Guidance Note: E [redacted] ent Scheme (EIS)

1. Introduction – what is the [redacted]

The Enterprise Investment [redacted] encourage private investment into growing British companies [redacted] reliefs.

EIS has been around sinc [redacted] r HMRC approved venture capital schemes. EIS enables co [redacted] to help grow their businesses by offering tax reliefs to ind [redacted] uy new shares in the company. HMRC's guidance on EIS [redacted]

EIS may be of benefit to [redacted] estment to grow and individuals looking to make tax efficie [redacted] d companies.

2. How EIS Works

Investors can invest up t [redacted] **new** shares in an EIS qualifying company and benefit from [redacted] **l to 30%** of the amount invested. The investor must hold the [redacted] les for EIS investment for at least 3 years after the investme [redacted]

After the qualifying period, [redacted] rom a **complete exemption from capital gains tax** on the s [redacted] e ability to **offset any losses** on the EIS investment if it un [redacted] r income or capital gains and the **deferral of an existing ca** [redacted] the investor re-invests the gain in EIS qualifying shares.

3. What are the Scheme Ru [redacted]

<u>EIS Shares</u>

The shares must be **subs** [redacted] must be newly issued shares and not shares sold by an ex [redacted] must be paid up in full, in cash when they are issued. T [redacted] dinary shares. There can be no special rights and arrange [redacted] hares which make them anything other than full risk shares. [redacted] e) provides more detail.

<u>The Company</u>

EIS rules are prescriptive [redacted] to be eligible for EIS investment, these include:

The company:

- must not have mo [redacted] oss assets before any shares are issued and not mo [redacted] diately afterwards;
- cannot raise more [redacted] any 12-month period (subject to a maximum of £12 m [redacted] etime);
- must be establishe [redacted]
- must not be trading [redacted] xchange (or have plans to do so);
- must not control an [redacted] n qualifying subsidiaries;
- must not be control [redacted]

- must have fewer th[redacted]nt employees;
- must be carrying o[redacted]RC has details of what qualifies), not be in financial [redacted]is trade must not be more than 7 years old at the ti[redacted]stment (subject to exceptions as listed by HMRC); a[redacted]
- must use the EIS i[redacted] 2 years to grow and develop the business of the co[redacted]

<u>The Investor</u>

The investor must not be [redacted]g company; this includes being an employee of the company[redacted]e entitled to acquire more than a 30% stake in the compan[redacted] can qualify for EIS relief if they become a director of the [redacted] EIS shares provided he/she was not previously connected [redacted]lved in carrying on its trade. This is to assist business ange[redacted]heir investment request a seat on the company's board, this [redacted]of the subscription and written into the subscription agreemen[redacted]

The scheme rules <u>must</u> [redacted]s after the investment is made, otherwise tax relief will [redacted] investors. Before the reliefs are claimed, HMRC also has [redacted]pany invested in, and the shares issued, meet all the require[redacted]

4. Knowledge Intensive Co[redacted]

There are slightly differe[redacted]knowledge intensive companies. These are companies tha[redacted]amount of research, development and innovation. If the com[redacted]onal conditions, then they are able to raise up to £20 million [redacted]etime of the company (rather than £12 million) and the 7-ye[redacted]d to 10 years. The money raised must be used for research[redacted]

To qualify as a knowledge-[redacted]ional conditions must be met. The company must:

- have fewer than 50[redacted]ployees at the time the shares are issued;
- have spent an a[redacted]perating costs on research and development or inn[redacted]ther:
  - 10% in each[redacted]e investment; or
  - 15% in any [redacted] the investment; and

  either:
- be carrying out wo[redacted]roperty and the company expects the majority of its b[redacted]is within 10 years; or
- have 20% of its em[redacted]earch and development when the investment is recei[redacted]r - these employees must have a relevant Master's o[redacted]

More details and guidance[redacted]here.

5. Application Process

When the company has is[redacted]r or not it has asked for advance assurance (see below), it [redacted]nce statement (EIS1) and provide its:

- business plan;
- memorandum and [redacted]
- last annual accoun[redacted]st (if it hasn't submitted accounts yet, just its cash flo[redacted]
- shareholder (subsc[redacted]afts (if it has them); and
- prospectuses and [redacted]cting investment (if it has them).

The company can only su[redacted]ement when it has carried out its qualifying business activity[redacted]ubmit it within 2 years of this date, or within 2 years of the [redacted] which the shares were issued (whichever is later).

It must complete a separat[redacted]are issue.

6. Advanced Assurance

It is possible (and highly [redacted]anies who intend to raise money under EIS to apply to H[redacted]urance (i.e. an opinion) that the company's proposed share[redacted] tax relief.

Only companies intending [redacted] for advanced assurance. It is not possible for individuals [redacted] apply and therefore advanced assurance only relates to [redacted]t the company will be a qualifying company and the shares [redacted] does NOT confirm whether any individual shareholder is el[redacted]

HMRC has further details [redacted]here, and has an application form EIS-SEIS(AA) which can b[redacted] advanced assurance.

It is not compulsory to use[redacted]commends companies do so. It is also possible to send a lett[redacted] company's application.

All advance assurances m[redacted]

- the latest accounts [redacted]ounts of any subsidiary company;
- the company's busi[redacted]
- the latest draft of a[redacted]document to be issued to potential investors;
- an up to date cop[redacted]and Articles of Association of the company and its su[redacted]any changes to be made;
- a copy of the regis[redacted]ate of submission of the advance assurance applicati[redacted]
- details of any subs[redacted]her side agreement to be entered into by the shareho[redacted]
- any other relevan[redacted]mple documents to support a company's view tha[redacted]sive company and group structure diagram; and
- additionally, the co[redacted]how the growth and development condition will be [redacted] to provide supporting detail or documentation alo[redacted]proposed trading activities will be structured and carr[redacted]

A response by HMRC to [redacted]n normally take 4-5 weeks from receipt of the application.[redacted]nly consider itself bound by any advanced assurance give[redacted]ormation on which it is based is complete and accurate and[redacted]t its intention as described.

7. Documentation

The EIS legislation mak[redacted]ares must be "subscribed" for. Therefore, the shares m[redacted]iption suggests some degree of formality, it is advisable fo[redacted]tion agreement. At the very least there should be a subscrip[redacted]plying for the new shares. As the EIS investor will be a mino[redacted]ay want the agreement to contain certain minority protection[redacted]eto over key decisions such as altering the company's ar[redacted]ure or scope of the business or making any changes to its[redacted]S investors are also likely to want covenants that the compa[redacted]course of running its business that may jeopardise its EIS reli[redacted]

As the shares will not be l[redacted]areholder's name is written in the company's register of me[redacted]at following the subscription, the company books are writte[redacted]clude the PSC register, if relevant for any shareholder ownin[redacted]ompany.

<u>We provide a range of [redacted]stomers with the EIS process. However, we do not pro[redacted]ally or any guidance, advice or comment in relation to t[redacted]commended that any company considering EIS investm[redacted]egal and tax advice.</u>

<u>In addition, our templat[redacted] in light of the scheme rules, however the templates [redacted]g points for drafting and we cannot provide any assu[redacted]tability to HMRC</u>.