Irish Tax Institute

Response to Public Consultations on:

- **Employment and Investment Incentive and Seed Capital Scheme**
- **Special Assignee Relief Programme**
- **Foreign Earnings Deduction**

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About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's AITI Chartered Tax Advisers (CTA) and is the only professional body exclusively dedicated to tax. Our members provide tax expertise to thousands of businesses and individuals in Ireland and internationally. In addition, many hold senior roles within professional service firms, global companies, Government, Revenue and State bodies.

The Institute is the leading provider of tax qualifications in Ireland, educating the finest minds in tax and business for over thirty years. Our AITI Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice.

A respected body on tax policy and administration, the Institute engages at the most senior levels across Government, business and state organisations. Representing the views and expertise of its members, it plays an important role in the fiscal and tax administrative discussions and decisions in Ireland and in the EU.

Employment and Investment Incentive (EII) and Seed Capital Scheme (SCS)

Background and importance of the reliefs

The Irish Tax Institute welcomes the opportunity to respond to the public consultation on the Employment and Investment Incentive (EII) and Seed Capital Scheme (SCS). These tax reliefs play an important role in encouraging and facilitating investment in Irish SMEs.

Our submission highlights the importance of facilitating equity investment by private individuals in active Irish businesses either operated by themselves or others.

Ways to increase take-up of the schemes

The take up of both EII and SCS have been below expectations. We have recommended a number of amendments which we believe would increase the attractiveness of these reliefs and encourage much needed investment in active Irish businesses. These include:

EII

- Granting full tax relief to investors upfront in the year of investment, rather than granting relief in two tranches as is currently the case.
- Reviewing the current 3 year holding requirement for the investment, as this is a short turnaround time for the investee company to generate a return to the investor.
- Reviewing aspects of the technical application and interpretation of the legislation, as outlined below.

SCS

- Retaining and enhancing the current regime, for example by:
  (a) Extending the relief to non-PAYE taxpayers in the interests of encouraging entrepreneurship.
  (b) Considering ways to grant tax relief upfront to assist cash-flow.

The importance of the Irish SME sector

The SME sector plays a vital role in the Irish economy and is the main creator of jobs in Ireland. SMEs make up 99% of all Irish businesses and employ almost 70% of the workforce. Providing support to, and facilitating the growth of SMEs is vital for Ireland to achieve increased employment.

Need for increased SME equity financing

The Government has made efforts in recent years to assist SMEs in raising finance including the package of measures introduced in Budget 2014. In spite of these efforts, SMEs in Ireland have faced, and continue to face, significant challenges in raising finance.

Given the difficulties of obtaining bank finance in the current environment, the importance of equity finance for SMEs has been recognised repeatedly by the Government. A public consultation on SME Equity Finance is currently being held by the Department of Finance. The consultation paper recognises *"that there is a real need to increase the levels of equity investment in Irish SMEs, and that to date this strand of potential funding has been underutilised in Ireland"*.

The Government's Medium Term Economic Strategy commented that "*Irish enterprises and entrepreneurs must be encouraged to shift from an overreliance on debt towards a greater use of private equity in growing and scaling their businesses"*.

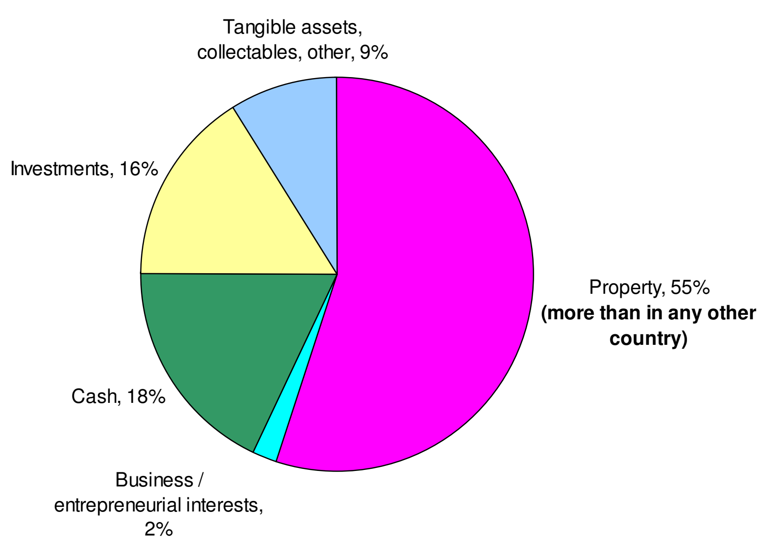
The Action Plan for Jobs 2014 stated that one of the priorities for 2014 is to ensure *"the increased participation in Government sponsored access to finance schemes for SMEs"* including the EII and the SCS.

While private sector financing may be provided to SMEs through institutional investors and venture capital funds, we believe that the private capital held by individuals who have the means to invest in Irish businesses, could provide another vital source of funding. The total amount held on deposit in Irish banks by households at the end of March 2014 was €91.2 billion. If even a small percentage of this capital was harnessed for productive investment in small, high-potential businesses, it would have significant benefits for the Exchequer.

Competition from other types of investment

Starting a business or investing in a trading company is a high risk investment, particularly in comparison to investing in property or other asset backed investments.

