Fáilte Ireland
National Tourism Development Authority

Tourism

And

The Business Expansion Scheme

And

The Seed Capital Scheme

CONTENTS

TAX INCENTIVES FOR TOURISM

INTRODUCTION

If you own or intend to commence a tourist business and are looking for outside investors, or if you are an investor looking for a suitable unquoted company in the tourism industry to invest in, or intend investing further in your own tourism company, you may be able to take advantage of an important tax incentive scheme – the Relief for Investment in Corporate Trades Scheme, more commonly called the Business Expansion Scheme (BES). The benefits of the BES apply to certain tourist traffic undertakings involved in export tourism. The scheme applies to investments made on or before 31 December 2013.

The scheme works by giving individual investors tax relief on investments they make in certain tourism companies. Qualifying companies must be Micro, Small or Medium Sized Enterprises (MSMEs) as defined by European Commission Regulations. This reduces the cost (and thereby the risk) to an investor of his/her investment and enhances the ability of eligible companies to attract outside investment.

The scheme includes a special relief for seed capital investment by new entrepreneurs and relief for existing/new promoters.

This booklet gives a general idea of how the BES and the Seed Capital Schemes work and should enable you to decide whether they are of interest to you or not. If you decide that they are, you should consult a professional adviser to ensure that you fully understand all the rules before entering into any transaction. Full details of the legislation relating to the schemes can be found in Sections 488–508A of the Taxes Consolidation Act 1997, as amended. The information in this booklet includes the amendments made to the schemes by the European Communities (Income Tax Relief for Investment in Corporate Trades – Business Expansion Scheme and Seed Capital Scheme) Regulations 2004 and 2007, Finance Act 2005 and Finance Act 2007. **All references in the booklet to investment limits relate to the tax year 2007 and later years unless otherwise stated. The booklet does not cover the options available to investors in respect of investments prior to 1 January 2007 and individuals who have made such investments should consult their professional adviser.** In addition, it should be noted that BES relief is a "specified" relief for the purposes of the 'Limitation on amount of certain reliefs used by certain high income individuals', introduced by Finance Act 2006.Such limitations are not detailed in this booklet and individual investors should take their own professional advice where appropriate.

Investment in the tourist industry like any other industry and particularly in unquoted companies carries risks and no investment, whether made under this scheme or otherwise, is guaranteed to succeed. It is in recognition of these risks that the Government introduced BES in 1984 for manufacturing and certain service industries. It is an important and generous tax incentive which reduces the cost of an investment and accordingly increases the potential return. Investors should, however, carefully evaluate the risks associated with any investment before proceeding.

Fáilte Ireland has to approve the eligibility of the tourism project and will provide assistance in explaining Fáilte Ireland's requirements for approval. Your solicitors, stockbroker, accountant, tax practitioner or other adviser should be able to give you the detailed professional help which you will require. Alternatively you might consult the Office of the Revenue Commissioners, Business Incentives, Direct Taxes Interpretation and International Division, Dublin Castle, Dublin 2, who administer the taxation aspects of the schemes.

This leaflet does not purport to be a legal interpretation of any of the legislation on which these reliefs are based. Nor is it intended as a comprehensive guide. It should be used for general information purposes only.

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SECTION 1

THE BUSINESS EXPANSION SCHEME FOR TOURISM DEVELOPMENT

1. WHAT ARE THE MAIN FEATURES?

- The scheme was introduced in 1984 and has been extended to run until 31 December 2013.
- The Finance Act 1987 provided for the extension of the scheme to cover certain tourist traffic undertakings.
- Qualifying companies must be either incorporated and tax resident in the Republic of Ireland (Ireland) or incorporated elsewhere in the European Economic Area but carrying on a business in Ireland through a branch or agency, and, in either case, carrying out qualifying activities.
- From 1 January 2007 qualifying companies must be micro, small or medium sized enterprises ('MSMEs') as defined by the European Commission.[1] In addition in the case of medium sized enterprises located[2] in *'non assisted' areas of Ireland*[3], note these will only qualify where they are in a stage of development not beyond the 'start up stage'[4].
- A qualifying company and its associated companies may, between them, raise BES investments totalling €2,000,000 [2006 limit was €1,000,000]. Where a company or its associate companies have previously raised money under this scheme then the maximum amount that may be raised is the difference between the amounts so raised and €2,000,000 [2006 limit was €1,000,000]. Furthermore, with effect from the 1st January 2007, a company may not raise more than €1,500,000 in any 12-month period [2006 limit was €750,000 in any 6 month period].
- It is open to individuals who have income liable to Irish tax.
- The legislation provides for tax relief on BES investments up to €150,000 [2006 limit was €31,750] per individual investor, per annum, in the tax year in which he/she

[1] For the period 5 February 2004 to 31 December 2004 the definition is as contained in Annex 1 to Commission Regulation (EC) No. 70/2001 of 12 January 2001. From 1 January 2005 the definition is as contained in Annex 1 to Commission Regulation (EC) No. 364/2004 of 25 February 2004 (OJ No. L63 of 28 February 2004, page 22).

[2] Location is determined by reference to the place where the 'qualifying trading operations' of the applicant or its qualifying subsidiary are carried on.

[3] This is an EC requirement and 'non assisted' areas of Ireland are as specified in OJ No. C292 of 1 December 2006, page 11. 'Non-assisted' areas of Ireland are Dublin, Meath, Wicklow and Kildare and with effect from 2009 Cork City and County other than Cork Docklands.

[4] This is within the meaning of the Community Guidelines on State Aid to Promote Risk Capital Investments in Small and Medium-Sized Enterprises (OJ No. C194 of 18 August 2006, page 2). 'Start-up' capital is defined as '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'.

makes his/her investment. The relief is given as a deduction from total income in the year in which the shares are issued.

- An investor who cannot obtain relief on all his/her investment in a year of assessment, either because his/her investment exceeds the annual maximum investment limit of €150,000 [2006 limit was €31,750] or because his/her income in that year is insufficient to absorb all of it, may carry forward the unrelieved amount to following years up to and including tax year 2013 subject to the normal limit of €150,000 [2006 limit was €31,750] on the amount of BES investments that can be relieved in any one year.

- In order to qualify, investments must be in qualifying companies (as defined) engaged in one or more of the tourism activities set out in Appendix 1.

