



WHITEHALL

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## SSAS Loan Guideline



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## 2. Introduction

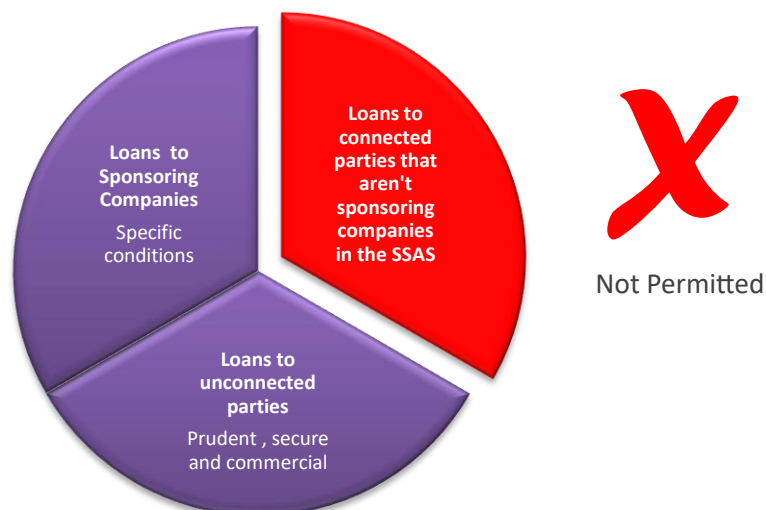
One of the unique features of Small Self-Administered Schemes (SSAS) is their ability to make loans, which other types of pension scheme cannot. There is a number of rules and regulations that need to be followed when using a SSAS to make a loan.

These investments are not straightforward and advice is required before proceeding. Loans are illiquid investments and this must be borne in mind when considering whether they are suitable as a pension scheme investment.

Please note the following:

- Your pension scheme is a “money purchase” pension scheme (also known as “defined contribution”) which means your eventual retirement benefits depend on how much money you pay into your pension scheme and the performance of the investments you make.
- Your pension scheme is defined by HM Revenue & Customs as a “member-directed pension scheme” which means you decide on the investments from the range available and direct us on what you choose.
- Your pension scheme is considered by financial services regulators to be complex because of the wide range of options available and the rules associated with each option. It is also designed to be a long-term arrangement which involves accumulating funds for your retirement.
- Our roles as Trustee and Scheme Administrator mean we aim to facilitate the operation of the pension scheme in accordance with your wishes whilst carrying-out the regulatory requirements.
- We do not give financial advice. If you are in any doubt about the suitability of any aspect of your pension scheme, we strongly recommend that you obtain independent financial advice. If you do not already have an independent financial adviser, information can be obtained from [www.unbiased.co.uk](http://www.unbiased.co.uk) or telephone 0800 085 3250.
- We do not give legal advice. Although we can provide some template documents which have been produced by our lawyers, you need to obtain legal advice and can appoint a solicitor of your choosing.
- We charge fees for our services which are detailed in our schedule of fees.
- Details of our services are given in our Terms and Conditions.

