

Form EII 1

Relief for investment in corporate trades under Part 16 TCA 1997



Statement and declaration within the meaning of sections 501(3) and 501(5) TCA 1997

This form, when completed in full, should be sent to:

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

Use any envelope and write "Freepost" above the address. No stamp required.

Alternatively it can be sent to eiiadmin@revenue.ie via myAccount or through ROS.

Please refer to the Notes on pages 8 and 9 before completing this form.

Applicants should note that incomplete applications will not be processed and will be returned to the applicant for completion. All questions marked with a red asterisk must be answered, and refer to note 3 in relation to who must complete the other questions. An application which does not include all of the required supporting documentation will be treated as an incomplete application.

1. Company details

- * 1.1 Name
- * 1.2 Corporation Tax Reference Number
- 1.3 Employers Registration Number
(Please quote the reference number and name, if different, under which the trading company returns PAYE / PRSI on behalf of its employees)
- 1.4 Date of Incorporation
- 1.5 Address for correspondence
- 1.6 Country of incorporation [s.494(2)]
- 1.7 Country of tax residence [s.494(3)(a)]
- 1.8 Is the company unquoted? [s.494(3)(a)] Yes No
- 1.9 The company exists for the purposes of (please tick only one box):
- 1.9.1 Carrying out qualifying trading activities [s.494(3)(a)(i)]
- 1.9.2 Holding shares in trading subsidiaries or making loans to trading subsidiaries [s.494(3)(a)(ii)(I)]
- 1.9.3 Carrying on its trade and holding shares / loans in trading subsidiaries [s.494(3)(a)(ii)(II)]
- * 1.10 The company is not regarded as a firm in difficulty [s.494(18)] (see note 9)
- * 1.11 The company's tax affairs are currently in order and up to date [s.501(9)]
- * 1.12 The company's share capital is fully paid up [s.494(11)]
- 1.13 Documents to be attached:**
- 1.13.1 Certificate of incorporation
- 1.13.2 Where the company has sources of income other than trading income, provide an analysis based on the sample analysis table included at the end of this form of that income over a period of 3 years
- 1.13.3 Current tax clearance

* 2. Declaration

I declare that to the best of my knowledge and belief:

- (i) the information given in this form is correct;
- (ii) the company is a qualifying company within the meaning of section 494 TCA 1997;
- (iii) the company and any subsidiary companies will throughout the relevant period continue to comply with sections 494(3), 494(11), 494(12) TCA 1997;
- (iv) nothing has occurred, or is expected to occur, which would reduce the amount of relief available to any of the shareholders in respect of which relief is sought; and
- (v) the shares in respect of which relief is being sought have been issued for bona fide commercial purposes and not as part of a scheme or arrangement, the main purpose, or one of the main purposes, of which was the avoidance of tax.

I acknowledge that on the happening of any event which gives rise to a withdrawal of relief, in whole or in part, the company and any person connected with the company who has knowledge of the event must, under s.503(1) and s.503(2) TCA 1997, notify Revenue, in writing within 60 days.

Where the company applied for outline approval on or after 15 December 2017, I confirm that where any of the information provided in the outline application has changed, I have provided the relevant updated information in this form.

I acknowledge that if the information in this statement is found to be false or misleading, the company shall be liable to a penalty of €4,000 under s.501(6) TCA 1997.

Signature _____

Capacity: Company Secretary

Name _____

Date

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3. Identifying an undertaking [S.494(4A)]

3.1 Is the company a member of a group? (within the meaning of the Companies Act 2014) Yes No

3.2 Were the shares in any qualifying subsidiary acquired from another person in the previous two years? [s.498] Yes No

If yes, please provide details of name, address, relationship to the qualifying company, summary of the transaction, of the person(s) from whom they were acquired

3.3 Is the company linked (refer to note 10) with another enterprise? Yes No

3.4 Is the company considered a partner enterprise (refer to note 11) with another enterprise? Yes No

3.5 Documents to be attached:

- 3.5.1 Group structure, including **all** companies (both Irish and non-Irish, and both trading and non-trading), other shareholdings by the individuals at the top of the corporate structure and trades carried out by shareholders in their own name. For each company / trade it must include:
 - (a) Name of the company / trade
 - (b) % ownership
 - (c) Names and PPSNs / Nationality of directors of the company (if applicable)
 - (d) Corporation tax reference number (if applicable)
 - (e) Nature of trade
 - (f) Date the trade commenced, and if that trade was acquired from another person, details of that acquisition.
- 3.5.2 Any shareholder agreements
- 3.5.3 Details of any changes in shareholding in the company, or by controlling shareholders in the company, in the year prior to filing this statement. Yes No
- 3.5.4 Details of any acquisition or transfer of a trade to which this company was party, in the year prior to filing this statement. Yes No
- 3.5.5 Form B1, as filed with the CRO, and Form B5 in respect of any shares issued after the date of the Form B1

4. Undertaking details

- 4.1 Date of first commercial sale [s.494(4A)]
- 4.2 The undertaking is a [s.494(4)] (please tick only one):
 - 4.2.1 Micro enterprise
 - 4.2.2 Small enterprise
 - 4.2.3 Medium enterpriseSee Note 8 for details on these three categories.

