Relief for investment in corporate trades

Part 16-00-02

This document should be read in conjunction with Part 16 TCA

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This manual refers to Part 16 TCA 1997, as it stands amended from Finance Act 2015 and all subsequent amendments. It applies to shares issued on or after 13 October 2015.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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

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1 What are the three reliefs available under Part 16?

The purpose of this manual is to provide guidance to companies on the reliefs available under Part 16 of the Taxes Consolidation Act 1997 ('TCA') for investments in corporate trades. The three reliefs are:

- Employment Investment Incentive ('EII')
- Start-up Capital Incentive ('SCI') and
- Start-Up Relief for Entrepreneurs ('SURE')

The three reliefs available under Part 16 of the TCA are all designed to help trading companies attract equity-based risk finance from an individual investor(s). Eligibility to relief in each case arises if there is:

1. A qualifying company,
2. A qualifying investment, and a
3. An investor who meets certain criteria.

The three reliefs available under Part 16 are all reliefs covered by Article 21 of EU Commission Regulation No 651/2014 of 17 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty[1] (referred to as the "General Block Exemption Regulation" or "GBER"). Many phrases used in respect of these reliefs take their meaning from GBER.

The minimum investment that can be made by an individual investor in any one company under this Part is €250 in a year of assessment. Where an investment is made through a Designated Investment Fund ('DIF') or a Qualifying Investment Fund ('QIF'), this minimum limit will not apply.

Relief for Investment in Corporate Trade ('RICT')[2] groups can raise a maximum of €5 million in any rolling 12-month period under Part 16. Therefore, if there are separate EII, SCI and SURE investments in a 12-month period, the total investment cannot exceed €5 million.

There is a life-time limit of €15 million per RICT group for relief granted under Part 16 for shares issued since 6 April 1984. This applies to the total amounts raised under EII, SCI and SURE.

[1] OJ No. L187, 26.6.2014, p. 43

[2] "RICT Group" means the company concerned, its partner businesses and linked businesses. (S489 TCA 1997)

1.1 A Summary of EII

EII is a tax incentive which provides for tax relief of up to 40% of the investment made in certain corporate trades. The EII allows an individual investor to obtain income tax relief on investments for shares in certain companies up to certain limits each tax year.

Relief under EII is available to individual investors in unquoted micro, small and medium sized trading companies. Certain activities are, however, excluded.

A qualifying undertaking can raise a lifetime maximum limit of €15m[3] risk finance utilising this incentive. There is a €5m limit on a rolling 12-month period ending with the share issue, on the amount a RICT group can raise under EII, SURE & SCI.

Investment by individual investors can be made directly in the company or through a Designated Investment Fund (DIF) or a Qualifying Investment Fund (QIF).

Due to changes in legislation, different conditions apply depending on when the investment was made. This is relevant in particular with reference to the maximum amount of investment on which relief can be claimed in a year and on whether the investment can be claimed in two tranches or upfront and all at once. This is explained in detail below.

[3] The amount of €15m is a cumulative amount that applies to the total amount of risk finance which a RICT Group may raise. (Paragraph 9 Article 21 of GBER)

2 How much can an investor claim under the EII? (s502)

2.1 Investments made from October 2015 up to and including 8 October 2019

An individual investor who has made an investment on or before 8 October 2019 can claim relief on investment up to a maximum of €150,000[4] in a year of assessment.

Relief is allowed on thirty fortieths [30/40] of the EII investment in the year in which the investment is made.

2.2 Investments up to and including 31 December 2018

Relief is available to investors on the balancing ten fortieths [10/40] of the EII investment in the fourth year after the EII investment was made. Three years after the year in which the original share issue took place, a company may submit an application to Revenue called an EII1A. On fulfilling the relevant conditions and approval of the application, the company will receive an EII certificate and enable investors claim the balancing amount for those investments that took place in the period to 31 December 2018. On receipt of a valid EII certificate from the company for the 10/40, an investor can then claim the relief in the fourth year after the original share issue took place. The shares must be held by the investors for 4 years.

These rules apply irrespective of whether the investment is made directly in a company by the individual or whether the investment is made by an individual through a DIF.

2.3 Investments from 1 January 2019 up to and including 8 October 2019

Relief is available on the balancing ten fortieths [10/40] of the EII investment in the fourth year after the EII investment was made. Three years after the year in which the original share issue took place, a company may confirm themselves that the conditions are met, initiating a Statement of Qualification ('SOQ')[5] to enable investors claim the relief for the balancing 10/40. On receipt of a valid SOQ from the company for the 10/40, an investor can then claim the relief in the fourth year after the original share issue took place. The shares must be held for 4 years.

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[4] The limit applies to the maximum amount invested under EII, SURE and/or SCI on which relief can be claimed in any one tax year.

[5] For investments up to and including 31 December 2018, what is issued to investors is known as an EII Certificate. This requires obtaining prior Revenue approval. The requirement for prior Revenue approval remains for the 10/40 for those investments made up to that date of 31 December 2018.

This applies whether the investment is made directly in a company by the individual or whether the investment is made by an individual through a DIF.

Details on claiming the second tranche of relief can be found in Section 5.4.

2.4 Investments from 9 October 2019 to 31 December 2019

An individual investor who has made an investment between 9 October 2019 and 31 December 2019 can claim relief on the investment up to a maximum of €150,000 in a year of assessment.

Relief is allowed on the full amount of the EII investment in the year in which the investment is made (i.e. 2019).

The ability to claim relief on the full amount invested on or after 9 October 2019 applies whether the investment is made directly in a company by the individual or whether the investment is made by an individual through a DIF.

For the period up to and including 31 December 2019, for those investments made via a DIF an investor can claim the relief in the year in which the DIF invests in the company or the investor may elect in writing to claim the relief in the year in which their money is committed to the fund.

Example 1:

In August 2019, Peter invested €100,000 for the issue of new shares in Company A, a qualifying company.

In November 2019, Peter invested a further €50,000 for the issue of new shares in Company B, also a qualifying company.

On receipt of the SOQ from both Company A and Company B, Peter claimed relief against his income tax liability for the year 2019 in the amount of €125,000.

Peter was entitled to claim relief on thirty fortieths (€75,000) of the August 2019 investment of €100,000.

Peter was entitled to claim the full relief on the November 2019 investment of €50,000.

2.5 Investments from 1 January 2020

An individual investor who has made an investment on or after 1 January 2020 can claim relief on investments up to a maximum of €250,000 per year of assessment.

Alternatively, an individual investor who has made an investment on or after 1 January 2020 can claim relief on investments up to a maximum of €500,000 per year of assessment, subject to the following conditions;

- An investor must 'elect' to retain those shares for a period of 7 years in order to claim the maximum relief. This election must be made at the time of the share issue.
- An investor cannot then 'opt out' of the election at a future date before the 7 years are expired without suffering a clawback of the total relief initially claimed.

This applies whether the investment is made directly in a company by an individual investor or whether the investment is made by an individual investor through a DIF.

Where an investor invests an amount greater than the maximum amount allowed in a year, the excess over the maximum allowed amount is available to carry forward against future income tax liabilities.

An election is made through the RICT Return at the time of the completion of the RICT Return by the company. It is for the investor and the company to agree on the terms of the investment prior to completion of the RICT Return and issuance of the SOQ. The SOQ will contain details of the investment duration and value.

2.6 Maximum Investment for which relief is available in a year

Date of Share Issue	**Type of Relief**	**Maximum Relief Available**	
On or Before 31 Dec 2018	EII	€150,000	
2019	EII/SCI	€150,000	
From 1 Jan 2020	EII/SCI	€250,000	
From 1 Jan 2020	EII/SCI	€500,000	See conditions set out in Section 2.5 to avail of relief at this level
ALL DATES	SURE	€100,000	

Example:

In January 2020, Brian invested €200,000 in Company C, a qualifying company. Brian elected to retain these shares in Company C for a period of 7 years.

In May 2020 Brian invested a further €150,000 in Company D, a qualifying company. Once again, Brian elected to retain these shares in Company D for a period of 7 years.

On receipt of the SOQs from both Company C and D, Brian claimed relief against his income tax liability for the year 2020 in the amount of €350,000. Brian must hold these shares until at least January 2027 and May 2027 respectively.

Example:

In January 2020, Dave invested €200,000 in Company L, a qualifying company. Dave elected to retain these shares in Company L for a period of 7 years.

In August 2020 Dave invested a further €150,000 in Company M, a qualifying company. Dave decided to retain these shares for only 4 years. On receipt of the SOQs from both Company L and M, Dave claimed relief against his income tax liability for the year 2020 in the amount of €250,000., i.e. Dave claimed the full €200,000 for Company L and €50,000 for Company M.

The remaining €100,000 investment is available to carry forward against future income tax liabilities. Relief is claimed against income for an investment in the order in which the investment is made.

Example:

In June 2020, Ashling invested €500,000 in Company S. Ashling, at the time of the investment elected to hold the shares for a period of 7 years.

On receipt of the SOQ from Company S, Ashling claimed relief against her income tax liability to the amount of €500,000.

In January 2022 Ashling decided she no longer wished to hold the shares in Company S and sold them. As the shares were not held for 7 years, Ashling no longer meets the conditions of EII and the relief availed of will be ‘clawed-back’ in full.

Example:

In January 2020, Peter invested €300,000 in Company D. Peter did not elect to hold these shares for longer than 4 years.

On receipt of the SOQ from Company D, Peter claimed relief against his income tax liability for the year 2020 in the amount of €250,000. The balance of the investment is available to carry forward against future income tax liabilities.

Example:

In February 2021, Jim invested €500,000 in Company Y. Jim elected to hold these shares for a period of 7 years.

Jim then invested a further €200,000 in Company Z in March 2021, Jim again elected to hold these shares for a period of 7 years.

On receipt of the SOQ from both companies, Jim can claim relief against his income tax liability for the year 2020 in the amount of €500,000.

The balance of the investment is available to carry forward against future income tax liabilities. Relief is claimed for an investment in the order in which the investment is made.

Example:

James invested €300,000 in January 2020 in Company Q; James elected to hold these shares for a period of 7 years.

James then invested a further €200,000 in June 2020 in Company R, however James elected to hold these shares for a period of 4 years.

On receipt of the SOQs from both companies, James can claim relief against his income tax liability for the year 2020 in the amount of €300,000.

All of the June 2020 investment is available to carry forward against future income tax liabilities. Relief is claimed for an investment in the order in which the investment is made.

Example:

Martina invested €200,000 in February 2020 in Company S and elected to hold these shares for a period of 4 years.

Martina then invested a further €300,000 in June 2020 in Company H. Martina elected to hold these shares for a period of 7 years.

On receipt of the SOQs from both companies, Martina can claim relief against her Income Tax Liability for the year 2020 in the amount of €300,000.

As explained in previous examples, relief is claimed for an investment in the order in which the investment is made. Martina must claim relief on her February 2020 investment of €200,000 in the first instance. However, as Martina has invested a further amount of €300,000 and elected to hold these shares for 7 years, she can avail of the increased maximum limit. She can only claim it to the maximum of the amount she has elected to hold for 7 years, being €300,000.

As she has already claimed relief against her February 2020 investment, that means Martina can now claim relief on a further €100,000. The balance (€200,000) of her June 2020 relief is available to carry forward against future income tax liabilities.

Example:

Pam invested through a DIF for the investments in qualifying companies in the year 2021. Pam invested €500,000.

The DIF invested €250,000 of this in Company G, for shares which are to be held for 4 years.

The DIF invested the remaining €250,000 in Company H, for shares which are to be held for a period of 7 years.

While Pam invested €500,000 through the DIF, neither of Pam's investments in a company is for an amount of greater than €250,000. Pam can claim relief to the maximum of the amount she has elected to hold for 7 years, being €250,000, but as she has already claimed relief against her earlier 4-year investment in the amount of €250,000, all of Pam's 7-year investment is available to carry forward against future income tax liabilities.

3 How can a company make a claim for EII? (s502)

3.1 Investments up to and including 31 December 2018

For those companies who have raised EII investment in the time up to and including 31 December 2018 an application for qualification must be submitted to Revenue prior to any relief being claimed by investors. This application is known as an EII1.

A company has two years from the end of the year in which the share issue took place to make this application.

For all share issues on or after 2 November 2017 and up to and including the 31 December 2018, a Form EII1 Supplemental must also be completed and submitted by the company.

This application (EII1 and EII1 Supplemental), if it receives EII Certification, will allow the investor in the qualifying company to claim relief of 30/40 of the investment upfront. **For share issues in this period, the last date on which a Form EII1 and EII1 Supplemental could be submitted was 31 December 2020.**

For shares issued up to and including 31 December 2018, on completion of the subsequent period (beginning on the date of share issue and ending three years from that date), a company can submit an additional application for the relief of the balance 10/40 of the investment. This application is known as an EII1A[6].

Example:

Company E issued EII shares on 4 December 2018. The Form EII1 (and Form EII1 Supplemental) must be submitted on or before 31 December 2020.

Example:

Company F issued EII shares on 1 January 2018. The Form EII1 (and Form EII1 Supplemental) must be submitted on or before 31 December 2020.

[6] The EII1A can be found here.

Example:

Company E, having issued EII shares on 4 December 2018, can from the 4 December 2021 submit the Form EII1A for the balance (10/40) of the investment.

On approval of the EI1A, an investor can claim the balance of the relief when the shares have been held for 4 years.

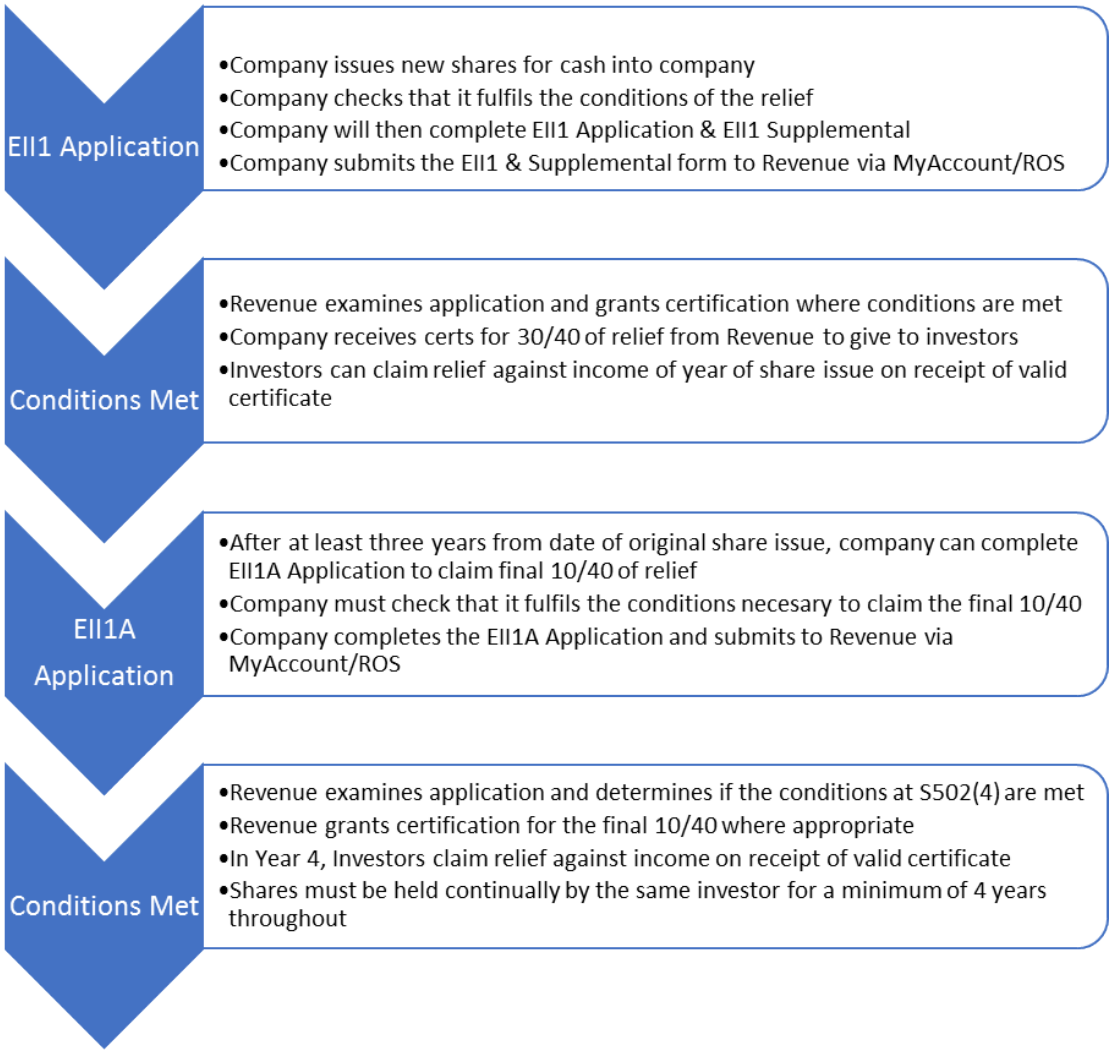

Figure 1: EII application process up to and including 31 December 2018

3.2 Investments from 1 January 2019

For those companies who wish to raise investment using EII from 1 January 2019, there is no longer a requirement to submit an application to Revenue for confirmation that the necessary conditions to avail of EII are met prior to availing of the relief. The company, upon determining the necessary requirements are met, can avail of EII by means of self-assessment, and on being satisfied that all requirements have been met, the company can issue a Statement of Qualification (SOQ) to investors to enable them avail of the relief.

For any investments made on or before 8 October 2019, an investor may only claim relief on 30/40 in the year in which the investment was made in the company and only after the subsequent period ends can they then claim the relief on the balance of the investment of 10/40.

For investments made on or after 9 October 2019 and up to and including 31 December 2021, an investor can claim relief on the full amount subscribed in the year in which the investment was made in the company, subject to the annual limit.

A company, however, must still fulfil certain obligations, as explained throughout this guidance, prior to an investor being able to claim the relief against their income tax, including that the company must have expended 30% of the amount invested on a qualifying purpose.

3.3 Investments from 1 January 2022

For those companies who wish to raise investment using EII from 1 January 2022, there is no longer a requirement to wait until 30% of the amount invested has been expended on a qualifying purpose prior to investors availing of the relief. The company, upon issuing the shares for the investment received, can issue an SOQ to an investor. The company has from the date of the share issue to 4 months after the end of the year of assessment in which the shares are issued to issue the SOQ to an investor. On receipt of the SOQ an investor may claim the relief against their income tax liability.

