IT55 The Employment and Investment Incentive (EII) - Relief for Investment in Corporate Trades

Status of this Document

This document is NOT a legal interpretation of any of the legislation[1] on which the EII scheme is based. Nor is it intended as a comprehensive guide to the EII scheme. It is a general information guide to the EII scheme, aimed at independent third-party investors wishing to avail of this tax relief incentive scheme and for qualifying companies wishing to raise investments under the EII scheme.

This leaflet is intended to be in plain language. However, throughout this guide several terms are used which are defined in legislation. Revenue has produced a separate leaflet (IT15A) containing the statutory definition of many of these terms or phrases. You are advised to read this leaflet in conjunction with the definitions provided and where necessary consult Part 16 of Taxes Consolidation Act 1997 (as amended) for further definitions.

The Employment 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 scheme since its launch. This guide explains the scheme that is currently in force. Please see Appendix 2, for a time line of changes to the scheme.

Revised May 2016

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

[1] Legislative basis for the Employment and Investment Incentive: Part 16, Sections 488 to 507, and Schedule 10 of the Taxes Consolidation Act 1997, as amended.

Contents

Introduction and Summary of the Scheme

The Employment and Investment Incentive (EII) is a tax relief incentive scheme which provides for tax relief of up to 40% in respect of investments made in certain corporate trades.

The EII scheme 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 the EII scheme investment was made providing that certain conditions are met[2]. Potentially, this can result in a further tax saving for the investor up to 10% of the investment.

The EII scheme 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:

- 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.

[2] 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

A qualifying investor is an individual who:

1. 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,

2. subscribes on his/her own behalf for eligible shares in a qualifying company. However, a person may use a nominee to hold the shares on his/her behalf, or they may invest through a designated investment fund,

   and

3. 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.

Connected Party

A person is connected with the company if:

1. he/she, or an associate[3] of his/hers, is a partner of the company, 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 the EII scheme in respect of any investment made by him in Motorbike Limited.

   or

2. he/she possesses, or is entitled to acquire, including in the event of the company being wound up, more than 30% of:

   a. the issued ordinary share capital of the company,

   b. the loan capital and issued share capital of the company,

   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 the EII scheme in respect of any further investment made by her in Shopping Limited.

   or

3. he/she controls the company,

   or

4. 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.

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[3] An associate for the EII is 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.

> 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 the EII scheme is not due to Jim, Mark or Luke.

A person is **not** connected to the company for the reason that their spouse, civil partner or close family is connected with it.

With the exception of condition 4, the conditions set out above relating to connected parties do not apply to an investor investing in his/her own company where the amounts subscribed for the issued share capital and the loan capital do not, in aggregate, exceed €500,000 at the time of the share issue.

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

- they are not a connected party, as defined, with the company,

and

- are not receiving payments from the company other than reasonable pay and expenses.

> 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 the EII scheme 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 the EII scheme. 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 the EII scheme would be withdrawn.

The Company and its Trade

The Company

A qualifying company is one which:

1. is:

    a. a micro enterprise, which has less than 10 employees and has an annual turnover and/or annual balance sheet total not exceeding €2 million,

    or

    b. a small enterprise, which has less than 50 employees and has an annual turnover and/or annual balance sheet total not exceeding €10 million,

    or

    c. a medium-sized enterprise, which has less than 250 employees and has an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million,

2. is incorporated in the State or another European Economic Area (EEA) State[4],

3. is resident in the State or is resident in another EEA State and carries on business in the State through a branch or agency,

4. is not regarded as a firm in difficulty for the purposes of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty[5],

5. when its initial EII investment is received, the company (including any companies it is in a group with or any company involved in a similar or related market which have common shareholders, directors, or are directly or indirectly under the ultimate control of the same individual) meets one of the following conditions:

    a. has not operated in any market,

    b. it is trading for less than 7 years,

    or

    c. the investment under the EII Scheme is required to fund a new product or enter a new geographical market and the amount of the investment required under the EII scheme is greater than 50% of its average annual turnover for the preceding 5 years,

