

The Seed Capital Scheme: Tax Refunds for New Enterprises

Status of this Document

This document is not a legal interpretation of any of the legislation¹ 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 Seed Capital Scheme (SCS), aimed primarily at those in PAYE-type employment wishing to set up and take employment in their own (qualifying) business and in doing so, avail of this tax relief incentive scheme.

Revised May 2008 (to reflect Finance Act 2008 changes)

¹ Legislative basis for both the Seed Capital Scheme (SCS), and its associated scheme, the Business Expansion Scheme (BES): - Part 16, Sections 488 to 508A of the Taxes Consolidation Act 1997, as amended.

Introduction

The Seed Capital Scheme (SCS), in conjunction with its associated scheme, the Business Expansion Scheme (BES²), are tax relief incentive schemes. The BES provides tax relief for investment in certain corporate trades, while the SCS provides for a refund of tax *already* paid by an individual, when that individual sets up, and takes employment in, a new qualifying business (as defined). Both schemes have broadly taken the same format over a number of years and, because they are 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 schemes - 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 have to do with the location and stage of development of the qualifying company itself and are discussed more fully in the Section below entitled “The Seed Capital Scheme and the BES”. 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 1st January 2007, a company that raises capital under the SCS (and/or under the BES) will have to reduce *other* State-aids (with the exception of schemes approved under the R&D and Innovation State-aid framework). A State agency³, 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.

² Business Expansion Scheme (BES): - A separate information leaflet (IT 55 Effective date: 01/01/2007)) is available on the Revenue Commissioners’ website.

³ 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.

If the amount of the reduction resulting from this calculation is greater 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.⁴

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.

⁴ **The full text in this regard - of the European Commission Decision dated 24th 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 Seed Capital Scheme (SCS)

If you are an employee, an unemployed person or were made redundant recently and are interested in starting your own business you may be entitled to avail of the tax refund available under the Seed Capital Scheme.

An employee who leaves employment and invests by means of shares in a company, which carries on a new business, may claim a refund of income tax paid in previous years. An unemployed person may also avail of this facility.

The Refund

- You could receive all the income tax you have paid over six years, if your investment is big enough.
- You can select the tax years for which you may claim refunds from any or all of the six years prior to the year of investment. **Your investment must be claimed up to the extent of your total income in each of the selected years (subject to a max. of €100,000). There is no facility available where the investment can be spread over a number of years so as to utilise personal allowances in each year.**
- **For each of the selected years, the refund is limited to the tax you have paid, with an upper limit in any year of the tax paid on €100,000.**
- The refund may be claimed immediately the company starts to trade.
- If you have already received BES relief for any of the six years selected the amount of the relief available to you in that year is the difference between €100,000 and the amount of the original BES investment.
- You may obtain a refund in this manner for two investments in the company made within a three-year period. Both investments, however, **must** be made in the same company.

What Conditions Apply?

The Investor:

- The scheme is designed for those who are or were in PAYE type employment. To ensure that this intention is achieved the sources of your income over the four tax years immediately before the year in which you invest in the company are reviewed. In the tax year immediately before the year in which you invest, your income may come from any source (that is, it may be from self-employment, rental, investment, PAYE or other). *In the other three tax years, your non PAYE income should not exceed the lower of €25,000 or your total PAYE type income.*
- **You must enter into a full-time employment contract for at least one year with the company as an employee or a director** starting either within the tax year in which the investment is made or if later, within 6 months of the date on which the relevant investment is made.
- Your investment in the company may be made in two stages, the second investment must be made within two years following the tax year in which your first investment is made. The facility to claim relief under the scheme in respect of a second investment is only available to investors who make both investments in a qualifying company on or after 2 June 1995.
- It should be noted that where a second investment is planned the scheme will only be available up to 31 December 2013.
- You must subscribe for shares in the company.

