

# FINANCE ACT 2012

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 38 Schedule 6: Seed Enterprise Investment Scheme*

#### Details of the Schedule

##### Part 2 of the Schedule

90. [Part 2](#) provides for relief for capital gains.
91. Paragraph 2 provides for the Taxation of Chargeable Gains Act 1992 (TCGA) to be amended.
92. Paragraph 3 inserts new sections 150E and 150F into the TCGA.
93. New section 150E mirrors existing section 150A TCGA that applies to EIS shares. Section 150E reduces the consideration taken into account for capital gains tax on a disposal of shares by the amount of the SEIS relief attributable to those shares. It reduces or eliminates any chargeable gain on a disposal of shares to which SEIS relief is attributable and provides rules that permit those shares to be identified.
94. New section 150F mirrors existing section 150B TCGA that applies to EIS shares. It modifies the effect of new section 150E to limit the reduction in any chargeable gain on the disposal of shares to which SEIS relief is attributable to the extent that value is received and the SEIS relief reduced in consequence.
95. Paragraph 4 of the Schedule inserts a new section 150G into the TCGA. Section 150G introduces Schedule 5BB to the TCGA, which provides the SEIS re-investment relief.
96. Paragraph 5 inserts new Schedule 5BB into the TCGA – see paragraphs 97 to 108 below.

##### *New Schedule 5BB TCGA*

97. Paragraph 1 of Schedule 5BB sets out the conditions for relief and the amount of relief available.
98. Paragraph 1(2) to (4) sets out three conditions for relief:
  - a. An individual must realise a gain on a disposal of an asset in the tax year 2012-13.
  - b. The individual must make an investment that qualifies for SEIS relief from income tax, and claim that relief.
  - c. The individual must claim SEIS re-investment relief in respect of the amount on which the SEIS relief is claimed.
99. Paragraphs 1(5) to (7) sets out the amount of SEIS re-investment relief. Paragraph 1(5) sets the amount on which SEIS relief is claimed (“the SEIS expenditure”) against the gain on the disposal of the asset. Paragraph 1(6) provides that the amount of the gain that has the SEIS expenditure set against it is not liable to CGT. Paragraph 1(7)(a) restricts

*These notes refer to the Finance Act 2012 (c.14)  
which received Royal Assent on 17 July 2012*

the SEIS expenditure on which relief may be claimed to the extent it has already been used to claim to other SEIS reinvestment relief or to EIS deferral relief. Paragraph 1(7) (b) ensures SEIS re-investment relief is not given against any part of the gain that has already been covered by other SEIS re-investment relief or by EIS deferral relief

100. Paragraph 2 of Schedule 5BB restricts the amount of SEIS re-investment relief that is given under paragraph 1 in two circumstances.
101. Paragraph 2(1) and (2) applies where the amount invested under SEIS exceeds the maximum amount of £100,000 on which an individual can obtain income tax relief in any one tax year. In this circumstance the SEIS re-investment relief is capped at the amount on which SEIS relief is due, applying the formula in sub-paragraph (2).
102. Paragraph 2(3) and (4) applies where SEIS relief is restricted before the claim to SEIS re-investment relief is made. In this case the maximum amount on which SEIS re-investment relief can be claimed is restricted by a similar amount, under the formula in sub-paragraph (4).
103. Paragraph 2(5) gives the order in which the two restrictions in paragraph 2 are to be applied in cases where they both apply.
104. Paragraph 3 of Schedule 5BB sets the time limit for claiming SEIS re-investment relief as the same as the limit that applies for claims to SEIS relief. The paragraph also makes clear that claims 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.
105. Paragraph 4 of Schedule 5BB treats the amount on which SEIS re-investment relief is given as spread ('attributed') equally across all the shares in respect of which the claim to relief is made. This is required in order to be able to recover the correct amount of relief, should this become necessary, under paragraph 5 or 6 of Schedule 5BB (see below).
106. Paragraph 5 of Schedule 5BB applies where the SEIS relief attributed to shares is withdrawn or reduced so that the SEIS re-investment relief attributed is also withdrawn or reduced in the same proportion. For example, if the SEIS relief were reduced by 60 per cent the SEIS re-investment relief will also be reduced by 60 per cent. Where this happens paragraph 5(2) makes the individual who made the investment liable to CGT for the tax year 2012-13 on a chargeable gain of the appropriate amount. Where paragraph 5 applies to reduce the amount of SEIS re-investment relief attributable to the shares in question, sub-paragraphs (4) and (5) reduce the amount of SEIS re-investment relief remaining attributable to the shares by a corresponding amount.
107. Paragraph 6 of Schedule 5BB modifies the effect of paragraph 5 in cases where the investor in shares to which SEIS re-investment relief is attributable transfers some or all of the shares to their husband or wife or civil partner, and that transfer does not itself lead to relief being withdrawn. Where SEIS re-investment relief is withdrawn or reduced after the transfer, a gain is charged to CGT on the transferee spouse or civil partner in respect of the shares which they hold, and the amount of the gain charged on the original investor is based on only the shares they still hold.
108. Paragraphs 7 and 8 of Schedule 5BB make supplementary provision. Paragraph 7(1) permits all necessary adjustments to be made to give effect to claims or charges under the Schedule, notwithstanding the normal time limits for amending or making assessments to CGT. Paragraph 7(2) provides that when an assessment under paragraphs 5 or 6 to withdraw re-investment relief, interest is to be charged from 31 January following the tax year in which the assessment is made. Paragraph 8 defines various terms in Schedule 5BB.