

The UKBAA Guide to EIS & SEIS

Angel investors who pay tax in the UK have access to important tax relief schemes that have been provided by the Government in recognition of the risks that angel investors take and to show their backing for this important source of finance for small businesses: EIS & SEIS.

The Enterprise Investment Scheme (EIS)

Under the Enterprise Investment Scheme (EIS) angels can gain both income tax and capital gains tax relief to investors who subscribe for eligible shares in small unquoted companies that qualify under the scheme. Find out more about the EIS scheme.

What relief is available for EIS investments?

- 30% income tax relief on up to £1,000,000 of investment per tax year (plus the possibility of carrying back income tax relief to the previous tax year)
- Exemption from capital gains tax on disposal of EIS shares after the end of the three-year relevant period
- Allowing losses on the disposal of the EIS shares to be offset against either income or capital gains
- Unlimited capital gains tax deferral in respect of the disposal of other assets, on amounts reinvested in EIS shares
- Inheritance tax relief for EIS investments

What companies qualify for EIS?

In order to access EIS relief, the business that you intend to invest in must satisfy the requirements under the EIS scheme. Notably the business must:

- not be listed on the stock exchange (except under AIM)
- have a permanent establishment in the UK
- have gross assets of not more than £15m immediately pre-investment and £16m immediately afterwards
- cannot be actively trading for more than 7 years
- have fewer than 250 employees at the time of investment
- are not under the control of another company
- carry on a qualifying trade as defined by the EIS
- cannot take on more than £12m EIS-based investment total in the lifetime of the business

Qualifying conditions

There are several important qualifying conditions attached to EIS Income Tax relief:

1. Restriction for connected individuals

Between the period commencing two years before the issue of EIS shares and the later of three years after the investment was made and the date the company commences trading, an individual investor cannot be 'connected' with the qualifying EIS company. He or she cannot:

- be remunerated as a company employee, partner, or director (unless an unremunerated director, or potentially a paid 'business angel' investor), or
- directly or indirectly possess or be entitled to acquire more than:
 - 30% of the ordinary share capital, or
 - 30% of voting rights, or
 - 30% of the rights to assets on a winding up of the company or any subsidiary.

These rules are subject to exceptions for unpaid directors, and paid business angel investors, which broadly permit payment for services as a director once the shares have been issued. It is advisable to become a

director only once shares have been issued. Any director involved in the company's trade prior to issue is likely to be connected and relief will be denied.

2. Three year holding period

The individual must retain the shares for a minimum of three years (possibly up to five if the trade commenced after the share issue date). If the shares are disposed of within this minimum holding period, the relief will be clawed back (unless the disposal was to a spouse or civil partner, in which case the spouse or civil partner is deemed to have subscribed for them). See note on 'Relief Clawback.'

3. Investing via partnerships

Investors who invest in start-ups or other small companies through a partnership structure are not eligible for EIS relief.

Capital Gains Tax Exemption

There will be no CGT charged on any gain of EIS shares disposed after the minimum holding period on which Income Tax relief was given and not withdrawn.

Capital Gains Tax Deferral Relief

- CGT can be deferred if capital proceeds are invested in EIS shares – even if the investor is connected (see above). The gain can be realised from any asset but the share investment must take place in the period of one year before or three years after the disposal of the asset. The minimum or maximum EIS investments do not apply to deferral relief.
- Gains realised on or after 3 December 2014, which qualified for Entrepreneurs' Relief (ER) may be reinvested in EIS (or Social Investment Tax relief) and will still remain eligible for ER when the deferred gain is realised.
- It is important to claim ER the first time that any part of the deferred gain comes back into charge, even if there is no tax to pay due to losses or the annual exemption. If relief is not claimed on the first part

of the gain to be realised, then it cannot be claimed later in respect of any of the remaining gain.

Loss Relief

If EIS shares are disposed of at a loss at any time, the loss (after any Income Tax relief has been taken into account) can be offset against income for that year and the previous year instead of being offset against capital gains.

Relief Clawback

The clawback of relief works in one of several ways depending on the nature of the disposal.

- Where the individual gifts the shares within three years, all of the original relief obtained will be withdrawn and an assessment made in respect of the relief given.
- Where the individual sells the shares within three years for a profit, again the original relief obtained will be withdrawn and an assessment made in respect of the relief given.
- Where the individual sells the shares for a loss the relief clawed back will be the proceeds of the sale multiplied by 30% (20% if the investment was made before 6 April 2011).

