Report of the TALC Sub-Committee on Simplification of Business Reliefs for SMEs

June 2024

As agreed by Main TALC on
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Table of Contents

1 Executive Summary

1.1 Background

This paper presents the recommendations of the Tax Administrative Liaison Committee (TALC) sub-committee tasked with identifying potential opportunities to simplify the administrative processes associated with various business supports and schemes, with a focus on smaller businesses.

TALC was established to promote dialogue and understanding between Revenue and tax professionals. TALC plays an important role in shaping tax administration processes. Comprising representatives from Revenue, the Irish Tax Institute (ITI), the Consultative Council of Accountancy Bodies – Ireland (CCAB-I) and the Law Society of Ireland, the group provides a platform for exchanging insights, sharing best practices, and addressing emerging challenges in the tax environment. The core aim of TALC is to review and make recommendations to achieve more effective and efficient administration of taxation.

In his budget speech on October 15th 2023, the Minister for Finance, Mr Michael McGrath TD expressed a concern regarding the complexity faced by businesses in accessing tax reliefs and schemes and a desire that "*all businesses, especially SMEs, know what they are entitled to claim and can access all appropriate schemes and reliefs…*" In this context the Minister acknowledged the commitment of Revenue to "*support businesses by making it as easy as possible to avail of the vast range of business supports schemes that it administers on behalf of the State*" and announced that Revenue would establish a sub-committee of TALC to focus on "*identifying any opportunities to simplify and modernise the administration of business supports*".

Tax reliefs and supports play an important role in the support of entrepreneurial activity in the Irish economy. Small and Medium Enterprises (SMEs) are defined by EU rules as companies with a staff count of less than 250 and a turnover of less than €50 million, or a balance sheet total of less than €43 million. SMEs account for approximately 99% of all Irish enterprises, employing over 66% of Ireland's workforce throughout multiple sectors. The overhead in availing of these reliefs was noted by the Commission of Taxation and Welfare for SMEs in the State.

SMEs in Ireland and Engagement with Revenue

SMEs are a significant contributor to the Irish economy. The most recently published CSO data indicates there were 349,338 active SMEs in 2021 representing over 99% of active enterprises. SMEs defined as enterprises with fewer than 250 persons on their payroll, employed 1,307,026 people in 2021 representing approximately 70% of all persons engaged.

Looking at the composition of SMEs in more detail, micro(1-9 employees) enterprises make up 92.6% of all active enterprises but 27.6% of all persons employed. Small enterprises(10-49 employees) make up 6.1% of all active enterprises but 22% of all persons employed and medium enterprises make up 1.1% of all active enterprises but 19.6% of all persons employed.

In terms of SMEs contribution to the Irish economy, these entities generated turnover of €421,000 billion in 2021.

SMEs account for a large share of Revenue's interactions with taxpayers and the data highlight important variation in the size of the enterprises within the SME cohort. This suggests there may be potential differences in their needs and expectations when accessing Revenue's services. In this regard, Revenue's fifth survey of SMEs, conducted in 2022, covered a broad range of topics including customer service, factors that influence compliance, and taxpayer burden. Relevant findings from the survey show that 62% of survey respondents contacted Revenue in the 12 months prior to the survey. SMEs with 50 to 249 employees were more likely to contact Revenue (93%), compared to 55% of companies not classified as employers. 95% of respondents indicated satisfaction with the services provided. In terms of paying taxes on time, 20% of SMEs reported having difficulties, with some variation in the response according to enterprise size.

Table 1 – Numbers of Active Enterprises and Persons Employed by Class Size and Sector 2021

Active Enterprises	Manufac.	Construction	Distribution	Services	Total*
Micro (<10 employees)	15,883	68,211	41,911	198,206	324,211
Small (10-49)	1,574	2,001	5,582	12,153	21,310
Medium (50-249)	575	221	790	2,231	3,817
All SMEs (<250)	18,032	70,433	48,283	212,590	349,338
Large (250+)	174	26	111	387	698
All sizes	**18,206**	**70,459**	**48,394**	**212,977**	**350,036**
Persons Engaged	Manufac.	Construction	Distribution	Services	Total*
Micro	27,204	99,270	87,132	307,924	521,530
Small	33,594	37,197	109,036	234,949	414,776
Medium	61,076	18,887	70,914	219,843	370,720
All SMEs	121,874	155,354	267,082	762,716	1,307,026
Large	123,687	15,092	115,938	327,046	581,763
All sizes	**245,561**	**170,446**	**383,020**	**1,089,762**	**1,888,789**

Source: CSO

Table 2 – Turnover and Gross Value Added by Class Size and Sector in 2021

Turnover (€m)	Manufac.	Construction	Distribution	Services	Total*
Micro	12,467	17,182	46,998	78,584	155,231
Small	14,412	7,646	55,815	44,552	122,425
Medium	28,024	4,932	47,182	62,732	142,872
All SMEs	54,903	29,760	149,995	185,869	420,527
Large	309,844	6,461	43,940	232,784	593,030
All sizes	364,747	36,221	193,935	418,654	1,013,557
Gross Value Added (€m)	Manufac.	Construction	Distribution	Services	Total*
Micro	4,624	4,713	6,430	37,543	53,310
Small	2,755	2,279	6,536	13,269	24,840
Medium	9,197	1,124	6,571	19,844	36,736
All SMEs	16,576	8,116	19,538	70,657	114,887
Large	135,623	737	8,202	70,642	215,204
All sizes	152,199	8,853	27,740	141,299	330,091

Source: CSO

* Selected sectors excludes non-manufacturing industries (NACE Rev.2 B, D, and E) and Financial and insurance activities (NACE Rev.2 K).

1.2 Scope of the Sub-committee's Review

The sub-committee had the following Terms of Reference:

- To create a list of relevant tax-based business support schemes and reliefs for examination.
- To systematically review the required administrative processes and conditions to which businesses must adhere in availing of each support scheme or relief, to determine which aspects give rise to the particular difficulty, complexity or significant compliance burden (referred to as "pain points").
- To examine the underlying rationale for the processes or conditions giving rise to "pain points" in each scheme, to determine the necessity for these, having regard to the requirements of domestic legislation, EU legislation and the appropriate minimisation of risk of tax leakage or of abuse.
- To identify and make recommendations in relation to administrative changes which may reduce or eliminate "pain points", and which can be feasibly implemented within the scope of relevant legislation and having regard to appropriate management of risk.

The sub-committee agreed it should focus its work on those reliefs and supports which have a broad application across SMEs or which have broad application beyond a specific industry sector. The sub-committee agreed that reliefs and supports targeted within a specific industry sector (for example agriculture, construction) may have too narrow a focus and, as such, these reliefs were not regarded as priority for the sub-committee.

As TALC is an administrative forum, the remit of the sub-committee did not extend to making recommendations for legislative amendments in its report. Notwithstanding this, the sub-committee acknowledged that to facilitate a discussion and a deeper understanding of the administrative issues facing taxpayers with respect to accessing and availing of many of the tax reliefs available to them, that legislative and policy matters would inevitably form part of the discussions.

1.3 Life-cycle Framework

The sub-committee adopted a life-cycle approach to examining the administration of the various tax-based reliefs and supports of which SMEs may avail. This approach offered several advantages. Firstly, it facilitated a comprehensive assessment of the unique needs and challenges encountered by SMEs at each stage of their life-cycle. By following this structure i.e. start-up, growth and maturity/exit phase the sub-committee assessed the discrete needs of the entrepreneurs at each stage and the challenges that may arise in accessing tax-based supports.

While it was noted that some of the supports are relevant at multiple stages in the life-cycle, this approach provided a framework for analysing supports in an impactful and meaningful way. The structured life-cycle approach allowed for better understanding of the intended rationale behind specific measures, anticipation of future requirements of the SMEs and identification of potential challenges at different points in their business life-cycle.

Start Up

- Employment Investment Incentive (EII)
- Start-Up Capital Incentive (SCI)
- Start-Up Relief for Entrepreneurs (SURE)
- Start-Up relief for new companies

Growth

- R&D Tax Credit
- KEEP
- Revised Entrepreneur Relief
- Accerated Capital Allowances - energy efficency
- Relief for investment in Innovative Enterprises (New "Angel Investor" Relief)
- Transfer of a business to a company
- CGT share buyback relief

Maturity

- CGT Retirement Relief
- CAT Relevant Business Property Relief

1.4 Findings of the sub-committee

In examining challenges in the take-up by small businesses of the targeted tax-based support schemes, the sub-committee identified two key overlapping themes of awareness and certainty. For many small businesses, especially in the start-up phase when resources are limited, access to professional tax advice can be prohibitive due to cost. Awareness of the range of supports available, the conditions attaching to each and the potential longer-term consequences of early decisions, especially in relation to raising risk capital, is vital. Enterprises are also very anxious to ensure that when they do avail of supports, they remain in compliance with the relevant legislation and avoid the risk of clawback of supports given, along with interest and penalties. It was acknowledged by the sub-committee that, in general, SMEs want to do things correctly and, as they are accountable to several cohorts of stakeholders (such as Revenue, investors and employees), clarity around the rules when availing of tax supports is vital.

In relation to both these objectives, the sub-committee identified significant potential benefits from improved communications and information provision focussing on the needs and perspectives of small business founders. These are detailed in Section 5 of this report but include a restructuring of information provision on Revenue's website in collaboration with small business interests; some enhancements to the extensive suite of Tax and Duty Manuals (TDMs) published by Revenue, and investment in wider awareness of tax reliefs and associated conditions through the development of material for relevant 3rd level institutions. As well as enhancing awareness of the schemes, these developments should help entrepreneurs to avail of the schemes.

Beyond these key themes, the sub-committee identified a very limited range of potential changes, exclusive to the administrative process, that could enhance the uptake of supports by SMEs. These include improvements to certain forms, more effective use of information submitted by taxpayers and improved engagement with independent experts engaged by Revenue to validate compliance, for example with the Research and Development (R&D) Tax Credit. Many of the sub-committee's detailed discussions on specific reliefs covered potential areas for change that were considered policy matters or legislative in nature and therefore, outside the scope of the sub-committee's review and findings.

Submissions to the sub-committee by practitioner bodies also highlighted a number of areas where the interpretation of legislation has been contentious. While these matters are generally more proper to the relevant TALC technical sub-committees they were considered by the sub-committee and agreed positions have been reflected in this report.

A list of the agreed administrative recommendations is provided on page 12.

1.5 Policy Issues raised that were outside the scope of the sub-committee's review.

During the course of the sub-committee's review, practitioners raised several matters regarding the underlying tax policies and associated legislation governing these reliefs. As TALC is purely an administrative forum, and policy formation is outside of its remit, the sub-committee could not make any recommendations in relation to legislative matters. The range of issues submitted by the various practitioner bodies that would require legislative amendment are summarised in Appendix B for information. These are matters which practitioner bodies may bring to the attention of the Minister for Finance, as part of the normal Finance Bill process.

1.6 Summary of Administrative Recommendations

The following table provides a list of the agreed administrative recommendations made by the sub-committee under the relevant business tax reliefs and communications.

Theme	Recommendation
Part 16 TCA including EII SURE SCI	Revenue to review both the website text and TDM in relation to all of the suite of reliefs covered in this chapter. The sub-committee endorses Revenue's proposal to work with bodies representing small businesses to develop material that meets their needs (See also Section 5 - Communications). In addition, the sub-committee recommends that the TDM be re-developed as a series of separate manuals covering SCI, EII and SURE.
EII	Revenue to update training for officials involved in compliance activities to ensure that they are aware of information available internally (eg RICT return and CRO data) to minimise duplicate information requests during interventions
EII	In relation to website material, it is recommended that Revenue sets out in tabular form the impact of the General Block Exemption Regulation (GBER) rules in relation to initial and follow-on investments and how these interact with the decisions to avail of each of the reliefs provided for under Part 16 of the Taxes Consolidation Act (TCA) 1997.
EII	Revenue to review the suite of RICT forms used by EII claimants to improve ease of completion and filing.
EII	Revenue to prioritise development of the Revenue Online Service (ROS) to facilitate Finance Act 2021 changes that extended the EII scheme to include qualifying investment funds.
R&D	Enterprise Ireland, in consultation with Revenue, to identify and provide an overview of the criteria for Research, Development & Innovation (RD&I) grants provided by Enterprise Ireland (EI) and Investment Development Agency (IDA Ireland) to aid an understanding of how the relevant criteria for RD&I grant funding differs, or, to any extent, aligns with the criteria for

	the R&D tax credit. Any agreed statement of alignment/difference to be included in the R&D TDM.
R&D	Revenue and EI to further explore the possibility of EI certifying projects as passing the "science test" i.e. that they consist of systematic activities seeking to resolve scientific or technological uncertainty
R&D	Revenue to complement its published guidance with information regarding common errors made by claimants of the R&D credit that result in claims being disqualified in whole, or in part.
R&D	Revenue to explore publishing Step-by-Step guidance (in video/multimedia form) for first time claimants of this credit.
R&D	Revenue to continue its collaboration with EI, IDA Ireland and the Industry Research and Development Group (IRDG) in information events for users of the R&D Relief.
R&D	Companies and their representatives to attend briefing meetings where arranged (which will not be necessary in all cases) with Revenue appointed R&D experts.
R&D	Revenue to explore the provision of guidance material in relation to the credit to relevant 3rd level educational institutions to provide an initial grounding in the relief to potential future claimants. (See also Section 5 - Communications)
R&D	Revenue to continue to broaden its panel of independent experts engaged for this purpose.
Share Valuations	Revenue to review its published guidance in relation to the valuation of unquoted shares to ensure clarity for all stakeholders.
Revised Entrepreneur Relief	Revenue to update its guidance to clarify that the operation of payroll by a company is not necessarily determinative of employment status within that company for the purposes of this relief.
Revised Entrepreneur Relief	Revenue to clarify its position in relation to the liquidation of a holding company following the disposal of trading company in relation to this relief.
Transfer of a Business to a Company	Revenue to review its guidance with regard to the treatment of liabilities forming part of the business being transferred to ensure that it is fully consistent with the legislation.

“Angel Investor” Relief	Revenue and EI to continue to work closely to develop an integrated approval process that minimises the overhead to claimants and provides maximum certainty to potential investors.
Revenue Technical Services	It is recognised that there is scope for improvement in relation to proactive communication by the RTS with taxpayers regarding the status and likely timelines of their technical query. It is recommended that RTS review its communications process to identify scope for potential improvement.
Website – Revenue.ie	Revenue to advance its work with small business and start-up interests to redevelop its website material on business reliefs to ensure ease of access to information for non-tax professionals.
Tax and Duty Manuals	Revenue to continue to improve the readability of its extensive suite of manuals, including the breaking down of the Part 16 TDM into individual manuals for each relevant relief. Revenue to continue its practice of including numerous practical examples covering different scenarios in each manual. Revenue to continue to prioritise prompt updating of manuals to reflect Finance Act changes, revisions to processes or updates to the understanding of interpretive issues following TALC discussions, RTS advice, TAC determinations or Court judgements. Revenue to continue to consult with stakeholders, where possible, in advance of any substantive changes to its TDMs.
Education	Revenue to explore the possibility of collaboration with the Technical Universities with a view to educating potential entrepreneurs attending relevant third level courses on business reliefs and supports including the R&D tax credit in particular. A programme of material, similar in style to Revenue’s current Transition Year (TY) Tax Education module should be explored. It is acknowledged that this material would be significantly more technical in nature than the current TY offering.

2 Startup Phase

2.1 Relief for Investment in Corporate Trades - Part 16 of the TCA

The relief for investment in corporate trades comprises three separate reliefs, namely, the **Employment Investment Incentive Scheme (EII)**, the **Start-Up Capital Incentive (SCI)** and the **Start Up Relief for Entrepreneurs (SURE)**. While these reliefs generally relate to raising finance for a newly founded SME, the EII is also relevant to an expanding business. The reliefs are founded on, and to a large extent shaped by, the EU General Block Exemption Regulations (GBER) in addition to specific Irish legislation.

All three schemes provide for income tax relief for qualifying individuals who make qualifying investments in qualifying companies. The key issues that arose in relation to the three reliefs are similar in nature. As such, administrative recommendations relating to all three reliefs are set out at the end of this section.

2.2 Brief Summary of the Employment Investment Incentive (EII)

The EII is an income tax relief which aims to encourage individuals to provide equity-based finance to certain business enterprises at various stages of their life cycle, from early, pre-revenue, stages through to expansion into new territories or economic activities.

The EII is available to individuals who make qualifying investments in qualifying companies. In general, an individual will be a qualifying investor if neither the individual nor his or her family own any capital in the company other than EII related capital.

2.2.1 Key Issues Identified

Issues identified in relation to EII were: -

1. Access to information regarding the scheme
2. Complexity of the rules for the scheme
3. Certainty regarding compliance with the rules of the scheme
4. Challenges in completing the necessary forms/returns.
5. Practical issues with Revenue's approach to compliance interventions in relation to the scheme
6. Concerns about getting the rules wrong and the potential financial consequences of doing so
7. The interaction of the relief with other tax supports aimed at SMEs and

8. Understanding the longer-term impact of decisions regarding initial levels of investment raised.

2.2.2 Access to Information

- The sub-committee considered that there is scope for improvement in the presentation of information by Revenue in relation to EII, in particular to suit the needs of small start-up businesses who may not have access to professional tax advice. The Revenue website contains some general high-level information in relation to EII. However, this information is included with other schemes under the banner of “Relief for Investment in Corporate Trades” (a term that may not be self-explanatory to the non-tax professional). For more detailed information on qualifying conditions etc. the reader is referred to a Tax and Duty manual (TDM) which covers the suite of three reliefs all of which provided for under Part 16 of the TCA 1997[1], and contains extensive historical information on rates of relief and changing conditions over time. This is a long, comprehensive technical manual, very much geared to the needs of tax professionals and challenging for a small business founder.

- Revenue acknowledges that there is scope to improve its web text information on this scheme, along with the other supports provided for in Part 16 TCA, to present the necessary information in a manner that is accessible to a non-tax literate business founder. During the work of the sub-committee, Revenue commenced work with small business representative bodies on this matter. It also agreed that its technical publication could be enhanced and made more accessible by separating the relevant reliefs into multiple manuals. The area of communications and information provision is further considered in Section 5 of this paper.

[1] The sub-committee noted delays in the updating of the current Part 16 Manual with respect to recent changes in EII. Revenue has advised TALC of the reasons for this delay and have published several clarifications on EII matters in the interim.

2.2.3 Complexity

The sub-committee noted that the key area of complexity arises from the necessity to comply with the conditions for State Aid provided for in the EU's General Block Exemption Regulation Article 21A (GBER). This is also the primary reason for uncertainty with regard to the qualifying conditions. The key GBER requirements of Article 21A, which was amended in 2023, are:

- A reduction in the rights that can attach to eligible shares.
- A reduction in the level of investment required from 50% to 30% of the average annual turnover of the company seeking expansion risk finance, where the investment will be used to significantly improve the environmental performance of the company or for other environmentally sustainable investments.
- An increase in the lifetime limit on the amount of risk finance investment that may be raised by a qualifying company from €15 million to €16.5 million with a corresponding increase in the amount that may be raised in any 12-month period from €5 million to €5.5 million. The limit of €16.5 million on the amount of risk finance investment that may be raised by an eligible undertaking includes any amount that is raised under either or both Part 16 (under EII, SCI or SURE) and the new relief for investment in innovative enterprises under Chapter 6A of Part 19 (known as 'Angel Investor relief').
- An amendment to the rate of tax relief that applies to investments made by investors. The rate of relief given will now depend on when the RICT Group was established, when it had its first commercial sale and whether the RICT Group has previously raised funding under Part 16 or not. The rates of relief available on direct equity investments are 50%, 35% and 20%, depending on the circumstances. A 30% rate of relief is available on indirect investments made through a qualifying investment fund.
- For companies seeking to raise funding in their early stages of development, the requirement that a company must raise capital before it has started operations or within 7 years of its first commercial sale has been broadened so that companies raising capital within 10 years of their date of incorporation will also qualify. The amendments also provide for how those periods are to be calculated in situations where businesses have been acquired or formed through a merger.
- Standardising the investment period to four years for all investments.
- Doubling the amount on which an investor can claim relief, in a tax year, for four-year investments to €500,000.

- Other technical amendments include replacing the terms used in current legislation with new terms required by the GBER such as replacing “new product or geographic market” with the term “new economic activity”, and “foreseen” with “provided for” in the context of follow-on risk finance.

2.2.4 Certainty

Recognising the need for businesses to have certainty in their compliance with these requirements, and acknowledging the necessary complexity involved in complying with the EU legislation, Revenue’s manual specifically invites businesses to request a confirmation from the Revenue Technical Service (RTS) in relation to GBER compliance. While some concerns were raised at the sub-committee regarding turn-around times for RTS responses, Revenue advised the sub-committee that only small numbers of queries are received annually in relation to EII and that these are generally addressed promptly (14 queries in 2021 and 13 in 2022 out of a total 87 and 62 new companies respectively availing of EII).

Revenue acknowledged that there have, on occasion, been delays in responding to RTS queries but that enhancements to its case management system mean there is now much more active management of these queries. The sub-committee still considered, however, that there is scope for further improvement in how Revenue communicates with taxpayers to provide updates on status and likely timelines as these queries are being processed.

Practitioner members of the sub-group expressed a view that application to RTS on EII matters was limited to GBER compliance matters only. However, Revenue confirmed that RTS is available to answer questions of an interpretive or technical doubt in relation to any aspect of the EII in the same manner as any other tax issues. RTS does not provide any general pre-approval process but is available to address areas of technical doubt.

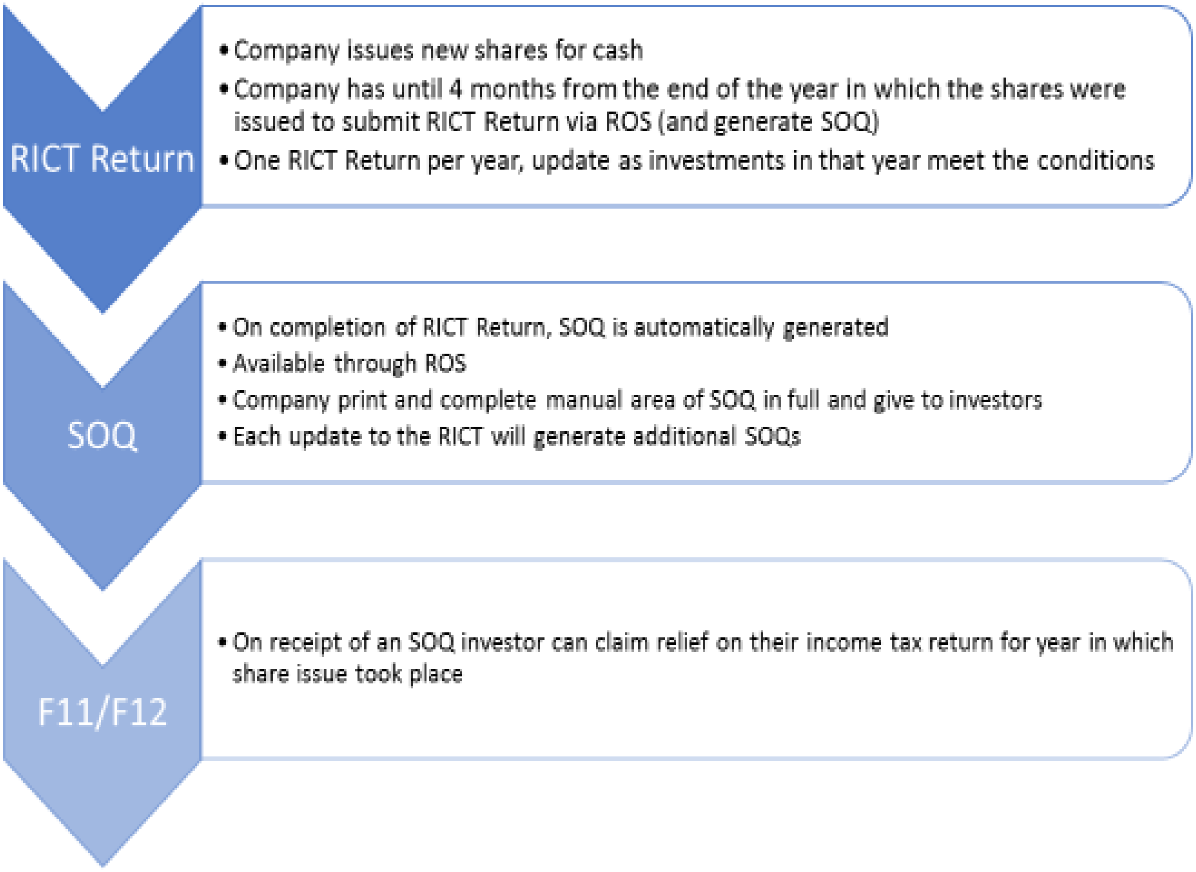
2.2.5 Process and Required Forms

The following infographic sets out the steps required of both the company and the investor in order to claim relief on EII investments.