Barclay's Wealth Insight Report in 2013 provided a breakdown of how wealth is held by Irish high net worth individuals:



This report shows that wealthy Irish individuals hold the majority (55%) of their wealth in property, more than in any other country globally. By comparison, only 2% of wealth is held in business or entrepreneurial interests.

The Government has recently introduced some very welcome measures to incentivise and encourage investment in property, including the 7- year CGT exemption and the REITs regime. These measures are working well and a similar approach is needed to encourage equity investments in active Irish businesses, particularly given the higher risk of such investments.

EII

The EII provides income tax relief for individuals who make equity investments in qualifying trading companies. Relief is initially available to an individual at 30% of the qualifying investment. A further 11% tax relief will be available where it has been proven that employment levels have increased at the company, at the end of the holding period (3 years) or where the company used the capital raised for expenditure on research and development.

An individual can make an investment of up to €150,000 per annum under the scheme. There are restrictions on what type of trading company can qualify to raise funds under the relief. These limitations apply to the size of the business and the type of trade it engages in.

The EII was introduced in Finance Act 2011 to replace the Business Expansion Scheme (BES). Budget 2011 outlined that the purpose of replacing BES with EII was to boost job creation by SMEs and anticipated that an extra €13 million of tax relief would be granted under the new scheme each year. The major differences between BES and EII are:

- An increase in the amount that companies can raise through qualifying investment.
- An extension in the range of eligible investee companies.
- A reduction in the administrative burden for investee companies.
- A reduction in the holding period for shares from 5 to 3 years.
- A split in the granting of relief into two tranches – 30% provided up front and a further 11% after 3 years, if targets are met by the investee company (under EII).

Uptake of EII v BES

With the introduction of the EII came a decline in the level of tax relief being granted to investors in Irish businesses. It was expected that EII would be more popular than BES and result in an increase in the level of tax relief granted by €13 million every year. In reality the amount of relief granted under EII has dropped significantly.

Relief granted under EII / BES 2011-2013

Year	Relief	Cost €m	Number of Investors
2011	BES	41	927
2012	BES	31.5	984
2012 (part of year)	EII	4	352
2013	EII	12.4	1,011

The number of investors claiming relief has remained relatively consistent. Notwithstanding the reduction in the rate of relief given upfront from 41% to 30%, the significant decrease in the amount of relief granted appears to be due to a reduction in the average level of investment made by investors. Less money has been invested in SMEs since EII was introduced.

Concerns about EII have been raised in recent pre-Budget submissions by a number of bodies. In addition to the Irish Tax Institute, concerns have been expressed by the Irish Exporters Association, Chambers Ireland, Dublin Chamber of Commerce, CCAB-I, Small Firms Association and IBEC amongst others.

Minister for Jobs, Enterprise and Trade, Richard Bruton T.D. has recognised the concerns with EII and commented in the Sunday Business Post recently that *"the take-up of this in recent years has been surprisingly low so we need to look afresh at the scheme"*.

Institute recommendations

The measure introduced in Finance (No. 2) Act 2013 to temporarily remove the EII from the scope of the high earner restriction is very welcome. Feedback from our members is that this has already enabled some investors to increase the level of investment made in SMEs this year. Further changes are necessary however, if the EII is to be "fit for purpose".

There are a number of changes to the EII which we believe would result in a relief which would be more attractive to investors and increase the amount of money invested in the SME sector.

1. *Full 41% relief in the year of investment*

Income tax relief under EII is currently granted to an investor in two stages:

- Tax relief is given at a rate of 30% of the investment in the year in which the investment is made.
- Additional relief at a rate of 11% of the investment is given after three years, if certain targets are met by the investee company. These targets require that employment levels must have increased at the company or that the investment has been used for research and development (R&D).

We appreciate the intention of this approach was to lock-in jobs but this structure has become a real barrier. When an investor is considering an EII investment, compared to a property investment, the returns are not comparable.

The inability to claim the full value of the relief upfront significantly reduces the attractiveness of the relief to investors. As the investor will not have control of the investee company, he/she is not in a position to significantly influence whether the conditions are met. As a result, when evaluating whether to make an investment, a prudent investor cannot assume that the additional 11% relief will become available.

We believe therefore that the full 41% relief should be given from the outset to make the relief more attractive to investors. This will make eligible investments more financially attractive to investors. Such a change should not increase the cost of the relief to the State, as under the current scheme, where the conditions are met, the same total level of relief would be provided to the investor. Any incremental cost of a revamped relief to the State would be outweighed by the benefits to the economy from the increased investment in active businesses.

2. *Consider extending the 3-year holding period*

Shortening the holding period of a qualifying investment from 5 years under BES to 3 years under EII was seen as a measure which would enhance the attractiveness of the relief to investors. However, in practice, the 3-year investment timeframe is proving quite restrictive. It is difficult for companies to invest funds received through the EII and generate a return sufficient to pay back the investment within a 3-year period. Numerous companies have cited this to our members as a drawback of the scheme and a reason for not using EII as a source of finance.

Similarly when EII funds are evaluating whether to invest in a company they will look to see that the investment can be paid back within the 3 year holding period. This limits the amount of companies which are able get funding through these EII funds. We believe therefore that the 3 year time period should be reviewed.