  A qualifying company must be an unquoted company. An unquoted company is a company none of whose shares are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock market other than –

  on the Irish Enterprise Exchange (IEX) of the Irish Stock Exchange, or

  on the IEX of the Irish Stock Exchange and on any similar or corresponding market of the stock exchange of one or more EU Member States, provided the quotation on the IEX occurs before or at the same time as the first quotation on an unlisted securities market of a stock exchange of another EU Member State.

- The following sectors have been formally excluded from the scheme: coal industry, steel and shipbuilding sectors and any company regarded as a "firm in difficulty" within the meaning of European Community Guidelines on State Aid for rescuing and restructuring firms in difficulty.[5]

- Investors must purchase new ordinary share capital in the company. Shares must carry no preferential rights to dividends, assets or redemption. Normally, the minimum investment in any one company which qualifies is €250. However, where spouses, each with independent income, are jointly assessed, this limit applies to their combined investment.

- Relief can be claimed immediately in the case of established companies and after four months' trading in the case of new companies.

- Shares must be held for five years, and certain conditions satisfied in relation to the investor for a period of five years after and up to two years before investment. Other conditions in relation to the company need only be satisfied for three years after investment or the company commencing to trade.

- Relief will not be given in respect of shares which are the subject of an option which requires a person to acquire them from the investor at a price other than their market value or where the investor's risk has been eliminated.

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[5] For the period up to and including 9 October 2004 refer to OJ No C288 of 9 October 1999, page 2. As and from 10 October 2004 refer to OJ No. C244 of 1 October 2004, page 2.

2. Interaction of BES/SCS with other State Aids

In approving the extension of the BES/SCS schemes to 2013, the European Commission stipulated that the aid provided under these schemes must be cumulated with other State aids. The stipulation was:

'For the qualifying companies receiving the BES and SCS investments, the relevant State aid ceilings or maximum eligible amounts of State aid under block exemption regulations, guidelines, frameworks and other State aid documents will be reduced by 50% in general and by 20% for the qualifying companies located in assisted areas and up to the total amount of the BES and SCS investment received during the first three years of the first the BES and SCS investment. This obligation does not apply to State aid granted on the basis of the Community framework concerning state aids for research and development or any successor framework or block exemption regulation in this field.'

The Department of Finance's press release in respect of this stipulation indicated:

- *'Cumulation, where it applies, will be operated by the State bodies granting financial assistance under other State aid schemes.*
- *There will be no reduction in the BES or SCS by way of cumulation. Nor will cumulation apply to aid granted under the Community framework for research, development and innovation. De minimis aid will not be affected.*
- *Aid reduction will be by 50% in general and by 20% in the assisted areas.*
- *The reduction in the State aid ceilings, or maximum eligible amounts of State aid, will be applied in respect of the total amount of BES and SCS investment received at the time that reduced State aid is approved. Such reductions will continue to be made for a period of three years from the date the first BES/SCS investment is received until the total reductions equal the amount of the total BES/SCS investment received during that three year period.*
- *Cumulation will apply in relation to BES and SCS investments made under the revised schemes only i.e. from 1 January 2007.*
- *Any queries regarding the rules governing the cumulation of State aids should be addressed to the State body responsible for the administration of the State aid in question.'*

Details of companies that raise BES/SCS finance will be published on the Revenue website and will be made available to other State agencies/bodies responsible for the administration of other State-aid schemes. In addition, details of the operation of the schemes, including details of qualifying companies, will be reported on annually to the European Commission and published on its website.

3. How do I Know if my Investment will Qualify?

The investor, the company, its trade, the shares purchased and the company's use of the money raised all have a part to play in ensuring that the investment qualifies for relief.

The Revenue Commissioners offer an outline approval service to potential BES companies and while this approval is not in any way binding on the Revenue Commissioners it affords the investor a degree of comfort that the main issues for relief in respect of that company have been satisfactorily addressed.

The conditions for relief must continue to be met for specified periods to ensure that the relief granted is not withdrawn in whole or in part.

4. Who are the Qualifying Investors?

They are the individuals who subscribe on their own behalf for eligible shares (Paragraph 13) in a qualifying company (Paragraph 5) and who are not for a period (starting with the date of incorporation of the company or, if later, 2 years before the issue of the shares and ending 5 years after the issue of shares) connected with the company.

When is an individual connected with a company?

When he/she or an associate (i.e. a partner, certain trustees, and persons with common interests in certain trusts or estates) of his/hers:

- is a partner of the company;
- owns or is entitled to acquire, including in the event of the company being wound up, more than 30% of the ordinary share capital, share capital and loan capital taken together, or voting power of the company (unless the aggregate of the share and loan capital of the company is €500,000 [2006 limit was €317,500] or less – see Section 2);
- can ensure that the company's affairs are conducted in accordance with his/her wishes; or
- is investing in the company as part of a deal whereby a person connected with the company in turn invests in a separate company with which the individual is connected.

Can employees and directors qualify?

Yes, provided that their relationship with the company does not secure for them any reward over and above what would be normal. Furthermore, individuals may qualify in respect of investments in companies owned or run by close relatives of theirs (provided of course they are not otherwise disqualified) where the individual's own interest in the company, if its share/loan capital exceeds €500,000 [2006 limit was €317,500], is less than 30%.

Is there a limit to the number of investments in any one company?

No. Subject to the limitation to the number of shareholders in the case of a private company, the €2,000,000 [2006 limit was €1,000,000] ceiling and the €1,500,000 limit in any 12 month period [2006 limit was €750,000 in any 6 month period].

Is there a limit to the number of companies I can invest in?

No. But tax relief is subject to the overall investment limit of €150,000 [2006 limit was €31,750] per tax year.

5. WHAT TOURISM COMPANIES QUALIFY?

A qualifying company is one which

1. is incorporated and tax resident in Ireland or incorporated elsewhere in the European Economic Area but carrying on a business in Ireland through a branch or agency and in either case carrying out qualifying activities (previously the schemes were restricted to qualifying companies incorporated and tax resident in Ireland),
2. is regarded as a micro, small or medium sized enterprise[6]. However, a medium-sized enterprise located[6] in a non-assisted area[7] must be at a stage of development not beyond start-up stage[7] to be eligible for the Business Expansion Scheme.
3. is not a 'firm in difficulty'[8] as defined in the European Commission regulations referred to in Section 1 ('What are the Main Features?) of this booklet, and;
4. for a period of three years commencing on the date on which the shares are issued or, if later, the date on which the company starts trading, satisfies the following conditions:
    - is an unquoted company (subject to the exceptions mentioned in Paragraph 1 above),
    - is engaged, or is the holding company of a subsidiary engaged, in a qualifying trade (Paragraph 5),
    - has had a three year Development and Marketing Plan, which is primarily designed and formulated to increase tourist traffic, and revenue, from outside the State, approved of by Fáilte Ireland (see Paragraph 7).

