

## **Do all Members also need to be the Trustees of the SSAS and what are the implications if they are not?**

As a company, we only act as the Scheme Administrator ourselves where all Members are also the Trustees, but from our experience we have come across Schemes where not all Members are the Trustees, so we'll summarise the implications below.

In order to answer the question properly, we'll need to look at two areas:

### **1. Making Investments:**

The full spectrum of investments available to SSASs (under tax legislation i.e. the Finance Act 2004) where all members are also the trustees, are available to SSASs where for one reason or another, not all members are also the trustees.

HMRC's guidance and Part 4 of the Finance Act 2004 neither state nor imply the need for all members to also be the trustees of the Scheme. In fact, there is no mention of the requirement for any member to also be a trustee.

However, schemes where not all members are also the trustees are legally prohibited from making Employer Related Investments which include the following (from Section 40 of the Pensions Act 1995):

- (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer,
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person,
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person,
- (d) loans to the employer or any such person, and
- (e) other prescribed investments,

Now, according to the Pensions Regulator, this still remains untested in the courts, but certainly something to be aware of.

## 2. Exemptions from additional maintenance and reporting requirements:

Substantial exemptions are offered under other relevant pension legislation where the scheme qualifies as a “Small Scheme” where the scheme is an Occupational Pension Scheme with fewer than 12 members who are also the trustees, or “Relevant Scheme” in the case of the Financial Services and Markets Act 2000 which also allows substitute trustees to act on behalf of members who for whatever reason cannot act themselves.

Such as producing:

- Audited Accounts
- Actuarial Reports
- Statements of Investment Principals
- Annual Member Letters, Benefit Statements and Illustrations
- An Annual Governance Report and Chair Trustee Statement

And the requirement for the trustees to act on advice from an FCA Authorised Investment Adviser.

**So, in summary, for a SSAS to be able to act with the flexibility and exemptions that we expect it to have, it will need to have fewer than 12 Members and all Members will also need to be its Trustees.**