- You must acquire at least 15% of the issued share capital of the company and you must maintain the level of your shareholding at this percentage for at least one year, even if the share capital of the company should expand. This condition will apply in the case of both a first and a second investment.

The Company:

- The company must be set up with the intention to carry on qualifying trading operations. Qualifying trading operations are
 - (1) the manufacture of goods
 - (2) the operation of certain tourist traffic undertakings
 - (3) internationally traded services
 - (4) certain activities which have the potential to become internationally traded services
 - (5) the cultivation of mushrooms
 - (6) the micro-propagation of plants and plant cloning
 - (7) the cultivation of horticultural produce in greenhouses
 - (8) research and development activity which is undertaken with a view to carrying on certain of these qualifying trading operations and which are certified as such by an industrial development agency
 - (9) commercial research and development activities
 - (10) the production, publication, marketing and promotion of a qualifying musical/video recording
 - (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. (See also point (c) below).
- (a) The company must obtain a certificate from an appropriate body or person certifying that the qualifying trading operations to be carried on by the company will be a **bona-fide new venture**, which having regard to certain criteria may be eligible for grant aid or financial assistance from the certifying body or person. The grant aid or financial assistance requirement does not apply to the activities listed at (6) above.
- (b) It should be noted that the approval of a grant or equity investment from one of the industrial development agencies, is required in the case of **internationally traded services**. In the case of **activities which have the potential to become internationally traded services**, an industrial development agency must have provided a certificate confirming eligibility for the grant of financial support of not less than €2,540 towards the carrying out of a feasibility study by a person approved of by the agency into the commercial viability of the services to be rendered.
- (c) It should be noted that in the case of **recycling activities** in relation to waste material, approval of a grant or financial assistance from an industrial development agency including a County Enterprise Board is required; **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).⁵

Who Certifies These Activities?

Manufacturing generally -

Enterprise Ireland, SFADCo, Udaras na Gaeltachta or County Enterprise Boards, as appropriate.

Fish farming (Aquaculture) and fish processing -

An Bord Iascaigh Mara.

Internationally traded services and services with the potential to be internationally traded services -

Enterprise Ireland, SFADCo, Udaras na Gaeltachta or County Enterprise Boards, as appropriate.

Tourist traffic undertakings -

Failte Ireland.

Micro-propagation of plants, plant cloning, mushroom and horticultural cultivation -

The Minister for Agriculture and Food.

Commercial research and development -

Enterprise Ireland, SFADCo, Udaras na Gaeltachta, or County Enterprise Boards, as appropriate.

Musical/Video recordings by a new artist produced in the State -

The Minister for Arts, Sport and Tourism.

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 -

Enterprise Ireland, SFADCo, Udaras na Gaeltachta or County Enterprise Boards, as appropriate⁶

Conditions To Prevent Abuse

- **You must not within the 12 months before your first investment in the company, have held either directly or indirectly, more than 15% of the share capital or of the loan and share capital of any other company, or 15% of the voting power in any other company.**
- However, this prohibition is waived where you own more than 15% of only one other company provided that:
 - the turnover of the other company in each of that company's three accounting periods prior to the company's accounting period in which the investment is made in the seed capital company did not exceed €127,000

and

 - the other company is a trading company (other than a company trading in land or financial services).

This prohibition is also waived where you own more than 15% of a shelf or dormant company.

- The company must not have any special trading arrangements with your former employer. Normal business transactions are, however, acceptable, provided these are conducted on the same terms as with any other unrelated company.

⁵ Section 24, Finance Act 2008 – with effect from 1st January 2008 – refers.

