Relief for investment in corporate trades: as it applies to companies

Part 16-00-02

This document should be read in conjunction with Part 16 TCA 1997 and TDM 16-00-03.

Document created March 2019

This manual refers to Part 16 TCA 1997, as it stands amended by Finance Act 2018. It applies to shares issued on or after 1 January 2019.

For share issues prior to that date please refer to Tax and Duty Manual Part 16-00-10 in respect of EII, and Tax and Duty Manual Part 16-00-11 in respect of SURE.

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Introduction

The purpose of this manual is to provide guidance to companies on the reliefs available under Part 16 TCA 1997 for investments in corporate trades. The three reliefs are:

- Employment Investment Incentive ("EII")
- Start-up Capital Incentive ("SCI") and
- Start-Up Relief for Entrepreneurs ("SURE").

Tax and Duty Manual Part 16-00-03 provides more details on the conditions that investors must satisfy to be eligible to claim those reliefs.

1 The three reliefs

The three reliefs available under Part 16 are all designed to help trading companies attract equity-based risk finance from individuals. Eligibility to relief in each case arises if there is:

1. A qualifying company
2. A qualifying investment, and a
3. An investor who meets certain criteria.

1.1 EII [Chapter 4]

EII is a tax relief for companies who are in a position to raise funding from individuals who are, in general terms, not connected with the company. There is a €15m life time limit, and €5m limit on a rolling 12 month period ending with the share issue, on the amount a company can raise under the three Part 16 reliefs.

Investment can be made directly in the company or through a designated investment fund.

1.2 SCI [Chapter 4, s.503]

SCI is a tax relief for early stage micro companies to attract equity based risk finance from family members. There is a €500,000 lifetime limit on the amount that a company can raise under SCI.

1.3 SURE [Chapter 5]

SURE is a tax relief for entrepreneurs who leave an employment to set up their own company. There are limits on the amount of investments in respect of which an investor can claim relief, and limits on the number of investors that can claim relief in respect of a company. The practical effect of these limits is that the maximum a company can rise under SURE is €4.2m.

1.4 The legislation

All legislative references in this manual are to the Taxes Consolidation Act 1997.

The three reliefs available under Part 16 are all reliefs covered by Article 21 of Commission Regulation No 651/2014 of 17 June 2014 declaring certain categories of

aid compatible with the internal market in application of Articles 107 and 108 of the Treaty[1] (referred to as the "General Block Exemption Regulation" or "GBER"). Many phrases used in respect of these reliefs take their meaning from GBER.

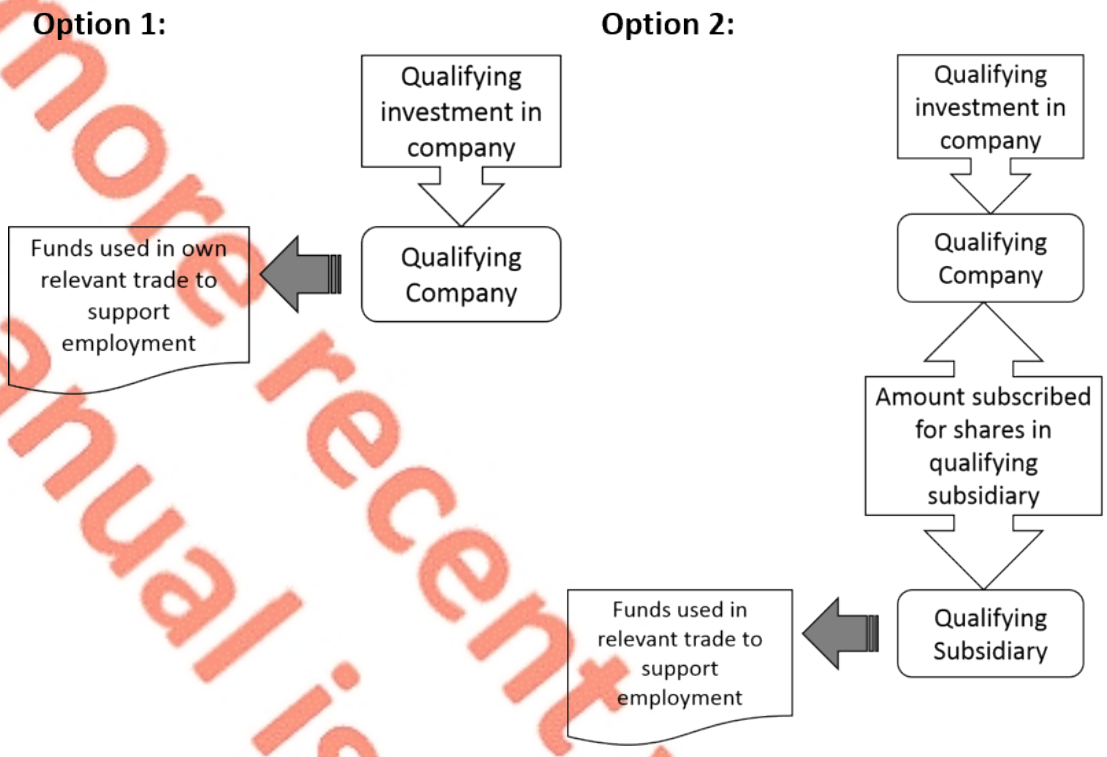
This manual is not a complete guide to Part 16 which includes significant anti-avoidance rules that are not dealt with in this manual. As such it should be read in conjunction with Part 16 as amended by Finance Act 2018.

