Enterprise Investment Scheme Association

# OVERVIEW ON ADVANCE ASSURANCE

A guide to HMRC's advance assurance procedure for SEIS and EIS

## ■ Introduction

The SEIS and EIS regimes encourage investment in smaller, higher-risk trading companies through providing tax reliefs to individual investors buying newly issued shares in those companies.

The regimes are complex and contain detailed requirements relating to:

— the individual investors

— the shares being issued; and

— the issuing company.

There is no statutory procedure available. However, a company can apply to HMRC for an advance assurance that, on the basis of information supplied with the application, HMRC would authorise the company to issue the relevant certificates to enable the investors to claim SEIS or EIS tax relief.

This assurance procedure relates solely to the qualifying status of the company and to the shares intended to be issued, not to that of the investors.

## ■ Advance assurance from HMRC

Applications for advance assurance are not mandatory, but if the company chooses to make an application, it must be made in respect of a specific issue of shares and there is an online form which must be used.

An application must be submitted by the company secretary or a director or an agent authorised to act on the company's behalf.

HMRC guidance states that it aims to respond to most applications within 15 working days and to complex cases within 40 working days albeit this is an aim rather than a hard deadline.

HMRC provides the assurance on the basis of the information provided to it that the conditions are met at the time, not that they will continue to be met throughout the 3-year holding period.

## ■ Information and documentation required for advance assurance

The information provided to HMRC with the advance assurance application must be sufficient to enable HMRC to form a view as to whether all of the qualifying conditions are (or will be) met. In particular, the following must be included as part of any advance assurance application:

— the amount of money the company plans to raise

— details of any previous investments received under EIS, SEIS, or VCT schemes (if applicable)

— the company's business plan and financial forecasts

— a copy of the latest accounts if available

— details of any subsidiaries or parent companies (if applicable)

— details of how the company or companies will use the money raised for growth and development

— details of all trading activities

— the company's articles of association

— a copy of the register of members from the date of the application for advance assurance

— any draft shareholders' or investment agreement

— details of how the risk to capital condition is met

If the company has not used a venture capital scheme before, the following further information is needed:

— where money is raised directly from investors: details of those potential investors including full names, addresses and specific details about their proposed investments

— where the company plans to list on AIM: the name and registration number of the nominated adviser that supports its listing (where it is already AIM-listed, no investor information is required)

— where the company seeks investment through a fund manager or business promoter: evidence that they have agreed to act and will continue to work with the company, and

— where a crowdfunding platform is used: evidence the platform has accepted the company's proposal and will continue to work with it

## ■ Refusing advance assurance

HMRC provides guidance on circumstances in which advance assurance will be declined, including:

— the shares have already been issued, i.e. it is not an advance request

— HMRC is not satisfied that the company is likely to meet the conditions for relief

— the information provided or the nature of the activity does not enable HMRC to come to a conclusion

— it appears that tax avoidance or aggressive tax planning is involved

— HMRC considers the investment would be outside the principles or objectives of the EIS scheme

— the risk to capital or disqualifying arrangements requirement is not met.

When HMRC is unable to give an advance assurance, it will provide a brief explanation of the reasons.

## ■ Relying on advance assurance

Provided correct and complete information has been provided to it, HMRC will normally be bound by any assurance given.

HMRC provides guidance on circumstances in which it will not be bound by an assurance given, including where:

— the details of the transaction change materially

— the information on which the advance assurance was based is subsequently superseded

— incorrect, incomplete or misleading information is provided when the assurance application is made

— on examination of the detail of subsequent transactions entered into by the company (and associated transactions involving other parties) the substance of the company's activities is other than as described in the application

— a change in legislation or case law

*Thank you to our Tax & Technical Committee for preparing this guide. You can find details about the members of our Tax & Technical Committee here and the EIS Association Member Directory also includes a list of Tax Advisers who typically assist with this and related processes.*