3. *Interpretation of the 'use of funds' requirements*

For the investor to avail of EII relief, the investee company must use the investment raised under EII "for the purpose of carrying on relevant trading activities" or for R&D expenditure if it has not yet begun to trade.

There is limited Revenue guidance on the meaning of "for the purpose of carrying on relevant trading activities". Feedback from our members suggests that there is not sufficient clarity on the meaning of this test and how it is applied. Our members have experienced situations where the relief has been denied in circumstances where the investment would have benefited the trade of the investee company. These situations include where the investee company planned to use the investment:

- to purchase a capital asset which would be used for trading purposes, and
- to restructure a company's debt which was necessary for it to continue trading.

BES relief had a similarly worded requirement – the investment had to be used "for the purposes of qualifying trading operations". Our members have experienced instances however, where investments which met this test under BES do not seem to qualify for EII.

We believe that Revenue guidance should be issued outlining that this requirement should be interpreted such that relief is available whenever the investment is used for the overall benefit of the trade. This guidance would provide greater certainty and clarity for investors and investee companies.

4. *Restrictions on companies in group structures availing of the scheme*

Although the scope of companies which can avail of funding under the EII is wider than under BES, the legislation remains quite restrictive for companies which operate group structures. Subsidiary companies must satisfy certain criteria in order for the holding company/group to qualify. These are preventing some groups from availing of the scheme. The restrictions surrounding companies in group structures require review to enable more groups to qualify. The relief could still be subject to the condition that the funds be used by the qualifying company and not used by any non-qualifying companies in the group.

5. *CGT treatment for losses made on EII investments*

Under s489(8) TCA 1997, when shares on which EII has been claimed are sold, the income tax relief is disregarded and the gain is computed for CGT purposes, as if no income tax relief had been granted. When a gain is made on the disposal of the shares this ensures that CGT does not arise on the income tax relief granted.

Example of Gain on EII shares:

- *Shares purchased* *100*
- *EII relief claimed* *30*
- *Shares sold for* *110*

The relief of 30 is disregarded for CGT purposes and a chargeable gain of 10 arises for the investor.

However, s504 TCA 1997 provides that if the shares are sold at a loss, the level of CGT loss available to offset against other gains is restricted. This is to ensure that any CGT loss available for offset reflects the actual economic loss to the investor after taking the income tax relief into account.

Example of loss on EII shares:

- *Shares purchased* 100
- *EII relief claimed* 30
- *Shares sold for* 50

S504 operates to ensure that the loss that arises for CGT purposes is limited to 20 as the base cost is restricted to 70 (100-30).

Given the high risk associated with an investment in an SME trading company, consideration should be given to removing this restriction on the available CGT loss arising on the disposal of shares. If this loss could be offset against another CGT gain, it would help to reduce the economic loss suffered on the investment. This would help to mitigate some of the risk for the investor of making a qualifying investment.

6. *High earner restriction*

The measure in Finance (No. 2) Act 2013 to temporarily remove the EII from the scope of the high earner restriction is a very welcome measure. Feedback from our members is that this measure has enabled investors to increase the level of investment made. This increased investment will provide much needed additional funding for SMEs and this measure should be extended when it expires in 2016.

7. *Advertising and promotion of the scheme*

There is a lack of awareness about the availability of the EII. One of the recommendations in the Action Plan for Jobs 2014 is *"raising the level of awareness amongst SMEs and entrepreneurs of the business supports available"*. EII should be promoted and marketed as a key part of Ireland's actions to make 2014 the 'Year of Jobs', by encouraging investment in active job-creating businesses.

Seed Capital Scheme (SCS)

While the EII is aimed at encouraging individuals to invest available funds in other peoples' businesses, the Seed Capital Scheme (SCS) aims to incentivise individuals currently or recently in employment to start and invest in their own business. The SCS enables such individuals to claim income tax relief on investments in their business of up to €100,000.

The relief is aimed at those who are or were in employment and who commence a new trading venture. The relief is limited to the amount of income tax the individual has paid through PAYE over the previous 6 years. The individual must control at least 30% of the new trading company and must take up employment with that company.

The Action Plan for Jobs 2014 outlined the importance placed on encouraging entrepreneurship in Ireland and the important role entrepreneurs can play in the economy:

> *"This year we are putting a particular focus on entrepreneurship. As a country we have some great entrepreneurs but, perversely, we are not a great country for entrepreneurs"*
>
> *"The Government's ambition is for Ireland to be among the most entrepreneurial nations world and acknowledged as a world-class environment in which to start and grow a business. With the unemployment challenge that Ireland is currently facing, growing the number of entrepreneurs and start-ups is hugely important for Ireland's economic development"*.

The Action Plan for Jobs also recognised the need to review the SCS and other existing tax supports for entrepreneurs and the need to provide *"a simplified offering targeted at increasing entrepreneurship"*.

Institute recommendations

Some of the conditions attaching to the SCS are limiting its attractiveness for potential entrepreneurs. As a result, the relief has not been widely taken up.