CAN A COMPANY HAVE SUBSIDIARIES?

A qualifying company can have subsidiaries provided generally that:

(a) the subsidiaries are at least 51% owned by the parent company; and

(b) the subsidiaries are themselves qualifying companies, or carry out certain services for, or functions on behalf of, the parent company or its subsidiaries.

BES funds raised by a holding company for use by its qualifying subsidiary, or subsidiaries, may only be used by the holding company to acquire new ordinary shares in the subsidiary, or subsidiaries, as the case may be. These ordinary shares can have no preferential rights to dividends, assets on a winding up or redemption.

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[6] For the period 5 February 2004 to 31 December 2004 the definition is as contained in Annex 1 to Commission Regulation (EC) No. 70/2001 of 12 January 2001. From 1 January 2005 the definition is as contained in Annex 1 to Commission Regulation (EC) No. 364/2004 of 25 February 2004 (OJ No. L63 of 28 February 2004, page 22).

[7] Non-assisted areas are detailed in the 'Regional Aid Map 2007-2013 – Ireland'. Guidelines on National Regional Aid for 2007-2013 are set out in OJ No. C54 of 4 March 2006. Location is determined by reference to the place where the 'qualifying trading operations' of the applicant or its qualifying subsidiary, branch or agency are carried on. Stage of development is within the meaning of the Community Guidelines on State Aid to Promote Risk Capital Investments in Small and Medium-Sized Enterprises (OJ No. C194 of 18 August 2006, page 2). 'Start-up' capital is defined as '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'.

[8] For the period up to and including 9 October 2004 refer to OJ No C288 of 9 October 1999, page 2. As and from 10 October 2004 refer to OJ No. C244 of 1 October 2004, page 2.

The limit of €2,000,000 [2006 limit was €1,000,000] in eligible shares being issued by a company extends to its associated companies. Where a company or its associate companies have previously raised money under this scheme then the maximum amount which can be raised is the difference between the amounts so raised and €2,000,000, subject to maximum of €1,500,000 in any 12 month period [2006 limit was €750,000 in any 6 month period]. The eligible shares of all the companies taken together cannot exceed the limit. Companies acting in pursuit of a common purpose or controlled by persons with a reasonable commonality of identity are associated. Subsidiary companies will also be taken into account.

6. Which Tourist Activities Qualify for BES?

Those which are designated tourist traffic undertakings. "Tourist traffic undertaking" means:

(a) the operation of tourist accommodation for which Fáilte Ireland maintains a register in accordance with the Tourist Traffic Acts other than hotels, guest-houses and self-catering accommodation;

(b) the operation of such other tourism facilities as may be approved of by the Minister for Finance for the purposes of the Business Expansion Scheme; or

(c) the promotion, outside of Ireland, of any of the above facilities including hotels, guest-houses and self-catering accommodation, e.g. group marketing companies.

A complete list of qualifying activities is given in Appendix 1.

7. Are There Any Other Tourism Conditions?

Yes. In considering whether a company operating or promoting a tourism facility is a qualifying company, the Revenue Commissioners require certified evidence that Fáilte Ireland has approved the required three year Development and Marketing Plan for the company. A certificate is issued by Fáilte Ireland to this end. *Funds raised by a company for a tourism project will not be eligible for tax relief under the BES without this certificate*. Accordingly we would advise that a company not raise BES funds prior to receiving this certificate. In the case of a company which has raised funds from investors prior to securing the certificate, it may be possible to qualify for BES relief if the certificate was forthcoming within 2 years of the date of investment and the funds were only used as set out in the approved plan. This is also provided that all other non-tourism specific conditions of the scheme are satisfied. It would not be recommended to plan to operate up to these outer time limits, or on an assumption that the business proposal will qualify for certificate issue.

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8. What is a Development and Marketing Plan?

It is a plan which must satisfy Fáilte Ireland that the company's proposals are *primarily designed and formulated to increase foreign tourist traffic and revenue.*

To enable it to consider a plan submitted by a company, Fáilte Ireland adheres to certain principles agreed with the Minister of Tourism, Sport and Recreation, with the consent of the Minister for Finance. In particular, the principles cover:

(a) the extent to which the company's interests in land and buildings may form part of its total assets;

(b) specific requirements which have to be met in order to comply with the main objective of the extension of the Business Expansion Scheme to tourism, i.e. *an increase in foreign tourist traffic and revenue,* and

(c) the extent to which money raised under the Business Expansion Scheme must be used on foreign promotion of the company's activities.

Factors which will be taken into account by Fáilte Ireland in relation to (b) above include:

- product standards,
- marketability of the company's products,
- achievability of foreign demand for product type,
- adequacy of company's foreign marketing programme.

9. What Details are Needed in the Plan?

The details can be broken down into the three main categories set out at (a), (b) and (c) in Paragraph 7. A checklist is provided at Appendix 2.

Interest in Land and Buildings

Specific upper limits apply to the proportion of total assets which can be devoted to land and buildings *excluding fixtures and fittings*. Such interest should normally be held freehold, but a long leasehold giving a sufficient interest (e.g., 20 years or more) may be acceptable. For the purposes of assessment, the value of land and buildings, as shown in the company's balance sheet, before liabilities, as a proportion of total assets is used. Where a leasehold is concerned, the valuation of same should be calculated as of 3/4 of annual amount of rent multiplied by number of complete years for which the lease has been created. As an alternative method to the above, Fáilte Ireland reserves the right to request that the applicant company, at its own expense, have the valuation of a leasehold determined by means of a professional valuation from an Irish Auctioneers and Valuers Institute (IAVI)member firm. Limits on interest in land and buildings for the various qualifying tourist undertakings, are as follows:

Not more than 50% of total assets

- Out-of-State promotion of approved tourism facilities
- Boat/cruiser/passenger boat/water craft hire
- Horse drawn caravan hire
- Sub-aqua centres
- Sea angling boat hire
- Chauffeur-drive operations for tourism only
- Tourist guide agencies
- Outdoor pursuits/activity centres
- Tour coach services

Not more than 65% of total assets

- Sailing/yachting centres/marinas

Not more than 70% of total assets

- Caravan and camping sites
- Equestrian centres

Not more than 75% of total assets

- Holiday hostels
- Holiday camps
- International conference centres
- Interpretative centres
- Game fisheries angling facilities
- Commercial Golf facilities (pay-as-you-Play) (see Appendix 3)
- Heritage houses, castles, gardens: improvements and development of ancillary services for tourism.

