

**Kuber Ventures Limited**

**REGULATORY CONSIDERATIONS  
OF EIS INVESTING**

**October 2016**

# Agenda

Introduction, Piers Denne, Kuber Ventures

Kate Troup, Charles Russell Speechlys

Dermot Campbell, Kuber Ventures

Closing Remarks

Networking

Kuber Ventures Limited

KATE TROUP

CHARLES RUSSELL SPEECHLYS



CharlesRussell  
Speechlys

**Kuber Ventures**

**MiFID II – Some Key Areas of  
Change for IFAs**

**Kate Troup**

# MiFID II

## Effective Date

- 3 January 2018
- Member states must adopt measures transposing MiFID II by 3 July 2017
- UK must comply despite Brexit

## Key Legislation

- MiFID II Directive (2014/65/EU)
- Markets in Financial Instruments Regulation (Regulation 600/2014) (MiFIR)
- delegated directive
- supplementing implementing regulations
- FCA Consultation Papers and Discussion Paper
- Level 2 and 3 Guidance

## Article 3 Firms

- Must be subject to analogous requirements

# Inducements and Adviser Charging

## MiFID II

- Independent advisers and portfolio managers are banned from receiving and retaining all monetary and non-monetary benefits from third parties other than “minor non-monetary benefits” when dealing with retail and professional clients

## FCA Proposals

- Retain existing advisor charging rules in COBS 6.1A and 6.1B
- Transposing MiFID II inducement ban for advice to professional clients
- For firms providing advice to retail clients extending MiFID inducement bans
  - a) including restricted advice
  - b) banning rebates of inducements to clients
  - c) applying ban to the “business of providing advice” not just inducements provided in relation to the provision of a particular personal recommendation to a client

# Inducements and Research

## MiFID II Delegated Directive:

Research received from a third party will not be regarded as an inducement if it is received in return for either of the following:

- a) direct payments by the investment firm out of its own resources; or
- b) payments from a separate research payment account controlled by the investment firm, provided a number of conditions relating to the operating account are met

## Research Payment Account (RPA)

- must be funded by specific research charge to client
- firm must set and regularly assess research budget
- firm is held responsible for the account
- firm must regularly assess quality of research

Firms must make disclosures to clients about the research charge and produce a “research policy” to be provided to clients.

# Suitability

MiFID II expands on existing MiFID suitability requirements:

- firms must assess suitability of overall package where advice is based on package of bundled products or services;
- firms must ensure they consider whether there are obvious inaccuracies in information given by clients;
- firms must ensure information held about a client is kept up to date if providing ongoing advice;
- if advice includes switching investments the firm must collect information on the client's existing investments and new investments to analyse the costs and benefits of the switch;

The new rules will apply to Article 3 firms

# Appropriateness

## MiFID I

- Appropriateness assessment required for non-advised (or non-discretionary) sales of complex products

## MiFID II

- Fewer products are “non-complex” so widens scope of products subject to appropriateness test

## Two new criteria for non-complex products:

1. product must not include a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile;
2. product must not include any explicit or implicit exit charges that have the practical effect of making the investment illiquid.

# Other key changes

## MiFID Investments

- will include structured deposits

## Independence

- Similar provisions to UK post-RDR rules
- Independent advisory firms will need to include structured deposits in their review of retail investment products which could meet an investor's needs

## Product Governance

- enhanced responsibility for firms involved in all stages of distribution chain

## Recording of telephone conversations and electronic communications

- will apply to Article 3 firms
- the FCA has said it will consider alternative proposals for smaller financial advisers, but any proposals must have an analogous outcome



CharlesRussell  
Speechlys

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**Regulatory considerations when  
advising on EIS**

