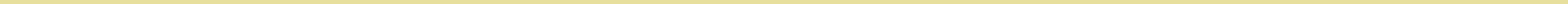
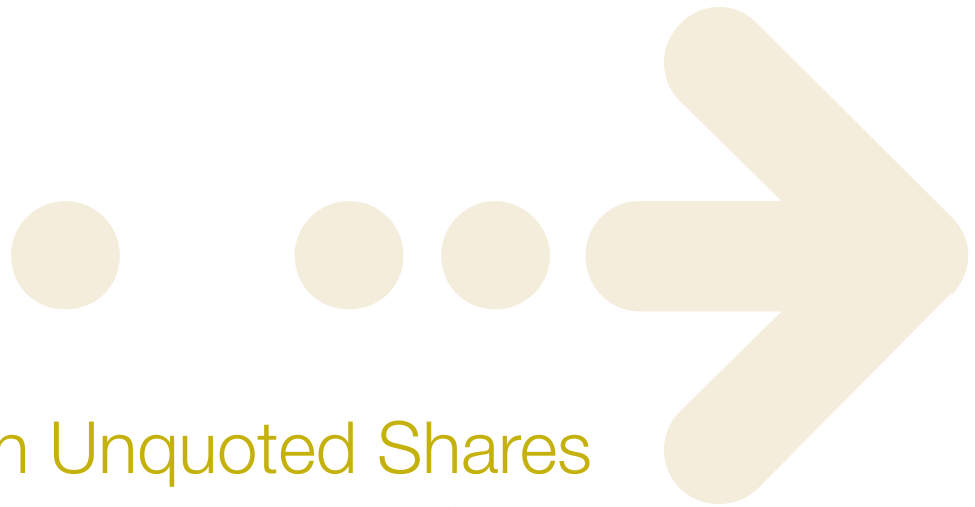




Investing in Unquoted Shares
under The Pointon York SIPP







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The range of investments open to a Self-Invested Personal Pension Scheme (SIPP) was significantly widened with effect from 6th April 2006 (“A-Day”). One of the investment options now available to SIPPs is that of investing in unquoted shares. These are shares of a private limited company which are not traded on a recognised stock exchange, such as the London Stock Exchange or AIM.

We are pleased to confirm that should you wish to take advantage of the opportunity to invest some of your SIPP in unquoted shares, Pointon York has the facility to enable you to do so. As this is a new area of investment for SIPPs we recommend that you consider the following general guidance and seek professional advice before taking a decision to invest in unquoted shares.

This Guidance is divided into three sections. The first section sets out when an investment in unquoted shares may be an indirect investment in **taxable property**, which leads to penal tax charges being levied in respect of the investment. The second section focuses on the steps which will need to be taken with regard to valuing unquoted shares. The final section of this Guidance sets out the conditions on which your Pointon York SIPP will permit an investment in unquoted shares.

Words in **bold italics** are terms defined in the Glossary at the end of the booklet.

Part A: Are you indirectly investing in “taxable property”?

Although an investment in unquoted shares by a SIPP is in itself permitted, you should consider carefully whether your investment could be seen by the HM Revenue & Customs (HMRC) as an indirect investment in **taxable property**. The legislation is drafted very widely and the legal definition of **taxable property** is much wider than you might think.

If your SIPP does invest indirectly in **taxable property**, you will be personally liable for tax charges of at least 40% of the market value of the interest in the property your SIPP is deemed to have acquired. Additionally your SIPP could suffer a further 15% charge, or more. Such tax charges will not arise, however, if your investment is in what HMRC describe as a **genuinely diverse commercial vehicle**.

Basically, a **genuinely diverse commercial vehicle** is:

- an arm’s length trading company, which meets certain qualifying criteria, of which neither you nor anyone connected with you are a **controlling director**;
- a Real Estate Investment Trust; or
- a special purpose vehicle which meets certain qualifying criteria - one of which is that neither you nor anyone associated with you, collectively or alone, owns or has beneficial interest in 10% or more of the company’s shares.

What is “taxable property”?

