The purpose of this guide is:

1. **To answer some frequently asked questions about a Small Self Administered Scheme (SSAS) making a loan to the sponsoring, or an associated employer.**
2. **To let you know about some of our basic requirements before you make your decision to proceed with a loan.**
3. **To guide you through the loan back process**

Whilst we can provide generic information please note that Westerby is not authorised by the Financial Conduct Authority to provide financial advice. We cannot therefore comment as to whether the loan is a suitable investment for your particular pension scheme.

Introduction

Current pension legislation permits a SSAS to make loans, to a party which is, or has been, a sponsoring or associated employer to the scheme. The legislation also prescribes on what terms the loan may be advanced.

There are five key tests that a loan must satisfy to qualify as an authorised employer loan. If a loan fails to meet one or more of these tests then severe tax penalties will apply.

The five key tests are:

1. Security
2. Interest rates
3. Term of loan
4. Maximum amount of loan and
5. Repayment terms

Each of these tests is covered in detail below.

1) Security

Legislation requires that SSAS loans to a participating employer must be secured by a first legal charge over suitable assets. As such, the borrower (or a guarantor) will need to possess sufficient assets not charged elsewhere (or subject to any hire purchase agreements) over which the Trustees can register a charge.

HMRC legislation has been tightened to the extent that loans secured on anything other than commercial property carry a risk of tax charges should a default event result in the security being called in. Westerby does not allow loans to be secured on residential property, stock, works of art, antiques, jewellery, fine wines, debtors, goodwill and also shares in the borrowing or associated companies.

It may however be possible to secure a loan using vehicles, specific items of plant and machinery, or genuine intellectual property such as a trade mark, patent or franchise. Each case will be assessed individually on the submission of as much information as possible in relation to the asset in question. If Westerby does allow the loan to proceed, the SSAS members will be asked to indemnify Westerby against any potential tax charges arising in the event of default.

Throughout the term of the loan the value of the security must equal or exceed the amount of the loan capital and interest outstanding. To provide a safety margin Trustees will not normally therefore consider a loan in excess of 70% of the value of commercial property and 50% of the value of depreciating assets such as vehicles or plant and machinery. In most cases therefore we will require a valuation of the security. This valuation must be addressed to the Trustees of The Scheme.

If the asset used as security is replaced by another asset, the value of the replacement must be at least equal to the lower of:

- The market value of the asset it has replaced, or
- The amount of loan outstanding, including interest, at the time the security is replaced

2) Interest Rates

The minimum interest rate for a SSAS loan to a participating employer is set by H M Revenue & Customs (HMRC) at 1% over average base rate. The interest rate can be fixed or variable.

The average base rate is defined by HMRC as the average of the base lending rates of the following 6 leading high street banks:

- The Bank of Scotland plc
- Barclays Bank plc
- HSBC plc
- Lloyds TSB plc
- National Westminster plc
- The Royal Bank of Scotland plc

The average rate calculated is rounded up as necessary to the nearest multiple of 0.25%.

3) Term of Loan

The repayment period of the loan must not be longer than 5 years from the date the loan was advanced. The total amount owing (including interest) must be repaid by the loan repayment date.

HMRC recognises that sometimes loans will be made to employers and the employer will sometimes get into financial difficulties during the term of the loan. Accordingly, where an employer is having genuine difficulties making repayments and there is an amount of capital or interest outstanding at the end of the loan period, 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.

- The rollover loan will not be treated as a new loan and therefore any existing security may continue, even if the security is less than the face value of the loan.
- Under no circumstances can a loan be rolled over more than once.
- Any increase to the original loan will be treated as a new loan.
- The 50% limit will only be re-tested in the event of a new loan being taken out. An unauthorised payment tax charge will be applied to a loan that exceeds the 5 year term and has not been rolled over.

4) Maximum amount of Loan

The amount of loan which can be made to a sponsoring employer is restricted to a total of 50% of the net scheme assets valued immediately before the loan is made. If a loan is found to exceed the 50% limit, an unauthorised payment tax charge will be applied to the excess amount.

The 50% limit is applied immediately before the loan is advanced 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.

These restrictions are necessary because although such loans provide a useful source of business funding, there may be liquidity problems for the scheme if there is a requirement to provide scheme benefits.

Any further advances made after the original loan is made are to be treated as a new loan made on the date the further advance was made.

5) Repayment Terms

All loans to employers 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.