Qualifying companies issuing eligible shares as part of a qualifying investment must provide Revenue with certain information on that investment. The information required is set out in a Return of Qualifying Investments in a Qualifying Company ('RICT Return'), with the company providing details to Revenue of the investments made and qualifying shares issued within the year that these investments occurred.

The company then provides the investor with a 'Statement of Qualification' form. This statement notes that the company complies with all the necessary company conditions.

Section 892 of the TCA 1997 requires that Form 21R returns are filed with Revenue by nominee holders of securities.



The sub-committee noted that the Form RICT is a macro enabled form in Microsoft Excel which has proven prone to technical errors often leading to a need for direct contact between the relevant business and Revenue. The form is incompatible with several operating systems, cannot be saved on the cloud, shared or have its file name amended without triggering an error message. Once the SOQs are generated, they require printing, signing and scanning to be sent to investors. This increases the administrative burden. Revenue recognises that both the Form RICT and SOQ require modernisation with a view to reducing this burden.

Revenue confirmed that a redesign of these RICT forms is on its ICT development schedule but has been delayed due to resource constraints. Prioritisation of this development is recommended.

Practitioners raised concerns regarding a required update on the Revenue Online Service (ROS) to facilitate Finance Act 2021 changes that extended the EII scheme to include qualifying investment funds. Revenue confirmed that it will prioritise this development.

2.2.6 Revenue's Compliance Interventions

As part if its role in upholding the integrity of the tax system Revenue, conducts risk based interventions to verify compliance with the conditions for these tax supports, in common with all other areas of the tax code.

The sub-committee was advised that interventions in relation to EII have often included requests to businesses for infomation already provided to Revenue on the RICT form or available from the CRO on the relevant company records. There is scope to reduce the burden of compliance interventions by ensuring, through appropriate training, that Revenue staff are fully aware of the information already available to them and that they review this in advance of any intervention.

2.3 Brief Summary of the Start Up Capital Incentive (SCI)

The SCI is a tax relief for equity-based investment by family members of existing shareholders of early-stage micro companies. There is a €500,000 lifetime limit on the amount that a company can raise under the SCI. The SCI can only be claimed where a qualifying company is carrying on a qualifying new venture and exists solely to do so. The SCI is only available in respect of investments in micro-enterprises. If the company is raising investment under the SCI, it cannot have commenced, or prepared to commence, the carrying on of any trade or business more than 7 years prior to the share issue date. A company cannot raise amounts under the SCI if it has any partner or linked enterprises.

2.3.1 Key Issues Identified

The issues identified by the sub-committee primarily related to issues of information and awareness under two broad categories:

1. Awareness of the availability of the scheme and the qualifying conditions; and
2. Awareness of the interaction between this and other RICT reliefs and the impact on decision making with regard to levels of investment sought. Founders may not always recognise that raising a small amount of SCI in early stages will limit the amount of the relief available for subsequent rounds of investment, thereby significantly reducing the value and attractiveness of EII.

2.3.2 Awareness of availability of the scheme

The issues identified broadly reflect those discussed in relation to EII under section 2.2.1 above. The SCI is included with other reliefs under the rubric of "Relief for Investment in Corporate Trades" in both Revenue's website and TDM, making it challenging for the non–tax professional to easily understand whether this relief is suitable for their business at its current stage of development.

2.3.3 Awareness of interactions between tranches of investment and associated relief

As noted above with EII, there is a need for potential investors to be aware of the GBER rules applying to initial and follow-up risk capital investments in to ensure that businesses make informed decisions regarding amounts of risk capital to raise at this point in their life cycle.

2.4 Brief Summary of the Start Up Relief for Entrepreneurs (SURE)

SURE is a tax relief that provides a refund of income tax paid by the investing individual in previous years. The relief may be claimed if the individual invests in his or her own company and is:

- an employee
- an unemployed person
- a person who has recently been made redundant.

The general conditions for SURE are that the individual must:

- establish a new company carrying on a new qualifying trading activity
- have mainly PAYE income in the previous four years
- take up full-time employment in the new company as a director or an employee
- invest cash in the new company by subscribing for new shares, or convert an outstanding director's loan into eligible shares
- keep the purchased shares for at least four years.

SURE, is the third relief contained in the TDM for Relief for Investment in Corporate Trades. The observations and recommendations of the group are similar to those identified under both EII & SCI.

2.4.1 Key issues identified

Practitioners identified that a lack of awareness of the scheme is the key administrative issue experienced by SMEs, along with complexity in calculating the relief and which tax years can be taken into account in maximising the relief. As with all reliefs covered by GBER, the potential impact on future larger rounds of EII since 1 January 2024 needs to be fully understood.

2.5 Administrative Recommendations in relation to SURE, EII and SCI

- Revenue to review both the Website text and TDM in relation to all of the suite of reliefs covered in this chapter. The sub-committee endorses Revenue's current work with bodies representing small businesses to develop material that meets their needs (See also Section 5 - Communications). In addition, the sub-committee recommends that the TDM be re-developed as a series of separate manuals covering SCI, EII and SURE. The sub-committee recommends that these manuals be updated promptly with newer examples as any substantive new clarifications become available on the operation of these provisions or developments arise in the interpretion of the legislation. These may arise from RTS advice or determinations of the TAC or the Courts.
- Revenue to review and redevelop the suite of forms used by EII claimants to improve ease of completion and filing.
- In relation to website material, it is recommended that Revenue sets out in tabular form the impact of the GBER rules in relation to initial and follow-on investments and the attendant rates of relief. This will enable greater clarity for businesses making decisions on availing of any of the reliefs discussed in this Section.
- Revenue to update training for officials involved in compliance activities to ensure that they are aware of information available internally (eg RICT return and CRO data) to minimise duplicate information requests during interventions.
- It is recognised that there is scope for improvement in relation to proactive communication by the RTS with taxpayers regarding the status and likely timelines for responses to technical queries. It is recommended that RTS review its communications process to identify ways achieve this.
- As a general recommedation in relation to all tax areas, TDMs to be updated as quickly as practicable after enactment of new legislation (See also Section 5 – Communications).

2.6 Start-up Relief for New Companies

This relief is granted by reducing the Corporation Tax payable on the profits of the new trade and gains on the disposal of any assets used for the purposes of the new trade for the first five years of trading. The amount of employers' Pay Related Social Insurance (PRSI) paid by the company determines how much relief can be claimed with the relief limited to the total amount of employers' PRSI.

2.6.1 Key Issues Identified

As with the suite of reliefs provided for in Part 16 TCA, it was noted that there is scope to enhance the information provided by Revenue on its website in relation to this relief as part of the wider review of the communication of business reliefs with a particular focus on meeting the needs of small businesses and non-tax professionals.

Practitioner members of the sub-group also queried the linkage between the quantum of the relief and the level of employers' PRSI paid by the company, indicating that this undermines the value of the scheme to employers. However, as this is a matter relating to the policy design of the relief, the sub-committee makes no recommendation.

2.6.2 Administrative Recommendations.

Revenue to review the information provided in relation to this relief as part of the overall review of its website content aimed as start-up businesses. (See also Section 5 - Communciations)

3 Growth / Expansion Phase

3.1 Research and Development Tax Credit (R&D)

R&D Relief, as provided for in s.766 TCA 1997, provides for a refundable Corporation Tax credit of 25% of qualifying expenditure on R&D activities. To qualify, the R&D activity must be systematic, investigative or experimental activities in a field of science or technology which seeks to achieve scientific or technological advancement and involve the resolution of scientific or technological uncertainty. Only expenses incurred in the actual "carrying on" of the qualifying activity may be included in the calculation of the credit claimed. At 4 April 2024 the cost to the exchequer of the R&D tax credit for 2022 was €1,148 million in respect of 1,551 claimant companies. (Note: These figures are provisional at the time of writing)

3.1.1 Key Issues Identified

The issues identified by the sub-committee primarily related to:

1. Certainty in relation to qualifying activities (the "Science Test")
2. Record keeping in relation to qualifying expenditure (the "Accountancy" Test)
3. Definition of qualifying expenditure (Agency Staffing)
4. Revenue's compliance interventions.

3.1.2 Certainty in relation to qualifying activities

Practitioners expressed a concern that SMEs may be dissuaded from claiming the R&D credit due to uncertainty regarding the nature of qualifying R&D activity and the consequent risks of withdrawal of the credit during a Revenue intervention, with attendant interest and penalty charges.

3.1.3 Definitions

The definition of qualifying R&D activity for the purposes of the R&D Corporation Tax Credit is set out in the legislation and activities must be "systematic, investigative or experimental activities in a field of science or technology, being basic research, applied research or experimental development". Activities will not be R&D activities unless they seek to achieve a scientific or technological advancement and involve the resolution of scientific or technological uncertainty.

The definition of qualifying R&D activity applied by grant agencies such as Enterprise Ireland (EI) or the Investment Development Agency (IDA Ireland) is based on the OECD's "Frascati" manual. While there are broad similarities in terms of the definition of research and development, there are key differences between the definitions for the purposes of the R&D Corporation Tax credit and the definition for the purposes of obtaining grant funding. The activities on which grant funding are based may not necessarily always involve the resolution of a scientific or technological uncertainty and the strict limitation of the R&D credit to activities forming the "carrying on "of that resolution, (i.e. excluding preparatory or ancillary work) is seen as a source of confusion for claimant SMEs.

As part of this review, the sub-committee met with representatives of EI and Department of Enterprise Trade and Employment. EI confirmed that, in partnership with IDA Ireland, they are working to document clearly these differences in order to assist claimant enterprises, SMEs in particular, to understand the distinct parameters of each support and to eliminate any confusion. The sub-committee welcomes this work as potentially providing valuable clarification and recommends that it be advanced in consultation with Revenue.

Revenue also noted that it engages in extensive communications activity, including supporting the work of EI, IDA Ireland and the Industry Research and Development Group(IRDG) to bring clarity on these issues to businesses. Revenue also hosts a regular discussion group bringing together tax officials, practitioners and industry experts to address practical issues in relation to the operation of the R&D Tax Credit.

3.1.4 Advance Approvals

It was suggested to the sub-committee that advance approvals of specific projects as qualifying activity could greatly improve certainty for small business carrying out R&D work. Revenue and EI have held discussions on the possibility of EI certifying that projects would, if carried out as planned, constitute qualifying activity. While all parties would welcome this, the scale of resource increase in EI that would be necessary to enable this is a significant obstacle. Revenue also noted that any advance approval must, of its very nature, remain provisional and conditional on the projects as being carried out as set out at the time of approval. Notwithstanding these limitations, the sub-committee sees potential merit in this approach to limiting disqualification risk and recommend that EI and Revenue continue to explore it.

Practitioner members of the sub-committee also suggested that Revenue provide advance approval on the methodology used by individual claimant companies to capture qualifying costs in order to address concerns SMEs have in relation to satisfying the “accounting test” of the R&D Tax Credit. Revenue indicated that it provides guidance on the nature of qualifying costs and the types of record to be kept, emphasising the need to isolate costs specifically incurred “in the carrying on” of qualifying R&D. Beyond that, it does not see scope for individually validating the record keeping practices of a large number of claimant companies, each with numerous projects using record keeping methodologies tailored to scope, scale, and type of activity in each instance.

3.1.5 EI/IDA/Horizon 2020/Horizon Europe Grant Recipients

Revenue currently operates an administrative practice of not challenging the “science test” for companies awarded an R&D grant by any of the above bodies where the qualifying expenditure does not exceed €200k (equating to €50k in tax relief). Practitioner members of the sub-committee requested that this threshold be doubled to expenditure of €400,000.

Revenue’s view is that the existing administrative practice is already a significant exercise of administrative discretion and that a widening of areas where automatic approval is granted would be subject to policy consideration and therefore, a legislative amendment would be necessary.

3.1.6 Record Keeping in relation to qualifying expenditure.

Sub-committee members expressed concern that the level of record keeping necessary to substantiate expenditure is onerous, especially for small businesses. In particular, the need to keep specific records of expenditure incurred “in the carrying on" of R&D activity represents a significant increment above normal commercial record keeping. It was noted that Revenue’s guidance on the matter outlines a significant level of record keeping. Revenue advised that its guidance is not directive and that it is open to any thorough format of record keeping but that a business must be able to accurately track expenditures incurred in the actual “carrying on” of the activity to substantiate any claim to the credit.

3.1.7 Definition of qualifying expenditure (Agency Staffing)

Practitioner members of the sub-committee questioned Revenue's guidance which only allows costs incurred on agency-provided staff to be treated as direct employee costs of the company where such staff work on the premises in which the R&D is carried on and the engagement period does not exceed 6 months. They argued that this is not consistent with changing remote working practices and does not reflect the commercial reality of such projects. Practitioners indicated that there is no risk of "double-claiming" of the credit by SMEs where the agency-provided staff cannot make a R&D tax credit claim. Revenue's view is that the use of agency staff is treated as outsourcing, and subject to the limitations on outsourcing. In certain circumstances, agency staff may be treated as direct employees of the company but only where all conditions as set out in the guidance are met, including that the individual works on the company's premises. This ensures that the qualifying agency staff engaged by the company are undertaking the qualifying R&D activities within the EEA/UK**.** It is considered that any change in scope would result in an increase in the cost of the credit to the Exchequer and would therefore be a policy matter which would require legislative change.

3.1.8 Revenue's Compliance Interventions

Practitioner members of the sub-committee expressed concern that Revenue's compliance interventions, which examine both the issues of qualifying activity and expenditure, act as a disincentive to claiming the credit, and by extension, to the growth or R&D activity in Ireland. It was suggested that any adjustments to the allowable credits arising from interventions be treated as "*technical adjustments*" under Revenue's Code of Practice for Revenue Compliance Interventions due to the "*subjective nature of R&D*". This would mean that no tax geared penalties would apply. It was also proposed that R&D claimants would be given greater access to external experts engaged by Revenue to validate qualifying activity.

Revenue noted its responsibility to examine claims to this credit thoroughly, given that the credit currently costs in excess of €1bn annually. It also disagreed with the characterisation of the question of allowable activity as "*subjective"* given that the question of whether or not a person is carrying on systematic, investigative or experimental activities which aim to resolve scientific or technological uncertainty is a matter of fact. It did, however, note that there may be technical aspects to R&D intervention settlements and these are addressed on a case-by-case basis.

Practitioners expressed a concern about perceptions of the transparency and neutrality of independent experts engaged by Revenue to verify the nature of qualifying R&D activity. Revenue agreed that, to improve trust and transparency, it will institute a practice of inviting claimants to attend any briefing meetings held with such experts.

3.1.9 Processing Challenges in relation to the Specified Return

Practitioners noted difficulties in the completion and submission of the specified R&D Return introduced to implement the changes introduced by the 2022 Finance Act and Revenue acknowledged processing difficulties that led to delays in payment of relief to some claimants. Revenue confirmed that it has invested resources in rectifying the issues and these are now resolved.

3.1.10 Administrative Recommendations

The following is recommended by the group based on their overview and discussions of the administrative processes for SMEs claiming the R&D Tax Credit.

- Enterprise Ireland, in consultation with Revenue, to identify and provide an overview of the criteria for RD&I grants provided by EI and IDA Ireland to aid an understanding of how the relevant criteria for RD&I grant funding differs, or, to any extent, aligns with the criteria for the R&D tax credit. Any agreed statement of alignment/difference to be included in R&D TDM.
- Revenue and EI to further explore the possibility of EI certifying individual projects as passing the "science test" i.e. that they consist of systematic activities seeking to resolve scientific or technological uncertainty.
- Revenue to complement its published guidance with information regarding common errors made by claimants of the R&D credit that result in claims being disqualified in whole or in part.
- Revenue to continue to consult with stakeholders in advance of any substantive updates to its guidance.
- Revenue to explore the provision of guidance material in relation to the credit to relevant 3rd level educational institutions to provide an initial grounding in the relief to potential future claimants. (See also Section 5 Communications)
- Revenue to explore the provision of step-by-step guidance (in video/multimedia form) for first time applicants.

- Revenue to invite taxpayers, and their agents where relevant, to attend any briefing meetings held with independent experts engaged by Revenue to validate the carrying on of qualifying R&D activity.
- Revenue to continue to broaden its panel of independent experts engaged for this purpose.

3.2 Key Employee Engagement Programme (KEEP)

The KEEP is a share option scheme available to SMEs, which is intended to help such enterprises attract and retain talent in a competitive labour market. The scheme allows for the grant of share options subject to qualifying criteria. SMEs do not require Revenue approval to offer KEEP share options to their employees and, where conditions are met, any gain realised by employees on the exercise of a KEEP share option is exempt from Income Tax, Universal Social Charge (USC) and PRSI.

3.2.1 Keys Issues Identified

While there were a number of policy matters raised by practitioner members of the sub-committee, the issue of valuation of shares was the only substantive administrative issue raised with respect to the KEEP. Two specific issues were identified: -

1. The valuation methodology
2. The duration of validity of any share valuation for KEEP purpose.

In addition, practitioners queried the interaction of KEEP with any of the reliefs provided for in Part 16 TCA. Revenue confirmed that is not possible to claim EII relief on the exercise of a KEEP option to purchase shares. An individual who either has a KEEP option to purchase shares or who has shares as a result of having exercised a KEEP option may be a connected person for the purposes of Part 16 and accordingly may not be a qualifying investor for the purposes of s.500 TCA. GBER refers to "independent private investors" where "independent investor" means a person that is not a shareholder of the eligible undertaking in which it invests.

3.2.2 Valuation Methodology

Practitioner members of the sub-committee expressed concern about the practical risks associated with determining market valuation of shares and share options in a small, privately owned company at a point in time and where there is generally no market for the shares which might be issued under the KEEP scheme. Revenue's perspective is that the choice of valuation methodology for any unquoted shares, including the application of minority interest discounts, should follow established accounting practices, and that it is not possible to be prescriptive as to the precise methodology chosen for any given company as the optimal method will vary having regard to the activity of the company, the nature of its assets and the maturity of its products or services etc. Revenue consider that it is very much a matter for each company to determine an appropriate methodology having regard to all relevant facts and circumstances. Revenue did advise that it is highly unlikely to challenge a valuation that has been competently prepared using an established methodology and taking account of all relevant facts.

Practitioner members noted that there was very little published guidance on the matter of valuing unquoted shares with the notable exception of the CAT manual (TDM *Valuation of Unquoted Shares – CAT Manual Part 21*) and that on this basis this TDM was being referred to in matters of valuation, specifically the appropriateness of the level of minority interest discounts, even where the valuation was not being prepared for tax purposes. Revenue advised that this guidance exists purely for CAT purposes and is not relevant, nor should it be relied on, for other tax matters including KEEP.

Revenue agreed to review its published material in relation to the valuation of unquoted shares to ensure clarity for all parties.

3.2.3 Duration of Valuations

Sub-committee members noted that tranches of KEEP shares may be issued over time, as new key employees come on board. In this context, the cost of repeated use of the services of professional valuers was seen as an obstacle to effective take-up of the scheme. Practitioners noted the practice of the UK tax administration, His Majesty's Revenue and Customs (HMRC) of accepting a valuation of shares for the purposes of its Enterprise Management Initiative (EMI), a scheme somewhat like KEEP, as having a validity of 90 days. This practice is sometimes referred to as a valuation "Safe Harbour".

As part of the research of this group, the Revenue representatives met with officials from HMRC to gain an understanding of share valuations for EMI purposes. HMRC advised that share valuations for EMI purposes are generally carried out by independent professional valuers at the expense of the relevant company. While HMRC do confirm that their acceptance of a valuation stands for a 90-day period, this is subject to strict conditions, in particular that a valuation will no longer be considered valid if there is change in the circumstances of the company or any reason to consider the share valuation is likely to have changed. Valuations will also be revoked where HMRC comes into possession of information that may give it reason to believe that not all material facts were disclosed to the initial valuer.

Like Revenue, HMRC does not provide guidance on preferred methodology for share valuation. Its view, similar to that of Revenue, is that the choice of methodology must be made by each company, having regard to its own particular facts and circumstances.

Revenue's view is that its approach does not, result in any higher level of uncertainty for companies issuing KEEP options than the HMRC approach for EMI. Revenue is clear that properly completed valuations will remain valid unless and until there are changes of circumstances that will likely give rise to a material change in valuation, whether upwards or downwards.

3.2.4 Administrative Recommendations

The sub-committee recommends that Revenue to review its published guidance in relation to the valuation of unquoted shares to ensure clarity for all stakeholders.

3.3 Revised Entrepreneur Relief (RER)

s.597AA TCA 1997, introduced by the Finance Act 2015 and later amended, provides a reduced CGT rate for entrepreneurs disposing of certain business assets. Initially set at 20% for gains up to €1,000,000, this rate was reduced to 10% for disposals from 1 January 2017 onwards. To qualify, individuals must meet specific criteria outlined in the legislation, and the relief does not apply to investments, development land, or assets connected with arrangements intended to act as avoidance measures.

3.3.1 Key Issues Identified

Issues raised under the heading of administration in relation to this relief generally related to Revenue's interpretation of certain aspects of the legislation including:

1. Availability of the relief on the liquidation of holding company
2. The working time requirement
3. Mixed holdings of investments

3.3.2 Availability of the relief on liquidation of holding company

Practitioner members of the sub-committee raised concerns about Revenue's published guidance which does not allow for the relief in circumstances where the investment is held through a holding company and the liquidation of the company does not take place until after the disposal of the relevant company. The concern centred on clarity of availability of RER on liquidation of a holding company following the sale of its trading subsidiary. Revenue advised that its approach on this matter is constrained by the legislation which requires the relevant business assets to be in use in the relevant company at the time of the disposal. Practitioner bodies are of the view that this is impractical and does not reflect commercial reality. They indicated that they may pursue an amendment to the legislation.

3.3.3 Working time requirements.

The legislation requires that a qualifying person availing of this relief, will have devoted at least 50% of their working time to a managerial or technical capacity in the company (or group where relevant) in the 3 years prior to a qualifying disposal of assets. Practitioners expressed concern as to how this would be established if payroll is not operated by the company being disposed of and expressed concern over the availability of the relief where a person was actively managing multiple businesses. Revenue advised that it did not consider the operation of payroll as a key determinant of the working time condition but expected that adequate commercial records e.g. charging for time committed, would be available as supporting evidence of a person's working time. It also advised that as the 50% requirement is enshrined in legislation, it does not have discretion to take a flexible approach in cases where a person was running multiple separate businesses and had devoted the required amount of time to any one business. Practitioners requested that Revenue include reference to the payroll issue above, when next updating its manual on this matter.

3.3.4 Mixed holdings of investments.

Practitioners noted that an entrepreneur can be excluded from claiming RER where non-qualifying activity such as the holding of investments or the leasing of a trading premises takes place within a group company and suggested that Revenue accept an apportioning of the relief where there is a mix of qualifying and non-qualifying activities in a company. Revenue considers this to be a legislative matter that would require a change to the definition of a either "qualifying business" or "holding company" and is, therefore, not an administrative issue.

