

BUSINESS INVESTMENT RELIEF

Background

Most UK taxpayers are liable to pay UK income tax and capital gains tax on all of their worldwide income and gains as they arise.

However, individuals who are resident but not domiciled in the UK can make a claim to be taxed on the remittance basis instead. This means they are taxed on all of their income and gains arising in the UK, but not on non-UK income and gains that are kept outside of the UK.

Generally, if non-UK income and gains that are subject to the remittance basis are brought into the UK, then a UK tax liability will arise on the remittance.

However, in order to stimulate overseas investment in UK business, the government introduced Business Investment Relief (BIR) with effect from 6 April 2012.

This powerful relief provides non-domiciled individuals with an opportunity to use offshore funds for UK investment, without incurring a UK tax charge.

Main features

- Subject to certain conditions, BIR allows an individual to use non-UK income or gains to make an investment in the UK without being treated as having made a remittance.
- There is neither an annual nor a lifetime cap on the amount of foreign income or gains that may qualify for the relief.
- An investment may be made either by the remittance basis taxpayer or by one of a list of "relevant persons", such as a spouse.
- Investments in fully listed companies, partnerships (including limited liability partnerships) and sole traders' businesses are excluded from the relief.

Key conditions

The following are the main conditions that must be met in order to qualify for the relief:

- The investment must be made within 45 days of the remittance into the UK.
- A claim for relief from UK tax must be made on the self-assessment tax return for the tax year of remittance.

- The investment must be in the form of shares or a loan in a qualifying company, i.e. a private limited company which is an eligible trading company, holding company, stakeholder company or hybrid company. In contrast to many investment reliefs, property investment businesses are not automatically excluded.
- When the investment is disposed of the disposal proceeds (up to the amount of the investment), it must be taken offshore or re-invested as another qualifying investment within 45 days of the disposal to avoid the original income or gains coming into charge.
- The investor must not extract value from the investment, either in the form of money or in any other way, although payments received in the ordinary course of business and on arm's length terms are allowed. This can include reasonable fees or salary for work done for the company.

Potentially chargeable events

There is a potentially chargeable event if any of the following apply:

- The company ceases to be an eligible trading company, holding company, stakeholder company or hybrid company;
- The investor extracts value or disposes of the holding;
- The company did not begin to trade or hold investments within five years of the date of the investment, or becomes non-operational after that period.

If there is a potentially chargeable event, the original income or gains will come into charge unless the entire investment is sold, and the proceeds taken offshore within 90 days.

Any gain made on the investment itself will be subject to Capital Gains Tax.

Advance assurance

In advance of making the investment, it is possible to ask HMRC for an opinion on whether the planned investment can be treated as a qualifying investment under the BIR rules.

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Other benefits

A claim for relief under these provisions does not affect entitlement to other investment reliefs, such as the Enterprise Investment Scheme.

A non-domiciled taxpayer might therefore be able to remit non-UK funds to the UK without any tax implications, and in addition make use of the income tax and capital gains tax reliefs available under EIS or SEIS.

Business Property Relief from UK inheritance tax may also be available in respect of the investment after a two year qualifying period.

How can Moore Kingston Smith assist me?

This document provides only a brief summary of the issues relating to Business Investment Relief. We would be pleased to discuss your particular circumstances and, should you appear eligible for the relief, assist you with an application for advance assurance. Please get in touch with your usual Moore Kingston Smith adviser or contact us using the details below.