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EIISURE Review
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Consultation on Review of EII and SURE

Dear Sir

We welcome the opportunity to provide input to the Consultation on the Review of the Employment and Investment Incentive (EII) and the Start-Up Refunds for Entrepreneurs (SURE) schemes.

Our members have in-depth experience of the operation of these schemes and their input has informed our approach to this submission.

EII

The EII is a very important source of finance for early stage and small businesses that often have limited funding options available to them and very often must rely on financial backing from family and friends. It plays a vital role in scaling start-ups and small businesses to the next level of growth, helping them to expand, increase employment and raise further future investment.

The tax relief on qualifying EII investments is a critical part of the decision-making process for investors, particularly in relation to the quantum of investment. However, the actual decision to invest is based on commercial grounds and belief in the business, as no investor will make an investment to obtain 40% tax relief without a reasoned belief that their investment monies will be ultimately repaid also. There is very significant risk attaching to the investment monies which are vital to many start up and small companies and the tax relief is a necessary cog for the sustainability of same.

Improving the funding environment is essential to mitigate the challenges facing Irish business. In a post-Brexit environment, smaller businesses in particular, will have to invest in new markets. These may be far afield, such as China or India, or closer to home, in Europe.

Either way, planning for such diversification could take three to five years. Huge structural changes will be required to drive expansion and diversification.

Changes to supply chains and logistics may be needed in certain sectors such as the food industry, and these can be complex and expensive. This investment will require serious financial support, by way of capital, a strong balance sheet and funding from a range of external sources. It will be critical to the expansion of Irish companies.

Many SMEs encounter difficulties when raising finance from mainstream banking institutions, often due to issues not related to the business. For example, the directors may have legacy issues resulting from property investments which prevent the SMEs from securing the funding. Generally, other alternative lenders will not consider lending to trading SMEs which do not operate in a preferred sector, such as IT or that cannot provide substantial security (for example, property or personal guarantees from directors).

For those that can raise funding through alternative means, the finance costs can be prohibitive to doing business. In this context, the EII scheme is a vital tool to allow many viable and fundamentally sound SME businesses to raise short-term financing at a reasonable rate of return to grow and develop.

Providing entrepreneurial funding for a business carries great risk for any investor, particularly when the business is in the start-up and early scale-up stage. With the recovery of the Irish economy, there is now a greater appetite for investment among Irish investors. Investors are exploring a suite of possible investment opportunities available to them domestically and abroad. The EII scheme therefore needs to be an attractive proposition to Irish investors to encourage them to bear the risk of investing in these small businesses.

However, there are a number of design features of the EII which are acting as barriers to investment, such as splitting the tax relief into two tranches, the annual investment limit of €150,000 and the revised connected party rules following Finance Act 2017.

The impact of the GBER policy

The General Block Exemption Regulations (GBER)[1] are also having a significant impact on the operation of the scheme. The GBER has added to the cost and complexity of claiming EII. It is particularly difficult for established SMEs (i.e. those trading more than seven years) to qualify for relief under the rules. Under the GBER, companies trading for more than seven years must either:

(a) be entering a new geographical market with a new product or service; or
(b) have previously raised BES/EII funding within their first seven years of trading.

The GBER restrictions also affect businesses that are less than seven years old in cases where they previously raised EII and now want to raise further investment. GBER requires that follow on investment must have been foreseen in the original business plan. Moreover, it requires a business to have foreseen in that business plan its exact financial requirements for funding throughout the first seven years if further investment utilising the EII scheme is envisaged. This is unrealistic from a commercial perspective.

[1] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible internal market in application of Articles 107 and 108 of the Treaty.

The administration of the GBER

There is a tight and restrictive administrative process under the GBER which is stifling the use of this important tax relief aimed at helping small companies to raise finance. We understand from member feedback that Revenue is taking a prescriptive approach in administering the EII within the parameters of the GBER.

For example, the original business plan must provide both numerical and descriptive information of how the future funding will be spent by the business. Many businesses, especially smaller business may have plans to raise future funding after a number of years trading but may not have not envisaged in detail, at the outset, how much funding would be required in the future to expand and develop the business.

The inclusion of the EII scheme within GBER is now locking businesses out of the opportunity to raise much needed capital investment, as the GBER provisions are being applied retrospectively to business plans prepared before its introduction.

As illustrated in the 12 case studies in Appendix II, our members are experiencing considerable difficulties with the administration of EII, including:

- Backlogs in obtaining outline approval (pre-clearance) that a company may qualify for EII.
- Significant delays in issuing tax relief certificates to investors, once they have provided finance to the EII company.
- Uncertainty around when such tax relief certificates will issue and where they are in the queue.
- Increased requests from Revenue for further supporting information, such as detailed breakdowns of shareholdings; budgets; bank statements and business plans, in addition to what has been supplied in the completed application forms.
- Uncertainty surrounding the level of information that must be provided to satisfy the conditions imposed by the GBER, for example, the degree of detail to be included in the company's business plan.
- Interaction between EII and Entrepreneur Relief.