How do I claim the relief?

There is a formal application process made through HMRC. When considering making an investment and wanting to take advantage of the EIS scheme, you need to gain confirmation that the business will qualify for EIS relief before committing to invest. You should normally ask the investee company to demonstrate that they have obtained advanced clearance from HMRC that the business qualifies for EIS investment, in advance of you closing the deal and the shares being issued.

It is important to note that the levels of reliefs from taxation can change and the value of a relief depends upon the individual circumstance of the investor. Not all investors will qualify; for example, you cannot have been previously connected to the business. There are also restrictions on the type of shares that can be issued which must be ordinary shares.

See also restrictions on the type of shares that can be issued which must be Ordinary shares.

If you are considering making an EIS investment you should ensure you fully understand the rules and also seek professional advice. [See the EIS website](#) for more information.

The Seed Enterprise Investment Scheme (SEIS)

In April 2012, the Government launched a new scheme to provide encouragement to angel investors to invest in seed stage businesses that may seem riskier. This new scheme offers up to 50% relief on making investments in very small businesses with growth potential that are at a very early seed or start-up stage, which have only just started trading and may have little or no revenues and very few assets.

What relief is available through SEIS scheme?

- 50% income tax relief on up to £200,000 across all investments per tax year
- reduction in capital gains tax on gains realised from disposals of other assets where the gains are reinvested in SEIS companies in the same tax year
- Inheritance tax relief for SEIS investments
- Exemption from capital gains tax on disposal of SEIS shares after 3 years
- Allowing losses on the disposal of the SEIS shares to be set off against either income or capital

As with EIS, there are a number of requirements in relation to the investors. For example, investors must be unconnected with the company and under SEIS the investor, together with associates, cannot own more than 30% of the ordinary share capital, the issued share capital or the voting power.

Which companies qualify for SEIS?

In order to qualify for the SEIS, a company must:

- be undertaking, or planning to undertake, a new qualifying business
- have fewer than 25 full-time employees
- have gross assets of less than £350,000 at the time of the SEIS investment
- have been carrying on the particular trade at the date of the relevant share issue for less than three years, though the company could have been established for a longer period
- the maximum qualifying companies will be able to raise is £250,000 under the scheme, and funds raised must be used within three years.

- SEIS funds cannot be raised by a company that has raised either EIS or VCT monies previously.

These rules are not exhaustive and there are various other conditions that need to be met and maintained.

As with EIS, the company has to gain clearance from HMRC and should provide you with information that they have gained provisional approval if possible. Be sure you are fully informed about the scheme and whether you and your investee company qualify before you make the investment. Find out more about the SEIS scheme on the [HMRC website](#).

It is useful to note that companies defined as Knowledge Intensive have been given additional opportunities to offer tax advantages to investors. For example, there is a higher limit of employees to 500 and a higher lifetime limit of £20m that can be received from EIS-based investment.

“Knowledge-intensive companies” are defined in the new legislation broadly as follows:

- In at least one of the 3 “relevant years” prior to investment the company or group has spent at least 15% of operating costs on R&D or innovation
- or in each of those 3 years has spent at least 10% of operating costs on R&D or innovation; and either of the following conditions is also met
- the “innovation” condition – when the relevant shares are issued, the company or group is engaged in the creation of IP from which within 10 years it is expected will derive the greater part of the company’s or group’s business, either from the exploitation of the IP or by the creation of new products, processes or services which use the IP
- the “skilled employee condition” – at least 20% of the company’s or group’s FTE numbers are “skilled” as defined and are engaged directly in R&D or innovation activities carried on by the issuing company or any qualifying subsidiary of that company
- the definition of “skilled” relies on higher educational attainments. The 3 “relevant years” prior to investment are the 3 consecutive years ending immediately before the company’s last accounts filing period, or if later, 12 months before the date of investment

[Find out more on EIS, SEIS & Knowledge-Intensive companies.](#)

Call HMRC directly for help with questions about EIS & SEIS

Telephone: 0300 200 3300

Outside UK: +44 135 535 9022

8am to 8pm Monday to Friday

8am to 4pm Saturday

This guide has been prepared and reviewed by the UKBAA Legal, Tax and Regulatory Committee.