These guidance notes are presented for your personal use and viewing and contain information posted by HMRC on their website at http://www.hmrc.gov.uk/manuals/vcmmanual/VCM30000.htm

These guidance notes are intended to put the HMRC information in one accessible document, but it is advised that users access the HMRC website or contact HMRC directly for up to date information or advice.

Access by you of these guidance notes constitutes your acceptance of the terms and conditions as set out herein.

They take effect from the date on which you first use these guidance notes. You agree to use these guidance notes only for lawful purposes.

Companies and investors should not proceed solely on the basis of the information herein, and should consider seeking professional advice.

Disclaimer of liability

No responsibility or liability is accepted for the accuracy or sufficiency of any information in these guidance notes, or for any errors, omissions or misstatements, negligent or otherwise, relating thereto.

In particular, but without limitation, no representation or warranty is given as to the reasonableness of this information. Accordingly, none of the shareholders of Rippon Publishing Management Limited, nor any of its directors, employees or advisers, nor any other person, shall be liable for any direct, indirect or consequential loss or damage suffered by any person as a result of relying on any statement in or omission from this information and any such liability is expressly disclaimed.

Seed Enterprise Investment Scheme (SEIS)

As of 6 April 2012, the Government introduced a new scheme aimed at incentivising investment into so-called "seed-stage" companies.

This note covers the basics of how the scheme works, what tax relief is available and who is eligible for the scheme.

SEIS operates in a similar manner to the Enterprise Investment Scheme, providing income tax and capital gains tax reliefs for individual investors who subscribe in cash for qualifying shares in qualifying companies.

Income tax

For shares issued on or after 6 April 2012, an investor who qualifies for the relief can claim an income tax reduction equal to 50% of the money subscribed, subject to an annual subscription limit of £100,000 (so the maximum income tax saving is £50,000).

Relief can only be used to the extent that the individual has an income tax liability (it cannot create a loss or a repayment of tax) but investors can also use the tax reduction against their income tax liability for the previous tax year, or can split the reduction between the two tax years. Note, however, that this "carry back" does not apply to any tax year before 2012/2013, so any SEIS investment in 2012/2013 would only be eligible for relief against income tax for that tax year. Relief cannot be carried forward to years after the issue of qualifying shares.

Capital gains tax

Where income tax relief is available for an investment in SEIS shares, broadly any capital gain realised on a disposal of the shares will be exempt from tax.

In addition, the scheme includes an exemption from capital gains tax for proceeds of disposals made in the 2012/2013 tax year that are 'matched' with investments in SEIS companies during the same period. There is no restriction on the type of capital asset to which this applies, but a gain that would be subject to capital gains tax must be realised on the disposal. It is not necessary to reinvest the entire proceeds of any disposal – only an amount of the proceeds equal to the gain (or part of the gain) to be exempted. An example is shown below.

The Finance Act 2013 extended this to cover disposals made in the 2013/2014 tax year although only 50% of the amount reinvested will be exempt.

Practical example

An individual earning £100,000 in taxable earnings during 2013/2014 will be liable to approximately £29,627.00 in income tax for the tax year.

An investment of £50,000 in a SEIS company would generate a tax saving of £25,000 against that tax liability, leaving a net income tax bill of approximately £4,127.

Furthermore, if the same individual disposed of an investment property (or other capital asset) for £20,000 in the same tax year, realising a gain of £10,000 (before exemptions), they

would be able to 'match' half of the gain (I.e. £5,000) to the SEIS investment and thereby save half of the 28% CGT otherwise payable on that disposal (i.e. a maximum of £1,400) ***in addition*** to the £25,000 income tax saving. If the gain was £120,000, but the individual reinvested £100,000, the maximum saving would be £14,000 (28% of £50,000).

Time limits

The scheme is only available to small 'start-up' companies. This, in effect, means that the company must not have been actively trading at any time before two years before the shares are issued.

As is the case under EIS, the shares must generally be held for three years from issue to benefit from the full income tax and CGT reliefs above. If SEIS shares are disposed of within three years of their issue, then there is a potential claw-back of the income tax relief claimed (and no CGT exemptions will be available, either on the disposal or in respect of any other disposal the proceeds of which were reinvested in the SEIS shares).

SEIS relief can only be claimed by an investor (via their self-assessment return) once the company has either spent at least 70% of the SEIS monies invested or been actively trading for at least four months (as opposed to preparing to trade or conducting R&D in advance of trading). This marks the trigger-point for the company to issue a certificate of qualification to the investor, permitting the relief to be claimed.

Who can be a qualifying investor?

One of the key requirements is that the investor must not be in control of the company or hold more than 30% of the company's ordinary share capital, issued share capital or voting rights. There are no restrictions on how much loan capital in the company the investor can hold.

Which companies can qualify for SEIS?

One of the key conditions is that the company must exist wholly for the purpose of carrying on one or more "new" qualifying trades. This would not include a situation where a company has, in the 6 months prior to commencing the new trade, carried on a different trade consisting of the same activities as the new trade. The legislation also excludes situations where trades or activities that have previously been carried on are in effect transferred to the company.

In addition, as mentioned above, companies that had active trades more than two years before the investment do not qualify.

However, the company need not carry on a trade immediately – it can be engaged in research and development with the intention of trading. In addition, the monies raised under SEIS can be used in such R&D and there is no time limit placed on the company starting an actual trade.

Companies can only raise a maximum of £150,000 under the scheme - this is a lifetime limit. Monies raised under SEIS must also be used by the company in its qualifying activity within three years (but, as explained above, this can include R&D work preparatory to the carrying on of an actual trade).

In addition, the company must not have had any investment under EIS or the VCT scheme before any shares are issued under SEIS. However, it can raise EIS and/or VCT funding ***after***

an SEIS round, provided at least 70% of the SEIS capital has been spent in the company's qualifying activity.

Other main conditions:

- the company's gross assets must not exceed £200,000 immediately before the investment (there is no gross assets test following the investment);
- the company must have fewer than 25 full time employees;
- the company must have a UK permanent establishment;
- the company must not be listed on a recognised stock exchange (AIM listed companies can qualify);
- the company must not be controlled by another company (although Finance Act 2013 introduced an exception for shelf companies);
- the company must not control another company (although the rules do permit the investee company to have certain qualifying subsidiaries); and
- the company must not be a member of a partnership.

HMRC Notes

Background

The Seed Enterprise Investment Scheme (SEIS) is designed to help small, early-stage companies to raise equity finance by offering a range of tax reliefs to individual investors who purchase new shares in those companies. It complements the existing Enterprise Investment Scheme (EIS) which will continue to offer tax reliefs to investors in higher-risk small companies. SEIS is intended to recognise the particular difficulties which very early stage companies face in attracting investment, by offering tax relief at a higher rate than that offered by the existing EIS.

SEIS applies for shares issued on or after 6 April 2012. The rules have been designed to mirror those of EIS as it is anticipated that companies may want to go on to use EIS after an initial investment under SEIS.

More detailed guidance on the rules for EIS and SEIS can be found in HMRC's Venture Capital Schemes manual which can be found by following the link below. This guidance note provides some further links to specific pages in that manual.

Tax reliefs available - Income Tax relief

Income Tax relief is available to individuals who subscribe for qualifying shares in a company which meets the SEIS requirements, and who have UK tax liability against which to set the relief. Investors need not be UK resident.
The shares must be held for a period of 3 years from date of issue for relief to be retained. If they are disposed of within that 3 year period, or if any of the qualifying conditions cease to be met during that period, relief will be withdrawn or reduced.
Relief is available at 50% of the cost of the shares, on a maximum annual investment of £100,000. The relief is given by way of a reduction of tax liability, providing there is sufficient tax liability against which to set it. A claim to relief can be made up to 5 years after the 31 January following the tax year in which the investment was made.

Example 1

Jenny invests £20,000 in the tax year 2012-13 (6 April 2012 to 5 April 2013) in SEIS qualifying shares. The SEIS relief available is £10,000 (£20,000 at 50%). Her tax liability for the year (before SEIS relief) is £15,000 which she can reduce to £5,000 as a result of her investment.

Example 2

James invests £20,000 in the tax year 2012-13 in SEIS qualifying shares. The relief available is £10,000, as above. His tax liability for the year (before SEIS relief) is £7,500. James can reduce his tax bill to zero as a result of his SEIS investment, but loses the rest of the relief available.
There is a 'carry-back' facility which allows all or part of the cost of shares acquired in one tax year to be treated as though the shares had been acquired in the preceding tax year. The SEIS rate for that earlier year is then applied to the shares, and relief given for the earlier year. This is subject to the overriding limit for relief each year. Please note that there is no

SEIS rate for a year earlier than 2012-13, so there is no scope for carrying relief back before that year.

Tax reliefs available - capital gains re-investment relief

This relief was originally only available for the tax year 2012-13 but has been extended to 2013-14 at half the rate. If you disposed of an asset that would have given rise to a chargeable gain in 2012-13, and reinvested all or part of the amount of the gain in shares which also qualify for SEIS income tax relief, the amount reinvested may be exempted from Capital Gains Tax. If you dispose of an asset that would give rise to a chargeable gain in 2013-14, and reinvest all or part of the amount of the gain in shares which also qualify for SEIS income tax relief, half of the amount reinvested may be exempted from Capital Gains Tax. Capital gains re-investment relief is also subject to the £100,000 annual investment limit which applies for income tax relief. Thus for 2012-13 gains of up to £100,000 may be exempted and for 2013-14 up to £50,000. The latest date for making a claim for 2012-13 is 31 January 2019 and, for 2013-14, 31 January 2020.

The asset does not have to be disposed of first; the investment in SEIS shares can take place before the disposal of the asset, providing that both the disposal and investment take place in the same year.

If you make use of the 'carry-back' facility for the purposes of SEIS income tax relief note that any claim to reinvestment relief must match the year in which the shares are then treated as issued. If you are issued SEIS shares in 2013-14, you may want to claim SEIS income tax relief as if all or some had been issued instead in 2012-13. If you do so, the shares treated as issued in 2012-13 are also treated as issued in 2012-13 for the purposes of re-investment relief and you cannot claim re-investment relief on gains made in 2013-14 in respect of those shares.

The Capital Gains Manual gives guidance on when an asset is disposed of for CGT purposes, starting at paragraph CG14250.

Example 1

Benjamin sells an asset in June 2012 for £200,000 and realises a chargeable gain (before exemption) of £80,000.
If he makes qualifying investments of only £20,000 in SEIS shares in 2012-13, he can claim that £20,000 of his gain is exempted from CGT and he will be liable to CGT on a chargeable gain of £60,000 on the disposal of the asset in June 2012.
(Allowable losses and the CGT annual exempt amount can be set off against the remaining £60,000 chargeable gain in the normal way).

Example 2

Neela sells an asset in June 2013 for £200,000 and realises a chargeable gain (before exemption) of £80,000.
If she makes qualifying investments of at least £80,000 in SEIS shares in 2013-14, and all other conditions are met, she can claim that £40,000 (half of the gain) is exempted from

CGT. She does not need to invest the whole £200,000 sale proceeds in order to get full exemption.

Tax reliefs available - capital gains disposal relief

If you have received Income Tax relief (which has not subsequently been withdrawn) on the cost of the shares, and the shares are disposed of after they have been held for at least three years, any gain is free from Capital Gains Tax.
Please note: if no claim to Income Tax relief is made, then any subsequent disposal of the shares will not qualify for exemption from Capital Gains Tax.

Interaction with other Venture Capital Schemes

The company can follow a share issue under SEIS with further issues of shares under EIS, or investment from a Venture Capital Trust (VCT). However, it must have spent at least 70 per cent of the monies raised by the SEIS issue before it can do so.
A company cannot issue shares under the SEIS scheme if it has already had investment from a VCT, or issued shares in respect of which it has provided an EIS compliance statement (EIS1).

VCM30000 - Seed Enterprise Investment Scheme: contents

VCM30100 - Seed Enterprise Investment Scheme: Overview of SEIS reliefs

The Seed Enterprise Investment Scheme ('SEIS') is designed to help small, early-stage companies to raise equity finance by offering a range of tax reliefs to individual investors who purchase new shares in those companies. It complements the existing Enterprise Investment Scheme ('EIS') which will continue to offer tax reliefs to investors in higher-risk small companies. SEIS is intended to recognise the particular difficulties which very early stage companies face in attracting investment, by offering tax relief at a higher rate than that offered by the existing EIS.

The income tax relief rules are in ITA07/Part 5A (see VCM31000+). The rules have been designed to mirror those of EIS as it is anticipated that companies may want to go on to use EIS after an initial investment under SEIS. More detailed guidance on the rules for EIS can be found at VCM10000+ onwards.

TCGA92/S150E provides relief from capital gains tax ('CGT') on the gains on shares which qualify for SEIS relief (see VCM40000+). TCGA92/SCH5BB provides relief from CGT on the disposal of assets where the proceeds are reinvested under SEIS (see VCM45000+)

VCM31000 - Seed Enterprise Investment Scheme: income tax relief: contents

VCM31100 - SEIS: Income tax relief: introduction: contents

VCM31110 - SEIS: income tax relief: introduction: commencement

ITA07/S257A

The Seed Enterprise Investment Scheme ('SEIS') applies for shares issued on or after 6 April 2012 and before 6 April 2017. This scheme is therefore of fixed length but can be extended by a Treasury order.

VCM32000 - SEIS: income tax relief: the investor

VCM31120 - SEIS: income tax relief: introduction: eligibility for SEIS income tax relief

ITA07/S257AA

An investor is eligible for income tax relief in respect of shares issued to him or her where particular requirements are met.

The investor need not be UK resident but must have UK income tax liability against which to set the relief. The shares must be held for a period of at least three years from the date of issue for relief to be retained. If they are disposed of within that three year period, or if any of the qualifying conditions cease to be met before the termination date for the shares (see VCM31140), relief will be withdrawn or reduced (see VCM36000+).

There are requirements which apply to the investor (VCM32000+), general requirements that include requirements as to the purpose of the issue of shares and the use of money raised (VCM33000+) and requirements that apply to the issuing company (VCM35000+). These requirements are in Chapters 2 to 4 of ITA07/Part 5A.

VCM31130 - SEIS: income tax relief: introduction: form and amount of SEIS income tax relief

ITA07/S257AB

The relief takes the form of a reduction in the individual's Income Tax liability. Except where it is restricted as explained below, the amount of the reduction is equal to tax at the SEIS rate of 50% on the amount of the subscription (this excludes any costs incidental to the subscription) or, if that would exceed the liability for the year, whatever amount will reduce that liability to nil. The maximum investment on which an investor may claim relief for any year is £100,000.

Carry back election

An investor may elect under ITA07/S257AB(5) to have part or all of an issue of shares treated as though acquired in the tax year preceding that in which the shares were actually acquired. This is subject to the maximum annual investment limit for that earlier year (£100,000). The SEIS rate for the earlier year is then applied to the shares treated as acquired in the earlier year and relief given accordingly. As there is no SEIS rate for periods before 6 April 2012 an election under S257AB(5) will be effective only for shares acquired in 2013-14 and later tax years. See VCM35160 for how to make claims.

ITA07/Ss22 - 32

The relief reduces tax liability in accordance with the steps explained in Chapter 3 of Part 2 ITA07. First of all, total income chargeable to income tax is calculated. Then personal allowances and other reliefs (such as loss relief) are deducted. Income tax liability is then

calculated by applying the appropriate income tax rates to the result. Finally SEIS relief is used to reduce that tax liability.

To decide whether a reduction equal to tax at the SEIS rate would eliminate the tax liability, it may be necessary to decide in which order reliefs taking the form of reductions in liability should be taken. ITA07/S27 provides that reliefs are to be deducted in the following order: first of all, VCT relief, then EIS relief, then SEIS relief, then various others as listed in S27.

The circumstances in which the amount of the reduction may be restricted are:

- where the individual has received value from the company (see VCM36040+), and
- where the aggregate amounts on which the individual has claimed relief exceed the limit for the year (see below).

In the first case the amount on which the reduction is calculated is the amount of the subscription less the amount of the value, and in the second case it is the amount of the limit for the year.

Example 1

Jenny invests £20,000 in the tax year 2012-13 (6 April 2012 to 5 April 2013) in SEIS qualifying shares. The SEIS relief available is £10,000 (£20,000 at 50 percent). Her tax liability for the year before SEIS relief is £15,000 which she can reduce to £5,000 (£15,000 less £10,000) as a result of her investment.

Example 2

James invests £20,000 in the tax year 2012-13 in SEIS qualifying shares. The relief available is £10,000 as for Example 1. However his tax liability for the year before SEIS relief is £7,500. James can reduce his tax bill to zero as a result of his SEIS investment, but loses the rest of the relief available of £2,500 (£10,000 less £7,500).

See VCM35020 for cases where the maximum investment amount is exceeded in a year.

See VCM35170 for the claims procedure.

VCM31130 - SEIS: income tax relief: introduction: form and amount of SEIS income tax relief

ITA07/S257AB

The relief takes the form of a reduction in the individual's Income Tax liability. Except where it is restricted as explained below, the amount of the reduction is equal to tax at the SEIS rate

of 50% on the amount of the subscription (this excludes any costs incidental to the subscription) or, if that would exceed the liability for the year, whatever amount will reduce that liability to nil. The maximum investment on which an investor may claim relief for any year is £100,000.

Carry back election

An investor may elect under ITA07/S257AB(5) to have part or all of an issue of shares treated as though acquired in the tax year preceding that in which the shares were actually acquired. This is subject to the maximum annual investment limit for that earlier year (£100,000). The SEIS rate for the earlier year is then applied to the shares treated as acquired in the earlier year and relief given accordingly. As there is no SEIS rate for periods before 6 April 2012 an election under S257AB(5) will be effective only for shares acquired in 2013-14 and later tax years. See VCM35160 for how to make claims.

ITA07/Ss22 - 32

The relief reduces tax liability in accordance with the steps explained in Chapter 3 of Part 2 ITA07. First of all, total income chargeable to income tax is calculated. Then personal allowances and other reliefs (such as loss relief) are deducted. Income tax liability is then calculated by applying the appropriate income tax rates to the result. Finally SEIS relief is used to reduce that tax liability.

To decide whether a reduction equal to tax at the SEIS rate would eliminate the tax liability, it may be necessary to decide in which order reliefs taking the form of reductions in liability should be taken. ITA07/S27 provides that reliefs are to be deducted in the following order: first of all, VCT relief, then EIS relief, then SEIS relief, then various others as listed in S27.