3.3.5 Administrative Recommendations

Revenue to update its guidance to clarify that the operation of payroll by company is not necessarily determinative of employment status within that company for the purposes of this relief and to set out its position in relation to the liquidation of a holding company following the disposal of trading company, in relation to this relief.

3.4 Accelerated Capital Allowances for Energy Efficient Equipment

s.285A of the TCA 1997 provides accelerated capital allowances for energy-efficient equipment used for the purposes of a trade, allowing 100% of the capital expenditure to be claimed in the year of purchase as opposed to a longer period. This is subject to the equipment's inclusion on the Sustainable Energy Authority of Ireland's (SEAI's) approved list. From 1 January 2022, equipment powered directly by fossil fuels is excluded from this scheme. The allowance is available to both companies and sole traders, provided the equipment is owned by the business, new, and meets specific energy efficiency criteria.

The provision includes accelerated allowances for electric vehicles subject to the limit of the "specified amount" of €24,000 provided for in s.380K TCA (*Emissions-Based Limits on Capital Allowances and Expenses for Certain Road Vehicles*)

3.4.1 Keys Issues Identified

The key issue identified in relation to this relief was the limitation of the relief to specific qualifying products included on the list published by SEAI. These are identified by product codes on the SEAI list. There are currently some 31,000 such product codes. Sub-committee members suggested that qualification by reference to energy efficiency performance criteria would allow for greater flexibility of product choice and easier access to the relief. In particular they suggested that long lead-times for the approval and inclusion of new products on SEAI register may reduce business flexibility in the adoption of energy efficient equipment.

Revenue noted that the restriction of the relief to products on the published SEAI list is a legislative requirement as set out in section 285A of the TCA 1997 and any change would, therefore, require policy consideration and subsequent legislative change if considered appropriate. Revenue did, however, engage with the SEAI to understand the lead-times involved. It is understood that the approval process generally takes in the order of 2 months, with updates to the list published 6 times annually by SEAI. Revenue's view is that this lead-time does not represent a significant impediment to take-up of this credit.

3.4.2 Administrative Recommendations

There are no agreed administrative recommendations in relation to this relief.

3.5 Transfer of a business to a company s.600

s.600 of the TCA 1997 provides for relief from CGT where the assets of a business assets (excluding cash) are transferred to a company in exchange for shares, provided the transfer is for genuine commercial purposes and not intended for tax avoidance. The relief is applicable to the portion of the gain corresponding to the shares received. The gain attributable to other forms of consideration, such as cash, remains subject to CGT. The relief operates by deducting the amount of the gain from their allowable cost, carrying forward to future CGT calculations upon disposal of these shares. In essence the relief is a deferral of CGT rather than a relief from CGT.

3.5.1 Keys Issues Identified

The area of concern noted in relation to this relief relates to Revenue's guidance regarding the treatment of creditors of the business. In general, Revenue regards the acceptance by the business of debts formerly held by the individual disposing of the business as forming part of the consideration paid, with an exception for "*bona-fide trade creditors*". The example given of such creditors is a food supplier to a restaurant business. Practitioners on the sub-committee suggested that other liabilities such as bank loans should be treated a part of the net value of the business rather than as part of the consideration.

Practitioner members of the sub-committee took a view that this narrow interpretation by Revenue restricts the take-up of the relief by entrepreneurs. They expressed a view that the concept of "*bona fide trade creditors*" is not provided for in legislation and that Revenue's interpretation fails to acknowledge the true net worth of the enterprise being transferred i.e. net of normal trade borrowings, thereby making the relief unattractive for taxpayers. They also expressed a view that this concept ignores the commercial reality of a business being critically reliant on assets that are secured against business loans, the repayment of which is dependent on generating business profits.

Revenue agreed to further examine this issue but noted that, as this will be a technical review which will have to have regard to any risk of tax leakage that might arise, the review will take some time. Any changes will be advised through an update to the TDM.

3.5.2 Administrative Recommendations

Revenue to review its guidance with regard to the treatment of liabilities forming part of the business being transferred to ensure that it is fully consistent with the legislation.

3.6 Acquisition by a company of its own shares (CGT share buyback relief)

When a company buys back its own shares, any amount paid above the original issue price is generally treated as a distribution under s.130 of the TCA 1997 to prevent shareholders from extracting profits without incurring Schedule F tax. However, under certain conditions outlined in Chapter 9 of Part 6 of the Act, buy-backs can be treated as capital gains rather than income, aligning with the Companies Act 2014 provisions. Specifically, s.176 TCA allows unquoted companies to qualify for this treatment if the buy-back is for the benefit of the company's trade, is not part of a profit-participation scheme without dividends, and meets criteria regarding shareholder residency, shareholding duration, and reduction in shareholding interest.

3.6.1 Keys Issues Identified

The sole area of administrative concern identified in respect of this relief was a view by practitioner members of the sub-committee that Revenue's guidance in relation to the reduction in an individual's level of shareholding was inconsistent with the legislation. Revenue guidance indicates that it expects an individual's shareholding in a company to be reduced to 5% or less whereas the legislation refers to a "*substantial reduction*" in the relevant shareholding. This is defined as a reduction of 75% of the person's shareholding prior to the buy-back. Revenue's response was that the 5% test is not related to the "substantial reduction" requirement. It considers a shareholding greater than this level to be inconsistent with the requirement that the share buy-back is for the benefit of the trade. Revenue advised that this relief should not be considered as an alternative form of Retirement Relief and relates only to circumstances where the buy-back materially benefits the trade e.g., through facilitating the exit of a dissenting shareholder.

Revenue also noted that its publication of detailed guidance on these matters in 2018 had led to a very substantial reduction in the number of queries to its RTS and cited this as a very positive example of how improved guidance can assist taxpayers to be fully compliant.

Practitioners also queried whether Revenue accepted the potential for either deferral or part deferral of payments subject to this relief, or “earn-out” payments, having regard to the potential impact of a substantial payment on liquidity. Revenue confirmed that it could not consider earn-outs in these circumstances, as these effectively entail ongoing participation by the individual disposing of the shares in the profits of the company. Revenue confirmed that, in exceptional circumstances where a single payment would prove detrimental to the trade, it would be open to approving a brief phased payment arrangement.

3.6.2 Administrative Recommendations

There are no agreed administrative recommendations in relation to this relief.

3.7 Relief for Investment in Innovative Enterprises ("Angel Investor" Relief)

The Finance Act (No. 2) of 2023 introduced this new relief which brings about an effective reduced rate of CGT of 16%, (or 18% if through a partnership), on a gain up to twice the value of their investment by certain classes of investors. There is a lifetime limit of €3 million for the relief to be available. This provision is subject to a commencement order.

3.7.1 Keys issues Identified

Practitioner members of the sub-committee expressed concern that the scheme as introduced is complex, and subject to a range of conditions to ensure GBER compliance. This may require considerable planning and advice for the relief to be accessed. Concern was also expressed that, as multiple State agencies (Revenue and EI) may be involved in the certification process, there may be potential for administrative delays. The process will entail confirmation of both the "going concern" aspects of the relevant enterprise and the commercial innovation involved. Revenue and EI confirmed to the sub-committee that they are working together to design an integrated streamlined approval process to minimise delays and duplication of effort on the part of claimant taxpayers and their advisers. EI also confirmed that they intend to provide the necessary certification to non-EI client companies.

3.7.2 Administrative Recommendations

Revenue and EI to continue to work closely to develop an integrated approval process that minimises the overhead to claimants and provides maximum certainty to potential investors.

4 Maturity Phase

4.1 Disposal of a business on retirement s.598 & CAT business relief scheme

4.1.1 Administrative Issues

The sub-committee noted that there is a significant level of technical complexity involved in the administration of these reliefs but that this complexity stems essentially from the policy design of the reliefs themselves. Specifically, it was noted that as the CAT and CGT provisions focus separately on the treatment of persons disposing of businesses and persons in receipt of same that the various definitions, rules for valuations etc. are different. Practitioners noted that explaining these differences to clients can be challenging but that each has its own benefits for taxpayers which could potentially be undermined by alignment.

It was not considered that there were any changes to administrative processes that might have a significant impact on the usage of the reliefs by the SME sector. It was, however, noted that there is scope to improve Revenue's presentation of materials in relation to these reliefs on its website.

4.1.2 Brief Summary of scheme relating to relief from CGT on disposals of business or farm on "retirement".

s.598 provides relief from CGT to individuals aged 55 and above who dispose of "qualifying assets" to persons other than their children. This relief is referred to as "retirement relief" but can apply even where the individual does not "retire" in the literal sense, and assists individuals manage tax liabilities when disposing of business or farming assets, supporting retirement planning and business continuity.

4.1.3 Brief Summary of the CAT Business Relief Scheme

Business Relief provides relief from CAT on inherited or gifted business property, reducing its taxable value by 90%. This applies to businesses, shares in businesses, or shares/securities of a business company, subject to specific conditions, such as the business being operational for a minimum period and the beneficiary retaining ownership for a certain time. The relief is not available for businesses dealing mainly in currencies, securities, stocks, shares, land, buildings, or investments, and certain assets cannot be included in the relief calculation. The relief can be withdrawn if the business ceases trading, or the property is disposed of within specified periods.

4.1.4 Key Issues Identified

s.598 Retirement Relief and CAT Business Relief were discussed by the group in tandem as part of a comparison of both reliefs with practitioners highlighting the differences regarding set criteria of the reliefs. Practitioners noted that the differences between the reliefs can cause confusion amongst business owners.

Revenue note that each relief operates within the framework of the particular tax head to which it relates, and within the confines of the policy objective it seeks to achieve. The concerns raised by practitioners surrounding the differences are of a policy nature rather than a matter of administration.

4.1.5 Administrative Recommendations

In line with the recommendations with regard to communications outlined in Section 5 below, Revenue to review the presentation of its website materials in relation to these reliefs.

5 Communications

5.1 Communications Issues

A common theme that emerged in the discussions of the sub-committee was the challenge, especially for the non-tax professional, of getting information about the range of reliefs available and their application in particular cases. It was especially noted that small start-up enterprises will often not wish to undertake the expense of engaging professional tax advice and may, therefore, be unaware of the full range of tax based business supports and reliefs available.

It was noted that Revenue's web-based presentation of information in relation to tax reliefs available to the business sector, is significantly less detailed than that provided to personal taxpayers. Much of the information provided is in high level summary form and the reader is referred to Tax and Duty Manuals (TDMs) for more detailed information. These TDMs, while richly detailed with many examples, are generally written from the perspective of the tax professional (whether Revenue official or a tax adviser) and are often presented in technical language and follow the structure of the legislation. As an example, in Chapter 2 above, it was noted that a range of supports most relevant to small start-up enterprises, are bundled together in both the website and TDM under the rubric of "Relief for Investment in Corporate Trades", itself a technical and non-self-explanatory term. For more detailed information, the reader is referred to a TDM which details all of Part 16 of the TCA and runs to some 108 pages in length. This manual is very much written by tax professionals for tax professionals.

The consequences of this are not simply a challenge in finding information. Start-up businesses need to understand the options open to them and also the consequence of early-stage risk capital raising decisions. In particular the distinction between the level of relief available for initial stage and follow-on investment under GBER rules needs to be understood by entrepreneurs in order to make prudent decisions.

Since the commencement of the work of the sub-committee, Revenue's Communications Branch has engaged in dialogue with the small business interests to examine how best to present the most relevant information needed by start-ups and small businesses on the Revenue website. That dialogue will be expanded in July 2024 to include a wider base of relevant representation in workshops to examine this issue.

The objective for Revenue is to better understand how small-scale entrepreneurs access and consume tax knowledge and to tailor its presentation of information accordingly. The intention is that this dialogue will lead to a significantly more user-friendly presentation of relevant data. In particular, it is intended to summarise the interaction between the various reliefs in an easily readable table. In tandem with this work, Revenue's Legislation Services Division has advised that it is to begin work on separating the Part 16 Manual into a series of shorter and more accessible manuals detailing each of the individual reliefs.

The sub-committee also noted the importance of timely updating of Tax and Duty Manuals following either legislative changes or updates to process or interpretation. While it is acknowledged that Revenue is generally very prompt in revising these following Finance Act changes, with many new manuals published annually before the New Year, the importance of continual prompt updating was stressed as vital for practitioner and taxpayer alike.

5.2 Administrative Recommendations

- Revenue to advance its work with small business and start-up interests to redevelop its website material on business reliefs to ensure ease of access to information for non-tax professionals.
- Revenue to continue to improve the readability of its extensive suite of manuals, including the breaking down of the Part 16 TDM in individual manuals for each relevant relief. Revenue to continue its practice of including numerous practical examples covering different scenarios in each manual.
- Revenue to continue to prioritise prompt updating of manuals to reflect Finance Act changes, any revision to processes and any updates to the understanding of interpretive issues following TALC discussions, RTS advice, TAC determinations or Court judgements.
- Revenue to continue to consult with stakeholders, where possible, in advance of any substantive changes to its TDMs.
- Revenue to continue its collaboration with EI, IDA Ireland and IRDG in information events for users of the R&D Relief.

- Revenue to explore the possibility of collaboration with the Technical Universities with a view to educating potential entrepreneurs attending relevant third level courses on business reliefs and supports including the R&D Tax Credit in particular. A programme of material, similar in style to Revenue's current TY Tax Education module should be explored. It is acknowledged that this material would be significantly more technical in nature than the current TY offering.

6 Appendices

6.1 Appendix A – Sub-committee Membership

Main Representative	Representative Body
Brian Boyle (Chair)	Revenue
Emma Brennan (Secretary)	Revenue
Sarah Collins	Revenue
Davina Lyons	Revenue
Martina Mulligan	Revenue
Anne Gunnell	ITI
Grainne McDermott	CCAB-I
Caolán Doyle	Law Society

Additional Representative	Representative Body
Sarah Sheehan	Revenue
Ian Collins	ITI
Stephen Gahan	ITI
Laura Lynch	ITI
Crona Clohisey	CCAB-I
Enda Faughan	CCAB-I
Maura Ginty	CCAB-I
Beryl Power	CCAB-I
David Broderick	SFA
Catherine McGovern	SFA
Donal Leahy	EI
Felix O´Kane	DETE

6.2 Appendix B – Policy Proposals submitted by Practitioner Bodies. These were not considered by the subcommittee as tax policy is outside of the remit of TALC.

Tax Relief	Proposal
Accelerated Capital Allowances	Simplify the process for adding new products to the approved list maintained by SEAI by determining the eligibility of a product based on it meeting certain specified performance criteria for its particular product category.
EII	Permit holding company structures as these are borne out of genuine commercial arrangements and the restriction appears to stem from rules pertained in the former Business Expansion Scheme which was relevant to the economy and corporate structures of the 1980's when only large corporates could have group structure, rather than GBER, which takes a holistic view incorporating a RICT Group.
EII	Amend the "relevant trading activities " (RTA) test The requirement for a qualifying company to carry on "wholly RTA" is too restrictive. As section 490 TCA 1997 already contains a requirement for the EIIS funds to be used for the purpose of carrying on RTAs, it should be sufficient for a qualifying company to be carrying on "wholly or mainly" RTAs. Not only is the "wholly and mainly" test a practically easier test to meet, it is consistent with other sections of tax legislation.

EII	Amend the employment conditions such that a company is deemed to have fulfilled the condition if they satisfy either of the tests i.e. there is an increase in the number of employees or an increase in total remuneration to reflect commercial reality. In early days, there can be low numbers of highly paid employees during its R&D+I phase, changing to high volume, lower paid workers when building sales and operating teams. Employment is still being created and maintained in line with the aim of the scheme, just the types of employment roles change as the business matures.
EII	Amend the connected party rules to provide a carve-out from the connected party rule linked with a control test, so that shares and share options granted to non-executive directors or other key employees will not automatically result in ineligibility as a qualifying investor.
EII	Recognise additional exit strategies for EII investors beyond what is provided by way of a share redemption or trade sale given the high commercial risks investors assume.
EII	Allow the offset of capital losses, net of tax relief already received, incurred on EII investments.
EII	Amend the sanctions imposed for administrative errors or delays in the certification and reporting process from being a clawback of the entire EII relief on the fundraising company to a more proportionate monetary fixed penalty.
EII	Instruments: The scheme does not support commonly used investments such as Convertible Loan Notes (CLNs) and Simple Agreement for Future Equity (SAFEs).
EII	Request for introduction of EII Lite/Advanced Assurance for smaller funding rounds.

EII	Reconsider the interpretation of follow-on investment to beyond 7 years after first commercial sale, to reflect commercial reality of early stage high potential businesses raising funds in tranches on achieving certain milestones, as is typical in the MedTech sector in particular. This one change has resulted in the progress of several MedTech projects stalling due to not being able to secure funding for future milestones.
KEEP	Amend the definition of a qualifying holding company for KEEP purposes to permit the group as a whole to be considered, rather than considering the holding company in isolation, similar to the approach taken for the CGT holding exemption in section 626B TCA 1997.
KEEP	Remove the annual emoluments cap from the qualifying share option limit.
KEEP	Amend the sanction for undervaluing share options (where the valuation is within a certain percentage of the Revenue determined value e.g. 75%) such that income tax is charged on the difference between the market value at the date of grant and the option price rather than a full disqualification of relief under KEEP.
KEEP	Allow for the continuation of the relief in the event of a SME undergoing a corporate restructuring during the period in which the KEEP share option rights are outstanding.
KEEP	Provide roll-over type relief of KEEP share options where share rights are exchanged or surrendered for new rights to ensure the tax arises at the point of exercise of the new right with the history of the original share right taken over.
KEEP	Amend benefit-in-kind provisions Liquidity can also be an issue for employees wishing to exercise their share options. Amending the benefit-in-kind

	provisions applying interest on loans to employees where the loan is advanced for the purposes of funding the costs arising on exercise of employee share options, particularly in SMEs would increase participation
R&D	Put Revenue's streamlined R&D validation process for small and micro companies on a statutory footing and increase the limit (i.e. €50K) to apply per project rather than per claim or to €100,000.
R&D	Introduce a Revenue pre-approval process for first time R&D tax credit claimants as recommended by the OECD in its 2019 report, to reduce uncertainty for SMEs.
R&D	Condense 3-year payment schedule into one year for SMEs which tend to be cash constrained.
R&D	Extend time limit for claims. The 12-month time limit for claims is considered too restrictive for SMEs and should be extended.
R&D	Align the definition and criteria of R&D with grants given by Enterprise Ireland and IDA Ireland which include innovation with the R&D tax credit.
R&D	Increase the limits where R&D is subcontracted or outsourced to a third-party or university or Institute for Higher Education in line with Government policy to foster collaboration between academia and private business.
R&D	Allow rent to qualify as R&D expenditure which is a substantial cost for most small and micro sized companies.
R&D	Reconsider the pre-notification requirement introduced in Finance (No. 2) Act 2023
R&D	Introduce new targeted measures for R&D in specific priority areas such as green or energy related R&D and AI/innovation in general.

Revised Entrepreneur Relief	Provide explicitly for relief on liquidation of a holding company following sale of the trading subsidiary
Revised Entrepreneur Relief	Broaden the definition of a holding company by amending the definition of a qualifying group to include a company (which would include a holding company or another subsidiary company) that owns an asset that is sued wholly or mainly for the purposes of a qualifying business carried on by another company within the qualifying group.
Revised Entrepreneur Relief	Remove the restriction on relief where a group holds a dormant company.
Revised Entrepreneur Relief	Attribute the period during which a deceased spouse owned shares and/or fulfilled working time requirements to a surviving spouse.
Revised Entrepreneur Relief	Allow relief on disposal of a personally held asset used in the business of a company where it is disposed of to the same person at the same time.
SCI	Amend SCI eligibility criteria and amend limits.
SCI	Concerns around rates of relief to apply to subsequent rounds if SCI raised. Remove from definition of follow-on relief.
Start-up Relief for New Companies	Remove the link between the quantum of corporation tax relief and the amount of employers' PRSI paid by a company in an accounting period given the reduced salary levels often paid by start-ups.
Share buyback relief	Insert an exclusion for bona fide commercial transaction into section 135(3A) TCA 1997 to provide taxpayers with the necessary level of legislative certainty when implementing transactions involving disposals of shares.
SURE	Extend SURE to self-employed workers who set up a new business.

Accelerated Capital Allowances for Energy Efficient Equipment	Increase the limit of €24,000 in respect of capital allowances for electric vehicles

6.3 Appendix C - List of Abbreviations

Acronym	Definition
ACA	Accelerated Capital Allowances
CAT	Capital Acquisitions Tax
CATCA	Capital Acquisitions Tax Consolidation Act 2003
CCAB-I	Consultative Committee of Accountancy Bodies – Ireland
CGT	Capital Gains Tax
CLN	Convertible Loan Note
CRO	Companies Registration Office
CT	Corporation Tax
EEE	Energy Efficient Equipment
EI	Enterprise Ireland
EII	Employment Investment Incentive Scheme
EMI	Enterprise Management Incentive
GBER	General Block Exemption Regulation
HMRC	His Majesty's Revenue and Customs
HPSU	High Potential Start-up
IDA Ireland	Investment Development Agency Ireland
IRDG	Industry Research and Development Group
ITI	Irish Tax Institute
KEEP	Key Employee Engagement Programme
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay as You Earn
PRSI	Pay Related Social Insurance
PSSF	Pre-Seed Start Fund
R&D	Research and Development

RER	Revised Entrepreneur Relief
RICT	Relief for Investments in Corporate Trades
RLS	Revenue Legislation Services
ROS	Revenue Online Service
RTS	Revenue Technical Service
SAFE	Simple Agreement for Future Equity
SCI	Start Up Capital Incentive
SEAI	Sustainable Energy Authority of Ireland
SFA	Small Firms Association
SME	Small and Medium Enterprise
SURE	Start Up Relief for Entrepreneurs
TALC	Tax Administration Liaison Committee
TCA	Taxes Consolidation Act 1997
TDM	Tax and Duty Manual
USC	Universal Social Charge

6.4 Appendix D – Statistical Table

Costs of Reliefs and Numbers of Claimants

Relief	Taxhead	2022 Cost of Relief €m	2022 Number of Claimants	2021 Cost of Relief €m	2021 Number of Claimants	2020 Cost of Relief €m	2020 Number of Claimants	2019 Cost of Relief €m	2019 Number of Claimants	2018 Cost of Relief €m	2018 Number of Claimants
Accelerated Capital Allowances for Energy Efficient Equipment	IT/CT	N/A	N/A	7.0	1,308	8.5	984	4.5	1,012	3.7	776
Start-Up Relief for New Companies	CT	7.8	1,374	7.2	1,398	6.4	1,258	6.2	1,199	6	1,171
Research & Development (R&D) Tax Credit	CT	N/A	N/A	753	1,629	658	1,616	626	1,601	355	1,303
CGT Revised Entrepreneur Relief	CGT	161.7	1,334	142.9	1,204	93.2	924	93.9	972	92.4	875
CGT Retirement Relief	CGT	N/A	1,923	N/A	1,861	N/A	1,691	N/A	1,604	N/A	1,400
CAT Business Relief	CAT	198.1	767	148.9	729	185.5	603	200.4	648	189.9	643
Start-Up Relief for Entrepreneurs (SURE)	IT	N/A	N/A	0.7	36	1.0	46	0.7	31	0.8	39
Key Employee Engagement Programme (KEEP) (1)	IT	N/A	N/A	0.5	43	0.2	45	0.1	<10	N/A	N/A

(1) The tax cost includes the cost of relief to income tax, USC and PRSI, it does not include an account for CGT payable on the sale of shares.

6.5 Appendix E – Written submissions

6.5.1 Irish Tax Institute

Talc Sub-committee on Simplification and Modernisation of Business Reliefs

Feedback on the Tax Reliefs to Support the Lifecycle of a SME

Introduction

The Institute has been an active participant in the work of the TALC Subcommittee on Simplification and Modernisation of Business Reliefs to date. We welcome the opportunity to provide a summary of the issues we have raised at the sub-committee meetings on the various business reliefs under consideration. We have summarised in the sections below the Institute's administrative and legislative recommendations which we believe would make the various business reliefs more accessible to SMEs.

