



SOCIAL INVESTMENT TAX RELIEF

**Framework for an application to
HMRC for Advance Assurance**

December 2018

For more information and resources on SITR, please visit: www.bigsocietycapital.com/get-sitr.



NOTE ABOUT THE FRAMEWORK

This document is intended to help any organisation that:

- Is seeking to raise funding where investors will claim Social Investment Tax Relief (“SITR”), and
- Wishes to apply to HMRC for an advance assurance that SITR will be available to investors

Before you use this document, we’d like you to be aware of the following:

- This document is a suggested framework for your application to HMRC. It is not, and cannot be complete or comprehensive. Each case is judged on its own facts and we cannot, in this document, cover all the possible issues that might be relevant to an application of this nature. But we hope you find it a useful starting point.
- Also, this document is not an attempt to explain all of the criteria that must be met in order for SITR to be available to investors. If you do not know what those criteria are, or you just want to (or need to) know more about them, you can find further information in the [Essential Guide to Social Investment Tax Relief](#).
- For a better understanding of the context in which this document might be used, and the process for seeking advance assurance from HMRC, we’d recommend that you:
 - Watch our [webinar on advance assurances](#); and
 - Read the detailed note: [A Guide to Advance Assurance](#)
- If you are in any doubt about this document, the rules relating to SITR, or the process for seeking an advance assurance from HMRC you must seek independent professional advice.
- This application is not appropriate for an accredited social impact contractor.

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www.bigsocietycapital.com

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DRAFT LETTER / EMAIL TO BE TYPED ON LETTERHEAD OF SOCIAL ENTERPRISE

By email: enterprise.centre@hmrc.gsi.gov.uk

By post: HM Revenue & Customs, Small Company Enterprise Centre (Admin team), Mid-size Business
S0777, Newcastle NE98 1ZZ

Dated:[] 20[]

[add name of social enterprise raising the funding] – Social Investment Tax relief – Advance Assurance

1 Introduction

- 1.1 [add name of social enterprise raising the funding] (the “Social Enterprise”) is a [charity][community interest company][community benefit society] that **[add very brief summary of main activities]**.
- 1.2 In order to raise working capital to grow its business, the Social Enterprise is seeking to raise funds from investors (the “**New Investments**”).
- 1.3 Those investors (details of whom are set out in Schedule 4) will be seeking to claim Social Investment Tax Relief (“**SITR**”) on the New Investments pursuant to Part 5B of the Income Tax Act 2007 (“**ITA**”).
- 1.4 The purpose of this [email/letter] is to seek advance assurance that the New Investments will qualify for SITR.

2 The Social Enterprise

- 2.1 The Social Enterprise was [incorporated in [England and Wales][Scotland] on **[add date of incorporation]** as a private company limited by [guarantee/shares] with company number **[add company number]**¹ OR [established by trust deed dated **[add date of trust deed establishing charitable trust]**]² OR [established by **[what?]**]³
- 2.2 The registered office of the Social Enterprise is at **[add registered office]**.

¹ Use this wording in brackets if the Social Enterprise is a company

² Use this wording in brackets if the Social Enterprise is a trust

³ Use this wording in brackets if the Social Enterprise is an unincorporated association – but you will need to add details of whatever document forms its constitution and rules

2.3 The Social Enterprise is registered as [a charity with the Charity Commission for [England & Wales][Scotland] with number [**add charity number**].]⁴[a community benefit society with the FCA with number [**add number**]]⁵[a community interest company with the Office of the Regulator of Community Interest Companies]⁶.

2.4 The Social Enterprise's corporation tax reference is [**add corporation tax reference**].

3 Issued Share Capital and Loan Capital of the Social Enterprise, and Independence

3.1 The Social Enterprise [has no share capital (as it is a [company limited by guarantee][trust][unincorporated association])]⁷ OR [has a share capital. Details of its share capital are set out in Schedule 1]⁸.

3.2 The Social Enterprise [has no loan capital]⁹ OR [has outstanding loans. Details of its loan capital are set out in Schedule 2]¹⁰.