Taxable property is property which if held by a registered pension scheme, such as The Pointon York SIPP, would result in HMRC imposing penalty tax charges on your investment.

The term taxable property catches two types of property:

- residential property; and
- items that HMRC refer to as **tangible moveable property** (property which you can touch and move).

If the investment is not in a **genuinely diverse commercial vehicle** then the tax legislation essentially looks through the SIPP investment, and deems the SIPP to have an indirect interest in any taxable property either that company holds, or any other company that company has an interest in.

This is best illustrated by way of an example:

If it is proposed that your SIPP will acquire 20% of the ordinary share capital of A Limited (an unquoted company), which in turn owns 50% of the ordinary share capital of B Limited, your SIPP will have a holding of 20% in A Limited and an indirect holding of 10% in B Limited. If B Limited held any **taxable property** the SIPP would be deemed to have a 10% interest in that property, with a proportionate tax charge arising, unless either A Limited or B Limited was viewed as a **genuinely diverse commercial vehicle**.

HMRC has published Guidance on the consequences of investing directly and indirectly in **taxable property**. This can be found on HMRC’s website at www.hmrc.gov.uk/manuals/rpsmmanual/RPSM07109000.htm. Please review this guidance with your advisers in the context of your proposed investment.

The term **tangible moveable property** catches items such as antiques, fine art, fine wine, classic cars, boats, stamp collections and rare books, but also has a far wider interpretation and catches most other items that can be touched and moved, no matter how innocent those items might seem in terms of potential personal use or benefit.

The only forms of **tangible moveable property** not viewed as **taxable property** are investment grade gold bars and such **tangible moveable property** that satisfies the following criteria:

- the market value of the property is less than £6,000 (for the avoidance of doubt, this is per item);
- your SIPP does not hold the asset directly, but it is held indirectly through a company, for example;
- the asset is held solely for the administration and management of the company which owns it; and
- neither you nor **anyone connected** to you can either personally occupy or have personal use of the asset.

We would stress that the definition of **taxable property** is a lot wider than you might assume. HMRC interpret the term 'solely for the administration and management of the company' very narrowly. For example, it could catch any

goods produced by a trading company (even if fairly low in value and seemingly innocent) if you are connected with the company.

Examples of the sorts of property viewed as being owned by a company for the purpose of their administration and management include items such as desks, computers, chairs, carpets, kettles and small items of office equipment. These will not be viewed as **taxable property** provided you or persons connected to you do not have personal usage of the items concerned.

Where dealing with a trading company, any items held or acquired by the company in relation to their trading activity will not be viewed as being held for the administration or management of the company. For example, items such as stock, components acquired to make goods, company vehicles/vans, most plant and machinery (that are not integral to any building) are likely to be viewed as **taxable property**.

What issues should I consider to avoid an indirect investment in “taxable property”?

The following is initial guidance of certain issues which you should be aware of and consider before proceeding with any investment in unquoted shares. The list is not exhaustive and is not intended, nor should it be interpreted, as advice on whether you should proceed with any investment in unquoted shares.

However, if any of the statements in the matrix below and over the page either do, or might, apply to your

circumstances the investment will probably be in a company which does not qualify as a **genuinely diverse commercial vehicle**. Penal tax charges could therefore be incurred. As such, you may wish to consider further whether or not to proceed with your proposed investment.

In any event, you should take independent professional advice on the potential tax implications of any proposed investment in unquoted shares.

1	If the company in which you propose to invest has as its main activity the carrying on of a trade, profession or vocation, and...
	<ul style="list-style-type: none"> - you or another member of The Pointon York SIPP (or someone who is connected to you or such other member) are a director who is involved in the management of the company, or another company which holds an interest in that company, and the <u>aggregate</u> beneficial shareholding in that company held by you and/or other members of The Pointon York SIPP (and anyone connected to you or such other members) in the relevant company comes to 20% or more of the company's ordinary share capital; OR - you, The Pointon York SIPP as a whole or someone or a company otherwise connected with you or other members of The Pointon York SIPP will collectively be deemed to have control of the company after the share acquisition.

2 If the company in which you propose to invest does not have as its main activity the carrying on of a trade, profession or vocation, and...

