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

Part 16-00-10

This document should be read in conjunction with Part 16 Taxes Consolidation Act 1997

Document last updated March 2019

This manual refers to Part 16 TCA 1997, before it was amended by Finance Act 2018. It applies to shares issued up to 31 December 2018.

For share issues after that date please refer to Tax and Duty Manual Part 16-00-02 in respect of the company conditions, and Tax and Duty Manual Part 16-00-03 in respect of the investor conditions.

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Status of this Document

This document is NOT a legal interpretation of any of the legislation on which EII is based. Nor is it intended as a comprehensive guide to EII. It is a general information guide to EII, aimed at independent third-party investors wishing to avail of this tax relief and for qualifying companies wishing to raise investments under EII.

This guide is intended to be in plain language. However, throughout this guide several terms are used which are defined in legislation and references to that legislation (within square brackets, e.g. [s.492], for those who wish to get a fuller understanding of the incentive.

The Employment and Investment Incentive is a State aid, established under certain qualifying criteria as set out by the EU under The General Block Exemption Regulation (GBER).

A number of changes have been made to the incentive since its launch. This guide explains the incentive that is currently in force. Please see **Appendix 2** for a time line of changes to the incentive.

Introduction and summary of the incentive

The Employment and Investment Incentive (EII) is a tax incentive which provides for tax relief of up to 40% in respect of investments made in certain corporate trades. The EII allows an individual investor to obtain income tax relief on investments for shares in certain companies up to a maximum of €150,000 per annum in each tax year up to 2020. Initially relief is allowed on thirty fortieths [30/40] of the EII investment in the year the investment is made. Potentially, this can result in a tax saving for the investor of up to 30% of the investment.

Relief in respect of the further ten fortieths [10/40] of the EII investment will be available in the fourth year after EII investment was made providing that certain conditions are met[1]. Potentially, this can result in a further tax saving for the investor up to 10% of the investment.

Relief under EII is available to unquoted micro, small and medium sized trading companies. However, certain activities are excluded. A qualifying company can raise a lifetime maximum of €15,000,000 risk finance using this incentive, which may not otherwise be able to be raised.

The tax relief is provided to assist companies to raise finance to allow them to expand and create or retain jobs. In order to qualify for tax relief each investment must satisfy conditions relating to a number of component parts, including the following:

[1] An increase in the number of qualifying employees and an increase in the wages paid by the company to qualifying employees by at least the wages of one qualifying employee, or an increase in the companies R&D spend.

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

The requirements of each of the component parts are looked at in turn in the following sections of this leaflet.

It is important to note that investments made using the EII are risk finance investments and, as such, there is no guarantee that they will generate a return and could in fact result in a loss for the investors. The responsibility for the risk associated with the investment rests entirely with the investor.

1 The Investor [section 492]

A qualifying investor is an individual who:

I. is resident in the State for the tax year in respect of which he/she makes the investment. However, in certain circumstances, a non-resident may qualify if they have income charged to Irish tax,

II. subscribes on his/her own behalf for eligible shares in a qualifying company [s.492(1)(b)]. However, a person may use a nominee to hold the shares on his/her behalf, or they may invest through a designated investment fund [s.506(1)],

and

III. is not, throughout the period of 2 years before and 4 years after making the investment, connected with the company or any of its subsidiaries[s.492(1)].

1.1 Connected Party

A person is connected with the company if:

I. he/she, or an associate[2] of his/hers, is a partner of the company [s.492(2)(a)], i.e. in a partnership with the company,

> Alfie and Motorbike Limited enter into a partnership to promote a music festival. This would mean Alfie is connected with Motorbike Limited and Alfie would not be able to avail of tax relief under EII in respect of any investment made by him in Motorbike Limited.

Or

II. he/she possesses, or is entitled to acquire, including in the event of the company being wound up, any of [s.492(4) and s.492(6)]:
   a. the issued ordinary share capital of the company,
   b. the loan capital[3] of the company,

[2] An associate for the EII is spouse or civil partner, ancestor, lineal descendent or sibling, a person who is in a partnership with the investor, or a person who is a beneficiary of a trust, or a will/ estate that the investor is also a beneficiary of.

c. the voting power in the company,

> Deirdre owns 35% of Shopping Limited's share capital. Therefore, Deirdre is connected with Shopping Limited and Deirdre would not be able to avail of tax relief under EII in respect of any further investment made by her in Shopping Limited.