In addition to identifying opportunities to simplify and modernise the administration of business reliefs, the TALC Sub-committee has been tasked by the Minister for Finance to consider ways to raise awareness of such reliefs among SMEs. In this regard, we welcome the work that Revenue has begun to ensure it is easier for SMEs to source information on the various reliefs on the Revenue website.

We would strongly encourage the development of a centralised webpage for SMEs on the Revenue website which categorises the business reliefs by the relevant phases of the business i.e. start-up, growth and maturity including sale and succession. This would simplify the process for SMEs to obtain the relevant information on the reliefs from the outset.

Employment Investment Incentive (EII)

Administrative Recommendations

- **Commit appropriate and adequate resourcing to the administration of EII applications.**

  To ensure consistency in dealing with applications in a timely manner, it is important that there are dedicated full-time Revenue staff who understand the complicated rules of the scheme, together with Revenue officials who have commercial knowledge and experience in dealing with such businesses.

- **Enhanced support for small and micro companies**

  A streamlined administrative process needs to be introduced for small and micro companies to help them avail of EII finance. This could be achieved by adopting non-mandatory template forms (i.e. for business plans, cash flows etc.) and/ Revenue accepting already completed Enterprise Ireland or Local Enterprise Office forms, where relevant, as supporting documentation for EII claims. Such steps would ease the extensive administrative burden for small and micro companies.

- **Reduce duplication of administration**

  Companies claiming EII are required to file Form RICT, Form 21R and to tick a box on the Form CT1. The Form RICT is macro enabled and can be prone to technological errors. Feedback from members has highlighted that information that has already been submitted on the aforementioned forms to Revenue, is often requested subsequently by Revenue when conducting a Level 1 compliance intervention.

  It is reasonable for Revenue officials to request copies of business plans, bank account statements to support EII applications but all Revenue officials dealing with a particular taxpayer should have access to the relevant information contained on their submitted EII forms when undertaking a compliance intervention without having to request the taxpayer to submit the information again.

Furthermore, Revenue officials should be able to download the relevant share information that has been submitted by a company on its Form B5 to the CRO, instead of requesting it again from the taxpayer when conducting an EII compliance intervention.

- **Separate Tax and Duty Manual (TDM) for each relief in Part 16 TCA 1997**

  The TDM on Part 16 TCA 1997 currently runs to 108 pages and covers the three schemes contained in Part 16 i.e. EII, Start-up Capital Incentive (SCI) and Start-up Relief for Entrepreneurs (SURE). Consideration should be given to separating the Manual into three separate TDMs to cover each relief.

  With regard to the TDM on EII, this should be streamlined to contain guidance on the current rules that apply with historical material archived into separate Manuals for reference.

Legislative Recommendations

- **Permit holding company structures**

  The exclusion of holding company structures is causing genuine businesses to be precluded from EII finance. Typically, founder holding companies are established before raising EII finance is even a consideration. These structures are inadvertently borne out of genuine commercial arrangements, sometimes as a result of partnerships or Joint Ventures (JVs) arising from incubator programmes or due to the understanding of founders as to market norms and investor expectations on certain structures. In some cases, the structure can be a legacy from a previous failed venture.

  The exclusion of structures which include founder holding companies from the EII is in stark contrast to other funding sources (including Enterprise Ireland and other Government funding) where founder holding company structures are permitted and in fact, are encouraged in certain sectors.

  It is our understanding that the General Block Exemption Regulations (GBER) which sets out the conditions which the EII, as a State aid, must satisfy, does not prohibit holding companies. The restriction appears to stem from rules that pertained to the former Business Expansion Scheme (BES).

- **Amend the employment conditions**

Section 26(b) Finance Act 2021 reintroduced a condition in section 502(5) TCA 1997 regarding increases in employment or expenditure on R&D. The condition must be satisfied three years after the year in which the eligible shares are issued. Failure to satisfy the condition will result in a partial withdrawal of the tax under the scheme.

This condition was removed in 2019 following the removal of second stage relief for shares issued after 8 October 2019. The removal of the condition was in line with the stated objective at that time, to increase the efficiency and effectiveness of the scheme. The reintroduction of the condition further adds to the administrative burden and does not take account of the fact that businesses may pivot and change their business models during the interim period.

Section 502(5) TCA 1997 requires an increase in (a) both the number of employees and the total remuneration of employees, or (b) the expenditure on R&D. The requirement to increase both the number of employees and the total remuneration of employees can be problematic and would appear to be contrary to section 496(2)(a) TCA 1997, which states that EII is for the creation or maintenance of employment.

In our view, it would be more appropriate for a company to be deemed to have fulfilled the employment condition if they satisfy either of the tests i.e. an increase in the number of employees under Section 502(5)(a) or an increase in total remuneration under Section 502(5)(b)) TCA 1997.

- **Impact of non-compliance**

  Under the existing rules, administrative errors or delays in the certification and reporting process can result in a full clawback of the relief on the fundraising company which is disproportionate to the error in our view.

  For example, where eligible shares are held by a nominee, a failure to file a nominee return (Form 21R) may result in such shares ceasing to be eligible shares and consequently, there will no longer be a qualifying investment for the purposes of the relief (see section 494(2) and section 496 TCA 1997). This means that there is a clawback of the relief on the company under section 508U TCA 1997. Equally, filing a Form RICT without an Eircode number could trigger a full claw back of the relief.

These penal sanctions can act as a disincentive for companies considering using the EII. We believe it would be more proportionate for a monetary fixed penalty to be imposed, rather than a clawback of the entire EII relief, as a sanction for an administrative error or the late filing of a return.

- **Amend the connected party rules**
  We welcomed the amendment to the connected party rules in Finance Act 2022 where the EII investment in a company is made via an investment fund. However, we believe a further amendment to the connected party rules is necessary where the EII investment is made directly in the qualifying company.

  The connected party rule limits the ability of early-stage companies to attract strong board membership because shares and share options granted to non-executive directors or other key employees to incentivise them to join the board, are curtailed. Investment by such individuals can be key to developing a business as it means they are committed to its future.

  In our view, there should be a carve-out from the connected party rule linked with a control test, so that shares and share options granted to non-executive directors or other key employees will not automatically result in ineligibility as a qualifying investor.

- **Recognizing additional exit strategies for EII investors**
  Normal commercial investment decisions are always made with exit strategies being provided to investors. Investors will always ask about what the company will do with their money and how and when they will receive a return on their investment.

  The EII scheme only allows investors to exit by way of share redemption or a trade sale. The former attracts income tax treatment and requires the company to have accumulated distributable reserves, and the latter only materialises for a small number of companies. Investee companies also need to be able to tidy up their share capital tables in advance of a potential exit or for other commercial reasons without the fear of contravening the EII rules.

The EII scheme imposes a clawback of relief for investors still within their relevant period if other EIIS investors are taken out. In the event a company raises several rounds of EII funds, it is not reasonable to expect the investors in Round 1, who took on the highest levels of risk, to have to wait until the 4-year period of the final round has expired to receive a return on their investment. The redemption windows set out in section 508R (9) TCA 1997 are not sufficient.

We believe the EII scheme should recognise exit strategies for investors beyond what is provided by way of a share redemption under section 508R(9) TCA 1997 or trade sale, given the high commercial risks investors assume.

- **Allowing the offset of capital allowances**
  Capital losses, net of the tax relief already received, incurred on EII investments should be allowable, in line with the recommendation made by Indecon in their 2018 evaluation of the scheme, provided the loss relief does not impact the income tax relief available under the revised GBER. We believe limiting the loss to the actual cash loss to the investor is fair and reasonable and there is a precedent for such under section 552(1A) TCA 1997.

Start-up Capital Incentive Relief

Administrative Recommendations

- **Raise Awareness of the scheme**
  Feedback from our members indicates that awareness of the SCI scheme is low. Therefore, we would recommend Revenue to enhance the information on the Revenue website to ensure the SCI scheme is easily accessible to small and micro companies and start-ups.

- **Separate TDM on SCI**
  As outlined above, we recommend that Revenue guidance on SCI is contained in a separate TDM for ease of reading rather than as part of a TDM on all reliefs contained in Part 16 of the TCA 1997.

Legislative Recommendation

- **Review the criteria of the scheme**
  Feedback from our members suggests the narrow criteria set out in the SCI scheme has impacted its take up. The limit of €500,000, which is considered quite low and the fact the company must not have any linked enterprises are barriers to claiming the relief.

  Furthermore, as follow on investment under Part 16 only qualifies for 20% tax relief in line with the revised GBER, we understand that members advise their clients to undertake a lager round of investment first, which can qualify for 40% or 50% under the EII provisions before obtaining finance from family/friends which qualify for relief under the SCI scheme.

Start-Up Relief for Entrepreneurs (SURE)

Administrative Recommendation

- **Separate TDM on SURE**
  As outlined above, we recommend that Revenue guidance on SURE is contained in a separate TDM for ease of reading rather than as part of a TDM on all reliefs contained in Part 16 of the TCA 1997.

Legislative Recommendation

- **Extend Sure to the self-employed**

Under the SURE scheme, an individual needs to have paid sufficient income tax through the PAYE system in the previous four years. This means that a previously self-employed person, who has paid equivalent levels of income tax through the self-assessment system, does not qualify for relief. Apart from discriminating against self-employed workers, this restriction acts as a significant barrier to the effectiveness and applicability of SURE. The SURE scheme should be extended to self-employed workers who set up a new business.

Tax Relief for Startup Companies

this content on the Revenue website to ensure the relief can be more easily accessed by small and micro companies and start-ups.

Legislative Recommendation

- **Remove the link to employers PRSI**

  Finance Act 2011 modified the relief to link the quantum of corporation tax relief to the amount of Employers' PRSI paid by a company in an accounting period, subject to a maximum of €5,000 per employee and an overall limit of €40,000. Finance Act 2013 enhanced the relief to allow a carry-forward of any unused relief arising in the first three years of trading, due to losses or insufficient profits, for use in subsequent years.

  Feedback from our members indicates that linking the quantum of relief to Employers' PRSI has acted as a significant barrier to availing of the relief under section 486C. This is because often in start-ups companies, salaries are often paid at reduced levels due to salary caps imposed by funders until certain milestones are reached by the business.

Furthermore, employees in start-ups are often given a mix of a lower salary and share-based remuneration. All of this results in lower levels of Employers' PRSI being paid by start-ups to support claims for relief under section 486C.

R&D Tax Credit

Administrative Recommendations

- **Increase limit for Revenues streamline R&D validation process for small and micro companies**

In an effort to reduce the administrative burden, Revenue does not seek to challenge the 'science test' as part of any validation checks on a R&D Tax Credit claim made by a small or micro company that has already been approved for an Enterprise Ireland, IDA or EU grant for the R&D project, provided the credit claim is no more than €50,000 for any accounting year and the R&D project is undertaken in a qualifying field of science or technology.

While this is a welcome simplification measure for small/micro companies, consideration should be given to increasing the amount that can be claimed from €50,000 to make the credit more accessible for small/micro companies and start-ups. For example, the €50,000 limit could apply per project rather than per claim or it could be increased by a multiple of what it is now, say to €100,000.

- **A Revenue pre approval process for first time claims from small and medium businesses**

We believe a pre-approval process for first time R&D Tax Credit claims by small/micro companies would help to alleviate the uncertainty over Revenue subsequently challenging the claim on the 'accounting test' (i.e., the record-keeping requirements).

Notably, the OECD has recommended the introduction of such a pre-approval process to help reduce uncertainty for SMEs. In the UK, SMEs making their first R&D claim can qualify for 'Advance Assurance.' If 'Advance Assurance' is granted, HMRC will accept any R&D claims in the first three accounting periods without the need for HMRC to carry out further checks on the claim.

- **Simplified documentation for claims from SMEs**

The 'accounting test' must be passed by small and micro companies. The time and resources required to prepare this documentation can deter some taxpayers, and particularly SMEs, from claiming the credit. For them, the compliance cost for the business is greater than the potential benefit of the tax credit.

Having a 'one size fits all' approach, regardless of the size of the company is not fit for purpose and does not encourage engagement from the SME sector. Simplified documentation requirements for claims by SMEs would help improve the uptake of the R&D Tax Credit among start-up and SMEs.

Revenue should consider leveraging financial documentation prepared by SMEs for other government agencies, for example, Enterprise Ireland grants, to support R&D Tax Credit claims. Currently, Revenue provide a “Suggested File Layout” which is based on 24 questions, in addition to sub-questions, as a basic guide to the contemporaneous documentation that it expects a company to maintain. This includes a caveat that *“further supplementary/clarifying information may be requested.”*

Typically, grant agencies require supporting information in a different format to support a grant funding drawdown, including a “Claims Checklist” and associated documentation (e.g. Independent Accountant’s Report, Directors’ Statement, Revenue Grant Claim Form, Progress Report) and further documentation to be available upon inspection (e.g. payslips, timesheets, and invoices).

Furthermore, we recommend that Revenue guidance relating to overhead costs should be simplified as it has become increasingly complex to navigate, particularly for SMEs. This could be achieved, for example, by providing for a set percentage of labour overheads in guidance to simplify R&D expense claims and provide more certainty to taxpayers.

- **Amend Revenues guidance on agency staff**

  The use of agency staff is considered to be outsourcing for the purpose of computing the amount of qualifying R&D activity and related expenditure and is subject to the limitations

  on outsourcing. This rule relates to any individual not remunerated directly by the company for their services.

  Revenue allows costs incurred which relate to individual consultants who are hired on a part time or short-term basis to undertake sub-contracted activity to be treated as part of the direct employee costs of the company and not as agency staff, provided that the following conditions are met:

  - The individual works under the company’s control and direction.
  - The individual works on the company’s premises.
  - The individual must be able to contribute specialist knowledge, which cannot be supplied by the in-house research team, to a specific R&D project being undertaken by this in-house team.
  - The engagement period does not exceed 6 months.

This is a welcome concession in Revenue's guidance but feedback from our members suggests that the conditions to satisfy the concession for agency staff often do not reflect the commercial reality of such projects, in particular the requirement for the individual to work on the company's premises and for the engagement period not to exceed 6 months. Requiring an individual to work on the company's premises does not reflect the hybrid nature of the new blended working environment and should be reconsidered.

We would contend that there should not be any restriction imposed on SMEs using agency staff or individual consultants, where those agency staff/individual consultants cannot make an R&D Tax Credit claim as there is risk of double-dipping

of the credit. Feedback from our members indicates that the removal of this restriction for agency staff/individual consultants would greatly benefit SMEs.

- **Develop SME friendly guidance on industry specific issues**
  The processes and documentation needed to support a R&D Tax Credit claim can be daunting. This is a particular challenge for business sectors such as food, software, and IT, which traditionally do not document their processes and costs to the extent done in highly regulated sectors, such as pharma and financial services. Providing SME-friendly guidance, with step-by-step instructions on the claims process and practical studies, together with tips on how to avoid common errors in claims is essential, similar to the approach adopted by HMRC in the UK.

  Industry specific guidance, with detailed practical instances of what qualifies and what does not qualify would be welcome. For example, starting with sector-specific guidance for food production, software, and med-tech industries, all of which engage in very different R&D processes. Uncertainty surrounding what can qualify and how to document such processes, continues to persist in these sectors.

- **Ensure Revenues compliance interventions are proportionate and conducted in a timely and efficient manner**
  There is a certain level of anxiety amongst companies over the potential for Revenue to subsequently challenge R&D Tax Credit claims. While verification of claims by taxpayers is an intrinsic part of a self-assessment system, it is important that Revenue Compliance Interventions are proportionate and conducted in a timely and efficient manner, in the interest of all parties. In addition, it is important that there is recognition of the appropriateness of 'technical adjustment' treatment for R&D Tax Credit claims, given the subjective nature of R&D.

- **Access to revenues R&D experts**

  Providing access to Revenue's R&D technical experts is a way in which R&D Tax Credit claims could be dealt with more smoothly. Taxpayers and their advisers should be given the opportunity to participate in briefings with R&D technical experts during the review process, which would reinforce the independence of the expert and increase the overall transparency of the review process.

  It is also vital that the R&D technical experts tasked with opining on the science element of R&D Tax Credit claims have the experience of the application of science in a business environment. Feedback the Institute has received indicates that the technical experts used by Revenue to opine on the 'science test' tend to be from academic backgrounds, which can often result in knowledge gaps, as the technical expert is applying science theory to commercial practices. Revenue should explore ways to expand the pool of experts undertaking this work to ensure it adequately reflects the necessary expertise.

  The Institute was disappointed to learn that the May 2024 training session for R&D technical experts, which was being co-designed and co-developed by Revenue and members of the TALC R&D Discussion group from tax practice will no longer proceed due to concerns raised it might jeopardise the independence of the experts. Revenue needs to consider ways to address the serious concerns among taxpayers and their advisers in relation to the perceived lack of independence of R&D technical experts. These include:

  - The level of consistency from the R&D technical experts varies widely on the science test.
  - Delayed response times from the R&D technical experts, with some responses delayed up to six months.
  - Some R&D technical experts do not appear to fully understand that they are independent given they are engaged by Revenue; provided with Revenue guidance at the start of the engagement; issue the draft report to Revenue (to ensure it meets certain technical standards per the legislation) and appear as a Revenue witness in appeal cases.
  - Experts sharing draft reports on R&D Tax Credit claims with Revenue and not with the relevant taxpayer.
  - Experts having pre-meetings with Revenue to discuss R&D Tax Credit claims and not with the relevant taxpayer.

  The aim of the training was to ensure that the experts would remain independent in drafting their report, while at the same time, address the abovementioned concerns raised by practitioners over the past number of years in relation to the perceived lack of independence and access to R&D technical experts.

- **Stakeholder engagement in advance of updates to guidance**

  Revenue guidance on the R&D Tax Credit has changed 18 times since the introduction of the credit. While many of the updates have provided more clarity on various aspects of the credit, the combination of the volume of iterations and the change in emphasis to the extent to which a company may rely on the guidance, has added to the uncertainty in particular where the legislation underpinning the guidance has not been amended but Revenue's interpretation of it has altered.

  Consultation with stakeholders in advance of updates to Revenue's guidance would help to provide more tax certainty for claimants. This should include consultation with corporation tax software providers to ensure R&D Tax Credit claims can be submitted to Revenue without processing difficulties.

Legislative Recommendations

- **Condense the three year repayment schedule into one year for SMEs**

  The changes introduced in Finance Act 2022 to align the R&D Tax Credit with new international definitions of refundable tax credits provides for a new three-year fixed payment schedule. We welcome the Finance (No.2) Act 2023 amendment to double the first year payment threshold to allow the first €50,000 of a R&D Tax Credit claim to be paid in full in the first year of the claim rather than having to be spread over the normal three-year period.

  However, we believe condensing the 3-year R&D Tax Credit payment schedule to one year for SMEs would provide valuable assistance to smaller companies that tend to be cash constrained and accelerating the refund for them would be very beneficial, with only a timing cost for the Exchequer.

- **Align the definitions and criteria for R&D**

  We believe consideration should be given to aligning the definition for R&D grants given by IDA Ireland and Enterprise Ireland which include innovation with the R&D Tax Credit.

  Section 2.7.1. Interaction with IDA/Enterprise Ireland's/Horizon 2020/Horizon Europe R&D grants in Revenue's Guidelines refers to a concession for small or micro enterprises whereby Revenue would not, as a rule, seek to challenge the science test in relation to a project where: an Enterprise Ireland, Horizon 2020, Horizon Europe or IDA R&D grant has been approved in respect of the R&D project (where the total credit is €50,000 or less).

  However, Revenue's Guidelines draw a distinction whereby projects may be "innovative" rather than qualifying R&D, while national grants often include reference to innovation e.g. Enterprise Ireland "RD&I Fund" or IDA "RD&I Grant."

Enterprise Ireland's, Horizon Europe and IDA's R&D grants in respect of research and experimental development projects come within the meaning of the OECD's Frascati Manual 2015, which states: *"Research and experimental development comprise*

creative and systematic work undertaken in order to increase the stock of knowledge….and to devise new applications of available knowledge. [Innovation] has to do with putting new or significantly improved products on the market or finding better ways (through new or significantly improved processes and methods) of getting products to the market. R&D may or may not be part of the activity of innovation, but it is one among a number of innovation activities. These innovation activities may be carried out in-house or procured from third parties."

Ideally, the criteria for the R&D Tax Credit administered by Revenue should be aligned with other State agencies, the EU, and the OECD Frascati Manual for simplicity. However, at a minimum, it should be aligned with the criteria adopted by other Stare agencies. Given all R&D grants from IDA and Enterprise Ireland are subject to assessments on the science element by Technical Assessors, this should be relied upon by Revenue for the purposes of meeting the science test for R&D Tax Credit claims.

- **Increase the limits for outsourcing**
  We believe the level of qualifying expenditure incurred by a company when R&D is sub-contracted or outsourced to a third-party or university or Institute of Higher Education should be increased, above the current limits of 15% of in-house R&D expenditure or €100,000 (whichever is greater). This would be in keeping with Government policy to foster collaboration between academia and private business.

- **Allow Rent to qualify for R&D**
  The R&D Tax Credit plays a critical role in supporting innovation in our indigenous businesses. *The Report of the SME Taskforce: National SME and Entrepreneurship Growth Plan* identifies enhancements needed to the R&D Tax Credit to incentivise increased investment in innovation by Irish SMEs. However, Revenue's guidance, updated in July 2020, significantly impacted the attractiveness of the R&D Tax Credit for SMEs.

In July 2020, Revenue updated their guidance on Section 766(1) TCA 1997 on the circumstances in which rental costs can be considered qualifying expenditure for the purpose of the R&D Tax Credit. Notwithstanding representations from tax advisers through TALC, Revenue confirmed their view that in most cases rent does not qualify as R&D expenditure but there may be scenarios where rent can qualify where the expenditure is incurred wholly and exclusively in the carrying on of the R&D activities.

The guidance provides examples of rent incurred on a specialised laboratory or a clean room in order to advance R&D activities which it states may be qualifying expenditure but the rent of an office space in which R&D activities are carried on is not qualifying expenditure as the office is “the setting in which R&D happens and does not itself perform a key function in relation to the R&D process”. We believe that Revenue’s guidance significantly narrows the circumstances where rent may be included as qualifying expenditure on R&D and in our view, is contrary to the policy intention of the R&D Tax Credit.

We consider that Revenue’s interpretation also creates a clear inequity in favour of companies that have the available resources to incur expenditure on the construction or refurbishment of a building or structure for R&D purposes rather than incur a rental cost. It must be the purpose to which the building is used that is relevant as opposed to the occupancy type i.e. owned versus rented.

Section 766A TCA 1997 provides that where a company acquires a building and incurs expenditure on the refurbishment of the building for R&D purposes, these costs, subject to meeting specific conditions, qualify for the R&D Tax Credit.

However, based on Revenue’s most recent guidance, renting the same refurbished R&D building may not qualify for the R&D Tax Credit even if the same R&D activity is being undertaken in the building. This measure clearly discriminates against SMEs who are, in many instances, unlikely to have the financial resources to purchase a building, but very often are the start-ups carrying out significant and innovative R&D.

Equally, as rental costs are a substantial cost for most small and micro sized companies, the disallowance of rent as qualifying expenditure on R&D significantly diminishes the attractiveness of the R&D Tax Credit for such companies.

Feedback the Institute has received directly from entrepreneurs confirms that legislative clarification is necessary to ensure rent is a qualifying cost for the purpose of the R&D Tax Credit so that the tax incentive can continue to encourage investment in R&D and innovation by Irish business.

- **Incentive Green/Energy Efficient R&D**
  In our view, consideration should be given to new targeted measures for R&D in specific priority areas, such as green or energy related R&D and AI/innovation in general. The introduction of such targeted measures could help the Government to deliver its ambitious carbon emission targets.

