

Enterprise Investment Scheme (EIS)

General

The Enterprise investment Scheme (EIS) offers a number of valuable tax reliefs to individuals who subscribe for shares in qualifying companies.

For companies looking to raise equity capital, the benefits of EIS can help to attract investors.

The following EIS reliefs are available:

Income Tax relief

Income tax relief is available at a rate of 30% to an individual who makes a cash subscription for shares in a qualifying company.

The maximum eligible for EIS income tax relief in any one tax year is £1 million.

The income tax relief is restricted to the income tax due to be paid by an investor and cannot create a tax repayment.

It is possible to carry back the investment to the previous tax year. The only restricting factor on this is the maximum subscription eligible for EIS income tax relief in that particular tax year, therefore the carry back is restricted to £1 million.

CGT exemption

No Capital Gains Tax is payable on disposal of shares where the shares have been held for 3 years provided EIS income tax relief was claimed on those shares.

The CGT exemption will be restricted if full income tax relief was not available on the subscription.

Losses on the disposal of EIS shares are allowable regardless of the period of time the shares are held. The amount of the capital loss is restricted by the amount of the EIS income tax relief still attributable to the shares disposed.

A capital loss arising on the disposal of EIS shares can be converted into an income tax loss and set against the individual's income tax liability for the year.

CGT deferral

Capital gains tax deferral is available for gains arising on the disposal of any asset where the proceeds are reinvested into an EIS qualifying company.

The reinvestment must take place during the period one year prior to and three years following the disposal.

This relief is only available if the investor is a UK resident.

Gains may be deferred regardless of whether income tax relief is available or claimed.

Qualifying Companies

Companies must meet certain conditions for any of the reliefs to be available to the investor:

- The issuing company must carry on a qualifying business activity.
- The maximum age of a company is 7 years from the date of the first commercial sale (10 years for a knowledge intensive company).
- The gross assets of the company must not exceed £15 million immediately before the relevant share issue and £16 million immediately afterwards.
- The issuing company, or where relevant the group, must have fewer than 250 full-time equivalent employees at the time of issue of the shares.
- The maximum amount of EIS investment received by the company in anyone year is £5 million.
- The maximum amount of EIS investment that can be received by a knowledge-intensive company is £20 million, and in any other case is £12 million.
- The company must have a permanent establishment in the UK.



- The company must be unquoted when the shares are issued and there must be no arrangement in existence at that time for it to become a quoted company.
- The company must not be a subsidiary of or be controlled by another company from the date of incorporation. Where a company is established and controlled initially by another company, they can still be a qualifying Seed EIS company providing that the control exists during a period where the company has issued only subscriber shares and has not yet begun, or begun preparations for, its trade or business.
- Any subsidiaries of the company must be qualifying subsidiaries.
- The company nor a qualifying subsidiary must be a member of a partnership or limited liability partnership.
- The company must have spent the money raised by the issue of shares within two years of the issue of the shares for the purpose of a qualifying business activity.
- The issuing company must not be “in difficulty” at the time of issue of the shares.
- Providing legal or accountancy services.
- Providing services or facilities for a business which to any substantial extent to be an excluded activity.
- Property development.
- Farming or market gardening.
- Holding, managing or occupying woodlands, other forestry activities or timber production. The processing of raw timber is not included.
- Operating or managing hotels, or comparable establishments.
- Operating or managing nursing or residential care homes.
- Managing property used as a hotel, care home or nursing home.
- Shipbuilding.
- Producing coal.
- Producing steel
- Generating or exporting electricity or making electricity generating capacity available.
- Generating heat.
- Generating any other form of energy.
- Producing gas or fuel.

Qualifying business activities

The shares must have been issued to finance a qualifying business activity. The trade must be conducted on a commercial basis with a view to making profits. Most trades will be qualifying trades however the main excluded activities are:

- Dealing in land
- Dealing in commodities, futures, shares, securities or other financial instruments.
- Dealing in goods other than in an ordinary trade of wholesale or retail distribution.
- Banking, insurance, money-lending, debt factoring, hire-purchase financing or other financial activities.
- Leasing, including letting ships on charter or other assets on hire. This includes any trading activity that consists of the customer using the traders property i.e. furnished holiday lets.
- Receiving royalties or licence fees.