Or

III. he/she controls the company [s.492(7)],

or

IV. he/she is investing in a company as part of a deal whereby a person connected with that company in turn invests in a separate company with which the investor is connected [s.492(11)].

> Jim, who is connected with Z Limited, makes an EII investment in X Limited. Mark, who is connected with X Limited, makes an EII investment in Y Limited and Luke, who is connected with Y Limited, makes an EII investment in Z Limited.
> As these investments form part of a deal whereby a person connected with a company in turn invests in a separate company with which the investor is connected, relief under EII is not due to Jim, Mark or Luke.

Employees and directors of the investee company may invest in the company under EII provided:

- they are not a connected party, as defined above, with the company [s.492(3)], **and**
- are not receiving payments from the company other than reasonable pay and expenses [s.492(3)].

> Jason, who is employed by Football Limited, owns 40% of the issued share capital of the company. He would therefore not be able to avail of tax relief under EII in respect of any further investments made by him in Football Limited.
> Gillian, who is employed by Arts Limited and earns €48,000 per annum [€4,000 per month], invested €10,000 into Arts Limited and availed of relief under EII. It subsequently transpired that Gillian was paid €19,000, including a bonus of €15,000, in the month immediately after the EII investment was made. This would be considered excessive pay and the relief granted to Gillian under EII would be withdrawn.

[3] Loan capital includes any debt incurred by the company such as for money borrowed or capital assets acquired, or for any right to receive income created in favour of the company.

2 The Company and its trade

2.1 The group of which the company is part [section 494]

There are a number of conditions which apply to the company in which the EII investment is made and all partner and linked enterprises. This grouping is referred to as an undertaking.

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

(a) One enterprise holds the majority of the voting rights in the other enterprise,

(b) One enterprise can control the board of the other enterprise,

(c) One enterprise has a right to exercise dominant control over the other because of a contract or because of something in the enterprises' constitutions, or

(d) One enterprise, which is a shareholder in another enterprise, can actually control that other enterprise 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 enterprises will only be linked where the two enterprises are in the same or adjacent markets (that is, either operating in the market downstream (customers) or upstream (suppliers) of the qualifying company).

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

In order to qualify for EII, the undertaking of which the company is part must:

I. be a micro, small or medium sized enterprise[4] [s.494(4)]:

II. not be regarded as a firm in difficulty[5] [s.494(18)],

III. when its initial EII investment is received, meet one of the following conditions:

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[4] a micro enterprise has less than 10 employees, and an annual turnover and/or annual balance sheet total not exceeding €2 million,
a small enterprise has less than 50 employees, and an annual turnover and/or annual balance sheet total not exceeding €10 million,
a medium-sized enterprise has less than 250 employees, and an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million

[5] An undertaking will be considered a "firm 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.

a. has not operated in any market,

b. it is trading for less than 7 years,

or

c. the investment under EII is required to fund a new product or enter a new geographical market and the amount of the investment required under EII is greater than 50% of its average annual turnover for the preceding 5 years [s.494(4A)],

IV. when any follow-on EII investments are being raised, these investments are only eligible for relief where the possibility of follow on EII investments was foreseen in the undertaking's original business plan (being the business plan first used to raise financing under BES, SCS, SURE or EII) [s.494(4A)].

These conditions must be met at the time of the share issue.

2.2 The Company [section 494]

A qualifying company is one which, at the time of the share issue:

I. is incorporated in the State or another European Economic Area (EEA) State[6] [s.494(2)],

A qualifying company is one which, throughout a period of four years after the shares have been issued, or the company begins trade,

I. is resident in the State or is resident in another EEA State and carries on business in the State through a branch or agency [s.494(3)(a)],

II. must:

a. exist wholly[7] for the purposes of carrying on of a qualifying trade [s.494(3)(a)(i)],

or

b. be a holding company of one or more qualifying subsidiaries (refer to 2.3 below) [s.494(3)(a)(ii)(I)],

or

c. be a company which exists for the purposes of carrying on a qualifying trade and be a holding company for qualifying subsidiaries[s.494(3)(a)(ii)(II)],

III. is an unquoted company, i.e. not listed on the official list of a Stock Exchange or quoted on an unlisted securities market of a stock exchange except that they may be listed on the Enterprise Securities Market of the Irish Stock Exchange [s.494(3)(a) and the definition of 'unquoted company' in s.488(1) refer],

IV. has its issued share capital fully paid up [s.494(11)],

V. is not under the control of another company or other companies, or under the control of a company and a person connected with that other company. Control in this case means a person holding 50% of the voting power of the company, or over 50% of the share capital, or a person who is entitled to a greater part of the company's assets upon winding up [s.494(12)],

[6] The EAA includes all EU Member States, Norway, Iceland, and Lichtenstein

[7] A company may have incidental other income, e.g. where they have temporarily placed the funds raised in a bank account and earned interest on that amount. Such income will not be taken as evidence that the company does not exist wholly for the purposes of carrying on a qualifying trade. However, where the company has income which is not incidental to its trade, it is likely that it will not pass this test.