3.3 [The Social Enterprise has a number of members. As a company limited by guarantee, each member has one vote at any member's meeting and so no member possesses any ability to control the affairs of the Social Enterprise.]¹¹

3.4 [The Social Enterprise has a number of members. As a community benefit society, each member has one vote at any member's meeting and so no member possesses any ability to control the affairs of the Social Enterprise.]¹²

3.5 [The Social Enterprise is a trust. Its trustees are:

3.5.1 [**list all trustees**]; and

3.5.2 [].]¹³

⁴ Use this wording in brackets if the Social Enterprise is a charity

⁵ Use this wording in brackets if the Social Enterprise is a community benefit society

⁶ Use this wording in brackets if the Social Enterprise is a community interest company

⁷ Use this wording in brackets if the Social Enterprise does **not** have a share capital

⁸ Use this wording in brackets if the Social Enterprise **does** have a share capital

⁹ Use this wording in brackets if the Social Enterprise does **not** have any loan capital

¹⁰ Use this wording in brackets if the Social Enterprise **does** have loan capital

¹¹ Use this wording in brackets if the Social Enterprise is a company limited by guarantee

¹² Use this wording in brackets if the Social Enterprise is a community benefit society

¹³ Use this wording in brackets if the Social Enterprise is a trust

3.6 [The Social Enterprise is a charitable unincorporated association. Its trustees are:

3.6.1 [*list all trustees*]; and

3.6.2 [.]¹⁴

4 Subsidiaries, interests in other organisations and acquired trades

4.1 [Save as described in paragraph 4.2 below,] the Social Enterprise does not have, and has never had:

4.1.1 any subsidiary; or

4.1.2 any interest in the share capital of any other company.¹⁵

4.2 [The Social Enterprise owns the subsidiaries detailed in Schedule 3 (the “**Subsidiaries**”).]¹⁶

4.3 [Save as described in paragraph 4.2 above, the][The] Social Enterprise is not, and has never been:

4.3.1 a subsidiary of another company or trust;

4.3.2 under the control of another company or trust;

4.3.3 a member or guarantor of any company limited by guarantee;

4.3.4 a member or partner of any partnership;

4.3.5 a member of any consortium;

4.3.6 a member of any joint venture; or

4.3.7 a trustee of any trust.¹⁷

4.4 [The Social Enterprise has never acquired a "trade" (within the meaning of ss. 173A (6) and (7) ITA) .]¹⁸ [Neither the Social Enterprise nor any Subsidiary has ever acquired a "trade" (within the meaning of ss. 173A (6) and (7) ITA) .]¹⁹

¹⁴ Use this wording in brackets if the Social Enterprise is an unincorporated association – however you should also add details of its membership structure and voting rights of members

¹⁵ If you cannot make the declarations in this paragraph, you should take professional advice, as other paragraphs in this application may require material changes

¹⁶ Use this wording in brackets if the Social Enterprise **does** have one or more subsidiaries

¹⁷ If the Social Enterprise cannot give these confirmations, you should take professional advice, as other paragraphs in this application may require material changes

¹⁸ Use this wording in brackets if the Social Enterprise does **not** have, and has never had, any subsidiaries

¹⁹ Use this wording in brackets if the Social Enterprise **does** have one or more subsidiaries. If you cannot make one of the declarations in this paragraph, you should take professional advice, as other paragraphs in this application may require material changes

5 **Employees**

5.1 At the time the New Investments are to be made the Social Enterprise [and the Subsidiaries] will have, in aggregate, no more than [***add total numbers of employees***] employees (including directors).

6 **Gross Assets**

6.1 We have enclosed with this [letter/email] the annual accounts of the Social Enterprise [and each of the Subsidiaries] for the year ended [***add latest financial year end for which accounts are available***]. We have also enclosed with this [letter/email] a draft balance sheet showing the projected aggregate gross assets of the Social Enterprise [and the Subsidiaries] as at the date the SITR Investments are to be made. The Social Enterprise will receive £[***add total amount of money being invested***] in cash pursuant to the New Investments. Accordingly, for the purposes of section 257MC of ITA the aggregate gross assets of the Social Enterprise [and the Subsidiaries] will be:

6.1.1 less than £15m immediately before the New Investments are made; and

6.1.2 less than £16m immediately afterwards.

7 **Unquoted status**

7.1 For the purposes of section 257MD of ITA, none of the shares, stocks or debentures in the Social Enterprise are, or will immediately following the New Investments be:

7.1.1 listed on a recognised stock exchange; or

7.1.2 listed on a designated stock exchange outside the United Kingdom; or

7.1.3 dealt in outside the United Kingdom by such means as may be designated by HMRC.

