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**Venture Capital Schemes**

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Draft legislation and Explanatory Note  
9 December 2009  
Page 3 amended 26 January 2010

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## Introduction

This document invites comments on draft legislation:

- implementing four changes to the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCTs), which are necessary to secure State Aid approval for the schemes; and,
- proposing a new definition of the size of business that can benefit under the schemes, aligned more closely with the European Commission (EC) definition.

A Technical Note setting out HM Revenue & Customs' (HMRC) understanding of the position under the EIS of companies that are members of partnerships has also been published today on the HMRC website.

Comments should arrive by 1 February 2009, and should be sent to:

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### **The following text was added 26 January 2010:**

In response to requests to allow more time for the consultation:

- The deadline for the receipt of comments on the proposed new condition based on the EC Small Enterprise definition has been extended to 12 March 2010. The deadline for comments on the draft legislation making changes required for State aid approval remains 1 February.
- The Government's current intention is that any legislation to apply a new condition based on the EC Small Enterprise definition would only apply to money raised by VCTs or EIS Funds after a final announcement of the detail of any legislation. Money raised before then by a VCT or EIS Fund, but which is not invested until a later date, would not therefore be affected.

## Chapter 1 - Background

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### State Aid approval of the Venture Capital schemes

The EIS and VCT received approval from the EC as State Aids on 29 April 2009. That approval was subject to a number of changes being made. The draft legislation included in this Note makes those changes.

In particular, it:

- applies a new requirement that to qualify under either scheme, a company must not be in difficulty;
- replaces the requirement that to qualify under either scheme a company must carry on its qualifying trade wholly or mainly in the UK, with one that the company must have a permanent establishment in the UK;
- removes the requirement that a VCT's shares must be included in the official UK List, replacing it with one that their shares must be traded on an EU regulated market; and
- changes the rules governing the amount of a VCT's investment that must be held as equity.

We would be grateful for comments on this draft legislation.

### Size of businesses benefiting from the schemes

This Note also contains draft legislation applying a definition of a small business to companies benefiting from the schemes, based on the definition set out by the EC (see the Annex to Commission Recommendation 2003/361/EC of 6 May 2003).

The proposed new condition focuses on the substance of the economic activity comprising, or including, the company's qualifying business activity, and requires that the enterprise engaged in the substantial economic activity is a small enterprise.

The venture capital schemes have always been focussed on smaller, higher risk businesses, in order to target support for investment at those businesses that find it most difficult to raise money. The new definition is proposed as a means of preventing larger businesses benefiting from the schemes and from investment that might otherwise go to those intended to benefit from the reliefs.

## EIS companies in partnership

HMRC has also today published a separate Technical Note (“Enterprise Investment Scheme (EIS) and Partnerships”) setting out its current view that under section 183 of the Income Tax Act 2007, companies carrying on their qualifying activity in partnership do not qualify under the EIS.

HMRC recognises that this change of view may have adverse implications for companies who had intended carrying out a trade in partnership. HMRC now intends to consult with the EIS sector on the consequences of this for companies carrying on business in small partnerships, and in particular on whether there is now a need to cater for some partnership arrangements by revising the law.

While the attached draft legislation is not intended to directly address this issue, a possible approach would be to use the new definition to allow companies carrying on business in partnership to qualify, where the partnership is a small enterprise.

We welcome comments on this issue at the address given above and will be approaching stakeholders shortly to seek their views.

Any company or individual who wishes to discuss their own position following the issue of the Technical Note should contact Kathryn Robertson on 020 7147 2589 (email: [kathryn.robertson@hmrc.gsi.gov.uk](mailto:kathryn.robertson@hmrc.gsi.gov.uk)) or Des Ryan on 020 7147 0818 (email: [des.ryan@hmrc.gsi.gov.uk](mailto:des.ryan@hmrc.gsi.gov.uk)), or, if they have already been corresponding with the Cardiff or Maidstone Small Companies Enterprise Centre ([enterprise.centre@hmrc.gsi.gov.uk](mailto:enterprise.centre@hmrc.gsi.gov.uk)) their contact in that office.