> Company A holds 60% of the shares in Company B. Company B would not qualify for EII as it is under the control of Company A.
> Company E and Company F together own 60% of the voting rights in Company G. They together control company G. Therefore, Company G would not qualify for EII.
> Mr T owns 100% of the shares in Company S. Company S and Mr T together own 75% of the shares in Company U. They together control Company U. Therefore, Company U would not qualify for EII.

VI. does not control other companies unless they are qualifying subsidiaries[s.494(12)].

Where relief is claimed in respect of a qualifying subsidiary, these conditions must be met by the qualifying subsidiary in addition to the qualifying company [s. 494(17) and s.505(1)].

If the conditions are not met for the 4 year holding period, this will result in the relief already granted under EII being withdrawn.

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

A company will not cease to be regarded as a qualifying company if it is wound up or dissolved during the four 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 [s.494(10)]. However, the winding up of the company may trigger other clawbacks of relief, such as return of capital (refer to section 10 below for more details).

2.3 Qualifying Companies and Subsidiaries [section 505]

A qualifying company can have subsidiaries provided that:

I. the subsidiaries are at least 51% owned by the qualifying company,

and

II. the subsidiaries are themselves qualifying companies or carry out certain services for, or functions on behalf of, the qualifying company or its subsidiaries.

> The most common example of a qualifying subsidiary would be a UK or US based sales office which would sell, or buy, products on behalf of the qualifying company.

2.4 The Trade [the definition of ‘relevant trading activities’ in section 488(1)]

EII is available to the majority of micro, small and medium-sized trading companies.

However, the following trading activities are excluded from the incentive:

- adventures or concerns in the nature of trade, e.g. once-off or speculative transactions,

- dealing in commodities or futures in shares, securities or other financial assets,
- financing activities, however, Internationally Traded Financial Services may qualify subject to approval from Enterprise Ireland,
- professional service companies, e.g. accountants, pharmacists, solicitors, business advisors, doctors and architects,
- dealing in or developing land, i.e. construction and building, forestry,
- 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).

3 Extra requirements for certain activities

3.1 Tourist Traffic Undertakings [section 494(6)]

A company carrying on Tourist Traffic Undertakings must have prior approval from Fáilte Ireland before making any application to the Revenue Commissioners.

3.2 Internationally Traded Financial Services [section 494(5)]

A company carrying on Internationally Traded Financial Services must have prior approval from Enterprise Ireland before making any application to the Revenue Commissioners.

3.3 Green Energy Activities [section 494(7) and section 489(11)]

Companies generating renewable electricity are deemed to commence trading for the purposes of EII when they have applied for a grid connection agreement.

4 Use of EII Money

The company must use the money raised from the share issue for the purpose of carrying on a qualifying trade [s.489(1)(b)(i)], or if the company has not yet commenced to trade in incurring expenditure, on research and development[8] [s.489(1)(b)(ii)].

In addition, the use of the funds must contribute directly to the maintenance or creation of employment in the company (e.g. the money raised can be used to pay the wages of the qualifying employees of the company) [s.489(1)(c)].

The following are examples of how money raised under EII can be utilised by the company:

- purchase of stock,
- paying for light and heat,
- the purchase of fixtures and fittings and plant and machinery,
- the purchase of a premises from which the trade will be carried on,
- the extension on the company's premises.

4.1 Research and Development

A company carrying on qualifying R&D, but which has yet to commence to trade, must spend at least 30% of the amount raised on qualifying R&D prior to a claim being made [s.489(4)(b)(ii) and s.501(1)(a)(i)].

[8] As defined by section 766 TCA 1997,more information is available here

4.2 Qualifying subsidiaries

The money raised by a share issue can be used by a qualifying subsidiary for the above purposes. In order to avail of relief under EII, the qualifying company must invest the money into the qualifying subsidiary by way of share issue [s.494(3)(b)].