4.3 Documents to be attached:

- 4.3.1 Details of the first commercial sale. In many cases this will coincide with the date on which the trade commenced.
- 4.3.2 Workings used to support the classification of the undertaking as micro / small / medium sized. Where the companies' accounts are not filed with the CRO, or where abridged accounts are filed, full accounts should be included in support of those calculations.

5. Trade details

- 5.1 Nature of trade(s) [s.494(3)(a)(i)]
- 5.2 Date of commencement of trade [s.489(4)(a) and s.501(1)(a)(ii)(II)] (a trading company must have been carrying on its trade for at least 4 months prior to any claim being made).
- * 5.3 The company will not have commenced to trade when the shares are issued, and the funding is to support R&D activities, [s.489(4)(b)(ii) and s.501(1)(a)(i)] at least 30% of the amount raised must have been expended on R&D activities prior to a claim being made.

There is a two year window within which claims can be made, starting at the end of the year of assessment in which the shares are issued once the trade has been carried out for 4 months, or 30% of the amounts raised are expended on R&D, as appropriate.

- 5.4 Was the trade, or part of the trade, acquired from another person in the previous two years? [s.494(4A) and s.498] If yes, please provide details of name, address, relationship to the qualifying company, summary of the transaction, of the person(s) from whom it was acquired Yes No

- 5.5 Name of and address of the company where relevant trading activities are, or will be, carried on

- 5.6 Does the company carry on:

- 5.6.1 Internationally Traded Financial Services? [s.494(5)]

- 5.6.2 Tourist Traffic Undertakings? [s.494(6)]

- 5.6.3 Green energy activities? [s.494(7)]

- 5.6.4 Other trading activities?

5.7 Documents to be attached:

- 5.7.1 Describe the trading activities undertaken, and if the company has recently commenced to trade describe the initial sales.

- 5.7.2 Approval from Fáilte Ireland or Enterprise Ireland, where applicable.

- 5.7.3 Proof that a grid connection application has been made, if applicable.

- 5.7.4 If the company is carrying out pre-trading R&D activities the key aspects of qualifying R&D under s.766 must be identified, that is:

- (a) What are the systematic, investigative or experimental activities?

- (b) What field of science or technology are they in?

- (c) Are those activities undertaken with a view to: basic research; applied research; or experimental development,

- (d) What scientific or technological advancement do they seek to achieve?

- (e) What scientific or technological uncertainty will they resolve?

6. Investment details

- 6.1 It is expected that the company (please tick only one box):

- 6.1.1 Will carry out its trading activities for a four year period from the date the shares were issued, or if the trade had not commenced at that point, a four year period from the date the trade commenced [s.494(3)(a)]

- 6.1.2 Will acquire shares in a subsidiary which will carry out the relevant trading activities for the required 4 year period [s.494(3)(a)(ii)(I) and s.494(3)(b)]

- 6.1.3 Will acquire shares in a subsidiary which exists to support the trading activities of the company or its other subsidiaries [s.494(3)(a)(ii)(II) and s.494(3)(b)]

Or

- 6.1.4 Will carry out a combination of 6.1.1, 6.1.2 and 6.1.3.

- 6.2 The amount raised by the undertaking under SURE / BES / EII is not greater than:

- 6.2.1 €5,000,000 in a 12 month period ending on the date of the share issue [s.491(4)] Yes No

- 6.2.2 €15,000,000 in total [s.491(2) and (3)]. Yes No

6.3 At the time funding to which SURE / BES / EII apply is first sought, which one of the following applies [s.494(4A)] (please tick only one box):

- 6.3.1 The undertaking has not yet commenced business
- 6.3.2 The undertaking has been in business for less than 7 years from its first commercial sale
- 6.3.3 The undertaking requires this first round of funding to enter a new product or geographical market, and the business plan supporting that move shows that the undertaking requires capital in excess of 50% of its average annual turnover for the preceding 5 years.

Where this is the second or subsequent time the company is seeking to raise SURE / BES / EII questions 6.3 and 6.4 must be answered. Where this is the first time the company is seeking to raise SURE / BES / EII it should answer question 6.3 and then skip to question 6.5.