**Chapter 2 – Draft Legislation**

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## SCHEDULE 1

### VENTURE CAPITAL SCHEMES

#### *Enterprise investment scheme*

- 1 (1) Part 5 of ITA 2007 (enterprise investment scheme) is amended as follows.
- (2) In section 179 (meaning of “qualifying business activity”)—
  - (a) in subsection (2)(b)(i), omit “wholly or mainly in the United Kingdom”,
  - (b) omit subsection (3),
  - (c) in subsection (4)(b)(i) and (ii), omit “wholly or mainly in the United Kingdom”, and
  - (d) omit subsection (5).
- (3) In section 180 (overview of Chapter 4)—
  - (a) before paragraph (a) insert—
    - “(za) UK permanent establishment (see section 180A),
    - (zb) financial health (see section 180B),”, and
  - (b) for paragraphs (e) and (ea) substitute—
    - “(e) size (see section 186),”.
- (4) Before section 181 insert—

#### **“180A The UK permanent establishment requirement**

- (1) The issuing company must meet the UK permanent establishment requirement throughout period B.
- (2) The UK permanent establishment requirement is that the issuing company has a permanent establishment in the United Kingdom.
- (3) For the purposes of this section—
  - (a) section 148 of FA 2003 (meaning of “permanent establishment” in the Tax Acts) does not apply, and
  - (b) “permanent establishment” has the meaning given by Article 5 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, as it stands on the day on which FA 2010 is passed.

#### **180B The financial health requirement**

- (1) The issuing company must meet the financial health requirement at the beginning of period B.
  - (2) The financial health requirement is that the issuing company is not in difficulty.
  - (3) The issuing company is “in difficulty” if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02).”
- (5) For sections 186 and 186A (requirements as to gross assets and number of employees) substitute—

**“186 The size requirement**

- (1) The relevant enterprise must be a small enterprise—
    - (a) immediately after the beginning of period B, and
    - (b) immediately after any relevant change that takes place during that period.
  - (2) In subsection (1) “relevant enterprise” means the enterprise engaged in the economic activity that is or includes the qualifying business activity mentioned in section 174.
  - (3) In subsection (1) “relevant change” means—
    - (a) an enterprise that is neither a partner enterprise of, nor a linked enterprise in relation to, the relevant enterprise becoming such a partner enterprise or linked enterprise,
    - (b) a partner enterprise of the relevant enterprise increasing its holding of capital or voting rights in the relevant enterprise,
    - (c) the relevant enterprise increasing its holding of capital or voting rights in a partner enterprise of the relevant enterprise, or
    - (d) a partner enterprise of the relevant enterprise becoming a linked enterprise in relation to the relevant enterprise.
  - (4) In this section “enterprise”, “partner enterprise” and “linked enterprise” have the same meaning as in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003.”
- (6) After section 191 insert—

**“191A Meaning of “small enterprise”**

- (1) In this Part “small enterprise” means a small enterprise as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (“the Annex”).
- (2) In its application by virtue of subsection (1), the Annex has effect subject to the following modifications.
- (3) Article 2 (staff headcount and financial ceilings determining enterprise categories) has effect as if the references in paragraphs 1 and 2 to annual turnover were omitted.
- (4) Article 4 (data used for staff headcount, financial amounts and reference period) has effect as if—
  - (a) in the first sentence of paragraph 1, the reference to financial amounts were omitted,
  - (b) the final sentence of that paragraph and paragraphs 2 and 3 were omitted, and
  - (c) it provided that the data to apply to financial amounts were data as at the time under consideration.
- (5) Article 6 (establishing the data of an enterprise) has effect as if the references in paragraph 1 and the first subparagraph of paragraph 2 to the accounts of an enterprise were, in relation to an enterprise that is not required to draw up accounts, to such accounts as the enterprise would draw up as at the time under consideration in

accordance with generally accepted accounting practice if it were required to do so.

- (6) In the application of paragraphs 2 to 4 of that Article in relation to data consisting of financial amounts, references to data determined on the basis of, or derived from, the accounts of an enterprise are, in the case of an enterprise that does not have an approved accounting period ending with the time under consideration, to be treated as mentioned in subsection (7).
- (7) The references are to be treated as references to data determined on the basis of, or derived from, bona fide estimates of amounts that would be included in a balance sheet prepared in accordance with generally accepted accounting practice, were such a balance sheet drawn up as at the time under consideration.
- (8) Nothing in subsections (6) and (7) affects references in Article 6 to consolidated accounts (which accordingly, in the application of that Article in relation to data consisting of financial amounts, continue to be references to any consolidated accounts drawn up for a period ending with the time under consideration).
- (9) In this section “the time under consideration” means the time as at which it is being determined whether a body is a small enterprise.
- (10) Expressions used in this section and in the Annex have the same meaning here as there.
- (11) The Treasury may by order amend this section.”

