

A Guide to Section 23 Relief



Prepared by
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Table of Contents

	<i>Page</i>
Table of Contents	2
1. What is Section 23 Relief?	4
2. What schemes does Section 23 Relief apply to?	4
<i>A. Terminated Schemes</i>	4
<i>B. Current Schemes</i>	4
3. Qualifying period	5
4. Qualifying expenditure	6
4.1 <i>Work carried out during qualifying period</i>	6
4.2 <i>Certificates of reasonable cost/ compliance</i>	6
4.3 <i>Costs taken into account in calculating qualifying expenditure</i>	6
4.4 <i>Grants</i>	7
4.5 <i>Value-Added Tax</i>	7
4.6 <i>Inducements to purchase property</i>	8
4.7 <i>Premiums not treated as rent</i>	8
4.8 <i>Fitting out and furnishing the property</i>	8
4.9 <i>Restriction on qualifying expenditure incurred in 2007 and 2008</i>	8
5. How a property qualifies for relief	8
6. How qualifying expenditure is incurred	10
6.1 <i>Construction by site owner</i>	10
6.2 <i>Purchase of a property from a builder</i>	11
6.3 <i>Purchase of a property from a person who is not a builder</i>	12
6.4 <i>Property purchased by means of site contract and building agreement</i>	13
6.5 <i>Expenditure incurred during 2007 and 2008</i>	13
7. What to check before purchase	14
7.1 <i>Documentation required</i>	15
8. How to claim section 23 relief	17
9. How section 23 relief is granted	17
9.1 <i>Restriction on use of tax reliefs by high-income individuals</i>	18
10. Withdrawal of section 23 relief	18
10.1 <i>Property ceases to be a qualifying property</i>	18
10.2 <i>Sale of a section 23 property</i>	19
10.3 <i>Where share of ownership in a property is varied</i>	20
10.4 <i>Death of a claimant</i>	21
10.5 <i>Transfer of property between spouses</i>	23
11. Purchase of a second-hand section 23 property	23
11.1 <i>Documentation required</i>	23
11.2 <i>Amount of relief on second-hand property</i>	23
11.3 <i>Obligations on new owner</i>	24
APPENDIX 1	26
Construction, Refurbishment, Conversion	26
<i>Construction</i>	26
<i>Refurbishment</i>	26
<i>Conversion</i>	26
<i>Alterations to Land</i>	27
APPENDIX 2	28

CURRENT INCENTIVE SCHEMES	28
TERMINATED INCENTIVE SCHEMES	30
APPENDIX 3	31
INTEGRATED AREA URBAN RENEWAL SCHEME AREAS DESIGNATED	31
RURAL RENEWAL SCHEME - QUALIFYING AREAS	33
TOWN RENEWAL SCHEME – DESIGNATED TOWNS.....	34
SEASIDE RESORT SCHEME - DESIGNATED RESORTS.....	35
DESIGNATED ISLANDS.....	36
APPENDIX 4	37
CERTIFICATE OF REASONABLE COST / COMPLIANCE	37

1. What is Section 23 Relief?

Section 23 relief is a commonly used term for rented residential relief.¹ The relevant legislation is contained in Chapter 11 of Part 10 of the Taxes Consolidation Act, 1997. In general, section 23 relief is a tax relief that applies to rented residential property in a tax incentive area. It is available to a person who has incurred expenditure on the purchase, construction, conversion or refurbishment of a qualifying property and who lets that property, having complied with certain conditions. The meaning of the terms construction, conversion and refurbishment is set out in *Appendix 1*. Relief for expenditure incurred can be set against the rent received from that property and other Irish rental income so that the amount of a person's taxable income is reduced. The term 'property' as used in this document refers to rented dwellings such as houses or apartments.

It should be noted that it is the first use of the property following construction, conversion or refurbishment that determines the type of relief that will apply. If the property is first used by an individual as his or her sole or main residence, owner-occupier relief applies. If the property is first let by an individual under a qualifying lease, section 23 relief applies. It is not possible for both types of relief to apply to the same property at different times².

For the purposes of section 23 relief, a property includes land such as a yard, garden or car-parking space that forms part of the property. This document applies to these ancillary items as it does to the property itself.

2. What schemes does Section 23 Relief apply to?

Section 23 relief applies to the following schemes:

A. Terminated Schemes

- Custom House Docks Area
- Temple Bar Area
- 1994 Urban Renewal
- Seaside Resorts
- Islands

While the period during which qualifying expenditure had to be incurred has ended for the above schemes, section 23 relief may still be applicable to properties in these areas depending on when the properties were first let. It should be noted that some holiday cottages in the seaside resort areas that are registered or listed with Fáilte Ireland qualify for relief in the form of capital allowances rather than section 23 relief. This document does not apply to such properties.

B. Current Schemes

- Integrated area urban renewal
- Living over the shop³
- Park and ride³

¹ The relief was first introduced by section 23 Finance Act 1981.

² Certain properties were originally designated as being eligible only for owner-occupier relief under the integrated area urban renewal and town renewal schemes. Following a recommendation by the Minister for the Environment, Heritage and Local Government, these properties became eligible to opt for section 23 relief where this was the preferred choice. The option to choose applies to expenditure incurred under the particular schemes on or after December 2001, or to expenditure incurred before that date if there was no purchase contract in place at that date and the property was purchased by 1 September 2002.

- Rural renewal
- Town renewal³
- Student accommodation

Qualifying expenditure can be incurred on these latter schemes up to 31 July 2008, provided that certain conditions are fulfilled. Details of the qualifying periods for both the current and terminated schemes are contained in *Appendix 2*. A list of the qualifying areas for the integrated area urban renewal, town renewal and rural renewal schemes are contained in *Appendix 3*. Details of the areas designated for the 1994 urban renewal scheme are contained in statutory instruments that are available at www.irishstatutebook.ie. Further details about these schemes are available at www.revenue.ie.⁴ Guidelines governing the park and ride scheme were issued by the Department of the Environment, Heritage and Local Government. These can now be obtained from the Department of Transport.

3. Qualifying period

Finance Act 2006 extended, subject to certain conditions, the termination date for the current schemes to 31 July 2008. However, where the various conditions are not met, earlier termination dates of 31 December 2002, 31 December 2004 or 31 December 2006 can apply – see *Appendix 2*. The extension of the qualifying periods to either 31 December 2006 or 31 July 2008 is dependent on certain pre Finance Act 2006 conditions being met in addition to a new condition introduced in the Finance Act 2006 for the purposes of availing of the 31 July 2008 deadline. With the exception of the urban renewal scheme, the earlier condition required a valid application for full planning permission to have been submitted to the relevant local authority by 31 December 2004. Where this occurred, expenditure incurred up to 31 December 2006 in respect of the work covered by the planning application qualified for relief. In the case of the urban renewal scheme, the 31 December 2006 deadline applied where the local authority certified that 15% of the project costs was incurred by 30 June 2003. In order to qualify for the new extended deadline of 31 July 2008, the Finance Act 2006 introduced a new condition requiring work to the value of at least 15% of the actual construction, refurbishment or conversion costs to have been carried out by 31 December 2006. Guidance on these conditions is available on our website under '[Tax Practitioners/Technical Guidelines/Transitional arrangements for property-based incentive schemes](#)'.

³ In the case of the living over the shop scheme, expenditure must be on “necessary construction” (to be determined by the relevant local authority) rather than on “construction”. In the case of a building that is within the site of a park and ride facility, only construction expenditure qualifies for relief and not refurbishment or conversion expenditure. Expenditure on the refurbishment of a façade of a property will qualify for relief in the town renewal scheme.

