HM Revenue
& Customs

Tax-advantaged venture capital schemes – streamlining the advance assurance service

Consultation document
Publication date: 5 December 2016
Closing date for comments: 1 February 2017

Subject of this consultation:	The consultation suggests options for streamlining the advance assurance service for companies using the tax-advantaged venture capital schemes: the Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and Venture Capital Trusts (VCTs), as well as the Social Investment Tax Relief (SITR).
Scope of this consultation:	We are seeking views on proposed options for streamlining the advance assurance service, and any additional suggestions.
Who should read this:	We would like to hear from anyone who uses the advance assurance service, including companies seeking investments under one or more of the schemes as well as advisers, investors, fund managers and representative bodies.
Duration:	The consultation will run for 8 weeks from 5 December 2016 to 1 February 2017.
Lead official:	Cathy Wilson, CT Innovation and Growth, Venture Capital Schemes
How to respond or enquire about this consultation:	Written responses should be submitted by 1 February 2017 either by email to venturecapitalschemes.policy@hmrc.gsi.gov.uk Or by post to Venture Capital Schemes Policy Team, HM Revenue & Customs, Room 3/63, 100 Parliament Street, London, SW1A 2BQ
Additional ways to be involved:	If you’re interested in discussing these proposals with us, please contact us at the email address above.
After the consultation:	A summary of responses will be published as soon as possible after the consultation closes. Responses will be used to inform decisions about the future of the advance assurance service.
Getting to this stage:	This is the first consultation document on the advance assurance service.
Previous engagement:	Following comments on a consultation on new guidance published in May 2016, HMRC and HM Treasury have already engaged with industry representative bodies in order to gather opinions and suggestions. These suggestions have been used as the basis for the questions used in this consultation.

Contents

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1. Introduction

The tax-advantaged venture capital schemes

1.1. The tax-advantaged venture capital schemes are intended to encourage individuals to invest directly or indirectly in higher-risk, early stage trading companies that would otherwise struggle to raise money to help them grow and develop. The schemes play an important role in helping to deliver UK growth.

1.2. The schemes are:

- The Seed Enterprise Investment Scheme (SEIS)
- The Enterprise Investment Scheme (EIS)
- Venture Capital Trusts (VCTs).

1.3. In addition, the Social Investment Tax Relief (SITR) is designed to encourage individuals to invest in social enterprises. A social enterprise may be a community interest company, community benefit company, charity or accredited social impact contractor. This document includes the SITR as one of the tax-advantaged venture capital schemes, and references to a company include a social enterprise.

1.4. Individuals can claim income tax relief of 30% of their investment in a qualifying company (or 50% of investments under the SEIS), as well as benefitting from a range of capital gains tax reliefs, depending on the scheme. Individuals claim tax relief through their Self-Assessment tax return or, for smaller investments, through Pay As You Earn.

1.5. The schemes are administered by the Small Company Enterprise Centre (SCEC), a specialist team within HM Revenue and Customs (HMRC).

1.6. Other than for investments by VCTs, companies must apply to the SCEC for statutory approval for each round of investment they receive. A company applies for approval by submitting a statutory compliance statement which states the company has met, and will meet, all the conditions of the scheme.

1.7. The individual investor cannot claim tax relief until HMRC has approved the company's statutory compliance statement and authorised the company to provide a statutory certificate to the individual.

The advance assurance service

1.8. The advance assurance service is a non-statutory and discretionary advance clearance service the SCEC provides to companies before an investment is received. We will provide our opinion as to whether, if an investment were to be made as described in the application, that prospective investment would meet the qualifying conditions when it is made.

1.9. There is no right of appeal against our decision to refuse to give an advance assurance. If we decline to issue an advance assurance an investor may go ahead with the investment and the law may be tested through the statutory procedures, beginning with the company submitting a compliance statement.

1.10. If we provide an advance assurance we are committed to honouring our decision, subject to:

- all relevant information having been disclosed by the company
- the company making no changes to the facts on which the advance assurance has been provided, and
- the legislation not having changed between the date the advance assurance is provided and the date of the investment.

1.11. However, if we give an advance assurance it is not a guarantee that tax relief will be allowed when the investor claims it, or that relief will not be withdrawn at a later stage. The investor must meet separate conditions which are not generally considered in an advance assurance, and the company and investor must meet a number of conditions for a specified continuous period following the investment.

1.12. Nevertheless, the service is greatly valued because it gives certainty to potential investors that the company itself is eligible for investment and they will be able to claim tax relief on their proposed investment, subject to meeting the specific conditions applying to an investor.