The resulting delays in processing EII applications are creating uncertainty for taxpayers surrounding the availability of tax relief on their investments and in some cases compromising the businesses ability to raise EII finance.

We believe that it is essential that the review undertaken by Indecon Economic Consultants not only considers the economic impact of the GBER on EII investment, but also the extent to which the administrative costs associated with the GBER are impacting potential EII investments.

Importance of outline approval

The ability for a company to obtain an opinion from Revenue (in the form of outline approval) that it may qualify for the EII is an essential part of the current scheme. Obtaining outline approval (pre-clearance) is critical to enabling companies to seek EII investment in the marketplace. Investors want certainty from the outset on whether their investment will qualify for tax relief before they are willing to make the investment which carry a high degree of risk. While outline approval does not guarantee this, it does serve to give some independent clarity to investors before making an investment.

Media reports have suggested that a self-assessment process could be introduced to address some of the long delays currently being encountered by taxpayers. However, we believe that pre-clearance rather than self-assessment is vital for companies so that they can provide investors with the necessary advance assurance that their investment should qualify for tax relief.

SURE

The SURE is an income tax refund scheme which is available to individuals who start their own business. The impact that SURE can have on a new business is limited by the fact that it comes in the form of a tax refund "after the event". What a new business needs most in its early days is cash upfront to pay any salaries and other running costs.

However, the SURE refund can only be claimed after the investment has been made by the new business owner. He/she must find the cash upfront from elsewhere to invest in the new business first and then make the claim.

Under SURE, the individual needs to have paid sufficient income tax through the PAYE system in the previous four years. This means that a previously self-employed person, who has paid equivalent levels of income tax through the self-assessment system, does not qualify for the relief. These design features of the SURE often act as significant barriers to the effectiveness of the scheme.

Need for an effective regime for Ireland

In the body of this submission, we have set out 12 key tax policy and administration recommendations for the EII and SURE incentives, which we believe are necessary to improve the effectiveness and efficiency of the schemes and which can help to inform government policy in this area.

If it is not possible to adopt such recommendations into the EII regime that is within the GBER framework, the government may consider the option of applying to the European Commission for State aid approval of a new notified risk finance scheme that can help to generate much needed funds for small enterprises to expand and grow in Ireland.

The Institute would be happy to engage further in this consultation through stakeholder meetings or direct discussions. Please contact Anne Gunnell at agunnell@taxinstitute.ie or (01) 6631750 if you require any further information.

Yours truly

Martin Lambe

Martin Lambe
Chief Executive

Summary of Tax Policy and Administration Recommendations

EII – Tax Policy Recommendations

1. **Carry out an economic analysis on the impact of the GBER on the operation of the EII**

   We believe that it is essential for this Review to consider the economic impact of the GBER on EII investment. It would be useful if this exercise could also quantify the extent to which the administrative costs associated with the GBER are impacting potential EII investments.

2. **Provide full EII relief in year one**

   As well as being capped, the EII income tax relief for investors is also split into two tranches - 30% in the year of investment and an additional 10% after three years, if the company meets certain employment targets. This concept of a split relief has been a feature of the EII relief since it replaced BES in 2011. However, it significantly reduces the attractiveness of the EII and should be removed. Investors have no influence over whether the company will achieve the necessary employment targets to allow them to claim their second tranche of relief.

3. **Amend EII rules to recognise Research & Development (R&D) as a qualifying trade in its own right**

   Companies carrying out R&D work for prolonged periods prior to trading are currently experiencing some uncertainty about the availability of EII. Under the predecessor to EII (the Business Expansion Scheme), R&D was recognised as a qualifying trade in its own right and therefore these concerns for companies in sectors such as MedTech did not arise. We recommend that R&D is confirmed as a qualifying trade for EII.

4. **Review the impact of the new connected party test on SME start-ups**

   The EII scheme does not permit the investor or his/her associate (including a relative) to hold **any** shares in the company before making the EII investment, thereby denying the relief to the founder shareholder who may want to inject more funding into the business.

   The connected party rules also deny the relief in situations where a start-up may look to family members and friends to raise investment at the outset. In many instances, it is family and friends of the founder shareholder who are the only ones willing to back the start-up business due to the levels of risk.

   In contrast, an investor is considered 'connected' under the UK EIS if he/she or an associate owns more than 30% of the company. We understand that HMRC only consider linear relatives for the UK EIS (e.g. spouse, civil partner, parent, and child and not brother or sister).

   The impact of the new connected party test introduced in Finance Act 2017 needs to be reconsidered, given close family members and friends are common sources of initial finance for start-ups and they are being excluded by this test.

Perhaps, a new scheme with a simplified submission process, targeted at small/ start-up/ micro companies within certain thresholds could be considered to address the issue of friends and family being prohibited from investing in such companies.