⁴ The following documents are available under publications/leaflets and guides/leaflets and guides for individuals/income tax

–
 IT 26 Urban Renewal Scheme (scheme now terminated)
 IT 26A Integrated Area Urban Renewal Scheme
 IT 29 Tax Relief for Renewal and Improvement of Certain Resort Areas (scheme now terminated)
 IT 65 Rural Renewal Scheme
 A Guide to Living over the Shop Scheme
 A Guide to the Town Renewal Scheme
 A Guide to the Student Accommodation Scheme

4. Qualifying expenditure

4.1 Work carried out during qualifying period

Relief is only available for expenditure on construction, conversion or refurbishment work that is carried out during the qualifying period for the particular scheme. Where work is carried out after the end of the qualifying period, the property will still be eligible for relief but only in respect of the amount of the expenditure incurred in the qualifying period. For the purposes of determining when expenditure is incurred, only the amount of the expenditure that is attributable to work that is actually carried out during a particular period is taken into account. Therefore, there is no relief for an advance payment for materials or for work that will be carried out after any of the deadlines set down.

4.2 Certificates of reasonable cost/ compliance

A certificate of reasonable cost or a certificate of compliance must be issued in respect of a property before it can qualify for relief (see *Appendix 4* for details). The main purpose of these certificates is to ensure that the work that has been carried out conforms to standards required by the Department of the Environment, Heritage and Local Government and that the floor area does not exceed specified limits. Because the certificate of reasonable cost also certifies that the cost of the work that was carried out was reasonable, the expenditure actually incurred on construction, conversion or refurbishment work must not exceed the amount on the certificate. As these certificates are essential for a property to be regarded as a qualifying premises for relief purposes, any expenditure on additional work not covered by a certificate that is carried out after the relevant certificate is issued does not qualify for relief.

4.3 Costs taken into account in calculating qualifying expenditure

Not all of the costs incurred on the construction, refurbishment or conversion of a property are taken into account in calculating the amount of the qualifying expenditure. Broadly speaking, only the **direct** costs of construction and site clearance and preparation are allowed. However, Revenue practice is to allow the cost, when **first** installed, of fitted kitchens and bathroom suites and certain other items such as fireplaces that form part of the fabric of the building. The treatment of VAT as a cost is dealt with in section 4.5. Costs that are allowed in calculating the amount of the qualifying expenditure include:

- Direct construction, conversion or refurbishment costs such as the cost of building materials, hire of equipment, labour costs, administrative overheads, architects' and engineers' fees,
- The cost of certain items, when **first** installed, that form part of the fabric of the building such as fitted kitchens (excluding appliances), bathroom suites, fixed flooring, tiling and light fittings,
- Site clearance and preparation costs such as laying foundations, walls, power supply, drainage, sanitation and water supply,
- Interest paid on money borrowed to fund direct construction, conversion or refurbishment costs,
- Fees paid to local authorities for the provision of certain infrastructure and services that are **directly** related to the particular property.

Costs that are **not** allowed in calculating the amount of the qualifying expenditure include:

- The cost of the site or the cost of the pre-refurbished/converted building in the case of a refurbishment or conversion project,

- Costs associated with the acquisition of the site or the pre-refurbished/converted building such as legal fees and stamp duty,
- Interest paid on money borrowed to fund the purchase of the site and interest on other borrowings not directly related to the construction, conversion or refurbishment costs,
- The cost of items that do not form part of the fabric of the building such as kitchen appliances, free-standing furniture, carpets, curtains and garden plants,
- Marketing and selling costs such as money spent on advertising the property and auctioneers' fees,
- Costs attributable to a person's own labour,
- General contributions/levies paid to a local authority that are not directly related to the property,
- The monetary value of any land, serviced sites or houses that are transferred to a local authority or any sum of money paid to a local authority as part of an agreement for the provision of social and affordable housing.

For the purposes of calculating the relief, the price paid for the completed property does not include legal and other professional fees and stamp duty paid in connection with the purchase of the property.

It should be noted that the costs contained in the certificate of reasonable cost that is issued by the Department of the Environment, Heritage and Local Government should not be used as a basis for calculating the relief.

The examples in sections 6 illustrate how the various costs are treated.

4.4 Grants

Grants and other payments received directly or indirectly from the State, any local authority or any public body must be deducted from the qualifying expenditure.

4.5 Value-Added Tax

VAT may be paid in connection with the construction, refurbishment or conversion of a property or the purchase of a property. For example, a builder who sells a newly constructed house will charge the purchaser VAT and a person who intends to let a refurbished house will be charged VAT by a builder who carries out work for him or her or on building materials if he or she carries out the work himself or herself. **VAT that has been paid can only be included in the qualifying expenditure where it cannot be claimed back by the person who has paid it.** In other words, relief is only available where VAT is a **net** cost to the person paying that VAT.

Where a person does not register for VAT, he or she can use the VAT inclusive purchase price of the property for the purposes of calculating relief. Prior to 2 April, 2007, the date of passing of the Finance Act 2007, (subject to certain transitional arrangements) it was possible for a person who purchased a property and who engaged in short-term letting of the property (i.e. leases of less than 10 years) to elect to register for VAT. This meant that the person could reclaim the VAT that was paid on the purchase of the property but had to charge VAT on the rents received under the lease. Where a person elects to waive the VAT exemption on the short-term lettings, the purchase price for the purposes of calculating relief should be VAT exclusive. See examples in sections 6.1 and 6.2 where VAT inclusive figure is used.

A detailed analysis of how VAT applies in relation to property transactions is beyond the scope of this document. If you have a VAT related query you should consult the [VAT Guide to Property](#) available at www.revenue.ie or contact your local tax office.

4.6 Inducements to purchase property⁵

Where inducements are given to encourage the purchase of a property, the cost to the seller of providing those inducements must be deducted from the purchase price of the property for the purposes of calculating section 23 relief. For example, a property may contain certain domestic appliances or a purchaser may be entitled to membership of the local golf club. Where a composite price is paid for a property and any other item(s), the part of the price relating solely to the purchase of the property should be separately identified.

4.7 Premiums not treated as rent

A lease is not a qualifying lease where any premium payable by the lessee in connection with the lease exceeds 10% of the combined site and construction costs of the property in the case of a property that is constructed. In the case of refurbishment and conversion projects, the premium cannot exceed 10% of the market value of the property at the time that the refurbishment or conversion work was completed. Where a premium does not exceed this 10% limit and if any part of that premium is not treated as rent, the amount of the qualifying expenditure is to be reduced by the amount of the premium not treated as rent. Where a premium is required under a lease, the duration of which does not exceed 50 years, a proportion of the premium is to be treated as rent and the balance is to be treated as a capital payment/receipt.

4.8 Fitting out and furnishing the property

Section 23 relief is not available for the cost of fitting out and furnishing a property. However, such expenditure may qualify for capital allowances given over 8 years at the rate of 12½% per annum of the qualifying expenditure.

4.9 Restriction on qualifying expenditure incurred in 2007 and 2008

For projects qualifying for the extended deadline of 31 July 2008 there is a gradual reduction in the amount of expenditure that can qualify for relief after 31 December 2006. Eligible expenditure incurred on the actual construction, conversion or refurbishment of a property during 2006 can qualify in full without restriction. However, only 75% of such expenditure incurred in 2007 and 50% of such expenditure incurred in the period 1 January 2008 to 31 July 2008 can qualify for relief. This restriction is illustrated in the example in section 6.5.

5. How a property qualifies for relief

To qualify for relief the following conditions must be satisfied:

- Expenditure must be incurred on the construction, conversion or refurbishment of a property under the terms of a tax incentive scheme within the qualifying period for that scheme. It is not sufficient to merely own a property in a designated area,

⁵ This issue was covered in Tax Briefing issue 65, December 2006, page 13 – available at www.revenue.ie under ‘publications’.

