

The background image shows the interior of a modern airport terminal. Large glass windows on the right side let in warm, golden light, suggesting sunset or sunrise. The silhouettes of two people walking with rolling suitcases are visible in the center. The ceiling has a complex, geometric structure. A teal-colored diagonal graphic element is overlaid on the left side of the image.

Downing Business Investment Relief

—
Memorandum

Downing



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Supplemental information memorandum

Supplemental information memorandum for:

- (i) UK resident non domiciled individuals ("Non Doms"); and
- (ii) UK domiciled and resident but not ordinarily resident individuals ("NORs")

who have claimed the remittance basis of taxation.

This supplemental information memorandum and the attached application form (together, the "Supplement") are intended as supplemental documents to each Memorandum and related investor agreement (the "Investor Agreement") for the Downing EIS services that are currently open to applications (each a "Service") and should be read in conjunction with the applicable Memorandum and the relevant Investor Agreement. This Supplement is authorised only for distribution with the applicable Memorandum. Words and expressions defined in the applicable Memorandum shall have the same meanings in this Supplement.

This Supplement, taken in conjunction with the relevant Memorandum, constitutes a financial promotion pursuant to section 21 of the FSMA and is issued by Downing LLP ("Downing" or the "Manager"). Downing is authorised and regulated in the UK by the Financial Conduct Authority ("FCA"). Recipients should seek specific professional advice regarding the financial, legal and risk implications of participating in any Service. Nothing in the applicable Memorandum or this Supplement constitutes investment, tax, legal or other advice by Downing and your attention is drawn to the section headed "Risk Factors" of the applicable Memorandum and within this Supplement.

This Supplement supersedes and amends the applicable Memorandum and the relevant Investor Agreement to the extent there is any inconsistency.

Introduction

Business Investment Relief (“BIR”) was introduced by the UK Government with effect from 6 April 2012 to encourage funds held overseas by individuals who have claimed the remittance basis to be invested in UK trading companies. This service has been designed by Downing to combine BIR and EIS tax reliefs.

Non Doms and NORs (“Non Dom/ORs”), who have claimed the remittance basis of taxation, should be able to:

- A. use foreign funds that are subject to the remittance basis of taxation to invest in EIS Companies without triggering a taxable remittance; and
- B. obtain EIS tax benefits in order to reduce or defer tax liabilities which would otherwise arise on their UK income and gains.

The minimum subscription under Downing’s BIR service is £100,000.

The Custodian will maintain an offshore client account to avoid remitting funds to the UK until just before funds are required to be invested in accordance with the relevant Downing EIS Memorandum.

Companies that are ‘qualifying companies’ for EIS purposes should also likely be ‘eligible trading companies’ for the purposes of BIR. Consequently, Non Dom/ORs who have claimed the remittance basis of taxation and who would otherwise not wish to bring foreign income (and gains, in the case of Non Doms) into the UK (on the basis that it would trigger a taxable remittance) should now be able to do so in order to invest in Qualifying Investments without incurring a UK tax liability.

Immediately prior to investment, the Manager will instruct the Custodian to transfer funds held on behalf of Non-Dom/ORs from the Custodian’s offshore client money account to the Custodian’s onshore client money account. From this account, investments can be made alongside other investors in the applicable EIS Service in accordance with the relevant Memorandum. Non Dom/ORs should read the relevant Memorandum and complete the relevant application form for the Service through which they wish to invest, in addition to completing the application form at the end of this document.

If such Non Dom/ORs have sufficient UK income tax liability and/or UK capital gains they may also be eligible to obtain EIS income tax and/or deferral relief in respect of investments made in Qualifying Investments.

On realisation of the Qualifying Investments, disposal proceeds equal to the BIR Remittance must either be taken offshore or reinvested in further onshore Qualifying Investments in order to prevent a taxable remittance arising, but any profits or gains arising from the EIS investments may remain onshore, tax-free.

This introduction should be read in conjunction with the full text of this Supplement.

