

What is IR?

IR is a new relief from capital gains tax (CGT) to add to the array of reliefs available for equity fundraisings. IR was enacted in Finance Act 2016.

Like Entrepreneurs' Relief (ER), IR can reduce the effective CGT rate by half to 10% on qualifying gains, with a separate £10m lifetime limit. So, IR could save a shareholder £1m of tax on a gain of £10m.

While ER is aimed at officers and employees, IR is aimed at investors who are not officers or employees of the company (although certain "business angel" directors may still qualify). It may prove particularly attractive in fundraisings where SEIS or EIS relief is not available. Advance planning is essential.

When does IR apply?

The investment

The relief only applies to shares, which must be:

- ordinary shares (no preference of any kind);
- fully paid up in cash;
- issued for commercial reasons (and not for tax avoidance reasons);
- issued as a bargain at arm's length (from the perspective of the company and the investor);
- issued to the investor on or after 17 March 2016, and held for at least 3 years; and

- held by the same investor from the date of issue up to the date of disposal.

The issuer company

The company issuing the shares must be:

- a trading company, or member of a trading group, for whole time from the share issue up to the disposal (non-trading activities must not be substantial: usually no more than 20% of assets, income, expenses, or time); and
- unlisted at date of share issue: that is, no shares listed on recognised stock exchange: AIM is fine, but LSE is not; listing later is OK.

The investor

The investor (and all connected persons) must not be an officer or employee of the company (or a connected company), although there are exceptions, including for unpaid directors appointed on or after the share issue (eg business angels). Unlike ER, which generally has a 5% minimum holding requirement, there is no minimum or maximum shareholding for IR.

Beware!

IR sounds relatively simple, but there can be complexities. Like EIS, the relief is subject to a number of disqualification pitfalls that must be avoided. For example, IR can be denied if an investor receives value (such as return of capital) during the period beginning 1 year before the share issue and ending 3 years afterwards.

Additional issues can arise on "rollover" transactions involving exchanges for share and loan notes (as IR only applies to new issues of shares, not other securities) and on earn outs. In each case, shareholders may need to consider whether to elect to disapply deferral of gains.

This publication is not a substitute for detailed advice on specific transactions and should not be taken as providing legal or tax advice on any of the topics covered.

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Investors' Relief (IR)

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	SEIS	EIS	Investors' Relief	Entrepreneurs' Relief
Asset	New issue of ordinary shares for cash	New issue of ordinary shares for cash	New issue of ordinary shares for cash	Any shares or securities in employer group company (but minimum shareholding)
Maximum annual investment (for shareholder)	£100,000	£1m	Unlimited	Unlimited
Maximum annual investment (for company)	£150,000	£5m	Unlimited	Unlimited
Lifetime limit on beneficial tax treatment on disposal	Unlimited	Unlimited	£10m (of gains)	£10m (of gains)
Income tax relief on investment	50% of investment	30% of investment	No	No
CGT deferral on investment	Hold over up to ½ of investment	Unlimited hold over (subject to conditions)	No	No (can rollover on share for share)
CGT on disposal	0% (exempt)	0% (exempt)	10% (below limit)	10% (below limit)
Return of value allowed during investment	No	No	No	Yes
Required minimum / maximum shareholding	No minimum Maximum 30%	No minimum Maximum 30%	No limits	Minimum 5% No maximum
Shareholder can be director?	Yes	No, except where not previously connected ("business angel")	No, except where unpaid and not previously connected ("business angel")	Yes, must be director or employee
Shareholder can be employee?	No, unless also a director	No	No (at subscription) Yes, after 180 days (if not previously connected)	Yes, must be director or employee
Minimum holding period	3 years	3 years	3 years	12 months
Type of company / group business	Trading (restricted)	Trading (restricted)	Trading	Trading
Quoted?	No (AIM OK)	No (AIM OK)	No (AIM OK)	Possible