1.13. In addition the SCEC provides a telephone help line and email query service, services that are greatly valued by our customers.

Pressures on the advance assurance service

1.14. The advance assurance service has come under increasing pressure in recent years, and response times have been lengthening. Although HMRC has doubled its resource since 2011-12, demand has trebled.

1.15. This increasing demand on the service is due to several factors, including the introduction of the SEIS in 2012, the adaption by customers and HMRC to new rules in 2015, and the increasing popularity of the schemes. Demand is expected to increase further following the expansion of SITR.

1.16. Other pressures on the service come from applications for investments which are outside the spirit of the scheme rules. In these cases, applications are often re-submitted several times, with small details changed in each application. As a result, we issued guidance in May 2016 making it clear that we reserve the right to withhold an opinion if we choose.

1.17. Demand is increasing significantly, and if this trend continues it will have an impact on the service standards we can deliver. Any delays can affect investment deals and the future funding of companies. We need to make sure our service is fit for purpose and capable of dealing with increasing volumes as the schemes continue to grow.

Action we are taking

1.18. We have taken a number of steps to improve the advance assurance service and our response times have been improving since April 2016 as a result.

1.19. We recently increased our resource to deal with a backlog of the less complex cases. We also aim to ensure that individual applications are seen by the same officer. This saves time because different officers do not need to start from scratch to understand the details of the case.

1.20. Guidance published in May 2016 has helped to embed the new rules on EIS and VCTs and reduce uncertainty for companies and advisers. Following a consultation over summer 2016, we are updating this guidance to provide greater clarity and certainty about how the new rules work.

1.21. We are introducing a new online service for companies to apply for an advance assurance and, later, to make a statutory compliance statement. The full service will deliver considerable benefits to both HMRC and customers by sharing data from the compliance statement with HMRC's compliance systems and replacing the existing paper certification process with an electronic one.

1.22. The online service will help companies applying for an advance assurance to supply all the right information at the same time, reducing delays in obtaining additional information and reducing requests for progress updates. However, each application will still need be checked for eligibility by our officers.

What we are consulting on

1.23. We are seeking comments on suggestions previously put forward by industry representative bodies (listed in Annex A), and informal comments made by individuals in the industry, on how we can direct our advance assurance service more effectively at those who most need it. We also welcome any additional suggestions.

Who should read this consultation document?

1.24. This consultation is intended for companies seeking investments under one or more of the tax-advantaged schemes that seek to rely upon our advance assurance service as well as advisers, investors, fund managers and representative bodies.

1.25. In order to ensure that we understand responses from different parts of the industry, we would be grateful if you could provide answers to the following questions in your responses:

Question 1. In what context are you responding to this consultation; e.g. investor, investee company, fund manager, industry body representative.

Question 2. Which tax-advantaged scheme or schemes have you used?

2. Options for streamlining the advance assurance service

Principles for a streamlined advance assurance service

2.1. Companies securing an advance assurance from HMRC benefit from increased certainty that their investment will qualify for tax relief under the venture capital schemes. This is a valuable service, however increased demand means that we need to prioritise those cases where there is the greatest uncertainty, and to streamline the service itself.

2.2. In considering the appropriateness of different options, we will have regard to the following four principles:

- the change should contribute to an improved, sustainable service, where demand for the venture capital schemes is likely to increase over the years
- the service should focus on cases of genuine uncertainty
- the service will not support tax planning strategies
- the service must align with HMRC's broader strategic objectives.

2.3. We want to focus on cases of genuine uncertainty and reduce routine reliance upon our service. There is a large community of specialist advisers providing support to companies seeking investment under the tax-advantaged venture capital schemes. It is likely that, until now, the advance assurance has merely duplicated their work and confirmed the view the adviser has already arrived at.

2.4. Similarly, investors need to carry out their own due diligence in determining whether a prospective investment is suitable for their portfolio. Many investors already take advice from an independent financial adviser when considering whether to invest through a fund and it is reasonable to expect an investor to engage an adviser when considering an investment, often of many thousands of pounds.

2.5. Some parts of the venture capital industry also use the advance assurance service to support their tax planning strategies, which runs counter to the intention and spirit of the schemes.

2.6. The rest of this chapter sets out a number of options that have been suggested by industry members to help improve our service.

