Slevin's Guide to the Enterprise Investment Scheme

LIST OF CHAPTERS

List of Ch Preface About the Disclaime List of Co	author		Page i ii v vi vii
Chapter	1	An introduction to the	
		Enterprise Investment Scheme	1
Chapter	2	The qualifying investor	13
Chapter	3	Is the investor `unconnected'?	27
Chapter	4	The general requirements in respect of relevant shares	57
Chapter	5	The company invested in	81
Chapter	6	Excluded activities	121
Chapter	7	Claims to EIS Relief	143
Chapter	8	Investment Funds	161
Chapter	9	Withdrawal or reduction of relief	171
Chapter	10	Miscellaneous	205
Chapter	11	Seeking Advance Clearance from HMRC	221
Chapter	12	HMRC's enforcement powers	229
Chapter	13	Definitions	241
Chapter	14	EIS Disposal relief (CGT Exemption)	245
Chapter	15	Setting Losses against Income	261
Chapter	16	CGT Deferral Relief - Deferring the gain	271
Chapter	17	CGT Deferral Relief – Assessment of the gain	309
Chapter	18	CGT Deferral Relief - Statutory Definitions	335

CONTENTS

001	TILNIO	Page
Prefa	ice	i
Disclaimer		iii
List o	of Contents	iv
	PART ONE	
	The Income Tax Relief and related measures	
1.	The Enterprise Investment Scheme: introduction	1
101	Setting the scene	1
102	Four measures under one banner	1
103	The four facets	2
104	Who may claim relief	3
105	Encouraging investment in business	3
106	The activities of the company raising capital	4
107	The amount of income tax relief	4
108	Capital Gains Tax	5
109	The ongoing requirements	5
110	Structure of this publication	5
111	HMRC's Small Company Enterprise Centre	7
2.	Income Tax Relief: the Qualifying Investor	13
201	The 'qualifying investor': An overview	13
202	The 'connected person' test	14
203	The linked loan provision	14
204	HMRC's practice: linked loans	15
205	The commercial reason test	17
206	Pre-arranged exits	18
3.	Income tax relief: is the investor 'unconnected?'	27
301	Introduction	27
302	The period under review	27
303	Meaning of 'connection' with the issuing company	28
304	Connected employees, directors and partners	28
305	The connection test: partners	29
306	The connection test: directors	30
307	Unpaid directors	33
308	Paid business angels	35

309	Interaction of Section 168 & 169 ITA 2007	43
310	Connected persons interested in the capital	44
311	Meaning of associate	49
312	Persons subscribing for shares under certain arrangements	50
4.	Income tax relief: the general requirements	57
401	Introduction	57
402	Meaning of 'relevant shares'	57
403	The general requirements	58
404	The so-called share requirement	58
405	The maximum amount of risk capital raised requirement	59
406	The reason for the subscription	65
407	The so-called spending of the money raised by SEIS requirement	65
408	The purpose of the issue requirement	66
409	The absence of pre-arranged exit requirement	68
410	The 'use of the money' requirement	69
411	Time limits regarding using the money raised	72
412	A shortfall in spending?	73
413	The need for a paper trail	74
414	The 'minimum period requirement'	76
5.	Income tax relief: the company invested In	81
501	Introduction	81
502	When can the issuing company be considered a qualifying company?	84
503	Period B	86
504	A permanent establishment in the UK	87
505	The financial health test	89
506	The Period B trading requirement	90
507	Qualifying trade	91
508	Groups of companies	92
509	Some 'trading requirement' definitions	93
510	The meaning of Research and Development'	94
511	The meaning of 'substantial part'	95
512	The 'Qualifying Business Activity'	95
513	The relevant qualifying trade	97
514	Activities carried on by a company in partnership	98
515	Preparation work	100
516	The 'unquoted' status requirement	101

