member's pension rights, do not normally constitute chargeable consideration and are not subject to Stamp Duty Land Tax, except in Scotland.
- Where VAT is due on the purchase price, Stamp Duty Land Tax will apply to the purchase price plus the VAT unless the purchase qualifies as a transfer of a going concern (TOGC), in which case VAT should not need to be charged.

## 12. Costs

All costs properly incurred by the SSAS Trustees in connection with property transactions should be met from the SSAS.

In addition to any fees EBS may charge (on a time cost basis), a property purchase may give rise to the following costs:

- Survey/valuation fee.
- Environmental risk assessment fee.
- Asbestos survey fee (if relevant).
- Solicitor's fees/legal fees.
- Stamp Duty Land Tax.
- VAT.
- Insurance premiums.
- Mortgage arrangement fee.

This is not an exhaustive list and the Trustees should consult their professional advisers (such as the solicitor, surveyor or financial adviser) who are involved in a particular transaction to confirm whether any other costs are likely to be incurred.

After completion of the purchase, further costs will be incurred in respect of the management of the property whether this is carried out by the Trustees or by a professional property manager.

Management of the property includes the following:

- Collection of rents and any other monies in accordance with the terms of the lease and any associated agreement and ensuring these are paid to the Trustees' bank account, or where applicable a bank account operated by the professional manager on behalf of the SSAS Trustees.

- Ensuring that the tenant observes the covenants in the lease (e.g. payment of rates, taxes and insurance premiums).
- Monitoring the condition of the property and ensuring that the tenant arranges for any necessary repairs or maintenance to be carried out to an acceptable standard.
- Monitoring the use of the property to ensure compliance with current planning consents and any relevant regulations.
- Ensuring that all outgoing that the SASS Trustees (as landlord) are responsible for are paid.
- Maintaining proper records and books of account, which should be available for inspection by auditors or HMRC as necessary.
- Collection of and payment of VAT including submission of VAT returns to HMRC (unless this is handled by the Trustees' accountant).

### 13. Trading

It is possible that HMRC could deem transactions in property by a registered pension scheme such as a SSAS to be trading. For example, where the SSAS purchases land, obtains planning permission for residential property use and then sells the development before the buildings are 'habitable' as dwellings or where the SSAS becomes involved in the frequent purchase, development and sale of properties.

Where HMRC deems transactions to constitute trading, any profits, associated income and capital gains will be taxed accordingly.

As Scheme Administrator, the SSAS Trustees must report details of any trading income and gains to HMRC on a self-assessment tax return.

HMRC guidance regarding the approach to be taken in determining whether a transaction is to be regarded as trading or investment can be found in HMRC's Business Income Manual on its website:

<http://www.hmrc.gov.uk/manuals/bimmanual/BIM60001.htm>

### 14. Pros and Cons of the purchase of property by the SSAS and lease back to a Sponsoring Employer

#### Pros

- The rent paid by the sponsoring employer is a legitimate business expense for tax purposes.
- The rent is not taxable in the hands of the SSAS Trustees.
- The sponsoring employer is not paying rent to a third party; therefore, the Members are benefiting in their own pension arrangement.
- When the property is eventually sold by the SSAS Trustees there should be no Capital Gains Tax liability.
- The property is not part of the assets of the sponsoring employer and should be secure from creditors if the employer suffers financial difficulties or goes into liquidation.
- Any increase in the value of the property will not increase the value of the Members' shares in the sponsoring employer for Capital Gains Tax and Inheritance Tax purposes.

#### Cons

- The SSAS Trustees' needs for liquidity (to provide retirement or death benefits) could give rise to the sale of the property at an inopportune time. Furthermore, specialist property (e.g. where it is only suitable for a particular type of business use) may prove difficult to sell.
- Liquidity needs for continuing payments of retirement benefits (i.e. income withdrawals) could be seriously compromised if there were no tenant and no rental income, no prospect of selling the property and insufficient income from other assets.
- The sponsoring employer as tenant will be responsible to the Trustees for complying with all legislation affecting the property and will specifically assume the responsibility for being the 'dutyholder' for the purposes of the Control of Asbestos Regulations 2012.
- The sponsoring employer cannot use the property as collateral for loans required by the sponsoring employer.
- The sponsoring employer must pay a commercial rent to the SSAS Trustees.
- Professional valuations of the property and rent reviews may be required from time to time. For example, where Members are making income withdrawals in the form of capped drawdown pension

from the SSAS (rather than flexi-access drawdown pension), valuations will be required every time new funds are put into payment and every 3 years as part of the 3 yearly reviews of such withdrawals. From the Member's 75th birthday, annual valuations will be required because reviews of such withdrawals are then required every year.

