

SCHEDULES

SCHEDULE 6

SEED ENTERPRISE INVESTMENT SCHEME

PART 2

RELIEF FOR CAPITAL GAINS

Introductory

2 TCGA 1992 is amended as follows.

Disposal of shares to which SEIS relief is attributable

3 Before section 151 insert—

“150E Seed enterprise investment scheme

- (1) For the purpose of determining the gain or loss on any disposal of shares by an individual where—
 - (a) an amount of SEIS relief is attributable to the shares, and
 - (b) apart from this subsection there would be a loss,the consideration given by the individual for the shares is to be treated as reduced by the amount of the relief.
- (2) Where—
 - (a) shares are disposed of by an individual after the end of the period referred to in section 257AC(2) of ITA 2007,
 - (b) an amount of SEIS relief is attributable to the shares, and
 - (c) (apart from this subsection) there would be a gain,the gain is not a chargeable gain.
- (3) Despite section 16(2), subsection (2) does not apply to a disposal on which a loss accrues.
- (4) Subsection (5) applies where—
 - (a) an individual’s liability to income tax has been reduced (or treated by virtue of section 257H of ITA 2007 (spouses and civil partners) as reduced) for any tax year under section 257AB of that Act in respect of an issue of shares,
 - (b) the amount of the reduction (“R”) is less than the amount (“T”) which is equal to tax at the SEIS rate on the amount subscribed for the issue, and

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- (c) R is not within paragraph (b) solely by virtue of section 29(2) and (3) of ITA 2007.
- (5) If there is a disposal of the shares on which there is a gain, subsection (2) applies only to so much of the gain as is found by multiplying it by the fraction—
- $$\frac{R}{T}$$
- (6) Any question as to—
- (a) which of any shares that—
 - (i) are acquired by an individual at different times, and
 - (ii) are shares to which SEIS relief is attributable,
 a disposal relates to, or
 - (b) whether a disposal relates to shares to which SEIS relief is attributable,
- is to be determined for the purposes of capital gains tax as for the purposes of section 257HA of ITA 2007.
- Chapter 1 of this Part has effect subject to this subsection.
- (7) Sections 104, 105 and 106A do not apply to shares to which SEIS relief is attributable.
- (8) Where—
- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
 - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
 - (c) immediately following the reorganisation, SEIS relief is attributable to the existing holding or the allotted shares,
- sections 127 to 130 do not apply in relation to the existing holding.
- (9) Sections 135 and 136 do not apply in respect of shares to which SEIS relief is attributable.
- (10) Subsection (9) does not have effect to disapply section 135 or 136 where—
- (a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future right to be redeemed,
 - (b) the new shares are issued after the end of the relevant period, and
 - (c) the condition in subsection (11) is satisfied.
- (11) The condition is that at some time before the issue of the new shares—
- (a) the company issuing them issued eligible shares, and
 - (b) a certificate in relation to those eligible shares was issued by the company for the purposes of section 257EB(1) of ITA 2007 and in accordance with sections 257EC and 257ED of that Act.

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- (12) 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 the SEIS relief being given or withdrawn.
- (13) Where shares to which SEIS relief is attributable are exchanged for other shares in circumstances such that section 257HB of ITA 2007 (acquisition of share capital by new company) applies—
- (a) subsection (9) above does not have effect to disapply section 135, and
 - (b) sections 257HB(3)(b), 257HC(2)(a) and 257HD of ITA 2007 apply for the purposes of this section as they apply for the purposes of Part 5A of that Act.
- (14) For the purposes of this section—
- “eligible shares” means shares that meet the requirements of section 257CA(2);
 - “new holding” is to be construed in accordance with sections 126, 127, 135 and 136;
 - “ordinary share capital” has the meaning given in section 989 of ITA 2007;
 - “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;
 - “relevant period” means the period found by applying section 257AC(2) of ITA 2007 by reference to the company issuing the shares referred to in subsection (9) and by reference to those shares;
 - “the SEIS rate” has the meaning given by section 257AB(3) of ITA 2007;
 - “SEIS relief” means relief under Part 5A of ITA 2007 (seed enterprise investment scheme);
- and that Part applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable.

150F Seed enterprise investment scheme: reduction of relief

- (1) This section has effect where—
- (a) section 150E(2) applies on a disposal of shares, and
 - (b) before the disposal, value is received in circumstances where SEIS relief attributable to the shares is reduced by an amount under section 257FE(2)(a) of ITA 2007.
- (2) If section 150E(2) applies on the disposal but section 150E(5) does not, section 150E(2) applies only to so much of the gain as remains after deducting so much of it as is found by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the amount by which the SEIS relief attributable to the shares is reduced as mentioned in subsection (1), and

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B is the amount of the relief attributable to the shares.

- (3) If section 150E(2) and (5) apply on the disposal, section 150E(2) applies only to so much of the gain as is found by—
 - (a) taking the part of the gain found under section 150E(5), and
 - (b) deducting from that part so much of it as is found by multiplying it by the fraction mentioned in subsection (2) above.
- (4) Where the SEIS relief attributable to the shares is reduced as mentioned in subsection (1) by more than one amount, “A” in subsection (2) is to be taken to be equal to the aggregate of the amounts.
- (5) The amount which is “B” in subsection (2) is to be found without regard to any reduction mentioned in subsection (1).
- (6) For the purposes of this section, Part 5A of ITA 2007 (seed enterprise investment scheme) applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable.”

Seed enterprise investment scheme: re-investment relief

- 4 After section 150F (inserted by paragraph 3 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.”

- 5 After Schedule 5B 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,

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- (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.

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(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 Chapters 6 and 7 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).

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Adjustment of capital gains tax liability

- 7 (1) 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.
- (2) In its application to an assessment made by virtue of this paragraph, section 86 of TMA 1970 (interest on overdue capital gains tax) has effect as if the relevant date were 31 January next following the tax year in which the assessment is made.

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.”