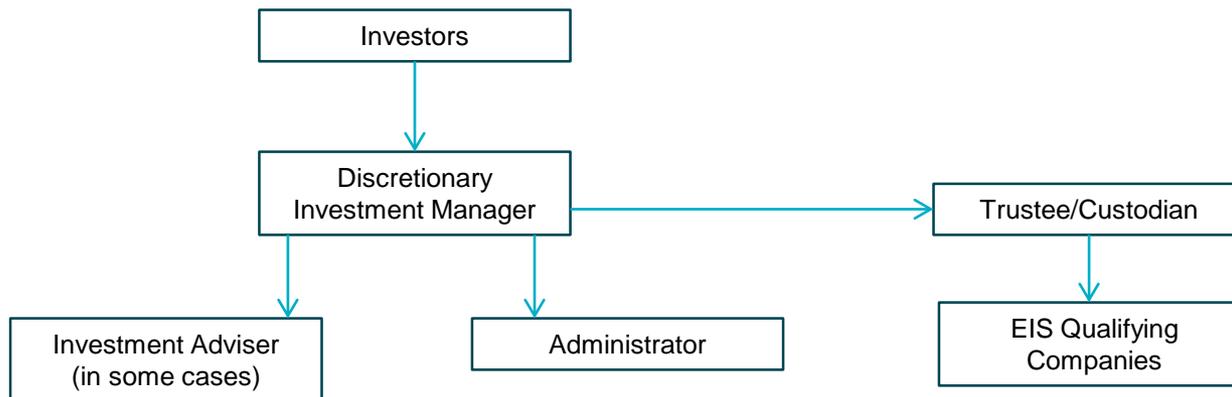
**Kate Troup**

# Enterprise Investment Scheme (EIS)

- the Enterprise Investment Scheme was introduced by HMRC to help small UK companies raise capital from private investment;
- the EIS offers five generous tax incentives to private investors who are resident in the UK for tax purposes:
  - up to 30% upfront income tax relief;
  - tax free growth;
  - tax relief on any investment losses;
  - up to 100% inheritance tax relief; and
  - capital gains tax deferral for the life of the investment.
- to obtain reliefs an investor must invest in EIS qualifying companies
- investors must hold a direct legal or beneficial interest in shares issued by the EIS qualifying companies

# Method of Investment in EIS Qualifying Companies

1. Direct investment in qualifying companies
2. HMRC Approved EIS Fund
  - Managed portfolio
  - Collective management (AIF)
3. Unapproved EIS Fund
  - Managed portfolio
  - Collective management (AIF)



# Regulatory Treatment of EIS “Funds”

## Managed Portfolio EIS

- investor taken on as manager’s client
- investor enters into a discretionary investment management agreement with the manager
- manager provides MiFID regulated discretionary management services
- suitability assessment for each investment against investor’s investment objective and risk profile

## Collectively Managed EIS

- Alternative Investment Fund
- investor enters into an Investment Management Agreement with the fund manager but is not a client of the manager
- investments are managed on a synchronised basis
- investment objectives which are taken into account are those of the fund not the individual investors.

In both cases shares will be held by nominee

# Implications of Regulatory Classifications

## Manager

- Permissions - AIFM or MiFID
- Investment Objectives – fund-wide or individual
- Suitability - only for managed portfolio

## Investors

- Client of manager for managed portfolio
- Investor in AIF for collectively managed EIS
- Day-to-day very little difference

## IFA

- Managed portfolio – advice on discretionary fund manager service
- Collectively managed EIS – advice on investment in an AIF

## Financial Promotions

- Underlying investments are non readily realisable securities
- Collectively managed EIS are AIFs and non-readily readily realisable securities but are not collective investment schemes or non-mainstream pooled investments

# Suitability and Appropriateness

## Suitability

- advisers must carry out suitability assessment before giving advice to retail clients
- managed portfolio EIS manager must carry out suitability assessment against customers investment objectives and risk profile when making each investment in an EIS qualifying company
- collectively managed EIS – manager will not be subject to MiFID suitability requirements

## Appropriateness

- appropriateness assessment must be carried out before investment is made via a direct-offer financial promotion of a collectively managed EIS
- appropriateness assessment must be carried out before arranging deals in collectively managed EIS

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KUBER VENTURES

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# BUILDING REGULATORY COMPLIANT PROPOSITIONS

October 2016

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# My background

Dermot Campbell APFS Chartered FCSI

Chief Executive,  
Kuber Ventures

23 years industry  
experience

- Snr Client Adviser, UBS
- Chartered Financial Planner
- Former Independent Financial Adviser

# Regulatory context

## SEIS and EIS funds

- EIS and SEIS Funds - AIFs or MIFID Portfolios
  - Managers FCA Authorised
  - Covered by FSCS
- CIS exemption for EIS/ SEIS
  - EIS and SEIS funds should not be UCIS
  - Inadvertently structure as UCIS
    - reputable advisers
- Some "funds" are simply baskets of investments with no FCA authorised fund manager. i.e. Not FCA regulated and no FSCS

## Single company SEIS and EIS

- Individual EIS are single unlisted company
  - Can be AIM listed
  - Governance controls
- Not FCA regulated
  - No FSCS