Transfer of a business to a company

Administrative Recommendation

- **Update guidance on the term bona fides trade creditor for the relief**

Relief under section 600 TCA 1997 applies by deferring chargeable gains on the transfer of a business as a going concern to a company (by someone who is not a company). All assets of the business must transfer. The relief applies to the extent that the consideration for the business as a going concern is in the form of shares.

According to Revenue's interpretation of the relief, any liabilities of the business included in the transfer ranks as consideration for the transfer and therefore, that proportion of any gain on transferring chargeable assets is chargeable to CGT. However, Revenue guidance provides that "bona fide trade creditors" do not form part of consideration for the purposes of the calculation. Revenue's Tax & Duty Manual Part 19-06-04, states "the term 'bona fide trade creditors' means genuine creditors who supply goods or services to a business. An example of a trade creditor is a supplier of food to a restaurant. Liabilities of a business such as bank loans or tax liabilities taken over by the company are not trade creditors and, if taken over, are to be included as consideration for the transfer of a business."

It is important to note that section 600 does not contain any such definition of the meaning of "consideration paid". In practice, the value of a business as a going concern is calculated taking into consideration all assets and liabilities of the business including bank loans, finance lease, invoice discounting/factoring, tax liabilities etc. These factors must be taken into account to establish the market value of a business. In our view, it is counter intuitive to exclude these items when actually transferring the business.

Revenue's interpretation seems to apply the relief on an asset by asset basis whereas the relief is targeting the transfer of a business as a whole with a deferral of CGT. Revenue has adopted a narrow interpretation of the legislation which essentially precludes businesses with any degree of leverage with legitimate business liabilities, from availing of the relief in full. Of course, it is accepted that liabilities should reduce the base cost for any future disposal of the share but having to pay CGT up front makes this relief unworkable in practice for many taxpayers.

For example, common occurrences such as businesses owning a premises with bank debt; businesses with assets on finance lease or hire purchase; businesses with invoice discounting and businesses with overdrafts, are essentially prohibited from availing of full relief under section 600. The main reason for this is the upfront CGT liability which creates a real cash cost without any corresponding cash income for the business owner.

If Revenue consider the liabilities of the business should remain as consideration/ deemed consideration, then the taxpayer should be entitled to choose how to allocate the liabilities to asset line items (i.e. allocate bank loan against non-chargeable assets first to maximise the amount which can qualify for relief under section 600).

Revised Entrepreneur Relief

Administrative Recommendations

- **Liquidation of a holding company following the sale of its trading subsidiary**

Section 597A TCA 1997 does not specify whether Entrepreneur Relief is available on a liquidation of a holding company following the sale of its trading subsidiary.

Revenue's guidance on Entrepreneur Relief only refers to situations where the liquidated company is carrying on a qualifying business at the date the liquidator is appointed.

However, it is unclear whether Entrepreneur Relief can apply on the liquidation of a qualifying holding company. For example, where the trading company is sold because the purchaser did not want to acquire the entire group and the holding company is immediately liquidated following the sale. It would be helpful if Revenue guidance could clarify that relief is available in such circumstances.

- **Working time requirement – non group companies**

It is not uncommon for a business owner to own two individual companies, which are not in a group and wants to sell one of those companies. Consider the example of Taxpayer A who owns two Centra shops each in a separate company. This structure was not created by design but occurred commercially, as Taxpayer A inherited one shop and acquired the second. Taxpayer A wants to sell one of the companies to reduce his hours and scale back. The question then must be considered regarding whether Taxpayer has met the full-time working requirement for Entrepreneur Relief particularly if the payroll is processed through the company which is not being sold.

The abovementioned example arises in practice frequently across a number of sectors including FMCG (Centra etc.), pharmacies and hospitality. Clearly, the business owner is spending his full-working time in the overall business but it would be helpful if clarification could be provided by Revenue to give certainty to such taxpayers.

- **Apportionment of relief where a company/group holds investments or leases trading premises**

When either the holding of investments or the leasing of trading premises takes place within a group company, this can exclude an entrepreneur from claiming Entrepreneur Relief. We believe consideration should be given to either apportioning the relief in circumstances where there is a mix of investments and qualifying activities (similar to the Retirement Relief provisions) or to allow the relief in full where non-trading activities are below a certain *de minimus* level.

This is the approach adopted in the UK, where Business Asset Disposal Relief (formerly known as Entrepreneurs' Relief) is available on the sale of shares in a holding company, provided non-trading activities in the group do not comprise of more than 20% of the group's overall activities.

A *de minimus* level could also be determined on a valuation basis, for example, less that 20% of the value of the company, where the valuation basis is defined.

Legislative Recommendations

- **Broaden the definition of a holding company**

Following enactment of Finance No.2 Act 2023, a holding company for Entrepreneur Relief purposes means a company that holds shares in other companies, all of which are its 51 per cent subsidiaries, and whose business consists wholly or mainly of the holding of shares in those subsidiaries.

Whilst this is a legislative definition, there is one main issue which commonly occurs in practice, which can be illustrated by the following example: HoldCo has two subsidiaries, Sub1 which is trading and Sub2 which owns the property which is used wholly for the purposes of the trade of Sub1. Entrepreneur Relief is denied in such circumstances.

There is a myriad of scenarios where these types of structures are implemented for commercial reasons such as for banking requirements; insurance requirements where there is a high risk asset within the business like a quarry or to de-risk the trade/business interests from property. This is particularly prevalent in the context of emergency accommodation provision at present. Business owners who manage their risk in a prudent manner regarding their business assets are disadvantaged against business owners who do not.

This is could be addressed by amending the definition of a “qualifying group” in section 597AA TCA 1997 to include a company (which would include a holding company or another subsidiary company) that owns an asset that is used wholly or mainly for the purposes of a qualifying business carried on by another company within the qualifying group.

- **Remove the restriction were a group holds a dormant company**

According to Revenue’s Operational Manual, Entrepreneur Relief is not available in situations where a dormant company is present in the group. This is a very significant limitation to the relief because a subsidiary company can commonly become dormant over time. For example, this might happen where the company has ceased to trade or where the trade has been transferred to another group company and the company cannot be wound up or liquidated due to company law legislation for the protection of creditors.

A group company could have dozens of trading subsidiaries, out of which only one is dormant, yet the relief is completely denied to the entrepreneur in this situation.

The legislation should be amended to remove the restriction from Entrepreneur Relief in situations where a group holds a dormant company for *bona fide* commercial reasons.

- **Remove the restriction on relief where a group has a shareholding in a joijt venture company of less than 51%**

One of the conditions of Entrepreneur Relief is that all subsidiaries must be minimum 51% subsidiaries for the relief to apply. If a group is party to a joint venture and holds less than 51% of the joint venture company, this again can result in full denial of the relief. The legislation should be amended to remove restrictions to the relief in situations where a group has a shareholding in a joint venture company of less than 51%.

- **Allow claim for relief where EII funds are raised by the company**

  A founder of a company which was financed using shares issued under the EII scheme may be denied Entrepreneur Relief on disposal of their shares in certain circumstances. This issue arises because Entrepreneur Relief requires the vendor to own 5% of the ordinary share capital of a company.

  Often, EII shares do not have voting rights and have limited dividend and winding up entitlements. However, such EII shares may be considered to be ordinary share capital for tax purposes, as section 2 TCA 1997 defines ordinary share capital as "*all the issued share capital (by whatever named called) of a company, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the company*".

  This means, for example, if a founder shareholder owned 100 €1 ordinary shares but the company also had 500,000 €1A ordinary shares in issue from a previous EII round, a disposal of the founder's shares may not qualify for Entrepreneur Relief, as the legislation is silent on whether to consider the number of shares in issue or the nominal value of the shares in issue, when applying the 5% shareholding test.

  The legislation should be amended to confirm that shares which qualified for relief under Part 16 TCA 1997, with the exception of shares qualifying for SURE, should be ignored for the purposes of meeting the 5% shareholding test for Entrepreneur Relief. Clarification would also be welcome on whether it is the number of shares or the nominal value of shares that is relevant when determining the 5% test.

Relief for Investment in Innovative Enterprises

It is difficult to provide any meaningful feedback on the operation of this relief given it is newly introduced and the administrative measures have not yet been rolled-out.

However, we would ask that the certification process is made as simple as possible for SMEs. Given this scheme operates under GBER, we would urge that lessons are learned from the complexities encountered in the administration of the EII scheme and are avoided where possible in the roll-out of this new scheme.

Furthermore, the investment made must be for a minimum amount of €20,000, or

€10,000 where at least a 5% shareholding is acquired. We understand that there is concern that some investors may not be able to obtain the minimum 5% ordinary issued share capital of a company to qualify for the relief and that the overall limit of €20,000 is too low to encourage claimants.

CGT Share Buyback Relief

Administrative Recommendation

- **Update Revenue Guidance on the trade benefit test**

  Where a company buys back its shares for a price above the subscription price for the share, any amount in excess of the subscription price, is treated as a distribution by the company subject to income tax at marginal rates in the hands of the shareholder, unless the shareholder meets the conditions of share buyback relief to avail of CGT treatment.

  Appendix II of Revenue's Manual on the acquisition by a company of its own shares (TDM Part 06-09-01) provides guidance on the application of the Trade Benefit Test. It outlines situations where a vendor who is selling all the shares but retaining a connection with the company can meet the test.

  The guidance states: *"However, there may be situations where:*

  - *For sentimental reasons, a retiring director of a company wishes to retain a small shareholding in the company. In this context,* ***Revenue would consider that a small shareholding would not exceed 5% of the share capital of the company****.*
  - *A controlling shareholder in a family company is selling his/her shares to allow control to pass to his/her children but remains on as a director for a specified period purely because his/her immediate departure from the company at that time would otherwise have a negative impact on the company's business.* ***Revenue would consider that the specified period that the director remains with the company should not exceed 6 months****.*
    In such circumstances it may still be possible for the company to show that the main purpose is to benefit its trade."

  There is nothing in legislation which requires a disponer to dispose of all (or practically all) of his shares and retire from the business. The only requirement under section 178 TCA 1997 is that the vendor's shareholding is substantially reduced and that they are not otherwise connected with the company post buy-back. We believe Revenue's guidance goes beyond the legislative requirements on the basis of an interpretation of what generally benefits a trade.

  In most cases the purpose of a buy-back is to allow control and decision-making to pass on to someone else (usually the next generation) allowing them to progress the business trade further. Usually, this would entail embracing new technology and introducing new practices and procedures to improve productivity within the business. Furthermore, in family business situations, the preference of parents in many instances is to pass the business on a gradual basis to children.

Remaining on as a director of the company post buy-back is generally a legitimate benefit to the trade of the company, retaining experience, networks, customer, supplier, staff relationships etc and successfully managing the transition. This can last for much longer than a six-month period. While exiting as a shareholder and ceding control is one aspect, being available as a resource and support for the new owners can be invaluable and a necessary requirement with key customers.

Of course, every case turns on its own facts but the guidance should be more clear that it is only Revenue's interpretation and it is not legislation, or at the very minimum, it should state that longer periods can be referred to Revenue Technical Service (RTS) to be considered on a case by case basis.

Legislative Recommendation

- **Insert a bona fide test in section 135(3A) TCA 1997 to provide certainty for taxpayers when selling shares in closely held companies**

  Finance Act 2017 inserted a new subsection 3A into section 135 TCA 1997. The policy intent at the time of its introduction was *"to deal with a number of specific tax avoidance schemes which have been uncovered by the Revenue Commissioners."* However, unlike other targeted anti-avoidance measures in Irish tax legislation, section 135 TCA 1997 does not include a *bona fide* test, which is normally used to prevent unintended consequences from arising.

  The passing on of family businesses and management buy-outs (MBOs) involving close companies continue to be hindered by the anti-avoidance provision contained in section 135(3A). If Revenue take the view that a company has retained profits in excess of the company's commercial needs, subsection 3A imposes income tax treatment rather than CGT treatment on the selling shareholders. This prevents selling shareholders from claiming CGT treatment and retirement relief on an exit from the business.

  In the absence of a statutory *bona fide* test, considerable concern continues to exist regarding the potential effect of section 135 on scaling up and passing on of businesses in the SME sector. Although, Revenue guidance may assert that *bona fide* financing arrangements entered into by a purchaser relating to the acquisition of shares are outside the scope of the provision, this is not expressed in legislation. Therefore, it cannot be relied upon by taxpayers in the event of the matter being disputed and subject to an appeal.

  Indeed, the Appeal Commissioners have expressly stated that their jurisdiction does not extend to supervising the administrative actions or any purported inequity in the application of the tax code by Revenue.

A number of examples are provided by Revenue in its guidance to demonstrate the application of the section. However, given the broad scope of the measure, the examples do not address the wide range of circumstances in which the provision can potentially apply. Furthermore, as it is an anti-avoidance section, Revenue do not provide an advance opinion as to the application or otherwise of section 135(3A) to any given transaction.

Take the following scenario which often arises in practice. There is a straight-forward sale of shares in a trading company. Increasingly, our members report that purchasers require vendors to leave certain levels of cash in the business to fund post-acquisition working capital for a period of time (usually 2-3 months). Cash levels can vary depending on the nature of the business. Ultimately that cash is repatriated back to the selling entity over time. Clearly, both parties are part of the agreement, as these terms are generally specified in the legal documents. Section 135(3A) catches such situations which are not specifically excluded in Revenue guidance.

Section 135(3A) is so broad ranging that it appears to catch all scenarios (bona fide or not) in respect of which assets are in some way linked to the disposal/acquisition of shares. To continually update guidance for the specific practical examples that arise in the commercial world necessitates a “whack a mole” approach, which ultimately, creates further uncertainty around commercial transactions.

Inserting an exclusion for *bona fide* commercial transactions into section 135(3A) TCA 1997 is critical, to provide the necessary level of certainty to taxpayers and their advisers, when implementing transactions involving the disposal of shares in a company with cash on its balance sheet. This matter has been continually highlighted by advisers since the introduction of this legislative provision and it frequently prevents the sale or transfer of family businesses.

It is worth noting that Revenue has other substantial anti-avoidance legislation to rely on, such as sections 817 and 811C TCA 1997 to address any concerns.

Accelerated Capital Allowances – Energy Efficient Equipment

Administrative Recommendation

- **Simply the process to get items added to approved list.**

The cost incurred by a business in investing in energy efficient equipment (EEE) can be relieved for tax purposes through accelerated capital allowances (ACAs). ACAs provide a tax deduction equal to 100% of the costs incurred on qualifying EEE in the year the expenditure was incurred.

The ACA scheme is administratively difficult and is limited in scope. We would ask that the process for adding new products to the list is simplified to reduce the delay experienced when new products are added to the list.

This could be achieved by determining the eligibility of a product based on it meeting certain specified performance criteria for its particular product category. For example, the Sustainable Energy Authority of Ireland (SEAI) criteria could be used to determine qualification rather than being based on different individual product codes and registered with the SEAI.

Legislative Recommendations

We would recommend the following enhancements to the ACA scheme:

- Widen the scope of the relief beyond EEE to whole buildings that receive a recognised accreditation for overall energy performance.
- Remove the condition that the equipment must not be leased, let, or hired, as this precludes landlords and lessors from availing of the relief.
- Introduce a tax credit for companies which can be monetised where the company is loss-making for the element of the loss generated by the ACA claim.
- Introduce an enhanced rate of relief above the current 100% first-year allowance.

Key Engagement Programme (KEEP)

Administrative Recommendation

- **A Revenue agreed 'Safe Harbour' for the valuation of shares**

Share valuations in relation to KEEP are costly and difficult in practice because a company may be required to undertake multiple valuations within a 12-month period depending on when employees are recruited.

Currently, there is no clear guidance on how to determine what market value is for the purposes of the KEEP. If qualifying options are not granted for market value or the market value is subsequently determined by Revenue to be higher than originally projected, the options will not qualify as KEEP options under section 128F TCA 1997, resulting in no exemption from income tax, USC and PRSI on exercise.

Revenue's guidance on KEEP states that Revenue expects that in valuing the shares the company should use a valuation method which complies with relevant accounting standard and that Revenue will not provide an opinion regarding company specific share valuations. No guidance is provided by Revenue on what may be appropriate regarding acceptable discounting of shares in a private company.

Furthermore, it is unclear if Revenue's CAT Manual on the valuation of unquoted shares can be relied upon by taxpayers when valuing KEEP shares given the CAT guidance is directly linked to section 27 CATCA 2023 inheritance cases. It can often be difficult to apply general accounting principles, depending on the stage in the lifecycle of a business, especially if the company is not yet generating revenues.

Comprehensive Revenue guidance on share valuations is urgently required to support companies adopting the KEEP. This could be achieved by Revenue developing templates or safe harbour approaches for valuing shares in a SME. For example, if the taxpayer has undertaken 'best endeavours' to make a reasonable attempt to value 'potential' at a point in time and that valuation is accepted by Revenue to last for 12 months, provided no significant events are likely to take place which could impact the valuation.

This would mean that a taxpayer would have assurance from Revenue that the share valuation is not less than market value for tax purposes, where the taxpayer has adopted the safe harbour approach to valuing the KEEP shares.

It is noteworthy that it is possible to agree a valuation of a company with HMRC for the purposes of the Enterprise Management Incentive (EMI) which is a share scheme in the UK that is similar to the KEEP. An application request for a share valuation in connection with the EMI can be made online by the SME and is given priority by HMRC.

Legislative Recommendations

- **A proportionate sanction for the undervaluing of share options**

As outlined above, obtaining certainty over the valuation of KEEP shares is a key concern for companies considering availing of the scheme. Where options are granted at an undervalue within say a certain percentage of the Revenue determined value (for example, 75%), we believe a more proportionate sanction would be for a charge to income tax to arise on the exercise of the options on the difference between the market value at the date of grant and the option price. This would allow the options to remain qualifying share options, but it would also enable Revenue to collect income tax on the portion of the gain attributable to the undervalue.

The income tax arising on exercise could be collected under the same mechanism as section 128 TCA 1997 (i.e. a charge to income tax under Schedule E is imposed on any gain realised by a director or employee from a right granted to him/her, by reason of his/her office or employment, to acquire shares or other assets in a company).

- **Amend the definition of a qualifying holding company**

A ‘qualifying holding company’ for KEEP purposes cannot be a trading company. If it is trading, it is not a ‘qualifying holding company,’ even if it is wholly or mainly holding shares in trading subsidiaries.

Company structures with an intermediate holding company may not be regarded as a qualifying company if there is no qualifying subsidiary held directly by the ultimate holding company. In contrast, Revenue guidance for Revised Entrepreneur Relief (Section 597AA TCA 1997) acknowledges that structures with a double holding company are not precluded from that relief.

A holding company can only hold shares in a qualifying subsidiary and a ‘relevant subsidiary’ and no other companies. A ‘relevant subsidiary’ is one in which the ‘qualifying holding company’ holds more than a 50% interest in the ordinary share capital. Therefore, if the holding company had a 50% joint venture interest in another company it cannot be a ‘qualifying holding company’, even if it had a qualifying subsidiary that was a qualifying company.

The definition of ‘qualifying holding company’ in section 128F(1) TCA 1997 should be amended to permit the group as a whole to be considered, rather than simply considering the holding company in isolation. This could be achieved by amending the wording of the definition of ‘qualifying holding company’ at subsection (c) to state that it means a company where *“the business of the company, its qualifying subsidiary or subsidiaries, and as the case may be, its relevant subsidiary or subsidiaries, taken together consists wholly or mainly of the carrying on of a trade or trades.”* This approach would be similar to the approach taken for the CGT holding company exemption in section 626B TCA 1997.

- **Remove the annual emoluments cap for the share options limit**

Currently, the total market value of all shares, in respect of which qualifying share options have been granted by the qualifying company to an employee or director, must not exceed €100,000 in any year of assessment, €300,000 in all years of assessment or 100% of the annual emoluments of the qualifying individual in the year of assessment in which the qualifying share option is granted.

Linking the amount of share options that can be awarded under the KEEP to the employee’s annual emoluments restricts high growth companies in start-up mode availing of the scheme. Often in start-up businesses, employees and directors have lower salaries, compared with larger multinationals, which can prohibit such companies under the KEEP offering equity as an incentive for these individuals to stay in the business.

Rather than discriminating in practice against the remuneration strategies of these companies and the mix of cash-based and equity-based remuneration that they offer employees, the KEEP measures should simply set absolute values, such as those included in subparagraph (i) and (ii) of part (d) of the definition of a qualifying share option in section 128F(1) TCA 1997. It should be left to a company to determine the proportionate mix of cash and share-based remuneration as a commercial matter and to follow market driven pay awards.

An amendment to the qualifying limit of 100% of the annual emoluments of the qualifying individual would take account of situations where an employee's salary has reduced because of reduced working hours or a temporary layoff. It would also address situations where employees, who are temporarily absent from work due to maternity or paternity leave, are limited in terms of the relief which may apply, as often their salary levels would be reduced during this time.

The lifetime limit of €300,000 can act also as a barrier to claiming relief under the scheme where shares have increased in value. Consideration should be given to applying the limit on a rolling basis. In the UK scheme, the cap is on the value of the share options as opposed to the value of the shares, which can be rolled over every three years.

- **Allow for the continuation of the relief when the company undergoes restructuring**

The current KEEP legislation does not provide for the continuing availability of the relief in the event of the SME (e.g., holding company and its subsidiaries) undergoing a corporate reorganisation during the period in which the KEEP share option rights are outstanding.

The KEEP legislation should be amended to include similar provisions to those contained within the Revised Entrepreneur Relief legislation, which seeks to address reorganisations that might affect the entitlement of a qualifying individual and a qualifying company to meet the scheme requirement

- **Provide for roll over relief oof KEEP share options**

Section 128F TCA 1997 should be amended to provide ‘roll over relief’ of KEEP share options, similar to that provided in section 128(8)(a) TCA 1997. Where share rights are exchanged between directors and employees or a company grants a new right in exchange for the surrender of an original right, the new right and the original right are looked at as one for the purpose of the charge to tax under section 128.

This 'roll over relief' effectively means that the tax charge arises at the point of exercise of the new right, with the history of the original share right taken over in respect of a future exercise of the new right. A similar relief is not included in the KEEP legislation.

For example, Company A grants share options that meet the conditions of the KEEP under section 128F TCA 1997 and would qualify for an exemption from income tax on exercise.

During the exercise period, a transaction is entered into which results in the share capital of Company A being acquired, and unexercised share options are exchanged or assigned for new options in the acquiring company.

Section 128F should be amended to provide 'roll over relief' in respect of KEEP share options. This would apply where during the exercise period, a transaction is entered into which results in the share capital of a company being acquired, and unexercised KEEP share options are exchanged or assigned for new options in the acquiring company.

In such circumstances, if the acquiring company meets the qualifying company/ group criteria set out in the legislation, the future exercise of the new replacement options should qualify for relief, with the history of the original share option being taken over for the purposes of determining the charge to tax.

CGT RETIREMENT RELIEF AND CAT BUSINESS RELIEF

CGT Retirement Relief promotes the timely transfer of businesses from one generation to the next and from one entrepreneur to the next, when the transferor is approaching retirement age. It is a critical relief, without which, the lifetime transfer or disposal of many family businesses would be uneconomic.

While CAT Business Relief is key to ensuring that CAT does not create a barrier to the transfer of business property by way of gift or inheritance which could otherwise result in businesses being wound up and assets having to be sold to pay a CAT liability.

However, there are a number of inconsistencies in the definitions; conditions and types of activities/assets which do not qualify between each of the reliefs which often cause difficulty, complexity, and uncertainty in practice. In Appendix I, we have prepared a comparison of CGT Retirement Relief and CAT Business Relief which outline these inconsistencies in detail. More alignment on the definitions, conditions etc of the two tax reliefs that can apply on the transfer of passing on a business to the next generation would enhance simplification for SMEs.

APPENDIX I

COMPARISON OF CGT RETIREMENT RELIEF AND CAT BUSINESS RELIEF

Minimum Age Requirement

In the case of CGT Retirement Relief, there is a minimum age requirement of 55 for the individual disposing of assets. In addition, different age limits currently apply where the disposal is made by the individual aged between 55 and 66 or > 66 yrs. These limits will be further revised with effect from 1 January 2025, such that the age limits will change to disposals when the individual is aged between 55 and 70 or > 70 yrs.

