need to know

11|2014

ukie

THE ASSOCIATION FOR UK INTERACTIVE ENTERTAINMENT

Harbottle & Lewis

Seed Enterprise Investment Scheme

This document has been prepared by Ukie Associate Member, Harbottle & Lewis. It provides a summary of the Seed Enterprise Investment Scheme (SEIS), the tax benefits relating to the scheme and the qualifying conditions that must be met by the investor and the company recovering the investment to obtain such reliefs. This document has been prepared in light of the applicable English tax legislation as at November 2014 which may be subject to change, possibly with retrospective effect. This document is intended to be used as guidance only and does not constitute legal advice from Harbottle & Lewis LLP. You should seek legal advice if you intend to use the SEIS.

1. Introduction

The SEIS aims to provide a tax incentive for investment in start-up companies. The reliefs available through the SEIS and the criteria which must be met by the company and the investor are summarised in this short guide.

The SEIS is designed to help smaller, early stage companies raise equity finance by encouraging individuals to invest in these companies. The scheme focuses on businesses which are about to start or have just begun to carry on a qualifying trade.

2. Tax benefits

There are four possible tax reliefs available through the SEIS:

2.1. **Income tax relief** - Investors may claim relief against income, up to an annual investment limit of £100,000 at a rate of 50 per cent. of the invested amount, irrespective of the income tax rate that applies to the investor.

2.2. **Capital Gains Tax (CGT) relief** - No CGT is payable by an investor on the disposal of the shares.

2.3. **Loss relief** - relief is also given for any allowable losses arising on the disposal of the shares less any income tax relief already claimed on the shares.

2.4. **CGT reinvestment relief** - Gains arising on the disposal of any asset in 2013-2014 will be partially exempt if the proceeds are reinvested in SEIS shares in 2013-2014 or 2014-2015. The exempt amount is half the qualifying re-invested amount.

The reliefs described in paragraphs 2.1 to 2.4 above, will be withdrawn or reduced if the shares are sold within three years of their issue to the investor.

The reliefs cannot be claimed if the company has not been trading for at least four months, or, if the company is not yet trading, it has spent at least 70 per cent. of the monies raised by the relevant issue of shares. The reliefs must be claimed within five years of the self-assessment deadline for the year in which the shares were issued.

3. Qualifying conditions

In order to take advantage of the benefits of the SEIS, both a qualifying company and a qualifying investor must meet the following criteria:

Seed Enterprise Investment Scheme

3.1. In order to qualify, the investee company:

3.1.1 must issue full-risk ordinary shares which must be fully paid up in cash. The shares will be able to carry preferential rights to dividends provided that the amount of the dividend and the date the dividend is payable cannot be dependent on the decision of the company, the shareholder or anyone else. The dividends must not be cumulative;

3.1.2 must not have gross assets exceeding £200,000 immediately before the shares are issued;

3.1.3 must have fewer than 25 employees;

3.1.4 must not be listed on a recognised stock exchange when the shares are issued and there must be no arrangements in place for it to become quoted (AIM is not regarded for these purposes as a recognised stock exchange);

3.1.5 must exist wholly for the purpose of carrying on a new qualifying trade (incidental purposes can be ignored). If the business is already incorporated, it must have been incorporated within two years of the issue of the shares;

3.1.6 must have a permanent establishment in the UK for the three years following the share issue;

3.1.7 cannot be in "difficulty" when the shares are issued. This means it must not be a "firm in difficulty" under European Commission guidelines; and

3.1.8 must not be the subsidiary of or controlled by another company and if the company receiving investment has any subsidiaries, these must be at least 50 per cent. owned by and under the control of that company.

The investing company cannot raise more than £150,000 through SEIS investments. This limit applies to aggregate amounts raised by the most recent issue and all other share issues made on the same day and in three years immediately preceding that date.

3.2. In order to qualify, the investor:

3.2.1 cannot hold a stake of 30% or more in the issuing company. This limit also applies to directors investing in their companies;

3.2.2 must make the investment for genuine commercial reasons and not for tax avoidance purpose;

3.2.3 cannot be an employee in the issuing company from the date the shares are issued to the third anniversary of issue;

3.2.4 must hold the shares for three years – in order to retain SEIS reliefs; and

3.2.5 cannot receive loans from the issuing company.

SEIS relief is provisional and may be withdrawn if during the period of three years from the issue of the shares an event takes place which contravenes any of the above conditions governing relief. Additionally, the shares must not be issued in connection with, or as a consequence of, disqualifying arrangements which generate access to the reliefs where the benefit of the investment is passed onto another party or where the business activity would otherwise be carried on by another party.

What should I do next?

For further information on this document or SEIS please contact David Scott (**david.scott@harbottle.com**).