6. at the time of any follow-on EII investments[6], the company (and any connected companies) meet **all three** of the following conditions:

    a. the amount of EII investment raised in total by the company does not exceed €15,000,000,

    b. the possibility of follow on EII investments was foreseen in the company's original business plan,

    and

    c. the company (and any connected companies) are a Micro, Small or Medium Sized

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

[5] OJ No. C288 of 9.10.99, p. 2 and O.J No C244 of 1.10.2004, p.2

[6] This also applies to companies that have previously raised risk finance under the BES, SCS or SURE schemes.

Enterprise,

7. must:

    a. exist wholly[7] for the purposes of carrying on of a qualifying trade,

    or

    b. be a holding company of one or more qualifying subsidiaries,

    or

    c. be a company which exists for the purposes of carrying on a qualifying trade and be a holding company for qualifying subsidiaries,

8. is an unquoted company, i.e. not listed on the Irish Stock Exchange, or any international equivalent, or on any unlisted security markets,

9. has its issued share capital fully paid up,

10. 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,

> Company A holds 60% of the shares in Company B. Company B would not qualify for the EII scheme 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 the EII scheme.
>
> 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 the EII scheme.

11. does not control other companies unless they are qualifying subsidiaries.

With the exception of conditions 5 and 6, the other conditions in relation to qualifying companies and subsidiaries must continue to be met for a period of four years after the shares have been issued, or the company begins to trade. If the conditions are not met for the 4 year holding period, this will result in the relief already granted under the EII scheme being withdrawn.

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.

The company may take on EII investments before it starts to trade. However, it must begin to trade within two years of taking the first EII investment.

[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.

Qualifying Companies and Subsidiaries

A qualifying company can have subsidiaries provided generally that:

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

and

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

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.

The Trade

The EII scheme is available to the majority of small and medium-sized trading companies.

However, the following trading activities are excluded from the EII scheme:

- 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,
- professional service companies, e.g. accountants, solicitors, business advisors, doctors and architects. However, Internationally Traded Financial Services may qualify subject to approval from Enterprise Ireland,
- 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).

Extra requirements for certain activities

Tourist Traffic Undertakings

A company carrying on Tourist Traffic Undertakings must have prior approval from Fáilte Ireland before making any application to the Revenue Commissioners. More information is available on **www.failteireland.ie**

Internationally Traded Financial Services

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

Contact details for these agencies are located in Appendix 1.

Green Energy Activities

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

Research and Development

A company carrying on qualifying Research and Development[8], but has yet to commence to trade, must:

- within 2 years of the date of share issue commence to trade,

or

- dispose, to another company for use in their trading activities, of an intangible asset which the R&D activities led to.

Use of EII Money

The company must use the money raised from the share issue for the purpose of carrying on a qualifying trade, or if the company has not yet commenced to trade in incurring expenditure, on research and development.

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

The following are examples of how money raised under the EII scheme 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.

The money raised under the EII Scheme cannot be used to repay debt of the company.

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 the EII scheme, the qualifying company must invest the money into the qualifying subsidiary by way of share issue.

Qualifying Shares

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

1. represent new ordinary share capital in a qualifying company,

and

2. carry no preferential rights.

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.

The shares should be issued without undue delay after the investment takes place and should be

[8] As defined by section 766 TCA 1997,more information is available here: **http://www.revenue.ie/en/tax/ct/leaflets/research-dev.pdf**

issued in the same tax year the investment was received.

The Investment

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.

Limits of the Scheme

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 scheme 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.

The maximum a company and its group companies 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.

Capital Gains Tax

The normal provisions relating to Capital Gains Tax (CGT), including those applicable to unquoted companies, will apply with regard to investments under the scheme.

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

Designated Investment Funds

A designated investment fund is a fund which has been designated by the Revenue Commissioners under Section 506 of the Taxes Consolidation Act, 1997.

