

## **The Business Expansion Scheme (BES) - Relief for Investment in Corporate Trades**

### **Status of this Document**

*This document is not a legal interpretation of any of the legislation<sup>1</sup> on which this scheme is based. Nor is it intended as a comprehensive guide to the scheme. It is a general information guide to the BES, aimed primarily at independent third-party investors wishing to avail of this tax relief incentive scheme for investment in corporate trades. It should also serve as a handy quick reference guide to owners of small businesses wishing to raise investments under the scheme. Appended to this leaflet is a list of useful contacts in State agencies and bodies with responsibility for the administration of related State-aid.*

**Revised May 2008 (to reflect Finance Act 2008 changes)**

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<sup>1</sup> Legislative basis for the Business Expansion Scheme (incorporating the Seed Capital Scheme (SCS)): - Part 16, Sections 488 to 508A of the Taxes Consolidation Act 1997, as amended.

## **Introduction**

The Business Expansion Scheme (BES) is a tax relief incentive scheme that provides tax relief for investment in certain corporate trades. The scheme has broadly taken the same format over a number of years and, because it is a form of State-aid (at the level of the enterprise), any changes to the scheme require the approval of the European Commission, to ensure that it remains compatible with EU law.

The most recent changes to the scheme - announced by the Minister for Finance in his Budget 2007 speech - have been approved by the European Commission subject to certain conditions. These conditions primarily relate to the location and stage of development of the qualifying company itself and are discussed more fully in the Section below entitled “The Company”. One of the conditions specified in the approval is that medium-sized enterprises (as defined) operating in what are known as the “non-assisted areas” of Ireland may only qualify for the BES in their seed/start-up phase of development. For State-aid purposes, Ireland is divided into “assisted” and “non-assisted” areas. The current “assisted” areas are all areas of Ireland excluding Dublin, Meath, Kildare and Wicklow (and with effect from 2009, Cork city and county (except for Cork Docklands).

A further condition of approval is that Ireland must implement the EU rules on cumulation of State-aids. With effect from 1<sup>st</sup> January 2007, a company that raises capital under the BES (and/or under the SCS<sup>2</sup>) will have to reduce *other* State-aids (with the exception of schemes approved under the R&D and Innovation State-aid framework). A State agency<sup>3</sup>, on application to it by a BES/SCS-capitalised company, will be required to reduce

- by 50% in the “non-assisted” areas

and

- by 20% in the rest of Ireland -

the maximum aid intensity (i.e. the percentage level of support) or maximum eligible amounts available, under that agency’s State-aided schemes, to such a company during the first three years of its total BES/SCS capitalisation, effective from the date of its first BES/SCS share-issue. If the amount of the reduction resulting from this calculation is greater

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<sup>2</sup> Seed Capital Scheme (SCS): - The Finance Act 1993 and subsequent Finance Acts widened the scope of the BES to provide a refund of tax already paid by an individual who sets up and takes employment in a new qualifying business. A separate information leaflet (IT 15) is available on the Revenue Commissioners’ website.

<sup>3</sup> Throughout this leaflet, reference to a “State agency” includes reference to a relevant statutory body or authority responsible for the administration of a relevant State-aid.

than the value of the BES/SCS investments, then, in such cases, the maximum amount to be deducted will be equal to the amount of the BES/SCS investments.<sup>4</sup>

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

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

**Finally, any queries regarding EU cumulation of State-aid rules should be addressed to the State agency responsible for administration of the State-aid in question.**

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<sup>4</sup> **The full text in this regard - of the European Commission Decision dated 24<sup>th</sup> August 2007 - is as follows:** For the qualifying companies receiving the BES and SCS investments, the relevant State aid ceilings or maximum eligible amounts of State aid under block exemption regulations, guidelines, frameworks, and other State aid documents will be reduced by 50% in general and by 20% for the qualifying companies located in the assisted areas and up to the total amount of the BES and SCS investment received during the first three years of the first BES and SCS investment. This obligation does not apply to aid granted on the basis of the Community framework concerning state aids for research and development or any successor framework or block exemption regulation in this field.