The circumstances in which the amount of the reduction may be restricted are:

- where the individual has received value from the company (see VCM36040+), and
- where the aggregate amounts on which the individual has claimed relief exceed the limit for the year (see below).

In the first case the amount on which the reduction is calculated is the amount of the subscription less the amount of the value, and in the second case it is the amount of the limit for the year.

Example 1

Jenny invests £20,000 in the tax year 2012-13 (6 April 2012 to 5 April 2013) in SEIS qualifying shares. The SEIS relief available is £10,000 (£20,000 at 50 percent). Her tax liability for the year before SEIS relief is £15,000 which she can reduce to £5,000 (£15,000 less £10,000) as a result of her investment.

Example 2

James invests £20,000 in the tax year 2012-13 in SEIS qualifying shares. The relief available is £10,000 as for Example 1. However his tax liability for the year before SEIS relief is £7,500. James can reduce his tax bill to zero as a result of his SEIS investment, but loses the rest of the relief available of £2,500 (£10,000 less £7,500).

See VCM35020 for cases where the maximum investment amount is exceeded in a year.

See VCM35170 for the claims procedure.

VCM32010 - SEIS: income tax relief: the investor: overview

ITA07/S257B

This section of the VCM sets out the investor requirements in respect of SEIS income tax relief. An investor is a 'qualifying investor' in relation to the 'relevant shares' (see VCM33020) if the requirements at ITA07/Part 5A/Chapter 2 are met as to:

- No employee investors (see VCM32020),
- No substantial interest in the issuing company (see VCM32030),
- No related investment arrangements (see VCM32040),
- No linked loans (see VCM32050),
- No tax avoidance (see VCM32060).

VCM32020 - SEIS: income tax relief: the investor: no employee investors

ITA07/S257BA

In order to qualify for SEIS, neither the investor nor any associates may be employees of the company or any qualifying subsidiary (see VCM34140) in period B (see VCM31140) unless they are also a director. An individual is not treated for this purpose as employed by the company if he or she is a director of the company.

Meaning of 'associate'

'Associate' is defined at ITA07/S257HJ and has the same meaning as for EIS relief under ITA07/S253 (see VCM11100). 'Associates' include business partners, trustees of any settlement of which the investor is a settlor or beneficiary, and relatives. Relatives for this purpose are spouses and civil partners, parents and grandparents, children and grandchildren. Brothers and sisters are not counted as associates for SEIS purposes.

Meaning of 'director'

'Director' is defined at ITA07/S257HJ as having the same meaning as that given at CTA10/S452, as follows:

'Director' includes any person occupying the position of director by whatever name called and any person in accordance with whose directions or instructions the directors are accustomed to act. It also includes any person who:

1. is a manager of the company or otherwise concerned in the management of the company's trade or business, and
2. is either on their own or with one or more of their associates the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means, to control not less than 20% of the ordinary share capital of the company.

The expression 'with one or more of his or her associates' means that a person is treated as owning or, as the case may be, controlling, what any associate owns or controls, even if he or she does not own or control share capital of his or her own.

'Ordinary share capital' means all the issued share capital, by whatever name called, of the company other than share capital carrying a right to a dividend only at a fixed rate. For the purposes of this test, 'associate of a person' has a similar meaning to associate of a participator rather than the definition above. See CTM60150 to CTM60170, substituting 'person' for 'participator'.

VCM32030 - SEIS: income tax relief: the investor: no substantial interest in the issuing company

ITA07/S257BB

In order to qualify for SEIS relief, an investor must not have a 'substantial interest' in the company at any time from incorporation of the company to the termination date (period A - VCM31140)

ITA07/S257BF

'Substantial interest' is defined as the investor directly or indirectly possessing, or having an entitlement to acquire more than a 30 percent stake in the company via

- ordinary or issued share capital,
- voting power,
- rights on winding up, or
- as having control of the company (see below).

Shareholdings of associates are taken into account in arriving at the 30 percent figure. For the meaning of 'associate' see VCM32020.

An individual is not regarded as having a substantial interest in a company for this purpose, if the company has issued only subscriber shares (that is, those issued as part of the procedures via which the company is registered at Companies' House) and the company has not yet begun to carry on any trade or preparations for any trade. (ITA07/S257BF(5)).

'Control' for this purpose uses the definition at ITA07/S995. That is, the power of any person by means of the holding or shares or voting power, or as a result of any powers conferred by a document regulating the company or any other company, that the affairs of the company are conducted in accordance with the person's wishes.

VCM32040 - SEIS: income tax relief: the investor: no related investment arrangements

ITA07/S257BC

An investor will not qualify for SEIS relief if he has subscribed for the shares as part of a reciprocal arrangement which involves somebody else subscribing for shares in a company in which the investor has a substantial interest in return for the investor subscribing in a company in which the other person has a substantial interest. The legislation is drafted in such a way as to disqualify shares issued under arrangements involving multiple investors and multiple companies. (See VCM32030 for meaning of 'substantial interest'.)

VCM32050 - SEIS: income tax relief: the investor: no linked loan

ITA07/S257BD

At any time in period A (see VCM31140), there must be no loans to the investor or their associates which are linked to their subscription for shares. This includes cases where credit is given or a debt due from the investor or associate is assigned.

Any individual who receives a loan which is caught by the provision is obliged under ITA07/S257GE to give notice of the fact to an officer of HMRC within 60 days of the date when the loan was made.

There is a similar requirement under the EIS - see VCM11030 for further guidance. Our interpretation is given in SP6/98, which is reproduced at VCM11030.

VCM32060 - SEIS: income tax relief: the investor: no tax avoidance

ITA07/S257BE

An investor in a company is not eligible for SEIS relief unless the subscription is made for genuine commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Commerciality

This requirement rules out any subscription which is motivated by considerations of benevolence. This could be the case if, for example, the company were the proprietor of an unsuccessful professional football club and a supporter of the club paid a large premium for shares in the company; that may well not be a commercial subscription. Similarly, if the company is owned by a person whom the investor wishes to benefit, and the investor pays a large premium for the shares with the object of increasing the value of the other person's shares, that too would not be a commercial subscription.

Deathbed investments are unlikely to be made for genuine commercial reasons.

Avoidance schemes

The subscription for the shares of the company must not form part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax.

The reduction of an investor's tax liability which flows from the schemes in the circumstances intended by Parliament is obviously not a tax advantage at which this rule is

aimed. We therefore do not have to judge whether a subscription for eligible shares would have been made if it had not attracted relief.

The scope of the provision cannot be described precisely, but it may apply in a situation where there are grounds for thinking that the circumstances are not ones in which Parliament intended the relief to be available.

Before any case is challenged solely on these grounds a report should be made to CTIAA (CT Structure, Incentives & Reliefs team).

VCM33000 - SEIS: income tax relief: general requirements: contents

VCM33010 - SEIS: income tax relief: general requirements: overview

ITA07/S257C

As well as the investor requirements (see VCM32000+) and issuing company requirements (see VCM34000+) there are general requirements relating to the investment and how it is used. Chapter 3 of ITA07/Part 5A sets out the requirements to be met as to:

- The shares (see VCM33020),
- The purpose of the issue (see VCM33030),
- The spending of the money raised (see VCM33040),
- No pre-arranged exits (see VCM33060),
- No tax avoidance (see VCM33070), and
- No disqualifying arrangements (see VCM33080).

VCM33020 - SEIS: income tax relief: general requirements: shares requirement

ITA07/S257CA sets out the types of shares for which investors can subscribe under the scheme. The shares must be ordinary shares which, throughout the three year period (VCM31140) carry:

- no present or future preferential right to dividends where either:
    -
    - The rights attaching to the share include scope for the amount of the dividend to be varied based on a decision taken by the company, the shareholder or any other person. Note: this exclusion covers only those shares which carry preferential rights and does not therefore prevent the voting of dividends in respect of non-preferential shares, nor does it prevent shareholders from choosing to waive a dividend payment should they wish to do so; or
    - The right to receive dividends is 'cumulative' - that is, where a dividend which has become payable is not in fact paid, the company is obliged to pay it a later time, normally once funds become available.
- no present or future preferential rights to the company's assets on its winding up, and
- no present or future right to be redeemed.

Ordinary shares

'Ordinary shares' means shares forming part of a company's 'ordinary share capital', which is itself defined in ITA07/S989 as all issued share capital, by whatever name called, other than capital the holders of which have a right to a dividend at a fixed rate but no other right to share in profits.

Preferential right

A right carried by a share is a preferential right if that right takes priority over a right carried by some other share. Thus where a company has only one class of issued share capital no share carries any preferential right.

The rights carried by ordinary shares may in some cases be preferential as compared with the rights of deferred shares, but this is not necessarily so. In particular, where deferred shares carry a purely theoretical right to a residue of assets in a winding up (for example where, in the case of a very small company, after the first £20million has been distributed to ordinary shareholders the deferred shareholders are entitled to 1p per share) we do not regard the ordinary shares as carrying a preferential right.

Where a company has two classes of issued share capital, and dividends are declared on one class but not on the other, the right of the former class is not a preferential right.

Subscription in cash

The shares must be subscribed for wholly in cash and be fully paid up at the time they are issued. (See VCM12020 for further guidance.)

Date of issue of shares

The date when shares are issued is to be ascertained in accordance with company law (see National Westminster Bank plc v CIR (67TC1)). Shares are issued to a person when that person's title to them has become complete. When that happens will depend on the circumstances of the particular case, but normally it will be when the shareholding is entered in the company's Register of Members.

The issue of shares should not be confused with the issue of a share certificate, which merely provides evidence of ownership of shares.

VCM33030 - SEIS: income tax relief: general requirements: purpose of the issue requirement

ITA07/S257CB

Shares must be issued to raise money for the purpose of a qualifying business activity (see VCM33050).

The issue of shares in consideration for the liquidation of a loan, or by the 'conversion' of loan stock, does not raise money for the company. The 'conversion' of loan notes was considered in Optos plc v Revenue & Customs Commissioners (SpC 560)and Domain Dynamics (Holdings) Ltd v Revenue & Customs Commissioners (SpC 701), in relation to the similarly-worded EIS legislation.

If the issue of shares does in fact raise money it can normally be accepted that that was the purpose of their issue. But that is not always the purpose. In particular it may not be the purpose where the shares are issued because the investor exercises a right to acquire more shares, otherwise than in the course of a wider fund-raising share issue by the company in which the investor has the right to opt to participate.

Forthright (Wales) Ltd v Davies (76TC134) determined that the payment of dividends is not a purpose of a qualifying business activity. It found that EIS relief was not due on shares issued to raise money for dividend payments. Similar considerations will apply for SEIS.

See also VCM33060 as regards shares which are issued for non-commercial purposes and for purposes of tax avoidance.

VCM33040 - SEIS: income tax relief: general requirements: spending of the money raised requirement

ITA07/S257CC

The money raised from the share issue must be spent by the end of period B (see VCM31140), for the purpose of the qualifying business activity (see VCM33050) for which it was raised.

This is to ensure that companies do not raise more money than they actually need in order to allow investors to obtain tax relief. In most cases companies will have a business plan which makes it clear why the monies are needed, and how the company intends to use them for the business within the necessary timescale.

The company's other sources of income may be a relevant factor in determining whether the monies raised by the relevant share issue have been spent. This will particularly be the case where trading income is available to meet the company's day to day running costs. In general it is not appropriate to assume that expenditure has been met first and foremost out of the monies raised by the share issue.

If an insignificant part of the money is employed for some other purpose, or an insignificant part is not spent, this is to be disregarded.

Spending money to acquire shares in another company

The legislation specifies that spending money on the acquisition of shares or stock in a company does not of itself amount to spending the money for the purposes of a 'qualifying business activity'. This does not prevent the money being used to acquire shares in a subsidiary company, providing that after the share issue the subsidiary is a qualifying 90 percent subsidiary (see VCM34040) and that subsidiary then goes on to use the money for a qualifying business activity carried on by it (which will exclude the acquisition of shares or stock in another company).

VCM33050 - SEIS: general requirements: meaning of 'qualifying business activity'

ITA07/S257HG

The shares must be issued in order to raise money for the purpose of a 'qualifying business activity', and the money must be spent for the purpose of that activity.

The term 'qualifying business activity' covers the following:

- carrying on a new qualifying trade (see VCM34020),
- preparing to carry on a new qualifying trade,
- carrying on research and development, which must either be carried on when the shares are issued or be commenced immediately afterwards, and which the company intends should benefit or lead to a new qualifying trade.

The activity may be carried on either by the company issuing the shares or by a company which is, at the date of issue of the shares, a qualifying 90 percent subsidiary of that company. See VCM34040 for the meaning of 'qualifying 90 percent subsidiary'.

Preparing to carry on a trade

'Preparing' to carry on a trade covers both the setting up of a new trade and the acquisition of an existing trade from its present owner.

Preparing to trade does not cover preliminary activities such as market research aimed at discovering whether a trade would be likely to succeed, or raising capital, neither does it cover research and development.

As regards the date when a company begins to carry on a trade, see BIM70501 onwards.

Research and development

'Research and development' is defined in accordance with ITA07/S1006.

VCM33060 - SEIS: income tax relief: general requirements: no pre-arranged exits requirement

ITA07/S257CD

Pre-arranged exits

No relief is available in respect of shares if the arrangements under which they were issued, or any arrangements which otherwise relate to or are connected with the issue, include:

- arrangements which might in any way lead to the disposal of the shares, or of other shares in the company,
- arrangements which might lead to the cessation of the company's trade, or of any trade carried on by a person connected with the company,
- arrangements for the disposal of some or all of the assets of the company or of any person connected with the company.

This rule is intended to ensure that the company is capable of carrying on its trade indefinitely under its existing ownership. There is a let-out for arrangements, of the kind which might be found in a company's Articles of Association, which merely ensure that if its trade fails the company can be wound up in an orderly manner.

The rule does not stop the directors of a company from indicating in advance to potential investors how they envisage that shares in the company might be disposed of at some later date.

Underpinning value

No relief is available in respect of shares if the arrangements under which they were issued, or any arrangements which otherwise relate to or are connected with the issue, include arrangements which are intended to protect the value of the investment in any way. This includes, for example, schemes which insure investors against making a loss, and schemes to maintain the value of the shares artificially. There is an exception for ordinary commercial matters such as insurance by the company against normal trading risks.

VCM33070 - SEIS: income tax relief: general requirements: no tax avoidance requirement

ITA07/S257CE

Commerciality and tax avoidance

The shares must not be issued other than for bona fide commercial purposes, and must not be issued as part of a scheme or arrangement whose main purpose, or one of whose main purposes, is the avoidance of tax. The reduction of an investor's tax liability which flows from the schemes in the circumstances intended by Parliament is obviously not a tax advantage at which this rule is aimed.

Before any case is challenged solely on these grounds a report should be made to CTIAA (CT Structure, Incentives & Reliefs team).

VCM33080 - SEIS: income tax relief: general requirements: no disqualifying arrangements requirement

ITA07/S257CF

This test is intended to prevent the schemes being used primarily for the purpose of delivering a tax mitigation product to investors with little or no other commercial purpose; or of delivering the benefits of tax-advantaged finance to another entity or project which would not itself qualify for support under the schemes or whose owners do not want to relinquish equity. The intention is to disqualify companies which would be unlikely to exist in the first place, or would be unlikely to carry on the particular activities in question (or to carry them on in the manner proposed), were it not for the desire to achieve one or both of those particular aims.

The legislation consists of several subsections.

Subsection (1) operates by preventing an issue of shares by an EIS or SEIS company, or shares or securities by a VCT investee company, from qualifying under the schemes if those shares or securities are issued, or any money raised by the issue, is employed ('spent' in the case of SEIS) in consequence of or in anticipation of, disqualifying arrangements.

To determine whether arrangements are 'disqualifying' or not, **subsection (2)** examines the purpose of the 'arrangements' in question. If the main purpose, or one of the main purposes, is both to secure that:

- A qualifying business activity is or will be carried on by the company or by a qualifying 90 percent subsidiary (that activity being the one for which the relevant shares are issued to raise money) and
- that relevant tax relief is available or the company will form part of a VCT's qualifying holdings,

then we are required to consider whether one or both of Condition A and Condition B are met; if either is met then the arrangements are 'disqualifying'.

What subsection (2) requires us to consider is whether the purpose of the arrangements is to create an activity or the appearance of an activity which will qualify under the schemes so that the tax advantages will be available.

Examples might include (without necessarily being limited to):

- cases where a business appears to be fragmented in a way which is commercially unusual with the result that there is a company which (apart from this test) meets the qualifying conditions for the schemes;
- cases where a transaction which would normally be expected to be between two parties, involves three (or more) parties, where the additional party is a company which (apart from this test) meets the qualifying conditions for the schemes;
- cases where the economic substance of a company's activity appears to be at odds with its form (for instance, where contractual arrangements appear designed to generate an outcome similar to a lending or credit facility whilst the contracts are not immediately obviously loan or credit contracts in legal form).

The remainder of the legislation needs to be considered only where arrangements have such a purpose. Where that's the case, if either Condition A or Condition B is met, the arrangements are 'disqualifying'.

Condition A at **subsection (3)** is that as a result of the money raised by the relevant issue being employed for the purpose of the relevant business activity, the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a party or parties to the arrangements or a person or persons connected with such a party.

Condition B at **subsection (4)** is that, in the absence of the arrangements, it would have been reasonable to expect that the whole or greater part of the component activities of the relevant business activity would have been carried on as part of another business by a person or by persons who are party to the arrangements or a person or persons connected with such a party.

'Arrangements' for the purposes of this legislation is defined as including 'any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable)'. It is immaterial whether the company itself is party to all parts of the arrangements in question, and it is immaterial whether a person who is a party to part of the arrangements is aware of the purpose of the arrangements as a whole.

'Relevant tax relief' means SEIS or EIS income tax relief; share loss relief as provided for by Chapter 6 of Part 4 of ITA 2007; capital gains disposal relief as provided by sections 150A or 150E of TCGA 1992; EIS capital gains deferral relief; or SEIS capital gains reinvestment relief.

See VCM35030+ for information about this legislation in the context of the HMRC's advance assurance facility.

VCM34000 - SEIS: income tax relief: issuing company: contents

VCM34010 - SEIS: income tax relief: issuing company requirements: overview

ITA07/S257D

This part of the manual deals with the rules applying to the investee company - that is, the company issuing the shares. Guidance on investor requirements is at VCM32000+ and general requirements is at VCM33000+.