Options that are out of scope of this consultation

2.7. Some industry members have suggested that the advance assurance service should become a paid-for service, either for all companies or for companies seeking a fast track opinion. We have considered this option but we are not pursuing it as part of this consultation.

2.8. Introducing a charge for our services would be a significant undertaking. It would need to be considered in the wider context of how we offer our services more generally. One drawback may be that charging for our services might disproportionately disadvantage those companies most likely to need our services.

2.9. Some industry members have suggested that we should prioritise applications for the largest investments by creating a fast track service, on the grounds that those companies may be more likely to contribute most in economic terms. However, this would mean companies with the most resources would benefit the most from our service, disadvantaging smaller companies.

2.10. Another suggestion has been to enable advisers to send in incomplete applications before all the documents are finalised. This approach has led in the past to our officers reviewing incorrect applications. We do not intend to change our current approach of requiring all information to be sent with the application.

2.11. One alternative suggestion has been to introduce a booking system. This would be used to allow companies to book a review at a specific date and time by which all documents must be submitted. However, this approach would take time and expense to set up and operate. There would also be a significant risk of speculative bookings which could make it harder for some smaller companies to access the system.

Options for consultation

2.12. A number of options for improving the advance assurance service are set out below. Most of the options can be combined with others and could be used as part of a potential package of changes.

Option 1: 'Do nothing' approach

2.13. Doing nothing would mean that all companies would continue to be able to access the advance assurance service. However, if no changes are made, response times will continue to increase over the long term as demand increases.

Question 3. What would be the impact of increasing response times, including any increase in costs and / or administrative burdens?

Option 2: Withdraw the advance assurance service

2.14. Withdrawing the service in whole or in part would require companies and investors to assure themselves, and their investors, of their eligibility for the venture capital schemes.

2.15. As explained above, many companies use a professional adviser to help them to determine if they are eligible. The larger the company and the larger the prospective investment, the more likely the company will be to use one of the top specialist advisers. These advisers are highly knowledgeable and able to advise a company on the most complex technicalities so that the advance assurance is often an unnecessary exercise.

2.16. There is a strong argument that a company should be able to rely upon its adviser's opinion as to whether it is eligible or not under a particular scheme. Transferring the burden of determining if a prospective investment would be eligible should also help to reduce boundary pushing because the agent will become fully responsible for the quality of their advice. However, some work we currently carry out at the advance assurance stage would be pushed to the later compliance statement stage.

2.17. The withdrawal of the advance assurance service may also disadvantage smaller companies which are less able to afford specialist advisers. It could also lead to more formal appeals and, potentially, Tribunal cases.

Question 4. What would be the impact of withdrawing the advance assurance service?

Option 3: Restrictions and limits

2.18. Focussing the advance assurance on a smaller population – those cases where there is likely to be greatest uncertainty – would improve response times for those customers.

2.19. It is worth noting that the advance assurance service introduced last year for research and development tax credits is targeted at the smallest companies making their first claim, with a turnover below £2 million and with fewer than 50 employees.

2.20. There are a number of ways to prioritise the advance assurance service, such as by limiting it:

- to companies seeking their first investment under any of the tax-advantaged venture capital schemes
- by reference to the size of the investment or of the size of the company, or both
- to companies seeking SEIS investment only
- to a company's first one or two advance assurance applications only.

2.21. We have already announced, as part of our guidance published in May 2016, that we reserve the right to withhold an opinion if we chose. We will withhold an opinion where, for example, it becomes apparent that the advance assurance application is seeking to test the boundaries of our rules rather than confirm whether or not a company is eligible on their set of circumstances.

Question 5: How could the advance assurance service be changed to focus on cases where there is greatest uncertainty? What would be the impact of such changes?

Option 4: Provide a service for discrete aspects of the rules

2.22. At present the advance assurance service is an all or nothing service: all of the circumstances of the company and the investment are considered. There is no scope for a technical discussion on a specific point. However we appreciate there are some specific issues that are not clear cut, especially in the light of recent rule changes to the EIS and VCT schemes.

2.23. Several representative bodies have suggested that we enable companies to seek an advance assurance on discrete aspects of a particular case. This would allow for faster responses to discrete questions about a company's eligibility under a specific rule. This service could be provided either alongside or instead of the current advance assurance service.

2.24. The company's and investment's eligibility would need to be reviewed in full at the compliance statement stage, which may lengthen response times at that point.

Question 6. In what way could the advance assurance service be limited to discrete aspects of the rules? Please provide details of the impact on your business, particularly any increase in costs and / or administrative burdens.