**Summary of the Business Expansion Scheme (BES)**

The scheme allows an individual investor to obtain income tax relief on investments up to a maximum of €50,000 per annum in each tax year up to 2013. Relief is available at the investor's highest rate of income tax. An investor who cannot obtain relief on all his/her investment in a year of assessment, either because his/her investment exceeds the maximum of €50,000 or his/her income in that year is insufficient to absorb all of it, can carry forward the unrelieved amount to following years up to and including 2013, subject to the normal limit of €50,000 on the amount of investment that can be relieved in any one year.

In order to qualify, investments must be made in companies engaged in certain manufacturing; service; tourism; R&D; plant cultivation activities; in the construction and leasing of advance factories; or, in certain music recording activities.

The investee companies must be unquoted, i.e. they must not be listed on the official list of a stock exchange or on an unlisted securities market of a stock exchange. Companies listed on the Irish Enterprise Exchange (IEX) or whose shares are traded in an over-the-counter market do, however, qualify.

Investors must purchase new ordinary share capital in the company. Shares must carry no preferential rights. Normally, the minimum investment by an individual in any one company that qualifies is €250. The maximum investment by all investors in any one company or group of companies is €2,000,000 subject to a maximum of €1,500,000 in any one twelve month period. There must be no condition that would eliminate the investor's risk.

Relief can be claimed immediately in the case of established companies or after four months' trading in the case of new companies.

If the company is not trading at the time the shares are issued, it must commence trading within two years of the share issue. If the company is mainly involved in R&D activity relating to the qualifying trade it must commence trading within three years of the share issue.

Shares must be held and certain conditions satisfied in relation to the investor for a period of five years. Other conditions in relation to the company need only be satisfied for three years.

### **Qualifying Investments**

Each investment breaks down into a number of component parts. These are as follows:

- the investor,
- the company and its trade,
- the shares purchased,
- how the company uses the money invested.

Each of the above must meet certain criteria to ensure that the investment qualifies under the scheme. After that, certain conditions must be met for specified periods (e.g. the shares must be held for five years) to ensure that the investment continues to qualify. Otherwise the tax relief granted may be withdrawn in whole or in part.

### **The Investor**

A qualifying investor is an individual who:

- is resident in the State for the tax year in respect of which he/she makes the claim;
- subscribes on his/her own behalf for eligible shares in a qualifying company; and
- is not for the relevant period, as defined, connected with the company (see below).

Where an individual is entitled to relief in respect of a subscription by him/her for eligible shares under the BES he/she shall not be entitled to relief in respect of that same subscription under section 479 of the Taxes Consolidation Act 1997 (Relief for new shares purchased on issue by employers).

### **Restriction on the use of tax reliefs by certain high income tax payers**

BES relief is a “specified relief” for the purposes of the new restriction of certain reliefs provisions provided for in Chapter 2A of Part 15 of Taxes Consolidation Act, 1997.

### **Rules Relating to Connected Parties**

An individual is deemed to be connected with a company if:

- he/she, or an associate<sup>5</sup> of his/hers, is a partner of the company;
- he/she possesses, or is entitled to acquire, including in the event of the company being wound up, more than 30% of (a) the issued ordinary share capital of the company or (b) the loan capital and issued share capital of the company, or (c) the voting power in the company.
- he/she controls the company (as defined in Section 1 of the Taxes Consolidation Act, 1997); or
- he/she is investing in the company as part of a deal whereby a person connected with the company in turn invests in a separate company with which the individual is connected.

The above conditions relating to connected parties as qualifying investors do not apply to an investor investing in his own company where the amounts subscribed for the issued share capital and the loan capital do not, in aggregate, exceed €500,000.

### **Employees and Directors as Investors**

Employees and directors of the investee company may invest in the company under the scheme but are subject to certain rules. Individuals may qualify in respect of investment in companies owned or run by family members or close relatives of theirs (provided they are not otherwise disqualified).