(A) SPECIFIC REQUIREMENTS

These fall into the two categories of development and marketing

Development

- A comprehensive description of business objective;
- A three year plan including details and estimated costs of any proposed capital development over the period;
- Details of funding arrangements for applicant company.

Marketing

- *Competitive position analysis,* including description of target market and market segments. (There should be an analysis defining target markets and market segments, outlining how the enterprise will succeed when faced with existing and potential competition and general market intelligence showing existing state of the product market and likely trends impacting on the enterprise.);
- *Marketing Mix* (e.g. advertising, promotions, e-marketing, personal selling, etc) proposed and rationale for same;
- *Budgets* for Marketing Programme including information on sources of funds and financial projections;
- *Scheduling of marketing activities* over a three year period including advertising, PR and Promotional schedules and listing of individuals or agencies responsible for implementation;
- Statement of *how* the proposed *export marketing* activities will *co-ordinate* with and *complement national tourism* export *marketing* activities;
- Details of *goals* and *targets* including forecast *revenue projections* and foreign (export components of same).

Fáilte Ireland will also require evidence that the tourist undertaking meets the requirements of the Planning, Health and Fire Authorities and will operate in accordance with registration criteria or codes of standards set out by Fáilte Ireland of the various qualifying activities. Fáilte Ireland will provide further details on registration criteria and codes of standards, on request.

(B) FOREIGN PROMOTION

Not less than 8% of the money raised under the Business Expansion Scheme by companies providing qualifying tourist accommodation and/or approved tourist facilities – (A) and (B) in Appendix 1 – must be used in promoting their undertakings outside the State. This expenditure must be completed by the end of the third year of the project.

For those promotional companies qualifying under Section C of the qualifying enterprises (Appendix 1), the BES funds must, of course, be used primarily for overseas marketing activities. To assist applicants plan their marketing programme, detailed information on a wide range of promotional opportunities can be found in the Calendar of

Promotion, available from Fáilte Ireland's Marketing Services Division.

10. WHAT HAPPENS WHEN THE PLAN IS APPROVED?

Certificates of approval will be issued to applicant companies who fulfil the requirements set out in these guidelines and who, in the opinion of Fáilte Ireland, have a development and marketing plan designed and formulated to increase tourist traffic and revenue from outside the State. Fáilte Ireland's decision will be final.

Note where a company fails to carry out its three year development and marketing plans for any reasons other than the winding up, or dissolution without winding up, of the company, or unless modified with the agreement of Fáilte Ireland (Paragraph 11), this could invalidate the entitlement to BES relief.

The issue of a certificate of approval by Fáilte Ireland to a company in respect of a development and marketing plan does not in any way imply that the company will be regarded by the Revenue Commissioners as a qualifying company for the purposes of the Business Expansion Scheme. The other criteria which are not specifically related to tourism must also be satisfied and these are solely matters for the Revenue Commissioners.

11. HOW IS THE PLAN MONITORED?

Failte Ireland will advise on requirements relating to the need to monitor implementation of the development and marketing plan over the three-year relevant period which commences on the date the BES shares are issued, or if later, the date on which the company begins to carry on qualifying trading operations. Failure to comply with the approved plan submitted and with the specific thresholds set out could invalidate the entitlement to BES relief and, in that event, Failte Ireland will notify the Revenue Commissioners of the non-compliance.

Failte Ireland will, therefore, be in further contact with BES-certified companies to monitor the progress made since starting. The following details will be required:

(a) copies of the company's audited accounts for each year;

(b) a specific certificate may also be required from the company's auditor stating-

- the amount of BES funds actually raised,
- the company's interest in land and buildings (excluding fittings) and that the company is within the allowed % of total assets in the balance sheet in the period, and
- details of funds expended on out-of-State marketing in accordance with the approved marketing plan.

It is always advisable to keep Fáilte Ireland informed of the company's progress. In the event that any difficulty is experienced carrying out the marketing and development plan, Fáilte Ireland will be happy to discuss any unanticipated problems and will be prepared, if necessary, to agree a revised structure and to suggest, where possible, special marketing options enabling the conditions to be fulfilled.

12. Must a BES Company Confine Itself to Approved Activities?

No. Provided it receives not less than 75% of its total trading income from the qualifying tourist activities in the BES period it can still benefit from the scheme.

However, the trade must be conducted on a commercial basis with a view to making profits and it must be carried on wholly or mainly in the Republic of Ireland.

13. What are the Rules for the Share-Purchaser?

In order to qualify under the scheme, the individual investor must subscribe on his/her own behalf for shares which:

- represent new ordinary share capital in a qualifying company;
- for a period of 5 years from the date of issue, carry no preferential rights as to dividends, assets on a winding up, or, redemption;
- are not part of any agreements, arrangements or understandings that would eliminate risk for the investor.

The whole of the company's issued share capital must be fully paid up. The minimum investment for an individual, or a couple jointly assessed, in any one company is €250. This minimum does not apply to investments in funds designated specifically for the purposes of the scheme (paragraph 20).

The maximum investment which will qualify for relief in any one tax year is €150,000 [2006 limit was €31,750]. This limit applies to individuals. A married couple can each obtain relief on an investment of €150,000 [2006 limit was €31,750] provided each spouse has sufficient total income to absorb the amount of his/her investment.

14. How Must the Company Use the Money?

The company must use the equity raised to carry on the qualifying trade having regard to the company's three year development and marketing plan approved by Fáilte Ireland and to fulfil the requirements in the general Business Expansion Scheme as to *the creation or maintenance of employment* and for the purposes of doing one or more of the following:

- enlarging the company's trading capacity;
- engaging in the acquisition of technology, new product or service development or the provision of new products or services;
- identifying and exploiting new markets or expanding existing markets;
- increasing sales.