- it is a **close company**; **OR**
- the company has assets of less than £1 million and holds less than three assets which consist of an interest in residential property; **OR**
- an asset of the company which qualifies as **taxable property** has a value of more than 40% of the company's total assets; **OR**
- the company's main purpose, or one of its main purposes, is the direct or indirect holding of an animal or animals for sporting purposes (e.g. racehorses); **OR**
- you or any person or company connected to you have collectively a **10% interest** in the company. This collective measure catches any interests held indirectly, either by you or a person connected to you, through a pension scheme (including The Pointon York SIPP) or another trust.

3 The purpose, or one of the purposes, for The Pointon York SIPP holding an interest in the company is to enable you, a member of The Pointon York SIPP, another member of The Pointon York SIPP or someone **connected** with you or such member, to have personal use of or to occupy **taxable property**.

Pointon York will not provide you with any advice whatsoever on whether a potential investment would be deemed an indirect investment in "taxable property" and will enter into the transaction purely on an Execution-only basis.

If the company is not a "genuinely diverse commercial vehicle" and it, or a company it has an interest in, does hold "taxable property", we will not allow the investment under The Pointon York SIPP. You must declare that this is not the case in our application form.

We stress again, we strongly recommend that you seek independent professional advice before proceeding.

What exactly are the tax consequences of being deemed to invest 'indirectly' in "taxable property"?

Both you and your SIPP will become liable to a tax charge based on the indirect interest the SIPP is deemed to have in the **taxable property** held by the company at the point the SIPP acquires the shares. These charges are calculated on a pro-rata basis by reference to the "market value" of the **taxable property** held by the company at that time.

For example, if your SIPP holds 10% of the shares in a company that holds £20,000 of **taxable property** at the time of acquisition the SIPP is deemed to hold a £2,000 interest in that property, with tax charges becoming due on that amount.

You will be liable to a tax charge of either 40% or 55% of the above chargeable amount (depending on the relative size of the chargeable amount to your SIPP fund). Your SIPP will be liable to a tax charge somewhere between 15%

and 40% of the chargeable amount (this will be 15% if you pay all your due charge).

So in the above example the member would be liable for either a £800 or £1,100 charge, and your SIPP a charge of £300 (minimum).

We are obliged to report any charges due to HMRC.

After this, charges will arise again every time the company acquires further **taxable property**. With a trading company, this is likely to occur frequently.

In addition there may be a charge on your SIPP relating to any dividend received from the company, or on any capital gain realised on selling the shares, to reflect that the company has held **taxable property** throughout the period of ownership.

Part B: Valuation of Unquoted Shares

General

It is essential that you obtain an up-to-date fair market valuation of the shares which you propose to acquire through your SIPP. If any shares are acquired at less than fair market value, there could be tax consequences.

Is your SIPP purchasing the shares either from you, or a person or company **connected** to you? Are the unquoted shares in a company of which you alone, or together with family, are deemed to **control** (i.e. have the greater part of the share capital or voting power of the company)?

If either of these are the case, the acquisition of the shares by your SIPP will be a “connected party transaction”.

These are not the only type of connected party transaction. You should ensure that you take independent legal advice as to whether or not the acquisition of shares by your SIPP could be such a transaction.

If your SIPP is involved in a connected party transaction, you must ensure that the share acquisition takes place on an arm’s length basis at full “market value” (determined in accordance with legislation - section 272 of The Taxation of Chargeable Gains Act 1992). Failure to do so could lead to tax penalties being imposed by HMRC.

Determining the “market value” of unquoted shares can be both complex and subjective. The appropriate methods to employ will depend on the particular circumstances of the transaction. Factors that may influence the valuation include the financial position and performance of the company, the information about the company that is deemed to be available and the level of influence conferred by the shareholding being valued.

Our Requirements

In the circumstances below, Pointon York will require an independent valuation of the “market value” of the unquoted shares which are to be acquired by your SIPP, prepared in accordance with section 272 of The Taxation of Chargeable Gains Act 1992.