- In the case of the integrated area urban renewal, living over the shop or town renewal schemes a certificate of consistency must have been issued by the local authority stating that the construction, refurbishment or conversion of the property is consistent with the objectives of the plan for those particular schemes. Relief may not be granted until such time as the final stage certificate of consistency has been issued. Use of the property before then could jeopardise the relief,
- The property must be situated wholly within a qualifying tax incentive area, front onto a qualifying street (living over the shop scheme) be within an 8 km distance of a certifying educational institution (student accommodation scheme) or be situated within the site of a park and ride facility. As each individual dwelling must be situated **wholly** within a designated area, there is **no** relief available for dwellings situated partly inside and partly outside a designated area. Therefore, a single apartment block that straddles a designated/non-designated area will contain both qualifying and non-qualifying apartments; there is no provision for apportioning any of the qualifying expenditure to the non-qualifying apartments,
- The property must be suitable for use as a dwelling and be used **only** as a dwelling. For example, if part of a house that is let to a doctor is used as a surgery or office no relief is due,
- Where qualifying expenditure is being incurred up to the 31 December 2006 or the 31 July 2008 extended deadlines, a valid application for full planning permission covering the work represented by that expenditure must have been submitted to the relevant local authority by 31 December 2004 (does not apply to urban renewal scheme). Guidance on this condition is available on our website under [Tax Practitioners/Technical Guidelines/Transitional arrangements for property-based incentive schemes](#).
- Where qualifying expenditure is being incurred up to the 31 December 2006 or the 31 July 2008 extended deadlines, and where the construction, refurbishment or conversion work does not require the submission of a planning application, work to the value of 5% of the development costs must have been carried out by 31 December 2004 and a detailed plan in relation to the development work and a binding written contract under which the expenditure is to be incurred must have been in place by that date,
- Where qualifying expenditure is being incurred up to the 31 December 2006 or the 31 July 2008 extended deadlines under the integrated area urban renewal scheme, a certificate must have been issued by the relevant local authority stating that 15% of the total project cost had been incurred by 30 June 2003. This certificate must have been issued on or before 30 September 2003 (see note 1 to **Appendix 2** for further details). In strictness, the work on the project should be carried out by the person who received the certificate from the local authority. However, Revenue is prepared to accept that, where a site is sold, the certificate may be transferred to the new owner provided that he or she does not make any changes to the original project for which the certificate was issued,
- Where qualifying expenditure is being incurred after 31 December 2006, work to the value of at least 15% of the actual construction, conversion or refurbishment costs must have been incurred by 31 December 2006. Guidance on this condition is available on our website under [Tax Practitioners/Technical Guidelines/Transitional arrangements for property-based incentive schemes](#),
- Without being used, the property must be let under a qualifying lease and continue to be so let for a period of 10 years from the date of the first qualifying lease. As the property must be used as a dwelling from this date, a lease with, for example, a management company prior to onward letting to a lessee, who will use the property as a

dwelling, cannot be regarded as a qualifying lease. Reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease are acceptable. A qualifying lease is a lease drawn up at arm's length under which periodic payments of rent are received. Any premium payable by the lessee cannot exceed 10% of the combined site and construction costs of the property in the case of a property that is constructed. In the case of refurbishment and conversion projects, the premium cannot exceed 10% of the market value of the property at the time that the refurbishment or conversion work was completed. The lease cannot allow the tenant, or any other person, to acquire an interest in the property for less than the market value of the property,

- In the case of the rural renewal scheme, the duration of a qualifying lease cannot be for a period of less than 3 months. For the period 1 June 1998 to 5 April 1999, the minimum period of a qualifying lease was 12 months. The property must be used as the sole or main residence of the lessee. This rules out holiday lettings,
- In the case of the seaside resorts scheme, a property must be used primarily for letting to tourists and be occupied for no other purpose from April to October each year. Lettings to non-tourists are permitted in the remaining months but a property cannot be let to, or occupied by the same person for more than two consecutive months at any one time or for more than six months in any year. A register of lessees must be maintained in respect of each property,
- The property has to meet certain floor area specifications (see *Appendix 2* for details),
- A certificate of reasonable cost or a certificate of compliance must have been issued in respect of the property (see *Appendix 4* for details). The Revenue practice is to allow a claim for relief where the certificates have been issued by the filing date for the claimant's return of income for the year for which the claim is made. This practice only applies for the year for which relief is first due,
- Where it is required, planning permission must have been granted for refurbishment and conversion work.

Guidelines outlining the conditions applying to the student accommodation scheme have been published by the Department of Education and Skills and are available at www.education.ie. These guidelines together with some additional Revenue material are available on our website under '[Tax Practitioners/Technical Guidelines/The Student Accommodation Scheme](#)'.

In the case of the park and ride scheme, the relevant local authority must have certified that there has been compliance with guidelines that were issued by the Department of the Environment, Heritage and Local Government. These are now available from the Department of Transport. There is a limit on the amount of qualifying expenditure that can be incurred on residential accommodation (both owner-occupied and rented) at a park and ride facility. If the construction expenditure on the residential element of a scheme exceeds 25% of the total allowable expenditure, there is no relief due for the residential element.

6. How qualifying expenditure is incurred

Qualifying expenditure can be incurred in various ways as set out below.

6.1 Construction by site owner

Where a person owns a site or a building and carries out the construction, refurbishment or conversion himself or herself, or engages a builder to carry out the work, the amount of the relief is the cost of having the property constructed, refurbished or converted. See section 6.4

for the treatment that applies where a property is bought by means of a contract for the site and a separate building agreement. As indicated in section 4.3, the expenditure qualifying for relief is the expenditure incurred directly on construction and the cost of site clearance and preparation. It does not include the costs of acquiring the site or the building, or any cost attributable to the person's own labour. Where a builder is engaged to carry out the work, the amount of the relief is the amount reflected in the building agreement with the builder and includes the builder's profit. As indicated in section 4.5, VAT that has been paid can only be included in the qualifying expenditure where it cannot be claimed back by the person who has paid it.

Example 1

Mrs. O'Connor owns a site and engages a builder to construct a house on the site. She agrees to pay the builder €160,000 (VAT inclusive) for the completed house. The builder's direct construction costs are €120,000 and his profit is €40,000. Mrs. O'Connor is entitled to relief of €160,000. She is not registered for VAT.

Example 2

Mr. Whelan purchases a badly run down house for €100,000. He carries out the refurbishment work himself in his spare time. He spends €50,000 on building materials and €10,000 on the hire of building equipment. He pays an auctioneer €3,000 to sell the completed house. Mr. Whelan is entitled to relief of €60,000, which is the amount of the direct refurbishment costs.

6.2 Purchase of a property from a builder⁶

Where a newly constructed property is purchased from a person who carries on the trade of a builder, the amount of the relief is calculated by using the following formula:

$$\text{Price paid to builder} \times \frac{A}{B + C}$$

A = construction expenditure incurred in the qualifying period

B = total construction expenditure

C = expenditure on the acquisition of the site

The price paid is the actual purchase price of the property (excluding stamp duty). The construction expenditure and site costs used in the formula are those incurred by the builder and not those charged to the purchaser by the builder. As indicated in section 4.3, the expenditure qualifying for relief is the expenditure incurred directly on construction and the cost of site clearance and preparation. The formula operates to exclude the site cost so that relief is not available for the full amount paid to the builder. This is why section 23 properties are advertised as qualifying for, for example, 80% relief or 90% relief, depending on the cost of the site, any costs attributable to the purchase of the site and any non-construction costs incurred by the builder. The amount of the relief includes a portion of the builder's profit.