# Funds on Kuber – regulatory classification EIS funds

## Managed Portfolio (MIFID)

- Amersham Corporate Development Capital (ACDC) EIS
- Amersham Odexia Consumer Brands
- Atlantic Screen Music
- Blackfinch EIS Portfolio
- CHF Media EIS only
- CHF Media EIS/ SEIS hybrid
- Deepbridge Technology
- Goldfinch Entertainment (EIS)
- Seed Advantage EIS Fund
- Seneca EIS portfolio service
- Symvan Technology EIS Fund

## Alternative Investment Funds

- Boundary Capital Home Run
- Guinness AIM
- The Imbiba Leisure EIS
- Titan Storage EIS

# Funds on Kuber – regulatory classification SEIS funds

## Managed Portfolio (MIFID)

- AMIM OxTech Asteroid Series SEIS
- Blackfinch Music SEIS Portfolio
- CHF Media SEIS
- Seed Mentors SEIS fund
- Deepbridge Life Sciences SEIS
- Symvan Technology SEIS Fund 2

## Alternative Investment Funds

- The Goldfinch SEIS

# Funds on Kuber – regulatory classification BPR funds

## Managed Portfolios

- Blackfinch IHT Portfolios
- Deepbridge IHT Service
- Guinness Sustainable Inheritance Planning
- Seneca Inheritance Tax Service

## Alternative Investment Funds

- Mariana Estate Planning Solution

# Client classification

## High Net Worth

- £100,000 income
- £250,000 investment assets

## Sophisticated investors

- Experience
- Member investment syndicate
- Professional experience
- Director of a company turning over > £1m