There is no age requirement in respect of CAT Business Relief.

Period of Ownership

In the case of CGT Retirement Relief, assets must have been owned for a minimum period of 10 years prior to a disposal.

In the case of CAT Business Relief, the minimum holding period is 2 years in the case of an inheritance and 5 years in the case of a gift.

These time frames apply also to transfers of land/buildings which are owned personally, and which are used by a company, and both the property and shares are transferred to the same person at the same time.

Qualifying Assets

For the purpose of CGT Retirement Relief, a 'family company' is where:

a. The individual exercises at least 25% of the voting rights or
b. The individual exercises at least 10% of the voting rights and at least 75% of the voting rights are exercisable by his/her family (as defined).

A completely different test applies for CAT Business Relief for the purposes of 'relevant business property.' The test is not linked solely to voting rights.

Given the divergence it is not uncommon to have a situation where one relief applies but not the other.

Basis of Valuation

For the purposes of CAT Business Relief, no account can be taken of minority discounts in arriving at the valuation of shares which are transferring in a 'private company' as defined in Section 27 CATCA 2003.

However, the restriction on a minority discount does not apply in the context of valuing shares for CGT Retirement Relief purposes. A transfer to family members is a 'connected party' transaction which is deemed to be for market value in accordance with the provisions of Section 547/548 TCA 1997. The CGT legislation defines market value as the '*price which those assets might reasonably be expected to fetch on a sale in the open market.'*

This results in a difference in valuation for CGT purposes and for CAT purposes in the context of share transfers between connected/family members. This results in:

c. Different valuation methodologies being adopted for CGT and CAT in the context of the same transaction.
d. The beneficiary having a lower CGT base cost (by reference to the lower CGT valuation incorporating a minority discount) in the event of a future disposal of the shares income when they will have potentially paid CAT by reference to a higher amount.
e. It can impact the workings in relation to the CGT/CAT of said provisions.

For CGT Retirement Relief the 'chargeable business assets' must be used for. the purposes of 'farming, or a trade, profession, office or employment.' The meaning of these terms is in accordance with the income tax acts.

For CAT Business Relief, there must be a transfer of a 'business, an interest in a business or shares in a company carrying on a business.' In certain cases, a company could be regarded as trading not necessarily carrying on a business or vice versa.

Therefore, there is a lack of consistency in relation to the types of activity which can qualify for each relief.

Non-Qualifying Assets

For CGT Retirement Relief, in the case of a transfer of shares in a 'family company' it is necessary to consider the underlying assets in the company/group to determine the level of relief available. The relief applies to gain arising on 'chargeable business assets' as compared to chargeable assets. It is necessary therefore to consider the split of underlying assets in the company between:

f. Chargeable business assets,

g. Chargeable assets, and
h. Non-chargeable assets.

As euro denominated cash is not a chargeable asset, the company can potentially have excess cash resources and still qualify in full for CGT Retirement Relief. This contrasts with CAT Business Relief where excess cash over and above normal working capital requirement can at worst, impact the availability of relief or at best dilute the level of relief available.

For the purposes of CAT Business Relief certain activities are regarded as 'excluded businesses' which includes investment activity or businesses which consist wholly or mainly of dealing in currencies, securities, stocks or shares, land, or buildings.

Overall, there is a lack of consistency in terms of the types of activity/assets which do not qualify for each relief.

Property not held within a company but used for the purposes of the trade

Both CGT Retirement Relief and CAT Business Relief permit the transfer of land and buildings owned outside of the qualifying company to transfer to the same person and at the same time as the transfer of the shares to qualify for relief.

For CGT Retirement Relief permits such transfers in respect of land and buildings: *"which was owned by the individual for a period of not less than ten years ending with the disposal, and used throughout that period for the purposes of his family company, and which is disposed of at the same time, and to the same person as the shares or securities in his family company."*

The individual could have a shareholding as low as 10% in the family company and meet this requirement.

For CAT Business Relief, the relief applies to land and buildings: *"owned personally by the disponer which, immediately before the gift or inheritance was used wholly or mainly for the purposes of a business of a company controlled by the disponer…"* Control is taken by reference to voting rights. Therefore, it is possible that a significant asset forming part of the transfer or succession of a business may qualify for one relief but not the other.

Availability of Reliefs following Share Reorganization

Section 598 TCA 1997 specifically sets out that CGT Retirement Relief can apply where there has been a share reorganisation in accordance with Section 586 and 587 TCA 1997. Section 95 TCA 2003 deals with replacement property, however, the section does not specifically address a situation where the shares being transferred have previously been the subject of the reorganisation provisions. Therefore, there is less clarity in this situation in relation to the availability of CAT Business Relief.

Definition of a Holding Company

For the purposes of CGT Retirement Relief, the definition of a holding company and a group are determined by reference to the definition of a 75% subsidiary in accordance with section 9 TCA 1997. Only 75% subsidiary companies can qualify.

For the purposes of CAT Business Relief, the definitions of holding company and subsidiary have the same meanings as in the Companies Acts.

The lack of consistency in terms of definitions means that often in a group situation CGT Retirement Relief may not apply and CAT Business Relief does and vice versa.

Clawback Provisions

A 6-year clawback period applies for both CGT Retirement Relief and CAT Business Relief. The clawback period for CAT Business Relief is extended to 10 years in the case of a disposal of development land but this is not the case with CGT Retirement Relief.

6.5.2 The Consultative Committee of Accountancy Bodies-Ireland

The Consultative Committee of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Institute of Certified Public Accountants in Ireland

The CCAB-I has been an active voice in the ongoing work of the TALC subcommittee on Simplificationand Modernising of Business Tax Reliefs to date (“the TALC Simplification subgroup”).

The CCAB-I acknowledges that the purpose of the TALC Simplification subgroup is to report on the simplification of the administration of business tax reliefs with a view to enabling a greater uptake ofthese reliefs. However, we note that access to the majority of business tax reliefs is restricted as theyare only applicable to trading corporates, to the exclusion of non-corporates and service companies.

Tax simplification is a positive endeavour, and the CCAB-I has long supported a reduction in the compliance burden for businesses. Compliance costs driven by the complexity and inherent uncertainties of the business tax reliefs available are indeed a deterrent to their uptake by the SME sector whose key focus in recent year has been to manage limited resources and keep their businessafloat.

Simplicity from the perspective of the taxpayer should be the focus of any reform introduced if theobjectives of improved awareness of and access to business tax reliefs are to be achieved.

Although the remit of the TALC Simplification subgroup was to identify administrative simplification opportunities that would result in improved business awareness and access to business tax reliefs, the CCAB-I has also highlighted in this submission, for completeness, some legislative obstacles thatdeter or prevent businesses from accessing these reliefs. As we noted at the commencement of meetings of the subgroup, there are instances where it is difficult to disentangle administrative issues from legislative and policy matters, i.e. often the administrative issues arise as a result of legislative provisions or requirements.

As there may be other administrative issues buried in the legislation, CCAB-I suggests that the TALC Simplification subgroup be reconvened to consider the conditionality of the reliefs in light of Ireland’seconomic evolution.

Relief for Investments in Corporate Trades

Revenue guidance

- The current guidance, contained in Tax and Duty Manual Part 16-00-02, is complex, lengthy, and difficult to navigate, even for the most experienced practitioners. Businesses need well signposted web pages to highlight the taxes and reliefs appropriate to their stage in the business life cycle, whilst practitioners need well-structured technical guidance to provide clarity and certainty. We recommend that Revenue provide separate Tax and Duty manualsfor each RICT relief, to provide guidance on the Employment Investment Incentive (EII), Start-up Relief for Entrepreneurs (SURE) and Start-up Capital Incentive (SCI). The inclusion of examples including case studies showing the continuity from SURE to EII would also be useful. CCAB-I also suggests that separate guidance be provided for investors as they have differing information requirements to the investee company.
- It is well accepted that the EU General Block Exemption Rules (GBER) rules are difficult to interpret, with specific provision in Part 16 for obtaining Revenue confirmation on specific GBER matters. However, the difficulty in practice is that there is no indication of the turnaround time for such requests coupled with much anecdotal experience of delays of several months in Revenue engagement. CCAB-I recommends that Revenue confirmation be provided within a standard timeframe.

Administrative aspects

- CCAB-I has identified and reported on the need to update the Revenue Online Service (ROS) portal to facilitate Finance Act 2021 changes that extended the EII scheme to include qualifying investment funds. It is concerning that lack of updates could lead to a clawback of the relief with interest and penalties arising. Our recommendations on this matter have been included on the priority list provided to Revenue at Main TALC by practitioners in 2023.
- CCAB-I also notes that where an EII investor has relief clawed back, they may then have to seek a refund for USC and PRSI when incorrectly charged on the clawback, unless they work around the issue by filing an amended return, thus increasing the administrative burden.
- Frustration can occur for businesses and practitioners when information perceived to have already been provided to Revenue when filing RICT and Companies Registration Office (CRO) returns is later requested by Revenue when substantiating a claim or as part of an intervention. CCAB-I recommends that protocols should require caseworkers to check internally, and with CRO, before making such requests.
- The RICT form is only acceptable on an Excel based (Windows) platform. Many tech-based startups do not use this interface resulting in an increased administration burden and expense as they are required to source additional hardware and software or engage third party assistance to prepare and file the RICT.

Legislative aspects

There are various provisions in Part 16 that cause issues in practice regarding the eligibility of investors, company eligibility, and the management of administrative and compliance requirementsin respect of which the CCAB-I has made previous submissions. Matters of particular concern are:

- the prohibition of holding company structures;

  CCAB-I is disappointed with the exclusion of holding company structures which seems toarise from historic legislation. It is our understanding the there is no such prohibition of holding companies under the GBER.

- The definition of "relevant trading activities" (RTA) in s489 TCA 1997;

  CCAB-I is concerned that the requirement for a qualifying company to be carried on "wholly"RTA is very narrow. As s490 TCA 1997 already contains a requirement for the EIIS funds to be used for the purpose of carrying on RTA, CCAB-I suggests that it be sufficient for a qualifying company to be carrying on "wholly or mainly" RTA. Not only is the "wholly and mainly" test apractically easier test to achieve but it is consistent with other sections of tax legislation, such as retirement relief (s598 TCA 1997) .

- The penalty regime for EII relief administrative errors;

  CCAB-I considers the penalty regime applicable to administrative errors to be disproportionate. For example, failure by a nominee company to file a nominee return (Form21R) may result in the denial of or full clawback of EII relief. Completion and submission of Form 21R is often a matter that is outside the control of the company and is merely replication of information that would have already been provided to Revenue via the RICT form. CCAB-I suggests that a fixed penalty regime would be more appropriate for such administrative errors.

- Exclusion of the self-employed from SURE relief;

  SURE applies only to individuals that were previously employed, an unemployed person, orsomeone who has been made redundant and who is starting their own business. CCAB-I notes that the exclusion of those that were previously self-employed may be a factor in thelow uptake of the relief. Furthermore, the restrictive two-year window for a second SURE investment is a relatively tight timeframe and a further deterrent.

Section 486C Start up relief for New Companies

CCAB-I notes that there is very little uptake of this relief with members reporting that the amount ofthe relief being linked to the amount of Employers' PRSI paid by a company in an accounting periodseems to have a negative impact on its effectiveness.

Research & Development

CCAB-I is concerned that the introduction of the pre-notification requirement in Budget 2024 is yetanother administrative hurdle that may invalidate an otherwise valid claim and seems at odds withGovernment's aim to simplify access to business tax reliefs.

Uncertainty relating to Revenue approval of the R&D claim is also seen as a significant deterrent tothe uptake of the R&D tax credit as members report that:

- the 12 month claim period is too restrictive for SMEs;
- frustration with the perceived duplication of documentation for the science test where support has already been granted by other State organisations;
- perceived lack of alignment amongst Revenue's external technical experts; and
- the exposure to R&D interventions is a disincentive to claiming the R&D tax credit.

CCAB-I suggests that where the R&D spend does not exceed €100,000, Enterprise Ireland approval ofthe science test should be sufficient to also satisfy Revenue.

Members also report a lack of consistency across Revenue divisions in issuing R&D tax credit refunds.Such inconsistency, sometimes combined with a failure to communicate progression and/or delays, creates uncertainty and anxiety for business, in particular where cashflow is impacted.

S600 transfer of a company

CCAB-I acknowledges that the main deterrents for uptake of s600 TCA 1997 relief are policy in nature. These are namely arriving at the valuation of goodwill, the stamp duty cost at 7.5%, and therequirement to transfer premises into the company.

In addition, CCAB-I wishes to highlight that the treatment of certain liabilities as 'deemed consideration' not only gives rise to cashflow issues for the business owner but does not reflect thetrue value of the business transferred to the company. For the purpose of the UK's corresponding Incorporation Relief (162 TCAG 1992) HMRC, by concession, does not treat liabilities as deemed consideration and hence these do not restrict relief.

Revised Entrepreneur Relief (RER)

CCAB-I is concerned that the definition of a qualifying group for the purposes of this relief is restrictive and does not take into consideration common business structures. A qualifying group requires the business of each 51 percent subsidiary to consist wholly or mainly of the carrying on of aqualifying business. Revenue guidance states that this means that relief would not apply where there is a dormant company in a group or where one of the subsidiaries is not a trading company. This requirement disadvantages business owners managing the business prudently whereby the businessproperty is held in a separate company to that of the trade or where a dormant company cannot be wound up or liquidated for bona fide reasons.

In addition, members are reporting instances where liquidation issues regarding the timing of cessation to trade are preventing genuine claims. Revenue guidance advises that RER can apply on the liquidation of a company, provided that the company was carrying on a qualifying business up tothe time the liquidator was appointed. However, many businesses will not appoint a liquidator until such time as the trade has ceased and the underlying assets of the company have been realised. TheUK's corresponding Business Asset Disposal Relief allows a three year period after cessation within which liquidation can happen and the shareholders can avail of the reduced rate of CGT.

The working time requirement has also been identified as an obstacle to claiming the relief for somebusiness owners operating from multiple locations (in separate companies) such as pharmacies andconvenience stores. CCAB-I recommends the inclusion of examples/case studies on the operation ofRER in such circumstances in Revenue guidance.

Since the introduction of this relief nine years ago, the lifetime limit remains at €1 million in respectof chargeable gains in the disposal of chargeable business assets from 1 January 2015. CCAB-I recommends raising the cap on the lifetime limit and changing the 'look back' date.

Angel Investor Relief

Although no administrative requirements are yet in place given the fact that this relief is new, CCAB-Irequests that Revenue keep any planned requirements simple.

The legislation requires a qualifying company to hold qualifying certification, consisting of two certificates; one of going concern, the other of commercial innovation. Certification is to be providedby Revenue. CCAB-I is concerned that a lengthy certification process will impact negatively on a business' ability to raise finance. We recommend that Revenue adequately resources the processsuch that certification can be provided within a 4 to 6 week timeframe.

There is also concern that its application to the early stage of a business and its linkage to the EIIscheme will further detract from its usefulness.

Special Assignee Programme

The Special Assignee Relief Programme (SARP) is a key relief for attracting highly skilled employees to Ireland. The economic benefits of SARP include enhanced corporation tax receipts, increased levels ofR&D, and knock-on wage benefits for the wider workforce with associated increases in payroll taxes for the Exchequer. The overall cost-benefit return of SARP continues to be positive. CCAB-I believes the Government should include the necessary legislation to permanently include SARP in Irish legislation.

Ireland's tax system is highly progressive and relies heavily on high-income earners. As such, the personal tax rates for workers considering working in Ireland could be prohibitive. Further, the explosion of remote working capacity in recent years means workers can now choose to work from places which before would have been untenable. SARP is a measure which attracts such workers to Ireland. To address the skills shortages in the economy CCAB-I recommends that SARP should be extended to Irish indigenous businesses that hire talent from abroad.

Accelerated capital Allowances

Currently, accelerated capital allowances can only be claimed for expenditure on energy efficient equipment that is include on the SEAI's approved list. CCAB-I suggests that the requirement instead be that the equipment meet the criteria to be included on the SEAI list rather than being required tobe on the list to prevent delays in business' investing whilst it awaits an SEAI list update.

Members have also noted that the €24,000 threshold for capital allowances for Electric Vehicles isunrealistic and should be increased.

Intangible Assets S291A

While not seen as a relief that impacts SMEs, in general CCAB-I notes that the timeline for claiming relief is too restrictive and the consequence of oversights are too penal. CCAB-I considers 24-monthsa more reasonable claim period.

Company buyback of shares

Whilst CCAB-I acknowledges that the Revenue Manual is helpful, we recommend that there should be additional more up to date examples of the "trade benefit test", to provide extra comfort to taxpayers and negate the need for technical queries.

Revenue's guidance requiring a disposal of all of the individual's shareholding is also in direct contrast to the legislation which stipulates that there must be a substantial reduction in the shareholder's interest in the company of more than 25% and that they are not

connected with thecompany (i.e. hold less than a 30% shareholding) after the buyback.

Practitioners are reporting delays to approvals resulting in increased taxpayer frustration and anxiety.CCAB-I recommends improved communications regarding pre-approval submissions where delayed responses are anticipated due to complexity.

Practitioners have also reported that the requirement for all consideration to be paid at the time of the buyback not only creates difficulties for funding but does not tally with the ‘earn out’ structuresthat are acceptable when disposing of a business to third parties.

Company share buybacks can be an efficient mechanism to enable the transfer of ownership to the next generation of entrepreneurs who want to progress the business. However, the anti-avoidance legislation contained in s135(3A) TCA 1997 is a deterrent to genuine corporate transactions such as management buyouts. CCAB-I is concerned that the guidance underpinning s135(3A) TCA 1997 is toospecific and therefore recommends that the legislation be amended to include the term ‘bona fide’ as, although guidance uses the term, recent TAC determinations confirmed that guidance is not law.

KEEP

CCAB-I welcomes the amendments to the Key Employee Engagement Programme (KEEP) introduced in Finance (No.2) Act 2023. However, we note that several factors will continue to deter uptake of therelief.

Under KEEP, the option price at the date of grant cannot be less than the market value of the same class of shares at that date. In addition, KEEP requires that the aggregate issued but unexercised shareoptions do not exceed a €6 million company limit. A significant practical issue facing SMEs in implementing KEEP is the uncertainty that such valuation conditions have been met. The valuation ofshares in private companies can be complex and professional valuations place a cost burden on SMEswhich is often a barrier to these companies implementing KEEP in the first instance.

Revenue could assist SMEs in adopting KEEP by providing guidance on appropriate valuation methodologies. CCAB-I recommends that Revenue provide a ‘safe harbour’ and/or advance opinion, similar to the UK, with a validation period applicable to the share valuation to reduce the uncertaintiesfor participants.

Practitioners have reported that the definition for qualifying holding companies does not allow for traditional corporate structures and is impractical in certain sectors (e.g. pubs, retail, etc.), inhibitingbusiness growth. KEEP requires a qualifying holding company not to carry on a trade, not be under the control of another company, and its business must consist wholly or mainly of holding shares **only** in its qualifying and relevant subsidiaries.

However, a holding company for RER purposes is simply a company whose business consists wholly or mainly of the holding of shares of all companieswhich are its 51 percent subsidiaries. In general, holding companies do not only own shares and theyoften charge for management services they provide to their subsidiaries. CCAB-I recommends that the KEEP legislation is adapted in line with the RER legislative definition of holding company.

Linking the ceiling restriction to the employee’s emoluments also dilutes the value of the incentive package that can be offered by a cash-strapped start-up company with high growth potential to attract and retain key employees. We recommend removing the restriction linking the value of shareoptions granted to the annual emoluments of the employee.

Liquidity can also be an issue for employees wishing to exercise their share options. CCAB-I recommends that the benefit-in-kind provisions applying interest on loans to employees are relaxedwhere the loan is advanced for the purposes of funding the costs arising on exercise of employee share options, particularly in SMEs.

Ireland is fast becoming a global centre for FinTech services activity. The sector draws from a pool ofengineering and financial services talent. Recruiting and retaining such skilled talent requires attractive employee remuneration packages, such as the KEEP share option incentive scheme. The exclusion of professional service companies and financial activities, from operating a KEEP scheme limits the scope of the programme as it disqualifies many companies, including Fintech companies, from taking up the scheme. CCAB-I recommends expanding the scope of the programme to allow companies in the FinTech sector to take-up and operate the KEEP scheme.

Holding Companies

Current legislation contains differing conditions and definitions for holding companies to qualify for different reliefs, exemptions and schemes, with some being more extensive and complex than others. This disparity in defining a holding company creates uncertainty and inflates administrative costs. Accordingly, CCAB-I recommends the streamlining of the definitions for entrepreneurial reliefsto provide consistency and clarity, thereby supporting entrepreneurship within the economy.

Conclusions

In order for SMEs to benefit from the supports available to nurture entrepreneurs throughout the life-cycle of the business, business tax reliefs must be simplified both administratively and legislatively. CCAB-I looks forward to further engagement with Revenue and Government on the implementation of the simplifications needed to improve awareness and uptake of the business taxreliefs available to support the SME sector.

6.5.3 Law Society of Ireland

LAW SOCIETY OF IRELAND

LAW SOCIETY OF IRELAND

Intro

- A subcommittee of the main Tax Administration Liaison Committee (“TALC”) has been established to focus on the simplification and modification of business supports for SMEs, the TALC Sub-Committee on Simplification and Modernisation of Business Reliefs (hereinafter the “Sub-committee”).
- The Sub-committee has been meeting over the last number of months and was set up in circumstances where businesses have raised concern in connection with supports and reliefs offered to businesses, which has led to an underutilisation of these reliefs and supports (for example TBESS (Temporary Business Energy Support)).
- The remit of the Sub-committee is identifying opportunities to simplify and modernisethe administration of business supports and to report to main TALC. The Sub- committee is administrative in nature and not policy making and is to report back to main TALC by the end of June.
- Given the remit of the Sub-committee, the Law Society of Ireland (the “Law Society”) will restrict its comments to administrative suggestions, as opposed to suggestions onpolicy or legislative changes.
- In addition to the comments below, the Law Society has seen the i) ITI feedback document of 5 April 2024; ii) CCAB-I feedback document; and iii) Alliance for Innovation feedback document to the Sub-committee, and are also broadly supportive of the suggestions therein.

Acquistion by a company of its own shares

- Chapter 9 of the Taxes Consolidation Act 1997 (“TCA 1997”) outlines the taxation treatment of the acquisition by a company of its own shares.
- Where a company acquires its own shares at a price that is in excess of the original issue price, the acquisition is treated as a distribution by the company under section 130 TCA1997.
- If, however, the shareholder can meet the conditions of the share buyback relief they are able

to avail of Capital Gains Tax treatment.

- Revenue Tax and Duty Manual Part 06-09-01 provides guidance on the application of the "Trade Benefit Test". The guidance, starting on page 16, envisages "the shareholderselling his/her entire shareholding in the company and making a complete break from the company. If the company is not buying all the shares owned by the vendor or if thevendor is selling all the shares but retaining some connection with the company (e.g. directorship) it would seem unlikely that the transaction would benefit the company'strade".[1]
- The conditions as to reduction of vendor's interest as shareholder as outlined in section178 TCA 1997, however, only requires that the shareholding be *substantially reduced*. "Where immediately after the purchase the vendor owns shares in the company the vendor's interest as a shareholder shall, subject to *section 181*, be substantially reduced."[2]
- The interpretation by Revenue in its guidance is harsher than that outlined in the legislation. This restricts some businesses in availing of the relief, for example, if a shareholder wants to substantially reduce their involvement in the company, but not divest completely.
- The Law Society recommends that Revenue's guidelines should be updated to reflect the correct legislative position.

