



HM Revenue
& Customs

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

Summary of Responses

20 March 2017

Contents

1	Introduction	3
2	Responses	5
3	Next steps	11
4	List of stakeholders consulted	12

On request this document can be produced in Welsh and alternative formats including large print, audio and Braille formats

Template version: September 2013

1. Introduction

The consultation

- 1.1 A consultation on the advance assurance service for the tax-advantaged venture capital schemes was announced at Autumn Statement 2016. A consultation document, *Tax-advantaged venture capital schemes – streamlining the advance assurance service*¹, was published by HM Revenue and Customs (HMRC) on 5 December 2016. The document asked for views on options for streamlining the advance assurance service provided by the Small Company Enterprise Centre (SCEC).
- 1.2 The tax-advantaged schemes covered by the consultation are:
 - the Seed Enterprise Investment Scheme (SEIS)
 - the Enterprise Investment Scheme (EIS)
 - Venture Capital Trusts (VCTs) and
 - the Social Investment Tax relief (SITR).
- 1.3 Growing demand for the advance assurance service, and the adjustment by customers and HMRC to new rules in 2015, has lengthened the time taken by the SCEC to provide its opinion on whether a company would be eligible to receive an investment under one or more of the schemes.
- 1.4 Chapter 1 of the consultation document explained some of the pressures and what we have done to improve the advance assurance service. However, the increasing popularity of the schemes means we need to ensure the service is sustainable in the long term and that we direct our resources more effectively at those who most need it.
- 1.5 The options put forward for discussion were:
 - do nothing
 - withdraw the advance assurance service
 - restrict access to the advance assurance service in one or more ways
 - provide a service for discrete aspects of the rules
 - introduce standard documents for companies to use to provide certainty.
- 1.6 The consultation ended on 1 February 2017.

Overview of responses

- 1.7 We received 60 written responses as well as comments at a meeting of the Venture Capital Stakeholder Forum held on 17 January 2017. A breakdown of the capacities in which written respondents made their comments is below:

¹ H https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574564/Tax-advantaged_venture_capital_schemes_-_streamlining_the_advance_assurance_service.pdf

12 from representative or trade bodies

20 from professional advisers

24 from corporate investors, investment houses, fund managers and other fund raisers

4 from individuals.

- 1.8 A list of respondents, excluding individuals, is at Annex A.
- 1.9 We are grateful to everyone who responded to the consultation and attended the Venture Capital Stakeholder Forum. The respondents provided invaluable insights that have helped us to focus the further work we need to carry out.
- 1.10 Many of the responses highlighted the value of the advance assurance service and the vast majority felt that the service should continue. There were mixed responses as to whether the service should be restricted and, if so, how.
- 1.11 The option to introduce a discrete enquiry service was broadly welcomed, but not as a substitute for continuing with a full advance assurance service. Several respondents noted that it would increase demand for HMRC resource, particularly from specialist advisers.
- 1.12 There were also mixed responses to the idea of providing standard documents that companies can use with assurance that they meet the conditions of the various schemes. Overall, it appears that this idea would be of use only to the smallest companies and, perhaps, where fund managers are carrying out large numbers of deals each year.
- 1.13 Respondents made a number of further suggestions for improving the service. Several respondents suggested that charging should be introduced and that the legislation itself should be simplified. These ideas are out of scope of this consultation but have been noted as areas for future consideration.
- 1.14 Three main themes emerged from these additional suggestions:
- if the advance assurance service were to be withdrawn, better and more detailed guidance would be needed to help reduce areas of uncertainty
 - advance assurances are needed while the consequences of making an investment that turns out to be non-qualifying are so high; either the individual investor will not be able to claim tax relief or a VCT could lose its status
 - delays could be reduced by introducing a checklist of the documents companies need to provide with their advance assurance application.
- 1.15 Chapter 2 provides more detail of the responses to the individual questions posed in the consultation document.
- 1.16 Chapter 3 explains how we intend to use the information from the consultation to work towards streamlining the advance assurance service.

2. Responses

- 2.1 This chapter gives details of the responses we received to each of the questions we asked in the consultation document. It is too early to provide a full response to the points raised by respondents to the consultation because it is clear that more work is needed. Chapter 3 sets out the next steps.

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

- 2.2 We received written responses from a wide range of people including fund managers, industry bodies, professional advisers and investors. These covered a wide range of different enterprises from corporate investors to co-operatives and social enterprises. Paragraph 1.7 provides a breakdown of respondents.