### **Number of Investors in an Individual Company**

The number of BES investors in any one company is subject only to the limitation on the number of shareholders in a private company and subject also to the overall limit of €2,000,000 (subject to a maximum of €1,500,000 in any one twelve month period) of BES funds that can be invested in any one company or in a number of companies promoted or owned by the same person(s).

### **Number of Companies an Investor Can Invest In**

There is no limit to the number of companies an investor can invest in but tax relief is subject to the overall investment limit of €50,000 per annum up to and including 2013.

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<sup>5</sup> Associate has the same meaning in relation to a person as it has by virtue of Section 433 of the Taxes Consolidation Act, 1997 in relation to a Participant except that the reference in paragraph (a) of that section to a relative of a participant shall be excluded from such meaning. A relative is defined as husband, wife, ancestor, lineal descendant, brother or sister. Associate, therefore, does not include immediate family members or close relatives.

## **The Company**

A qualifying company is one which:

- is a Micro, Small or Medium Sized Enterprise within the European Commission definition in force for the relevant period (see notes below for a definition and for details of restrictions applying to medium-sized enterprises);
- is incorporated in the State or another European Economic Area (EEA) State;
- is resident in the State or is resident in another EEA State and carries on business in the State through a branch or agency;
- is not regarded as a firm in difficulty for the purposes of the *Community Guidelines on State Aid for rescuing and restructuring firms in difficulty*;
- is an unquoted company (except in the case of companies listed on the Irish Enterprise Exchange (IEX));
- is engaged in a qualifying trade or whose business consists of holding shares or securities in one or more qualifying subsidiaries; and
- has its issued share capital fully paid up.

A company will not cease to be regarded as a qualifying company if it is wound up or dissolved during the three year relevant period, provided it can be shown that the winding up or dissolution is for bona fide commercial reasons, and not part of a scheme or arrangement the main purpose of which (or one of the main purposes of which) is the avoidance of tax.

## **Qualifying Companies and Subsidiaries**

A qualifying company can have subsidiaries provided generally that:

- (a) the subsidiaries are at least 51% owned by the parent company; and
- (b) the subsidiaries are themselves qualifying companies, or carry out certain services for, or functions on behalf of, the parent company or its subsidiaries.

## **Definition of Small & Medium-sized Enterprises (SMEs)**

The current EU definition<sup>6</sup> of micro, small & medium-sized enterprises is set out in Commission Regulation 364/2004 of 25 February 2004 – OJ L63 of 28 February 2004, page 22 and may be summarised as follows:

- A medium-sized enterprise has less than 250 employees and has an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million;
- A small enterprise has less than 50 employees and has an annual turnover and/or annual balance sheet total not exceeding €10 million;

- A micro enterprise has less than 10 employees and has an annual turnover and/or annual balance sheet total not exceeding €2 million.

### **Medium-sized enterprises in “non-assisted areas”**

Under EU State-aid rules, medium-sized enterprises operating in the non-assisted areas are limited to their seed/start-up stage of development for the purpose of raising BES investments. The “Regional Aid Map 2007-2013 – Ireland” details the current assisted areas of Ireland (all areas in the State with the exception of counties Dublin, Meath, Kildare and Wicklow (and with effect from 2009, Cork city and county (excluding Cork Docklands)).<sup>7</sup>

### **Determination of whether in an “assisted” or “non-assisted” area / Location of company**

The location of the company will be determined by reference to the location at which the company, or qualifying subsidiary, branch or agency, as the case may be, carries on qualifying trading operations.