5. Raise the €150,000 Annual Investment Limit

The Irish market contains a limited number of individuals who have funds to invest in business through the EII. At a time when these businesses need a diverse range of finance, the annual cap of €150,000 for these investors is further limiting the funding available for companies through the scheme. The equivalent UK EIS scheme has a Stg£1million investment limit and the limit for the Irish scheme should be increased to an equivalent amount.

6. Extend EII relief to USC and PRSI

Currently EII relief is only available against income tax and not either USC or PRSI. This reduces the relief available to 40%, when the investors marginal tax rate may be as high as 55%.

EII – Tax Administration Recommendations

We believe steps should also be taken to address the current difficulties in the administration process and therefore, we have outlined a number of administrative recommendations below.

7. Resourcing

As illustrated in our sample cases at Appendix II, some investors are waiting a year (or even longer) to receive their EII tax credit certificates because of the backlog in the system. Many remain unclear when and if they will receive tax relief on their investment.

According to recently available published information on EII administration there are 180 applications currently outstanding to be dealt with by four Revenue officials.[2] Additional resources should be committed to processing EII applications, as a matter of priority.

We also recommend the development of customer service standards for EII applications. This would be consistent with Revenue protocols that introduce service standards for processing taxpayer correspondence and tax returns. A general review of the resourcing of the EII administration should be conducted to ensure that resourcing is set at an appropriate level to meet the relevant customer service standards.

8. Review the information that must be provided to Revenue

Detailed information must be provided to Revenue at both the outline approval stage and when the applications for tax relief certificates are submitted. It would be beneficial if the information requirements were reviewed to eliminate the need to provide duplicate information and ensure that information Revenue needs to determine an application can

[2] Response to Parliamentary Question 19526/18 by Minister Paschal Donohoe, TD on 3 May 2018.

be provided at an early stage (minimising additional queries). This would also help reduce uncertainty surrounding the level of information to be provided.

For example, the Form EII currently requires the company to provide details of shareholdings and trades carried on by the individuals at the top of the corporate structure. The purpose of this information is to enable Revenue to determine whether the “connected party” rules are breached. However, the form, as currently designed, appears to seek disclosure of any and all share investments held (including portfolio investments) which are of no relevance to the application.

9. Enhance the outline approval process

The ability to obtain outline approval from Revenue that a company will qualify for EII investment is vital. It provides the company raising investment with confidence that the company's shares will qualify for relief, which helps them to raise finance. Many potential investors are simply not interested in investing, if they cannot have some degree of certainty that their investment will qualify for EII relief. HMRC provides such a service whereby a company can obtain “advance assurance” that an investment will qualify for EIIS/SEIS. This assurance is normally binding on HMRC, provided that the information that was provided to HMRC was correct and complete (and there has been no change to the facts and circumstances provided to HMRC).

It would help to streamline the administrative process if companies could provide all the information Revenue require, as far as possible, at the point when outline approval is sought. Then, when the funds are raised the company would only be required to certify that the facts and circumstances have not changed since outline approval was granted (if that is the case) and submit only the relevant new information (i.e. relating to the quantum of the funds raised and details of the investors).

Furthermore, the process could be simplified by using technology. The application for outline approval could take the form of an online “questionnaire” where applicants could complete the relevant questions and upload further information if necessary. The application process could contain some prompts and information to assist applicants with areas of uncertainty, such as the connected party rules, or the meaning of linked enterprises. This would help minimise the risk of incomplete applications, rejected applications and the instances of additional follow up queries from Revenue, when they commence their review of the application. This approach would be particularly helpful for start-ups and small businesses who are preparing EII applications without professional assistance and may struggle with current complexity of the application process.

We would also suggest that a dedicated Revenue case manager is appointed to each EII case. Currently, when correspondence is submitted to Revenue’s EII email address, the applicant does not know who has received the correspondence, when it will be dealt with and who is handling their case. In addition, it can be difficult to engage directly with the relevant Revenue official to discuss any queries or minor points about the application. Correspondence must be submitted in writing and this can delay the resolution of queries and the ultimate processing of the tax relief certificates.

10. Address areas of uncertainty through Revenue guidance

Revenue guidance on EII has been updated over the last six months to address some common queries on the GBER and on the "connected party" rules introduced in Finance Act 2017. This guidance could be further enhanced by regularly updating it with common queries Revenue receive and include information on any common errors in applications.

Given the complexity of the GBER, further guidance from Revenue on its application would be particularly beneficial. Common areas of uncertainty for members include:

- The level of narrative and financial detail to be provided in the company's business plan to satisfy the GBER criteria.

- Clarity on whether expansion of a business within Ireland will meet the "geographic market" test in the GBER.

