

Briefing document

Enterprise Investment Scheme

Introduction

The Enterprise Investment Scheme (EIS) is intended to help certain types of smaller, higher-risk unquoted trading companies raise capital. It does so by providing a range of tax reliefs for investors who subscribe for qualifying shares in these companies. There are a number of detailed conditions which must be met by both the investor and the company over a prescribed period in order for tax relief to be available and tax advice should always be taken, both on investment and in respect of any changes during the prescribed holding period.

This briefing note contains an outline of EIS relief. A similar scheme, the Seed Enterprise Investment Scheme (SEIS), provides tax reliefs for investments into small, start-up companies. The SEIS is not covered in this briefing note, though a separate briefing note is available.

Outline of the reliefs available

Provided all the conditions are met over the appropriate time periods, the tax reliefs available include:

- Income tax relief of 30% on the amount invested into EIS companies. Income tax relief can be claimed on a maximum investment of £1million per annum into most trading companies, though it is possible to claim relief on up to £2million of investment per annum if the additional £1million is invested into 'knowledge-intensive' companies. Relief can be carried back to the previous tax year, subject to the aforementioned maximum amounts on which relief can be claimed.
- Capital Gains Tax (CGT) exemption on disposal of EIS shares on which income tax relief has been claimed.
- CGT on gains made on other assets can be deferred. Deferred gains come back into charge once the EIS investment is sold, or if the relevant conditions for EIS to apply otherwise cease to be met. CGT deferral relief must be claimed.
- EIS shares may also be eligible for relief from inheritance tax after they have been owned for at least two years. This is not part of the EIS: relief may be available due to overlap with the conditions that must be met for business property relief from inheritance tax to be available.

EIS investments

A number of conditions must be met by both the investor and the company in order for EIS relief to be available. The shares must also meet specific criteria. In particular:

- Income tax relief and the CGT exemption are only available provided (i) the investor does not have a substantial (more than 30%) interest in the company and (ii) the investor is not an employee. In certain cases it is possible for the investor to be a director, though various conditions must be met.
- The company must carry out a qualifying trade (or begin trading within two years of the issue of EIS shares) and must not, to a substantial extent, carry out non-qualifying activities. Non-qualifying activities include, but are not limited to, dealing in land and property development. In addition, the company must have objectives to grow and develop its trade in the long-term.
- EIS relief is only available if, by making the investment, the investor puts his or her capital at risk and so could make an overall loss on the investment, taking into account the net investment return, loss of capital and any tax relief obtained.
- The company must be unlisted (listing on AIM is acceptable for EIS purposes).
- The company must have gross assets of £15million or less before the EIS investment is made and no more than £16million gross assets immediately following the issue of EIS shares. There are also limits on the maximum amount that a company can raise each year and over its lifetime through the EIS and similar

schemes. The relevant limits vary depending on whether or not the company qualifies as knowledge-intensive.

- In the case of groups of companies, the above limits on the value of gross assets apply to the value of the entire group and the group must also meet various conditions.
- The shares must be new ordinary shares, which are fully paid up and which do not have any terms which protect the investor from the risk of investing in a qualifying EIS company.
- In order to qualify as 'knowledge-intensive', such that the aforementioned higher investment limits apply, the EIS company must meet certain conditions which, broadly, relate to its research and development expenditure, creation of intellectual property and/or the number of skilled employees.

The conditions must be met both at the date of the investment and for the three years following the issue of the EIS shares (or three years after trading commences, if the company has not begun trading when the investment is made). If the above conditions are not met throughout the three year period, any income tax relief claimed may be clawed back, the CGT exemption on disposal of the EIS shares will be unavailable and any gains on disposal of other assets which were deferred using EIS CGT deferral will come back into charge.

Commercial issues

Whilst they are attractive, the tax benefits of EIS investments are only one of a number of aspects of which a potential investor should be aware.

EIS investments carry significant investment risk, so it is essential that appropriate investment advice is taken from an FCA authorised advisor.

Investors also need to be aware that it can be difficult to sell the shares. Since the initial tax reliefs are only available on subscription for new shares there are unlikely to be many potential purchasers of second hand EIS shares. This investment should therefore only be considered as part of your overall investment strategy and, as mentioned above, advice should be taken from a qualified investment advisor before investing.

Find out more...

This note reflects the law in force as at 28 February 2019. This note sets out available reliefs and exemptions, and conditions that must be met, for shares issued from the aforementioned date. Different provisions may be relevant to shares issued beforehand.

Please be aware that this note does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk.

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