The issuing company must be a 'qualifying company'. To be a qualifying company it must satisfy certain conditions to do with:

- Trading (see VCM34020 and VCM34030),
- Carrying on a qualifying business activity (see VCM34040),
- UK permanent establishment (see VCM34050),
- Financial health (see VCM34060),
- Unquoted status (see VCM34070),
- Control and independence (see VCM34080),
- No partnerships (see VCM34090),
- Gross assets (see VCM34100),
- Number of employees (see VCM34110),

- No previous other risk capital scheme investments (see VCM34120),
- The amount raised through the SEIS (see VCM34130),
- Qualifying subsidiaries (see VCM34140),
- Property managing subsidiaries (see VCM34150).

VCM34020 - SEIS: income tax relief: issuing company: trading requirement

ITA07/S257DA

The investee company - that is, the company issuing the shares - must fall into one of two categories. It must either exist for the purpose of carrying on a new qualifying trade or it must be the parent company of a group whose business is essentially that of carrying on qualifying activities. See below for the meaning of 'new qualifying trade'.

Trading companies

If the company is a single company it must exist wholly for the purpose of carrying on a new qualifying trade or trades. See below for the meaning of 'new qualifying trade'.

The purposes for which a company exists fall to be ascertained primarily by reference to what, through its directors and employees, it actually does, and not, for example, by reference to the intentions of those who originally formed it. A new company whose directors are actively engaged in setting up a trade should not be regarded as failing to satisfy the rule merely because it is not yet trading and a large part of its funds is temporarily being held on deposit. However, the making of investments which are less easily realisable is likely to lead to the conclusion that the company exists for investment purposes, even if there is an intention to trade at a later date.

The cessation of trading, other than an involuntary and temporary cessation caused by some eventuality such as a fire, will normally mean that the company ceases to exist for the purpose of carrying on a trade. But there is no reason why the company should not cease one trade and begin another, provided the interval between the two activities is brief.

As regards a cessation of trading caused by the company or a subsidiary becoming insolvent, see VCM34030.

Parent companies

For a company to be a parent company it must have one or more qualifying subsidiaries (see VCM34140). This includes companies that become qualifying subsidiaries during the relevant period.

Non-qualifying activities carried on must not amount to a substantial (see VCM3010) part of the business.

The way this rule is applied is as below.

The following types of activity are ignored altogether:

- holding shares in a subsidiary, making loans to a subsidiary, and making loans to the parent company,
- holding and managing property used by any group company for the purpose of a trade or of research and development,
- insignificant activities, where the particular company which carries them on exists for the purpose of carrying on a trade.

Everything else done by any company in the group constitutes 'the activities of the group taken as a whole'.

Any activities in the following categories have to be identified:

- trades, or activities which are parts of trades, which are on the list of excluded activities in VCM3010,
- activities which are not carried on in the course of a trade, other than research and development (for example, investment in property or shares).

Such activities must not form a substantial part of the activities of the group as a whole.

The wording of the provision allows us to disregard any trivial or incidental activity.

New qualifying trade

A 'new qualifying trade' is defined in S257HF as being one which has not been carried on by either the company or by any other person for longer than two years at the date of issue of the shares; and where neither the company nor any qualifying subsidiary had carried on any other trade before the company in question began to carry on the new trade.

For a trade to be a qualifying trade, it must be conducted on a commercial basis and with a view to the realisation of profits - see the guidance at BIM85705 and BIM85710.

In addition, the trade must not consist wholly or as to a substantial part in the carrying on of 'excluded activities' - see VCM3000+.

See VCM37030regarding the special rules applying where the company participates in a share exchange that results in the insertion of a new holding company over it.

See VCM34030 regarding the rules applying if the company goes into liquidation, receivership or administration.

VCM34030 - SEIS: income tax relief: issuing company: ceasing to meet trading requirement

ITA07/S257DB

Effect of administration or receivership

When a company goes into administration or receivership its directors lose most of their powers. The person who is able to exercise those powers (usually an 'administrative receiver') may act in a way which would cause the company to cease to satisfy one or more of the conditions - for example, they may have to sell the company's assets, with the result that the company is unable to carry on a trade.

Any failure to satisfy a requirement which is due entirely to the company's or a subsidiary's having been put into administration or receivership is to be ignored, provided everything done as a consequence of that is done for commercial reasons and is not part of a scheme or arrangement aimed at avoiding tax.

Effect of liquidation

If a resolution is passed, or an order is made, for the winding up of the company or a subsidiary (or any other act is done for the same purpose), or if the company is dissolved without winding up, the company will fail to satisfy at least one of the conditions which apply to it.

However, this failure will be disregarded where the winding up or dissolution is for genuine commercial reasons, and not part of a scheme or arrangement for avoiding tax.

The usual 'genuine commercial reason' for winding up a company will be that it is insolvent or is likely to become insolvent. The sooner a company goes into liquidation after ceasing to trade because of insolvency, the sooner it can be established that relief will not be withdrawn from its investors.

VCM34040 - SEIS: income tax relief: issuing company: issuing company to carry on qualifying business activity

ITA07/S257DC

Throughout period B (see VCM31140) the new qualifying trade and any preparation work or research and development leading to it must be carried on by the issuing company itself or by a qualifying 90 percent subsidiary.

But the rules do not act to deny relief where an existing trade is carried on by another company and the issue of shares is preparatory to the carrying of a qualifying trade by the qualifying company or one of its qualifying 90 percent subsidiaries. Neither do the rules act to deny relief in cases in which the qualifying company (or any other company) goes into liquidation, administration or receivership provided that these actions are entered into and carried out for bona fide reasons and that the relevant qualifying trade is not sold on a going concern basis to a person who was connected with the qualifying company during period B.

See VCM34020 for the meaning of 'new qualifying trade'.

Meaning of 'qualifying 90 percent subsidiary' (ITA07/S190)

For a subsidiary to be a qualifying 90 percent subsidiary, the relevant company must:

- own at least 90 percent of the subsidiary's issued share and voting rights,
- be beneficially entitled to at least 90 percent of the assets available for distribution to equity holders of the subsidiary, and
- be beneficially entitled to at least 90 percent of any profits of the subsidiary which would be available for distribution to equity holders.

In addition, no person other than the relevant company must have control of the subsidiary, and there must be no arrangements by virtue of which any of the above conditions could cease to be met.

A company is still to be treated as a qualifying 90 percent subsidiary if it is held indirectly via a company which is a qualifying 100 percent subsidiary of the relevant company, (based on similar considerations to those above).

Arrangements for the disposal of the subsidiary do not prevent this test from being regarded as met, providing that the disposal is for genuine commercial reasons and not for the purposes of tax avoidance.

The winding up of a subsidiary, or the subsidiary entering into or being in administration or receivership, do not prevent this test from being regarded as met providing that those events take place for genuine commercial reasons and not for the purposes of tax avoidance.

'Equity holder' is as defined at CTA10/S158 (see CTM81010).

VCM34050 - SEIS: income tax relief: issuing company: UK permanent establishment requirement

ITA07/S257DD

The issuing company must have a permanent establishment in the UK throughout period B (see VCM31140).

'Permanent establishment' is defined at ITA07/S191A. Note that the definition is slightly different from that at FA03/S148 which serves for the purposes of the remainder UK Taxes Acts. This is so that the definition can be tailored as necessary for the purposes of the schemes, without the need to modify the more general domestic definition.

The definition is based on Article 5 of the OECD Model Tax Convention. The OECD provides a detailed commentary on each Article of the Model Convention to assist with interpretation. That commentary cannot be replicated in this guidance (as HMRC does not hold the full copyright), but it should be found without difficulty using common internet search facilities.

For a company to be considered to have a permanent establishment in the United Kingdom, either of the following must apply:

- it has a fixed place of business there through which the company's business is wholly or partly carried on; or
- an agent acting on behalf of the company has and habitually exercises there authority to enter into contracts on behalf of the company.

Fixed place of business

The legislation lists a number of examples, including:

- a place of management,
- a branch,
- an office,
- a factory,
- a workshop,
- a mine, oil or gas well,
- a quarry or any other place of extraction of natural resources, and

- a building site or construction or installation project.

This list is not intended to be exhaustive; the type of business will determine the type and nature of the premises or facilities required.

But these would qualify as a permanent establishment only if in relation to the business as a whole, the activities carried on there are not of a preparatory or auxiliary character. The legislation lists some examples of activities which might be considered to be preparatory or auxiliary in nature - for instance, storage or display of goods or merchandise belonging to the company; the maintenance of stock owned by the company for storage, display or delivery; the maintenance of stock owned by the company for the purpose of processing by another person; purchasing goods or merchandise or collecting information for the company.

But again, this list is not intended to be exhaustive and whether activities are considered to be preparatory or auxiliary will depend on the nature of the company's business as a whole. What is critical is the extent to which the activities of the fixed place of business form an essential and substantial part of the whole business.

For the purposes of this part of the SEIS legislation, the following points may be worth noting:

- It is the business of the issuing or relevant company which is to be considered, and not the business of the group as a whole if the company is the member of a group. So where the issuing company is the parent company of a group and that company acts mainly as a holding company, there is no requirement that the business of one or more of its trading subsidiaries be carried on from the place of business in question. It will be sufficient that the administrative and management functions of the parent company be carried on there.
- Thus a UK-registered parent company, which carries out the necessary functions of a parent company from a fixed place of business within the UK, is likely to be considered to have a permanent establishment within the UK regardless of where the activities of any trading subsidiaries are carried on.
- The legislation makes it clear that an overseas-registered parent company will not be regarded as having a permanent establishment in the UK merely by virtue of the fact that it has a subsidiary which is resident in the UK, or which carries on its business there. An overseas parent company must itself have a permanent establishment in the UK for it to qualify.
- The issuing or relevant company must meet the requirements of the 'independence' test at ITA07/S257DG(2) - see VCM34080.

Agent acting on behalf of the company

The legislation also allows a company to be treated as having a permanent establishment in the UK where an agent has and exercises authority in the UK to enter into contracts on behalf of the company. This test is offered as an alternative to the 'fixed place of business' test and the company need only meet one of the tests to qualify.

Agents who are independent of the company - that is, who offer their agency services to the company in pursuit of their own business - are excluded. Examples of the types of agency business which would be considered to be independent are brokers and commission agents.

Merely maintaining an employee in the UK will not itself be sufficient to guarantee permanent establishment status. The agent (which may be an individual or a company) must have and must repeatedly use the authority to enter into contracts on behalf of the company or which are otherwise binding on the company. The contracts in question must relate to the substantive business of the company and not merely to matters which would be considered preparatory or auxiliary.

VCM34060 - SEIS: income tax relief: issuing company: financial health requirement

ITA07/S257DE

The issuing company must meet the financial health requirement at the beginning of period B - that is, at the date the shares are issued. (See VCM31140 for an explanation of period B.)

At the relevant time, the company must not be 'in difficulty'. The company is 'in difficulty' if it is reasonable to assume that it would be regarded as 'a firm in difficulty' for the purposes of the European Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C244/02).

The EC Guidelines in question are lengthy, but the following paragraphs are most relevant for the purposes of the SEIS rules:

'9. There is no Community definition of what constitutes 'a firm in difficulty'. However, for the purposes of these Guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

10. In particular, a firm is, in principle and irrespective of its size, regarded as being in difficulty for the purposes of these Guidelines in the following circumstances:

in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;

in the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12

months;

whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

11. Even when none of the circumstances set out in point 10 are present, a firm may still be considered to be in difficulties, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings brought under domestic law. In the latter case, these Guidelines apply to any aid granted in the context of such proceedings which leads to the firm's continuing in business. In any event, a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/ shareholders or from market sources.

12. For the purposes of these Guidelines, a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets. A firm will in principle be considered as newly created for the first three years following the start of operations in the relevant field of activity.'

Whether it is 'reasonable' to assume a company is 'in difficulty' in this context might be open to interpretation. HMRC intend to follow the example of the Guidelines and will not regard a company as falling within the scope of the restriction if at the date of issue of the relevant shares:

- it is within the first three years of operations in the relevant field of activity and/or
- it has been able to raise funds from its existing shareholders or from the market sufficient to meet its anticipated funding requirements at that time.

VCM34070 - SEIS: income tax relief: issuing company: unquoted status requirement

ITA07/S257DF

At the time when the shares are issued, neither they nor any of the company's other shares or debentures or other securities may be quoted - that is, listed on an exchange which is at that time a recognised stock exchange (see CTM60310) or has been designated by HMRC, or be dealt in outside the UK by any means designated by HMRC.

In addition, at the time when the shares are issued there must not be any arrangements for such a listing, or for the company to become a subsidiary of another company, which would not satisfy this requirement. It may become quoted later without the investors losing tax relief, but not if there were arrangements for it to become quoted in existence when the shares were issued.

The Alternative Investment Market (AIM) and the PLUS Markets (with the exception of PLUS-listed) are not considered to be recognised exchanges, so a company listed on those markets can raise money under the SEIS if it satisfies all the other conditions. The PLUS-listed market is regarded as a recognised stock exchange and shares listed on that market at the time of issue will not qualify for SEIS. Enquiries as to whether an exchange or a means of dealing has been designated should be addressed to CTIAA (CT Structure, Incentives & Reliefs team).

VCM34080 - SEIS: income tax relief: issuing company: control and independence requirement

ITA07/S257DG

The control test

This test stipulates that the company must not, at any time in period A (see VCM31140) control, whether on its own or together with any person connected with it, any company which is not a qualifying subsidiary of the issuing company. There must be no arrangements at any time during period A by virtue of which this test could be breached, whether during period A or at any other time.

For the meaning of 'qualifying subsidiary' see VCM34140.

The independence test

The company is not a qualifying company if it is under the control of another company or of another company and any person or persons connected with that other company. It may not, therefore, be a subsidiary in period A.

With effect for shares issued on or after 6 April 2013, any on-the-shelf period will be ignored when determining whether a company is or has been under the control of any other company.

There must not be any arrangements at any time during period A by virtue of which the independence requirement could be breached, either during period A or at any other time. But this rule does not apply where the arrangements relate to transactions to which VCM37030 applies.

See below for the meaning of 'arrangements' in this context.

Meaning of 'control'

For the purpose of determining whether a company is under the control of another company on or after 21 March 2000, 'control' has the meaning given to it by ITA07/S995. That is, the power of any person by means of the holding or shares or voting power in any company, or as a result of any powers conferred by a document regulating the company or any other company, that the affairs of the company are conducted in accordance with the person's wishes.

Meaning of 'connected'

'Connected' has the meaning given in ITA07/S993, (see CG14580 onwards, which deals with similarly worded legislation).

Note that, as well as the more obvious connections, ITA07/S993(7) provide that persons are to be regarded as connected in relation to a company if they act together to secure or exercise control of that company. The provision extends to persons acting on the direction of any of those persons.

Meaning of 'on-the-shelf period'

'On-the-shelf period' means a period during which the issuing company has not issued any shares other than subscriber shares and has not begun to carry on, or make preparations for carrying on, any trade or business.

Meaning of 'arrangements'

'Arrangements' for this purpose is as defined in ITA07S257HJ(1). It includes any scheme, agreement or understanding, transaction or series of transactions, whether or not legally enforceable.

VCM34090 - SEIS: income tax relief: issuing company: no partnerships requirement

ITA07/S257DH

Neither the issuing company nor any qualifying 90 percent subsidiary may be a member of either a partnership at any time in period A.

See VCM34040 for the meaning of 'qualifying 90 percent subsidiary'.

'Partnership' is defined at ITA07/S257DH(2) as including a limited liability partnership, or any entity established under the law of a territory outside the UK which is similar in character to a partnership.

See VCM31140 for the meaning of 'period A'.

VCM34100 - SEIS: income tax relief: issuing company: gross assets requirement

ITA07/S257DI

Immediately before the shares are issued, the total value of the company's assets (or of the group assets where the company is a parent company), must not exceed £200,000.

Where the company is the parent of a group of companies, the limit applies to the aggregate value of gross assets of all the companies in the group, and for this purpose, no account is taken of:

- any assets which consist in rights against another company in the group, or
- any shares in, or securities of, another such company.

Valuation of assets

HMRC's general approach is that the value of a company's gross assets at any time is the aggregate of the values of the company's gross assets as shown in its balance sheet if the company were to draw one up at that time. 'Gross assets', means all the assets which would be shown on that balance sheet, without any deduction in respect of liabilities. This approach is subject to the proviso that the balance sheet would be drawn up on a basis consistent with that used in the accounts for preceding periods (if any), and in accordance with generally accepted accounting practice.

So if the shares in question were issued immediately after the date to which the company's accounts were drawn up, the value of the company's gross assets immediately before the issue would be the value shown in the balance sheet. And if the shares were issued immediately before the date to which the company's accounts were drawn up, the value of the company's gross assets immediately after the issue would be the value shown in the balance sheet.

Where shares are issued at other times, the values will, in the first instance, be based on the values given in the company's latest available balance sheet. However, these values should be updated as precisely as is practicable, taking into account all the relevant information available to the company (and, where applicable, to its subsidiaries). For example, where a

company is able to ascertain the amount of trade debts owed to it at any given time, it would be reasonable to take the aggregate amount of such debts outstanding at the time of the issue or grant.

When accounts covering —

- the accounting period in which the issue was made,
- and if they were not available at the time of the issue, those for the immediately preceding accounting period,

become available, the values arrived at in the way described above may need to be reviewed in the light of the information contained in those accounts.

Payments in respect of shares

HMRC will not regard the assets of a company immediately before the issue of the shares in question as including any advance payment received by the company in respect of that issue.

Where shares or securities are issued partly paid, the right to the unpaid portion will be regarded as an asset of the company. That asset will be taken into account for the purpose of deciding whether the relevant gross assets rule is satisfied, whether it is shown in the company's balance sheet or not.

VCM34110 - SEIS: income tax relief: issuing company: number of employees requirement

ITA07/S257DJ

There is an upper limit on the number of employees the investee company may have at the time the shares are issued. That number must be fewer than 25 full-time employees, or their part-time equivalents. If the company is a member of a group, that figure is applied to the group as a whole.

Who are employees?

Directors are counted as employees for the purpose of this test. But apprentices, students on vocational training, and employees on maternity or paternity leave at the time the shares are issued are not to be counted.

Full-time and part-time employees

The headcount limit is expressed in terms of 'full-time equivalent' employees.

HMRC regard a full-time employee as someone whose standard working week (excluding lunch breaks and overtime) is at least 35 hours. Any employee who worked longer than those hours would still only count as one full-time employee.

Where there are part-time employees their full-time equivalence can be calculated on any 'just and reasonable' basis. For example, someone working 21 hours a week would be expected to count as 60% of a full-time employee. Someone working 'one week on, one week off' would count as 50%, while the proportion of an employee working in term times only would depend on the length of those terms in relation to the year as a whole.