11. Allow relief to be claimed against prior year tax liability

Currently, EII relief must be claimed by the investor against income earned in the year of the investment (or the year in which the investor subscribed for the EII shares if the investment was made via a designated fund). As a result, EII companies and designated EII funds are generally in the marketplace raising funds at the same time, during the last quarter of the year, as this is the point at which investors are focused on tax matters, due to the income tax filing deadline.

As a result, applications for outline approval or certificates of relief tend to be submitted to Revenue at the same time. One way to reduce the volume of EII applications at any one time, would be to allow investors to claim relief in the year prior to the year of investment. We expect that this would result in a more even spread in raising EII investment throughout the entire tax year and reduce the strain on administrative resources as the timing of the investment would not be directly linked to the relief.

SURE Recommendations

12. Extend SURE to include business founders who were previously self-employed

The SURE scheme should be extended to include new business founders who were previously self-employed and starting up another business (as well as those coming from employment).

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EII – the background

The Employment and Investment Incentive (EII) is the main income tax incentive that is available to individuals investing in Irish business. It is aimed mainly at supporting early stage business and is a very important relief that can encourage investment in these businesses.

These businesses often have great difficulty in obtaining bank finance and so this tax measure is a very important element of Government support for this sector which is so critical to Ireland's future growth. We have outlined the process that must be undertaken to claim EII relief at Appendix I.

EII relief – the investor perspective

- The EII entitles individuals buying shares in certain types of trading companies to claim income tax relief up to 40% of the value of their investment.

- However, the relief is split into two tranches: 30% is granted in the year of investment and a further 10% is granted after three years.

- The maximum EII claim is €150,000 in any one year.

- No relief is granted for USC or PRSI under EII, even though USC has become a very fixed feature of the personal tax system, (giving high marginal rates of 52% or 55%) against which taxpayers do not receive any additional benefits.

Benefit of the EII to the Irish business receiving the funds

- The target company can raise a maximum of €5m EII funding a year, subject to a lifetime limit of €15m.

- Most trading activities qualify for funding except for once-off speculative transactions; financing activities, including dealing in commodities, securities etc; dealing in and developing land; forestry; film production; operations in the coal, steel and shipbuilding sectors and professional services.

- The investor must not be connected to the company. Following Finance Act 2017, an individual is considered connected if he/she or an associate (including a relative) own **any** shares in the EII company. Before 2 November 2017, certain founders, friends and family members could obtain tax relief on their initial investment in the business because such individuals were not considered connected to the EII company unless they owned more than 30% of the company's shares.

The success of the EII versus BES

The EII replaced a previous incentive known as the Business Expansion Scheme (BES) in 2011. The EII is broader in scope than the BES was, so that a wider variety of trading activities can avail of the funding.

However, the tax relief available under the EII is lower than that under the BES. The BES provided for tax relief at the investor's highest rate of income tax in year one, whereas EII income tax relief is split into two tranches over three years.

Although the economic environment has been challenging in recent years compared to the peak year for BES investment, it is nonetheless true that just over half the number of investors are using EII compared to BES when it was most successful.

Year	No. of investors	Cost to the Exchequer
BES in 2008 (peak)	3,200	€135.7m[3]
EII in 2016	1,768	€32.5m[4]
Drop from peak	(1,432)	(€103.2m)

The impact of the GBER

The EII scheme was brought within the rules of the General Block Exemption Regulations (GBER)[5] in October 2015. GBER allows Member States to introduce State aid measures, within certain parameters, without seeking prior approval or notification from the European Commission. The purpose of aligning the EII with GBER was to ensure that changes to the scheme could be implemented immediately, without having to wait until EU State aid approval issued.

However, there are restrictions within the GBER which exclude certain businesses from qualifying for the EII. It is particularly difficult for established SMEs (i.e. those trading more than seven years) to qualify for the relief. Under the GBER, such companies must either enter a new geographical market with a new product or service or have previously raised BES/EII funding within their first seven years of trading.

The GBER restrictions also affect businesses that are less than seven years old in cases where they previously raised EII and now want to raise further investment. GBER requires that follow on investment must have been foreseen in the original business plan along with the exact quantum of investment required. Taking account of the uncertainty in the global economy in recent years, the timing and quantum of any investment can only be a best estimate in the preparation of any cashflow projections when the business is in its infancy. The business is primarily concerned with its survival one or two years out.

Feedback from our members, as illustrated by the case studies 8 to 10 in Appendix II, has indicated that Revenue is taking quite a prescriptive approach to this area. For example, the original business plan must provide both numerical and descriptive information of how the further funding will be spent by the business. Many businesses, especially smaller business may have plans to raise further funding after a number of years trading but may not have the level of detail Revenue require. The inclusion of the EII scheme within GBER is now locking businesses out of the opportunity to raise much needed capital investment.

[3] Parliamentary Question of April 2014 - PQ 16419/14
[4] Employment and Investment Incentive (EII) Statistics 2012 – 2016 (Page 5), published by the Revenue Commissioners
[5] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible internal market in application of Articles 107 and 108 of the Treaty.

