



Emily McAlister <emilym@pensionpractitioner.com>

SIPP or SSAS

4 messages

Brown, Jenny <Jenny.Brown@oaklandinnovation.com>

23 September 2020 at 13:48

To: "gavinm@pensionpractitioner.com" <gavinm@pensionpractitioner.com>, Emily McAlister <emilym@pensionpractitioner.com>, Stephen Brown <stephen@artek-design-house.co.uk>

Join Microsoft Teams Meeting[Learn more about Teams](#) | [Meeting options](#)

This e-mail message is confidential and for use by the addressee only. If you are not the intended recipient, you must not use, disclose, copy or forward this transmission. Please return the message to the sender by replying to it and then delete the message from your computer. Oakland Innovation provides e-mail services for both itself and its group companies. Oakland Innovation shall not be held liable to any person resulting from the use of any information contained in this e-mail and shall not be liable to any person who acts or omits to do anything in reliance upon it. Oakland Innovation does not accept responsibility for changes made to this message after it was sent.

Company Information:

Name: Oakland Innovation Ltd. Registered Address: Harston Mill, Harston Cambridge CB22 7GG. Registered as a Company in England: 2390201
VAT Number: 432214202

**Gavin** <gavinm@pensionpractitioner.com>

25 September 2020 at 16:18

To: "Brown, Jenny" <Jenny.Brown@oaklandinnovation.com>

Cc: Emily McAlister <emilym@pensionpractitioner.com>, Stephen Brown <stephen@artek-design-house.co.uk>

Good afternoon Jenny and Stephen,

Many thanks for your time a little earlier today, hopefully next time I can get microsoft to recognise my camera!

I am sorry to hear some of the guidance you have been given is at odds with the actual tax legislation as well as that of the pension regulations. Pensions are a specialist area and from my experience most of those operating in it are generally selling investments and are not pension practitioners, which is a different field of work.

I set out below the actual position for your reference on the points we discussed, and a link to the underlying regs, if in the future a financial advisor wants to "fact check" the position.

Death Benefits and Membership

The first item we covered was the issue of death benefits. Your pension scheme is trust based and under Rule 3 of your scheme rules this allows you to invite whomever you wish into the scheme provided that they are tax resident.

A SIPP is a collection of individual personal pensions and the trustee of the scheme is in fact the SIPP operator. Therefore, you cannot join the same trust as each SIPP is individual in nature, as opposed to collective.

This therefore affects distribution of death benefits. Under a SIPP the proceeds will be paid out as per your nomination, whereas under the SSAS you can choose the same option as a SIPP or keep the funds within the same trust to be passed down the family line at a future point in time. This is used for legacy planning and allows the funds to sit outside of the estate of all parties, including the children.

Legislation: [Paragraph 15 Schedule 28 Finance Act 2004](#), [Paragraph 6 Schedule 5 Finance Act 2016](#)

You can also include a provision to ensure that the funds remain within the bloodline, ensuring that in the event of a divorce by one of your children in future, their pot does not form part of the assets of their own estate, as you may not want ex-partners laying claim to the assets of the trust in future. This is covered under Rule 12.4 of the Scheme Rules, although the blood line provision does require an update of the Scheme Rules.

Transact

Transact are a platform provider for financial advisors to invest and manage funds. You can self manage funds through a number of other providers, including Interactive Investors, Saxo Bank, AJ Bell. Saxo Bank have the best customer service of the three and Interactive Investors are the lowest in cost. I will speak with each of these account opening teams once I have the Transact Summary from you. I can then advise which would be the best options and give that information to you. There will be no cost to

open an account with any of them. You will have your own logins to trade/deal and manage the portfolios. You can even give a third party access to limited trades if you wish. Transact will in-specie transfer the portfolios to the new account.

Unquoted Shares in Connected Companies

The rule on the 5% share holding restriction only applies to sponsors/principal employer of the pension fund.

Legislation: [Section 180\(5\) Finance Act 2004](#)

As the fund is effectively a family trust (contributions are no longer being made), the 5% restriction is not relevant here. There is a separate test which is known as the taxable property regulations that can affect you where you invest into private companies that your family runs. We need to ensure that certain controls are put in place, but there is no theoretical limit.

