EIS-eligible Advanced Subscription Agreements ("**ASAs**"): Keeping it Simple

ASAs – A Brief Overview

ASAs remain a popular fundraising tool for early-stage UK companies and their investors, often allowing for speedy advance fundraising ahead of a formal equity round since a proper valuation exercise and long-form documents can be postponed until a future round.

Funds are paid upfront by the investor via the ASA with shares issued at a later date (such as at the time of the round). The Court of Appeal decision in the case of *Blackburn and another v Revenue and Customs Commissioners* [2008] EWCA Civ 1454 is authority that a company can accept such capital contributions on this basis without a formal allocation of shares and such contribution will not constitute a 'loan' to the company.

ASAs are standardised instruments which are typically light on terms. They are also attractive to many UK investors as (subject to meeting certain conditions) they are an eligible means to tax relief under the Seed Enterprise Investment Scheme ("**SEIS**") and/or Enterprise Investment Scheme ("**EIS**") in respect of the conversion shares once issued subject to the statutory conditions being met at the time of issuance.

HMRC's official guidance on the use of ASAs

HMRC have long publicly stated that they will not consider ASAs as suitable for S/EIS unless the agreement is a true contribution (and not a loan), cannot be varied, cancelled or assigned and bears no interest charge. S/EIS-eligible ASAs must also contain a longstop date and not be evergreen.

To grant 'advance assurance'[1] in respect of an ASA proposed to be used for an S/EIS eligible investment, HMRC has said they will only accept a maximum of six months from the date of issue of the ASA. Their explanation is that any longer period may easily result in different conditions existing at the time of the eventual share issue than those foreseen at the date assurance was sought. Key factors (such as the business plan or company status) could change, potentially disqualifying the investment from S/EIS relief.

The six-month longstop date has therefore been popularised as the appropriate period to adopt for any ASA where an investor is seeking S/EIS relief in respect of their investment, including where advance assurance hasn't been sought. But is it necessarily true that any longer period would render an ASA offside for S/EIS purposes?

HMRC's latest feedback

[1] Advance Assurance is a pre-clearance/approval process with HMRC. It gives investors' confidence that the company and the proposed investment structure *should* qualify for S/EIS relief when the shares are issued.

Notwithstanding the current guidance described above in relation to the granting of advance assurance in relation to ASAs, HMRC has confirmed to us that when it comes to later reviewing EIS1 compliance statements, any shares which have been issued pursuant to an ASA with a longstop date greater than six months will not necessarily be challenged solely on the basis of the extended longstop date. The reviewer will be primarily focused on the nature of the share class and the issuing company's business for the purpose of S/EIS eligibility.

In other words, a longstop date longer than six months would not automatically disqualify an investment from S/EIS relief. However, companies and their investors must ensure that the ASA represents a bona fide equity investment and that all statutory S/EIS conditions are met at the time of the eventual share issue.

This is welcome to hear from HMRC, particularly since the six-month period can feel particularly short for many start-ups facing the joint demands of both equity fundraising and commercialising their nascent business. The important features of ASAs are that they remain simple and straightforward. Any complexity, particularly combined with an extended longstop date, and an ASA would certainly be vulnerable to challenge.

Bethany Johnson
6 June 2025