

Enterprise Investment Scheme (EIS)

Background

The following notes are meant to be used as a **reference guide for EIS**. Specific tax advice should be sought in relation to your own personal circumstances before implementing any of the guidance shown below.

The Enterprise Investment Scheme (EIS)

EIS was introduced to **encourage investment** in higher risk companies by providing investors with **income tax and capital gains tax relief**. In the **current economic climate**, EIS has become an attractive way for higher rate tax payers to receive relief, whilst helping to sustain economic development in companies which qualify for the scheme.

The qualifying company

In order to qualify as an EIS company the following criteria, amongst others, must be satisfied:

- The company must carry on a **qualifying trade** (broadly speaking, most trades qualify unless it is an excluded trade, such as property development or dealing in shares and securities);
- The company must operate **wholly or mainly** in the **UK** and must be **unquoted**;
- The company must not **control** any other company, and not be under the control of another company, although there is scope for the 'qualifying subsidiaries' rules to apply;
- The assets of the company must not exceed **£7million** immediately before the shares are issued, and they must not exceed **£8million** immediately after the issue;
- There must be **fewer than 50 full time employees** in the company at the date the shares are issued;

The qualifying investor

There are a number of conditions that an investor must satisfy:

- **No connection with the issuing company** at any time in the period from 2 years before to 3 years after the share issue. Connected parties include employees, shareholders or associates with more than, or an entitlement to acquire more than 30% of the ordinary share capital.
- **No linked loan** must be made to the investor or his associates from share issue for 3 years, otherwise relief will be clawed back. The investor must not be investing in the company purely to obtain a tax advantage.

Claiming the relief

Relief is given as follows:

- **Income tax reduction of 20%** x the amount invested (to a maximum of £500,000 for 2009/10 and 2008/09), or the complete tax liability for the year if lower;
- Relief must be claimed within 12 months of HMRC authorising the company via **Form EIS1**;
- Relief is given on an **actual basis**, so it is **immediate within the tax year it arises**. However it can be carried back one tax year if the shares are issued and subscribed for before 6 October in a tax year.
- **Capital Gains Tax Deferral Relief** can also be claimed for **any gain** made by an investor during the period. Capital gains made in respect of an EIS investment will be exempt upon sale, but the original gains which were deferred will become taxable.

Withdrawal of relief

Relief would be withdrawn in the following circumstances:

- The investor sells the shares within 3 years of issue;
- The investor receives value from the company;
- The company ceases to be a qualifying company.

HMRC Advance Assurance

HMRC will issue assurance that a company will qualify for EIS, by application. However, the registration of a new company as EIS qualifying cannot be completed until it has been trading for at least 4 months.

Budget 2011

Changes were announced in the Budget 2011 with regards to EIS.

The level of investment made by an individual qualifying investor was increased from £500,000 to £1 million.

Furthermore, the tax relief on this investment has increased from 20% to 30%.

In terms of the qualifying company, the gross assets test has increased to £15million, and the number of employees test has jumped to 250 from 50.

This means that more companies should qualify for the EIS going forward.

Please note that the changes announce in the Budget are subject to State Aid Approval by the European Commission.

Further information....

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