

AN EISA GUIDE TO

The Enterprise Investment Scheme (“EIS”) and the “Sunset Clause”

What is the Sunset Clause?

For the last dozen or so years, the EIS income tax relief has been considered to be a form of State aid, and has needed to be notified to the European Commission. When EU State aid approval was last obtained for the EIS in 2015, it was a requirement that a "sunset" clause be included in the EIS legislation.

Section 157(1)(aa) Income Tax Act 2007 provides that income tax relief is available for subscriptions for shares under the EIS prior to 6 April 2025. This is colloquially known as the “Sunset clause”. However section 157(1A) goes on to say that “The Treasury may, by regulations, amend subsection (1)(aa) to substitute a different date for the date for the time being specified there”. This gives the Government the power to extend the Sunset clause by secondary legislation beyond 5 April 2025.

Does this affect deferral relief under the EIS?

Please note that the capital gains tax deferral relief available for investment in EIS companies is a separate tax relief from EIS income tax relief, and is not subject to a sunset clause.

What about SEIS?

There is no similar provision for the Seed Enterprise Investment Scheme (“SEIS”). This is because SEIS, being for smaller investment amounts, is a *de minimis* State aid, rather than a notified State aid. As such, if the legislation remains unchanged, SEIS tax reliefs will continue to be available after 5 April 2025.

What about VCTs?

There are similar provisions in the Venture Capital Trusts (“VCT”) legislation. These provide that VCT income tax relief is available for subscriptions of shares in VCTs before 6 April 2025, and also that regulations may be laid to substitute a different expiry date. The dividend relief and capital gains exemptions for VCT shares are not subject to a sunset clause.

What can be done?

The UK has now left the EU and therefore many of the State aid restrictions will cease to apply, and the Government may choose to remove the EIS Sunset Clause altogether. Northern Ireland is in the United Kingdom, but it is subject to the provisions of the Northern Ireland Protocol. It is not clear whether EU approval will need to be sought to remove or extend the sunset clause for businesses trading in Northern Ireland. The Government has been reluctant to make distinctions between different parts of the United Kingdom, but in the Spring Statement of 23 March 2022 the rate of VAT was reduced to zero on solar power, heat pumps and insulation for Great Britain, but not Northern Ireland, due to the Northern Ireland Protocol; and this may be a precedent for other government interventions.

What does the EISA recommend?

The sunset clause is beginning to cause concern for entrepreneurs who are considering their need for capital in the medium term. We recommend that the Government should announce its intentions as to the longevity of EIS, which has proved its worth over a quarter of a century and has been supported by each party in government. The EIS falls within the remit of Treasury ministers, and we understand that the Government is likely to address this at a fiscal event before the end of 2023.

EIS backed businesses have created thousands of jobs throughout the UK, and some have gone on to become “unicorns”. The Patient Capital Review Industry Response in October 2017 concluded that “accessing long-term, patient finance is difficult in the UK’s under-developed and fragmented ecosystem. If left unaddressed, this will continue to stifle the rich pipeline of UK start-ups coming to fruition and will see the UK lose out on the jobs, skills development, talent, technological know-how and other economic benefits they could provide” and “The popularity of these schemes [EIS & VCT] has contributed significantly to the development of a vibrant UK start-up scene”¹.

The need of private capital is now greater than ever to aid the post Covid recovery and to support the levelling up agenda. We hope that the EIS will continue to play a crucial part in supporting and growing UK businesses for many years to come.

¹ In November 2016, Sir Damon Buffini led an independent industry panel of entrepreneurs, academics and investment professionals to support the Government’s Patient Capital Review into the availability of long-term finance for growing UK firms. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/661397/PCR_Industry_panel_response.pdf