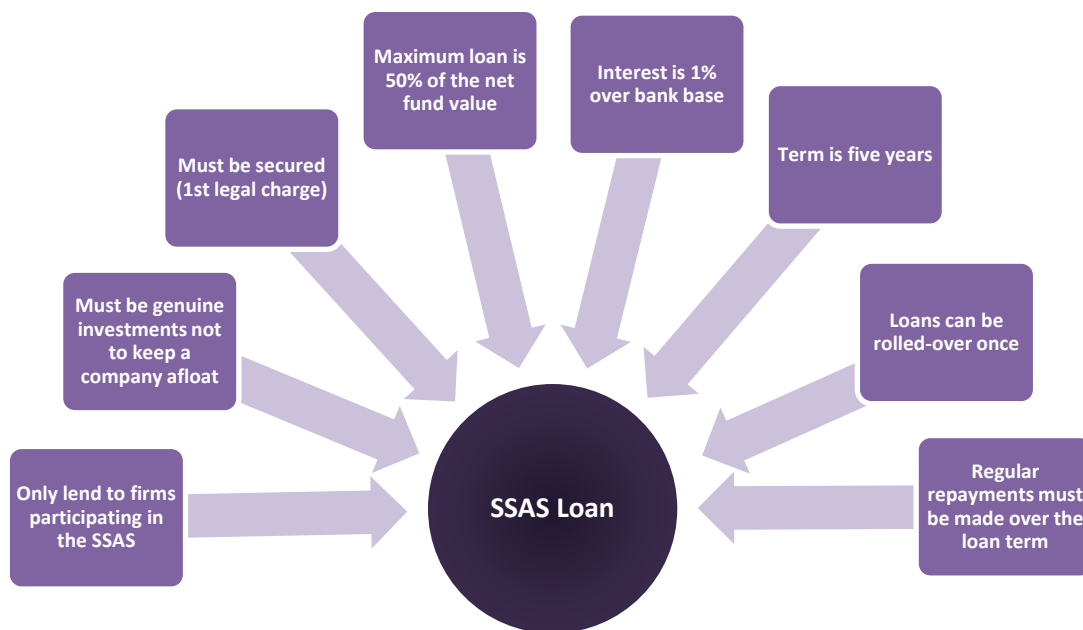
## 3. At a Glance



A loan can be made to principal or participating employers of a SSAS or to genuine unconnected third parties but not to connected parties. HMRC define a connected party in Section 993 of the Income Tax Act 2007. Therefore loans cannot be made to the following connected parties:

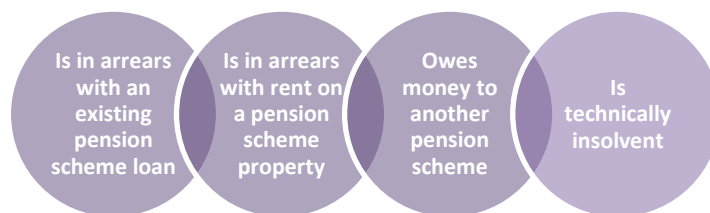
- A scheme member, spouse or relative of a scheme member or relative of a member's spouse.
- A partnership where a scheme member, spouse or relative of a scheme member is a partner.
- A company not participating in the scheme but controlled by a scheme member, spouse or relative of a scheme member or jointly by a number of connected parties.

## 4. Loans to SSAS Sponsoring Employers: Overview



HM Revenue & Customs (HMRC) permit pension scheme loans where they are genuine, secure and on full commercial terms. If loans are being made to a company, the company must be trading and the loan must be for trading purposes.

HMRC would not expect SSAS trustees to approve a loan for a company in any of the following circumstances:



Trustees of a SSAS must take all available steps to enforce the repayment of a loan if the conditions of the loan have been breached. There must be no preferential treatment given to a principal or participating employer when enforcing the collection of the loan, even where this would result in the company being placed into liquidation.

## 5. Purpose of the Loan

All loans must be made for genuine reasons of assisting the trade of the borrower and we ask for the specific purpose of the loan. The loan must be used for this reason. Permitted reasons for loans should match the company's SIC code on Companies House, for example, purchase of commercial property, purchase of stock, purchase of plant, machinery, computer software or hardware and marketing costs. We need you

to be more specific than giving cash flow as a reason and HMRC do not allow loans to keep ailing businesses afloat. This list is not exhaustive and merely provides you with some guidance.

See section 13 below regarding loans used to acquire taxable property.

## 6. Maximum Loan

The maximum loan which may be made to a principal or participating employer is 50% of the net market value of the pension scheme's assets. The total combined amount of connected party loans cannot exceed the 50% limit.

The limit is tested at the time the loan is made and should be based on up-to-date valuations of all assets, including property and unquoted shares where relevant. The limit will not be tested again if the value of the fund falls. If a loan exceeds the 50% limit at the time it is granted, an unauthorised payment tax charge will apply.

### Examples of maximum loans:

Scheme 1		Scheme 2	
Cash on deposit	£50,000	Discretionary managed fund	£100,000
Managed funds	£40,000	Non-standard funds	£75,000
Commercial Property	£300,000	Shares in Principal employer	£5,000
Outstanding mortgage	(£75,000)	Existing loan	£40,000
<b>Net fund value</b>	<b>£315,000</b>	<b>Net fund value</b>	<b>£220,000</b>
<b>50% maximum loan</b>	<b>£157,500</b>	<b>50% maximum loan</b>	<b>£110,000 - £40,000 = £70,000</b>

It is important to remember that to make a loan, sufficient cash must be available in the pension fund. In Scheme 1 above, only £50,000 is immediately available and in Scheme 2, there is no cash available. Investments will therefore have to be sold to make the maximum allowable loans.

