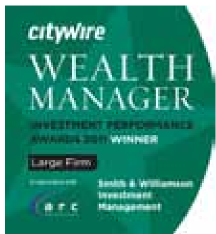
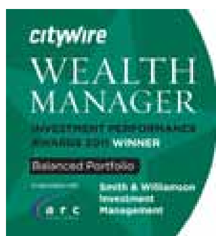
Smith & Williamson

NEXIA INTERNATIONAL

# investing in companies

## Tax incentives



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"With tax relief options on income tax, CGT and IHT – the EIS could be the last of the great tax breaks."
*– Adrian Walton*

## Executive summary

Investing in smaller businesses can often be viewed as risky. But there can be significant tax incentives for investing in some companies, which help to mitigate economic risk.

For those companies looking for alternatives to bank funding, the Enterprise Investment Scheme (EIS) and venture capital trusts (VCTs) are options well worth exploring. In relation to the EIS, tax relief is potentially available to owner-managers of businesses, as well as outside investors.

In this guide we examine the EIS and funding from VCTs, which can be an important source of financial support for smaller businesses.

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> "You don't have to be an investment professional or venture capital specialist to take advantage of EIS. One of the great things about EIS is that it presents ordinary investors with the opportunity to invest in exciting growth companies."

## Introduction

This guide summarises the main features of the current range of tax incentives available for individuals and, under limited circumstances, trustees contemplating investment in companies, based on legislation and information available as at December 2011.

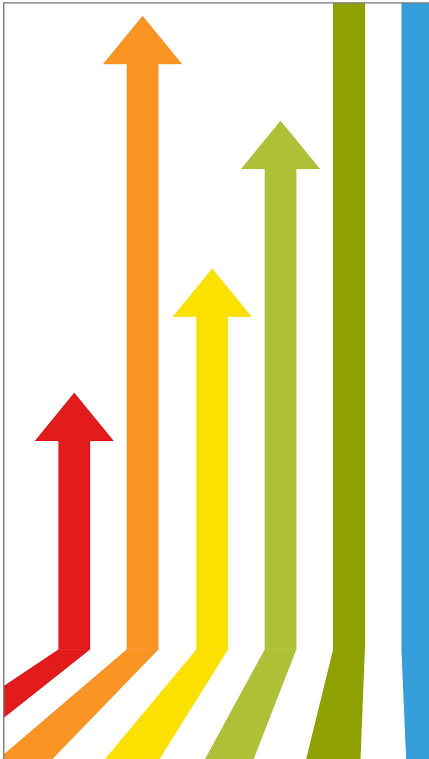
Two main types of investment are available: the EIS and VCTs.

Under the EIS, individuals invest directly in unquoted trading companies, whereas under the VCT scheme they invest in a quoted vehicle whose managers invest funds in such companies ('investee' companies).

These have some characteristics in common but a number of important differences. The appendix provides a comparison between the two schemes.

The reliefs that investors are likely to be most interested in are:

- Income tax relief on investment/dividends
- Capital gains tax (CGT) relief on sale of EIS/VCT shares
- CGT deferral under EIS
- Inheritance tax (IHT) relief under EIS.



## Qualifying individuals

### *EIS*

Investors must be individuals to qualify for income tax relief. In addition, they must be resident and ordinarily resident in the UK if they are to qualify for CGT deferral relief.

Trustees of certain trusts can get CGT deferral relief, but not income tax or CGT-free sales.

Broadly, the individual must not be connected (in a period beginning two years before the share issue and ending three years after the later of the issue of the shares or commencement of trade) with the company in which they invest, which means:

- He and his associates must not own more than 30% of: the ordinary shares, or the voting rights, or the total issued share capital, or assets on a winding up. (Associates include business partners and relations i.e. spouse/civil partner, grandparents, children and grandchildren – but not brothers or sisters – in addition to trustees of certain trusts).
- He must not be a paid director of the company except in limited circumstances.
- He must not receive value from the company e.g. repayment of certain loans, receipt of excessive dividends, assets transferred at an under/over value, repayment of share capital.
- He must not be an employee of the company or any of its 51% subsidiaries.

The rules are complex and have not been covered here in detail. This guide provides an overview of the rules only and professional advice should be sought.

