Seed Enterprise Investment Scheme

Hazlewoods

The seed enterprise investment scheme (SEIS) provides substantial tax relief for individuals who invest in shares in smaller start-up companies. The relief applies to shares issued on or after 6 April 2012.

This factsheet explains the basics of the SEIS. The rules are generous but not straightforward. We have provided a summary here as general guidance. Of course, each issue of shares will need to be considered separately and in detail.

What reliefs are available under the SEIS?

- Investments of up to £200,000 (£100,000 pre-6 April 2023) per tax year will receive income tax relief at 50% (regardless of the investor's marginal tax rate, although relief cannot create a refund).
- The investor can claim to treat up to £200,000 of SEIS investments as if made in the prior tax year.
- SEIS shares that have been held for more than three years can be sold without Capital Gains Tax (CGT) arising if the shares still qualify at disposal. If a loss arises, it will be restricted by the income tax relief already obtained and not withdrawn in respect of the shares. Any such loss can be set against either:
    - capital gains in the same tax year or carried forward against future capital gains; or
    - net income in either the same tax year and/or the preceding tax year (by election).
- Relief is also available where a chargeable gain on disposal of an asset is reinvested into a qualifying SEIS company. Up to 50% of the gain will be exempt from CGT. To qualify for reinvestment relief, the investor must also have claimed SEIS income tax relief.

When is relief available?

SEIS relief is available on issues made from 6 April 2012. It was originally intended to be a temporary relief until 5 April 2017. In the Finance Act 2014, however, the reliefs (both income tax and CGT relief) were made permanent.

What are the qualifying conditions?

The qualifying conditions are similar to those for the Enterprise Investment Scheme (EIS) but have lower monetary limits as the scheme is squarely aimed at new start-ups. There are a number of hurdles as follows:

Am I a qualifying investor?

To be a qualifying investor you must:

- not be an employee of the company or any qualifying subsidiary from the date the shares are issued (unless you are a director). The same rule applies to your associates;
- not have related investment arrangements (i.e. mutual investment agreements);
- not have linked loans (ones that would not have been made or made on the same terms to a non-investor) The same applies to your associates;
- not have tax avoidance as one of the main purposes of the investment;
- not have either control or a substantial interest in the company (more than 30% of the shares, votes or assets on a winding up or distribution); and
- make a claim (supported by a compliance certificate provided by the issuing company) within five years of the SA filing deadline for the year of issue (or deemed issue if the claim is carried back a year). So, for SEIS investments made in 2023/24, a claim must be made by 31 January 2030.

Is the issuing company a qualifying company?

To be a qualifying company it must:

- not be a subsidiary; but can be the parent company of a qualifying group;
- have been trading for less than two years before the share issue;
- be unquoted;
- have fewer than 25 full time equivalent employees (including employees of any subsidiaries);
- have gross assets of no more than £350,000 (£200,000 pre 6 April 2023) immediately prior to the share issue (the limit applies to consolidated group assets if the company is a parent company);
- be carrying on or preparing to carry on a new qualifying business activity (if the parent of a group, the group must not be wholly or substantially carrying on non-qualifying activities) ;
- have a UK permanent establishment;
- not be in financial difficulty;
- not itself, nor any qualifying 90% subsidiaries, be members of a partnership;
- not itself, nor any of its qualifying subsidiaries, have had any previous EIS or VCT investment;
- not have SEIS investments of more than £250,000 (£150,000 pre 6 April 2023) (this is a cumulative limit over the three years to issue); and
- only issue a 'compliance certificate' (which allows SEIS to be claimed by the investor) once 70% of the money raised has been spent on the qualifying business activity, or after four months, if earlier.

Companies who benefit from DECC Renewable Obligations Certificates (ROCs) or Renewable Heat Incentive (RHI) subsidies are not entitled to SEIS investment.

What is a qualifying business activity?

The definition of a qualifying business activity is broadly the same as for EIS relief. This means that the company, or a 90% subsidiary, must be either:

- carrying on or preparing to carry on a new qualifying trade; or
- carrying on research and development from which a new qualifying trade will derive or benefit.

Qualifying trades include all forms of trade except certain excluded activities. These include: dealing in land; financial activities; legal and accountancy services; operating or managing hotels or nursing homes; and farming.

'Risk-to-capital' condition

A principles-based test applies for investments made on, or after, 15 March 2018. There are two parts to the condition, both of which must be met:

1. the company invested in must have long-term objectives to grow and develop; and
2. the investment must carry a significant risk the investor will lose more capital than they gain as a return (including any tax reliefs).

Some guidance has been provided on factors to consider when looking at this condition, but it is non-exhaustive and will depend on the specific facts and circumstances of each investment.

Are there any general requirements?

As well as the qualifying conditions for investors and companies, other requirements are that:

The shares issued must be:
- non-redeemable ordinary shares (i.e. no preference to dividends or assets on winding up);
- fully paid up in cash (unless bonus shares); and
- issued to raise money for the purpose of the qualifying business activity.

- the monies raised must all be spent on qualifying business within three years of the share issue (except for insignificant amounts); and
- there must be no pre-arranged exits or disqualifying arrangements.

Can SEIS relief be withdrawn?

There are similar provisions to EIS for the withdrawal or reduction of the relief. For example, if some or all of the shares are disposed of early, relief is either reduced or withdrawn. For income tax, this is from the year the relief was obtained. CGT and reinvestment reliefs will also be reduced.

Are there any exceptions?

- There is a 'look-through' for nominees and bare trustees; and
- transfers between spouses or civil partners are not treated as disposals.

Are there any alternatives to the SEIS?

The SEIS is a type of venture capital scheme, similar to Venture Capital Trusts and the EIS. If SEIS is not suitable for your circumstances, please speak to us to find out about other tax efficient investments or alternative ways to raise finance.

If you would like to discuss further, please get in touch.

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