Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2023 edition

Part 10

Income Tax and Corporation Tax: Reliefs for Renewal and Improvement of Certain Urban Areas, Certain Resort Areas and Certain Islands

December 2023

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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PART 10
INCOME TAX AND CORPORATION TAX: RELIEFS FOR RENEWAL AND IMPROVEMENT OF CERTAIN URBAN AREAS, CERTAIN RESORT AREAS AND CERTAIN ISLANDS

CHAPTER 1
Custom House Docks Area

Overview

This Chapter provided for a scheme of tax reliefs designed to encourage the development of the Custom House Docks Area of Dublin. Provision was made —

- in ***section 323***, for capital allowances in respect of capital expenditure incurred on the construction of certain commercial premises,
- in ***section 324***, for a double rent allowance in computing trading or professional income in respect of rent paid for the lease of certain industrial buildings or structures and certain commercial premises,
- in ***sections 325, 326*** and ***327,*** respectively, for relief against rental income in respect of expenditure incurred on the construction of certain rented residential accommodation, the conversion of certain buildings into such accommodation and the refurbishment of multi-dwelling rented residential accommodation, and
- in ***section 328***, for relief to owner-occupiers in respect of expenditure incurred on the construction or refurbishment of certain residential accommodation.
- in ***section 329***, for measures which were supplementary to ***sections 325, 326, 327*** and ***328.***

The scheme is now terminated, in so far as the termination date for incurring qualifying expenditure or entering into qualifying leases has passed. However, claims in relation to qualifying expenditure incurred, or rent paid under qualifying leases entered into, before the termination date may continue to arise.

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 325, 326, 327, 328*** and ***329*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these sections, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

322 Interpretation (*Chapter 1*)

Summary

This section defines the terms "the Custom House Docks Area" and "the specified period" which are used in the Chapter. It also enabled the Minister for Finance to make orders extending the Custom House Docks Area beyond the boundaries of the area as set out in ***Schedule 5***.

Details

Definitions

"the Custom House Docks Area" is the area described in ***paragraph 2*** of ***Schedule 5***, and that Schedule applies for the purposes of supplementing this Chapter. ***(1) & (4)***

"the specified period" is the period from 25 January, 1988 to —

- 24 January, 1999 in the case of the double rent allowance (***section 324***),
- 31 December, 1999 in the case of the reliefs for residential accommodation (***sections 325*** to ***328***), and
- 31 December, 1999 in the case of capital allowances for commercial premises (***section 323***) but, in any case where 51 per cent of the qualifying expenditure has been incurred by that date on a qualifying premises, the deadline extends to 30 June, 2000.

The specified period may be altered in relation to certain areas deemed to be part of the Custom House Docks Area by virtue of Ministerial order under ***subsection (2)***.

Ministerial orders extending Custom House Docks Area

(2) The section empowered the Minister for Finance, after consultation with the Minister for the Environment and Local Government, to direct by order that an area, which would not otherwise be within the definition of the Custom House Docks Area, is to be regarded as part of that Area. In relation to any area so prescribed by order, the Minister for Finance may also set down in the order the period which is to be treated as "the specified period" in relation to that area, but no such period may begin before 26 January, 1994 or end after the final dates for the various reliefs set down in the definition of "the specified period" in ***subsection (1)***.

(3) Orders made to designate areas as part of the Custom House Docks Area must be laid before Dáil Éireann in the normal way.

It is to be noted that a single order extending the area of the Customs House Docks Area for the purposes of this section and for the purposes of ***section 446*** may be made under ***section 446(12)***.

323 Capital allowances in relation to construction of certain commercial premises

Summary

This section provides for the granting of capital allowances for capital expenditure incurred in respect of work carried out on the construction of commercial buildings and structures (for example, offices, shops, etc) in the specified period. The capital allowances are available in respect of the full expenditure so incurred. The allowances available are —	
• annual writing-down allowances of 4 per cent (available to both owner-occupiers and lessors),	
• an industrial building (initial) allowance of 50 per cent (available to both owner-occupiers and lessors), and	
• free depreciation (accelerated writing-down allowances) of up to 100 per cent (available only to owner-occupiers).	
Details	
Qualifying premises	
The definition of "qualifying premises" outlines the types of buildings or structures in relation to which expenditure on construction or refurbishment may qualify for relief if the work is carried out in the specified period. Firstly, the site of the building or structure must be wholly within the Custom House Docks Area. Secondly, the building or structure must not be an industrial building or structure, nor must it be in use as or as part of a dwelling house. Thirdly, the building or structure must be either in use for the purposes of	***(1)***

a trade or profession or let on a commercial basis whether or not it is so used for the purposes of a trade or profession.	
Application of law relating to industrial buildings or structures	
Subject to the modifications set out in ***subsections (3)*** to ***(5)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions (for example, the exclusion of allowances for retail shops in ***section 268***). Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that a change in the nature of the use of the premises from, say, use as a shop to use as an office constitutes continuance of use as a qualifying premises.	***(2)(a)***
Allowances available	
Allowances are available only in respect of capital expenditure incurred during the specified period (see ***subsection (5)***).	***(2)(b)***
The effect of ***subsection (2)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. The allowances are available to both owner-occupiers and lessors of qualifying premises.	
An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. The allowance is available to both owner-occupiers and lessors of qualifying premises.	
In addition (by the deemed deletion of ***subsection (5)*** of that section), an industrial building (initial) allowance and an annual writing-down allowance may be made for the same chargeable period in respect of qualifying expenditure, and the fact that an industrial building (initial) allowance is made for a chargeable period in respect of qualifying expenditure does not preclude free depreciation (an acceleration of the annual writing-down allowances) being claimed in respect of that expenditure for subsequent chargeable periods.	
Free depreciation of up to 100 per cent of qualifying expenditure is made available under ***section 273***. Free depreciation is available only to owner-occupiers of qualifying premises.	***(3)(a)(ii)***
Balancing charge	
Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying premises was first used or, in the case where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 13 years after that expenditure was incurred.	***(4)***
Qualifying expenditure	
The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the specified period. The inspector may determine the amount of the capital expenditure referable to the work carried out during that period. Where work commences, but is not completed, in the specified period, only the part of the expenditure referable to the work carried out in that period qualifies for relief.	***(5)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —	
• ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,	
• ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and	
• ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.	

324 Double rent allowance in respect of rent paid for certain business premises

Summary

This section provides for the granting of a double deduction, as an expense in computing the profits or gains of a trade or profession, for rent paid on qualifying premises in the Custom House Docks Area. The relief is available only where a bona fide commercial lease is entered into in the specified period (25 January, 1988 to 24 January, 1999), or within the period of 2 years commencing on the day after the end of that period, and the lessee is not connected with the lessor.

In general, the relief is available for a maximum rental period of 10 years in respect of any one qualifying premises, taking into account all lease periods in respect of the premises under qualifying leases. However, there is an overriding termination date of 31 December 2008 in relation to rent payable under qualifying leases. Additionally, in certain cases no relief is available in relation to rent payable after 31 December 2003 (see ***subsection (5)***).

The term "qualifying premises" covers industrial buildings or structures and commercial premises which are situated in the Custom House Docks Area and let on bona fide commercial terms and in respect of which capital expenditure is incurred in the specified period which qualifies for capital allowances. However, for a refurbished building or structure to be treated as a qualifying premises, the refurbishment expenditure incurred in the specified period must amount to not less than 10 per cent of the market value of the building or structure before its refurbishment.

Details

Definitions

"lease", "lessee", "lessor" and "rent" take their meanings from ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage, and "lessee" and "lessor" include successors in title. ***(1)(a)***

"market value" is the price which the unencumbered fee simple of the building or structure would fetch in an open market sale less the part of that price attributable to the site of the building or structure.

"qualifying lease" is a lease in respect of a qualifying premises granted in the specified period, or within 2 years of the end of that period, on bona fide commercial terms to a

lessee who is not connected with the lessor or with any other person who is entitled to a rent in respect of the premises under that lease or any other lease.

"qualifying premises" includes industrial buildings or structures and commercial premises situated in the Custom House Docks Area which are let on bona fide commercial terms and in respect of which capital expenditure is incurred in the specified period which qualifies for capital allowances. However, where the capital expenditure so incurred is on refurbishment, the building, structure or premises is not treated as a qualifying premises unless the refurbishment expenditure amounts to not less than 10 per cent of the market value of the building, structure or premises before its refurbishment.

