Finance Act 2018

2018 CHAPTER 3

PART 1

DIRECT TAXES

Investments

14 EIS, SEIS and VCT reliefs: risk to capital

(1) In Part 5 of ITA 2007 (enterprise investment scheme)—

(a) in section 157 (eligibility for EIS relief), in subsection (1), before paragraph (a) insert—

"(za) the risk-to-capital condition is met (see section 157A),", and

(b) after that section insert—

"157A Risk-to-capital condition

(1) The risk-to-capital condition is met if, having regard to all the circumstances existing at the time of the issue of the shares, it would be reasonable to conclude that—

(a) the issuing company has objectives to grow and develop its trade in the long-term, and

(b) there is a significant risk that there will be a loss of capital of an amount greater than the net investment return.

(2) For the purposes of subsection (1)(b)—

(a) the risk is to be determined by reference to a loss of capital, and the net investment return, for the investors generally,

(b) the reference to a loss of capital is to a loss of some or all of the amounts subscribed for the shares by the investors, and

(c) the reference to the net investment return is to the net investment return to the investors (whether by way of income or capital growth) taking into account the value of EIS relief.

(3) For the purposes of subsection (1) the circumstances to which regard may be had include—

(a) the extent to which the company's objectives include increasing the number of its employees or the turnover of its trade,

(b) the nature of the company's sources of income, including the extent to which there is a significant risk of the company not receiving some or all of the income,

(c) the extent to which the company has or is likely to have assets, or is or could become a party to arrangements for acquiring assets, that could be used to secure financing from any person,

(d) the extent to which the activities of the company are sub-contracted to persons who are not connected with it,

(e) the nature of the company's ownership structure or management structure, including the extent to which others participate in or devise the structure,

(f) how any opportunity for investment in the company is marketed, and

(g) the extent to which arrangements are in place under which opportunities for investments in the company are or may be marketed with, or otherwise associated with, opportunities for investments in other companies or entities.

(4) If the issuing company is a parent company—

(a) any reference in this section to the company's trade is to what would be the trade of the group if the activities of the group companies taken together were regarded as one trade, and

(b) any reference in subsection (3)(a) to (e) to the company is to any group company."

(2) In Part 5A of ITA 2007 (seed enterprise investment scheme)—

(a) in section 257AA (eligibility for SEIS relief), before paragraph (a) insert—

"(za) the risk-to-capital condition is met (see section 257AAA),", and

(b) after that section insert—

"257AAA Risk-to-capital condition

(1) The risk-to-capital condition is met if, having regard to all the circumstances existing at the time of the issue of the shares, it would be reasonable to conclude that—

(a) the issuing company has objectives to grow and develop its trade in the long-term, and

(b) there is a significant risk that there will be a loss of capital of an amount greater than the net investment return.

(2) For the purposes of subsection (1)(b)—

(a) the risk is to be determined by reference to a loss of capital, and the net investment return, for the investors generally,

(b) the reference to a loss of capital is to a loss of some or all of the amounts subscribed for the shares by the investors, and

(c) the reference to the net investment return is to the net investment return to the investors (whether by way of income or capital growth) taking into account the value of SEIS relief.

(3) For the purposes of subsection (1) the circumstances to which regard may be had include—

(a) the extent to which the company's objectives include increasing the number of its employees or the turnover of its trade,

(b) the nature of the company's sources of income, including the extent to which there is a significant risk of the company not receiving some or all of the income,

(c) the extent to which the company has or is likely to have assets, or is or could become a party to arrangements for acquiring assets, that could be used to secure financing from any person,

(d) the extent to which the activities of the company are sub-contracted to persons who are not connected with it,

(e) the nature of the company's ownership structure or management structure, including the extent to which others participate in or devise the structure,

(f) how any opportunity for investment in the company is marketed, and

(g) the extent to which arrangements are in place under which opportunities for investments in the company are or may be marketed with, or otherwise associated with, opportunities for investments in other companies or entities.