The company may use the money raised for the purpose of the qualifying trade of a subsidiary provided the above conditions and the specific conditions relating to subsidiaries (paragraph 5) are met.

15. For How Long Must the Conditions of the Scheme be Met?

Shares must be held for at least five years if the individual wants to retain the full tax relief. He/she may, of course, sell them within the five years if he/she so wishes but this may result in the loss of some (if the disposal is made at arms length), or all (disposal not at arms length), of the relief. A transfer of shares between spouses, while they are living together, will not result in a withdrawal of the relief.

Individuals must continue to be "qualifying individuals" for a period of five years after the shares have been issued.

Conditions in relation to qualifying companies, trades and subsidiaries must continue to be met for a period of three years after the shares have been issued if the company is trading when the investment is made. If it is not trading, the period runs until three years have elapsed from the time trading commenced.

If conditions are not met for the prescribed periods, the relief would no longer be due and, if already given, may be withdrawn. This would happen if, for example:

(a) The company fails to comply with the legislative conditions governing the scheme;

(b) The company received a full listing on the Stock Exchange or otherwise ceased to be a qualifying company within the three year period.

16. Can Relief be Lost for Any Other Reasons?

Obviously, if the relief was given in error in the first place, the Revenue Commissioners would, of course, be entitled to have it withdrawn.

If a company in which an individual has invested repays any debt to the individual (other than an ordinary trade debt), makes a loan to the individual or generally attempts to circumvent the requirements of the scheme by providing a benefit to the individual or transferring an asset to the individual for no consideration or otherwise attempting to pass back to investors the money which they have invested, then the individual is deemed to have "received value" from the company and his/her benefits under the scheme will be reduced accordingly. Reasonable payments to employees or directors in their capacity as employees or directors are of course permitted.

Relief may also be clawed back / withdrawn if the company in which an individual has invested repays, redeems or repurchases any of its share capital belonging to a shareholder who has not qualified for relief under the scheme. Where there is a repayment of share capital in this respect, the relief granted to the qualifying individual is reduced by the amount receivable or the nominal value of the shares, if greater. Where there is more than one qualifying individual the claw back will be in proportion to those individuals' entitlements to relief.

In addition where any shareholder receives value from the company, each qualifying individual who has subscribed for shares must recalculate his / her percentage of the ordinary share capital for the purposes of determining whether he / she is connected with the company. If the recalculation results in a qualifying individual holding more than 30% of the ordinary share capital, the individual will become connected with the company and relief will be withdrawn in full.

Companies who have previously raised money through this scheme and now intend to raise more should be particularly aware of these provisions especially in relation to any put and call options in place with previous investors.

Death or any event arising after death will not give rise to a withdrawal of relief.

The liquidation of a qualifying company will not result in a withdrawal of relief provided the liquidation is for bona fide commercial reasons and the assets of the company are distributed within a specified period, normally three years after the commencement of the winding up. However, if an investor recovers any amount arising from the liquidation this will be treated as "value" received from the company and the relief will be reduced by this amount.

If the relief has to be recovered, it will be done by the Revenue Commissioners issuing an assessment for the year in which the relief was originally given and interest may be payable for the intervening period.

17. How do I Claim the Tax Relief?

In the first instance the company should approach Fáilte Ireland for a certificate of approval of a three year Development and Marketing Plan in respect of one or more qualifying tourist traffic undertakings (see paragraph 5). On receipt of such approval or if the company is confident that approval is imminent, the company should then approach the Office of the Revenue Commissioners, Business Incentives Unit, Financial Services Branch, Dublin Castle, Dublin 2 for an opinion (referred to as outline approval) as to whether the company and its trade meet the requirements of a qualifying company and trade. Once the investment has been made, the company submits a specific form (namely, a RICT1 – available from the Revenue website) to the Revenue Commissioners, which, if satisfactory, results in the Revenue Commissioners authorising the company to issue a form RICT 3 to investors. It is this form which enables the individual investor to claim the relief on application to the individual's own tax district.

In the case of an investment through a designated fund, a modified procedure applies which the manager of the fund will be happy to explain.

18. When Will Relief be Given?

In the case of an established company, relief will be given as a deduction from total income in respect of the tax year in which the shares are issued. However, where an investor invests in eligible shares through a designated investment fund, but the shares are not issued until the following year of assessment, he/she can opt for relief in either year.

In the case of new companies, tax relief will not be given unless and until the relevant company has carried on the trade for four months. If the company is not trading at the time the shares are issued, the relief will not be given unless the company begins to trade within two years from the date of purchase of the shares. This two year limit may be increased to three years where not less than 80% of the monies subscribed have been spent on research and development connected with the proposed activity.

Claims for relief must be lodged with the Revenue Commissioners within two years of the end of the tax year in which the shares are issued. In the case of new companies, the claim must be lodged within two years of the end of the first four months' trading.

19. Is Capital Gains Tax (CGT) Payable When the Shares are Sold?

The normal provisions relating to capital gains tax, including inflation indexation up to 31 December 2003, will apply in regard to investments under the scheme. For the purposes of computing an individual's liability to CGT, the purchase price of the shares will be considered to be the cost before deduction of the tax relief.

Capital gains tax on the disposal of shares is currently charged at a rate of 20%.

Special rules exist for identifying any shares disposed of when an individual owns both qualifying and non-qualifying shares, or qualifying shares acquired at different times.

Any loss arising on the sale of qualifying shares will be reduced by the amount of BES relief granted for the purposes of computing the allowable loss for capital gains tax purposes. If the original relief has been reduced or withdrawn, only the amount of relief obtained is deducted.

Individuals are reminded, however, that under the scheme shares must be held for at least five years otherwise all or part of any income tax relief given in respect of those shares may be forfeited.

20. How do I Find a Company to Invest in?

Companies seeking BES funds generally advertise, usually in the period September to December inclusive. Your accountant, solicitor, stockbroker or other financial adviser will also be happy to assist. Alternatively, you may know someone, a friend or relative, who is looking for investors for a business, or you might invest through a special investment fund designated by the Revenue Commissioners under the scheme. These funds are called designated investment funds.