Risk factors

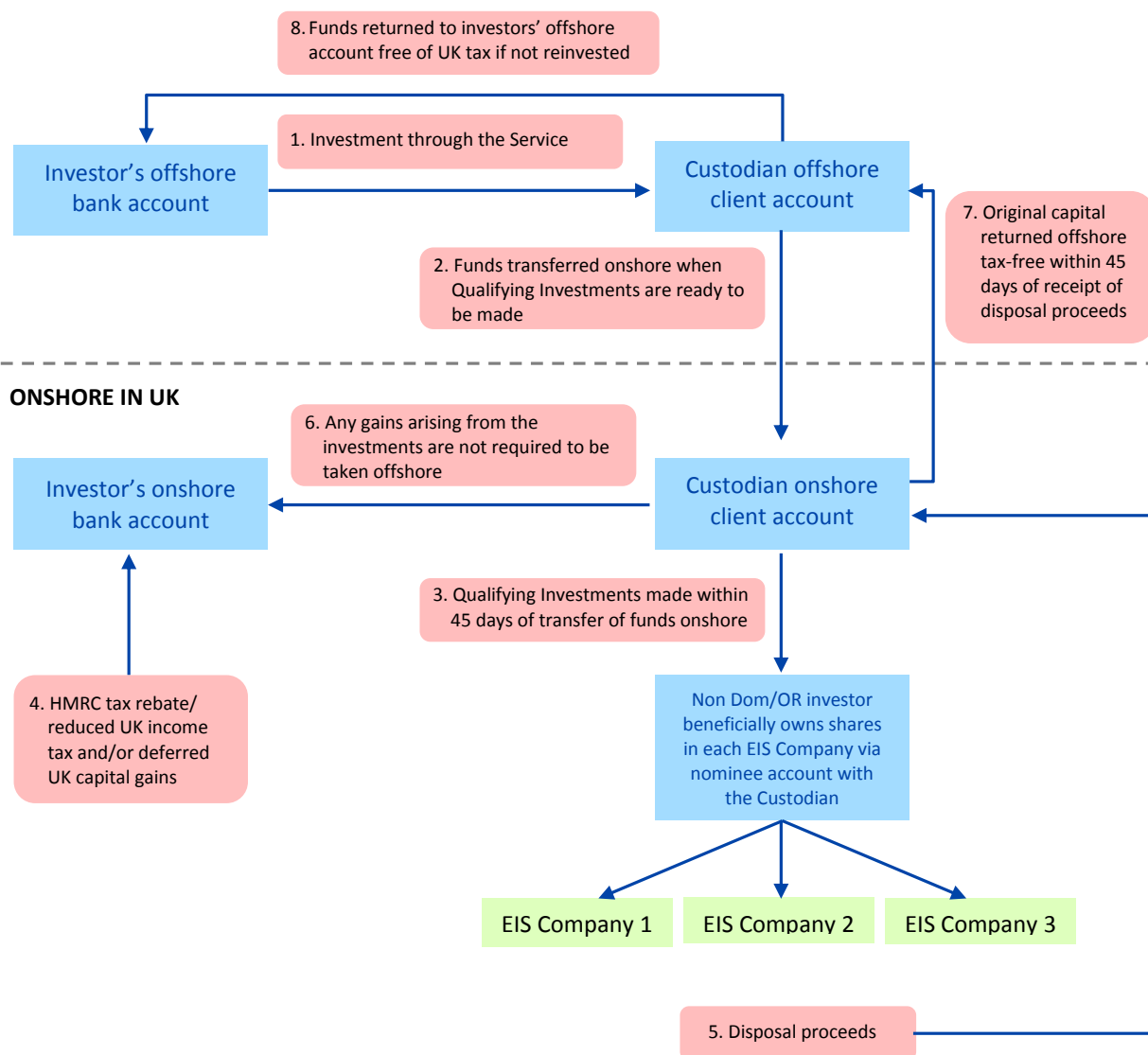
These risk factors should be read in conjunction with the risk factors contained in the relevant Memorandum for the required Service.