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

- 2.3 The vast majority of respondents had used EIS, VCTs or SEIS or a mixture of these schemes. Just over a quarter of respondents had used SITR or had members who had used this scheme. Only three of the consultation respondents use SITR exclusively and four use EIS exclusively – the majority of respondents had used a mixture of the various available schemes.

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

- 2.4 Many respondents felt that response times are currently too long. Others felt that existing times of 6-8 weeks for more complex cases are just about acceptable, given the value of an advance assurance.
- 2.5 Overall it was felt that increasing response times would not be acceptable and could result in fewer investments, because investors and companies would be discouraged. Some investors may turn to lower risk investments instead.
- 2.6 Respondents considered that delays could lead to funding failures, lost opportunities (for example to hire key staff), distractions from running the business and, in some cases, company failures. Any increase would be particularly damaging to the start-up sector.
- 2.7 Some respondents were concerned that delays could mean companies may turn instead to non-tax-advantaged investors, particularly where tax-advantaged funds already invest alongside non-tax-advantaged funds. There was some concern that some investors insist upon an advance assurance for an investment that clearly meets the conditions.
- 2.8 Several respondents said that increasing response times would lead to increasing professional fees and bridging costs.
- 2.9 Some respondents said that a moderate increase in response times would be preferable to withdrawal of the service.

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

- 2.10 The vast majority of respondents felt that the complete withdrawal of the advance assurance service would have a very negative impact on investment in the schemes. One respondent estimated withdrawal would reduce the number of investors and companies benefiting from the schemes by between 10% and 20%.
- 2.11 Many felt that the advance assurance process is a pre-requisite for investment in many circumstances. The outcome of HMRC's challenges of tax avoidance schemes such as film schemes means most independent financial advisers will not recommend an investment in EIS without an advance assurance.
- 2.12 A crowdfunding platform said it requires companies to secure an advance assurance in order to comply with Financial Conduct Authority rules and obligations under the Market Acts 2000.
- 2.13 Withdrawal of the advance assurance service would make it harder for the smallest companies to obtain investment, as investors would become unwilling to invest owing to the lack of certainty and reputational risk increased.
- 2.14 Many respondents pointed to the consequences of making an investment in a non-qualifying company. For SEIS, EIS and SISR investments the investor is unable to claim tax relief. For VCTs, a non-qualifying investment breaches the VCT conditions, jeopardising their status as a VCT.
- 2.15 Some also felt that some elements of the additional EIS and VCT rules introduced in 2015 are very subjective and they felt that HMRC has not yet established or communicated consistent interpretations of some aspects, making it difficult for a professional adviser to provide reliable advice.
- 2.16 There may also be an increased professional cost as advisers would require increased insurance cover for any advice given and relied upon, due to the withdrawal of the advance assurance service. This could make it impossible for smaller companies to access the funding they require.
- 2.17 Several respondents pointed out that the advance assurance stage enables HMRC to reject aggressive schemes at an early stage. Withdrawing advance assurances could lead to more legal challenges after investments are made, requiring more resource.
- 2.18 However, a small number of respondents felt that the advance assurance service could be withdrawn in relation to certain schemes, although those views were mixed as to which schemes would still need support:
- one respondent suggested that advance assurances are not needed for SEIS companies, while others felt that the smallest companies would suffer most because many of them cannot afford professional advice
 - one respondent felt that VCTs would be able to cope without advance assurances if the guidance were improved
 - another respondent suggested that advance assurances should be withdrawn for all investors other than VCTs, owing to the significant consequences for VCTs of making a non-qualifying investment

- other respondents emphasised the importance of the advance assurance service continuing for SITR investments where, unlike the other schemes, there is less experience of the rules and more support is needed.
- 2.19 Any level of withdrawal of the advance assurance service would still need some other way of giving certainty, such as improved guidance. Many respondents highlighted the need for HMRC to provide more detailed guidance and communicate anonymised details of settled cases.

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?

