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The Employment Investment Incentive Scheme – An Important Update

by **Kris O’Shea**

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The Employment Investment Incentive Scheme (EIIS) is a tax relief incentive scheme, which provides Irish small and medium enterprises (SMEs) with early stage and/or growth funding and qualifying investors with income tax relief.

To find out more about the EIIS generally, you can read our previous article here.

The Finance (No. 2) Bill 2023

The Finance (No. 2) Bill 2023 was published in October by the Department of Finance, and as expected, it is introducing major changes to the EIIS. This is largely to bring the EIIS into compliance with recently updated EU state aid legislation known as the General Block Exemption Regulation (GBER). The most significant changes in our view are:

- The rate of relief given to investors will no longer be a standard rate of 40% but will vary from 20-50% depending on the circumstances of the company being invested in.
- Follow-on EIIS investments will have significant new conditions.
- Shares carrying certain preferential rights will no longer be permissible (with a possible exception for EIIS fund investors).
- The maximum amounts that can be invested are to be increased.
- The minimum holding period for EIIS shares will be standardised to four years.

A more detailed analysis of the changes to the EIIS that the Bill will introduce is provided below.

Relief for Investors

Previously, the income tax relief rate for qualifying investors under the EIIS was 40%. This has now been replaced by a tiered income tax relief rate scale for qualifying investors depending on which of the eligibility criteria the qualifying company being invested in satisfies. This new tiered system can be summarised as follows:

Proposed Relief Rate	**Eligibility Criteria Satisfied**
50%	Companies that have not yet operated in any market.

Proposed Relief Rate	**Eligibility Criteria Satisfied**
35%	Companies incorporated less than seven years ago and receiving their first EIIS investment.
30%	Companies being invested in through a qualifying investment fund.
20%	Companies receiving a follow on EIIS investment; and Companies using the EIIS investment to expand into new markets.

Significant changes to the EIIS necessitated by the GBER

As alluded to above, the Bill has made a number of changes to bring EIIS legislation in line with updates to the GBER. These include:

- A reduction in the level of investment required by a qualifying company seeking expansion risk finance from 50% to 30% of the qualifying company's average turnover in circumstances where the investment will be used to significantly improve the environmental performance of the qualifying company.
- The deletion of wording in the legislation which allowed shares to carry a right to preferential rights to a dividend or to repayment of capital on a winding up. Preferential shares carrying these rights had been standard for EIIS funds. It is possible that this may still be permissible for EIIS fund investments, but further clarity is awaited in this regard.
- There is an extension of relief to companies incorporated less than ten years ago that have been operating in any market.
- Follow-on risk finance in qualifying companies must be specifically provided for (rather than foreseen) in the business plan required for an initial EIIS investment.

Other changes to EIIS investment rules

- The lifetime limit on the amount a RICT group can raise through EIIS qualifying investments has been increased from €15 million to €16 million.
- The 12-month limit on the amount a RICT group can raise through EIIS qualifying investments has been increased from €5 million to €5.5 million.
- The maximum amount an investor can directly invest in an EIIS qualifying investment has been increased from €250,000 to €500,000.
- The minimum holding period for shares in order to obtain relief under the EIIS has been standardised to four years in all cases.

What does the future hold?

The Bill has both positive and negative implications for the EIIS. However, even with the potential negative impacts of the Bill on the EIIS, it is worth pointing out that the EIIS has gone through significant changes in the past and has always weathered and adapted to those changes to remain a highly competitive source of funding for SMEs and an attractive proposition for investors.

It is expected that the Bill will be enacted in December and that the changes above will apply from 1 January 2024.

Conclusion

LK Shields have market leading experience on EIIS investments and have advised EIIS funds and individual EIIS investors on investments, exits, public listings, follow-on investments, share sales and disputes. We have also advised investee companies on EIIS investments and exiting EIIS investors. Our expert knowledge and experience ensure that our clients, whether investors or companies, will achieve an optimal outcome.

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