# Client on boarding

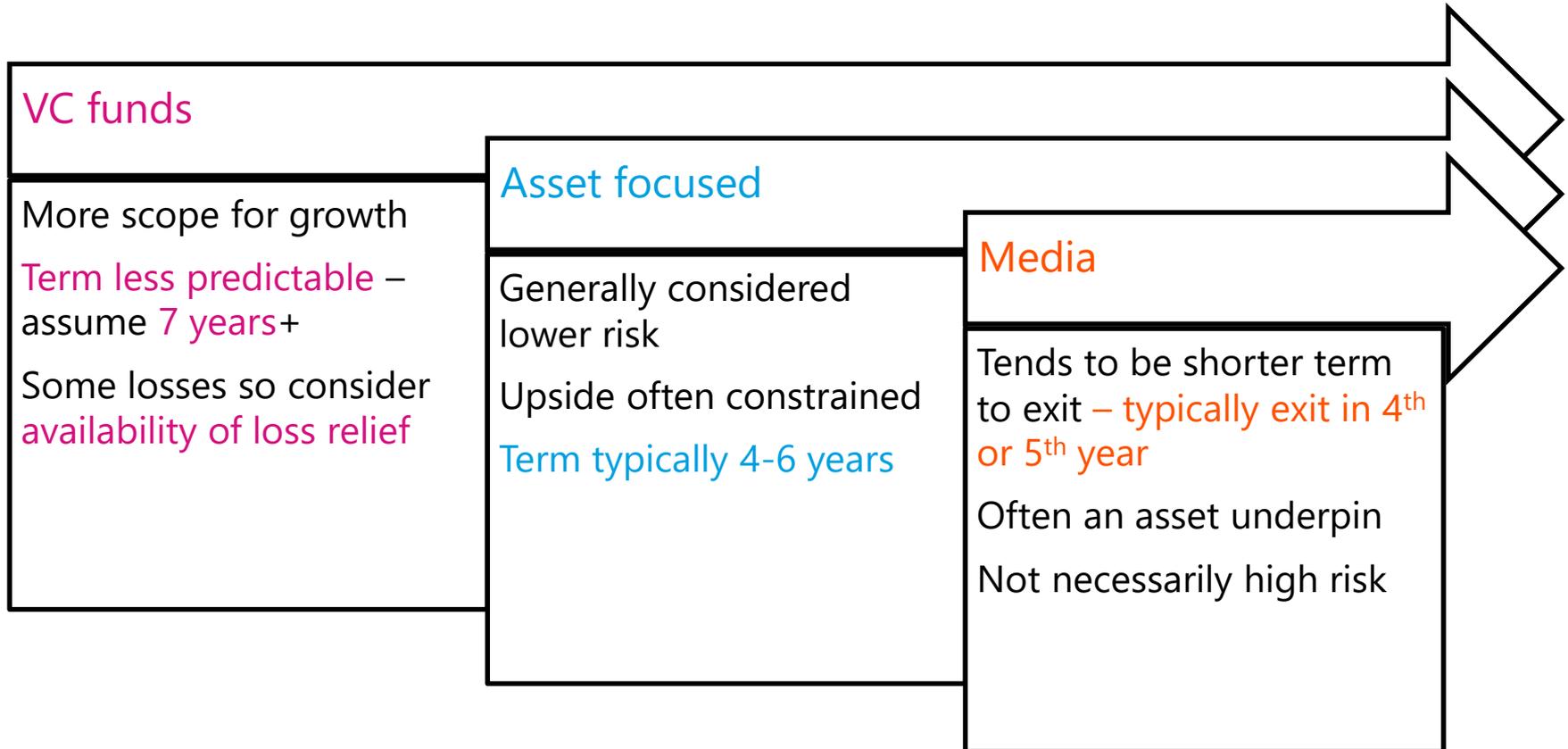
## Suitability test

- Carried out by all MIFID portfolio managers on every transaction for every investor