Not all the above conditions apply if only CGT deferral is being claimed.

### *VCT*

To receive the VCT income tax relief an investor needs to be aged 18 or over. Trustees cannot qualify for this relief. There are complex provisions that can deny income tax relief where the investment is financed by loans.

"You can't use the EIS and VCTs to invest in all business types. Some business activities are excluded, such as property development, hotels, farming and financial services."

## Qualifying companies

### *EIS*

The value of the gross assets of the company (or group if appropriate) must not exceed £7m immediately before the investment takes place and £8m immediately thereafter. For shares issued after 5 April 2012, these limits will be increased to £15m and £16m respectively (subject to State Aid approval).

The company must not be "in difficulty" to qualify for the scheme (under the EU Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty).

Investment must be into new ordinary shares that have no preferential rights. For shares issued after 5 April 2012, this rule will be relaxed to align the definition of qualifying shares with those for VCTs i.e. broadly, to allow certain preferential rights in relation to dividends. For shares issued after 5 April 2012, where the company has previously issued shares qualifying for SEIS relief (see below), it will only be possible to issue shares qualifying for EIS relief if 75% of the SEIS funds have been spent on the qualifying business activity for which it was raised.

The company must be unquoted (AIM qualifies) although it could become quoted in the relevant period (three years from the later of the share issue or commencement of trade) without loss of relief, if no prior arrangements for a quotation were in place.

The company issuing the eligible shares must have a "permanent establishment" (essentially a fixed place of business) in the UK. The funds raised must be used in qualifying activities within 24 months of the later of the share issue and the commencement of trade.

Certain trades are specifically excluded, including:

- dealing in property, shares, commodities and other financial instruments
- property investment and development
- insurance and banking (though not insurance broking)
- leasing
- legal and accounting services
- farming, market gardening and forestry activities
- hotels and nursing homes
- exploitation of intellectual property rights (not created by the company)
- ship building
- coal and steel production.

In addition the company must not be under the control of another company and is restricted as to how it holds shares in subsidiaries.

### *VCT*

A VCT cannot be a close company and must have received HMRC's approval for operation as a VCT. Broadly similar rules apply to define the types of companies in which a VCT can invest. However, a VCT may have up to 30% of its investments in other assets such as fixed interest stocks i.e. at least 70% by value of its investments must be represented by shares or securities in qualifying companies. Of the 70% of investments that must be in qualifying companies, at least 70% of this must be in "qualifying ordinary shares" – i.e. ordinary, non-redeemable shares (though please note recent changes to allow certain preferential rights in relation to dividends). There is a three year grace period for satisfying these conditions for new VCTs. The VCT's shares must be admitted to trading on an EU regulated market. Any money held by a VCT, or held on its behalf, is treated as an investment for the purpose of these tests even if the funds are held on non-interest bearing accounts. No more than 15% of the value of a VCT's investments can be represented by shares in any one company.

## Overview of changes in recent years

Following the Government's announcement in the March 2011 Budget in relation to proposed changes to the schemes, the draft 2012 Finance Bill was published on 6 December 2011, which confirmed the following changes that will apply to shares issued on or after 6 April 2012 (subject to State Aid approval):

- the employee limit for investee companies to increase to fewer than 250 full-time employees (currently fewer than 50 full-time employees)
- the size threshold for the gross assets test for investee companies to increase to no more than £15m immediately before investment, and £16m immediately thereafter (currently £7m and £8m respectively)
- the maximum annual amount that can be invested in a company through the EIS and from VCTs in aggregate in any 12-month period to increase to £10m (currently £2m)
- the annual amount, qualifying for income tax relief, that an individual can invest under the EIS to increase to £1m (currently £500,000).

Other changes were announced in the Chancellor's Autumn Statement on 29 November 2011, which were included in the draft 2012 Finance Bill. Again, these following changes will apply from 6 April 2012.

