

The Employment and Investment Incentive (EII) - Relief for Investment in Corporate Trades

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 EII, aimed primarily at independent third-party investors wishing to avail of this tax relief incentive scheme for investment in corporate trades. It should also serve as a handy quick reference guide to owners of small businesses wishing to raise investments under the scheme. Appended to this leaflet is a list of useful contacts in State agencies and bodies with responsibility for the administration of related State-aid.

¹Legislative basis for the Employment Investment Incentive (incorporating the Seed Capital Scheme (SCS)): - 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 has 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 Employment Investment Incentive (EII) is a tax relief incentive scheme that provides tax relief for investment in certain corporate trades. The scheme has replaced the Business Expansion Scheme (BES)

The scheme was announced by the Minister for Finance in his Budget 2011 speech and has been approved by the European Commission. Medium-sized enterprises (as defined) operating in what are known as the “non-assisted areas” of Ireland may only qualify for the EII in their seed/start-up phase of development. For State-aid purposes, Ireland is divided into “assisted” and “non-assisted” areas. The current “assisted” areas are all areas of Ireland excluding Dublin, Meath, Kildare, Wicklow, Cork city and county (except for Cork Docklands).

With effect from 1st January 2007, a company that raises capital under the EII/BES (and/or under the SCS²) will be subject to a reduction in other State-aids (with the exception of schemes approved under the R&D and Innovation State-aid framework). A State agency³, on application to it for State aid by a company that has raised capital under the BES/EII/SCS, will be required to reduce

- by 50% in the “non-assisted” areas

or

- by 20% in the rest of Ireland -

the maximum aid intensity (i.e. the percentage level of support) or maximum eligible amounts available, under that agency’s State-aided schemes. These restrictions generally apply to a

²Seed Capital Scheme (SCS) provides for a refund of tax already paid by an individual who sets up and takes employment in a new qualifying business. A separate information leaflet (IT 15) is available on the Revenue Commissioners’ website.

³Throughout this leaflet, reference to a “State agency” includes reference to a relevant statutory body or authority responsible for the administration of a relevant State-aid.

⁴The full text in this regard - of the European Commission Decision dated 24th August 2007 - is as follows:

For the qualifying companies receiving the BES/EII and SCS investments, the relevant State aid ceilings or maximum eligible amounts of State aid under block exemption regulations, guidelines, frameworks, and other State aid documents will be reduced by 50% in general and by 20% for the qualifying companies located in the assisted areas and up to the total amount of the BES/EII and SCS investment received during the first three years of the first BES/EII and SCS investment. This obligation does not apply to aid granted on the basis of the Community framework concerning state aids for research and development or any successor framework or block exemption regulation in this field.

company during the first three years from the date of its first EII/BES/SCS share-issue. If the amount of the reduction resulting from this calculation is greater than the value of the EII/BES/SCS investments, then, in such cases, the maximum amount to be deducted will be equal to the amount of the EII/BES/SCS investments.⁴

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 rules governing the cumulation of State-aid, full details of a company that has been the beneficiary of a State-aid in the form of EII/BES/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 State-aid cumulation rules should be addressed to the State agency responsible for administration of the State-aid in question. **The Office of the Revenue Commissioners will not deal with such queries.**

SUMMARY OF THE EMPLOYMENT AND INVESTMENT INCENTIVE (EII)

The scheme allows an individual investor to obtain income tax relief on investments up to a maximum of €150,000⁵ per annum in each tax year up to 2013. Relief is initially available to an individual at 30%. A further 11% tax relief will be available where it has been proven that employment levels have increased at the company at the end of the holding period (3 years) or where evidence is provided that the company used the capital raised for expenditure on research and development. (This additional 11% will not be subject to the high earners restriction). An investor who cannot obtain relief on all his/her investment in a year of assessment, either because his/her investment exceeds the maximum of €150,000 or his/her income in that year is insufficient to absorb all of it, can carry forward the unrelieved amount to following years up to and including 2013, subject to the normal limit of €150,000 on the amount of investment that can be relieved in any one year.