(4) If the issuing company is a parent company—

(a) any reference in this section to the company's trade is to what would be the trade of the group if the activities of the group companies taken together were regarded as one trade, and

(b) any reference in subsection (3)(a) to (e) to the company is to any group company."

(3) In Part 6 of ITA 2007 (venture capital trusts)—

(a) in section 286 (qualifying holdings), in subsection (3), before paragraph (za) insert—

"(1za) risk to capital (see section 286ZA),", and

(b) before section 286A insert—

"286ZA The risk-to-capital requirement

(1) The requirement of this section is that, having regard to all the circumstances existing at the time of the issue of the relevant holding, it would be reasonable to conclude that—

(a) the relevant company has objectives to grow and develop its trade in the long-term, and

(b) there is a significant risk that, for the investing company, there will be a loss of capital of an amount greater than its net investment return.

(2) For the purposes of subsection (1)(b)—

(a) the reference to a loss of capital is to a loss of some or all of the amounts given in consideration for the relevant holding, and

(b) the reference to the net investment return is to the net investment return to the investing company irrespective of whether the return takes the form of income, capital growth, fees or other payments or anything else.

(3) For the purposes of subsection (1) the circumstances to which regard may be had include—

(a) the extent to which the company's objectives include increasing the number of its employees or the turnover of its trade,

(b) the nature of the company's sources of income, including the extent to which there is a significant risk of the company not receiving some or all of the income,

(c) the extent to which the company has or is likely to have assets, or is or could become a party to arrangements for acquiring assets, that could be used to secure financing from any person,

(d) the extent to which the activities of the company are sub-contracted to persons who are not connected with it,

(e) the nature of the company's ownership structure or management structure, including the extent to which others participate in or devise the structure,

(f) how any opportunity for investment in the company is marketed, and

(g) the extent to which arrangements are in place under which opportunities for investments in the company are or may be marketed with, or otherwise associated with, opportunities for investments in other companies or entities.

(4) If the relevant company is a parent company—

(a) any reference in this section to the company's trade is to what would be the trade of the group if the activities of the group companies taken together were regarded as one trade, and

(b) any reference in subsection (3)(a) to (e) to the company is to any group company."

(4) The amendments made by this section come into force in accordance with provision made by the Treasury by regulations.

(5) Regulations under subsection (4)—
- (a) may make different provision for different purposes;
- (b) may provide for any of those amendments to have effect in relation to shares, or shares or securities, issued on or after a day that is—
  - (i) earlier than the day on which the regulations are made, but
  - (ii) not earlier than the day on which this Act is passed.

15 EIS, SI and VCT reliefs: relevant investments

(1) Nothing in the specified EIS and VCT transitional provisions (see subsection (2)) prevents any shares or other investments constituting relevant investments (within the meaning given by section 173A(3), 280B(4) or 292A(3) of ITA 2007) for the purposes of determining entitlement to—
- (a) EIS income tax relief,
- (b) income tax relief for social investments, or
- (c) VCT income tax relief,

in respect of shares issued or investments made on or after 1 December 2017.

(2) The specified EIS and VCT transitional provisions are—
- (a) paragraph 8 of Schedule 16 to FA 2007;
- (b) paragraph 22 of Schedule 7 to FA 2012;
- (c) paragraphs 18 and 19 of Schedule 8 to FA 2012.

(3) In this section—

“EIS income tax relief” means relief under Part 5 of ITA 2007 (enterprise investment scheme);

“income tax relief for social investments” means relief under Part 5B of ITA 2007;

“VCT income tax relief” means relief under Part 6 of ITA 2007 (venture capital trusts).

16 EIS and VCT reliefs: knowledge-intensive companies

Schedule 4 contains provision about EIS and VCT reliefs in relation to knowledge-intensive companies.

17 VCTs: further amendments

Schedule 5 contains further amendments about venture capital trusts.