Relief granted under Seed Capital Scheme 2011-2013

Year	**Cost €m**	**Number of Claimants**
2011	2	65
2012	1.6	67
2013	1.3	65

We believe that a more widely available and simplified scheme could play an important role in achieving the Government's ambition to make Ireland a world-class environment in which to start a business. We believe it is important therefore that the SCS is improved and that it is maintained as a separate relief from EII.

Tax relief up-front to assist with cashflow

As the relief is currently structured, the individual is required to raise the capital up front in order to make the investment. There is then a time-lag between the purchase of the shares in the company and the cash refund from claiming the SCS. For example, where an individual ceases employment and starts a new business in 2013, he cannot apply for SCS until the end of the year and will not receive the tax refund until sometime in 2014.

As a result, the investor is not in a position to leverage the tax relief and must source additional finance to invest in the business. In many cases, difficulty in accessing capital for the investment means that the business cannot be started and the relief not availed of. It would be beneficial if a mechanism could be put in place to provide, with appropriate safeguards, that the tax refund was available up front to the investor.

Extension of the relief to non-PAYE taxpayers

The relief is effectively limited to PAYE employees and those who were previously self-employed are excluded. To qualify for the relief, the individual needs to have paid sufficient income tax through the PAYE system but a self-employed person who has paid equivalent levels of income tax through self-assessment does not qualify.

The original policy intention of the SCS was to assist people in setting up a business where they had been made redundant or were leaving employment. In the current economic environment, a lot of people who had been self employed are looking to set up another business. There are no other tax reliefs available to support previously self-employed individuals investing in their own business. EII will not be available as the individual is likely to have more than 15% control of the new venture and therefore, would be ineligible for that relief. It would be helpful therefore if the criteria to qualify for SCS could be relaxed to facilitate previously self employed individuals from benefitting from the relief.

Advertising and promotion of the scheme

As with EII, the availability of the SCS needs to be advertised and marketed more widely and effectively. Consideration should be given to setting up a dedicated helpdesk within the Revenue to assist individuals seeking information and assistance in relation to the SCS and other tax issues arising in starting up a business.

Special Assignee Relief Programme (SARP)

Background and the importance of an effective regime for mobile executives

The Irish Tax Institute welcomes the opportunity to respond to this consultation on the Special Assignee Relief Programme (SARP).

The corporation tax landscape is currently undergoing fundamental review by the OECD in its Base Erosion and Profit Shifting (BEPS) project. A key feature of this process is the link between the taxation of profits and the location where a company's value-added activities take place. Key executives are critical to substance. The location of key corporate executives and "decision-makers" in a country is critical to establishing value and substance and influences where corporate group activity is located and brings further activity to a country.

Formulating a tax policy that is effective in attracting the top mobile talent is intrinsic to Ireland's sustained position in this corporate tax environment. Therefore, this current review of our SARP offering is very timely and a good opportunity to assess our competitive position.

The Institute fully supports the objectives of the current SARP regime to attract internationally mobile employees to Ireland and enhance Foreign Direct Investment (FDI). We believe however that the current tax environment for mobile executives assigned to Ireland is problematic and requires reform. We are competing with some very competitive offerings in other jurisdictions seeking to attract the same talent.

An effective regime is even more important given that assignees working here pay some of the highest levels of tax anywhere in the OECD.

The limited use and the restrictions inherent in the current SARP regime highlight the need for a much simpler and attractive offering for mobile executives. Very effective regimes currently operate in the Netherlands and France and based on these experiences we believe that an effective Irish regime should contain a number of features.

Key features of a new model

- It should be "skills-based", to ensure it is aimed at attracting individuals whose talents and expertise can contribute to Irish economic growth. A focus on the skills which are recognised by the employment permit system (as being in demand in Ireland) may be appropriate.
- It should have an attractive and competitive level of relief similar to the Dutch or French model where a flat rate of relief applies to all of an individual's income. The rate of relief in both the Dutch and the French model is 30%. We need a

regime that is at least as competitive as these but ideally better, for example, provides a 35% rate of relief.

- The scheme should be available to new hires as well as assignees. If there are concerns about displacement, these should be addressed by the skills conditions attached to the relief.
- Lump sum payments to cover costs of relocation and certain expenses such as school fees, accommodation and travel costs should be reimbursed to an assignee on a tax-free basis.
- The tax administration regime should be simplified, for example, allow relief on a self-assessed basis, without the need for advance clearance from Revenue.

Further information on the current regime, its limitations and our proposals are set out below.

FDI and the importance of a competitive tax policy for mobile executives

FDI is a key part of Ireland's economic development strategy and it has worked very well for us for many years. The importance of Ireland's FDI offering is widely recognised and its benefits are consistently and well communicated by Government.

