CHARTER TAX

Helpsheet

Business Investment Relief (BIR)

What is BIR?

Business Investment Relief (or BIR) is a useful relief for non-UK domiciled individuals who have filed tax returns on the remittance basis and who wish to use overseas income and / or gains to invest in the UK without incurring a chargeable remittance. Please see our separate helpsheet on remittances for more on this area.

Without the relief, an investment into a UK company could mean that the individual is required to pay up to 45% tax on the funds brought to the UK and could therefore mean that the investment is no longer commercially viable.

In order to encourage further investment into the UK, Government therefore introduced BIR.

How does BIR work?

Where the qualifying conditions are met, an amount remitted to the UK in order to invest in an eligible company is deemed to be not remitted, and no income tax or capital gains tax charge is applied to the amount.

The amount of the investment must be disclosed on the taxpayer's tax return, and HMRC can enquire into the return to check that the investment is eligible for relief.

How does a remittance qualify?

In order for an investment to qualify for BIR, there are two main conditions that must be met.

- The first condition relates to the company being invested in (which, broadly, must be an eligible trading company or an eligible holding company, or a combination of both);
- The second condition relates to the investor and in particular that no uncommercial/ untaxed benefits are received as a result of the investment.

Once funds are brought to the UK, the investment must be made within 45 days. It is therefore often preferable for the investment to be made directly into the company from an offshore account in order to ensure that this condition is met.

Investments into companies can be made by way of a subscription for shares, or a loan to the company on commercial terms.

What Companies Qualify for BIR?

Only investments in certain companies qualify for BIR, and there is a clearance procedure whereby the investor can seek advance assurance from HMRC on a proposed investment.

Listed companies are excluded from this relief, so it is not possible to claim BIR on investments into companies on the London Stock Exchange (or equivalent full listing internationally). However, companies on the Alternative Investment Market can still qualify for relief.

Generally speaking, the investment must be in a trading company, or the holding company of a trading group (or a combination of both).

If at any point the company ceases to qualify for the relief, the investor has a limited time period in which to remove the funds from the UK.

Investments in companies that are preparing to carry on a trade in the UK can also qualify for BIR, giving the investor relief when investing in a new venture which is just starting up.

The definition of what qualifies as trading activity is slightly wider than some other tax definitions and includes, in particular, rental businesses (though such investments do not qualify for Entrepreneurs' Relief on disposal). The key point is that the trade is "commercial" (which is not a well defined term).

It will always be necessary to seek specific advice that the activity of the company invested in will be a qualifying activity for BIR purposes.

What benefits can the investor receive?

It is crucial that neither the investor nor their close family receive any benefits from the investment other than a commercial return, on which they will pay tax (for example, dividends on shares or interest on a loan).

Examples of uncommercial benefits could include free or reduced price meals if investing in a restaurant, or cheap or free accommodation for someone investing in a property or hotel business.

If any benefit is received other than arm's length remuneration, the whole of the investment is treated as remitted to the UK, with potentially significant UK tax implications, so it is very important to ensure that no benefit is received.

What happens at the end of the investment?

When the investment is disposed of, the funds need to be removed from the UK or reinvested in another qualifying business, otherwise the original invested amount will become a chargeable remittance.

If there is a gain on the disposal of the investment, this is charged to capital gains tax and that element can be retained in the UK since it has already been taxed here.

BIR can be used on its own or together with other tax reliefs such as EIS relief and Entrepreneurs' Relief, which are also designed to provide taxpayers with tax incentives to invest in small and growing businesses in the UK.

How can we help?

Charter Tax is experienced in advising non-UK domiciled individuals on their UK tax obligations, and can advise on the opportunities available through BIR. This helpsheet is intended to be an overview of the main conditions, and does not cover all of the requirements that must be met for an investment to be eligible for BIR.

We can provide advice on whether a particular investment may qualify for relief, and apply to HMRC for advance clearance on this point. We can also complete the tax return to calculate and claim the relief.

If you would like further assistance, please contact **Janet Pierce** at janet.pierce@charter-tax.com or **Tom Barker** at Thomas.barker@charter-tax.com

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24 April 2020

Disclaimer

The information provided by Charter Tax Consulting Limited is general in nature and does not constitute specific tax advice. Professional advice should be sought before deciding on a course of action, or refraining from a certain action, arising from the above information. Tax legislation changes regularly and the information contained herein is provided based on legislation as at 24 April 2020.

Taxation planning concerns the application of complex statute and case law to future events. Accordingly, however expert the opinion given, it is always possible that the Courts will take a different view of the application of the law.

We undertake to apply reasonable care and skill in the provision of advice. We do not guarantee that tax planning steps will in all circumstances achieve a certain legal effect.