

EIS/SEIS Advance Assurance

What is an Advance Assurance ?

HMRC offer a free service to companies who intend to raise money under EIS or SEIS whereby HMRC will provide an opinion as to whether, following an application by the company, the company's proposed share issue would qualify for the EIS/SEIS tax reliefs.

If an Advance Assurance is given, this will be in the form of a letter from HMRC, referring to the company and the application made, and confirming, on the basis of the information supplied, that HMRC would be able to authorise the company to issue EIS3 or SEIS3 certificates to individual shareholders, following the receipt of form EIS1 or SEIS1 from the company.

Only companies intending to issue shares can apply for Advance Assurance (or agents acting on behalf of the company). It is not possible for individuals considering investing to apply nor, because of confidentiality, for HMRC to confirm whether an application has been made by a company.

HMRC will not give an Advance Assurance where the relevant shares have already been issued.

Why would a company want to apply for Advance Assurance ?

Obtaining an Advance Assurance gives added confidence that the company's shares will qualify for EIS or SEIS tax reliefs, so this may help the company in seeking subscribers for the company's shares and who want comfort that their investment in the company is expected to qualify. Many potential investors will ask a company if an Advance Assurance has been received.

How do companies obtain an Advance Assurance ?

HMRC has an application form EIS/SEIS(AA) which can be downloaded from HMRC's website. It is not compulsory to use the form but HMRC recommend companies to do so, as it sets out the information that must be sent to HMRC. However, for more complex proposed share issues (such as where there will be more one class of shares or where the business that the company intends to carry on is not clearly outside the EIS/SEIS excluded activities), then a more detailed explanation of the position is called for than can be set out in the form, and the application should be set out in a letter to HMRC.

What information do I need to send to HMRC ?

The following information should be sent to HMRC with the Advance Assurance application;

- The issuing company's corporation tax reference number and the HMRC office currently dealing with the company's corporation tax affairs (if there is one).
- Name and address of company.
- Company's Companies House registration number.
- Date of incorporation.
- Details of the approximate sum the company hopes to raise.
- The purpose the money raised by the shares will be used for.
- Details of all trading or other activities to be carried on by the company, and any subsidiary, and details of which company(/ies) will use the money raised by the share issue.
- The latest company accounts and the accounts of any subsidiary company.
- A copy of the latest draft of any prospectus, information memorandum, business plan or similar document which is to be issued to potential investors.
- An up-to-date copy of the Memorandum and Articles of Association of the company and of any subsidiary, and details of any changes to be made.
- Details of any subscription agreement or other side agreement to be entered into by the shareholders.
- Any further information necessary to allow HMRC to consider whether all the EIS or SEIS requirements are likely to be met. For instance, details of minority holdings in other companies, or details of other companies' minority holdings in the issuing company, may be relevant in determining whether the 'control and independence' requirements will be met.

-A declaration that the company expects to be able to complete the declaration on form EIS1/SEIS1 after the shares are issued.

It is not necessary for the request to identify the intending subscribers.

If the details of the proposed share issue change subsequent to the Advance Assurance application being submitted, consideration should be given as to whether it is necessary to send details of the changes to HMRC.

What happens if HMRC refuse to give an Advance Assurance ?

If HMRC do not think the share issue will qualify for EIS/SEIS relief in due course they will say so, and set out the reasons why. It is possible to discuss this with HMRC and make changes to the proposed share issue, so that HMRC are then able to give Advance Assurance; but HMRC cannot help with any tax planning.

HMRC will refuse to provide an Advance Assurance where the share issue is for the purposes of tax avoidance.

HMRC have also stated they will decline to give Advance Assurance where they have a concern that the EIS/SEIS “disqualifying arrangements” legislation applies. This legislation is broadly targeted at EIS at SEIS issues where the EIS or SEIS company would be unlikely to exist, or would be unlikely to carry on the particular activities intended (or to carry them on in the manner proposed), were it not for the desire to achieve one or both of those particular aims.

There is no formal appeal possible against an HMRC refusal to give an Advance Assurance as it is a non-statutory service. However it would still be open to the company to apply for the issue of EIS3 or SEIS3 certificates in due course, which, in the event of a refusal by HMRC to do so, would enable the company to appeal against that decision.

What's not covered by the Advance Assurance ?

An Advance Assurance only relates to whether it is expected (on the basis of the information supplied with the Advance Assurance application) that the company will be a qualifying company, the shares will be eligible shares, and will be issued to raise money for a qualifying business activity and, finally, that the money raised will be employed only by companies that satisfy the rules of the scheme.

Accordingly it does not confirm whether any individual shareholder is eligible for relief, nor that the company will continue to meet all of the EIS/SEIS requirements which must be met throughout the qualifying period for the shares.

The Advance Assurance relates to a particular issue of shares, and an assurance given in respect of one share issue cannot be regarded as providing assurance in respect of a different share issue.

An Advance Assurance does not mean that an investment is in any way approved or recommended by HMRC.

How long does it take ?

A response by HMRC to Advance Assurance can take up to 4 – 5 weeks from receipt of the application, although HMRC will try to respond sooner. HMRC can be very busy in the weeks leading up to the end of the tax year.

Applications are dealt with in order of receipt by the Inspector dealing with the request. Only where there are Stock Exchange requirements in respect of announcements will HMRC consider giving priority to such applications (so principally in respect of AIM listed companies). Companies seeking Advance Assurance should take into account the length of time an application can take.

Can the company rely on an Advance Assurance once given by HMRC ?

HMRC will normally consider itself bound by any Advance Assurance given, providing that the information on which it is based is complete and accurate and the company carries out its intention as described.

However HMRC's view will be based on the information received from the company with the Advance Assurance application and the responsibility for the accuracy of the information supplied and considered by HMRC rests wholly with the company. Therefore HMRC will not be bound by an Advance Assurance given where that information was incorrect or subsequently superseded. Also the Advance Assurance will not be binding where there is a change in legislation or a court case which changes the interpretation underlying the Advance Assurance being given (if that is before the issue of the shares or in some cases before the completion of the form EIS1/SEIS1).

Does the company need to seek Advance Assurance ?

There is no requirement for the company to seek an Advance Assurance, and neither is there a requirement for the company to register with HMRC in advance of an issue of shares.

Where does a company send its Advance Assurance to ?

Advance Assurance applications should initially be sent to;

Small Company Enterprise Centre (Admin Team)
Mid-size Business SO777
Newcastle
NE98 1ZZ

Tel: 0300 123 1083

The SCEC can be emailed at: enterprise.centre@hmrc.gsi.gov.uk but HMRC cannot guarantee the security of emails sent and is at the Company's own risk. If the company wants a reply by email, it must authorise HMRC to do so.

Finally, a company which receives an Advance Assurance will still need to submit EIS1 or SEIS1 in respect of the share issue in due course.

Further information:

HMRC has information on EIS and SEIS at their website under “Enterprise Investment Scheme (EIS)” or “Seed Enterprise Investment Scheme (SEIS)” and in their Venture Capital Manual (VCM). Advance Assurances are included in the website section “HM Revenue & Customs: Clearances and approvals” of the website.