5 Qualifying Shares

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

I. represent new ordinary share capital in a qualifying company,
and
II. carry no preferential rights [definition of 'eligible shares' in s.488(1)].

Shares must be held in the company for the period of 4 years from the date of share issue. If the company has yet to commence to trade when the shares are issued, the period of 4 years begins on the date the company commences to trade [s.496(1)].

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[…]

The shares should be issued without undue delay after the investment takes place and should be issued in the same tax year the investment was received.

6 The Investment [section 497]

The investment must be made by way of investing new cash into a company in exchange for qualifying shares. Relief cannot be given on converted director's loans, or on shares awarded in lieu of wages, or for no consideration.

7 Limits of the Incentive

7.1 For investors [section 490]

The minimum investment in any one company in a tax year is €250. (This does not apply in relation to investments through investment funds designated for the purposes of the incentive where there is no statutory minimum). A married couple/civil partnership can split this minimum investment to €125 each.

The maximum investment in a tax year by an individual is €150,000, which can be invested in a number of companies. If this amount cannot be relieved in a tax year due to insufficient income, any amount unrelieved may be carried forward until it is fully utilised, or to 2020 whichever is the earlier.

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.

The spouse/civil partner that make the investment must claim the relief on the investment. Relief on an investment by one spouse/civil partner cannot be transferred to the other spouse/civil partner.

7.2 For the company [section 491]

The maximum a company and its group companies (refer to 2.1 above for details of what will be part of the group) can raise in its lifetime is €15,000,000, subject to a maximum of €5,000,000 in any one twelve monthly period. If companies enter into specified arrangements or understandings which are designed to circumvent the €15,000,000 limit, then the maximum amount that can be raised under the EII by all such companies as a whole will be limited to €15,000,000.

8 Disposal of shares

8.1 Income Tax [section 175, section 135]

Where the shares in respect of which relief under EII was claimed are repurchased by the company, it is likely that income tax will arise. Where the shares are purchased by a company which is put in a position to purchase the shares by the qualifying company, it is likely that income tax will arise.

8.2 Capital Gains Tax [section 504]

The normal provisions relating to Capital Gains Tax (CGT) will in general apply with regard to investments under the incentive. However, where a person holds shares in respect of which EII was granted and shares of the same class in respect of which EII was not granted, disposals will be deemed to be of the EII shares first [s.496(4)].

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.

9 Designated Investment Funds [section 506]

A designated investment fund is a fund which has been designated by Revenue, and the Designated Funds Act 1985 also has application.

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 in relation to the total size of the fund.

Each fund must prepare a prospectus, which must be approved by the Minister for Jobs, Enterprise and Innovation, and which must include particulars of fees to be charged and the remuneration or other charges to be levied in respect of the management of the fund.

10 Circumstances in which relief may be withdrawn

In addition to continuing to meet the conditions set out above for the prescribed period, a clawback of EII may arise where there has been a return of value to the shareholder.

Shares must be held for at least four years. The investor may sell them within the four years if he/she so wishes but this will result in him/her losing the relief.

If a company in which an individual has made an investment under EII:

- 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 EII by providing a benefit for the individual,
- transfers an asset to the individual without any consideration,
- 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 EII will be reduced accordingly [s.497].

> In March 2016, Paula made an €80,000 investment under EII in Skin Limited [a company that manufactures beauty products] and received tax relief on €60,000 [30/40 of €80,000] in 2016 on this investment.
> In June 2018, Skin Limited gave Paula beauty products valued at €30,000 at no cost. This would be considered to be "value received" by Paula from Skin Limited and Paula's relief under EII will be reduced accordingly.
>
> | | |
> |---|---|
> | EII Investment made in 2016: | €80 000 |
> | Value received in 2018: | €30,000 |
> | Revised EII Investment: | €50,000 |
>
> Paula is due relief on the revised EII investment of €50,000 and the relief granted to Paula in 2016 will be reduced to €37,500 [30/40 of €50,000].

Reasonable payments to employees or directors in their capacity as employees or directors are 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 [s.496(3)].

Similarly, if an individual grants to any person an option within 4 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 [s.496(3)].

If the relief does have to be withdrawn [s.502] 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[9]. The investor cannot lose more tax relief than he/she originally obtained, but may have to pay interest and/or penalties to the Revenue Commissioners.