517	The Alternative Investment Market	103
518	The 'control' and the 'independence' requirement	103
519	Continuity of EIS relief on certain takeovers	105
520	The 'Gross Assets' requirement	106
521	The maximum number of employees requirement	111
522	The 'Qualifying Subsidiaries' requirement	113
523	The 'Property Managing Subsidiaries' requirement	114
524	The meaning of 'a Qualifying 90% Subsidiary'	115
525	Joint ventures	117
526	Meaning of 'qualifying trade'	118
527	Getting into financial difficulties	119
6.	Excluded Activities	121
601	Introduction	121
602	'Non-qualifying activities'	121
603	Summary of excluded activities	122
604	Meaning of 'excluded activities'	122
605	Excluded Activities: dealing in land, commodities, futures or in shares	124
606	Excluded Activities: financial activities e.g. banking, insurance, etc	124
607	Excluded activities: leasing	125
608	Providing legal or accountancy services	125
609	Excluded activities: wholesale and retail distribution	126
610	Excluded activities: leasing of ships	128
611	Excluded activities: receipt of royalties and licence fees	130
612	Excluded activities: property development	132
613	Excluded activities: receipt of royalties and licence fees	132
614	Excluded activities: hotels and comparable establishments	133
615	Excluded activities: nursing homes and residential care homes	133
616	Excluded activities: the provision of certain services	134
617	Excluded activities: farming	136

618	Excluded activities: woodlands, forestry activities or timber production	137
619 620	Excluded activities: shipbuilding Excluded activities: producing coal	137 138
621	Excluded activities: producing steel	138
622	Excluded activities: subsidised generation or export of electricity	138
623	Excluded activities: subsidised generation of heat or of gas or fuel	140
7.	Income tax relief: claims	143
701	Introduction	143
702	Choosing the tax year	143
703	Entitlement	144
704	Time limit for making claim	144
705	Supporting documents	145
706	Deadline for presenting compliance statements	147
707.	Appeals against HMRC'S refusal	149
708.	HMRC's processing of form EIS 1	149
709.	Penalties for fraudulent certificate or statement	151
710.	Carry-back provision	151
711.	Calculating the EIS relief – setting the scene	152
712.	Calculating the EIS relief	153
713.	Attributing relief to specific shares	153
8.	Investment funds	161
801	Approved EIS funds	161
802	Impact of approved funds provisions	162
803	HMRC's Guidance to Managers	163
804	Unapproved funds	164
805	Partners wanting to invest	164
9.	Withdrawal or reduction of EIS relief	171
901	Introduction	171
902	The meaning of Period A	173
903	The meaning of Period B	173
904	The meaning of Period C	173
905	The date of issue of shares	174
906	An unconnected investor becoming connected	174
907	The issuing company ceasing to be a 'Qualifying Company'	174
908	The issuing company failing to employ the money raised	176

910	Premature disposal of the shares attracting EIS relief	177
510	Premature disposal of the shares: part disposals	177
911	Liquidation proceeds	178
912	The granting of options	179
913	Value received by the EIS investor	179
914	What constitutes value received?	181
915	Receipts of value from or by connected persons	183
916	The calculation of the reduction or withdrawal of EIS relief	183
917	The reduction where maximum EIS relief not enjoyed	185
918	Replacement (circulating) capital	186
919	Breaching prohibition of investment-linked loans	188
920	Accidental receipts of value	189
921	Further provisions regarding the replacement of value	191
922	The amount of the replacement value	192
923	Restriction on withdrawal of relief under Section 224	192
924	Relief granted: subsequently found not to have been due	193
925	Assessments: withdrawal of or reduction of the EIS Relief	194
926	Time limits for assessments	194
927	Cases where assessments are not to be made	194
928	Date from which interest is chargeable on an assessment	194
10.	Miscellaneous matters	205
1001	Date of issue of shares	205
1002	Transfers between spouses, etc	207
1003	Special share identification rules	207
1003		
1003	Continuity of EIS relief on certain takeovers	208
	Continuity of EIS relief on certain takeovers Shareholders' agreements	208 211
1004	•	
1004 1005	Shareholders' agreements	211
1004 1005 1006	Shareholders' agreements Loss of income tax relief for interest paid	211 212
1004 1005 1006 1007	Shareholders' agreements Loss of income tax relief for interest paid Interaction with other CGT reliefs	211 212 212
1004 1005 1006 1007 1008	Shareholders' agreements Loss of income tax relief for interest paid Interaction with other CGT reliefs Entrepreneurs' relief	211 212 212 213
1004 1005 1006 1007 1008 1009	Shareholders' agreements Loss of income tax relief for interest paid Interaction with other CGT reliefs Entrepreneurs' relief Death of an investor	211 212 212 213 213
1004 1005 1006 1007 1008 1009	Shareholders' agreements Loss of income tax relief for interest paid Interaction with other CGT reliefs Entrepreneurs' relief Death of an investor Inheritance tax implication	211 212 212 213 213 213
1004 1005 1006 1007 1008 1009 1010 11 .	Shareholders' agreements Loss of income tax relief for interest paid Interaction with other CGT reliefs Entrepreneurs' relief Death of an investor Inheritance tax implication Seeking advance assurance from HMRC	211 212 212 213 213 213 221