8 **Trading Activities**

8.1 The Social Enterprise carries on the following activities:

8.1.1 [***give full explanation of the trading activities, and any non-trading activities, carried on by the Social Enterprise***]

8.2 [The Subsidiaries carry on the following activities:

8.2.1 [***give full explanation of the trading activities, and any non-trading activities, carried on by each Subsidiary***]

8.3 Further details of the Social Enterprise's activities can be found on the Social Enterprise's website at: [www.\[\]](http://www.[])

9 De Minimis State Aid

9.1 In the three years prior to the date the New Investments are to be made, the Social Enterprise will have received the following amounts of de minimis state aid (as defined in s.257MA (3) ITA):

9.1.1 ***[add details of all de minimis state aid received in the previous three years]***

9.2 [In the three years prior to the date the New Investments are to be made, the Subsidiaries will have received the following amounts of de minimis state aid (as defined in s.257MA (3) ITA):

9.2.1 ***[add details of all de minimis state aid received in the previous three years]***

9.3 Save as set out in [paragraph 9.1][paragraphs 9.1 and 9.2] above, during the three years prior to the date the New Investments are to be made [the Social Enterprise will not have] [neither the Social Enterprise nor any Subsidiary will have] received any aid (whether by way of investment, loan, grant funding or otherwise) which is de minimis aid which fulfils the conditions laid down in Commission Regulation (EU) No 1407/2013 (de minimis aid) (as that Regulation may be amended or replaced from time to time).

10 Risk Finance State Aid

10.1 On the date the New Investments are to be made, the Social Enterprise will have received the following “relevant investments” (as defined in s. 257MNA(2) ITA):

10.1.1 ***[add details of all “risk finance” state aid (including VCT, EIS, SEIS and SITR investments) ever received in the past]***

10.2 [On the date the New Investments are to be made, the Subsidiaries will have received the following “relevant investments” (as defined in s. 257MNA(2) ITA):

10.2.1 ***[add details of all “risk finance” state aid (including VCT, EIS, SEIS and SITR investments) ever received in the past]***

10.3 [Save as set out in [paragraph 10.1][paragraphs 10.1 and 10.2] above, no][No] monies will have ever been invested in the Social Enterprise [or any Subsidiary]:

10.3.1 in respect of which the investor has claimed or will claim relief under the under the Seed Enterprise Investment Scheme or the Enterprise Investment Scheme or Social Investment Tax Relief; or

10.3.2 by venture capital trusts; and

10.4 [Save as set out in [paragraph 10.1][paragraphs 10.1 and 10.2] above] [Neither the Social Enterprise nor any Subsidiary will have ever][The Social Enterprise will never have] received any aid (whether by way of investment, loan, grant funding or otherwise) which was received by the recipient pursuant to a measure approved by the European Commission as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the European Commission's Guidelines on State aid to promote risk finance investment (as those guidelines may be amended or replaced from time to time).

11 Date of First Commercial Sale

11.1 The Social Enterprise made its first commercial sale (as that term is defined in s. 257MNA(4) ITA) on **[add date]**.

11.2 [The Subsidiaries made their first commercial sales (as that term is defined in s. 257MNA(4) ITA) on the following dates:

11.2.1 **[add name of Subsidiary and date]**;

11.2.2 **[add name of Subsidiary and date]**.]

12 The New Investments

NOTE: USE THIS VERSION OF PARAGRAPH 12 IF THE INVESTMENT IS BY WAY OF LOANS

12.1 The Social Enterprise intends to raise a total of £**[add amount]** by way of the issue of loans (the “**SITR Loans**”) to be issued to a number of individuals (the “**SITR Investors**”). Details of the SITR Investors, and the amounts to be invested by each, are set out in Schedule 4.

12.2 On completion of the New Investments:

12.2.1 The SITR Investors will transfer the sum of £**[add total amount being raised]** to the Social Enterprise (or its advisers); and

12.2.2 [The SITR Investors and the Company will enter into an inter-creditor agreement with other lenders to the Social Enterprise (the “**Inter-Creditor Agreement**”); and]

12.2.3 The Social Enterprise will execute and date the agreement(s) constituting the SITR Loans (the “**SITR Loan Agreement**”).

