

## **Enterprise Investment Scheme (EIS)**

*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 you implement any of the guidance shown below.*

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 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 will increase from £500,000 to £1million.

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 with effect from April 2012.

## **Autumn Statement 2011**

Further changes were announced in the Chancellor's Autumn Statement on 29 November 2011. Plans for the new Seed Enterprise Investment Scheme (SEIS) were publicised for smaller, new companies carrying on, or preparing to carry on, a new business in a qualifying trade.

As with the current EIS scheme, SEIS will provide tax relief to investors who subscribe for shares and have a stake of less than 30 per cent in the company. The relief will apply to investments made on or after 6 April 2012.

For the first year of the new scheme, the Government will also offer a capital gains tax (CGT) holiday – gains realised on the disposal of assets in 2012-13 that are invested through SEIS in the same year will be exempt from CGT.

The SEIS is not yet in force, but the Finance Bill 2012 provides that the scheme will:

- Apply to smaller companies, with 25 or fewer employees and assets of up to £200,000, which are carrying on or preparing to carry on a new business;
- Give income tax relief of 50% for qualifying investors on a maximum investment of £100,000.
- Give a CGT holiday for gains realised by qualifying investors in the 2012-13 tax year.

Please note that the maximum investment which can be raised via the SEIS for a qualifying company is £150,000.