The formula is generally used where newly constructed properties are purchased unused from a builder. However, in the case of the **student accommodation scheme**, the formula can be used where a builder sells a property that has already been let by him under a qualifying lease. The period of such letting cannot exceed one year. This provision applies to sales of property on or after 5 December 2001. It caters for situations where a builder lets a property to students at the start of an academic year while awaiting the sale of the property.

⁶ A builder means a builder, developer or other person who sells newly constructed, refurbished or converted property in the course of the trade of building/developing.

The same formula applies to the purchase of a newly refurbished or converted property from a builder with A and B in the formula being the refurbishment or conversion costs and C being the cost of the building, including site, prior to refurbishment or conversion.

See section 6.4 for the treatment that applies where a property is bought by means of a contract for the site and a separate building agreement.

Example 1

A builder buys a derelict property for €100,000. He spends €60,000 directly on refurbishment and €4,000 on marketing and selling the refurbished property. A delay in obtaining planning permission results in him being unable to get all of the work done within the qualifying period. Work to the value of €10,000 is carried out outside of the qualifying period. He sells the refurbished property for €250,000 (VAT inclusive) to Mr. Nolan.

The qualifying expenditure according to the formula is as follows:

$$€250,000 \times \frac{€50,000}{€60,000 + €100,000} = €78,125$$

Mr. Nolan’s qualifying section 23 expenditure is €78,125

Example 2

Mr. Nolan was unexpectedly forced to sell the house in the previous example before it could be used. He sold it to Mr. Hurley for €230,000. Mr. Hurley’s qualifying expenditure according to the formula is as follows:

$$€230,000 \times \frac{€50,000}{€60,000 + €100,000} = €71,875$$

Mr. Hurley’s relief is €71,875 as it is lower than €78,125, which was the relief that would have been due to Mr. Nolan. If Mr. Hurley had purchased the house for €260,000, the qualifying expenditure according to the formula would have been €81,250. In this case, Mr. Hurley’s relief would be limited to €78,125, i.e. the amount of Mr. Nolan’s relief.

6.3 Purchase of a property from a person who is not a builder

Where a newly constructed property is purchased from a person who does not carry on the trade of a builder, the amount of the relief is the lower of:

- the direct cost of construction, excluding site cost and costs attributable to the purchase of the site - see example in section 6.1,
- or**
- the amount produced by the formula in section 6.2 above.

Generally, in a market where property prices are rising, the relief will be based on the expenditure on the construction work carried out during the qualifying period and not on the amount produced by the formula.

The purchase of a newly refurbished or converted property from a person who does not carry on the trade of a builder is treated in the same way as the purchase of a newly constructed property from that person.

Example

John and Jane McDonald, purchased a site for €50,000 with the intention of building a house to let. They engaged a builder to construct a house at a cost of €200,000. €150,000 was spent on building materials and labour costs were €50,000. All of the work was carried out during

the qualifying period. Due to personal circumstances the McDonalds decided to emigrate and sold the house, unused, to Mr. Moore for €350,000. The qualifying expenditure according to the formula is as follows;

$$\text{Price paid to non-builder} \quad \times \quad \frac{A}{B + C}$$

A = construction expenditure incurred in the qualifying period

B = total construction expenditure

C = expenditure on the acquisition of the site

$$€350,000 \quad \times \quad \frac{€200,000}{€200,000 + €50,000} \quad = \quad €280,000$$

In this case, Mr. Moore's qualifying expenditure is €200,000, the cost of construction, as it is lower than the €280,000 produced by the formula.

6.4 Property purchased by means of site contract and building agreement

Where a person purchases a property by means of separate but connected contracts - a contract for the purchase of the site and a building agreement for the construction of the property – for relief calculation purposes Revenue treats both transactions as a single contract for the purchase of a completed property and the formula in section 6.2 is used accordingly. This is because the person is effectively purchasing a completed property and is not entering into unconnected agreements for the purchase of a site and the engagement of a builder to carry out the construction. This treatment applies whether the property is purchased from a builder or a person who is not a builder.

Example

A builder owns a site and is constructing a number of houses, which will be sold to purchasers by means of a site contract and a building agreement. Mr. O' Dwyer enters into a contract for the purchase of a site from the builder for €60,000 and enters into a building agreement for the construction of a house for €200,000 with a construction company connected to the builder. The sale of the site is dependent on Mr. O'Dwyer entering into the agreement with the builder's company to carry out the construction. The site had previously cost the builder €50,000 and the company incurs €150,000 directly on construction costs. Mr. O'Dwyer's qualifying expenditure is not the amount reflected in the building agreement for the house. Instead, it is the amount produced by the formula in section 6.2. His qualifying expenditure according to this formula is;

$$€260,000 \quad \times \quad \frac{€150,000}{€150,000 + €50,000} \quad = \quad €195,000$$

6.5 Expenditure incurred during 2007 and 2008

As part of the transitional arrangements for phasing out the property-based incentive schemes, only 75% of the expenditure incurred in 2007 and 50% of the expenditure incurred in the period 1 January 2008 to 31 July 2008 can qualify for relief for projects qualifying for the extended deadline of 31 July 2008. For the purposes of establishing whether expenditure is incurred during 2007 and 2008, it is necessary to look at the position for each individual property. Thus, for example, apartments within a single apartment building could qualify for different amounts of relief depending on when construction was carried out.

Guidance on these transitional arrangements is available on our website under ['Tax Practitioners/Technical Guidelines/Transitional arrangements for property-based incentive schemes'](#).

Example

A builder starts construction on a project comprising 20 identical houses in November 2006 and finishes work in May 2008. He submitted a valid application for full planning permission to the local authority before 31 December 2004. By the end of 2006 he had spent €900,000 on drawing up plans, preparing the site and laying the foundations. His quantity surveyor estimated that the overall actual construction costs would be €4m, which would mean that work to the value of over 15% of the actual construction costs should be incurred by 31 December 2006, thereby qualifying for the extended termination date of 31 July 2008. Qualifying construction costs of €2.7m and €500,000 are incurred during 2007 and 2008 respectively. The builder had paid €1m for the site, i.e. €50,000 site cost per house.

The allowable construction costs are:

$$€900,000 + €2,025,000 (€2.7m \times 75\%) + €250,000 (€500,000 \times 50\%) = €3,175,000.$$

It is not possible to apportion this cost evenly over the 20 houses. Separate calculations have to be carried out for the various houses depending on when the expenditure on their construction was incurred. The €900,000 incurred on drawing up plans, preparing the site and laying the foundations can be apportioned. In addition to this apportioned expenditure of €45,000 per house, 16 houses are fully completed during 2007 with attributable expenditure of €2.56m. 4 houses are partially completed during 2007 with attributable expenditure of €140,000 and completed during 2008 with attributable expenditure of €500,000.

The formula in section 6.2 is adjusted and the appropriate fraction is:

$$\frac{\text{construction expenditure incurred in qualifying period reduced by restrictions}}{\text{overall construction expenditure incurred} + \text{site cost}}$$

The qualifying expenditure as a percentage of the purchase price for the first **16 houses** according to the price adjustment formula is:

$$\frac{^7€2,640,000}{^8€3,280,000 + €800,000} = 65\%$$

If the houses are sold for €350,000, each purchaser is entitled to section 23 relief of €227,500 (€350,000 x 65%).

The qualifying expenditure for the remaining **4 houses** is:

$$\frac{^9€535,000}{^{10}€820,000 + €200,000} = 52\%$$

If the houses are sold for €350,000, each purchaser is entitled to section 23 relief of €182,000 (€350,000 x 52%).

