By providing a tax relief to external investors, IR is intended to offer a financial incentive for individuals to invest in unlisted trading companies and groups over the longer term. The relief may be of particular interest to those who like to invest capital in a business start-up in exchange for ownership equity.

**Tax relief available**

IR can reduce the rate of UK capital gains tax (CGT) to 10% on the disposal of qualifying shareholdings, subject to a £10 million lifetime limit. When compared to the current standard CGT rate of 20%, this gives a maximum potential tax saving to investors of £1 million. The relief applies to ordinary shares issued on or after 17 March 2016 and the investment must be held for at least three years prior to the sale of the shares. The rules are complex and should be considered prior to the investment and monitored in the years following the investment.

Although it is a separate relief, the rules for IR were intended as an extension to Entrepreneurs’ Relief (ER) but there is no specific interaction provision. As such, it is possible that a single gain could attract relief under each provision in specific narrow circumstances. The £10 million lifetime allowances under ER and IR are not mutually exclusive and so in a few cases there could be an opportunity to utilise both tax reliefs.

**What are the qualifying conditions for IR?**

**Conditions for the investor**

- An investor cannot be an employee or director of the company or group which the investor has invested in (except in certain circumstances).
- The investor cannot receive value from the company during the period of restriction. The period of restriction is the period beginning one year before the shares are issued and ending 3 years after the date the issue. This prohibition does not include dividends.
- The Investor can be an individual or partnership, but not an LLP.

**Conditions for the shareholding**

- The shares must be newly issued ordinary shares that are fully paid up and subscribed for wholly for cash, on or after 17 March 2016;
- The shares must be held continuously for at least 3 years, and cannot be disposed of before 6 April 2019;
- The shares must be issued for genuine commercial reasons and not as part of any tax avoidance arrangements;
- The shares cannot be listed on a stock exchange.

**Conditions for the investee company**

- The company must be a trading company or holding company of a trading group throughout the three year window beginning on the date of issue.

**Ongoing considerations and potential pitfalls**

The availability of IR may be withdrawn under certain circumstances even if the conditions are met at the time of the investment. This may take place if:

1. The investor receives ‘disqualifying payments’ as a director of the company or becomes a ‘relevant employee’ of the company by receiving remuneration.
2. The investor receives value from the company during the period beginning one year before the date the shares were issued and ending immediately before the third anniversary of the date the shares were issued.
3. If there is a group reorganisation that does not meet the necessary criteria.

The legislation surrounding these conditions is complex and advice should be sought when considering their application to your specific circumstances.

Investors’ Relief (IR) was introduced in Finance Act 2016 with the policy intention of strengthening the UK’s enterprise and investment culture by improving the ability of unquoted companies to access the capital they need to expand and generate employment opportunities.
How can Smith & Williamson help?
Smith & Williamson have a great deal of experience in advising private clients and their business interests. When you are considering making an investment, we can help you consider the suitability of IR, as well as other potential reliefs available and assist in structuring a transaction so that the qualifying conditions can be met.

If you would like any further information, please get in touch with your usual Smith & Williamson contact in the first instance.

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