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The Seed Capital Scheme and the BES

The Seed Capital Scheme forms part of the BES. If you think that you may qualify for the Seed Capital Scheme it is also necessary for you and your company to comply with the requirements of the BES. The most important of these are

- A company that raises both Seed Capital and BES may raise a maximum of €2,000,000, up to a maximum of €1,500,000 in any one twelve-month period.
- The shares issued in respect of your investment must not carry any preferential rights to dividends, assets or redemption.
- **You must not dispose of the shares for at least 5 years.**
- You must not enter into any agreement, arrangement or understanding which could reasonably be considered to eliminate the risk from your investment.
- There must be no attempt to pass back your investment to you.
- The company must be an unquoted company resident in the State or is resident in the European Economic Area with an establishment in the State carrying out qualifying trading activities.
- The company must be a micro, small or medium-sized enterprise within the European Commission definition in force for the relevant period (see notes below for definitions and for details of restrictions applying to medium-sized enterprises).
- The company must not be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty
- The company must use the amounts invested for the purposes of qualifying trading operations.
- At least 75% of the income of the company must derive from qualifying trading operations.
- The company (unless it has qualifying subsidiaries) must not control or be controlled by any other company and it must not carry on a trade which is similar to another trade where both trades are under common control.

Definition of Small & Medium-sized Enterprises (SMEs)

The current EU definition⁷ 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

⁷ It should be noted that these definitions are subject to change.

the State with the exception of counties Dublin, Meath, Kildare and Wicklow (and with effect from 2009, Cork city and county (excluding Cork Docklands)).⁸

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*”⁹, 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.

Claiming A Refund

The refund of tax in respect of an investment made may be claimed as soon as the company has obtained the appropriate certificate from the relevant agency and commences to trade. A refund will normally be made within four weeks of receipt of an **adequately** completed claim. You can help us to meet this deadline by supplying full information.

NO REFUND WILL BE GIVEN IF ANY CONDITION OF THE SCHEMES IS NOT FULFILLED.

What You Have To Do

- Complete an **application form** (which is **available from the appropriate agency**) for a certificate and **submit it to that agency**.
- If the agency is satisfied that the company meets its requirements, the necessary certificate will be issued if the company has already been incorporated.
- If the company is not yet incorporated a conditional certificate will be issued.
- **The agency will also issue the tax refund application forms RINE C and RINE I.**
- When the company has been incorporated, all the shares have been issued (including those you will purchase yourself) and the company has commenced trading, the forms RINE C and RINE I should be completed and submitted 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

⁸ See *Guidelines on National Regional Aid for 2007-2013*, OJ C54, 4.3.2006

⁹ OJ C 194, 18.08.2006

Further Investments

If you wish to expand your company in the future you may be entitled to BES relief in respect of any further investment which **you** may make in the company.

In addition, BES relief may be available to any outside investors you may wish to take into the company provided the investments and the investors comply with the requirements of the BES. You **must**, notwithstanding any outside investment in your company, ensure that the continuing conditions of the Seed Capital Scheme are not contravened.

However, this option is **not** available in the case of trading operations which qualify for the Seed Capital Scheme but not the BES. The activities concerned are qualifying trading operations with the potential to become internationally traded services.

Forms To Be Completed	
RINE C	Supplies information concerning the company (Form supplied by the certifying agency)
RINE I	Supplies information concerning the individual investor. (Form supplied by the certifying agency) A separate RINE I form must be completed by each investor claiming a refund. Each RINE I form should be accompanied by relevant P45s/P60s, Form P21 (Balancing Statements), copies of Form B5 (proof of share issue and receipt), proof of Capital Duty paid, the company's Bank Statement showing the amounts paid in respect of qualifying shares and certificate of incorporation. Also required is a bona fide new venture certificate from the certifying agency plus a copy of the grant including evidence of payment/approval (where feasibility/employment grants are required)

Send the completed Forms, with the certificates to: Office of the Revenue Commissioners, Business Investment - Incentives Branch, Corporate Business and International Division, Dublin Castle, Dublin 2.

Further information can also be obtained from the above address or by telephoning 7024107. Alternatively you might consult your professional adviser who should be able to provide any further details you require. The Industrial Development Agencies/County Enterprise Boards are also willing to help.

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.

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

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