The Action Plan for Jobs 2014 clearly outlines the continuing importance of FDI for Ireland:

> *Foreign Direct Investment (FDI) has been, and will continue to be, an integral part of Ireland's economic development strategy. Foreign-owned firms contribute substantially to Ireland's exports, jobs, expenditure in the Irish economy and to Exchequer funds. FDI plays a key role in stimulating the development of 'new' sectors in Ireland, in enhancing our research, development and innovation performance and in accelerating the achievement of critical mass within sectors.*

At the start of 2014, employment in IDA client firms stood at 161,112 which is the highest level on record. The investment by foreign firms in Ireland also has a significant multiplier effect on the rest of the economy. Commenting on the IDA results, the Minister for Jobs, Enterprise and Trade, Richard Bruton, T.D. noted that:

> *"Every 10 jobs created in multinational companies lead to approximately 7 jobs being created elsewhere in the economy in supply and service businesses".*

A key element of any FDI strategy is attracting the key executives who will establish and drive the operation. Key executives bring the talent, experience and expertise needed to grow businesses and create jobs. The location of key projects can hinge on 1 or 2 key decision makers. There must be a competitive framework in place to attract these leaders to Ireland and to support them while they are here. Minister Bruton has commented in the Dáil on the importance of attracting these key decision makers to Ireland:

"In essence, if we can attract the correct strategic senior executives to Ireland, he or she may bring hundreds more jobs[1]*".*

The difficulty in attracting key mobile international talent is also an issue for the Irish SME sector. This is particularly true for firms in the technology sector and those looking to expand and to compete abroad. Recent changes proposed to Ireland's work permit system have recognised Ireland's skill shortage in ICT and other sectors and broadened the range of highly skilled people who can qualify for permits to work in Ireland. We need to ensure that the tax cost of locating here does not prevent these workers from coming to Ireland.

While Ireland has an excellent track record of attracting international investment, this is becoming an increasingly crowded space and our neighbours in the UK, in particular, are making great efforts to gain ground in winning FDI projects. As the international FDI landscape becomes more competitive than ever, it is important that we act to ensure that Ireland is an attractive destination for internationally mobile employees.

The OECD's BEPS project and similar European Union initiatives are likely to result in significant changes to the international corporate tax system, as noted above. These changes will pose challenges to Ireland but will also create opportunities. The likely increased emphasis on the location of substance in a post-BEPS world, increases the importance that Ireland ensures it is an attractive place for internationally mobile employees to locate and work.

Current tax policy

Ireland has some very positive elements in our FDI offering, however, a key concern is the high personal tax burden that is payable by key executives and is often ultimately borne by the businesses here. The burden arises as a result of two key aspects of our personal tax regime:

a) Very high marginal tax rates.
b) A current SARP relief regime for assignees with limited appeal.

This position needs to be addressed if we are to remain competitive.

a) Very high marginal tax rates

Recent OECD figures[2] show that Ireland has the 9th highest marginal tax rate of 34 OECD countries. Additionally, the marginal rate applies at a much lower income level in Ireland than in most other OECD countries.

This high income tax burden creates a significant tax cost when locating employees in

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[1] Dáil PQ 2, 22 May 2013
[2] OECD 'Taxing Wages 2014'

Ireland, making it less attractive for key overseas employees to locate here. This tax cost is often borne by the business, under tax equalisation policies, making Ireland a much less attractive place to locate staff.

The 2013 Tax Strategy Group Paper on Income Tax recognises this concern and comments that the high tax burden for higher income workers could prove to be *"a potential disadvantage for firms seeking to attract highly skilled, internationally mobile talent"*.

The Economist Intelligence Unit in a 2012 report *'Investing in Ireland - A survey of foreign direct investors'* commented that income taxes could be discouraging senior talent from locating here. The report shows that investors believe these high marginal tax rates will make it less attractive for senior executives to settle in Ireland. The fact that high earners in our competitor countries, can earn much more before they enter the higher income tax brackets, enhances these concerns.

A number of business leaders have spoken out about the impact of high income tax on investment decisions, by making Ireland uncompetitive in attracting top talent. Gus Kelly, CEO of AerCap, has commented that key decision makers are not choosing to locate to Ireland due to high income tax rates. He commented:

> *"Why would you come here and pay higher tax rates? It is a natural disincentive for expatriates to come here. The problem is, other places are much more attractive…We have to ask ourselves: how attractive is the country for expatriates to come to? Do I want to earn 33 per cent less, and move my family and my children to a foreign country? That is the question that people will ask themselves, and it's a tough equation"*[3].

b) Our current targeted regime (SARP)

Currently, Ireland has the SARP targeted at encouraging the assignment of mobile employees to Ireland. SARP was introduced in Finance Act 2012 and is currently due to expire at the end of 2014.

In his Budget 2012 speech, the Minister for Finance, Michael Noonan, T.D. outlined the reasons for introducing SARP.

> "*While the package of attractions for inward investment has been very successful, I believe with some adjustments more jobs can be created.*
>
> *As part of that strategy, I will introduce a "Special Assignee Relief Programme". This will allow multinational and indigenous companies to attract key people to Ireland so as to create more jobs and to facilitate the development and expansion of businesses in Ireland"*

[3] Sunday Business Post, 26 January 2014.

SARP works by providing income tax relief on a proportion of income earned by employees who are assigned by their employer to work in Ireland. Where a range of conditions are satisfied, an employee can claim for 30% of his or her income between €75,000 and €500,000 to be exempt from income tax. This income is not exempt from USC and, where the individual is not liable to social insurance elsewhere, PRSI is also payable. SARP allows expenses for some travel to the employee's home country and for children's school fees to be reimbursed tax-free.