This scheme is available to the majority of small and medium sized trading companies. However, the following trading activities will not be eligible for the scheme:

- Adventures or concerns in the nature of trade
- Dealing in commodities or futures in shares, securities or other financial assets
- Financing activities
- Professional service companies
- Dealing in or developing land
- Forestry
- Operating or managing hotels, guest houses, self catering accommodation or comparable establishments or managing property used as a hotel, guest house, self catering accommodation or comparable establishment
- Operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home
- Operations carried on in the coal industry or in the steel and shipbuilding sectors
- The production of a film (within the meaning of section 481)

The company must be unquoted, i.e. it must not be listed on the official list of a stock exchange or on an unlisted securities market of a stock exchange. Companies listed on the Enterprise Securities Market or whose shares are traded in an over-the-counter market will however qualify.

Investors must purchase new ordinary share capital in the company. Shares must carry no preferential rights. Normally, the minimum investment by an individual in any one company which qualifies is €250. The maximum investment by all investors in any one company or group of companies is €10,000,000 subject to a maximum of €2,500,000 in any one twelve

⁵EII is a "specified relief" for the purposes of the restriction of certain reliefs provisions provided for in Chapter 2A of Part 15 of Taxes Consolidation Act, 1997. However only the initial 30% relief is subject to the restriction. Where the additional 11% relief is payable, that element will not be subject to the restriction.

month period. There must be no condition which would eliminate the risk to the investor.

Relief can be claimed immediately in the case of established companies or after four months' trading in the case of new companies.

If the company is not trading at the time the shares are issued, relief cannot be claimed until the company:

1. commences trading. It must however commence trading within two years of the share issue, or
2. expends at least 30% of the funds raised under the scheme on research and development activities which are connected with and undertaken with a view to carrying on relevant trading activities.

Shares must be held and certain conditions satisfied in relation to the investor for a period of three years.

Qualifying Investments

Each investment breaks down into a number of component parts. These are as follows:

- the investor,
- the company and its trade,
- the shares purchased,
- how the company uses the money invested.

Each of the above must meet certain criteria to ensure that the investment qualifies under the scheme. After that, certain conditions must be met for specified periods (e.g. the shares must be held for three years) to ensure that the investment continues to qualify. Otherwise the tax relief granted may be withdrawn in whole or in part.

The Investor

A qualifying investor is an individual who:

- is resident in the State for the tax year in respect of which he/she makes the claim;
- subscribes on his/her own behalf for eligible shares in a qualifying company; and
- is not for the relevant period, as defined, connected with the company (see below).

⁶Associate has the same meaning in relation to a person as it has by virtue of Section 433 of the Taxes Consolidation Act, 1997 in relation to a Participator except that the reference in paragraph (a) of that section to a relative of a participator shall be excluded from such meaning. A relative is defined as husband, wife, civil partner, ancestor, lineal descendant, brother or sister. Associate, therefore, does not include immediate family members or close relatives.

Rules Relating to Connected Parties

An individual is deemed to be connected with a company if:

- he/she, or an associate⁶ of his/hers, is a partner of the company;
- he/she possesses, or is entitled to acquire, including in the event of the company being wound up, more than 30% of (a) the issued ordinary share capital of the company or (b) the loan capital and issued share capital of the company, or (c) the voting power in the company.
- he/she controls the company (as defined in Section 1 of the Taxes Consolidation Act, 1997); or
- he/she is investing in the company as part of a deal whereby a person connected with the company in turn invests in a separate company with which the individual is connected.

The above conditions relating to connected parties as qualifying investors do not apply to an investor investing in his own company where the amounts subscribed for the issued share capital and the loan capital do not, in aggregate, exceed €500,000.

Employees and Directors as Investors

Employees and directors of the investee company may invest in the company under the scheme but are subject to certain rules. Individuals may qualify in respect of investment in companies owned or run by family members or close relatives of theirs (provided they are not otherwise disqualified).