7. What to check before purchase

The purchaser should establish the scheme under which the property is to qualify for relief. This is important as different conditions apply to the various schemes. Section 2 above has

⁷ €2,640,000 = €720,000 (€45,000 x 16) + €1,920,000 (€2.56m x 75%)

⁸ €3,280,000 = €720,000 (€45,000 x 16) + €2.56m; €800,000 = €50,000 x 16

⁹ €535,000 = €180,000 (€45,000 x 4) + €105,000 (€140,000 x 75%) + €250,000 (€500,000 x 50%)

¹⁰ €820,000 = €180,000 (€45,000 x 4) + €140,000 + €500,000; €200,000 = €50,000 x 4

details of the relevant information sources for the various schemes. A list of the qualifying areas for the integrated area urban renewal, town renewal and rural renewal schemes are contained in *Appendix 2*. Details of the areas designated for the 1994 urban renewal scheme are contained in statutory instruments available at www.irishstatutebook.ie.

7.1 Documentation required

A person claiming relief should be able to show that he or she has fulfilled all of the relevant conditions and that he or she is entitled to the relief. The person should also be able to provide details of the construction and site costs in order to calculate the amount of the relief to which he or she is entitled. Section 6 provides examples of how the relief is calculated. A statement from a builder stating that the property qualifies for, for example, 80% or 90% relief, is not sufficient, as it does not give a breakdown of the builder's costs. The following documents, as appropriate, may be required to support a claim for relief in the event of a claim being audited by Revenue. They should be retained, and only if requested, given to the claimant's tax office. If the property is sold within the 10-year period following its first letting under a qualifying lease, the new purchaser will require the documents to support a claim for relief. The documents are:

- A certificate of consistency from the local authority stating that the construction, refurbishment or conversion of the property is consistent with the objectives of the integrated area urban renewal, living over the shop or town renewal plans. The property cannot become a qualifying property until such time as the final stage certificate of consistency is issued,
- Where expenditure is being incurred up to 31 December 2006 or 31 July 2008 for the integrated area urban renewal scheme, a certificate must have been issued by the relevant local authority by 30 September 2003 stating that 15% of the total project cost had been incurred by 30 June 2003. (see note 1 to *Appendix 2* for further details)¹¹,
- Where expenditure is being incurred up to 31 December 2006 or 31 July 2008 for schemes other than the urban renewal scheme, evidence that a valid application for full planning permission was submitted by 31 December 2004. Expenditure on any work that did not form part of that **particular** planning application does not qualify for relief,¹¹
- Where expenditure is being incurred up to 31 December 2006 or 31 July 2008 for schemes other than the urban renewal scheme, and where the construction, refurbishment or conversion does not require the submission of a planning application, there must be evidence that work to the value of 5% of the development costs had been carried out by 31 December 2004 and that certain documentation was in existence by that date. The documents are a detailed plan in relation to the development work and a binding written contract under which the expenditure was to be incurred,
- Where expenditure is being incurred between 1 January 2007 and 31 July 2008, evidence that work to the value of at least 15% of the actual construction costs was carried out by 31 December 2006. Revenue expects that builders and developers will provide a statement prepared by a quantity surveyor or architect showing clearly the work that was carried out up to 31 December 2006, the construction, conversion or refurbishment costs attributable to this work, the projected costs to completion of the

¹¹ More detailed information is available on our website www.revenue.ie under 'Publications/Technical Guidelines/Transitional arrangements for property-based incentive schemes'.

project and the percentage of the total figure represented by the work that was carried out by 31 December 2006¹²,

- Where expenditure is being incurred between 1 January 2007 and 31 July 2008, details of the construction, conversion or refurbishment expenditure relating to work carried out during 2007 and in the period 1 January 2008 to 31 July 2008, which expenditure is to be restricted to 75% and 50% respectively¹²,
- A certificate of compliance in the case of a newly constructed refurbished or converted house purchased from a builder. This is issued by the Housing Grants Section of the Department of the Environment, Heritage and Local Government in Ballina. The certificate should be obtained before tax relief is claimed but where there is a delay in its issue, Revenue will accept a claim for relief where the certificate is issued by the filing date for the claimant's return of income for the year for which the claim is made (see *Appendix 4* for details). This Revenue practice only applies for the year for which relief is first due,
- A certificate of reasonable cost where a new house is to be let by the person who built it, or had it built, or where a refurbished or converted house is to be let by the person who refurbished or converted it, or had it refurbished or converted. This is issued by the Housing Grants Section of the Department of the Environment, Heritage and Local Government in Ballina. The certificate should be obtained before tax relief is claimed but where there is a delay in its issue, Revenue will accept a claim for relief where the certificate is issued by the filing date for the claimant's return of income for the year for which the claim is made (see *Appendix 4* for details). This Revenue practice only applies for the year for which relief is first due,
- Where planning permission was required for conversion or refurbishment work, a copy of the planning permission,
- A copy of the purchase contract between the vendor and the purchaser showing the purchase price or a copy of the contract for the purchase of the site and a copy of the building agreement. Where a composite price is paid for a property and any other item(s), the part of the price relating solely to the purchase of the property should be separately identified,
- Details of the total cost of the construction, conversion or refurbishment, including (separate) details of any work carried out outside of the qualifying period. (see *Appendix 2* for details of qualifying periods) In the case of the purchase of a property from a builder, a statement of the builder's costs is required. The statement should provide separate details of the site acquisition costs and the direct construction, conversion or refurbishment costs incurred by the builder. As stated in section 4, only the costs directly attributable to construction, conversion or refurbishment are allowed. This information is required by the claimant to calculate the amount of the relief. In the case of the purchase of a newly refurbished or newly converted property, evidence of the cost of the building before refurbishment or conversion is required,
- A copy of the first qualifying lease and any other qualifying leases drawn up during the 10-year period following the first qualifying lease (see section 5 for more detail on qualifying leases),
- In the case of the student accommodation scheme, a certificate from the relevant educational institution(s) in accordance with section 4 of the Department of Education and Skills guidelines,

¹² More detailed information is available on our website www.revenue.ie under 'Publications/Technical Guidelines/Transitional arrangements for property-based incentive schemes'.

- In the case of the park and ride scheme, a certificate from the relevant local authority stating that the development complies with the requirements laid down in guidelines issued by the Department of the Environment, Heritage and Local Government that are now available from the Department of Transport in relation to residential accommodation at a park and ride facility.

8. How to claim section 23 relief

The mere purchase of a section 23 property does not entitle a person to tax relief. The property must be let under a qualifying lease before the relief can be claimed. Section 5 contains more detail on qualifying leases and on the other conditions to be fulfilled. The property must continue to be let under a qualifying lease(s) for a period of 10 years from the date it is first let under a qualifying lease, apart from reasonable periods of temporary disuse between the ending of one lease and the commencement of another. A claimant does not need to obtain any form of advance approval or permission from Revenue to apply for the relief. Provided that all of the conditions of a scheme are fulfilled, the relief can be claimed in an individual's annual income tax return under the self-assessment system. Under the self-assessment system, a return of income must be made on or before 31 October in the year following the year of assessment. Certain persons who pay tax under the PAYE system may not be obliged to make a return of income. For the year of assessment 2005 and following years, a person with PAYE income who also has gross income from a non-PAYE source(s) of €50,000 or more (even though this income may be reduced to nil or to a negligible amount because of deductions, losses, allowances and other reliefs such as section 23 relief) is regarded as a 'chargeable person' and is required to make a return of income under the self-assessment system. The €50,000 limit applies to gross income from **all** non-PAYE sources and not from each separate source. A person who became a 'chargeable person' in 2005 continues to be a 'chargeable person' for future years, as long as the source(s) of the non-PAYE income continues to exist, irrespective of the amount of the annual gross income. A person with assessable non-PAYE income of €3,174 or more for any year is also regarded as a 'chargeable person' for self-assessment purposes and must file a return of income.

