

The Seed Capital Scheme: Tax Refunds for New Enterprises

Status of this Document

This document is not a legal interpretation of any of the legislation¹ on which this scheme is based. Nor is it intended as a comprehensive guide to the scheme. It is a general information guide to the Seed Capital Scheme (SCS), aimed primarily at those in PAYE-type employment wishing to set up and take employment in their own (qualifying) business and in doing so, avail of this tax relief incentive scheme.

Revised November 2011 (to reflect Finance Act 2011 changes)

¹Legislative basis for both the Seed Capital Scheme (SCS), and its associated scheme, the Employment and Investment Incentive (EII): - Part 16, Sections 488 to 507 of the Taxes Consolidation Act 1997, as amended.

1.Introduction

Throughout this leaflet several terms are used which are defined in legislation. Revenue have produced a separate leaflet containing the statutory definition of many of these terms or phrases. You are advised to read this leaflet in conjunction with the definitions provided and where necessary consult Part 16 of Taxes Consolidation Act 1997 (as amended) for further definitions.

The Seed Capital Scheme (SCS), in conjunction with its associated scheme, the Employment and Investment Incentive (EII), are tax relief incentive schemes. In the absence of an extension being introduced both schemes will expire on 31 December 2013.

The EII provides tax relief for investment in certain corporate trades. The SCS provides for a refund of tax already paid by a specified individual, when that individual makes a relevant investment in a qualifying company and-

- The activities carried on by the qualifying company constitute a qualifying new venture,
- The money raised is or will be used to carry on relevant trading activities, OR where the company has not commenced to carry on relevant trading activities on research and development activities,
- The shares must continue to be held for a period of 3 years,
- The use of the money will directly contribute to the creation or maintenance of employment, and
- Throughout the relevant period that individual possess at least 15% of the issued ordinary share capital of the company in which the individual makes the relevant investment.
- The individual takes up a relevant employment with the company-
 1. within the year of assessment in which the investment is made, or
 2. if later,
 - a. within 6 months from the date a single investment was made, or
 - b. where more than 1 investment was made, within 6 months from the date of the last such investment.

Cumulation of State Aid

With effect from 1st January 2007, a company that raises capital under the SCS (and/or under the EII) will be subject to a reduction in other State-aids, which they apply for subsequent to raising funds under the SCS/EII (with the exception of schemes approved under the R&D and Innovation State-aid framework).

The attention of owners of small businesses or, of people intending to start or expand a business by raising EII/SCS investments is drawn, in particular, to the fact that under EU Cumulation of State-aid rules, full details of a company that has been the beneficiary of a State-aid in the form of EII/SCS -

- Must be notified to the European Commission;
- Will be published on the Revenue website and on the European Commission's website;
and
- May be made available to other State agencies with responsibility for the administration of other State-aided schemes.

Finally, any queries regarding the rules underpinning the cumulation of State-aid should be addressed to the State agency responsible for administration of the State-aid in question.

2. Summary of the Seed Capital Scheme (SCS)

If you are an employee, an unemployed person or were made redundant recently and are interested in starting your own business you may be entitled to avail of the tax refund available under the Seed Capital Scheme.

An employee who leaves employment and invests by means of shares in a qualifying new venture, may claim a refund of income tax paid in previous years. An unemployed person may also avail of this facility.

3. The Refund

- Relief from income tax may be claimed in respect of the investment, subject to a maximum investment of €100,000 in any year of assessment.
- Relief already granted may be withdrawn if the specified individual fails to take up a relevant employment -
 1. within the year of assessment in which the investment is made, or
 2. if later,
 - a. within 6 months from the date a single investment was made, or
 - b. where more than 1 investment was made, within 6 months from the date of the last such investment.
- You can select the tax years for which you may claim refunds from any or all of the six years² prior to the year of investment.
- The SCS is a relief from income tax, not a tax credit. Therefore relief in respect of any investment must be claimed up to the extent of your total income in each of the selected years (subject to an overall maximum investment of €100,000 in any one tax year). There is no facility available whereby the investment can be spread over a number of years so as to utilise personal tax credits in each year.
- There is no facility to allow a spouse transfer any unused relief to the other spouse.
- For each of the selected years, the refund is limited to the income tax paid by the investor.
- The refund may be claimed:
 1. immediately the company starts to carry on relevant trading activities, or
 2. if it has not started to carry on relevant trading activities, once it has expended not less than 30% of the amount of the investment on research

² Note any limitation imposed by section 865(4) TCA 1997 shall not prevent a claim under this provision.

and development activities which are connected with and undertaken with a view to carrying out relevant trading activities.

