DIXON WILSON
CHARTERED ACCOUNTANTS

EIS and SEIS

25 February 2019

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 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. 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. 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.

   A capital gain made in the same tax year as an SEIS investment can be exempted from tax. The amount of gain that can be exempted is 50% of the amount of SEIS investment.

3. These reliefs are not 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	£100,000
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 can be for shares in a company which is not knowledge-intensive.

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.

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

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

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 £5,000,000 is increased to £10,000,000.

3. For a knowledge-intensive company, the limit 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.

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 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 able to continue in business in the short and medium term.

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.

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.

Dixon Wilson
22 Chancery Lane
London
WC2A 1LS

T: +44 (0)20 7680 8100
F: +44 (0)20 7680 8101
DX: 51 LDE

www.dixonwilson.com
dw@dixonwilson.co.uk