McCann FitzGerald

The Employment and Investment Incentive Scheme

BRIEFING

The Employment and Investment Incentive Scheme is a tax-efficient means for companies engaged in certain corporate trades to raise sums of up to €5m a year (subject to a scheme cap of €15m per company or associated group companies) in equity capital, where the money raised is used for the purposes of a qualifying trade or is used for the purposes of research and development activities.

What is the Employment and Investment Incentive Scheme?

The Employment and Investment Incentive Scheme (the "**EIIS**") replaces the Business Expansion Scheme ("**BES**") which was discontinued on 31 December 2011. The EIIS is an incentive scheme that provides a tax deduction to investors for the amount invested in certain companies engaged in trading activities, subject to various conditions. The EIIS is open to companies engaged in most trading activities and the amount that a company (including associated companies) can raise during its lifetime under the EIIS is €15m (subject to a maximum investment of €5m in any one twelve-month period). The scheme is designed to assist job-creation and to encourage companies to carry out research and development activities.

What does the EIIS do?

The EIIS allows a qualifying investor to obtain an income tax deduction on qualifying investments. The minimum investment that a qualifying investor can make is €250 per year, and the maximum investment qualifying for relief is €150,000 per year.

The relief currently applies to qualifying investments made in the period to 31 December 2020. The relief is given by means of a deduction from the qualifying investor's total income for tax purposes for the year in which the investment is made, provided certain conditions are met.

A qualifying investor must subscribe for new ordinary share capital in the company and the shares may not carry present or future preferential rights to dividends, to a company's assets on winding up or present or future preferential rights to be redeemed.

Relief will initially be available to a qualifying investor on thirty fortieths of the amount which they invest. The balance of the relief of ten fortieths will be available where, at the end of the three-year investment period, it is proved that:

- employment levels in the relevant company have increased; or
- the company has used the equity capital raised for expenditure on research and development.

The Employment and Investment Incentive Scheme (continued)

Qualifying Investors

To qualify as an investor under the scheme, an individual must:

- subscribe on his or her own behalf for eligible shares in a qualifying company;
- not be connected with the relevant company for the relevant period. Broadly speaking an individual will be connected with a company if the individual (or an associate of the individual) is a partner of the company, or if the individual is entitled to acquire more than 30% of (a) the issued ordinary share capital of the company (b) the loan capital and issued share capital of the company or (c) the voting power in the company; and
- hold the eligible shares for a period of four years.

Qualifying Companies

The EIIS is available in respect of an investment in the shares of the majority of micro, small and medium-sized trading enterprises[1]. A medium-sized enterprise may be required to satisfy certain requirements as to the location of their activities in order to qualify for the scheme.

In order for a company to qualify for the relief, a number of conditions must be satisfied:

- the company must carry on a relevant trading activity. A relevant trading activity is any trading operation, subject to certain exclusions. The principal **exclusions** include: dealing in commodities, futures, shares, securities or other financial assets; financing activities; professional services; dealing in or developing land; occupying woodlands; coal, steel or shipping activities and film production;
- the company must be incorporated in Ireland or another EEA Member State;
- the company, throughout the relevant period, must be an unquoted company resident for tax purposes in Ireland, or resident for tax purposes in another EEA Member State and carrying on a business in Ireland through a branch agency; and
- the company must:
  - exist wholly for the purpose of carrying on relevant trading activities principally in Ireland;
  - carry on a business that consists wholly of the holding of shares or securities or the making of loans to one or more qualifying subsidiaries; or
  - carry on a business that consists of both the holding of such shares or securities or the making of loans and the carrying on of relevant trading activities principally in Ireland.

The company may, in the relevant period, have one or more subsidiaries provided that each subsidiary satisfies certain conditions.

Withdrawal of Relief

The relief may be withdrawn if, during the relevant period, the company or investor ceases to be a qualifying company or a qualifying investor. Relief will also be withdrawn, in full or in part, where the individual disposes of the investment shares within the relevant period.

In addition, relief may be withdrawn where, during the relevant period, the individual receives value from the company or enters into an option or agreement to dispose of the eligible shares at a price other than market value.

Capital Gains Tax

Where shares are held for the relevant period any relief granted is not taken into account for the purposes of calculating any gain on the sale of the shares. If a loss arises on the sale, any relief granted, which has not been withdrawn, will be taken into account to reduce the loss for CGT purposes.

1 Within the meaning of Annex 1 to Commission Regulation (EU) No. 631/2004 of 17 June 2014.

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(continued)

Managed Fund Investments

Relief is also available where qualifying investors choose to invest in a managed fund established for the purposes of the EIIS. This may enable a qualifing investor to spread the EIIS exposure over a portfolio of qualifying companies.

Further information is available from:

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