

Over the past few years this relief has become more generous but we would recommend obtaining advice before setting up a company if you would like your investors to be eligible for relief as there are a number of hurdles in the legislation that need to be borne in mind.

Income tax relief at 30%

Income tax relief can be obtained based on the amount subscribed for shares in an EIS company. In order to obtain relief both the investor and the company must be eligible for relief. From 6 April 2012 the relief can be obtained on up to £1m of investment by each investor. The relief can be obtained in the tax year of investment or carried back in part or full to the previous tax year. The relief cannot reduce the tax liability in either year below nil.

The relief can be withdrawn in full if the eligibility conditions are breached such as sale of the shares within three years.

CGT deferral relief

Capital gains tax liabilities arising on the disposal of other assets can be deferred when investing in EIS shares. The deferred gain will however come back into charges, for example on the disposal of the EIS shares.

CGT on exit

If income tax relief is given in full on the shares, any gain on disposal will be exempt from CGT. However a loss will be allowable for offset against other gains arising in the same year. The loss is restricted by the EIS income tax relief given.

Eligibility for Income Tax relief

Investor

For an individual to be eligible for Income Tax relief they must not be connected with the company. This is defined as more than a 30% holding in a company and includes associates' shareholdings. There can also be restrictions on being a director of the company.

If shares are disposed of at a loss an election can be made for the capital loss (less any Income Tax relief given) to be set against other income of the year of the disposal, or income of the previous year, rather than being set off against capital gains as would normally be the case.

Company

The company must be an unquoted trading company and there are some trades that are not eligible for relief, particularly trades with high land asset bases.

The company's gross assets need to be less than £15 million prior to the issue of the EIS shares and must not exceed £16 million immediately afterwards.

Timescales

Money invested will not be eligible for EIS relief unless it is used wholly for the purposes of the trade within two years following the issue of the shares, or two years after the trade starts, if later

The relief will be withdrawn or restricted if an investor disposes of the shares or receives value attributable to the shares within a period beginning at incorporation or, if later, two years before the shares are issued and ending three years after investment, or later if the company has not started trading at the date of investment.

Conclusion

EIS can provide very valuable tax relief to investors but there are a number of conditions to ensure that investors and the company are eligible for relief. The summary above provides examples of this but is not exhaustive.

Find out more

For further information, advice and guidance please contact one of our specialists:

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This is a general illustrative guide only and individual professional advice should be obtained on specific issues. Information is believed correct at time of publication but may alter.

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