

A DETAILED GUIDE TO INVESTORS' RELIEF



Investors' Relief (IR) was introduced under the Finance Act 2016 for investors in unlisted trading companies who hold their shares for a minimum of three years. The relief is intended to incentivise individual investors to acquire shares in such companies whereby a reduced rate of capital gains tax (10%) is charged on disposal.

The benefits of IR to the investor are:

- Lower rate of CGT on disposal of shares issued
- Maximum limit of £10m separate from the limit of Entrepreneurs' Relief

Conditions of IR for an investor are:

- Shares must be in a non-listed trading company
- Only applies to shares issued after 16 March 2016
- Shares must be held for at least three years
- Employment restrictions apply only to relevant employees
- Maximum lifetime limit of £10m

Relevant Employees

A person is defined as a 'relevant employee' if, at any time during the 'relevant period', in respect of the issuing company the individual was/is an officer or employee of either the issuing company or of a company connected with it.

For the purposes of the above, 'Connected' refers to direct and lineal relatives, including spouses and civil partners, brothers and sisters. This also covers partners who are connected via a partnership.

However, if an individual is an unremunerated director of the issuing company (or connected company) throughout the shareholding period and at no time prior to the 'relevant period' was connected to the issuing company either personally or through a person connected with the individual, the directorship will not make the individual a 'relevant employee'.

Conditions for the shares are:

- Consideration for the shares must be wholly in cash
- Shares must be fully paid up when issued
- The shares have to be subscribed for and issued for genuine commercial reasons, and not for the purpose of tax avoidance
- The shares must be subscribed for and issued by way of a bargain at arm's length
- Shares have to be ordinary shares

Conditions for the company are:

- The company shares cannot be listed on a recognised stock exchange at the point the shares are issued
- The company must be a trading company or the holding company of a trading group throughout the holding period
- Companies listed on the Alternative Investment Market (AIM) and the PLUS Markets (with the exception of PLUS-listed) are not considered to be recognised exchanges, and are therefore still eligible for IR

Common pitfalls to avoid when claiming IR

Share exchanges

Generally during the sale of a private company, it is common for the sale to involve an exchange of shares whereby shares are acquired in the purchasing entity. This can cause an issue, as depending on how the deal is structured, a Capital Gain exemption can apply by default resulting in the new shares being acquired for the same price as the old shares, thereby potentially making the new shares ineligible for IR on their disposal.

Under these circumstances, it would be important to consider electing for the share exchange treatment to be disapplied, thereby crystallising the gain on the shares on which IR is available.

Disposing of qualifying and non-qualifying shares

If a shareholding is disposed of by an investor and that holding consisted of both shares qualifying for IR and those non-qualifying, IR relief would be restricted to those shares which qualified. Therefore, the lower CGT rate is applied only to qualifying shares.

Special Identification rules

Special identification rules exist to ensure maximum relief is available for future disposals. These rules, at times, are difficult to adhere to so we suggest speaking to a member of our tax team for further advice and support.

Next Steps

To understand more regarding any of the above reliefs, please contact us to arrange an appropriate time to discuss your tax affairs in more detail and be fully aware of the impact that the above may have on you.

Please contact a member of our dedicated tax team on **01753 888211** or email info@nhllp.com