However, the current SARP regime has had a very limited appeal, due to a number of key restrictions with the model. The limitations of the relief are highlighted by the fact that only 15 people availed of SARP in 2012[4]. Upon introduction, it was estimated that the amount of income tax relief granted would be €5 million a year. Details on the full cost of providing the relief to these 15 individuals is not available to us, but figures provided in the Dáil show that the cost of granting the relief to 8 applicants was €63,800, which is an average tax saving for each applicant of nearly €8,000.

The limitations of the current SARP have been identified by a number of different groups since the introduction of the relief. In addition to the Irish Tax Institute, a wide number of bodies have identified concerns with SARP in recent pre-Budget submissions. These bodies include IBEC, Irish Exporters Association, CCAB-I, American Chamber of Commerce Ireland, Irish Proshare Association and the Dublin Chamber of Commerce.

IDA, Forfás, Enterprise Ireland and Science Foundation Ireland have also raised concerns about SARP. Minister Bruton indicated in May 2013 that, as well as receiving submissions calling for improvements to SARP from these independent enterprise development agencies, his Department's pre-Budget 2013 submission to the Department of Finance advocated for changes to SARP including a request that the rate of relief be increased.

Key issues with the current SARP regime

There are a number of key restrictions with this relief which are causing practical problems and are reflected in the low level of take up of the relief. These concerns have typically been echoed in the range of submissions calling for improvements to SARP.

Restrictions in current SARP	Problems caused by restriction
The relief does not apply to the first €75,000 of income.	The relief is less attractive that the relief available in competitor jurisdictions, resulting in a higher tax cost for assignees based in Ireland.
The relief is capped at income levels above €500,000.	The income cap on the relief limits the benefit of the relief for top earners who are

[4] Dáil PQ 129, 8 April 2014

	likely to be the key decision makers who can bring jobs to Ireland.
The individual must have worked with the same employer for 12 months outside of Ireland prior to moving to Ireland.	This requirement means relief is not available to new hires.
The assignee must not be tax resident anywhere outside of Ireland.	This restriction causes issues, particularly in the 1st year of an assignment where the assignee may be dual-resident in Ireland and another country for all / part of the first year of assignment. The issue also causes a concern for US citizens who remain tax resident in the US by virtue of their citizenship. While Revenue has commented in guidance that this restriction will not prevent US citizens from being entitled to claim the relief, however, the issue is not free from doubt.
The assignee can only perform incidental duties outside of Ireland.	This restriction is too unclear and unduly restrictive. In many cases, executives recruited to Ireland are likely to have responsibility for operations in other parts of the EMEA region and it would be necessary for them to spend time working in other countries.
The assignee must have worked for a company in a country with which Ireland has a tax treaty or a treaty information exchange agreement.	This restriction prevents the relief from applying to assignees coming from a number of countries. Brazil is a case in point.

Other international approaches

Many other jurisdictions with which Ireland competes for FDI have more effective personal tax incentives, to attract expatriate senior executives, most notably, the Netherland and France. We set out the key features of these regimes below:

The Netherlands

The Netherlands operates a tax relief for expatriates which allows the employer to pay a qualifying employee a tax-free amount of up to 30% of his/her total remuneration for a maximum period of 8 years.

The main criteria to avail of this relief are:

- The employee must have specific expertise, which is scarce or not available on the Dutch labour market. The ‘specific expertise’ element of this requirement will be met once the employee meets a minimum salary level (€51,969 in most cases).

- The employee must be recruited from abroad and not have lived in the Netherlands for the previous 2 years.
- Moving costs and school fees for children.

We understand that the Dutch Tax Authority receives between 10,000 and 12,000 applications for their 30% ruling regime each year and approve the vast majority of them.

France

A very attractive regime for expatriates exists in France which operates in a similar manner to the Dutch "30% ruling regime" in that the employee can be paid a tax-free amount equal to approximately 30 percent of their total remuneration for a maximum period of up to 5 years. The French regime, however, does not impose a skills requirement which would seem to place it ahead of the Dutch regime, as regards potential breadth of application.

In addition to allowing an exemption from tax on 30% of total remuneration, the regime also provides for:

(i) A tax exemption in respect of all assignment related allowances and benefits in kind, such as, housing and utilities, cost of living allowances and tax equalisation payments.
(ii) An elimination of taxable remuneration corresponding workdays performed outside France (up to 20% of total remuneration) and
(iii) An exemption from French tax on 50% of all non-French sourced passive income (interests, dividends, capital gains)

In order to qualify for the relief, an individual must;

(i) not have been considered a French tax resident in the five years prior to arrival;
(ii) be tax resident in France

It is important that the individual's taxable remuneration after consideration of the exemptions cannot be less than "normal" remuneration paid to other French employees, performing similar functions within the company or the group or similar company.

There are also similar targeted regimes in other countries, for example:

- In Luxembourg payment of certain benefits and allowances can be made to assignees tax-free for up to 5 years to cover e.g. housing costs, living costs, schools etc.
- In Belgium, certain relocation allowances can be paid tax-free. Where time is spent working outside Belgium, this can reduce the amount of employment income taxed in Belgium.
- In Sweden, 25% of an assignee's salary and benefits can be exempt from tax and social security for up to 3 years. Relocation expenses can also be paid tax-free.
- In Finland, certain qualifying foreign experts can elect to be taxed at a 35% rate of income tax, for a period up to 48 months.