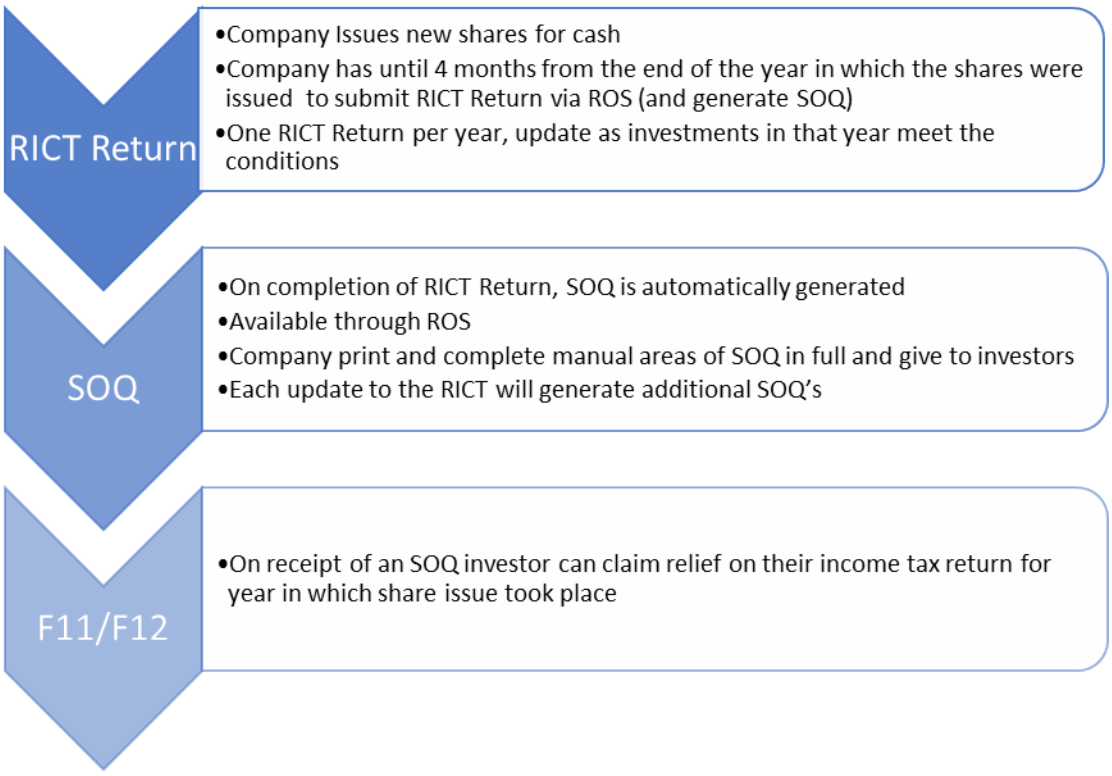

Figure 2: EII application process from 1 January 2022

Example:

Company P raised risk finance investment throughout the year 2022. The period of time in which the company has to issue the SOQ for each investment is as follows:

Date of share Issue	Date by which SOQ must be issued
1 January 2022	30 April 2023 (16 months)
30 June 2022	30 April 2023 (10 months)
31 December 2022	30 April 2023 (4 months)

4 Obligations of the Company under Self-Assessment (s508E)

4.1 Complete the RICT Return

Qualifying companies that issue 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.

For share issues prior to 1 January 2022

A qualifying company must have spent 30% of the amount raised on each share issue on a qualifying purpose before it can be included on the RICT return and before an SOQ can be issued for an investment.

A qualifying company has 60 days from the date that this 30% amount was spent in which to submit the completed RICT Return to Revenue. In limited circumstances, a company may have difficulty identifying accurately when this 30% has been spent. However, where it can be shown that reasonable efforts have been made to accurately reflect when the spend has been reached, and the other reporting requirements have been adhered to, Revenue will accept that this requirement is met.

For share issues from 1 January 2022

For share issues from 1 January 2022 a qualifying company will no longer be required to have expended 30% of the amount raised on a qualifying purpose before it can complete the RICT return and before an SOQ can be issued for an investment. On receipt of the investment and issuing of the shares for that investment, a company can complete the RICT return and in turn issue the relevant SOQ's immediately if it so chooses. The company has from the date of the share issue until the end of 4 months from the end of the year of assessment in which the shares were issued to issue the SOQ.

The RICT Return[7] must be uploaded via Revenue Online Service (ROS).

The completion and submission of the RICT Return via ROS to Revenue, will automatically generate the SOQ that a company can then give to its investors. Once the investor receives the SOQ, they can avail of the relief on their investment against their income tax.

[7] The RICT Return can be found here. Note – the RICT return is in the process of being updated to reflect the changes necessitated by Finance Act 2021

4.2 Statement of Qualification (s508A, s508B, s508C)

In order that an investor can claim relief under Part 16, the company must issue an SOQ to a qualifying investor (or to the manager of a DIF/QIF).

Without a valid SOQ an investor cannot claim relief against their income for the qualifying investment.

For share issues prior to 1 January 2022

A company cannot issue an SOQ to a qualifying investor until the company has spent 30% of the amount raised on a qualifying purpose. Also, a company cannot issue an SOQ to a qualifying investor if it is more than two years after the end of the year in which the shares were issued.

For the purposes of providing an SOQ to investors, amounts committed by the company will be treated as spent on a qualifying purpose. Where such amounts have been raised by the company, and where these funds can clearly be shown to be intended for future expenditure, Revenue will treat this as having been incurred on the date when it was actually incurred or committed. For example, a company has purchased a new truck, has a signed contract showing this purchase, but payment is not due until delivery in 6 months. Revenue will accept these funds are spent when they are committed to be spent by the company.

After the date on which 30% of the investment has been spent, a company has 60 days within which to file the RICT Return. A reasonable approach will be taken when determining when the 30% has been spent on a qualifying purpose if a company cannot readily identify it amongst other amounts spent during that time. The Business Plan together with the normal records that any business will have, should adequately demonstrate this condition being fulfilled.

Second Stage Relief – Investments made between 1 January 2019 and 8 October 2019

For investments made from 1 January 2019 up to and including 8 October 2019, a second SOQ must be provided, after the necessary time has passed, by the company to investors to allow them avail of the balance of the relief of 10/40 of their investment.

Companies that satisfy the conditions for second stage relief on investments made between 1 January 2019 and 8 October 2019 should take the following steps:

- Request a "Statement of Qualification – Second Stage Relief" online through ROS or MyAccount:
    - Under the 'My Enquiry relates to' field, select 'Relief for investment in corporate trades (RICT)'. Select "Company Query – pre 2019 EII/SURE investments".

  - Submit a request for a "Statement of Qualification – Second Stage Relief".

- On receipt of the "Statement of Qualification – Second Stage Relief", complete the relevant investment details and distribute to the investors. Where the investment was made via a DIF the "Statement of Qualification – Second Stage Relief" should be provided to the Manager of the Fund.

The company does not need to update its RICT Return. DIFs do not need to update their DIF Return.

It should be noted that it is for each company to satisfy itself that it meets the requirements for second stage relief under self-assessment. Under the above outlined process, Revenue does not certify that the conditions for relief have been met which remains a matter for the company.

On receipt of the "Statement of Qualification – Second Stage Relief", individuals who invested directly in the company may claim second stage relief. Where the investment was made by a DIF and the "Statement of Qualification – Second Stage Relief" has been issued to the Fund, the Manager of the Fund may advise subscribers to the fund that the investment qualifies for second stage relief". Investors may then claim relief using the initial Managers Certificate issued to the investor at the time of claiming the first stage of the relief. The Fund is not required to issue a further Managers Certificate.

For share issues from 1 January 2022

For share issues from 1 January 2022 a qualifying company can issue an SOQ immediately on issuing the shares. A qualifying company will have until 4 months from the end of the year of assessment in which the qualifying shares were issued to complete the RICT return and issue the SOQ to the investor.

It should be noted that a company issuing an incorrect SOQ to an investor will be treated in the same manner as if an incorrect tax return was filed. Relief that is not due will be withdrawn and, depending on the circumstances in which an incorrect return is filed, penalties, publication and prosecution may apply. Regard should be had to the Code of Practice for Revenue Audits and other Compliance Interventions. SOQ's may be reviewed by Revenue in a compliance intervention carried out in accordance with Revenue's Code of Practice. Any income tax relief which an investor claims based on an incorrect SOQ is recoverable from the company.

Example:

Company F raised risk finance investment throughout the year 2019. Qualifying investments were made in the following amounts and on the following dates in Company F:

Date of Share Issue	Amount Raised	Date 30% Spent	Total deemed spent December 2021
1 February 2019	100,000	1 July 2019	30,000
30 June 2019	150,000	31 December 2019	75,000
20 December 2019	180,000	2 December 2021	100.000
Total	**430,000**		**205,000**

Company F must complete the RICT Return for the year 2019 with details of the investments made each time that 30% of the amount invested in that year has been spent.

On the 1 July 2019, Company F had spent €30,000 of the qualifying investment on a qualifying purpose. Company F had 60 days from 1 July 2019 in which to submit a RICT Return for 2019 providing details of the investment that took place on 1 February 2019.

On successful completion of the RICT Return for this investment, SOQ's were automatically generated for the February 2019 investment, which the company could then issue to the relevant investors. The SOQs were for 30/40 of the investment as the investment was made prior to 9 October 2019.

By 31 December 2019 Company F had spent €75,000 of the qualifying investment on a qualifying purpose. Company F therefore had 60 days from 31 December 2019 in which to update the existing RICT Return for 2019 providing the additional details of the investment that had taken place on the 30 June 2019.

On successfully updating the RICT Return with details of this investment, SOQ's were automatically generated for the June 2019 investment, which the company could then issue to the relevant investors. The SOQ's were for 30/40 of the investment.

Company F did not spend any further money on a qualifying purpose prior to 31 December 2021, however they had a signed contract dated 2 December 2021 with a 3rd Party to build a new machine for €100,000. The contract specified that payment would be made for the machine in May 2022. While 30% of the funds raised in December 2019 were not spent on a qualifying purpose within the two years of the end of 2019, the company had a signed contract committing them to the purchase and to a spend of at least 30% of the total investment in 2019 and therefore they can update the RICT Return to reflect this and issue SOQ's to the December 2019 investors. The SOQ's will be for the full amount subscribed in December 2019 as this investment was made after 8 October 2019.

It is a requirement that the total amount of an investment is spent in full before the end of the relevant period.

Example:

Company J raised risk finance investment throughout the year 2022. Qualifying investments were made in the following amounts and on the following dates in Company J with the RICT Return completed and SOQ's issued as follows:

Date of Share Issue	Amount Raised	SOQ Issued	Qualifying/Non-Qualifying
1 January 2022	€100,000	1 January 2023	Qualifying
30 May 2022	€300,000	31 December 2022	Qualifying
1 June 2022	€300,000	30 April 2023	Qualifying
31 December 2022	€200,000	1 January 2023	Qualifying
31 December 2022	€150,000	3 May 2023	Non-Qualifying

Company J has 4 months from the end of the year of assessment in which the share issue occurred to issue the relevant SOQ. As the SOQ for the 2nd investment of €150,000 was not issued within 4 months of the end of the year of assessment in which the share issue took place is not a qualifying investment and relief will not be available on it.

Claiming relief on shares issued from 1 January 2019 to 31 December 2021

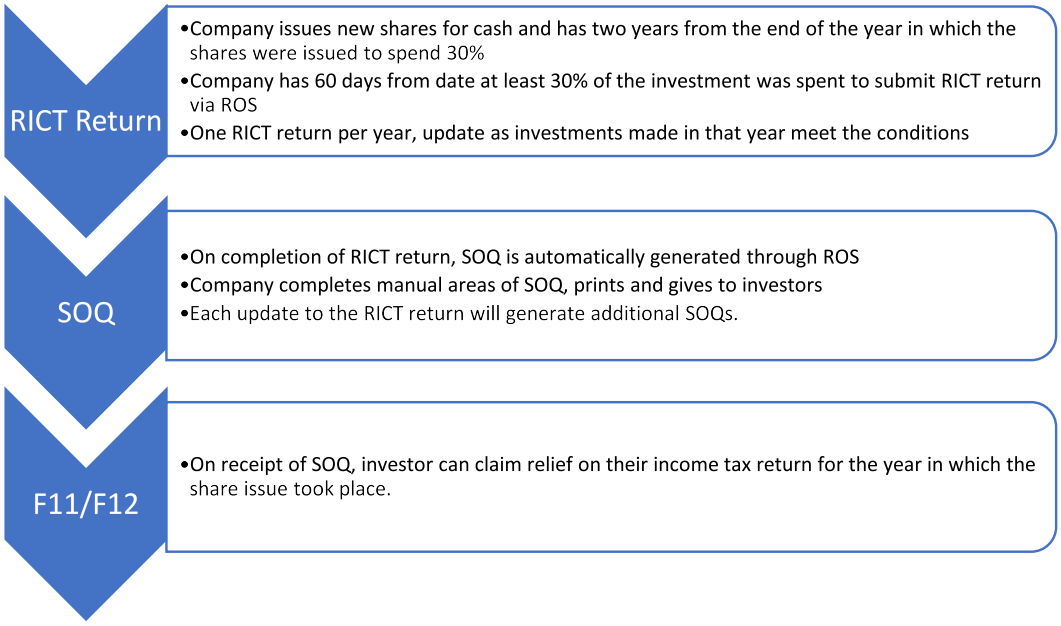

Figure 3: Process to claim EII relief from 1 January 2019 to 31 December 2021

Claiming relief on shares issued from 1 January 2022

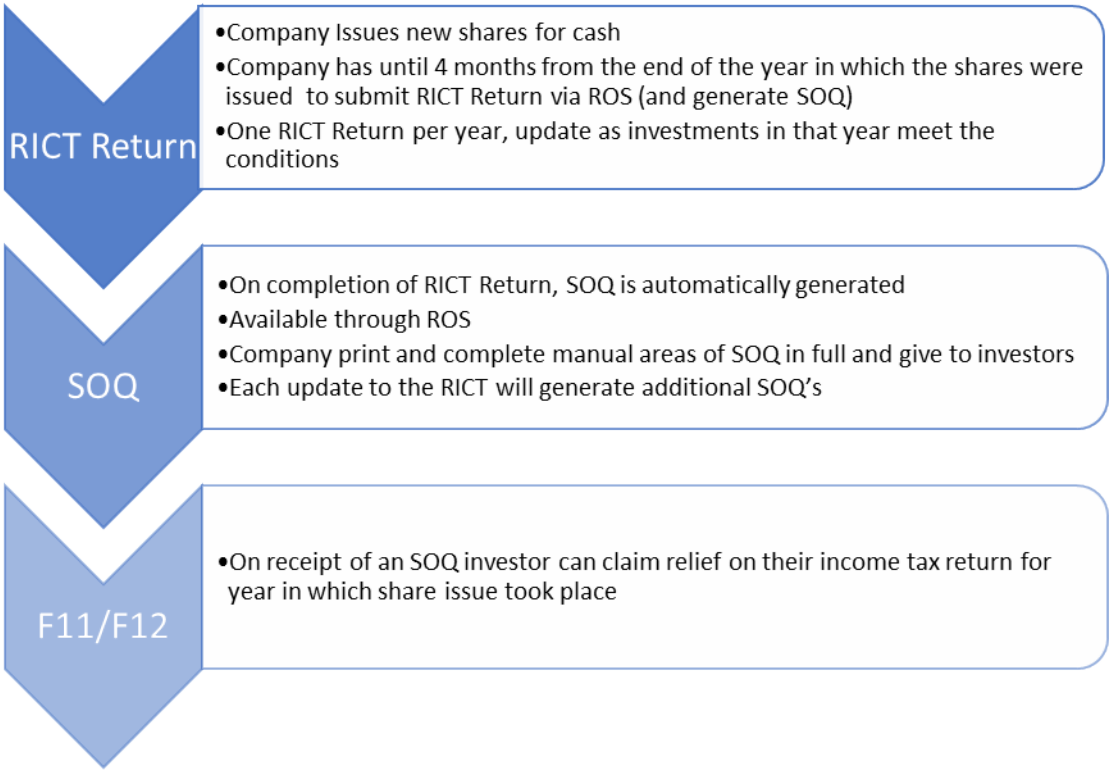

Figure 4: Process to claim EII relief from 1 January 2022

4.3 Obligations of an Investment Fund (DIF/QIF) under Self-Assessment (s508J)

Those who wish to make an EII investment may do so either directly in the qualifying company or through a designated investment fund (DIF) or a qualifying investment fund (QIF). A DIF is a fund that has been approved by Revenue. A QIF is an Investment Limited Partnership or Limited Partnership managed by an Alternative Investment Fund Manager ('AIFM'). Subsequent references to an investment fund include both a DIF and a QIF.

If the investment is made in the company through an investment fund as described above, the company carries out the same process as if an individual investor had contributed, but instead of giving the SOQ to the individual investor, the company will provide the investment fund manager with the SOQ.
On receipt of an SOQ from a company, the investment fund manager will have 30 days to provide Revenue with certain information relating to those SOQ's and investors.

The information required is set out in a Return of Information of an Investment Fund Return ('IF Return'). The IF Return[8] must be uploaded via ROS.

The IF Return on completion and submission via ROS to Revenue will automatically generate a Managers Certificate. The manager of the investment fund will provide the individual investor with the Managers Certificate showing the qualifying investments. The investor can claim relief once they have received the relevant certificate from the investment fund.

Example:
Castle Designated Investment Fund invested €1,000,000 in five separate qualifying companies on behalf of 10 investors in 2020.

Castle Designated Investment Fund invested €100,000 in Company A and €300,000 in Company B.

Company A fulfilled its reporting obligations on 30 March 2020 and issued SOQ's for the qualifying investment to the fund manager.

[8] The DIF Return can be found here. The IF Return is in the process of being drafted and a link included in due course.

The fund manager submitted the DIF Return for 2020 on 5 April 2020 to Revenue, providing details of the investment in Company A.

The fund manager can now generate the Managers Certificate for the investment in Company A. On receipt of the Managers Certificate from the fund manager, the investors can claim the portion of relief available for that investment.