The availability of EII investment for R&D companies

The current EII regime is causing some difficulty in sectors where a prolonged period of R&D activity typically takes place before trading can begin. The MedTech sector is a case in point, even though companies in this sector should be ideal candidates for EII relief. Their activities are labour intensive, leading to significant employment creation, growth of supplier companies and the development of technology that can be scaled, commercialised and internationally traded.

For EII relief to apply, the company in question must generally be trading. There is a recognition in the rules that companies in an early R&D phase may not yet be trading, but they can still qualify for the relief, provided:

- they begin to trade within two years of issuing the EII shares, or
- the company sells an intangible asset (which was a result of the R&D activities) to another company to use in their trading activities.

The difficulty for companies in sectors such as MedTech is that they will often not have begun to trade within two years. Withdrawal of EII relief can arise in these circumstances because the company has continued to undertake R&D beyond the two-year period, without beginning to trade.

Under the old BES system (the predecessor to EII), R&D was recognised as a qualifying trade in its own right and therefore concerns about prolonged R&D periods did not arise under BES.

In addition, it is not common for the developed IP in question to be sold. In most cases, the company that develops and owns the IP is sold to a larger player who has the funds and contacts to commercialise the innovation. For example, often a university spin out takes in EII funds, continues R&D, brings the product to CE marking[6] or the US Food and Drug Administration (FDA) regulatory approval and will subsequently be sold to a multinational.

[6] The letters 'CE' appear on many products traded on the extended Single Market in the European Economic Area (EEA). The CE marking signifies that products sold in the EEA have been assessed to meet high safety, health, and environmental protection requirements.

SURE – The background

- Start-Up Refunds for Entrepreneurs (SURE) is an income tax refund scheme available to individuals who start their own business.
- Anyone who has recently been in employment can claim a tax refund of up to €100,000 for the investment they make in their new business.
- The individual may select from the previous six tax years, which year he/she wants the SURE investment to be utilised to claim the refund of tax.
- There is no refund for USC or PRSI previously paid.
- There is no refund for any tax paid by a person who was previously self-employed in another business before starting this business. It is only available to people previously in PAYE employment, previously unemployed or recently made redundant or retired.

The conditions for SURE

- The person must set up a new company to operate the business and buy shares in that company.
- The company must carry on a qualifying trading activity. Most trading activities are permitted except for once-off speculative transactions; financing activities, including dealing in commodities, securities etc; dealing in and developing land; forestry; film production; operations in the coal, steel and shipbuilding sectors and professional services.
- The person must hold shares in the company for four years from when the shares are issued and must hold at least 15% of the share capital for 12 months after the shares are issued.

The limitations of SURE

Restrictions in SURE are limiting its use and these restrictions need to be reviewed in light of current circumstances.

- The impact that SURE can have on a new business is limited by the fact that it comes in the form of a tax refund "after the event".
- What the new business needs most in its early days is cash upfront to pay any salaries and other running costs. However, the SURE refund can only be claimed after the investment has been made by the new business owner. He/she must find the upfront cash from elsewhere to invest in the new business at the outset and then make the claim - this is often a significant barrier to the effectiveness of SURE.
- To qualify for the relief, the individual needs to have paid sufficient income tax through the PAYE system in the previous four years. However, income in the year immediately before the investment can be from any source.

- A previously self-employed person, who has paid equivalent levels of income tax through the self-assessment system, does not qualify.

The latest data available for a full year indicates that the relief costs €1.8m a year and that only 86 people claimed it in 2015.[7] Only **29** SURE applications[8] have been received so far in 2018. There was no budgeted cost for SURE in the summary list of Budget measures when it was launched in Budget 2015, so we are unable to comment on whether the scheme has performed in line with expectations.

[7] Revenue Commissioners, Costs of tax expenditures (credits, allowances and reliefs)
[8] Response to Parliamentary Question 21868/18 by Minister Paschal Donohoe, TD on 17 May 2018.

Appendix I

The EII administrative process

The conditions that apply to EII tax relief are lengthy and complex. The tax legislation contains 40 pages of provisions dealing with the EII and the conditions for the relief. To qualify for the relief strict criteria must be satisfied, relating to:

- The company seeking to raise EII investment (the qualifying company);
- How the funds raised are used;
- The EII shares issued to investors, and
- The individual investor.

Detailed information on each of these components must be provided to Revenue before an investor can claim tax relief for the investment. The following steps must be completed before tax relief can be claimed:

1. Application for outline approval submitted

A company which wishes to raise investment under the EII scheme will generally apply to Revenue for "outline approval" which confirms that the company will meet the conditions of the scheme. Obtaining outline approval is not mandatory. However, it allows the company to find out at an early stage whether they are likely to meet the conditions of the scheme, before they begin to raise money from investors. It also provides some certainty to investors that their investment in the company will qualify for tax relief.