- 2.20 Most respondents felt it would not be possible to restrict the advance assurance service. There is scope for genuine uncertainty over the application of the legislation in a wide variety of areas, even for professional advisers, particularly in relation to the additional 2015 EIS and VCT rules. One respondent pointed out that advisers are advising not just on income tax but also future capital gains tax reliefs, and advisers will be wary of future negligence cases. Another respondent suggested HMRC should set up a specialist unit to deal with the more complex cases.
- 2.21 Several respondents said that HMRC does not always communicate changes in interpretation of the rules so that what might appear to be certain can become uncertain.
- 2.22 Many respondents commented that the size of the investment does not necessarily represent its complexity so this would not be a good method to streamline the service. Also, company circumstances change and evolve and an assurance given previously may not be relevant later on. One respondent pointed out that a limit on size could result in fragmentation of the schemes.
- 2.23 Some respondents felt that concentrating on larger, more complicated, deals would disadvantage smaller, more straightforward, company investments. Some said they were willing to accept longer response times for more complex cases if straightforward cases were dealt with more quickly.
- 2.24 Some respondents suggested ways in which the advance assurance service could be restricted. Ideas included allowing a company to apply for just one advance assurance under EIS or VCT, leaving follow-on funding to be raised without an advance assurance, unless the amount of the investment is significant. Introducing an online service to fast-track straightforward applications or for those seeking additional funding where there have been no changes from the previous application was also suggested.
- 2.25 A few respondents suggested that there should be a set of parameters – which would always be approved – to streamline the service, or an automatic checklist enabling a company to self-certify their advance assurance, by confirming they meet all the conditions. Others suggested introducing a “safe haven” or “safe harbour” list of features where advance assurance would not be required. They suggested the list could be informed by HMRC in relation to areas which require clearance and that any boundary pushing should be rejected.

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.

- 2.26 Most respondents said they would like to see a discrete service introduced but only if it were introduced alongside the current full advance assurance service. Several respondents pointed out this would mean increasing demand for HMRC resource.
- 2.27 Several professional advisers said they would use a discrete enquiry service in advance of a full advance assurance application to check certain grey areas before finalising the details of an investment. This would help to reduce professional costs for companies that might not qualify, without having to incur costs for a full application.
- 2.28 A few respondents felt that a discrete enquiry service might be useful for follow on funding cases where specific circumstances had changed without needing a full advance assurance later on. However, there would be a problem in determining what constituted adequate disclosure.
- 2.29 Some respondents said that limiting companies to discrete enquiries could result in gaming the system, which would encourage boundary pushing and would not save HMRC resource. There were also concerns expressed that such a service would target resource on the more complex cases, disadvantaging companies working within the spirit of the rules.
- 2.30 Some respondents said that a discrete enquiry service would only be workable if there was unambiguous and objective advice available for those areas that were not covered by that service. Indeed, this may push work from the advance assurance stage to the compliance stage due to the subjective nature of the current legislation. This route would still discourage investment in the schemes.

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.

- 2.31 There were mixed responses to the idea of standardised documents. Over half of respondents said that this could be beneficial in some way - especially if these documents were pre-approved and used for simpler investments or start-ups alongside better guidance.
- 2.32 One respondent pointed out that providing a standard set of documents, even for the smallest companies, would be resource-intensive for the bodies providing them because the documents would need to be updated regularly to meet the latest commercial and legislative standards.
- 2.33 A large number of respondents felt that many investments, particularly in older companies where there may be other non-tax-advantaged investors, are too individual to be able to use a standard set of documents, so this route would not help to streamline the service.

- 2.34 Some respondents felt that a standard set of documents at investment house level might work. However, whether this would save time would depend on the number of deals the investment house carries out in a year, and the scope of changes from standard wording.
- 2.35 Some respondents suggested it might be possible to provide a set of standard clauses that could be adopted, where changes from the standard could be highlighted.
- 2.36 Many respondents said they would be happy to help explore this option further.

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

- 2.37 Many respondents welcomed the forthcoming digital service for advance assurance applications. One respondent urged HMRC to continue to resource the specialist helpline as it will be invaluable to those small businesses without specialist advice.
- 2.38 A number of suggestions were made in relation to the contact between companies, advisers and HMRC:
- it would be helpful to know the current time frames for giving a view on an application; one idea was to use an automated message on the help line before the digital service is introduced
 - having a single point of contact in the SCEC throughout the processing of an advance assurance application was also suggested – perhaps with more direct officer contact.
- 2.39 Many respondents, particularly tax bodies and advisers, pointed to the complexity of the legislation and that simplification would be the answer to managing demand for advance assurances. Many respondents suggested improving the guidance; they felt that making it more detailed and including and explaining the outcomes of real cases, perhaps through an archive of precedent cases, would help improve certainty for companies and their advisers.
- 2.40 Several respondents suggested a self-certified checklist could be used by companies or advisers that would be accepted by HMRC. HMRC would reserve the right to withdraw tax relief if misuse subsequently comes to light. One respondent said HMRC should focus on companies working within the spirit of the rules.
- 2.41 There were several suggestions to remove the “cliff edges” experienced by investors where entitlement to tax relief is lost, or VCT status is jeopardised, because the company is non-qualifying:
- companies that make an honest error could be given a grace period to correct the error
 - investing in a non-qualifying investment should not result in a breach of a VCT’s status where the VCT can demonstrate it had taken steps, including appropriate due diligence, to try and ensure that an investment was, to the best of its knowledge, qualifying.