"refurbishment" is any work of construction, reconstruction, repair or renewal carried out in the course of the repair or restoration of a building or structure.

Duration of relief

In general, the maximum period for which the double rent allowance is available is 10 years in respect of any one premises. Thus, if a person enters into a qualifying lease in respect of a qualifying premises, all previous periods for which rent was payable in respect of the premises under a qualifying lease are taken into account in establishing the period of entitlement to the double allowance. However, in the case of a qualifying lease entered into by a person before 11 April, 1994, only those previous periods in which the premises was occupied under a qualifying lease entered into by that person or by any person connected with that person are taken into account. ***(1)(b)***

Furthermore, in the case of qualifying leases entered into before 18 April, 1991, the period for which the double rent allowance is available in relation to a qualifying premises is a straight period of 10 years commencing on the date on which rent on the premises is first payable under the qualifying lease. ***(1)(c)***

An overriding termination date of 31 December 2008 applies in relation to rent payable under qualifying leases. Additionally, in certain cases no relief is available in relation to rent payable after 31 December 2003 (see ***subsection (5)***).

The relief

A person who is carrying on a trade or profession in a qualifying premises under a qualifying lease and who is entitled, in computing the profits or gains of the trade or profession, to a deduction for rent paid on the premises for any period for which the relief under this section is available (see ***subsections (1)(b)*** and ***(c)***) is entitled to a further equivalent deduction, thereby giving a double allowance. In the case of a qualifying lease granted on or after 21 April, 1997, the double allowance is not given where the rent is payable to a connected person. ***(2)***

Prevention of abuse

A measure is included to counter possible abuse of the relief through cross-leasing between connected persons. Entitlement to the double rent allowance is conditional on the claimant and, in the case of qualifying leases entered into on or after 6 May, 1993, both the claimant and any person connected with the claimant not having an interest in a premises which is itself leased and qualifies for a double rent allowance. This condition does not apply where the claimant can show that the renting by him/her of the premises which is the subject of his/her claim for the double rent allowance was not undertaken for the sole or main benefit of obtaining that allowance. ***(3)***

Finance leases

A finance lease is not treated as a qualifying lease for the purposes of the double rent allowance. A lease is a finance lease if, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment, but excluding any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value (that is, open market value less any grants receivable towards the cost of purchase of the premises) of the premises. A lease is also a finance lease if, in substance, it provides the lessee with the risks and benefits of ownership of the premises other than legal title to the premises. ***(4)***

Overriding termination dates in relation to relief for rent payable

Relief under the section does not apply: ***(5)***

- in relation to rent payable for the period 3 December 1998 to 31 December 2003 unless:
  - (*a*) in the case of a qualifying premises in areas included in the Custom House Docks Area by order of the Minister of Finance under ***section 322(2)***, an agreement or contract to secure the development of the qualifying premises or the building in which it is located had been entered into in the specified period, but by 2 December 1998, with the Dublin Docklands Development Authority, or
  - (*b*) in the case of any other qualifying premises, an agreement or contract to secure the development of the qualifying premises or the building in which it is located had been entered into in the specified period, but by 2 December 1998, and the development was wholly or mainly completed before 1 January 2000,
- in relation to rent payable for the period 1 January 2004 to 31 December 2008 in the case of a qualifying premises referred to in ***paragraph (a)*** above,
- in relation to rent payable for the period 1 January 2004 to 31 December 2008 in the case of qualifying premises referred to in ***paragraph (b)*** above unless the construction or refurbishment of the qualifying premises was completed prior to 1 April 1998, or the construction or refurbishment of the qualifying premises commenced prior to 1 April 1998 and a lessee occupied it prior to 9 February 1999,
- in respect or rent payable for any period after 31 December 2008.

325 Rented residential accommodation: deduction for certain expenditure on construction

326 Rented residential accommodation: deduction for certain expenditure on conversion

327 Rented residential accommodation: deduction for certain expenditure on refurbishment

328 Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment

329 Provisions supplementary to sections 325 to 328

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 325, 326, 327, 328*** and ***329*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these sections, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

CHAPTER 2
Temple Bar Area

Overview

This Chapter provided for a scheme of tax reliefs designed to encourage the renewal and development of the Temple Bar Area of Dublin. Provision was made —

- in ***section 331***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures,
- in ***section 332***, for a scheme of capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain commercial premises,
- in ***section 333***, for a double rent allowance in computing trading or professional income in respect of rent paid for the lease of certain industrial buildings or structures and certain commercial premises,
- in ***sections 334, 335*** and ***336,*** respectively, for relief against rental income in respect of expenditure incurred on the construction of certain rented residential accommodation, the conversion of certain buildings into such accommodation and the refurbishment of multi-dwelling rented residential accommodation, and
- in ***section 337***, for relief to owner-occupiers in respect of expenditure incurred on the construction or refurbishment of certain residential accommodation.
- in ***section 338***, for measures which were supplementary to ***sections 334, 335, 336*** and ***337***.

The scheme is now terminated, in so far as the termination date for incurring qualifying expenditure or entering into qualifying leases has passed. However, claims in relation to qualifying expenditure incurred, or rent paid under qualifying leases entered into, before the termination date may continue to arise.

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 334, 335, 336, 337*** and ***338*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these sections, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

330 Interpretation (Chapter 2)

Summary

This section is the interpretation section for the Chapter. It defines the Temple Bar Area by reference to the area described in ***Schedule 6***. The reliefs applicable in the Temple Bar Area are granted only in respect of buildings or premises which are approved for the purposes of the Chapter by Temple Bar Renewal Limited. The qualifying period for the scheme of reliefs was from 6 April, 1991 to 5 April, 1999, except in the case of ***sections***

334 to ***336*** where it was from 30 January, 1991 to 5 April, 1999. This period was extended to 31 December, 1999 in the case of residential projects where Dublin Corporation certified that at least 50 per cent of the total cost of such projects was incurred by 5 April, 1999.

Details

Definitions

"qualifying period" is the period from 6 April, 1991, except in the case of ***sections 334 to 336*** (which provided relief against rental income for expenditure incurred on the provision of certain rented residential accommodation) where it was the period from 30 January, 1991, to — ***(1)***

(i) 5 April, 1999, or

(ii) 31 December, 1999, in the case only of ***sections 334 to 337*** (inclusive) where Dublin Corporation certified that at least 50 per cent of the total cost of the project was incurred by 5 April, 1999.

"refurbishment" is any work of construction, reconstruction, repair or renewal, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure, which is consistent with the original character or fabric of the building or structure. Specifically included as refurbishment is the provision or improvement of water, sewerage or heating facilities.

"the Temple Bar Area" is the area described in ***Schedule 6***, and that Schedule applies for the purposes of supplementing this Chapter. ***(1) & (4)***

Buildings or premises must be approved by Temple Bar Renewal Ltd

In order for relief to apply in respect of capital or other expenditure incurred or rent payable in relation to any building or premises in the Temple Bar Area, Temple Bar Renewal Ltd (the company which is the supervisory body as to the appropriate standards of construction and refurbishment works carried out in Temple Bar) must approve the buildings or premises for the purposes of this Chapter. ***(2)***

Apportionment

Total expenditure on a building or structure may be apportioned as between business and residential parts to enable the amounts of relief applicable to the respective parts to be calculated. ***(3)***

331 Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Summary

This section provides for accelerated capital allowances, by way of industrial building (initial) allowance and accelerated writing-down allowances (free depreciation), in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of certain industrial buildings or structures (factories and hotels) in the Temple Bar Area.

The rate of initial allowance, which is available to both lessors and owner-occupiers, is 25 per cent in the case of construction expenditure and 50 per cent in the case of refurbishment expenditure. The rate of free depreciation, which is available only to owner-occupiers, is 50 per cent in the case of construction expenditure and 100 per cent in the case of

refurbishment expenditure. Refurbishment expenditure incurred in the qualifying period is deemed to include (in addition to the actual refurbishment expenditure) the lesser of —

- the purchase price paid for the building or structure (exclusive of site cost), and
- its market value (exclusive of site vale) on 1 January, 1991,

but only if the refurbishment expenditure so incurred is at least equal to that purchase price or market value, as may be appropriate.