From our review of these international approaches we have identified a number of key features that should be considered in developing an Irish model that is fit for purpose.

These key features as highlighted above are:

- It should be skills-based, to ensure it is aimed at attracting individuals whose talents and expertise can contribute to Irish economic growth. A focus on the skills which are recognised by the employment permit system as being in demand in Ireland may be appropriate.
- It should have an attractive and competitive level of relief similar to the Dutch model, so that a flat rate of relief applies to all of an individual's income. The rate in the Dutch model is 30% and we need a regime that is at least as competitive as this, but ideally better, e.g. 35% relief.
- The scheme should be available to new hires as well as assignees. If there are concerns about displacement these should be addressed by the skills conditions attached.
- Tax-free lump sum payments to cover employee costs of relocation should be allowable. It should also be possible for certain expenses incurred by the employee to be reimbursed tax free. These should include school fees, accommodation costs and home travel.
- Relief should be claimed through the self-assessment system rather than requiring advance approval from Revenue.

We fully appreciate that the relief needs to have controls and cannot lead to the displacement of current workers. A skills based relief focussed on attracting people with skills which are in short supply in Ireland will ensure that there is no displacement cost for the Exchequer. Furthermore, it is important that the controls for the relief do not create a disproportionate restriction on the relief being available. Any restrictions must be balanced and not create uncertainty, as to the availability of the relief. Certain elements of the current SARP relief should therefore not be a feature of the new relief:

- There should not be a restriction on the individual being dual-tax resident given the likelihood that assignees may be dual-resident in Ireland and another country for all / part of the first year of assignment. Such a restriction also causes issues for US citizens who remain tax resident in the US by virtue of their citizenship.
- There should not be a restriction on the individual working outside of Ireland during the assignment. In many cases, executives recruited to Ireland are likely to have responsibility for operations in other parts of the EMEA region and it would be necessary for them to spend time working in other countries.
- There should not be a requirement for the assignee to have worked in a company located in a country with which Ireland has a tax treaty or treaty information exchange agreement. This unnecessarily restricts the availability of the relief for assignees from a number of countries.

Cost verses benefit of reform

A reformed relief which attracts key employees to Ireland would not have an overall net cost to the Exchequer. As Minister Bruton has commented:

> "*Many of the senior executives claiming tax relief under SARP would not have moved to Ireland if it were not for SARP. The costs of SARP are more than offset via the economic benefits"*[5].

Attracting key decision makers to Ireland will help to directly create jobs. It will also help to indirectly create jobs with every ten FDI jobs believed to help indirectly create seven additional jobs in Ireland. Individuals with significant skills and experience locating here will also contribute to the up-skilling of the Irish work force.

Implementing the new relief

The new relief should be operated as part of the self-assessment regime. Self assessment works well in Ireland and Irish businesses typically have a strong tax compliance record. A self-assessment approach would ensure that a successful relief does not result in an increased work-load for Revenue. Employers should be required to file a return in the year after the relief applies, outlining the details of employees who benefited from the relief, similar to the current Form SARP 1.

A dedicated mobile talent unit in Revenue is essential to provide assistance to businesses looking at bringing international assignees to Ireland. Tax issues for international assignees can be complex and businesses need to be able to quickly determine, and be certain of, the tax implications of locating employees here. HMRC have taken this approach in the UK and created an Expatriate Team to handle the tax affairs of expatriate employees in the UK.

Timing of implementation

We believe that this new relief should be included in Finance Act 2014 and begin operation in 2015. Grandfathering/transitional provisions could be included to ensure that employees currently benefiting under SARP are entitled to continue to benefit under a new regime. In line with current Government practice to include sunset clauses with all tax incentives, the relief could provisionally expire at the end of a fixed period.

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[5] Dáil PQ 2, 22 May 2013

Foreign Earnings Deduction (FED)

Background and importance of the FED

The FED plays an important role in encouraging and incentivising Irish businesses to export to emerging markets. It should be of particular use for SMEs in assisting them gain a foothold in these markets, as they are unlikely to have the resources to recruit local sales personnel. However, there are ways the relief could be enhanced to improve its appeal and its use.

Currently, relief is only available where time is spent in a limited range of countries "eligible countries" which are Brazil, Russia, India, China, South Africa (the BRICS) and certain other African countries. These represent only a small proportion of the countries Ireland exports to. We include a table below which highlights the value of exports to non-BRICS countries in 2012.

Also, to be eligible for relief an employee must spend 60 days in a year working in an eligible country or countries. This period is too lengthy a requirement for SMEs, who cannot afford to have key staff away from their base for such a long period of time. In addition, days of travel to or between countries are not counted in determining whether the 60 day requirement has been met.

Ways to increase take-up of the FED

We think in order to make the relief work as intended;

- The list of eligible countries should be extended, perhaps to include all non-EU countries;
- the number of days the employee is required to spend working in these countries (qualifying days) should be reduced from 60 days to 30 days and
- the days of travel should be included when counting the number of qualifying days.