- If you have already received BES or EII relief for any of the six years selected, the amount of the relief available to you in that year is the difference between €100,000 and the amount of the original BES/EII investment.
- You may obtain a refund in this manner for two investments in the company made within a three-year period. Both investments, however, must be made in the same company.

4. What Conditions Apply?

The Investor:

- The scheme is designed for those who are or were in employment which was subject to PAYE. To ensure that this intention is achieved the sources of your income over the four tax years immediately before the year in which you invest in the company are examined. In the tax year immediately before the year in which you invest, your income may come from any source (that is, it may be from self-employment, rental, investment, PAYE or other). *In the other three tax years, your non PAYE income should not exceed the lower of €50,000 or your total PAYE type income.* For example if your investment is made in 2011, this condition will apply to 2007, 2008 and 2009 only.
- You must enter into a relevant employment for at least one year with the company as an employee or a director starting either within the tax year in which the investment is made or if later, within 6 months of the date on which the relevant investment is made.
- Your investment in the company may be made in two stages. The second investment must be made within two years following the tax year in which your first investment is made. For example if the first investment was made in 2009 the second investment must be made before the end of 2011.
- It should be noted that where a second investment is planned, the current scheme is due to expire on 31 December 2013.
- You must subscribe for eligible shares in the company and retain those shares for 3 years.
- You must acquire at least 15% of the issued share capital of the company and you must maintain the level of your shareholding at this percentage for at least one year, even if the share capital of the company should expand. This condition will apply in the case of both a first and a second investment.

The Company:

The company must be a qualifying new venture. Other than in the case of Tourist Traffic Undertakings, as set out below, there is no requirement for a company to have prior certification by any agency to confirm it is a qualifying new venture. The onus is on the applicant to ensure this condition is met.

In addition the company must -

1. be incorporated in the State or in an EEA State other than the State.
2. throughout the relevant period of 3 years be an unquoted company which is resident:
 - in the State, or
 - in another EEA State and carries on business in the State through a branch or agency.
3. if located in an assisted area, be a micro or small enterprise, or a medium-sized enterprise. If located in a non-assisted area, then it must be a micro or small enterprise, or a medium-sized enterprise in seed or start-up phase only.
4. carry on relevant trading activities from a fixed place of business in the State.
5. is engaged in a qualifying trade or whose business consists of holding shares or securities in one or more qualifying subsidiaries.
6. must not, in the period commencing 2 years before and 3 years after the date the shares are issued, have any special trading arrangements with your former employer company, or a company which controls or is under the control of that former employer company. Normal business transactions are, however, acceptable, provided these are conducted on an arms length basis.
7. must not, in the period commencing 2 years before and ending 3 years after the date the shares are issued, carry on a trade which is similar to another trade in respect of which you have or have had a controlling interest.

Green Energy Activities

Where the relevant trading activities of a company includes green energy activities it must expend all the money subscribed on such activities within a period of 1 month before the end of the 3 year holding period.

Research and Development Activities

In the case of a company which had not commenced to trade when the subscriptions for shares were made, that company must -

- within a period of 1 month before the end of the 3 year holding period have expended all the money subscribed, on research and development activities, and disposed of a specified intangible asset (within the meaning of section 291A TCA 1997) which is connected with, and arises directly from those research and development activities to another person for the purposes of a trade carried on by that person, OR
- commenced relevant trading activities within 2 years from the date the investments were raised, and have, within the 3 year holding period, expended all the money subscribed on relevant trading activities or research and development activities. See paragraph (7) for conditions which apply before making a claim.

Approval from other State Agencies

A company carrying on Tourist Traffic Undertakings must have prior approval from Failte Ireland, BEFORE making any application to the Revenue Commissioners. Please contact the Investment and Product Development Division of Failte Ireland at 01 8847 257 or 01 8847 258, or via e-mail at taxschemes@failteireland.ie with any queries.

The Funds Raised

The company must use the amounts invested:

1. For the benefit of a qualifying new venture.
2. In the carrying out of relevant trading activities, or in the case of a company that has not commenced to carry on relevant trading activities, on research and development activities.

In addition the use of the funds must contribute directly to the creation or maintenance of employment in the company.