[1] OJ No. L187, 26.6.2014, p. 43

2 Qualifying company [Chapter 2]

In order for a company to raise funding to which relief under EII, SCI or SURE can apply, the company must be a "qualifying company". In determining whether or not a company is a qualifying company regard will be had to both the activities of the company itself and also to other businesses within the "RICT[2] group" (refer to section 3 for more details on RICT groups).

The qualifying company in which the investment is made can either be a trading company itself, or the holding company of a trading company.



Whichever structure is chosen, the only subsidiaries in which the qualifying company can hold shares are "qualifying subsidiaries" (refer to 2.2.2.1 for more details).

2.1 Qualifying purpose [s.496(2)]

The company must intend to use the amounts raised for a "qualifying purpose" within 4 years of the share issue. A qualifying purpose is spending the amounts either:

a) for the purposes of carrying out relevant trading activities, or
b) where the company has not yet commenced to carry out relevant trading activities, on research, development and innovation ("R&D+I").

The amounts spent must contribute to the maintenance or creation of employment.

"Relevant trading activities" includes most trades. However, the following are specifically excluded:

i. Once off trades,

[2] The acronym stands for "Relief for Investment in Corporate Trades".

ii. Dealing in commodities, shares or other financial assets,
iii. Financing activities,
iv. The provision of professional services, which means:
    I. Services of a medical, dental, optical, aural or veterinary nature,
    II. Services of an architectural, quantity surveying or surveying nature and related services,
    III. Services of accountancy, auditing, taxation or finance,
    IV. Services of a solicitor, barrister or other legal services and
    V. Geological services,
v. The occupation of woodlands
vi. Operating or managing hotels, guest houses etc, unless the activity is a tourist traffic undertaking (refer to X.Y below)
vii. Operations carried on in the coal, steel or shipbuilding sectors, and
viii. The production of films (within the meaning of section 481).

"R&D+I" is a continuum of activities from innovation to research and development. Innovation is implementing a new organisational method, or a significantly improved production or delivery method. Research and development has the same meaning as in s.766[3].

Amounts cannot be spent on buying a trade or shares in a company (other than subscribing for shares in a qualifying subsidiary, as set out in 2.2.2.1 below).

If the amount invested was only partially spent on a qualifying purpose, then only that part will qualify for relief. If the company has multiple sources of funds, and spends those funds on both qualifying and non-qualifying purposes, then the following provisos should be applied to determine whether or not the amounts raised from the issue of eligible shares were spent on a qualifying purpose:

- If any of the non-Part 16 sources of funds are specified to be used for a specific purpose, e.g. a bank loan taken out specifically to build a factory, then these specific funds should be allocated to that purpose.
- Any available non-Part 16 funds not so allocated should be spent on non-qualifying purposes in priority to qualifying purposes.

2.2 Conditions: throughout the relevant period

The company and the RICT group must continue to meet a number of conditions throughout the relevant period. The relevant period runs for 4 years from the date the eligible shares are issued.

2.2.1 Residence [s.490(3)(a)(i)]

Throughout the relevant period the company must be either tax resident in Ireland, or tax resident in an EU or EEA Member State.

[3] Further guidance on R&D within the meaning of section 766 is available on the Revenue website.

The company must either carry on relevant trading activities from a fixed place of business in the State, or, if it is carrying out R&D+I it must intend to carry out relevant trading activities from a fixed place of business in the State.

2.2.2 Investment in the trading company [s.490(4)]

The investment can be made in:

a) A company that exists wholly for the purposes of carrying on relevant trading activities. A company that exists wholly for the purposes of carrying on a relevant trade must not carry out any other activities, other than those that are purely incidental. A company cannot carry on a business that consists partially of a trade and partially of the provision of professional services, for example.

Example: Rental income
A company may enter into a lease for the entire building, and then sub-let out certain floors. If the company is sub-letting the floors on a short term basis while it is growing to a size that it will need the entire building, then the receipt of that rental income (which is taxable under Case V) will be acceptable: the rental income is incidental as the company exists to carry on the trade. However, if the company is sub-letting the floor on a longer term basis, and intends to occupy only the portion of the building it is currently in, then the receipt of that rental income will mean that the company exists for two purposes: carrying on its trade and earning rental income. As such, it will not be a "qualifying company".

Or

b) A holding company that either exists wholly for the purpose of being a holding company (that is, it must exist to hold shares in qualifying subsidiaries and it may make loans to those qualifying subsidiaries) or wholly for the purposes of both carrying on relevant trading activities and being a holding company. In these cases, the company may use the amounts raised in its own trade, or it may subscribe for shares in a "qualifying subsidiary", which uses the amounts raised for the purposes of its trade.

Example: not a qualifying company
If the holding company owns a property which it rents to its qualifying subsidiaries, then it is not a qualifying company.

2.2.2.1 Qualifying subsidiaries [s.492]

There are two types of qualifying subsidiaries that a qualifying company can have:

(a) Subsidiaries which trade in their own right,
(b) Subsidiaries which carry out support functions for the qualifying company's trade.

Subsidiaries which carry out a trade in their own right must meet the conditions laid out in paragraph 2.2.1. That is, they must be resident in Ireland or an EU or EEA State, and must carry out, or intend to carry out, relevant trading activities from a fixed place of business in the State.

Subsidiaries which carry out support functions can be established anywhere in the world. However, their business, which must be relevant trading activities, can only involve:

(I) Purchasing goods or materials for use by the qualifying company or its qualifying subsidiaries,
(II) Selling goods or materials produced by the qualifying company or its qualifying subsidiaries, or
(III) Providing services to or on behalf of the qualifying company or its qualifying subsidiaries.