11 The Tax Relief [section 489]

Providing all of the conditions of the incentive are met, initial relief of 30/40 of the EII investment is due in the tax year in which the investment is made.

Where an investor invests in eligible shares through a designated investment fund but the shares are not issued to the fund until the following year, he/she can opt to claim tax relief in the year in which he/she made the investment in the fund rather than the year in which the shares were issued.

> Peter invests in a designated fund in October 2016. The shares are not issued by the company the designated fund invested in until March 2017. Peter can opt to claim tax relief on the EII investment in 2016 [the year he made the investment] or 2017 [the year the shares are issued].

Further relief of 10/40 of the investment may be due in the fourth tax year following the year of investment (if you invest in December 2016, this relief would be due in 2020), if:

I. there is an increase in the number of qualifying employees. To determine if there is an increase of the number of qualifying employees, the number of qualifying employees in the year of assessment before the investment under EII was made is compared to the number of qualifying employees in the year of assessment 3 years after the investment was made,

   and

II. the amount of wages paid to qualifying employees has increased by the wages of at least one qualifying employee.

[9] Refer to Tax and Duty Manual 16-00-03 for further details on withdrawing relief.

An investment under EII was made in March 2016.
The company in which the EII investment was made had:

- 4 qualifying employees in the year ended 31st December 2015 [the year of assessment before the EII investment was made],
- 6 qualifying employees in the year ended 31st December 2018 [the year of assessment 3 years after the EII investment was made ends].

The wages paid by the company in which the EII investment was made was as follows:

- €120,000 in the year ended 31 December 2015,
- €190,000 in the year ended 31 December 2018.

As the number of qualifying employees has increased by 2 and the emoluments by €70,000 [which is more than emoluments of one qualifying employee in 2015], the further 10/40 relief under EII is due.

III. there is an increase in the company's spend on qualifying R&D activities. To determine if there is an increase in the R&D spend, the amount spent on R&D in the accounting period preceding the year of assessment in which shares were issued is compared to the R&D spend in the accounting period ending in the year before the year in which the 4 year holding period ends.

An investment under EII was made in March 2016.
The company's expenditure on R&D in the accounting period ended the 31st December 2015 [the accounting period ending the year before the EII investment was made] was €175,000.
The company's expenditure on R&D in the accounting period ended the 31st December 2019 [the accounting period ending the year before the 3 year period ends] was €215,000.
As there has been an increase in the company's R&D spend, the further 10/40 relief under EII is due.

A qualifying employee is an employee, other than a director of the company, who throughout his/her employment works at least 30 hours per week and his/her employment is capable of lasting at least 12 months.

12 How to apply for approval under EII [section 501]

Before any investor can receive their relief, the company must apply to Revenue for approval. Revenue approval is based on the information provided by the company on the relevant form. It is an offence for the company to provide false or misleading information which causes Revenue approval to issue when it is not due. Revenue approval is in the form of a certificate which is issued to the company and allows relief to be claimed by the investor.

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

[…]

For the initial relief of 30/40 of the EII investment, the company must submit a **Form EII 1**. A Form EII 1 is required for each share issue.

In order to avail of the further relief of 10/40 of the EII investment, the company must submit a **Form EII 1A** for each share issue.

12.1 EII Outline approval

A company may apply to Revenue for Outline Approval. This gives an indication to the company that it would be considered to be a qualifying company for the purposes of EII.

If a company wishes to apply for Outline Approval, the company should submit a **Form EII Outline** to Revenue.

It must be stressed that entitlement to EII relief is determined only when the share issue has taken place and the fact that a company may obtain Outline Approval does not guarantee the availability of EII relief.

12.2 Approval of a share issue – direct investments

12.2.1 Form EII 1

The Form EII 1 can be submitted:

- immediately, in the case of a company that has already been trading for more than four months,
- in the case of a new company, when the company has been trading for four months, or
- in the case of a company that is not yet trading but carrying on qualifying R&D, when 30% of the money raised under EII is spent on R&D.

If the statement submitted by the company indicates that the requirements of incentive are met, Revenue will issue EII 2 and EII 3 certificates to the company.

An EII 2 certificate authorises the company to issue EII 3 certificates to individual investors for that share issue.

An EII 3 certificate enables the investor to claim tax relief on his/her investment under EII. The company must fill in part 1 of EII 3 certificate before issuing to the investor.