So companies (or groups) could have appreciably more than 25 employees at the time the shares were issued, but, if many of them are part-time, could still come under the limit.

Seasonal employees

The number of employees of some companies (or groups) may vary over the course of a year. In these situations there is no need to calculate some kind of average figure; the test is whether the limit of 25 full-time employees or their equivalents is met on the day the shares are issued.

VCM34120 - SEIS: income tax relief: issuing company: no previous other risk capital schemes investments

ITA07/S257DK

Neither the company nor any company which is a qualifying subsidiary at the time of issue of the relevant shares, may have received any investment under either the EIS or VCT scheme at any time up to and including the day the relevant shares are issued.

A company is regarded as having received an EIS investment if it has issued shares and at any time provides a form EIS1 (compliance statement) in respect of them.

A company is regarded as having received VCT investment if a VCT makes an investment of any kind in the company.

A 'qualifying subsidiary' is defined at ITA07/S191. See also VCM34140and VCM13130.

See VCM12030 and VCM54140 for rules relating to issues of EIS shares and VCT investments following an issue of shares qualifying for SEIS relief.

VCM34130 - SEIS: income tax relief: issuing company: amount raised through SEIS

ITA07/S257DL

The amount of all SEIS investment, together with any other de minimis State aid received by the company in the 3 years to the date of the latest SEIS investment, must not exceed £150,000.

Where a share issue takes above £150,000 the total aid received by the company in the 3 years to the date of investment, the investment in the share issue is apportioned so that relief is given only on the proportion of the investment which doesn't exceed the £150,000 limit.

The purpose of S257DL is to ensure that any investment under SEIS is kept within the limits which allow SEIS to be regarded under EU regulations as providing de minimis and therefore non-notifiable State aid.

De minimis aid

The UK Government does not maintain a list of all State aids which are considered to be covered by the EU regulations on de minimis aid. For an aid to be considered de minimis the measure via which it is provided must be limited to providing no more than €200,000 over a three-year period, as well as containing a number of other restrictions. If a company has received any small amounts of funding or support from a Government measure (whether the UK Government or any other European Community member state Government) and is not clear about whether that funding should be counted towards the SEIS limit, the company should seek clarification from the provider of the funds or the administrator of the scheme as to whether that funding is State aid covered by the EU de minimis rules.

VCM34140 - SEIS: income tax relief: issuing company: qualifying subsidiaries requirement

ITA07/S257DM

At any time in period B (see VCM31140) any subsidiary of the issuing company must be a qualifying subsidiary.

Meaning of 'qualifying subsidiary'

'Qualifying subsidiary' is defined at ITA07/S257HJ and has the same meaning as for EIS relief under ITA07/S191.

A company is a qualifying subsidiary if it is a 51 percent subsidiary of the investee company. The meaning of 51 percent subsidiary is the same as that given in CTA10/S1154. That is, the investee company must directly or indirectly hold more than 50 percent of the ordinary share capital.

In addition in order to be a qualifying subsidiary, no other person other than the company issuing the shares, or one of its subsidiaries, must control the subsidiary (see below), and there must be no arrangements by virtue of which that requirement could cease to be met.

These conditions are not to be regarded as ceasing to be satisfied by reason only of a winding-up or dissolution of the subsidiary or its parent, or of the subsidiary or its parent going into receivership, or of a disposal of the shares in the subsidiary, provided in all cases that this occurs for genuine commercial reasons and not as part of a scheme or arrangement for the avoidance of tax.

'Control' for this purpose has the meaning given at ITA07/S995. That is, the power of any person by means of the holding or shares or voting power, or as a result of any powers conferred by a document regulating the company or any other company, that the affairs of the company are conducted in accordance with the person's wishes.

See VCM34040 for the meaning of 'qualifying 90 percent subsidiary'.

VCM34150 - SEIS: income tax relief: issuing company: property managing subsidiaries requirement

ITA07/S257DN

If the company has a subsidiary whose business consists wholly or mainly of holding or managing land or property deriving its value from land, that subsidiary (termed a 'property managing subsidiary') must be a qualifying 90 percent subsidiary of the company.

References in the legislation to property deriving its value from land include:

- any shareholding in a company deriving its value directly or indirectly from land
- any interest in settled property deriving its value directly or indirectly from land
- any option, consent or embargo affecting the disposition of land

See VCM34040 for the meaning of 'qualifying 90 percent subsidiary'.

VCM35000 - SEIS: income tax relief: company and investor procedures: contents

VCM35010 - SEIS: income tax relief: company and investor procedures: overview

An investor cannot claim SEIS income tax relief until the company that issued the shares sends a form SEIS3 to the investor. There are various procedures that the company and the investor must follow. VCM35080+ sets out what the company has to do and VCM35150+ sets out what the investor has to do.

SEIS is administered in HMRC by the Small Companies Enterprise Centre ('SCEC') - see VCM2070.

The SCEC decides if a company and a share issue qualify, and is responsible for monitoring companies to ensure that they continue to meet the requirements of the scheme for the duration of the qualifying period for any share issue.

In advance of inviting applications for shares, companies hoping to attract subscriptions under the SEIS can seek assurance that they are likely to satisfy the conditions of the scheme insofar as the company requirements are concerned. There is no requirement for them to seek this assurance, and neither is there a requirement for them to register with HMRC in advance of an issue of shares. Guidance on advance assurances is at VCM35030+.

VCM35020 - SEIS: income tax relief: company and investor procedures: attribution of SEIS relief to shares

Normally the amount of Income Tax relief attributable to a holding of shares will be self-evident. Where, however, the maximum amount on which relief is available for a year (see VCM31130) is exceeded, the position is not always clear. In this situation the total relief obtained for the year is apportioned between all the holdings of shares for which relief was claimed, or the individual can choose to claim relief on some shares and not on others.

Example

Mr Frazer subscribes £50,000 for shares in each of four qualifying companies in 2012/13, giving a total investment of £200,000. But he can only claim relief on a maximum of £100,000. So, for instance, he can opt for relief to be given on the subscriptions for all the shares in two of the companies, or have the relief given on half of the shares in all four companies.

Bonus issue

Where some of the shares in a holding were acquired by means of a bonus issue in respect of shares already held, they are treated as having been acquired as part of the original holding.

Example

Mr Thomas subscribed £48,000 for 2,400 shares issued on 1 June 2012, and obtained relief on that amount. On 1 December 2013 there was a ‘ten for one’ bonus issue, so he is regarded as having acquired 26,400 shares on 1 June 2012.

If Mr Thomas sells 19,800 shares on 1 September 2014 for £54,000 the relief to be withdrawn is tax on 19,800 / 26,400 x £48,000 = £36,000.

If the date when Mr Thomas sells is 1 September 2015 (more than three years after 1 June 2012 but less than three years after 1 December 2013) no relief is withdrawn, because all the shares are regarded as issued on the earlier date.

VCM35030 - SEIS: income tax relief: company procedures: company and investor procedures: advance assurance requests: overview

HMRC operates an advance assurance facility for SEIS as it does for EIS. This facility allows companies to submit details of their plans to raise money, their structure and their activities in advance of an issue of shares, so that the SCEC (see VCM35010) can advise on whether or not the proposed share issue is likely to qualify for relief. This facility is non-statutory, and companies are not obliged to use it before shares are issued to investors.

See VCM35080+ for the statutory procedures to be followed once shares have been issued.

Based on the information provided as part of an advance assurance application, HMRC will provide an opinion as to whether we would be able to authorise the company to issue compliance certificates (forms SEIS3 - see VCM35110) were the company to carry out its intentions as described and then to submit a compliance statement (form SEIS1 - see VCM35090) following an issue of shares. This requires HMRC to form a view at the time of an advance assurance application, as to whether the conditions of the scheme would be satisfied to the extent they need to be satisfied at the point a company provides its compliance statement.

Requests can be dealt with only if they come from the company's secretary or directors or from some person authorised by them to negotiate with HMRC on their behalf. The rules of confidentiality apply, and potential investors making enquiries about a company should address those enquiries to the company itself.

An advance assurance is given in respect of a particular issue of shares and companies should be aware that an assurance given in respect of one share issue should not be regarded as providing assurance in respect of a different share issue.

It is not necessary for the request to identify the intending subscribers, and no assurance as to the availability of relief to a particular subscriber can be given either to the company or to the subscriber in question.

Form SEIS/EIS(AA) is available on the HMRC website at http://www.hmrc.gov.uk/forms/eis-aa-bw.pdf for companies who wish to make an application for an advance assurance. It is not compulsory to use it but companies are recommended to do so as a useful way of giving all the information needed.

That form mentions that the company must be able to complete the declaration on form SEIS1 when shares are issued. Form SEIS1 is also on the website at http://www.hmrc.gov.uk/forms/seis1.pdf

VCM35040 - SEIS: company and investor procedures: company procedures: advance assurance requests: information needed

In order to give an assurance the HMRC officer will need to be satisfied that:

- the company can be expected to be a qualifying company (see VCM34010),
- the shares to be issued will be eligible shares (see VCM33020),
- the shares are to be issued to raise money for a qualifying business activity (see VCM33050),
- the money raised is to be employed only by companies that satisfy the rules of the scheme.

When making its request for an assurance the company may supply primary facts or broad statements (such as, 'the shares to be issued will be eligible shares'). However, no assurance is given unless the information supplied includes all the following:

- a copy of the latest available accounts of the company, and of any subsidiary company. If the company has not yet drawn up a set of accounts, we do not expect it to do so for this purpose,
- details of all trading or other activities to be carried on by the company and any subsidiary, and a note of which company or companies will use the money raised,
- details of the approximate sum the company hopes to raise, and how it will be used,
- confirmation that the company expects to be able to complete the declaration on form SEIS1 in due course,
- a copy of the latest draft of any prospectus, information memorandum, business plan or similar document to be issued to potential investors. Where the company intends to seek investment from an EIS or SEIS Fund, an EIS or SEIS discretionary portfolio arrangement or a VCT, the name of the Fund / Arrangement and of the firm responsible for it, or of the VCT in question. In such cases we may also ask to see any prospectus, information memorandum or brochure relating to the relevant fund raising or offer,
- an up-to-date copy of the Memorandum and Articles of Association of the company and of any subsidiary, and details of any changes to be made,
- details of any subscription agreement or other side agreement to be entered into by the shareholders.

We would advise companies to ensure that they are aware of all of the qualifying conditions of the scheme and to provide any further information they think may be necessary to allow the inspector to consider whether all the requirements are likely to be met. For instance, details of minority holdings in other companies, or details of other companies' minority

holdings in the issuing company, may be relevant in determining whether the 'control and independence' requirements will be met - see VCM34080.

VCM35050 - SEIS: company and investor procedures: company procedures: advance assurance requests: where HMRC will not be bound by an assurance given

There are some circumstances in which our primary duty to apply tax legislation according to statute and case law may mean that we can no longer be bound by an assurance we have given. For example this may occur where:

- the nature or terms of a transaction or agreement change in a way that has a material impact on the transaction or agreement as a whole
- the information on which the advance assurance was based has been superseded since the advance assurance was given
- incorrect, incomplete or misleading information is provided when the assurance application is made
- an examination of the detail of transactions subsequently entered into by the company (and taking account of any associated transactions involving other parties which could reasonably be regarded as part of a planned set of arrangements) would lead to the conclusion that the substance of the company's activities was other than as described in the application
- a Court or Upper Tribunal judgment before the investment is made, or before the company makes its statutory declaration on form SEIS1, changes the prevailing interpretation of the law on which the assurance was based. An assurance will be based on the prevailing understanding of the law at the time it is given. Where the courts change the prevailing interpretation of the law and subject to the principle of legitimate expectation, we are required to apply the tax legislation as required by the new interpretation of the law.
- the statutory law relevant to the qualifying conditions in respect of the issue of shares for which the assurance was given, changes. If this change is retrospective we will not be bound by any assurance we have previously given. If the new statute is enacted prior to the issue of shares and is prospective, any previously given clearance relating to the transaction will not be considered to be binding. HMRC has a duty to apply the tax legislation as required by statute at the time the transaction takes place. It remains the company's responsibility to take account of changes in the law.

VCM35060 - SEIS: company and investor procedures: company procedures: advance assurance requests: declining

HMRC will not give an advance assurance where the relevant shares have already been issued. In that situation the company should submit its compliance statement (form SEIS1) in accordance with the statutory procedure (see VCM35090).

HMRC will not give advance assurance if it is not satisfied that the company is likely to meet all the qualifying conditions (although we will not normally refuse to give assurance solely on the grounds that the company may not spend the monies raised within the timescale required by section 257CC - see VCM33040).

In some cases HMRC may not be able to provide an assurance. This may particularly be the case where it appears the shares may have been issued or subscribed for, for the purposes of tax avoidance. See VCM32060 and VCM33070 as to what is considered to be "tax avoidance" in the context of the venture capital schemes. It may also be the case where we think there may be 'disqualifying arrangements'. Please refer to VCM33080 for a description of what this means. This is because it is not always possible to determine what the purposes of any transactions or arrangements are until effect is given to those purposes.

Refusal to grant advance assurance does not indicate that HMRC has already reached a view about how the legislation will apply. However in such cases rather than attempting to form a view in advance of the company carrying out its intentions, we will want to examine at the time the company provides its compliance statement (SEIS1) the circumstances in which funds have been raised, the company established or activities commenced, shares issued and directors appointed; along with the detail of transactions entered into by the company and any associated transactions entered into by third parties which might reasonably be considered to be part of a planned set of arrangements.

Each case will be considered on its own merits, but factors pointing to a decision not to grant advance assurance on the grounds that there may be 'disqualifying arrangements' are likely to include (without necessarily being restricted to) cases where the following apply:

-
  - immediately after the proposed investment, the majority of shares, voting rights, rights to assets in a winding up or rights to sale proceeds will be held by any combination of VCTs and/or EIS or SEIS shareholders but voting rights in the EIS or SEIS shares have been delegated to a person or persons who would have an interest in the company entering into 'disqualifying arrangements' and/or decisions about the company's activities will be made by such persons.
  - the majority of the activities required to fulfil obligations to customers will be carried out by persons other than employees of the relevant trading company, or will be carried on by employees of the company but other than in their capacity as such, where it seems likely that these arrangements exist as part of 'disqualifying arrangements'.
  - the transactions to be entered into by the company will involve the company paying all or most of the monies raised by the share issue to a party to whom it has subcontracted work or from whom it has commissioned work in advance of that work being done, whilst the company will not be paid by its customer until work has been completed, where it seems likely that these arrangements exist as part of 'disqualifying arrangements'.

- the transactions to be entered into by the company will involve the company providing its customer with services or goods, where that provision will involve the company incurring costs which will not be recouped from its customer within a period of 90 days of the goods or services being provided where it seems likely that these arrangements exist as part of 'disqualifying arrangements'.
- the company's activities involve the purchase and re-sale of intangible assets, where vendor or purchaser are parties who would be likely to benefit from, or have an interest in, the company being involved in 'disqualifying arrangements'.
- the prospectus, information memorandum, brochure or similar offer document describes the investment opportunity in a way which suggests that the investment is not high risk. This may include, for instance, statements to the effect that the investment is low-risk or lower risk than other EIS or SEIS investments or that there is a high likelihood of the investor's capital being preserved. In the context of the 'disqualifying arrangements' legislation, we will want to consider the reasons why the investment might be less exposed to risk than other EIS investments.

If there are no grounds for believing that there may be 'disqualifying arrangements', the presence of one or more of these indicators will not mean that no assurance will be given. For instance, the fact that the company subcontracts work as part of its normal trading activities will not prevent HMRC giving an assurance if the subcontracting agreement is not part of 'disqualifying arrangements'.

VCM35070 - SEIS: company and investor procedures: company procedures: advance assurance requests: responding to

The response to a request for an assurance will take the form of a statement as to whether, on the basis of the information provided, HMRC would be able to authorise the company to issue certificates under ITA/S257EC in respect of the shares to be issued, following receipt of a form SEIS1 satisfactorily completed. The granting of an assurance is therefore an indication that HMRC considers that the requirements laid out in Chapters 3 and 4 of Part 5A ITA07 are likely to be met insofar as it is possible for them to be met for the time being on the date the company provides its compliance statement.

The assurance does not indicate an acceptance by HMRC that the company will continue to meet all of the requirements which must be met throughout the qualifying period for the shares. The company is advised to make investors aware that the holding of an advance assurance does not guarantee that relief will not be reduced or withdrawn at a later date. Where an assurance is given and shares are issued in reliance on it the company will need to take care that the conditions relating to the company and its trade are complied with throughout the three year period (see VCM31140) related to the shares.

In some cases there will be a clear indication in the company's application for advance assurance that the company may at some future time within the three year period cease to satisfy one of the conditions (for example, excluded activities which the company intends to carry on might come to be a substantial part of its trade, see VCM3000+). As explained above, the assurance given relates only to the likelihood of the requirements being met at the point at which HMRC is being asked to authorise the issue of compliance certificates (EIS3s) to its investors. The assurance may include a reminder about the need for the company to meet the conditions for a continuing period, and may incorporate an explanation as to how it is proposed to apply the test in question (for example, how it is proposed to decide whether the excluded activities make up a substantial part of the trade).

Where a company supplies valuations or forecasts responsibility for their accuracy lies entirely with the company.

Where the officer is unable to give a favourable response to a request for an assurance, a brief explanation of the reason will be given. But it is entirely the company's responsibility to decide what amendment, if any, it should make to its proposals.

VCM35080 - SEIS: income tax relief: company and investor procedures: company procedures: overview

ITA07/S257ED

Before investors can claim any tax relief, the company must complete a compliance statement (form SEIS1) and send it to the SCEC (contact details at VCM35010). There is no time limit within which the company must provide its statement, but companies need to be aware that investors cannot claim tax relief until the procedures described below have been completed.

In outline, the statutory procedure for obtaining relief in respect of a subscription for shares is as follows:

1.
    1. The company that has issued the shares supplies a statement to HMRC on form SEIS1. the form lists the subscribers who have requested certificates, It also contains a Declaration that at the time of completion, the company has already met the requirements of the scheme to the extent that those requirements have to be met at the time of issue of the shares and from that time to the date of the Declaration; and that it expects to meet all other requirements for the period for which they are required to be met. Form SEIS1 is available on the HMRC website at http://www.hmrc.gov.uk/forms/seis1.pdf

2. If on examining the statement HMRC is satisfied that it should do so, it will send the company the appropriate number of blank forms SEIS3, using form SEIS2 to authorise it to issue certificates.
3. The company completes the certificates and sends them to the subscribers.
4. Each subscriber - or, where the subscriber is a nominee, the beneficial owner of the shares - can then claim relief (see VCM35150 regarding claims to relief).

