

# Private Client and Wealth Structuring

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## EIS/VCT developments in Finance Bill 2012

In early July this year, we published a client briefing summarising the Government's consultation on the Enterprise Investment Scheme (EIS) and Venture Capital Trust (VCT) schemes. The consultation's aim was to ensure that these schemes remain effective while supporting increased investment into small companies.

Draft legislation has now been published (on 6 December 2011) outlining the proposals in detail:

### 1. New Seed Investment Enterprise Scheme (SEIS)

As outlined in the HMRC consultation, the Government will launch this new scheme from April 2012 in order to encourage investment in new start-up companies. SEIS will be focused on smaller, early stage companies carrying on, or preparing to carry on, a new business in a qualifying trade.

The main proposals of the scheme are as follows:

- (a) income tax relief of 50% will be available on the amount invested by individuals who invest in shares in qualifying companies;
- (b) the individual investor must hold a stake of less than 30% in the qualifying company, including directors who invest in their companies;
- (c) the definition of "eligible" shares will be the same as EIS (which it is proposed will be widened in Finance Bill 2012);
- (d) there will be an annual investment limit of £100,000 per individual investor, with unused annual amounts able to be carried back to the previous year, as under EIS;
- (e) there will be an overall tax favoured investment limit of £150,000 for the qualifying company. This is a cumulative, not an annual limit;
- (f) there will be an exemption from capital gains tax (CGT) on gains on shares within the scope of the SEIS; and
- (g) there will be an exemption from CGT on gains realised from disposals of assets in 2012-13, where the gains are reinvested through SEIS in the same year. Combined with the income tax relief this gives the potential for 78% relief on the investment.

The legislation will be included in Finance Bill 2012. The relief will apply to shares issued on or after 6 April 2012. SEIS will apply to smaller companies, those with 25 or fewer employees and assets of up to £200,000 which are carrying on or preparing to carry on a new business.

### 2. Better focus of EIS and VCT scheme

The Government aim's is to focus these schemes better on higher risk activities, and prevent tax relief being provided for investment in companies or activities outside the purpose of the schemes. Or, for the more cynical, read "anti-avoidance"!

The details of the proposal are:

- (a) **Purpose test** - for both EIS and VCTs a new disqualifying purpose test will apply to shares in underlying investee companies issued on or after 6 April 2012. The test will disqualify shares which are issued subject to arrangements whose main purpose is to generate access to reliefs in circumstances where either 1) the benefit of the investment is passed to another party or 2) the business activities would otherwise be carried on by another party.
- (b) **Share acquisition** - share acquisition will no longer be regarded as a "qualifying activity" for EIS, to shares issued on or after 6 April 2012 and for VCTs, to money invested in a VCT on or after that date. This used to be prevented until a change in the law a few years ago which permitted it. Unfortunately the old work-around (hiving up the trade immediately after acquisition) looks unlikely to be available; and
- (c) **Exclusion of Feed-in-Tariff based activity** - for both EIS and VCT schemes, the exclusion will apply to all shares in underlying investee companies issued on or after 6 April 2012.

### 3. Simplification

The proposals that will be introduced in Finance Bill 2012 disregard loan capital for the purposes of the limit on the proportion of a company's capital which an investor can hold without being treated as "connected". This is a relaxation of the current rules defining when a person is connected to a company through an interest in its capital.

It is also announced that shares will be allowed to carry a preferential right to dividends providing their amount and the date that they are payable is not dependent on a decision of the company, the holder or anyone else.

Finally, the Government has removed the £1 million limit for VCT investment for companies not in partnership.

#### 4. Increase in Thresholds

Finance Bill 2012 will also increase the following EIS and VCT thresholds:

- (a) the employee limit will be increased to fewer than 250 employees (from fewer than 50 full time employees);
- (b) the threshold to gross assets of no more than £15 million before investment and £16 million after (an increase from £7 million before the investment and £8 million after); and
- (c) the maximum annual amount that can be invested in an individual company will increase from £2 million to £10 million.

#### 5. Energy/Renewables

The proposals add “subsidised generation or export of electricity” to the list of excluded activities that will not qualify for EIS relief, which will catch all feed-in-tariff based businesses.

However, community interest companies, co-operative societies, community benefit societies and NI industrial and provident societies have been excluded from this list, ie. these entities will not be affected by the changes. In addition, electricity generated using wholly or mainly anaerobic digestion or hydroelectric power is not excluded.

#### Conclusion

On the whole the changes proposed by the Government are positive. They show the commitment that exists behind encouraging small, start-up companies, and simplifying the existing EIS and VCT schemes to encourage enterprise in the UK. However, there is – as always – a sting in the tail in the form of the anti-avoidance measures announced at the same time.

If you would like to some guidance of how these changes affect you or your organisation, please contact a member of the Corporate Tax team below:



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