Budget 2010

HM Revenue & Customs

BN12

24 March 2010

VENTURE CAPITAL SCHEMES

Who is likely to be affected?

1. Investors under the Enterprise Investment Scheme (EIS) and Venture Capital Trust (VCT) schemes, companies receiving investment under the schemes and VCTs themselves.

General description of the measure

2. This measure will make the final four changes to the EIS and VCT schemes agreed with the European Commission as a condition for their approval by the Commission as approved State aids.

3. The Government intends to legislate this measure in a Finance Bill to be introduced as soon as possible in the next Parliament.

Operative date

4. The changes generally will have effect on and after the date that the legislation receives Royal Assent, with the exception of the definition of eligible shares for VCTs, which will not affect monies raised by the VCT before that date.

Current law and proposed revisions

VCTs only

5. The current legislation at section 274 of the Income Tax Act 2007 (ITA) requires the shares making up a VCT's ordinary share capital to be included in the official UK list throughout the relevant accounting period. This will be replaced with a requirement that the shares instead be admitted for trading on any EU regulated market. The effect is that VCTs will be able to be listed on markets throughout the EU/European Economic Area (EEA). The European Commission publishes a list of all regulated markets in the Official Journal of the European Union at least annually, and the list of regulated markets is also available on its website.

6. The current legislation at section 274 of ITA requires that at least 30 per cent of the VCT's qualifying holdings is represented throughout the relevant accounting period by holdings of eligible shares. Section 285(3) of ITA defines "eligible shares" for this purpose. The new legislation will increase the eligible shares holdings requirement to 70 per cent, but will also change the definition of "eligible shares" to allow VCTs to include shares which may carry certain preferential rights to dividends.

EIS and VCTs

7. The new legislation will exclude shares in a company from qualifying for the purposes of the EIS or VCT legislation if it is reasonable to assume that the company would be treated as an "enterprise in difficulty" for the purposes of the European Commission's Rescue and Restructuring Guidelines, published in the Official Journal at OJC 2004/C 244/02, at section 2.1.

8. The current legislation, at sections 179 (for EIS) and 291 (for VCTs) of ITA requires that there is a qualifying trade carried on wholly or mainly in the UK. For shares issued on or after the commencement date of the legislation, the requirement will be that the company issuing the shares must simply have a permanent establishment in the UK.

9. "Permanent establishment" will be defined based on Article 5 of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital. It is intended that the definition will be published in full in secondary legislation to be made after the date that the primary legislation receives Royal Assent.

10. Regulations will also be made at this time to update Statutory Instrument 2004/2199 to reflect the new conditions concerning eligible shares.

Further advice

11. If you have any questions about this change, please contact Kathryn Robertson on 020 7147 2589 (email: kathryn.robertson@hmrc.gsi.gov.uk), David Harris on 020 7147 2562 (email: david.harris@hmrc.gsi.gov.uk) or Des Ryan on 020 7147 0818 (email: des.ryan@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk