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Clarifications

The consultation process highlighted a number of misunderstandings relating to current rules, and a number of respondents raised queries over the application of certain rules. A brief explanation of these issues, and clarification on the HMRC interpretation of the relevant legislation where appropriate, is detailed below.

B.1 The requirement that the trade be carried on “wholly or mainly” within in the UK does not exclude exporters, nor does it require only minimal foreign activity. HMRC interpret the requirement as meaning that more than 50 per cent of the activity should be in the UK.

B.2 The headcount test applies at time of the qualifying share issue only. After EIS investment, companies can exceed the current limit, and employ more than the equivalent of 50 full-time employees.

B.3 The rules of the scheme do not exclude “master franchisors” as such. As with other activities based on acquiring and exploiting intellectual property, the issue is what value the company itself adds to the asset.

B.4 If a company has already been trading for four months when it issues shares, it need not wait another four months before submitting an EIS1 form.

B.5 If a company is wound up for genuine commercial reasons, its investors do not lose their relief, whether or not it appoints a liquidator.

B.6 It is acceptable for a payment made in advance of a share issue to be “converted” into shares where it is established that this was always the intention – where the payment was never intended as a loan but was simply an advance payment for the shares.

B.7 Social enterprises are not excluded providing their trade is conducted on a normal commercial basis and with the aim of making a profit. That remains the case even if any post-tax profit, instead of being distributed by way of dividends or otherwise, is re-employed in that, or another, social enterprise or charitable endeavour.