As investment into private companies is generally not permissible via traditional SIPPs (because of indemnity issues by sipp providers) they are usually held in a SSAS. Please let either myself or Emily know in advance any investment in private companies so I can ensure that the taxable property regulations are adhered to.

Current Investment in the SSAS

In respect of the unquoted company shares you presently hold, given that this falls outside of the 6 year rule, I would let sleeping dogs lie. My suggestion would be that the transfer is treated as a contribution, but as tax relief has not been earned on the transfer there is no tax loss to the Exchequer. We can file an amendment to the return if needed and required to in future.

If you move these shares out of the Scheme you will pay stamp duty on the transfer and given the gap in public sector finances, there may well be a wealth tax coming down the line, and these shares would no longer enjoy some of the current tax exemptions. I don't see there is any benefit in moving these shares based on what we covered.

Living Overseas

Pensions from your SSAS can be paid gross and we have a number of clients who have retired overseas or moved into a SSAS so that they can benefit from local tax rates in jurisdictions such as Portugal and Spain which benefits pensioners with a lower tax status - hence also why we have a foothold in Gibraltar and the UK.

We simply need to file a non-resident return to HMRC and close the PAYE account to action this. The scheme remains in the UK as a tax exempt pension scheme, but the income is paid and taxed where you become resident. We have administered such arrangements for clients over several years some of whom have been as far away as Vietnam and Australia!

Professional Trustee

I would only recommend use of acting as a professional trustee where you either have unconnected members in your scheme or where the beneficiaries are simply the children and their heirs in the future. This would be to ensure that your wishes are adhered to. We do act as a trustee on some family trusts to provide oversight in these instances.

Interactive Investors and the other share and fund dealing platforms may require us to act as an account trustee (but we would delegate all management and trading to you the managing trustees). An account trustee serves a different function to a professional trustee, as it holds no liability and serves very little functionality other than that of a post box at times.

Hopefully this covers the relevant points for now and importantly clears up the loose ends on the information you have been given.

Best wishes

Gavin

[Quoted text hidden]

Stephen Brown <stephen@artek-design-house.co.uk>

25 September 2020 at 16:49

To: Gavin <gavinm@pensionpractitioner.com>, "Brown, Jenny" <Jenny.Brown@oaklandinnovation.com>

Cc: Emily McAlister <emilym@pensionpractitioner.com>

Dear Gavin

Thank you for this. It is extremely helpful.

The ownership of the shares in specifically Brown Consulting Services Ltd (I believe this is the sponsoring Company) and Artek Design House Ltd are held equally in our personal capacities and 5% in the SSAS. This was carried out following advice at the time from the chap who set it all up. There seems to be concern that a potential tax charge may exist and not have been paid. At the time we were not advised that there was a charge and quite frankly didn't as a consequence go looking for one. Could you explain what circumstances would trigger a tax charge please? Neither company owns property, both are simply trading tools and at the time of transfer there wasn't as far as I am aware a limit on contributions to the SSAS. No payment was made for the shares, no dividend has been paid to the SSAS, the value at the time, without checking the accounts would have been circa £20k and today somewhat less as I have drawn down the investments held and reduced turn over due to semi retirement.

That said if there is a problem we are happy to rectify it although from what you have said earlier that is not the case.

We will come back to you again after the weekend if that is ok with you and intend to move this forward in the way in which you outline this morning.

Thank you once again for your help

Kind regards

Stephen

[Quoted text hidden]

Gavin <gavinm@pensionpractitioner.com>

25 September 2020 at 17:22

To: Stephen Brown <stephen@artek-design-house.co.uk>

Cc: "Brown, Jenny" <Jenny.Brown@oaklandinnovation.com>, Emily McAlister <emilym@pensionpractitioner.com>

Stephen,

thanks for the clarification on the holding. The 5% holding is permitted within the regulations and there are tax benefits to such holdings, so the advice at the time was the correct one.

There should have either been a consideration paid at the time, or the shares should have been treated as a contribution.

The scheme should have received dividends as a shareholder but there is no consideration involved. I don't think a tax penalty arises here as it is more of an incorrect recording of interest.

I will have a think on this and get back to you with my thoughts on how to proceed and check with HMRC (off the record). We will come up with a workable solution all round.

Have a good weekend

Gavin

[Quoted text hidden]