

RESIDENTIAL INVESTMENT IN A SIPP AND SSAS POST 6.4.06

Post-Budget Announcement on Residential Investments in SIPPs and SSASs

Two days after the Budget, on Friday 24th March, HMRC released details of how direct residential holdings, and "tangible movable property" will be taxed within SIPPs and SSASs post A-Day. "Tangible movable property" means things like works of art, antiques, fine wines etc i.e. anything other than property that can have "personal use". Essentially, it confirms that taxation will effectively be at 55%.

More importantly, it defines what HMRC mean by "residential", and it also confirms that investment in residential will be permitted, so long as it is through a "genuinely diverse commercial vehicle".

HMRC definition of "residential"

Not surprisingly, it is a bit long and complicated, but in essence:

1. a building or structure that is used or is suitable for use as a dwelling
2. it includes land associated with it eg garden
3. any building classified as "Residential" under Building Regulations is not allowed - and vice versa i.e. if it is not classified by Building Regs as being "residential" then it is classed as "commercial"
4. a beach hut is residential
5. timeshare is not allowed
6. if part ownership of a hotel allows the member to stay in the hotel (either the part they own or any other room), that is "residential". But if part ownership gives no preferential rights, it is "commercial" and allowed.
7. if an entire hotel or inn is owned, that is acceptable i.e. "commercial"
8. halls of residence are allowed, but not individual student lets
9. residential homes for children, the elderly, the sick etc, are allowed
10. a hospital or hospice is allowed
11. prisons are allowed!

12. if there is a shop with a connected flat above it, that is classed as "residential" but will be allowed if it is a condition of the lease that the shopkeeper lives in the connected accommodation.

HMRC has also clarified that if a commercial property investment is converted to residential, the investment can continue to be held within the SIPP or SSAS whilst the conversion is taking place, but it must be sold before it becomes habitable eg Certificate of Habitation is issued.

Grounds rents on residential property will not be permitted.

"Genuinely diverse commercial vehicles"

SIPPs and SSASs can invest in residential property, so long as it is via something called a "genuinely diverse commercial vehicle". There are to be 3 types:

1. A UK REIT
2. a vehicle whereby the SIPP or SSAS owns no more than 10% of the property and has absolutely no right to any personal use, and where the following 3 conditions also apply:
 - a) the total asset value is at least £1M, or at least 3 residential properties are held in the vehicle
 - b) if the vehicle is a company, it must in the UK and must not be a close company or, if it is a non-UK company, it would not be a close company if it were a UK company.
 - c) it must not have as one of its main purposes the direct or indirect holding of an animal for sporting purposes eg no racing stables!

Note that the 10% limit includes "Connected Parties" i.e. if the member also personally makes an investment in that property, and/or a SIPP of a party connected to the member makes an investment in the property, the total investment of these "connected parties" cannot exceed 10%.

3. Arms length trading vehicles, with no possibility of the member having personal use of any of the properties.

Offplan

HMRC make it clear that it will be acceptable for SIPPs and SSASs to invest in offplan residential developments. However, the investment **MUST** be sold by the SIPP or SSAS before the development is habitable – defined as having a Certificate of Habitation or the local equivalent.

But before SIPPs and SSASs leap into investing in offplan residential developments all around the world – words to the wise. A SIPP or SSAS is not allowed to "trade". A SIPP or a SSAS investing in offplan developments is leaving itself open to potentially being (penally) taxed as having "traded". This will be up to the local Inspector of Taxes.

There is probably a timescale issue here. A "short term" development might be classed as "trading". A longer term development might not. Whether or not this is the case, and what HMRC consider to be "short" or "long" term remains to be seen. The advice is – check with the local Inspector of Taxes **before** making such an investment. We understand that the local Inspectors will be given guidance on these matters, but that the guidance has not yet been issued.

Comments

This is only draft legislation, and will become law as part of the Finance Act 2006 i.e. it will not become law until July 2006. However, it can be assumed that the vast majority of the proposals will be carried through to the final legislation. There might be some tinkering of the detail, but the principles and spirit of the legislation will not change.

Overall, we feel that this is sensible legislation. It will enable those true "real estate" investors, to make direct property investments via syndication. The "maximum 10%" rule is prudent and practical. Its extension to include "connected parties" rules out abuse whereby 10 family members could collectively purchase their dream holiday home via a SIPP.

Opportunities for IFAs and UK and overseas property companies

This creates a wealth of opportunities for IFAs and property companies to work together to construct investment opportunities via syndication for those of their clients who are attracted to the idea of investing in real estate.

The 10% maximum investment by any one investor will mean that many SIPPs will want to invest in several syndicates, creating additional opportunities for IFA's and the developers.

We know specialist solicitors who can put together the required legal syndication agreement at relatively low cost.

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