



## **Scale Ireland observations on GBER consultation**

**October 2025**

Scale Ireland is Ireland's leading independent not-for-profit, representative organisation for Irish tech start-up and scaling companies. We are the biggest representative organisation for the Irish tech sector with 800 members. Our mission is to support, promote and advocate on behalf of indigenous tech start-up and scaling companies of all stages, sizes and sectors and to create the most favourable conditions for them to succeed. Our vision is to make Ireland a leading global location for innovation and entrepreneurship.

We welcome the opportunity to participate in this consultation on the GBER. We recognise the central importance of GBER to the operation of the EU state aid regime. Our main interest is in articles 21 and 22 of the consolidated regulation though we will also make some general high level observations also.

We are conscious that this consultation appears at a time when the EU is considering wider relating to competitiveness and innovation. Informed by the Draghi Report of last year, we regard the Commission's competitive compass to be an important innovation in EU policy. We are aware also that the EU has also initiated a review of start-up policy. We believe that the review of the GBER regulations should be assessed in this wider context. In particular, it is worth assessing the extent to which GBER facilitates, or could further facilitate, the EU in meeting the scaling challenge identified by the Draghi report.

In addition, we also believe that the volume of scaling entities within the Union will always be a function of the number of start-up companies formed - the more start-ups we generate, the more scaling companies we will produce. The start-up environment

varies from country to country, is hindered by the absence of legal definition that differentiates high potential start-ups from more typical SMES, and requires continued support. It is important not to lose focus on this point.

## **High level observations**

1. We believe the current GBER regulatory suite is excessively complicated and denies individual member states the capacity to design interventions that are appropriate to their jurisdictions. For SMEs and start-up companies in particular we believe that complexity is the enemy of participation. While we recognise that the Commission has an important role to play in protecting the integrity of the single market, we are not of the belief that the current level of detail involved in GBER is proportionate to this risk.

We believe there is a case that in cases where public money participation falls below a certain threshold, additional flexibility should be afforded to member states to design effective aids. Our experience of GBER aided schemes in Ireland is that they are often too complicated and deter early stage start-up participation in particular. Responsibility for such complexity does not necessarily rest entirely with the EU. Obviously member states' finance departments and revenue authorities also play a role here.

2. The suite of rules would be well served by timely accompanying interpretative guidance from the Commission. Any complex regulation is open to a range of interpretations. In Ireland domestic tax law is typically accompanied by interpretative guidance. It is our view that a similar process should operate with respect to the GBER regulations. While the primary first hand users of the regulations are public authorities, we know from our interaction with them in the course of our day to day activities, that interpretative issues even arise at their level. In addition to issues of interpretation, there are also issues of understanding and comprehension that might also be aided by additional explanation.

Some of the thresholds used within the regulations can appear arbitrary. We believe that additional guidance would be of assistance to member states in their design of GBER compliant market interventions.

3. It was our experience that the implementation of the most recent set of GBER modifications was unsatisfactory and led to market disruption in Ireland's most important GBER compliance tax relief scheme for investors in SMEs. The six month deadline,

one which required, as we understand it, primary legislative change in Ireland's context, and did not leave investors and investment facilitators sufficient time to prepare the market for the changes ahead. In part, the scale of the challenge was determined by the nature of the changes, but the absence of lead-in time was also an issue.

This scheme, the [Employment Investment Incentive Scheme](#), is an important source of capital to start-up companies, and the cumulative changes made to it deterred investors from participation in it in 2024. It is unclear, as of yet, the extent to which some additional clarity from our Department of Finance and additional bedding down time has seen investment levels recover. Our initial assessment was that it led to a 30 to 35% fall off in investment levels as against previous years.

## Articles 21 and 22

4. As indicated these are the two articles of most interest to our members. There are three tax relief schemes operated in Ireland that are GBER compliant. These are the Start-up Relief for Entrepreneurs Scheme (SURE), the Start-Up Capital Incentive Scheme (SCI) and the Employment Incentive Investment Scheme (EIS). It is the EIS that is by far the most important and regularly used to attract private capital to start-up and scaling companies and the comments made here are primarily related to that scheme.

5. We believe that the most recent changes made in the regulations, most specifically, the introduction of three rates of tax relief have had a negative impact on the schemes. Our initial assessment was that it led to a 30 to 35% fall off in investment levels as against previous years.

