

SCHEDULE 1

SEIS: RE-INVESTMENT RELIEF

Seed enterprise investment scheme: re-investment relief

- 1 After section 150F of the TCGA 1992 (inserted by paragraph [] of this Schedule) insert –

“150G Seed enterprise investment scheme: re-investment

Schedule 5BB to this Act (which provides relief in respect of re-investment under the seed enterprise investment scheme in the tax year 2012-13) has effect.”

- 2 After Schedule 5B to that Act insert –

“SCHEDULE 5BB

SEED ENTERPRISE INVESTMENT SCHEME: RE-INVESTMENT

SEIS re-investment relief

- 1 (1) Sub-paragraph (5) applies where conditions A to C are met in relation to an individual (“the investor”).
- (2) Condition A is that –
- (a) there would (ignoring sub-paragraphs (5) and (6)) be a chargeable gain (“the original gain”) accruing to the investor at any time in the tax year 2012-13, and
 - (b) the original gain is one accruing on the disposal of an asset by the investor at any time (“the disposal time”) in that year.
- (3) Condition B is that –
- (a) the investor is eligible for SEIS relief for the tax year 2012-13 in respect of an amount subscribed for an issue of shares in a company made to the investor in that year,
 - (b) the investor makes a claim for and obtains SEIS relief for that year in respect of all or some of those shares (“the relevant SEIS shares”), and
 - (c) if the relevant SEIS shares, or any corresponding bonus shares in relation to those shares, were issued before the disposal time, they are still held by the investor at the disposal time.
- (4) Condition C is that –
- (a) the investor has made a claim under this paragraph for relief in relation to the original gain, and

- (b) the claim is in respect of the amount on which SEIS relief is claimed by the investor in respect of the relevant SEIS shares (“the SEIS expenditure”) or part of that amount.
- (5) So much of the SEIS expenditure as –
- (a) is specified in the claim,
 - (b) is unused, and
 - (c) does not exceed so much of the original gain as is unmatched,
- is to be set against a corresponding amount of the original gain.
- (6) Where an amount of the SEIS expenditure is set against the whole or part of the original gain under sub-paragraph (5), so much of that gain as is equal to that amount is to be treated as not being a chargeable gain.
- (7) For the purposes of this paragraph –
- (a) the SEIS expenditure is unused to the extent that it has not already been set under sub-paragraph (5) or paragraph 2(1) of Schedule 5B against the whole or any part of a chargeable gain, and
 - (b) the original gain is unmatched, in relation to the SEIS expenditure, to the extent that it has not had any other expenditure set against it under sub-paragraph (5) or paragraph 2(1) of Schedule 5B.

Restrictions on relief under paragraph 1

- 2 (1) Sub-paragraph (2) applies if the investor’s tax reduction under section 257AB of ITA 2007 for the tax year 2012-13 is limited by subsection (2)(b) of that section (calculation of tax reduction where claim made for amounts subscribed for shares which exceed £100,000).
- (2) Paragraph 1(5) to (7) has effect as if references to the SEIS expenditure were references to so much of that expenditure as is given by the formula –

$$\frac{SA}{TSA} \times \text{£}100,000$$

where –

“SA” means the SEIS expenditure (ignoring this paragraph);

“TSA” means the total of the amounts subscribed for shares issued in the tax year 2012-13 in respect of which the investor is eligible for and claims SEIS relief for that tax year.

- (3) Sub-paragraph (4) applies if the amount of SEIS relief attributable to any of the relevant SEIS shares has been reduced under Chapter

6 of Part 5A of ITA 2007 before the SEIS relief was obtained (otherwise than by virtue of corresponding bonus shares being issued in respect of those shares).

- (4) Paragraph 1(5) to (7) has effect as if the SEIS expenditure were the amount found by multiplying that expenditure by the fraction –

$$\frac{R1}{R2}$$

where –

“R1” means the amount of SEIS relief attributable to the relevant SEIS shares when the relief is obtained;

“R2” means the amount of SEIS relief which would have been so attributable in the absence of the reduction.

- (5) In a case where sub-paragraphs (2) and (4) both apply, sub-paragraph (2) is to be applied before sub-paragraph (4).

Claims

- 3 (1) Section 257EA of ITA 2007 (time for making claims for SEIS relief) applies in relation to a claim made by the investor for the purposes of paragraph 1 in relation to the SEIS expenditure as it applies in relation to a claim for SEIS relief in respect of that expenditure.
- (2) Nothing in paragraph 1(3) prevents a claim being made by the investor under paragraph 1 before SEIS relief has actually been obtained by the investor in relation to the SEIS relief.