2.2.2.2 Special rules for SURE and SCI [s.503(2)(ii) and 507(1)]

SURE and SCI may only be claimed where a qualifying company is carrying on a qualifying new venture. A qualifying new venture is relevant trading activities that are set up and commenced by the new company. The company should be newly incorporated, i.e. have been incorporated for less than 2 years, and the activities must not have previously been carried on by any other person. This means that a sole trader cannot transfer their trade to a company and claim either SURE or SCI in respect of that company.

2.2.3 Control [s.490(3)(a)(ii)]

The company cannot control any company that is not a qualifying subsidiary.
The company cannot be under the control of any other company.

Control, for this purpose, has a broad meaning[4]. Generally, a company will be taken to have control of another company if that company:

- holds the greater part of the share capital,
- holds the greater part of the voting rights, and
- by virtue of their rights as a shareholder, would be entitled to the greater part of the assets on a winding up.

Where two or more companies together meet those tests, the company will be said to be under their control. For example if a company has two 30% corporate shareholders, it will be under the control of companies and therefore will not be a qualifying company.

2.2.4 Fully paid up share capital [s.490(3)(b)]

All companies in the RICT group must have their shares fully paid up at all times during the relevant period.

[4] Defined with reference to subsections (2) to (6) of section 432.

2.3 Conditions: on the date the eligible shares are issued

On the date that the eligible shares are issued, there are a number of conditions that the RICT group and the company must satisfy.

2.3.1 SME [s.490(2)(a)(i)[5]]

The RICT group must be a Micro, Small or Medium-sized Enterprise. These are defined[6] 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/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.

2.3.1.1 Special rules for SCI [s.503(2)(a)(i)]

SCI is only available in respect of investments in micro enterprises.

2.3.2 Undertaking in difficulty [s.490(2)(a)(ii) [7]]

A RICT group, which is less than 3 years old, cannot be an "undertaking in difficulty".

The RICT group will be considered a "undertaking in difficulty" when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:

(a) In the case of a limited liability company, where more than half of its subscribed share capital and share premium has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.

(b) In the case of an unlimited company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

The above tests should be applied immediately before the issue of shares to which the Part 16 relief may apply.

[5] A requirement of Paragraph (1) of Article 21 of GBER
[6] In Annex 1 of GBER
[7] A requirement of Paragraph (18) of Article 2 of GBER

If it is less than 7 years since the RICT group made its first commercial sale, and the raising of finance is facilitated by a financial intermediary which is regulated as an investment firm (MiFID[8]), or as an investment business firm authorised[9] to provide investment advice, by the Central Bank of Ireland, then different rules may apply. Such a RICT group will not be treated as an "undertaking in difficulty" if, having carried out investment research and financial analysis, the regulated firm satisfies itself that the investment opportunity is of sufficient standing to present to its advisory clients.

Irish generally accepted accounting principles sometimes allows companies make choices in the preparation of their accounts. In applying the test set out in (a) or (b) companies should consider any conservative accounting choices that they have made. For example, did the company chose to expense R&D when that R&D also met the conditions for capitalisation? Is the company carrying fixed assets at historic cost when it would be acceptable to revalue them? If issues such as these arise, it is not necessary for the company to restate its accounts. A signed statement by a registered auditor that it would be possible to restate the accounts, and what the amended figures would be, is sufficient.

2.3.3 Unlisted [s.490(2)(b)(i)[10]]

Each company in the RICT group should be an "unlisted company". An unlisted company is defined as one that does not have any stocks, shares or debentures listed on the official list of a stock exchange, or quoted on an unlisted securities market[11]. The one exception is that companies may be quoted on the Enterprise Securities Market of the Irish Stock Exchange, or on the equivalent markets of other EU or EEA Member States.

2.3.4 Deggendorf rule [s.490(2)(b)(ii)[12]]

The RICT group cannot be the subject of an outstanding recovery order following a decision of the Commission that declared an aid illegal and incompatible with the internal market. This applies to aids granted by any Member State.

2.3.5 Tax clearance certificate [s.490(2)(c)]

The company that issues the eligible shares must hold a tax clearance certificate.

[8] Under Regulation 5(2) European Union (Markets in Financial Instruments) Regulations 2017 [SI No. 375 of 2017]
[9] Under the Investment Intermediaries Act 1995
[10] A requirement of Paragraph (5) of Article 21 of GBER
[11] Refer to Tax and Duty Manual Part 04-02-03 for the differences between listing and quoting on markets of a stock exchange.
[12] A requirement of Paragraph (4)(a) of Article 1 of GBER, based on Case C-188/92, *TWD Textilwerke Deggendorf GmbH v Germany*, ('Deggendorf') ECR [1994], I-00833

2.4 Industry specific rules [s.491]

2.4.1 Internationally traded financial services [s.491(1)]

A company that carries out internationally traded financial services will only be a qualifying company if it has been given a certificate by Enterprise Ireland that the activities are of a kind specified in the Schedule to the Industrial Development (Service Industries) Order 2010[13].

2.4.2 Tourist traffic undertaking [s.491(2)]

A company that carries out tourist traffic undertakings will only be a qualifying company if those activities have been approved by the National Tourism Development Authority[14].

2.4.3 Green energy activities [s.491(3)]

Green energy activities are activities undertaken with a view to producing energy from renewable sources. Such companies, for the purposes of EII, SCI and SURE, are deemed to start trading when they apply for the grid connection agreement.