Details

Qualifying industrial buildings or structures

(1) The section applies to certain industrial buildings or structures in the Temple Bar Area which are either constructed in the qualifying period or are in existence on 1 January, 1991 and are refurbished in that period. The industrial buildings or structures covered are those in use for the purposes of a trade carried on in a mill, factory or other similar premises or in a laboratory the sole or main function of which is the analysis of minerals, or for the purposes of a trade of hotel-keeping. Given the nature of the Temple Bar Area, the section applies mainly to hotels.

Allowances available

(2) The normal industrial building annual writing-down allowances are already available under ***section 272*** in respect of capital expenditure incurred on the construction or refurbishment of qualifying industrial buildings or structures, namely, 4 per cent allowances for factories, mills, laboratories, etc and 15 per cent (10 per cent in year 7) allowances for hotels.

Accelerated capital allowances are now made available as follows in respect of such construction or refurbishment expenditure but only in so far as that expenditure is incurred in the qualifying period (see ***subsection (6)***).

An industrial building (initial) allowance is made available under ***section 271*** in respect of qualifying expenditure. The allowance is available to both owner-occupiers and lessors of qualifying industrial buildings or structures. The rate of allowance is 25 per cent in the case of qualifying construction expenditure and 50 per cent in the case of qualifying refurbishment expenditure.

In addition (by the deemed deletion of ***subsection (5)*** of that section), an industrial building (initial) allowance and an annual writing-down allowance may be made for the same chargeable period in respect of qualifying expenditure, and the fact an industrial building (initial) allowance is made for a chargeable period in respect of qualifying expenditure does not preclude accelerated writing-down allowances (free depreciation) being claimed in respect of that expenditure for subsequent chargeable periods.

(3) Accelerated writing-down allowances (free depreciation) are made available under ***section 273*** in respect of qualifying expenditure. Free depreciation is available only to owner-occupiers of qualifying industrial buildings or structures – it is not available to lessors. The rate of free depreciation available is 50 per cent in the case of qualifying construction expenditure and 100 per cent in the case of qualifying refurbishment expenditure.

Refurbishment expenditure

(4) Refurbishment expenditure incurred in the qualifying period is deemed to include (in addition to the actual refurbishment expenditure) the lesser of —

- the purchase price paid for the building or structure (exclusive of site cost), and
- its market value (exclusive of site value) on 1 January, 1991,

but this effective enhancement of the relief is available only if the refurbishment expenditure actually incurred in the qualifying period is at least equal to that purchase price or market value, as may be appropriate.

Balancing charge

(5) Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying industrial building or structure which is a factory, mill or laboratory type premises, a balancing charge will not be made if that event occurs more than 13 years after the building or structure was first used or, in the case where refurbishment expenditure on the building or structure qualified for capital allowances, more than 13 years after that expenditure was incurred.

[This provision does not impact on hotels where the retention period required to avoid a balancing charge is 7 years or 10 years depending on when the capital expenditure on the construction or refurbishment of the hotel was incurred (***section 274(1)(b)(iii)*** refers).]

Qualifying expenditure

(6) The capital expenditure which is to qualify for accelerated capital allowances must be expenditure incurred on construction or refurbishment work actually carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for the accelerated capital allowances provided by this section. Of course, title to the normal writing-down allowances still exist in relation to the part of the expenditure referable to work carried out outside the qualifying period.

This provision negates, for the purposes only of determining the amount of expenditure which is to qualify for accelerated capital allowances under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of those allowances. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

Bar on double relief

(7) It is not possible to obtain "double relief" under this section and also under the Temple Bar Area legislation that operated under ***section 42*** of the Finance Act, 1986 as applied by section 55 of the Finance Act, 1991. Any allowance given or charge made under that earlier legislation in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of qualifying industrial buildings or structures is treated as having been given or made under this section.

332 Capital allowances in relation to construction or refurbishment of certain commercial premises

Summary

This section provides for a scheme of capital allowances in respect of capital expenditure incurred on the construction or refurbishment in the qualifying period of commercial premises in the Temple Bar Area (that is, buildings which are not industrial buildings or structures for tax purposes, for example, shops, offices, pubs, multi-storey car parks, etc).

In the case of refurbishment expenditure and the construction of multi-storey car parks, 100 per cent of the expenditure incurred is available for write-off. Refurbishment expenditure incurred in the qualifying period is deemed to include (in addition to the actual refurbishment expenditure so incurred) the lesser of the purchase price paid for the building (exclusive of site cost) and its market value (exclusive of site vale) on 1 January, 1991, but only if the refurbishment expenditure so incurred is at least equal to the purchase price or market value, as may be appropriate. In the case of other construction expenditure, a maximum of 50 per cent of the expenditure incurred is available for write-off.

For refurbishment expenditure and construction expenditure on certain multi-storey car parks, which qualifies for a full 100 per cent write off, the scheme of allowances is —

- annual writing-down allowances of 4 per cent (available to both owner-occupiers and lessors),
- an industrial building (initial) allowance of 50 per cent (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 100 per cent (available only to owner-occupiers).

For other construction expenditure, which qualifies only for a 50 per cent write off, the scheme of allowances is —

- annual writing-down allowances of 2 per cent (available to both owner-occupiers and lessors),
- an industrial building (initial) allowance of 25 per cent (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 50 per cent (available only to owner-occupiers).

Details

Definitions

"multi-storey car park" is a car park consisting of 3 or more storeys which must be wholly or mainly in use for the purpose of providing car parking to the public generally without preference for any particular class of person. ***(1)***

"qualifying premises" defines the buildings or structures expenditure on the construction or refurbishment of which may qualify for relief if the work is carried out in the qualifying period. Firstly, the building or structure must be constructed in the Temple Bar Area in the qualifying period or, in the case of buildings or structures in existence in that Area on 1 January, 1991, refurbished in that period. Secondly, the building or structure must not be an industrial building or structure, nor must it be in use as or as part of a dwelling house. Thirdly, the building or structure must be in use for the purposes of a trade or profession or, whether or not it is so used, let on a commercial basis.

Application of law relating to industrial buildings or structures

Subject to the modifications set out in ***subsections (3)*** to ***(8)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions (for example, the exclusion ***(2)(a)***

of allowances for retail shops in ***section 268***). Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that a change in the nature of the use of the premises from, say, use as a shop to use as an office constitutes continuance of use as a qualifying premises.

Allowances available

Allowances are available only in respect of capital expenditure incurred during the specified period (see ***subsection (8)***). ***(2)(b)***

The effect of ***subsection (2)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. By virtue of ***subsection (7)***, however, the writing-down allowances are halved to 2 per cent in the case of qualifying construction expenditure other than such expenditure on multi-storey car parks. The writing-down allowances are available to both owner-occupiers and lessors of qualifying premises.

An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. By virtue of ***subsection (7)***, however, the initial allowance is halved to 25 per cent in the case of qualifying construction expenditure other than such expenditure on multi-storey car parks. The initial allowance is available to both owner-occupiers and lessors of qualifying premises. ***(3)***

In addition (by the deemed deletion of ***subsection (5)*** of ***section 271***), an industrial building (initial) allowance and an annual writing-down allowance may be made for the same chargeable period in respect of qualifying expenditure, and the fact that an industrial building (initial) allowance is made for a chargeable period in respect of qualifying expenditure does not preclude free depreciation (an acceleration of the annual writing-down allowances) being claimed for subsequent chargeable periods.

Free depreciation (an acceleration of the annual writing-down allowances) of up to 100 per cent of qualifying expenditure is made available under ***section 273***. By virtue of ***subsection (7)***, however, the free depreciation entitlement is halved to 50 per cent in the case of qualifying construction expenditure other than such expenditure on multi-storey car parks. Free depreciation is available only to owner-occupiers of qualifying premises. ***(4)***

Refurbishment expenditure

Refurbishment expenditure incurred in the qualifying period is deemed to include (in addition to the actual refurbishment expenditure) the lesser of — ***(5)***

- the purchase price paid for the building or structure (exclusive of site cost), and
- its market value (exclusive of site value) on 1 January, 1991,

but this effective enhancement of the relief is available only if the refurbishment expenditure actually incurred in the qualifying period is at least equal to that purchase price or market value, as may be appropriate.

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying premises was first used ***(6)***

or, in the case where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 13 years after that expenditure was incurred.