- 2.42 Some respondents suggested HMRC should interpret the legislation less strictly. One respondent with an interest in VCTs suggested the law could be changed to allow a certain percentage of investments held to be non-qualifying, subject to a one-off notional tax charge.
- 2.43 Several respondents were still interested in options that were out of scope of the consultation:
- a few respondents wanted HMRC to accept partial applications with final documentation to follow; they felt that that it would also save HMRC time
 - several respondents suggested charging a fee for applications, including, perhaps, on a sliding scale, as a way of maintaining and improving the current advance assurance service
 - several respondents suggested increasing HMRC resource and reorganising the work in various specialist teams, including by reference to different industries.

3. Next steps

- 3.1 We are very grateful to all the respondents to our consultation who gave their time to provide their views and ideas. It is clear from the responses how valuable the advance assurance service is to our customers and there is a general wish to retain the service for all companies raising an investment.
- 3.2 However, we consider that it should be possible to reduce demand for the advance assurance service, in time. We currently accept around 70% of all applications without query. Two thirds of the remainder are approved following the provision of additional information, often because the original application did not include all the relevant documents.
- 3.3 Our current figures suggest that around 50% of companies receiving an advance assurance do not go on to raise funding. We also see a number of companies that raise investments outside the terms of an advance assurance approval, often leading to refusal of tax relief.
- 3.4 We want to continue to look at the scope for reducing unnecessary demand. However before we can consider making any changes to the service it is clear from the responses that we need to carry out more work to provide more reassurance to companies and advisers. This has the potential to reduce the demands on the service and so improve response times for all applicants.
- 3.5 We intend to use the information we have received to plan further work, including informal consultations with respondents who have said they are willing to help. We expect to focus initially on the following areas:
 - improving our communications and guidance, including scope for checklists that can be used when applying for an advance assurance
 - exploring the scope for using standard documents in specific circumstances, particularly very small companies and with fund managers.
- 3.7 We are happy to hear from people who are interested in supporting this work even if they did not respond to the original consultation. If you are interested, please contact us at:
venturecapitalschemes.policy@hmrc.gsi.gov.uk
- 3.8 We plan to publish a full government response later in the year.
- 3.9 We shall use the views that were not directly related to the scope of the consultation to inform the relevant policy and technical areas.

Annexe A: List of stakeholders consulted

Association of Investment Companies
Albion Ventures LLP
Big Society Capital
Bird & Bird LLP
British Private Equity and Venture
Capital Association
BTA (Cheltenham) LLP
Charles Russell Speechlys LLP
Community Shares Unit
Co-operatives UK
Crowdcube
Community Chest Business Loans Ltd
Daedalus Partners LLP
Deloitte LLP
Downing LLP
Enterprise Investment Scheme
Association
Encore Ventures LLP
Episode 1 Ventures LLP
Grant Thornton UK LLP
Harcourt Capital LLP
Mark Holland of Holland's
Ingenious Group
Institute of Chartered Accountants in
England and Wales
Johnston Carmichael LLP
Kin Capital Ltd
KPMG LLP
Livingbridge VC LLP
Maven Capital Partners UK LLP
James Cowper Kreston
Mills & Reeve LLP
MMC Ventures Ltd
Mobeus Equity Partners LLP
Nabarro LLP
Northern Ireland Tax Committee of
Chartered Accountants Ireland
NVM Private Equity LLP
Nyman Libson Paul
Octopus Group
Oxford Capital Partners LLP
Parkwalk Advisors
Philip Hare & Associates LLP
PKF Littlejohn LLP
Pricewaterhouse Coopers LLP
Resonance Ltd
Rockpool Investments LLP
RSM UK
Seedrs Limited
Shakespeare Martineau
Shoosmiths LLP
Smith & Williamson LLP
Social Investment Scotland
Triodos Bank
Triple Point Investment Management
LLP
The Chartered Institute of Taxation
UK Bioindustry Association
UK Business Angels Association
UK Crowdfunding Association
Wiggin LLP