- The tax law relating to the remittance basis of taxation is complex and investors should seek independent tax advice to ensure that all tax consequences of making an investment have been investigated and understood.
- BIR has only recently been introduced and so has not been operational for any meaningful period of time. Until BIR claims have been made by taxpayers and processed by HMRC, the Manager will have limited knowledge of the approach HMRC will take to the applicability of BIR in any given situation.
- Provisional advance assurance that each company in which the Service invests is a Qualifying Investment for BIR purposes will not be sought from HMRC, because the Manager believes that advance assurance under the EIS regime should be sufficient to confirm the company's status for BIR purposes.
- If an EIS Company ceases to carry on, or make preparations to carry on, a commercial trade, its BIR qualifying status may be adversely affected. While the Manager will require that various safeguards are provided against this risk, Downing cannot guarantee that all EIS Companies will retain their EIS or BIR qualifying status.
- In the event that an investor's interest in a Qualifying Investment is realised through a liquidation of that company, the investment is likely to cease to be a Qualifying Investment at the date of appointment of the liquidator unless the liquidation takes place for genuine commercial reasons. If the investment ceases to be a Qualifying Investment at the date of appointment of the liquidator, the investor must receive his/her liquidation distributions within 90 days of that date, and either reinvest the funds or take them offshore within the 45 Day Period in order to prevent a remittance tax liability arising. Whilst the Manager will make every effort to ensure that liquidation distributions are made within the 90-day time limit, the Manager cannot guarantee that such distributions will be made within this time-frame.
- Investors' funds will be held in a single bank account in the name of the Custodian. The Manager's tax advisers consider that investors' funds placed in such a nominee account will retain their income/gains nature and the proportions of each will not be altered by other funds held in that account. However, there is no certainty that HMRC will take the same view.
- Non Doms who use offshore funds to invest in UK assets such as the Qualifying Investments discussed in this Supplement may, as a result, become subject to UK Inheritance Tax ("IHT") in respect of those assets if those assets are in excess of the nil rate band for inheritance tax. Although it is expected that the Qualifying Investments will be "relevant business property" (as defined in IHTA 1984) and will therefore qualify for business property relief, such investments must generally be held for a period of two years before the relief will be available.
- BIR applies to Non Dom/ORs who have claimed the remittance basis of taxation. Where investors claim the remittance basis of taxation in respect of the year that the income or gains used to make the investment arose, there is a risk that they will lose their entitlement to claim BIR if they have ceased to be entitled to do so there is a risk that they will lose their entitlement to claim BIR. This is a complex area of taxation and investors should take their own advice before investing.
- Claiming BIR and EIS relief may negatively impact Non Dom/ORs' tax liability in countries outside the UK and therefore international tax advice should be taken.
- Any tax treatment referred to in this Supplement will depend on an individual's personal circumstances and may be subject to change.
- Past performance is not a guide to future performance.

Fund operation

The following diagram shows the steps and the related cashflows involved in investing through Downing EIS Services when combined with Business Investment Relief.

OFFSHORE



For details of charges, please refer to the relevant Memorandum. There are no additional charges to Investors in relation to the operation of the offshore bank account or Downing's BIR service.

Claiming BIR

The Manager will provide Non Dom/OR investors who wish to claim BIR with the relevant information required to complete their self-assessment tax returns within 3 months of each Qualifying Investment being made.

BIR must be claimed on the investor's self-assessment tax return no later than the first anniversary of 31 January following the tax year in which the funds are transferred onshore.

Offshore client account

Prior to investment in Qualifying Investments

Prior to investment in EIS Companies, the Non Dom/ORs' funds will be held by the Custodian in cash in the Custodian's non-interest bearing offshore client money account.

The Manager will only authorise and instruct the Custodian to transfer the Non Dom/OR funds to the Custodian's onshore client money account (to be held in trust for the investor) when the Qualifying Investments are ready to be made and when the shares in the Qualifying Investments are to be issued to the investor.

In the unlikely event that Non Dom/OR funds are transferred onshore but the Qualifying Investments are not made for any reason, all such funds will be transferred back to the Custodian's offshore client account within the 45 Day Period.

On realisation of Qualifying Investments

On realisation of the Qualifying Investments and receipt of the disposal proceeds, the Manager will, except to the extent an investor has instructed otherwise on the Non Dom/OR Application Form in this supplement, instruct the Custodian to transfer the net disposal proceeds back to the Custodian's offshore client account within the 45 Day Period. Interest will not be accrued on these funds prior to the distribution of the proceeds.

