

Music Business Expansion Scheme

Your demos are completed, you have been gigging and built up your own following and you want to release an album. But how do you finance the recording marketing and distribution of the album if you have not signed a record deal. Until recent years many artists were not in a position to release that album due to financial constraints and lack of funding. Over the past few years however artists ranging from Jack L and Metisse to a number of unsigned bands have taken advantage of the provisions of taxation legislation under the Business Expansion Scheme.

Tax relief under the Business Expansion Scheme was initially set up to provide tax rebates for individuals investing in manufacturing and Information Technology companies and proved very successful in attracting investment in new and start up companies. The legislation was subsequently extended to include investment in companies incorporated for the production, publication, marketing and promotion of qualifying musical recordings. The maximum amount that can be raised through a BES fund is £250,000 (€317,435). The maximum amount that can be invested by an individual in the fund in any one year is £25,000 (€31,744). This amount is restricted to £18,500 (€23,490) for the short tax year ended 31 December 2001.

Initial attempts to raise funds for investment in qualifying companies were not particularly successful as potential investors balked at the perceived risks of investing in the music industry and instead threw their money at the rapidly rising technology companies. In early 2000 however Jack L successfully raised significant funds to record his follow up album to Metropolis Blue, which is due for release in autumn of this year. As technology stocks withered and investments fell, music industry investments did not appear as risky as before. In Spring of 2001 Metisse followed Jack L's success with another high profile BES scheme. Running in tandem with these schemes a number of lesser profile bands and artists have raised money tax efficiently from private sources. The scheme is due to expire in December 2001 however the Minister for Finance is being currently lobbied on this matter.

So how does the scheme work? The artist or band incorporates a limited company to record, market and distribute an album. This company seeks approval from the Department of Arts, Culture and the Gaeltacht as to whether it meets the qualifying criteria for BES. Following Department of Arts approval the company subsequently requires approval from the Revenue Commissioners in order to provide tax relief to investors. It is important to note the investment is for one album only and not in the artists or bands career.

Incorporating a company: A limited company must be incorporated for BES purposes. The shareholders and directors of the company are normally members of the band and /or management. The limited company is deemed to be a separate legal entity from the band or artist and as such may need to obtain a licensing agreement from the artist for the purpose of the BES. The BES does not impact on tax-free royalty income. The artist should always obtain legal advice in respect of the corporate structure of the company in order to protect their interests.

Department of Arts approval: The Department's aim is to create long-term job opportunities within a professional environment in the music industry. The company must therefore comply with the following criteria in order to qualify for Department of Arts approval:

- The company must be resident in Ireland
- The artist cannot have sold in excess of 5,000 units of any previous albums
- The recording of the album must take place in Ireland
- The project must be commercially feasible
- The company must confirm inclusion in the credits to the published recording of the following "Produced with the support of investment incentives for the Irish music industry provided by the Government of Ireland"

In order to satisfy the Department, the company must produce a 3-year business plan focussing on the commerciality and the job creation potential of the project. This business plan will include marketing plans and financial projections. Professional assistance may be required in order to produce the Business plan to the required standard to obtain Department approval. It should be noted by potential investors that Department approval in no way can be taken as approval of the commercial viability of the project.

Revenue Commissioner's approval: On receipt of the Certificate of Approval from the Department of Arts, further application must be made to Revenue for formal approval of the BES. This application again reiterates the legal, corporate and taxation structure of the approved company. No funds can be raised until Revenue approval of the scheme has been granted.

Investment: With the red tape completed the hard work begins in actually raising finance. It is not considered likely that a high profile scheme such as Jack L or Metisse will be run in the short tax year ended 31 December 2001 for the following reasons:

The benefit of BES investments has fallen in relation to the associated risk of the investment e.g. when the top rate of tax was 65% the net cost of a BES investment was 35% of the sum invested. Now that the top rate of tax is 42% the net cost of the investment is 58% of the sum invested. The technology recession has reduced the amount of funds available for investment. As a result of the short tax year the maximum amount that can be invested is £18,500 (€23,490)

We do however envisage a number of schemes being run where the BES finance is raised privately. These schemes are focussed on raising finance from friends, family and fans. The BES allows individuals financially support the artist at a tax efficient cost. The individual also has a stake in the success or otherwise of the album.

On receipt of Revenue approval, investors obtain tax relief at their top rate of tax on investments made in the qualifying company. In the short tax "year" ending 31 December 2001 an investment of £10,000(€12,697) will attract tax relief of £4,200(€5,333) resulting in a net cost to the investor of £5,800(€7,364).

The company must use the investment received to finance the recording of the album within 12 months of raising the finance. Prior to incurring the legal and professional fees associated with obtaining the BES structure and relevant authorisations and approvals, the band/artist should ensure they have identified the likely cost of recording, marketing and distributing the album and the probability of raising sufficient finance through friends and family. It would be a costly and timely exercise to put all structures in place only to find insufficient investments are made.

Artists considering raising funds in this manner should be developing database details of fans and individuals that would consider investment. Personal contacts to develop the BES concept can result in increased investment being made. It is important that all parties are in agreement as to the percentage shareholdings held by the artist and the investors in the BES company and the valuation models to be applied on cessation of the scheme.

Time Scale: The BES runs for a 5-year period. During this time the company cannot make any capital repayment to the investors or the tax relief will be lost. Furthermore if the company ceases to be a BES qualifying company during the period the relief will be withdrawn. However in the event of the company going into liquidation as a result of lack of success, the investors will not lose their tax relief. It is vital that appropriate licensing agreements be in place between the artist, the BES company and any record companies to cover all eventualities during the BES period.

Scheme maturity: On completion of the 5-year period, the company buys back the investors shares at market value. The valuation of the company would incorporate the future earnings potential of the album. The company therefore requires cash funds sufficient to meet the cost of the buy back of the shares. The company should budget for the payment of this cost over the life of the fund. Following the payment to investors the BES company may be liquidated and the rights to the album can revert to the artist. If a gain arises on the buy back of the shares the investor may be subject to capital gains tax.

Conclusion: The Business Expansion Scheme provides an ideal opportunity for artists to finance the recording and release of an album. Significant legal and structural red tape must be overcome in order to obtain the optimum structure for both artist and investors however the potential benefits to both parties should ensure that the option of a BES be explored.

About Noone Casey: Noone Casey is an accountancy and business advisory practise specialising in providing tax efficient solutions for clients. Noone Casey is the acknowledged market leader in promoting and structuring music Business Expansion Schemes in Ireland. Further details on BES and other tax efficient schemes can be obtained by contacting Noone Casey at 01 670 7900 or at

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