

Investors' Relief

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The Spring Budget announced the introduction of a new relief, Investors' Relief (IR), which was sold as an extension of Entrepreneurs' Relief (ER). Let's be clear, IR is not an extension of anything, it is a new relief in its own right with a separate set of rules which need to be met.

There is no doubt that IR will be valuable to some and gives a similar effect as ER, namely a 10% rate of CGT on gains accruing on the disposal of certain qualifying shares held by investors in an unlisted company, who have no connection with the company.

IR may be extended to interests in shares (e.g. a joint holding) in certain circumstances. So what is the detail?

Qualifying shares, potentially qualifying shares and excluded shares

A 'qualifying share' is:

- a share subscribed for (per s169VU TCGA 1992, wholly in cash, fully paid up, for genuine commercial reasons and not for tax avoidance purposes) by the person making the disposal ('the investor');
- the investor has held the share continuously for the period beginning with the issue of the share and ending with the relevant time ('the share-holding period');
- the share was issued on or after 17 March 2016;
- at the time the share was issued, none of the shares or securities of the company that issued it were listed on a recognised stock exchange;
- the share was an ordinary share when issued and is an ordinary share at the relevant time;
- the company that issued the share was a trading company or the holding company of a trading group (per ss165 and 165A TCGA 1992) when the share was issued and has been so throughout the share-holding period;
- at no time in the share-holding period was the investor or a person connected with the investor a relevant employee in respect of that company; and
- the period beginning with the date the share was issued and ending with the date of the disposal is at least three years (the three-year test effectively runs from 6 April 2016).

A 'potentially qualifying share' is a share which meets the above conditions other than the three year period.

A person who has at any time in the relevant period been an officer or employee of the issuing company or a connected company is to be regarded as having at that time been a 'relevant employee' in respect of the issuing company. Unremunerated directors are ignored provided that at no time before the relevant period had the person, or a person connected person, been connected with the issuing company or involved in carrying on (whether on the person's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the issuing company or a company connected with that company.



In addition, if a person:

- becomes an employee of the issuing company or a connected company at a time which is within the relevant period but not within the first 180 days of that period;
- at the beginning of the relevant period, there was no reasonable prospect that the person would become such an employee within the relevant period; and

- the person is not at any time in the relevant period a director of the issuing company or a connected company

that employment of the person does not make the person a relevant employee.

The relief

Where a qualifying person disposes of a holding, or part of a holding, of shares in a company and, immediately before that disposal, some or all of the shares in the holding are qualifying shares, then a claim for relief is required and the rate of CGT is 10%.

The 'relevant gain' means:

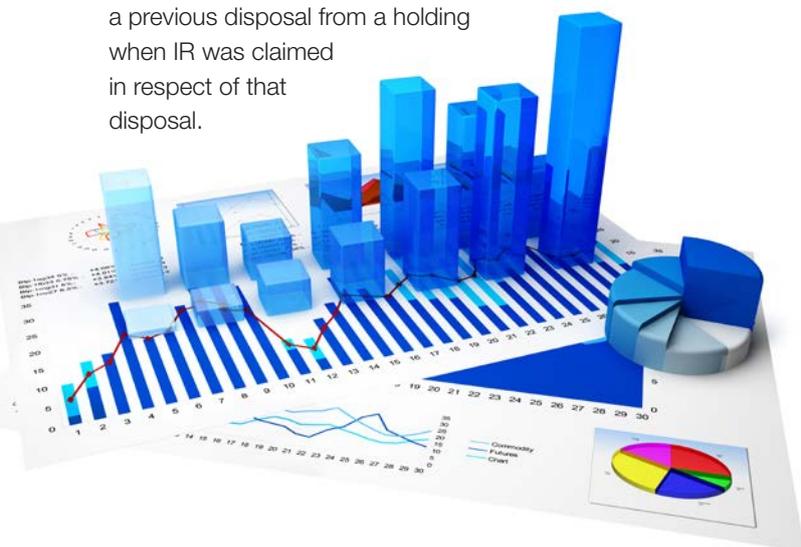
- where immediately before the disposal all the shares in the holding are qualifying shares, the chargeable gain on the disposal (after the set off of capital losses); and
- where at that time only some of the shares in the holding are qualifying shares, the appropriate part of that chargeable gain (per s169VD TCGA 1992).

