Start-Up Refunds for Entrepreneurs (SURE)

Part 16-00-11

This document should be read in conjunction with Part 16 of the Taxes Consolidation Act 1997

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This manual refers to Part 16 TCA 1997, before it was amended by Finance Act 2018. It applies to shares issued up to 31 December 2018.

For share issues after that date please refer to Tax and Duty Manual Part 16-00-02 in respect of the company conditions, and Tax and Duty Manual Part 16-00-03 in respect of the investor conditions.

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Introduction and Summary of the Scheme

Start up Refunds for Entrepreneurs (SURE) is a tax relief incentive scheme.

If you are interested in starting your own company, you may be entitled to an income tax refund [1]of up to 41% of the capital that you invest under SURE. Depending on the size of your investment you may be entitled to a refund of income tax paid over the 6 years prior to year in which you invest.

The following is a basic example of how refunds under SURE are calculated.

John makes a SURE investment of €100,000 in 2015.

The €100,000 investment made by John can be used to reduce his taxable income in one or more of the previous six tax years.

John's Earnings & Tax Paid for the last 6 years [2009 to 2014], per his Forms P60, and current year, per his Form P45, are as follows:

	2009	2010	2011	2012	2013	2014	2015
Earnings	80,000	80,000	100,000	75,000	60,000	30,000	30,000
Tax Paid	21,496	21,496	29,532	20,562	14,412	2,700	2,700

John opts to utilise his SURE investment of €100,000 in 2011. This reduces John's taxable income and tax payable for 2011 to Nil and results in a SURE refund of €29,532 calculated as follows:

2011 Earnings: €100,000
SURE Investment: €100,000
Taxable Income: €Nil

As John paid tax of €29,532 in the 2011 tax year, and has previously not received a full or partial refund of tax paid in the 2011 tax year, he will receive a SURE refund of the full amount of the tax he paid in the 2011 tax year of €29,532.

1. General Conditions

The general conditions for SURE are that you must:

- Establish a new company carrying on a qualifying trading activity (see below);
- Have mainly PAYE income in the previous 4 years. This would include a person currently in PAYE type employment, an unemployed person, a person recently made redundant or a retired person;

[1] Your SURE Investment does not entitle you to a refund of PRSI and, or USC deducted

- Take up full-time employment in the new company either as a Director or an Employee;
- Invest cash into the new company by way of purchase of new shares.

2. What Conditions Apply?

Conditions apply to the Investor, the newly created company and its business activities and the timing and nature of your investment. These are set out below.

The Investor

The investor must make an investment by purchasing new eligible shares (please refer to the definition of new eligible shares on Limits on Investment Amounts)
They must hold the shares for a period of 4 years from the date of issue.

Investors must hold at least 15% of the issued share capital of the company for 12 months after the issue of shares, or if the company is not trading at that time, from the date it begins to trade.

Investor's income from previous years must have been mainly liable to PAYE. However income in the year immediately before the investment can be from any source.

For example if investor's SURE investment is made in 2015, incomes for the 2011 to 2014 tax years are examined and, the following applies:

- 2014: income can be from any source
- 2013, 2012 & 2011: investor's non-PAYE income should not exceed the lower of your PAYE income or €50,000.

The Investor must enter a full-time employment for a 12 month period with the company, as an employee or a director, starting either 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.

It should be noted that investors 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).

An Investor must not receive any payments from the company other than reasonable remuneration and expenses in the 3 year period after the share issue.

During the 12 months before first investment in the company an investor must not have held (or have been entitled to acquire either directly or indirectly) more than 15% of the share capital, loan capital or voting rights of any other company.

This condition may be set aside where an investor only held an interest in only one other company and either:

- company is dormant i.e. no turnover in any of the previous 3 years;

or

- The 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 (see below) The subscription for the shares must be for bona fide commercial purposes.

An Investor must not avail of SURE for the purposes of avoiding tax only.

Neither the investor nor the company may enter into any agreement, arrangement or understanding which could reasonably be considered to eliminate the risk from the investor's investment.

2.1 The Company

2.1.1 The Company must

I. Be a Qualifying New Venture.
This means that as well as carrying on a qualifying trade (see below) it must be a new company i.e. less than two years old (from incorporation), and it must not 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. a pub) and the SURE company re-opens the pub (possibly with a different name and layout) in the same location.
- A person who had traded as a Sole Trader, then decides to incorporate, and carry on the same business as a company.

