New ‘risk to capital’ condition for venture capital schemes: draft guidance

OMB **Personal tax**

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As noted in the February Technical Newsdesk, Clause 14 of Finance (No.2) Bill 2017-19 introduces an additional risk to capital condition in order for investments to qualify for any of the three venture capital reliefs – Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and Venture Capital Trusts Schemes (VCTs).

In relation to each of the three schemes, the new risk to capital condition has two legs. Having regard to all the circumstances existing at the time of the share issue, it must be reasonable to conclude both that the company in which the investment is being made ‘has objectives to grow and develop its trade in the long-term’ and that there is a significant risk that there will be a loss of capital of an amount greater than the net investment return.

On 4 December 2017 HMRC published draft guidance on the r*isk to capital* condition for consultation. Somewhat unusually this was published directly in HMRC’s Venture Capital Manual at VCM8500 onwards rather than being listed as a consultation in the HMRC section of GOV.UK.

The draft guidance provides an overview of the risk to capital condition as well as looking at its two legs and the factors to be considered in more detail. There is information on advanced assurance and compliance checks, as well as a small number of examples of how the condition may apply.

The draft guidance contains some helpful comments: for example reinforcing that when determining whether the condition is met, all factors will be considered together, and that even one or more indicators of potential capital preservation does not necessarily mean the condition will not be met (and vice versa). However, ATT’s submitted comments on the draft guidance express concern that there is insufficient detail in several important areas.

In particular, ATT notes that there is little to illustrate the meaning of key terms in the legislation such as *grow and develop* or *long term*. As set out in the ATT’s written evidence to the Public Bill Committee the use of such imprecise terms coupled with a lack of guidance on their interpretation will make it difficult for companies to self-assess whether the condition is met, and could put more strain on the advance assurance service.

ATT notes that it would be helpful for the final guidance to:

- Clarify whether *grow and develop* are to be read as encompassing different requirements and, if so, how the two terms are distinguished.
- Provide more guidance as to the interpretation of *long term*, including some examples of what would, and would not, be considered long term in the context of specific investments.

ATT also observes that it would be helpful to provide more information regarding the practical steps companies can take to demonstrate compliance with the risk to capital condition.