## Appropriateness test

- Carried out by anyone arranging an investment in an AIF – at point of entry

# Portfolio construction

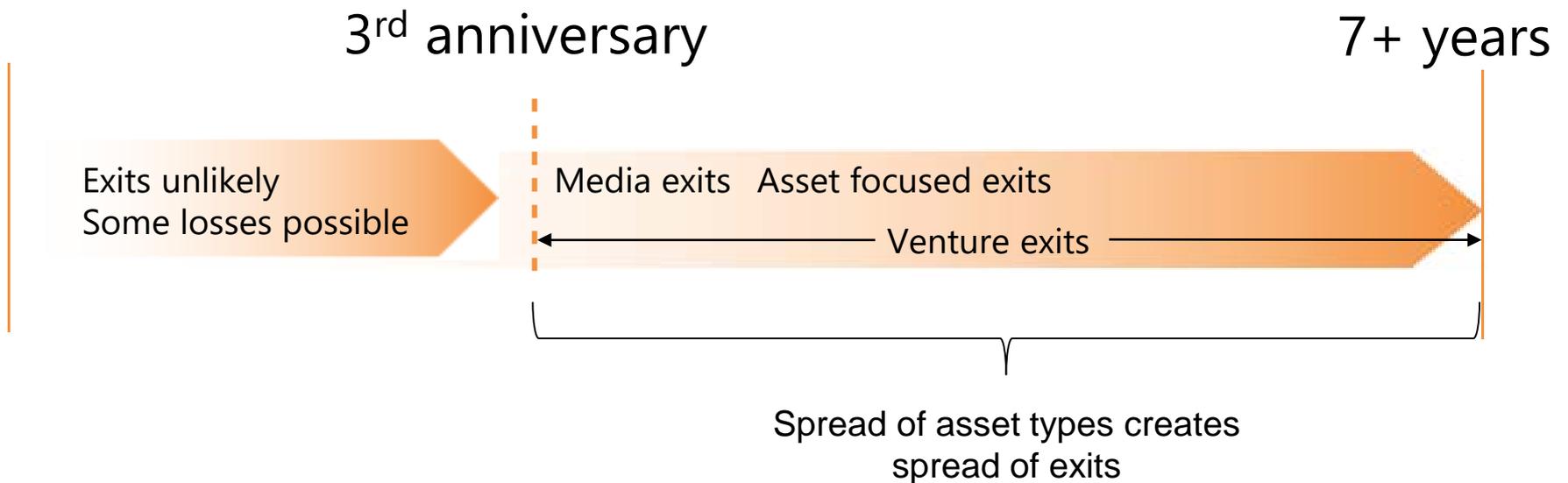


# Power of Loss Relief Portfolio example

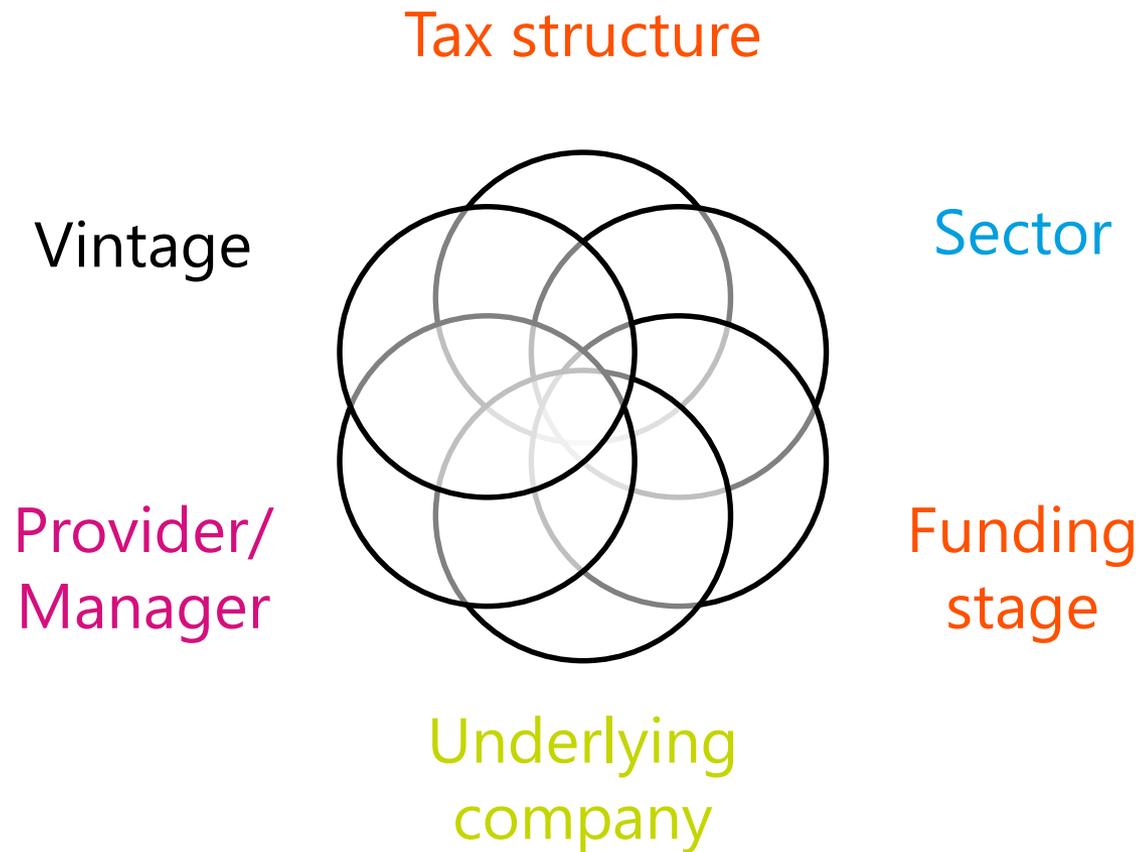
10 investments - £100 each Total investment £1,000	Initial investment	Net profit (loss)	Total return post tax
1 investment fails	£100.00	£(38.50)	£61.50
2 lose 30%	£200.00	£0.00	£200.00
4 break even	£400.00	£120.00	£520.00
2 return 1.3 X investment	£200.00	£120.00	£320.00
1 returns 5 X money	£100.00	£430.00	£530.00
<b>Total return</b>	<b>£1000.00</b>	<b>£631.50</b>	<b>£1,631.50</b>