The maximum amount of IR is limited to relevant gains of £10m.

Share identification rules

New s169VE TCGA 1992 introduces special rules for determining the composition of a holding of shares from which there has been an earlier disposal. In order to determine the number of qualifying shares, potentially qualifying shares and excluded shares in the holding it is necessary to determine the number of each type disposed of on earlier occasions.

New s169VF TCGA 1992 sets out rules for identifying the types of share disposed of on a previous disposal from a holding when IR was claimed in respect of that disposal.



Broadly, shares which were qualifying shares at the time of the earlier disposal are treated as having been disposed of first, then shares which were excluded shares at that time and then shares which were potentially qualifying shares.

New s169VG TCGA 1992 sets out rules for identifying the types of share disposed of on a previous disposal from a holding when IR was not claimed in respect of that disposal. Broadly, shares which were excluded shares at the time of the earlier disposal are treated as having been disposed of first, then shares which were potentially qualifying shares at that time and then shares which were potentially shares.

The aim is to preserve the maximum potential IR to be claimed on future disposals.

Reorganisations

Rules are introduced to identify whether shares held after a reorganisation under s126 TCGA 1992, share exchange under s135 TCGA 1992 or reconstruction under s136 TCGA 1992 are qualifying, potentially qualifying or excluded shares for IR purposes when they are disposed of.

A claimant can elect to ignore the normal tax treatment of a reorganisation of share capital/share exchange. Where an election is made, for IR there is deemed to be disposal of the original shares and a gain eligible for IR is treated as accruing. The election is only effective if the original shares qualified for IR at the time the reorganisation or exchange of shares occurred and must be made within 12 months of 31 January following the year of reorganisation, etc.

Receipt of value

New rules are introduced which treat what would otherwise be qualifying or potentially qualifying shares as excluded shares where, broadly, the shareholder receives value in some form from the company in the 'period of restriction'. This period is defined as one year before the shares are issued and, normally, three years after. Value is again defined broadly and based on the EIS rules.

Trustees

IR is potentially extended to disposals made by the trustees of a settlement where there is at least one individual who is an eligible beneficiary (broadly a non-employee with an interest-in-possession).

Claims

Any claim for IR must be made by the individual, or in the case of a disposal by the trustees of a settlement jointly by the trustees and the eligible beneficiary, on or before the first anniversary of the 31 January following the tax year in which the disposal is made.



To summarise

Clearly IR is aimed at the business angel, not the owner-manager, and is more akin to the Enterprise Investment Scheme (EIS) than anything else and IR should be looked at by investors and companies seeking additional capital as an alternative to EIS and the Seed Enterprise Investment Scheme (SEIS).

At first sight, EIS and SEIS look better from the point of view of the investor. These reliefs give income tax relief on the amount invested and a complete tax exemption from CGT. IR gives no income tax relief and a 10% CGT rate. However, IR may be more attractive to companies seeking investment. EIS and SEIS are subject to many conditions, including restrictions on the types of trades which qualify, the size of the company, how much can be raised and how and when the monies are invested.

Scenarios in which IR may be attractive to the company raising funds and the investor include:

- asset-backed trades which are excluded from EIS and SEIS such as hotels, property development and farming
- larger companies on the Alternative Investment Market. These companies are not regarded as 'listed' and so potentially qualify. Some of these companies could qualify for EIS but EIS is restricted to companies with gross assets of less than £15m before a further share issue.



Investors' Relief is covered on our Finance Act 2016 courses

If you can't make the face to face course you can also watch this online from 31 October 2016.

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