2.5 Winding up or dissolution [s.490(5) and (6)]

In general, the winding up or dissolution of a company causes it to cease to be a qualifying company. However, bona fide winding ups or dissolutions will not cause the company to cease to be a qualifying company provided:

i. It is for bona fide commercial reasons,
ii. it is not for the avoidance of tax, and
iii. the net assets of the company, if any, are distributed without undue delay.

(Refer to section 6 in relation to a clawback which may arise in respect of any capital returned on a winding up or liquidation).

2.6 Special rules for SCI [s.503(2)(b)]

There are two further sets of conditions that apply where the company is seeking to raise financing under SCI. The first is that SCI is only available in respect of a business carried on by a company with no partner or linked businesses (refer to section XX for discussion on what these are). The second is that the company must not have commenced carrying on, or made preparations for the carrying on of, a trade or business more than 7 years prior to the share issue.

[13] S.I. No. 81 of 2010

[14] http://www.failteireland.ie/Supports/Identify-Available-Funding/Employment-Investment-Incentive.aspx

3 RICT group [s.489]

A RICT group is made up of a qualifying company and all of its partner businesses and linked businesses.

3.1 Linked businesses[15]

Two businesses (being businesses carried on either by a company or a sole trader) are considered linked businesses where:

(a) One business holds the majority of the voting rights in the other business,
(b) One business can control the board of the other business,
(c) One business has a right to exercise dominant control over the other because of a contract or because of something in the business' constitutions, or
(d) One business, which is a shareholder in another business, can actually control that other business because of a shareholder agreement.

Consideration must be given to whether or not (a) to (d) would apply if the relationship was traced through a natural person, or a group of natural persons acting jointly. Where a relationship is traced through a natural person, the businesses will only be linked where the two businesses are in the same or adjacent markets. Businesses operate in adjacent markets if they are operating in the market directly downstream or upstream of each other, e.g. in customer / supplier markets regardless of whether or not there is a customer / supplier relationship.

3.2 Partner businesses[16]

Two businesses are considered partner businesses where they are not linked businesses and where one businesses (either solely or along with linked businesses) holds 25% or more of the share capital or voting rights of another businesses. Where a relationship is traced through a natural person, the businesses will only be partner businesses where the two businesses are in the same or adjacent markets (that is, either operating in the market directly downstream or upstream of the qualifying company).

3.2.1 Special rules for SCI (Start-up Capital Investment) [s.503(2)(b)(ii)]

A company cannot raise amounts under SCI if it has any partner or linked enterprises.

[15] Defined in Annex 1 of GBER
[16] Defined in Annex 1 of GBER

4 Qualifying investment [Chapter 3]

A qualifying investment is an investment in eligible shares in a qualifying company where the funds are used for a qualifying purpose. The investment must be based on a business plan, and there are a number of additional rules which apply depending on whether this is the first, or subsequent, fund raising by a company.

4.1 Eligible shares [s.494 and s.495]

Shares must be new shares, issued by the company. They may be redeemable shares, which carry preferential rights to a dividend and preferential rights on a winding up. There can be no other terms of the shares, or agreements made with the investor, which substantially reduce the risk that the investor will get their capital back or any expected dividend.

For example, if there was a put/call option with the founder shareholders for the disposal of the shares after 4 years, then the shares would not be eligible shares. In contrast, the shares can be convertible into ordinary shares in the event that they are not redeemed, provided that the terms of the conversion are reasonable.

4.2 A qualifying investment [s.496]

A qualifying investment is an investment in eligible shares in a qualifying company where the funds are used for a qualifying purpose.

The first time a RICT group raises EII, SCI or SURE it will either be as an "initial risk finance investment", for start-up companies, or as "expansion risk finance investment", for those looking to move into a new product or market.

An RICT group can raise subsequent rounds of funding either where they were foreseen in the business plan for that first round of funding, in which case they are raising "follow on risk finance investments", or where the group is expanding into a new product or market, which is an "expansion risk finance investment".

The investment must be based on a business plan, and there are a number of additional rules which apply depending on whether this is the first, or subsequent, fund raising by a company.

4.2.1 Business plan [s.496(4)][17]

The business plan must be in writing. It must contain details of the products, sales and profitability development, and it must establish the financial viability of the investment. Business plans must include a description of how the money raised is to be used, and they should include cash flow projections showing the receipt of any funding and how that funding is to be spent.

It is not the name on the document which is important, but its contents. It is also noted that the same business plan may serve a number of purposes. An investment

[17] Based on Paragraph 14(c) of Article 21 of GBER

memorandum can be used as a business plan where it contains sufficient information: not all investment memorandum are sufficiently detailed. Equally the same business plan may be presented to Enterprise Ireland for funding and used to raise funding from family and friends (under EII or SCI).

4.2.1.1 Informal business plans

For share issues on or after 13 October 2015, there has been a requirement that the EII or SURE investments are made on foot of a viable business plan.

Prior to that date where the original investors are close to the company, it is accepted that business plans, in the past, may have been less formal than those required to raise BES / EII funding from 3rd party investors. In such cases consideration can be given to other supporting documentation which might broadly be considered as part of the original business plan at that time, for example communication with Enterprise Ireland, or other possible investors. However, the plans must still be fully formed. That is, extracts of diaries which show the amount to be raised may be useful provided there is also consideration of how those amounts are to be invested, and provided the activity now being undertaken matches that envisaged.

Regardless of the layout of the business plan, a business plan is not a vague document. It matches the fund raising requirements with how the capital raised is to be used. Simply stating that €500,000, for example, might be sought under EII is not the same as a viable business plan showing the need to raise €500,000. A simple expression of intent to fund raise without a matching considered approach of how that money would be invested in the business would not constitute a business supporting the need for the investment. A business plan which shows EII funding to be raised and a corresponding increase in cash will not meet this requirement.