To obtain outline approval, the company (or their adviser) will complete a 9-page EII outline approval form, providing information about the company and the trade and the plans to raise investment. Detailed documentation will also be submitted to Revenue, including the company's business plan, group structure and other relevant documentation.

2. Revenue review information provided and provide outline approval

Having reviewed the information provided to them, Revenue will express an opinion as to whether the company will qualify for EII investment. This opinion is based on the facts and circumstances provided to Revenue. However, it is not binding on Revenue nor is it a guarantee that the investment will qualify for EII tax relief.

3. Funds raised and shares issued to investors

When the company receives outline approval from Revenue, the company and adviser will seek to raise funds in the marketplace or from their targeted pool of investors. The adviser will provide potential investors with a pack of information about the company seeking to raise finance, including a business prospectus, information on the investment opportunity and the confirmation that outline approval for the investment has been received from Revenue. The fact that the company has received outline approval increases the attractiveness of the investment to potential investors.

4. **Application to Revenue for certifications that the conditions for the relief are met**

   Once the targeted level of investment has been raised and shares have issued to the investors, the adviser/company will complete and submit a Form EII1 to Revenue, seeking certification from Revenue that the investment will qualify for EII relief. This application form provides details on each investor and the amounts raised together with copies of shareholder agreements. At this stage, companies who did not apply for outline approval, will also provide detailed information on the company and its trade, business plan and other information to Revenue. Having reviewed all the information, Revenue will determine whether the conditions for EII relief have been met.

5. **Issue of certificates of tax relief**

   If Revenue accept that the conditions to obtain EII relief are satisfied, Revenue will issue the company/advisers with:

   - A certificate confirming that the company meets the conditions for EII relief (a Form EII2) and certificates for each individual investor, confirming the amount of tax relief that can be claimed (Form EII3).
   - The first tranche of tax relief amounts to 30/40 of the amount invested (subject to a cap on the investment of €150,000).

6. **Investor claims tax relief for 30/40 of their investment (first tranche of relief)**

   Once the investor receives the Form EII3 (which certifies their relief claim) they can claim tax relief against their income in the tax year in which they made the investment. Taxpayers who invest in EII through a designated fund, may claim relief in either the year they subscribe for the shares in the fund or the year in which the fund invests in EII companies.

   Investors claim relief by including the relevant details of their claim on their income tax return (including the reference number on their EII relief certificate) if they are self-assessed taxpayers. PAYE taxpayers can claim relief by submitting their EII3 certificates to Revenue. A claim for relief must be submitted within two years from the end of the year of investment.

7. **Company satisfies conditions for second tranche of relief**

   The investors must hold the EII shares for at least four years to retain their tax relief. Further tax relief may be due to the investor, if the company satisfies certain conditions as follows;

   - since the EII investment was raised, the number of “qualifying employees” has increased by at least one individual and corresponding wages have also increased, or
   - the amount of expenditure on qualifying R&D activities has increased.

   This additional relief, if available, is claimed four years after the year of investment and amounts to 10/40 of the amount invested.

   The company/adviser must submit a Form EII1A, confirming that the company has met the conditions, to request certification from Revenue that the investors can claim the additional tax relief.

8. Certificates for additional tax relief

If Revenue are satisfied that the company has met the relevant conditions, they will issue Forms EII2A (in relation to the company) and Form EII3A (for each investor). These forms certify that the investors can claim the additional tax relief. The individual investors will include information from the Form EII3A on their income tax return for the fourth year following the year of investment. PAYE taxpayers will submit the certificates to Revenue to claim further relief.

Appendix II

Case Studies of Members' Experiences of the EII Scheme

Case 1

Issue: 10 months wait for tax relief certificates – no questions raised on application

In this case, the investors are waiting more than 10 months to receive their EII tax relief certificates from Revenue. EII investment of €750,000 was raised by a start-up company in the engineering sector in the South West in 2016. The application to Revenue seeking outline approval that the investment would qualify for EII was submitted in 2016 and processed within two months. In July 2017, the company submitted the form (Form EII1) to Revenue providing detailed information on the investment and the investors in order to receive the EII tax relief certificates. A company must be trading for four months before an EII1 can be submitted so this was the earliest that the application could be submitted to Revenue. Since then the company and adviser have not received any information on when the certificates will issue.

The adviser has contacted Revenue every two months since the application was submitted in July 2017 to enquire when the certificates will issue or whether Revenue has any queries on the application. While apologetic for the delay, Revenue has been unable to provide the adviser with a timeframe for issuing the certificates, as they have not yet begun their review of the application. The investors expected to claim tax relief on their investment in the company in their 2016 income tax returns, which were submitted last November. Currently, the adviser and the company who raised the EII investment are receiving repeated calls from investors, demanding to know why they have not received their certificates and asking whether the investment will qualify for tax relief at all.

