Comparison of EIS, SEIS and VCT

This note summarises the main requirements to qualify for the Enterprise Investment Scheme ('EIS' relief), the Seed Enterprise Investment Scheme ('SEIS' relief) and Venture Capital Trusts ('VCT' relief) and the tax benefits for the individual investor.

The intention of the note is to compare and summarise the three reliefs. The conditions for each relief are not detailed and further advice should be sought before implementation.

Background

The EIS, SEIS and VCT reliefs were introduced to provide incentives to investors to invest in small unquoted companies, which are generally perceived to be higher-risk investments.

The reliefs

In order to compare the reliefs the table below analyses the following:

- Income tax relief on the amount invested and when it may be withdrawn;
- The capital gains tax exemption and/or utilisation of capital losses on the disposal of the shares;
- Deferral relief, provided the relevant conditions (explained below) are met; and
- Business property relief from inheritance tax ('IHT'), where certain conditions are met.

	EIS Relief	SEIS Relief	VCT Relief
Income tax	Income tax relief at 30% of the amount invested in subscribing for new shares (maximum annual investment of £1 million). By election, where an EIS investment is made in one year it can be treated as though it was an investment made in the immediately preceding tax year, subject to the overall limit for that year. Dividends paid on EIS shares are taxable.	Income tax relief is available at 50% of the cost of the shares subscribed for (maximum annual investment is £100,000) By election, where an investment is made under SEIS in one year, it can be treated as though it was an investment made in the immediately preceding tax year, subject to the overall limit for that year. There is no SEIS rate for a year earlier than 2012/13. Therefore, there is no scope for carrying relief back before that tax year. Dividends paid on SEIS shares are taxable.	Income tax relief at 30% of the amount invested in subscribing for new shares (maximum investment of £200,000). There is no carry back of a VCT subscription to the previous tax year. Dividends are exempt from income tax provided that in the year of acquisition the market value of the qualifying shares did not exceed £200,000 or, where the limit is exceeded, the dividends in respect of the first shares acquired up to the limit are exempt.
Income tax reducer withdrawn	Where the EIS shares are sold within 3 years, the EIS investor receives value or an option is placed over the shares, then the EIS tax reducer is clawed back. The clawback is the lower of: • Original income tax reducer; and • 30% x sale proceeds received (only applicable if sold for a loss) There can also be a claw-back if the company loses its EIS status within 3 years.	Where the SEIS shares are sold within 3 years, the SEIS investor receives value or an option is placed over the shares, then the SEIS tax reducer is clawed back. The clawback is the lower of: • Original income tax reducer; and • 50% x sale proceeds received (only applicable if sold for a loss) There can also be a claw-back if the company loses its SEIS status within 3 years.	Where the VCT shares are sold within 5 years, the VCT tax reducer is clawed back. The clawback is the lower of: • Original income tax reducer; and • 30% x sale proceeds received (only applicable if sold for a loss) There is also a clawback if the VCT loses its approved status within 5 years.

	EIS Relief	SEIS Relief	VCT Relief
Capital gains tax (CGT) relief	An EIS investor is entitled to exemption from CGT on a disposal of those shares, provided he has held them for three years. Therefore, any growth in value is effectively tax free.	A SEIS investor is entitled to exemption from CGT on a disposal of shares, provided he claimed income tax relief on the shares and has held them for three years. Therefore, any growth in value is effectively tax free.	A VCT investor is exempt from CGT on the disposal of ordinary shares acquired within the permitted maximum of £200,000 in any one tax year.
Relief for capital losses on disposals	Relief is given for allowable losses arising on the disposal of the shares against either income of the tax year of disposal (or of the previous tax year) or chargeable gains, provided all the relevant conditions referred to below are met. The capital loss is reduced by any income tax relief obtained under EIS and not withdrawn.	Relief is given for allowable losses arising on the disposal of the shares against either income of the tax year of disposal (or of the previous tax year) or chargeable gains, provided all the relevant conditions referred to below are met. The capital loss is reduced by any income tax relief obtained under SEIS and not withdrawn.	No relief is available.
Deferral relief	The tax due on a gain on any asset can be deferred by subscribing for shares in EIS qualifying companies, in a period beginning one year before and three years after the disposal of the original asset.	If in the tax year 2013/14 you dispose of an asset which would give rise to a chargeable gain and reinvest all or part of the amount of the gain in shares which also qualify for SEIS income tax relief in 2013/14 or 2014/15, 50% of the gain reinvested will be exempt from capital gains tax. Reinvestment relief will also apply if a qualifying investment in SEIS eligible shares is made in 2013/14 and a claim is made to carry back all or some of the investment to 2012/13. For 2012/13 the exemption is up to 100% of the amount reinvested.	VCT deferral relief is not available for investments in shares issued after 5 April 2004.
Business property relief	Shares in EIS companies held for at least two years will normally qualify for 100% business property relief for IHT purposes.	Shares in SEIS companies held for at least two years will normally qualify for 100% business property relief for IHT purposes.	No relief available.