Number of Investors in an Individual Company

The number of EII investors in any one company is subject only to the limitation on the number of shareholders in a private company and subject also to the overall limit of €10,000,000 (subject to a maximum of €2,500,000 in any one twelve month period) of EII funds that can be invested in any one company or in a number of companies promoted or owned by the same person(s).

Number of Companies an Investor Can Invest In

There is no limit to the number of companies an investor can invest in but tax relief is subject to the overall investment limit of €150,000 per annum up to and including 2013.

The Company

A qualifying company is one which:

- is a Micro, Small or Medium Sized Enterprise within the European Commission definition in force for the relevant period (see notes below for a definition and for details of restrictions applying to medium-sized enterprises);
- is incorporated in the State or another European Economic Area (EEA) State;

- is resident in the State or is resident in another EEA State and carries on business in the State through a branch or agency;
- is not regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty;
- throughout the 3 year holding period:
 1. carries on relevant trading activities from a fixed place of business in the State,
 - or
 2. consists wholly of the holding of shares or securities of, or the making of loans to, one or more qualifying subsidiaries of the company, or
 3. both the holding of such shares or securities, or the making of such loans and the carrying on of relevant trading activities from a fixed place of business in the State.
- is an unquoted company within the meaning assigned in section 488 TCA 1997. A listing of shares, stocks or debentures on the Enterprise Securities Market of the Irish Stock Exchange shall not disqualify a company. Likewise a listing on the Enterprise Securities Market of the Irish Stock Exchange and a corresponding market of the stock exchange of one or more Member States of the EU shall not disqualify a company where the Irish listing takes place before or at the same time as the other EU listing, and
- has its issued share capital fully paid up.

A company will not cease to be regarded as a qualifying company if it is wound up or dissolved during the three year relevant period, provided it can be shown that the winding up or dissolution is for bona fide commercial reasons, and not part of a scheme or arrangement the main purpose of which (or one of the main purposes of which) is the avoidance of tax.

Qualifying Companies and Subsidiaries

A qualifying company can have subsidiaries provided generally that:

- (a) the subsidiaries are at least 51% owned by the qualifying company; and
- (b) the subsidiaries are themselves qualifying companies, or carry out certain services for, or functions on behalf of, the qualifying company or its subsidiaries.

Definition of Small & Medium-sized Enterprises (SMEs)

The current EU definition⁷ of micro, small & medium-sized enterprises is set out in Commission Regulation 364/2004 of 25 February 2004 – OJ L63 of 28 February 2004, page 22 and may be summarised as follows:

- A medium-sized enterprise has less than 250 employees and has an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million;
- A small enterprise has less than 50 employees and has an annual turnover and/

⁷ It should be noted that these definitions are subject to change.

⁸See *Guidelines on National Regional Aid for 2007-2013, OJ C54, 4.3.2006*

- or annual balance sheet total not exceeding €10 million;
- A micro enterprise has less than 10 employees and has an annual turnover and/or annual balance sheet total not exceeding €2 million.

Medium-sized enterprises in “non-assisted areas”

Medium-sized enterprises operating in non-assisted areas are limited to their seed/start-up stage of development for the purpose of raising EII investments. The “Regional Aid Map 2007-2013 – Ireland” details the current assisted areas of Ireland (all areas in the State with the exception of counties Dublin, Meath, Kildare, Wicklow, Cork city and county (excluding Cork Docklands)).

Determination of whether a company is located in an “assisted” or “non-assisted” area.

The location of the company will be determined by reference to the location at which the company, or qualifying subsidiary, branch or agency, as the case may be, carries on relevant trading activities.

The company’s stage of development

Under the EU “*Community Guidelines on State Aid to promote Risk Capital Investments in Small and Medium-Sized Enterprises*”, Member States are required to collect data on a beneficiary company’s stage of development. Those Guidelines contain definitions of “seed capital”, “start-up capital” and “expansion capital”, as follows:

“**Seed capital**” means financing provided to study, assess and develop an initial concept, preceding the start-up phase;

“**Start-up capital**” means financing provided to companies, which have not sold their product or service commercially and are not yet generating a profit, for product development and initial marketing;

“**Expansion capital**” means financing provided for the growth and expansion of a company, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development or the provision of additional working capital.

