



Business investment relief

In principle, a UK resident, nondomiciled individual can remit ‘clean capital’ (ie offshore funds that do not represent income or gains that would be taxed on remittance) to the UK without a tax charge. However, in many cases, non-UK income and gains will be intermingled with these clean capital amounts, and the matching rules for remittances to the UK from mixed funds such as these can make it difficult for clean capital to be extracted.

To prevent this having a negative impact on investment in UK business, Business Investment Relief (BIR) has been available since 6 April 2012. From this date, UK resident, non-UK domiciliaries who invest in certain qualifying companies have been able to bring non-UK source income and gains into the UK without a UK tax charge. According to UK government figures, some £1.5 billion of investment has been made using BIR since its introduction.

The amount that can be claimed under this relief is unlimited, but there are, as might be expected, conditions which must be met:

- The investment must be in a qualifying company (the ‘target company’ – see below).
- The investment may be in the form of shares (either preference or ordinary) or loans. From 6 April 2017, this includes the acquisition of existing shares rather than just newly issued shares (as was the case prior to 6 April 2017).
- The investment must be made within 45 days of the offshore income/gains being brought to the UK.
- No benefit attributable to the investment can be received by the investor or any ‘relevant person’. Relevant person includes spouse/civil partner, children or grandchildren under the age of 18, trustees of a settlement where a relevant person is a beneficiary, and a participator in a close company.
- On the disposal of the investment, the proceeds of sale up to the amount of the original investment must be taken offshore or reinvested in another qualifying company within 45 days.

The target company

In order for the investment to qualify, the target company must be a private limited company (ie unquoted). Investments into partnerships (including investments into corporate partners) and unincorporated businesses do not qualify.

It must:

- Carry on a commercial trade, or be preparing to carry on a trade, within (from 6 April 2017) five years of the date of the investment; or
- Hold one or more investments in an eligible trading company (or a company preparing to carry on a trade); or
- From 6 April 2017, both carry on a commercial trade and hold investments in one or more eligible trading companies (a ‘hybrid company’).

Carrying on at least one commercial trade must be all, or ‘substantially all’, that the company does. The meaning of substantially all is not defined, but HM Revenue & Customs (HMRC) has said that where the carrying on of a commercial trade accounts for at least 80% of a company’s total activities, the company will generally be regarded as meeting this requirement.

A holding company will only be eligible if it is a member of an eligible trading group (ie all companies in the group are private limited companies and the group as a whole passes the 80% commercial trading test), and a hybrid company must pass the same test in respect of its combination of trading and investment activity.

Any activity that is treated as a trade for corporation tax purposes will be considered a commercial trade for BIR purposes, including farming or market gardening and the commercial occupation of land (but not woodland). The definition of trading is extended for these purposes to include the renting or leasing of land or property, including residential property as well as research and development activities.

The investment can be made via an offshore trust or company or nominee.

Potentially chargeable events

BIR may be withdrawn where a potentially chargeable event occurs and the appropriate mitigation steps are not taken within a specified grace period.

Where BIR is withdrawn, the foreign income and gains that were used to make the investment will be treated as remitted to the UK for tax purposes.

The following are potentially chargeable events for these purposes:

- Some or all of the investment is sold.
- If the investor, or a relevant person, receives value directly or indirectly attributable to the investment. The rule is not breached where the value received is subject to income tax or corporation tax and the amounts are paid in the ordinary course of business and on arm's length terms. Dividends, market rate loan interest, or director's remuneration which is commercial and commensurate with the duties undertaken should not cause the rule to be breached.
- The target company ceases to be an eligible trading company.
- If the company was preparing to carry on a trade at the date of investment, yet it is still non-operational five years later (two years before 6 April 2017).

If the BIR conditions are breached, there is no restriction on the deemed remittance and there is no de minimis, ie the whole amount used to make the investment is treated as remitted.

The mitigation steps are generally to remove disposal proceeds (up to the amount invested) from the UK or reinvest them in another qualifying company within 45 days of a potentially chargeable event occurring. Where no cash proceeds arise (eg if the target company ceases to be an eligible trading company), the investor generally has 90 days to sell their investment and then another 45 days to remove the funds from the UK or reinvest the proceeds in a qualifying company.

For companies that fail to start trading within five years, this deadline is increased to a (single, combined) two-year deadline for potentially chargeable events taking place on or after 6 April 2017.

The claim

An individual intending to make a business investment can ask HMRC for advance assurance as to whether the investment will be treated as a qualifying investment for BIR purposes.

The claim itself must be made on the investor's self-assessment tax return for the year in which the investment is made.

In addition to business investment relief, an investment in the UK can potentially attract other tax reliefs including:

- Enterprise Investment Scheme (EIS) – income tax relief at 30% on up to £1 million investment per tax year (up to £2 million where at least £1 million is invested in 'knowledge intensive companies') and capital gains tax exemption/deferral relief.
- Seed EIS – income tax relief at 50% on up to £200,000 of investment per tax year and capital gains tax exemption/reinvestment relief.
- Business Asset Disposal Relief (formerly known as Entrepreneurs' Relief) – 10% rate of capital gains tax on up to £1 million of lifetime gains on qualifying assets (previously up to £10 million of lifetime gains prior to 11 March 2020).
- Investors' Relief – an extension of Business Asset Disposal Relief to unlisted trading companies, which reduces the rate of capital gains tax on disposals of qualifying shares to 10%, subject to a £10 million lifetime limit.
- Business Property Relief – inheritance tax exemption at either 50% or 100% which may be available after an investment is held for two years.

Conditions apply to each of these reliefs, and we would recommend that individuals take advice on the potential tax position of proposed investments in advance to ensure that relevant reliefs are identified (and the qualifying conditions met).

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This factsheet is based on law and HMRC practice at 1 April 2023.

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