



Could you use EIS to attract investment?

What is the Enterprise Investment Scheme?

The Enterprise Investment Scheme (EIS) is intended to encourage investment into small and medium sized companies with a higher risk profile by offering significant tax relief to investors.

The EIS has evolved continually since its inception in 1994. Recent years have seen a significant increase in the applicable thresholds, creating a greater incentive for investors to make EIS eligible investments.

Why should I be interested in EIS?

Many small and medium companies in the FinTech sector will, in principle, qualify to receive EIS investments. The potentially generous tax reliefs available make investments eligible for EIS particularly attractive to investors.

Reliefs available include:

Income tax relief – income tax relief is available for the investor to the value of 30% of the amount of the qualifying EIS investment (subject to a cap).

CGT deferral – capital gains realised on the disposal of other assets can be deferred by reinvesting the proceeds of the disposal in qualifying EIS investments.

CGT exemption – gains on qualifying EIS investments are exempt from capital gains tax after three years.

IHT – qualifying EIS investments generally qualify for 100% business property relief once held for two years.

Loss relief – losses on qualifying EIS investments (less any EIS income tax relief already received) can be set-off against income to reduce Income tax.

Does the investment qualify for EIS relief?

There are a number of requirements relating to the company, the investor and the shares which must be met. For a summary of some of the main requirements please see over the page.

What next?

Take advice to ensure that an investment will qualify for EIS relief. The rules surrounding eligibility for EIS relief are too complex to cover fully here and change frequently. There are several ways in which an investment can fail to meet the criteria. In some cases, a seemingly insignificant deviation from the conditions of EIS can lead to the full amount of relief being denied or withdrawn.

Key criteria

	Qualifying requirement
Company	<ul style="list-style-type: none"> ■ Cap of £5 million per annum investment under EIS scheme and lifetime limit of £12 million generally or £20 million for knowledge-intensive companies (KICs). ■ Must be an unquoted company (AIM and PLUS quoted companies may qualify). ■ As a general rule, the EIS company cannot be more than seven years old or, for KICs, 10 years old (from date of first commercial sale). ■ EIS funds must be used to promote the growth and development of the company. ■ Must have a permanent establishment in the UK. ■ Must not be a subsidiary of another company. It may have its own subsidiaries provided it owns more than 50% in each of them (90% of any subsidiary which is involved in property management). Further conditions apply if EIS monies are to be used in the subsidiary. ■ Must have gross assets of not more than £15 million pre-investment and not more than £16 million immediately post-investment. ■ Must have 249 or fewer full time employees (or part time equivalent) pre-investment or, for KICs, 499 or fewer employees. ■ Must exist wholly for the purpose of carrying on a qualifying trade, i.e. activities cannot be substantially made up of 'excluded' activities (see below). ■ Must remain qualifying throughout a three year period. ■ Funds must be employed in the qualifying trade within two years.

	Qualifying requirement
Shares	<ul style="list-style-type: none"> ■ Must be “full risk” non-redeemable ordinary shares without preferential rights (other than certain dividend rights) or anti-dilution protection. ■ Must be new shares, fully paid up in cash at completion. ■ Must be held by the investor for at least three years, with no pre-arranged exit for the investor.
Investor	<ul style="list-style-type: none"> ■ Must not be “connected” with the company during a period of two years before the investment and three years afterwards ie: the investor and his associates must not: <ul style="list-style-type: none"> ■ own or be entitled to acquire 30% or more of the company; ■ be able to control the company; ■ be an employee; ■ be a paid director before the investment (subject to certain exceptions). ■ Must be independent from the company and hold no other shares in the company at time of first investment (with exceptions for previous SEIS, EIS or VCT investments or “founder shares”). ■ Can invest up to £1 million in EIS qualifying investments per annum.
Excluded activities	<p>Companies which carry out a substantial level of excluded activities do not qualify for EIS investment. If the company receiving the investment is the parent company of a group, the activities of the group as a whole are considered when determining whether the level of excluded activities is substantial.</p> <p>Certain financial services, including banking, insurance, money-lending, debt-factoring and hire-purchase finance are excluded. However, in most cases, developing and/or selling technology which has applications in the financial sector will not be excluded.</p>

Contact:

If you would like any further information on EIS please speak to your usual contact at Burges Salmon or contact:



John Barnett
Partner

+44 (0)117 902 2753
john.barnett@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the 'Who we are' section of the Burges Salmon website at www.burges-salmon.com.

© Burges Salmon LLP 2016. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.