The company cannot submit an SEIS1 until either:

- it has been trading for at least four months, or
- it has spent at least 70 percent of the monies raised by the relevant issue of shares.

This process must be followed for every issue of shares in respect of which it is intended SEIS relief will be claimed.

An appeal can be made against a decision by HMRC not to authorise a compliance certificate (ITA07/S257EE).

A maximum penalty of up to £3,000 may apply where a company negligently or fraudulently issues a certificate or statement or issues one in breach of the conditions in ITA07/S257EC.

VCM35090 - SEIS: company and investor procedures: company procedures: company's statement on SEIS1

ITA07/S257EC(2), S257ED

A company whose new shareholders ask it for certificates enabling them to claim relief cannot issue them without first obtaining authority from HMRC. To do this the company must provide HMRC with a statement to the effect that the conditions for the relief (apart from any which relate to the investor) have been satisfied so far, and that it intends to ensure that they continue to be satisfied. It is therefore not possible for a company to obtain authority to issue certificates once it has ceased to satisfy any condition. So for instance, coming under the control of another company would make the issue of certificates impossible even where, had relief already been obtained, it would have been preserved by the operation of ITA07/S257HB (see VCM37030).

Where there is more than one issue of shares, the company must submit a separate statement in respect of each issue. (All shares of the same class issued on the same day count as one issue).

The company cannot submit an SEIS1 until either:

- it has been trading for at least four months, or

- it has spent at least 70 percent of the monies raised by the relevant issue of shares.

VCM35100 - SEIS: company and investor procedures: company procedures: examining SEIS1

A company cannot be authorised to issue certificates to its investors unless it has submitted a statement on form SEIS1 which complies with the rules mentioned at VCM35090 and the HMRC officer is satisfied that:

- all the information given on form SEIS1 is correct, and
- there is no reason not to accept the declaration given on the form.

If so satisfied, the officer must give the authorisation even if it appears that none of the subscribers listed will be able to obtain relief (see Wild v Cannavan (70TC554)). It is therefore not necessary for the officer to consider the identity of the subscribers at this stage.

In examining the statement the officer will consider whether any of the information supplied at any 'advance assurance' stage has proved inaccurate, and will explore any matters about which unsupported statements were originally accepted. Where only draft documents were previously seen (for example, a draft prospectus) the final document will be obtained and examined. If the company did not seek an assurance in advance, all the items listed in VCM35040 above will now need to be supplied.

As with the giving of advance assurances, HMRC is normally bound by a decision to authorise relief, so the company's statement will be considered very carefully and any necessary clarification obtained before a decision is made.

Under ITA07/S257EF the furnishing of a false statement attracts a penalty. The maximum penalty is £3,000.

Value received

If form SEIS1 shows that any of the listed subscribers, or any associate of such a person, has received value the implications of this for the availability of relief need to be considered. (See VCM32020 for meaning of associate.)

In any case where the amount of income tax relief that might be claimed by any subscriber will be affected the HMRC officer and the company should agree the amount to be recorded on the form SEIS3 to be issued to that subscriber.

VCM35110 - SEIS: company and investor procedures: company procedures: authorising the issue of certificates

If satisfied that everything on the form is correct the officer will authorise the company to issue certificates to those subscribers who have requested them. This is done by completing and issuing form SEIS2. The appropriate number of forms SEIS3 will be sent to the company with the form SEIS2 - normally the number of names of subscribers recorded on the front of form SEIS1, but if a subscriber is known to be acting as nominee for more than one investor more may be issued.

Forms SEIS3 are not made available to anyone other than a company that has been authorised to issue them. Spare copies may, however, be issued at the officer's discretion where requested (for example, where the company wishes to issue a duplicate to an investor who has lost the original certificate).

Receipt of a form SEIS3 by an investor indicates only that HMRC is satisfied that, from the date of issue of the relevant shares to the date the company submitted its compliance statement, the issuing company has met all the requirements insofar as they could for the time being be met. It does not indicate that the investor will be eligible for tax relief.

Notes for HMRC officers

On each occasion that form SEIS2 is issued the officer should send a photocopy of the related form SEIS1 to KAI Analysis under cover of a form SEIS10, noting the back of form SEIS1 accordingly. In any case where the form is accompanied by a lengthy schedule the original can be sent with a request that it be returned after the details needed have been extracted.

The trade classification number to be entered on form SEIS10 is the (four-digit) number applicable to the qualifying business activity for which the money was raised. Where that activity is carried on by a subsidiary, this number may be different from that applicable to the company whose shares are the subject of the relief. Where money is raised for research and development the number to be used is the number for the trade that the company intends to derive or benefit from the research and development.

When an authority to issue certificates of relief is sent, the file for the company issuing the shares and also the file for any subsidiary using money raised by the share issue should be clearly marked 'SEIS' and a prominent note should be made in each file of the termination date related to the share issue.

VCM35120 - SEIS: company and investor procedures: company procedures: action on receipt of SEIS3

Where the company has issued a certificate on form SEIS3 and the shareholder has obtained tax relief, the office dealing with the shareholder sends a copy of the SEIS3 claim form to the officer who authorised the issue of the certificate. In each case the officer should check that the name of the subscriber and the amount of the investment tallies with the information given on form SEIS1. The issue by a company of a false or unauthorised certificate attracts a penalty under ITA07/S257EF the maximum penalty is £3,000 for each such certificate.

The officer will consider whether the individual was entitled to claim the relief obtained. This involves consideration of all the circumstances surrounding the issue of the shares in question. For example, there might be some indication that the subscription may not have been for bona fide commercial reasons - perhaps the fact that a very large premium was paid, or the fact that the company appears to be hopelessly insolvent - in which case the subscriptions may not have been made for bona fide commercial purposes (see VCM32060). Exceptionally there might be evidence that the subscriber had received a loan (see VCM32050) or had an option to sell the shares (see VCM36030). In all cases the officer will consider whether the subscriber in question is a qualifying individual (see VCM32010).

VCM35130 - SEIS: company and investor procedures: company procedures: refusal to authorise issue of SEIS3

ITA07/S257EE

If, after obtaining all necessary information, the officer decides that not everything on the form SEIS1 is correct, a formal refusal to authorise the issue of certificates to the subscribers will be sent. The refusal will normally be in the following form.

‘The company's statement on form SEIS1 relating to the share issue made on [date] and dated [date form signed] has been duly considered and I hereby give notice of my decision as follows: authority under Section 257EC(3) of the Income Tax Act 2007 (ITA) to issue certificates under Section 257EC(1) ITA is refused. The grounds of this decision are that the statement is not correct in the following respect[s]: [specify].

If the company does not wish to accept this decision it may appeal against it. Written notice of any appeal should be given to me within thirty days of receipt of this notice.

If you appeal I will consider any further information you send me and try to reach agreement with you. If we cannot agree, you can

- ask for my decision to be reviewed by an HMRC officer not previously involved in the matter, or
- notify your appeal to an independent tribunal

If you opt for a review you can still notify your appeal to the tribunal after the review has finished.'

VCM35140 - SEIS: company and investor procedures: company procedures: examination of accounts

When examining accounts for either the company issuing the shares or the company employing the money raised covering the period which includes the date of issue of the shares, the officer may take the opportunity to check the information given on form EIS1. Any enquiry thought necessary as to the way in which the money has been employed in the business and whether it was so employed before the end of the time allowed (see VCM33040) will be made at this point.

When subsequent accounts covering any part of the period up to the termination date (see VCM31140) are examined the opportunity will be taken to check that no report as to the failure of a condition of the relief should have been made.

If any enquiry needs to be made, it will normally be made informally in the first instance. If the officer thinks it necessary to use HMRC's statutory powers to obtain information (see VCM36170), CTIAA (CT Structure, Incentives & Reliefs team) should first be consulted.

VCM35150 - SEIS: income tax relief: company and investor procedures: investor claims: conditions

An investor cannot claim tax relief until the company has sent in a compliance statement as described at VCM35040, and HMRC has authorised the company to issue a compliance certificate to the investor (claim form- SEIS3).

The investor must meet all the conditions needed to be a qualifying investor - see VCM32010.

An investor can claim relief up to five years after the 31 January following the tax year in which the investment was made. This is a longer period than for most reliefs, to take account of the fact that it is dependent on the company first making its application and having that approved.

Guidance on the SEIS coding process is in PAYE10047.

VCM35160 - SEIS: company and investor procedures: investor claims: method of

An investor can make a claim on his or her Self Assessment tax return for the tax year in which the shares were issued. See SAM121405.

A claim does not become final until the tax return on which it is made ceases to be capable of amendment. Where for any reason relief which is claimed would, if it had been obtained, have had to be withdrawn, the individual ceases to be eligible for relief and the tax return needs to be amended accordingly.

When a claim is made on a SA tax return the required details in respect of each holding of shares should be copied from the form SEIS3 into the space reserved at the end of the form for further information.

If the shares were issued in a year for which it is too late to make or amend a Self Assessment, or if the claim is for capital gains re-investment relief, the investor must also complete the claim part of the claim form and send it to his or her tax office.

Investors who wish to obtain relief for an investment for the current year without waiting for the year to end can effectively do so by requesting a change to their code number (using the claim section of form SEIS3) or by claiming a reduction in a payment on account.

As regards the procedure where the investor wants to treat some of the shares as issued in the year before the year in which they were issued see VCM35170.

VCM35170 - SEIS: company and investor procedures: investor claims: shares treated as acquired in preceding year

Where the investor wishes to treat some of the shares as issued in the year before the year in which they were issued (see VCM31130), it will be necessary to make two separate claims.

Example

Mr Illingworth subscribes £50,000 for 50,000 shares which are issued to him on 30 September 2014. He receives form SEIS3 on 31 October 2014. He wants 20,000 shares to be treated as issued in the previous year.

His claim to relief on £30,000 for 2014-15 will be made after the end of the year on his tax return. In the meantime he completes the claim section of form SEIS3 to show a claim to relief on £20,000 for 2013-14, thus amending his tax return for that year. At the same time he uses the same means to obtain a coding adjustment for 2014-15.

VCM35180 - SEIS: company and investor procedures: investor claims: examining claims

Where a claim, or a request for a current year adjustment, falls to be examined, the following matters should be considered:

- Has the claimant (or any associate) been employed by the company at any time since the shares were issued? If so, report the facts to the Inspector who authorised the issue of the form SEIS3, who will decide whether the claimant is a qualifying individual.
- Will the relief fall within the maximum amount allowed for the year in question? (See VCM31130).
- If the claim relates to shares which the claimant requires to be treated as issued in the previous year will the total amount dealt with in this year be within the maximum allowed? (See VCM31130 and VCM35170).
- Does the amount on which relief is claimed tally with the amount shown at part 1 of form SEIS3, and is the claim for the correct year?
- If part 1 of form SEIS3 shows that any value has been received, has the amount on which relief is claimed been restricted accordingly?

If for any reason the claim falls to be refused, see VCM35200.

VCM35190 - SEIS: company and investor procedures: investor claims: action after receipt

Where a claim is accepted (either without enquiry or after enquiry) this should be notified to the Small Company Enterprise Centre (SCEC) office dealing with the company. If there is an SEIS3 claim form send a copy of it to the SCEC office, using form MS117 LFC. If there is no SEIS3 claim form, complete an S/EIS3 (Internal) and send this. That form is also available on LFC. Sending these forms enables the SCEC to check that the investor qualifies for the relief and that the amount and year are correct, and assists the Inspector in arranging for any reduction of relief which may be needed at a later stage.

Claims to income tax relief totalling less than £5000 need not be referred to SCEC.

VCM35200 - SEIS: company and investor procedures: investor claims: refusal of claims

If a claim cannot be accepted and agreement cannot be reached, the officer should send a formal notice of refusal to the claimant with a covering letter, a copy of it being sent to the agent where appropriate. Where the refusal relates to more than one claim, the notice should identify clearly all the separate claims to which it relates.

There is no requirement for the refusal of a claim to be included within a closure notice.

The notice of refusal should be on the following lines:

'The claim(s) to Income Tax relief under the Seed Enterprise Investment Scheme listed above have been duly considered and I hereby give notice of my decision as follows; the claims are refused. The grounds for this decision are that….

If you do not accept this decision, written notice of appeal should be made to me within 30 days of receipt of this notice.

If you appeal I will consider any further information you send me and try to reach agreement with you. If we cannot agree, you can

-
  - ask for my decision to be reviewed by an HMRC officer not previously involved in the matter, or
  - notify your appeal to an independent tribunal

If you opt for a review you can still notify your appeal to the tribunal after the review has finished.'

VCM35210 - SEIS: company and investor procedures: obligation to notify HMRC of disqualifying events

ITA07/S257GE, S257GF

Investor obligations to notify HMRC

If an investor becomes aware of an event which should result in the withdrawal or reduction of relief, he or she is obliged to notify HMRC of that event within 60 days of it occurring. Events which the investor is obliged to notify are any which would result in relief falling to be withdrawn or reduced for any of the following reasons:

- the investor ceases to be a qualifying investor (see VCM32010)
- there is a loan linked to the investment (see VCM32050)
- the shares are disposed of within Period B
- there is a put option or a call option over the shares (see VCM36030)
- the investor or an associate has received value (see VCM36040)

Company obligations to notify HMRC

The company is obliged to notify HMRC within 60 days of any event as a result of which any of the following happens or will happen:

- the monies raised by a share issue will not be spent as required by ITA07/S257CC (see VCM33040),
- the company ceases to be a qualifying company (see VCM34010),
- the company or a person connected with the company provides value to the investor or an associate (see VCM36040),
- the company acquires a trade or assets from parties controlling the company (see VCM36050),
- the company acquires share capital from parties controlling the company (see VCM36050).

If an investor or the company fails to provide the required information within the 60 day period, or fraudulently or negligently provides incorrect information, either may be liable to penalties under TMA70/S98.

See VCM36100 for HMRC's powers to require the production of information in certain circumstances.

VCM36000 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: contents

VCM36160 Procedure: date from which interest is chargeable
VCM36170 Procedure: HMRC powers to obtain information

VCM36010 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: overview

Both income tax relief and capital gains re-investment relief ('tax relief') will be withdrawn if during the three years from the date of issue of the shares:

- the investor becomes employed by the company without being a director of the company (see VCM32020),
- the investor's holding in the company becomes a 'substantial interest' (see VCM32030),
- the shares cease to be eligible shares (see VCM33020) or there is a put or call option over them (see VCM36030)
- the company ceases to meet the qualifying conditions (see VCM34000+)
- the company fails to spend the money raised by the share issue as required (see VCM33040)

This is additional to the general power to withdraw relief under TMA70/S29(1)(c) where an HMRC officer discovers that the relief is excessive.

Tax relief will be either withdrawn or reduced if at any time during the three years from the date of issue of the shares:

- the investor disposes of any of the shares (see VCM36020),
- the investor or associate receives 'value' from the company or from a person connected with that company (see VCM36040).

VCM36020 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: disposal of shares

ITA07/S257FA, S257FB

Relief will be withdrawn where before the end of period B (see VCM31140) the investor disposes of shares for which SEIS relief has been given. Guidance on the attribution of SEIS relief to shares is at VCM35020 and on the identification of shares on a disposal is at VCM37020.

The death of an investor does not trigger the withdrawal of any relief given - ITA07/S257GC. A disposal to a spouse or civil partner does not trigger the withdrawal of any relief given - the shares are treated as though the spouse or civil partner had subscribed for them - ITA07/S257FA(4) (see VCM37010).

'Disposal of shares' is defined under S257HH as including the disposal of any interest in or right in or over the shares. It includes the situation where the investor is treated as having exchanged one set of shares for another by virtue of TCGA92/S136.

Calculation of relief to be withdrawn

Where relief has to be reduced following a disposal, the amount of the reduction is:

- the amount of relief attributable to the shares,

or

- a sum equal to tax at the SEIS rate on the amount or value of the consideration received,

whichever is the smaller.

But if the relief attributable to the shares is less than tax at the SEIS rate on the amount originally subscribed, for example because the investor has insufficient income tax liability against which to set the whole amount, the reduction in the relief is to be restricted proportionately.

Example 1

Miss Bergen subscribed £100,000 for shares in Serena's Shoes Ltd issued to her in 2014-15, and obtained relief of £50,000 (£100,000 at 50%). Two years later she sells the shares under a bargain at arm's length for £80,000.

50% of £80,000 is £40,000 and this, being less than £50,000, is the amount of relief to be withdrawn. (She may be able to claim Share Loss Relief on the net loss of £72,000, i.e. £90,000 less the remaining tax relief of £18,000, - see VCM70000 onwards.)

Example 2 - maximum relief not obtained

If Miss Bergen's income tax liability in 2014-15 before relief was only £30,000, so that the relief attributable to her shares was only that amount instead of the full £50,000, the disposal proceeds must be apportioned by multiplying them by the relief obtained (£30,000) divided by the relief claimed (£50,000). The apportioned disposal proceeds amount to £48,000. £48,000 multiplied by the SEIS rate of 50% is £24,000, which is less than the relief obtained of £30,000. The relief is therefore reduced by £24,000.

Part disposals

If the disposal is of part only of the holding of shares we need to decide how much of the relief attributable to the holding relates to the shares disposed of. If the shares are disposed of for the same amount or more than the individual paid for them, the relief withdrawn will be a proportionate amount of the relief originally given. If they are disposed of for less than the individual paid for them, (providing the disposal was by way of a bargain at arms length), only relief equal to tax at the SEIS rate on the amount of consideration received is withdrawn. The following examples (which assume that disposals are at arms length) illustrate how the amount of relief to be withdrawn is calculated.

Example 3

Mr Larkin subscribed £100,000 for 100,000 shares in Sussex Crafts Ltd and obtained relief of £50,000. Two years later he disposes of 25,000 shares for a consideration of £30,000. The relief is apportioned across the 100,000 shares so that £12,500 is attributable to the 25,000 shares sold, leaving £37,500 attributable to the 75,000 shares retained. Since the relief of £12,500 is less than 50% of the consideration of £30,000, it is withdrawn in full.

Example 4

Suppose that Mr Larkin receives only £10,000 for the 25,000 shares that he sells. The apportioned relief of £12,500 exceeds 50% of the consideration of £10,000, so only £5,000 of the relief attributable to those shares is withdrawn. As before, the relief apportioned to the remaining 75,000 shares is £37,500; if those shares are later disposed of at a profit no part of the remaining £37,500 of relief relating to the shares already disposed of can be withdrawn on account of the later disposal.