Allowances halved for construction expenditure except for multi-storey car parks

In the case of qualifying construction expenditure, other than in the case of multi-storey car parks, only one-half of the writing-down allowances, industrial building (initial) allowance and free depreciation which would otherwise apply are available. In effect, therefore, annual writing-down allowances of 2 per cent, an industrial building (initial) allowance of 25 per cent and free depreciation of 50 per cent are available in respect of such expenditure, and there is an overall cap of 50 per cent on the amount of such expenditure which can be written off. Any balancing allowances or charges arising are similarly restricted to one-half of the allowance or charge which would otherwise arise. ***(7)(a)***

The allowances and charges are computed in the first place as if the one-half restriction did not apply and the resultant allowances or charges are then reduced by one-half. ***(7)(b)***

The operation of ***section 274(8)*** is not affected by this mechanism. Thus, the amount of a balancing charge cannot exceed the amount of the capital allowances actually made to the taxpayer. ***(7)(c)***

Qualifying expenditure

The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(8)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

Bar on double relief

It is not possible to obtain "double relief" under this section and also under the Temple Bar Area legislation that operated under ***section 42*** of the Finance Act, 1986 as applied by section 55 of the Finance Act, 1991. Any allowance given or charge made under that earlier legislation in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of qualifying premises is treated as having been given or made under this section. ***(9)***

333 Double rent allowance in respect of rent paid for certain business premises

Summary

This section provides for the granting of a double deduction, as an expense in computing the profits or gains of a trade or profession, for rent paid on qualifying premises in the Temple Bar Area. The relief is available only where a bona fide commercial lease is entered into in the qualifying period (6 April 1991 to 5 April 1999), or by 31 December 1999, and the lessee is not connected with the lessor. In general, the relief is available for a maximum rental period in respect of any one qualifying premises of 10 years taking into account all lease periods in respect of the premises under qualifying leases.

The term "qualifying premises" covers industrial buildings or structures and commercial premises which are situated in the Temple Bar Area and let on bona fide commercial terms and in respect of which capital expenditure is incurred in the qualifying period which qualifies for capital allowances. However, for a refurbished building or structure to be treated as a qualifying premises, the refurbishment expenditure incurred in the qualifying period must amount to not less than 10 per cent of the market value of the building or structure before its refurbishment.

Details

Definitions

"lease", "lessee", "lessor" and "rent" take their meanings from ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage, and "lessee" and "lessor" include successors in title. ***(1)(a)***

"market value" is the price which the unencumbered fee simple of the building or structure would fetch in an open market sale less the part of that price attributable to the site of the building or structure.

"qualifying lease" is a lease in respect of a qualifying premises granted in the qualifying period, or in any subsequent period ending on or before 31 December 1999, on bona fide commercial terms to a lessee who is not connected with the lessor or with any other person who is entitled to a rent in respect of the premises under that lease or any other lease.

"qualifying premises" includes industrial buildings or structures and commercial premises situated in the Temple Bar Area which are let on bona fide commercial terms and in respect of which capital expenditure is incurred in the qualifying period which qualifies for capital allowances. However, where the capital expenditure so incurred is on refurbishment, the building, structure or premises is not treated as a qualifying premises unless the refurbishment expenditure amounts to not less than 10 per cent of the market value of the building, structure or premises before its refurbishment.

Duration of relief

In general, the maximum period for which the double rent allowance is available is 10 years in respect of any one premises. If a person enters into a qualifying lease in respect of a qualifying premises, all previous periods for which rent was payable in respect of the premises under a qualifying lease are taken into account in establishing the period of entitlement to the double allowance. Thus, for example, if a previous tenant had claimed a double rent allowance for a period of 4 years in respect of rent paid for the premises, the maximum period for which the double rent allowance would be available to a new tenant would be 6 years. However, in the case of a qualifying lease entered into by a person before 11 April, 1994, only those previous periods in which the premises was occupied ***(1)(b)***

under a qualifying lease entered into by that person or any person connected with that person are taken into account.

Furthermore, in the case of qualifying leases entered into before 18 April, 1991, the period for which the double rent allowance is available in relation to a qualifying premises is a straight period of 10 years commencing on the date on which rent on the premises is first payable under the qualifying lease. ***(1)(c)***

The relief

A person who is carrying on a trade or profession in a qualifying premises under a qualifying lease and who is entitled, in computing the profits or gains of the trade or profession, to a deduction for rent paid on the premises for any period for which the relief is available (see ***subsections (1)(b)*** and ***(c)***) is entitled to a further equivalent deduction, thereby giving a double allowance. In the case of a qualifying lease granted on or after 21 April, 1997, the double allowance is not to be given where the rent is payable to a connected person. ***(2)***

Prevention of abuse

A measure is included to counter possible abuse of the relief through cross-leasing between connected persons. Entitlement to the double rent allowance is conditional on the claimant and, in the case of qualifying leases entered into on or after 6 May, 1993, both the claimant and any person connected with the claimant not having an interest in a premises which is itself leased and qualifies for a double rent allowance. This condition does not apply where the claimant can show that the renting by him/her of the premises which is the subject of his/ her claim for the double rent allowance was not undertaken for the sole or main benefit of obtaining that allowance. ***(3)***

Finance leases

A finance lease is not treated as a qualifying lease for the purposes of the double rent allowance. A lease is a finance lease if, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment, but excluding any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value (that is, open market value less any grants receivable towards the cost of purchase of the premises) of the premises. A lease is also a finance lease if, in substance, it provides the lessee with the risks and benefits of ownership of the premises other than legal title to the premises. ***(4)***

Bar on double relief

It is not possible to obtain "double relief" under this section and also under the Temple Bar Area legislation that operated under ***section 45*** of the Finance Act, 1986 as applied by section 55 of the Finance Act, 1991. Any rent which qualified for a double deduction under that earlier legislation is treated as having been relieved under this section. ***(5)***

334 Rented residential accommodation: deduction for certain expenditure on construction

335 Rented residential accommodation: deduction for certain expenditure on conversion

336 Rented residential accommodation: deduction for certain expenditure on refurbishment

337 Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment

338 Provisions supplementary to sections 334 to 337

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 334, 335, 336, 337*** and ***338*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these ***sections***, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

CHAPTER 3

Designated areas, designated streets, enterprise areas and multi-storey car parks in certain urban areas

Overview

This Chapter provided for a scheme of tax reliefs designed to promote urban renewal and redevelopment in certain areas of the country. The areas in question were, in general, designated for the purposes of the Chapter by way of order of the Minister for Finance. However, certain enterprise areas are described in ***Schedule 7***. The Chapter also contained measures to promote "living over the shop" in certain designated streets. Again, the streets in question were designated for the purposes of the Chapter by way of order of the Minister for Finance.

Provision was made —

- in ***section 341***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures in designated areas and designated streets,
- in ***section 342***, for capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain commercial premises in designated areas and designated streets,
- in ***section 343***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain buildings or structures in enterprise areas,
- in ***section 344***, for capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain multi-storey car parks,
- in ***section 345***, for a double rent allowance in computing trading or professional income in respect of rent paid for the lease of certain industrial buildings or structures and certain commercial premises,
- in ***section 346***, for relief against rental income in respect of expenditure incurred on the construction of certain rented residential accommodation in designated areas,
- in ***sections 347*** and ***348***, respectively, for relief against rental income in respect of expenditure incurred on the conversion of certain buildings in designated areas and designated streets into rented residential accommodation and on the refurbishment of multi-dwelling rented residential accommodation in those areas and streets, and
- in ***section 349***, for relief to owner-occupiers in respect of expenditure incurred on the construction or refurbishment of certain residential accommodation in designated areas and designated streets.

- in ***section 350***, for measures which were supplementary to ***sections 346, 347, 348*** and ***349.***

The scheme is now terminated, in so far as the termination date for incurring qualifying expenditure or entering into qualifying leases has passed. However, claims in relation to qualifying expenditure incurred, or rent paid under qualifying leases entered into, before the termination date may continue to arise.

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 346***, ***347***, ***348***, ***349*** and ***350*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these sections, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

339 Interpretation (Chapter 3)

Summary

This section is the interpretation section for the Chapter. It contains definitions of terms used throughout the Chapter and, in particular, sets out the qualifying periods for the scheme of reliefs provided by the Chapter.

Details

Definitions

"designated area" and "designated street" is an area or street specified as a designated area or a designated street by order of the Minister for Finance under ***section 340***. ***(1) & (3)***

"enterprise area" is an area specified as an enterprise area by order of the Minister for Finance under ***section 340*** or an area described in ***Schedule 7***, (Cherry Orchard/Gallenstown, Finglas and Rosslare Harbour), which applies for the purposes of supplementing this Chapter.