On 1 July 2020, Company B fulfilled its reporting obligations and issued SOQs for the qualifying investment made by the fund of €300,000.

The fund manager updated the DIF Return for 2020 with this additional investment and can now generate the Managers Certificates for the investment in Company B to give to the investors.

4.4 Process for an individual investor to claim relief under Self-Assessment

The relief is given as a deduction from total income of an investor. It will reduce the individual's income tax liability but will not reduce PRSI or USC. On receipt of a valid SOQ or Managers Certificate, as appropriate, an investor can claim the relief by entering the amount in the relevant box on the Form 11 or Form 12 as appropriate.

For investments made directly by an individual investor in a company relief should be claimed in the year in which the investment is made.

For investments made through a DIF in the year 2019 and prior years, relief can be claimed in the year in which the funds were committed to the fund or the year in which the fund invested in the company.

For Investments made in a company through a DIF from 1 January 2020 onwards, and for investments made through a QIF, relief can only be claimed in the year in which the investment was subscribed for by the investor to the investment fund and not the year in which the fund subscribed for shares in a company.

Example:

Breda committed €10,000 to Castle Designated Investment Fund in December 2018. Castle Designated Investment Fund invested this amount in Company H on 5 March 2019. As this was an investment made prior to 1 January 2020, Breda had a choice when to claim the relief. She could have claimed the relief against her 2019 income tax. However, Breda elected to claim relief against her 2018 income tax for the investment made.

In December 2020 Breda committed a further €10,000 to Castle Designated Investment Fund. Castle Designated Investment Fund invested this amount in Company I on 5 March 2021. On the basis that this investment was made in the fund after 1 January 2020, Breda could only claim relief against her 2020 income tax for the investment.

Summary: Claim for Relief when investment made through a DIF from 1 January 2019, or through a QIF

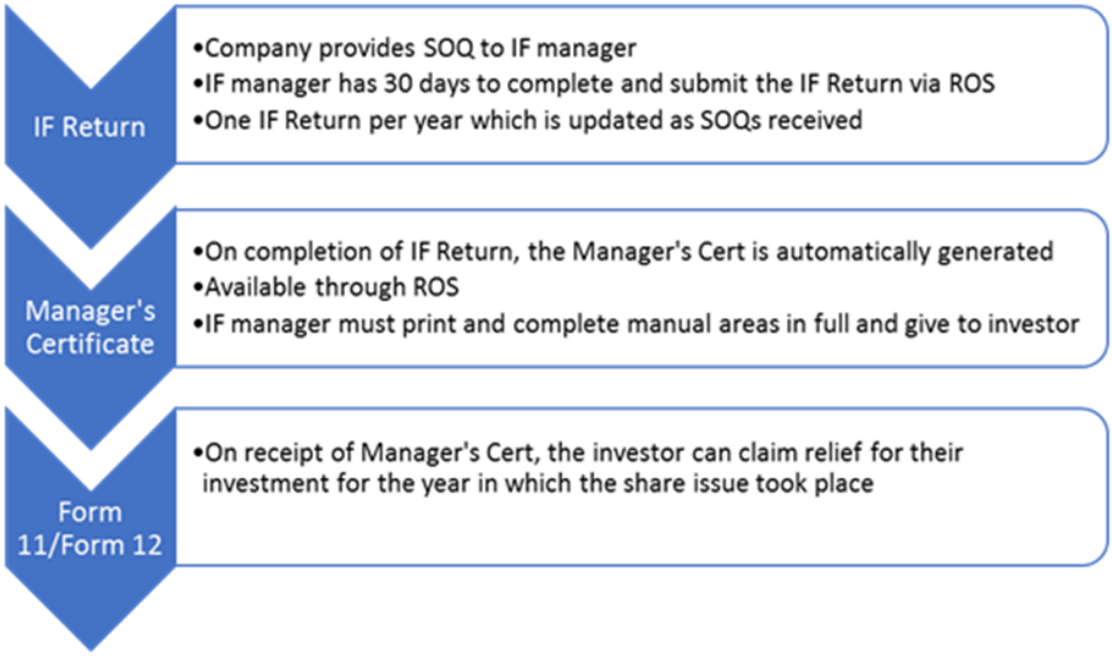

Figure 5: Process to claim EII Relief when investment made through a DIF from 1 January 2019 or through a QIF

5 Qualifying Company [s490] (Chapter 2)

In order for a company to raise funding to which relief under EII, SCI or SURE can apply, the company must be a "qualifying company".

The qualifying company in which the investment is made can either be a trading company or the holding company of a trading company. Whichever structure is chosen, the only subsidiaries in which the qualifying company can hold shares are subsidiaries which come within the definition of "qualifying subsidiaries" as set out below in Section 5.3.

5.1 Conditions of a Qualifying Company and the RICT Group

5.1.1 Conditions

On the date that the eligible shares are issued, there are a number of conditions that the RICT group and/or the company must satisfy, as follows:

1. The company is incorporated in the State or another European Economic Area (EEA) State[9]
2. The RICT group is an SME[10]

   The RICT group must be a Micro, Small or Medium-sized Enterprise. These are defined[11] as follows:

   - A medium-sized enterprise has less than 250 employees and has an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million;
   - A small enterprise has less than 50 employees and has an annual turnover and/or annual balance sheet total not exceeding €10 million;
   - A micro enterprise has less than 10 employees and has an annual turnover and/or annual balance sheet total not exceeding €2 million.
3. The RICT group is not an Undertaking in Difficulty[12]

   A RICT group, cannot be an "undertaking in difficulty" as set out in Section 8.2.3.

[9] The EEA includes all EU Member States, Norway, Iceland, and Lichtenstein

[10] A requirement of Paragraph (1) of Article 21 of GBER

[11] In Annex 1 of GBER

[12] A requirement of Paragraph (18) of Article 2 of GBER

4. Each company in the RICT group is Unlisted[13]

Each Company in the RICT group should be an "unlisted company", with no arrangements at the date the EII shares are issued to become listed in future. An unlisted company is defined as one that does not have any stocks, shares or debentures listed on the official list of a stock exchange or quoted on an unlisted securities market[14]. The one exception is that companies may be quoted on the Euronext Growth of the Irish Stock Exchange, or on the equivalent markets of other EU or EEA Member States.

5. Deggendorf Rule[15]

The RICT group cannot be the subject of an outstanding recovery order following a decision of the Commission that declared an aid illegal and incompatible with the internal market. This applies to aids granted by any Member State.

6. Tax Clearance Certificate

The company that issues the eligible shares must hold a current valid tax clearance certificate at the date the eligible shares are issued.

5.2 Conditions to be met throughout the relevant period

The relevant period in respect of any eligible shares issued by a company refers to the period beginning on the date on which the shares were issued and ending 4 years after that date.

The company and the RICT group must continue to meet a number of conditions throughout the relevant period, as set out below:

5.2.1 Residence

Throughout the relevant period the company must be either tax resident in Ireland, or tax resident in an EU or EEA Member State.

In addition, the company must either carry on relevant trading activities from a fixed place of business in the State, or, if it is carrying out research, development and innovation ('R&D+I') it must intend to carry out relevant trading activities from a fixed place of business in the State.

[13] A requirement of Paragraph (5) of Article 21 of GBER

[14] Refer to Tax and Duty Manual (TDM) Part 04-02-03 for the differences between listing and quoting on markets of a stock exchange.

[15] A requirement of Paragraph (4)(a) of Article 1 of GBER, based on Case C-188/92, TWD Textilwerke Deggendorf Gmbh v Germany, ('Deggendorf') ECR [1994], I-00833

R&D+I is a continuum of activities from innovation to research and development. Innovation is implementing a new organisation method, or a significantly improved production or delivery method. Research and development have the same meaning as in s.766 TCA[16].

5.2.2 Purpose of the company

The company in which the investment is being made must exist wholly for the purposes of carrying on relevant trading activities including R&D+I. A company that exists wholly for the purposes of carrying on a relevant trade must not carry out any other activities, other than those that are purely incidental. A qualifying company cannot carry on a business that consists both of a trade and partially of the provision of non-qualifying activities such as professional services.

Example:

Company B is a rapidly expanding company that is developing heart valves.

The company has entered into an agreement for the lease of a five-story building in January 2020. Company B currently has staff to fill 2 floors of this building. It is their intention to fully utilise the building by July 2020.

Company B enters into an agreement to short term sub-let the empty 3 floors until June 2020.

As it can be shown that this rental income being the non-qualifying activity is only for a short period of time, it would be deemed incidental and the receipt of that rental income (which is taxable under Case V) will not prevent the company qualifying.

[16] TDM Part 29-02-03 provides further guidance on R&D within the meaning of section 766 TCA 1997.

Example:

Company C is a small company of 5 staff making customised flowerpots.

The company operates from a three-story building which it has owned for a number of years. The company leases 2 stories of this building to a 3rd party on a long-term rolling contract basis, as it does not anticipate it will need more than 1 floor for its trade.

The rental income from the other 2 stories, is not incidental to its trading income. The company exists for two purposes; carrying on its trade and earning rental income. This is not permitted, and it will not be a qualifying company.

If the company is not carrying on relevant trading activities it can be a holding company. The holding company can either exist wholly for the purpose of being a holding company (that is, it must exist to hold shares in qualifying subsidiaries and it may make loans to those qualifying subsidiaries) or for the dual purpose of both the carrying on of relevant trading activities and being a holding company. If this is the case, the company may use the amounts raised in its own trade, or it may subscribe for shares in a "qualifying subsidiary", which uses the amounts raised for the purposes of its trade.

Example:

Company D is a holding company. It holds shares in Company Z which is an IT company.

Company D owns a building from which Company Z operates.

Company D and Company Z have a lease agreement, in which Company Z pays rent for the use of the building to Company D.

As Company D rents property to Company Z, it does not meet the conditions of a qualifying holding company.

5.2.3 Control

The company cannot control any company that is not a qualifying subsidiary. The company cannot be under the control of any other company, or of any other company and any person connected with that other company. A "person" refers to both an individual and a body corporate.

Control, for this purpose, has a broad meaning[17] and will apply where a person exercises or is able to exercise control, whether that is directly or indirectly. Generally, a company will be taken to have control of another company if that company:

- Holds the greater part of the share capital,
- Holds the greater part of the voting rights, and
- By virtue of their rights as a shareholder, would be entitled to the greater part of the assets on a winding up.

Where two or more companies together meet those tests, the company will be said to be under the control of those two or more companies.

Example:

It is the intention of Marble Limited to apply for EII.

The shareholding in Marble Limited is held equally by 5 other companies.

Those 5 other companies have no connections other than their individual shareholdings in Marble Limited.

Marble Limited will not be deemed to be under the control of those 5 companies for the purposes of EII.

Example:

It is the intention of Quartz Limited to apply for EII.

Stone Limited holds 30% of the shareholding in Quartz Limited.

Diamond Limited holds 100% of the shareholding in Stone Limited and also holds 25% of the shareholding of Quartz Limited.

Stone Limited and Diamond Limited are connected.

Quartz Limited will be deemed to be under the control of these companies together for the purposes of EII and therefore will not qualify for relief.

[17] Defined with reference to subsections (2) to (6) of section 432 TCA 1997.

Example:

It is the intention of Ruby Limited to apply for EII.

Catherine owns 30% of the shares directly in Ruby Limited.

Pearl Limited owns 30% of the shares in Ruby Limited.

Catherine also owns 100% of the shares in Pearl Limited.

As Catherine and Pearl Limited are connected, together, they control Ruby Limited and therefore Ruby Limited will not qualify for the relief.

Example:

It is the intention of Sapphire Limited to apply for EII.

The shareholding of Sapphire Limited is held equally by Rocks Limited and Sparkle Limited.

No connection exists between Sparkle Limited and Rocks Limited apart from their shareholding in Sapphire Limited.

Sapphire Limited will not be deemed to be under the control of the two companies together for the purpose of EII.

Example:

In February 2018 Silver Limited qualified and raised investment by means of EII. In January 2020, the entire shareholding of Silver Limited is purchased by Gold Limited

As Silver Limited is now under the control of Gold Limited it is no longer a qualifying company. It will not qualify for future EII investment while under the control of another company.

Furthermore, the relief given on approval of the 2018 investment, is now withdrawn and the amounts will be clawed-back from the 2018 investors.

7. Share capital must be fully paid up.

All companies in the RICT group must have their shares fully paid up at all times during the relevant period.

5.3 Qualifying Subsidiary [s492]

As previously mentioned, a qualifying company may have a subsidiary, but any such subsidiary must also be qualifying.

Each qualifying subsidiary must be

I. At least 51% owned by the qualifying company, and
II. The subsidiary itself is a qualifying company or carries out certain services for, or functions on behalf of, the qualifying company or its subsidiaries.

5.3.1 Subsidiary established in Ireland, EU or EEA

A subsidiary which carries on a trade in its own right must be resident in Ireland, UK or an EU or EEA State, and must carry out, or intend to carry out, relevant trading activities from a fixed place of business in the State.

5.3.2 Subsidiary established anywhere in the world

A subsidiary which solely carries out a support function of the qualifying company can be established anywhere in the world. The business of such a subsidiary must still be a relevant trading activity which can only involve:

I. Purchasing goods or materials for use by the qualifying company or its qualifying subsidiaries,
II. Selling goods or materials produced by the qualifying company or its qualifying subsidiaries, or
III. Providing services to or on behalf of the qualifying company or its qualifying subsidiaries.

Example:

Castleview Limited is an IT software development company seeking EII. Castleview Limited is resident in Ireland and operates out of a building in Kilkenny. Castleview Limited has 3 subsidiaries for which it holds 100% of the shares in each.

Subsidiary A is established in the USA and operates a sales hub through which North American orders for the software Castleview Limited have created can be ordered and customer services provided. It is providing a support function for Castleview Limited and therefore, Subsidiary A is a qualifying subsidiary.

Subsidiary B is established in France and sells mobile phones. While it is not providing a support function for Castleview Limited, it is carrying on a trade in its own right and is established within the EU and therefore, Subsidiary B may be a qualifying subsidiary, once it meets the other conditions mentioned above.

Subsidiary C is established in China and sells electric cars. Subsidiary C is established outside of Ireland, EU or EEA and is not providing a support function to Castleview Limited, therefore it is not a qualifying company.

Castleview Limited is therefore not a qualifying company for the purposes of EII as all of its subsidiaries are not qualifying subsidiaries.

5.4 Conditions to be met for Second Stage Relief

For all investments made under Part 16, in addition to the conditions that must be met throughout the relevant period, a number of conditions must be met after the subsequent period for the entitlement to the balance of the relief to be allowed in full.

The subsequent period will begin on the date shares were issued and will end 3 years after that date.

For investments prior to 1 January 2020 and on or after 1 January 2022 the conditions outlined below must be met.

If the conditions below are not met, the final 10/40 of relief will not be granted or will be clawed back, depending on when the share issue took place.

Conditions:

1. The total number of employees that the company has in the year of assessment that the subsequent period ends is greater than the total number of employees that the company had in the year prior to the year that the shares were originally issued.
   AND
2. The total amount that is paid to those employees in the year of assessment that the subsequent period ends is greater than the total emoluments paid to the employees by at least the total emoluments of one employee in the year prior to that of the year the shares were originally issued.
   OR
3. The amount of expenditure on R&D&I incurred in the year of assessment that the subsequent period ends is greater than the amount incurred in the year prior to the year of assessment in which the shares were issued.

Example:

Rain Limited issued qualifying shares in January 2019, which were held for the relevant period, being 4 years from the date of the share issue, i.e. January 2019 to January 2023.

Rain Limited in 2018 had 2 full-time employees earning €50,000 per annum each.

At the completion of the subsequent period in 2022, i.e. three years after the qualifying shares were issued, Rain Limited had 4 full-time employees.

These 4 employees still earned €50,000 per annum each.

The number of employees did increase after the subsequent period (2 full time employees in 2018, 4 full time employees in 2022) and the emoluments paid to these employees in total (2 employees earning €50,000 each in 2018, 4 employees earning €50,000 each in 2022) did also increase over the amounts paid in 2018.

Rain Limited has therefore met the additional conditions of Part 16. Relevant payroll records submitted by the company to Revenue would be examined to determine if the condition had been met.

Example:

Sunshine Limited issued qualifying shares in December 2019, which were held for the relevant period, being 4 years from the date of the share issue.

In 2018, Sunshine Limited had 1 full-time employee who earned €100,000 per annum.

At the completion of the subsequent period, in December 2022, Sunshine Limited had 3 full-time employees who earned €100,000 in total between them.

While the number of employees has increased in line with the conditions, by increasing from 1 employee to 3 employees, as there is no increase in the emoluments earned (being the same amount for the 3 employees as for the 1 employee) , Sunshine Limited does not meet the additional conditions of Part 16 and the final 10/40 of the relief is therefore not due.

5.5 Covid-19: Temporary Measures

All companies are required to meet the conditions set out above in order to avail of EII Relief in full. It is necessary for these conditions to be met 3 years after the share issue date.

For certain companies the end of that subsequent period will fall in the period from March 2020 to March 2021. Given the impact Covid-19 has had on both the Irish and global economy, Revenue acknowledges the difficulty companies may have in meeting these requirements.

Revenue have introduced a temporary measure for those companies unable to meet the conditions as set out in Part 16.

This is applicable for companies who had share issues in 2017 and/or 2018 and the 'relevant period'[18] for those share issues would end in the period from 1 March 2020 to 31 March 2021.

Where the conditions set out in Part 16, s502(4) (previously s489(10)) are required to be fulfilled by the company within the period 1 March 2020 to 31 March 2021, the company may still submit the EII1A application to Revenue as if the conditions are met. Assuming all other matters are in order, it will be processed on the assumption that the conditions will be met.

It remains a requirement that the conditions still must be met by the company. All companies who are within the category affected, will have an additional 12 months from 31 March 2021 to meet the conditions.

On submission of their application (EII1A) for the balance of the relief, the company should highlight that they intend to avail of the Temporary Covid-19 extension to meet the relevant conditions.

The exception to this is, if a company at 31 December 2019 had fewer employees or lower emoluments or less expenditure on R&D+I than it had in the year prior to the initial investment being made, then it will not be able to avail of this temporary measure.

From 1 January 2019, all applications now fall under self-assessment. Those companies availing of this extension will only be required to submit the application once. Therefore, once the company submits the application for approval, it will not be necessary to resubmit the application once the conditions are actually met. Revenue will still retain the right to confirm where necessary that the conditions are met in line with Revenues compliance programme for self-assessment.

