

Tax treatment of certain Venture Managers (S.541C)

Part 19-01-14B

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14B.1 Section 41 Finance (No 2) Act 2008 inserted section **541C TCA 1997** and introduced a new tax regime for the return (known as carried interest) received by venture capital managers for managing investments in certain venture capital funds. **Section 541C** has been amended by **section 46 Finance Act 2013**. Its effect is twofold.

- It treats carried interest to which the section applies, and which is received by a partnership or a company, as chargeable gains to which **section 28 TCA 1997** applies, and
- It charges those gains to capital gains tax at 15% if received by an individual or a partnership and 12.5% if received by a company rather than the rate provided for in **section 28**. Where a partnership comprises one or more companies the carried interest apportioned to the company based on the agreed profit sharing ratio is subject to capital gains tax at 12.5%.

14B.2 The following definitions apply for the purposes of this provision.

- “Carried interest” is the share of profits, excluding those profits attributable to investors by reference to an initial rate of return, received by an individual, company or partnership for managing the relevant investment (the share ratio having been agreed at the outset).
- “carried interest” to which this section applies is an amount of carried interest which does not exceed 20% of the total profits of a relevant investment.
- “proportion of carried interest derived from the relevant investment” means an amount of carried interest derived from the formula

$$\frac{A \times B}{C}$$

C

where —

A is carried interest,

B is the value of all relevant investments in an EEA State of the qualifying venture capital fund, and

C is the value of all relevant investments of the qualifying venture capital fund.

- A “qualifying venture capital fund” is an entity structured in the form of a partnership the main purpose of which is to make relevant investments where the individuals, companies or partnerships are legally obliged to provide capital sums for investment purposes over a period of time.
- A “relevant investment” is an investment made on or after 1 January 2009 for at least 3 years from the date of the initial investment in the unquoted shares or securities of a private trading company carrying on a research, development or innovation business. A business previously carried on by another person before being commenced by the company, or where the activities were part of another persons business or which is an excepted trade within the meaning of **section 21A TCA 1997** is excluded.
- “Research and development” activities has the same meaning as in **section 766 (1) TCA 1997**.
- “Innovation activities” mean new technological, telecommunications, scientific or business processes.
- An “investor” is a person other than a person who is entitled to carried interest or a person connected to that person.
- “Total profits of an investment” are the total profits inclusive of the profits attributable to the investors in a relevant investment based on an initial agreed rate of return.

14B.3 In facilitating the investment via venture capital funds in start-up SMEs engaged in research, development and innovation, this provision will help maintain Ireland’s international competitiveness by encouraging an open enterprise economy, attracting high-value economic activities and developing high-skilled employment.

14B.4 This provision applies as and from 1 January 2009.