#### *Venture capital trusts*

- 2 (1) Part 6 of ITA 2007 (venture capital trusts) is amended as follows.
- (2) In section 274 (requirements for the giving of approval) –
  - (a) in the table in subsection (2), in the first entry, in column 2, for “included in the official UK list” substitute “admitted to trading on a regulated market
  - (b) in the last entry in the table, in columns 1 and 2, for “30%” substitute “70%”,
  - (c) in paragraphs (c) and (d) of subsection (3), for “30%” substitute “70%”, and
  - (d) at the end insert –
    - “(4) In this section “regulated market” has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).
  - (5) The Treasury may by order amend –
    - (a) the first entry in the table in subsection (2) (the listing condition), or
    - (b) subsection (4).”
- (3) In section 275(3)(b) (alternative requirements for the giving of approval), for “30%” substitute “70%”.

- (4) In section 278(1) (conditions relating to value of investments: general), for “30%” substitute “70%”.
- (5) In section 280(2) (conditions relating to qualifying holdings and eligible shares), for “30%” substitute “70%”.
- (6) In section 285 (interpretation of Chapter) for subsection (3) substitute –
- “(3A) For the purposes of this Chapter shares in a company are “eligible shares” if they are shares that –
- (a) carry no right to dividends of a fixed amount,
  - (b) carry no right to dividends at a rate per cent (whether fixed or variable) of the nominal value of the shares,
  - (c) subject to subsection (3B), carry no present or future preferential right to dividends,
  - (d) carry no present or future preferential right to the company’s assets on its winding up, and
  - (e) carry no present or future right to be redeemed.
- (3B) Shares are not prevented from being “eligible shares” by reason only of the fact that the company is required or entitled to make a distribution in respect of the shares in priority to, or without making a distribution in respect of, any other shares.”
- (7) In section 286 (qualifying holdings: introduction) –
- (a) in subsection (3), before paragraph (a) insert –
    - “(za) UK permanent establishment (see section 286A),
    - (zb) financial health (see section 286B),” and
  - (b) for paragraphs (j) and (ja) substitute –
    - “(j) size (see section 297),”.
- (8) Before section 287 insert –

**“286A The UK permanent establishment requirement**

- (1) The requirement of this section, at any time on or after the issue of the relevant holding, is that the relevant company has a permanent establishment in the United Kingdom at all times from the issue of the holding to the time in question.
- (2) For the purposes of this section –
  - (a) section 148 of FA 2003 (meaning of “permanent establishment” in the Tax Acts) does not apply, and
  - (b) “permanent establishment” has the meaning given by Article 5 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, as it stands on the day on which FA 2010 is passed.

**286B The financial health requirement**

- (1) The requirement of this section is that the relevant company is not, at the time of the issue of the relevant holding, in difficulty.
- (2) The relevant company is “in difficulty” if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of

the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02).”

- (9) In section 289(5) (the proportion of eligible shares requirement), for “285(3)” substitute “285(3A) and (3B)”.
- (10) In section 291 (carrying on of qualifying activity requirement) –
- (a) in subsection (2), for “A qualifying trade carried on wholly or mainly in the United Kingdom” substitute “Carrying on a qualifying trade”,
  - (b) in subsection (3), omit “wholly or mainly in the United Kingdom”, and
  - (c) in subsection (4)(b), omit “wholly or mainly in the United Kingdom”.
- (11) For sections 297 and 297A (requirements as to gross assets and number of employees) substitute –

**“297 The size requirement**

- (1) The requirement of this section is that the relevant enterprise must be a small enterprise –
    - (a) immediately after the issue of the relevant holding, and
    - (b) immediately after any relevant change that takes place after that time.
  - (2) In subsection (1) “relevant enterprise” means the enterprise engaged in the economic activity that is or includes the relevant qualifying activity by reference to which the requirement in section 293 is met.
  - (3) In subsection (1) “relevant change” means –
    - (a) an enterprise that is neither a partner enterprise of, nor a linked enterprise in relation to, the relevant enterprise becoming such a partner enterprise or linked enterprise,
    - (b) a partner enterprise of the relevant enterprise increasing its holding of capital or voting rights in the relevant enterprise,
    - (c) the relevant enterprise increasing its holding of capital or voting rights in a partner enterprise of the relevant enterprise, or
    - (d) a partner enterprise of the relevant enterprise becoming a linked enterprise in relation to the relevant enterprise.
  - (4) In this section “enterprise”, “partner enterprise” and “linked enterprise” have the same meaning as in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003.”
- (12) In section 300(2)(a) and (b) (meaning of “qualifying trade”), omit subparagraph (ii) and the “and” before it.
- (13) After section 302, insert –

**“302A Meaning of “small enterprise”**

- (1) In this Part “small enterprise” means a small enterprise as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (“the Annex”).
- (2) In its application by virtue of subsection (1), the Annex has effect subject to the following modifications.