### **The company’s stage of development**

Under the EU “*Community Guidelines on State Aid to promote Risk Capital Investments in Small and Medium-Sized Enterprises*”<sup>8</sup>, Member States are required to collect data on a beneficiary company’s stage of development. Those Guidelines contain definitions of “seed capital”, “start-up capital” and “expansion capital”, as follows:

**“Seed capital”** means financing provided to study, assess and develop an initial concept, preceding the start-up phase;

**“Start-up capital”** means financing provided to companies, which have not sold their product or service commercially and are not yet generating a profit, for product development and initial marketing;

**“Expansion capital”** means financing provided for the growth and expansion of a company, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development or the provision of additional working capital.

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<sup>6</sup> It should be noted that these definitions are subject to change.

<sup>7</sup> See *Guidelines on National Regional Aid for 2007-2013, OJ C54, 4.3.2006*

### **The Trade**

The company in which investment is made must carry on qualifying trading operations. These are:

- 1) the manufacture of goods (including computer services)
- 2) the operation of certain tourist traffic undertakings
- 3) internationally traded services
- 4) the cultivation of mushrooms
- 5) the micro-propagation of plants and plant cloning
- 6) the cultivation of horticultural produce in greenhouses
- 7) research and development activity which is undertaken with a view to carrying on certain of these qualifying trading operations
- 8) commercial research and development activities
- 9) the construction and leasing of advance factory buildings
- 10) the production, publication, marketing and promotion of certain musical recordings by a new artist
- 11) recycling activities in relation to waste material, which has been subjected to any process or treatment, which results in value-added material that is reusable. Waste material means any of the following: packaging; construction and demolition waste; metals, wood, glass and plastics; electrical and electronic equipment; batteries; end of life mechanically propelled vehicles<sup>9</sup>. (See also point (c) below, under the heading “Qualifying trades requiring grants/grant approval”).

**Some of the above activities require certification by a development agency and/or grant aid to qualify for BES purposes, as follows:**

#### **Activities requiring certification for BES**

- Research and Development carried out with a view to carrying out a qualifying trade.
- Tourist traffic undertakings.
- Cultivation of horticulture produce (in greenhouses).
- Music industry (promotion of one new artist).
- Construction and leasing of an Advance Factory.

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<sup>8</sup> OJ C 194, 18.08.2006

<sup>9</sup> Section 24, Finance Act 2008 – with effect from 1<sup>st</sup> January 2008 – refers.

**Who certifies these activities?**

- Tourist traffic undertakings – Failte Ireland.
- Micro-propagation of plants, plant cloning, and horticultural cultivation (in greenhouses) – The Minister for Agriculture and Food.
- Research and development activities undertaken with a view to carrying on certain qualifying trades – Enterprise Ireland, SFADCO or Udaras na Gaeltachta, as appropriate.
- Music industry, promotion of new artist – The Minister for Arts, Sport and Tourism.
- Construction and leasing of an advance factory – I.D.A., SFADCO or Udaras na Gaeltachta.

**Qualifying trades requiring grants/grant approval**

To qualify, some trades require grants as follows:

(a) Internationally Traded Services – require approval for grant or shares taken in the company by an industrial development agency including County Enterprise Boards.

(b) Computer Services (data processing services, software development services or technical and consultancy services that relate to either or both) – require an employment grant from an industrial development agency. Note: software development services companies qualify on receipt of grant approval.

(c) Recycling activities in relation to waste material – require approval of a grant or financial assistance from an industrial development agency including a County Enterprise Board; **or**, written confirmation from an industrial development agency including a County Enterprise Board that the company has submitted a business proposal to the agency or board, and that in the opinion of the agency or board the activities described in the business proposal come within the scope of a service industry specified in the Schedule to the Industrial Development (Services Industries) Order 2003 (S.I No. 458 of 2003)<sup>10</sup>

**Qualifying Trades and Other Commercial Activities**

A company carrying on a qualifying trade may also carry on other trading activities provided it receives not less than 75% of its total income from the qualifying trade, over a qualifying period of three years.

The trade must be conducted on a commercial basis with a view to making profits.

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<sup>10</sup> Section 24, Finance Act 2008 – with effect from 1<sup>st</sup> January 2008 – refers.