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[18] FA18 introduced the change, that 'relevant period' is now referred to as 'subsequent period'. The conditions attached remain the same.

Example:

Mint Limited issued shares in June 2017. Mint Limited received approval for 30/40 of the relief upfront in June 2017.

While the shares must be held by the investors for four years, three years after the date of share issue, being June 2020, Mint Limited is entitled to apply to receive approval for the balance of the relief due (i.e. 10/40).

In general, Mint Limited must satisfy the relevant conditions as set out in s502(4) (previously s489(10)) by June 2020.

However, Mint Limited can avail of the temporary measures. Mint Limited may still submit its application for the balance of relief in June 2020, even if they have not met the conditions set out in s502(4) yet.

Mint Limited will have until March 2022 to meet the conditions. If it has not met the conditions at this time, the relief for the 10/40 will be clawed back.

6 Use of Investment: Qualifying Purpose [s496]

The company must use the amounts raised for a 'qualifying purpose' within the relevant period (4 years of the share issue). To come within the meaning of a 'qualifying purpose' the amounts must be:

a) For the purposes of carrying out relevant trading[19] activities, or
b) Where it has not commenced trading, to carry out such relevant activities, on research, development and innovation ("R&D+I").

"Relevant trading activities" includes most trades. However, the following are specifically excluded:

i. Once off trades,
ii. Dealing in commodities, shares or other financial assets,
iii. Financing activities,
iv. The provision of professional services, which means:
    I. Services of a medical, dental, optical, aural or veterinary nature,
    II. Services of an architectural, quantity surveying or surveying nature and related services,
    III. Services of accountancy, auditing, taxation or finance,
    IV. Services of a solicitor, barrister or other legal services and
    V. Geological services,
v. The occupation of woodlands
vi. Operating or managing hotels, guest houses etc, unless the activity is a tourist traffic undertaking
vii. Operations carried on in the coal, steel or shipbuilding sectors, and
viii. The production of films (within the meaning of section 481).

Amounts raised cannot be spent on buying a trade or shares in a company (other than subscribing for shares in a qualifying subsidiary).

A qualifying purpose does not include using the funds on the purchase directly or indirectly of an interest in another company, so that that company then becomes a qualifying subsidiary. It cannot be used to purchase a further interest in a qualifying subsidiary. It also cannot be used to purchase either directly or indirectly a trade.

Any intention to raise investment must be supported by a Business Plan that existed prior to any such funding being sought.

[19] TDM Part 02-02-06 provides guidance as to what may constitute a trade.

The amounts raised must be utilised by the company for a qualifying purpose. If the amount invested was only partially spent on a qualifying purpose, then only that part will qualify for relief. If the company has multiple sources of funds, and spends those funds on both qualifying and non-qualifying purposes, then the following provisions should be applied to determine whether or not the amounts raised from the issue of eligible shares were spent on a qualifying purpose:

- If any of the non-Part 16 sources of funds are specified to be used for a specific purpose, e.g. a bank loan taken out specifically to build a factory, then these specific funds should be allocated to that purpose. Risk finance, being in this case EII, cannot be raised to pay for something for which finance has already been sourced or granted.
- Any available non-Part 16 funds not so allocated should be spent on non-qualifying purposes in priority to qualifying purposes.
- Where both non-Part 16 source of funds and Part 16 funds are being spent concurrently, subject to the above two conditions and only for the purposes of 30% of the amounts invested being spent within the required timeframes, it will be deemed that Part 16 funds are spent in the first instance.

The normal books and records that any company is required to keep are sufficient for the purposes of identifying the source and purpose of funding. Equally if a company has other documents that they believe will evidence the purpose and source of funding, that documentation will be considered where appropriate, for example board meeting minutes.

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

- Purchase of stock,
- Paying for light and heat,
- The purchase of fixtures and fittings or plant and machinery,
- The purchase of premises from which the trade will be carried on,
- The extension on the company's premises,
- Creation of employment.

In general, if the expenditure is not expended in the carrying on of the actual trade of the company, it is non-qualifying. The following are some example of what will not be considered a qualifying purpose:

- Fees associated with raising equity risk finance
- Finance fees associated with DIFs
- Payment of fees associated with raising other sources of financing
- Making distributions
- Placing the investment into a sinking fund or holding in escrow for the purposes of paying other debt

Revenue does not require a business to keep documentation in addition to the normal records that a company is required to keep, to show the breakdown of what is spent on a qualifying and non-qualifying purpose. The normal records of any business that may be useful include for example; bank statements, invoices, loan agreements and contracts.

A company must be cognisant of the requirement to have an adequate Business Plan to support the investment being sought under Part 16. It stands to reason that a Business Plan that would be deemed appropriate for the purposes of raising risk finance in the first instance, would also adequately demonstrate what purpose the funds are being utilised for. Once the existing documentation can reasonably demonstrate that any funds raised for the purposes of Part 16 have been spent on a qualifying purpose or have been committed to being spent on such a purpose it will be accepted.

Example:

Corona Limited was incorporated in January 2019 and it intended to begin trading in June 2019.

Corona Limited required funding from various sources and prepared a detailed business plan outlining the necessity for this funding and it's intended purpose.

Corona Limited had successfully applied for and been granted a loan of €500,000 from the bank to build its business premises which will cost €1,000,000.

The business plan of Corona Limited required equity investment of €1,000,000 and stated it was for the purposes of building its business premises.

Only €500,000 of this would qualify under Part 16 as there is no requirement for the full additional €1,000,000 as they have already received a loan of €500,000 for this purpose.

Example:

Corona Limited in the same business plan stated that it required further equity investment in the amount of €200,000 to purchase the machinery to carry out its trade. They are unable to get any other funding to purchase this equipment. This would qualify under Part 16.

6.1 Extra requirements for certain activities: Industry specific rules [s491]

Internationally traded financial services

A company that carries out internationally traded financial services will only be a qualifying company if it has been given a certificate by Enterprise Ireland that the activities are of a kind specified in the Schedule to the Industrial Development (Service Industries) Order 2010[20].

Tourist Traffic undertaking

A company that carries out tourist traffic undertakings will only be a qualifying company if those activities have been approved by the National Tourism Development Authority[21].

Green Energy Activities

Green energy activities are activities undertaken with a view to producing energy from renewable sources. Such companies, for the purposes of EII, SCI and SURE, are deemed to start trading when they apply for the grid connection agreement.

[20] S.I. No. 18 of 2010

[21] http://www.failteireland.ie/Supports/Identify-Available-Funding/Employment-Investment-Incentive.aspx

7 Qualifying Investment [s496] (Chapter 3)

A qualifying investment is an investment in eligible shares in a qualifying company where the funds are used for a qualifying purpose. The investment must be based on a business plan, and there are a number of additional rules which apply depending on whether this is the first, or subsequent, funding raised by a company.

7.1 Eligible shares [s494 and s495]

Eligible shares must be new shares issued by the company for a cash investment. They may be redeemable shares, which carry preferential rights to a dividend and preferential rights on a winding up. There can be no other terms of the shares, or agreements made with the investor, which substantially reduce the risk that the investor will get their capital back or any expected dividend.

The shares can be converted into ordinary shares in the event that they are not redeemed, provided that the terms of the conversion are reasonable.

If the investment is made in shares by means of a Nominee[22], then all reporting obligations of that Nominee as set out in s892 and s894 TCA 1997 must be carried out as required. For shares issued from 1 January 2019, if these reporting obligations are not met, the shares are not eligible shares.

It is the responsibility of the companies to ensure that this obligation is met.

Relief under EII cannot be given on converted director's loans, or on shares awarded in lieu of wages, or for no consideration.

Example:

The founder shareholders of Company T entered into a Put/Call option with EII investors upon their investment in 2019 for new shares in the company. The option stated that the EII investors would dispose of their EII shares to T Limited after 4 years. These are not eligible shares.

[22] TDM Part 38-03-13 sets out the obligations that must be fulfilled

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

[…]

8 Qualifying Investment and the General Block Exemption Regulations ('GBER')

Article 21 of Commission Regulation No 651/2014 of 17 June 2014 declares certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (referred to as the "General Block Exemption Regulation" or "GBER").

State aid is an advantage in any form given on a selective basis to undertakings by national public authorities.

EII is a State aid. State aids require notification to the Commission by virtue of Article 108(3) of the Treaty. However, certain categories of aid subject to certain conditions may be exempted from such notification, and aid granted in the form of EII is such a category. However, the conditions which must be met are set out in GBER.

As previously set out, a qualifying investment is an investment in eligible shares in a qualifying company where the funds are used for a qualifying purpose.

The first time that a RICT group raises EII, SCI or SURE it will either be as an "initial risk finance investment", for start-up companies, or as "expansion risk finance investment", for those looking to move into a new product or market.

Subsequent rounds of investment can be raised by the RICT group, either where they were foreseen in the business plan for that first round of funding, known as "follow-on risk finance investments", or where the group is expanding into a new product or market, known as "expansion risk finance investment".

8.1 What is a RICT Group? [s489]

A RICT group is made up of a qualifying company and all of its partner businesses and linked businesses and any businesses that were its partner or linked businesses at any time. As the concept of an undertaking is activity based and not status based, consideration must be given as to whether it is engaged in an economic activity. An individual or company (any natural or legal person) with the intention to provide or already providing a service (economic activity), irrespective of its legal form, it is deemed an undertaking. Consideration must be given to all undertakings that may benefit directly or indirectly from the investment. This will include those self-employed, family businesses and partnerships.

The identification of the RICT Group is a condition to be met that is separate to the 'control' conditions set out already in this manual.

Linked Businesses[23]

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

(a) One business holds the majority of the voting rights in the other business,
(b) One business can control the board of the other business,
(c) One business has a right to exercise dominant control over the other because of a contract or because of something in the business' constitution, or
(d) One business, which is a shareholder in another business, can actually control that other business because of a shareholder agreement.

Partner Businesses[24]

Two businesses are considered partner business where they are not linked businesses and where one business (either solely or along with one or more linked businesses) holds 25% or more of the share capital or voting rights of another business.

Example:

Queen Limited is seeking to raise risk finance investment. Dame Limited holds 30% of the shares in Queen Limited.

An individual, Ashling Allen, holds the balance of the shares in Queen Limited.

Dame Limited trades as a confectionary maker. Queen Limited will make high-end furniture.

As the shareholding by Dame Limited in Queen Limited is a direct shareholding, it does not matter what market they operate in. They will form part of the same RICT group with Ashling.

[23] Defined in Annex 1of GBER

[24] Defined in Annex 1 of GBER

Example:

Leisurewear Limited is a newly incorporated company and it intends to raise equity investment by means of EII.

The company creates high-end leisurewear. The company is held 25% by Larry Lemon, 30% by Susan Ryan, 10% by Tophats Limited and 35% by Coattails Limited. There are no other shareholdings held by any of the mentioned shareholders.

There are no links to each other aside from through Leisurewear Limited. The RICT group is made up of Leisurewear Limited, Larry Lemon, Susan Ryan and Coattails Limited. Tophats Limited is not part of the RICT Group as its shareholding in Leisurewear Limited is less than 25%.

Natural Persons Test

Consideration must be given to whether (a) to (d) of the 'linked' business conditions would apply if the relationship was traced through a natural person, **or a group of natural persons acting jointly.** Where a relationship is traced through a natural person, or a group of natural persons acting jointly, the businesses will only be linked where the two businesses are in the same or adjacent markets. Businesses operate in adjacent markets if they are operating in the market directly downstream or upstream of each other, e.g. in customer/supplier markets, regardless of whether or not there is a customer/supplier relationship. Therefore, an actual relationship does not need to exist, only the potential that such a relationship could exist will render the businesses to be linked. The 'Natural Persons Test' is only applicable to 'linked' businesses, it is not applicable where the company is a 'partner' business and therefore there is no requirement to trace through a 'natural person' for the partner business test.

Example:

Trains Limited is seeking to raise risk finance investment. Trains Limited will operate as an online travel agent.

Dave Davidson will hold 100% of the shareholding in Trains Limited. Dave has a small sole trade that sells airline tickets on behalf of a number of airlines.

As the market in which Dave operates as a sole trader would be deemed to operate in the same market as Trains Limited, the RICT group is made up of Trains Limited and Dave's sole trade business. Trains Limited is linked to Dave's sole trade business through a natural person, being Dave.

Example:

It is the intention of Trinity Management Limited to raise equity risk finance by means of EII. The trade of Trinity Management Limited is making clocks.

Peter Piper holds 100% of the shares in Trinity Management Limited. Peter Piper holds 100% of the shareholding in Faces Limited. Faces Limited trades in repairing clocks.

The business of Faces Limited would be considered operating in an adjacent market to Trinity Management Limited. Trinity Management Limited and Faces Limited are linked through a natural person, being Peter. Therefore, the RICT group is made up of Trinity Management Limited and, through Peter Piper, Faces Limited.

Example:

Athomeworkouts Limited is a newly incorporate company selling gym equipment for home use. It is held 35% by Gymgoers Limited, 55% by Tommy Sharp and the remaining 10% is held by Lycra Limited.

Tommy Sharp also holds 100% in Zoom Limited. Zoom Limited sells high-end toy cars.

The RICT group is made up of Athomeworkouts Limited, Gymgoers Limited and Tommy Sharp. Tommy Sharp, a natural person holds 100% of the shares in Zoom Limited. However, Zoom Limited does not operate in the same or adjacent market and therefore is not linked with the RICT group and does not form part of the RICT group.

Example

Tim and Tom are brothers.

Tim operates Eat Company Limited a chain of grocery stores throughout Ireland. He is the 100% shareholder.

Tom operates Fresh Company Limited a fruit and vegetable wholesale company throughout Ireland.

Tim intends to raise EII investment. Tim and Tom are not involved in the company owned by the other. For the purposes of EII, Tom and Fresh Company Limited will not form part of the RICT Group.

Example

Susie and Barry are married. Susie has recently set up a car sales company, called Drive Limited. Susie holds 55% of the shares in this company.

A company called Cycling Limited holds the other 45% of the shares. Barry, Susie's husband holds 100% of the shares in Cycling Limited. Cycle Limited is a 'linked' business, while not having a majority of the shareholding, it meets one or more of the other relevant conditions.

Barry also holds 100% of the shares in a company called Parts Limited. Parts Limited, sell car parts.

As Parts Limited traced through a natural person (Barry) operates in an adjacent or same market as Drive Limited, it must also be included in the RICT Group.

Exception

In certain circumstances a business may be deemed as not having any partner business, even if the 25% thresholds are exceeded by certain investors[25]. That is only if those investors either individually or jointly are not linked within the meaning set out above to the enterprise and it is deemed that no dominant influence would exist for such investors if they are not involving themselves directly or indirectly in the management of the company.

8.2 What is the significance of a RICT Group?

The RICT group must be considered when deciding if EII can be availed of. It must be examined in the context that the investment granted cannot deny State aid of its practical effect, being that it must be clear that the aid given goes to those it was intended for.

[25] The types of investors referred to here, can be found at Paragraph 2 Annex 1 of GBER

Once the RICT group has been identified the provisions within GBER must be applied to that RICT group in totality. These include:

- Determining whether the RICT group meets the definition of an SME, which would include meeting the employment and turnover criteria necessary to meet this definition.[26]
- Determining the age of the RICT group for the purposes of meeting the criteria of Paragraph 5 of GBER.
- Determining Undertaking in Difficulty, whether it needs to be applied and what elements it applies to.
- Determining whether the Business Plan adequately supports the 'initial', 'follow-on' or 'expansion' investment.

8.2.1 Is it an SME?

As already defined under Section 5.1.1**.**

8.2.2 How old is the RICT Group?

Paragraph 5 of GBER sets out a number of conditions which a company must fulfil in order to avail of EII. The conditions are as follows:

An Undertaking, known as a RICT Group for EII, which at the time of the initial risk finance investment is an unlisted SME and fulfils at least **one** of the following conditions:

(a) They have not been operating in any market;
(b) The have been operating in any market for less than 7 years following their first commercial sale;
(c) They require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years.

Example:

Glam Limited was incorporated in March 2020. It creates a detailed business plan detailing the need to raise equity risk finance in order to purchase a premise from which to operate.

Glam Limited have not operated in any market prior to March 2020. Subject to an adequate business plan, the company would fulfil the criteria of Paragraph 5(a) of GBER.

[26] Annex 1 of GBER provides the data that must be used.

Example:

Hair Limited was incorporated in January 2013. It engaged in R&D for 12 months and did not release its product to market until January 2014.

It made its first sale in June 2014. The company sought to raise risk finance for the first time in March 2020.

While the company has been in existence for a period greater than 7 years (Jan 2013 to March 2020), because it did not actually make a commercial sale until June 2014 (less than 7 years ago), subject to an adequate business plan, the company would fulfil the criteria of Paragraph 5(b) of GBER.

Example:

Nails Limited, a nail salon was incorporated in January 2010 and began to trade immediately with their first sale in March 2010. There are no other companies in the RICT Group.

In January 2019, Nails Limited identified a gap in the market and decided it would expand into selling designer sunglasses. The company prepared a viable business plan to support this expansion and identified that they would require €50,000 equity risk finance initially to be able to support this expansion.

Nails Limited calculated that their average turnover in the 5 years preceding 2019[27]amounted to €80,000. As the €50,000 needed is greater than 50% of the average annual turnover for that previous period of 5 years, the RICT Group would fulfil the criteria of Paragraph 5(c) of GBER.

Example:

Ryan has operated a farm for over twenty years as a sole trader. In January 2020, Ryan decides to incorporate the farm as a Limited company; Cows R Us Limited and invest €20,000 to purchase a new tractor.

The conditions of Paragraph 5 of GBER are applied to Ryan as a sole-trader and Cows R Us Limited. As Cows R Us Limited (as Ryan) has operated previously and for more than 7 years and is not expanding into a new product or market, the company would not fulfil the criteria of Paragraph 5.

[27] Annex 1 of GBER provides the data that must be used

8.2.3 Is the RICT Group an Undertaking in Difficulty

The RICT group will be considered an "undertaking in difficulty" when, without intervention by the State, it will be at significant risk of going out of business in the short or medium term. An undertaking is considered to be in difficulty if at least one of the following circumstances occurs:

(a) In the case of a limited liability company, where more than half of its subscribed share capital and share premium has disappeared as a result of accumulated losses. This is the case when the deduction of accumulated losses from reserves (and all other elements generally considered as part of the company's own funds) leads to a negative cumulative amount that exceeds half of the subscribed share capital.