The investor must make his/her claim with the EII 3 certificate not later than two years from the end of the year of investment. In some limited circumstances, a claim may be made later than this date[10]. For an investment made under EII in 2017, the claim must be made by the 31st of December 2019.

[10] If the company is not trading for 4 months at the time of shares are issued, the claim must be made within two years of the date the company has been trading for 4 months. If the company submits the form EII 1 3

12.2.2 Form EII 1A

The Form EII 1A should be submitted as follows:

- in a case where employment has been increased, the 1st January of the fourth year after investment,
- in a case where the R&D spend increased, the day after the company’s accounting year end, in the year before the 4 year share holding period ends.

If the statement submitted by the company indicates that the requirements of incentive are met, Revenue will issue EII 2A and EII 3A certificates to the company.

An EII 2A certificate authorises the company to issue EII 3A certificates for that share issue.

An EII 3A certificate enables the investor to claim the additional tax relief on his/her investment under EII. The company must fill in part 1 of this certificate before issuing to the investor.

The Form EII 1 / EII 1A must be completed by the company secretary.

Applications by the company should be submitted online via MyEnquiries to: eiiadmin@revenue.ie.

Alternatively, they can be sent to:

Office of Revenue Commissioners
Incentives Branch
Stamping Building
Dublin Castle
Dublin 2
Eircode: D02 HW86

12.3 Approval of a share issue – investments through designated funds

Where an investment is made through a designated fund, the investor can claim relief once the Certificate EII 5 or EII 5A, as appropriate, has issued.

12.4 How the investor makes his/her claim [section 501]

The claim cannot be made unless, and until, the investor holds the relevant EII 3 or EII 3A certificate (or EII 5 or 5A certificate for investments through designated funds).

Once they hold the EII 3 certificate, a claim for the initial relief of 30/40 must be made:

I. within two years of the end of the year of assessment in which the shares are issued,
or
II. if the company is not trading at the time the shares are issued, within two years from the end of the 4 month period mentioned earlier.

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months before the end of the two year limit, the limit may be extended by 3 months.

Once they hold the EII 3A certificate, a claim for the further relief 10/40 must be made within two years of the end of the year of assessment in which the 4 year share holding period ended.

If the investor invested through a designated investment fund, the investor cannot make their claim unless they are in possession of an EII 5 or EII 5A certificate.

The investor can make the claim electronically using the Revenue On-Line Service [ROS] or by using myAccount.

The claim may also be made in writing to the investor's local tax district.

Appendix 1 – State Aid Cumulation.

With effect from October 2015, a company that raises capital under the EII (and/or under SURE) is subject to the cumulation rules under the **General Block Exemption Regulations (GBER)**.

The cumulation rules set out in GBER may apply to other State aid received by the undertaking.

The attention of owners of small businesses, or of people intending to start or expand a business by raising EII investments, is drawn 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:

- must be notified to the European Commission;
- details will be published on the Revenue website and on the European Commission's website;
  and
- will be made available to other State agencies with responsibility for the administration of other State aid schemes.

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.

Appendix 2 – Timeline of EII changes

- 21/11/2011 – The Employment and Investment Incentive (EII) is launched. It ran in tandem with the Business Expansion Scheme (BES) until the 31/12/2011.
- 01/01/2012 – All share issue from this point are in EII. The BES is ceased.
- 01/01/2013 – The incentive is extended until the 31/12/2020. The operation of hotels, guest houses and hostels is now a qualifying trade subject to certification by Fáilte Ireland for share issue after this date.
- 15/10/2013 - The first tranche of EII relief was removed from the high earners restriction from share issue dated between 15/10/2013 and 31/12/2017.
- 01/01/2014 – The higher rate of income tax was lowered from 41% to 40%. To reflect this change, the rate of initial relief was changed from 30/41 of the investment to 30/40 of the investment and the additional relief was changed from 11/41 of the investment to 10/40 of the investment for investments dated 01/01/2014 onwards.
- 13/10/2015 - Internationally Traded Financial Services is now a qualifying trade for share issue dated 13/10/2015 onwards.
  The operation of Qualifying Nursing Homes is now a qualifying trade for share issue dated 13/10/2015 onwards.
  The limits on funds raised under the incentive were increase from €2,500,000 to €5,000,000 in any 12 months period and from €10,000,000 to €15,000,000 for the lifetime of the business.
  Medium sized companies based in non-assisted areas of the State, that are beyond the start-up phase, can now qualify for the incentive for share issue dated 13/10/2015 onwards.
  Companies are now required to have their tax affairs fully up-to-date in order to qualify.
  The incentive was brought in line with the EU's General Block Exemption Regulations on State aid (GBER) by restricting when a company can make its first or subsequent applications to the incentive.
- 2/11/2017 – individuals connected with the company are no longer eligible for relief under EII.

