

## **SIPPs in France after 5th April 2006**

**Conversation between UK investor and David Anderson solicitor and Chartered Tax Advisor and Susanna Heley trainee solicitor both at Sykes Anderson LLP about buying French property with his pension money following publication of the Finance Bill 2006 with an acknowledgement to John Quarrell solicitor of Freedom SIPP for his assistance.**

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**Q. The Finance Bill has just been published. What does it allow you to buy with your SIPP?**

A. The first thing to remember is that the Finance Bill has not yet been passed so it is not yet law. However it is unlikely there will be any substantive change to these rules as they have been carefully drafted to avoid any further damaging U turns by Gordon Brown. The new rules are helpful in that they are more specific than the old rules as to what a SIPP can invest in. The new rules prevent a SIPP from investing in “residential property” as defined in the Bill.

**Q. What is “residential property”?**

A. It is easiest to understand the provisions if you break them down into three separate definitions. Firstly residential property is defined as a building “that is used or suitable for use as a dwelling”. It includes any land forming part of the garden or any grounds of such a building, which is used “for a purpose connected with the enjoyment of the building”.

**Q. So this excludes a house or flat, which is purely residential, let out on a long lease?**

A. Yes. This is what the Chancellor said would happen in December. However it allows a SIPP to buy a formerly residential property, which is derelict if the property is to be redeveloped into commercial property such as a hotel for which see below. It also allows a SIPP to own land adjacent to residential property, which is not used in connection with the residential property such as agricultural land or a shop. As an example if you owned an equestrian property and ran a riding school on the land adjacent to the residential property it would probably be acceptable for the SIPP to own the adjacent land but not if the land was only used for riding your own horses on.

**Q. What about gites?**

A. This is going to be difficult to buy in a SIPP unless the accommodation comes within the definition of a hotel in which case you should be all right. You will have to ensure that all French rules are complied with for the accommodation to be classified as a hotel. Remember this will involve numerous matters including commercial rates on the property and have other French tax implications. If the French authorities class it as a hotel it is almost certain the UK Inland Revenue will accept it as a hotel. Otherwise it is unlikely a SIPP can own it.

**Q. What are the other definitions of “residential property” in the Bill?**

A. A hotel or similar accommodation is defined as residential. However a SIPP can own the whole of a hotel.

**Q. Can a SIPP buy part of a hotel?**

A. Yes. This is permitted provided no person as a result of this ownership has a right to use or occupy that part of the hotel or any other part of the hotel accommodation. This means that if your SIPP say buys a suite in a hotel you must not be able to stay in the suite or have any right to stay in any other suite in the hotel at a rate, which is below the rates offered to other customers.

**Q. Does a part of a hotel include an apart-hotel?**

A. Yes this will almost always be the case if the hotel provides accommodation in the form of an apartment or suite rather than a room. This will cover the case of most French tourist leaseback properties, which are managed by hotel or para-hotel groups. These are classified as hotels in France and the legal structures are commercial with the properties rented by the owners to the hotel operating company under French commercial leases. In addition French VAT is reclaimable by the owners as for all other French commercial property. It is very difficult how this can be viewed and taxed in France as entirely commercial and not accepted as commercial by the UK Revenue.

**Q. So are you saying I can buy a leaseback in France with my SIPP?**

A. Yes provided the development is run as a hotel it does not matter that the hotel suites are in fact flats. There is no definition of “hotel” in the Bill and common sense must apply so that if it has all the facilities most people would expect to find in a hotel it will be a hotel. In practice the French Inland Revenue will not allow the property to qualify for French VAT reclaim unless it is a hotel or para hotel according to the definition in the French tax code.

**Q. Most leasebacks allow you to spend some time in the property. Is this acceptable?**

A. Definitely not. The commercial lease must exclude you from benefiting from use of the property or any other property in the hotel in any way. The rental must be at the commercial rate for no occupancy by you at all. Although technically you could pay the open market rate to stay in the property to avoid any difficulties with your SIPP provider or the Inland Revenue you should not use the property at all. It should be viewed as a pure investment.

**Q. What about owning an apart hotel without a leaseback arrangement in place and just renting it out through the hotel management company without a guaranteed leaseback type rental?**

A. This should be an acceptable SIPP investment.

**Q. What happens when the property ceases to be leased out to the hotel operating company?**

A. It becomes residential and the SIPP must sell it. Under the new rules it can sell it to you at market price.

**Q. You mentioned a third exclusion?**

A. Yes beach huts are also excluded as a SIPP investment.

**Q. What is explicitly allowed which might be thought of as residential?**

A. Homes providing residential accommodation for children, halls of residence for students, homes for the elderly, disabled or those with addiction problems, a hospital or hospice and a prison.

**Q. Is there any specific permission for a SIPP to own residential property for job related purposes?**

A. Yes, the SIPP can buy a residential property if it is to be occupied by a person who is not a member of the SIPP and is not “connected” with his employer and is required to live in the property as part of his job. This would cover say caretakers flat. A further exemption allows a person who is not a member of the SIPP to occupy residential premises used in connection with business premises held as an investment of the pension scheme. The Inland Revenue notes say this will cover a trader who leases a shop from a SIPP fund, which has a flat above the shop, occupied by the tenant in connection with running the shop.

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