## 7. Security

All loans must be secured throughout the term of the loan. There are a number of requirements for the security:

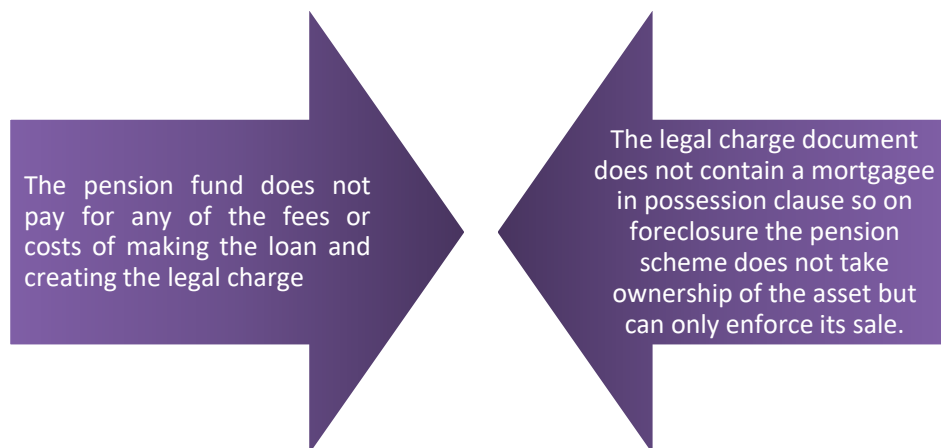
- It must have real value. We will require an independent valuation of the asset used as security.
- The value must be at least equal to the loan capital and interest payments over the term of the loan.
- The security must be a fixed first legal charge over an asset held outside of the pension scheme. The legal charge will provide the pension scheme with certain rights over the asset used as security where the terms of the loan are not met.
- The security cannot be a floating charge, as other creditors would legally rank ahead of such a charge in the event of insolvency.
- The asset used as security may be replaced during the term of the loan provided the value of the replacement asset is at least equal to the lower of the market value of the asset it has replaced or the amount of the outstanding loan capital plus interest.
- Where the principal or participating employer or a connected individual carries out a transaction which in turn reduces the value of the security, an unauthorised payments charge will apply. However, where the value of the security reduces for reasons beyond their control, this will not be deemed an unauthorised payment.
- The security does not have to be provided by the borrowing company, it can be provided by other parties such as the pension scheme members, other family members or other companies.
- We do not permit a principal private residence to be used as security.

Examples of security are:

- Commercial property
- Intellectual property (copyright, trademarks, designs and patents)
- Certain business assets which enable a fixed charge to be granted
- Personal investments such as land, cash deposits or investment portfolios (where a charge is accepted by the provider)
- Buy-to-let property (not a principal place of residence)
- Plant and machinery (provided it does not depreciate in value faster than the loan is repaid).

**Please Note:**

Security over “taxable property” (i.e. residential property, plant and machinery and tangible moveable property) can only be used where two conditions are fulfilled:



To enforce a legal charge, a solicitor will be required.

Failure to comply with these conditions will have two consequences:

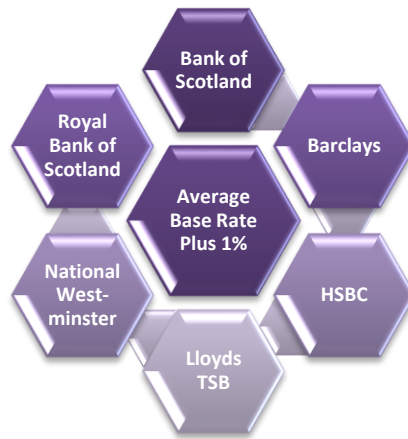
1. The costs paid for by the pension fund are an unauthorised payment and will incur unauthorised tax charges of at least 55% on the amount paid.
2. Should the pension scheme foreclose and take ownership or possession of the asset it instantly triggers unauthorised payment tax charges on the value of the asset acquired. These charges can be very significant.

Once the loan is made, the legal charge must be registered.

- Company assets used as security must be registered at Companies House.
- Property used as security must be registered with the Land Registry.
- Intellectual Property used as security must be registered with the Intellectual Property Office (not copyright).

## 8. Interest Rates

All loans must charge interest of at least 1% above the average of the six leading high street bank base rates to ensure a commercial rate of interest is applied to the loan. At the time of passing the regulation these banks were:



The average is rounded up to the nearest 0.25% and this interest rate will apply for the duration of the loan term provided there is no alteration to the conditions of the loan.