A designated investment fund comprises the subscriptions of a number of investors. The fund will be likely to invest in a number of companies. Broadly, each investor will get a share in each company in proportion to the value his/her subscription bears to the total size of the fund.

Investing in a designated investment fund allows an investor to spread his/her investment over a number of ventures while leaving the appraisal of the relevant projects to those well qualified and experienced to do so. A once-off fee will normally be payable by the investor to the fund manager. In addition an entrepreneur who seeks equity from a fund can concentrate on his/her venture rather than devoting time and money in attempting to persuade individual investors to invest in his/her company.

Each fund must prepare a prospectus which must be approved by the Minister for Enterprise, Trade and Employment and which must include, inter alia, particulars of fees, remuneration or other charges to be levied in respect of the management of the fund. As with investments made on an individual basis, however, there is no guarantee that they will succeed and the risk associated with the investment is ultimately carried by the individual. The prospectus must make this clear in a manner that is satisfactory to the Minister for Enterprise, Trade and Employment.

Individuals should consult with their professional advisers before investing in the shares of unquoted companies and particularly in relation to how to make the best use of the available reliefs.

You are strongly advised to obtain independent advice on the viability of any project before investing.

21. How Can I Find Investors to Put Money Into my Company?

The same procedures apply, only in reverse. Find someone you know with funds to invest. Consult a professional adviser. Approach a designated investment fund or employ a combination of these methods.

SECTION 2

INVESTMENT RELIEFS FOR NEW ENTREPRENUERS AND EXISTING OWNERS OF A TOURISM BUSINESS

22. What are the Reliefs?

The reliefs were introduced in the Finance Act 1993:

- New entrepreneurs who satisfy the conditions below may qualify for relief on their Seed Capital Scheme (SCS) investments. The relief can amount to a refund of the tax paid (in one or more of the previous six years) on income of up to €574,000 (bearing in mind the short tax year 2001) or, looking back six years from 2008 onwards, the tax paid on income of up to €600,000. These limits apply with respect to investments made on or after 1st January 2007 only, i.e. where investments under the Seed Capital Scheme were made *before* 1st January 2007, the maximum annual deduction amount is €31,750 [maximum refund, therefore, would be in respect of the tax paid on income up to €182,240 (bearing in mind the short tax year 2001)].
- Additional relief for owners/entrepreneurs. Owners with more than a 30% interest in a BES/SCS capitalised-company may be entitled to relief on new investments made by them under the BES, if the share and loan capital of the company, taken together, do not exceed €500,000 [2006 limit was €317,500] immediately after the investment. Relief granted will not be withdrawn if this ceiling is subsequently exceeded.

23. How can I get Relief in Respect of the Seed Capital Scheme?

Where the following conditions are satisfied an individual can claim SCS relief for an investment against his/her taxable income for any of the six years of assessment which he/she nominates immediately prior to the year of assessment in which the first investment under the scheme is made. Any unused relief can be carried forward for relief in current and future years of assessment (up to 2013). The maximum relief in any one year is €100,000 [2006 limit was €31,750].

1. He/she must invest in a qualifying company[9], which carries on or intends to carry on qualifying operations and which has been certified by Fáilte Ireland as being a bona fide new venture which may be eligible for grant assistance from it (refer to Appendix 1).. This certification is in addition to the development and marketing plan certification processes.

2. Fáilte Ireland must have regard to the potential for the creation of additional sustainable employment and the

[9] Refer to paragraphs 1 and 5 of Section 1 of this booklet.

desirability of minimising the displacement of existing employment in arriving at the decision on eligibility for grant assistance. In addition, the certificate shall not be issued unless the value of the company's interests in land and buildings (excluding fixtures and fittings) is or is intended to be not greater than half the value of its assets as a whole. The company must undertake to furnish Fáilte Ireland when requested to do so with such details in relation to the carrying on of its trade as Fáilte Ireland may specify before a certificate will be issued.

3. Investment in the company may be made in two stages, the second investment must be made within two years following the tax year in which the first investment is made.

4. Relief will be granted in respect of investments in qualifying companies, however no company can raise more than the maximum permitted amount of €2,000,000 [2006 limit was €1,000,000]. Where a company or its associate companies have previously raised money under this scheme then the maximum additional amount which can be raised is the difference between the amounts so raised and €2,000,000 [2006 limit was €1,000,000]. A company/group of companies may not raise more that €1,500,000 in any 12 month period [2006 limit was €750,000 in any 6 month period].

5. He/she must become a full-time employee or full-time director of the company either in the year of assessment in which he/she makes the investment or, if later, within six months of the date of the last share subscription in the year of assessment in which the first investment under the scheme is made.

6. He/she must remain a full-time employee or director of the new company for the later of twelve months from the date the shares are issued or the date his/her employment commences.

7. The scheme is designed to encourage those who are or were in PAYE-type employment to set up their own new business. To ensure that this intention is achieved, the sources of income over the four tax years immediately prior to the year of investment in the company are taken into account. In the tax year immediately prior to the year of investment, the investor's income may come from any source (that is, it may be from self-employment-, rental-, investment-, PAYE-income or other income sources). In the other three tax years, *non-PAYE* income cannot exceed the lower of €25,000 (€18,500 in short tax year 2001) or, total PAYE-type income in each of the 3 years.

8. For the period of one year [2006 - 2 years], after the shares are issued or if the qualifying operations commenced after that date one year [2006 – 2 years] after the qualifying operations commence, he/she must possess at least 15% of the issued ordinary share capital of the company.

9. Within the period of twelve months immediately before the date of the last subscription for shares in the first tax year in which the investment is made he/she must not possess or have possessed or been entitled to acquire more than 15% of the issued ordinary share capital, or the loan capital and issued share capital taken together, or the voting power of any other company except dormant companies or one only trading company which for each of the three preceding accounting periods has a turnover of €127,000 or less.

10. The shares subscribed for by the individual must be eligible shares i.e. new ordinary shares which, throughout the period of five years beginning with 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.

11. The individual must satisfy the ordinary BES criteria except that he/she may claim relief under the scheme as soon as the trade commences. He/she does not have to wait until four months after the company has commenced to trade as is usual with BES companies. The 30% rule (Section 1, paragraph 4) does not apply even if the share capital and loan capital of the company combined exceeds €500,000 [2006 limit was €317,500]. His/her investment is not confined to 30% of the ordinary share capital, or loan capital and issued share capital taken together or voting power of the company. In other words he/she may own up to 100% of the company if his/her interest exceeds 30% by virtue only of his/her investment under this scheme.

