

CASE STUDY

EMPLOYEE ACCOMMODATION

APPROVED FOR CLIENT USE | MARCH 2024



A client wants to acquire a pub using their pension; however the property contains a residential employee's flat.

The Challenges

Ruth owns a pub in Essex personally, which is presently vacant. She has however sourced a new tenant who will take occupation of the pub shortly. Ruth has been considering investing in commercial property via her pension for some time and is looking to benefit from the tax advantages that her SIPP offers.

Ruth has researched SIPP commercial property investment online and understands that she can sell the property to her SIPP, as long as the pension pays full market value, as advised by a RICS qualified valuer.

However, Ruth has also read that the SIPP cannot buy or own residential property as this would impose onerous tax charges on the pension.

Ruth consults her financial adviser Mike for more information.

The Actions

Mike explains that Ruth can indeed sell the pub to her SIPP, however due to the residential element of the property there are additional regulations and requirements that apply.

Mike explains that there are two concessions that may apply in respect of the employee accommodation: Condition A or Condition B.

In Mike's experience, providers tend to proceed with Condition A as the required criteria are arguably more robust. Mike outlines the condition criteria as follows:

Condition A is met if the property is (or, if unoccupied, is to be) occupied by an employee who:

(a) is neither a member of the pension scheme nor connected with such a member,

(b) is not connected with the employer, and

(c) is required as a condition of employment to occupy the property.

Therefore any employee residing in the property must be unconnected to both Ruth and the tenant company. This agreement would be documented in the employee's Contract of Employment, which Curtis Banks would need sight of as part of the acquisition process.

Mike discusses the timeline with Ruth to ensure compliance with the regulations and they agree that in the first instance, they will begin the acquisition to Curtis Banks, via the SIPP. They submit the relevant forms, making it clear therein that there is a residential element to the property so that the initial formal instructions to the valuer and solicitor can be tailored accordingly.

Curtis Banks issue formal instructions to the valuer, requesting that in addition to the standard valuation requirements, the valuer also advises in respect of the following:

- Advice that the property would not be deemed taxable under HMRC regulations
- Confirmation of the square footage of both the commercial and residential elements.

Copies of the formal instructions are sent to Mike, who forwards these to Ruth. Therein, it is confirmed that as there is a residential element within the property to be acquired by the SIPP, a third party property manager will need to be appointed to manage the property moving forward. Ruth sources a property manager local to the pub, and agrees fees directly with them, before forwarding details to Curtis Banks in order that they may formally appoint them.

As part of the acquisition, Curtis Banks explains to Mike and Ruth that HMRC guidance indicates that the living accommodation must be 'intended to be used' or 'is used' in order to meet the concession. Therefore if the living accommodation was to fall vacant during the SIPP's ownership, HMRC could potentially take a view that it is not acceptable to hold the property within the SIPP. Unfortunately, the guidance does not indicate a period of time as to when the property would become taxable, and as such Ruth is asked to confirm that she is aware of the risks involved.

The Results

Curtis Banks work with Ruth's chosen professionals to satisfy due diligence in order for the transaction to complete. The incoming tenant sends Curtis Banks a copy of the Contract of Employment for the employee who will reside on site, for review and approval of the specific residency clause. Mike arranges for funds to be disinvested to ensure that there is sufficient cash available in the SIPP to pay for the property and all associated transactional costs.

The purchase proceeds to completion, with the SIPP acquiring the entirety of the property including the residential employee accommodation. The tenant company take

occupation on the day of completion, with the unconnected employee taking residence of the flat.

Ruth and Mike agree to have regular check-ins with each other to ensure at that stage that the property continues to comply with HMRC regulations.

Important points to consider

The value of pension funds may fall as well as rise. Your money is tied up until you take your benefits. Benefits can generally be taken any time after age 55, although this is due to increase to 57 in 2028.

This information is based on our understanding of current legislation, including (but not limited to) FCA, PRA and HMRC regulation. It does not constitute any form of advice.

Contact Details

If you'd like to speak to us about anything on this fact sheet, please contact us on:

T 0370 414 7000

We may record and monitor calls. Call charges will vary.

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Please remember not to send any personal, financial or banking information via email as it is not a secure method of communication.