- To clarify that investors are disqualified from claiming EIS income tax relief if their shareholding or voting power exceeds 30% (currently there is in addition a 30% test for the aggregate of issued share capital and loans made to a company).
- To replicate the definition of eligible shares for EIS purposes to that used for VCTs with respect to certain preferential rights in relation to dividends (currently shares with certain preferential rights are excluded).
- Shares issued in connection with "disqualifying arrangements" will not attract EIS or VCT relief. This is designed to catch the following two scenarios:
  (i) where the whole or majority of the amounts raised are paid to or for the benefit of another party
  (ii) in the absence of arrangements it would have been reasonable to expect that the qualifying activities would have been carried on as part of another business.

  For some time, HMRC has wanted to target companies specifically set up for EIS/VCT purposes which fulfil a financing role but have no real commercial substance, typically with no employees or premises. These proposals are designed to stop the scenario where all or most of the trading activities are sub-contracted to another party or parties.
- Tax relief will also not be available under EIS or from VCTs where the funds raised by a share issue are to be used to acquire shares in another company, unless shares are subscribed for in a new qualifying 90% subsidiary. This will particularly impact on typical management buy-out and buy-in structures.
- Removal of the £1m per annum limit on investment by a VCT in a single company (except for companies in a partnership or a joint venture).

The above proposals are subject to ongoing consultation, which is expected to end in February 2012.

### *Seed EIS*

Draft 2012 Finance Bill proposals have been issued for the introduction of a new Seed Enterprise Investment Scheme (SEIS) from 6 April 2012. While the introduction of this new scheme was expected from the Government's previous announcements, this is the first time much of the detail has been released. The rules are summarised as follows.

- In order to qualify for SEIS, a company must be less than two years old and be undertaking, or planning to undertake, a new business which has fewer than 25 employees and gross assets of less than £200,000 at the time of the SEIS investment.
- Companies qualifying will be able to raise a total of up to £150,000 under the scheme, and funds raised must be used within three years. There must have been no EIS or VCT investment made on or before the day on which the shares qualifying for SEIS relief are issued. Once 75% of SEIS funds have been utilised for the qualifying business activity for which they were raised, the company may raise funds under the EIS, or from VCTs.
- The scheme offers upfront income tax relief of 50% for subscriptions of shares by investors of up to £100,000 (which can include directors but not other employees). It should be noted that a claim for relief under SEIS may not be made until at least 70% of the money raised by the issue has been spent by the issuing company for the purposes of the qualifying business activity for which it was raised.
- The individual investor limit for SEIS will be £100,000 per year.
- There is no capital gains tax payable on the disposal of SEIS shares held for more than three years. Furthermore, the rules provide for an exemption from CGT on gains realised from disposals of other assets in 2012/13 where the gains are reinvested through the new SEIS in the same year.

### *Other announcements*

In respect of shares issued before 6 April 2012, legislation has been included in the draft 2012 Finance Bill to prevent companies whose trade consists wholly or substantially in the receipt of feed-in tariffs (FITs) or similar subsidies from qualifying for EIS or VCT investment in cases where they do not start commercially generating electricity before 6 April 2012. However, companies who have issued EIS/VCT shares prior to 23 March 2011 will not be affected by this change. No EIS or VCT relief will be available for shares issued in such companies after 5 April 2012.

The Finance Act 2011 introduced an increase in the rate of EIS income tax relief for an individual from 20% to 30% effective for shares issued on or after 6 April 2011.

The following changes were announced in the 2010 Budget and implemented in the Finance (No 3) Act 2010 and apply to shares issued on or after 6 April 2011. There were four specific changes, which were required to maintain State Aid approval from the European Commission (EC) for the schemes.

- A new requirement was introduced that to qualify under the schemes, a company must not be "in difficulty".
- The requirement that to qualify under either scheme a company must carry on its qualifying trade wholly or mainly in the UK was replaced with a requirement that the company issuing the shares must have a "permanent establishment" in the UK.
- The requirement for a VCT's shares to be included in the official UK list was replaced with one that its shares must be admitted for trading on an EU regulated market. The EC publishes a list of all regulated markets in the *Official Journal of the EU*, which is available on its website.
- The requirement that a VCT must hold at least 30% of its qualifying holdings by value in qualifying ordinary shares was increased to 70%, but the definition of qualifying ordinary shares was also changed to allow VCTs to include shares which may carry certain preferential rights to dividends.