(b) In the case of an unlimited company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

The above tests must be applied immediately before the issue of shares to which the Part 16 relief may apply. The tests do not have to be applied to a RICT Group that is less than 3 years in existence.

8.2.4 Financial Intermediary

If it is less than 7 years since the RICT group made its first commercial sale, and only if the raising of finance is facilitated by a financial intermediary which is regulated as an investment firm (MiFID)[28], or as an investment business firm authorised[29] to provide investment advice, by the Central Bank of Ireland, then different rules may apply. Such a RICT group will not be treated as an "undertaking in difficulty" if, having carried out investment research and financial analysis, the regulated firm satisfies itself that the investment opportunity is of sufficient standing to present to its advisory clients.

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[28] Under Regulation 5(2) European Union (Markets in Financial Instruments) Regulations 2017 [SI No. 375 of 2017]

[29] Under the Investment Intermediaries Act 1995

Example

City Fund have raised investments from private investors and are seeking to make EII qualifying investments in Ham Limited.

In the prospectus provided by City Fund to its private investors, it is clearly stated that investors cannot rely on the Investor Memorandum and that investors must seek their own financial advice.

Therefore, City Fund cannot be viewed as a financial intermediary for the purposes of the 'Undertaking in Difficulty' test.

Example

Butter Limited are seeking investments through a number of private equity funds. The investments of one of these funds will be made with a view to qualifying for EII.

As with the previous example, the Investor Memorandum of the fund seeking EII, states that the individual investors must seek their own independent financial advice and no due diligence has been carried out by the fund regarding the investment.

However, a fund also investing in Butter Limited but with no involvement with the EII investors, has carried out due diligence and is regulated as an investment firm by the Central Bank.

Butter Limited cannot deem the regulation of the second and non-EII fund sufficient for the purposes of the 'Undertaking in Difficulty' test. The investment firm carrying out such due diligence must be linked to the EII investment with the work done on behalf of the EII investors.

8.2.5 Accounting Treatment for Undertaking in Difficulty

Irish generally accepted accounting principles ('GAAP') sometimes allow companies to make choices in the preparation of their accounts. A more prudent method of accounting will often be chosen by Irish companies. This more conservative approach may contribute to the status of an entity as an undertaking in difficulty. In applying the test set out in (a) or (b) of Section 8.2.3 above, companies should consider any conservative accounting choices that may have been made and whether the possibility existed for an alternative, less conservative method to be considered.

If it is the case that a less conservative alternative exists, Revenue will not require the company to restate its accounts. Revenue will accept a signed statement by a registered auditor that it would be possible to restate the accounts. To be accepted, such a statement must include the amended figures and supporting adjustments, as well as the applicable Accounting Principles under which it is being applied.

Examples

Did the company choose to expense R&D when that R&D also met the conditions for capitalisation?

Is the company carrying fixed assets at historic cost when it would be acceptable to revalue them?

Does the company have deferred income?

8.3 Is the business plan sufficient?

As previously mentioned, a qualifying investment is an investment in eligible shares in a qualifying company where the funds are used for a qualifying purpose. The investment being sought must be based on a business plan, and there are a number of rules that apply to the business plan – the specific rules depend on whether it is the first or subsequent rounds of fund raising by a company.

9 The Business Plan [s496(4)][30]

Paragraph 14 of Article 21 of GBER sets out what must be in existence when risk finance is sought. A RICT Group seeking to raise risk finance must have a viable business plan. The business plan must be in writing. It must contain details of the products, sales and profitability development, and it must establish the financial viability of the investment.

A business plan must at a minimum include a description of how the money raised is to be used, and it should include cash flow projections showing the receipt of any funding and how that funding is to be spent. If there are to be multiple rounds of investment sought, over a period of years, each round should be given the same consideration in the business plan and sufficient detail provided to satisfy the necessity for the investment. It is not enough to simply state future investment will be sought.

A business plan should reflect the need to spend money on a particular purpose in order to carry on the business. There should be a genuine necessity for the investment sought.

It is not how the document is described which is important, but rather its contents. It is also noted that the same business plan may serve a number of purposes. An investment memorandum can be used as a business plan where it contains sufficient information: not all investment memorandums are sufficiently detailed. Equally the same business plan may be presented to Enterprise Ireland for funding and used to raise funding from family (under SCI) and/or other parties.

9.1 Informal Business Plans

For share issues on or after 13 October 2015, there has been a requirement that the EII, SCI or SURE investments are made on foot of a viable business plan.

If an entity first raises investment under SURE, it must ensure that if the intention is to raise further risk finance investment via EII or SCI, it should have a business plan that will sufficiently support this. That business plan should exist at the time the SURE investment is being sought and reflect all elements of investment being sought.

Prior to 13 October 2015, where it may be the case that the original investors are close to the company, it is accepted that business plans, in the past, may have been less formal than those required to raise funding through the Business Expansion Scheme ('BES') or EII from 3rd party investors. In such cases

[30] Based on Paragraph 14(c) of Article 21 of GBER

consideration can be given to other supporting documentation which might broadly be considered as part of the original business plan at that time, for example communication with Enterprise Ireland, or other possible investors. However, the plans must still be fully formed. That is, for example, extracts of diaries which show the amount to be raised may be useful, provided there is also consideration of how those amounts are to be invested, and provided the activity now being undertaken matches that envisaged.

Regardless of the format or layout of the business plan, a business plan cannot be a vague document. The business plan must match the fundraising requirements with how the capital raised is to be used. Simply stating that €500,000, for example, might be sought under EII is not the same as a viable business plan showing the need to raise €500,000 for a particular purpose. A simple expression of intent to fundraise without a matching considered approach of how that money would be invested in the business would not constitute a business plan supporting the need for the investment. A business plan which shows EII funding to be raised and a corresponding increase in cash will not meet this requirement.

Where there are larger investors, or fund investors, they may have based their decision to invest on more than the published business plan. In those cases, any documents upon which they relied when making their investment decision can be considered in the whole with the more widely circulated plan (for example that included in the investment memorandum).

9.2 Initial risk finance investment [s496(5)][31]

Many companies who seek to raise EII, SCI or SURE supported funding, do so in tranches. That is, they embark on a fundraising round over a number of months. Shares are usually issued at the end of the fundraising round, but there may be occasions where the shares are issued as the amounts are invested. The initial risk finance investment will be the initial round of fund raising, whether the shares are issued at the end, or throughout that fundraising round. It should be noted that the shares should be fully paid up at all times throughout the relevant period. At the time the initial shares are issued, it must be less than 7 years since the RICT group made its first commercial sale.

For the purposes of an initial risk finance investment the RICT group will comprise of the qualifying company and any RICT group that the company is part of. It will include any company that was at any time part of a RICT group with the

[31] Based on Paragraph 5(a) and (b) of Article 21 of GBER

qualifying company or its subsidiaries. A RICT Group cannot enter into a scheme or arrangement that would artificially create a group that fulfilled this criterion.

Example

Company Y was incorporated and began to trade in January 2018. There were no other companies in the RICT Group. The company prepared a detailed business plan, which, provided both financial information and a detailed description of what the investment was to be used for, clearly identified the need to raise finance from a number of sources.

The business plan was prepared prior to any investment being sought. The business plan stated that in mid-2018 the company intended to raise €300,000 to purchase equipment. The €300,000 would be deemed 'initial risk finance investment'.

9.3 Follow-on risk finance investment [s496(7)][32]

If a RICT Group wishes to seek further funding rounds, and has previously raised risk finance, such as BES, SURE, EII or SCI, those further rounds are known as follow-on risk finance.

The possibility of raising that follow-on investments must have been foreseen in the original business plan.

The first round of funding (being either the initial or expansion risk finance investment) must have been eligible shares issued on or after 6 April 1984 in respect of which relief under EII, BES, SCI or SURE was available. Furthermore, that first round of funding must meet the current definitions of 'Initial risk finance investment' or 'expansion risk finance investment', as the case may be.

It is often the case that while an investment can genuinely be foreseen in the documents prepared, the events may not occur in the exact format or timeline that was envisaged. It is for this reason that it is extremely important that the business plan is sufficiently descriptive, supported robustly with a narrative and financial projections, and it can still be seen that it did foresee the need for the investment.

[32] Based on Paragraph (6) of Article 21 of GBER

Example

The business plan of Company Y also detailed the intention to raise future rounds of investment over the following 5 years and set out detailed analysis of the necessity for this to be funded via risk finance investment and the purpose of those future rounds of investment . These future rounds would be deemed 'follow-on risk finance investment'.

9.4 Expansion risk finance investment [s496(6)][33]

A RICT Group, in its lifetime, may wish to expand into a new product or geographic market and may raise 'expansion risk finance'. The business plan, prepared to raise investments to support this 'expansion' into a new product or market, is the business plan that must show the amount to be raised. While the business plan to support 'expansion risk finance investment' must contain the same information as that discussed above, a new business plan is necessary to support the 'expansion risk finance'. That new business plan for the 'expansion risk finance' will then be viewed as the original business plan for investments sought for that expansion.

When seeking expansion risk finance the business plan must show that the initial amount of risk finance amount raised as expansion risk finance is greater than 50% of the average annual turnover for the last 5 years.

If a company cannot fulfil the criteria set out in Paragraph 5(a); **"they have not been operating in any market"** or 5(b); **"they have been operating in any market for less than 7 years following their first commercial sale";** it is then that it can consider whether it would meet the conditions set out under 5(c); **"they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years."**

This type of funding can be the first time that the RICT group has raised equity to which EII, SURE or SCI will apply, or it could be a RICT group that previously raised such equity but is now expanding into a new product or market.

[33] Based on Paragraph 5(c) of Article 21 of GBER

The content and quality of the business plan is key in demonstrating successfully that it is 'expansion risk finance'. Given the specifics of each individual case, where a business plan provides sufficient details, highlighting that the company is seeking finance for expansion into either a new geographic market or the creation of a new product it will prove very helpful in demonstrating that it is genuine 'expansion'. The business plan should have a detailed narrative, supported by well thought out financial information, both of which will be helpful in providing a clear picture of the expansion to take place and for which EII is sought.

9.4.1 New Geographic Market

When determining whether there is a new geographic market, it is not simply the case that a new country is automatically considered a new geographic market or that a new area within an existing country is not considered a new market. Each scenario is different, and consideration will be given to the reality of the change and a common-sense approach applied to the fact pattern. Some considerations that should be given are whether there would be a substantial difference made to the customer base and the potential for other customers to access the product.

Example

Fly-Time Limited is an online travel agent. As it is an online platform, it is accessible to all regions throughout the world via its website.

It currently only offers holidays taking place throughout Ireland. In 2021 Fly-Time Limited have decided to start offering holidays to locations throughout France also.

This would not be considered expansion into a new geographic market. The possibility to avail of their service was already available worldwide via their online platform, adding a new 'line' is not considered expansion into a new geographic market.

It is simply giving the existing customer base more choice. The customer base always existed; they just may not have chosen to holiday in Ireland. It may, however, be considered a new product.

Example

Beans Limited is an exclusive coffee brewer. It only offers bespoke coffee-to-go in their Dublin store.

They do not offer an online retail service or a delivery service. In 2021 they decide to set up a new store in Donegal. The new store will offer the same service as the Dublin store; coffee-to-go.

As this now makes their product available to a substantially different customer base than the Dublin store, it would be considered a new geographic market.

Example

Sleepy Limited is a chain of coffee shops offering coffee-to-go services from their chain of stores situated throughout Dublin city centre. In 2021, they decide to expand to open additional stores around Dublin city.

As the product is already readily available and accessible to people throughout Dublin, and the potential customer base is remaining unchanged, simply that the same customers may now have more opportunity to get the product.

This would not be considered a new geographic market. It is simply a growth in an existing market as the availability of the product was reasonably still there for the same customers.

Example

Sunshine Limited creates a range of sunglasses. They currently retail their product in their own stand-alone store in Ireland.

In March 2021 they are successful in winning a contract for the largest retail outlet operating a chain of outlets throughout Ireland and the UK. As this would make their product available to a new customer base that may not all readily have the opportunity to shop in their own store it would be acceptable as a new market.

9.4.2 New Product

While it is not the case that Revenue will automatically take a different NACE (Nomenclature of Economic Activities) code classification as confirmation of a new product, as a starting point, consideration may be given to the NACE code. This is the European statistical classification of economic activities. Regarding NACE codes, GBER states that 'the same or a similar activity' means an activity falling under the same class as set down in Regulation (EC) No 1893/2006.

It may however be accepted that in certain circumstances a product that remains within the same NACE code or same class of NACE code would be considered a new product for the purposes of raising risk finance investment.

However, it is important to consider the totality of the situation. When considering whether it is a new product, consideration should be given to what new skills may be needed to create that product, what new equipment and/or new costs that would be associated with it. It is not simply about an increase in costs that are already being incurred, the relevant question is whether there is something new that necessitates the raising of risk finance investment to create this new product.

Example:

Fancy Limited creates high-end clothing for sale in exclusive retail outlets around the world. In 2021 Fancy Limited decides it is now going to add shoes to its line.

Fancy Limited realises that it does not have any staff who can do this work and it is necessary for them to hire staff that can provide this service. It will equally need new raw materials and equipment to produce the shoes. It is identifiable here that new labour, raw materials and equipment are required which would be considered acceptable as expansion into a new product.

Example:

Sparkles Limited has been established for 20 years selling diamond rings to various jewellery stores throughout Ireland.

In January 2020, Sparkles Limited decided it would now begin to sell diamond earrings also. The extension of their production into diamond earrings does not require the company to purchase new raw materials. The company and their existing employees have all the skills and equipment necessary to do this.

While it is a growth of the brand, offering something additional, it would not be accepted as a new product for the purposes of risk finance investment.

Example:

Treats Limited produces chocolate bars. In January 2020 it is decided that the company will purchase new equipment to improve the production process. This would not be accepted for expansion risk finance; it is simply a new method of producing the same product.

Example:

Clean Limited, a pharmaceutical production company decides in March 2021 to begin the production of a new pharmaceutical product.

This will need to be manufactured in a specialised environment, that is currently not available in the plant.

While the product would appear to be the same product that the company already produces, being pharmaceutical, the necessity to build a new section of the plant in order to produce this product would mean it would be accepted for the purposes of expansion risk finance as a new product.

Example:

Screen Limited produces computer screens. It has been operating for over 10 years. In January 2020 they decide to expand and build a new factory. The new factory will be used to produce the same product, just a larger volume. This would not be accepted as expansion risk finance investment; it is simply a growth of the business.

9.4.3 Criteria to be met for Expansion risk finance investment

In general risk finance investment is available to new SME's. A company that isn't new or has been successfully trading for longer than 7 years cannot seek risk finance investment as a source of funding. It is only when such a company wishes to expand that it may now consider risk finance investment.

It can arise that companies that are established cannot avail of other sources of finance to expand. It is in these circumstances that risk finance investment can then be considered.

There are conditions that a company seeking investment in this manner must meet. The company must be seeking initial risk finance investment in an amount greater than 50% of the average annual turnover of the RICT Group for the preceding 5 years. This must be reflected in the business plan. The investment which must meet the 50% 'test' is the first investment being sought. That initial investment can be in a number of tranches, but it must still be clearly identifiable in the business plan that it is the initial investment. The business plan must demonstrate a specific need for the financing and further demonstrate that the financing cannot be sourced in another manner.

Example:

Moonshine Limited has been in operation providing Medtech solutions since 2000. In 2019 Moonshine Limited decided to seek risk finance investment to support its growth in the market.

The company had never sought risk finance investment before and therefore could only avail of it if it met the conditions under 'expansion' risk finance. The company stated in its business plan that it would need €1,000,000 initially to meet the criteria as set out under Paragraph 5(c) of GBER.

There was no further detail as to what this was needed for or why they could not receive investment elsewhere. This would not be accepted for the purposes of 'expansion' risk finance.

Example:

Saturn Limited has been operating in the car parts market since 1995. There are no other companies in its RICT Group.

In 2020 Saturn Limited has created a completely new product for airplanes that it intends to begin production on in May 2020. The company has never previously sought risk finance investment before and it is greater than 7 years old. In order to consider risk finance investment, it must fulfil the criteria of Paragraph 5(c) of GBER.

The company identified that as an initial risk finance investment it would be necessary to raise €3,000,000 for the purpose of building a factory suitable to produce their product. This was supported by the company's detailed business plan. The company must now determine if they meet the test of Paragraph 5(c)

Previous 5 Years Turnover:	€20,000,000
Average Annual Turnover:	€4,000,000
50% of Average Annual Turnover:	€2,000,000
Initial 'Expansion Risk Finance':	€3,000,000

Saturn Limited meets the criteria as; the initial amount of 'expansion risk finance' being sought (€3,000,000), is greater than 50% of the average of the annual turnover of the previous 5 years (€2,000,000).

9.5 Additional Investment not foreseen in business plans

A statement that the company intends to raise the maximum amount of EII that would be possible is not adequate. The capital being raised must be matched with investment plans.

Statements that the company may seek to raise additional financing in the future is not sufficient.

Statements that the company hopes to grow and expand and will require additional funding to support that growth and expansion are not sufficient.

If a business plan foresees follow-on investment to complete B, and the company completes B, it cannot then look to raise follow-on investment to complete C, which has never been mentioned in the original business plan. However, investments for the purpose of completing C may qualify if C constitutes entry into a new product or market (and qualifies as an expansion risk finance investment).

Also, at different points in the past, the EII/BES/SURE legislation contained lower limits on the amounts which could be raised over the life of a company. Therefore, many business plans for funding raised at the time those lower limits applied, foresaw raising EII/BES up to the limit in legislation. Investors would likely not have viewed the business plan as a serious proposition if it envisaged raising more BES than was permitted by the Irish legislation. In those cases, consideration is given to other equity investments which were envisaged by the company in its business plan.

A business plan which just envisages raising the maximum EII will not be treated as foreseeing additional funding unless it also sets out how those amounts are to be invested in the company's business.