Where there are larger investors, or fund investors, they may have based their decision to invest on more than the published business plan. In those cases, any documents upon which they relied when making their investment decision can be considered in the round with the more widely circulated business plan (for example that included in the investment memorandum).

4.2.2 Initial risk finance investment [s.496(5)][18]

Many companies who seek to raise EII, SCI or SURE supported funding, do so in tranches. That is, they embark on a fund raising round over a number of months. Shares are usually issued at the end of the fund raising round, but there may be occasions where the shares are issued as the amounts are invested. The initial risk finance investment will be the initial round of fund raising, whether the shares are issued at the end, or throughout that fund raising round.

[18] Based on Paragraph (5)(a) and (b) of Article 21 of GBER

At the time the shares are issued, it must be less than 7 years since the RICT group made its first commercial sale. For this purpose, the RICT group includes any companies which were part of the RICT group, but which have been disposed of[19].

4.2.3 Expansion risk finance investment [s.496(6)][20]

A RICT group wishing to expand into a new product or geographic market may raise "expansion risk finance". The business plan, prepared to raise funds to support this move into a new product or market, must show that the amount to be raised is greater than 50% of the average annual turnover for the last 5 years.

This type of funding can be the first time that the RICT group has raised equity to which EII, SURE or SCI will apply, or it could be a RICT group that previously raised such equity but is now expanding into a new product or market.

4.2.4 Follow-on risk finance investment [s.496(7)][21]

RICT groups that have previously raised SURE, EII or SCI may raise follow-on risk finance investment in certain circumstances.

Follow-on risk finance investments are subsequent funding rounds, that were foreseen in the business plan that was used to raise either the initial risk finance investment or the expansion risk finance investment, as the case may be.

The first round of funding (being either the initial or expansion risk finance investment) must have been eligible shares issued on or after 6 April 1984 in respect of which relief under EII, BES, SCS or SURE was available. Furthermore, that first round of funding must meet the current definitions of 'Initial risk finance investment' or 'expansion risk finance investment', as the case may be. That is, if it was the first round of EII fund raising, it must have been raised when the RICT group was less than 7 years from its first commercial sale, while if it was an 'expansion risk finance investment' it must have passed the '50% of average annual turnover for the previous 5 years' test.

4.2.4.1 Examples of business plans re foreseeing additional investment

In straightforward cases the investment will be foreseen in the year in which the additional EII investment is sought. However, in others it is less straight forward. Below are examples of the less straightforward situations where it is accepted that the business plan foresaw the investment.

These examples illustrate that both the descriptive and numerical aspects of the business plan are important.

[19] Paragraph (a) of the definition of RICT group in s.489
[20] Based on Paragraph (5)(c) of Article 21 of GBER
[21] Based on Paragraph (6) of Article 21 of GBER

A. Activity foreseen but delayed

A business plan foresaw extending a building and carrying on new activities in that extension. For a number of reasons, including planning permission, the extension was not proceeded with at the time. Almost 15 years later changes in technology meant that the reasons the extension had not progressed were addressed and the extension could now be built. The BES / EII funding envisaged for the extension was foreseen in the business plan, albeit that there had been unforeseen circumstances which caused a delay of many years before it was actually progressed with.

B. Activity foreseen but cost has increased

A business plan foresaw raising €100k EII to carry out a specific project. For reasons outside of the control of the company the cost of carrying out that same project increased. The company had foreseen raising EII to fund the project. Therefore, the increased amount was allowable.

C. Activity foreseen but cost not included

A business plan foresaw raising €500k to carry out initial R&D into a medtech device. The business plan foresees that clinical trials will be required before the device can be commercialised. The business plan envisages that the clinical trials will be funded by EII but as there is a high degree of uncertainty around the initial R&D, the associated high degree of uncertainty around the trials means that the company are not able to guestimate the level of funding required. However, the business plan foresees that follow-on EII funding will be required in order to carry out the clinical trials. The business plan used to raise the follow-on investment must establish the financial viability of that funding.

4.2.4.2 Business plans not foreseeing additional investment

A statement that the company intends to raise the maximum amount of BES / EII possible is not sufficient. The capital raising must be matched with investment plans.

A statement that the company may seek to raise additional financing in the future is not sufficient. Nor is a statement that the company hopes to grow and expand and will require additional funding to support that growth and expansion.

If the business plan foresees follow-on investment to complete B, and the company completes B, it cannot then look to raise follow-on investment to complete C which had never been mentioned in the original business plan. Investments to complete C may qualify if C is entry into a new product or market (and qualifies as an expansion risk finance investment).

4.2.4.3 Irish limits on the amount of BES that can be raised

At different points in the past, the EII / BES / SURE legislation has contained lower limits on the amounts which can be raised over the life of a company. Therefore, many business plans for funding raised at the time those lower limits applied, foresee raising EII / BES up to the limit in legislation. Investors would likely not have

viewed the business plan as a serious proposition if it envisaged raising more BES than was permitted by the Irish legislation. In those cases consideration is given to other equity investments which were envisaged by the company in its business plan.

A business plan which just envisages raising the maximum EII / BES will not be treated as foreseeing additional funding unless it also sets out how those amounts are to be invested in the company's business.

4.3 Limits on amount that can be raised [s.497][22]

RICT groups can raise a maximum of €5 million in any rolling 12 month period under Part 16. That is, if there are separate EII, SCI and SURE investments in a 12-month period, the total investment cannot exceed €5 million.

