

Investment advice

Despite Gordon Brown's U-turn on SIPPs last December, David Anderson explains that you can still buy French leasebacks with your self-invested pension

Most people will be aware that the government announced last year that as part of the pensions reforms people would be able to take more control over their pension funds by transferring the pension money into a self-invested personal pension known as a SIPP. The rules governing what SIPPs can invest in were published at the end of March 2006 after a long wait.

Prior to Gordon Brown's famous U-turn in December, you could use your SIPP to invest in residential buy-to-let homes, which fuelled great interest in second home abroad. The new rules, which are not yet law but are likely to be enacted as drafted, contain the detailed definitions of what SIPPs can invest in.

Commercial property such as shops, restaurants, offices and factories are permitted as before. This would include a campsite and a horse-riding school, for example. Properties, which come within the definition of 'dwelling' or are deemed suitable for use as 'dwellings' are not permitted investments for SIPPs.

This is likely to be interpreted fairly strictly so to avoid being classified as a dwelling the property should, for instance, not have residential planning permission, should not be occupied for purely residential purposes and should for rates and taxes purposes, for example, be classed as commercial. This rules out most gîtes unless they can be classified as hotels under French law, which will be rare.

In practice the SIPP provider you use will need to be convinced the property is commercial before it will allow the transaction to proceed. It is best to use a SIPP provider with experience in the French property market

and the infrastructure to provide ongoing support.

Certain categories of property are specifically defined as non-residential. These include student residences, old age homes and prisons. Hotel accommodation is permitted as a SIPP investment. The purchase of an entire hotel or part of an hotel is acceptable provided the buyer does not have any right to use the accommodation or benefit in any other way such as having discounts to stay at the hotel, even in other accommodation.

This category of hotel accommodation, as

You can still use your SIPP to purchase commercial property such as shops, restaurants, offices and factories in France

well as the definition of residential property as a dwelling, means that almost all French leaseback properties can be bought using a SIPP. Most of these are contained within hotel or para-hotel complexes and as they are classified as commercial for French purposes, they will qualify in the UK. However, leasebacks which allow the owner several weeks use a year will be excluded. The property must be a pure investment.

The SIPP can recover the French VAT in the usual way and borrow 50% of the value of the fund. In other words, someone with a SIPP fund of £100,000 can buy a £150,000 leaseback net of French VAT.

It is possible for, say, two SIPP funds to buy a property together. In the above example, if each fund had £100,000 then a lease-

back of £300,000 could be bought. However, it is important that the ages of everyone involved and the anticipated retirement ages are similar, as the property will have to be sold to fund the retirement.

At the end of the leaseback period the lease can either be renewed or the property will have to be sold. This is because when the leaseback ends the property becomes residential and must be sold either on the open market or to the members of the SIPP at market price.

We have now completed a large number of SIPP purchases in France using a tax effective structure. This is because although the SIPP is tax free in the UK, it is not recognised as tax free in France. Initial SIPP purchases some years ago were done just as in the UK with the SIPP trustee, usually a UK trust company, buying the property. This is an unsatisfactory situation both commercially and tax wise. If you are in this position you

need to take professional advice straight away and consider whether you have a claim against your SIPP provider if the risks under French law were not explained to you at the time.

More recently purchases using limited companies have been suggested with the SIPP fund holding shares in the company. These are also fraught with tax and commercial difficulties, and are best avoided. We have proceeded with a simple structure which for most investors means little if any tax is paid in France and no ongoing administration costs are involved. The major lenders and top notaries and *avocats* practices in Paris have approved our structure.

The information here is of a general nature and you should not act on it without professional advice on the specific facts of your case.

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