- As the SSAS Trustees do not pay tax, interest payable on any borrowing taken out by them will not qualify for tax relief.

Although the acquisition of property by a SSAS and lease back to a sponsoring employer can be tax-efficient, the sponsoring employer and the Members should consider carefully their own position and aim to purchase/hold the property on the most commercial and cost-effective terms, taking advice as they think fit.

## 15. Sale of property

Where property is to be sold to a connected party, it must be at the market value as confirmed by an independent professional surveyor appointed by the SSAS Trustees.

If the SSAS Trustees require EBS to be involved in the sale of a property, they should complete and return EBS's questionnaire which is available on request.

The SSAS Trustees and their solicitor should also ensure the following:

- Where the sale is to a connected party and a firm of solicitors has agreed to act for both seller and buyer, they should ensure that they receive written confirmation from the solicitor that they have no conflict of interest in acting for both parties
- The buyer's identity is verified for the purposes of Anti-Money Laundering requirements
- Where relevant, VAT is charged on the sale price and the buyer is provided with a VAT invoice unless the SSAS Trustees' accountant / VAT adviser or solicitor confirms that the sale qualifies as a TOGC
- All outstanding rents (and any default interest) are paid by the existing tenant(s) to the SSAS bank account / solicitors' client account before or at completion
- Where an existing tenant is to surrender a lease, particularly where the tenant is a connected party, the surrender is carried out on commercial terms as confirmed by an independent professional surveyor
- Any associated mortgage is repaid and written confirmation obtained from the lender that the mortgage has been released
- Following completion and where advised by their accountant or other VAT adviser, to de-register for VAT purposes

### Correspondence address

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**This document is solely for information purposes and should not be construed as investment or financial advice. Individuals should seek such advice from their own professional advisers if they are in any doubt as to whether a particular course of action is suitable. EBS Pensions Limited's interpretations are based on current tax law and HM Revenue and Customs' published guidance as at the date of this publication, all of which may be subject to change in the future. While we believe this interpretation to be correct, EBS Pensions Limited can give no guarantee in this respect.**

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## Appendix 1

### Example of a commercial property purchase by a SSAS

#### Costs

Purchase price	£225,000
VAT	£ 45,000
Stamp Duty Land Tax <sup>1</sup>	£ 3,000
Surveyor's fees <sup>2</sup>	£ 900
Solicitor's fee <sup>3</sup>	£ 2,750
Land Registry fees	£ 300
Environmental risk assessment	£ 300
Mortgage arrangement fee	£ 1,000
Insurance premium	£ 750
	£279,000

#### Notes:

1. Stamp Duty Land Tax (SDLT) is payable on both the purchase price and any associated VAT liability. The rate of VAT is currently 20%

The amount of SDLT due on the total of the purchase price plus VAT of £270,000 is calculated as follows:

Portion of purchase price	Rate	SDLT
Up to £150,000	0%	£ 0
£150,001 to £250,000 (£100,000)	2%	£ 2,000
£250,001 to £270,000 (£20,000)	5%	£ 1,000
		£ 3,000

2. There may be additional surveyor's fees if the SSAS Trustees need to commission an asbestos survey to satisfy the Control of Asbestos Regulations (e.g. there is no tenant at outset, who would normally be responsible for such a survey and producing an asbestos management plan).
3. This includes charges for searches and the preparation of a lease.

No account has been made for fees relating to the establishment of the SSAS as it has been assumed these will be paid by the sponsoring employer.

## Financing the investment

There are two Members in the SSAS. One has an insured personal pension with a transfer value of £42,500 and the other has an executive pension plan from a previous employer with a transfer value of £27,500. This is a combined transfer value of £70,000. Therefore, a gross contribution of £116,000 would be required to fund the property purchase.

The maximum authorised borrowing is 50% of the net value of the SSAS. The calculation is as follows: (£70,000 + £116,000) × 0.5 = £93,000.