There is a life-time limit of €15 million per RICT group for relief granted under Part 16 for shares issued since 6 April 1984. This applies to the total amounts raised under EII, SCS, SURE, BES and SCI.

4.3.1 Special rules for SCI [s.503(3)]

In addition to the annual and lifetime limits set out above which apply to all Part 16 reliefs, there is a lower threshold which applies to SCI. The maximum lifetime amount which a company can raise under SCI is €500,000.

[22] Limits based on Paragraph (9) of Article 21 of GBER

5 Administration of the reliefs [Chapter 6]

5.1 Confirmation on GBER conditions [s.508D]

If a company is uncertain as to:

a) who the members of a RICT group are (refer to paragraph 3 above),

b) whether or not it is an undertaking in difficulty (refer to paragraph 2.3.2above), or

c) whether or not the investment meets certain conditions (refer to 4.2 above),

it can apply to Revenue for confirmation on those points.

The application must be made to an authorised Revenue officer and must include all relevant information. Refer to Appendix I for details on the information that must be provided.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[…]

5.2 Statements of qualification [s.508A to s.508C]

In order that an investor can claim relief under Part 16, the company must issue the investor with a "statement of qualification". There are:

- Form SQEII 3, which a company that raised EII funding should issue[23];
- Form SQSCI 3, which a company that raised SCI funding should issue;
- Form SQSURE 3, which a company that raised SURE funding should issue.

For the purposes of providing the 'statement of qualification' to investors, amounts committed by the company will be treated as spent on a qualifying purpose. Where such amounts have been raised by the company, and where these funds can be clearly shown to be intended for future expenditure, for example if the company has contractually committed to purchase a specific piece of plant, Revenue will generally follow normal accounting treatment, i.e. it will treat this as having been incurred on the date when it was actually incurred, or on the date it was committed.

Issuing an incorrect Statement of Qualification to an investor is the same as filing an incorrect tax return. Statements of qualification may be reviewed by Revenue in a compliance intervention carried out in accordance with Revenue's code of practice for Revenue audit and other compliance interventions. Any income tax relief which an investor claims based on an incorrect Statement of Qualification is recoverable from the company. Interest and, as set out in the code of practice, tax geared penalties may arise.

[23] A Statement of Qualifying (second stage relief) will be available in due course.

5.3 Reporting requirements [s.508E]

Qualifying companies that issue eligible shares as part of a qualifying investment must provide Revenue with certain information on that investment. The information required is set out in Form RICT which must be uploaded through the Revenue MyEnquiries service. This must be filed for each share issue.

The company must file this with Revenue within 60 days of having spent 30% of the amount raised on a qualifying purpose.

The following information, obtained from the Form RICT, will be published on the Revenue website:

i. Name of the company;
ii. Address of the company;
iii. CRO number of the company;
iv. Amount of finance raised;
v. Date of share issue; and
vi. Type of relief.

In addition to reporting obligations on Form RICT, the company must also include certain details on the Form CT1 for the accounting period in which the shares were issued.

6 Clawback events [Chapter 10]

6.1 Disposal of a qualifying subsidiary [s.508O]

As set out in section 2 above, the qualifying company may use the amounts raised to invest in shares in a qualifying subsidiary. Where the qualifying company disposes of that qualifying subsidiary it should return those amounts, without undue delay, to the investors. The return of the amounts to the investors will trigger a partial claw back, from the investors, of the relief available.

6.2 Return of capital to other investors [s.508R]

The compliance period is a 6 year period that runs from two years before to 4 years after the share issue date. Where the qualifying company, or any company in the RICT group, returns capital to EII / SCI / SURE investors within their compliance period, any clawback of relief will be on those investors. If in that period there is a return of capital that does not trigger a clawback of relief on the investors, then this section may apply.

Example A:
Company A issued EII 'A' shares on 1 January 2019 for €10,000. On 1 March 2019 it redeemed €10,000 worth of shares from its founder shareholders. Section 508R provides that the relief on those 'A' shares is clawed back, and section 508U provides that the clawback of EII relief is on the company.

Example B:
Company B issued EII 'B' shares on 1 January 2019 for €25,000. On 1 March 2018 it redeemed €5,000 worth of shares from its founder shareholders. Section 508R provides that the investment on which relief is available is reduced to €20,000. The €5,000 reduction must be apportioned across the 'B' investors. This adjustment must be shown on the Statement of Qualification for the 'B' shareholders.

This section triggers a reduction in the relief available where shares are bought off investors, or where payments are made in respect of giving up rights to any of the share capital. It includes amounts which a person is entitled to receive at a future date.

6.2.1 Capital redemption window

In certain circumstances, a company can redeem shares, or purchase shares, from any member other than an investor who is within their compliance period, without triggering a clawback of EII relief under section 508R[24].

The specific circumstances in which such a return of capital can occur are:

[24] Some of the tax implications of a company redeeming its shares are dealt with in Tax and Duty Manual Part 06-09-01. Redemptions of shares will generally be treated as a distribution by the company, meaning that dividend withholding tax must be operated.

a) The most recent EII / SCI / SURE fund raising by the RICT group was 18 months prior to the return of capital, and
b) The RICT group will not seek to raise EII / SCI / SURE supported funding for 12 months after the return of capital.

It is important to note that this capital redemption window does not prevent a clawback of SCI or SURE. It is only available in respect of EII investors.

6.3 Ceasing to comply with any conditions during the relevant period

As set out in 2.2 above, there are a number of conditions that must be complied with throughout the relevant period. If the company ceases to comply with any of these conditions and therefore ceases to be a qualifying company during that period, or if the company does not use all of the funds raised for a qualifying purpose, then a clawback of relief will be triggered.