"lease", "lessee", "lessor", "premium" and "rent" have the same meanings as in ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage. "Lessee" and "lessor" include successors in title. "Premium" includes any like sum whether payable to an immediate or superior lessor or to a person connected with the immediate or superior lessor.

"market value" is the price which the unencumbered fee simple of the building, structure or house would fetch in an open market sale less the part of that price attributable to the site of the building, structure or house.

"qualifying period" is, in general, the period from 1 August, 1994 to 31 July, 1997. However, this period may be extended in certain cases – see ***subsections (2)(a)*** to ***(2)(d)***. Also, it is subject to change in the case of any area or street specified as a designated area, a designated street or enterprise area by way of Ministerial order under ***section 340*** – see ***subsections (1)*** and ***(2)*** of that section. Moreover, it does not apply in the case of ***section 344*** which provides capital allowances in respect of certain capital expenditure incurred on the construction or refurbishment of certain multi-storey car parks and which has its own separate qualifying period. Finally, in the case of "enterprise areas" described in ***Schedule 7***, there is also a separate qualifying period, namely, 1 July, 1997 to 31 December, 1999. This period may be extended in certain cases – see ***subsection (2)(e)***.

"refurbishment", other than for the purposes of ***sections 348*** and ***349***, is any work of construction, reconstruction, repair or renewal, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure. Specifically included as refurbishment is the provision or improvement of water, sewerage or heating facilities.

"the relevant local authority" is, for the purposes of the extension of the qualifying period in certain cases provided by ***subsection (2)***, the local authority in whose functional area the particular premises is situated.

"street" includes part of a street and the whole or part of any road, square, quay or lane.

Extension of qualifying period in certain cases

(2)(a) The end date of the general qualifying period was in certain circumstances extended by one year to 31 July, 1998 in the case of designated areas and designated streets and enterprise areas (other than those described in ***Schedule 7***). The extension applies where the relevant local authority has certified on or before 30 September, 1997 that not less than 15 per cent of the total cost (including site cost) of the building, structure or premises was incurred before 31 July, 1997. The time limit extension applies for all the reliefs available under the Chapter in the case of the designated areas and streets and the enterprise areas in question. The extension does not impact on the relief available under ***section 344*** in respect of capital expenditure incurred on certain multi-storey car parks nor does it have any impact on entitlement to the double rent allowance under ***section 345*** in respect of rent paid for such a multi-storey car park. (Please refer to ***sections 344*** and ***345*** respectively for details of extended qualifying periods, in certain circumstances, in relation to these reliefs for multi-storey car parks).

(2)(b) In deciding whether to issue a certificate, local authorities are required to have regard only to guidelines issued by the Department of the Environment on 28 January, 1997. These guidelines are entitled "Extension from 31 July, 1997, to 31 July, 1998, of the time limit for qualifying expenditure on developments".

(2)(c) The deadline in relation to the buildings, structures and premises to which ***subsection (2)(a)*** above relates was extended to 31 December, 1998, subject to the following conditions —

- 15 per cent of the total cost of the building or structure was certified by the relevant local authority to have been incurred by 31 July, 1997,
- an application for planning permission, if needed, was received by a planning authority by 1 March, 1998, and
- where the previous deadline of 31 July, 1998 was not met, a certificate from the relevant local authority stating that in its opinion the person had a reasonable expectation on 31 July, 1997 that the expenditure to be incurred would have been incurred by 31 July, 1998 and that the failure to meet that deadline was due to unanticipated specified delays.

(2)(d) Additionally, a further 4-month extension of the scheme to 30 April, 1999 applies to residential elements of projects for which the scheme was previously extended to 31 December, 1998 and is available where the relevant local authority certifies that at least 50 per cent of the total cost was incurred by 31 December, 1998.

(2)(e) An extension is also provided for in the case of qualifying buildings in the enterprise areas described in ***Schedule 7*** (Cherry Orchard/Gallenstown, Finglas and Rosslare Harbour), which have a separate qualifying period, namely, 1 July, 1997 to 31 December, 1999. This period is extended by one year, for capital allowances purposes, to 31 December 2000 where the relevant local authority certifies by 31 May 2000, in accordance with

Department of Environment guidelines, that at least 50 per cent of the project costs had been incurred by 31 December 1999.

340 Designated areas, designated streets and enterprise areas

Summary

The Minister for Finance, following consultation with the Minister for Environment and Local Government, may by order direct that certain areas and streets are to be "designated areas", "designated streets" or "enterprise areas" for the purposes of the Chapter. In relation to any area or street so described by order, the Minister for Finance may also set down in the order the period which is to be treated as the "qualifying period" in relation to that area or street, but no such period may begin before 1 August, 1994 or end after 31 July, 1997 or such other date to which this termination date is extended by virtue of ***section 339(2)***.

The Minister for Finance, following consultation with the Minister for Public Enterprise, may also direct by order that certain locations adjacent to certain regional airports are to be "enterprise areas" for the purposes of this Chapter. In relation to any area so described by order, the Minister for Finance may also set down in the order the period which is to be treated as the "qualifying period" in relation to that area, but no such period may begin before 1 August, 1994 or end after 31 December, 1999, or 31 December 2000, in certain circumstances.

Details

Designated areas, designated streets and certain enterprise areas

(1) The Minister for Finance is empowered, after consultation with the Minister for the Environment and Local Government, to direct by order that an area or street is to be a designated area, a designated street or an enterprise area for the purposes of this Chapter. In relation to any such area or street, the qualifying period for the scheme of reliefs is to be the period as set out in the order, but no such period may begin before 1 August, 1994 or end after 31 July, 1997 or such other date to which this termination date is extended by virtue of ***section 339(2)***.

Enterprise areas adjacent to regional airports

(2) The Minister for Finance may by order direct that areas immediately adjacent to certain regional airports are to be treated as enterprise areas for the purposes of this Chapter. Before making any such order, the Minister for Finance must consult with the Minister for Public Enterprise and must also have received a proposal from or on behalf of a company wishing to set up qualifying trading operations (that is, manufacturing qualifying for the 10 per cent rate of corporation tax or internationally traded services as designated under the Industrial Development Act, 1986, for example, research and development services). The airports concerned are Cork, Donegal, Galway, Kerry, Knock, Sligo and Waterford. In relation to areas designated as enterprise areas under this provision, the qualifying period for relief is to be the period as set out in the order, but no such period may begin before 1 August, 1994 or end after:

- 31 December, 1999, or
- 31 December 2000, where the relevant local authority certifies by 31 May 2000, in accordance with Department of Environment guidelines, that at least 50 per cent of the project costs had been incurred by 31 December 1999.

Ministerial orders to be laid before Dáil Éireann

Orders made by the Minister for Finance under this section must be laid before Dáil Éireann in the normal manner. ***(3)***

341 Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Summary

Subject to conditions, accelerated capital allowances, by way of industrial building (initial) allowance and accelerated writing-down allowances (free depreciation), are available in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of certain industrial buildings or structures in designated areas and, subject to further conditions, in respect of capital expenditure incurred on the refurbishment of such buildings in designated streets. The initial allowance available provides for the write-off of 25 per cent of expenditure incurred (available to both lessors and owner-occupiers). Free depreciation (available only to owner-occupiers) allows for the write-off of up to 50 per cent of expenditure incurred. Any balance of expenditure unallowed may be written off under the normal annual writing-down allowances provided for by ***section 272***. The industrial buildings or structures covered by the section are mills, factories and other similar premises and laboratories the sole or main function of which is the analysis of minerals.

Details

Qualifying industrial buildings or structures

The section applies to certain industrial buildings or structures the sites of which are wholly within a designated area or which front on to a designated street. The industrial buildings or structures covered are those in use for the purposes of a trade carried on in a mill, factory or other similar premises or in a laboratory the sole or main function of which is the analysis of minerals in connection with the exploration for, or extraction of, minerals. ***(1)***

Allowances available

The normal industrial building writing-down allowances of 4 per cent per annum are already available under ***section 272*** in respect of capital expenditure incurred on the construction or refurbishment of qualifying industrial buildings or structures. Accelerated capital allowances are now made available as follows in respect of such construction or refurbishment expenditure.