12 The New Investments

NOTE: USE THIS VERSION OF PARAGRAPH 12 IF THE INVESTMENT IS BY WAY OF SHARES

- 12.1 The Social Enterprise intends to raise a total of £[**add amount**] by way of the issue of a total of [**add total number of shares being issued**] [**refer to the class of ordinary share being issued (if it is a separate class)**] ordinary shares of £[**add nominal value of the share**] each (the “**SITR Shares**”) to be issued to a number of individuals (the “**SITR Investors**”). Details of the SITR Investors, and the amounts to be invested by each, and the numbers of SITR Shares to be issued to each, are set out in Schedule 4.
- 12.2 On completion of the New Investments:
- 12.2.1 The SITR Investors will transfer the sum of £[**add total amount being raised**] to the Social Enterprise (or its advisers);
- 12.2.2 [The Social Enterprise will amend its articles of association (the “**Amended Articles**”);]
- 12.2.3 [The Social Enterprise, its shareholders, and the SITR Investors will enter into a [subscription/investment/shareholders] agreement (the “**SITR Shareholder Agreement**”);] and
- 12.2.4 The Social Enterprise will issue and allot the SITR Shares, credited as fully paid, to the SITR Investors.

13 The SITR Investors

- 13.1 The SITR Investors are all individuals.
- 13.2 No SITR Investor (together with his or her associates) will hold more than 30% of the [share capital or] loan capital of the Social Enterprise [or any Subsidiary].

14 Use of the monies to be invested by the SITR Investors

- 14.1 The money from the New Investments will be employed as follows:
- 14.1.1 to pay all fees and expenses associated with the making of the New Investments; and
- 14.1.2 as working capital to be employed in [**add explanation as to exactly how the SITR monies will be used. If a Subsidiary intends to employ the SITR monies, confirm this fact and confirm that the Subsidiary in question is a “social enterprise”, is at least 90% owned, and there are no arrangements in place under which ownership could at any time fall below 90%**].

- 14.2 We have enclosed a copy of the Social Enterprise's latest business plan/cash flow forecast which explains in more detail how the SITR Funding will be used.
- 14.3 It is anticipated that all of the SITR Funding will have been employed by the end of [**confirm date by which it is anticipated all SITR funding will have been spent**].

15 The SITR Loans

NOTE: USE THIS VERSION OF PARAGRAPH 15 IF THE INVESTMENT IS BY WAY OF LOANS

- 15.1 The key terms of the SITR Loans are described in this paragraph 15.
- 15.2 All SITR Loans rank equally.
- 15.3 Liabilities to repay the SITR Loans are unsecured and are not guaranteed by any party.
- 15.4 The SITR Loans are repayable [**add explanation of the repayment date or dates**]. The SITR Investors may demand repayment earlier than that date (or dates) in the following circumstances:
- 15.4.1 [**if there are any "default" clauses allowing the lenders to demand early repayment, these must be explained here**]
- 15.5 The SITR Loans are repayable at face value (no redemption premium is payable).
- 15.6 In the event of a winding up of the Social Enterprise, all monies due to the holders of SITR Loans will be fully subordinated to the claims of all other creditors of the Social Enterprise[, and will rank alongside the lowest class of share in the Social Enterprise]²⁰.
- 15.7 Whilst the principal remains outstanding interest will accrue at the rate of [**explain the rates at which interest will be charged, and when and how those rates may vary**]% per annum payable [**explain when and how interest will be paid**]. Any overdue amount will bear additional interest at an extra [**explain any provisions for default interest to be charged**]% per annum.
- 15.8 [**add description of any other terms of the SITR Loan Agreement that may be relevant**]
- 15.9 [**if there is to be an Inter-Creditor Agreement, summarise its key terms here**]

15 The SITR Shares

NOTE: USE THIS VERSION OF PARAGRAPH 15 IF THE INVESTMENT IS BY WAY OF SHARES

- 15.1 The key terms of the SITR Shares are described in this paragraph 15.

²⁰ Use this wording in brackets if the Social Enterprise has a share capital

- 15.2 [The Sitr Shares rank pari passu with all other shares in issue]²¹[The Sitr Shares rank alongside other classes of share as follows:
- 15.2.1 Voting: [**summarise voting rights for each class of share**];
- 15.2.2 Dividends: [**summarise how each class of share will rank for distributions of income i.e. dividends**];
- 15.2.3 Distributions of capital: [**summarise how each class of share will rank for distributions of capital e.g. on a winding up**]; and
- 15.2.4 [**summarise any other key rights attaching to the shares**].]²²
- 15.3 [**add summary of the terms of the Sitr Shareholder Agreement or any other agreement signed by the Sitr Investors which sets out their rights and/or governs the way in which the Social Enterprise is to be managed**]

