

MC TRUSTEES

Taxable Property and Unquoted Shares (29 March 2007)

Please note that this document replaces all previous versions.

This document is a guide to the Taxable Property provisions contained in Sections 174A, 185A to 185I, and Schedule 29A Finance Act 2004. It reflects MC Trustees (Pensions) Limited's interpretation of the provisions but MC Trustees (Pensions) Limited does not accept responsibility for any errors in this document and those reading it should refer to the Act itself or take their own advice if they choose to act on our opinion. MC Trustees (Pensions) Limited is authorised by the Financial Services Authority to establish, operate and wind up personal pensions, but not to give financial advice.

1 Summary of Provisions

- 1.1 Taxable property consists of residential property and most tangible moveable assets. Residential property is any building or structure (including associated land) which may be used as a dwelling. Tangible moveable assets include such things as art, antiques, jewellery, fine wine, yachts, racehorses and cars.
- 1.2 The intention of the provisions is to levy tax should a member of a member directed pension scheme (ie a SIPP or a SSAS) use funds which have benefited from tax reliefs acquiring assets which may be used by the member.
- 1.3 These provisions replace the initial proposals to assess any such assets as benefits in kind and tax them accordingly.
- 1.4 If taxable property is acquired by a registered pension scheme the following taxes will be payable:
 - 1.4.1 40% of the purchase price will be deemed to be income to the member and taxed accordingly as an Unauthorised Payment.
 - 1.4.2 15% of the purchase price will be paid in tax as a scheme sanction charge.
 - 1.4.3 An additional tax of 15% of the purchase price may also be payable as an unauthorised payments charge.
 - 1.4.4 Income from the taxable property will be deemed to be at least 10% of the purchase price and that 10% (or the actual income, if higher) will be taxed at 40% by means of a scheme sanctions charge on the administrator.
 - 1.4.5 Capital gains at 40% of the gain on disposal of the taxable property will be payable by a charge on the scheme administrator.
- 1.5 The tax treatment of benefits taken from the scheme is not affected.
- 1.6 Hotels, nursing homes etc (provided the member or a person connected with a member does not have the right to use them at other than market rate), are not taxable properties but timeshares are.
- 1.7 Properties such as a caretaker's flat are not taxable property provided that they are occupied as part of a person's job and that person is not a member of the scheme or connected to a member.

2 Unlisted Shares

- 2.1 The legislation is drafted so as to prevent a vehicle (such as a company or companies) being used to shelter any of these charges. In practice any such vehicles will be 'seen through' when the tax assessment is made.
- 2.2 Indirect holding of tangible moveable property which meets all the following conditions is not regarded as taxable property:
- 2.2.1 The market value of the asset is not greater than £6,000.
- 2.2.2 The interest in the asset is held directly.
- 2.2.3 The asset is held solely for the purposes of the administration or management of the vehicle that holds it directly.
- 2.2.4 Neither the member, or anyone connected to the member, personally occupies or has use of the asset.
- 2.3 Investment may be made in genuinely diverse commercial vehicles. These must meet the following conditions:
- 2.3.1 They must be carrying on a trade, vocation or profession.
- 2.3.2 The pension scheme, either alone, or together with associated persons does not have control (as defined in section 416 ICTA 1988) of the company.
- 2.3.3 Neither the member or a person connected (as defined in section 839 ICTA 1988) to a member is a controlling director of the vehicle or any other vehicle which holds an interest in the vehicle directly or indirectly.
- 2.3.4 The pension scheme does not directly or indirectly hold an interest in the vehicle for the purpose of enabling a member, or person connected to a member, to occupy or use the property.

Notes

All references in that section to a company are to be taken as references to the vehicle and associates as including associated persons. "Controlling director" means a director to whom paragraph (b) of section 417(5) Income and Corporation Taxes Act 1988 applies, broadly 20% controlling directors. In that section the reference to associates includes associated persons.

The term "associated person" in relation to the pension scheme means,

- **Any member of the pension scheme**
- **Any person connected with such a member,**
- **any arrangement (under that or another pension scheme) relating to a member of the pension scheme,**
- **any arrangement (under that or another pension scheme) relating to a person connected to such a member,**
- **any associated pension scheme (a pension scheme is associated with another pension scheme if members representing at least 10% by value of one pension scheme are members of the other pension scheme or connected with such members).**

2.4 The technical guidance provided by HM Revenue & Customs states:

"Registered pension schemes may invest in equities regardless of whether or not they are quoted on a recognised stock exchange and regardless of whether the company is a UK company or an overseas company. A registered pension scheme is restricted however, in the percentage of shares that can be acquired in a sponsoring employer company".

"Indirect investment in taxable property via genuinely diverse commercial vehicles will not be subject to the tax charges on taxable property".

2.5 There are no provisions in the Finance Act 2004 which preclude investments in unquoted shares.

3 Summary

3.1 We have set out, above, our understanding of the taxable property provisions.

3.2 We do not consider that the provisions are designed to prevent investment in unlisted shares per se, but to prevent the unlisted companies (among other vehicles) being used to avoid the tax payable on taxable property.

3.3 Our view, therefore, is that investment in unlisted shares will not, in itself, lead to additional tax charges.

3.4 There will be a risk of tax charges if the unquoted company owns individual items of taxable property valued at more than £6,000.

3.5 MC Trustees (Pensions) Limited is prepared to permit investments in unquoted shares **only** when the total percentage of shares proposed to be owned by the SIPP, the member and any party connected or associated with the member together total less than 20% of the issued share capital of the Company. MC Trustees (Pensions) Limited will require the following indemnity:

"I confirm that the company I am investing in conforms to the following criteria:

- It is carrying on a trade, vocation or profession.
- The pension scheme does not, either alone, or together with associated persons have control (as defined in section 416 ICTA 1988) of the company.
- Neither the member nor a person connected (as defined in section 839 ICTA 1988) to a member is a controlling director of the vehicle or any other vehicle which holds an interest in the vehicle directly or indirectly.
- The pension scheme does not directly or indirectly hold an interest in this company for the purpose of enabling a member, or person connected to a member to occupy or use any property owned by the company

I indemnify MC Trustees (Pensions) Limited against the amount any scheme sanction charge which may be raised by HM Revenue & Customs in respect of this investment."

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