

Tax-advantaged venture capital schemes – streamlining the advance assurance service

BioIndustry Association submission – February 2017

Question 1. In what context are you responding to this consultation; e.g. investor, investee company, fund manager, industry body representative

Industry Body representative with approximately 330 members. (See the end of this submission for further details about the BioIndustry Association.)

Question 2. Which tax-advantaged scheme or schemes have you used?

Our members have used the SEIS, EIS and VCT advance assurance services

Question 3. What would be the impact of increasing response times, including any increase in costs and / or administrative burdens?

Feedback from our members indicates that increasing the response times would have a negative impact on businesses and their ability to fundraise. Pre-approval is often a pre-requisite for investors. Reducing response times would create a lottery in which some applications would be processed quickly due to an Inspector being available or taking a light-touch approach, compared to other applications where a junior Inspector is handling the application, or there is a perceived risk issue. This is already a feature of the current system.

It can often be the case that companies need to complete their funding rounds quickly to avoid additional costs (e.g., having to consider whether to slow down operations or reduce staff numbers, for example) or even take steps to wind-up the company if funding does not materialise. Therefore, longer response times and/or the lack of ability to obtain advance clearance makes the fundraising process more difficult, uncertain and potentially more expensive. We also note that the “Assessment of Impacts” of this measure did not reference the greater uncertainty and potential costs companies raising money would suffer from in the event the advance clearance scheme was dispensed with.

Question 4. What would be the impact of withdrawing the advance assurance service?

The venture capital schemes are highly complex, are regularly updated, and HMRC views on numerous areas are uncertain and can change. The advance assurance process offers certainty and is invaluable to early-stage biotechnology companies. The BIA strongly urges HMRC not to withdraw the service.

In its absence, smaller companies may not be able to afford to take professional advice. In addition, different advisors take different opinions, or conclude that a point is uncertain and that assurance is the only route to certainty.

As stated above, approval is often a pre-prerequisite for investors, they will be discouraged from funding deserving companies if they cannot be sure of obtaining the tax relief. This would severely impact the effectiveness of the venture capital schemes. Furthermore, advanced assurance can tip an investor in favour of a business that they perceive as a risk. Encouraging riskier investments by the VC community could benefit

UK innovation, which is in line with Government priorities set out in the recent Industrial Strategy.

Removing the service altogether may also prove to be a false economy as HMRC may then need to utilize greater resources to investigate transactions post-event.

Question 5. How could the advance assurance service be changed to focus on cases where there is greatest uncertainty? What would be the impact of such changes?

[answered with question 6]

Question 6. In what way could the advance assurance service be limited to discrete aspects of the rules? Please provide details of the impact on your business, particularly any increase in costs and / or administrative burdens.

The service currently provides assurance for a particular funding round and the assurance letter reply is explicit that the assurance cannot be relied on for other purposes. This leads to a company with a fixed share capital structure and unchanging use of proceeds making many applications.

The service could be restricted so that applications can only be made where a previous assurance has not been given to that company, or has been given to that company at a time when its share capital structure was materially different, or where a new matter of fundamental uncertainty has arisen since the previous application. An additional potential solution would be to include a renewal system which would allow any clearance to apply to future rounds if the terms of the round are the same as the earlier round (and assuming there has not been a change of law).

This would reduce the number of applications, lower costs and reduce administrative burdens. A similar more restricted process already exists for EMI advance assurance applications, where HMRC only check the independence of the company and whether it carries on non-excluded activities. In addition, non-statutory clearance applications already exist for areas of fundamental uncertainty.

Additionally, guidance could be expanded to set out common scenarios where assurance is being requested and what the Inspector's judgement was. This would need to be updated on a periodic basis. The manuals are currently in the process of being updated but going forward more regular updates would also be helpful.

Question 7. How would a standard set of approved documents assist you? Would you be prepared to cooperate in devising a standard set of documents?

Please provide details of any savings in costs and / or administrative burdens from using standard documents.

Each company will use bespoke documents for funding rounds, in terms of articles, shareholders agreements and subscription agreements. These are negotiated between the legal advisers to investors and the company. We cannot see how this process can accommodate 'standard' documents as there are numerous legal matters or issues particular to the company and its stakeholders which would lead to these documents being changed.

Question 8. Do you have any other suggestions to improve our advance assurance service?

Some Inspectors do not look at company websites before asking for additional information, or they make requests for additional information without a clear reason for their request. Given the delays in the service it would be helpful if HMRC requests for further information can be based upon a genuine technical uncertainty in relation to which the Inspector does not currently hold information.

Similarly, the advance assurance service could be streamlined by HMRC providing a checklist setting out all the information required to be submitted at the time an application is made. This may help to reduce the number of follow up queries inspectors need to make.

About the BIA

Established in 1989, the BioIndustry Association (BIA) is the UK trade association for innovative bioscience enterprises. BIA members include emerging and more established bioscience companies, pharmaceutical companies, academic research and philanthropic organisations, and service providers to the UK bioscience sector.

Our members are responsible for over ninety per cent of biotechnology-derived medicines currently in clinical development in the UK and are at the forefront of innovative scientific developments targeting areas of unmet medical need. This innovation leads to better outcomes for patients, to the development of the knowledge-based economy and to economic growth. Many of our members are small, pre-revenue companies operating at the translation interface between academia and commercialisation.

For additional information or clarification on any of the points raised please contact Martin Turner, Policy and Projects Manager, at mtturner@bioindustry.org or on 020 7630 2192.