For example, for a 5 year fixed interest loan of £100,000 accruing £20,000 of interest, the repayments required for each year will be known at outset i.e.(£100,000 + £20,000) / 5 = £24,000.

Payments can be annually, quarterly or monthly with a minimum requirement of annually in arrears.

Unauthorised Payment Tax Charges

If a loan fails to meet one or more of the five key tests then unauthorised payment tax charges will apply.

The amount of unauthorised payment is calculated separately for each of the five key tests but to prevent double charging, if the loan fails on more than one test the unauthorised payment will be the greatest amount calculated under each test. In any case the amount of the unauthorised payment must not exceed the amount of the loan when it was made.

In the event of default the following tax charges will apply:

- **Unauthorised Payment Charge** - 40% tax charge is payable by the borrower on the amount which is in default;
- **Scheme Sanction Charge** - 15% tax charge payable by The Scheme, and;
- **Unauthorised Payment Surcharge** - 15% if the loan is more than 25% of the scheme assets.

The total tax charge could therefore amount to 70% of the original loan advanced.

Documentation

The loan must be fully documented in a legally binding agreement and the legal charge over the security registered at Companies House and/or the Land Registry as appropriate.

The documentation must be drafted by a solicitor appointed by Westerby. We will obtain a quotation on a case by case basis and undertake to inform you before proceeding.

The legal costs will be paid by The Scheme, but can be reimbursed by the borrower by including them as an "arrangement fee" in the loan documents.

Default Events

We need to make you aware of what may happen in the event of default on capital or interest payments by the borrower.

The Trustees are required by law to act commercially and take action to recover any amounts outstanding. This means that the Trustees would be obliged to:

1. Call in the security by taking possession of the assets charged.
2. Take further legal action as necessary for the recovery of the debt including, if necessary, appointment of liquidators.

As a co-Trustee, you would be required to be party to such action which may cause you some personal distress when it is your own company that is in default.

The costs of taking recovery action must be met by The Scheme, but can be charged back to the borrower if this is permitted by the loan agreement.

Investment Advice

Westerby can only provide details of the legislative requirements regarding loans; we are not authorised and regulated to give financial advice and cannot therefore comment on the suitability of a particular loan as an investment for the Trustees. Any loans advanced are granted entirely at the member trustee(s) own risk.

We would strongly recommend therefore that you consult with your financial adviser before proceeding to make a loan from your pension scheme.

Westerby Fees

Loans are not covered by the basic standard annual administration fee and are therefore charged in addition. The fee for the work involved in arranging the loan and the annual loan administration fees can be found within the latest fee schedule.

The Loanback Process

The first step is to complete and sign our Loanback Questionnaire which is available on request or from our website www.sipp-ssas-pensions.co.uk.

On receipt of the completed questionnaire we will assess whether the loan is acceptable, whether the security is suitable for inclusion in a pension scheme and whether you will have sufficient funds in your pension scheme to cover the loanback.

If the loan back is suitable:

1. We will contact our solicitor and obtain a firm quotation of costs involved and advise you of the exact amount.
2. We will formally appoint our solicitor and ask them to draft the loan agreement and legal charge.
3. We will then send the bank authority and loan documentation to the borrower for signature. (N.B. funds will not be advanced until the loan documents are fully executed).
4. Return executed loan documents to solicitor for registration to Companies House/Land Registry.
5. Arrange payment of Loan to borrower.
6. We will contact the borrower to arrange for the repayments to be made at the agreed frequency.

Timescales

We will make every endeavour to complete all loanbacks within your preferred timescale, however we are reliant on third parties and many factors are outside of our control so we cannot offer any guarantees of completion within a set timescale.

Action

If you wish to proceed please:

1. Complete and sign our Loanback Questionnaire and return it to us.
2. Provide details of the assets to be charged together with proof of ownership and a current valuation by a suitable qualified and independent professional addressed to the Trustees. If property is used as security we will need a copy of the Title Deeds and a professional valuation addressed to the Trustees and carried out by a chartered surveyor within the last 6 months. For other assets please contact us if you are unsure of what details to provide.
3. Provide copies of the last three years accounts for the borrower.

We hope you have found this guide useful and that any questions you may have had have been answered. If however you require any further guidance, please contact us on 0116 326 0183 or via the enquiries form on our website www.sipp-ssas-pensions.co.uk

WTSL/SSAS/LBG/JS/JUL2021