



**European Commission Public Consultation on a
draft General Block Exemption Regulation (GBER)**

Position Paper

23 April 2026

Table of Contents

1.	About the Irish Tax Institute	3
2.	Introduction.....	4
3.	Enhancement of relief.....	4
4.	Excluding tax relief on exit from State aid calculation	5
5.	Undertaking in Difficulty Rules	6
6.	Conclusion.....	7

1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 6,000 is part of the international CTA network which has more than 33,000 members. It includes the Chartered Institute of Taxation UK, The Tax Institute (Australia), the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

2. Introduction

We welcome the opportunity to contribute to the European Commission's public consultation on a revised General Block Exemption Regulation (GBER).

In Ireland, a number of tax reliefs operate under the provisions of Article 21 and 21a of the current GBER which are largely replicated in Articles 25 and 26 of the revised GBER. These tax reliefs include the Employment Investment Incentive (EII), the Start-up Capital Incentive, Start-up Relief for Entrepreneurs and Relief for Investment in Innovative Enterprises. For early stage and small businesses that have limited financing options, these reliefs, in particular the EII, are an essential source of funding to help them grow and develop. Consequently, the focus of this submission is on Articles 25 and 26 of the revised GBER as these are the provisions of most interest to our members.

We welcome the confirmation in the Explanatory Memorandum accompanying the proposal for a revised GBER that the Commission intends to issue a guidance document to clarify the interpretation of GBER, where necessary. It is important that comprehensive guidance is provided to ensure that Member States have certainty regarding the requirements of GBER when designing tax measures which operate under its remit. Such guidance will also help stakeholders understand the parameters within which national tax measures coming within the scope of GBER must operate.

We have set out below our observations on the revised GBER and identified areas where we believe amendments may be necessary to ensure that it provides an appropriate framework for the design of national tax measures that encourage the commitment of risk capital by investors in SMEs.

3. Enhancement of relief

The rates of income tax relief available under risk finance schemes operating within the GBER framework in Member States vary depending on the category of investment. For example, different rates of relief apply depending on whether the

investment is classified as an initial risk finance investment or a follow-on investment. Consideration could be given to amending the GBER to permit Member States greater flexibility in setting relief rates, including the possibility to apply enhanced rates of relief commensurate with the risk profile of the investment made.

The maximum qualifying investment amounts permitted under the GBER should be reviewed to ensure they remain appropriate relative to the capital requirements of scaling SMEs. Consideration should be given to the merit of allowing higher aggregate fundraising limits at qualifying company group level, as the current caps on the amount of risk finance that may be raised may be insufficient for capital-intensive enterprises.

4. Excluding tax relief on exit from State aid calculation

We consider that the current GBER framework creates a significant barrier to Member States offering tax incentives on the exit or disposal of investments made under risk finance aid schemes. Capital Gains Tax (CGT) reliefs such as CGT loss relief or reduced CGT rates on exit constitute additional State aid under GBER.

This means any such CGT relief must be aggregated with the income tax relief granted at the point of initial investment for the purposes of assessing compliance with the GBER's maximum aid thresholds. We believe this is an unnecessarily restrictive approach as it fails to recognise the distinct policy objectives served by entry relief and exit relief, respectively.

Consideration could be given to amending the GBER to ensure that CGT relief on the disposal of shares acquired under qualifying risk finance aid schemes, whether in the form of a CGT exemption, a reduced rate of CGT, or CGT loss relief, do not count towards the State aid limits applicable to the initial risk finance investment. In particular, we believe that CGT loss relief, which is a feature of the general tax code of many Member States and is not ordinarily considered State

aid, should be excluded from the State aid calculation. Appropriate restrictions could be applied, such as limiting the relief to the actual cash loss to the investor.

Excluding such reliefs from the State aid calculation would enable Member States to design a balanced incentive structure that encourages both the initial commitment of risk capital and the patient holding of investments over the medium to long-term, without the current constraint of having to trade off entry relief against exit relief within a single aid cap.

5. Undertaking in difficulty

Under the current GBER framework, a qualifying company must not be an "undertaking in difficulty" at the time eligible shares are issued. As transposed into domestic law in Member States such as Ireland, this requirement applies at group level, meaning that the entire corporate group must satisfy the test.

The "undertaking in difficulty" test requires, amongst other things, that in the case of a limited liability company, more than half of its subscribed share capital and share premium must not have disappeared due to accumulated losses. The feedback we have received from our members is that national GAAP frameworks sometimes allow companies to adopt conservative accounting treatments, such as expensing R&D expenditure rather than capitalising it, or carrying fixed assets at historic cost when revaluation would be acceptable, which may cause a company to fail the "undertaking in difficulty" test, when it is in fact commercially viable. We understand that some Member States have sought to address this issue, for example, by accepting auditor statements confirming that accounts could be restated under less conservative principles.

To ensure consistency across the EU, we consider that the GBER should be amended to provide clearer and more practical guidance on how the "undertaking in difficulty" test should be applied, to ensure it focuses on genuine financial distress rather than penalising prudent accounting choices. In addition, the test

should be made more compatible with the accounting frameworks in use across Member States.

In our view, an exemption should apply for early-stage companies that may have accumulated losses from their development phase, but whose underlying business model and commercial prospects remain sound. In this regard, we welcome the confirmation in the Explanatory Memorandum that the Commission will add a new exemption to allow aid for research, development and innovation for certain innovative start-ups and consider exempting additional aid categories particularly relevant to startups following the feedback received through the public consultation last year.

6. Conclusion

Article 25 and 26 of the revised GBER will provide the framework for the design of national tax measures that are intended to facilitate the commitment of risk capital in SMEs by investors. To ensure that Member States have certainty regarding the requirements of GBER when designing tax measures, it is important that comprehensive guidance is issued by the Commission on the revised GBER when adopted.

It is essential that the tax relief for investors which is permitted under Article 25 and 26 of the revised GBER is sufficient to encourage the investment of capital in SMEs and that the maximum amount which may be raised by a company remains appropriate relative to the capital requirements of scaling SMEs. It is also vital that the “undertaking in difficulty” rules are appropriately calibrated to ensure that they are focused on instances of genuine financial distress.