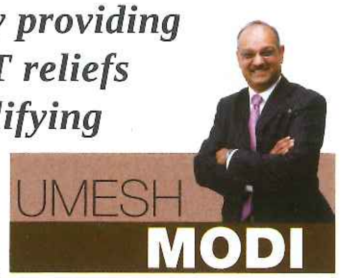
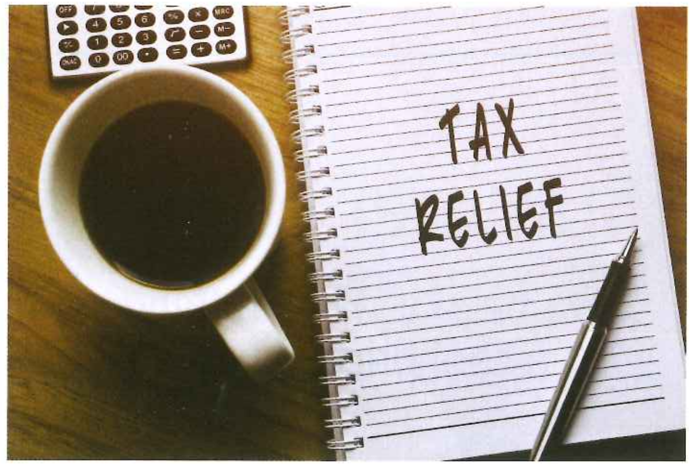
Umesh Modi

Enterprise Investment Scheme

***The purpose of the Enterprise Investment Scheme (EIS) is to help certain types of small higher-risk unquoted trading companies to raise capital. It does so by providing income tax and CGT reliefs for investors in qualifying shares in these companies,* says Umesh Modi...**





There are really two separate schemes within the EIS:
• a scheme giving income tax relief on the investment and a CGT exemption on gains made when the shares are disposed of; and/ or
• a scheme aimed at providing a CGT deferral.

An individual can take advantage of either or both of these schemes.

EIS reliefs available

Income tax relief
• Investors may be given income tax relief at 30% on their investments of up to £1,000,000 a year (£2 million a year for knowledge-intensive companies from 6 April 2018).
• The income tax relief is withdrawn if the shares are disposed of within three years.

CGT exemption
• Gains on the disposal of EIS shares are exempt unless the income tax relief is withdrawn.
• The CGT exemption may be restricted if an investor does not get full income tax relief on the subscription for EIS shares.
• Losses on the disposal of EIS shares are allowable. The amount of the capital loss is restricted by the amount of the EIS income tax relief still attributable to the shares disposed of.
• A capital loss arising on the disposal of EIS shares can be set against income.

CGT deferral
• Gains arising on disposals of any assets can be deferred against subscriptions for shares in any EIS company.
• Shares do not have to have income tax relief attributable to them in order to qualify for deferral relief.
• The gain will become chargeable in the tax year when the subscription shares are disposed of.
• There is no upper limit on the amount of deferral relief available to an individual although there is a limit on investment in a single company or group of companies.

Qualifying Companies

Companies must meet certain conditions for any of the reliefs to be available for the investor.
• The company must be unquoted when the shares are issued and there must be no arrangement in existence at that time for it to cease to be unquoted.
• All the shares comprised in the issue must be issued to raise money for the purpose of a qualifying business activity.
• The money raised by the share issue must be wholly employed within a specified period by the company.
• The company or group must generally have fewer than 250 full time employees.
• The size of the company is limited to £15 million (gross assets).
• The amount of capital raised in any 12 month period is limited to £5 million (£10 million for knowledge-intensive companies from 6 April 2018)
• The company must not be regarded as an 'enterprise in difficulty' under EC guidance.
• The company need only have a permanent establishment in the UK rather than carrying on a qualifying trade wholly or mainly in the UK.

Qualifying business activities
A trade will not qualify if excluded activities amount to a substantial part of the trade. The main excluded activities are:
• dealing in land, in commodities or futures or in shares, securities or other financial instruments
• financial activities
• dealing in goods other than in an ordinary trade of retail or wholesale distribution
• leasing or letting assets on hire
• receiving royalties or licence fees, other than, in certain cases, such payments arising from film production, or from research and development
• providing legal or accountancy services
• property development
• farming or market gardening
• holding, managing, or occupying woodlands
• operating or managing hotels, guest houses or hostels
• operating or managing nursing homes or residential care homes
• ship building
• coal and steel production.

Time period in which the money is invested
The time limit for the employment of money invested is to two years from the issue of the shares or, if later, two years from the commencement of the qualifying activity.