## Income tax relief on investment/dividends

### *EIS*

Individuals can currently get a tax credit of 30% (prior to 6 April 2011 the rate of relief was 20%) on a maximum investment of £500,000 in cash for newly issued shares in a single tax year (though this increases to £1m for investments on or after 6 April 2012). The maximum income tax relief is, therefore, £150,000 (£100,000 prior to 6 April 2011 and £300,000 after 5 April 2012). The minimum investment per company per tax year is £500. The credit is set off against the individual's tax liability but he/she must have an income tax liability sufficient to cover the credit in order to obtain the relief in full. The relief can only reduce the income tax liability to nil.

For investments made in the 2009/2010 income tax year and subsequent years, an individual may carry back any EIS income tax relief arising at any time in an income tax year, to the previous income tax year. This is subject to the overall cap per income tax year, and subject to the individual having sufficient income to offset the relief.

Income tax relief will be withdrawn if shares are disposed of within three years of acquisition or within three years of the company starting to trade if later, or if the investor or company ceases to qualify.

Income tax relief will not be withdrawn if the company becomes quoted within three years of the qualifying investment, so long as this was not part of a pre-arranged scheme.

Dividends from EIS companies are taxable in the normal way.

### *VCT*

The rate of income tax relief is 30%.

The maximum annual investment is £200,000 per tax year. No carry back facility is available.

Income tax relief is given as a credit against the individual's income tax liability for the year of subscription.

Income tax relief will be withdrawn if the VCT ceases to qualify within five years of the issue of shares or if the shares are disposed of within five years of issue.

Dividends in respect of up to £200,000 of VCT investment per annum are free of income tax. This, unlike the income tax relief on subscriptions, is also available on 'second hand' shares as well as newly issued ones.

"EIS and VCT investments provide capital for smaller unquoted companies. This type of investment is generally considered to be higher risk than mainstream investments, so it is important to assess the investment risks as well as the possible tax breaks."

## Capital gains tax relief on sale of shares

### *EIS*

As long as income tax relief was given on shares subscribed for and not withdrawn then those shares will be free of CGT when ultimately sold. It follows therefore that the company must carry on its qualifying activity for three years from the date of acquisition of the shares, or three years from commencement of trading, if later. After that time it can carry on non-qualifying activities such as investment and the shares will still be free of CGT when sold.

In cases where a disposal of EIS shares does not meet the tests for CGT exemption (as EIS income tax relief has been withdrawn or not available in the first place), the EIS shares will be subject to CGT on a disposal.

The rates of CGT that apply to an individual for disposals on or after 23 June 2010 are:

- 10% for gains qualifying for entrepreneurs' relief (ER) within the lifetime allowance (but see below on interaction with ER);
- 18% to the extent that there is any income tax basic rate band not being used against income (or 'allocated' against gains taxed at the ER 10% rate); and
- 28% for the remaining gains.

ER is subject to a lifetime allowance, which stands at £10m per individual with effect from 6 April 2011 (from 23 June 2010 to 5 April 2011 the limit was £5m).

### *VCT*

Disposals of VCT shares will be free of CGT as long as the VCT qualified when the shares were bought and sold and provided the amount invested did not exceed the permitted annual maximum of £200,000. Relief is available on shares that were subscribed for or purchased 'second hand'.

"…the Government will continue to ensure that the targeted tax incentives for investment, the EIS and VCTs, effectively meet their objective of incentivising additional equity investment into small companies, and will continue to seek viable options to ensure the tax system supports, where possible, access to equity finance for SMEs."
– *HM Treasury's report* Financing business growth: The Government's response to Financing a private sector recovery October 2010

## Capital gains tax deferral relief

### *EIS*

Capital gains made on the disposal of any kind of asset can be deferred by reinvestment in EIS companies. The investment must be in newly issued ordinary shares, subscribed for in cash.

Gains that can be deferred are those made on the disposal (not deemed disposal) of a chargeable asset not more than three years before, nor more than one year after, the EIS investment is made.

The maximum gain that can be deferred is not limited to the £500,000/£1m applicable to EIS income tax relief. It is possible to invest more than that and get deferral relief on the total investment. In addition, deferral relief is available where the investor does not meet the strict conditions of being unconnected with the EIS company. They can, for instance, be the sole shareholder. Deferral relief is not therefore dependent on income tax relief.