9. How section 23 relief is granted

Section 6 contains details of how to calculate the amount of the relief. The full amount of the relief is deducted from the rental income of the particular property in the first year of letting, together with other allowable deductions such as management expenses and interest relief etc. If, as is most likely, the deductions exceed the rental income from the property, the excess can be deducted from other Irish rental income for that year. Any remaining excess deductions are treated as a rental loss for that first year and can be carried forward against any Irish rental income arising in later years until the loss is used up. If an individual does not have sufficient rental income to absorb a rental loss, the carry forward of the rental loss can continue beyond the 10-year period following the first letting of the property under a qualifying lease. Section 23 relief cannot be set against rental income from properties outside Ireland or against income from an individual's employment, profession, trade, investment or sale of capital assets. Where more than one person has incurred qualifying expenditure on a property, both the relief and the rental income/expenses are apportioned among those persons according to the amount of the expenditure incurred by each person. For example, if a property is purchased by a number of people for €400,000 and one person pays €100,000 of this amount, he or she is entitled to 25% of the section 23 relief and 25% of the rental income/expenses available in respect of the property.

The following example shows how the relief is granted:

Example

In August 2005 Mr Ryan purchased a house from a builder for €379,000. The builder's construction costs were €298,000 and the site cost was €43,000. The formula in section 6.2 is used to calculate the section 23 qualifying expenditure:

$$\text{€379,000} \times \frac{\text{€298,000}}{\text{€298,000} + \text{€43,000}} = \text{€331,208}$$

The amount of the qualifying expenditure is €331,208. This amount can be deducted from the gross rent receivable from the property. The property is let from September 2006.

	€
Gross rent 2006	8,000
Less;	
Insurance	400
Interest	300
<i>Section 23 relief</i>	<u>331,208</u>
Total deductions	<u>331,908</u>
Rental Loss	(323,908)

This loss of €323,908 is available for set off against all Irish rental income in the year in which it arises. Any excess can be carried forward against Irish rental income for later years.

Mr Ryan owns two other properties for which he completed a 2006 rental computation.

	Property 1	Property 2	Property 3
(Section 23 property)			
Loss	(€323,908)		
Profit		€20,000	€30,000

€50,000 of the loss of €323,908 is set against the profit arising from properties 2 and 3, so no tax is payable on Mr. Ryan's rental income for 2006. A loss of €273,908 can be carried forward against Mr. Ryan's Irish rental income in later years.

9.1 Restriction on use of tax reliefs by high-income individuals

Finance Act 2006 introduced restrictions on the use of certain tax reliefs by high-income individuals. From 1 January 2007, individuals whose income in a year exceeds €250,000 will not be able to fully avail of certain tax reliefs in calculating their taxable income for that year. Section 23 relief is one of these restricted reliefs.

10. Withdrawal of section 23 relief

10.1 Property ceases to be a qualifying property

The section 23 relief is withdrawn if, at any time during the 10-year period following the first letting of the property under a qualifying lease, the property ceases to be a qualifying property. If this happens, the relief already granted will be withdrawn by treating the amount of the relief granted to date as if it were rent received in the year in which the property ceased to be a qualifying property. Any such withdrawal of relief should be accounted for under the self-assessment system as the receipt of rent on the relevant income tax return.

A property ceases to be a qualifying property if there is a breach of the conditions pertaining to a scheme. Examples of such breaches are the use of the property, at any stage, as the claimant's residence, the enlargement of the property beyond the permitted floor area, the rent-free occupation of the property or the letting of the property under the rural renewal

scheme for periods of less than 3 months. Section 5 contains details of the conditions to be fulfilled.

10.2 Sale of a section 23 property

To continue to be entitled to section 23 relief, a property must be retained and let under a qualifying lease(s) for a period of 10 years from the date that the property was first let under a qualifying lease. Section 5 contains details of qualifying leases. The relief already granted is withdrawn if the property is sold within this 10-year period. In the year of sale the seller is treated as having received an amount of rent equal to the amount of the section 23 relief granted. Any such withdrawal of relief should be accounted for under the self-assessment system as the receipt of rent on the relevant income tax return. Section 11 contains details of the section 23 relief that is available to a subsequent purchaser of the property.

Example

Mr Browne refurbished a rural renewal scheme property owned by him during 2002. The refurbishment costs were €50,000. He is entitled to section 23 relief on this amount. He let the property under a qualifying lease in February 2003.

2003	€	2004	€
Rental Income	5,000	Rental Income	6,000
Section 23 Relief	<u>50,000</u>	Loss forward from 2003	<u>45,000</u>
<i>Loss</i>	<i>(45,000)</i>	<i>Loss</i>	<i>(39,000)</i>

2005	€
Rental Income	8,000
Loss forward from 2004	<u>39,000</u>
<i>Loss</i>	<i>(31,000)</i>

The property is sold in February 2006. As it is sold within the 10-year period following its first letting under a qualifying lease, there is a withdrawal of the relief already granted. Mr Browne is assessed for the year 2006 (the year of sale) on the amount of the relief granted to him as if it were rental income additional to any rent received in respect of the property in 2006 to the date of sale.

2006	€
Rental Income	1,200
Rent deemed received <i>(Section 23 relief)</i>	<u>50,000</u>
Total Rental Income	51,200
<i>Loss forward</i>	<i>(31,000)</i>
Net Rental Income	20,200

Although the full amount of the section 23 relief is withdrawn, the net effect is that Mr. Browne is assessed for 2006 only on the amount of section 23 relief actually availed of by him up to the time of sale, i.e. €19,000. If Mr. Brown had received rental income from other properties during this period and this income had absorbed some of the section 23 relief, the amount of the assessment for 2006 would be higher.

10.3 Where share of ownership in a property is varied

The reduction of a person's share of ownership of a property within 10 years of first letting the property is treated as the disposal of part of the property. For example, if a person owns 100% of a property and sells 50% to another person, 50% of the section 23 relief granted to that person will be clawed back. The person who purchases the 50% share will now be entitled to 50% of the section 23 relief. If two people jointly own a property and one sells his or her 50% share to the other person, the relief granted to that person will be clawed back and the other person can add that relief to the relief to which he or she is already entitled. See section 10.5 for the treatment of transfers of property between spouses. See section 11 for the relief available to a purchaser of a second-hand property.

Example

In 2005 Helen incurred qualifying expenditure of €300,000 on a house. Her sister Maeve returned home from America in 2006. Helen transferred ownership of the house into their joint names in March 2006 resulting in Maeve incurring qualifying expenditure of €150,000. Helen received net rental income of €4,000 for January and February 2006. Net rental income of €20,000 was received for the rest of 2006 and was split between Helen and Maeve. The position is as follows:

Helen		Maeve	
2005	€		
Net rental income	20,000		
Section 23 relief	<u>300,000</u>		
<i>Loss</i>	<i>(280,000)</i>		
2006	€	2006	€
Net rental income	14,000	Net rental income	10,000
Rent deemed received (50% section 23 relief)	<u>150,000</u>	Section 23 relief	<u>150,000</u>
Total rental income	164,000	<i>Loss</i>	<i>(140,000)</i>
<i>Loss forward 2005</i>	<i>(280,000)</i>		
<i>Net rental loss</i>	<i>(116,000)</i>		

Assume both sisters had jointly purchased the house in 2005 and Helen decided to sell her 50% share of the house to Maeve in March 2006. Net rental income of €20,000, €4,000 and €20,000 was received respectively for 2005, for January and February 2006 and for the rest of 2006. The position is as follows:

