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EIS and SEIS Technical Update

27 June 2024

INTRODUCTION

The Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) are designed to help businesses raise finance by offering investors generous tax breaks. These schemes are particularly popular with new companies as they help attract investors.

While the tax relief for investors is extremely beneficial, ensuring that all the conditions to qualify for the relief are met can be painful. EIS and SEIS have long lists of conditions to be met for the company, for the investor and general conditions. Some of these conditions are intuitive and some are not. There are many places where it is easy to fall foul of a condition inadvertently, and for it to be impossible to fix without starting again with a new company, which is not always an option. We emphasise that full advice should be taken as early as possible on how to qualify for EIS/SEIS relief to avoid disappointment at a later date.

TAX RELIEF FOR THE INVESTOR

	Note	EIS	SEIS
Income tax relief on investment	1	30%	50%
Carry back of income tax relief by one tax year	1	Yes	Yes
Capital gains tax disposal relief if shares held for three years		Exempt from CGT on disposal of shares	Exempt from CGT on disposal of shares
Capital gains tax relief on other assets	2	Gains on others assets can be deferred	Gains on other assets can be exempted
Inheritance tax exemption	3	Fully exempt once held for two years	Fully exempt once held for two years
Loss relief against income	3	When disposed of at a loss, can set against general income	When disposed of at a loss, can set against general income

1. EIS/SEIS income tax relief: For example, if £100,000 of EIS investment is made, an income tax reduction of £30,000 can be claimed in that tax year or the previous tax year. This relief cannot reduce an individual's income tax charge for a tax year to less than zero, therefore an individual must have a sufficiently large tax charge to take advantage of the relief in full.

2. EIS capital gains tax deferral relief: A capital gain made on other assets can be deferred when an EIS investment is made within 3 years following the gain and 12 months prior to the gain. The amount of gain that can be deferred is the amount of the EIS investment, and the gain is deferred until the EIS investment is disposed of.
SEIS capital gains tax reinvestment relief: A capital gain made on other assets in the same tax year as an SEIS investment is treated as issued to you for Income Tax purposes (i.e. in the same year that you claim the Income Tax relief) can be exempted from tax. The amount of the gain that can be exempted is 50% of the value of the SEIS investment made.

3. These reliefs are not all unique to EIS or SEIS investments.

CONDITIONS FOR THE INVESTOR

	Note	EIS	SEIS
Maximum investment in any tax year on which relief can be claimed	1	£2,000,000	£200,000 (£100,000 up to 5 April 2023)
Maximum shareholding (including the interests of other family members and associates)		30%	30%
Can directors invest and get relief?		Usually only unpaid directors	Yes
Can employees invest and get relief?		No	No

1. No more than £1,000,000 of EIS investment can be for shares in a company which is not knowledge-intensive.

EIS and SEIS income tax reliefs are available to both UK and non-UK resident individuals provided that they are UK taxpayers. The CGT exemption is also available regardless of residence, though typically only relevant to UK residents as non-UK residents are normally not within the scope of CGT on disposal of shares.

Non-UK residents who make a qualifying SEIS investment are eligible for the 50% exemption on gains realised on disposal of other UK assets. This may be relevant if a non-UK resident has realised a gain which is subject to UK CGT, such as a gain on a disposal of UK property/land.

EIS CGT deferral relief is only available to UK residents, and a deferred gain may be subject to UK CGT if the investor who has claimed EIS deferral relief ceases UK residence.

GENERAL CONDITIONS

The investment must be a subscription for ordinary shares that are fully paid up in cash when issued. This means the timing of the cash being received by the company and the shares being issued is very important.

The money raised by the share issue must be employed for the purposes of the trade within three years of the shares issued for SEIS and two years for EIS investment.

It also means that an existing loan from an investor cannot be converted in EIS or SEIS shares.

Convertible loan notes also cannot qualify, but advance subscription agreements can be used to achieve a similar effect.

