

# GUIDELINES ON DEFINITIONS USED IN RELIEF FOR INVESTMENT IN CORPORATE TRADES - EMPLOYMENT AND INVESTMENT INCENTIVE AND SEED CAPITAL SCHEMES

The legislation governing both of these schemes is contained in Part 16 Taxes Consolidation Act (TCA) 1997, as amended by Finance Act 2011

This leaflet contains guidelines on some common terms used throughout Part 16 TCA 1997, in relation to the Employment and Investment Incentive (EII) and Seed Capital (SC) Relief. It is intended to serve as a useful reference when completing any forms in connection with either scheme.

## ***Status of this Document***

***This document is not a legal interpretation of any of the legislation on which this scheme is based. Nor is it intended as a comprehensive guide to the scheme. It is a general guideline on common terms used throughout Part 16 TCA 1997, which deals with the EII and SC schemes. It should serve as a handy quick reference for owners of small businesses wishing to raise investments under the scheme.***

***Those looking for the legal interpretation on any terms used throughout Part 16 TCA 1997 should consult the Taxes Consolidation Act 1997.***

Except where otherwise indicated references are to the Taxes Consolidation Act, 1997.

## Definitions

1. A firm in difficulty is as provided for in the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty.  
  
For further details please refer to OJ No. C288 of 9.10.1999, p.2, and OJ No. C244 of 1.10.2004, p.2
2. 'Assisted area' means an area specified in the National Regional State Aid Map for Ireland approved under Commission Decision No. N 374/2006 of 24 October 2006.
3. 'Connected person' is as provided for in Section 492 TCA 1997
4. (a) 'EEA State' means a state which is a contracting party to the EEA Agreement.  
  
(b) 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement.
5. 'Eligible shares' means new ordinary shares which, throughout the period of 3 years beginning on the date on which they are issued, carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future preferential right to be redeemed
6. For the meaning of:
  - 51% subsidiary – see section 9 TCA 1997
  - person connected with – see section 10 TCA 1997
  - control – see section 488(1) TCA 1997
7. 'Green energy activities' means activities undertaken with a view to producing energy from renewable sources.
8. 'Qualifying subsidiary' - A qualifying company may in the relevant period have one or more subsidiaries if –
  - (a) the conditions set out in subsection (2) of section 505 are satisfied in respect of the subsidiary or each subsidiary and, except where provided in subsection (3) of section 505 continue to be satisfied until the end of relevant period, and
  - (b) the subsidiary or each subsidiary is a company –
    - (i) to which section 494(3)(a)(i) relates, or
    - (ii) which exists solely for the purpose of carrying on any trade which consists solely of any one or more of the following relevant trading activities –
      - (I) the purchase of goods or materials for use by the qualifying company or its subsidiaries,
      - (II) the sale of goods or materials produced by the qualifying company or its subsidiaries, or
      - (III) the rendering of services to or on behalf of the qualifying company or its subsidiaries

The conditions set out in subsection (2) of section 505 are as follows

- (a) the subsidiary is a 51 per cent subsidiary of the qualifying company,
- (b) no other person has control of the subsidiary within the meaning of section 11 TCA 1997, and
- (c) no arrangements are in existence by virtue of which the conditions in paragraphs (a) and (b) could cease to be satisfied.

9. 'Relevant period', in relation to relief in respect of any eligible shares issued by a company, means –

- (a) subject to paragraphs (b) and (c) of section 488 (1) TCA 1997 the period beginning on the date on which the shares were issued and ending either 3 years after that date or, where the company was not at that date carrying on relevant trading activities, 3 years after the date on which it subsequently began to carry on such activities,
- (b) as respects a relevant employment, the period beginning on the date on which the shares are issued or, if later, the date on which the employment commences and ending 12 months after that date, and
- (c) as respects a specified individual, the period beginning on the date on which the shares are issued and ending either one year after that date, or, where the company was not at that date, one year after the date on which it subsequently began to carry on such activities.