Changes to the rules for qualifying companies
Over the years, governments make amendments to what are regarded as qualifying companies for EIS. The thrust of the changes is to ensure well-targeted support for investment into small and growing companies, with a particular focus on innovative companies.

How to qualify for income tax relief

Eligibility for income tax relief is restricted to companies with which you are not 'connected' at any time during a period beginning two years before the issue of the shares and ending three years after that date, or three years from the commencement of the trade if later.

You can be connected with a company in two broad ways:
• by virtue of the size of your stake in the company; or
• by virtue of a working relationship between you and the company.

In both cases the position of your 'associates' is also taken into account.

Size of stake
You will be connected with the company at any time when you control directly or indirectly possess, or are entitled to acquire, more than 30% of the ordinary share capital of the company.

Working relationship
You will be connected with the company if you have been an employee or a paid director of the company.

There is an exception to this rule if you become a paid director of the company after you were issued with the shares.

You must never previously have been connected with the company and must not become connected with it in any other way. Also, you must never have been involved in carrying on the whole or any part of the trade or business carried on by the company.

How to qualify for CGT deferral relief

You can defer a chargeable gain which accrues to you on the disposal by you of any asset. In addition, you can defer revived gains arising to you in respect of earlier EIS, Venture Capital Trust (VCT) or CGT reinvestment relief investments.

There are some restrictions on investments against which gains can be deferred. These are designed, broadly, to prevent relief being obtained in circumstances where there is a disposal and acquisition of shares in the same company.

Receiving value from a company

The EIS is subject to a number of rules which are designed to ensure that investors are not able to obtain the full benefit of EIS reliefs if they receive value from the company during a specified period. If relief has already been given, it may be withdrawn.

Examples of the circumstances in which you would be treated as receiving value from the company are where the company:
• buys any of its shares or securities which belong to you
• makes a payment to you for giving up the right to payment of a debt (other than an ordinary trade debt)
• repays a debt owed to you that was incurred before you subscribed for the shares
• provides you with certain benefits or facilities
• waives any liability of yours or an associate's to the company
• undertakes to discharge, any such liability to a third party
• lends you money which has not been repaid before the shares are issued.

Receipts of 'insignificant' value will not cause the withdrawal of relief.

How we can help

It is not possible to cover all the detailed rules of the schemes in an article of this kind. If you are interested in using the EIS please contact us.

We can also help to guide you through the implementation of a scheme which is suitable for your circumstances.

Source: Practice Track

This article is based on current legislation and practice and is for guidance only. Specific professional advice should be taken before acting on matters mentioned here. Umesh Modi BA ACA, is a Chartered Accountant and Tax Advisor, and a partner at Silver Levene LLP. He can be contacted on 020 7383 3200 or umesh.modi@silverlevene.co.uk

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Pharmacy leaders launch guidance with Falsified Medicines Directive a year away

Community pharmacists struggling to get to grips with the impending EU Falsified Medicines Directive have been given hope in the form of guidance which is designed to improve their understanding of the system.

With a little more than a year away before the directive, which will compel pharmacists to scan the barcodes of all medicines at the point of dispensing, comes into force, the UK FMD Working Group for Community Pharmacy (UK FMD WGCP) has introduced a guide "to build understanding of the options open to pharmacy contractors and to start conversations between pharmacies and IT system suppliers."

From February next year new packs of prescription medicines on the European market will have a unique 2D barcode and anti-tamper device under the directive.

The guide, *The Way Forward for FMD* in Community Pharmacy, dispels myths that the UK will not need to adhere to FMD because of Brexit as well as providing information and support.

"It is not a complete and final implementation plan for FMD, because many important details from the government are still missing and each pharmacy owner will have to make their own decisions about how FMD is implemented within their own business," said the National Pharmacy Association who are a part of UK FMD WGCP.

"The Way Forward for FMD in Community Pharmacy covers key assumptions about FMD, high level processes for incorporating authentication in to existing dispensing workflows, handling stock transition, what IT systems will need to deliver and implications for patient safety."

Raj Patel Chair of the UK FMD WGCP AND NPA Board member, said: "FMD is going to happen, and it's only a year until the kick off date for safety features including 2D barcodes and tamper-proof seals on medicine packs.

"Time is short, so we must make whatever preparations we can, on the basis of the facts already available, even if these are frustratingly incomplete. There remains a yawning information gap and a lack of assurances about the position post-Brexit, so we are working from reasonable assumptions about the position.

"We see it as our duty to supply pharmacies with the best steer possible, while acknowledging that meeting the February 2019 implementation date will be heroically challenging, to say the least.

"The pharmacy sector has major investment decisions in relation to FMD which cannot be postponed for much longer. However, we can now start having conversations with each other and our suppliers, so that we are better prepared."