

## Relief for investment in corporate trades: as it applies to investors

### Part 16-00-03

This document should be read in conjunction with Part 16 TCA 1997 and Tax and Duty Manual Part 16-00-02

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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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## Executive Summary

The purpose of this manual is to provide guidance to investors 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 16-00-02](#) provides more details on the conditions that companies, in which the investment is made, must satisfy before an individual investor can be eligible to claim those reliefs.

### 1. The three reliefs

The three reliefs under Part 16 are all designed to be used by trading companies to 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
3. An investor who meets certain criteria.

These reliefs for investments in corporate trades are given by way of deduction from total income. They are reliefs from income tax, but not from PRSI or USC. Each relief requires that the investor subscribe for new shares in a company, and hold those shares for a 4-year period.

#### 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 (the conditions are set out in section 3 below).

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

Relief is available in two tranches:

- The first tranche is 30/40 which is given in the year of assessment in which the investment is made (see section 5 below re designated funds).
- The second tranche is 10/40 which may be available in the fourth year of assessment following the year of investment if certain conditions are met by the company.

## 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. Where the company, the investment and the investors meet certain criteria, then the investor can claim the same relief as an EII investor would claim. That is, the relief is available in two tranches: 30/40 in the year of investment and 10/40 may be available after 4 years.

SCI investments cannot be made through designated investment funds. They must be made directly in the company.

## 1.3 SURE [Chapter 5]

SURE is a tax relief for entrepreneurs who leave an employment to set up their own company. Depending on the size of the investment, investors may be entitled to a refund of income tax paid over the 6 years prior to the year of investment.

SURE investments cannot be made through designated investment funds. They must be made directly in the company.

## 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<sup>1</sup> (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 which are not dealt with in this manual. As such it should be read in conjunction Part 16 as amended by Finance Act 2018.

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<sup>1</sup> OJ No. L187, 26.6.2014, p. 43

## 2 Qualifying investments [Chapter 3]

An investment can only qualify for relief if it is a subscription for eligible shares, if the company meets certain criteria (as set out in TDM 16-00-02) and if the investors meet certain criteria. The company will provide the investor with a statement that it complies with its conditions, but it is up to each individual investor to ensure that he or she meets the investor conditions.

### 2.1 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 company or its shareholders, 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.

Shares may be held in the investors name, or by a nominee. Shares held by a nominee will only qualify for relief if the nominee has made the appropriate return<sup>2</sup> to Revenue, identifying that the shares are held as nominee for the investor. Appropriate trust deeds should be available evidencing that this is a nominee shareholding.

### 2.2 A qualifying investment [s.498 and s.499]

Relief is not generally available if an individual subscribes less than €250 in a qualifying company.

There is no minimum investment where the subscription is made through a designated investment fund.

There are anti-avoidance rules which prevent an investment qualifying for relief where the company commences to carry out activities previously carried out by the investor, or by anyone connected with the investor.

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<sup>2</sup> Form 21R – Return of Third Party Information by Nominee Holders of Securities, as required under section 892 and 894.

### 3 Individuals qualifying for relief

One of the key differences between the reliefs is the type of individual who can claim them.

#### 3.1 Qualifying investor: EII [s.500 and s.501]

An investor cannot be connected with the company. Essentially, the investor should be a third party investor with no prior connection with the company (other than a previous EII investment).

Connected, in this context, includes situations where the individual or a relative of the individual (being a spouse, civil partner, ancestor, lineal descendant or sibling):

- a) is in a partnership with the company, or any company in the RICT group (refer to TDM 16-00-02 for more details on what companies are in the RICT group).
- b) is an employee or director of the company, or any company in the RICT group, and receiving (or being entitled to receive) any payment other than those that a 3<sup>rd</sup> party would receive in the same position.
- c) has an interest in the capital of the company.