Appendix 3 – Examples of Relief

Below are a number of examples of how relief on an EII investment is calculated.

Example 1
The following example illustrates how the initial relief [30/40] on an EII investment is calculated where relief on the EII investment is obtained at the higher [40%] rate of tax.

John, who is taxed under PAYE and is paid €6,500 gross monthly, makes an EII investment in a "qualifying company" in June 2016 of €40,000.

John decided to wait until January 2017 to claim relief on his EII investment and inputs the details into myAccount.

John’s Form P60 for the 2016 Tax Year shows the following details:
Total Pay: €78,000. Tax Deducted: €21,140,
Tax Credit (single person, and PAYE credit): €3,300,
Rate Band: €33,800.
John’s revised tax liability for 2016 is calculated as follows:

2016		
Gross Pay		€78,000
EII Investment*		**€30,000**
Taxable Pay		€48,000
Taxable as follows:		
	€33,800 @ 20% =	€6,760
	€14,200 @ 40% =	**€5,680**
	Gross Tax Payable	€12,440
	Less:	
	Tax Credits	**€3,300**
	Net Tax Payable	€9,140
	Tax Already Paid	€21,140
	Refund Due	€12,000
Refund due on allowable EII Investment €30,000 @ 40% = €12,000		
* EII Investment €40,000 X 30/40 = €30,000 in 2016		
John can claim relief on the balance of his EII investment of €10,000 [€40,000 - €30,000 claimed in 2016] in the 2020 tax year if due.		

Example 2

If John, in Example 1 above, decided to claim relief on his EII investment immediately, the following would apply:
John submits his EII3 Certificate to his local tax office who issue John with a revised Tax Credit Certificate for the 2016 tax year in July 2016.

John's revised Tax Credit Certificate shows the following details:
Tax Credit: €9,300. Rate Band: €63,800.

When John's employer operated the revised Tax Credit Certificate, he received a tax refund, in his wages, of €7,000 in his July 2016 monthly salary payment.
John also paid €1,000 per month less in tax in the months August to December 2016 [i.e. €1,000 x 5 = €5,000] as a result of the revised Tax Credit Certificate.

John still receives a refund of €12,000 in 2016 in respect of his allowable EII investment of €30,000 but, rather than a lump sum payment €12,000, the refund is made in his monthly salary payments.

John can claim relief on the balance of his EII investment of €10,000 [€40,000 - €30,000 claimed in 2016] in the 2020 tax year if due.

Example 3

The following example illustrates how the initial relief [30/40] on a EII investment is calculated where relief on the EII investment is obtained at a combination of the higher [40%] and standard [20%] rates of tax.

Stephen, who is taxed under PAYE and paid €4,500 gross monthly, makes an EII investment in a "qualifying company" in April 2016 of €40,000.

Stephen decided to wait until January 2017 to claim relief on his EII investment and inputs his details in **myAccount**.

Stephen's Form P60 for the 2016 Tax Year shows the following details:
Total Pay: €54,000. Tax Deducted: €11,540,
Tax Credit: €3,300 (single person, and PAYE credit),
Rate Band: €33,800.

Stephen's revised tax liability for 2016 is calculated as follows:

2016		
Gross Pay		€54,000
EII Investment*		**€30,000**
Taxable Pay		€24,000
Taxable as follows:		
	€24,000 @ 20% =	€4,800
	€0 @ 40% =	**€0**
	Gross Tax Payable	€4,800
	Less:	
	Tax Credits	**€3,300**
	Net Tax Payable	€1,500
	Tax Already Paid	€11,540
	Refund Due	€10,040
Refund due on allowable EII Investment €30,000 in 2016 is calculated as follows: €20,200 @ 40% = €8,000 €9,800 @ 20% = €1,960 Total refund due: €10,040		
* EII Investment €40,000 X 30/40 = €30,000 in 2016		
Stephen can claim relief on the balance of his EII investment of €10,000 [€40,000 - €30,000 claimed in 2016] in the 2020 tax year if due.		