- (3) Article 2 (staff headcount and financial ceilings determining enterprise categories) has effect as if the references in paragraphs 1 and 2 to annual turnover were omitted.
- (4) Article 4 (data used for staff headcount, financial amounts and reference period) has effect as if—
  - (a) in the first sentence of paragraph 1, the reference to financial amounts were omitted,
  - (b) the final sentence of that paragraph and paragraphs 2 and 3 were omitted, and
  - (c) it provided that the data to apply to financial amounts were data as at the time under consideration.
- (5) Article 6 (establishing the data of an enterprise) has effect as if the references in paragraph 1 and the first subparagraph of paragraph 2 to the accounts of an enterprise were, in relation to an enterprise that is not required to draw up accounts, to such accounts as the enterprise would draw up as at the time under consideration in accordance with generally accepted accounting practice if it were required to do so.
- (6) In the application of paragraphs 2 to 4 of that Article in relation to data consisting of financial amounts, references to data determined on the basis of, or derived from, the accounts of an enterprise are, in the case of an enterprise that does not have an approved accounting period ending with the time under consideration, to be treated as mentioned in subsection (7).
- (7) The references are to be treated as references to data determined on the basis of, or derived from, bona fide estimates of amounts that would be included in a balance sheet prepared in accordance with generally accepted accounting practice, were such a balance sheet drawn up as at the time under consideration.
- (8) Nothing in subsections (6) and (7) affects references in Article 6 to consolidated accounts (which accordingly, in the application of that Article in relation to data consisting of financial amounts, continue to be references to any consolidated accounts drawn up for a period ending with the time under consideration).
- (9) In this section “the time under consideration” means the time as at which it is being determined whether a body is a small enterprise.
- (10) Expressions used in this section and in the Annex have the same meaning here as there.
- (11) The Treasury may by order amend this section.”
- (14) In section 327 (certain requirements of Chapter 4 to be treated as met)—
  - (a) in subsection (1), for the words from “gross assets” to the end substitute “size requirement).”, and
  - (b) in subsection (4)(b), for “, 297 and 297A” substitute “and 297”.
- (15) In Schedule 4 (index of defined expressions)—
  - (a) in column 2 of the entry for “eligible shares (in Chapter 3 of Part 6)”, for “285(3)” substitute “285(3A) and (3B)”, and

- (b) in column 1 of the entry for “the 30% eligible shares condition (in Chapter 3 of Part 6)”, for “30%” substitute “70%”.

*Consequential repeals*

- 3 (1) In consequence of the amendments made by paragraph 1, omit –
  - (a) in ITA 2007, in Schedule 2, paragraph 58, and
  - (b) in FA 2007, in Schedule 16, paragraph 2.
- (2) In consequence of the amendments made by paragraph 2, omit –
  - (a) in ITA 2007, in Schedule 2, paragraph 76, and
  - (b) in FA 2007, in Schedule 16, paragraph 3.

*Commencement of amendments relating to 70% eligible shares condition*

- 4 (1) The amendments made by paragraph 2(2)(b) and (c), (3) to (6) and (15) have effect in relation to accounting periods ending on or after 6 April 2010.  
This is subject to the following provisions of this paragraph.
- (2) The amendments mentioned in sub-paragraph (1) do not have effect in relation to shares or securities held by a company (“the investing company”) if the shares or securities –
  - (a) are issued before 6 April 2010, or
  - (b) are issued on or after that date and are acquired by the investing company by means of the investment of protected money.
- (3) In this paragraph “protected money” means –
  - (a) money raised by the issue before 6 April 2010 of shares in or securities of the investing company, or
  - (b) money derived from the investment of such money.