5. Conditions To Prevent Abuse

1. You must not within the 12 months before your first investment in the company, have held, or have been entitled to acquire (directly or indirectly) more than 15% of -
 - the share capital of any other company,
 - the loan capital and share capital of any other company, or
 - the voting power in any other company.

However, this prohibition is waived provided that:

- the annual turnover of the other company, in each of that company's three accounting periods prior to the company's accounting period in which the investment is made in the seed capital company, did not exceed €127,000, and
- the other company existed wholly or mainly for the carrying on of relevant trading activities.

This prohibition is also waived where you own more than 15% of a shelf or dormant company.

2. The subscription for the shares must be for bona fide commercial purposes. Relief is not due if the main purpose of the subscription is for tax avoidance.

6. The Seed Capital Scheme and the EII

The Seed Capital Scheme forms part of the EII. If you think that you may qualify for the Seed Capital Scheme it is also necessary for you and your company to comply with the additional requirements of the EII. The most important of these are

1. A company that raises both Seed Capital and EII may raise a maximum of €2,500,000 in any one twelve-month period, up to a lifetime maximum of €10,000,000.
2. The shares issued in respect of your investment must be eligible shares. Throughout the holding period of 3 years they cannot carry any present or future preferential rights to dividends or to a company's assets on its winding up. In addition they must not carry any present or future preferential right to be redeemed.
3. Throughout the relevant period the share capital of the company cannot include any issued shares not fully paid up.
4. **You must not dispose of the shares for at least 3 years.**
5. You must not enter into any agreement, arrangement or understanding which could reasonably be considered to eliminate the risk from your investment.
6. There must be no attempt to pass back your investment to you.
7. The company could not be considered as a firm in difficulty for the purposes of the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty.
8. With the exception of qualifying subsidiaries, the company must not control or be controlled by any other company.

7. How to Make a Claim

Claims can be made once the company commences to carry on relevant trading activities.

Where the claim relates to a company which has not commenced to carry on relevant trading activities, but has carried out research and development activities, a claim can be made once the company has expended 30% of the funds raised on the research and development activities, only where those activities are undertaken with a view to carrying on relevant trading activities.

Claims should be sent to:

**Office of Revenue Commissioners,
Corporate Business & International Division (CBI).
New Stamping Building,
Dublin Castle,
Dublin 2.**

And must include:

1. A Form RINE C completed by the company Secretary.
2. A separate RINE I completed by each individual investor.

3. Copy of company bank statement showing when the investment was lodged.
4. Form B5 showing allotment of shares.
5. Copy of company capital duty paid receipt, if appropriate.

Once CBI Division is satisfied that the investment qualifies for the relief the individual investor's application will be forwarded to the applicant's tax office. CBI Division does not calculate or process any refund due. Refunds are dealt with by the applicant's tax office, which notify the individual applicants directly of any refunds due.

8. Further Investments

If you wish to expand the company in the future you may be entitled to EII relief in respect of any further investment made by you in the company. In addition, EII relief may be available to outside investors, subject to the requirements of EII. You must however, notwithstanding any outside investment, ensure that the continuing conditions of the SCS scheme are not contravened.

Please see separate information leaflet on EII.

Queries in relation to the operation of this scheme should be sent to

eiiadmin@revenue.ie

Appendix - Useful Contacts in relevant State agencies

N.B. Any queries regarding EU cumulation of State-aid rules should be addressed to the State agency responsible for administration of the State-aid in question.

State Body	Contact Name/ Address	Telephone	E-mail
Enterprise Ireland	Garrett Murray Senior Investment Advisor Investment Services Division Enterprise Ireland The Plaza Eastpoint Business Park, Dublin 3	01 - 7272815	Garrett.Murray@enterprise-ireland.com
IDA	Peter Townsend Athlone Business & Technology Park Garrycastle Dublin Road Athlone Co. Westmeath	090 - 6471500	peter.townsend@ida.ie
SFADCo	Gerry O'Connor Shannon Development Shannon Co. Clare	061 - 361555	oconnorg@shannondev.ie
Udarás na Gaeltachta	Miriam Ní Néill Udarás na Gaeltachta Na Forbacha Gaillimh	091 - 503294	m.nineill@udaras.ie
Failte Ireland	88-95 Amiens Street Dublin 1	(01) 884 7259	taxschemes@failteireland.ie