A designated fund comprises the subscriptions of a number of investors. The fund will be likely to invest in a number of companies. Broadly, each investor will get a share in each company in proportion to the value his/her subscription bears 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.

As with investments made on an individual basis, there is no guarantee that they will generate a return and could in fact result in a loss for the investors. Responsibility for the risk associated with the investment rests entirely with the investor.

Duration of Conditions and circumstances in which relief may be withdrawn

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.

An individual must be a qualifying investor for a period of two years prior to the share issue and four years after the shares have been issued.

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

If conditions are not met for the relevant period, the relief due under the EII scheme will no longer be due and, if already given, may be withdrawn.

> If the company received a full listing on the Stock Exchange, or otherwise ceased to be a qualifying company within the four year period, then all relief granted to investors under the EII scheme will be withdrawn.

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

- repays any debt to the individual (other than an ordinary trade debt),
- makes a loan to the individual or generally attempts to circumvent the requirements of the EII scheme 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 the EII scheme will be reduced accordingly.

> In March 2016, Paula made an €80,000 investment under the EII scheme 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 the EII scheme 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.

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.

If the relief does have to be withdrawn from the investor, it will be done by re-assessing the investor's liability to income tax in the year in which the relief was originally given. The investor cannot lose more tax relief than he/she originally obtained, but may have to pay interest and/or penalties to the Revenue Commissioners (however, if this tax is repaid without delay this may not apply).

The Tax Relief

Providing all of the conditions of the EII scheme are met, initial relief of 30/40 of the EII scheme 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 scheme 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:

1. 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 the EII scheme was made is compared to the number of qualifying employees in the year of assessment 3 years after the investment was made,

and

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

> An investment under the EII scheme 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 the EII scheme is due.

3. 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 the EII scheme 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 the EII scheme 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.

The further relief of 10/40 of the EII scheme investment can be claimed in the fourth year after the EII investment. For example if the investment was made in 2015, the relief on the additional 10/40 is due in 2019.

How to apply for approval under the Scheme

Before any investor can receive their relief, the company must apply to Revenue for approval. If Revenue is satisfied that all aspects of the scheme are met, certificates will be issued to the company that will allow relief to be claimed by the investor.

EII Outline approval

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

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

It must be stressed, however, 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.

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.

Approval of a share issue

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 the EII scheme is spent on R&D.

If the requirements of the EII scheme 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 the EII scheme. 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[9]. For an investment made under the EII scheme in 2016, the claim must be made by the 31st of December 2018.

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.

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 requirements of the EII scheme 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 the EII scheme. The company must fill in part 1 of this certificate before issuing to the investor.

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

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

Applications by the company should be sent to:

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

or submitted online via **MyEnquiries** to: **eiiadmin@revenue.ie**

How the investor makes his/her claim

The claim cannot be made unless, and until, the investor holds the relevant EII 3 or EII 3A certificate.

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

1. within two years of the end of the year of assessment in which the shares are issued,

   or

2. 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.

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 my**Account**.

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

Queries on the Scheme

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

Electronically using **MyEnquiries** which can accessed via my**Account** or ROS

By e-mail to: **eiiadmin@revenue.ie**

By telephone: 01 - 858 9843.

Appendix 1 – State Aid Cumulation - Useful Contacts in Relevant State Agencies.

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/SURE 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/SURE:

- 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 <u>not</u> deal with such queries.

Useful Contacts in relevant State agencies.

Enterprise Ireland

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Investment Services Division,
Enterprise Ireland,
The Plaza,
Eastpoint Business Park,
Dublin 3.

+353 (1) 727 2289 **Eoghan.Hanrahan@enterprise-Ireland.com**

IDA

Clem McLoughlin
Athlone Business & Technology Park,
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+353 (90) 647 1517 **clem.mcloughlin@ida.ie**

Udarás na Gaeltachta

Miriam Ní Néill
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Failte Ireland

Derek Walshe
88-95 Amiens Street,
Dublin 1.