A person will “have an interest in the capital of the company” if they do, or can, hold any of the issued share capital, loan capital, voting rights or rights to assets on a winding up. However, there are two exceptions to this rule. The first is if the only “interest in the capital of a company” that a person has is shares that were raised as part of an EII supported fundraising and that person is not under the control of the company. That is, third party EII shareholders, and their family, can continue to make EII investments in a company which they do not control. The second exemption is if the only shares the person holds are founder shares (e.g. the €100 subscribed on foundation of the company), the company has not issued any other shares and the company has not yet commenced any business activity.

Investors cannot get around these rules by arranging reciprocal investments. For example, Mr A invests in Company B, which is owned by Ms B, and Ms B invests in Company A, which is owned by Mr A.

#### 3.2 Qualifying investor: SCI [s.500 and s.503]

The only difference between the investors who qualify for SCI and EII is in relation to the restriction placed on associates of investors. EII is not available for investors whose associates have an interest in the capital of the company. SCI is available to those associates. For example, if Sinead sets up a qualifying company, Sinead’s parents and siblings may get SCI relief for investing in Sinead’s company. Sinead may not get SCI relief.

### 3.3 Specified individual: SURE [s.505]

#### 3.3.1 Employment before investment [s.505(2)]

In order to claim relief under SURE, the investor must be a “specified individual”. To be a “specified individual”, the individual must have been in employment (taxable under either Sch E in respect of an Irish employment or Case III of Sch D in respect of a foreign employment) for the three years preceding the year that precedes the year in which he or she first makes a SURE investment. That is, for an investment during 2019, the individual must have been in employment for 2015, 2016 and 2017. For each of those years, the individual cannot have earnings from any other source in excess of €50,000, or the employment income, whichever is the lower.

#### 3.3.2 Ownership requirement [s.505(3)]

During the specified period (the period of 1 year from the investment, or if the company was not trading when the investment was made, ending 1 year after it commenced to trade) the individual must hold at least 15% of the issued ordinary share capital of the company.

This ownership requirement will not be failed solely because there is a bona fide winding up of the company within that period.

#### 3.3.3 Prohibition on other ownership interests [s.505(4), (5) and (6)]

In general terms, an investor seeking to claim relief under SURE should not hold more than 15% of the ordinary share capital, loan capital or voting power of any other company. There are limited exceptions for companies that carry on no business or which hold no assets.

#### 3.3.4 Employment post investment [s.508S]

An individual must either be carrying on a full time employment in the company at the time he or she makes the first SURE investment in the company, or must take up such an employment shortly thereafter. The employment must be commenced by the later of the end of the calendar year in which the investment is made, or 6 months after the subscription for shares.

## 4 Claiming the reliefs

The three reliefs are given as a deduction from total income. They reduce the individual's income tax liability, but do not reduce PRSI or USC. Relief is claimed by entering the amount in the appropriate box on the Form 11 or through MyEnquiries.

### Limits on relief [s.502(3) and s.507(2)]

The maximum qualifying investment (including EII, SCI and SURE) in respect of which relief can be claimed in a year is €150,000.

#### 4.1.1 SURE [s.507(2)]

The maximum investment in respect of which relief under SURE can be claimed is €100,000 per year of assessment, but refer to 4.3 below re the interaction of this limit and the mechanics of claiming relief.

## 4.2 EII and SCI [s.502 and s.503]

Individuals that qualify for EII and SCI are eligible for the same relief, which is claimed in the same way. EII investments may be made directly or through a designated fund, and Part 5 of this guidance sets out the special rules that apply where the investment is made through such a fund.

#### 4.2.1 30/40 [s.502(2)(a)]

Where an investor subscribes for shares in a qualifying company, the company should provide the investor with a "statement of qualification" (under section 508A). The company must provide the "statement of qualification" within two years of the share issue.

The investor is entitled to rely on this statement as evidence that the company satisfied the company requirements, and to claim this portion of the EII or SCI relief. The statement should be retained as it may be required if Revenue carry out a compliance intervention on the investor.

Relief for investments directly in a company should be claimed in the year in which the investment is made.

