

Briefing document

Business investment relief

Introduction

The purpose of Business Investment Relief (BIR) is to encourage investment by non-UK domiciled individuals into UK trading companies. BIR operates by enabling non-UK domiciled individuals to make tax-free remittances of foreign income and gains where a tax charge would otherwise arise on remittance.

BIR only applies while qualifying investments are held. If the investment is disposed of or if the qualifying conditions cease to be met, the invested funds must be exported from the UK or reinvested into a qualifying BIR investment within set time frames. If this is not done, a tax charge will arise on the remittance of funds.

Some of the requirements for BIR to apply and remain in place are detailed and complex. This note sets out a high-level overview of BIR. We recommend that professional advice is taken prior to investment. Significant tax charges may arise if funds are remitted to make an investment that turns out to be ineligible for BIR, or if BIR is lost.

BIR only relates to the remittance of funds to make qualifying investments; it does not confer any other tax reliefs. Other tax reliefs may however be available on the making of a BIR investment.

Type of investment

- BIR is only available on investments into eligible unlisted private limited companies that, broadly, either carry on a commercial trade, and/or have an interest in other companies that trade commercially. More detail on this point is provided below.
- Shares listed on the Alternative Investment Market (AIM) are unlisted for this purpose.
- BIR is available on acquisition of existing and subscription for new shares and securities. It is also available on the making of loans which are not securities, provided the loan is newly made to the company.
- If a loan drawn-down facility is made available, each draw-down is treated as a separate investment on which BIR must be claimed.
- BIR is not available on investments into unincorporated businesses or partnerships.
- There is no minimum or maximum limit to the amount which can be invested and qualify for BIR.

Qualifying companies

As noted, BIR is available on investment into unlisted eligible companies that meet certain conditions. It is possible to invest directly into trading companies, into companies that have an interest(s) in other trading companies, or into companies that both trade and have interests in other trading companies.

In all cases the trading company, or group in the case of corporate groups, must be carrying on a commercial trade with a view to realisation of profit. 'Commercial trade' is widely defined for BIR purposes and includes:

- Letting commercial and/or residential property.
- Preparing to carry on a trade. Trade must commence within five years of an investment being made.

- Conducting research and development (R&D) activities, from which it is expected a commercial trade will derive or benefit. BIR is unavailable if the trading company's only activity is preparing to carry out research and development.

BIR may be withdrawn if a company becomes non-operational, or if the company is not yet operational at the date of investment and does not become operational within five years of the investment being made.

No "benefits" related to investment

Broadly, the investee company and/or group should not provide a non-commercial benefit to the investor or a relevant person (certain relatives, trusts and companies). This applies to benefits received both before and/or after an investment is made. If this condition is not met, BIR may be unavailable or withdrawn.

Time limits on the making of a BIR investment

- The investment must be made within 45 days of remitting funds to the UK.
- BIR may be available if a remittance is made in order to make an investment that does not go ahead, if the funds are exported within 45 days of remittance and the reason for the remittance can be evidenced.
- BIR can also be claimed if funds realised from a BIR investment are reinvested into another BIR eligible investment.
- BIR must be claimed no later than the first anniversary of 31 January following the end of the tax year in which funds were remitted to the UK.
- The claim must be made by the person who would be taxable on the remittance of funds. For example, if an individual (person A) receives untaxed foreign income chargeable on the remittance basis and gives this to their spouse or civil partner (person B) who remits the funds in order to make an eligible BIR investment, it is person A who must make the BIR claim.

Breach of conditions and future disposals

- Broadly, on a future disposal of the investment, the investor must export or make a further BIR qualifying investment using an amount equal to the lower of the proceeds received and the original amount invested within 45 days of receipt of the proceeds.
- Unusually, there is no exemption for transfers between spouses/civil partners, which constitute a disposal for BIR purposes. In this case, the market value of the assets transferred, rather than proceeds, is compared to the original amount invested when considering what amount must be removed from the UK within 45 days.
- If the conditions for BIR to apply cease to be met, the investor must normally dispose of his or her investment within 90 days of the breach of the condition and take the required amount (as explained above) offshore within 45 days of the disposal.
- A different time limit applies if the investee company was non-operational at the date of investment, and does not become operational within five years of investment. In such cases, the investor has two years from the end of the five year period or the date the company becomes non-operational to dispose of the investment and export or reinvest the proceeds.

It is important that any investments on which BIR have been claimed are closely monitored due to the tight time limits that apply.

Advance clearance procedure

In some cases it is possible to apply to HMRC for advance clearance to obtain their opinion as to whether or not a proposed investment will qualify for BIR. This may be helpful in circumstances where the position is uncertain. However, it should be borne in mind that detailed information must be provided when applying for clearance and that, while HMRC aim to respond within 28 days of receipt of application, they are not obliged to do so.

Commercial considerations

Although BIR is a valuable tax relief, any potential investor should always keep general commercial considerations in mind, as for all investment decisions. It may be appropriate to take independent financial advice when assessing the suitability of an investment.

Find out more...

This note reflects the law in force as at 6 April 2020. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk).

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