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EMPLOYMENT INVESTMENT INCENTIVE SCHEME OPPORTUNITIES 2022

Supporting Irish businesses the tax-efficient way p4

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EIIS a vital support for companies

The Employment Investment Incentive Scheme (EIIS) provides tax relief for investors while delivering an essential source of funding for Irish businesses

Lorraine Courtney

Investing in an EIIS is an opportunity to support new, forward-thinking entrepreneurs who can influence everyday life. It is a vital source of funds to qualifying companies, Mary McKeogh, tax partner at McKeogh Gallagher Ryan, said.

"It is typically cheaper than bank debt and the promoter determines the length of time the funds are invested for, so they are comfortable they can build up the funds to exit the investors. Securing non-bank finance is very important for any enterprise, particularly in the initial phases, as banks can charge very high interest rates to new companies as they don't have a borrowing record with the institution."

McKeogh said the scheme is of great value to investors as there are so few tax reliefs available to taxpayers these days – EIIS and pension contributions are all that remain. "As this is the week of the income tax deadline, we are certainly seeing how limited the options are for people to secure tax relief and how much they want it. The main downside to most of the investment reliefs is that the taxpayers need to have the funds available to invest in these projects as well as having a tax liability."

There is now a wide range of EIIS projects available – from low to high risk, offering from modest to uncapped returns – allowing investors select the risk-return profile that suits them best. "It traditionally has been our experience that the tax relief is the driving influence for investors, not the return on the investment: that is what makes it so affordable for companies," McKeogh said. "The government provides the tax relief, taking pressure off the company to offer a return beyond its capability."

Three technical amendments are being made to the Employment Investment Incentive scheme (EIIS) in this year's Finance Bill, said a Revenue spokesperson.

"Following on from the opening up of the scheme to a wider range of investment funds in Finance Act 2021, an amendment is being made to the provisions that relate to connected persons.

"Those provisions include that an individual is not a qualifying investor if that individual or an associate of that individual is connected with the company in which the investment is being made. An associate includes a partner of that individual.

"The provision is being amended to provide a carve-out in respect of persons who are associates of an individual solely as a result of being a partner of that individual in a qualifying investment fund (QIF) under the EII legislation.

"The second amendment provides for a change in the information required to be included in a Statement of Qualification, which is the document issued by companies to investors in relation to their investment. And the third relates to the claw-back of relief. The amendments are technical in nature and ensure that the legislation operates as intended."

EIIS has over the years consistently proved itself to be of significant benefit to the economy as a whole and the government should be doing all it can to support the important role it plays in empowering entrepreneurs and encouraging small business growth.

EIIS funds help Irish companies to get off the ground and allow them realise their potential

EIIS funds are critical in providing cash for Irish companies, Tom Maguire, tax partner, Deloitte Ireland, said.

"They help them to get off the ground, allow them realise their potential. Anything that can be done to improve the regime is always a good thing.

"There was a public consultation a couple of years ago on the EIIS scheme. Some changes were made thereafter, but there is always more that could be done. Changes have been made over the years to make it more user friendly, but I think it would be fair to say that it is complex legislation and something that professional advice should always be taken on.

"The relief is an income tax relief but it doesn't reduce PRSI or USC. People see these levies as reducing the amount of income they take home, so it would reduce complexity of the relief and indeed explaining the relief by allowing the relief to reduce these levies as well."

If you invest in an EIIS company and it succeeds, then you pay capital gains tax on any gain arising when you sell the shares, just as you would on any other investment, said Maguire.

"This means that there is no discrimination between investors where a gain arises. However, when an investor makes a loss on disposing of their investment in EIIS shares then that loss may not be an allowable loss for CGT purposes. Had that investor put his or her money or savings into a non-EIIS company and lost money on that investment then they would be allowed to use that loss in reducing other capital gains in the same or future years."

Maguire said that exiting an investment is just as much a consideration when considering whether to make such an investment in the first instance.

"How many times do we say, 'what's the worst that can happen?' when making any investment decision? However, ensuring loss relief on EIIS investments would serve to reduce but not eliminate the element of risk when investing in such companies and by definition increase the attractiveness of such investments to would-be investors," he said.

EIIS is a state aid governed by the EU General Block Exemption Rules. "We would be hopeful that the Irish Revenue Commissioners would take a pragmatic approach in the interpretation and application of these rules so that it can have as broad an application as possible and be used by as many Irish companies as possible," McKeogh said.

"The removal of the pre-approval process does mean that it is quicker to start an EIIS fundraising project. However, the downside of this is that a promoter is left to interpret these technical rules with no avenue to Revenue for guidance, apart from on a point of interpretation of the EU rules.

"Revenue can in the future disagree with the company's interpretation of the EIIS regulations and penalise them if they take a different view, which could be very costly."

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