Helen		Maeve	
2005	€	2005	€
Net rental income	10,000	Net rental income	10,000
Section 23 relief	<u>150,000</u>	Section 23 relief	<u>150,000</u>
<i>Loss</i>	<i>(140,000)</i>	<i>Loss</i>	<i>(140,000)</i>
2006		2006	
Net rental income	2,000	Net rental income	22,000
Rent deemed received (section 23 relief)	<u>150,000</u>	<i>Loss forward 2005</i>	<i>(140,000)</i>
Total rental income	152,000	Additional section 23 relief	<u>(150,000)</u>
<i>Loss forward 2005</i>	<i>(140,000)</i>	<i>Net rental loss</i>	<i>(268,000)</i>
Net rental income	12,000		

10.4 Death of a claimant¹³

The death of the owner of a section 23 property within 10 years of first letting the property is treated as a disposal of the property for section 23 purposes and there is a withdrawal of all of the relief already granted. The withdrawn relief is accounted for in the same way as the sale of a property as detailed in section 10.2, i.e. by treating the amount of the relief granted up to the date of death as if it were rent received in the year in which the owner dies. This deemed rental income becomes a liability of the deceased person's estate. The interest in the property passes at the time of death and the person who inherits the property is entitled to section 23 relief from that time provided that he or she fulfils all of the relevant conditions and that the property has not ceased to be a qualifying property. Section 5 outlines the conditions that must be fulfilled for the property to qualify for relief. The new owner must continue to let the property under a qualifying lease(s) for the remainder of the 10-year period and may claim the relief.

These clawback provisions also apply in the case of **married couples**. There is no statutory basis for rental income losses to pass between spouses, whether living or deceased.² This may result in a situation where a tax liability of the deceased spouse's estate cannot be relieved by losses accruing to the spouse who has inherited the property and entitlement to the section 23 relief. However, it is Revenue practice in death cases involving spouses to allow a surviving spouse to set section 23 relief due to him or her (that might otherwise have created a rental loss) against the amount of rent assessable on the deceased spouse as a result of the clawback of relief. This practice applies, for the year of death, in situations where the surviving spouse was the assessable spouse, where the deceased was the assessable spouse and where the couple were taxed as single persons. It applies where the ownership of a property passes on or after **6 April 1995**. A formal undertaking has to be given by the surviving spouse that if any event occurs that gives rise to a further clawback of relief within the 10-year period from the date the property was first let by the deceased spouse, the amount of the relief to be withdrawn from the surviving spouse will be the full amount of the section 23 relief allowed in relation to the property both in the pre-death and post-death periods.

A further option is available to a surviving spouse in cases where the ownership of a property passes on or after **1 January 2010**.³ Under this 'further option', an election may be made that:

- no clawback of section 23 relief will be applied in the case of the deceased spouse, **and**
- any unused balance of section 23 relief will transfer to the surviving spouse, where such relief has not been used in full by the deceased spouse in relation to rental income received up to the date of death.

Any election will apply to **all** 'section 23 type' property held by the deceased spouse i.e. elections will not apply to individual properties where more than one property is involved. The election should be made to the relevant local Revenue office and should be made jointly by the personal representative of the deceased spouse (e.g. the executor of the will or the

¹³ Tax Briefing issue 23 (September 1996) outlines the tax treatment - available at www.revenue.ie under 'Publications'.

² Tax Instruction 4.8.13 sets out the position in relation to the use of rental losses (and excess capital allowances) between spouses - available at www.revenue.ie in the Tax & Duty Manuals.

³ This Revenue practice was published in Tax Briefing issue 8 (June 2010) available at www.revenue.ie. It is available to all married couples and not just those 'high worth' individuals who are subject to the restrictions on the use of certain tax reliefs.

administrator of the estate) and by the surviving spouse. Where the surviving spouse is also the personal representative of the deceased, the election may be made solely by that person.

This 'further option' also requires a formal undertaking by the surviving spouse that he or she will take responsibility for any clawback that arises within the remainder of the 10-year period from the date of the first letting. The amount of the clawback on the surviving spouse will be the full amount of the section 23 deduction allowed to either, or both, the deceased or the surviving spouse.

These two practices do **not** apply where property passes following death between parties **other than spouses** (but see section 10.5 below).

Example

This example illustrates the position where the deceased spouse was the assessable spouse. The surviving spouse becomes chargeable for the year of death on the income from the date of death. There are two assessments. One assessment is for the pre-death liability of the couple that includes the liability arising from the clawback of the section 23 relief. A second assessment is for the post-death income received by the surviving spouse from which the section 23 deduction is made.

In the example in section 10.2 Mr. Browne had net rental income of €20,200. If, instead of selling the property he had died in February 2006, the same figures would apply. If Mrs. Browne inherits the property she will be entitled to claim the full amount of the relief that was originally granted to her deceased husband. This amount was €50,000. If Mrs. Browne is the assessable spouse, her position for 2006 is as follows if she availed of the Revenue practice set out in the 2nd paragraph of section 10.4;

	€
Rental income (pre death husband)	20,200
Less S23 relief from wife	<u>20,200</u>
<u>Net rental income - husband</u>	Nil
Rental income (post death wife)	6,000
Remaining S23 relief	<u>29,800</u>
Rental loss - wife	(23,800)

This loss of €23,800 can be carried forward against Mrs. Browne's future rental income.

If Mrs. Browne had inherited the property after **1 January 2010**, she could opt to avail of the 'further option' set out in the 3rd paragraph of section 10.4. In such circumstances, she would receive the amount of section 23 relief that was unused at the date of death instead of the full amount of the relief that was given to Mr. Brown. Thus, she would have been entitled to relief of €29,800 (and not €50,000), without having to compute a clawback of relief in establishing the tax liability for the deceased spouse.

In both scenarios, Mrs. Browne must give a formal undertaking that if, for whatever reason, she becomes subject to a withdrawal of the section 23 relief granted, the amount to be withdrawn will be €50,000, the full amount of the section 23 relief, and not just whatever

amount she may have claimed in the post-death period. Without such an undertaking, Mr. Browne's estate would have additional taxable income of €20,200.

10.5 Transfer of property between spouses

The Revenue practice referred to in the 2nd paragraph of section 10.4 also applies where a section 23 property passes between spouses as a result of a legally enforceable maintenance arrangement (as defined in section 1025 Taxes Consolidation Act, 1997) or in circumstances where a property is transferred from the name of one spouse into the joint names of both spouses. Subject to a surviving spouse availing of this practice, where one of the spouses was the sole owner of the property and becomes a joint owner, 50% of the full amount of the relief granted is withdrawn from that person and the other spouse becomes entitled to that relief.

The practice applies only to transfers of property between spouses and does not apply to transfers between parents and children or between any other persons. See section 10.3 for the treatment of transfers of property between persons who are not married.

The 'further option' referred to in the 3rd paragraph of section 10.4 does **not** apply in either of the circumstances referred to above.

11. Purchase of a second-hand section 23 property

If a section 23 property is sold more than 10 years after the date on which the property was first let under a qualifying lease, there is no withdrawal of the relief already granted and the new purchaser is **not** entitled to relief, even if relief was not claimed by the original owner. If a property is purchased within the 10-year period and the property is still a qualifying property, section 23 relief will be available to the new purchaser provided that he or she fulfils all of the relevant conditions. Section 5 outlines the conditions that must be fulfilled for the property to qualify for relief. The new owner must continue to let the property under a qualifying lease(s) for the **remainder** of the 10-year period and may claim the relief even if the original owner, for whatever reason, has not claimed the relief. The 10-year period does not start again for the second owner.