VCM36030 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: call and put options

ITA07/S257FC, S257FD

Income tax relief is not available in relation to any shares if at any time before the termination date there is a put option or a call option over the shares.

A **put option** is defined by the legislation as an option granted to the investor by any person which, if exercised, would bind the grantor to purchase any of the relevant shares.

A **call option** is defined as an option granted by the investor which, if exercised, would bind the investor to sell any of the relevant shares.

VCM36040 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: value received by investor: overview

ITA07/S257FE to 257FO

Where an individual who has obtained relief, or is entitled to obtain relief, in respect of shares in a company receives any value within period A (see VCM31140) that relief is to be reduced. For the calculation of the reduction, seeVCM36050.

But where the value received is insignificant, the relief is not affected. See VCM36060 for the meaning of 'insignificant'.

This rule is extended by ITA07/S257FM to cover cases where:

- the value comes from any person connected with the company (whether it becomes connected before or after the value leaves it)
- the recipient is an associate of the individual.

VCM36070 sets out the circumstances in which value is considered to be received, and explains how the amount of the 'value' is to be determined.

A number of types of payment are not treated as the provision of 'value' - see VCM36080.

How much relief is withdrawn will depend on the amount of the value received. There is scope for relief to be retained if the value received is made good by the investor as soon as is practicable. See VCM36090.

Obligation to report

An individual who receives value is obliged by ITA07/S240 to make a report to HMRC within 60 days. Failure to make such a report attracts a penalty under TMA70/S98.

VCM36050 - SEIS: withdrawal or reduction of relief: value received by the investor: calculation of reduction of relief

ITA07/S257FE, S257FJ, S257FK, S257FL

Where relief falls to be reduced because the investor has received value from the company, the amount of the reduction is the amount of the value received multiplied by the SEIS rate of 50%, or the amount of relief attributable to the shares, whichever is the smaller.

Where the investor has not had the maximum amount of relief on his investment, possibly because he had insufficient income in the year, relief is reduced in proportion to the amount originally obtained.

Where value is received in respect of more than one issue of shares, the receipt is related to the earliest share issue as far as possible.

Example 1

In May 2013 Mr Potter was issued with shares for which he had subscribed £10,000 and received £5,000 relief. On 1 June 2014 he receives value of £7,500. £7,500 at the SEIS rate of 50% is £3,750 and that is the amount of relief withdrawn as that is less than the £5,000 relief originally obtained.

Example 2

If Mr Potter had only had tax liability for that year of £1,000, he would have received only that amount of relief. In this situation the figure of value received of £7,500 must be apportioned by applying the formula at ITA07/S257FL. The formula is the amount of the relief obtained (£1,000) divided by the amount claimed (£5,000), giving an apportioned value received figure of £1,500. That figure is then multiplied by the SEIS rate of 50% to give the sum of £750. The reduction in relief is the smaller of that sum, and the amount of relief attributable to the shares (£1,000). So in this case the relief is reduced by £750.

The effect of this is that his relief is the same proportion as if he had been able to claim all the available relief on his subscription.

Example 3 - multiple share issues

In May 2012 Mr Shah was issued with shares for which he had subscribed £3,000, and he obtained full relief of £1,500 for this. In May 2013 he subscribed £10,000 for further shares in the same company. Because his Income Tax liability for 2013-14 was small he obtained relief of £4,000 only for this subscription.

In August 2014 he receives value from the company of £4,000. In this circumstance the value received must be apportioned to each share issue by multiplying it by the ratio of that share issue to the total of all the share issues. On the first issue the apportioned amount of value received is £4,000 x £3,000 / £13,000 = £923, so the relief withdrawn is the lesser of £923 x 50% = £462 or £3,000 x 50% = £1,500, meaning relief of £462 is withdrawn.

On the second issue the apportioned amount of value received is £4,000 x £10,000 / £13,000 = £3,077. The relief withdrawn is the lesser of £3,077 x 50% = £1,538 multiplied by £4,000 / £5,000 = £1,209, or £4,000, meaning relief of £1,209 is withdrawn.

Example 4 - value received from connected persons

Graham and Mark own Gramark Consultants Ltd. They each subscribe for a 30% holding in a new company, Ecofriendly Umbrellas Ltd, and obtain relief. Shortly afterwards Mark receives value from Gramark Consultants Ltd.

Because Graham and Mark are a group that controls each company the two companies are connected under ITA07/S993(5)(d). So, by virtue of ITA07/S221(c), Mark has received value from a company connected with Ecofriendly Umbrellas Ltd and his relief must be reduced.

VCM36060 - SEIS: withdrawal or reduction of relief: value received by investor: meaning of 'insignificant'

ITA07/S257FF, S57FG

Where the amount of the value received is 'insignificant' it is ignored. An amount is insignificant for this purpose if:

- it does not exceed £1000, or
- if it exceeds £1000 it is insignificant in relation to the amount subscribed by the individual for the shares in question.

Our view is that for the purpose of the second category above 'insignificant' must be given its normal dictionary meaning of trifling or completely unimportant.

To ensure that this relaxation is not used for avoidance purposes, it is provided that the amount of any value shall not be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the share issue.

Where there is more than one receipt which is, on its own, insignificant as defined, the rule must be applied to the total amount received within period A (see VCM10540). For example, suppose an individual received value of £600 on 1 February 2012 and the same sum every three months thereafter. Assuming £1200 was not regarded as insignificant, the individual would be regarded as receiving value of £1200 on 1 May 2012, a further £1200 on 1 November 2012, and so on.

VCM36070 - SEIS: withdrawal or reduction of SEIS relief: value received by investor: when value is received

ITA07/S257FH, S257FI

The circumstances in which individuals receive value, and how that value is quantified for the purpose of computing the amount of a reduction of relief, are shown below. In this context references to payments or transfers to individuals include ones made to them indirectly or made to anyone else to their order or for their benefit.

Circumstances	Amount
1. The company repays, redeems or repurchases any of its share capital or securities belonging to the individual.	The amount receivable or, if greater, the market value of the shares or securities.
2. The company makes a payment to the individual for giving up his right to any of its the shares or securities on their cancellation or extinguishment.	The amount receivable or, if greater, the market value of shares or securities market.
3. The company repays a debt owed to the individual. A debt incurred after the issue of the relevant shares is not taken into account for this, unless that debt replaced an earlier debt incurred before the share issue.	The amount receivable or, if greater, the value of the debt.
4. The company makes a payment to the individual for giving up his right to any debt on its extinguishment. ('ordinary trade debts' - see below - and debts in respect of payments listed at VCM36070 are excepted from this rule).	The amount receivable or, if greater, the market value of the debt.
5. The company releases or waives any liability of the individual to the company. In addition to an actual release or waiver, a company is treated as having released or waived liability if the individual fails to discharge a liability owed to the company within 12 months of the time when it ought have been discharged.	The amount of the liability.
6. The company discharges, or undertakes to discharge, an individual's liability to a third person.	The amount of the liability.
7. The company makes a loan or advance to the individual	The amount of the loan or

other than one repaid in full before the issue of the shares.	advance.
8. The company provides a benefit or facility for the individual.	The cost to the company of providing the benefit facility less a consideration given for it by the individual.
9. The company transfers an asset to the individual for no consideration or consideration less than its market value.	The difference between the market value of the asset and any consideration given for it.
10. The individual transfers an asset to the company for a consideration in excess of its market value.	The difference between the market value of the asset and the consideration received for it.
11. The company makes any other payment to the individual, except payment within VCM36060 or one made in discharge of an 'ordinary trade debt' - see below.	The amount of the payment.
12. The individual receives any payment or asset in connection with the winding up or dissolution of the company.	The amount of the payment or market value of the asset.
13. The individual disposes of any share capital or securities, or rights over such shares to: • A person who has a 'substantial interest' in the company (see VCM32030) • Any employee of the company • Any director of the company	The amount receivable or, if greater, the market value of the shares.

In the EIS case of Optos plc v Revenue and Customers Commissioners (SpC 560), the Special Commissioners took the view that loan notes are a form of debt and the issue of conversion shares to repay loan notes is a receipt of value under ITA07/S216(2)(b), the EIS equivalent to ITA07/S257FH(2)(b).

In the EIS case of Blackburn & Another v Revenue and Customs Commissioners (SpC 606) the Special Commissioners considered value received in relation to payments made to the company in advance of a share issue. In contrast to Optos the payment in advance in this case was not considered to create a debt and no value was received by the issue of the shares as there was a clear intention that the payment was intended to be used to subscribe for shares to be issued at a later time.

Ordinary trade debt

This is defined at ITA07/S257FH(13) as any debt for goods and services supplied in the ordinary course of a trade or business where any credit given does not exceed six months and is not longer than that normally given to the customers of the person carrying on the business.

VCM36080 - SEIS: withdrawal or reduction of relief: value received by investor: payments not to be included

ITA07/S257FH(3) and (4)

Certain payments are not to be treated as 'value received'. These are as follows:

- Repayment or reimbursement of travelling or other expenses which were incurred by the investor or an associate of the investor in the performance of that person's duties as a director of the company,
- Interest on money lent to the company or to a person connected with the company, providing that the interest is at a normal commercial rate,
- Dividends or distributions which represent no more than a normal commercial return on the investment,
- Any payment for the supply of goods which does not exceed the market value of those goods,
- Any payment of rent for a property occupied by the company or by a person connected with the company, which does not exceed a reasonable commercial rent for the property,
- Any necessary and reasonable remuneration paid for services rendered to the company or a person connected with the company, where the services are provided in the course of a trade or profession and the remuneration is taken into account in arriving at the profits of that trade or profession. 'Services' in this context excludes secretarial or managerial services, or services of a kind undertaken by the company or connected person to whom they are provided.

VCM36090 - SEIS: withdrawal or reduction of relief: value received by investor: receipt of replacement value

ITA07/S257FN, S257FO

The individual can avoid the consequences of receiving value by returning the whole of the value to the person that gave it. The value may be returned in any of the following ways:

- by a cash payment, other than a payment listed below, or a payment for shares or securities of the company (unless the receipt of value in question arose from the receipt of those shares or securities),
- where the receipt of value arose from the waiver or discharge of a liability or debt, by reversing that transaction,
- where the receipt of value arose from either the transfer of an asset to the individual at an under-value or the transfer any asset to the company at an over-value, by the transfer of any asset in the reverse direction at a corresponding under-value or over-value.

Where the value comes from a person connected with the company it should be returned to that person, and where it is received by a person associated with the individual it should be returned by that person. Note that the value must be wholly returned; returning part of it has no effect.

The replacement value must be given without unreasonable delay. If the amount of the value received was the subject of appeal proceedings it must be given within 60 days after the final determination of the appeal. A payment made before the value was received may be taken into account as replacement value, provided it was not made earlier than one year before the issue of the shares.

If the value is replaced by way of a subscription for shares, no claim to relief (or, if the replacement value is given by a company connected with the individual, investment relief under the CVS) can be made in respect of that subscription.

Replacement in cash

The payments referred to above are payments of the following types:

- a reasonable payment for goods, services or facilities,
- a payment of interest on normal commercial terms,
- a payment of a dividend which does not exceed a normal return on the investment,
- a payment for an asset not exceeding its market value,
- a payment of rent on normal commercial terms,
- a payment to discharge a trade debt.

VCM36100 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: acquisition of trade or trading assets

ITA07/S257FP

As the SEIS is intended to encourage genuinely new investment in companies by outsiders the legislation needs to ensure that relief is not available to anyone who directly or indirectly owned the trade before it came to be owned by the company. This is done by ITA07/S257FP.

Where the section applies any relief given to the individual is to be withdrawn. (Under ITA07/S257FP(4) this has the effect that where relief has not yet been given the individual is not eligible for it.)

To decide whether the provision might apply to an investor we have to consider whether, at any time within period A (see VCM31140), either the individual or any group of persons to which he or she belongs either:

- has more than a half share interest in the trade or part of the trade as carried on by the company or its qualifying subsidiary, or
- controls the company.

In the first case, the provision will apply if the individual or group also had such an interest in the trade, or a part of the trade, at some previous time in the same period when it was carried on by some person other than the company. In the second case, ITA07/S257FP will apply if the individual or group, at some previous time in the same period, controlled another company which was then carrying on the trade or part of the trade.

VCM36110 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: acquisition of share capital

ITA07/S257FQ

ITA07/S257FQ covers the situation where the individual investor or a group of which he or she is part formerly controlled a company which then carried on the trade and that company has come to be owned by the company in which the individual has now invested.

For the purpose of deciding whether anyone has a half share in a trade or can control a company the rights and powers of each person are to be taken as including the rights and powers of any associate, see VCM32020, and 'control' has the meaning given in CTA10/S450 (see CTM60200).

The persons to whom a trade belongs, or the extent of their interests in it, are to be determined in accordance with CTA10/S941 (see CTM06020).

VCM36120 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: relief subsequently found not to have been due

ITA07/S257FR

In some cases it may be that the officer forms the opinion that relief falls to be withdrawn even though no notification has been given under ITA07/S257GE or ITA07/S257GF. Where in such a case the reason for the officer's opinion is that:

- the company is not a qualifying company, or
- the shares were not issued to raise money for the purpose of a qualifying business activity, or
- the company using the money raised does not satisfy the conditions applying to it, or
- the money raised was not employed for the purpose of a qualifying business activity within the time allowed,

the officer must give notice to the company before relief can be withdrawn. The notice should specify the date of the relevant share issue, state the grounds for the decision, and set out the company's right of appeal against it.

The purpose of this procedure is to allow the party to appeal proceedings to be the company itself in cases where most of the relevant evidence lies within its own power, and to simplify the withdrawal process in cases where there is a large number of investors. But neither the failure of a company to appeal nor any decision by the tribunal in favour of HMRC in any appeal prohibits a shareholder from making his own appeal against a withdrawal assessment subsequently.

Once the officer has given a notice under ITA07/S257FR it is not necessary to await determination of any appeal by the company before making an assessment to withdraw relief from individual investors. But if such assessments are made the officer should ensure that all individuals assessed are aware of the fact and that the company's appeal is heard first (or at the same time).

VCM36130 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: procedure: overview

ITA07/Part 5A/Chapter 7

Where the officer dealing with the affairs of a company becomes aware that relief falls to be withdrawn he or she will need to notify the tax offices dealing with the individuals concerned.

The notification will need to include the following details:

- the reason for the withdrawal,
- the amount to be withdrawn, if not the whole of the relief,
- the year in which the shares to which the relief relates were issued,
- the reckonable date for interest (see VCM36110).

VCM36140 - SEIS: income tax relief: withdrawal or reduction of relief: procedure: withdrawing relief

ITA07/S257G

SEIS relief cannot be withdrawn via self-assessment. Instead it should be recovered by the making of a manual Special Assessment using SEES, and the charge entered onto SAFE.

Instructions on how to do this are at SAM22001 to SAM22030 following the same procedure as would apply for a withdrawal of EIS relief.

Where the shares in question were acquired from a spouse or civil partner, the assessment will be on the person they were transferred to.

VCM36150 - SEIS: income tax relief: withdrawal or reduction of relief: procedure: time limits for assessments

ITA07/S257GB

Where an assessment to withdraw relief is required because of an event occurring after the date of the claim to relief, it may be made within six years after the end of the year of assessment in which that event occurred.

A discovery by an Inspector under TMA70/S29(1) that any relief obtained was excessive (for example, because not all the conditions were satisfied at the time when it was allowed) should not be regarded as an 'event' giving rise to the time limit mentioned in the paragraph above. In these circumstances, the time limit in TMA70/S34(1) (that is, five years after the 31 January next following the year of assessment for which the further assessment is to be made) applies, except in a case of fraudulent or negligent conduct where the extended time limits in TMA70/S36 apply.

VCM36160 - SEIS: income tax relief: withdrawal or reduction of SEIS relief: procedure: date from which interest is chargeable

ITA07/S257GD

Where SEIS relief falls to be withdrawn by reason of an event occurring after the date of the claim, there are special rules for determining the relevant date from which interest starts to run. This date will always precede the date when the SA return is amended or the assessment withdrawing relief is made.

Normally the relevant date from which interest starts to run will be 31 January next following the tax year in respect of which the assessment is made.

Where the relief is withdrawn following a discovery by the officer under TMA70/S29 (1) that it was excessive, the normal rules in TMA70/S86 for determining the relevant date apply.

VCM36170 - SEIS: withdrawal or reduction of SEIS relief: procedure: HMRC powers to obtain information

ITA07/S257GG and S257GH

See also VCM15170 for a description of the obligations imposed on investors and the company to notify HMRC of circumstances which should result in relief being reduced or withdrawn.

ITA07/S257GG

If an HMRC officer has reason to believe that a person has failed to give notice of an event (see VCM15170) which removes the entitlement to relief, that person may be required, by

notice in writing, to provide such information relating to any event as may reasonably be required. The time limit allowed for furnishing the information must not be less than 60 days.

ITA07/S257GG may not be used to issue speculative notices. Any information required under a notice must be confined to matters that may cause the withdrawal of relief.

ITA07/S257GH

In addition to the above, ITA07/S243 allows HMRC to require certain persons to provide information in relation to any scheme or arrangement which the officer has reason to believe may result in SEIS relief not being due. The types of arrangement covered by this rule are as follows:

- where the shares are subscribed for tax avoidance purposes (see VCM11040),
- where the company or a subsidiary is put into administration, wound up or liquidated for tax avoidance purposes,
- where shares are subscribed for under the type of arrangements described at VCM11090,
- where there are pre-arranged exit or investment protection arrangements of the type described at VCM12080,
- where there are disqualifying arrangements as described at VCM12100,
- any arrangements which would result in the company failing the control or independence requirements (see VCM13100), or
- any arrangements which would result in either a qualifying 90% subsidiary (see VCM13080) or a qualifying subsidiary (see VCM13130) ceasing to meet the relevant requirements for qualification.

HMRC may seek information from investors, the company, persons connected with or controlling the company, or persons believed to be party to disqualifying arrangements as appropriate to the circumstances and as outlined at ITA07/S257GH.

Failure to comply with a notice given under ITA07/S257GG or S257GH may attract penalties under TMA70/S98.

The officer is not precluded by the obligation to secrecy from disclosing to a company, in the course of exercising the power to require information, that relief has been claimed or given in respect of any of its shares.

VCM37000 - SEIS: income tax relief: supplementary and general: contents

VCM37040 Nominees and bare trustees

VCM37010 - SEIS: income tax relief: supplementary and general: transfers between spouses or civil partners

ITA07/S257H

Transfers of shares between spouses or civil partners are not treated as a disposal. The SEIS relief remains attributable to the shares until a disposal or other relevant event by the spouse or civil partner to whom they were transferred.