If a company is intending to raise follow-on risk finance, it should have a knowledge as to the purpose those funds will go to. It is not enough to just state 'we hope to raise future rounds' with no consideration as to its use. If follow-on risk finance is envisaged at the outset, the business plan should contain enough information to sufficiently support these future investments (both qualitative and quantitative). It is important that the information provided to support follow-on risk finance is both of a descriptive and financial nature, as both together will help to provide stronger evidence that the follow-on risk finance qualifies.

Example:

Company X prepared a business plan that supported the necessity for several rounds of investment by risk finance investment.

The business plan foresaw that in Year 3 the company would need to extend a building in order to facilitate carrying on increased production in that extension. When Company X sought planning permission for this extension in Year 3, the permission was not granted, and they were unable to proceed.

The Company decided to try again in Year 6 to seek planning permission to build the extension and it was granted. While the necessity to build the extension was foreseen as arising in Year 3, unforeseen circumstances caused a delay to this progressing in the timeframe intended. It would still be accepted that the necessity for investment for that purpose was foreseen.

Example:

Company Y prepared a business plan that supported the necessity to raise an Initial risk finance investment round of funding to buy a new coffee roasting machine.

This would cost €200,000 and was adequately supported in the detail of the business plan including the financial information. The business plan also stated it would seek to raise €2,000,000 more in future years in the hope of growing the business. No other detail was provided to support the necessity for these further rounds of investment.

Given the lack of detail, this would not be accepted as reflecting a necessity for any follow-on risk finance investment.

Example:

Company Z prepared a business plan that foresaw the necessity to raise €1,000,000 to undertake a specific project.

As the project got underway, the cost of carrying out the identified project increased.

As the company did foresee the necessity to undertake that specific project, the increased cost would be accepted if it is clearly identifiable that the costs were an actual increase in costs of the specific project and not new, unrelated costs.

Example:

Company A prepared a business plan that foresaw the necessity to raise €500,000 to carry out a specific project.

As the project got underway, the company decided it would carry out another project in conjunction with this.

It now intended to raise €1,000,000 through risk finance investment for both. As the necessity for this additional risk finance is not supported in the original business plan, relief would not be available under follow-on investment criteria on the additional amount.

Example:

Company B is involved in the creation of medical devices. In bringing such products to the market, there is a long process, any stage of which the outcome is not readily identifiable from the outset.

It is envisaged that if the company is successful in reaching a certain point, clinical trials will be required. The company when preparing the original business plan at the outset of the process, identified that the only source of this financing would be through risk finance investment, in this case EII.

However, given the uncertainty surrounding such work, the company cannot with any degree of certainty determine the level of funding required.

The business plan does however confirm that such funding would be required, an approximate quantification for it and a rationale for that quantification for clinical trials and therefore such investment would be deemed foreseen in the original business plan and qualify, even though not fully quantified at the time of the first business plan.

10 Limits on amount that can be raised [s497][34]

RICT groups can raise a maximum of €5 million in any rolling 12-month period under Part 16. Therefore, if there are separate EII, SCI and SURE investments in a 12-month period, the total investment cannot exceed €5 million.

There is a life-time limit of €15 million per RICT group for relief granted under Part 16 for shares issued since 6 April 1984. This applies to the total amounts raised under EII, SCI and SURE.

[34] Limits based on Paragraph (9) of Article 21 of GBER

11 Qualifying Investor [s500 and s501]

A qualifying investor is an individual who:

- Is resident in the State for the tax year in respect of which he/she makes the investment. However, in certain circumstances, a non-resident may qualify if they have income charged to Irish tax,
- Subscribes on his/her own behalf for eligible shares in a qualifying company. However, an individual may use a nominee to hold the shares on his/her behalf, or they may invest through a DIF or a QIF,
  and
- Is not, throughout the period of 2 years before and 4 years after making the investment, connected with the company or any of its subsidiaries.

An investor cannot be "connected" with the company. Essentially, what this means is that an investor should be a third-party investor with no prior connection with the company (other than where that connection is by means of a previous EII investment).

References to connected in this context include situations where the individual or a relative of the individual (being a spouse, civil partner, ancestor, lineal descendant or sibling):

a) Is in a partnership with the company, or any company in the RICT group.
b) Is an employee or director of the company, or any company in the RICT group, and receiving (or being entitled to receive) any payment other than those that a 3rd party would receive in the same position.
c) Has an interest in the capital of the company. (s500(2))

A person will "have an interest in the capital of the company" if they or an associate[35] do, or can, hold any of the issued share capital, loan capital[36], voting rights or rights to assets on a winding up. (s500(5))

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

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

Example:

Sheila and Musical Limited enter into a partnership to promote a rock concert. This means that Sheila is connected with Musical Limited and Sheila would not be able to avail of tax relief under EII in respect of any investment made by her in Musical Limited.

Example:

Claire owns 40% of Swimming Limited's share capital. Therefore, Claire is connected with Swimming Limited and Claire would not be able to avail of tax relief under EII in respect of any further investment made by her in Swimming Limited.

However, there are two exceptions to this rule. The first is if the only "interest in the capital of a company" that a person has is shares that were raised as part of an EII supported fundraising and that person, or those connected with that person does not have control of the company. As such, third party EII shareholders, and those connected with them including their family, can continue to make EII investments in a company which they do not control.

The second exception is if the only shares the person holds are founder shares and the company has not yet commenced any business activity. (s500(6))

Investors cannot circumvent these rules by arranging reciprocal investments. (s501)

Example:

Mr A invests in Company B, which is owned by Miss B. Miss B invests in Company A, which is owned by Mr A. Neither Mr A or Miss B are qualifying investors for the purposes of EII where this is an arrangement to attempt to avoid the connected party rules and avail of relief.

12 Disposal of Shares [s508M]

If shares are disposed of before the end of the compliance period (being the pre-investment period and the relevant period) it may result in a reduction in the relief that the individual (investor) may be entitled to in respect of those shares.

If the disposal of the shares is by any means other than a transaction made at arms-length, the individual will not be entitled to any relief. Otherwise, the relief to which the individual is entitled in respect of the investment will be reduced by the amount that the individual receives for the disposal.

12.1 Disposal of a Qualifying Subsidiary [s508O]

As already set out in Section 5.3, the qualifying company may use the amounts raised to invest in shares in a qualifying subsidiary. Where that is done and where that qualifying company subsequently disposes of that qualifying subsidiary, the qualifying company should return those amounts invested in the qualifying subsidiary, without undue delay, to the investors. It will be taken that the disposal of the qualifying subsidiary will be a partial disposal of the total investment in the qualifying company at that time, which will trigger a partial clawback from the investors of the relief available.

12.2 Return of Capital to investors [s508P]

The compliance period for a company is a 6-year period that runs from two years before, to 4 years after the share issue date. Where the qualifying company or any company in the RICT Group returns capital to EII/SCI/SURE investors within their compliance period it will result in a clawback of relief from those investors.

If an individual investor has multiple investments year on year, each will have its own compliance period. Except in the limited circumstances provided for in section 508P(9) outlined below, each compliance period for that investor must be completed before any transaction can occur whereby the company could return capital to the individual without resulting in a clawback.

Example:

Company A issued EII 'A' shares in January 2015 for €20,000 to Investor 1, it then issued EII 'B' shares in January 2016 for €10,000 to Investor 1 and lastly, it issued EII 'C' shares in January 2018 for €20,000 to Investor 2.

In March 2019, Company A redeemed €20,000 from Investor 1. Investor 1 remained in their compliance period for their 'B' share issue and Investor 2 remained in their compliance period for their 'C' share issue. Therefore, a clawback will occur against both Investor 1 who received value and Investor 2 as the redemption occurred during the compliance periods of both the 'B' and the 'C' share issues. Section 508P provides that clawback will be against those investors who received value first.

Example:

Company A issued EII 'A' shares in January 2019 for €1,000,000 to multiple investors. Company A raised no further amounts in any of the subsequent years through EII. In June 2023, Company A redeemed the shares issued in 2019. No clawback will occur as the compliance period has ended.

12.3 Capital Redemption Window (Qualifying investors) [s508P(9)]

In limited circumstances, it is possible for a company to redeem shares from an investor who has made investments in multiple years without triggering a clawback of EII relief. Section 508P allows such a redemption when it is the case that some of the investor's EII investments are still within their compliance period and some are no longer within their compliance period. This applies provided certain conditions are met.

The specific circumstances in which such a return of capital can occur are:

a) The most recent EIIS/SCI/SURE fund raising by the RICT group was 18 months prior to the return of capital,

b) The RICT group will not seek to raise EII/SCI/SURE supported funding for 12 months after the return of capital, and

c) The qualifying investor from whom the investment is redeemed will not be allowed to make another qualifying investment in that company for a period of 5 years after a redemption of their investments.

It is important to note that a qualifying company must have sufficient capital to support such a redemption. Other EII investment cannot be utilised for such a redemption.

As with a redemption under section 508R, this capital redemption window does not prevent a clawback of SCI or SURE. It is only available in respect of EII investors.

Example:

Capital Limited raised equity risk finance over a number of years from the same group of investors. Investor A invested in Capital Ltd. on 31 December of each year from 2016 to 2019. The last time that Capital Ltd. raised EII was on 30 March 2020. In January 2022 the company wishes to redeem the shares issued on foot of the 2016 risk finance investment from investor A.

It is greater than 18 months since the last qualifying fund raising took place by Capital Ltd. (30 March 2020 to January 2022). The company does not intend to raise any further EII investment within the next year.

The compliance period for Investor A's investment of 31 December 2016, ends 4 years after the date of the share issue, which will have been on 30 December 2020.

Investor A cannot have another qualifying investment in Capital Limited for a period of 5 years from the date of the redemption. It should also be noted, that should Capital Ltd. wish to redeem any of Investor A's other investments, the period of 5 years will begin from the latest redemption.

As the capital redemption window conditions are satisfied, the company fulfils the criteria of S508P(9) and therefore the relevant capital from the 2016 investment can be redeemed without triggering a clawback.

12.4 Return of Capital to other investors [s508R]

As previously set out, where the qualifying company, or any company in the RICT group, returns capital to EII/SCI/SURE investors within their compliance period, any clawback of relief will be on those investors.

Example:

Company B issued EII 'A' shares on 1 January 2019 for €100,000. On 1 March 2019 it redeemed €100,000 worth of shares from its founder shareholders. There will be a clawback of EII relief due to investors of the €100,000 redeemed from its founder shareholders.

Example:

Company C issued EII 'A' shares on 1 January 2020 for €200,000 to multiple investors. On 1 January 2021 it redeemed €150,000 worth of shares from its founder shareholders. The investment on which relief can now be available is reduced to €50,000. The reduction of €150,000 is apportioned across all the 'A' investors. This will be required to be reported on the SOQs issued for this investment.

However, if it occurs that there is a return of capital and it does not trigger a clawback of relief on those investors, it may mean that there will be a clawback on any other EII investors who are still within their compliance period.

Example:

Company D issued EII 'A' shares on 1 January 2019 for €100,000 to Investor Group 1. It issued 'B' shares on 1 January 2020 for €50,000 to Investor Group 2. It also issued 'C' shares on 1 January 2021 for €50,000 to Investor Group 3. In June 2023, after the compliance period of the 'A' shares has ended, the company redeems this share issue of €100,000.

As the compliance period for both the B and C share issue has not ended, it will result in a clawback as follows:

Those investors in Investor Group 1 who had no subsequent investment in Group 2 or 3, will not incur a clawback against their original investment. Their compliance period has ended.

Those investors in Group 2 and 3, who also had an investment in Group 1 will incur a clawback proportionately against their investments in the B and C share issue.

That amount that was redeemed from those investors who were no longer in their compliance period however remains to be clawed back. As well as those investors in Group 2 and 3 who had an investment in Group 1, investors in these groups who did not have any investment in Group 1 will be subject to this clawback. This clawback will occur against all the investments of B and C shares proportionately regardless of whether they were part of investment Group 1 originally.

12.5 Capital Redemption Window (Persons other than qualifying investors) [s508R(9)]

In certain circumstances, a company can redeem shares, from any member other than an investor who is within their compliance period without triggering a clawback of EII relief under section 508R[37].

The specific circumstances in which such a return of capital can occur are:

a) The most recent EII/SCI/SURE fund raising by the RICT group was 18 months prior to the return of capital, and
b) The RICT group will not seek to raise EII/SCI/SURE supported funding for 12 months after the return of capital.

It is important to note that this capital redemption window does not prevent a clawback of SCI or SURE. It is only available in respect of EII investors.

Example:

Techno Limited raised equity risk finance over a number of years. The last year in which it raised EII was December 2017. In January 2020 the company wishes to redeem the shares issued on foot of a 2015 risk finance investment from those investors who are no longer within their compliance period.

It is greater than 18 months since the last EII fund raising (January 2017 to January 2020) and the company does not intend to raise any further EII investment within the next year.

As both condition (a) and (b) are satisfied, the company fulfils the criteria of S508R(9) and therefore the relevant capital from the 2015 investment can be redeemed without triggering a clawback.

[37] The tax implications of a company redeeming its shares are dealt with in TDM Part 06-09-01. Redemptions of shares will generally be treated as a distribution by the company, meaning that the dividend withholding tax rules must be applied.

13 Withdrawing Relief (Chapter 11) for share issue from 1 January 2019

13.1 The company [s508U]

Where the company is responsible for an event for which the investor is not and could not be a party to the transaction, the withdrawal of the excess relief granted will be made by raising an assessment against the company. Examples of where this may happen are; the company ceases to be a qualifying company, the company redeems shares from other members, the company has issued an incorrect SOQ to the investor.

Where relief has been given and it wasn't due, the withdrawal will be made by means of raising a Case IV assessment for Corporation Tax of 1.2 times the amount.

The company cannot offset any loss or deficit against the Case IV amount and the Case IV amount should not be subject to the close company surcharge.

Example:

An investment of €10,000 was made in 2021 and relief was claimed in full by the investors on this amount. In 2022 the company was taken over by another company and was now under its control. As a company availing of EII cannot be under the control of another company, it is no longer a qualifying company and the relief availed of will be clawed back.

As the investors had no control of this event and the change in control of the company was achieved without their involvement, that clawback will be made against the company. The investment had resulted in relief of €4,000, being 40% of the investment. The Case IV assessment on the company will be for €4,800 i.e. 1.2 times the amount of the relief. This is taxable at 25%, giving the company a tax liability of €1,200.

Example:

An investment of €100,000 was made in 2020 and relief was claimed in full by the investors on this amount. In 2022 the company was approached by a large multinational seeking a possible purchase of the company. The shareholders including the EII investors agreed to sell their shareholding to the multinational. As the EII investors agreed with this transaction taking place, and sold their own shares, therefore the clawback will be made against the investors.

13.2 The Investor [s508V]

Where an event occurs that results in the withdrawal of relief and it is identified that the withdrawal is not to be made against the company, it must be made against the investor. Examples of where this may happen are where the investment is no longer a qualifying investment, there is a disposal of shares that results in a clawback event or the risk finance is raised for reasons that are not bona fide commercial reasons.

Where relief has been given and it wasn't due, the withdrawal will be made by means of raising a Case IV Schedule D assessment for Income Tax for the year of assessment for which the relief was given.

14 Reporting Obligations and Information required by Revenue [s508E & s508Y]

Qualifying companies that issue eligible shares as part of a qualifying investment must provide Revenue with certain information on that investment.

The information required is set out in Form RICT, which is already covered in this guidance. The Form RICT must be uploaded through ROS.

Certain information contained in the Form RICT will be published on the Revenue website as required in accordance with GBER and State aid transparency requirements. This information is:

i. Name of the company;
ii. Address of the company;
iii. CRO number of the company;
iv. Amount of finance raised;
v. Date of share issue; and
vi. Type of relief

In addition, where an event occurs that may result in relief being withdrawn this information must be provided to Revenue. Those who are required to notify Revenue of such an event include:

i. The company,
ii. Any person connected with the company who has knowledge of that matter, and
iii. The managers of the DIF or QIF who have knowledge of such a matter happening, where the investment has been made through such a fund.

Other Reporting Obligations and Forms Required

Report	Who	Why/How	When
Nominee Shareholders	Nominee or Company	Comply with s494 & the requirements of s892 & s894	After each share subscription via a Nominee*
Form RICT	Company	Comply with GBER (s508E)	Within 60 days of the date on which 30% of the risk finance amount raised has been expended on a qualifying purpose**
Form IF	DIF or QIF	Comply with s508J(2)	Within 30 days of receipt of an SOQ from a company***
SOQ	Investor	To avail of relief (s508A, 508B & 508C)/Generated via Form RICT	When claiming relief on Form 11/Form 12
Managers Cert	Investor	To avail of relief (s508J)/Generated via Form DIF	When claiming relief on investment via DIF on Form 11/Form 12
Corporation Tax (CT)	Company	Comply with the CT requirements	On the CT Return for accounting period in which the shares were issued

*The shares will not be deemed eligible if there is a failure to submit the relevant forms. No relief will be available.

**It is not possible to issue an SOQ without the submission of a Form RICT. It is not possible to claim relief without a valid SOQ. Failure to comply results in a penalty of €2,000, with an additional €50 per day if after 30 days that RICT return remains unfiled or after the CT Return becomes due, whichever comes first.

***It is not possible to issue a Managers Cert without the submission of a Form IF[38]. It is not possible to claim relief by investors without a valid Managers Cert

[38] A link to the updated form will be included when available.

15 A summary of Start-Up Capital Investment (SCI) [s503]

SCI is a tax relief for early stage micro companies to attract equity-based risk finance from family members. There is a €500,000 lifetime limit on the amount that a company can raise under SCI.

SCI can only be claimed where a qualifying company is carrying on a qualifying new venture and exists solely to do so. SCI is only available in respect of investments in micro-enterprises[39]. If the company is raising investment under SCI, it cannot have commenced or made preparations to commence carrying on any trade or business more than 7 years prior to the share issue date. A company cannot raise amounts under SCI if it has any partner or linked enterprises.

15.1 Capital of the Company [s500(5)]

For the purposes of Part 16, it is generally the case that an individual who has an interest, whether directly or indirectly in the capital of the company, will not be deemed a qualifying investor. However, such an interest will be ignored in certain specific circumstances.

Where an individual, other than the founder of the company, holds an 'interest' being shares in a company and where those shares only exist as a result of a previous investment that qualified under Part 16, that interest will be ignored.

Where the founder of the company holds shares in the company, which were only subscribed on formation (founder shares) of the company, no other shares have issued and the company has not begun to trade, then for purposes of these rules, they too will be ignored.