11.1 Documentation required

Section 7 contains details of what should be checked before purchasing a new property. It also applies to the purchase of a second-hand property. Section 7.1 contains details of the documentation that is required in support of a claim for relief. **A second purchaser has the same responsibility as the original purchaser to prove that he or she has fulfilled all of the required conditions for entitlement to relief.** The same documentation is therefore required. The new purchaser should check that the original owner let the property under a qualifying lease(s) throughout his or her period of ownership and should obtain evidence of this. The new purchaser need not be concerned with any withdrawal of relief from the seller as this is a matter solely for the seller and Revenue.

11.2 Amount of relief on second-hand property

A purchaser of a second-hand qualifying property is generally entitled to the full amount of the relief that was available to the original purchaser. Sections 4 and 6 deal with the costs that are relevant for the purpose of the relief and how to calculate the amount of the relief in different situations. However, if the amount of relief produced by the following formula is

lower than the relief that was available to the original purchaser, the amount produced by the formula is to be used.

$$\text{Price paid to original owner} \quad \times \quad \frac{A}{B + C}$$

A = construction expenditure incurred in the qualifying period

B = total construction expenditure

C = expenditure on site acquisition

The same formula applies to the purchase of a previously refurbished or converted property, with A and B in the formula being the refurbishment or conversion costs and C being the cost of the building, including site, prior to refurbishment or conversion.

Generally, in a market where property prices are rising the relief due to a second (or subsequent) purchaser will be the amount of relief that was available to the original purchaser. This is because the price paid for the property by the subsequent purchaser will be higher than the price paid by the original owner.

Example

Mr. Kennedy bought a refurbished urban renewal property from a builder for €250,000 in April 2000. The builder, who purchased the property for €100,000, had spent €60,000 directly on refurbishment and €4,000 on marketing and selling the refurbished property. The builder incurred legal costs of €10,000 in dealing with a compensation claim by a visitor who had been injured on the building site. Mr. Kennedy's qualifying expenditure according to the formula was as follows;

$$€250,000 \quad \times \quad \frac{€60,000}{€60,000 + €100,000} \quad = \quad €93,750$$

Mr. Kennedy let the property under a qualifying lease in June 2000. He sold the property to Mr. Daly for €300,000 in January 2005. Mr. Daly's qualifying expenditure according to the formula is as follows;

$$€300,000 \quad \times \quad \frac{€60,000}{€60,000 + €100,000} \quad = \quad €112,500$$

The amount of Mr. Daly's qualifying section 23 expenditure is restricted to €93,750, the amount of relief that was available to Mr. Kennedy, as this is lower than the amount of €112,500 produced by the formula.

11.3 Obligations on new owner

As with the first purchase of a qualifying property, the property must be let by any subsequent purchaser under a qualifying lease before relief can be claimed. It must continue to be let under a qualifying lease(s) for the remainder of the period of 10 years from the date of the original first qualifying lease, apart from reasonable periods of temporary disuse between the ending of one lease and the commencement of another. A new claimant does not need to obtain any form of advance approval or permission from Revenue to apply for the relief.

Provided that all of the conditions pertaining to a scheme are fulfilled, a claimant can claim the relief in his or her annual income tax return under the self-assessment system. The claim can

be made for the year in which the first qualifying lease is drawn up by the new owner. See sections 8 and 9 for details of how to make a claim and how section 23 relief is granted. As with the first purchase of a qualifying property, the relief is withdrawn if, at any time during the remainder of the 10-year period from the time the property was first let under a qualifying lease, the property is either sold or ceases to be a qualifying property. Section 10 contains details of how a property might cease to be a qualifying property and how to account for the withdrawal of relief.

Construction, Refurbishment, Conversion

Construction

The meaning of construction is generally self-explanatory. However, in the case of the living over the shop scheme any construction must be ‘necessary construction’. Additional storeys can be built only where they are required to restore or enhance the streetscape. A replacement building can be constructed where a dangerous building order has been issued and it is required to restore the streetscape. The replacement building must be consistent with the character and size of the original building. Extensions, limited to 30% of the existing floor area, to existing buildings must be necessary to facilitate access to residential accommodation or to provide essential facilities. What constitutes necessary construction is determined by the relevant local authority.

Refurbishment

Refurbishment includes construction, reconstruction, repair or renewal and the provision or improvement of water, sewerage or heating facilities where a certificate of compliance or of reasonable cost in respect of the work is issued by the Department of the Environment, Heritage and Local Government. The Department of the Environment, Heritage and Local Government are required to certify that the refurbishment work was necessary for the purposes of ensuring that a house is suitable for use as a dwelling. In relation to the façade of a house that fronts onto a street in the town renewal scheme, the construction, reconstruction, repair or renewal must be carried out in the course of the maintenance, repair or restoration of that façade. In the case of the rural and town renewal schemes, the pre-refurbished building can contain a single dwelling. In the case of the living over the shop, urban renewal and student accommodation schemes, the pre-refurbished building must contain at least two dwellings.

Conversion

Conversion is the conversion into a house of a building, or part of a building, that was not previously used as a house or the conversion of a building, or part of a building into multiple house units. The conversion of part of a building is restricted to the living over the shop, urban renewal and town renewal schemes. Conversion includes the carrying out of any works of construction, reconstruction, repair or renewal, and the provision or improvement of water, sewerage or heating facilities in the course of the conversion. As the works must be carried out in the course of the conversion, certain works are not regarded as conversion. These would include general repairs to a building or construction that was not actually part of the conversion work.

Alterations to Land

Construction, refurbishment and conversion also refers to work carried out in relation to the land on which the dwellings are situated or which is used in the provision of gardens, grounds, access or amenities in relation to the dwellings. The following type of work is covered;

- the demolition or dismantling of any building on the land
- site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works
- the construction of walls, the provision of power supply, drainage, sanitation and water supply
- the construction of any outhouses or other buildings or structures for use by the occupants of the dwellings.

APPENDIX 2

CURRENT INCENTIVE SCHEMES

SCHEME	QUALIFYING PERIOD	FLOOR AREA
Integrated area urban renewal	1 August 1998 ¹⁴ to 31 July 2008. If 15% certificate not issued, end date is 31 December 2002 (see note 1). Where this condition is met but work to value of at least 15% of actual construction costs is <u>not</u> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 125 square metres
Town renewal	1 April 2000 to 31 July 2008. If valid application for full planning permission <u>not</u> submitted on or before 31 December 2004, end date is 31 December 2004. Where this condition is met but work to value of at least 15% of actual construction costs is <u>not</u> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 125 square metres, or 150 square metres in the case of conversion or refurbishment expenditure incurred on or after 6 April 2001
Rural renewal	1 June 1998 to 31 July 2008. If valid application for full planning permission <u>not</u> submitted on or before 31 December 2004, end date is 31 December 2004. Where this condition is met but work to value of at least 15% of actual construction costs is <u>not</u> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 140 square metres for construction expenditure incurred before 6 December 2000, or 150 square metres for conversion or refurbishment expenditure incurred before 6 December 2000, or 175 square metres for expenditure incurred on or after 6 December 2000
Living over the shop	6 April 2001 to 31 July 2008. If valid application for full planning permission <u>not</u> submitted on or before 31 December 2004, end date is 31 December 2004. Where this condition is met but work to value of at least 15% of actual construction costs is <u>not</u> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 125 square metres
Student accommodation	1 April 1999 to 31 July 2008. If valid application for full planning permission <u>not</u> submitted on or before 31 December 2004, end date is 31 March 2003. Where this condition is met but work to value of at least 15% of	Not less than 55 square metres and not more than 160 square metres (see guidelines for further details)

¹⁴ Residential reliefs apply from 1 March 1999.