These circumstances are where the shares acquired by your SIPP are:

- to be bought or acquired from you or a person **connected** to you (this includes a company **connected** to you), or
- in a company that you or a person connected to you are either a director of, or are involved in the management of (or you or such other person **connected** with you have such a role within another company that holds an interest in the company whose shares are to be acquired).

If you are purchasing shares in a company quoted on the PLUS primary market we will only require an independent valuation if the deal is not done through the market.

Such a valuation must not be older than 3 months at the time of acquisition. The valuation must either be:

- addressed to us and specifically relate to the proposed transaction involving the SIPP (as the value of the shares may be lower, if a minority shareholding), or
- accompanied by a letter from the valuer addressed to us confirming that, in their professional opinion, the valuation is valid for the number of shares being purchased by the SIPP on this occasion. We would also require the valuer to confirm that there is no conflict of interest in them providing this opinion.

In all circumstances we will require full details of the valuation which has been adopted in respect of the unquoted shares, verified by an accountant where appropriate.

If the company is an arm’s length investment vehicle we will accept written confirmation of the ‘market value’ of the shares from the operator of that vehicle.

➔ Investing in Unquoted Shares under The Pointon York SIPP

If an independent valuation is required and not provided, or a valuation is provided which does not meet our requirements, we will appoint an independent firm specialising in unquoted share valuation to provide an informal opinion on whether the proposed purchase or acquisition price represents a market value for tax purposes. This opinion will be informal and for our purposes only.

There will be a charge for this, and we will confirm this with you before proceeding. You will be liable for this charge whether the transaction goes ahead or not.

Our valuer will require at least the following information to provide their opinion:

- details of the existing share structure of the company, with details of share rights and names of shareholders;
- a copy of the last set of published accounts for each company in the group;
- details of any previous transactions in the shares in that company (dates, price, basis on which price was agreed);

- details of any previous valuations agreed with HMRC;
- forecast profit and loss account for the current financial year; and
- confirmation as to any immediate plans to sell or float the company.

If our valuer cannot confirm to us on an informal basis that the proposed price is a market value for the purposes of relevant legislation then, if you want to proceed with the transaction, we will ask them to prepare a full formal valuation. You will be liable for the charges associated with the full formal valuation whether the transaction goes ahead or not. Further information may also be required by the valuer in this circumstance.

You should be aware that as the valuation of unquoted shares is both complex and subjective, there is a risk that HMRC will challenge the basis of any valuation market value is established on. It is therefore important that the basis of any valuation can be clearly substantiated.

Part C: Our Conditions for Investment in Unquoted Shares

Should you wish to invest in unquoted shares through your Pointon York SIPP our requirements are:

- ➔ If you are investing in a **close company** The Pointon York SIPP must be the only self-invested pension scheme you are a member of. If you hold funds in any other SIPP or SSAS these funds must be transferred to The Pointon York SIPP before we will proceed with the transaction.
- ➔ You warrant to Pointon York through our application form that any investment in unquoted shares will not result in a direct or indirect investment in **taxable property**, and to the extent that the transaction is with a “connected party”, it is being undertaken on an arm’s length basis.
- ➔ Where the investment is in a close company you, or a person or company **connected** to you, already hold an interest in, you have sought independent advice from appropriate professional advisers (whether an IFA, a lawyer and/or an accountant). In such circumstances we expect that professional adviser to sign up to our application form. [We strongly recommend that you seek professional advice before buying any unquoted shares]
- ➔ No more than 50% of your Pointon York SIPP fund may be invested in unquoted shares.
- ➔ The shares will be purchased or acquired in the name of Crescent Trustees Limited, the trustee of The Pointon York SIPP. They will be the legal owners of the shares.
- ➔ Crescent Trustees Limited will not hold any more than 24% of the issued share capital of any one unquoted company. Please note that this is an aggregate limit over all the SIPPs we hold, rather than a “per member” restriction.
- ➔ The unquoted shares must be acquired by the SIPP at a fair market value.
- ➔ We will not normally attend any AGMs, EGMs or other shareholders’ meetings in respect of the unquoted shares acquired by the SIPP.
- ➔ Crescent Trustees Limited will not exercise any voting rights in respect of the unquoted shares acquired by the SIPP. At your written request, Crescent Trustees Limited will appoint you as nominee in respect of such shares.
- ➔ You indemnify Crescent Trustees Limited and Pointon York generally and on an ongoing basis against any costs, charges or claims arising in connection with the purchase of such shares. This is covered in the Declaration in our application form.
- ➔ Crescent Trustees Limited/Pointon York SIPP Solutions Limited will purchase the shares on an Execution-only basis. They will not give you advice on the prudence or suitability of the investment or whether the investment will be deemed an indirect investment in **taxable property**.
- ➔ Before you proceed with the transaction you must ensure that the company's articles of association and any shareholders' agreement allow the transfer of shares.
- ➔ Crescent Trustees Limited / Pointon York SIPP Solutions Limited will want to appoint a lawyer or stockbroker to progress the transaction. This will incur charges.