Assume top rate tax payer

# EIS/ SEIS Profile of exits

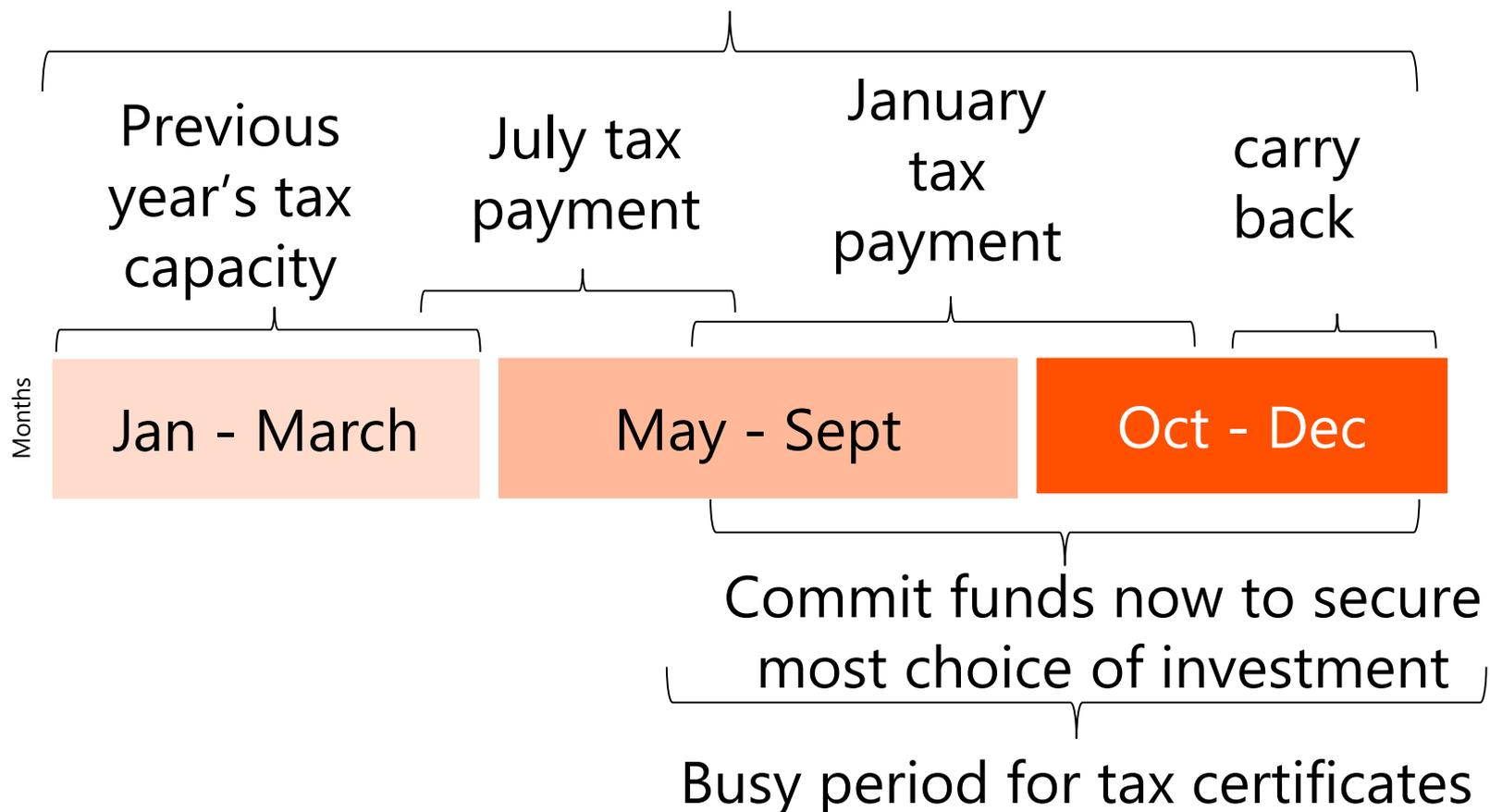


# Diversification

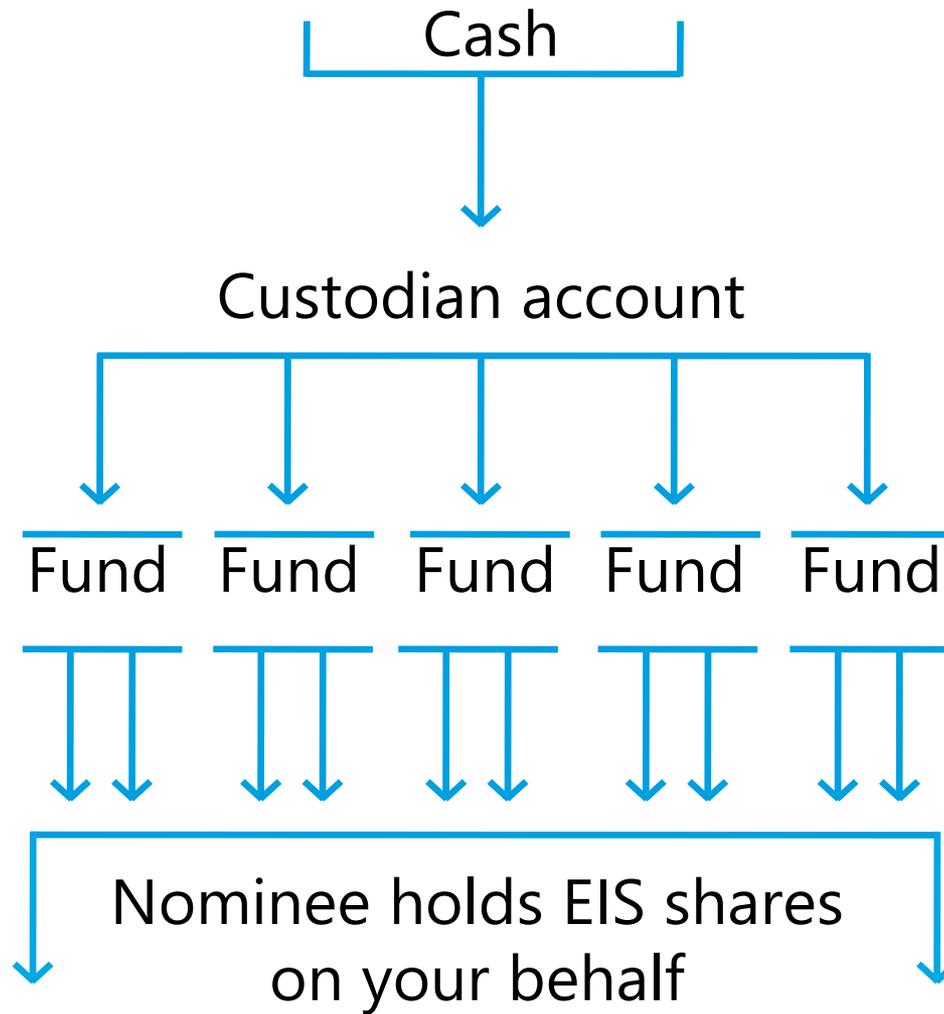


# Tax timetable

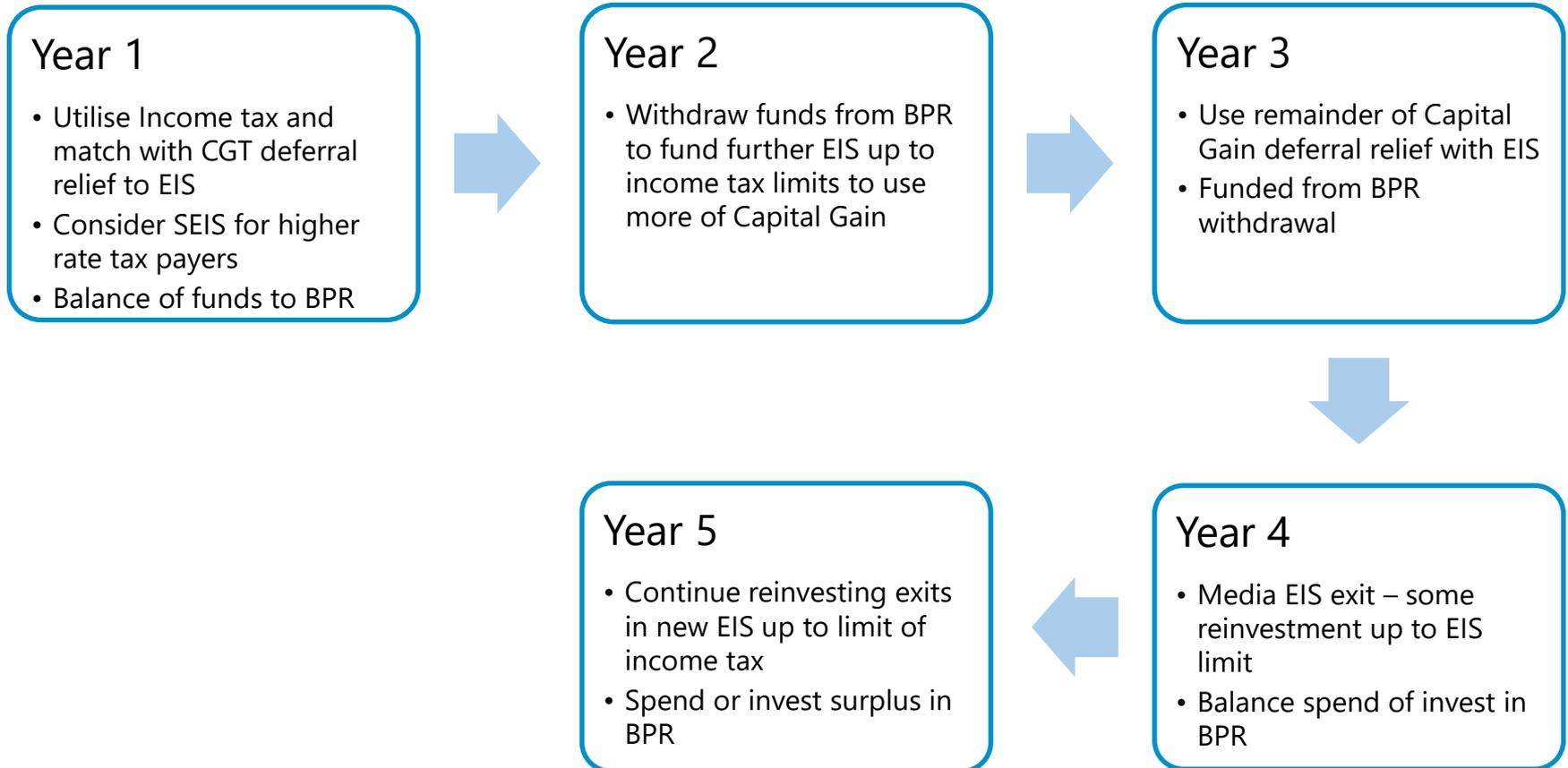