## **The Shares**

### **Qualifying Shares**

In order to qualify under the scheme, the individual must subscribe on his/her own behalf for shares:

- (i) which represent new ordinary share capital in a qualifying company;
- (ii) carry no preferential rights as to dividends or redemption.

The whole of the company's issued share capital must be fully paid up. The minimum investment in any one company is €250. (This does not apply in relation to investments through investment funds designated for the purposes of the scheme).

The maximum investment in any one company or its associated companies is €2,000,000 subject to a maximum of €1,500,000 in any one twelve monthly period. If companies enter specified arrangements or understandings which are designed to circumvent the €2,000,000 limit, then the maximum amount that can be raised under the BES by all such companies as a whole will be limited to €2,000,000.

The maximum investment, which will qualify for relief in any one tax year, is €150,000. This limit applies to individuals. A married couple can each obtain individual relief on an investment of €150,000 provided each spouse has sufficient taxable income to absorb the amount of his/her investment.

### **Use of BES Money Invested**

The company must use the equity raised to do one or other of the following:

- (a)
  - enable the company, or enlarge its capacity, to undertake its trading operations;
  - enable the company to engage in, or assist the company in, research and development, the acquisition of technological information, the development of new or existing products or services or the provision of new products or services; or
  - enable the company to identify new markets, and to develop new and existing markets, for its products or services; or
  - enable the company to increase its sales of products or provision of services;

### **and**

- (b) must use the equity raised with a view to the creation and/or maintenance of employment in the company or, in the case of the construction and leasing of advance factory buildings, in either or both a company contracted to construct the advance factory building and a company which enters into a lease for its use.

The company may use the money received for the purpose of the trade of a subsidiary provided the above rules and those relating to subsidiaries are met. A rule relating to subsidiaries is that where a company issues eligible shares for the purposes of raising BES funding for a qualifying trade which is carried on by its qualifying subsidiary, the company is not allowed to on-lend the proceeds of the BES fund raising to the subsidiary; the company must use the funds instead to acquire eligible shares in the subsidiary.

### **Duration of Conditions**

Shares must be held for at least five years if the investor wants to retain the full tax relief. He/she may, of course, sell them within the five years if he/she so wishes but this may result in his/her losing some or all of the relief.

An individual must continue to be a "qualifying investor" for a period of five years after the shares have been issued.

Conditions in relation to qualifying companies, trades and subsidiaries must continue to be met for a period of three years after the shares have been issued.

If conditions are not met for the prescribed periods, the relief will no longer be due and, if already given, may be withdrawn. This would happen if, for example, the company received a full listing on the Stock Exchange or otherwise ceased to be a qualifying company within the three year period.

### **Other Circumstances in Which Relief May Be Withdrawn**

If a company in which an individual has invested repays any debt to the individual (other than an ordinary trade debt), makes a loan to the individual or generally attempts to circumvent the requirements of the scheme by providing a benefit for the individual or transferring an asset to the individual without any consideration, or otherwise attempting to pass back to investors the money which they have invested, then the individual is deemed to have "received value" from the company and his/her benefits under the scheme will be reduced accordingly. Reasonable payments to employees or directors in their capacity as employees or directors are, of course, permitted.

If an individual acquires an option or enters into an agreement which would bind any person to purchase any eligible shares for a price which is other than the market value of the shares, that individual will not be entitled to any relief in respect of the shares to which the option or the agreement relates.

Similarly, if an individual grants to any person an option within 5 years of the date of issue or enters into an agreement which would bind the individual to dispose of any eligible shares to any person for a price which is other than the market value of the eligible shares, that individual will not be entitled to any relief in respect of the shares to which the option or the agreement relates.

If the relief does have to be withdrawn from the investor, it will be done by re-assessing the investor's liability to income tax in the year in which the relief was originally given. The investor cannot lose more tax relief than he/she originally had, but may have to pay interest to the Revenue Commissioners in some circumstances.