Key points

- An individual can invest annually up to £1 million in an EIS company, up to £100,000 in an SEIS company and a maximum of £200,000 in a VCT;
- For EIS it is possible to invest up to £1 million in 2012/13 and carry back £500,000 to 2011/12 (the EIS limit for that year), provided certain conditions are met;
- For SEIS it is possible to invest up to £100,000 in 2012/13. There is no SEIS rate for a year earlier than 2012/13. Therefore, there is no scope for carrying relief back before that tax year;
- Certain types of trade do not qualify for EIS, SEIS or VCT relief. These include certain financial activities, property development, hotels and providing legal or accountancy services;
- A ‘disqualifying arrangements’ test has been introduced to exclude VCTs, EIS or SEIS that do not invest in qualifying companies and are set up solely for the purpose of giving investors tax relief.

Conditions to be met

EIS

For EIS purposes, the company invested in and the investor need to meet certain conditions:

Conditions to be met by the company:

- The company’s gross assets must not exceed £15 million immediately before the shares are issued and £16 million immediately afterwards;
- The investee company must be unquoted when the shares are issued and there must, broadly, be no arrangements for it to become quoted. A company admitted to AIM will not be regarded as quoted for these purposes;
- The company must exist to carry on a qualifying trade (i.e. conducted on a commercial basis with a view to making profits; and the trade does not include, to a substantial extent (20% or more), excluded activities such as property development, leasing, dealing in land, shares and/or commodities etc);
- The company must not be a 51% subsidiary of another company;
- The company must not have any subsidiaries that are not 51% subsidiaries;
- The issuing company must either be a UK resident company carrying on a trade in the UK or be an overseas company with a UK permanent establishment carrying on a trade;

- The company must not be in financial difficulty;
- The investee company must have fewer than 250 full-time employees;
- The investee company cannot raise more than £5 million in total over a 12 month period under the EIS and the VCT scheme.

Conditions to be met by the investor:

The key conditions are as follows:

- The subscription must be in newly issued, ordinary shares and paid for in cash, as well as being for genuine commercial reasons and not for tax avoidance purposes;
- To retain the income tax relief and to be exempt from capital gains tax, the shares must be held for at least three years;
- The investor must not be connected for EIS purposes with the company. Investors who are connected with the company cannot claim income tax relief but may still qualify for capital gains tax deferral relief;
- An investor will be connected with the company if he, either on his own or with associates, possesses or is entitled to acquire more than 30% of the issued share capital, voting power or assets of the company or any subsidiary on a winding up;
- An investor will also be connected if he or she is an employee of the company or its group. They can be directors provided they meet certain conditions.

An investor must not receive any amount of remuneration as a director that is excessive in comparison to the services performed.

Relief will be withdrawn if the investee company, or a person connected with the company makes a payment to the investor (which is not "insignificant") up to one year before, and three years after, the share issue.

SEIS

For SEIS purposes, the company invested in and the investor need to meet certain conditions:

Conditions to be met by the company:

- The company must have no more than £200,000 in gross assets before the share issue;
- The company must be unquoted and must not be controlled by another company;
- The company must exist to carry on a qualifying trade;
- The issuing company must either be a UK resident company carrying on a trade in the UK or be an overseas company with a UK permanent establishment carrying on a trade;
- The company must not be in financial difficulty;
- The investee company must have fewer than 25 full-time employees;
- The company must not have any subsidiaries that are not 51% subsidiaries;
- The company cannot raise more than £150,000 in SEIS in a three year period;
- No EIS or VCT investments can previously have been made into the company.

Conditions to be met by the investor:

- The investor cannot be an employee of the company or any qualifying subsidiary during the period of three years commencing with the date the shares are issued. The investor can, however, be a director of the company;
- The investor must not have a substantial interest in the company. Investors who have a substantial interest cannot claim income tax relief but may still qualify for capital gains tax deferral relief for 2012/13;
- An investor must not receive any amount of remuneration as a director that is excessive in comparison to the services performed;
- The investor must be investing in the shares for genuine commercial reasons, and not as part of an arrangement where the main purpose, or one of the main purposes, is the avoidance of tax.

VCT

For VCT purposes, the following conditions must be met:

- The VCT's ordinary shares must be listed in the Official List of the London Stock Exchange or on any other EU Regulated Market. A listing on AIM will not satisfy this requirement;
- The VCT must not be a close company (i.e. UK resident and controlled by 5 or fewer shareholders or any number of directors);
- The VCT's income must be derived wholly or mainly from shares or securities;
- The VCT distributes by way of dividend at least 85% of its income from shares;
- No more than 15% by value of the VCT's total investments can be invested in any one company;
- At least 70% of the VCT's investments must be in unquoted trading companies carrying on a qualifying trade;
- For shares acquired before 6 April 2012 (or acquired after that date by funds raised before 6 April 2012) at least 30% of the VCT investments in qualifying companies are in the form of ordinary non-preferential redeemable shares. From 6 April 2012 at least 70% (by value) of the VCT's qualifying investments must be in "eligible shares";
- The VCT's investment in a company when added to all VCT, EIS and SEIS investments made in that company in the twelve months ending in the investment cannot exceed £5 million.

There are complex tax rules that apply to EIS, SEIS and VCT. The above notes are intended to only be a summary of the main conditions and to serve as a contrast between the three reliefs. Further, more detailed, advice will always be required before investing under either of these schemes.

Contact us

www.kingstonsmith.co.uk

Kingston Smith LLP
Devonshire House
60 Goswell Road
London EC1M 7AD
T 020 7566 4000