II. Be incorporated in the State or in another EEA [2]State.

III. Be an unquoted company.

IV. Be tax resident in the State or in another EEA State and carry on business in the State through a branch or agency.

V. Carry on relevant trading activities from a fixed place of business in the State.

VI. Be a micro, small or medium-sized enterprise.

VII. Have its issued share capital fully paid up. (This must remain fully paid up throughout the three years following investment) i.e. all issued shares must be paid for in full.

VIII. 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 not commenced to carry on relevant trading activities, on research and development activities.

[2] The European Economic Area (EEA) includes the 28 EU Member States and Iceland, Norway and Liechtenstein

2.1.2 The Company must not:

I. Have any special trading arrangements with your former employer company, or a company related to that former employer company. Normal business transactions are, however, acceptable, provided these are conducted on an arms length basis.
II. Carry on a trade which is similar to any other trade in respect of which you have or have had a controlling interest.
III. Be considered as a firm in difficulty for the purposes of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.
IV. Control or be controlled by any other company, with the exception of controlling a qualifying subsidiary.

2.2 Qualifying Trading Activity

Most trading[3] activities are allowed subject to the exceptions below.

I. Once-off or speculative transactions (referred to in the legislation as "Adventures or concerns in the nature of trade")
II. Dealing in commodities or futures in shares, securities or other financial assets
III. Financing activities e.g. making loans
IV. Professional service companies e.g. accountants, solicitors, business advisors, doctors and architects, however Internationally Traded Financial Services may qualify subject to the exclusions above
V. Dealing in or developing land (including building development)
VI. Forestry
VII. Operations carried on in the coal industry or in the steel and shipbuilding sectors
VIII. The production of a film

2.3 Extra requirements for certain types of trades

2.3.1 Green Energy Activities

Where the trading activities of a company includes green energy activities it must spend all the money subscribed on such activities prior to the final month of the 4 year holding period for the shares.

2.3.2 Internationally Traded Financial Services

A company carrying on Internationally Traded Financial Services[4] will require a certificate from Enterprise Ireland.

[3] The term "trading" is not defined in legislation as it is a concept that has been interpreted by the Courts over many years However, for practical purposes most regular recurring business activity that has a turnover is likely to qualify as trading.
[4] The inclusion of Internationally Traded Financial Services is subject to a commencement order by the Minister for Finance

2.3.3 Tourist Traffic Undertakings

A company carrying on Tourist Traffic Undertakings must have prior approval from Failte Ireland, BEFORE making any application to the Revenue Commissioners.

2.3.4 Research and Development Activities

Companies that have not commenced to trade may still qualify for SURE relief if they carry out relevant R&D activity[5]. Certain additional conditions arise:

I. They must commence to trade within 2 years of the investment and expend all of the money subscribed from shares before the end of the 4 year holding period, **or**

II. The company must spend all the money subscribed on research and development activities and must dispose of a specified intangible asset within the meaning of Section 291A TCA 1997 (i.e. intellectual property or know-how) prior to a date which is one month before the end of the 4 year holding period for the shares.

2.4 The Investment

The investment must be for new eligible shares (shares with no preferential rights).

The investment is normally a direct cash investment for shares. However, if the investor has paid company expenses from his own resources this may also qualify.

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

I. dates 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.

Please note, salary forgone is not considered to be the making of a loan under SURE.

There can be two "relevant investments" under the scheme, the second of which must take place within two years of the end of the first year i.e. first relevant investment in 2015, then the second investment must take place in either 2016 or 2017.

A relevant investment is the total amount subscribed for shares in a calendar year e.g. a person can make investments in March, April and May, and this would be a single relevant investment

[5] As defined by section 766 TCA 1997,more information is available here:

2.5 Limits on Investment Amounts

The minimum investment under the scheme is €250 and the maximum investment is €100,000 per year. Therefore the limit on the SURE investment is effectively €700,000, as €100,000 may be relieved in each of the previous 6 tax years and the current year e.g. you can invest €700,000 in 2015 and claim SURE of €100,000 in the years 2009 to 2015 inclusive.

