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You can still dip into SIPPs

Brown's U-turn may appear to have ruled out using a pension to buy French property, but it is still possible, as **DAVID ANDERSON** explains

Most people have a good idea of the value of their car and house but little idea of the value of their pension. This is usually neglected for years until retirement approaches and concerns arise late in the day about the level of pension income. The government's reforms of the pension system are of political necessity coming through in a

piecemeal fashion, and it's sensible to keep an eye on developments to see how you could benefit from the new liberalisations being introduced.

Unfortunately, as the reforms are usually presented in a technical manner, their impact can be difficult to grasp and it can be harder still to understand how they could be used to invest abroad in, say, France. The

latest announcement at the end of March 2006 has important provisions buried deep in one of the Finance Bill's schedules relating to what a self-invested personal pension (SIPP) can invest in.

Readers will be aware that in most cases you can transfer your existing pension to a SIPP, which allows you more control over what your pension invests in. Until the end of last year it seemed likely that SIPPs could invest in residential buy-to-let property in the UK and abroad, but last December an announcement was made that this would not be permitted, which

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subsequently became known as Gordon Brown's 'U-turn'.

The rules which have now come out prevent a SIPP from investing in property which is a dwelling or suitable for use as a dwelling. This rules out buy-to-let residential property. The rules do, however, permit what most people would understand by commercial property, ie shops, factory units, restaurants and old-age homes. Student accommodation and prisons are also permitted investments. Hotels and parts of hotels are permitted provided that you do not have any right to use the property or indeed any other property in the hotel at a discounted rate.

LEASEBACKS

The upshot for buyers in France is that gîtes are unlikely to qualify unless they can be shown to be hotels or similar accommodation. This will be unlikely in most cases and will involve showing that under French law they are commercial property, for example hotels. However, leasebacks will in almost all cases qualify either because they form part of a hotel or para-hotel complex or because they are not dwellings. They cannot be viewed as dwellings as the French planning rules do not permit them to be used as such. They are legally classified in France as commercial properties subject to commercial leases and subject to VAT on commercial premises.

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The end result is that a person with, say, £100,000 in their pension plan could borrow half the amount in the plan (£50,000) and buy a leaseback for £150,000.

All French VAT can be recovered in the usual way and any money needed to top up the pension would, for a higher rate taxpayer, be relieved from income tax at 40 per cent.

It is possible for two people, such as a husband and wife, to pool their pension money and purchase a leaseback for £300,000. It is important, however, that retirement ages are likely to coincide, as the unit will have to be sold to fund the pension. Once the leaseback ends the property will become residential and will have to be sold. It is possible for you to buy the property from the SIPP at market value.


If you have an existing leaseback you could either sell this to your SIPP and release the capital in your pension plan or make an *in specie* transfer to your pension plan and trigger income tax relief at your highest rate in the UK.

As a simple example, if you had an existing leaseback worth £100,000 and put this into your SIPP as an *in specie* transfer this would trigger a £40,000 tax rebate which could be used as the deposit to buy another one for say £100,000. This is subject to sufficient

earnings and possible UK Capital Gains Tax. This is an easy procedure with minimal fees to a *notaire* of around 350€.

PROPER STRUCTURE

It is vitally important the SIPP purchase is structured properly in France. Sadly there is often a lack of expertise in this area and there have been cases in which SIPP funds have bought them in the same way as they buy a property in the UK using a trust company, which has disastrous French tax implications. Other suggestions we have seen, which are equally inappropriate, include buying property using a company vehicle with the SIPP owning the shares, which have seriously adverse French tax consequences as well as numerous pension law pitfalls. This latter route is peddled as a one-size-fits-all approach for continental Europe which ignores the fact that each country in Europe has widely different tax regimes.

But don't let the perceived complications of SIPP purchases in France put you off. If you want to make the most of your pension, there are available simple yet elegant structures approved by major firms of *notaires* and *avocats* as well as by the major lenders. 



REMEMBER

Please note that taxation and property are complex subjects and you should not take or refrain from taking any step without full independent advice on the particular facts of your case. The content of this article is of a general nature and no liability is accepted in connection with it. This article does not constitute financial advice. You should always obtain such advice from a suitably specialised IFA.

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