The deferred gains will become taxable if:

1. The EIS shares are sold or disposed of other than to a spouse.
2. The EIS shares are exchanged for non-qualifying shares.
3. The EIS shares cease to be eligible shares (e.g. conversion to deferred or preferred shares) within three years of issue or three years of commencement of trade, whichever is the later.
4. The investor becomes non-UK resident within three years of issue or three years of commencement of trade, whichever is the later, unless he is going to work full-time offshore for three years or less.
5. An EIS company ceases to qualify for any reason (e.g. starting a non-qualifying trade) in the three years following the issue of the shares, or in the three years from the commencement of trade, whichever is later.
6. The investor receives certain prohibited benefits in the period beginning one year before and ending three years after the issue of the shares or three years after the commencement of trade, whichever is the later. These can include directors' remuneration, rents, loans or interest, which HMRC regards as excessive. Even a small amount of 'excessive' benefit can trigger the whole of the deferred gains although there are de minimis levels. Value can be repaid to the company if it has inadvertently been withdrawn.

The deferred gains will not be taxed on death, or if the shares are transferred to a spouse. Death washes out the deferred gain completely. However, the death of a life tenant will lead to the crystallisation of a deferred gain when a trust has invested in an EIS company.

An inter-spouse gift means that a later disposal by the donee spouse triggers the deferred gain, which is chargeable on the donee.

Gains which do crystallise can be deferred again by a further EIS investment.

It is important to note that there is a risk that the EIS investment may turn out badly, involving loss of funds but still leaving tax to pay on the deferred gains. However, there may be CGT loss relief available on the EIS investment to soften the blow.

### *The interaction with ER*

Prior to 23 June 2010 an individual could make an ER claim and defer the post ER gain under the EIS CGT deferral provisions. This meant that the individual could benefit from ER and defer paying the CGT on the disposal. Following the June 2010 'Emergency' Budget the legislation was modified such that an EIS CGT deferral claim cannot be made with respect to a qualifying ER gain to the extent that the special 10% ER rate applies.

Where an ER claim has been made on qualifying gains occurring between 6 April 2008 and 22 June 2010 EIS deferral relief can still be claimed. The rate changes will mean that a deferred gain coming into charge after 22 June 2010 will be taxed at 28% for a higher rate taxpayer based on current rates.

For qualifying ER disposals occurring on or after 23 June 2010 the rules changed so that where a gain meets the conditions, and there is unused ER lifetime allowance, there is a choice between:

- making the ER claim:
  - to benefit from the special 10% tax rate the tax is not deferred meaning it must be paid by 31 January following the tax year during which the qualifying ER disposal takes place; or
- making the EIS CGT deferral claim:
  - where the gain is deferred but when the gain does become chargeable it cannot benefit from the special 10% rate meaning that it will generally be taxed at 28% at current rates (as it is unlikely that such an individual will have unused basic rate band).

For qualifying ER disposals occurring on or after 23 June 2010 the only time ER and EIS CGT deferral relief can be used with respect to the same gain is where the quantum of the gain is such that only a portion of it can benefit from ER (meaning that a portion does not benefit from the special 10% tax rate and is, therefore, eligible for EIS CGT deferral relief). In such cases the gain is in effect taken to be split between an ER gain (the tax on which has to be paid) and a non-ER gain (which can be deferred if there is an EIS investment within the qualifying period).

### *Deferred gains and tax rate changes*

Where a gain is (or has been) deferred or rolled over it will be subject to tax at the rates prevailing when it comes into charge. This means that for a higher rate taxpayer, if current rates remain the same, gains will be subject to tax at 28%.

It is therefore necessary to consider whether the cash flow benefit of deferring paying tax on a pre-23 June 2010 gain, potentially coming back into charge at 28% or whatever the future rate is, would be more beneficial than if no deferral claim were made and suffering an 18% tax charge now. Account should also be taken of the effect on loss reliefs, availability of annual CGT exemptions, and any potential interest charges.