KEEP

- Section 128F TCA 1997 outlines the tax treatment of directors of companies granted rights to acquire shares or other assets.
- KEEP is a focused share option program intended to assist small and medium-sized enterprises ("SMEs") in attracting and retaining talent, allowing them to compete with larger firms in a competitive market for talent.[3]
- The Revenue Guidance is unclear as to how and when market valuation should be determined for the purposes of availing of the KEEP relief. Given the complexity and cost of valuing company shares, this adds unnecessary obstacles to availing of the relief.
- The Law Society requests that Revenue should provide clear guidance on what it woulddeem to be an appropriate valuation regime when availing of KEEP and provide specific examples of same.

Relief for investments in Corporate Trade

[1] Revenue Tax and Duty Manual Part 06-09-01 Page 17.

[2] S178 of the Taxes Consolidation Act 1997.

[3] Revenue Tax and Duty Manual Share Schemes Manual - Chapter 9

Part 16 of the TCA 1997 outlines reliefs available for investments in corporate trades, inparticular:

i) Employment Investment Incentives ("EII")
ii) Start-up Capital Incentives ("SCI"); and
iii) Start-up Relief for Entrepreneurs ("SURE")

- The reliefs under Part 16 are all reliefs outlined by Article 21 of EU Commission Regulation No 651/2014 of 17 June 2014.[4]
- Revenue provides guidance under Revenue Tax and Duty Manual Part 16-00-02. However, this manual is quite complex and spans 108 pages. The manual provides guidance for all three schemes EII, SURE and SCI, making it difficult to navigate.
- The Law Society requests that Revenue should consider providing updated guidance for each of the three reliefs in separate Tax and Duty Manuals.

Accelerated Capital Allowances

- Section 285A TCA 1997 provides for accelerated capital allowances for expenditure incurred by taxpayers on certain equipment that is energy-efficient and bought for the purposes of their trade. It allows for accelerated capital allowances to be claimed by a "person which has incurred capital expenditure on the provision of energy-efficient equipment for the purposes of a trade carried on by that person which at the time it isso provided is unused and not second-hand"[5].
- The capital allowances can only be claimed for expenditure on equipment that is included on the SEAI's approved list. This leads to timing difficulties and delays as businesses wait for the SEAI list to be updated.
- The Law Society requests that the relevant criteria used to determine the eligibility ofthe product should be published and a mechanism provided to allow for businesses and practitioners to suggest products for inclusion on the list that meet the published criteria.

General Administrative/Technology

There are issues with awareness among the SME sector in relation to many business reliefs. Many are unaware of these reliefs until they attend a practitioner, but at that stage it may be too late, or too costly, to reorganise their business structure in order to avail of the reliefs available. Consideration should be given to a technological solution to improve awareness in SMEs of what reliefs are available to them now, and what may be available to them in the future. A designated SME portal on the Revenue Online System (ROS) or a revenue.ie webpage outlining all business supports available to SMEs would be useful. In its work the Sub-committee considered reliefs for SMEs in three life-cycle stages (start-up, growth and maturity/succession) and it was a useful classification, to allow for the grouping of the various reliefs.

- Observations, from the various bodies involved in the Sub-Committee, were made on the difficulties with requests for information by Revenue caseworkers that businesses and tax professionals have already submitted to Revenue and/or the Companies Registration Office (CRO), as part of separate applications or annual returns. The Law Society requests that consideration should be given to allowing and requiring Revenue caseworkers to obtain this type of information internally, before duplicating work by requesting the information directly form the business or practitioner. A technological solution would likely be possible to allow the case worker to obtain submitted information from a centralised portal specific to those businesses.

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[4] Revenue Tax and Duty Manual Part 16-00-02.

[5] S285A TCA 1997.

6.5.4 Small Firms Association

TALC Sub- committee on Simplification and Modernisation of Business Reliefs Feedback on the Tax Reliefs to Support the Lifecycle of a SME

We refer to the Irish Tax Institute's submission dated 5th April 2024 to the TALC Sub- Committee. The SFA concurs with the points raised within that document. In addition, we would also like to raise the following points which were discussed at the TALC meetings.

5. R&D Tax credit

(5)(V) – give examples of what has qualified for R&D like in the What Constitutes Passive/Active trading examples in TDM Part 02-02-06

7. Revised Entrepreneur's Relief

S7(iv) As noted a Holding company for Entrepreneur's Relief is a company that holds shares in other companies, all of which are it's 51% subsidiaries. However, there may be circumstances whereby there may be a group structure with more than one/two Holding companies. We note the provisions in the TDM regarding a Double Holding structure may qualify for the relief, however this can be restrictive commercially. Therefore, this should be addressed by amending the definition of a Holding company to the effect that it beneficially owns directly or indirectly at least 51% of the shareholding of the company.

9. **Company Buyback of Shares Relief**

Administrative Recommendations

There can be significant delays in obtaining a reply from the RTS on a specific case. These delays can heighten issues between the shareholder parties, when there is a shareholder dispute case.

Administration & Legislative Recommendation.

The vendor must not be connected (as defined by section 186) with the company immediately after the purchase. Current commercial arrangements with third party sales include Earnout provisions and also deferred consideration. The TDM should be updated to reflect that a Company Buyback of shares will qualify for the relief where there is a deferred consideration. Revenue's view on Earnout provisions should also be clarified in the TDM.

Sometimes there may be a transfer to a child and contemporaneously a redemption of shares by the company– the legislation and TDM should clarify the order of claiming Entrepreneur's Relief and Retirement Relief on the gain arising on the:

1. Deemed Market value on the share transfer to the children and
2. Company Buyback of shares

ROS to be updated to reflect the above.

Wish to reiterate in connection with the above and Section 12 re CGT and CAT reliefs, the different basis of valuation for CGT and CAT, for different connected parties is problematic in a share transaction.

11. KEEP Shares

Section 128 TCA 1997, provides that income tax is generally chargeable on any gain realised by an individual on the exercise of a share option acquired in his or her capacity as an employee or director.

However, any income gain realised on the exercise of qualifying KEEP options granted on or after 1 January 2018 and before 1 January 2026 is exempt from income tax, the Universal Social Charge (USC) and Pay Related Social Insurance (PRSI).

Capital Gains Tax will generally arise on a subsequent disposal of the shares.

In order to qualify, the share options must be granted at the market value of the same class of shares at the date of grant. This can lead to funding issues for the employee to exercise the share option, if they wish to acquire them in order to potentially avail of Entrepreneur's Relief on a future disposal.

Legislative changes:

That the payment of the share consideration by the employee to the company over a period of time (say 3 years) would not be considered to be a deemed benefit in kind and therefore not liable to BIK tax or any other PAYE provisions.

6.5.5 The Alliance for Innovation

The Alliance for Innovation

SIMPLIFICATION OF SCHEMES SUBMISSION

TALC sub-committee on the simplification of the tax code.

This submission is being collectively made on behalf of **the Alliance for Innovation**, a coalition of five national organisations, all of whom have a shared interest in the growth of the indigenous high-growth tech start-up and scale-up sector in Ireland. The Alliance comprises of **Scale Ireland**, which represents indigenous tech start-up and scaling companies; **HBAN,** Ireland's largest network of business angel groups and syndicates with over 15 angel groups across Ireland and abroad; **IVCA,** the representative body for venture capital private equity firms on the island of Ireland; **Euronext,** the leading pan-European exchange, covering Belgium, France, Ireland, Italy, The Netherlands, Norway and Portugal, and **TechIreland**, an independent not-for-profit, on a mission to promote Irish and Ireland based innovation to the world, through data, content and community activities.

SUMMARY

What simplification means for our sector

From the Alliance's perspective we require a tax system that facilitates and supports the growth of indigenous enterprise, consistent with the legislative decisions made by the Government and the Oireachtas. It should support the sector in a balanced way that is straightforward and accessible, while guarding against abuse. Many supports and schemes operate from the perspective of avoiding abuse rather than facilitating use, with very complex and detailed guidelines.

That means working arrangements that are different to those applying to the multinational sector. Our sector does not constitute the same revenue risk to the state as that sector. This needs to be reflected in how they are treated.

Complexity arises from a number of sources. It can be ingrained in the legislation itself, it can be contained in Revenue guidance and it can also arise from Revenue's operational arrangements. The solution to our difficulty may involve changes to all three, but it also involves recognition on the part of Revenue that the sector requires a different customer services approach from the tax authorities.

It should be a metric of Revenue performance that these companies are availing of schemes set up for their benefit.

Early stage innovation start-ups are typically different to SMEs. They are capital intensive at their initial phases and they are frequently late to generate sales income. Consequently they do not necessarily enjoy the same level of internal resources or external expert support that is available to larger firms. Interaction with the Revenue Commissioners, falling foul of the Revenue Commissioners, being at the receiving end of Revenue Commissioners attention constitutes a far bigger risk to these companies than other sectors. Revenue determinations will impact on their capacity to secure additional necessary investment and to sell their ventures at a later stage.

It is this analysis that led the Alliance to previously call for the setting up of a Scaling Division within the Revenue Commissioners to generate a core group of Revenue officials who will be afforded the time to acquire first hand knowledge of the sector and its challenges, expertise in respect of the particular tax schemes set up to support the sector and also to act as a source of policy advice and guidance for the sector. We recognise that it is not the role of the Revenue authorities to act as tax advisors to any economic actor or sector, but we do ask that Revenue's performance is informed by particular dynamics of the sector and the potential positive economic and strategic impact to the state in terms of the global growth and expansion of these companies

It means a focus by the Revenue Commissioners to ensure compliance with the tax code, but also to additionally assist companies' avail of incentives in a timely and easy fashion. It involves a two way communication process, where companies are informed of the progress and quality of their applications based on a good faith premise that companies are seeking to adhere to regulations, unless there is significant evidence to the contrar

Background

The Government's White Paper on Enterprise (2022) recognises the importance of the growth of export orientated Irish businesses with an ambitious target to increase their number of large Irish exporting companies by 50% by 2030. It also contains targets for the growth of Enterprise Ireland high potential start-up companies as a complement to the established multinational presence here.

These companies differ from traditional SMEs, though policy decisions tend to treat them the same. This may change with Ireland's membership of the European Startups Nations Alliance as announced recently by the Minister for Enterprise, Trade and Employment, Simon Coveney.

These companies, particularly in the tech sector, focus significantly on innovative solutions to problems. They rely largely on external investment from friends and families in the first instance, angel investors and venture capital. This investment at the early stage is focussed on product development, hiring skilled staff and market readiness. These companies are slower to market than typical SMEs, frequently operating for lengthy periods of time prior to raising revenue from sales.

They are strongly supported by state agencies like the LEOs, Enterprise Ireland and the Western Development Commission and, at a later stage, the Ireland Strategic Investment Fund. They emerge from state funded university programmes and participate in state funded acceleration programmes like NDRC. They are both high risk and high potential.

They are also supported by tax credit schemes and reliefs, some of which are targeted explicitly at the sector. They can also avail of other supports also used by established companies. However, there has long been concerns about how these targeted measures are succeeding. These include:

- Is take up aligned with the intended ambition of the legislation passed by Houses of the Oireachtas?
- In their construction, are the reliefs sufficiently designed and tailored to work for companies that are frequently unable to afford external advice, or certainly specialist professional advice.
- Is the guidance and support material issued by Revenue Commissioners overly complex and acting as a disincentive to participation?
- What level of support and tolerance does Revenue offer such companies applying for participation in such schemes?

- Are the Revenue authorities aligned with the public policy objectives that have driven Government to support such schemes?

Scale Ireland recognises that these are not simple questions. We recognise, for example, that the first duty of the Revenue Commissioners is to preside over a tax collection environment that adheres to its own overarching legal framework and that is fair to all taxpayers.

Such an approach is integral to public acceptance of our tax code and historic lessons are clear that it cannot be taken for granted. This is, at its heart, an issue of balance.

However, for the incentives to function, they also require encouragement and facilitation on behalf of public authorities to founders and investors who are putting their hearts and souls into founding businesses with high growth potential. The number of companies availing of schemes is a measure of the success of an incentive. Only then can the policy decision be properly assessed.

The Commission of Taxation and Welfare (2022)

The suite of tax based measures to support indigenous enterprise were recently assessed by the Commission on Taxation and Welfare and received broad based support. In a section entitled *'Enabling SME access to Tax Reliefs'*, the Commission offers a general endorsement of Scale Ireland's analysis of the difficulties being faced by founders in SMEs. It suggests that self assessment of eligibility for the schemes hinders take up.

'A common concern raised in the context of SMEs is their difficulty and lack of certainty in ensuring that they are compliant with the qualifying conditions or are keeping the appropriate documentation for accessing various initiatives and entrepreneurial-related tax reliefs.'[1]

While recognising that the Revenue Commissioners provide both online guidance and general customer support, it asserts that it '*is not enough to enable better of often complex entrepreneurial tax reliefs by SMEs.'*[2]

On specific schemes, it asserts that complexity is a factor in hindering take up by SMEs. Recognising the importance of EIIS for example as a means of channeling private investment to the sector, it suggested that EIIS '*could be substantially enhanced through improved accessibility and reduced complexity'.*[3]

[1] Report of the Commission on Taxation and Welfare, p. 202.

[2] Ibid. p. 203.

[3] Ibid. p. 194.

The Commission asserts that an 'advanced assurance' mechanism 'could bring certainty to businesses and minimise the cost of engaging advisors and/or the cost associated with indirect claims'. The latter point is significant. Whether it is true or fair, founders cite fears of Revenue attention arising from genuine error as a disincentive to scheme the take up of the scheme.

The findings of the Commission has given rise to two commitments in the Government's White Paper, one of which, no doubt, has led to the establishment of this process. One is to keep the 1997 Taxes Consolidation Act under review '*with particular consideration to simplifying our tax code.'*[4]

The second is a commitment to '*develop a mechanism which can provide the necessary assurance and comfort for small enterprises that they are eligible for tax incentives, particularly in respect of the R&D tax credit, the Key Employee Engagement Programme (KEEP) and the Employment and Investment Incentive Scheme (EIIS*).'[5]

The Alliance welcomed these commitments and viewed them as two sides of a similar concern. The more simple compliance becomes, it follows that advanced assurance may not need to be as wide ranging.

The Founders Perspective

The Scale Ireland State of Start-ups Survey is now in its third year and has established itself as the most definitive record of the sentiment of start-up and scaling companies on key issues affecting them. Each year questions are posed about participation in the EIIS and KEEP schemes and utilisation of the R&D tax credit scheme. It is worth including the findings for general context.

2024 State of Start-Ups Survey

The most recent Scale Ireland State of Start-ups survey was published in late February 2024 in conjunction with our Regional Start-Up Summit.

R&D Tax Credit

The 2024 survey asked respondents to outline their experience of the R&D tax credit. 36% of respondents indicated that they had availed of the credit, 64% said that they had not. This return shows very little movement from 2023 when the respective figures were 34% and 66%. In the 2024 survey, we asked respondents how they found the application process for the credit. If we strip out those that declared the scheme as being not relevant to their company, over 54% declared the process to be 'complicated'. A similar question in 2023 on the tax credit reveals similar issues.

Again, over 50% of respondents reported the process as complicated.

EIIS

We asked a number of questions this year on EIIS including the level of awareness of the new GBER driven changes coming into force this year. Excluding those who answered that the scheme is not relevant to their company, 47% responded that they found the scheme either 'very difficult' or 'not easy'. In comparison only 5% responded that they found the scheme either 'easy or very easy'. Approximately, 7-8% determined the process to be 'fine'. Looking at EIIS in 2023 and similarly excluding companies who did not believe the scheme was relevant to them, over 50% found the process either difficult or very difficult.

KEEP

The 2024 survey asked a simple binary question on KEEP as to whether the respondents had used the scheme. 88.5% responded that they had not, 11.5% that they had not. This is a similar response to 2023 when the figures were 87% and 13% respectively, Overall, the figures confirm relatively low levels of take up of schemes, confirming the analysis of the Commission on Tax and Welfare.

2022 Free Responses

The 2022 questionnaire offered respondents the opportunity to comment on their reasons for participation and non participation in EIIS and other schemes, asking them to outline possible enhancements that they would like to see made. We have included a number of responses at Appendix 1 as they reflect the first hand experience of founders.

Recommendations

The Alliance has widely consulted with colleagues, founders, investors, key stakeholders and organisations and tax professionals working for startups for feedback. We have set out our comments under the heading of the main schemes affecting start-up and scaling companies.. Some observations may have relevance across all schemes or more widely to general compliance.

The Alliance believes that simplification needs to be defined from a user's perspective. Our aim should be to have as many start-ups and scaling companies avail of these incentives as is possible.

It would seem that in the balance between two appropriate aims - scheme take up and appropriate revenue protections - there is an abundance of focus on avoiding abuse rather than facilitating use. It should not be assumed that this is necessarily of long-term economic benefit to the state which has set ambitious targets for more companies to succeed and scale globally.

Complexity has many sources from the initial legislation, poor information dissemination, Revenue organisation and practice, poor customer services, and a lack of resources on the part of young companies to avail of the best advice.

Start-Up and Scaling Division

The Alliance previously called for a separate Revenue division, (similar to the Large Cases Division) for start-up and scaling companies.

The benefit of such a division will be to assist companies via a single port of call, and separately to have a dedicated team of Revenue officials with expertise and an in-depth understanding of the very specific needs of this sector.

We have received a number of complaints from companies regarding Revenue. Lack of specialist knowledge with respect to a number of the schemes, poor customer services with respect to applications and delayed payments. Whether it is fair or not, there is also a fear of interaction with Revenue giving rise to additional Revenue interest in other aspects of their businesses including an audit. These early stage companies do not constitute a risk to Revenue in the same manner as the companies covered by the large cases division and should be treated according

The Alliance believes that there should be a pro-active information campaign around these incentives on the part of the Revenue authorities to facilitate participation.. Such a campaign could/should include:

- ***Simpler usage guides to support*** Revenue guidance documents are complex and lengthy. In addition to technical advice, shorter 'how to use' documents should also be produced to demystify the process. The guidance documents should also be published in a timely manner which would enable more early stage start-ups to deal with applications internally and efficiently.
- ***Customer support/advice line***

  While the Alliance accepts that the Revenue cannot be tax advisers, we continue to believe that advice lines and good customer service responses can assist in making the most complex processes less intimidating for early stage companies
- **Online case studies**

  While Revenue guidance does currently include case study examples, the Alliance believes that these should be distributed more prominently and proactively.
- **Good faith code**

  We believe that fear of prompting revenue inquiry, audit and penalties may be a key driver in reducing take up of schemes being offered to support. It should be made clear to companies that Revenue believes that inquiries are being made on a good faith basis unless there is overwhelming evidence to the contrary.
- **Outreach/webinars**

  Periodic outreach information services by Revenue either online or in person would be of enormous benefit. This could be charged as being a function of a new start-up and scaling unit.

Observations of schemes

These are observations that arise from our conduct with founders, investors and advisers with respect to the series of incentive schemes of most interest to the companies they represent. As can be seen there are familiar themes across schemes.

R&D Tax Credit

The importance of the R&D tax credit to start-up and scaling companies cannot be underestimated. Our 2024 Scale of Start-ups Survey findings with respect to the recent increase in the credit reflects this - 78% of respondents felt that it would have a positive impact.

The Alliance recognises that the credit represents a significant tax expenditure to the state and as such warrants close attention on the part of the Revenue Commissioners. However, the lion's share of that expenditure relates to large and multinational companies.

- **Research Eligibility:** Lack of understanding per sector as to what constitutes R&D. For example: in the software industry, the D for "development" doesn't count unless it is "ED" experimental development. Most software companies don't understand this.
- **Prior advice/advance Assurance:** There is no way of getting Revenue assisted advice prior to making a claim.
- **Audit Risk:** The claim process carries risk - audit etc. Whereas R&D grants carry certainty, where the application is either approved or not.
- **Audit inconsistency:** There is uncertainty as to how Revenue deals with claims, and this plays out in practice. Audits (aspect and full) are inconsistent and prolonged. For example, we have been alerted to a 2 1/2 year audit ongoing with Revenue regarding one R&D audit. It has passed the science review and is now back in the accounting review. There is a sense it is very much personality-driven.
- **Regional Inconsistency:** Revenue is organised in geographical units so it is nearly impossible for local officials to develop the specialised knowledge of the R&D credit. It leads to inconsistencies of approach in the administration of the credit and importantly, inconsistencies in approaches across companies of different scale in different sectors. There should be a centralised R&D unit.
- **Expense:** This can be expensive for compliant companies paying advisors to work through issues with Revenue where in effect the balance of knowledge is with the advisor.
- **SME disadvantage:** It confers a considerable advantage on larger companies where the LCD is better informed on the issues.
- **Fear of Penalties:** Legislation should be amended to restrict penalties being imposed on R&D claims unless Revenue believes there is evidence of an attempt to mislead, fraud or neglect. The prospect of publication and penalties acts only as a disincentive to SMEs to claim in a very subjective area of taxation.

- **Resourcing:** Start-up and scaling companies do not possess the same level of internal resources to document the R&D process as those in the multinational sector. These companies are often advised by advisors not to make claims because their contemporaneous documentation process may not be of the necessary standard. This runs contrary to the public policy raison d'etre of the credit.
- **One size fits all:** SMEs are not established in Ireland solely in order to avail of R&D tax credits, unlike multinationals. SMEs operate their business in a lean and effective manner with small groups and dynamic teams. This is an incentive to encourage good behaviour and enhance our economy. At present SMEs are being targeted and being forced to go to tax appeal, at huge cost, and facing very significant penalties and publication, for what are valid claims, solely due to the Irish Revenue deeming the underlying contemporaneous documentation is not sufficient. The reality is that the level of documentation that does exist is entirely consistent with what would be expected to be in place naturally within the business sector for the company size. Multinationals naturally keep detailed records, as it is essential to run their business. Making SMEs do the same for the sole purpose of claiming R&D tax credits is punitive and potentially putting promising Irish businesses at risk of bankruptcy.
- **EI/IDA threshold:** Continued Revenue refusal to increase the EI/IDA approved science process in guidelines (from €50,000) is a source of frustration.
- **Flexibility:** Advisors are often called into deal with issues around audit. Informal approach prior to pushing that trigger makes sense.

EIIS

The EIIS scheme is an important source of private capital for start-up and scaling companies. However, during the process of this consultation, there is a widespread view that the recent state aid driven changes have put the scheme's future under considerable pressure. During our consultations issues around the online EIIS system arose and we have included a paper we received on the subject at Appendix II.The Alliance would also cite that the recommendations contained in the Indecon Report, commissioned in 2018 have not been implemented as such as:

"The design of the amended scheme should involve an online application process that includes prompts to clarify areas of potential uncertainty. Links to Revenue guidance and steps to require

- confirmation of key information provided by the companies could be provided. This should facilitate accurate and fast processing of EII applications. This is important to address the imbalance of knowledge/control between company/investors although it remains critical that investors or their advisors undertake normal due diligence on the companies for which they are proposing to become shareholders".

- **New 50% rate:** New 50% (rate 4) relief for businesses (introduced in the Finance Act 2023) that have "not operated in any market" is designed to support very early stage companies. It could potentially push some angels into far riskier early stage deals, skewing the landscape against doing investments at 20% (which is still early stage and risky, simply because the company raised some early stage risk capital). The requirements to qualify for this rate are also unclear, with early stage founders uncertain on whether they should raise their first round with friends and family, before raising a larger subsequent round with EIIS so that their investors can avail of a higher rate. For investors, this requires them to determine if they should avail of the 50% upfront tax relief on investment, or should they expect to pay Capital Gains Tax on future earnings. Ultimately this will be counter productive, will reduce returns for investors, and could damage the EIIS brand.
- **Clawback:** The liability for any clawback being placed on the start-up if a company does not meet EIIS conditions is perceived as a material risk among start-ups. There are a range of ways a clawback may occur e.g. a company could suffer a clawback if sold within 3 years, after delivering substantial employment growth and exports and embedding the company in Ireland. Should the clawback not be on a proportional basis over a 1-4 year period, and not an unconditional full clawback.
- **Instruments:** The scheme does not support commonly used investment instruments such as Convertible Loan Notes (CLNs) and Simple Agreement for Future Equity (SAFEs), which limits the speed at which start-ups can raise capital. The use of different investment instruments can disqualify startups for EIIS, adding to the complexity of determining eligibility.
- **Structure:** (legitimate tax planning),The eligibility of the corporate structure of a company should be reviewed.
- **Complexity:** EIIS was cited as a very technical and complex piece of legislation. The time and money needed to understand and use the scheme is a large barrier to time-poor founders. The complexity of determining eligibility for EIIS can take multiple weeks which slows a founder’s ability to raise capital quickly.
- **Inadequate resources:** The resources provided by Revenue were also referenced as complex, in particular the length of Revenue notes for guidance (over 100 pages) and difficulty in engaging with Revenue directly to query conditions.
- **Cost of Self-Assessment:** Self-certification typically requires support from a specialist tax advisor, at an average market rate of €10,000 which is a considerable barrier to founders as often early stage companies lack the necessary cash flow.