Case 2

Issue: 9 months waiting for EII tax relief certificates, affecting the company's ability to raise further funding

In this case, a company in the biopharma sector in the South West raised a second round of EII investment and is waiting nine months to receive the relevant tax relief certificates. As the company had previously raised EII investment, they believed that the company met the conditions for the relief and therefore, decided on this occasion not to seek outline approval from Revenue. This second round of investment raised €150,000 from a small group of investors (3/4 individual investors).

In Summer 2017, the company submitted the application form (Form EII1) to Revenue, providing detailed information on the investment and the investors in order to receive the EII tax relief certificates. As they had not sought outline approval they also submitted the detailed information and supporting documentation on the business plan, structure etc. To date, the company has not received the tax relief certificates, nor have they received any queries from Revenue about the application.

The adviser has phoned Revenue repeatedly over the last seven months asking for an update on the application. Initially, they were told that the certificates would issue "shortly" and to follow up for an update on their status. However, Revenue has been unable to provide them with a timeframe for release of the certificates or advise whether they have any queries on the application. In recent weeks, the adviser is finding it increasingly difficult to contact Revenue by phone as the phoneline hours have been reduced to a morning-only service.

The company that raised the EII investment wishes now to raise a further round of investment to expand their business, but the investors will not consider investing additional money until they receive tax relief for their investment in 2016.

Case 3

Issue: Plans to raise EII abandoned due to delays in obtaining outline approval

In this case, the company seeking investment abandoned plans to raise finance under EII due to delays in obtaining outline approval. A Dublin-based company in the hospitality sector sought to raise €3m to €4m through EII finance. An application for outline approval was submitted in September 2017. By December 2017, the adviser was contacting Revenue on an almost daily basis as the approval had not issued and the Revenue had not raised any queries on the application. Eight months later in April 2018, Revenue sought additional information on the company's business plan – this information was previously submitted to Revenue in September 2017, as part of the outline approval application.

The company was very eager to raise the finance and proceed with the expansion of the business. The Managing Director of the company became concerned that potential investors would become disinterested in investing in his business and would decide to explore alternative investment opportunities, due to the delay in obtaining outline approval. Consequently, the company decided to abandon its plans to raise finance using the EII and instead sought to raise private equity investment, even though this would be a more expensive source of finance for the company, as investors would expect a higher return on their investment.

Case 4

Issue: Incremental requests for additional information - 2 years waiting for tax relief certificates to issue

In this case, investors in a designated EII fund are waiting nearly two years to receive their tax relief certificates for the second tranche of relief on their investments. This fund raised two tranches of EII finance for a company in the energy sector in 2012. The fund manager requested confirmation from Revenue that the company met the conditions to allow investors claim additional EII tax relief 4 years after both investments. The fund manager submitted the relevant applications (Form EII1A) seeking certificates from Revenue which confirm that the investors can claim additional relief (amounting to 10/40 of their initial investment). These applications were submitted in July and December 2016.

In May 2017, almost a year after the initial application was submitted, Revenue raised a number of queries relating to both applications. The fund manager responded to these queries in July 2017. Revenue subsequently raised two further sets of queries in January 2018 and in March 2018 which the fund manager responded to within a month. At this point, it is almost two years since the original application for the tax relief certificates was submitted to Revenue.

Case 5

Issue: 14 months waiting for tax relief certificates to issue

In this case, investors in a designated EII fund, which invested in companies in the manufacturing sector are waiting over 14 months to receive their tax relief certificates. The fund applied for outline approval on the investment in 2016 and this was processed in a month.

It has been 14 months since the fund manager submitted the application form (Form EII1) to Revenue, providing detailed information on the investment but the tax relief certificates have not yet issued. Revenue raised queries on the application a month after it was submitted which the fund manager answered within a month. Since then there has been no communication from Revenue on the status of the application and when the certificates will issue, notwithstanding ongoing and repeated weekly contact with Revenue asking for an update.

Case 6

Issue: Lack of clarity on the prescribed information Revenue requires

In this case, a company in the hospitality sector was raising EII investment of circa €1m. Nine months after applying for the relevant tax relief certificates, Revenue requested additional information on the application. The adviser had completed the detailed application form (Form EII1) in full and provided all the information specified on the form. It would have been helpful if the additional information required by Revenue was stated on the application form. The adviser submitted the additional information but since then there has been no acknowledgement of its receipt and no further contact from Revenue.

Case 7

Issue: Waiting 7 months for EII certificates for 2nd tranche of relief on investment to issue

This company raised circa €1m in EII investment in 2013 and has met the conditions to enable the investors to claim the second tranche of relief (i.e. 10/40 of their investment). In October 2017, the adviser submitted the relevant application (Form EII1A) seeking certificates from Revenue which confirm that the investors can claim the additional relief. Revenue wrote to the adviser four months later in February 2018, seeking additional information on the company's budget which had been provided previously with the supporting information. The company resubmitted the requested information to Revenue.