Where a deferral claim has already been made, consideration should be given to withdrawing the claim. It should be noted that where claims are made within a self-assessment tax return, the timeframe for withdrawing the claim is the same as for any other amendment to a tax return (that is one year after 31 January following the end of the tax year for which the return was prepared).

### *VCT*

CGT deferral relief is not available for VCT investments.

## Losses

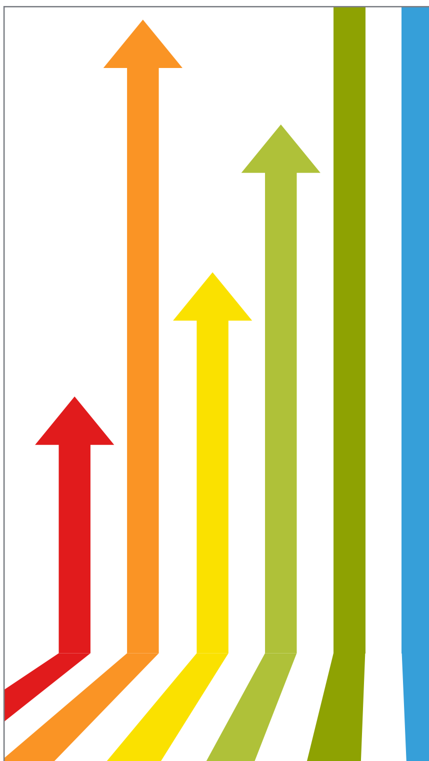
### *EIS*

If EIS shares are sold at arm's length at a loss, or the company goes into liquidation, a capital loss will accrue. This is calculated in the normal way less any income tax relief given and not withdrawn. This capital loss can also be set against income in the year it arises and/or the previous tax year. For a higher rate taxpayer, this limits the maximum economic loss to 35% for EIS shares issued after 5 April 2011.

### *VCT*

No allowable CGT loss accrues on VCT shares if they are sold at a loss or become worthless.

## Practicalities



### *EIS*

None of the EIS reliefs can be obtained until the company supplies a form EIS 3 to the investor. It can only provide this when it has been trading for at least four months. Thus there may be a significant delay in obtaining relief when a company is not already trading and needs time to prepare for the trade. There are further requirements as to how quickly the cash raised must be invested into a qualifying trade.

If an EIS 3 is not available when the tax return is submitted, then the taxpayer must pay the tax and subsequently amend the return and get a repayment of the tax overpaid.

The company must submit an EIS 1 form within two years of the end of the year of assessment in which the shares are subscribed for or, if the company completed the first four months of trading in a later year of assessment, within two years of the end of that four month period.

The investor must claim relief within five years from the 31 January following the tax year in which the subscription was made. This time limit for a claim for EIS relief is specifically prescribed in the legislation and therefore not affected by the general time limit for making claims having reduced from five years and ten months to four years.

### *VCT*

The investor must claim relief within four years from the end of the tax year in which the investment was made.

## Inheritance tax considerations

The IHT aspects of these schemes should also be borne in mind.

### *EIS shares*

EIS shares cannot normally be quoted (shares in AIM companies do not count as quoted for this purpose) and must be in trading companies. They should therefore normally attract IHT business property relief (BPR). Holdings of any size attract relief. A holding of less than 30% in an EIS company is therefore potentially very useful since it could attract one or more of the following:

- Income tax relief at 30%
- CGT exemption on disposal at a gain but relief on a loss
- 100% IHT relief on a gift or on death

The IHT relief for EIS shares should be contrasted with the position of any private assets which may be sold to realise the funds to invest; these are normally fully liable to IHT, so by reinvestment a considerable IHT advantage can be obtained. Normally however, the new shares must be owned for two years prior to the IHT event for BPR to be due, so life insurance cover may be advisable in the meantime.

### *VCT shares*

VCT shares, since they must be quoted, will not attract any special reliefs for IHT purposes.

## Important notes

This guide summarises various tax advantages for investment in companies. However, anyone contemplating any kind of investment should not be swayed unduly by tax considerations and should first consider, after taking any appropriate professional advice, whether the proposal makes commercial sense. The levels and bases of, and reliefs from, taxation can change and the value of a relief depends upon the individual circumstances of the investor. This guide is only a brief summary of complex tax legislation and detailed tax advice should always be taken.