7 Withdrawing relief [Chapter 11]

7.1 EII and SCI [s.508U]

Where relief was claimed under EII or SCI and it is to be clawed back from the company, a Case IV assessment of 1.2 times the amount should be raised. Relief is clawed back from the company where the company has triggered the clawback of the relief and the investor is not party to the transaction i.e. the company ceases to be a qualifying company, the company redeems shares from other members, the company issued an incorrect statement of qualification.

On an investment of €1,000, 30% relief was available in year 1, or €300. The Case IV assessment on the company will be for €1,200 which will be taxable at 25%, giving a tax liability of €300.

Section 508U specifically provides that the company cannot offset any loss or deficit against the Case IV amount, and also that the Case IV amount should not be subject to the close company surcharge.

7.1.1 Special rules for SCI [s.508V(6)]

There are special anti-avoidance rules where an individual claimed relief under SCI, and that relief is now being recovered from the company. If it is reasonable to consider that there were tax avoidance motives to triggering a clawback on the company rather than on the investor, and that tax is unpaid, then Revenue may recover the tax from the investor.

7.2 SURE [s.508W]

Where relief was claimed under SURE, any clawback of relief incorrectly claimed will always be on the investor.

There are special rules in section 508W dealing with the interaction of the interest, penalty and publication rules and clawback of relief under SURE.

Appendix 1 Confirmation on GBER conditions [s.508D]

Applications for Revenue's view on whether or not certain eligibility criteria for relief under Part 16 are met should be made in accordance with this Appendix.

They should be identified as an application for confirmation on GBER conditions under section 508D TCA 1997 and should be submitted online via ROS or MyAccount.

Please categorise the query as follows:

- Under the 'My Enquiry relates to' field please select 'Relief for investment in corporate trades'
- Under the 'More specifically' field please select 'Employment and Investment Incentive (EII).

Alternatively, you can send them to:

Office of Revenue Commissioners
Authorised Officer
Incentives Branch
Stamping Building
Dublin Castle
Dublin 2
D02 HW86.

The application must set out the following in respect of the qualifying company:

Company name
Trading as (if different)
Business address
Corporation Tax Reference Number

1. Purpose of the application

An application can be made by a company which has, or is about to, issue shares and which would like Revenue to review whether or not certain eligibility criteria for relief under Part 16 are met. Namely those criteria in relation to:

a) Undertaking in difficulty [s.490(2)(a)(ii)]
b) Based on business plan [s.496(4)]
c) Initial risk finance [s.496(5)]
d) Expansion risk finance [s.496)6)]
e) Follow-on risk finance [s.496(7)]

The application should clearly indicate which of the above conditions it is in relation to and should highlight where the companies uncertainty is.

This appendix sets out the information that is required to form an opinion on those criteria. Where a company is unable to obtain information, for example from a

shareholder, they should note that on the application rather than simply leaving a blank. An incomplete application, such as where Revenue identify information that was not provided other than as set out in this paragraph, may not be processed.

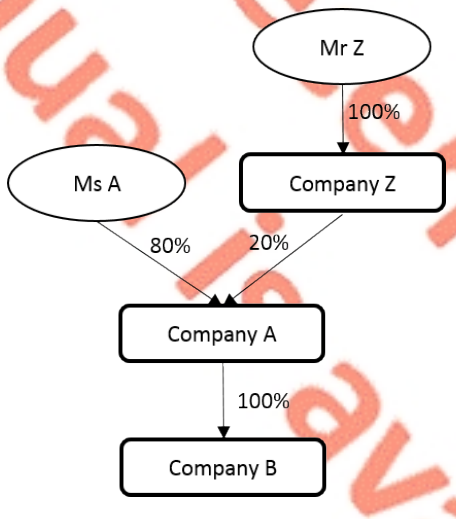
2. Details of the RICT group

In order to review any of the 5 aspects this form relates to, it is necessary to identify if the qualifying company is part of a RICT group.

In the application the company should set out the RICT group (applying the definitions in 3 above), if any, that it is a member of. Applying the following steps, which is information required by Revenue in respect of every application under section 508D, should assist in determining members of the RICT group.

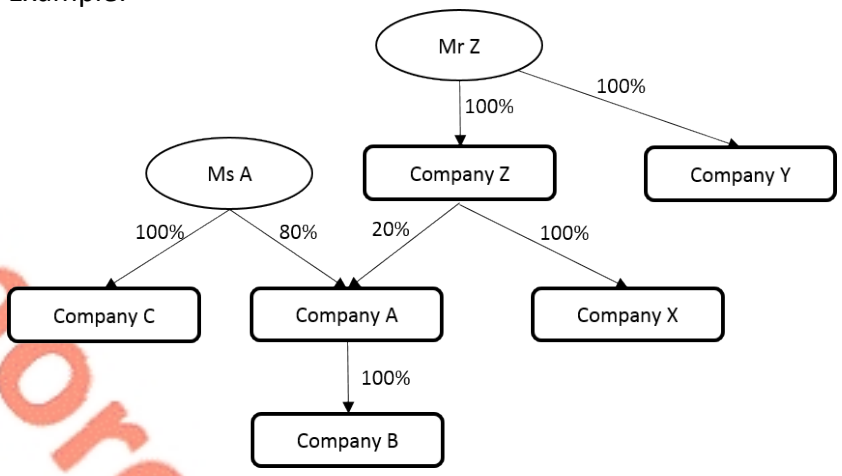
2.1. Prepare a group structure showing the qualifying company, companies in which it holds shares and any companies or individuals which own shares in those companies. Note that this should include all companies, whether dormant or otherwise, and wherever in the world they are incorporated or tax resident.

