OUR SERVICES

EIIS

Overview

EIIS is a valuable source of funds for early-stage innovative companies, and others expanding into new products or geographical markets. It is one of the few remaining total income tax reliefs available to investors looking to reduce their tax liabilities.

However, the rules of EIIS have become very complex in recent years and the risks have increased significantly for companies raising EIIS funds.

These questions need to be answered before determining if an investment qualifies for EIIS relief:

- Is the company a qualifying company?
- Are State Aid GBER rules complied with?
- Is the company a firm in difficulty?
- Is the Business Plan EIIS compliant?
- What rights can attach to EIIS shares?
- How do investors claim their relief?
- Can investors follow their money on previous investments?

Tax Partner, Laura Lynch, is one of Ireland's leading experts on EIIS, having been heavily involved in the legislative process and written several articles on EIIS as it has evolved.

Call us for a consultation, whether you are investor looking to claim EIIS on your investment, a company considering raising EIIS funds or you have a challenging legacy EIIS matter you need help with resolving.

Employment Investment Incentive Scheme (EIIS)

EIIS is a tax relief which aims to encourage individuals to provide equity based finance to trading companies. An individual investor receives a deduction from their gross income for the amount they subscribe for new shares in a company.

EIIS – the investors' perspective

The maximum an investor can claim relief on in any one tax year is €250,000 if they hold the shares for 4 years, or €500,000 if they retain them for 7 years. This election has to be made at the time of making the investment. A disposal of the shares within the 4-7 year timeframe will result in a clawback of the relief, payable to Revenue by the investor.

Since October 2019, individuals can claim all the relief in the year of investment. Previously, they could only claim 30/40ths in the year of investment, and the balance of 10/40ths in Year 4.

From 2019, a company "self-certifies" the investment. This means that the company, rather than Revenue, is responsible for sending investors their EIIS certs (now called "Statements of Qualification" or SQs), which entitles them to claim their relief.

PAYE workers and pensioners can send the SQ to Revenue during the tax year of investment, as a result of which they will receive the relief immediately through the payroll system. Self-employed or other investors who submit annual tax returns must wait until after year-end when filing the previous year's return to claim the relief through their annual Form 11.

Care needs to be taken when hoping to claim EIIS on an investment as there are several conditions to meet to qualify. For example, if an investor or someone connected to them already has an interest in the company (such as a loan or other shares) that did not qualify for EIIS, or if they acquire that interest after making an EIIS investment, this will disqualify them from EIIS. There can be no arrangements for investors' ability to de-risk their investments, or agreements to exit them at other than market value, or Put & Call Option agreements to facilitate their exit at the end of the investment term.

The shares can have preferential rights to dividends and a liquidation preference. They can be redeemable and can be convertible into another share class provided the terms of the conversion are reasonable.

A breach of any of the above conditions will result in a clawback of tax relief, payable by the investor.

EIIS – the company's perspective

EIIS can be a valuable source of finance for high potential early-stage companies, and older companies hoping to expand their product offering or scale internationally. However, since 2019, the company is responsible for certifying that an investment qualifies for the relief. If any of the conditions of the relief are not met, other than the ones mentioned above under the investors' perspective, the company must repay the tax break to Revenue, not the investor.

Accordingly, it is vital that companies seek advice before committing to qualifying for EIIS, to ensure that the company meets all the conditions of the relief or, indeed, before deciding whether EIIS is the right source of finance for the business at all. There are several conditions to be met, both at the time of receiving the funds and for at least 4 years afterwards. These conditions may not align with the company's future strategy, or the founders' own tax planning for exit, and this assessment should be made before approaching investors who expect a tax break on their investment.

The relief does not apply to disposals of:

> Investors subscribe for new shares in the EIIS company. The funds are lodged to the company bank account and the shares are issued in the name of the individual investors, or their nominee.

> For investments up to 31 December 2021:
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> - The company had to spend at least 30% of the EIIS funds raised on a "qualifying purpose" before it could self-certify the investment and send SQs to investors. It could do this at any time up to 2 years after the end of the tax year in which the shares were issued. For example, for an investment on 1 December 2021, the company has up to 31 December 2023 to send out the SQs.
> - The company must file a RICT Return with Revenue within 60 days of spending 30% of the funds on a qualifying purpose.

> From 1 January 2022:
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> - The company can immediately self-certify the relief. However, it must do so within 4 months of the end of the tax year in which the shares were issued. For an investment on 1 December 2022, the SQ must be sent to investors before 30 April 2023, which is a much shorter timeframe.
> - The RICT return ultimately generates the SQs so it will be filed and sent to Revenue at the same time.