CGT and IHT not date sensitive



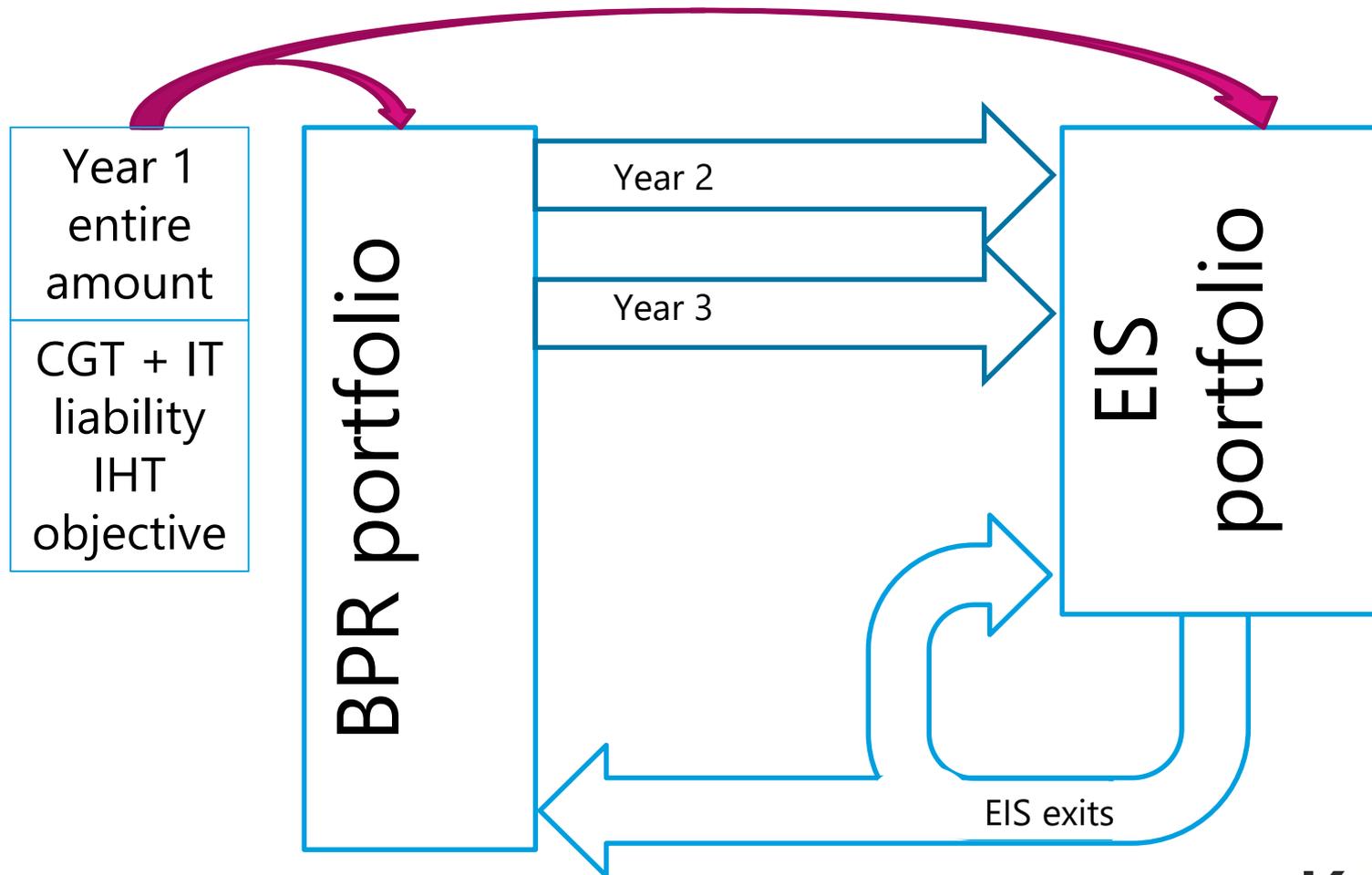
# Kuber Ventures: platform solution



# Interaction EIS - BPR



# Using a platform for complex tax planning



# Further information

## Helpline

- 020 7952 6685

## Online resources

- [www.kuberventures.com](http://www.kuberventures.com)
- <http://www.theaic.co.uk>
- <http://www.hmrc.gov.uk>

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