Designated areas

An industrial building (initial) allowance of 25 per cent is made available under ***section 271*** in respect of qualifying expenditure (see ***subsection (6)***) on the construction or refurbishment of qualifying industrial buildings or structures in the designated areas. The allowance is available to both owner-occupiers and lessors of such buildings or structures. ***(2)***

Accelerated writing-down allowances (free depreciation) of 50 per cent are made available under ***section 273*** in respect of qualifying expenditure (see ***subsection (6)***) on the construction or refurbishment of qualifying industrial buildings or structures in the designated areas. Free depreciation is available only to owner-occupiers of such buildings or structures – it is not available to lessors. ***(3)***

Designated streets

An industrial building (initial) allowance of 25 per cent and accelerated writing-down allowances (free depreciation) of 50 per cent are also available in respect of qualifying expenditure (see ***subsection (6)***) incurred on the refurbishment of qualifying industrial buildings or structures which front on to a designated street. (These allowances are not available in respect of construction expenditure on such buildings or structures.) In order for the allowances to apply in the case of qualifying refurbishment expenditure, 2 conditions must be satisfied. These are that — ***(2), (3) & (4)(a)***

- the qualifying industrial building or structure must be comprised in a building or structure in existence on 1 August, 1994, and
- apart from the capital expenditure incurred on the refurbishment of the industrial building or structure in the qualifying period, expenditure must also be incurred on the existing building which qualified for relief under —
  - ***section 347***, which provided relief for expenditure incurred on the conversion of certain buildings into rented residential accommodation,
  - ***section 348***, which provided relief for expenditure incurred on the refurbishment of multi-dwelling rented residential accommodation, or
  - ***section 349***, which provided relief for expenditure incurred on the construction or refurbishment of owner-occupied residential accommodation.

Moreover, the amount of the capital expenditure incurred on the refurbishment of the industrial building or structure which qualifies for the industrial building (initial) allowance and free depreciation is confined to an amount which does not exceed the aggregate amount of the expenditure incurred on the residential element of the existing building which qualifies for relief under ***sections 347, 348*** and ***349***. It should be noted, however, that any capital expenditure incurred on the refurbishment of the industrial unit which [because of the operation of this provision or the fact that the industrial building (initial) allowance and free depreciation are respectively confined to 25 per cent and 50 per cent of the expenditure incurred] does not qualify for the industrial building (initial) allowance or free depreciation by virtue of this section, will still qualify for the normal industrial building writing-down allowance of 4 per cent per annum under ***section 272***. ***(4)(b)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying industrial building or structure, a balancing charge will not be made if that event occurs more than 13 years after the building or structure was first used or, in the case where refurbishment expenditure on the building or structure qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(5)***

Qualifying expenditure

The capital expenditure which is to qualify for the industrial building (initial) allowance and free depreciation must be expenditure incurred on construction or refurbishment work actually carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for those allowances. Of course, title to the normal writing-down allowances under ***section 272*** will still exist in relation to the part of the expenditure referable to work carried out outside the qualifying period. ***(6)***

This provision negates, for the purposes only of determining the amount of expenditure which is to qualify for the industrial building (initial) allowance and free depreciation,

other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of those allowances. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

342 Capital allowances in relation to construction or refurbishment of certain commercial premises

Summary

A scheme of capital allowances is made available in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of certain commercial premises (that is, buildings which are not industrial buildings or structures for tax purposes, for example, shops, restaurants, etc) in designated areas and in respect of capital expenditure incurred in the qualifying period on the refurbishment of such premises on designated streets. The allowances are restricted to a maximum 50 per cent write-off of the capital expenditure incurred. The allowances available are —

- annual writing-down allowances of 2 per cent (available to both owner-occupiers and lessors),
- an industrial building (initial) allowance of 25 per cent (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 50 per cent (available only to owner-occupiers).

Details

Qualifying premises

This provision defines the types of buildings or structures, expenditure on the construction or refurbishment of which may qualify for relief if the work is carried out in the qualifying period. Firstly, the site of the building or structure must be wholly within a designated area or the building or structure must front on to a designated street. Secondly, the building or structure must not be an industrial building or structure, nor must it be in use as or as part of a dwelling house. Thirdly, the building or structure must be in use for the purposes of a trade or profession or, whether or not it is so used, must be let on a commercial basis. Finally, subject to the following exceptions, the building or structure must not be in use as or as part of an office. ***(1)(a)***

If the site of the building or structure is not within any of the county boroughs of Dublin, Cork, Galway, Limerick or Waterford, the building or structure may be in use as or as part of an office. Where the site of the building or structure is within any of the county boroughs of Dublin, Cork, Galway, Limerick or Waterford, then, if only part of the building or structure is in use as or as part of an office and the capital expenditure incurred in the qualifying period on the construction or refurbishment of that part is not more than 10 per cent of the total capital expenditure incurred on the construction or refurbishment of the ***(1)(b)***

whole building or structure in that period, the whole building or structure is treated as a qualifying premises.

Application of law relating to industrial buildings or structures

Subject to the modifications set out in ***subsections (3)*** to ***(6)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions (for example, the exclusion of allowances for retail shops in ***section 268***). Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that a change in the nature of the use of the premises from, say, use as a shop to use as a restaurant constitutes continuance of use as a qualifying premises. ***(2)(a)***

Allowances available – designated areas

Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises during the qualifying period (see ***subsection (7)***). ***(2)(b)***

The effect of ***subsection (2)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. By virtue of ***subsection (6)***, however, the writing-down allowances are halved to 2 per cent. The writing-down allowances are available to both owner-occupiers and lessors of qualifying premises.

Free depreciation (an acceleration of the annual writing-down allowances) of up to 100 per cent of qualifying expenditure is made available under ***section 273***. By virtue of ***subsection (6)***, however, the free depreciation entitlement is halved to 50 per cent. Free depreciation is available only to owner-occupiers of qualifying premises. ***(4)(b)***

Allowances available – designated streets

The same regime of capital allowances (2 per cent annual writing-down allowances, 25 per cent industrial building (initial) allowance and 50 per cent accelerated writing-down allowances (free depreciation)) as is available in the designated areas is also available in the case of the designated streets, but the allowances are available only in respect of qualifying expenditure incurred on the refurbishment of qualifying premises. (The allowances are not available in respect of construction expenditure on such premises.) ***(2) & (4)***

In addition, in order for the allowances to apply in the case of qualifying refurbishment expenditure, 2 conditions must be satisfied. These are that — ***(3)(a)***

- the qualifying premises must be comprised in a building or structure in existence on 1 August, 1994, and
- apart from the capital expenditure incurred on the refurbishment of the qualifying premises in the qualifying period, expenditure must also be incurred on the existing building which qualified for relief under —
    - ***section 347***, which provided relief for expenditure incurred on the conversion of certain buildings into rented residential accommodation,
    - ***section 348***, which provided relief for expenditure incurred on the refurbishment of multi-dwelling rented residential accommodation, or
    - ***section 349***, which provided relief for expenditure incurred on the construction or refurbishment of owner-occupied residential accommodation.

Moreover, the amount of the capital expenditure incurred on the refurbishment of the qualifying premises which qualifies for capital allowances is confined to an amount which does not exceed the aggregate amount of the expenditure incurred on the residential element of the existing building which qualified for relief under ***sections 347, 348*** and ***349***. ***(3)(b)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying premises was first used or, in the case where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(5)***

Allowances halved for qualifying expenditure

This provision provides that only one-half of the writing-down allowances, industrial building (initial) allowance and free depreciation which would otherwise apply are available. In effect, therefore, annual writing-down allowances of 2 per cent, an industrial building (initial) allowance of 25 per cent and free depreciation of 50 per cent are available in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of qualifying premises, and there is an overall cap of 50 per cent on the amount of such expenditure which can be written off. Any balancing allowances or charges arising are similarly restricted to one-half of the allowance or charge which would otherwise arise. ***(6)(a)***

The allowances and charges are computed in the first place as if the one-half restriction did not apply and the resultant allowances or charges are then reduced by one-half. ***(6)(b)***

The operation of ***section 274(8)*** is not affected by this mechanism. Thus, the amount of a balancing charge cannot exceed the amount of the capital allowances actually made to the taxpayer. ***(6)(c)***

Qualifying expenditure

The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(7)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

343 Capital allowances in relation to construction or refurbishment of certain buildings or structures in enterprise areas

Summary

A scheme of capital allowances is made available in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of certain buildings or structures in enterprise areas which are to be used by qualifying companies in the carrying on of certain trading operations (manufacturing or internationally traded services). The section provides that capital allowances for qualifying buildings in enterprise areas at regional airports cannot be claimed by property developers in certain circumstances (see ***subsection 11***).