We set out below the importance of exports to the Irish economy and why we recommend the changes we suggest to make the FED more attractive to Irish exporters.

Importance of exports to the Irish economy

As a small open economy, exports are vital to the Irish economy. The value of exports made from Ireland in 2013 was €86.89 billion according to the Central Statistics Office. Of this, €54.6 billion was exported to other EU countries.

The Action Plan for Jobs 2014 highlights the importance of exports for the Irish economy:

> *"Generating sustainable broad based export-led growth is essential to rebuilding our economy. As a small open economy growth in overseas markets is critical"*

The Government's Medium Term Economic Strategy Statement reaffirmed the importance of exports to generate growth and employment:

> *"The Government is, therefore, committed to a strategy of export-led growth, as essential to sustainably enhance employment opportunities and living standards in a small open economy".*

The Action Plan for Jobs also highlights the importance of encouraging Irish exports to expand into new markets and reduce our reliance on traditional export markets.

> *"Irish exports are concentrated in a relatively small number of sectors of business activity (although these are major sectors) and in a relatively small number of export markets (albeit major economies). This concentration leaves Ireland potentially vulnerable to economic downturns, the cyclical nature of sectoral demand and corporate strategies of individual businesses".*

Purpose of the FED

The FED provides an incentive for employees to spend time working for their employers abroad. This time spent abroad can play an invaluable role in helping to establish a foothold for Irish businesses in export markets.

On introducing the FED Minister Noonan commented:

> *"I am introducing a Foreign Earnings Deduction to further support our export drive by aiding companies seeking to expand into emerging markets"*

Minister Noonan commented on the FED in the Dáil in January 2014:

> *"The development of export markets is a key economic priority. The reason that FED was introduced was to encourage trade with countries with which Ireland had a low level of exports. In addition, the measure sought to compensate employees for travel to locations which were difficult to access from a distance perspective and due to language barriers".*

How the FED operates

The FED allows employees who carry out part of the duties of their employment in certain countries to claim a tax deduction. The employee must spend at lease 60 'qualifying days' in any 12 month period working in the relevant country. The amount of the deduction is calculated by multiplying the employee's salary by the percentage of days in the year spent working in the relevant country. The maximum deduction available is topped at €35,000.

Initially the relief was limited to the BRICS countries but was extended in Finance Act 2013, at the request of the Department of Agriculture, to apply to Egypt, Algeria, Senegal, Tanzania, Kenya, Nigeria, Ghana and the Democratic Republic of the Congo.

The relief, which was introduced in Finance Act 2012, expires at the end of 2014.

Take-up of the FED

When FED was announced in Budget 2012, it was estimated that the relief would cost €1 million in 2012 and €1.5 million in a full year. In 2012, FED was claimed by 83 employees at a total cost to the Exchequer of only €0.6 million.

Institute Recommendations

We recommend:

Continuance of the FED beyond 2014

The FED has provided an important relief to those who have claimed it. We believe the FED should be extended beyond 2014 with the enhancements we suggest below.

Extension of the qualifying countries

The FED was initially limited to the BRICS countries on the basis that these were the fast growing emerging markets where Irish companies should be seeking to export to. The Department of Agriculture sought the extension of FED for employment related travel to Nigeria, Senegal, Algeria, Egypt, Ghana, the Democratic Republic of Congo, Kenya and Tanzania as these countries are currently the most important trading partners for agricultural exports from Ireland and such an extension would complement the Government Agri-Food Development Fund for Africa. These countries were included within the scope of the FED from 2013.

The level of goods exported from Ireland in 2013 was €86.89 billion according to the Central Statistics Office. Of this, some €32.3 billion was exported to non-EU countries.

As the figures below indicate, BRICS countries make up only a very small portion of Ireland's exports to non-EU countries. In order to assist Irish companies in their efforts to internationalise their operations and realise their export potential we would welcome some consideration being given to extension of the scope of the FED beyond the currently applicable countries, perhaps to all non-EU countries. Many other emerging markets have significant potential for Irish companies to increase their level of exports.

Value of Irish Exports to Non-EU countries in 2013

Non-BRICS countries	€million	BRICS countries	€million
• USA	18,389	• China	1,941
• Switzerland	5,116	• Russia	637
• Japan	1,692	• India	281
• Canada	772	• Brazil	262
• Australia	713	• South Africa	259
• Mexico	690		
• Saudi Arabia	642		
• Singapore	560		
• Turkey	430		
• Norway	395		
• South Korea	321		
• Malaysia	198		
• Thailand	138		
• Taiwan	130		
• Other Non-EU	3,785		

Reduction of the 60 day minimum requirement

To be eligible for the FED, an employee must spend at least 60 days a year working in an eligible country. This requirement is too much for small businesses seeking to expand but who cannot afford to have employees away from their base for that length of time. Reducing the number of days required, perhaps to 30 days, would facilitate employees who make a number of shorter trade visits to multiple countries.

Additionally, feedback from our members suggests that spending 60 days in some countries, such as India, can trigger possible local payroll tax issues. As a result, unless a company is seconding an employee to such countries, employers are likely to send employees there for less than 60 days in a year, resulting in the FED not being available. Reducing the 60 day requirement would help to ensure that the relief is available in these circumstances.