Option 6: Standard documents

2.25. We are currently exploring with a fund the use of standard documents such as shareholders agreements for pre-approval. If an approved document was used routinely by all companies covered by an agreement this could help to reduce the need for advance assurances.

2.26. Agreeing standardised documents would take time and resource in the short term to develop, but could save time for applications in the long term. An application would not be any more or less likely to succeed if it used a standard set of documents; it would simply be easier and faster to check.

2.27. It may be most appropriate for industry bodies to take on the responsibility for developing and promoting standard documents.

Question 7. How would a standard set of approved documents assist you? Would you be prepared to cooperate in devising a standard set of documents? Please provide details of any savings in costs and / or administrative burdens from using standard documents.

Other suggestions

2.28. We welcome any other ideas to help us streamline our advance assurance service and make it sustainable for the long term, in the expectation that the tax-advantaged venture capital schemes will continue to grow.

Question 8. Do you have any other suggestions to improve our advance assurance service?

3. Next steps

3.1. The consultation on the options put forward in Chapter 2 ends on 1 February 2017.

3.2. We will analyse all the responses we receive and will publish a summary of responses in due course, including setting out how we intend to change our services.

4. Assessment of impacts

Summary of Impacts

1. **Exchequer impact (£m)**	2016 - 17	2017 - 18	2018 - 19	2019 - 2020	2020 - 2021	2021 - 22
	nil	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact					
Economic impact	This measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	There may be an impact on individuals who invest under the tax-advantaged venture capital schemes. They might need to rely more heavily on professional advice rather than an assurance from HMRC that a company is eligible for investment. There is no further impact on individuals, households and families. The measure is not expected to impact on family formation, stability or breakdown.					
Equalities impacts	The changes to the schemes are not likely to change the impacts of this measure on any group. After careful consideration, the government has concluded that there are no significant impacts on groups of people sharing protected characteristics differently to other groups, and has not identified any equalities impacts.					

Impact on businesses and Civil Society Organisations	Some professional advisers may need to rely more heavily upon their own judgement when advising their clients rather than rely upon a guarantee from HMRC. This may impact upon their insurance costs. The number of businesses affected and the impact on them will be explored as part of the consultation. Small and micro business assessment: Small and micro businesses within the charge to income tax are not affected by these proposals. However, some small and micro companies and civil society organisations seeking external investment under one or more of the tax-advantaged venture capital schemes may be affected, depending on the final scope of the changes to the advance assurance service. They may need to rely more heavily upon the advice of their professional advisers when determining if they are eligible for investment under one of the tax-advantaged venture capital schemes. The number of small and micro businesses affected and the impact on them will be explored as part of the consultation. There may be one-off costs for companies and advisers to familiarise themselves with the new guidance.
Impact on HMRC or other public sector delivery organisations	Options presented in this document would have an operational impact, with the intention of reducing future resource needs within HMRC. There may be some IT costs in realigning the IT system, depending upon the changes made.
Other impacts	Other impacts have been considered and none have been identified.

Further analysis of the impacts will be conducted once the operational design has been decided.

5. Summary of Consultation Questions

Question 1. In what context are you responding to this consultation; e.g. investor, investee company, fund manager, industry body representative.

Question 2. Which tax-advantaged scheme or schemes have you used?

Question 3. What would be the impact of increasing response times, including any increase in costs and / or administrative burdens?

Question 4. What would be the impact of withdrawing the advance assurance service?

Question 5. How could the advance assurance service be changed to focus on cases where there is greatest uncertainty? What would be the impact of such changes?

Question 6. In what way could the advance assurance service be limited to discrete aspects of the rules? Please provide details of the impact on your business, particularly any increase in costs and / or administrative burdens.

Question 7. How would a standard set of approved documents assist you? Would you be prepared to cooperate in devising a standard set of documents? Please provide details of any savings in costs and / or administrative burdens from using standard documents.

Question 8. Do you have any other suggestions to improve our advance assurance service?

6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives.

How to respond

A summary of the questions in this consultation is included at chapter 5.

Responses should be sent by 1 February 2017:
by e-mail to venturecapitalschemes.policy@hmrc.gsi.gov.uk
or by post to: Venture Capital Schemes Policy Team, HM Revenue & Customs, Room 3/63, 100 Parliament Street, London, SW1A 2BQ

Telephone enquiries 03000 536678 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: List of stakeholders consulted

The Association of Investment Companies
The British Venture Capital Association
The Enterprise Investment Scheme Association