Attribution of SEIS re-investment relief to relevant SEIS shares

- 4 (1) References in this Schedule to the SEIS re-investment relief attributable to any shares are to be read as references to the total amount attributed to those shares in accordance with this paragraph.
- (2) Sub-paragraph (3) applies where the whole or part of the SEIS expenditure is set off against a chargeable gain under paragraph 1(5).
- (3) A proportionate part of the expenditure which is so set off is attributed to each of the relevant SEIS shares.
- (4) Sub-paragraph (5) applies if corresponding bonus shares are issued in respect of all or some of the relevant SEIS shares (“the original shares”) to which relief is attributed under this paragraph.
- (5) A proportionate part of the total amount attributed to the original shares immediately before those bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and those bonus shares.

Removal or reduction of the relief

- 5 (1) This paragraph applies where in respect of shares issued to an individual –
- (a) SEIS relief is attributable to the shares,
 - (b) SEIS re-investment relief is also attributable to the shares, and
 - (c) the SEIS relief which is attributable to the shares is withdrawn or reduced under Chapter 6 of Part 5A of ITA 2007.
- (2) A chargeable gain accrues to the individual in the tax year 2012-13 on a disposal made in that tax year.
- (3) The amount of that gain is –
- (a) in a case where the SEIS relief is withdrawn, the amount of SEIS re-investment relief which is attributable to the shares immediately before the withdrawal, and
 - (b) in a case where the SEIS relief is reduced, the appropriate fraction of that amount.
- (4) In a case where the SEIS re-investment relief is withdrawn, the SEIS re-investment relief ceases to be attributable to the shares.
- (5) In a case where the SEIS relief is reduced, the appropriate fraction of the SEIS re-investment relief ceases to be attributable to the shares.
- (6) “The appropriate fraction” is –

$$\frac{R1 - R2}{R1}$$

where –

“R1” is the total amount of the SEIS relief attributable to those shares immediately before the reduction, and
“R2” is the total amount of the SEIS relief attributable to those shares immediately after the reduction.

Transfers of shares to spouses and civil partners

- 6 (1) This paragraph applies if –
- (a) shares to which an amount of SEIS relief is attributable were issued to an individual (“A”),
 - (b) A transferred the shares to another individual (“B”) during their lives,
 - (c) A was married to, or was the civil partner of, B at the time of the transfer, and
 - (d) subsection (4) of section 257FA of ITA 2007 (provision about disposals of shares disapplied where disposal between spouses or civil partners) prevented that section applying to the transfer.

- (2) Any chargeable gain which accrues by virtue of paragraph 5(2), as a result of SEIS relief attributable to the shares being withdrawn or reduced after the shares are transferred, is to accrue to B (instead of to A).

Adjustment of capital gains tax liability

- 7 All such adjustments of capital gains tax are to be made, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of relief being obtained, or a gain accruing, under this Schedule.

Interpretation etc

- 8 (1) In this Schedule –
“bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);
“corresponding bonus shares”, in relation to any shares (“the original shares”), means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares;
“SEIS relief” has the same meaning as in Part 5A of ITA 2007.
- (2) In this Schedule, references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual in one capacity and on the same day.
This is subject to sub-paragraph (3).
- (3) If section 257AB(1) and (2) of ITA 2007 applies, in the case of any issue of shares made to an individual, as if part of the issue had been issued in a previous tax year, this Schedule has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (4) Part 5A of ITA 2007 applies, for the purposes of this Schedule, to determine whether SEIS relief is attributable to any shares and, if so, the amount of relief so attributable.”

Consequential amendments

- 3 In Schedule 5B to TCGA 1992 (enterprise investment scheme: re-investment), in paragraph 2 (postponement of original gain) –
- (a) in sub-paragraph (3)(b), after “Schedule” insert “or paragraph 1(5) of Schedule 5BB”, and
 - (b) in sub-paragraph (4), after “this Schedule” insert “or paragraph 1(5) of Schedule 5BB”.

EXPLANATORY NOTE

SEED ENTERPRISE INVESTMENT SCHEME: RE-INVESTMENT RELIEF

SUMMARY

1. This Schedule provides for an additional relief under the Seed Enterprise Investment Scheme (SEIS). Subject to meeting conditions, this relief is, broadly, an exemption from capital gains tax (CGT) that individuals may claim where they realise capital gains on disposals of assets in the tax year 2012-13 and in the same year make investments that qualify for the main “SEIS relief” from income tax. The maximum exemption of £100,000 of gains corresponds to the maximum investment that can qualify for SEIS income tax relief in 2012-13.