VCM37020 - SEIS: income tax relief: supplementary and general: identification of shares on a disposal

ITA07/S257HA

An individual who owns shares to which relief is attributable (see VCM35020) may also possess other shares in the same company of the same class. Also, shares to which relief is attributable may have been acquired at various times and at various prices. Consequently, if the individual disposes of a part only of the holding we need rules to identify the particular shares disposed of. The rules are as below.

- Where the shares were acquired on different days, those acquired first are treated as disposed of first.
- As between shares acquired on the same day, the order of disposal is:
    - shares to which no SEIS relief of any kind is attributable,
    - shares to which SEIS relief, but not SEIS re-investment relief, is attributable,
    - shares to which both types of SEIS relief are attributable.

- Where shares have been treated as issued in the year preceding the actual year of issue, for the purpose of claiming Income Tax relief (see VCM35170) those shares are treated as disposed of before the others issued on the same day.

For the purpose of the above:

- shares to which either type of SEIS relief is attributable and which have been acquired from a spouse or civil partner are treated as issued when the spouse or civil partner acquired them,
- shares acquired as a result of a company reconstruction are treated as acquired when the original shares in the predecessor company were acquired.

A special rule applies to shares issued as bonus shares - see VCM35020.

A share disposal may result in the withdrawal or reduction of SEIS income tax relief - see VCM36010.

VCM37030 - SEIS: income tax relief: supplementary and general: acquisition of issuing company

ITA07/S257HB to HD

Normally an exchange of shares for other shares counts as a disposal (VCM36020). However, the SEIS has a provision whereby in certain circumstances the new shares are effectively treated as being a continuation of the old holding. Thus the new shares are treated as having been issued and the original qualification periods continue to run.

The circumstances in which this treatment is available are where the effect of the exchange is to insert a new holding company over the original investee company. This may be done as part of a rationalisation of the structure of the business or in preparation for obtaining a listing on a stock exchange. The provisions do not apply where two companies become subsidiaries of the same new holding company or in the case of a take-over by an established company.

Conditions

- At the time of the exchange, some relief is attributable to the old shares,
- The new shares are shares in a company in which the only issued shares, immediately before the exchange, are the original subscriber shares,

HMRC confirmed in advance of the exchange that they were satisfied that it would be effected for bona fide commercial reasons and would not form part of a scheme or arrangement to which TCGA92/S137 (1) would apply - in other words, HMRC gave a clearance under TCGA92/S138 (1) - see CG52632

- The consideration received in exchange for the old shares consists wholly of the new shares.

VCM37040 - SEIS: income tax relief: supplementary and general: nominees and bare trustees

ITA07/S257HE

Reliefs under the SEIS may be available where an individual subscribes for shares, and holds them, through a nominee. This facilitates the use of investment funds, which enable money pooled by a number of investors to be subscribed for shares in a range of companies, the investments being held in the name of a nominee.

For income tax relief the general rule, in ITA07/S257AA, is that to be eligible for the relief an individual must subscribe for shares on his or her own behalf. But it is provided in ITA07/S257HE that shares subscribed for, issued to, held by or disposed of for an individual by a nominee are to be treated as subscribed for, issued to, etc, that individual.

The company, which may or may not know who the beneficial owner is to be, should enter the name of the actual subscriber on the form SEIS3.

Note that the exception in ITA07/S257HE does not go far enough to enable investors to obtain income tax relief if they invest in a partnership which in turn invests in shares (including a limited partnership and a limited liability partnership). This is because rather than having sole ownership of a specific allocation of shares, the individual will instead own a proportion of all the partnership assets (as will all the other partners in the partnership).

VCM40000 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: contents

VCM40010 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: introduction

Gains arising on disposals of shares in a SEIS company may not be chargeable to CGT. This relief is called exemption or SEIS disposal relief in this guidance. It applies only to shares attracting SEIS Income Tax relief.

The SEIS disposal relief legislation is at TCGA92/S150E and TCGA92/S150F. The principal features of the scheme are:

- Gains on the disposal of SEIS shares acquired within the annual investment limit that applies for the Income Tax relief are exempt unless the Income Tax relief is reduced or withdrawn.
- Losses on the disposal of SEIS shares are allowable. The amount of the capital loss is reduced by the amount of the Income Tax relief still attributable to the shares disposed of.
- The ordinary share pooling and identification rules do not apply to SEIS shares. If there is a disposal of only some of a class of shares in a company, you use the SEIS share identification rules to establish whether the disposal relates to SEIS shares and, if so, which SEIS shares.

VCM40020 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: CGT exemption

TCGA92/S150E (2)

As the relief applies only to shares issued on or after 6 April 2012 the earliest the CGT exemption can apply is 6 April 2015. A gain on a disposal of shares on which SEIS Income Tax relief has been claimed may be exempt if the disposal is made on or after the third anniversary of the date on which the shares were issued.

If the shares are disposed of before this date, the Income Tax relief or part of it will be withdrawn, see VCM36020. There is no CGT exemption for any gain arising on such a disposal.

The investor may not be able to obtain Income Tax relief because their total income is too low or their income tax liability is reduced to nil by other reliefs. If the investor does not obtain any Income Tax relief on a subscription for shares in a SEIS company there is no CGT exemption for those shares. However, CGT exemption is available if some Income Tax relief is given even though the effect of the claim is to reduce the investor's Income Tax liability to nil, see VCM40060.

If Income Tax relief is obtained in full (that is, the amount of relief is equal to tax at the SEIS rate on the full amount of the subscription), and it is not withdrawn or reduced, there is no restriction on the CGT exemption. For example, in December 2012 an investor subscribes £50,000 for 200,000 25p ordinary shares in a SEIS company. The investor receives £25,000 Income Tax relief, none of which is subsequently withdrawn. All 200,000 shares would qualify for CGT exemption on disposals made on or after the third anniversary of the date of issue.

VCM40030 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: CGT exemption restricted

The CGT exemption may be restricted if:

- Income Tax relief is not given on the full amount of the subscription for SEIS shares, see VCM40040, or
- the amount of the Income Tax relief is reduced, or is withdrawn in full, see VCM40070.

VCM40040 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: Income Tax relief restricted

TCGA92/S150E (4) and (5)

The CGT exemption will be restricted if:

- the investor does not receive full Income Tax relief on their subscription, see VCM36000+,

unless

- the only reason full Income Tax relief cannot be given is because the claim reduces the investor's Income Tax liability to nil, see VCM40060.

The restriction will usually apply when an investor subscribes more than the amount on which Income Tax relief is available. Income Tax relief in any year of assessment may not exceed tax at the SEIS rate, 50 percent, on £100,000.

For example, on 1 December 2012 an individual may subscribe £150,000 for 100,000 shares in a SEIS company. Income Tax relief will only be given on £100,000 of the subscription. The CGT exemption only applies to a proportion of the gain on the disposal or part disposal of the 100,000 shares. You calculate the proportion of the gain which is CGT-exempt using the fraction R / T where:

R = the amount by which the individual's Income Tax liability is actually reduced, and

T = the amount of the subscription x the SEIS rate.

The effect of this formula is illustrated by the example at VCM40050.

This restriction does not apply if the shares are sold at a loss.

See VCM40100 for the treatment of losses.

VCM40050 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: Income Tax relief restricted: example

TCGA92/S150E (4) and (5)

- December 2012 an investor subscribes £150,000 for 100,000 shares in a SEIS company.
- Maximum Income Tax relief of £50,000 is given in the tax year 2012-13.
- January 2017 all the shares are sold for £270,000.

The chargeable gain before any exemption is calculated:

Disposal proceeds £270,000
Less cost £150,000
Chargeable gain £120,000

The TCGA92/S150E(5) formula is:
R = Amount of Income Tax relief = £50,000
T Subscription x SEIS rate (50%) £75,000

Only a part of the gain is treated as CGT-exempt. The exemption is restricted to:

£120,000 x 2 / 3 = £80,000

The chargeable gain becomes £120,000 - £80,000 = £40,000.

VCM40060 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: investor's income tax liability reduced to nil

TCGA92/S150E (4)(c)

The restriction provided by section 150E(5) does not apply if the only reason full SEIS Income Tax relief cannot be given is because the claim reduces the investor's Income Tax liability to nil. For example, an investor subscribes £100,000 for 100,000 £1 ordinary shares in a SEIS company. The investor claims Income Tax relief under ITA07/S257AB but only £16,000 worth of relief can be given before their Income Tax liability is reduced to nil, ITA07/S29(2). The restriction in TCGA92/S150E (5) does not apply.

VCM40070 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: income tax relief reduced

TCGA92/S150F

The CGT exemption may have to be restricted if the investor's Income Tax relief is reduced because they have received value from the company and ITA07/S257FE(2)(a) applies, see VCM36040.

The restriction is calculated as follows:

- compute the chargeable gain in the normal way including the operation of TCGA92/S150E(5), see VCM40040.
- reduce the exemption by an amount calculated by multiplying the gain by the fraction:

A = Reduction in Income Tax relief
B Total relief attributable to the shares before any reduction

If TCGA92/S150E (5) applies to reduce the exempt gain, the fraction above should be applied to the exempt part of the gain and the reduction made from that part. If the relief has been reduced on more than one occasion the numerator of the fraction is the total amount of all the reductions.

The effect of this formula is illustrated by examples at VCM40080 and VCM40090.

VCM40080 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: income tax relief reduced: example 1

TCGA92/S150F (2)

In this example TCGA92/S150E(2) applies but TCGA92/S150E(5) does not.

- December 2012 investor subscribes £100,000 for 100,000 shares in a SEIS company. Maximum Income Tax relief of £50,000 is given in the tax year 2012-13 applying the SEIS rate 50%.
- January 2014 the investor receives £20,000 value from the company. The Income Tax relief is reduced by £10,000 by making an assessment.
- January 2018 all the shares are sold for £270,000.

The chargeable gain before any exemption under section 150E(2) is calculated:

Disposal proceeds	£270,000
Less cost	£100,000
Chargeable gain	£170,000

The exemption applies only to the gain remaining after deducting the following amount:

Chargeable gain x Reduction in relief

Relief attributable to shares before the reduction

£170,000 x £10,000 = £34,000
£50,000

£136,000 of the gain is exempt and £34,000 remains chargeable.

VCM40090 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: income tax relief reduced: example 2

TCGA92/S150F (3)

In this example TCGA92/S150E(2) applies and TCGA92/S150E(5) applies also to restrict the exemption.

- December 2012 investor subscribes £150,000 for 100,000 shares in a SEIS company. Maximum Income Tax relief of £50,000 is given in the tax year 2012-13 applying the SEIS rate 50%.
- January 2014 the investor receives £20,000 value from the company. The Income Tax relief is reduced by £6,666 (£10,000 x £100,000 / £150,000) by making an assessment.
- January 2018 all the shares are sold for £270,000.

The chargeable gain before any exemption under section 150E(2) is calculated:

Disposal proceeds £270,000
Less cost £150,000
Chargeable gain £120,000

The TCGA92/S150E (5) formula is:

R = Amount of tax relief = £50,000
T Subscription x SEIS rate £75,000

The chargeable gain exemption is restricted to £120,000 x 2/3 = £80,000 leaving a chargeable gain at this point of £40,000.

The TCGA92/S150F (2) formula is

A = Reduction in relief
B Relief attributable to shares before the reduction

The exemption is further reduced by the following amount:

£80,000 x £6,666 = £10,666
£50,000

The exempt gain becomes £69,334 and the chargeable gain £50,666 (£40,000 + £10,666).

VCM40100 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: losses

TCGA92/S150E (1) and (3)

An investor can claim a loss on the disposal of SEIS shares even if

- the Income Tax relief is not withdrawn and
- were a gain to accrue instead, that gain would not be a chargeable gain.

Where a loss arises it must be reduced by the amount of any Income Tax relief which remains attributable to the shares sold.

The examples at VCM40110 and VCM40120 show how allowable losses are reduced to take account of Income Tax relief.

VCM40110 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: losses: example

- December 2012 an investor subscribes £100,000 for 50,000 shares in a SEIS company. Income Tax relief of £50,000 is given in 2012-13 applying the SEIS rate 50%.
- January 2014 the investor sells all 50,000 shares for £60,000. Income Tax relief of £30,000 in respect of the £60,000 value received by the investor is withdrawn (£60,000 x 50%), see VCM36020. Income Tax relief of £20,000 is not withdrawn and remains attributable to the shares sold. The allowable loss is calculated as below.

Disposal proceeds		£ 60,000
Less cost	£100,000	

Reduced by Income Tax relief*	£ 20,000	£ 80,000
Allowable loss		£(20,000)

*This is the SEIS Income Tax relief not withdrawn which remains attributable to the shares sold.

VCM40120 - Seed Enterprise Investment Scheme (SEIS): SEIS disposal relief: part-disposal: example

- December 2012 an investor subscribes £100,000 for 100,000 shares in a SEIS company. Income Tax relief of £50,000 is given in 2012-13.
- January 2014 the investor sells 25,000 shares for £10,000. Income Tax relief of £5,000 is withdrawn, (£10,000 x 50%), see VCM36020. Income Tax relief of £7,500 attributable to the shares sold is not withdrawn. The allowable loss is calculated:

Disposal proceeds		£ 10,000
Less cost	£25,000	
Reduced by Income Tax relief*	£ 7,500	£ 17,500
Allowable loss		£(7,500)

VCM45000 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: contents

VCM45140 Identification of disposals: examples
VCM45150 Assessments
VCM45200 Claims procedure

VCM45010 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: introduction

TCGA92/SCH5BB/PARA1 and PARA8(3)

SEIS re-investment relief applies for the tax years 2012-13 and 2013-14 only.

If an individual disposes of an asset that would give rise to a chargeable gain in 2012-13 and reinvests all or part of the amount of the gain in shares which qualify for SEIS relief, also referred to in this guidance as SEIS Income Tax relief, the amount reinvested may be exempted from Capital Gains Tax.

If an individual disposes of an asset that would give rise to a chargeable gain in 2013-14 and reinvests all or part of the amount of the gain in shares which qualify for SEIS relief, half of the amount reinvested may be exempted from Capital Gains Tax.

A £100,000 limit applies for SEIS relief. Thus gains of up to £100,000 may be exempted for 2012-13 and up to £50,000 for 2013-14.

Claim

Re-investment relief must be claimed. It may be claimed only by individuals and not by other persons such as companies or trustees.

Qualifying gains

The investor may claim relief against any chargeable gain arising in 2012-13 or in 2013-14 on the disposal of an asset. The gain may arise at any time in the tax year. The chargeable gain is the gain after taking into account any mandatory reductions, and any other reliefs or elections claimed or made in computing the chargeable gain, but before the deduction of losses or the Annual Exempt Amount.

Qualifying Reinvestment

To claim relief for 2012-13 the investor must subscribe for shares issued to them in 2012-13 in respect of which they claim and receive SEIS relief for that year. If the shares were issued before the time the chargeable gain accrued, they must still be held at that time.

To claim relief for 2013-14 the investor must subscribe for shares issued to them in 2013-14 in respect of which they claim and receive SEIS relief for that year. If the shares were issued before the time the chargeable gain accrued, they must still be held at that time

If the investor subscribes for shares eligible for SEIS relief that are issued in 2013-14, they may claim Income Tax relief for 2012-13 as if a specified part of that issue had instead been issued in 2012-13. SEIS re-investment relief then also has effect as if that part had been issued on a day in 2012-13. Similarly, if the investor subscribes for shares eligible for SEIS relief that are issued in 2014-15, they may claim Income Tax relief for 2013-14 as if a specified part of that issue had instead been issued in 2013-14. SEIS re-investment relief then also has effect as if that part had been issued on a day in 2013-14.

VCM45020 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: how re-investment relief is allowed

TCGA92/SCH5BB/PARA1 (1) to (7)

The relief must be claimed and it is given by treating all or part of the gain in relation to which the claim is made as not being a chargeable gain. There is no requirement that the proceeds of the disposal giving rise to the gain are directly applied to subscribe for the new shares.

The investor can specify an amount of expenditure in the claim up to the amount subscribed for an issue of SEIS shares in the tax year for which he or she claims and obtains SEIS relief, the ‘SEIS expenditure’.

The amount of SEIS expenditure taken into account in the claim cannot exceed

- the amount of the SEIS expenditure specified in the claim,
- the amount of the SEIS expenditure that is unused, or
- that part of the gain which is unmatched.

If the claim is made in respect of a gain accruing in 2012-13, the amount of the gain matched with the SEIS expenditure is treated as not being a chargeable gain.

If the claim is made in respect of a gain accruing in 2013-14, 50% of the amount of the gain matched with the SEIS expenditure is treated as not being a chargeable gain.

An investor's SEIS expenditure is unused to the extent that it has not already been used against all or part of a chargeable gain either in a claim to SEIS re-investment relief or in a claim to EIS deferral relief within TCGA92/SCH5B.

The original gain is unmatched to the extent that it has not had any other expenditure set against it in a claim for SEIS re-investment relief or in a claim to EIS deferral relief within TCGA92/SCH5B.

Example 1

In 2012-13 a taxpayer carries out the following transactions:

- he disposes of a property under an unconditional contract dated 1 May 2012 giving rise to an agreed chargeable gain of £90,000,
- he subscribes for and is issued with £60,000 worth of shares in a SEIS company on 1 September 2012
- he subscribes for and is issued with a further £40,000 worth of shares in another SEIS company on 1 December 2012.

The taxpayer can claim a total amount of £90,000 SEIS re-investment relief in respect of this gain and the two share issues. The chargeable gain on the property is reduced to nil. He does not have to claim relief on his acquisition in September in priority to that in December.

Example 2

In 2013-14 a taxpayer carries out the following transactions:

- he disposes of a property under an unconditional contract dated 1 May 2013 giving rise to an agreed chargeable gain of £90,000,
- he subscribes for and is issued with £100,000 worth of shares in a SEIS company on 1 September 2013

The taxpayer can claim £45,000 SEIS re-investment relief in respect of the gain and issue of SEIS shares. The chargeable gain on the property is reduced to £45,000.

VCM45030 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: time limit for claim

TCGA92/SCH5BB/PARA3

The time limit for claiming SEIS re-investment relief is five years from 31 January following the end of the tax year in which the shares were issued (or treated as issued in accordance with ITA07/S257AB(5)). Thus a claim for 2012-13 must be made by 31 January 2019 and for 2013-14 by 31 January 2020.