This rate is given on the HMRC website at: <http://www.hmrc.gov.uk/rates/interest-ctsa.htm>  
 It may be possible to use a higher rate of interest if the borrowing company can provide evidence that it is able to borrow on the same terms from another commercial lending source at a higher rate.

## 9. Loan Term

The repayment term of the loan must be no longer than five years from the date the loan is advanced. If the loan has not been fully repaid by the end of the term, the loan period may be extended for a period of up to a further five years starting from the original repayment date. This will not be treated as a new loan, the existing security may continue and the 50% limit will not be re-tested provided there is no increase to the original loan amount.

A loan may only be rolled over once.

We would require evidence of the company's trading status and reasons why it has been unable to make its loan repayments, together with proposals for meeting the loan commitment in future.

Loan rollovers can be quereid by HMRC if the company has paid dividiends to shareholders in preference to repaying its debts.

This is to allow for circumstances where the borrowing company has difficulties in maintaining its repayments and should not be factored into the borrowing term.

## 10. Repayment Terms

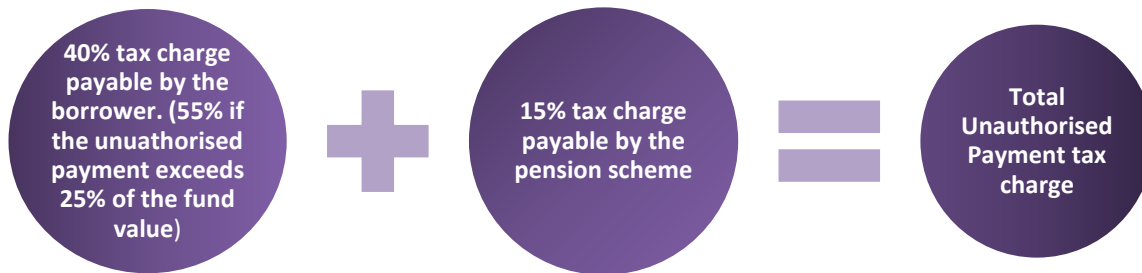
All loans must be repaid in equal instalments of capital and interest for each complete year of the loan, whether monthly, quarterly, half-yearly or annually.

**Example: £50,000 loan at 1.5% interest repayable annually**

Anniversary	Capital	Interest	Annual Repayment
Year 1	£10,000	£50,000 x 1.5% = £750	£10,450
Year 2	£10,000	£40,000 x 1.5% = £600	£10,450
Year 3	£10,000	£30,000 x 1.5% = £450	£10,450
Year 4	£10,000	£20,000 x 1.5% = £300	£10,450
Year 5	£10,000	£10,000 x 1.5% = £150	£10,450
Totals	£50,000	£2,250	£52,250

## 11. Unauthorised Payments

If a loan fails to meet any of the key criteria set out above, unauthorised payment tax charges will apply:



Please note that the pension Scheme Administrator registered with HMRC must report unauthorised payments to HMRC. We are not liable for payment of any tax charges that become due and where these cannot be paid by the borrower or the pension fund, HMRC will pursue the member trustees for payment.

## 12. Loans to Unconnected Parties

SSAs can make loans to unconnected parties but not connected parties who are not participating employers in the pension scheme.

All loan must be for business purposes of the borrower.

A loan to an unconnected party must be prudent, secure and on a commercial basis. Whilst there are no specific terms given by HM Revenue & Customs, a trustee's duty of care means loans should be secured in the same way as loans to participating employers.

The parties are able to negotiate the terms of the loan subject to the above conditions.

As the member trustee(s) make the investment decisions, they must ensure they carry out due diligence on the borrower to be satisfied the loan is a prudent investment. They must also take into account investment diversification, retirement plans of the scheme members and their attitude to risk.

Advice on the investment should also be obtained from a qualified specialist.

There is no specific limit on the percentage of the fund that can be lent to an unconnected party however loans are deemed illiquid and there may be liquidity problems for the scheme if there is a sudden requirement to provide scheme benefits. It may also not be prudent to lend the majority of scheme funds to one party.

We must establish with certainty that the third party is genuinely unconnected.

