



# Pensions Bulletin

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## SIPPs: investment in unquoted shares

**This Pensions Bulletin sets out the main issues advisers need to bear in mind when considering an investment in unquoted shares in a trading concern through a SIPP.**

Since April 2006, SIPPs have been able to invest in the shares of unquoted companies, as well as the more traditional quoted investments. This additional investment option has proved to be attractive to those wanting to take advantage of this greater flexibility.

Such investments are, however, far from straightforward. If care is not taken, a SIPP can be caught out by the taxable property legislation if they invest in a company that holds tangible moveable property (e.g. plant and machinery) or residential property.

When shares already in issue change hands the existing owner of the shares will need to complete a stock transfer form and pass the original share certificate to the SIPP provider to arrange re-registration. Unless the shares are a new issue, the SIPP will be responsible for stamp duty at a rate of 0.5% (rounded to the next £5) on the value of the shares that it is purchasing.

The Company Secretary, or other appointed registrar, will be responsible for recording the change of shareholding and for issuing a new share certificate.

### How to purchase unquoted shares through a SIPP

Unquoted shares may be purchased by the SIPP through a stockbroker or directly from the company. It is also possible for the SIPP to purchase shares directly from the SIPP holder or other connected person. In all cases, the purchase must be made on an arms length basis and supported by an independent professional valuation.

For any new issue of shares it is likely that the SIPP will need to enter into a subscription agreement. The terms of this agreement must be acceptable to the trustees of the SIPP. It may also be necessary for the SIPP trustee to enter into a shareholders' agreement. The SIPP provider may also request sight of the company's Memorandum and Articles of Association to ensure that the company will allow and recognise investments made by trustees.

### The taxation position

The taxation position for unquoted shares is the same as that for any other SIPP investment. There is no additional income tax to pay on dividends received by the SIPP and any gain made on the shares while held within the SIPP will be free from capital gains tax.

This assumes that the investment in the unquoted shares is not caught by the taxable property rules.

### Avoiding tax charges on taxable property

The 2006 legislative changes introduced two categories of taxable property - residential property and tangible moveable property.

If a SIPP invests in a company that owns taxable property then additional tax charges associated with indirect ownership of taxable property may apply.



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The taxable property rules also capture taxable property held by entities in which the unquoted company invests.

The penal tax charges that apply to investments in taxable property do not apply where the investment takes place via a genuinely diverse commercial vehicle. As most trading companies will own tangible moveable property, for example plant and machinery, it is important to ensure that the investment qualifies as an investment in a genuinely diverse commercial vehicle.

If tax is payable, significant charges will apply to the initial investment, income received and on any gain made on disposal. As a result of the complexities associated with accounting for these tax charges, most SIPP providers will not permit an unquoted investment to be held where there is a risk that these tax charges may be payable. Some SIPP providers do not allow any investment in unquoted securities.

### What is a genuinely diverse commercial vehicle?

For an unquoted share investment to qualify as an investment in a genuinely diverse commercial vehicle, the company must be one that carries on a trade, profession or vocation.

The SIPP, together with 'associated persons', must not have control of the company. The term 'associated person' broadly means the SIPP holder or any close family member of the SIPP holder, or any pension arrangement relating to the SIPP holder or close family member.

In addition, the SIPP holder must ensure that:

- they (or any close family member) are not deemed to be a 20% controlling director of the company or any other company that holds a direct or indirect interest in the company, and
- they have no right to occupy or use the taxable property held by the company.

Therefore, if the SIPP holder has a relatively small stake in the company then it is likely to qualify as an investment in a genuinely diverse commercial vehicle. Advisers need to bear in mind that separate personal holdings need to be taken into account – in some more complex cases it may be necessary to obtain legal advice prior to making the investment to ensure that the genuinely diverse commercial vehicle criteria are met.

It is important to remember that these criteria must continue to be met for as long as the SIPP has a stake in the company. Advisers need to take care to ensure that any additional investment by an associated person or the SIPP will not result in the limits for holdings being breached.

### Ongoing considerations for investing in unquoted shares

There are a number of other ongoing issues that need to be considered by advisers prior to the initial SIPP investment taking place.

As the trustee of the SIPP will be the shareholder, advisers need to understand how the trustee will deal with any

voting rights attached to the shares. These can be of greater importance in an unquoted company than a larger public quoted company.

In addition to obtaining a professional valuation at the outset, the SIPP provider may require regular professional valuations of the shares. This will certainly be the case when benefits are taken and, for example, there is a need to calculate the maximum tax free lump sum and maximum drawdown income. The cost of these valuations is likely to be borne by the SIPP holder. All other costs associated with holding the unquoted shares in the SIPP, including additional charges that the SIPP provider will levy, also need to be taken into account.

Finally, advisers should evaluate the ability to sell the shares, particularly if the SIPP needs to pay out benefits and liquidity in the pension fund is an issue.

Advisers therefore have an important role to play if any of their clients are investing in unquoted securities through their SIPP, particularly to ensure that the taxable property charges are avoided.