6.4 For second or subsequent claims for relief under SURE / BES / EII, in addition to having met the requirements of question 6.2 at the time it first raised SURE / BES / EII, the possibility of follow-on investments was foreseen in the business plan used to first raise SURE / BES / EII supported funding [s.494(4A)]. Yes No

6.5 Documents to be attached:

- 6.5.1 Description of the use to which the funds will be put, including how that will contribute directly to the creation or maintenance of employment in the company [s.489(1)(c)]. It is anticipated that this will be covered by the business plan.
- 6.5.2 Where the funds are to be invested in a subsidiary, details of how the investment is made.
- 6.5.3 A copy of the business plan for the first round of financing. Where the first round took place prior to 13 October 2015 and no formal business plan was put in place (for example in relation to a SURE claim) other evidence which supports this condition being satisfied should be submitted. Companies should note that EIIIS can only be claimed in respect of a follow-on investment if the business plan from the first round of financing envisages that follow-on investment for a specific purpose.
- 6.5.4 Company bank statement showing the investment(s), where relevant.

This section should only be completed for share issues made on or before the 2nd of November 2017.

7. New shareholder details – connected shareholders

- 7.1 Is any individual who has subscribed for shares, or a person connected with that individual, in a partnership with the company? [s.492(2)(a)] Yes No
- 7.2 Is any individual who has subscribed for shares, or a person connected with that individual, a director or employee of the company or a partner company? [s.492(2)(b)] Yes No
- 7.2.1 If yes, for a period of 4 years from the date the shares are issued, the company will not pay any amount to that director / employee other than amounts relating to normal remuneration, reimbursement of travel or other expenses and other amounts permitted under s.492(3) TCA 1997. Yes No
- 7.3 Is the total issued share capital of the company and the loan capital of the company €500,000 or greater? [s.492(8)(a)] Yes No
- 7.4 Does any individual who has subscribed for shares own, or is any individual who has subscribed for shares entitled to acquire (either directly or indirectly), more than 30% of:
- 7.4.1 The ordinary share capital of the company? [s.492(4)(a)] Yes No
- 7.4.2 the loan capital and issued share capital of the company? [s.492(4)(b)]? Yes No
- 7.4.3 The voting power in the company? [s.492(4)(c)]? Yes No

7.5 Is any individual who has subscribed for shares entitled to (either directly or indirectly) 30% of the assets of the company on a winding up, or entitled to acquire such rights? [s.492(6)] Yes No

7.6 Is any individual who has subscribed for shares entitled to control the company because of the voting rights attaching to their shares, or powers conferred on them by the company's constitution? [s.492(7)] Yes No

7.7 Documents to be attached

7.7.1 Where a company answers no to question 7.3 and yes to question 7.4, 7.5 or 7.6, details of the equity and loan capital of the company should be provided. This should include all amounts owed by the company which are outstanding for more than 30 days.

8. Shareholder details – other

* 8.1 Please tick which of the following applies:

* 8.1.1 All shareholders have subscribed for shares on their own behalf [s.492(1)(a)] or

* 8.1.2 Some or all shareholders are investing through a nominee company [s.506(1)]

8.2 Documents to be attached

* 8.2.1 Where investments are through a nominee company (other than investments by a designated fund), a copy of the trust agreement.

* 8.2.2 Schedule of the name and address of each subscriber, the PPSN of the subscriber, a description of the shares subscribed for and their nominal value, the number of shares subscribed for and the total euro amount subscribed. A sample schedule is available at the end of this form.

* 8.2.3 Stamped form B5 showing issue of shares

* 8.2.4 Company bank statements showing the receipt of subscription amount.

9. Eligible shares

* 9.1 The shares issued are ordinary shares [s.488(1)]

* 9.2 The shares issued carry no present or future preferential rights [s.488(1)]

9.3 Documents to be attached

* 9.3.1 Any shareholder agreements

* 9.3.2 Copy of the company's constitution showing the rights attaching to all shares

* 9.3.3 Copy of any other agreement relevant to the investment

10. Return of Value – prior to share issue [s.497(10)(a) and s.499(5)]

* 10.1 In the period of two years prior to the share issue, have any of the shareholders, or persons connected with the shareholders, in respect of which relief is now claimed:

* 10.1.1 Had shares in the company repurchased or redeemed [s.497(3)(a)]? Yes No

* 10.1.2 Had shares in the company purchased by a company connected with the company [s.497(6)] Yes No

* 10.1.3 Had a debt, other than a debt incurred in the provision of goods and services which was outstanding for less than 6 months, repaid [s.497(3)(b)]? Yes No

* 10.1.4 Received a loan from the company [s.497(3)(e)]? Yes No

* 10.1.5 Received any other benefit from the company, as outlined in s.497(3), s.497(5) and s.497(6)? Yes No