Requirements to be met by the investor

Eligibility for Income Tax relief is restricted to companies with which you are not 'connected' at any time during the period from incorporation to 3 years after the subscription for the shares. The investor (or any associate of his e.g. wife, husband, parents and children) cannot be:

- An employee of the company.
- A partner of the company.
- In possession of or entitled to acquire more than 30% of the company's issued share capital, loan capital or voting power.

- Able to control the company (e.g. by virtue of powers conferred in the Articles of Association). Further investment can be made providing that the initial investment was a risk finance investment (i.e. SEIS, EIS or SISR qualifying investment).

Business angels

An exemption applies where a “business angel” can make further EIS qualifying investments within 3 years of their initial investment. A “business angel” is an individual who, following their investment, joins the Board of the company.

Withdrawal of income tax relief

The main reason for the withdrawal of income tax relief is if the shares are sold by the investor before the end of the 3 year relevant period. If relief is withdrawn HM Revenue & Customs will issue the investor with a tax assessment for the tax year in which the original relief was obtained.

Relief will also be withdrawn if the investor receives any value from the company within the relevant 3 year period.

Receiving value from a company

Examples of the circumstances in which you would be treated as receiving value from the company are where the company:

- Buys any of its shares or securities which belong to you.
- Makes a payment to you for giving up the right to payment of a debt (other than an ordinary trade debt).
- Repays a debt owed to you that was incurred before you subscribed for the shares.
- Provides you with certain benefits or facilities.
- Waives any liability of yours or an associate’s to the company.

- Undertakes to discharge, any such liability to a third party.
- Lends you money which has not been repaid before the shares are issued.
- Receipts of ‘insignificant’ value will not cause the withdrawal of relief.

Advance assurance

Advance assurance that a company is a EIS qualifying company can be sought from HM Revenue & Customs.

Knowledge intensive companies

It is possible for ‘knowledge intensive companies’ to access EIS reliefs outside the usual timescales.

A ‘knowledge intensive company’ is one that at the date of the issues of shares:-

- 1) In any one or more of the 3 previous years at least 15% of the relevant operating costs was spent on research, development or innovation, or in each of the previous three years at least 10% of the relevant operating costs was spent on research, development or innovation, and
- 2) The company is engaged in intellectual property creation at the date of issue and it is reasonable to assume that in 10 years the exploitation or utilisation of the intellectual property will form the greater part of the company’s business, and/or
- 3) At least 20% of the full-time equivalent employees are ‘skilled employees’. ‘Skilled employees’ are those with a Masters degree or above who are engaged directly in research, development of innovation activities.

If the company qualifies as ‘knowledge intensive’ the following applies:-

Qualifying companies

- The maximum age of a company is 10 years from the date of the first commercial sale (7 years for a non- knowledge intensive company).
- The issuing company, or where relevant the group, must have fewer than 500 full-time equivalent employees at the time of issue of the shares. (250 for non-knowledge intensive company)
- The maximum amount of EIS investment that can be received by a knowledge-intensive company is £20 million (compared with £12 million)



Kirsty Murray
Tax Director Edinburgh
E kirsty.murray@scott-moncrieff.com
T 0131 473 3500

Income tax relief

- The maximum eligible for EIS income tax relief in any one tax year is £2 million (compared with £1 million for non-knowledge intensive company).

How can we help

Scott-Moncrieff can assist with both the applying for advance assurance that the company will qualify under the Enterprise Investment Scheme and in registering shares issued under EIS with HM Revenue & Customs.

For more information please contact:



Morag Watson
Tax Partner Edinburgh
E morag.watson@scott-moncrieff.com
T 0131 473 3500



David Boyd
Tax Partner Glasgow
E david.boyd@scott-moncrieff.com
T 0141 567 4500