### Definition of an Unconnected Party

The HMRC definition of a "connected party" is given in Section 993 and 994 of the Income Tax Act 2007 and sections 1122 and 1123 of the Corporation Tax Act 2010. An unconnected party must therefore not be one of the following:

#### A person is connected to another person:

- a spouse or civil partner
- a relative (brother, sister, ancestor or lineal descendant)
- a relative of a spouse or civil partner
- the spouse or civil partner of a relative

- the spouse or civil partner of a relative of a member's spouse or civil partner

**A trustee is connected to:**

- a trustee is connected with a settlor or a person connected with a settlor
- a trustee is connected with any close company whose participators include the trustees of the settlement

**A partner in a partnership is connected to:**

- a partner in a partnership is connected with any other partner in the partnership
- a partner in a partnership is connected with the spouse or civil partner of any other partner or a relative of any other partner

**A company connected to another company:**

- if the same person has control of both companies
- where a person has control of one company and persons connected with them have control of the other company
- where a person has control of one company and they together with persons connected with them have control of the other company
- where a group of two or more people have control of both companies and the groups either consist of the same people or people connected with them

**A company connected with a person:**

- Who has control of the company
- Who together with connected persons have control of the company

**Actions relating to companies**

- Any two or more persons acting together to secure or exercise control of a company are connected with one another

**Close Company**

- Five or fewer participators control the company, or
- Participators who are directors control the company
- Would more than half the assets of the company be ultimately distributed to five or fewer participators, or to participators who are directors, in the event of the company being wound up

**Controlling Director**

- Someone to whom section 452(2)(b) and (3) of the Corporation Taxes Act 2010 applies.
- a manager of the company or otherwise concerned in the management of the company's trade or business
- the beneficial owner of, or directly or indirectly able to control at least 20% of the ordinary share capital of the company (this includes shares held through pension schemes)
- they are treated as owning or controlling what any associate owns or controls (an associate is broadly similar to a connected party)
- Therefore you don't have to be an officer of the company to be a controlling director

## 13. Loans to Purchase Taxable Property

Loans must not be made to unconnected parties for the purpose of purchasing taxable property such as residential property, vehicles, yachts, jewellery or fine art. There are three exceptions to this where the borrowing party falls into one of the following categories:

### 1. Authorised employer loan to a sponsoring employer

An authorised employer loan made to a sponsoring employer is excluded if:

The taxable property is acquired for either:

- A trade, profession or vocation carried on by the sponsoring employer, or
- The sponsoring employer's administration or management
- The property is not occupied or used by a member or connected party

### 2. Other kinds of vehicle (Also known as Genuinely Diverse Commercial Vehicles)

The vehicle must meet the following five conditions:

The total value of the assets held directly by the vehicle is at least £1 million, or

1. the vehicle holds at least three assets directly which are residential property
2. and in either of these cases no asset held directly by the vehicle which is taxable property has a value which exceeds 40% of the total value of the assets held directly.

If the vehicle is a company, it is resident in the United Kingdom and is not a close company, or if it is not resident in the United Kingdom it would not be a close company if it were.

The vehicle does not have as its main purpose, or one of its main purposes, the direct or indirect holding of an animal(s) used for sporting purposes. This is to recognise that many racehorse syndicates have many members and provide them with certain benefits related to the horse ownership such as attendance at race meetings as an owner with access to the owner's enclosure.

The pension scheme must not directly or indirectly hold an interest in the vehicle for the purposes of enabling a member of the pension scheme or a connected person of a member to occupy or use the property.

The pension scheme, together with any associated persons, must not hold directly or indirectly an interest in the vehicle that exceeds any one of the following limits:

- Loans representing 10% or more of the gross assets of the vehicle,
- 10% or more of the share capital or issued share capital of the vehicle,
- a right to receive 10% or more of the income of the vehicle,
- such an interest in the vehicle as gives an entitlement to 10% or more of the amounts distributed on a distribution in relation to the vehicle,
- such an interest in the vehicle as gives an entitlement to 10% or more of the assets of the vehicle on a winding up or in any other circumstances.
- Such an interest in the vehicle as gives rise to income and gains derived from a specific property.

These limits apply to indirect holdings of a vehicle as well e.g. if a pension scheme lends funds representing 50% of the gross assets of company A which in turn owns 15% of company B then the pension schemes interest in company B will be 7.5%. The indirect holding in company B will therefore be less than 10%.