*Commencement of other provisions of this Schedule*

- 5 (1) The amendments made by paragraphs 1 and 3(1) have effect in relation to shares issued on or after 6 April 2010.
- (2) The amendments made by paragraph 2(2)(a) and (d) have effect in relation to accounting periods ending on or after 6 April 2010 (and have effect in relation to shares issued at any time).
- (3) The amendments made by paragraphs 2(7), (8) and (10) to (14) and 3(2) have effect in relation to shares or securities issued on or after 6 April 2010.
- (4) The amendment made by paragraph 2(9) has effect in relation to shares issued at any time.



## Chapter 3 – Explanatory Note

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### SUMMARY

1. The Schedule makes changes to the two venture capital schemes, the Enterprise Investment Scheme (EIS) and the Venture Capital Trusts scheme (VCT).

### DETAILS OF THE SCHEDULE

#### Enterprise Investment Scheme

2. Paragraph 1 of the Schedule makes changes to the qualifying conditions for EIS approved companies, dealt with in Part 5 of the Income Tax Act 2007 (ITA).
3. Sub-paragraph (2) amends section 179 of ITA to remove the current requirement that the company's trade is carried on wholly or mainly in the UK.
4. Sub-paragraph (3) inserts the new UK permanent establishment, financial health and size conditions into the list in section 180 of ITA.
5. Sub-paragraph (4) inserts new sections 180A and 180B into ITA.
6. New section 180A introduces the requirement that the company must have a permanent establishment in the UK throughout the period of three years following the issue of the shares. "Permanent establishment" is given the same definition as in the Organisation for Economic Co-operation and Development (OECD) Model Double Taxation Treaty, at Article 5 of that Model. This replaces the requirement that the trade be carried on wholly or mainly in the UK.
7. New section 180B introduces the financial health requirement, which must be met at the time the shares are issued. The requirement is that at that time, the company is not in difficulty. A company is "in difficulty" if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the EC Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty.
8. Sub-paragraph (5) replaces the existing sections 186 and 186A of ITA with a new section 186, imposing the new size requirement.
9. Currently, issuing companies are restricted as to size by sections 186 and 186A, which place a limit on the value of the company's gross assets and number of employees, respectively, at the time of issue of the shares.
10. New section 186 replaces both of those conditions with a requirement that the relevant enterprise must be a small enterprise both when the shares are issued, and immediately after any "relevant change" during the three year period following the issue of the shares. The "relevant enterprise" is the enterprise engaged in the economic activity that is or includes the qualifying business activity.

11. A “relevant change” is defined by reference to various events which increase the degree to which enterprises are related to one another as “partner” or “linked” enterprises, those terms having the same meaning as in the Annex to the EU Recommendation 2003/361/EC of 6 May 2003 which deals with small and medium enterprises (subject to new section 191A which modifies the Recommendation).
12. Sub-paragraph (6) inserts new section 191A into ITA, defining a “small enterprise” by reference to the EU Recommendation 2003/361/EC, but brings in a number of modifications to the EU definition for the purposes of the EIS.
13. In particular, an enterprise will qualify as “small” based on its staff headcount and assets, not annual turnover, and its status depends on the position only at the relevant time (so an enterprise does not have to exceed the relevant thresholds for two successive years before a change takes effect).

#### Venture Capital Trusts

14. Paragraph 2 of the Schedule makes changes to Part 6 of ITA, dealing with VCTs.
15. Sub-paragraph (2)(a) amends the requirement in section 274 of ITA for the shares of a VCT to be included in the official UK list, and replaces that with a requirement that the shares be admitted to trading on a regulated market. “Regulated market” is defined for this purpose as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments. The definition is included at the end of section 274.
16. Sub-paragraphs (2)(b) and (c) increase the proportion of the VCT’s qualifying holdings which are represented by holdings of eligible shares, from 30 per cent to 70 per cent.
17. Sub-paragraphs (3), (4) and (5) replace references to the 30 per cent qualifying holdings requirement with references to the increased 70 per cent qualifying holdings requirement in sections 275(3)(b), 278(1) and section 280(2) of ITA.
18. Sub-paragraph (6) replaces the definition of “eligible shares” at section 285(3) of ITA, with a new definition of “eligible shares”. This is now at sections 285(3A) and 285(3B).
19. Sub-paragraph (7) inserts the new UK permanent establishment, financial health and size conditions into the list in section 286 of ITA.
20. Sub-paragraph (8) inserts new sections 286A and 286B into ITA.
21. New section 286A introduces the requirement that the issuing company must have a permanent establishment in the UK. “Permanent establishment” is given the same definition as in the OECD Model Double Taxation Treaty, at Article 5 of that Model. This replaces the requirement that the trade be carried on wholly or mainly in the UK.