Example 4

If Stephen, in Example 3 above, decided to claim relief on his EII investment immediately, the following would apply:

Stephen submits his EII3 Certificate to his local tax office who issue Stephen with a revised Tax Credit Certificate for the 2016 tax year in June 2016.

Stephen's revised Tax Credit Certificate shows the following details
  Tax Credit: €9,300. Rate Band: €63,800.

When Stephen's employer operated the revised Tax Credit Certificate he received a tax refund, in his wages, of €5,020 in his June 2016 monthly salary payment.

Stephen's also paid €836.67 per month less in tax in the months July to December 2016 [i.e. €836.67 X 6 = €5,020] as a result of the revised Tax Credit Certificate.

Stephen still receives a refund of €10,040 in 2016 in respect of his allowable EII investment of €30,000 but, rather than a lump sum payment €10,040, the refund is made in his monthly salary payments.

Stephen can claim relief on the balance of his EII investment of €10,000 [€40,000 - €30,000 claimed in 2016] in the 2020 tax year if due.

Example 5

The following example illustrates how the initial relief [30/40] on a EII investment is calculated where relief on the EII investment cannot be fully relieved in the year of assessment the EII investment was made.

Rose, who is taxed under PAYE and paid €3,000 gross monthly, makes an EII investment in a "qualifying company" in June 2016 of €56,000.

Rose decided to wait until January 2017 to claim relief on her EII investment and submits her details into **myAccount**.

Rose's Form P60 for the 2016 Tax Year show the following details:
Total Pay: €36,000. Tax Deducted: €4,340,
Tax Credit: €3,300. Rate Band: €33,800.
Rose's revised tax liability for 2016 is calculated as follows:

2016	
Gross Pay	€36,000
EII Investment*	**€42,000**
Taxable Pay	€Nil
Credit Tax Paid	€4,340
Refund Due	€4,340
Refund due on allowable EII Investment is restricted to the amount of tax paid by Rose in 2016 of €4,340	
* EII Investment €56,000 X 30/40 = €42,000 in 2016	

Rose can:

- carry forward, to the 2017 tax year, the balance of her EII investment of €6,000 [€42,000 - €36,000] that was not relived in the 2016 tax year
- claim relief on the balance of her original EII investment of €14,000 [€56, 000 – (€36,000 claimed in 2016 and €6,000 claimed in 2017)] in the 2020 tax year if due

Example 6

The following example illustrates how the initial relief [30/40] on a EII investment while fully allowed is restricted to the amount of tax paid by the EII investor in the year of assessment the EII investment was made.

Denise, who is married and taxed under PAYE and is paid €3,500 gross monthly, makes an EII investment in a "qualifying company" in April 2016 of €48,000.
Denise decided to wait until January 2017 to claim relief on his EII investment and inputs her details in **myAccount**.

Denise's Form P60 for the 2016 Tax Year shows the following details:
Total Pay: €42,000. Tax Deducted: €3,450
Tax Credit: €4,950 (married person and PAYE credit).

Rate Band: €42,800

Denise's revised tax liability for 2016 is calculated as follows:

2016		
Gross Pay		€42,000
EII Investment*		**€36,000**
Taxable Pay		€6,000
Taxable as follows:		
	€6,000 @ 20% =	€1,200
	Gross Tax Payable	€1,200
	Less:	
	Tax Credits	**€1,200**
	Net Tax Payable	€Nil
	Tax Already Paid	€3,450
	Refund Due	€3,450
* EII Investment €38,000 X 30/40 = €36,000 in 2016		

Example 7

Paul, who is self employed and taxed under the self assessment system, makes an EII investment in a "qualifying company" in June 2016 of €80,000.

Paul can claim relief on this EII investment when making his Self-Assessment return in October 2017.

Paul claims relief on 30/40 [€60,000] of the EII investment on his 2016 self-assessment return and the amount of tax that Paul is due to pay under self assessment is reduced by the amount of the relief that Paul is due on his EII investment.

Paul's income tax liability for 2016, without taking account of the relief due to Paul in respect of his EII investment, was €55,000. The relief due to Paul in respect of his EII investment is €24,000 [€60,000 @ 40%], thereby reducing his income tax liability for 2016 to €31,000.

For pay and file purposes, Paul will have to make his Preliminary Tax payment for 2017 with reference to his income tax liability for 2016 **before relief for his EII investment is allowed** [i.e. he must pay his preliminary tax for 2017 based on income tax liability for 2016 of €55,000, i.e. without reference to his EII relief].