Qualifying companies must be certified by the Minister for Enterprise, Trade and Employment on the recommendation of Forfás. The full amount (100 per cent) of the expenditure so incurred is available for write off as follows —

- annual writing-down allowances of 4 per cent (available to both owner-occupiers and lessors),
- an industrial building (initial) allowance of 25 per cent (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 50 per cent (available only to owner-occupiers).

Details

Definitions

(1) "property developer" means a person wholly or mainly involved in the trade of constructing or refurbishing buildings for sale,

"the Minister" is expressed to mean the Minister for Enterprise, Trade and Employment. The reference to "except where the context otherwise requires" is necessary to avoid any confusion with the one reference in the section to the Minister for Finance.

"qualifying building" is a building or structure the site of which is wholly within an enterprise area, and which is in use for the purposes of the carrying on of "qualifying trading operations" by a "qualifying company", but does not include any part of a building or structure in use as, or as part of, a dwelling house. Thus, a qualifying building may be an industrial or a commercial (including offices) type building.

"qualifying company" is a company —

- which has been approved for financial assistance under a scheme administered by Forfás, Enterprise Ireland, the Industrial Development Agency (Ireland) or Údarás na Gaeltachta, or which is employed in the freight forwarding business in an enterprise area adjacent to a regional airport, and
- to which the Minister for Enterprise, Trade and Employment has given a certificate certifying that the company is a qualifying company which certificate has not been revoked by that Minister.

"qualifying trading operations" covers manufacturing activities qualifying for the 10 per cent rate of corporation tax, internationally traded services, that is, those services designated under the Industrial Development Act, 1986, and freight forwarding and certain allied services in enterprise areas adjacent to the regional airports.

Procedure for certification as a qualifying company

(2) The Minister for Enterprise, Trade and Employment may give a certificate to a company certifying that a company is, with effect from a date to be specified in the certificate, to be treated as a qualifying company. Such a certificate may be given only —

- on the recommendation of Forfás (in conjunction with Enterprise Ireland, the Industrial Development Agency (Ireland) or Údarás na Gaeltachta, as may be appropriate or the Minister for Public Enterprise in the case of a company engaged in freight forwarding at a regional airport), in accordance with guidelines laid down by the Minister for Enterprise, Trade and Employment, and

(4) The Minister for Enterprise, Trade and Employment may not certify that a company is a qualifying company unless —

- the company is carrying on, or intends to carry on, qualifying trading operations in an enterprise area, and
- that Minister is satisfied that the carrying on by the company of such trading operations will contribute to the balanced development of the enterprise area.

(5) In certain circumstances a certificate may be revoked. These are where —

- the company to which the certificate has been given ceases to carry on, or fails to commence to carry on, qualifying trading operations in the enterprise area, or
- the Minister for Enterprise, Trade and Employment is satisfied that the company has failed to comply with any condition subject to which the certificate was given.

In either case that Minister may revoke the certificate by way of notice served on the company by registered post. The revocation will take effect from such date as is specified in that notice.

(6) The Minister for Enterprise, Trade and Employment may take certain action if of the opinion that any activity of a company has had, or may have, an adverse effect on the use or development of the enterprise area or is otherwise inimical to the balanced development of the enterprise area. In any such case, the Minister may serve a notice in writing on the company by registered post requiring the company to desist from such activity with effect from a date to be specified in the notice. If the Minister is not satisfied that the company has complied with the requirements of the notice, the Minister may, by a further notice in writing served by registered post on the company, revoke the certificate given to the company. The revocation will take effect from such date as is specified in that further notice.

Application of law relating to industrial buildings or structures

(7)(a) Subject to the modifications set out in ***subsections (8)***, ***(9)*** and ***(11)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying buildings, despite anything to the contrary in those provisions. Those provisions are so applied as if a qualifying building were, at all times it is a qualifying building, an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises). The reference to the qualifying building being so treated "at all times at which it is a qualifying building" ensures that the allowances continue to be available only as long as the building or structure remains a qualifying building.

Allowances available

(7)(b) Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying building during the qualifying period (see ***subsection (10)***).

The effect of ***subsection (7)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. The writing-down allowances are available to both owner-occupiers and lessors of qualifying buildings.

An industrial building (initial) allowance of 25 per cent of qualifying expenditure is made available under ***section 271*** (In the case of an enterprise area adjacent to a regional airport, the rate is 50 per cent with effect from 1 January, 1998.) The initial allowance is available to both owner-occupiers and lessors of qualifying buildings. ***(8)(a)***

Free depreciation (an acceleration of the annual writing-down allowances) of up to 50 per cent of qualifying expenditure is made available under ***section 273***. Free depreciation is available only to owner-occupiers of qualifying buildings. ***(8)(b)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying building, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying building was first used or, in the case where refurbishment expenditure on the qualifying building qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(9)***

Qualifying expenditure

The capital expenditure which is to be relieved under this section must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(10)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

Property developers and airport enterprise areas

Capital allowances may not be availed of by a property developer who holds the relevant interest (within the meaning of ***section 269***) in expenditure incurred on the construction or refurbishment of a qualifying building in an airport enterprise area, in circumstances where that expenditure was incurred by the property developer or by a person connected (within the meaning of ***section 1***0) with the property developer. ***(11)***

344 Capital allowances in relation to construction or refurbishment of certain multi-storey car parks

Summary

Capital allowances are available in respect of capital expenditure incurred in the period 1 July 1995 to 30 June 1998 on the construction or refurbishment of certain multi-storey car parks in urban areas which are certified by the relevant local authority as having been developed in accordance with criteria laid down by the Minister for the Environment and Local Government following consultation with the Minister for Finance. The end date for the scheme has been extended to 30 September 1999 (all areas) or to 31 July 2008 (car-parks outside of Cork and Dublin) where certain conditions are met. The allowances available were originally restricted to a maximum 50 per cent write-off of the capital expenditure incurred but this restriction applies as respects expenditure incurred after 31 July 1998 only if double rent allowance is availed of in relation to the multi-storey car park.

Where a project qualifies for the extension to 31 July 2008, the amount of any capital expenditure attributable to the year 2007 and to the period 1 January 2008 to 31 July 2008 which may qualify for capital allowances must be reduced to 75 per cent and 50 per cent respectively of the amount for the capital expenditure attributable to period involved.

The allowances available in relation to capital expenditure incurred (or that expenditure as reduced in accordance with the above restrictions) are —

- annual writing-down allowances of 4 per cent (or, if applicable, 2 per cent) (available to both owner-occupiers and lessors) of the relevant amount,
- an industrial building (initial) allowance of 50 per cent (or, if applicable, 25 per cent) (available to both owner-occupiers and lessors) of the relevant amount, and
- accelerated writing-down allowances (free depreciation) of 100 per cent (or, if applicable, 50 per cent) (available only to owner-occupiers) of the relevant amount.

Details

Definitions

(1) "multi-storey car park" is a building or structure of 2 or more storeys wholly in use for the purpose of providing parking for the public generally "without preference for any particular class of person" and "on payment of an appropriate charge". These requirements are intended to exclude the allocation of parking space other than on a "first come, first served" basis. It will, for example, prevent a firm providing parking facilities allegedly for the public generally but which are, in reality, reserved full-time for its staff either without charge or on payment of a nominal charge. The building or structure which constitutes the car park must be "wholly" in use for the purposes outlined above i.e. it may not be in use for other commercial purposes.

"qualifying multi-storey car park" is a multi-storey car park in respect of which the relevant local authority gives the appropriate certificate in writing to the person providing the multi-storey car park. Such a certificate will state that the local authority is satisfied that the car park has been developed in accordance with criteria laid down by the Minister for the Environment and Local Government following consultation with the Minister for Finance.

"qualifying period" is the period from 1 July, 1995 to 30 June, 1998, within which capital expenditure must be incurred on the construction or refurbishment of qualifying multi-storey car parks in order to qualify for the capital allowances available. This period has been extended to 30 September 1999 where the "relevant local authority" certified, by 30 September 1998, that at least 15 per cent of the total cost of the project had been incurred

before 1 July 1998. The qualifying period has been further extended, ***but only for multi-storey car parks outside the jurisdictions of the Cork and Dublin City Councils:***

- to 31 December 2006 where it is certified by the relevant local authority, by 31 December 2003, that at least 15 per cent of the total cost of the project involved was incurred on or before 30 September 2003, and.
- to 31 July 2008 in cases where the relevant local authority certified the above condition and work to the value of at least 15 per cent of the actual construction or refurbishment costs (i.e. excluding site costs) is carried out by 31 December 2006. The person who carried out the work or, where that person sells the car park, the person who is claiming the capital allowances must be able to show that this 15 per cent condition was satisfied.