A company that raises both SURE and EII [6]may raise a maximum of €2,500,000 in any one twelve-month period, up to a lifetime maximum of €10,000,000.

2.6 New Eligible Shares

The shares issued in respect of your investment must be eligible shares. This means that throughout the holding period of 4 years they cannot carry any present or future preferential rights to dividends or to a company's assets on it's winding up. In addition they must not carry any present or future preferential right to be redeemed.

2.7 The Refund

If all of the conditions are met you may be entitled to a SURE refund on the investment. SURE is granted as follows:

- You select, from the previous 6 tax years, which year you want the SURE investment to be utilised.
- Your SURE investment is used to either:
    - fully utilise your SURE investment, up to a maximum of €100,000, **or**
    - reduce your taxable income in the year selected to Nil.

If your SURE Investment has not been fully utilised in the year selected you can pick other years(s) in order to fully utilise your SURE investment.

It should be noted that your:

- SURE investment, up to a maximum of €100,000, must be fully utilised in the 1st year selected by you before you pick another year and so on until your SURE investment has been fully utilised.
- SURE investment cannot be split between years in order to reduce your 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 your spouse / civil partner. Only the person making the SURE investment is entitled to tax relief on the SURE investment made.

[6] The Employment Incentive Investment Scheme (see Tax and Duty manual: Part 16-00-10)

If you have 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 you in that year is the difference between the amount of the original EII/BES investment and the maximum annual amount of €100,000.

Please refer to Appendix II for worked examples and a template to work out an estimate of the SURE refund you may be entitled to.

2.8 Further Investments

If you wish to expand the company in the future the company may qualify for the Employment and Investment Incentive (EII) relief in respect of any further investment made by third party investors in the company. You must however, notwithstanding any outside investment, ensure that the continuing conditions of SURE are not contravened.

2.9 How to make a Claim?

Before the claim is made the investor must have made his/her investment and received his/her shares in the company.

Claims can be made once the company commences to trade i.e. they must make their first sale.

Where the claim relates to a company which has not commenced to trade, but has carried out research and development activities, a claim can be made once the company has expended 30% of the funds raised on the research and development activities, only where those activities are undertaken with a view to carrying on relevant trading activities.

The claim for relief must be made within two years of the end of the year of assessment in which the investment is made and shares are issued, e.g. a claim for an investment made in 2015 must be claimed by 31st December 2017.

Claims should be sent to:

Office of Revenue Commissioners,
Incentives Branch,
Stamping Building,
Dublin Castle,
Dublin 2.

And must include:

- A Form Sure C completed by the company Secretary.
- A separate Form Sure I completed by each individual investor.
- Copy of company bank statement showing when the investment was lodged.
- Stamped Form B5 showing allotment of shares or Stamped A1 if shares allotted upon incorporation.

Once Incentives and Financial Services Branch (IFSB) is satisfied that the investment qualifies for the relief the individual investor's application will be forwarded to the applicant's tax office. IFSB does not calculate or process any refund due. Refunds are dealt with by the applicant's tax office, who will notify the individual applicants directly of refunds due. Note that if you have any outstanding tax liabilities, these will have to be addressed prior to the issue of a SURE refund.

2.10 Contact Details

Queries in relation to the operation of this scheme should be e-mailed to SUREadmin@revenue.ie or by telephone (01) 858 9843 or call in to your Local Enterprise Office.

2.11 Cumulation of State Aid

With effect from 1st January 2007, a company that raises capital under the SURE scheme (and/ or under the EII) will be subject to a reduction in other State aids, which they apply for subsequent to raising funds under the SURE/EII (with the exception of schemes approved under the R&D and Innovation State-aid framework).

The attention of owners of small businesses, or of people intending to start or expand a business by raising SURE/EII investments, is drawn in particular to the fact that under EU Cumulation of State-aid rules, full details of a company that has been the beneficiary of a State aid in the form of EII/SCS:

- Must be notified to the European Commission;
- Will be published on the Revenue website and on the European Commission's website; and may be made available to other State agencies with responsibility for the administration of other State-aided schemes.

N.B. Any queries regarding EU cumulation of State aid rules should be addressed to the State agency responsible for administration of the State aid in question.