12. As the company must be a qualifying company before certification can be given, it must have a three-year development and marketing plan approved in advance by Fáilte Ireland. In practice, Fáilte Ireland will be prepared to consider the development and marketing plan in conjunction with the certification criteria for eligibility under this scheme.

13. Note: cumulation will apply in relation to any SCS investments made from 1 January 2007 for State Aid purposes (refer to paragraph 2 of Section 1 of these Guidelines).

APPENDIX 1

QUALIFYING TOURIST UNDERTAKINGS

A. *Accommodation Facilities*

- Caravan and camping Sites that include an on site food service facility*
- Holiday hostels that include an on site food service facility*
- Holiday camps **

B. *Approved Tourist Facilities*

- Boat/cruiser/passenger boat/water craft hire***
- Horse drawn caravan hire***
- Equestrian centres
- Sailing/yachting centres/marinas
- Sub-aqua centres
- Heritage houses, castles, gardens: improvement and development of ancillary services for tourism
- Sea angling boat hire***
- Game fisheries angling facilities
- Commercial golf facilities (pay-as-you-play) (see Appendix 3)
- Interpretative centres
- Chauffeur-drive operations for tourism only***
- International conference centres****
- Outdoor pursuits, activity centres
- Tourist guide agencies
- Tour coach services***

* In the case of caravan and camping sites or holiday hostels, the facility concerned must provide evidence to Fáilte Ireland's satisfaction that meals will be provided on-site to staying guests by the facility operator.

** In the case of holiday camps, meals and refreshments must be provided on site

*** In all instances in which a company proposes to supply to tourists any form of transportation device, whether boat, road vehicle or other, complete information must be provided to Fáilte Ireland's satisfaction on the company's total fleet, and on the company's contracted access to supplementary fleet, in the event that the size of fleet directly controlled is judged insufficient by Fáilte Ireland to constitute an adequate tourism offering.

**** An international conference centre facility must be attached to accommodation classified as Four Star or higher by Fáilte Ireland and offering a minimum of sixtyfive bedrooms and be a dedicated meeting space with its own reception and lobby area, but be readily accessible to a Business Centre serviced with computers, printer, fax, photocopying and related services. In addition the meeting rooms concerned must comply with the following criteria:

There must be a minimum of four meeting rooms, one of which must be capable of seating minimum 50 people classroom style, with separate dining / banqueting facilities for this number separate to the conference room (and not the hotel/other facility main dining room) and three additional syndicate rooms each capable of holding a minimum 15 people. No form of bar facility is to be contained *within* the meeting rooms, and Fáilte Ireland must be satisfied that design is such that the rooms are not principally provided such that they can be adapted to the requirements of non-meetings business. In addition it is required that the rooms are

- dedicated meeting rooms isolated from public areas
- located conveniently for other services required by delegates
- accessible to wheelchair and mobility-impaired users
- with controls for ventilation and heating within the meeting room for guests direct use
- lighted to a maintained luminance of 500 lux
- with lighting controls in the room and enable split lighting over/near the projection screens
- adequately sound proofed for secure discussion and from noise outside the room
- capable of being secured with access under the control of the meeting organisers
- supplied with spacious and hard surface tabling with ergonomically designed comfort seating appropriate for prolonged use – minimum four hours
- with sufficient in-room power sockets together with appropriate provision of audio visual equipment
- equipped with high-speed internet access through provision of either hard-wired or wireless
- designed to allow natural light
- capable of being effectively blacked-out
- supplied with a telephone connection
- located nearby accessible toilets

C. The promotion outside the State of any of the facilities mentioned at (A) and (B) above, along with accommodation which has been registered by Fáilte Ireland.

APPENDIX 2

CHECKLIST

Approval of Development and Marketing Plan under Section 495 TCA 1997, for the purposes of applying for, the Scheme of Relief for Investment in Corporate Trades (Business Expansion Scheme).

The following is a *checklist* which will assist you with the preparation of the Development and Marketing Plans to be submitted. Your project must fall within the list of Qualifying Tourist Undertakings listed in Appendix 1.

Please ensure that all headings and sub-headings outlined in Paragraph 8 of the explanatory booklet concerning the Development and Marketing Plan have been covered and the points listed in the following checklist are adequately dealt with in your formal submission.

N.B. Please send two (2) copies of your proposal together with two (2) copies of plans or drawings to:

Business Expansion Scheme
Investment and Product Development Division
Fáilte Ireland
Baggot Street Bridge
Dublin 2

Wherever possible this material should also be sent by e-mail to taxschemes@failteireland.ie. The Division may be contacted by telephone at (01) 6024214.

DEVELOPMENT PLAN

Give a description of the type of project that is being proposed and details of the promoter(s). Provide plans/specifications.

Provide survey of existing buildings if applicable to assist with determining registration/listing requirements.

The project, where necessary, must obtain formal planning permission and other statutory environmental consents and evidence of compliance with health and fire authorities.

When is the project scheduled to start? How long will it take to complete?

Give cost estimate for the capital works involved.

Provide audited accounts for the last financial year and Income and Expenditure projections for the next five years.

An audited certificate is required determining the extent to which the company's interests in land and buildings may form part of its total assets.

State how project will be funded clearly identifying the amount of funding to be raised under the Business Expansion Scheme.

Show management and staffing structure, together with details of any additional employment being created by the new development, acquisition, etc.

Marketing Plan

Competitive Position Analysis

Give details of size property/company, location, facilities, atmosphere and physical condition.

Provide information on the proportion of tourists on leisure, business or for other reasons.

Provide details on how much of your business is booked in advance, online and from other sources, proportion of individuals and groups, and inclusive package deals.

Give breakdown of target percentage of tourists from each country, by segment, regional concentrations within a country and the overall seasonal pattern of demand by month.

Identify why tourists come to your facility: touring, special attractions locally (scenery, historic sites), special events, special interest (fishing, golf, etc).

Identify your existing/potential competitors (local/international).

Evaluate your own strengths and weaknesses versus your competitors, now and in five years from now? Who is your competitor attracting; from where; how; do they give better value; promote more; provide higher standards; invest more; lower costs; better contacts; reputation?