The Trade

This scheme is available to the majority of small and medium-sized trading companies. However, the following trading activities will not be eligible for the scheme:

- Adventures or concerns in the nature of trade
- Dealing in commodities or futures in shares, securities or other financial assets
- Financing activities
- Professional service companies
- Dealing in or developing land
- Forestry

- Operating or managing hotels, guest houses, self catering accommodation or comparable establishments or managing property used as a hotel, guest house, self catering accommodation or comparable establishment
- Operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home
- Operations carried on in the coal industry or in the steel and shipbuilding sectors
- The production of a film (within the meaning of section 481)

Approval from other State Agencies

Under the Business Expansion Scheme companies were required to obtain prior approval of their trading activities from the various certifying agencies or authorities. This requirement has been removed for the Employment and Investment Incentive in respect of all trading activities except **Tourist Traffic Undertakings**. 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 Shares

Qualifying Shares

In order to qualify under the scheme, the individual must subscribe on his/her own behalf for shares which:

- (i) represent new ordinary share capital in a qualifying company;
- (ii) carry no preferential rights as to dividends or redemption.

The whole of the company's issued share capital must be fully paid up. The minimum investment in any one company is €250. (This does not apply in relation to investments through investment funds designated for the purposes of the scheme).

The maximum investment in any one company or its associated companies is €10,000,000 subject to a maximum of €2,500,000 in any one twelve monthly period. If companies enter into specified arrangements or understandings which are designed to circumvent the €10,000,000 limit, then the maximum amount that can be raised under the EII by all such companies as a whole will be limited to €10,000,000.

The maximum investment which will qualify for relief in any one tax year is €150,000 . This limit applies to individuals. A married couple/civil partnership can each obtain individual relief on an investment of €150,000 provided each spouse has sufficient taxable income to absorb the amount of his/her investment.

Use of EII Money Invested

The company must use the equity raised for the purpose of carrying on relevant trading activities, or if the company has not yet commenced to trade in incurring expenditure on research and development. In addition, the use of the funds must contribute directly to the

maintenance or creation of employment in the company.

The company may use the money received for the purpose of the trade of a subsidiary provided the above rules and those relating to subsidiaries are met. A rule relating to subsidiaries is that where a company issues eligible shares for the purposes of raising EII funding for relevant trading activities which are carried on by its qualifying subsidiary, the company is not allowed to transfer or sub-lend? the proceeds of the EII fund raising to the subsidiary. The company must use the funds instead to acquire eligible shares in the subsidiary.

Duration of Conditions

Shares must be held for at least three years if the investor wants to retain the full tax relief. He/she may, of course, sell them within the three years if he/she so wishes but this may result in him/her losing some or all of the relief.

An individual must continue to be a “qualifying investor” for a period of three years after the shares have been issued.

Conditions in relation to qualifying companies, trades and subsidiaries must continue to be met for a period of three years after the shares have been issued.

If conditions are not met for the prescribed period, the relief will no longer be due and, if already given, may be withdrawn. This would happen if, for example, the company received a full listing on the Stock Exchange or otherwise ceased to be a qualifying company within the three year period.

Other Circumstances in Which Relief May Be Withdrawn

If a company in which an individual has invested repays any debt to the individual (other than an ordinary trade debt), makes a loan to the individual or generally attempts to circumvent the requirements of the scheme by providing a benefit for the individual or transfers an asset to the individual without any consideration, or otherwise attempts to pass back to investors the money which they have invested, then the individual is deemed to have “received value” from the company and his/her benefits under the scheme will be reduced accordingly. Reasonable payments to employees or directors in their capacity as employees or directors are, of course, permitted.

If an individual acquires an option or enters into an agreement which would bind any person to purchase any eligible shares for a price which is other than the market value of the shares, that individual will not be entitled to any relief in respect of the shares to which the option or the agreement relates.