Summary of monies available for the property purchase:

Bank Loan	£ 93,000
Transfer Values	£ 70,000
Employer Contribution	£116,000
	£279,000

## Estimated timing of property purchase

Establishment and registration of the SSAS and payment of employer contribution: 2 weeks to 2 months

Survey report, environmental risk assessment and agreeing mortgage terms: 2 - 4 weeks

VAT registration and "option to tax": 6 - 12 weeks<sup>1</sup>

Organising payment of transfer values to the SSAS: 6 - 12 weeks<sup>2</sup>

Solicitor's legal work (e.g. searches, negotiations with seller's solicitors, preparation of documents etc.): 6 - 12 weeks<sup>3</sup>

**Typical overall timescale 6 - 12 weeks**

This example of a property purchase by a SSAS is for illustration purposes only. Actual charges and timings will depend on the circumstances of each individual case.

### Notes

1. Confirmation that the registration and the option to tax are acceptable should be received from HM Revenue & Customs (HMRC) before exchange of contracts. Such acceptance may sometimes take longer than six weeks, particularly where it proves difficult to convince HMRC that the Trustees are an 'intending trader'. The Trustees should consult their accountant/VAT adviser for further details.
2. This very much depends on the transferring scheme. In some cases (particularly large occupational pension schemes) it can take far longer than 6 weeks as the statutory timescale for paying such transfers is 6 months.
3. This depends on the complexity of the case, the solicitor's attention to satisfying the SSAS's requirements, the co-operation of the seller, the seller's solicitor and any other parties (e.g. local authorities).

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## Appendix 2

### Draft letter to tenant in respect of Asbestos Regulations

[ Tenant's name ]

[ Address ]

Date:

Dear

**[ Name of SSAS ] ('the SSAS')**

**Property: [ property address ]**

**Regulation 4 of the Control of Asbestos at Work Regulations 2012**

On behalf of the SSAS Trustees (your Landlord) we are writing to you in accordance with Regulation 4 of the Control of Asbestos Regulations 2012.

Regulation 4 imposes an explicit duty to manage asbestos in non-domestic premises. Under the terms and conditions of your lease you are the 'dutyholder' and, therefore, responsible for complying with Regulation 4.

In order to satisfy Regulation 4 you are required to obtain a written assessment as to whether asbestos is or is liable to be present within the premises let to you. You must also draw up and keep up to date a plan to manage any risk.

In accordance with Regulation 4, we will require copies of the written assessment and/or asbestos survey and the plan to manage risk and any future updates to the plan.

You can obtain guidance on 'Asbestos health and safety' on the Health and Safety Executive's website: [www.hse.gov.uk/asbestos](http://www.hse.gov.uk/asbestos), which contains links to licensed asbestos contractors.

We look forward to hearing from you.

Yours sincerely

## Appendix 3

### Overseas commercial property – main points to consider

1. Does the overseas country recognise pension trusts and trustees?

If not, what is the best way for trustees of a SSAS to arrange title (bearing in mind potential tax liabilities in the country in which the property is located)? If you are in any doubt with regards to how to proceed you should seek professional advice from a solicitor.

If investing indirectly in commercial property via a company or other vehicle, which holds assets other than that commercial property, the SSAS Trustees would need to ensure that they would not fall foul of the HMRC taxable property rules. Details are available from EBS on request.

Not many European countries recognise trusts and trustees but EBS understands that The Netherlands and Italy do.

However, EBS believes the United States and many Commonwealth countries recognise trustees.

The SSAS trustees will need to take specialist advice on this.

2. What are the likely costs of these alternative methods of arranging title and how secure are they?
3. Although the property may be deemed commercial by the authorities in the country in which it is located, this may not be HMRC's view.
4. What are the tax implications of investment in such property?
  - In the country where the property is located (including income tax, capital gains tax, inheritance tax and VAT).
  - For a company/series of companies used to hold title.
  - Impact of any Double Tax Treaty.
5. An unauthorised payment charge will arise on the SSAS members where property is provided or made available for use by a member or a member of his family or household and the full market rent is not paid.
6. Environmental issues:
  - Does the country have similar environmental laws to the UK?
  - What, if any, are the potential liabilities for the SSAS trustees?
7. Health and Safety laws:
  - What are the responsibilities of the landlord?
  - Does the country have similar rules / laws in relation to asbestos management, fire risk assessment and air conditioning inspection reports?
8. Planning regulations and other local requirements such as community charges/rates.
9. Appointment of appropriately qualified notaries/solicitors (in the UK and the relevant overseas country), surveyors, property managers.
10. Language barriers.
11. Financing the investment, including borrowing from an overseas lender.
12. Money Laundering requirements and exchange rates.
13. Insurance.