Non-Domiciled Individuals: Business Investment Relief

Background
Non-domiciled individuals are generally subject to UK tax if they remit funds to the UK. Business Investment Relief (BIR) allows remittance basis foreign income and gains to be brought into the UK without triggering a tax charge where the funds are used to make an investment meeting specified conditions. BIR commenced on 6 April 2012.

Person making the investment
A non-domiciled individual is taxed by reference to remittances not only made personally but also those made by associated trusts and companies. BIR allows the investment to be made by any "relevant person" which includes such associated trusts and companies.

Entity into which investment is made
BIR requires that the investment is made in a company. Accordingly, BIR is not available for funds used to invest in a sole trader business, in a partnership or in a limited liability partnership. BIR refers to the company in which the investment is made as a "target company". There is no requirement that the target company is incorporated in the UK.

Basic conditions
The two basic conditions for BIR are:-
- The investment made is a "qualifying investment" (outlined below) in a target company.
- The taxpayer claims relief in their self assessment tax return.

As noted above, the investment might be made by say an associated trust. The claim for BIR must be made by the non-domiciled individual.

Form of investment
The investment can be in either of the two following forms, or a combination of them, namely:-
- Acquiring newly issued shares in the target company, or
- Making a loan to the target company.

The investment must be made within 45 days of the remittance to the UK.

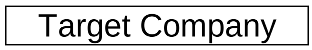
The acquisition of existing shares does not qualify for BIR. The shares may be ordinary shares or preference shares. Any percentage of the shares may be acquired ranging from a small minority to complete control. Any loan may be secured or unsecured.

Target company: private limited company
The target company requires to be a private limited company. This means only that none of the company's shares are listed on a recognised stock exchange.

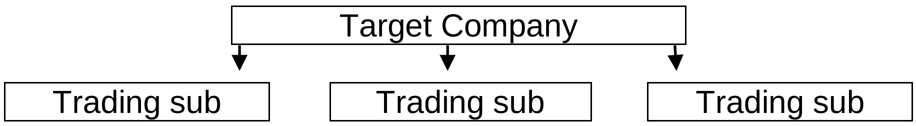
Accordingly, BIR cannot be used to acquire a portfolio of listed shares. AIM-quoted shares are permitted.

Target company: available forms
The target company can take one of three forms. In concept these three forms are illustrated as follows:-

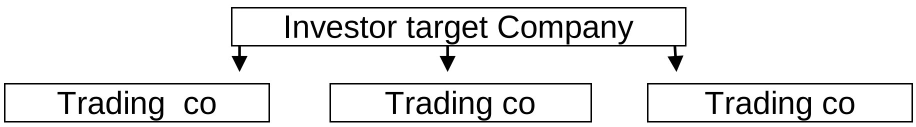
1. **Single (ungrouped) company**



2. **Eligible trading group**



3. **Eligible stakeholder company**



Target company: activities
The target company, if a single company, is one which carries on one or more commercial trades (or is preparing to do so within two years), and that is all, or substantially all, that it does (or it is expected to do when it begins trading).

For these purposes, trade includes:-

- Any activity that is treated as a trade for tax purposes. This includes farming, mines and quarries. Unlike EIS relief, there is no restriction over the type of trade.
- A business generating income from land. This includes renting or leasing of land or property.
- Carrying on research and development activities which are expected to lead to a commercial trade.

As noted above, BIR is extended to allow property rental businesses to qualify. Again this is in contrast to many other tax reliefs. However, other types of investments would not qualify for BIR.

The phrase "all or substantially all" is not defined. HMRC has indicated that it will accept that this requirement is met where carrying on a trade accounts for at least 80% of a company's total activities.

These conditions are applied, with appropriate modifications, to eligible stakeholder companies and eligible trading groups.

A target company is an eligible stakeholder company if it exists wholly for the purpose of making investments in eligible trading companies. A stakeholder company could not therefore carry out a trade of its own.

Target company: abnormal benefits
The target company may pay salaries at a market rate, or interest or dividends that any similar investor might reasonably have expected to receive. However, the payment or provision of abnormal benefits will disqualify the investment from BIR.

Advance assurance
HMRC will on request give an advance assurance whether or not a proposed investment will qualify for BIR.

Other tax reliefs
An investment under BIR could also qualify for tax relief under the SEIS and EIS schemes.

Income from BIR investments
There are no special rules applying to any income which may be generated from BIR investments. For instance, if the target company is a UK incorporated company then dividends would be UK source income and therefore taxable without the benefit of the remittance basis.

Disposal of a holding
Where there is a disposal of all or part of their holding, the disposal proceeds will be treated as giving rise to a remittance unless the investor:-

- takes the proceeds offshore, or
- reinvests in another qualifying investment

within 45 days.

However, it is only the amount originally invested that could be treated as being a remittance, and that needs to be taken offshore or reinvested. The gain on the sale may remain in the UK without reinvestment.

Any gain is subject to UK tax in the normal way. Therefore:-

- If the investor is a UK resident individual and the target company is a UK company, the gain is taxable in the UK. Normal rules, such as entrepreneurs' relief, would apply.
- If the investor was say a non-resident trust, the gain would not be taxed on the trust, but could be later taxed on a UK resident beneficiary when matched with capital payments.

Legislation

- ITA 2007 ss809VA-VO.

Commentary

- Simons Taxes E6.330.

- HMRC Residence, Domicile and Remittance Basis Manual RDRM34300.

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