Glossary

“10% interest” (paragraphs 23(1) and 24, schedule 29A, Finance Act 2004)

This will be satisfied if the persons / pension schemes mentioned collectively hold more than 10% of the company’s share capital or issued share capital, voting rights, rights to income, rights to monies on distribution, wind-up or any other circumstance.

“Close company” (Part XI Income & Corporation Taxes Act 1988 – “ICTA88”)

Broadly, a **close company** is a company which is under the **control** of either

- five or fewer “participators” (a “participator” includes any person who possesses, or is entitled to acquire, share capital or voting rights in the company, any loan creditor of the company and any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company), or
- any number of “participators” who are all directors of the company.

There are other ways a company can be viewed as a **close company**, and there are also exceptions. If in doubt, you should consult the company accountant.

For general tax purposes, a company must be resident in the UK to be a **close company**. However, for the purposes of the **taxable property** provisions it catches a non-UK resident company that would meet the **close company** definition if it were resident in the UK (i.e. an overseas company controlled by 3 people would be deemed a **close company** for this purpose).

“Connected” (section 839 ICTA88)

Generally, two individuals will be **connected** if they are married, in a civil partnership or otherwise related, including related by marriage or civil partnership. Individuals will also be connected if they act together to secure or exercise the control of a company.

A company will be **connected** to an individual if that individual alone, or that individual along with any person or persons (including any company), are deemed to **control** that company.

“Control” (section 416 ICTA88)

There will be **control** if The Pointon York SIPP or an individual has or is entitled to acquire the greater part of the company’s share capital or issued share capital, voting rights, rights to income, rights to monies or assets on distribution, wind-up or any other circumstance.

The rules on **control** are complex, and there are ways individuals who personally do not control a company in their own right can be treated as controlling the company with someone else. For example, a husband and wife each with a 30% interest in a company are collectively deemed to **control** the company.

Persons not **connected** to each other can also be linked for the purposes of the **control** definition. For example, a company with four unconnected directors each owning 25% of the share capital will all be deemed to control the company (as any three together can exercise **control**).

“Controlling director” (section 417(5)(b) ICTA88)

A director who is involved in the management of the company who has or is able to control 20% or more of the company’s ordinary share capital.

“Tangible moveable property”

This is described in Part A of the Booklet.

“Taxable property”

This is also described in Part A of the Booklet.

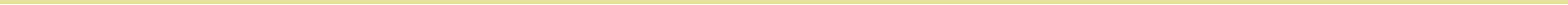
Important Notice

Nothing in this document constitutes legal, financial or investment advice. Pointon York recommend that you should seek independent financial advice before purchasing any unquoted shares.

Pointon York’s role is solely to provide the service which enables you to invest in unquoted shares. As such, Pointon York will not carry out any investigation, analysis or due diligence of any form whatsoever in respect of the unquoted shares proposed to be acquired by the SIPP, nor the relevant company and its group structure. Nor will Pointon York offer any opinion or advice as to the suitability or strength of any particular investment.

This document is intended to be used solely as guidance on issues which you may wish to consider before making an investment in unquoted shares through your SIPP.

Pointon York strongly advises that you seek independent legal, financial and investment advice before proceeding with any investment in unquoted shares through your SIPP.



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