Cancellation and other rights

The Non Dom/OR may exercise a right to cancel his/her subscription to each Service (or any of them) and terminate the relevant Investor Agreement by notifying the Manager in writing within 14 calendar days of the Manager receiving the investor's Non Dom/OR Application Form. Any correspondence should be sent to the Manager's registered office as set out in the relevant/applicable Memorandum.

On exercise of the investor's right to cancel, the Manager will instruct the Custodian to hold in its offshore client account any uninvested monies paid to the relevant Service by the investor, less any charges the Manager has already incurred for any services undertaken in accordance with the relevant Investor Agreement, and less any commission, advisory fees or other remuneration paid to advisers and introducers.

The Custodian will be obliged to hold investment monies in its offshore client account until satisfactory completion of checks under the Money Laundering Regulations 2007.

The right to cancel under the FCA rules does not give the investor the right to cancel or terminate or reverse any particular investment transaction executed for the account of the investor before cancellation takes effect.

The Manager reserves the right to treat as valid and binding any application not complying fully with the terms and conditions set out in the applicable Memorandum and this Supplement. In particular, but without limitation, the Manager may accept applications made otherwise than by completion of a Non Dom/OR Application Form where the investor has agreed in some other manner acceptable to the Manager to apply in accordance with the applicable Memorandum, this Supplement and the relevant Investor Agreement.

The Custodian and Nominee

By completing the Non Dom/OR Application Form in this supplement, prospective investors will, inter alia, be deemed to have irrevocably agreed to the Manager having appointed the Custodian on their behalf, to exercise the powers and to carry out duties on their behalf in accordance with the provisions of the Custodian Agreement, certain provisions of which are summarised below. Investors should note that the following does not summarise all the provisions of the Custodian Agreement.

A. Function

The function of the Custodian will be to perform (or procure the performance of) Custodian, Nominee and associated administrative services, which are conferred upon it by the terms of the Custodian Agreement.

B. Custodian's obligations and powers

The Custodian will:

- hold funds arising from investor subscriptions in cash in one or more offshore non-interest bearing client money accounts or sub-accounts or other account arrangements as approved by the Manager. All client money will be held offshore in an appropriately regulated banking institution, initially expected to be RBS International, and onshore in an FCA approved UK bank, initially expected to be The Royal Bank of Scotland, or another institution with equivalent standing and credit rating, pending investment in ordinary shares in Qualifying Investments ("Qualifying Shares");
- transfer funds onshore and deploy funds on the instructions of the Manager acting in accordance with the Investor Agreement, appoint the Nominee to acquire qualifying shares and hold the corresponding shares and share certificates in its name, and act on the instructions of the Manager to realise investments for investors; and
- be authorised to:
 - buy, sell, retain, convert, exchange or otherwise deal in the Qualifying Shares upon the instructions of the Manager; and
 - exercise voting and other shareholder rights in relation to the Qualifying Shares upon the instructions of the Manager in accordance with the Investor Agreement.

C. Liability

The Custodian will act in good faith and with reasonable care and diligence in the performance of its functions. The Custodian will not be liable to an investor in the event of any loss in value of funds invested or any insolvency of any bank with which funds are deposited in accordance with the Custodian Agreement, nor in the event of any restriction on the Custodian's ability to withdraw funds from such bank for reasons reasonably beyond the control of the Custodian.

D. Termination

The Custodian Agreement may be terminated: (i) by either party upon 180 days written notice; or (ii) if either the Custodian or the Manager fails to remedy a material breach of the Custodian Agreement within 30 days of notice of same. Where the Custodian is to be replaced, the Custodian will co-operate with the Manager and any replacement custodian to ensure an effective transfer of responsibilities.

Intermediaries

Applications will only be accepted if they are submitted through an FCA authorised intermediary whose details are completed in section 9 of the Application Form.

Following the introduction of the Retail Distribution Review (effective from 31 December 2012), intermediaries must not solicit or accept commissions or certain other payments in connection with advice given to retail clients in respect of retail investments from product providers. However, retail clients may pay an adviser charge in connection with such advice and a retail investment product provider, such as the Manager, may facilitate this payment of adviser charges. Any agreed adviser charges should be completed in section 2 of the Application Form.