1201	Introduction	229
1202	Information to be provided by the investor	229
1203	Information to be provided by the issuing company	230
1204	Power to require information where Section 240 or Section 241 apply	231
1205	Power to require information in other cases	231
1206	Obligation of secrecy	233
1207	Penalties	233
13.	Statutory definitions	241
1301	Meaning of a company being in administration or receivership	241
1302	Meaning of 'associate'	241
1303	Meaning of disposal of shares	242
1304	Meaning of 'issue of shares'	242
1305	Meaning of 'termination date'	242
1306	Sundry minor definitions	243
14.	EIS disposal relief	245
1401	Introduction	245
1402	Losses: available for set-off against income	245
1403	Reduction of allowable consideration	246
1404	Losses arising on disposals to connected persons	246
1405	The CGT Exemption: introduction	246
1406	The CGT Exemption: details	247
1407	Special share identification rules	250
1408	Setting capital losses against income	251
15.	Setting capital losses on EIS shares against income	261
1501	Introduction	261
1502	Entitlement to claim	262
1503	How the loss is to be deducted	262
1504	Unrelieved losses	263
	PART TWO	
16.	The Enterprise Investment Scheme: CGT Deferral Relief	271
1601	Introduction	271
1602	Who can claim to defer assessment gains	272
1603	The gains which can be deferred	273

1604	The mechanics of the postponement of the original gain	273
1605	The amount of gain which can be deferred	275
1606	How the gains are deferred	276
1607	The meaning of 'qualifying time'	277
1608	Extending the qualifying time	278
1609	Claims to deferment relief	280
1610	Company reorganisations	281
1611	Meaning of qualifying investment	282
1612	Company reorganisations: acquisition of capital by new company	284
1613	Meaning of qualifying investment	285
1614	Meaning of 'eligible shares'	285
1615	The motive for the share subscription	286
1616	The use of the money requirement	286
1617	The £5 million annual ceiling	287
1618	Meaning of 'qualifying company'	287
1619	Investor-controlled companies	289
1620	Dual action claims	290
1621	Pre-arranged exits	291
1622	Put and call options	293
1623	Shares acquired from a spouse or civil partner	293
1624	Exclusion of reinvestment in the same company	294
1625	Prohibition of relief where investment-linked loans exist	295
1626	CGT deferral and trustees	297
1627	Trustees: measures to counter tax avoidance	299
17.	CGT deferral relief: cancellation or withdrawal	309
1701	The end of the deferment: chargeable events	309
1702	Gains crystallised on certain reconstructions	310
1703	Gains accruing on chargeable events	313
1704	Who is assessable?	315
1705	Breaching the prohibition of investment-linked loans	316
1706	Put and call options	316
	Viii	

18.	CGT deferral relief: Statutory definitions	335
1715	HMRC's information powers	328
1714	Value received by persons other than the EIS investor	327
1713	Accidental receipts of value	323
1712	The de minimis provision	323
1711	Exclusion of 'qualifying payments'	321
1710	What triggers a return of value?	319
1709	Value received by investor	318
1708	Breaching the conditions: impact on the deferral	317
1707	Breaching one of the conditions	316