We recommend that the EIIS self-certification scheme is substantially simplified and a clear process is introduced whereby a company can determine whether it qualifies for EIIS in advance, without the need to engage and pay for a tax consultant. Increase certainty for companies that they are eligible for EIIS and simplify the process through the provision of a final confirmation that the company is eligible for EIIS investment where the information provided to the Revenue Commissioners is correct and complete.

- **EIIS Lite:** This could include the creation of an EIIS "Lite" scheme where a founder can quickly and easily determine its eligibility if raising below €1m. As an example, the UK uses a system called advanced assurance, where a company can apply to HMRC in advance of raising a round, and receives a certificate confirming it qualifies for EIS. As 85% of businesses need to draw down €100k when raising this would substantially speed up the process.
- **Advanced Assurance:** The UK uses a system called advanced assurance, where a company can apply to HMRC in advance of raising a round, and receives a certificate confirming it qualifies for EIS. As 85% of businesses need to draw down €100k when raising this would substantially speed up the process.
- **EIIS online interface:** Following consultation with key stakeholders, there is a strong view that the EIIS technological interface is out-dated and difficult to operate compared to other Revenue systems. In Appendix 1, we include a short document we received outlining the difficulties being experienced.

KEEP

The Alliance participated in the recent Department of Finance consultation on wider share based remunerations issues. Our observations reflect a wide consultation conversations held during that process.

- **Safe harbour/advance assurance:** The absence of safe harbour advice about company eligibility for KEEP acts as a disincentive to participation necessitating companies to absorb compliance risk. It is in stark contrast to the position prevailing for the UKs EMI scheme. A safe harbour process needs to be introduced to clarify whether companies are entitled to participate in the scheme.
- **Market Valuations:** Allowing for standard industry practices such as relying on the valuation of the most recent round of financing would give founders the simplicity, clarity, and certainty they need to implement KEEP. Alternatively, the valuation requirement should be replaced with a limit of 20% of the equity of the company that could be granted (on the date of granting) to employees.

- **Buyback:** The amendment allowing companies to buy back/redeem shares in the Finance Act 2022 acquired by an employee under the KEEP scheme was a significant recognition of the challenges facing start-up companies. However, its operation could be enhanced particularly with relation to the required holding period. The current tax rules which allow buybacks/redemptions to be taxed at capital gains rates are complex and require a holding period of five years. We would support the 5-year time limit commencing from the grant of the option thereby meaning that no cash needs to be available to fund the purchase of the shares until a liquidity event.
- **Company structure:** Issues regarding company structures and disqualifying events that cause difficulties for early stage start-ups continue to exist despite recent legislative amendments.These need to be addressed to encourage take-up.

a. companies with US or non-EEA TopCos;
b. companies in sectors such as certain fintech, property, professional services, which are currently excluded; and
c. companies that have had to re-organise, which is currently considered a disqualifying event.

- **Qualifying Companies:** While the definition of a qualifying company has been amended recently, it is still insufficiently flexible to include common company structures.
- **Rollover:** Allow for the benefits of the scheme to be retained in the event of changes in the company structures.
- **Penalties**: Restructuring the penalty for failure to file a KEEP return on time to be a monetary penalty only.
- **Sectoral Eligibility:** Provide clarity on the eligibility of the scheme in relation to fintechs.
- **Pricing share valuation/discounts:** The UK system also allows companies to agree a share price with HMRC. This is of critical importance particularly with respect to companies that have not had a pricing event where on foot of a genuine case made HMRC are happy to accept a nominal share price evaluation. (Discounts are facilitated but taxed at income tax rates not capital gains).
- **Temporary nature of the scheme:** The scheme has to be renewed on a relatively short time basis up to the end 2025 which in itself provides uncertainty.

- **Eligibility:** Change the eligibility for the KEEP Scheme to companies up to 15-20 years old as is the case in France/Germany as the current Irish scheme penalises growth of companies and also is very narrow in its eligibility which is recognised in international comparisons. This would also make the scheme very clear for companies. This would be similar to Germany which caps the scheme at €100m in revenue.
- **Simplification:** Administrative simplification including online templates for companies.
- **Guidance**: Provide guidance documents within a specific timeline on budgetary changes within specific deadlines to ensure scaling companies and start-ups with limited resources are aware of the benefits of the proposed changes.
- **Increasing the value of the issued but unexercised share**s from €6 million to €12 million, or to allow the awarding of share options in line with the growth in company equity, allowing companies to award options up to 20% of the value of the company;
- **Removing the link between equity ownership and salaries** under the KEEP scheme (S128F, TCA 1997) and raise the cap on share option, ultimately limiting share options to 20% of the total equity of a company for employees, and 2% of the total equity of a company for individuals, that could be granted (on the date of granting) to employees under the KEEP scheme. It should not be linked to annual remuneration. This would allow companies to utilise the scheme to attract the services of NEDs and key advisors.

Capital Gains Tax/Entrepreneur Relief

The environment with respect to CGT, a key driver of investment, is a complex one with a number of different rates in place for certain activities. Clearly, a lower competitive rate across the board would be the best way to affect simplification. Many of the schemes introduced are highly targeted.

We are conscious that one of the reasons for the related complexity is the need to comply with EU rules on State Aid which apply where there is an element of selectivity in the measure. To a significant degree, an overall reduction in the rate would improve access to investment and reliefs.

Additional options for consideration:

- **Adjust the tax free allowance:** If overall simplification through a rate reduction in investment is not feasible, it is still possible to advance simplification through broad based targeted changes. These include, for example, raising the capital gains tax threshold to a meaningful sum. Currently, the CGT rate threshold is €1,270. In 2000, it was at the same overall level (being £1000). It has not been adjusted for inflation, but the headline rate of capital gains tax has increased from 20% to 33%. Providing a meaningful tax free allowance increase would, while still being less significant than a rate change, reduce the overall effective rate of tax for investors.
- **Entrepreneur Relief:** The lifetime limit is considered too low. In the context of Ireland's start-up industry, an entrepreneur may have a successful exit in 2019 and exhaust their lifetime allowance of €1M. They can then no longer avail of Entrepreneur Relief. Our members have direct knowledge of entrepreneurs who, having already exhausted their lifetime limit, simply relocate outside the jurisdiction. These entrepreneurs then make their investments in Irish entities while living outside of Ireland. As such, they are then not subject to Irish capital gains tax. Raising the lifetime limit, or allowing it to be refreshed periodically (e.g. every five years) would align the purpose of the relief with the reality of how entrepreneurial investment occurs.
- **Share capital:** Reducing the requirement to hold at least 5% of the ordinary share capital of the company could also be considered. In many contexts, where employees hold smaller numbers of shares, they should, assuming they meet the other conditions, such as working within the business, also be able to benefit from Entrepreneur Relief. Currently the system provides a tax reduction for a person who holds 5.1% of the ordinary share capital, but none for an employee who holds 2%. In both cases, the person may be a key entrepreneur and driver of the business, but due to a technical requirement concerning the class of shares they hold, they may be treated quite differently.
- **Angels:** Our sector welcomed the reduced CGT changes for Angel Investors. The scheme as introduced is complex, and requires considerable planning and advice in order for it to be accessed. At this stage, our members' primary concern relates to the level of advice and planning involved for a company to access the scheme, as it requires pre-approval from state bodies. This necessarily involves expenditure by the company in order to even access the financing. Recognising that this type of scheme involves interaction with the EU State Aid regime, our organisation believes that any steps to simplify the scheme would be welcomed.

- We are concerned about how long this process would take, which could halt or delay angels investing until their investment qualifies. In relation to the dual process of certification for (1) going concern and (2) commercial innovation. We are concerned at the length of time it may take to obtain certification which could delay investors making an investment until they obtain qualification, which could ultimately put the company at risk as they may run out of money as they await the planned investment.

  An unnecessary delay in the investment could also halt the company's growth. **We propose the certification process takes no longer than 4-6 weeks.**

- As you are aware, in relation to the definition of 'innovative enterprise', GBER outlines four tests, only one of which has to be adhered to. We propose that Enterprise Ireland assesses the applicant prior to application (as the external expert) in order to obtain certification as a commercial innovation company. We believe Enterprise Ireland has the necessary and specific expertise to assess commercial innovation and this would also ensure the process is efficient. Revenue already effectively accepts Enterprise Ireland's assessment regarding the R&D Tax Credit science test.
- Separately, we also believe that if a start-up has qualified for Enterprise Ireland's PreSeed Start Fund (PSSF) or High Potential Start-up Funding (HPSU), investments in those companies should automatically qualify under the commercial innovation test. In cases where they do not, Enterprise Ireland should assess them prior to application as outlined above. It is important that the relief is also accessible to non Enterprise Ireland companies.
- We also want to ensure the relief is not overtly prohibitive and as it stands currently, potentially a significant number who have participated in "loan capital" are excluded (such as those investing through the Employment Investment Incentive Scheme (EIIS)). This is a significant issue as very many start-ups now use *Convertible Loan Notes* (CLNs) and *Simple Agreements for Future Equit*y (SAFEs) for early fundraising. These instruments defer the question of valuation to a future investor and greatly simplify (and reduce the cost of) legal documentation of the investment. Unfortunately, the investor in these cases would be excluded from the relief even after conversion. This would have a number of potential impacts including:
  - Angels could possibly refuse to participate in a CLN or SAFE because they lose eligibility for the relief, which would limit the funding options for start-ups. Companies could be pushed into

priced rounds to allow angels get relief adding huge complexity to early stage rounds, etc.

- Most early stage start-ups use CLN or SAFE options to extend the valuation conversation to a later stage when they are in a better position to determine their valuation based on certain criteria such as market penetration, customer validation, revenue, product offering etc. If you exclude CLN or SAFE options, this could deter investment in early stage start-ups.

  We propose that the clause excluding those who participate in the loan capital of the company should be dropped.

It is the view of the Alliance that the difficulties experienced by start-up and scaling companies derive from legislation, administrative practices and customer service culture. At the heart of the difficulties is the fact that start-up and scaling companies are more poorly resourced than larger competitors and that this gives rise to issues around record keeping and documentation, time pressures and access to expert advice.

Compliance requires significant time and resources for start-up founders and CFOs than it does of a multinational CEO/CFOs who have access to a well resourced and expert team as well as specialist experts. As a consequence, the stakes of a flawed application and engagement with Revenue are considerably higher for a time-pressured founder and represent a threat to the viability of their business. While start-ups and scaling companies do not generate the same level of resourcing to the state as larger companies, their success remains central to Ireland’s long term economic vision and strategy. Accordingly, they require additional support and flexibility.

Operation of EIIS online.

Introduction

The purpose of this note is to highlight some technical anomalies that have recently been identified during the process of generating Manager Certs via ROS by a manager of a qualifying investment fund (“QIF”). It appears that updates to the existing ROS portal might be required in order to resolve the issues that have arisen in practice.

Finance Act 2021 introduced a significant amendment to Part 16 of TCA 1997 dealing with Relief for Investments in Corporate Trades (“the EII Provisions”) in the area of investment structures that can be established as a fund. The relevant provisions were extended to include QIFs that encompass “limited partnership” of “investment limited partnership” investment structures that satisfy the requirements of Section 508,IA(2), TCA 1997. This extension came into operation with effect from 1 January 2022.

The long established provisions dealing with Designated Investment Funds (DIF’s) were not changed. The position post FA 2021 is that from 1 January 2022 the EII Provisions now caterfor both QIFs and DIFs.

Income tax relief can be claimed by investors who invest either directly or indirectly (via either a QIF or a DIF) into “qualifying companies”. In the case of QIFs or DIFs, the time when the entitlement to income tax relief is due is determined by the provisions of S508J(4), TCA 1997 i.e. deducted from the investor’s total income for the year of assessment in which the amount was subscribed into the QIF/DIF. This is subject to the condition that the eligible shares are issued no later than in the year of assessment following the year of assessment in which the investor subscribed into the QIF/DIF. Therefore, by way of example, an investor who subscribed into a QIF/DIF during December 2022 is entitled to income tax relief for 2022 provided the relevant eligible shares are issued on/before 31 December 2023.

The concepts of being entitled to the relief and the ability to actually claim the relief are dealt with separately. Specifically, under the provisions of s508F(1), TCA 1997 a qualifying investor:

“.. shall not claim relief in respect of a qualifying investment...until a statement of qualification...has been received form the company”. This deals with a situation where an individual has made a direct investment into a qualifying company - this therefore in practice means that each EII investor must wait to receive the statement of qualification

("SoQ") directly from the qualifying company before he/she can proceed with the step of actually claiming the relief.

The process is a little more involved in the case of individuals who invest indirectly via a QIF/DIF. In these circumstances, the manager of the QIF/DIF should after receiving the SoQ from the investee company be able commence the process of generating "Manager Certs" via ROS. This is required in order to comply with the provisions of s508J, TCA 1997 which, in effect, substitutes the requirement in s508F(1), TCA 1997 such that the investor needs to possess a Manger Cert (rather than a SoQ) before tax relief can be claimed.

The sequence of steps that need to be taken to generate Manager Certs is set out in figure 5 (page 26) of the Taxes and Duties Manual (Part 16-00-02).

The actual process of generating Manger Certs by the Manager of a QIF firstly involves registering for "share scheme reporting" on ROS. It is then necessary to file Form IF on ROS in order to comply with the provisions of s.508J(3), TCA 1997 (file a return of SoQ's within 30 days of their receipt) and to generate Manager Certs.

The Form IF is completed by reference to the "Return Year". This is defined within the explanatory notes of the Form IF as "the year that the fund commenced making investments in qualifying companies". The guidance notes also provide that the Form IF should be refreshed to reflect the additional SoQ received and is then re-submitted on ROS Form IF - Summary

The Form IF can be downloaded from Revenue's website and is completed in four sections as follows:

Manager Details:

This section deals with details for the Fund Manager who would issue the Manager Certs to investors. This section requires the following information:

- Name of Investment Fund Manager
- Manager Tax Reference Number
- Address / Eircode of Investment Fund Manager
- Email Address
- Telephone Number

Investment Fund Details

This section on the Form IF contains the following mandatory fields for completion:

- Type of Investment Fund
- Name of Investment Fund
- Tax Reference Number
- Return Year
- Address / Eircode of Investment Fund
- Is the Fund a Closed Fund?
- Fund Date (Closing)
- Name of Nominee Shareholder
- Tax Ref Number of Nominee Shareholder
- Amount Raised by the Fund
- Investments Made by the Fund

Investments made by the Fund

This section deals with the investee company details, the share characteristics and the SoQ's received for each of these investments and require the following information:

- Company Name
- Tax Ref Number
- Address / Eircode (of investee)
- Date Fund Subscribed for Shares in Company
- Class of Shares
- Number of Shares
- Date of Investment
- Amount Invested
- For investments up to and including 31 December 2021, date 30% of the funds raised were spent on a qualifying purpose
- Statement of Qualification received? (Y/N)
- Date of Statement
- Amount of investment which qualifies for relief under Section 502(2)(a)

Investor Information

This section requires details of the individual investors who invest in the QIF or DIF. The details requested are as follows:

- First Name
- Surname
- PPS Number
- Address / Eircode
- Date Investor Subscribes in the Fund
- Amount Invested in the Fund
- Elect to Invest (year)

Form IF Specific IT issues

The following is a summary of IT related issues that have arisen when completing the Form IF.

1) Manager Details

- No issues noted.

2) Investment Fund Details

- Cell C13 “Type of Investment Fund” - A drop down menu allows a choice to be made between a QIF or a DIF which appears appropriate so no issues with that.
- Cell C20 “Fund Date (Closing)” - Forced to submit a 2021 date as a workaround since knock-on errors arose elsewhere in the form when a 2022 date was included. This is inappropriate in the case of a QIF since the relevant legislation only became effective from 01 January 2022.
- Cell C21 “Name of Nominee Shareholder” - There is an error here when a nominee is not included. A QIF does not require a nominee shareholder. The Form IF also does not accept a repeat of either the fund or fund manager information and therefore requires a third party to be included. This should not be a requirement.

Investments made by the Fund

Cell N30 “For investments up to and including 31 December 2021, date 30% of the funds raised were spent on a qualifying purpose” - For investments made in 2022, the 30% test is now N/A. However, an entry is still required when completing the Form IF. It would be expected that this requirement would be automatically removed for QIFs which were only introduced in FA 2021 with effect from 01 January 2022.

- Cell L30 in Fund Information sheet “Date of Investment”. While it was possible to include 2022 as the “Date of Investment”, the “Fund Date (Closing)” needed to be included as a date in 2021 to enable this (as noted above). It should be possible for funds raised in 2022 to be deployed in qualifying companies in 2022.
- For Return Year 2023, cells I30 and L30 do not allow dates after 31/12/2023. Most of the money raised in 2023 will be spent in 2024.

Investor Information

- Investor information sheet - there is no requirement that all investors in a QIF must be Irish tax resident individuals and therefore the profile of the partnership might include persons (e.g. companies) that cannot avail of EII relief or individuals who cannot in practice (e.g. non-residents individuals without any Irish source income) avail of EII relief. - Error messages are flagged when persons who do not have a PPN number

are listed in this schedule. As a "workaround" it is necessary to aggregate the investments by non-eligible investors and incorporate this total in a line item for a non-qualifying investor (an Irish resident company having an Irish tax number) In additional, the expectation that there would be an automatic calculation to allocate a proportionate amount of the sum subscribed into Manager Certs based on qualifying investments actually made does not appear to be a feature of the IF Return process.

- Manager's Certs

The following are IT related issues that have arisen when reviewing the Manager Certs that were generated after the Form IF was first submitted/uploaded on ROS.

- "Declaration of manager of "designated investment fund" - This is generated notwithstanding that the QIF is chosen in the drop down in Cell C13 ("Type of Investment Fund) on the Investment Fund Details sheet on the Form IF. We recommend that distinct Manager Certs should be generated on ROS (e.g. Form EII 5 (QIF) or Form EII 5 (DIF)) depending on the type of investment fund. The declaration section of the form could then be tailored to deal with each type of fund.
- Closing date for the fund - In line with the Form IF above, this is pre-populated as 2021 which appears to be a consequential IT error related to the comment above about the Cell D20 "Fund Date (Closing)" on the Investment Fund Details sheet of the Form IF.
- Name of nominee shareholder - Unlike a DIF an QIF would not generally have a nominee shareholder and this should be removed. This could be resolved by

having a separate Form EII 5 (QIF) as outlined above. Practical Queries – Not Entirely IT Related

- Amount qualifying for relief - The manual input process. It might have been expected that it should be capable of being automatically populated since the Form IF contains information on (a) amount each investor subscribed into the QIF (b) the total amount raised by the QIF and (c) the total value of SoQ's received by investee companies. This data appears sufficient in order to determine the proportionate amount of the original sum subscribed into the QIF that can be tracked as ultimately invested into EII qualifying companies.

- Amount not yet qualifying for relief - This requires manual input. However, in relation to this point it is important to note that there is no requirement that funds raised by the QIF need to be placed within "qualifying companies". This makes it difficult to estimate with any precision the amount that is yet to qualify for relief. It is not necessarily the case that it is calculated by simply taking each investor's subscription into the fund and subtracting the amount qualifying for relief based on the SoQ's received by the manager of the QIF.

Timing of SoQ's vis-a-vis Form 11 filing. Practicalities of providing EII investors with the necessary information and in a timely manner for tax filing purposes. Example — Subscribe to the QIF in 2022 and the money is invested/placed in 2023 but the investee companies have until 30 April 2024 to produce SoQ's. The investor needs to file his/her 2022 Form 11 during November 2023 which could be up to 6 months before the relevant SoQ's are generated.

Free Responses to the Start-Up Survey EIIS

- *"Make it competitive to similar incentives in the UK." (the superiority of UK schemes has been highlighted by the Alliance)*
- *"Make it simpler to process so companies can easily do the paperwork themselves rather than employing advisors. Do away with the need to forecast all future funding requirements on your initial application (if you don't mention future funding in your initial application, you are precluded from applying for utilising EIIS funding in the future). Make it so you automatically qualify if you have already been vetted by Enterprise Ireland or similar organisations. Make the benefits more attractive to investors and more easily explained and promoted to them."*
- *"Must be a way of reducing legal fees - up to 10% of funds wasted on legal fees is crazy."*
- *"Resource, streamline & speed up processing of approvals and certs by revenue - 3 years post investment and revenue still haven't issued certs."*
- *"Publicise it more so that investors are more aware of the logistics. Make it easier to administer - this has improved somewhat, but getting clean up-to-date info isn't too easy when you're managing it yourself as a founder. A nice easy step 1, step 2, step 3 PDF would be great."*
- *"Make Revenue actually answer queries - it's impossible to contact them about how it works. Update the guidance online and make all the forms available… there is no EIIS1, EIIS2 or EIIS3 form template available anywhere online. Improve the actual tax back availability to bring it in line with the far superior UK equivalent."*

- *“Simplicity through instant automation of process to get approval, and get relief. Accelerate relief.”*
- *“Many (suggestions) but the main one must be the self certification process. This places all of the burden and risk on the start-up. There must be a simplified way to certify a start-up for the scheme and ensure that certification does not lapse due to events happening in the normal course of business.”*
- *“Where do you begin? The whole process needs to be simplified and start-ups need to get an edge on revenue generating companies or why would investors take a risk on a new company. Revenue’s cumbersome self certification process and the 40% claw back is overly onerous. At this stage all Irish start ups should go directly to the UK to take advantage of the investment pool size and the SEIS / EIS and cost effective Seed/Legals type platforms.”*

- *“Relaxing of revenues red tape and rules.*
- *submitting business plans and having to outline follow in EII funding for early stage start-ups etc doesn’t make sense.*
- *When you are not eii eligible it becomes next or near impossible to raise capital from private investors in Ireland.”*
- *“Has to align more with the UK's EIS scheme to keep it competitive. There should be more upside for an investor given how risky early seed stage investment is.”*

KEEP

In the same year, 2022, respondents were asked why they hadn’t availed of the KEEP scheme. Lack of awareness and complexity were the main issues among applicants.

- *“We have not fully explored the option, but it seems difficult to implement and very complicated. We have not yet had the resources we can allocate to be able to avail of it and administer it.”*
- *“Putting in place an ESOP but as topco (parent company) is UK based will be utilising an equivalent scheme there.”*
- *“There is a cost barrier in setting it up and also hard to navigate the legal technicalities around giving employees outside of Ireland shares.”*
- *“Too expensive to implement, required new company constitution and issuing of shares, which consultants were quoting over €800 to do.”*
- *“The KEEP scheme is simply not compelling. A scheme more in line with the UK's EMI scheme, where employees can be granted options with a strike price that's significantly discounted relative to market rate, would be much more attractive.”*
- *“We are in the process of creating a share scheme for employees. We haven't done it before because the system is complex and the legal costs are significant for a small, bootstrapped company.”*

R&D Tax Credit

There was less scope for free commentary on the R&D question. The dominant issue that arose was the need for full monetisation in year one and the complexity of the scheme. The majority of those that availed of the credit did so with the assistance of an existing service provider, approximately 45%, whereas the remainder divided equally between those that engaged a specialist advisor and those that applied without external assistance.