At the time of writing, the relevant certificates remain outstanding. The company wishes to raise a further round of investment to expand the business and hopes to raise it from the current EII investors. However, the investors will not consider investing further funds into the business until they receive the full tax relief due on the current investment.

Case 8

Issue: Lack of certainty on the GBER rules affecting expansion opportunities

A Dublin-based company wanted to expand their business to other locations in Ireland but could not obtain certainty on whether they would meet the conditions of the GBER. The company wanted to expand their operations by acquiring suitable commercial premises in Galway, Limerick or Cork. As the purchase of new premises would require substantial capital investment, the company wanted to explore whether EII investment could be raised to fund the acquisition. As the company had begun trading more than 7 years ago, it needed to satisfy certain conditions under the terms of the GBER before it could raise EII investment. For example, whether the company's business plan was prepared with a view to entering into a new product or geographical market.

It is not clear from the GBER or from Revenue's guidance on the EII whether expansion to another geographical market includes expanding a business into a new market in Ireland (rather than abroad). The adviser contacted Revenue in February 2018 to seek clarification on the matter. The adviser did not receive any reply to their query, despite multiple requests to Revenue for clarification. Preparing an application for outline approval for EII can be costly and time-consuming and therefore, the company wanted some clarity on whether expanding their business within Ireland would satisfy the conditions of EII, before they proceeded further with the application process.

Case 9

Issue: Small company wishes to raise finance after 7 years, GBER rules impacting on ability to raise finance

A small family company wishes to raise €200,000 in EII investment but the application of the GBER rules means that their original business plan does not contain sufficient detail to allow them to qualify for relief. The company hopes to raise investment from friends and family to reduce the costs involved in raising investment in the marketplace.

The company has been trading for more than 7 years and previously raised equity investment from friends and family. As the company is trading for more than 7 years, the GBER requires that their original business plan should have foreseen plans to raise EII investment. The business plan envisaged that additional finance would be raised in the future as the business grew but it did not include the level of detail sought by Revenue, such as the specific amount of EII investment to be raised and how it would be spent. The business could not anticipate that this level of detail would be required when they prepared the business plan over 10 years ago.

Revenue has denied the company's application for outline approval on the basis that the investment would not meet the terms of the GBER and therefore, it would not qualify for EII. Revenue has informed the taxpayer that they have the right to appeal their decision to the Tax Appeals Commission, if they are not satisfied with it.

The taxpayer is aware of the current backlog in the tax appeals process and is not optimistic that they will receive an early decision if they appeal Revenue's decision, resulting in the company being unable to raise the necessary finance to expand their business operations.

Case 10

Issue: Outline approval obtained but relief denied due to interpretation of GBER

A company raised EII funding for the first time in 2013. It subsequently raised further EII funding over the following three years. When the new GBER regulations came into effect in late 2015, the company sought and obtained updated outline approval for the company from Revenue. As part of this process, it answered detailed questions from Revenue about the application of the new rules to the company. The company subsequently submitted the application form for certificates on tax relief on the 2016 round of investment (Form EII1) to Revenue and provided further information and documentation on the application, at Revenue's request.

Revenue reverted this year with a determination that (in their view) the company's business plan which was prepared in 2013 was not sufficiently detailed to meet the requirements of the GBER. When the company prepared its business plan in 2013, it could not have anticipated the introduction of the GBER and the level of detail Revenue now seek in the business plan. So, in effect the GBER has a retrospective effect on claims for relief. Furthermore, investors had assumed that as outline approval had been granted, their investment would ultimately qualify for tax relief but now that is not the case as the application for EII relief has been denied.

Case 11

Issue: Plans to raise EII abandoned because of delays waiting on clarification from Revenue

In this case, the company applied to Revenue themselves for outline approval. The company devised a food ingredient to be sold wholesale into the B2C sector. The idea came from their experience of owning and working in restaurants. Outline approval was rejected in September 2017 on the basis that the company was operating more than 7 years in the same market. The rejection did not specify which undertakings were linked.

To date (as of May 2018) Revenue has not responded to any emails, calls or correspondence relating to the matter. As the issue was not resolved before year end, the company decided to abandon its plans to raise EII in 2017. Consequently, the company has not been able to expand the business or raise finance because they cannot obtain clarity and are still waiting on a response from Revenue.

Case 12

Issue: Interaction between EII and Entrepreneur Relief

In this case, a founder was selling his shares in his company. He owned 80% of the voting rights and control by owning 50 ordinary shares. However, the company raised EII finance, by issuing 500,000 non-voting B ordinary shares, resulting in the founder owning less than the 5% ordinary share capital required to claim Entrepreneur Relief. Revenue has refused to give an opinion to the taxpayer on whether the 5% test is met by the number of shares in issue or the nominal values of shares in issue. The interaction between EII and Entrepreneur Relief needs to be reviewed and legislated for.