DETAILS OF THE SCHEDULE

2. Paragraph 1 of the Schedule inserts a new section 150G into the Taxation of Chargeable Gains Act 1992 (TCGA). Section 150G introduces Schedule 5BB to the TCGA, which provides the SEIS reinvestment relief.
3. Paragraph 2 inserts new Schedule 5BB into the TCGA 1992.
4. Paragraph 3 amends Schedule 5B TCGA. Schedule 5B allows individuals to defer the time at which gains on disposals of assets become liable to CGT where they invest in shares under the terms of the main Enterprise Investment Scheme (EIS). The amendments made by paragraph 3 ensure that both EIS deferral and SEIS reinvestment relief cannot be claimed in respect of the same expenditure.

New Schedule 5BB TCGA

5. Paragraph 1 of Schedule 5BB sets out the conditions for relief and the amount of relief available.
6. Paragraph 1(2) to (4) sets out three conditions for relief:
 - A. An individual must realise a gain on a disposal of an asset in the tax year 2012-13.
 - B. The individual must make an investment that qualifies for “SEIS relief” from income tax, and claim that relief.

- C. The individual must claim SEIS reinvestment relief in respect of the amount on which the “SEIS relief” is claimed.
7. Paragraph 1(5) to (7) sets out the amount of SEIS reinvestment relief. Paragraph 1(5) sets the amount on which SEIS relief is claimed (“the SEIS expenditure”) against the gain on the disposal of the asset. Paragraph 1(6) provides that the amount of the gain that has the SEIS expenditure set against it is not liable to CGT. Paragraph 1(7) restricts the SEIS expenditure where there is also a claim to EIS deferral relief.
 8. Paragraph 2 of Schedule 5BB restricts the amount of SEIS reinvestment relief that is given under paragraph 1 in two circumstances.
 9. Paragraph 2(1) and (2) applies where the amount invested under SEIS exceeds the maximum amount of £100,000 on which an individual can obtain income tax relief in any one tax year. In this circumstance the SEIS reinvestment relief is capped at the amount on which SEIS relief is due, applying the formula in sub-paragraph (2).
 10. Paragraph 2(3) and (4) applies where SEIS relief is restricted before the claim to SEIS reinvestment relief is made. In this case the maximum amount on which SEIS reinvestment relief can be claimed is restricted by a similar amount, under the formula in sub-paragraph (4).
 11. Paragraph 2(5) gives the order in which the two restrictions in paragraph 2 are to be applied in cases where they both apply.
 12. Paragraph 3 of Schedule 5BB sets the time limit for claiming SEIS reinvestment relief as the same as the limit that applies for claims to SEIS relief. The paragraph also makes clear that claims to SEIS reinvestment relief may be made before effect is given to the claim for SEIS relief on which the SEIS reinvestment relief claim depends.
 13. Paragraph 4 of Schedule 5BB treats the amount on SEIS reinvestment relief is given as spread (‘attributed’) equally across all the shares in respect of which the claim to relief is made. This is required in order to be able to recover the correct amount of relief, should this become necessary, under paragraph 5 or 6 of Schedule 5BB, see below).
 14. Paragraph 5 of Schedule 5BB applies where the SEIS relief attributed to shares is withdrawn or reduced so that the SEIS reinvestment relief attributed is also withdrawn or reduced in the same proportion. For example, if the SEIS relief were reduced by 60 per cent the SEIS reinvestment relief will also be reduced by per cent. Where this happens paragraph 5(2) makes the individual who made the investment liable to CGT for the tax year 2012-13 on a chargeable

gain of the appropriate amount. Where paragraph 5 applies, the amount of SEIS reinvestment relief attributable to the shares in question, sub-paragraphs (4) and (5) reduce the amount of SEIS reinvestment relief remaining attributable to the shares by a corresponding amount.

15. Paragraph 6 of Schedule 5BB modifies the effect of paragraph 5 in cases where the investor in shares to which SEIS reinvestment relief is attributable transfers some or all of the shares to their husband or wife or civil partner, and that transfer does not itself lead to relief being withdrawn. Where SEIS reinvestment relief is withdrawn or reduced after the transfer, a gain is charged to CGT on the transferee spouse or civil partner in respect of the shares which they hold, and the amount of the gain charged on the original investor is based on only the shares they still hold.
16. Paragraphs 7 and 8 of Schedule 5BB make supplementary provision. Paragraph 7 permits all necessary adjustments to be made to give effect to claims or charges under the Schedule, notwithstanding the normal time limits for amending or making assessments to CGT. Paragraph 8 defines various terms in Schedule 5BB.

BACKGROUND NOTE

17. Draft legislation and an explanatory note for the main provisions of the Seed Enterprise Investment Scheme (SEIS) were published on 6 December 2011.
18. The proposal to introduce a CGT exemption for gains realised in 2012-13 and then invested through SEIS in the same year was announced in the autumn statement on 29 November 2011.
19. If you have any comments on queries on the SEIS reinvestment relief, email capitalgains.taxteam@hmrc.gsi.gov.uk or telephone Colin Weston on 020 7147 0127.