Taxation

The remittance basis of taxation

Non Dom/ORs are entitled to claim the remittance basis of taxation in the UK in respect of any particular year.

Under the remittance basis of taxation, Non Doms will only be subject to UK tax on income and gains that arise outside the UK in the particular year when the proceeds are "remitted" to the UK. The remittance basis applies similarly to NORs, but in respect of their foreign income only and not gains (which are taxed on an arising basis).

In order to claim the remittance basis for a particular year, the individual may be required to pay a charge (known as the remittance basis charge), which may be either £30,000 or £50,000, depending on the individual's particular circumstances. The individual will also lose his/her personal allowance and capital gains tax annual exemption for that year.

Business Investment Relief

Business Investment Relief was introduced by the Finance Act 2012 with effect from 6 April 2012. This relief allows Non Dom/ORs who have claimed the remittance basis to remit to the UK foreign income and/or gains relating to a year for which the remittance basis was claimed in order to make Qualifying Investments, without triggering a tax liability on the remittance. Instead, the foreign income and/or gains are treated as having not been remitted to the UK for the duration of the period that the Qualifying Investments are held.

A "Qualifying Investment" is made if shares are issued in "target companies", the definition of which includes "eligible trading companies". An "eligible trading company" is an unquoted company which is either carrying on a commercial trade, or preparing to commence such a trade within two years. Carrying on a commercial trade must be all, or substantially all, that the company does, or expects to do.

The EIS has an analogous requirement, i.e. EIS Companies must be carrying on a commercial trade, or preparing to do so, within two years of the EIS shares being issued. Therefore, companies that are qualifying companies for EIS purposes should in almost all cases also be "eligible trading companies" for the purposes of BIR.

Realisation of Qualifying Investments

Under BIR the relevant foreign income and/or gains are treated as not remitted to the UK for the duration of the period that the Qualifying Investments are held and for up to 45 days before and after investment.

If the investments lose their qualifying status at any point, the investor must dispose of them within 90 days of the date upon which they became aware of the loss of status. Non Dom/ORs must then within the 45 Day Period either reinvest in other Qualifying Investments or transfer the money back offshore, in order to prevent a taxable remittance arising.

If Non Dom/ORs simply dispose of their Qualifying Investments, they must either transfer the money offshore or reinvest in further Qualifying Investments, within the 45 Day Period, in order to prevent a taxable remittance from arising.

In all cases, the amount of money that must be taken offshore or reinvested is capped at the amount of the BIR Remittance. Any profits or gains arising from the investment are not required to be transferred offshore. Any dividends received would be subject to UK Income tax.

Mixed funds

A "mixed fund" is an overseas fund which contains:

- more than one type of income, gains or capital; and/or
- income, gains or capital from more than one tax year.

Qualifying Investments made from mixed funds are treated as offshore transfers, which means that the Qualifying Investment will be deemed to contain a proportional amount of the types of income, gains and capital that were in the original mixed fund immediately before the transfer was made.

Similarly, on a realisation of the Qualifying Investment, the disposal proceeds up to an amount equal to the BIR Remittance (or the entire disposal proceeds if these are less than the BIR Remittance amount) will contain a proportional amount of the types of income, gains and capital that were in the original mixed fund. Any disposal proceeds in excess of the BIR Remittance amount can remain onshore without triggering a taxable remittance and, to the extent EIS disposal relief applies, should be exempt from UK tax.