You should be aware that investing in a VCT or EIS carries certain risks and you could lose a substantial proportion, or all, of your investment. The risks are highlighted in the prospectus or other investment documentation for each issue, which you should read carefully. As stated above, it is important to obtain detailed advice before taking any action.

# APPENDIX Overview of current rules

| Feature | EIS | VCT |
|---|---|---|
| Available from: | 17/3/98 (*) | 6/4/98 (*) |
| Available to: | Any individual | Any individual aged over 18 |
| Income tax relief on: | Fully paid ordinary shares newly subscribed for cash ONLY | Ordinary shares newly subscribed for cash ONLY |
| Preferential rights/redemption: | Not permitted (but note recent changes for certain preferential rights in relation to dividends) | Not permitted (but note recent changes for certain preferential rights in relation to dividends) |
| Quotation/listing: | No shares or other paper may be quoted or listed at date of investment except on AIM. A later quotation is possible, subject to certain conditions | All ordinary shares MUST be quoted on an EU regulated market) |
| Limit of income tax relief: | £500,000 of investment per tax year, increasing to £1m with effect for investments made after 6 April 2012 (#)<br><br>Minimum of £500 per company per tax year | £200,000 of investment per tax year |
| Maximum % holding per investor for income tax relief: | 30% of share and loan capital, amending to 30% of share capital only from 6 April 2012 | No limit, although the VCT cannot be a close company |
| Rate of income tax relief: | 30% (as credit in terms of tax) (20% prior to 6 April 2011) | 30% (as credit in terms of tax) for investments made after 6 April 2006 |
| Priority of reliefs: | Takes priority over all tax credit reliefs except VCT relief | Takes priority over all tax credit reliefs |
| Time limit for claim by individual: | Five years from 31 January following either the year of investment or the year in which the company had been trading for four months if later | Four years from the end of the tax year in which the investment was made |
| Minimum holding period to avoid clawback of income tax relief: | Three years from issue of shares or commencement of trade, whichever is later | Five years from issue of shares for shares issued on or after 6 April 2006 |
| Taxation of dividends: | Taxable in normal way | TAX FREE on first £200,000 of shares acquired in a year |
| Restrictions on ability to distribute profits: | None (except company law) | Minimum 85% of income must be distributed each year; no minimum or maximum for distribution of capital gains |
| Place of trade: | Must have a UK permanent establishment (prior to 6 April 2011, the trade had to be carried on wholly or mainly in UK) | Must have a UK permanent establishment (prior to 6 April 2011, the trade had to be carried on wholly or mainly in UK) |
| Restrictions on company's activities: | Must carry on a "qualifying trade" – which excludes most financial sector/leasing, property development, farming, hotels, guest houses, nursing and care homes, ship building, coal and steel production, forestry and certain others – and any other activities must be de minimis | VCT itself must derive most income from investments AND must be at least 70% invested in "qualifying" companies: those companies must themselves carry on "qualifying trades" (see EIS). Other rules apply to limit types of shares/investments |
| Loanbacks allowed? | No | No |
| Loan interest relief on loans to buy shares? | Not available | Not available |

* Replaces earlier schemes effective from 1/1/94 (EIS) and 6/4/95 (VCT) – conditions explained in earlier editions.
# It is possible to carry back EIS relief to the previous tax year, subject to the annual subscription limits.