Example:

Dave sets up a qualifying company, Dave's parents and siblings may get SCI relief for investing in Dave's company. Dave may not get SCI relief.

[39] As defined by Annex 1 of GBER

Example:

Mary set up a qualifying company. The company has yet to begin trading and Mary holds the only shares in the company. These shares were issued on formation of the company.

Mary's mother wishes to invest in the company in the amount of €200,000. The company meets the conditions for SCI. It is a micro-enterprise, that exists only to carry on a qualifying new venture. It has not commenced to trade and is not part of RICT Group with any other businesses. Mary's mother can avail of relief under Part 16 on her investment.

Example:

Six months after Mary's mother invested €200,000, Mary's father decided to also invest €200,000 in the company. The company has still not begun to trade. As the only other shares issued are those of the founder (Mary) and those of Mary's mother, which qualified under Part 16, and all the conditions for SCI are still met, her father's investment will also qualify for relief.

16 A summary of Start-Up Relief for Entrepreneurs (SURE) [s504]

SURE is a tax relief for entrepreneurs who leave an employment to set up their own company. There are limits on the amount of investments in respect of which an investor can claim relief and limits on the number of investors that can claim relief in respect of a company.

Investment in a company via SURE can only be made directly through the company. A DIF or QIF cannot be used.

In general, the conditions necessary for SURE to apply are:

- A new company must be established to carry on a qualifying trading activity.
- The entrepreneur must have mainly PAYE income in the previous 4 years. For example, this includes; a person currently in PAYE type employment, a person currently unemployed, a person recently made redundant or a retired person.
- The entrepreneur must take up full-time employment in the new company either as a director or an employee.
- The entrepreneur must invest cash (in certain circumstances an Directors Loan will fulfil this condition) into the new company by means of a purchase of new shares.

16.1 SURE: The Investor

16.1.1 What constitutes a specified individual [s505]

This is someone who subscribes on their own behalf for eligible shares in a qualifying company.

The person must hold those shares for a minimum period of 4 years from the date of the share issue.

16.1.2 Employment before investment [s505(2)]

To claim relief under SURE, the investor must be a “specified individual”. This means that it is the individual who must have been in employment for the three years preceding the year that precedes the year in which the individual makes a SURE investment.

This employment must be employment that is taxable under either Schedule E in respect of an Irish employment or Case III of Schedule D in respect of a foreign employment.

Income from previous years must have been mainly liable to PAYE. For the three years preceding the year that precedes the year in which the individual makes an investment, the individual cannot have earnings from any other source in excess of €50,000, or the employment income, whichever is lower. However, income in the year immediately before the investment can be from any source.

Example:

If an individual is making an investment during 2020, the individual must have been in employment in 2016, 2017 and 2018. In those same three years, the individual also cannot have earnings from a source other than their employment income in excess of €50,000 or the amount of their employment income, whichever is lower.

16.1.3 Ownership requirement [s505(3)]

The individual must hold at least 15% of the issued ordinary share capital of the company during the specified period.

The specified period means, the period of 1 year from the date of the investment, or if the company was not trading when the investment was made, the specified period is a period of 1 year starting on the date it begins to trade and ending 1 year after that date.

The ownership requirement will not be failed solely because there is a bona fide winding up of the company within that period.

16.1.4 Other ownership interests [s505(4), s505(5) and s505(6)]

In general terms, an investor seeking to claim relief under SURE should not hold more than 15% of the ordinary share capital, loan capital or voting power of any other company.

There are limited exceptions for companies that carry on no business or which hold no assets.

These exceptions apply where an investor held an interest in only one other company and either:

- That other company is dormant i.e. no turnover in any of the previous 3 years and did not carry on a trade, profession or other business activity

and had no entitlement to any assets, other than cash on hand or on deposit not exceeding €130,
or

- That company had an annual turnover not exceeding €127,000 in each of the three accounting periods prior to the SURE investment; and the other company mainly carried on a qualifying trading activity and the subscription for shares must be for bona fide commercial purposes.

16.1.5 Employment post investment [s508S]

An individual must either be carrying on a full-time employment in the company at the time he or she makes the first SURE investment in the company or must take up such an employment shortly thereafter. An individual must enter a full-time employment for a 12-month period with the company as either an employee or a director. The employment must be commenced by the later of the end of the calendar year in which the investment is made, or 6 months after the subscription for shares.

The investor cannot be employed elsewhere during this 12-month period (except where the aggregate amount of such other employment(s) is no more than 10 hours per week).

Other than reasonable remuneration and expenses, an investor must not receive any payments from the company in the 3-year period after the share issue.

16.2 SURE: The Company

16.2.1 What is the Qualifying Company [s506]

The qualifying company must be a qualifying new venture. This means, that it must be carrying on a qualifying trade and it must be a new company (less than two years old from incorporation). It cannot have taken over an existing trade.

The following are examples of companies that would not qualify as new ventures:

- A business closed down (e.g. pub) and the SURE company re-opens the pub (even if has a different name and/or layout) in the same location.
- A person is trading as a sole trader, then decides to incorporate, and carry on the same business as a company.

Example:

Ryan has operated the local shop for a number of years as a sole trader. In January 2020, Ryan decides to incorporate this shop as a limited company and invest €20,000 to upgrade areas of the store. Ryan cannot avail of SURE on the investment, as the trade is not a new venture, it is simply carrying on an existing trade but now as a company.

Example:

Anne has been operating a fast-food outlet for a number of years in the local village. In December 2019, Anne decides to retire, and sells the business to Claire in January 2020. Claire spends a number of months doing up the business and invests €50,000 in doing so. The business is closed for this period. Claire re-opens a fast-food outlet in May 2020 and wishes to avail of SURE relief on her investment. Claire cannot avail of SURE as her trade, is the same as that which was there previously, and she simply purchased an existing trade.

16.2.2 Other Conditions to Meet

- The company must be incorporated in the State or in another EEA State[40].
- It must be an unquoted company.
- The company must be tax resident in the State or in another EEA State and carry on business in the State through a branch or agency.
- It must carry on relevant trading activities from a fixed place of business in the State.
- It must be a micro, small or medium-sized enterprise.
- It must have its issued share capital fully paid up. (it must remain fully paid up throughout the 3 years following investment).
- The company must use the amounts invested:
    - For the creation and maintenance of employment and for the benefit of a qualifying new venture in the carrying out of relevant trading activities, or
    - In the case of a company that has commenced to carry on relevant trading activities, on R&+I activities.

[40] The EEA includes all EU Member States, Norway, Iceland and Lichtenstein.

16.2.3 Qualifying Trading Activity

As mentioned above, the company must use or intend to use the amounts raised for a 'qualifying purpose'.

Most trading activities are allowed; however, the following are specifically excluded:

i. Once off trades,
ii. Dealing in commodities, shares or other financial assets,
iii. Financing activities,
iv. The provision of professional services, which means:
    I. Services of a medical, dental, optical, aural or veterinary nature,
    II. Services of an architectural, quantity surveying or surveying nature and related services,
    III. Services of accountancy, auditing, taxation or finance,
    IV. Services of a solicitor, barrister or other legal services and
    V. Geological services,
v. The occupation of woodlands
vi. Operating or managing hotels, guest houses etc, unless the activity is a tourist traffic undertaking
vii. Operations carried on in the coal, steel or shipbuilding sectors, and
viii. The production of films (within the meaning of section 481).

In addition, as with EII, there are certain other requirements that must be met for certain types of trades as follows;

Internationally traded financial services

A company that carries out internationally traded financial services will only be a qualifying company if it has been given a certificate by Enterprise Ireland that the activities are of a kind specified in the Schedule to the Industrial Development (Service Industries) Order 2010[41].

Tourist Traffic undertaking

A company that carries out tourist traffic undertakings will only be a qualifying company if those activities have been approved by the National Tourism Development Authority[42].

[41] S.I. No. 18 of 2010

[42] http://www.failteireland.ie/Supports/Identify-Available-Funding/Employment-Investment-Incentive.aspx

Green Energy Activities

Green energy activities are activities undertaken with a view to producing energy from renewable sources. Such companies, for the purposes of EII, SCI and SURE, are deemed to start trading when they apply for the grid connection agreement.

16.3 SURE: The Investment [Chapter 5 (s507)]

16.3.1 General Conditions

The investment must be for new eligible shares.

The investment will normally be by way of a direct cash investment for shares. However, if the investor has paid company expenses from his or her own resources this may also qualify.

16.3.2 Directors' Loan

If the investor has met company expenses from his/her own resources and this is considered a director's loan, the investor may, within 12 months, convert this loan to share capital. In order for the converted loan to qualify for SURE, the investor must supply a registered auditor's statement containing the following:

I. Date(s) the loan(s) was made
II. The date the loan(s) was converted
III. Confirmation the funds were used for the benefit of a qualifying new venture in the carrying out of relevant trading activities, or in the case of a company that has not commenced to carry on relevant trading activities, on research and development activities and the creation and maintenance of employment.

It should be noted however, that salary forgone is not considered to be the making of a loan under SURE.

Subject to these conditions being met, the loan will be treated as the making of a relevant investment on the date of the making of the loan.

Example:

Terry set up Terrycloth Limited in January 2020. At that time Terry loaned the company €50,000. In November 2020, Terry converted that loan to share capital held in the company and prepared all the relevant documentation to support this. As the conversion of the loan took place within 12 months of the date on which the loan was originally made to the company, Terry is in a position to avail of SURE.

Example:

Robert set up Robinsons Limited in June 2020. As this was a new company just getting off the ground, Robert did not draw down a salary in the first few months. 11 months after the company was set up, Robert decided to issue share capital in the company. Robert stated that the salary foregone was in lieu of cash for the share issue. It is the requirement of SURE that new cash must be provided for shares, therefore salary foregone is not acceptable in order to avail of SURE.

16.3.3 Limits on the Investment Amounts

The minimum investment under SURE is €250 and the maximum investment in respect of which relief can be claimed is €100,000 per year of assessment.

Relief for a SURE investment can be claimed over a period of 7 years - an investor can elect to claim the relief for an investment, of a maximum of €100,000 per year, over the year of investment and the 6 prior years. Therefore, the maximum SURE investment in respect of which relief is available is €700,000. Any unused relief is available for carry forward. An investor may make a second investment of up to €700,000 in the same company, this is explained further in Section 16.4 below.

The normal 4-year time limit for claiming repayments of tax is specifically not applied for these claims.

Example:

James made an investment €700,000 in 2019. €100,000 can be relieved in each of the previous 6 years and the current year, therefore James can claim SURE relief of €100,000 in 2013 to 2019 inclusive.

16.4 SURE: How often can an investment be made?

An individual can make two relevant investments of up to €700,000 each time, that may qualify for SURE relief, once all the conditions to be qualifying investments are met. The second qualifying investment must be made in one of the two years of assessment following the first investment. A relevant investment is the total amount subscribed for shares in a calendar year. The intention to raise any investment whether it is the initial investment amount or follow-on amount, and whether it is EII or SURE investment must be adequately reflected in the Business Plan of the company.

An individual can only claim SURE relief in respect of an investment in a single company i.e. both of the investments of up to €700,000 each must be in the same company, with the maximum amount of relief available for offset in a year of assessment being €100,000. The €100,000 limit exists irrespective of whether there are one or more investments.

Example:

Rose made investments in a company in 2020, in the months of March, September and October. These are considered her first relevant investment. Rose intends to make a further investment in later years in the same company. This second investment must take place in 2021 or 2022 to qualify for SURE.

16.5 SURE: Carry forward of unused relief [s508]

If an individual has invested more than €100,000 per year of assessment (as set out above) or does not have enough income to absorb the full relief in a year or over the preceding six years, then the unused amount may be carried forward for offset against total income in future years.

In each year, relief is given for earlier investments in priority to relief for later investments.

Example:

Seamus made investment into his company of €700,000 in the year 2021. Seamus was able to avail of relief to a maximum investment of €100,000 per year of assessment against his income tax liability for the year 2021 and the preceding six years.

Example:

Jim made an investment into his company of €650,000 in the year 2021. Jim was able to avail of relief to the maximum investment of €100,000 per year of assessment against his income tax liability for the year 2021 but only five of the preceding six years. This is because Jim had no income tax liability in the year 2020. Jim therefore can carry forward the unused amount of €50,000 for offset against total income in future years.

Jim made a further investment into his company of €300,000 in the year 2022. As Jim has already offset his income tax liability in total for each of the preceding years, Jim can offset any unused amount, firstly against his income tax liability for 2022 and carry forward the unused amount for offset against total income in future years.

Jim has sufficient income tax liability to avail of the maximum relief available of €100,000 in 2022. Firstly, Jim can offset the €50,000 he carried forward from his 2021 investment against his 2022 income tax liability. Jim can then offset €50,000 from his 2022 investment against the balance of his income tax liability for the same year.

Jim now has €250,000 to carry forward for offset against total income in future years.

16.6 SURE: Claiming the Relief [s507]

Before an investor makes the claim, the investor must have actually made the investment and received the shares in the company. A claim can then be made once the company starts to trade i.e. as a general rule the company must have actually made its first sale before the claim for relief can be made.

However, if the company has not yet begun to trade, but it has undertaken Research, Development & Innovation ("R&D+I") activities, a claim can be made once the company has spent 30% of the funds raised on R&D&I activities. This only applies where those R&D&I activities are undertaken with a view to carrying on relevant trading activities.

"R&D+I" is a continuum of activities from innovation to research and development. Innovation is implementing a new organisational method, or a significantly improved production or delivery method. Research and development have the same meaning as in s766.

For share issues before 1 January 2022

The claim must be made within two years of the end of the year of assessment in which the investment is made and shares are issued. The claims are made through the RICT Return.

For share issues on or after 1 January 2022

For those companies who wish to claim relief from 1 January 2022, there is no longer a requirement to wait until 30% of the amount invested has been expended on a qualifying purpose prior to availing of the relief. The company, upon issuing the shares for the investment received, can issue a SOQ-SURE (SQSURE3) to the individual. The company has 4 months from the end of the year of assessment in which the shares are issued to issue the SOQ to an investor. On receipt of the SOQ an investor may claim the relief against their income tax liability.

If all the conditions are met an individual may be entitled to a SURE refund on the investment.

SURE is granted as follows:

- The relief is available as a deduction from the specified individual's total income for the year of assessment in which the shares are issued, or
- The specified individual selects, from the previous 6 years, (prior to the year of investment), which year they want the SURE investment to be utilised.

If the SURE investment is not fully used up in the year selected, an individual can pick other year(s) (in those previous 6 years) in order to fully utilise the investment or, if the investment is still not fully used up within that period, the unrelieved balance can be carried forward to future periods.

16.6.1 Additional Conditions to be aware of are as follows:

- The SURE investment, up to a maximum of €100,000, must be fully utilised in the 1st year selected by the individual before another year is selected and so on until the SURE investment has been fully utilised.
- SURE investment cannot be split between years in order to reduce the income in a certain year to the standard rate cut off point and move to another year in order to maximise the refund at the top rate of tax.
- SURE investment cannot be transferred to or split with the spouse/civil partner of the investor. Only the person making the SURE investment is entitled to tax relief on the SURE investment made.

Example:

Seamus made a SURE investment of €100,000 in 2019.

The investment made by Seamus can be used to reduce his taxable income in 2019 and/or in one or more of the previous six years.

The earnings of Seamus are taking from his records, and are as follows:

Year:	Earnings:	Tax Paid:
2013	80,000	21,496
2014	80,000	21,496
2015	100,000	29,532
2016	75,000	20,562
2017	60,000	14,412
2018	30,000	2,700
2019	30,000	2,700

As Seamus paid tax on earnings of €100,000 in 2015 and has received no other refund of tax paid for that year, he selects the year 2015 and he will receive a SURE refund of the full amount of tax paid in the 2015 tax year. This will reduce his taxable income and tax payable for 2015 to NIL and will result in a SURE refund of €29,532.

The full €100,000 investment has been utilised and therefore, Seamus has no further amounts to offset for this investment.

Example:

Sheila made a SURE investment of €100,000 in 2019.

The investment made by Sheila can be used to reduce her taxable income in one or more of the previous six years.

The earnings of Sheila are taken from her records, and are as follows:

Year:	Earnings:	Tax Paid:
2013	80,000	21,496
2014	80,000	21,496
2015	60,000	14,412
2016	75,000	20,562
2017	70,000	18,412
2018	30,000	2,700
2019	30,000	2,700

Sheila has chosen that the relief is utilised firstly in the year in which the shares are issued. Shares were issued in 2019 and therefore relief is available against Sheila's 2019 earnings of €30,000. Sheila will receive a SURE refund of the full amount of tax paid in the 2019 year. This amounts to €2,700.

Sheila's full SURE investment of €100,000 has not been utilised. Sheila has the amount of €70,000 to offset. Sheila can offset this amount against other years from 2013 to 2018 until the investment is utilised fully. Sheila selects the year 2017 and Sheila will receive a SURE refund of the full amount of tax paid in 2017 tax year. This will result in a refund of €18,412.

Sheila has reduced her taxable income and tax payable for both 2017 and 2019 to NIL and results in a total SURE refund of €21,112.

Sheila has now utilised her full investment and therefore has no further amounts to offset for this investment.

16.7 How to claim a SURE refund

The company should file the RICT form through ROS and issue the specific SURE Statement of Qualification form ('SQSURE3') to the investor. It is on the basis of this SQSURE3 form that the investor makes a claim for relief and the investor must be in possession of this form in order to apply for a refund of tax.

The investor can claim relief in the year of the investment and up to 6 years prior to the year of investment. For years available online through ROS or myAccount, the investor should file the appropriate tax return i.e. Form 11 for self-employed or Form 12 for PAYE. The SQSURE3 form may be requested by the investors Tax Division to verify the claim.

To claim relief for years not available through ROS or myAccount, the investor should submit a copy of the SQSURE form to their Tax Division, who will deal with any refund that may be due.

16.8 SURE and Other Reliefs

If an individual has already received EII (or its predecessor BES) relief for any of the six years selected, the amount of income on which SURE is available to the individual in that year is the maximum annual amount under SURE of €100,000. If an individual received relief for EII/SCI and SURE in any one year, the total maximum relief available cannot be greater than the maximum available under EII.

