



Michelmores



Tax efficient
investment and share schemes

Seed Enterprise Investment Scheme (SEIS)

- Limited to £100,000 for an individual
- Total limit for the company £150,000
- Income tax relief 50%
- Tax free exit after 3 years
- If investment fails tax relief on loss, net of tax relief already received
- Reinvestment relief for an earlier gain up to $\frac{1}{2}$ of the investment

SEIS – Company requirements

- Trading
- Gross assets of less than £200,000
- Trading
- Not a subsidiary of another company
- No substantial no trade activities (20% tests)
- Has not previously raised EIS
- Must have a UK permanent establishment
- Not in financial difficulties
- Less than 25 employees

SEIS - Sundry

- No pre-ordained exit
- Cannot be a director or employee before money is invested
- Cannot convert loan capital to equity
- Can get HMRC advance assurance on qualification
- Company needs to have traded for 4 months before claim forms can be issued to lodge with HMRC
- Can be made to work for crowd funding

Enterprise Investment Scheme (EIS)

- Annual limit of £1m per person
- Annual company limit of £5m to include all risk finance/state aid up to maximum overall of £12m or £20m if the company is “knowledge intensive”
- Income tax relief 30%
- Tax free exit after 3 years
- If investment fails tax relief on loss, net of tax relief already received

EIS – Company requirements

- Trading
- Gross assets of less than £15,000,000
- Trading
- Not a subsidiary of another company
- No substantial no trade activities (20% tests)
- Has not previously raised SEIS
- Must have a UK permanent establishment
- Not in financial difficulties
- Less than 250 employees
- Must be less than 7 years old (or 10 for a knowledge intensive company) from the first commercial sale as defined in the State Aid guidelines

EIS - Sundry

- No pre-ordained exit
- Cannot be a director or employee before money is invested
- Cannot convert loan capital to equity
- Can get HMRC advance assurance on qualification
- Company needs to have traded for 4 months before claim forms can be issued to lodge with HMRC
- Cannot hold 30% or more of the company
- Can be made to work for crowd funding

Enterprise Management Incentives (EMI)

- HMRC approved
- Flexible – exit only or time and performance or both
- Agree market value with HMRC
- Qualifying trade
- Can obtain HMRC advance assurance
- Gross assets of less than £30m
- Less than 250 employees
- Corporation tax deduction on exercise on difference between market value and exercise price
- Must register the scheme and report grant of options to HMRC within time periods to be within the EMI regime

EMI - Employees

- Must work at least 25 hours a week or 75% of their working time
- Cannot have a material (30%) interest in the company
- No more than £250,000 of options based on market value at grant date
- If held for more than 12 months – entrepreneurs relief on sale – 10% tax rate
- If exercise price is equal to market value at date of grant, no tax on grant or exercise
- Cashless exercise

Employee Shareholder Status (ESS)

- HMRC approved
- Employee can get £2,000 of shares tax free
- Could give employee up to £50,000 shares within the scheme but this will attract income tax
- Tax free exit up to £100,000 of gains
- Cannot have a material interest in the company
- Provision for sale of shares if an ESS shareholder is a leaver
- Employee must receive independent legal advice paid for by the company
- Must give up certain employment rights

ESS – Employment rights

The employment rights that will need to be given up/amended are:

- Right to request study leave
- Right to training
- Rights of flexible working
- Statutory redundancy payment
- Right not to be unfairly dismissed apart from
 - Automatic unfair dismissal
 - Dismissals in breach of the Equality Act; and
 - Dismissals in relation to health and safety

Growth shares

- Non approved arrangement but quite widely used
- Company issues shares with the right to share in growth of the company over and above a given value, such value being more than the current market value. (“the hurdle”)
- Value below the hurdle vests with the original shareholders, value over the hurdle is shared
- No income tax on issue or sale
- If more than 5% - possibly entrepreneurs relief
- Can participate in dividends
- Can be voting or non-voting but if non-voting entrepreneurs relief would be an issue irrespective of size of shareholding

Other types of scheme

- Company share ownership plan (CSOP) – HMRC approved but limited to £30,000 worth of options. Gives capital gains position but restrictive and not widely used
- Share Incentive Plan (SIP) – Must be made available to all employees. Provides limited incentive as the amounts that qualify are very low. Mostly used by listed companies

Other types of scheme continued

- SAYE scheme – This is similar to a SIP but is linked to a savings account held by each employee. Expensive to set up and run so again, mainly listed companies.
- Non-tax advantaged (until recently “Unapproved options”) – Completely flexible and there are many variations to this type of arrangement but income tax and potentially national insurance on exercise. Capital gains tax on any subsequent growth.

Other types of scheme continued

- Phantom options – Not really an option at all but it is an agreement to pay x% of the proceeds on sale as if the recipient held shares. Taxed as income and with national insurance
- Bonus scheme – replicates the phantom scheme but with potentially less paperwork.