### 3. Trading Concerns

These are vehicles that are arm's length trading vehicles. There are four conditions to be met:

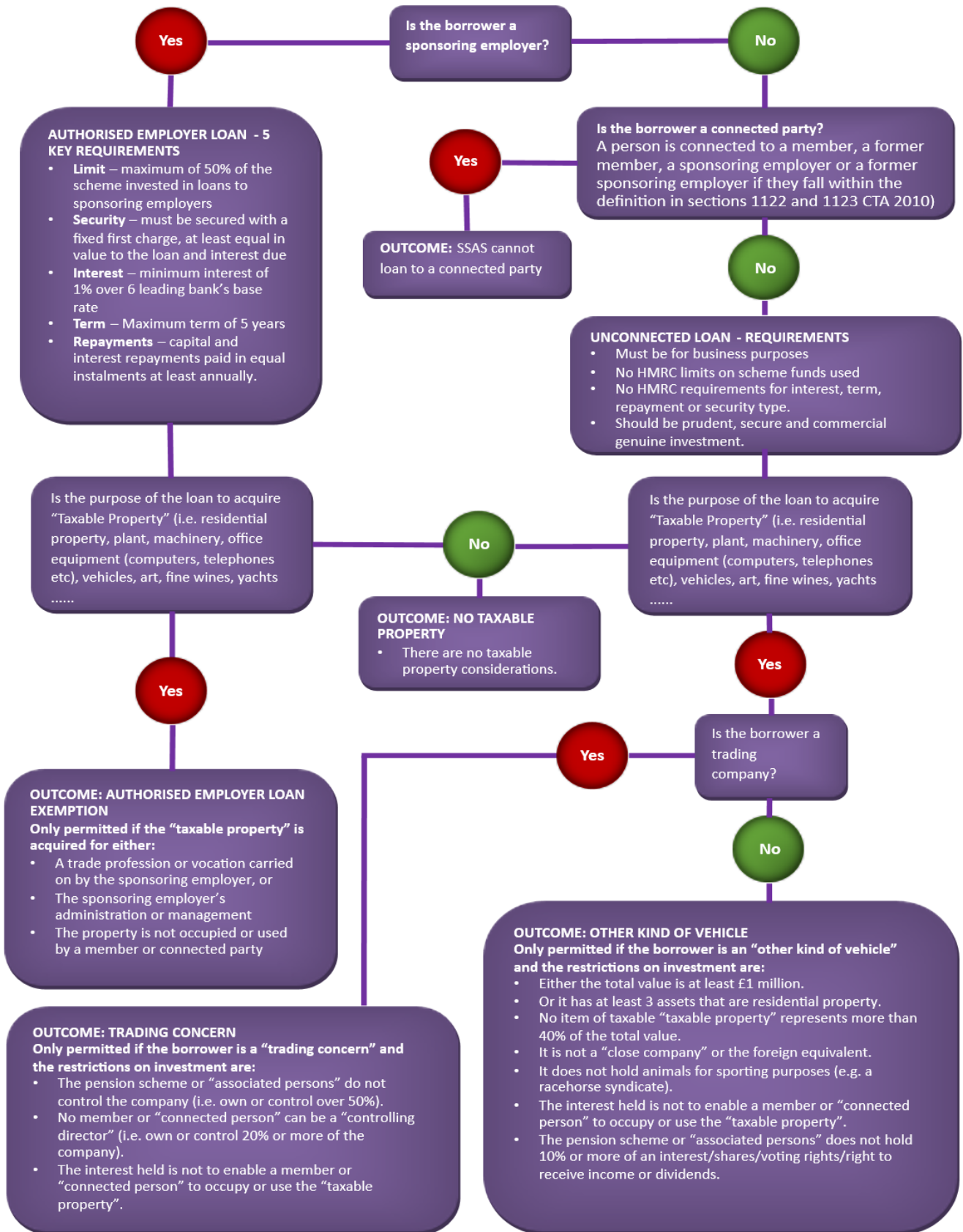
1. The vehicles main activity is the carrying on of a trade, profession or vocation.
2. The pension scheme either alone or together with associated persons (any scheme member or connected party) does not have control of the vehicle.
3. Neither a pension scheme member nor a person connected to such a member is a controlling director of the vehicle or any other vehicle which holds an interest in the vehicle directly or indirectly.
4. The pension scheme does not directly or indirectly hold an interest in the vehicle for the purposes of enabling a pension scheme member or a connected person of such a member to occupy or use the property.

"Control" has the meaning given by sections 450 and 451 of the Corporation Taxes Act 2010.

"Controlling director" means a director to whom section 452(2)(b) and (3) of the Corporation Taxes Act 2010 applies, broadly 20% controlling directors.

This enables pension schemes to invest commercially in trading concerns without worrying about tangible moveable property that is being used by the company for its trade.

# 14. Loan Decision Tree



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