Employment Investment Incentive – Public Consultation

Drinks Ireland|Irish Whiskey and **Drinks Ireland|Spirits** are the representative bodies of the Irish Whiskey and Spirits drinks industry on the island of Ireland. Both are constituent parts of ***Drinks Ireland*** which itself is part of ***Ibec***, Ireland's largest business representative body.

Reason for submitting comments.

On behalf of our member companies, we welcome the opportunity to provide comment to this consultation which reflect the experience of small and medium sized Irish distilleries that are established, are being established, or are at an early stage in the planning process. We wish to set out the views of our members on the operation of, and improvements which might be made to the ***Employment and Investment Incentive scheme*** (EIIS).

Some broad thoughts on EIIS and Irish distilleries.

As pointed out in previous comment on the **Employment Investment Incentive** scheme (EIIS) the experience that small and medium sized Irish distilleries have of the scheme are not the same as those of other small and medium sized companies.

While it is acknowledged that the EIIS is designed to assist entrepreneurs at early-stage investment, setting up a distilling operation is fundamentally different from other start-ups being highly capital intensive in the early years with little chance of return. The very fact that by law Irish Whiskey must be matured for a minimum of at least three years post distillation points to this.

The four-year rule serves to focus investors' expectations on an exit at that time. At the same time, larger funds, and now individual companies, design EIIS' to set the expectation that investors could and should exit as soon after the four years mark is reached as possible. This may be appropriate for other sectors, but not for Irish whiskey distilleries. Whilst the minimum period which investors must hold their investments under EIIS is four years, nothing prohibits them from holding longer, or having their expectations set on a further out exit horizon. And the nature of Irish whiskey sector is that it is particularly unlikely, in comparison with other sectors, to return investments or create liquidity in that time frame.

The EIIS' predecessor, the **Business Expansion Scheme** (BES) was originally designed to reward risk by investing in early and mid-stage businesses (i.e. business that generally finding it very difficult to raise finance or in some cases impossible). BES proved to be extremely helpful to business across all sectors. Some of our members availed of it repeatedly and found it to be both straightforward to use and supported by Revenue. BES proved to be of immense help to entrepreneurs.

While of significant help the EIIS that has replaced BES has proved to be considerably more complex and technically difficult. This has led to the aggressive challenging of the validity of some investments with numerous examples of it having been withdrawn after finance has been raised using it, despite obtaining prior approval.

The scope of the scheme is tight whilst carrying fewer benefits than its counterpart UK scheme. It needs to become more open and less restrictive if it is to achieve what its predecessor achieved.

Specific suggestions on EIIS

The following, while not an exhaustive list, are aspects of the scheme which could be amended with a view to enhancing its support for start-ups in the Irish whiskey /spirits sector in Ireland which as stated earlier due to its somewhat unique characteristics is at a disadvantage vis-a-vis other start-ups.

– The scheme is largely focused on and geared towards "EIIS Funds" through the larger EIIS brokers. These brokers tend to subsequently provide finance to businesses in sectors which don't have the same level of capital investment and have immediate sales channels which is not typical of the Irish whiskey /spirits sector. This makes it very difficult for SME's in the Irish whiskey /spirits sector accessing a reasonable level of funding from this route, which, works against the objective of the EIIS scheme in the first instance.

– Extend opportunity to invest up to seven years with additional encouragement in the form of tax breaks for staying in past the end of year four. This could be in the form of tax-free gain based on the number of years invested as above. This would be an acknowledgement of the heavy capital investment required up front in the Irish whiskey /spirits sector. It would counter investors pulling out after four or five years which puts significant pressure on smaller Irish distilleries to refinance at a time when their Irish whiskey is still too young to capitalise on commercially.

– Also relevant is the seven-year cut off rule (after trading commences) the result of which is companies cannot raise further funds under EIIS. As stated earlier Irish distilleries are somewhat different to other Irish SMEs. Mainly this is due to the time it takes to establish production (land and capital intensive) and insertion of a minimum of at least three years but often longer maturation period for Irish whiskey. This means that Irish distilleries need to raise funds over a longer time scale.

  EIIS as a relief is not only directed at the start-up stage but is intended to support a company's growth stage. The growth stage for Irish distilleries only commences some seven to eight years after start-up (i.e. commencement of production). It would be appropriate therefore that they should be able raise funds under EIIS when they are in their growth stage rather than seven years after commencement of company's trading. Irish distilleries no longer being able to avail of EIIS after seven years results in their access to finance becoming constricted.

– A clawback issue can also arise around repayment of investment to any investors who wish to invest in the same company in multiple years. Where the qualifying company returns capital to EIIS investors within their compliance period it can result in clawback of relief from those investors for follow on years in the same enterprise. This makes little sense as it penalises an investor who is committed to a particular enterprise on an ongoing basis as against a similar investor who invests in different projects each year. Addressing this significant issue would improve the attractiveness of the scheme to investors.

- The EIIS scheme should provide incentives to encourage investors into distilling companies with additional befits to compensate for taking a more long-term view. This could be staged / progressive capital gains tax exemptions.

- Irish whiskey manufacturing should be given a designated activity status within EIIS.

- Make the scheme more attractive to potential investors and address the fact that the EIIS is less beneficial to investors when compared to other similar schemes in different countries (e.g. EIS in the UK). Allow the gains from EIIS investments to be:
  - free from capital gains tax
  - inheritance tax, and
  - provide the possibility to write off losses against other gains.

- Eliminate the *Charge to Income Tax on Uplift* prior to five years which is currently in place.

- It is worth considering extending the deadline for investment from 31 December each year to 31 January the following year and similar to the pension regime allow contributions be made that apply retrospectively to the previous tax year.

- Self-certification (of EIIS compliance) was introduced in 2019. However, there remains an issue for 2018 and prior years where Revenue certificates for investors have not yet issued. This puts unnecessary pressure on the recipient Company regarding tax compliance for the investor. Resolve the outstanding issue of some companies still waiting for Revenue issued compliance certs for 2018 and years prior to that. This situation is leaving investors (and the relevant enterprise) with significant ongoing uncertainty as to whether or not back tax that was claimed might be disallowed.

- 'Advance Assurance' should be provided by the Revenue Commissioners with a view to offering certainty and enabling Irish distilleries to apply for reliefs prior to the issue of shares. Certainty was previously provided when Revenue offered advance assurance prior to issue of shares but this certainty was lost when self-certification was allowed (for good reason as it had been taking up to two and more years to acquire certification from Revenue). It should be possible to provide the certainty that advance assurance offers whilst also allowing Irish companies availing of the EIIS to self-certify.

- Clarity around Revenue approval for qualifying EIIS schemes is a key factor for investors. Timely approval by Revenue would be of huge assistance in this regard. Involving Revenue from the start rather than at later stage might help overcome these avoidable delays which as things currently stand, is putting companies off using the scheme. As already suggested an 'Advance Assurance' scheme similar to that which is (see UK) should remain in place to give certainty to the investee prior to the issue of shares that the company will be eligible.