22. New section 286B introduces the financial health requirement. The requirement is that at the time of issue of the relevant holding, the company is not in difficulty. A company is “in difficulty” if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the EU Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty.
23. Sub-paragraph (9) replaces the reference to section 285(3) of ITA in section 289(5), with a reference to new sections 285(3A) and 285(3B).
24. Sub-paragraph (10) amends section 291 of ITA to remove the current requirement that the company’s trade is carried on wholly or mainly in the UK.
25. Sub-paragraph (11) replaces the existing sections 297 and 297A of ITA with new section 297, imposing the new size requirement.
26. Currently, issuing companies are restricted as to size by sections 297 and 297A, which place a limit on the value of the company’s gross assets and number of employees, respectively, at the time of issue of the relevant holding.
27. New section 297 replaces both of those conditions with a requirement that the relevant enterprise must be a small enterprise both when the relevant holding is issued, and immediately after any “relevant change”. The “relevant enterprise is the enterprise engaged in the economic activity which is or includes the relevant qualifying activity.
28. A “relevant change” is defined by reference to various events which increase the degree to which enterprises are related to one another as “partner” or “linked” enterprises, those terms having the same meaning as in the Annex to the EU Recommendation 2003/361/EC of 6 May 2003 which deals with small and medium enterprises (subject to new section 302A which modifies the Recommendation).
29. Sub-paragraph (12) removes the references in section 300(2)(a) and (b) of ITA to the qualifying trade being carried on wholly or mainly in the UK, as a consequence of the introduction of new section 286A, the permanent establishment requirement.
30. Sub-paragraph (13) inserts new section 302A in ITA, defining a “small enterprise” by reference to the EU Recommendation 2003/361/EC, but brings in a number of modifications to the EU definition for the purposes of the EIS scheme.
31. In particular, an enterprise will qualify as “small” based on its staff headcount and assets, not annual turnover, and its status depends on the position only at the relevant time (so an enterprise does not have to exceed the relevant thresholds for two successive years before a change takes effect).

#### Both schemes

32. Paragraph 3 repeals a number of sections of legislation as a consequence of the amendments made in paragraphs 1 and 2, in respect of both the EIS and VCT.
33. Paragraph 4 deals with the commencement dates relating to the amendments to the 70 per cent eligible shares condition applying to VCTs.
34. Sub-paragraph (1) stipulates that the various amendments made to the qualifying holdings conditions for VCTs apply generally to a VCT's accounting periods ending on or after 6 April 2010.
35. Sub-paragraph (2) provides that those amendments do not affect shares or securities held by a VCT which were issued before the commencement date of 6 April 2010, or which were issued after that date but acquired by means of "protected money".
36. Sub-paragraph (3) defines "protected money" as money raised before 6 April 2010 by the issue of shares or securities in the VCT, or money derived from the investment of such money.
37. Paragraph 5 deals with the commencement dates relating to the other provisions of the Schedule.
38. Sub-paragraph (1) provides that the changes affecting the EIS at paragraph 1, have effect in relation to shares issued on or after 6 April 2010.
39. Sub-paragraph (2) provides that the amendments to the listing requirement for shares in a VCT, have effect for accounting periods of the VCT ending on or after 6 April 2010.
40. Sub-paragraph (3) provides that the amendments relating to the place of trade, financial health and size of a company in which a VCT invests, have effect for shares in an investee company issued on or after 6 April 2010.
41. Sub-paragraph (4) provides that, as regards the requirement that at least 10 per cent by value of the totality of shares in or securities of a company in which a VCT invests must be in "eligible shares" the new definition of "eligible shares" introduced by this Schedule has effect in relation to shares issued at any time.

#### **BACKGROUND NOTE**

42. Both the EIS and the VCT are designed to encourage investment into small, higher risk trading companies. The EIS does this by offering tax incentives to individual investors who invest directly in qualifying companies. The VCT scheme encourages indirect investment by individuals, through the medium of a corporate vehicle similar to an investment trust.
43. The investee companies in both schemes have to meet certain conditions with respect to size, independence and trading requirements.

44. In addition, a VCT has to meet certain conditions with respect to its own share capital, its income and its investments.
45. The present Schedule makes some changes to the qualifying conditions, to ensure that both schemes continue to meet European State Aid requirements, and to ensure that the schemes remain targeted on the small enterprises for which they are intended.