Loan Questionnaire

Scheme Name:	
Scheme Ref:	
Trustees:	

Borrower:	
If a Partnership or Company, then please provide the names of all Partners / Directors:	
Amount:	£
Term:	
Interest:	%
Security Details:	

Please read the following guidance notes and confirm the status of the Borrower:	**Sponsoring Employer**	**Unconnected 3rd Party**

Reason for the Loan:	

Guidance Notes

All Trustees must be a party to every investment decision that the Scheme makes (including Loans). When making a loan, the Lender defined in the Loan Agreement must be the name of each and every Trustee of the Scheme as Trustees of The Scheme.

Under current legislation, Occupational Pension Schemes (such as SSAS') are permitted to make 2 types of loan:

1) A Loan to a Company or Individual that is deemed an Unconnected 3rd Party to the Scheme.

   For guidance prescribed by HMRC, defining a Connected Party, then please visit the following URL:
   www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm027000

   A person is connected with an individual if that person is:
   - the spouse or civil partner of the individual, or
   - a relative of the individual, or
   - a relative of the individual's spouse or civil partner, or
   - the spouse or civil partner of a relative of the individual, or
   - the spouse or civil partner of a relative of the individual's spouse or civil partner.

   A company is connected with another person if that person has control of it, or if that person and persons connected with him together have control of it.

   There is no criteria to meet or limits from HMRC for 3rd Party Loans, as the Trustees are expected to act impartially and in the best interest of the Scheme, when negotiating the terms of the loan and in enforcing its repayment.

   Although 3rd Party Loans are permitted, Peer to Peer lending platforms are off limits due to the lack of control over the funds once they are on the platform (or at least the ability to monitor where they are being invested, so that the appropriate reports can be filed with HMRC) and the ability for Member Loans or Buddy Transactions to occur which would be deemed Unauthorised Member Payments and would result in substantial Tax Charges being levied against you personally and your Scheme (up to 70% of the value of the loan, even if it's repaid in full!).

2) A Loan to a Sponsoring Employer of the Scheme.

   When making a loan to a Sponsoring Employer (commonly known as a Loanback), there is a strict criterion that must be met for the loan to be deemed an Authorised Employer Payment.

   For guidance prescribed by HMRC on the key criterion for a loan to a Sponsoring Employer, then please visit the following URL:

   https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm123200

   There are 5 key tests that the loan must meet:

   i. It must be **secured by way of a 1st legal charge** over an asset at least equal in value to the loan and interest over the whole term.
   In addition, the Trustees must ensure that the value of the security is confirmed by an Independent and Suitably Qualified Valuer (e.g. a Chartered Accountant for Unlisted Shares).

ii. It must be at a **Commercial rate of interest** (at least 1 + base = currently 1.75%).
The '1+base' quoted by HMRC in their Pension Tax Manual is an absolute minimum Commercial Rate they expect
iii. It must be for a **maximum term of 5 years**.
iv. **The maximum amount of loan is 50% of the SSAS's Net Assets**, minus any existing loans made by the SSAS

Maximum New Loan = 50% of the Net Value of the Scheme – Current Value of Existing Loans

50 % of the Net Value of the Scheme = (Value of All Assets - Value of All Liabilities) ÷ 2

v. It must be repaid by **at least annual instalments of Capital plus Interest**.
Unfortunately, this means that interest only loans with a term of 1 year or more are not permitted.

Despite the most common style of loan being one on a 'Reducing Balance Method', HMRC bases the calculation of any Tax Charges using a 'Flat Rate Method', so to ensure that unnecessary and accidental Unauthorised Payments do not occur, we ensure that all new loans made to Sponsoring Employers are administered using the flat rate method.

Any further advances made after the original loan was made are to be treated as a new loan made on the date the further advance was made

Tax Charge Risks

There are a number of situations where a Loan to a Sponsoring Employer, that met the criteria at outset, can trigger tax charges against the Scheme and the Employer during or after its term.

1) Where there is a shortfall between the expected repayments and those physically received by the Scheme within a given Loan Year.
When monitoring loan repayments, we are concerned with each 12-month period from the date of the loan agreement or when the loan was physically drawn down (depending on the wording of the individual loan agreement), known as a Loan Year.
Where there are underpayments in any loan year during the term of the loan, then the highest underpayment in any given loan year during the full term will be deemed Unauthorised Employer Payments and tax charges will be levied by HMRC on that difference.

2) It is possible to roll a loan over once without additional tax charges, if there are any amounts outstanding at the end of its term. However, in order for there to be amounts outstanding at the end of the term, then there must have been a shortfall in a given loan year during the term which, as covered above, will be deemed Unauthorised Employer Payments and will result in tax charges being levied by HMRC.

3) Although there are no requirements for the managers of the Scheme to review the Employer's activities and use of the loan funds, if any of the funds are used to make loans to any Member (or a Connected Person to any Member) then HMRC will deem that amount to be an Unauthorised Member Payment and tax charges will be levied against the Member personally and the Scheme.

4) Where a Borrower or someone connected to a Borrower is involved in a transaction that devalues the security bellow an amount equal to the Capital + Interest remaining, then the shortfall in the Security value will be deemed an Unauthorised Employer Payment and will result in tax charges being levied by HMRC.
   <u>***This is particularly important when using the company Shares as security for a Loan, as the Employer's trade itself could be seen as a transaction that has had an impact on the value of the security***</u>

5) Where an amount remains unpaid after the roll over term.

The total amount of a loan deemed an Unauthorised Payment cannot equal more than the original loan itself.

As the Trustee/s of the ………………………………………………………………………………………., I/we declare that:

I/we have read and understood the Guidance notes at the beginning of this application form and have raised any queries with the Scheme Administrator, or my/our appointed advisers.

To the best of my/our knowledge and belief, the details I/we have provided on this form are correct and complete.

I/we consent to the lawful use of my/our personal information by those individuals, companies and other relevant parties, for the sole purpose of the administration and management of the Scheme.

I/we agree that I/we understand fully the responsibility the Scheme Administrator has, to ensure that the Scheme operates within the regulations and guidelines prescribed by Her Majesty's Revenue & Customs and in the event that the Scheme Administrator advises against proceeding with the loan that I/we the Trustee/s will adhere to the advice of the Scheme Administrator to protect my/our Scheme.

Trustee's Signature:	
Date:	

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Date:	

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Date:	

Trustee's Signature:	
Date:	

Trustee's Signature:	
Date:	