

# Business Investment Relief (BIR)



**Business Investment Relief (BIR) is a relief available to UK resident but non domiciled (or deemed domiciled) individuals which allows them to remit foreign income and gains to invest in UK companies without triggering a UK tax charge.**



## **Conditions**

BIR will apply where an individual

- makes a remittance of foreign income or gains to the UK;
- uses the remittance to make a 'qualifying investment';
- within 45 days of the remittance; and
- the avoidance of tax is not one of the main reasons for the investment.

A claim for relief must be made by the first anniversary of 31 January following the tax year of remittance e.g. Investment made in the year ended 5 April 2023, claim by 31 January 2025.

Advance assurance that an investment will qualify for BIR can be made to HMRC and is advisable where time permits.

## **Qualifying Investment**

To be a qualifying investment, the target company must be a private limited company whose shares are not traded on a recognised stock exchange.

Investments in AIM companies are okay.

The target company must be:

- an 'eligible trading company'
- an 'eligible stakeholder company'
- an 'eligible hybrid company', or
- an 'eligible holding company'

These are all specifically defined, and all make reference to an "eligible trading company".

An 'eligible trading company' is a private limited company which carries on one or more commercial trades (or this is substantially -HMRC suggest 80% - what the company does) or is preparing to do so within five years.

The meaning of 'trade' is relaxed for these provisions. Specifically, property businesses (including residential letting businesses) are considered a trade for BIR.

Investment in a Limited Liability Partnership or as a sole trader will not qualify. Also, a company that is a partner in a partnership will not be regarded as carrying on a trade carried on by the partnership.

The investment can be made by a “relevant person” via:

- shares (includes preference shares as well as securities); or
- a loan to the target company

Where a loan is drawn down in tranches, each tranche will be treated as a separate loan and investment

A “relevant person” includes:

- the individual
- the individual's spouse or civil partner (includes couples living together as such)
- a child or grandchild of any of the above who is under 18 years old
- Some trusts
- Some close companies where the relevant person is a participator

## **Clawback of relief**

Where relief has been granted, a remittance may be brought back into charge where there has been a

- ‘potentially chargeable event’ and
- ‘appropriate mitigation steps’ have not been taken within the ‘relevant grace period’

The effect of this is that the income and gains are treated as having been remitted to the UK at the end of the relevant grace period.

## **Potentially chargeable event**

A “Potentially chargeable event” occurs when :

- the target company loses eligibility
- the relevant person disposes of all or part of the holding
- the extraction of value rule is breached (Amounts that are income for tax purposes or provided in the ordinary course of a business and on arm's length terms should be okay)
- the five-year start-up rule is breached (ie 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)

## **Appropriate mitigation steps**

When a potentially chargeable event occurs, if appropriate mitigation steps are taken within a prescribed time limit, called a ‘grace period’, a taxable remittance can be avoided.

This grace period is 45 or 90 days depending on the type of potentially chargeable event.

Mitigation occurs when the income or gains are taken offshore or reinvested in a qualifying investment within the specific time limits.

In ‘exceptional circumstances’ HMRC may agree to extend the time limits for carrying out the mitigation steps.

There are also rules which allow some funds to be retained to settle a tax liability in very specific circumstances.

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**Disclaimer:** This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

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