16 Documents Enclosed

- 16.1 We have enclosed with this [email/letter]:
- 16.1.1 [A copy of the latest drafts of the Sitr Loan Agreement and Inter-creditor Agreement;]²³
- 16.1.2 [A copy of the latest drafts of the Amended Articles and Sitr Shareholder Agreement;]²⁴
- 16.1.3 [The certificate of incorporation and memorandum and articles of association of the Social Enterprise] [and the Subsidiaries]²⁵;
- 16.1.4 [The trust deed dated [] and establishing the Social Enterprise, together with all amendments to that trust deed;]²⁶
- 16.1.5 [The current constitution of the Social Enterprise;]²⁷
- 16.1.6 The accounting and financial information referred to in paragraphs 6.1 and 14.2 above; and
- 16.1.7 A letter from the Social Enterprise authorising HMRC to communicate with us by email.

²¹ Use this wording in brackets if the Social Enterprise has only one class of share and will **not** be creating a new class of share to issue to Sitr Investors

²² Include this wording in brackets if the Social Enterprise will have more than one class of shares

²³ Include this wording in brackets if the investment is by way of loans

²⁴ Include this wording in brackets if the investment is by way of shares

²⁵ Include this wording in brackets if the Social Enterprise and/or subsidiaries are companies

²⁶ Include this wording in brackets if the Social Enterprise is a trust

²⁷ Include this wording in brackets if the Social Enterprise is an unincorporated association

17 HMRC Assurances

17.1 On the basis of the information provided we should be grateful for assurances from HMRC that:

17.1.1 [The SITR Loans will be “qualifying debt investments” for the purposes of Part 5B of ITA;]²⁸

17.1.2 [The SITR Shares will satisfy Conditions A and B in sections 257L (2) and (3) of ITA;]²⁹

17.1.3 The Social Enterprise meets all of the conditions set out in Chapter 4 of Part 5B of ITA;

17.1.4 All requirements for SITR in Part 5B of ITA are met in relation to the SITR [Loans][Shares];
and

17.1.5 HMRC would, on receipt of a compliance statement under section 257PB of ITA, authorise the Social Enterprise to issue compliance certificates (under section 257PC of ITA) to all investors who subscribe for SITR [Loans][Shares].

Yours faithfully

.....
For and on behalf of [***name of Social Enterprise***]

²⁸ Include this wording in brackets if the investment is by way of loans
²⁹ Include this wording in brackets if the investment is by way of shares

Schedule 1³⁰

Details of the Share Capital of the Social Enterprise

Only complete this schedule if the Social Enterprise is a company with shares

If it is, add a table explaining:

- *Classes of shares and nominal values*
- *Name of each shareholder*
- *Numbers of shares and classes of shares held by each shareholder*
- *Numbers of shares that are the subject of options, warrants or other rights to subscribe for shares in the Social Enterprise*

³⁰ Delete Schedule 1 if the Social Enterprise has no share capital

Schedule 2³¹

Details of the Loan Capital of the Social Enterprise

Here you should list all "loan capital" i.e. any debt incurred by the Social Enterprise for:

- any money borrowed or capital asset acquired by it,
- any right to receive income created in favour of it - for example, where a person contracts to make annual payments to the Social Enterprise in return for a capital sum due at some later date, that capital sum is loan capital,
- consideration the value of which to the Social Enterprise was (at the time the debt was incurred) substantially less than the amount of the debt (including any premium on the debt).

But loan capital is treated as **excluding** a bank overdraft if the overdraft arose in the ordinary course of the bank's business.

Loan capital does **not** include normal hire purchase debts.

³¹ Delete Schedule 2 if the Social Enterprise has no loan capital

Schedule 3³²

The Subsidiaries

For each Subsidiary list:

- **Name**
- **Registered number (if it is a company)**
- **Charity number (if it is a charity)**
- **Registered office**
- **Corporation tax reference (if it has one)**
- **Details of issued share capital and numbers or % of shares held by the Social Enterprise**
- **Details of the loan capital (if any) of the Subsidiary**
- **Whether or not the Subsidiary is a “social enterprise” i.e. a charity, community interest company or community benefit society**
- **Whether the Subsidiary is trading or dormant**

³² Delete Schedule 3 if the Social Enterprise has no subsidiaries

Schedule 4

The New Investments

Name of Investor	Amount Invested £	No of SITR Shares³³
Total		

³³ Delete this column if the investment is by way of loans