Though it is a requirement that the investor obtains SEIS relief, a claim to SEIS re-investment relief may be made before effect is given to the claim for SEIS relief on which the SEIS re investment relief claim depends. Both claims may thus be made at the same time.

Note that a claim to re-investment relief reduces the amount of a chargeable gain accruing in 2012-13 or in 2013-14. Any repayment or discharge of tax relates to the year in which the gain accrues, not the year in which the claim is made.

VCM45040 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: relief restricted

Re-investment relief may be restricted if:

- SEIS Income Tax relief is not given on the full amount of the subscription for SEIS shares, see VCM45050.
- the amount of SEIS Income Tax relief has been reduced before re-investment relief was obtained see VCM45070.

VCM45050 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: income tax relief restricted

TCGA92/SCH5BB/PARA2 (1) & (2)

The restriction will usually apply when an investor subscribes more than the amount on which Income Tax relief is available. Income Tax relief in any year of assessment may not exceed tax at the SEIS rate on £100,000.

If the investor claims SEIS Income Tax relief for amounts subscribed for shares which exceed £100,000, you limit the amount of SEIS expenditure which may be set against the gain, see VCM45020, using the formula:

SA x £100,000
TSA

where

SA = the SEIS expenditure before applying the above formula

TSA = the total of amounts subscribed for shares issued in the tax year in respect of which the investor is eligible for and claims SEIS relief for that year

This is illustrated by the example at VCM45060.

VCM45060 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: income tax relief restricted: example

In 2012-13 an individual investor carries out the following transactions:

- He disposes of a property under an unconditional contract dated 1 May 2012 giving rise to an agreed chargeable gain of £130,000.
- He subscribes £40,000 for and is issued with shares in a SEIS company A Ltd on 1 September 2012.
- He subscribes £120,000 for and is issued with further shares in another SEIS company B Ltd on 1 December 2012.

He claims full SEIS Income Tax Relief in respect both share issues. He also makes claims for re-investment relief in respect of the amounts subscribed for the shares in both A Ltd and B Ltd.

Section 257AB(2)(b) ITA07 limits the amount on which the investor's SEIS Income Tax relief is based to £100,000.

Of the £40,000 subscribed for the shares in A Ltd the amount that can be matched with the chargeable gain is limited to

40,000 x £100,000 = £25,000
160,000

Of the £120,000 subscribed for the shares in B Ltd the amount that can be matched with the chargeable gain is limited to

120,000 x £100,000 = £75,000
160,000

The chargeable gain on the property is reduced to £30,000.

Had the transactions been carried out instead in 2013-14, the amounts subscribed for shares that could be matched with the chargeable gain would again be limited to a total of £100,000. After re-investment relief of £50,000 (see VCM45020) the gain on the property would be reduced to £80,000.

VCM45070 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: reduction in income tax relief attributable to shares before re investment relief obtained

TCGA92/SCH5BB/PARA2 (3) & (4)

Chapter 6 Part 5A ITA07 provides for the entitlement to SEIS Income Tax relief to be reduced, for example, if the investor within a certain period receives value from the issuing company. If the relief has been reduced before the re-investment relief is obtained, you limit the amount of SEIS expenditure which may be set against the gain, see VCM45080, by applying the fraction:

R1
R2

where

R1 = the amount of SEIS Income Tax relief attributable to shares when the re-investment relief is obtained.

R2= the amount of SEIS Income Tax relief which would have been so attributable in the absence of the reduction.

For the consequences should SEIS Income Tax relief be reduced or withdrawn after the relief has been obtained, see VCM45090.

Should both sub-paragraphs (2) and (4) of paragraph 2 Schedule 5BB apply, you use the formula (SA/TSA) x £100,000, see VCM45050, before applying the fraction R1/R2.

VCM45080 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: reduction in income tax relief attributable

to shares before re-investment relief obtained: example

In 2012-13 an individual investor carries out the following transactions:

- He disposes of a property under an unconditional contract dated 1 May 2012 giving rise to an agreed chargeable gain of £150,000
- 1 June 2012 he subscribes £100,000 for 100,000 ordinary shares in a SEIS company.
- 1 December 2012 he receives £20,000 value from the company.

Later he claims SEIS Income Tax relief and CG re-investment relief in respect of his subscription

Based upon the £100,000 subscription the investor would have been eligible for maximum Income Tax relief £50,000 in 2012-13. After reduction in respect of the earlier value received, he obtains relief £40,000.

Of the £100,000 subscribed for the shares the amount that may be matched with the chargeable gain is limited to

100,000 x £40,000 = £80,000
£50,000

The chargeable gain on the property is reduced to £70,000.

Had the transactions been carried out instead in 2013-14, the amount subscribed for SEIS shares that could be matched with the chargeable gain would again be limited to £80,000. After re-investment relief of £40,000 (see VCM45020) the gain on the property would be reduced to £110,000.

VCM45090 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: relief reduced or withdrawn

TCGA92/SCH5BB/PARA5

To obtain re-investment relief the investor must claim and obtain SEIS relief in respect of an issue of shares. Chapter 6 Part 5A ITA07 contains provisions which withdraw or reduce the Income Tax relief if certain events occur before the third anniversary of date of the share

issue. Where the Income Tax relief is withdrawn or reduced, there is a corresponding removal or reduction of re-investment relief. The removal or reduction of the relief is effected by deeming a chargeable gain to accrue to the individual in the tax year in which the shares were issued on a disposal made in that tax year.

Where in respect of shares issued to an individual

- SEIS relief is attributable to the shares,
- SEIS re-investment relief is also attributable to the shares, and

1. **the SEIS relief attributable to the shares is withdrawn**

a chargeable gain is treated as accruing in the tax year in which the shares were issued. The amount of the gain is the amount of the SEIS re-investment relief attributable to the shares immediately before the withdrawal of the Income Tax relief. No re-investment relief then remains attributable to the shares.

2. **the SEIS relief attributable to the shares is reduced**

a chargeable gain is treated as accruing in the tax year in which the shares were issued. The re-investment relief is reduced in the same proportion as the Income Tax relief and the amount of the gain is a fraction of the SEIS re-investment relief attributable to the shares immediately before the reduction. The fraction is:

$$\frac{R1 - R2}{R1}$$

where

R1 = the total amount of the SEIS relief attributable to the shares immediately before the reduction

R2 = the total amount of the SEIS relief attributable to the shares immediately after the reduction

The amount of re-investment relief remaining attributable to the shares is reduced by the amount of the gain brought back into charge.

This is illustrated by examples at VCM45100.

VCM45100 - Seed Enterprise Investment Scheme (SEIS): re-investment relief: relief reduced or withdrawn: examples

Example 1

An investor subscribes £50,000 for SEIS shares that are issued to him in 2012-13. He claims and obtains SEIS Income Tax relief in respect of the shares. He also claims in respect of the share subscription re-investment relief in relation to a chargeable gain of £40,000 from the disposal of a property in 2012-13. The chargeable gain is reduced to nil. Two years later he sells all the shares at undervalue to a friend.

The disposal of the shares is not by way of a bargain made at arm's length and all the SEIS relief is withdrawn. The whole of the re-investment relief is also withdrawn and a gain £40,000 becomes assessable for 2012-13.

Example 2

An investor subscribes £30,000 for SEIS shares that are issued to her in 2012-13. She claims and obtains SEIS Income Tax relief £15,000. She also claims in respect of the share subscription re investment relief in relation to a chargeable gain of £24,000 from the disposal of land in 2012-13. The chargeable gain is reduced to nil. Two years later, in 2014-15, she sells the shares at arm's length for £20,000.

On the sale of the shares £10,000 of the SEIS Income Tax relief is withdrawn. This is two thirds of amount attributable to the shares immediately before the sale and the re-investment relief is reduced in the same proportion:

$$R1 - R2 \times \frac{24,000}{15,000} = 15,000 - 5,000 \times \frac{24,000}{15,000} = 16,000$$

A gain £16,000 becomes assessable for 2012-13.

A loss accrues on the disposal of the shares in 2014-15. The loss is restricted by the Income Tax relief remaining attributable to shares, see VCM40100.

Example 3

An investor subscribes £50,000 for SEIS shares that are issued to him in 2013-14. He claims and obtains SEIS Income Tax relief in respect of the shares. He also claims in respect of the share subscription re-investment relief in relation to a chargeable gain of £40,000 from the disposal of a property in 2013-14. The chargeable gain is reduced to £20,000 (see VCM45020). Two years later he sells all the shares at undervalue to a friend.

The disposal of the shares is not by way of a bargain made at arm's length and all the SEIS relief is withdrawn. The whole of the re-investment relief is also withdrawn and a gain £20,000 becomes assessable for 2013-14.

VCM45110 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: attribution of relief to SEIS shares

TCGA92/SCH5BB/PARA4

The amount of re-investment relief is attributed equally across all the shares in respect of which the claim to relief is made. Thus an apportionment may be made if only some of the shares are disposed of.

If bonus shares are issued without any payment in respect of shares to which re investment relief is attributed and the shares are in the same company, of the same class, and carry the same rights, the relief is attributed proportionately across all the shares, both the original and the bonus shares.

VCM45120 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: shares transferred to spouse or civil partner

TCGA92/SCH5BB/PARA6

Where the investor in shares to which re-investment relief is attributable transfers some or all of the shares to their spouse or civil partner at a time when they are living together, section 257FA(4) ITA07 prevents a withdrawal of SEIS relief on the disposal and re-investment relief remains attributable to the shares acquired by the transferee.

If, after the transfer, SEIS relief is withdrawn or reduced, any chargeable gain accruing as a result (see VCM45090) is treated as accruing to the transferee spouse or civil partner in respect of the shares which they hold, and the amount of any gain treated as accruing to the original investor is based on only the shares they still hold.

Example

An investor subscribes £50,000 for SEIS shares that are issued to him in 2012-13. He claims and obtains SEIS relief in respect of the shares. He also claims, in respect of that share subscription, re-investment relief in relation to a chargeable gain of £40,000 from the disposal of a property in 2012-13. His chargeable gain is reduced to nil.

He transfers half his shares to his wife following which there is a return of value to shareholders. This return of value requires £30,000 of the re-investment relief to be withdrawn.

A 2012-13 chargeable gain £15,000 is treated as accruing to the investor. A 2012-13 chargeable gain £15,000 is treated as accruing to his wife.

VCM45130 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: identification of disposals

TCGA92/SCH5BB/PARA8 (4), TCGA92/S150E (6), ITA07/S257HA

The usual share identification rules do not apply where shares have been issued and SEIS Income Tax relief is obtained in respect of those shares. Each acquisition is treated separately.

A shareholder who has acquired SEIS shares may possess other shares in the company which are of the same class. Also, shares may have been acquired at various times and at different prices. Consequently, where a shareholder makes a disposal, we need rules to identify the particular shares disposed of to determine whether the shares disposed of result in any exempted gains coming back into charge.

First in First out

If the shareholder has acquired shares of the same class on different days and disposes of some but not all of his shares the disposals are identified first against the earliest acquisition.

Disposals of shares acquired on same day

If a shareholder disposes of some but not all of the shares he or she acquired on the same day it is necessary to determine which shares are disposed of. This is done by separating the shares into three categories depending on whether SEIS Income Tax relief alone is attributable to them, both SEIS Income Tax relief and re-investment relief are attributable to them, or neither. In making this decision, bear in mind that:

- SEIS reliefs cannot be attributable to shares if the shareholder did not acquire them by subscription unless the investor acquired them on a disposal within a marriage or civil partnership (see below) and the reliefs were already attributable to the shares;
- where an amount of re-investment relief or SEIS Income Tax relief is attributable to an issue of shares - that is, to all the shares of a particular class of shares which are issued to the investor on the same day - it is attributable to the whole of that share issue, and a proportionate amount is attributable to each share in respect of which the claim is made.

The shares are treated as disposed of in the order (a) - (c) as below.

	Shares to which SEIS IT relief is attributable	Shares to which re-investment relief is attributable
(a) Disposed of first	X	X
(b) Next	Y	X
(c) Finally	Y	Y

X indicates that the relief is not attributable.

Y indicates that the relief is attributable.

Under the SEIS Income Tax rules some shares may have been treated as issued in the tax year prior to that in which they were actually issued, see VCM31130. Where there is a disposal of shares which includes such shares, and not all of the shares in categories (b) or (c) are treated as disposed of, shares in that category treated for Income Tax relief purposes as issued in the previous tax year are treated as disposed of before those which were not.

For the purposes of these rules, if relief is attributable to shares disposed of which were acquired from a spouse or civil partner at a time they were living together, the acquirer is treated as having acquired them on the date they were issued.

The identification rules are illustrated by examples at VCM45140.

VCM45140 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: identification of disposals: examples

Example 1

An investor subscribes £80,000 for 80,000 shares in a SEIS company that are all issued to him on 3 November 2012. He obtains Income Tax relief on £80,000 and £60,000 re-investment relief in respect of a gain from a disposal of land. 50,000 of the shares are sold on 4 April 2014.

Following VCM45130 the amount of the deferred gain that accrues at the time the 50,000 shares are disposed of is calculated as follows:

- the £80,000 Income Tax relief is attributable equally to all 80,000 shares,
- the £60,000 re-investment relief is attributable equally to all 80,000 shares.

The numbers of shares falling into the categories described in VCM45130 are:

1. None.
2. None.
3. 80,000.

The 50,000 shares disposed of are identified as 50,000 of the 80,000 shares to which both re investment relief and Income Tax relief are attributable, (c).

The disposal is within three years of the share issue and the Income Tax relief attributable to the 50,000 shares may fall to be reduced or withdrawn with a corresponding reduction or withdrawal of re-investment relief, see VCM45090.

Example 2

On 25 May 2014, Mary disposes of 24,000 of her holding of 34,000 ordinary shares in Z Ltd in an arm's length sale. She had acquired the shares, which are all of the same class, as follows:

- on 1 September 2012, she was issued with 10,000 shares, in respect of which she obtained SEIS Income Tax relief,
- on 5 October 2012, she was issued with 5,000 shares, in respect of which she obtained both SEIS Income Tax relief and re-investment relief,
- on 5 October 2012, she acquired 4,000 shares by private sale from her brother, to whom they had been issued on 1 September 2012,
- on 16 January 2013, her husband transfers 9,000 shares to her. These shares had been issued to him on 5 October 2012, and he had obtained SEIS Income Tax relief in respect of the subscription,

No Income Tax relief had been withdrawn prior to the disposal.

For the purposes of the identification rules, the 9,000 shares that were transferred to Mary on 16 January 2013 are treated as having been acquired by her on 5 October 2012.

Following VCM45130, the relevant attributions of relief to the shares in her holding are as below, (the dates shown being those which are applicable for identification purposes).

	1/9/12	**5/10/12**
a Neither relief		4,000
b Income Tax relief only	10,000	9,000
c Both reliefs		5,000

The 24,000 shares that Mary disposes of are identified in the following way. Firstly, (First in First Out) with the 10,000 shares she acquired on 1 September 2012 and then with 14,000 shares she acquired (or is treated as having acquired) on 5 October 2012. Of the shares acquired on the same day, 5 October 2012, the 14,000 shares treated as disposed of are identified firstly as the 4,000 shares to which no reliefs are attributable, then the 9,000 shares to which Income Tax relief (but not re-investment relief) is attributable, and finally 1,000 of the 5,000 shares to which both Income Tax relief and re-investment relief are attributable.

Mary had subscribed £7,500 for the 5,000 shares that were issued to her on 5 October 2012, and in respect of that subscription she claimed re-investment relief for a chargeable gain of £4,000 which accrued to her on 10 November 2012. She sold her shares for £2 per share and on disposing of 1,000 of the 5,000 shares the Income Tax relief attributable to those 1000 shares is withdrawn. £800 (£4,000 x 1,000 / 5,000) of the previously exempted gain thus becomes assessable in 2012-13. (All the details of the withdrawal of Income Tax relief are not covered in this example).

Example 3

An investor subscribes £100,000 for 400,000 shares in a SEIS company that are issued on 1 February 2013 and claims the maximum Income Tax relief. These are the only shares held by him in that company. He makes a claim to set off £25,000 of the amount subscribed against a chargeable gain which accrues to him on 8 October 2012, £15,000 against a chargeable gain accruing to him on 10 December 2012, and £30,000 against a chargeable gain accruing to him on 28 December 2012. No other gains accrue to him in 2012-13 so he cannot set off the whole of the amount he subscribed for the shares against chargeable gains. On 4 April 2014 he disposes of 100,000 of the shares.

The total re-investment relief, £70,000, is attributed proportionately to each of the 400,000 shares. He has disposed of a quarter of his shares, so, if the disposal leads to the withdrawal in full of the Income Tax relief attributable to the 100,000 shares, a chargeable gain £17,500 (70,000 x100,000/400,000) will be treated as accruing in 2012-13.

VCM45150 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: assessments

TCGA92/SCH5BB/PARA7 (1)

Where re-investment relief is withdrawn it should be recovered by making an assessment following the guidance for the withdrawal of SEIS Income Tax relief, see VCM36140.

Where the shares in question were acquired from a spouse or civil partner, the assessment will be on the person they were transferred to, see VCM45120.

You should consider also whether adjustments are required for other years as a consequence of withdrawing the relief.

TCGA92/SCH5BB/PARA7 (2)

Where an assessment is made to withdraw re-investment relief or to give effect to a consequential adjustment, interest under section 86 TMA70 runs only from 31 January following the end of the year of assessment in which the assessment was made.

VCM45200 - Seed Enterprise Investment Scheme (SEIS): Re-investment Relief: claims procedure

In order to claim reinvestment relief the investor will need to submit part 2 of the compliance certificate (SEIS3) from the company in which the investment is made. This contains a claim form which the investor may use when submitting a claim (with or without a tax return). The SEIS3 form must be submitted with the reinvestment relief claim whether the claim is made on the tax return or separately.

Guidance on the procedure to be followed by a company to obtain forms SEIS3 for issue to investors is contained at VCM35110.

Relief must not be claimed until the investor has received that form. The SEIS3 form contains details of:

- the amount paid on subscription for the shares,
- the company in which the investment has been made,
- the date the shares were issued,
- the Small Company Enterprise Centre office which deals with the company and the company's tax reference,
- the chargeable gains against which reinvestment relief is claimed.

No reinvestment relief should be allowed in the absence of a SEIS3 form relating to that particular investment.

When a claim is agreed, you should send a copy of the claim form to the office dealing with the company and retain a copy in the permanent notes folder.

On receipt of the SEIS3 the office dealing with the company should check that the issue of form SEIS3 has been authorised and that the details returned agree.