The investor may only claim this portion of the relief if he or she is satisfied that he or she meets the investor requirements. The investor must complete certain information in the Form 11 / Form 12 accessible through [MyAccount](#) in relation to the investment.

If the statement of qualification is not received by the time the investor is filing the tax return for the year of the investment, relief may be claimed by subsequently amending that return on receipt of the statement. The normal time limits for claiming a repayment of tax<sup>3</sup> apply.

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<sup>3</sup> Refer to [TDM Part 37-00-30](#) for more details on these time limits.



The individual must include the company's name and tax reference number, the date the investment was made, the amount of the investment and the date of the Statement of Qualification.

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

[...]

#### 4.2.2 10/40 [s.502(2)(b) and (4)]

Where the company meets certain targets an entitlement to claim an additional amount of relief (being 10/40) may arise. The targets are that the company, 3 years after the investment was made, has either:

- a) Has at least one more full time employee than it had in the year prior to the investment being made, and has not reduced the amounts paid to other employees, or
- b) Spends more on R&D+I than it did in the year prior to the investment being made.

Where the company meets those targets, it should provide the investor with a "statement of qualification (second stage relief)" (under section 508B). As with the initial claim for the 30/40, the investor can rely on that statement that the company has met those targets.

The company cannot issue the second stage statement until the 4 year holding period has ended, and must issue the "statement of qualification (second stage relief)" within two years of meeting the targets.

The investor may only claim this portion of the relief if he or she is satisfied that he or she continues to meet the investor requirements. The investor must complete certain information in the Form 11 / Form 12 accessible through [MyAccount](#) in relation to the investment.

If the second stage statement of qualification is not received by the time the investor is filing the tax return for the year of the investment, relief may be claimed by subsequently amending that return. The normal time limits for claiming a repayment of tax apply.

The individual must include the company's name and tax reference number, the date the investment was made, the amount of the investment and the date of the Statement of Qualification (second stage relief).

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

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### 4.3 SURE [s.507]

An investor may make a number of investments in a qualifying company. For the purposes of relief under SURE, all investments made in a year of assessment are added together to form a “relevant investment”.

Where an investor makes a relevant investment in a qualifying company, the company should provide the investor with a “statement of qualification (SURE)” (under section 508C). The investor claims relief once that statement is received.

Relief for a SURE investment can be claimed over a period of 7 years, with any unused relief available for carry forward thereafter (refer to 4.4 below). An investor can elect to claim the relief for an investment, of a maximum of €100,000 per year, over the year of investment and the 6 prior years. That means that, the maximum SURE investment in respect of which relief is available is €700,000. The normal 4 year time limit for claiming repayments of tax is specifically lifted for these claims (s.507(3)(f)). An investment in 2019 can be claimed against the total income in 2013, 2014, 2015, 2016, 2017, 2018 and 2019.

An individual can make two relevant investments that may qualify for SURE relief (noting that both investments must be qualifying investments, as set out in TDM 16-00-02). The second investment must be made in one of the two years of assessment following the first investment.

Individuals can only claim SURE relief in respect of an investment in a single company.

### 4.4 Carry forward of unused relief [s.508]

Where an individual has either invested more than the €150,000 limit (or €100,000 limit in SURE) or where the individual does not have enough income to absorb the full relief in a year, the unused amount may be carried forward for offset against total income in future years.

In each year, relief is given for earlier investments in priority to relief for later investments.

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## 5 Investments through designated investment funds [Chapter 7]

Individuals that wish to make an EII investment may do so directly in the company, or they may do so through a designated investment fund. A designated investment fund is a fund that has been approved by Revenue as such.

If the investment is made through a designated fund, the company will provide the designated fund manager with the statement of qualification, and the designated fund manager will provide the investor with a certificate showing the qualifying investments. The investor can claim relief once they have received the relevant certificate.

Relief for investments in closed ended designated funds can be made in either the year in which the investor subscribes in the fund, or the year in which the fund subscribes in the company.