London Stock Exchange

A GUIDE TO AIM UK TAX BENEFITS – NON-UK COMPANIES

AIM

BAKER TILLY

AIM is the London Stock Exchange's international market for young and growing companies. AIM provides an ideal environment for these ambitious businesses to access the capital and liquidity of the London markets – the largest and deepest pool of international capital in the world.

AIM's unique regulatory framework is based around balancing the flexibility a growing company needs.

Businesses from all over the world continue to be attracted to AIM. In March 2008, over 1,680 companies from numerous countries and sectors were on the market and a total of £56 billion had been raised since AIM's launch.

Baker Tilly is the seventh largest (by turnover) UK firm of chartered accountants and business advisers. It, and its related entities, specialises in providing an integrated range of services and solutions to the owner managed business and listed companies. We provide, through close partner involvement, our growing and established business clients with audit, accountancy, personal and corporate taxation, VAT, consultancy, corporate finance, financial services, IT advisory and business recovery. The firm has national coverage through its network of offices and is represented internationally through its independent membership of Baker Tilly International.

Baker Tilly's clients include high net-worth individuals and growing entrepreneurial companies. Baker Tilly is acknowledged as a market leader acting for AIM companies as auditors and/or reporting accountants. It has recognised specialists in the legislation relating to the tax benefits that can be applicable to AIM companies and investors.

Baker Tilly, who is represented on the AIM Advisory Group of the London Stock Exchange, has been voted AIM Accountant of the Year in the Growth Company Awards four times.

Important note

While every effort has been made to ensure accuracy, information contained in this booklet is not intended to be comprehensive and recipients should not act upon it without seeking professional advice. The summaries of the tax benefits contained in this booklet are based on legislation enacted up to and including the Finance Act 2009. Only a summary of the tax reliefs, the principal qualifying criteria and the persons to whom they might apply are set out in this booklet. It is not the intention of this booklet to provide the full terms of the relevant legislation which are often complex, and the relevance of and ability to claim particular reliefs will generally depend on an individual's personal circumstances. Investments in unquoted companies usually carry higher risks but potentially higher returns and may not be suitable for all investors. Accordingly, professional advice should be obtained before making an investment. The information contained in this booklet does not constitute investment advice and should not be used as the basis for investment decisions. Provision of the information is in no way intended, directly or indirectly, as an attempt to market or sell in any country any financial instrument.

A guide to AIM UK tax benefits — non-UK companies

This guide outlines the various UK tax reliefs available to investors in non-UK companies

In certain circumstances a quotation on AIM can provide the opportunity for UK tax paying investors in non-UK companies to take advantage of UK tax benefits. These reliefs mostly apply to unquoted companies and for this purpose, qualifying companies traded on AIM are regarded under UK tax legislation as unquoted. The reliefs may not apply where the company is listed on another Recognised Stock Exchange.

A non-UK issuing group may be able to access sources of new funds raised under the EIS or from VCTs (see below) under certain circumstances.

The tax benefits fall under the following UK provisions:

- Enterprise Investment Scheme ('EIS')
- Venture Capital Trusts ('VCTs')
- Inheritance Tax Relief ('IHT').

Enterprise Investment Scheme

The EIS allows UK taxpayers who invest up to £500,000 pa (£500,000 for each husband and wife) in qualifying unquoted trading companies (which can include those on AIM) to obtain the following tax benefits for subscriptions in new issues of ordinary shares:

- 20 per cent initial allowance on the cost of investment
- no CGT on disposal.

This is provided the investment is held for three years and has remained qualifying.

In addition, a UK taxpayer can reinvest an unlimited amount and defer CGT arising on the sale of any other asset provided the reinvestment takes place up to one year before such gain arises or three years afterwards.