Definitions

To be read in conjunction with the definitions in the relevant Memorandum

“45 Day Period”	the period of 45 days: (i) from the date the Non Dom/OR’s foreign income and/or gains are brought to the UK and during which Qualifying Investments must be made with such funds for BIR to apply; or (ii) on realisation of investments, from the date of receipt by the investor of the disposal proceeds or liquidation distributions, and during which the BIR Remittance must either be reinvested or taken offshore to prevent a remittance tax liability arising
“BIR” or “Business Investment Relief”	business investment relief as set out in sections 809VA to 809VO of the Income Tax Act 2007 and available in certain prescribed circumstances to Non Dom/ORs who have claimed the remittance basis of taxation introduced by the Finance Act 2012
“BIR Remittance”	amount of foreign income and/or gains ‘remitted’ and invested by Non Dom/ORs and on which BIR is to be claimed
“Custodian”	such person or persons as the Manager may appoint to provide, and with which the Manager has agreed terms for, safe custody, custodial and nominee services in respect of a Service and at the date of this Supplement is Reyker Securities plc
“EIS Companies”	companies which constitute Qualifying Investments
“Manager” or “Downing”	Downing LLP
“Investor Agreement”	investor agreement (as supplemented and amended by this Supplement) to be entered into between each investor and the Manager, containing certain terms in respect of that investor’s investment in each Service in which the investor wishes to invest (as specified in that investor’s Non Dom/OR Application Form)
“Memorandum”	information memorandum of each Service, in which an investor wishes to invest (as specified in that investor’s Non Dom/OR Application Form) as amended, supplemented or replaced from time to time
“Nominee”	Reyker Nominees Limited or such nominee as the Custodian may appoint to act as the investor’s nominee from time to time
“Non Dom”	individual who is resident, but not domiciled, in the UK
“Non Dom/OR Application Form”	application form set out at the end of this document to be completed by the Non Dom/ORs
“Non Dom/ORs”	Non Doms and/or NORs
“NOR”	individual who is resident and domiciled in the UK, but not ordinarily resident in the UK
“Qualifying Investment(s)”	qualifying investment(s) for the purposes of BIR and EIS as further detailed at page 7 of this Supplement
“Service”	Downing EIS Service(s) currently open, as applicable
“Supplement”	this supplement, which amends the applicable Memorandum and the relevant Investor Agreement

Amendments to Memorandum and Investor Agreement

This Supplement is addressed solely to Non Dom/ORs who have claimed the remittance basis of taxation. It supplements and, where expressly stated, supersedes and amends the applicable Memorandum and the relevant Investor Agreement.

Memorandum

Each Memorandum, as supplemented by this Supplement, is drafted on the basis that:

- All investors (including Non Dom/ORs) have a UK income tax liability
- All investors (including NORs but Non Doms only to the extent they invest in UK assets) are liable to IHT and that IHT business property relief may therefore be available once the Qualifying Shares have been held for a period of two years.

It is important for Non Dom/ORs to note that the provisions in each Memorandum that address the taxation of the investor are drafted on the assumption that the investor is a domiciled, resident and ordinarily resident UK taxpayer and only addresses UK taxation. Non Dom/ORs should also consider the summary of taxation contained within this Supplement.

Investor Agreement

The Investor Agreement (as supplemented by this Supplement) to be entered into between the Manager and any investor who is a Non Dom or NOR is amended as follows:

This investor agreement (the “Agreement”) sets out the terms upon which the Manager agrees to manage the Service for Non Dom/ORs (the “investor”).

The Non Dom/OR Application Form forms part of this Agreement. Upon acceptance of a signed Non Dom/OR Application Form, this Agreement, the Non Dom/OR Application Form and those parts of the Memorandum and the Supplement referred to herein, will constitute the whole of the binding agreement between you and the Manager in respect of the Service.

Definitions, construction and interpretation

Deletion and replacement of the definition of 'Application Form' with the following:

- “Non Dom/OR Application Form” means an application form provided by the Manager to invest through the Service, to be completed by the investor and (where applicable) the investor’s adviser or introducer.

Deletion and replacement of the definition of “Tax Advantages” with the following:

- “Tax Advantages” means the various UK tax benefits, including EIS relief and BIR, arising from subscriptions for shares in EIS Companies; and

Insertion of the following definitions:

- “BIR” means business investment relief as set out in sections 809VA to 809VO of the ITA 2007 and available in certain prescribed circumstances to Non Dom/ORs who have claimed the remittance basis of taxation, which were introduced by the Finance Act 2012;
- “BIR Remittance” means the amount of foreign income and/or gains 'remitted' and invested by any Non Dom/OR and on which BIR is to be claimed;
- “Non Dom” means an individual who is resident, but not domiciled, in the UK;
- “Non Dom/OR” means a Non Dom and/or a NOR;
- “NOR” means an individual who is resident and domiciled in the UK, but not ordinarily resident in the UK;