Similarly, if an individual grants to any person an option within 3 years of the date of issue or enters into an agreement which would bind the individual to dispose of any eligible shares to any person for a price which is other than the market value of the eligible shares, that individual will not be entitled to any relief in respect of the shares to which the option or the agreement relates.

If the relief does have to be withdrawn from the investor, it will be done by re-assessing the investor's liability to income tax in the year in which the relief was originally given. The investor cannot lose more tax relief than he/she originally had, but may have to pay interest to the Revenue Commissioners in some circumstances.

Claiming the Tax Relief

In the case of an established company, tax relief will be given to the investor as soon as the Revenue Commissioners are satisfied that all relevant conditions have been complied with and, relief will apply in respect of the tax year in which the shares are issued. Where an investor invests in eligible shares through a designated investment fund (see note below), but the shares are not issued until the following year of assessment, he/she can opt for relief for the year in which he/she made the investment in the fund rather than for the year in which the shares were issued.

In the case of new companies, tax relief will not be given unless and until the relevant company has been carrying on relevant trading activities for four months. If the company is not carrying on relevant trading activities at the time the shares are issued, the relief will not be given unless and until:

1. the company begins to carry on such activities within two years from the date of purchase of the shares, or
2. expends not less than 30% of the funds raised on research and development activities which are connected with and undertaken with a view to carrying on relevant trading activities.

While a claim for the initial 30% tax relief may be made once all the condition are met, the remaining 11% relief will only be granted in the year of assessment following the end of the 3 year holding period if:

1. There is an increase in the number of qualifying employees in receipt of emoluments from the qualifying company in the year of assessment in which the 3 year holding period ends over the number in the year of assessment immediately preceding the year of assessment in which the 3 year holding period commenced, and
2. The average amount of emoluments paid to qualifying employees has not been reduced, other than in accordance with a general reduction in basic pay rates.

Capital Gains Tax

The normal provisions relating to capital gains tax (CGT), including those applicable to unquoted companies, will apply with regard to investments under the scheme.

For the purposes of computing an individual's liability to CGT, the purchase price of the shares will be considered to be the cost before deduction of the tax relief. In general, losses on the sale of shares will not give rise to an allowable loss for CGT purposes.

Designated Investment Funds

A Designated Investment Fund is a fund which has been designated by the Revenue Commissioners under Section 506 of the Taxes Consolidation Act, 1997. A designated fund comprises the subscriptions of a number of investors. The fund will be likely to invest in a number of companies. Broadly, each investor will get a share in each company in proportion to the value his/her subscription bears to the total size of the fund.

Investing in a Designated Investment Fund allows an investor to spread his/her investment over a number of ventures and to have expert advice to appraise the relevant projects. A fee will normally be payable by the investor to the fund manager. In addition, an entrepreneur who seeks equity from a fund can concentrate on his/her venture rather than devoting time to persuading a number of investors to invest in his/her company.

Each fund must prepare a prospectus, which must be approved by the Minister for Jobs, Enterprise and Innovation and which must include, inter alia, particulars of fees, remuneration or other charges to be levied in respect of the management of the fund. As with investments made on an individual basis, however, there is no guarantee that they will succeed and responsibility for the risk associated with the investment rests entirely with the investor. The prospectus must make this clear in a manner that is satisfactory to the Minister for Jobs, Enterprise and Innovation.

Queries on the Scheme

Queries in relation to the operation of this scheme should be sent to eiiadmin@revenue.ie

How to Make a Claim

Claims may 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 EII 1 completed by the company Secretary.
2. A copy of the company's Memorandum and Articles of Association
3. Approval of the company's trading activities from Failte Ireland , if the company is carrying on Tourist Traffic Undertakings

Once CBI Division is satisfied that the investment qualifies for the relief the authorisation will issue to the company together with the certificates of relief for the individual investors which will enable them to claim the relief from their local tax office. Relief cannot be claimed in the absence of the required certificate.

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

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