However, the qualifying rules are complex:

- **qualifying AIM companies (subject to a limitation of gross assets – see next page) can benefit from the funds invested if they are employed in a business carried on wholly or mainly in the UK. For overseas issuers this would effectively mean that the proceeds of EIS (or VCT funds – see page 4) included in an issue of new shares would have to be employed in a subsidiary whose qualifying trade is carried on wholly or mainly (i.e. more than 50 per cent) in the UK and of which at least 90 per cent is held by the issuing company, either directly or through a directly held subsidiary**
- **the group as a whole would have to be qualifying in respect of its trades (see Fig 1) or have no more than 20 per cent of activities which did not qualify. A separate issue of shares for the EIS shareholders and other shareholders may be necessary**
- **the group must have less than 50 full-time equivalent employees when the shares are issued.**

Fig. 1

EIS and VCTs – Qualifying business activities

Most trades (not investment activities) qualify but some activities do not. Non-qualifying activities include the following:

- property development
- letting of property
- dealing in land, commodities, futures, shares or securities
- dealing in goods other than by normal wholesale or retail
- banking, insurance, money lending, debt factoring, hire purchase or other financial activities
- legal or accountancy services
- farming, market gardening, forestry woodlands or timber
- operating or managing property-backed establishments such as hotels, guest houses, nursing homes, residential care homes or managing property used for any of these activities
- receipt of licence fees or royalties, except where the company or qualifying subsidiary has created the greater part by value of the intellectual property exploited
- shipbuilding
- coal production
- steel production.

Qualifying Gross Assets

- For EIS purposes the maximum relevant gross assets of the company (or group of companies) raising money under the scheme is £7 million immediately before the investment and £8 million immediately afterwards.
- For VCT purposes the maximum relevant gross assets will depend on when the VCT funds to be invested were themselves raised by the VCT.
- The investment of VCT funds raised before 6 April 2006 can be made under the previous gross assets limits of £15 million immediately before the investment and £16 million immediately afterwards.
- For VCT funds raised post 5 April 2006 the gross assets limits of £7 million immediately before the investment and £8 million immediately afterwards apply.

Maximum Investment

- A maximum of £2 million can be raised under the EIS, Corporate Venturing Scheme and VCTs in respect of funds raised by a VCT post 5 April 2007, taken together within the 12 months ending on the date of the relevant investment.
- The £2 million annual limit on funds raised does not apply to the investment of VCT funds raised by the VCT prior to 6 April 2007.

Maximum Number of Employees Test

- In respect of the EIS and the investment of VCT funds raised by the VCT after 5 April 2007 the group must have less than 50 full-time employees when the investment is made.
- This employee test does not apply to the investment of funds raised by a VCT prior to 6 April 2007.

Venture Capital Trusts (VCTs)

A VCT is a fully listed company, similar to a quoted investment trust, which is approved by HM Revenue & Customs and whose investments must, after three years, be at least 70 per cent in qualifying unquoted trading companies. In this way, investors in VCTs can gain access indirectly to a professionally managed portfolio of unquoted investments – which, for this purpose, can include shares in qualifying AIM companies.

Investments in VCTs (whether purchased in the market or subscribed for) of up to £200,000 in a tax year, entitle individual investors to generous tax reliefs, similar to those under the EIS, currently including an effective allowance of 30 per cent of the cost of the investment for a higher rate taxpayer for subscriptions in new shares issued by a VCT.

VCTs can be an important source of funds to qualifying AIM companies. Non-UK issuers may qualify (subject to a limitation on their gross assets – see over) for investment by such funds in a similar way as the EIS – i.e. by raising VCT funds and employing them in a UK qualifying subsidiary of which at least 90 per cent is held by the issuing company, either directly or through a directly held subsidiary.

Inheritance tax (IHT) Business Property Relief

Investments in qualifying AIM trading companies can attract 100 per cent relief from IHT provided that the investment is held for at least two years before a chargeable transfer for IHT purposes. For this purpose a trading company is one whose business consists wholly or mainly of trading activities. However, the business must not be wholly or mainly that of:

- dealing in securities, stocks and shares
- dealing in land or buildings
- making or holding investments (unless that of a market maker or discount house).

The residence or place of incorporation of the AIM company is not relevant for this relief to apply.

Non UK-domiciled individuals

The place of incorporation and location of the share register may be of importance to certain investors. Investor individuals who are not regarded as domiciled in the UK enjoy certain benefits in respect of investments which are not regarded as situated in the UK for tax purposes. The Finance Act 2008 contains a raft of measures affecting the UK taxation of non-domiciled individuals. The rules are complex and advice should therefore be sought with regard to the individual's tax status.

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