Example:

In January 2018 Norma invested in a new start-up SME. This investment qualified for EII relief. Norma claimed relief for this investment under EII in her 2018 Income Tax Return in the amount of €90,000. In January 2019, Norma invested €170,000 in her new entrepreneurial venture. This investment qualified for SURE relief. Norma has elected to avail of relief under SURE against her income for 2018. Norma has no income tax liability available for offset in the years preceding 2018. The maximum amount of relief which can be claimed in the 2018 year of assessment is €150,000. However, the maximum SURE investment that can be claimed in a single year of assessment is €100,000.

EII Investment 2018:	€90,000
SURE Investment:	€170,000
EII Investment Relief Allowed:	(€90,000)
SURE Investment Relief Allowed:	(€60,000)
Total Relief Allowed 2018:	(€150,000)
Balance of SURE Investment available to offset:	€110,000

Norma can offset the balance of the SURE investment against her 2019 income tax liability or if she does not have a sufficient liability in 2019, Norma now has the balance of the SURE investment available to carry forward to offset against her income tax liability for future years.

Example:

Rory claimed relief under EII in his 2020 Income Tax Return in the amount of €100,000. Rory invested €150,000 under SURE. The maximum amount of relief that can be claimed in the year of assessment against his income is €250,000.

EII Investment 2020:	€100,000
SURE Investment 2020:	€150,000
EII Investment Relief Allowed:	(€100,000)
SURE Investment Relief Allowed:	(€100,000)
Total Relief Allowed 2020:	(€200,000)

Rory can claim relief in full on his EII. Rory can claim relief for his SURE investment of €100,000; the maximum allowed under SURE. Rory can offset the remaining €50,000 of this SURE investment against any income tax liability he may have in the 6 preceding years, or if none, he may carry forward the balance to offset against any future income tax liability.

Example:

Martin claimed relief under EII in his 2020 Income Tax Return in the amount of €250,000. In 2021 Rory invested €700,000 under SURE.

Martin cannot offset any of his SURE investment against his 2020 income tax liability, as he has already availed of the maximum relief available for EII.

Martin can offset €100,000 against his 2021 income tax liability, and €100,000 against his income tax liability for the 5 years 2015 to 2019.

Martin now has the balance of his 2021 SURE investment available to carry forward to offset against his income tax liability for future years.

16.9 SURE Covid-19: Temporary Measures

For an investor availing of Start-Up Refunds for Entrepreneurs ('SURE') that investor must enter full-time employment for a 12 month period with the company, either as an employee or a director.

That employment must start within the year in which the investment is made or if later, within 6 months of the date on which the share issue is made.

If that first investment, is made by means of only one subscription for eligible shares, the employment must be taken up in the year the investment is made or within 6 months of that first subscription.

Where that first investment consists of more than one subscription for eligible shares, the employment must be taken up in the year the investment is made or within 6 months of the last subscription.

Temporary Measure:

All companies are required to meet the conditions of Part 16 TCA 1997 s508S and as set out above in order to avail of SURE Relief. Given the impact Covid-19 has had on both the Irish and global economy, Revenue acknowledges the difficulty companies may have in meeting these requirements.

Revenue have introduced a temporary measure for those companies unable to meet the conditions as set out in Part 16.

It remains a requirement that the conditions must still be met by the individuals, and all individuals who have made the 'relevant investment' in the period of 1 September 2019 to 31 March 2021 will from the date of the last subscription for that investment, will have up to an additional 12 months to meet the condition. No individual will have a period of greater than 18 months in which to fulfil the employment obligation.

Example:

An individual that subscribed for eligible shares on the 1 September 2019, would normally have had until 1 March 2020 to fulfil the employment obligation. That individual will now have until the end of February 2021 to fulfil the obligation.

Example:

An individual that subscribe for eligible shares on the 31 March 2021, would normally have until the end of the year of assessment to fulfil the obligation, being 31 December 2021. That individual will now have until the end of September 2022 to fulfil the obligation.

Example:

An individual that subscribed for eligible shares on the 30 March 2020, would normally have until the 31 December 2020 to fulfil the employment obligation. That individual will now have until the end of September 2021 to fulfil the obligation.

17 Death of an Investor

In general, where there is a disposal of any eligible shares before the end of a compliance period, and where that disposal is made otherwise than at arm's length, there will be no entitlement to relief for the individual disposing of those shares. If the disposal is made in any other case (including where the shares are disposed of at arm's length), the relief that the individual would have been entitled to will be reduced by the value of the consideration received for those shares.

However, this shall not apply where there is a disposal made by a married person to his/her spouse, when he/she is treated as living with his/her spouse for income tax purposes. It shall also not apply (i.e. there will be no clawback of the relief previously granted) where there is a disposal of shares through the death of an investor and the shares are passed to his/her spouse.

It also shall not apply where there is a disposal by a civil partner to the other civil partner at a time when he/she is treated as living with his/her civil partner for income tax purposes. It shall also not apply (i.e. there will be no clawback of the relief previously granted) where there is a disposal of shares through the death of an investor and the shares are passed to his/her civil partner.

Example:

Annabelle and Donald, a married couple are jointly assessed for income tax purposes.

Donald invests €50,000 in Company X in September 2019 and is obliged to hold the shares until September 2023 to avail of the relief. Donald claims 30/40 of the relief, €37,500 against his Income Tax for the tax year 2019 and receives a refund of tax.

Donald is deceased in April 2020. The relief already claimed will not be clawed back if the shares pass to his spouse Annabelle. However, the balance of the relief due will not be available to Annabelle. Under s498(2), Annabelle will not be jointly assessed with her husband in 2024, and therefore she cannot claim relief of the remaining 10/40.

Example:

Sandra makes an investment of €100,000, in Company Y in December 2019 and is obliged to hold the shares until December 2023 to avail of the relief.

Sandra claims €100,000 against her Income Tax for the tax year 2019 and receives a refund of tax. Sandra is deceased in January 2023. In her will she leaves her shares in Company Y to her friend Aoife. As Aoife receives the shares for no consideration, the disposal is not at arm's length and therefore, no relief is due to Sandra for the tax year 2019.

An assessment for Sandra will be raised for 2019 and the relief previously availed of by Sandra will be clawed back against her estate.

Example:

Andrew makes an investment of €75,000 in Company Z in February 2020 and is obliged to hold the shares until February 2024 to avail of the relief.

Andrew claims €75,000 against his Income Tax for the tax year 2020 and receives a refund of tax. Andrew is deceased in 2022. Andrew did not have a will and all his shares in Company Z form part of his assets to be sold and the proceeds distributed among his family.

The shares in Company Z are sold at arm's length for €50,000. The amount of relief originally claimed of €75,000, is reduced by the consideration received (through an arm's length transaction) for the shares, €50,000; leaving €25,000 relief due to Andrew in the tax year 2020. An assessment, for Andrew, will be raised for 2020 and relief of €50,000 will be clawed back against his estate.

Example:

In the above example if the shares had been sold at arm's length for €80,000, there would be a full clawback of relief as the consideration received (through an arm's length transaction) for the shares would exceed the amount claimed.

18 Appendix: Confirmation of Compliance with Certain Conditions [s508H]

Applications for a Revenue confirmation on whether or not certain eligibility criteria for relief under Part 16 are met should be made in accordance with this section.

All applications for Revenue confirmations should be made through the Revenue Technical Services ('RTS'). The RTS operates across all Revenue Divisions and handles complex technical issues on which clarity may be required. The opportunity to request Revenue's opinion is not for the purpose of seeking comfort for a transaction a taxpayer intends to enter into. The RTS should only be used where there is a genuine uncertainty on the matter for which information is not readily available in the public domain.

An application can be made by a company which is about to issue shares, and which would like Revenue to provide clarity on whether or not certain eligibility criteria for relief under Part 16 are met. Specifically, those criteria in relation to:

a) Undertaking in difficulty [s490(2)(a)(ii)]
b) The business plan [s496(4)]
c) Initial risk finance [s496(5)]
d) Expansion risk finance [s496(6)]
e) Follow-on risk finance [s496(7)]
f) Details of the RICT Group

The application should clearly indicate which of the above conditions it is in relation to and should highlight the nature of the uncertainty.

How to Make an Application

If there is a belief that an uncertainty exists for which a confirmation is needed, the RTS1A must first be completed.

Detailed guidance, together with a links to the Form RTS1A can be found in TDM Part 37-00-00a.

Complex technical queries should be submitted in writing attaching the completed Form RTS1A and accompanying documents. These should be submitted via MyAccount/ROS using the contact details in Appendix B of TDM Part 37-00-00a. This must be submitted to RTS directly.

What to include with the Form RTS1A

The Form should be completed in full. It will not be accepted if it is only partially completed. Where a company is unable to obtain information, it should note that on the application rather than simply leaving a blank. Equally, stating 'see attached' in answer to a question on the application is not permitted and it is important to ensure the question is answered on the actual application form. An incomplete application form, such as where Revenue identification information was not provided, may not be processed.

1. Details of the RICT Group (s489)

In order to review any of the 5 aspects (as set out above) the form can relate to it is necessary to identify if the qualifying company is part of a RICT group.

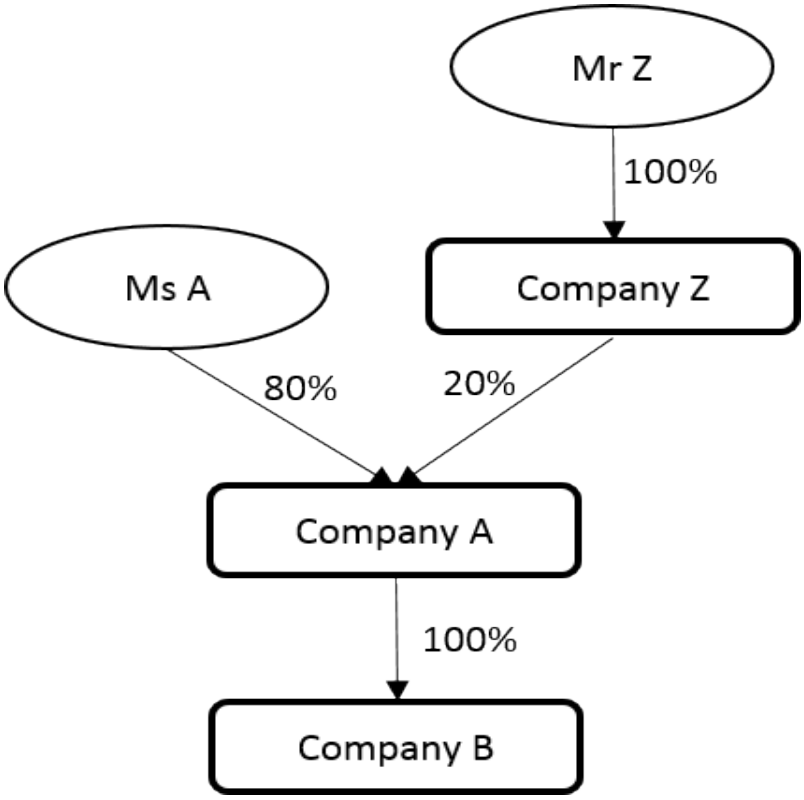
In the application the company should set out the RICT group (applying the definitions in Section 8.1), if any, that it is a member of. Applying the following steps, which is information required by Revenue in respect of every application under section 508D, should assist in determining members of the RICT group:

1.1

Prepare a group structure showing the qualifying company, companies in which it holds shares and any companies or individuals which own shares in those companies. Note that this should include all companies, whether dormant or otherwise, and where they are incorporated or tax resident.

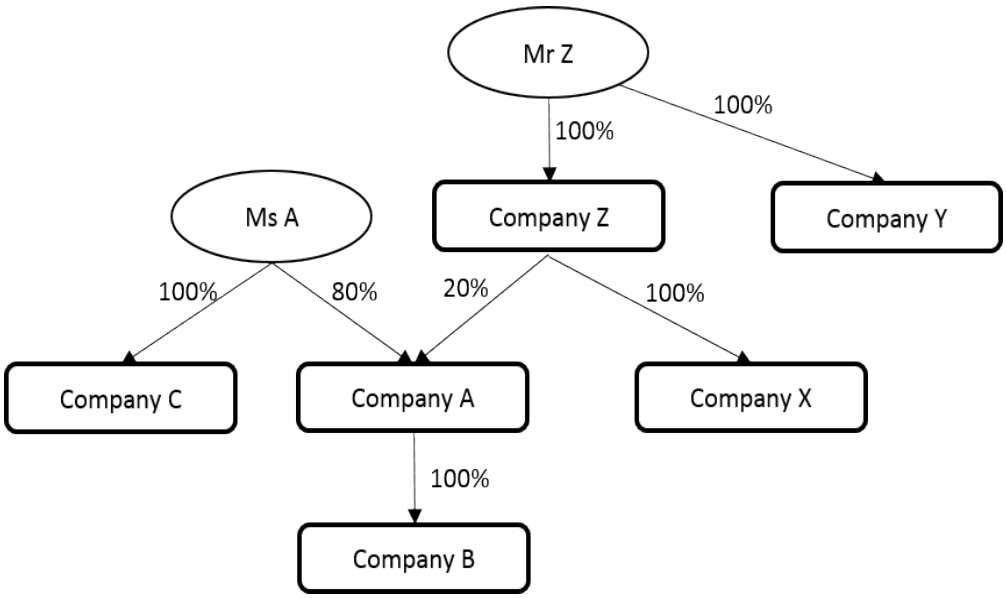
Example

Where Company A is the qualifying company: (Provide details of all parties in the structure)



Any other companies in which any of those companies or individuals own shares should be included.

Example



It is not necessary to include shareholdings held as an investment (e.g. as part of a quoted share portfolio). In most cases shareholdings of less than 5% can also be excluded. However they must be included where they are necessary to understand the control relationship, for example, a number of family members holding 4% each should all be included, a shareholder with a 4% shareholding who also has a right to acquire 20% of the shares in future should be included; a shareholder that has 4% of the shares but has the ability to appoint the board of the company should be included.

Any trades carried on by the individuals in their own name (e.g. as a sole trade or through a partnership) should be included.

Where the control relationship, either because of the rights attaching to shares, a contract, something in the company's constitution or a shareholders' agreement, is different to the shareholding relationship, details of the control relationship should be included.

A copy of the company's constitution, shareholders' agreements and details of the shares' rights, as well as any other associated document, must be attached to the application.

Where there are any future rights over shares, e.g. an option agreement, details of same should be included and a copy of any such agreement should be attached.

Example

Under an option agreement signed on 1 January 2019 Company A has the right to acquire 15% of the shares in Company Y in 5 years' time. These details should be provided.

Details of any changes in shareholding in the company in the year prior to this application must be included. Details of changes in shares held by controlling shareholders in the qualifying company should also be included.

Details of any loans between any of the parties in the group structure should be included.

Any other company or trade that would be considered part of "the group" should be included.

In the majority of cases, the RICT Group will comprise all businesses in the structure either under common corporate ownership or control, or under common individual ownership or control operating in customer/supplier markets.

For each company or sole trade, the following must be included:

- Where the company or trade is located (e.g. Cork, Monaghan, France etc.)
- A PPSN/Tax Reference Number (as applicable);
- The date of incorporation, for companies;
- A short description of the nature of the activities carried on (e.g. green energy generation, dormant company, holding company etc.);
- The date on which those activities commenced;
- If the activities were acquired from any other person, details of that acquisition (including the name, address, relationship of that person to the company and a summary of the transaction).
- Details of the first commercial sale (in many cases this will coincide with the date of commencement to trade).

A table, as follows, detailing the above can be provided:

Name	Location	TRN	Incorporated	Activity	Commence	First Sale	Acq.

2. Undertaking in Difficulty [S490)(a)(ii)]

A table setting out the financial position of all businesses in the RICT group must be included.

Sample table:

					Total
Name of business					
(a) Subscribed share capital per accounts					
(b) Share capital shown as a financial liability					
(c) Share premium					
(d) Sub-total (a) + (b) + (c)					
(e) 50% of (d)					
(f) Retained earnings / loss per accounts					
(g) Other reserves					
(h) Adjustments per auditor's letter					
(i) Sub-total (f) + (g) + (h)					
(j) Total (d) – (i)					

If (j), in the total column, is a negative amount and greater than the figure at (e), the RICT group may be an undertaking in difficulty.

The most recent financial statements, and auditor's letter if appropriate, for each business in the RICT group must be provided.

If the company believes that it is not an undertaking in difficulty because the issue of its shares was facilitated by a financial intermediary regulated by the Central Bank of Ireland, then details of that financial intermediary should be included.

3. Business Plan [S496(4)]

A business plan is defined as a written business plan which contains details of the product, sales and profitability development, establishing ex-ante financial viability and which includes both quantitative and qualitative details of the activities the investment is sought to support.

A copy of the business plan used to raise funding, or that will be used to raise funding, must be attached to this application.

4. Initial risk finance [S496(5)]

An initial risk finance investment is the first issue of eligible shares by a RICT Group, other than an expansion risk finance investment. Details of any previous EII/SURE/BES (or their equivalents in other Member States) by any member of the RICT group should be included.

Such a share issue will only qualify for relief if the share issue date is less than 7 years after the RICT group's first commercial sale.

For the purposes of the 7-year test, the RICT group includes all companies or trades that have at any time formed part of the RICT group with the qualifying company.

5. Expansion risk finance [S496(6)]

An expansion risk finance investment is the issue of eligible shares to fund entering a new product on the market or entering a new geographic market.

Such a share issue will only qualify for relief if the investment required in a business plan prepared to support this expansion is greater than 50% of the RICT group's average annual turnover in the preceding 5 years.

In addition to the business plan showing the proposed expansion, a table showing the annual turnover for each business in the RICT group, and the accounts which support those figures, should be provided.

Sample Table

				Total
Turnover 2018				
Turnover 2017				
Turnover 2016				
Turnover 2015				
Turnover 2014				
Total				
Average				
Investment sought per business plan				

6. Follow-on risk finance [S496(7)]

The business plan which supported either the initial risk finance investment, or the expansion risk finance investment, and foresaw the possibility of this follow-on investment must be provided.

A schedule showing the shares issued to date by the RICT group which qualified as risk finance investments should be included. The schedule should set out the date of the share issue, the amount raised, and the class of share issued. This should include details under all the relevant schemes i.e. BES/EII/SURE/SCI(as well as equivalent reliefs availed of in other Member States).

Companies should highlight where in the business plan the follow-on investment was foreseen, and the business plan should provide confirmation as to the purpose those funds are to be used for.