+353 (1) 884 7259 **eii@failteireland.ie**

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 scheme 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.

  Medium sized companies based in non-assisted areas of the State, that are beyond the start-up phase, can now qualify for the scheme for share issue dated 13/10/2015 onwards.

  The limits on funds raised under the scheme 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.

  Companies are now required to have their tax affairs fully up-to-date in order to qualify.

  The scheme 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 scheme.

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 a 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 my**Account**.

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 my**Account**.

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
	Credit Tax Paid	€11,540
	Refund Due	€10,040
Refund due on allowable EII Investment of €30,000 in 2016 is calculated as follows: €20,200 @ 40% = €8,080 €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 my**Account**.

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*		**<u>€36,000</u>**
Taxable Pay		€6,000
Taxable as follows:		
	€6,000 @ 20% =	€1,200
	Gross Tax Payable	€1,200
	Less	
	Tax Credits	**<u>€1,200</u>**
	Net Tax Payable	€Nil
	Credit Tax 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].

Appendix 4 – GBER FAQ

FAQ on Employment and Investment Incentive (EII) & **General Block Exemption Regulations** (GBER) - Finance Act 2015 amendments.

1. **What is GBER?**

   GBER is short for General Block Exemption Regulations. These are State aid regulations and are set out in Commission Regulation (EU) 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.

   EII is risk finance based State aid which comes within Article 21 of GBER which means that it is a permissible State aid.

   Many of the conditions required to fall within Article 21 were already part of EII (e.g. the requirement that the qualifying company be unquoted; that there be a cap on the amount of risk financing the company could raise, etc). The two main aspects of GBER, which were newly introduced into the EII scheme by the Finance Act 2015, are references to compliance with Paragraph (5) and Paragraph (6) of Article 21 (referred to hereinafter as paragraph (5) or (6) of GBER).

2. **What are the new GBER conditions?**

   No company which issues shares on or after 13 October 2015 will be a qualifying company, as required under EII, unless it falls within the following:

   5. Eligible undertakings shall be undertakings which at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:

   a. they have not been operating in any market;

   b. they have been operating in any market for less than 7 years following their first commercial sale;

   c. they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding 5 years.

   6. The risk finance aid may also cover follow-on investments made in eligible undertakings, including after the 7 year period mentioned in paragraph 5(b), if the following cumulative conditions are fulfilled:

   a. the total amount of risk finance mentioned in paragraph 9 is not exceeded;

   b. the possibility of follow-on investments was foreseen in the original business plan;

   c. the undertaking receiving follow-on investments has not become linked, within the meaning of Article 3(3) of Annex I with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.

3. **What is a risk finance investment?**

   Risk finance investment, within the meaning of Article 21, means State aid that has been approved by the EU as risk finance investment. There are three kinds of investment that have been approved, the EII, its predecessor the Business Expansion Scheme (BES) and SURE (formerly the Seed Capital Scheme).

4. What is an initial risk finance investment?

An initial risk finance investment is the first time the company (or group) raised/raises EII/BES/SURE.

5. What is a follow on risk finance investment?

Follow on risk finance investment is the second or subsequent time the company (or group) raises EII/BES/SURE.

6. What impact do these new rules have on a company which is less than 7 years old raising EII funding for the first time?

Once the share issue is less than 7 years from the date the company made its first sale, then it will be eligible for relief under paragraph (5)(b) of GBER.

7. What impact do these new rules have on a company which is more than 7 years old raising EII funding for the first time?

Where a company is looking to raise risk finance aid (EII/BES/SURE) for the first time more than 7 years after its first sale, then it can only do so if it comes within paragraph (5)(c) of GBER. That is, it must be entering into a new market (either geographic or product) and the amount that the company wants to raise under EII is greater than 50 % of the company's average annual turnover in the preceding 5 years.

8. Does the company have to raise 50% of the company's average annual turnover in the preceding 5 years before relief is granted?

Yes. However, this does not need to be in one tranche.