Example, where Company A is the qualifying company:



2.2. Include any other companies in which any of those companies or individuals own shares.

Example:



It is not necessary to include shareholdings held as an investment (e.g. as part of a quoted share portfolio). In most cases shareholdings of less than 5% can also be excluded. They must be included where they are necessary to understand the control relationship, for example, a number of family members holding 4% each should all be included, a shareholder with a 4% shareholding has a right to acquire 20% of the shares in future should be included; a shareholder that has 4% of the shares but has the ability to appoint the board of the company should be included.

2.3. Include any trades carried on by the individuals in their own name (e.g. as a sole trade or through a partnership)

2.4. Where the control relationship, either because of the rights attaching to shares, a contract, something in the company's constitution or a shareholders' agreement, is different to the shareholding relationship, include details of the control relationship.

A copy of the company's constitution, shareholders' agreements and details of the shares' rights, as well as any other associated document, must be attached to this application.

2.5. Where there are any future rights over shares, e.g. an option agreement, include details.

Example:
Under an option agreement signed on 1-Jan-18 Company Z has the right to acquire 15% of the shares in Company A in 5 years.

A copy of the option agreement must be attached to this application.

2.6. Details of any changes in shareholding in the company in the year prior to this application must be included. Details of changes in shares held by controlling shareholders in the qualifying company should also be included.

2.7. Details of any loans between any of the parties in the group structure should be included.

2.8. For each company or sole trade you must include the following:

- Where the company or trade is located (e.g. Cork, Monaghan, France etc.);
- A PPSN / Tax Reference Number (as applicable);
- The date of incorporation, for companies;
- A short description of the nature of the activities carried on (e.g. green energy generation, dormant company, holding company etc.);
- The date on which those activities commenced;
- If the activities were acquired from any other person, details of that acquisition (including the name, address, relationship of that person to the company and a summary of the transaction).
- Details of the first commercial sale (in many cases this will coincide with the date of commencement to trade).

2.9. Add in any other company or trade that you would consider of as part of "the group".

In the majority of cases, the RICT group will comprise all businesses in the structure either under common corporate ownership or control, or under common individual ownership or control and operating in customer / supplier markets.

3. Undertaking in difficulty [s.490(2)(a)(ii)]

A table setting out the financial position of all businesses in the RICT group must be included.

Sample table:

					Total
Name of business					
(a) Subscribed share capital per accounts					
(b) Share capital shown as a financial liability					
(c) Share premium					
(d) Sub-total (a) + (b) + (c)					
(e) 50% of (d)					
(f) Retained earnings / loss per accounts					
(g) Other reserves					
(h) Adjustments per auditor's letter					
(i) Sub-total (f) + (g) + (h)					
(j) Total (e) – (i)					

If (j), in the total column, is a negative amount, the RICT group may be an undertaking in difficulty.

The most recent financial statements, and auditor's letter if appropriate, for each business in the RICT group must be provided.

If the company believes that it is not an undertaking in difficulty because the issue of its shares was facilitated by a financial intermediary regulated by the Central Bank of Ireland, then details of that financial intermediary should be included.

4. Business plan [s.496(4)]

A business plan is defined as a written business plan which contains details of the product, sales and profitability development, establishing ex-ante financial viability and which includes both quantitative and qualitative details of the activities the investment is sought to support.

A copy of the business plan used to raise funding, or that will be used to raise funding, must be attached to this application.

5. Initial risk finance [s.496(5)]

An initial risk finance investment is the first issue of eligible shares by a RICT group, other than an expansion risk finance investment. Details of any previous EII / SURE / BES / SCS (or their equivalents in other Member States) by any member of the RICT group should be included.

Such a share issue will only qualify for relief if the share issue date is less than 7 years after the RICT group's first commercial sale.

For the purposes of the 7 year test, the RICT group includes all companies or trades that have at any time formed part of the RICT group with the qualifying company. Therefore, the information provided in 2.8 above should be provided in respect of any companies or trades that were held at any time.

6. Expansion risk finance [s.496)6)]

An expansion risk finance investment is the issue of eligible shares to fund entering a new product on the market or entering a new geographic market.

Such a share issue will only qualify for relief if the investment required in a business plan prepared to support this expansion is greater than 50% of the RICT group's average annual turnover in the preceding 5 years.

In addition to the business plan showing the proposed expansion, a table showing the annual turnover for each business in the RICT group, and the accounts which support those figures, should be provided.

Sample table

				Total
Turnover 2018				
Turnover 2017				
Turnover 2016				
Turnover 2015				
Turnover 2014				
Total				
Average				
Investment sought per business plan				

7. Follow-on risk finance [s.496(7)]

The business plan which supported either the initial risk finance investment, or the expansion risk finance investment, and foresaw the possibility of this follow-on investment must be provided.

Where the first risk finance investment was an initial risk finance investment, the details required under 5 must be provided to show that at the time that funding was raised, it would have qualified under those conditions.

Where the first risk finance investment was an expansion risk finance investment, the details required under 6 must be provided to show that at the time that funding was raised, it would have qualified under those conditions.

A schedule showing the shares issued to date by the RICT group which qualified as risk finance investments should be included. The schedule should set out the date of the share issue, the amount raised and the class of share issued. Note that this should include BES, EII, SCS, SURE and SCI as well as equivalent reliefs availed of in other Member States.

Companies should highlight where in the business plan the follow-on investment was foreseen, and should provide confirmation that the funds are to be used for that purpose.