FB 2015 – EIS and VCT sunset clauses

OMB Personal tax

01 November 2015

ATT comments on clauses 25 and 26 of the Finance Bill

The article ‘Proposed refocusing of the enterprise investment scheme’ (Tax Adviser, May 2015) drew attention to the joint Treasury and HMRC publication in March of draft legislation and explanatory notes on proposed changes to the enterprise investment scheme (EIS) and venture capital trust (VCT) legislation. The CIOT and ATT submitted comments on the proposals.

Clauses 25 and 26 of the summer Finance Bill introduce schedules 5 and 6, which contain the revised proposals for EIS and VCT respectively. The first point to make is that the Finance Bill proposals differ in some significant respects from those in the March 2015 consultation. For example, under the Bill the maximum age of the receiving business is seven years unless it qualifies as a knowledge-intensive company, in which case it can be up to 10 years old. A common 12-year period was also proposed. But the Finance Bill has preserved the escape clause by which the amount of new investment is at least 50% of the annual turnover averaged over the preceding five years.

It seems that the tightening of the conditions was a requirement of the European Commission for ongoing state-aid approval, without which the tax incentives could not have continued. This meant that the UK parliament had little alternative to accepting the conditions.

A new provision in each of the Finance Bill schedules (as a condition for state-aid approval) is the inclusion of a sunset clause, which would restrict tax relief to shares issued before 6 April 2025. In its briefing note to the Labour and SNP Treasury teams, the ATT accordingly recommended that ministerial assurances should be sought that every effort would be made to ensure the continuation of both reliefs and provide maximum advance publicity to any enforced shortening of the life expectancy of the two reliefs.