10. 'Relevant trading activities' means activities carried on in the course of a trade the profits or gains of which are charged to tax under Case I of Schedule D, excluding activities related to –

- (i) adventures or concerns in the nature of trade,
- (ii) dealing in commodities or futures or in shares, securities or other financial assets,
- (iii) financing activities,
- (iv) the provision of services, which would result in a close company (within the meaning of section 430) that provides those services being treated as a service company for the purposes of section 441 if that close company had no other source of income,
- (v) dealing in or developing land,
- (vi) the occupation of woodlands within the meaning of section 232,
- (vii) operating or managing hotels, guest houses, self catering accommodation or comparable establishments or managing property used as a hotel, self catering accommodation or comparable establishment,
- (viii) operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home, and
- (ix) operations carried on in the coal industry or in the ship and shipbuilding sectors,
- (x) the production of a film (within the meaning of section 481).

but including tourist traffic undertakings.

11. 'Replacement capital' is as provided for in Section 498 TCA 1997

12. 'Research and development activities' has the same meaning as section 766 TCA 1997

13. 'Specified individual' has the meaning assigned to it by section 495 TCA 1997

14. 'Director' shall be construed in accordance with section 433 (4) TCA 1997

15. 'Qualifying New Venture' has the meaning assigned to it by section 488 (1) TCA 1997
16. 'Specified intangible asset' has the meaning assigned by section 291A TCA 1997
17. The circumstances in which value is received from the company and the amount of the value are as indicated in sections 497 and 499 and in paragraph 3 of Schedule 10.
18. The definition of associated company in Section 491(5) TCA 1997 is very broad. Companies are associated for the purposes of limiting the relief available if the companies
  - act in pursuit of a common purpose, or
  - are under the control of the same person or group(s) of persons, or
  - if the same person or group(s) of persons have or had the means or power, either directly or indirectly to determine the trading operations carried on or to be carried on by both companies.

The definition of associated company includes situations where the same people are or have been involved at any stage in the planning or operation of a EII project. The individuals need not ever take a controlling interest in the projects.

19. 'Tourist traffic undertakings' means –
  - (a) the operation of tourist accommodation facilities for which the National Tourism Development Authority maintains a register in accordance with the Tourist Traffic Acts 1939 to 2003, other than hotels, guest house and self catering accommodation,
  - (b) the operation of such other classes of facilities as may be approved of for the purpose of the relief by the Minister for Finance, in consultation with the Minister for Tourism, Culture and Sport, on the recommendation of the National Tourism Development Authority in accordance with specific codes of standards laid down by it, or
  - (c) the promotion outside the State of -
    - (i) one or more tourist accommodation facilities for which the National Tourism Development Authority maintains a register in accordance with the Tourist Traffic Acts 1939 to 2003, or
    - (ii) any of the facilities mentioned in paragraph (b).
20. Under the EU "Community Guidelines on State Aid to promote Risk Capital Investments in Small and Medium-Sized Enterprises" (OJ C 194, 18.08.2006), Member States are required to collect data on a beneficiary company's stage of development. These 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.

21. The definitions of micro, small or medium-sized enterprises currently in force (i.e. with effect from 1st January 2005) may be seen at Annex 1 to Commission Regulation (EC) no. 364/2004 of 25 February 2004, {OJ L 63 of 28th February 2004} 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.

For further details please refer to O.J. No. C292 of 1.12.2006, p. 11

22. ‘Unquoted company’ means a company none of whose shares, stocks or debentures are –

- (a) listed on the official list of a stock exchange, or
- (b) quoted on an unlisted securities market of a stock exchange other than –
- (d) on the market known, and referred to in this definition, as the Enterprise Securities Market of the Irish Stock Exchange, or
- (e) on the Enterprise Securities Market of the Irish Stock Exchange and on any similar or corresponding market of the stock exchange of one or more Member States of the European Union; but this subparagraph shall not apply unless the shares, stocks or debentures are quoted on the Enterprise Securities Market of the Irish Stock Exchange before or at the same time as they are initially quoted on an unlisted securities market of a stock exchange of another Member State of the European Union.