Demonstrate the specific consumer need or requirement which the BES funds will service – service frustrated demand, improve quality, provision of new facility?

Give details of total capacity/incremental capacity being provided.

Provide data on the likely utilisation of capacity over next 3 years compared to last year (by most appropriate measure, e.g. rod days for fishing, bed-nights for accommodation, weeks rental for cruising, ticket admissions for interpretative centres).

Is the project likely to result in a demand for other facilities within the area, e.g. remain in area, avail of accommodation, entertainment, visitor purchasing?

Establish clear and realistic marketing and financial objectives including targets to be met and milestone dates.

Provide information on your pricing policy.

Give a breakdown on the projected revenue from domestic and foreign tourism for each of the first three years.

Marketing Mix – Budget for Marketing Programme

The budgeted marketing expenditure should be broken down between out-of-State and domestic for the first three years in Related Salaries; Travel/Hospitality, Administration, traditional media Advertising, New Media and e-marketing, Consumer Promotions, Publicity/PR, Print, Sales/Trade Promotions, Distributions and Membership.

Schedule of Marketing Activities

Give a detailed schedule of promotional activity over the next year and an outline for the following two years.

Confirm who is responsible for drawing up promotional plans and seeing them through.

Details of Employment

Number of jobs created during construction.

Number of new full-time operational jobs.

Number of new part-time operational jobs.

APPENDIX 3

COMMERCIAL GOLF FACILITIES (PAY-AS-YOU-PLAY)

1. *The approval relates to the operation of "Pay-as-you-Play" Commercial Golf Facilities that:*
   - comply with the code of standards laid down by Fáilte Ireland for such facilities (in the context of the BES);
   - are owned, managed and controlled by a company; and
   - are/become members of a Golf Product Marketing Group recognised by Fáilte Ireland.

2. *The approval does <u>not</u> extend to*
   - any golfing facility, existing or new, which offers any form of membership, whether of the facility itself or of an associated club;
   - any golfing facility which is currently in the ownership, or under the control of a private golf club.

3. ***Standards for "Pay-as-you-Play" Commercial Golf Facilities***
   - The facility must be of 18-hole championship standard.
   - The facility must feature international standard clubhouse services, including locker room, changing room, toilets, dining and lounge areas.
   - The facility must be operated as a commercial venture registered for VAT.
   - The facility must provide golf professional services and a satisfactory range of quality equipment for hire.
   - Priority in use of the facility must at all times, including weekends and peak season, be accorded to foreign visitors. On-line tee time booking must be available.
   - Tariffs for foreign tourists must not be less favourable than for any other class of golfer using the facility.
   - Membership of any club or society using the facility must not give any right to priority over either foreign visitors or hotel guests or any right to ownership of, or control over the company, or any associated company.
   - The ownership of any shareholding in the company controlling or managing the facility (or any associated company) must not give any right to reductions in tariffs for use of, or to any form of priority access to, the facility or any other golfing facility.

4. *Guidelines for approval of a Development and Marketing Plan in respect of "Pay-as-you-Play" Commercial Golf facilities*. (The following guidelines apply in addition to rather than in lieu of the existing guidelines for tourist traffic undertakings):

A. Fáilte Ireland shall not approve a Development and Marketing Plan in respect of a "Pay-as-you-Play" Commercial Golf facility unless it is satisfied that the plan:

- will result, on completion, in at least one-third of the revenue of the facility arising from foreign tourists;
- allows for the negotiation of substantial contracts with distribution intermediaries for the priority use of the facility by foreign tourists, and for the promotion of such use;
- provides that at least 10% of green fee income will be expended annually on overseas marketing; and
- makes provision for the employment in respect of the facility of a suitably qualified marketing executive.

B. The value of the company's interests in land and buildings (excluding fixtures and fittings) shall not be more than 75% of its assets; for this purpose, the cost of conversion of the land into a golf course shall be disregarded.

APPENDIX 4

USEFUL CONTACT POINTS/FURTHER INFORMATION

PLEASE NOTE THAT THE FAILTE IRELAND CORPORATE WEBSITE (WWW.FAILTEIRELAND.IE) SHOULD ALWAYS BE CONSULTED FOR THE MOST UP TO DATE INFORMATION ON THIS AND OTHER SUPPORT SCHEMES FOR THE TOURISM INDUSTRY

Fáilte Ireland Regional Offices, Dublin Region and Shannon Development

Fáilte Ireland South East Region
(Carlow, Kilkenny, South Tipperary, Waterford, Wexford)
41 The Quay, Waterford
Tel; (051) 875823
Fax: (051) 876720
Email: southeastinfo@failteireland.ie
Web: www.southeastireland.com

Fáilte Ireland South West Region
(Cork, Kerry)
Aras Fáilte
Grand Parade, Cork
Tel: (021) 4255100
Fax: (021) 4255199
Email: corkkerryinfo@failteireland.ie
Web: www.corkkerry.ie

Fáilte Ireland Western Region
(Galway, Mayo, Roscommon)
Forster Street, Galway City
Tel: (091) 537700
Fax: (091) 537733
Email: irelandwestinfo@failteireland.ie
Web: www.irelandwest.ie

Fáilte Ireland North West Region
(Cavan, Donegal, Leitrim, Monaghan, Sligo)
Temple Street, Sligo
Tel; (071) 9161201
Fax: (071) 9160360/9155049
Email: northwestinfo@failteireland.ie
Web: www.irelandnorthwest.ie

Fáilte Ireland East & Midlands Region
(Kildare, Laois, Longford, Louth, Meath, North Offaly, Westmeath, Wicklow)

Clonard House, Dublin Road
Mullingar, Co Westmeath
Tel: (044) 9348761
Fax: (044) 9340413
Email: eastandmidlandsinfo@failteireland.ie
Web: www.eastcoastmidlands.ie

Dublin Regional Tourism Authority Ltd (Dublin Tourism)
(Dublin City and County)
Dublin Tourism Centre
Suffolk Street, Dublin 2
Tel: (01) 6057700
Fax: (01) 8057757
Email: marketing@dublintourism.ie
Web: www.visitdublin.com

Shannon Development
(Clare, Limerick, South Offaly, North Tipperary)
Heritage & Tourism
Shannon Town Centre, Co Clare
Tel: (061) 361555
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Web: www.shannonregiontourism.ie