If the company is raising this money in a number of tranches, relief is not granted unless and until the full 50% has been raised. If the 50% is not met until a later year, the 5 year look back will take place from that year.

Example:

Castle Limited is trading for 10 years, but is expanding into a new geographic market in 2016. Its average turnover for the previous 5 years is €1,500,000.
In 2016, it manages to raise €600,000 from EII investors.
As the 50% requirement has not been met, those investors did not yet receive their EII 3 certificates.
In 2017, the company's average turnover for the previous 5 years is €1,600,000.
The company raises a further €400,000 from EII investors.
As the company has raised enough EII investment, the investors may now receive their EII 3 certificates.

9. What is a new geographic market?

A new geographic market is a market in a different location and with different customers than the company's original market.

Example:

A company based in Ireland launching in the UK.

10. **What is a new product?**

A new product is a product the company (or group) has not produced before and is different from its current product. In most cases, a new product would have a new NACE code.

Examples:

A company operating a nursing home, opening a respite care cente,

or

A three star hotel upgrading to a four star hotel in order to attract weddings, conferences, etc.

11. **What impact do these new rules have on a company raising EII funding for the second time?**

There are two sets of conditions to be met.

Firstly, a company is only eligible to raise EII funding a second time if it previously raised funding through EII/BES/SURE (all of which are found in Part 16 TCA 1997) where, at the time of that funding, it met the conditions of paragraph (5) of GBER.

For most companies, that will mean that they raised EII/BES/SURE within 7 years of their first sale. Other companies will meet this test if they used their first EII/BES/SURE funding to expand into new markets or launch new products, and have met the 50% of turnover threshold.

So a company must ask itself: Would I have satisfied one of the conditions in paragraph (5) of GBER at the time of my first EII/BES/SURE investment?

Secondly, if the company can answer yes to that question then the next condition is that the business plan at the time of the first EII/BES/SURE round foresaw this second (or subsequent) funding round. Where the initial business plan foresaw this second or subsequent round of financing, the total financing to be raised cannot exceed €15,000,000 and the company cannot have become “linked” to another company/companies unless together they remain SMEs.

12. **My company raised share capital when it was less than 7 years old, but relief under BES wasn’t claimed. It is now 15 years old. Can my company qualify for EII funding?**

No. The company must have raised EII/BES/SURE funding at a time when it would have qualified under paragraph (5) of GBER and the business plan from that funding round must have foreseen this new funding.

13. **I own a company which does not qualify under paragraph (5) of GBER. Can I set up a new holding company and a new sister company to carry on the relevant trading activities and use EII to fund that sister company?**

No. State aid rules apply not just to a company, but to an undertaking or an enterprise.

An enterprise is defined in Annex 1 GBER as “any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.”

The Court of Justice of the European Union has considered the meaning of ‘undertaking’ on many occasions and its jurisprudence results in something broadly similar to the definition of enterprise in GBER. They have considered groups to be an enterprise and also operations with no shareholding in common where actual control was exercised. It is important to stress that the test is not one which has set rules around percentages or ownership or control. It is about the actual facts of how an entity is being operated and controlled.

Paragraphs (5) and (6) should be applied both to an enterprise and to any “linked” or “partner” enterprises, as set out in Annex I GBER.

14. What is a linked enterprise?

A linked enterprise is, in Annex 1 GBER, what Irish tax practitioners would generally consider enterprises which are under the control of another enterprise, or control another enterprise. It looks not only at shareholding but also at who can and who does exercise control.

15. What is a partner enterprise?

A partner enterprise is, in Annex 1 GBER, one where an enterprise holds more than 25% of the capital or voting rights and where it is either a supplier or a customer of the company in which it holds the shares/voting rights.

16. What is an undertaking?

The Court of Justice of the European Union has considered the meaning of ‘undertaking’ on many occasions and its jurisprudence results in something broadly similar to the definition of enterprise in GBER. They have considered groups to be an enterprise and also operations with no shareholding in common where actual control was exercised.