CONDITIONS FOR THE COMPANY

The company must carry out a qualifying trade and the funds raised must be used for this trade. While trades in general will qualify, including any research and development which will lead to a trade, there are some that specifically do not qualify:

- Dealing in land or shares

- Dealing in goods otherwise than in an ordinary trade of

wholesale or retail distribution (eg. Goods held as an

investment);

- Banking, insurance or any other financial services;

- Leasing or letting or receiving royalties or licence fees;

- Legal or accounting services;

- Property development;

- Farming, forestry or market gardening;

- Shipbuilding, producing coal or steel;

- Operating or managing hotels or similar;

Operating or managing hotels or similar;

- Shipbuilding, producing coal or steel;

- Operating or managing nursing homes or residential care

homes;

- Generating electricity, heat or other form of energy;

- Producing gas or fuel; and

- Providing services of facilities for any of the above activities.

The company must not be in difficulty i.e. it must be able to continue in business in the short and medium term.

	Note	EIS	SEIS
Limit on age of business	1	7 years after first commercial sale	3 years (2 years for shares issued before 6 April 2023)
Maximum gross assets before share issue		£15,000,000	£350,000 (£200,000 for shares issued before 6 April 2023)
Maximum employees at time shares issued (full time equivalent)	2	250	25
Maximum raise per year	3	£5,000,000	£250,000 (£150,000 for share issued before 6 April 2023)
Maximum raise in the company's lifetime	4	£12,000,000 (including through other schemes)	£250,000 (£150,000 for shares issued before 6 April 2023)

1. For a knowledge-intensive company, the limit of 7 years for EIS investment is increased to 10 years. A company can qualify for EIS investment after these deadlines under certain conditions.

2. For a knowledge intensive company, the limit of 250 employees is increased to 500 employees with some added conditions.

3. For a knowledge-intensive company, the limit of EIS investment of £5,000,000 is increased to £10,000,000.

4. For a knowledge-intensive company, the limit of EIS investment of £12,000,000 is increased to £20,000,000.

The company must have a "permanent establishment" in the UK. This means that non-UK companies can raise investment under EIS and SEIS as long as they have a permanent establishment in the UK and meet all the other conditions.

The company must not be quoted or controlled by another company

WITHDRAWAL OF RELIEFS AND EXEMPTIONS

The EIS and SEIS reliefs and exemptions outlined above may be wholly or partially withdrawn if the requisite conditions are not met for the prescribed period. This broadly, means for three years following the making of an investment, though the time period may differ if the company has not commenced trading at the date of the investment is made. Both the investor and the company must meet conditions, which means that tax reliefs and exemptions may be lost if due care is not taken.

SUNSET CLAUSE

Under the Sunset clause, EIS relief was legislated to apply for share subscriptions made up to 5 April 2025. There has been a welcome extension to this in the Autumn Finance Bill 2023 announced on 22 November 2023 by the current government that the existing sunset clause for the EIS relief scheme will be extended for another 10 years from 6 April 2025 until 6 April 2035.

There is no sunset clause for SEIS investments which means that SEIS reliefs will continue after 5 April 2025.

THE PROCESS

A company can ask HMRC if they agree that an investment would meet the conditions of a scheme before they apply. This is called 'advance assurance'. While this is not a requirement, it is useful for companies to attract investors.

When shares have been issued, the company must complete a compliance statement and send it to HMRC. For EIS, a compliance statement can only be submitted once the company has been carrying out its qualifying trade for 4 months. It must be submitted by the later of 2 years from this date and 2 years from the end of the tax year in which the shares were issued. This is different for SEIS: the compliance statement can be submitted once the company has been carrying out a qualifying trade for 4 months or at least 70% of the amount raised through the issue of shares has been spent.

The company must complete a separate compliance statement for each share issue. Once shares are issued under EIS then the company cannot issue shares under SEIS.

An investor can claim EIS or SEIS income tax relief up to 5 years from the 31 January following the tax year in which the shares were issued. The company must have supplied the investor with an EIS/SEIS certificate before the claim can be made.

THE SCOPE OF THIS UPDATE

This update covers some highlights in relation to EIS and SEIS and certainly does not cover the all the conditions, or any of the condition in full detail. We emphasise that full advice should be taken as early as possible.

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