Enterprise Investment Scheme

The Enterprise Investment Scheme ("EIS") is designed to help higher-risk unquoted trading companies raise equity finance, by providing generous tax incentives to investors.

Reliefs

EIS provides three tax reliefs to individual investors:

- an "income tax relief" applied when the investment is made;
- a "disposal relief" applied when the shares in the EIS company are sold; and
- a capital gains tax "re-investment relief".

The income tax relief takes the form of a reduction in the individual's UK income tax liability, equal to 30% of the amount of the subscription price of the shares. The maximum investment on which an investor can claim relief is £2m per tax year, provided that £1m of the annual invesment is invested in knowledge intensive companies, or £1m otherwise. A company can raise in total up to £5m (or £10m for knowledge intensive companies) of EIS investment in a 12 month period (subject to the gross asset requirement set out below).

The maximum investment a company can receive under EIS is capped at £12m (or £20m for "knowledge intensive companies").

The disposal relief means that gains on the disposal of qualifying EIS shares are exempt from UK capital gains tax; however, any capital losses on disposal will be allowable (albeit reduced by the amount of income tax relief previously received) and the loss may be set against income, subject to making the appropriate claim.

The reinvestment relief works as follows: where an individual disposes of an asset, realises a capital gain, and reinvests all the gain by acquiring EIS shares, the gain will not be taxable in the year in which it arises. Instead, it will be deferred for tax purposes until the EIS shares are later sold; only then will it become subject to capital gains tax. Capital gains arising three years prior and one year from the date of issue of the EIS shares may be reinvested.

In certain circumstances, the amount of relief available may be restricted. For example, if the shares are sold within the first three years following their issue or the money raised is not fully employed for the purpose of the company's business within two years of the share issue (or the commencement of trade, if later), all the tax reliefs will be withdrawn entirely.

Requirements

In order to qualify for the relief, the company issuing the shares, the shares being issued, and the investor must all meet certain criteria. The principal requirements are as follows:

Company requirements effective from 2015

- The issuing company must exist for the purpose of carrying on a qualifying trade, or be the parent company of a group whose business does not consist wholly, or to a substantial part, in the carrying on of non-qualifying activities.

- Before the shares are issued, the value of the company's (or group's, if the issuing company is a parent company) gross assets must not exceed £15m. After the share issue, the company's (or group's) gross assets must not exceed £16m.
- The group may not employ more than 249 full-time equivalent employees or directors (499 for knowledge intensive companies).
- The company must have a permanent establishment in the UK at the date of the share issue and throughout the following three years.
- The company must be unquoted, and must not have control over any companies besides 51% subsidiaries.
- The amount of all EIS investment and other State Aid received in any 12 months (including other Venture Capital Trust scheme investments) must not exceed £5m or £10m from 5 April 2018 for knowledge intensive companies.
- The company cannot raise funds under EIS, for the first time, if it made its first commercial sale more than 7 years ago. There is an exemption from this requirement, where the funds raised under EIS within a 30 day period exceed 50% of the company's annual turnover, averaged over the last five years, and the funds are used to enter a new product or geographic market.

Investor requirements

- Neither the investor nor any associates may be employees of the company or any subsidiary during the three years following the share issue. Directors who receive only reasonable remuneration for their services as directors may be eligible to claim EIS relief so long as they were issued with their EIS shares prior to becoming directors.
- An investor (together with any associates) must not hold an interest in the company of more than 30% at any time during the two years before, or the three years after, the share issue.
- Where an investor holds, at the time that the EIS shares are issued, any shares in the company which were not acquired under a risk finance scheme (SEIS/EIS/Social investment relief) or were not subscriber shares, the investor will not be eligible for EIS tax relief.

Share requirements

- The shares must be ordinary shares, with no preferential right to assets in a winding-up , and must not be subject to any pre-arranged exit arrangements. They must be fully paid-up and subscribed for wholly in cash on the date of issue.
- The shares must be issued to raise money for the purpose of a qualifying business activity, and these monies must be fully employed for that purpose within the two years from the date of the share issue.

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