### **Payment of Tax Relief**

In the case of an established company, tax relief will be given to the investor as soon as the Revenue Commissioners are satisfied that all relevant conditions have been complied with and, relief will apply in respect of the tax year in which the shares are issued. Where an investor invests in eligible shares through a designated investment fund (see note below), but the shares are not issued until the following year of assessment, he/she can opt for relief for the year in which he/she made the investment in the fund rather than for the year in which the shares were issued.

In the case of new companies, tax relief will not be given unless and until the relevant company has been trading for four months. In the case of advance factory buildings the trade will be deemed to have commenced on the date on which the construction of the advance factory commenced. If the company is not trading at the time the shares are issued, the relief will not be given unless the company begins to trade within two years from the date of purchase of the shares. A period of three years before trading may be allowed where the company is engaged in research and development work. Where the company starts trading within the periods so prescribed, the relief will be allowed four months after the start of trading.

### **Capital Gains Tax**

The normal provisions relating to capital gains tax, including those applicable to unquoted companies, will apply in regard to investments under the scheme.

For the purposes of computing an individual's liability to CGT, the purchase price of the shares will be considered to be the cost before deduction of the tax relief. In general, losses on the sale of shares will not give rise to an allowable loss for CGT purposes.

### **Designated Investment Funds**

A Designated Investment Fund is a fund that has been designated by the Revenue Commissioners under Section 508 of the Taxes Consolidation Act, 1997. A designated fund comprises the subscriptions of a number of investors. The fund will be likely to invest in a number of companies. Broadly, each investor will get a share in each company in proportion to the value his/her subscription bears to the total size of the fund.

Investing in a Designated Investment Fund allows an investor to spread his/her investment over a number of ventures and to have expert advice to appraise the relevant projects. A fee will normally be payable by the investor to the fund manager. In addition, an entrepreneur who seeks equity from a fund can concentrate on his/her venture rather than devoting time to persuading a number of investors to invest in his/her company.

Each fund must prepare a prospectus, which must be approved by the Minister for Enterprise, Trade and Employment and which must include, inter alia, particulars of fees, remuneration or other charges to be levied in respect of the management of the fund. As with investments made on an individual basis, however, there is no guarantee that they will succeed and responsibility for the risk associated with the investment rests entirely with the investor. The prospectus must make this clear in a manner that is satisfactory to the Minister for Enterprise, Trade and Employment.

### **Queries on the Scheme**

Queries in relation to operation of this scheme should be addressed to Office of the Revenue Commissioners, Business Investment - Incentives Branch, Corporate Business and International Division, Dublin Castle, Dublin 2. Ph: 01-7024107 or 01-6792777 Extension 24107

E-Mail: [cillbyrn@revenue.ie](mailto:cillbyrn@revenue.ie)

**Appendix - Useful Contacts in relevant State agencies**

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

<b>State Body</b>	<b>Contact name/address</b>	<b>Telephone</b>	<b>Email</b>
<b>Enterprise Ireland</b>	<b>Sharon Flynn Client Service Unit Finisklin Business Park Co. Sligo</b>	<b>071 - 9159723</b>	<b>Sharon.Flynn@enterprise-ireland.com</b>
<b>IDA</b>	<b>Peter Townsend Athlone Business &amp; Technology Park Garrycastle Dublin Road Athlone Co. Westmeath</b>	<b>090 - 6471500</b>	<b>peter.townsend@ ida.ie</b>

<b>State Body</b>	<b>Contact name/address</b>	<b>Telephone</b>	<b>Email</b>
<b>SFADCo</b>	<b>Gerry O'Connor Shannon Development Shannon Co. Clare</b>	<b>061 - 361555</b>	<b>oconnorg@ shannondev.ie</b>
<b>Udaras na Gaeltachta</b>	<b>Steve O Culain Udaras na Gaeltachta Na Forbacha Gaillimh</b>	<b>Landline: 091 – 503213 Mobile: 087 2532922</b>	<b>stoc@udaras.ie</b>