GBER Revision 2023

Norma Lane
Office of the Revenue Commissioners
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GBER Revision 2023 - Overview

- Part 16 of the Taxes Consolidation Act, 1997 (“TCA”) provides relief from income tax for investments in corporate trades through
  - the Employment Investment Incentive (“EII”)
  - Start-Up Relief for Entrepreneurs (“SURE”)
  - Start-Up Capital Incentive (“SCI”)
- For all shares issued on or after 13 October 2015 the terms of the reliefs have to comply with the State Aid General Block Exemption Regulation (“GBER”).
- GBER prescribes mandatory conditions for exemption from the otherwise applicable notification to the Commission requirement that is imposed on Member States by Article 108(3) TFEU.

GBER Revision 2023 - Overview

- The European Commission has endorsed a targeted amendment to the GBER.
- The revision was adopted on 23 June 2023. It was published in the Official Journal of the European Union on 30 June 2023 and it entered into force on the day following its publication.
- Article 58(4) GBER provides for a 6-month adjustment period for existing schemes at the end of the period of validity of GBER, during which such schemes will remain exempted.

GBER Revision 2023 - Overview

- Article 21 of GBER prior to its revision dealt with ‘Risk finance aid’. It set out the specific conditions for such aid to be deemed compatible with the internal market and, thereby, exempt from notification to the Commission.
- The revisions include the splitting of Article 21 into two Articles : one dedicated to risk finance aid via financial intermediaries (Article 21), the other to risk finance in the form of tax incentives to natural persons investing in eligible undertakings (Article 21a).
- The Part 16 TCA reliefs are risk finance schemes in the form of tax incentives to natural persons investing in eligible undertakings and therefore fall under Article 21a of the revised GBER.

GBER Revision – Article 21a Risk finance aid to SMEs in the form of tax incentives for private investors who are natural persons

- Article 21a contains 6 paragraphs

- Article 21a(1) provides that risk finance aid schemes in the form of tax incentives to independent private investors who are natural persons providing risk finance investments directly or indirectly to eligible undertakings shall be compatible with the internal market if they meet the conditions in that Article and Chapter I.

GBER Revision – Article 21a(2)

- Article 21a (2) provides
  - That eligible undertakings are those that fulfil the criteria laid down in Article 21(3)
  - That risk finance investment shall not exceed the maximum amount laid down in Article 21(8) - €16.5m per eligible undertaking under any risk finance measure – increased from €15m

GBER Revision – Article 21a(2)

Article 21(3) revised GBER provides that an eligible undertaking is one that meets at least one of the following three conditions at the time of the initial risk finance investment:

(a) They have not been operating in any market - This condition has not been changed in the revised GBER.

(b) They have been operating in any market for any of the following: (i) less than 10 years following their registration or (ii) less than seven years after their first commercial sale.

- This condition is broader than the position in the previous GBER, where the equivalent condition is that the eligible undertaking must have been operating for less than 7 years following its first commercial sale.
- It also sets out how these eligibility periods are to be applied to undertakings that have acquired the activities of another undertaking or which are formed through a merger.
- In Part 16 TCA, risk finance investments pursuant to conditions (a) and (b) are termed “initial risk finance investment”.

GBER Revision – Article 21a(2)

(c) They require an initial investment which, based on a business plan prepared in view of a new economic activity, is higher than 50 % of their average annual turnover in the preceding five years.

- This type of risk finance investment is termed “expansion risk finance” in Part 16 TCA.
  - Previously, GBER referred to “new product or geographical market” rather than “new economic activity”.
- In addition, Article 21(3)(c) revised GBER provides for a new green bonus such that the expansion risk finance turnover threshold may be reduced to 30% of the average annual turnover in the preceding 5 years in respect of:

(i) investments significantly improving the environmental performance of the activity in accordance with Article 36(2) of GBER,

(ii) other environmentally sustainable investments as defined in Article 2(1) of Regulation (EU) 2020/852, and

(iii) investments aiming at increasing capacity for the extraction, separation, refining, processing or recycling of a critical raw material listed in Annex IV of GBER.

GBER Revision – Article 21a(2)

- Article 21(4) GBER allows for follow-on risk finance investment in eligible undertakings after either initial or expansion risk finance.
- Article 21(4) revised GBER is largely unchanged, other than the reference to the requirement that such risk finance investment must be “foreseen” in the business plan is changed to “provided for” in the business plan under the revised GBER.

GBER Revision – Article 21a(3) and Article 21a(4)

- Article 21a(3) provides that investors may provide risk finance aid indirectly through financial intermediaries.
- Article 21a(4) provides that investors may provide risk finance aid directly to eligible undertakings - only the acquisition of full risk ordinary shares constitutes an eligible investment. Section 494(3) of the Taxes Consolidation Act 1997 ("TCA") currently provides that eligible shares may be redeemable, preference shares.

GBER Revision – Article 21a(5) and Article 21a(6)

- Article 21a(5) and (6) revised GBER set maximum rates of relief that may be granted on investments made in eligible undertakings from all tax incentives combined.
- Differing rates of relief apply depending on which of the eligibility criteria, as set out in Article 21(3) and (4) revised GBER, the company in which the investment is made satisfies, and on whether the investment is made directly or indirectly in the eligible undertaking.

GBER Revision – Article 21a(5) and Article 21a(6)

- There is also a discretion under Article 21a(5) and (6) revised GBER to increase those maximum thresholds where the investments meet certain requirements,
  - Where made in assisted areas as per an approved regional aid map, or
  - where the companies receive support under a Member State's recovery and resilience plan, the European Defence Fund or the Union Space Programme, or from Union funds implemented under shared management.

GBER Revision – Article 21a(5) and Article 21a(6)

Type of risk finance investment	Maximum rate of relief on investment
Initial risk finance investment where a company has not been operating in any market	50%
Initial risk finance investment where a company has been operating in any market for less than 10 years/7years	35%
Expansion risk finance investment	20%
Follow-on risk finance investment	20%
Indirect risk finance investment via financial intermediary	30%

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- Thank you