*Levels of Relief:* In our discussions with investors in advance of this consultation, it is felt that the introduction of the three levels has led to an unhealthy focus on rate shopping by investors where decisions are being made on the basis of relief maximisation as much as merit. The three levels of relief have also added to the complexity of a scheme which the Irish Commission on Taxation and Social Welfare had already identified as overly complex.

As already indicated, the changes introduced afforded insufficient implementation time leading to considerable confusion and lack of clarity for investors and founders.

The introduction of a lower rate of relief at 20% attracts little or no interest from investors and constitutes, and from their perspective, is a poor return on the risk deployed. In Ireland, investors are not allowed to set off capital losses in investments

made under EIS against tax. The reward on risk they consequently aspire to is not met by the 20% relief level.

It is our view that the single relief rate that operated prior to the most recent changes offered a better risk return for investors and also made the scheme less complicated and easier to understand.

*7 to 10 year rule:* Article 21 (3) of the regulations inserts a time bound eligibility rule with respect to the regulations. For example, to fall within the 35% rate of relief on direct investment in GBER then companies have to be within 10 years of their incorporation (registration) or 7 years from their first commercial sale.

Scale Ireland believes that these periods should be increased. We believe that companies excluded by these regulations, often remain the market for tax relief driven investors and that to exclude them on this basis constitutes a problem for scaling companies. While we appreciate that the Commission may require limitations here for anti-avoidance purposes, we believe the current regulations to be too restrictive and contrary to the emphasis being placed on scaling companies within overall EU policy.

*Beneficiary threshold:* On a similar basis we believe that the beneficiary restriction of €16.5m to individual entities to be contrary to overall EU policy aims with regard to incentivising scaling companies. It seems to us that the threat to competition in the single market is not determined by the scale of support but whether the entity to be supported is genuinely innovative. If it is then it constitutes an enhancement to European markets not a hindrance.

*Gain limitation.* The imposition of a cap on the availability of tax reliefs in the GBER rules acts as a disincentive to investment. The tax relief should apply to a high level. For instance, in Ireland, the 'Angel Incentive Relief' was introduced in Ireland via the Finance Act 2023 to provide a lower capital gains tax rate of 16% for individuals investing in innovative start-up companies (as opposed to our standard CGT rate of 33%). The scheme limits the relief available in two ways - it contains a cash gain lifetime threshold of €10m and a limit on gains to twice the initial threshold of the initial investment. These limits do not factor in the value to the European economy of a successfully scaled company and the pull of windfall gain for the investor. We need to do more to incentivise private capital into indigenous companies at a time when funding is a key issue for innovative companies across Europe and at a time when there are also large amounts on deposit, which are not being invested into high potential-companies.

*Full ordinary share requirement:* The stipulation in article 21(a) (4) that eligibility is confined to 'only the acquisition of newly issued full-risk ordinary shares issued by an eligible undertaking shall constitute an eligible investment' constitutes a serious impairment to the scheme.

This definition automatically precludes investment instruments such as the Convertible Loan Notes (CLN) and the Simple Agreement for Future Equity instruments which dominate early stage investing in higher risk start-ups. These instruments are both well established and constitute in reality equity based investment. Indeed, they are only likely not to convert to equity in circumstances when the investment is lost.

The advantage to start-up companies of these instruments is their comparative simplicity, a factor which extends into reduced legal costs. They also avoid the complicated issue of valuation of early stage start-ups by effectively postponing that issue. To preclude these instruments from GBER is a serious impediment to facilitating its support of early stage start-ups and is entirely in conflict with stated EU policy goals.

## **Conclusion**

Scale Ireland is pleased to have been afforded the opportunity to participate in this review and believe that it has the potential to enhance the effectiveness of GBER based interventions. We are aware that the consultation is regarded as significant by the state authorities in Ireland.

We recommend:

- Scale Ireland would like to see revised GBER rules that remove obstacles to take-up and participation. In particular we believe that the introduction of the three tiered relief matrix has been detrimental to the operation of transparent schemes.
- We would like the regulations to be less proscriptive with a greater focus on simplicity and adaptability.
- The process of introduction of new or amended regulations must afford sufficient lead in time to allow markets time to assimilate the implications of the new rules. The publication of accompanying guidance in this respect would be most helpful.

- We would like the regulations to offer greater facility for support for scaling companies in line with stated EU Commission policy goals.
- We would like to see additional flexibility afforded to member states to design tax related schemes that will work in the market.

**Ends.**