* 10.2 In the period of two years prior to the share issue, have any shareholders (other than those in respect of whom relief under BES / SURE / EII was granted):

- * 10.2.1 Had any shares in the company redeemed or repurchased [s.499(1)]? Yes No
- * 10.2.2 Received any value from the company other than payments made for full consideration [s.499(9)] Yes No
- 11. Return of Value – post share issue [s.497(10)(a) and s.499(5)]**
- * 11.1 In the period of four years from the share issue in respect of which relief is now claimed, is it expected that any shareholders will,
- * 11.1.1 Have shares in the company repurchased or redeemed [s.497(3)(a)]? Yes No
- * 11.1.2 Have shares in the company purchased by a company connected with the company [s.497(6)]? Yes No
- * 11.1.3 Have a debt incurred prior to the share issue, other than a debt incurred in the provision of goods and services which was outstanding for less than 6 months, repaid [s.497(3)(b)]? Yes No
- * 11.1.4 Receive a loan from the company [s.497(e)]? Yes No
- * 11.1.5 Receive any other benefit from the company, as outlined in s.497(3), s.497(5) and s.497(6)? Yes No
- * 11.2 In the period of four years from the share issue, is it expected that any shareholders will (other than those in respect of whom relief under BES / SURE / EII was granted):
- * 11.2.1 Have any shares in the company redeemed or repurchased [s.499(1)]? Yes No
- * 11.2.2 Receive any value from the company other than payments made for full consideration [s.499(9)] Yes No

Notes

1. The purpose of making this Statement and declaration is to obtain authority from Revenue to issue a certificate of relief on Form EII 3.
A claim for relief by an individual in respect of a subscription for eligible shares in a qualifying company cannot be allowed unless a certificate of relief has been issued by the company on form EII 3.
Such a certificate cannot be issued until the company has been authorised to do so by the Revenue Commissioners on form EII 2.
To obtain the authority to issue a certificate a company must give the information required by this form (EII 1).
A company is liable to a penalty of €4,000 for issuing a form EII 3 without the authority of the Revenue Commissioners on form EII 2.
2. Guidance on the EII scheme is available in Tax And Duty Manual Part 16-00-10, which should be referred to prior to completing this statement.
3. Where a company has applied for confirmation that a company is a Qualifying Company, and in that application provided the information covered by the questions in this form which are in grey text, those questions need not be answered again **provided** that there has been no change from the situation previously notified to Revenue.
4. Where eligible shares have been issued on different dates, a separate EII 1 must be completed in respect of each issue.
5. Everything to be done by a company under the Taxes Acts is to be done through the secretary or person acting as the secretary of the company (See section 1044(2) Taxes Consolidation Act 1997).
6. Your attention is drawn to the fact that:
 - (a) Under EU cumulation of State-aid rules, full details of a beneficiary company of a State-aid in the form of Employment and Investment Incentive (EII) and or Startup Refunds for Entrepreneurs (SURE):
 - must be notified to the European Commission;
 - will be published on the Revenue website and on the European Commission website;
 - may be made available to other State bodies with the responsibility for the administration of other State-aided schemes.
 - (b) The granting of SURE or EII relief may affect future applications by the company for other State-aid schemes.
7. Any queries regarding EU cumulation of State-aid rules will not be dealt with by Revenue. Such queries should be addressed to the State body responsible for administration of the State-aid in question.
8. Definition of Micro, Small & Medium-sized Enterprises:
 - a medium-sized enterprise has less than 250 employees and has an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million;
 - a small enterprise has less than 50 employees and has an annual turnover and/or annual balance sheet total not exceeding €10 million;
 - a micro enterprise has less than 10 employees and has an annual turnover and/or annual balance sheet total not exceeding €2 million.

9. 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.
10. 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 or upstream of the qualifying company).
11. 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 (that is, either operating in the market downstream or upstream of the qualifying company).
12. An autonomous enterprise is an enterprise that has no linked or partner enterprises.

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

The Revenue Commissioners collect taxes and duties and implement customs controls. Revenue requires customers to provide certain personal data for these purposes and certain other statutory functions as assigned by the Oireachtas. Your personal data may be exchanged with other Government Departments and agencies in certain circumstances where this is provided for by law. Revenue’s data protection policy and information on your data protection rights are available on www.revenue.ie.

Sample income analysis (ref 1.13.2)

| | 2017 | 2016 | 2015 | 2014 |
|---|------|------|------|------|
| | € | € | € | € |
| Source (e.g. Interest) | | | | |
| Description: e.g. interest income earned from depositing available cash from funding round until its required for R&D activities. | | | | |
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Additional Information