- “Qualifying Investment” has the meaning given to it in the Supplement, being a qualifying investment for the purposes of EIS and BIR;
- “Supplement” means the supplement to the Memorandum in respect of Non Dom/ORs issued by the Manager in connection with the Service, as amended, supplemented or replaced from time to time;
- “45 Day Period” means, as applicable, the period of 45 days:
 - (a) from the date the Non Dom/OR’s foreign income and/or gains are brought to the UK and during which Qualifying Investments must be made with such funds for BIR to apply; or
 - (b) on realisation of Investments, from the date of receipt by the Investor of the disposal proceeds or liquidation distributions, and during which the BIR Remittance must either be reinvested or taken offshore to prevent a remittance tax liability arising.

Subscriptions

Insertion of the following new Clause 3.4:

“3.4 Pending their application to an Investment(s), Subscriptions received will first be held on trust and deposited in a non-interest-bearing offshore client money account with the Custodian. When the Subscriptions are to be applied to an Investment(s) they will be transferred to the Custodian’s onshore account prior to investment within the 45 Day Period. Following the realisation of Investments prior to the distribution of proceeds within the 45 Day Period, Investors’ funds will be held in the Custodian’s onshore account. Thereafter, the Investors’ funds will be transferred from the Custodian’s onshore account to the offshore account within the 45 Day Period. All client money held offshore will be held in an appropriately regulated banking institution, typically RBS International, and onshore in an FCA-approved UK bank, typically the Royal Bank of Scotland or another institution with equivalent standing and credit rating”.

Liability

Insertion of new Clauses 13.8 and 13.9 as follows:

“13.8 The Investor agrees that neither the Manager nor the Custodian shall have any liability to the Investor for any direct or indirect loss, damage, costs, charges, expenses or other claims of whatsoever nature arising under, or in connection with, things done or omitted to be done by it or them pursuant to this Agreement, including (but not limited to) loss or damage incurred as result of (a) HMRC not granting EIS Relief or withdrawing EIS Relief previously claimed in relation to EIS Companies, (b) HMRC not granting BIR or withdrawing BIR previously claimed, (c) changes in legislation since the date of this Agreement, and (d) third party claims, provided that nothing in this Agreement will operate to exclude or limit any liability of the Manager or the Custodian (i) in respect of fraud on its or their part, or (ii) in respect of death or personal injury arising from its or their negligence, or (iii) which otherwise cannot lawfully be omitted or excluded (including any duty or liability owed to the Investor under the FCA Rules), or (iv) which is finally and judicially determined to have resulted from its or their wilful default or negligence.

13.9 The Non Dom/OR:
has considered the suitability of remitting foreign income and/or gains to the UK to make Qualifying Investments for BIR and has read the risk warnings set out in the Supplement, including but not limited to:

- (i) BIR has been recently introduced and so has not been operational for any meaningful period of time so until BIR claims have been made by taxpayers and processed by HMRC, the Manager has limited knowledge of the approach HMRC will take to the applicability of BIR in any given situation;
- (ii) Provisional approval will not be sought from HMRC that each company in which the Fund invests is a Qualifying Investment for BIR purposes, as the Manager believes that approval under the EIS regime will be sufficient to confirm the company’s status for BIR purposes; and
- (iii) BIR applies to Non Dom/ORs who claim the remittance basis of taxation and there is a risk that Investors will lose their entitlement to claim BIR if they cease to be entitled to claim the remittance basis of taxation.

Additional references to BIR

Insertion of the following:

- “or BIR” after “EIS Relief” in Clause 5.3
- “or BIR” after “EIS” and before “Investors” in Clause 6.2”
- “or BIR” after “EIS Relief” in Clause 10.1(a)

Entire agreement

Replacing Clause 22 by the following:

- This Agreement, together with the Application Form and those sections of the Memorandum and the Supplement referred to herein, comprises the entire agreement between the Manager and the Investor relating to the provision of the Services.

This Supplement is dated 14 June 2013



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