| Feature | EIS | VCT |
|---|---|---|
| Capital gains of company: | Taxable in normal way | CGT FREE while VCT is approved |
| Capital gains on shares: | CGT FREE provided EIS income tax relief given and not withdrawn | CGT FREE even if income tax relief withdrawn, while VCT is approved subject to £200,000 p.a. limit as for dividends |
| Treatment of investor's capital losses: | LOSSES ALLOWABLE FOR CGT subject to restriction by reference to income tax relief not withdrawn. (Also possible to claim relief for losses against total income) | Losses not allowable for CGT while VCT is approved |
| Maximum capital which can be raised under scheme: | See below | See below |
| Maximum size of investee company: | Gross asset value not to exceed £7m before individual invests and £8m immediately afterwards, increasing to £15m and £16m respectively with effect from 6 April 2012 | Gross asset value not to exceed £7m when VCT invests and £8m immediately afterwards, increasing to £15m and £16m respectively with effect from 6 April 2012 |
| Maximum number of full-time employees at time of subscription: | 49, increasing to 249 with effect from 6 April 2012 | 49, increasing to 249 with effect from 6 April 2012 |
| Maximum amount of investment obtained through EIS, VCT and SEIS in 12 months prior to the issue of relevant shares: | £2m, increasing to £10m with effect from 6 April 2012 | £2m, increasing to £10m with effect from 6 April 2012 |
| Pre-arranged exits: | Prohibited | Prohibited |
| Subsidiaries: | Throughout the relevant period, the EIS company must own, directly or indirectly, more than 50% of the ordinary share capital of each subsidiary<br><br>Qualifying EIS activities must be located in the EIS company or subsidiaries that are 100% subsidiaries of direct 90% subsidiaries of the parent, or 90% subsidiaries of direct 100% subsidiaries<br><br>Any subsidiary of the EIS company which is a "property managing subsidiary" must be at least 90% owned throughout the relevant period | Throughout the relevant period, the VCT investee company must own, directly or indirectly, more than 50% of the ordinary share capital of each subsidiary<br><br>Qualifying VCT activities must be located in the VCT investee company or subsidiaries that are 100% subsidiaries of direct 90% subsidiaries of the VCT investee company, or 90% subsidiaries of direct 100% subsidiaries<br><br>Any subsidiary of the VCT investee company which is a "property managing subsidiary" must be at least 90% owned throughout the relevant period. |
| CGT deferral relief into scheme shares to defer gains: | Yes – reinvestment must be in the period from 12 months pre-disposal to three years afterwards (only newly subscribed shares) (CGT deferral relief not dependent on income tax relief) | No – from 5 April 2004 onwards |

## *Please Note*

We have taken care to ensure the accuracy of this publication, which is based on material in the public domain at the time of issue. However, the publication is written in general terms for information purposes only and in no way constitutes specific advice.

You are strongly recommended to seek specific advice before taking any action in relation to the matters referred to in this publication. No responsibility can be taken for any errors contained in the publication or for any loss arising from action taken or refrained from on the basis of this publication or its contents.

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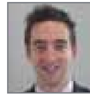

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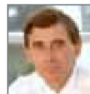

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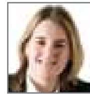

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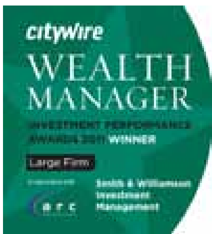


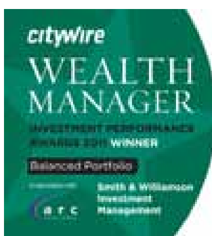

## About us

Smith & Williamson has been managing the financial affairs of private clients and their business interests. We are one of the top ten firms of accountants* in the UK and our investment management business has over £11.5bn funds under management and advice (as at 31 October 2011).

Our prime aim is to help our clients achieve their financial ambitions, both corporate and personal. Our clients are varied – private individuals, mid-large businesses, professional practices and non-profit organisations.

Our business spans ten offices in the UK and Ireland, with locations in the City of London, Belfast, Bristol, Birmingham, Dublin, Glasgow, Guildford, Salisbury, Southampton and Worcester, and an international capability in over 100 countries through membership of Nexia International (the 10th largest international accounting and consulting network) and M&A International.

In an award-winning business as diverse as ours, professionalism and teamwork are key. We recognise that clients and intermediaries take comfort from knowing that they can easily reach senior people and decision-makers in our organisation who are able to understand their needs and objectives.

Our business thrives on its people – a pool of highly talented and enthusiastic individuals who deliver a broad and innovative range of services, but without compromising on delivering a genuinely director-led service. Technical excellence underpins how we deliver our services and our teams are dedicated to offering practical financial solutions.

People may ask what sets us apart from our competitors; put simply, it's our people – ambitious, talented and enthusiastic professionals who enjoy what they do and relish the opportunity to work together and with our clients.

**According to the latest survey of the market by* Accountancy *magazine.*