"the relevant local authority" is essentially the local authority in whose functional area the multi-storey car park is situated. It includes the corporation of a county or other borough, urban district councils and county councils. In regard to the definition of "local authority", it should be noted that, by virtue of section 3(2) of, and Schedule 2 to, the Local Government Act 2001, references in any other enactment to "county borough corporation", "borough corporation" (not being a county borough corporation), "council of a county" and "council of an urban district", and to similar or analogous expressions, are now to be construed as references to "City council", "Borough council of a borough mentioned in Chapter 1 of Part 1 of Schedule 6 to the Local Government Act 2001", "County council" and "Town council of a town mentioned in Chapter 2 of Part 1 of Schedule 6 to the Local Government Act 2001", respectively.

Application of law relating to industrial buildings or structures

Subject to the modifications set out in ***subsections (3)*** to ***(6)(A)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying multi-storey car parks, despite anything to the contrary in those provisions. Those provisions are so applied as if a qualifying multi-storey car park were, at all times it is a such a car park, an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises). The reference to the qualifying premises being so treated "at all times at which it is a qualifying multi-storey car park" ensures that a change in the nature of the use of the premises (for example, to use as a private car park) will lead to a discontinuance of capital allowances. ***(2)(a)***

Capital Expenditure limited to 75 per cent of amount incurred in 2007 and 50 per cent of amount incurred in the period 1 January 2008 to 31 July 2008

The application of law relating to industrial buildings or structures is also subject to the provisions of ***sections 270(4), 270(5), 270(6)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 is subject to respective reductions to 75 per cent and 50 per cent of the relevant amount for the period involved. Where a building or structure is sold and ***section 279*** applies, that section is applied in a modified way to reflect the restrictions. Finally, expenditure is treated as incurred in a period only to the extent that it is attributable to work actually carried out in that period (see notes on ***sections 270*** and ***316***). ***(2)(a)***

Allowances available

Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying multi-storey car park during the qualifying period (see ***subsection (7)***). ***(2)(b)***

The effect of ***subsection (2)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. By virtue of ***subsection***

(6), however, the writing-down allowances may have to be halved to 2 per cent. The writing-down allowances are available to both owner-occupiers and lessors of qualifying multi-storey car parks.

Where capital expenditure is incurred in the qualifying period on refurbishment of a multi-storey car park, the allowances are available only if the amount of the expenditure so incurred is not less than 20 per cent of the market value (defined in ***section 339***) of the car park immediately before the refurbishment. ***(3)***

An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. By virtue of ***subsection (6)***, however, the initial allowance may have to be halved to 25 per cent. The initial allowance is available to both owner-occupiers and lessors of qualifying multi-storey car parks. ***(4)(a)***

Free depreciation (an acceleration of the annual writing-down allowances) of up to 100 per cent of qualifying expenditure is made available under ***section 273***. By virtue of ***subsection (6)***, however, the free depreciation entitlement may have to be halved to 50 per cent. Free depreciation is available only to owner-occupiers of qualifying multi-storey car parks. ***(4)(b)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying multi-storey car park, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying multi-storey car park was first used or, in the case where refurbishment expenditure on the qualifying multi-storey car park qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(5)***

Allowances halved for qualifying expenditure

The halving of allowances (see below) will not apply as respects capital expenditure incurred after 31 July 1998 on the construction or refurbishment of a multi-storey car park unless a qualifying lease for double rent allowance purposes under ***section 345*** is granted in respect of the car park involved. ***(6A)***

In situations where the halving provision applies, only one-half of the writing-down allowances, industrial building (initial) allowance and free depreciation, which would otherwise apply, are available. In such cases, therefore, annual writing-down allowances of 2 per cent, an industrial building (initial) allowance of 25 per cent and free depreciation of 50 per cent are available in respect of qualifying capital expenditure incurred in the qualifying period and there is an overall cap of 50 per cent on the amount of such expenditure which can be written off. Any balancing allowance or charge arising is similarly restricted to one-half of the allowance or charge which would otherwise arise. ***(6)(a)***

The allowances and charges are computed in the first place as if the one-half restriction did not apply and the resultant allowances or charges are then reduced by one-half. ***(6)(b)***

The operation of ***section 274(8)*** is not affected by this mechanism. Thus, the amount of a balancing charge cannot exceed the amount of the capital allowances actually made to the taxpayer. ***(6)(c)***

Expenditure in qualifying period must relate to work carried out

The capital expenditure that is to be relieved under this section must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(7)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

Bar on double relief

It is not possible to obtain double relief in respect of capital expenditure incurred on the construction or refurbishment of a qualifying multi-storey car park. Where capital allowances are made in respect of such expenditure by virtue of this section, such allowances are not given for the same expenditure by virtue of any other provision of the Tax Acts. ***(8)***

345 Double rent allowance in respect of rent paid for certain business premises

Summary

A double deduction is allowed, as an expense in computing the profits or gains of a trade or profession, for rent paid on certain premises in designated areas (but not designated streets) or enterprise areas. The relief is also available in respect of rent paid for multi-storey car parks which qualify for capital allowances under ***section 344***. However, in this case the qualifying period which is applicable for the relief is not that which is defined in ***section 344***. Instead it is defined separately in this section.

Broadly, the relief is available only where a bona fide commercial lease is entered into in the qualifying period or within the period of 1 year commencing on the day after the end of that period and where the lessee is not connected with the lessor. The relief is available for a maximum rental period in respect of any one qualifying premises of 10 years taking into account all lease periods in respect of the premises under qualifying leases.

Details

Definitions

"qualifying lease" is a lease in respect of a qualifying premises granted on bona fide commercial terms to a lessee who is not connected with the lessor or with any other person who is entitled to a rent in respect of the premises under that lease or any other lease. The lease must be entered into in the qualifying period or within the period of 1 year commencing on the day after the end of that period. ***(1)***

As regards enterprise areas, leases will be qualifying leases only if —

- in the case of such areas described in an order referred to in ***section 340(1)(a)***, the leases are entered into before 31 July, 1999, and
- in the case of such areas described in ***Schedule 7***, the leases are entered into before 31 December, 1999.

As regards "airport" enterprise areas described in an order referred to in ***section 340(2)(i)*** – the leases cannot qualify.

"qualifying premises" is a building or structure which is let on bona fide commercial terms and which is —

- an industrial building or structure within ***section 268(1)(a)*** (factory, mill or similar premises or laboratory for analysing minerals) the site of which is wholly within a designated area and in respect of which capital expenditure is incurred in the qualifying period which qualifies for accelerated capital allowances by virtue of ***section 341***,
- a commercial premises the site of which is wholly within a designated area and in respect of which capital expenditure is incurred in the qualifying period which qualifies for the scheme of capital allowances provided by ***section 342***,
- a building or structure the site of which is wholly within an enterprise area and in respect of which capital expenditure is incurred in the qualifying period which qualifies for the scheme of capital allowances provided by ***section 343***,
- an industrial building or structure within ***section 268(1)(d)*** (hotels) the site of which is wholly within a designated area and in respect of which capital expenditure is incurred in the qualifying period which but for ***subsection (6)*** (which provides that capital allowances must be disclaimed if the double rent allowance is to apply in the case of a hotel) would qualify for capital allowances, or
- a qualifying multi-storey car park which qualifies for the scheme of capital allowances provided by ***section 344***.

However, in any case where the title to capital allowances is based on expenditure incurred on refurbishment, the building, structure or premises is not treated as a qualifying premises unless the refurbishment expenditure amounts to not less than 10 per cent of the market value (defined in ***section 339***) of the building, structure or premises before its refurbishment.

Multi-storey car parks

As regards multi-storey car parks, "qualifying period", for the purposes of ***section 345***, is the period from 1 August, 1994 to — ***(1A)***

- 31 July, 1997, or
- 30 September 1998 where the local authority certifies that 15 per cent of the total cost of the project has been incurred before 1 July, 1998. This provision had the effect of providing until 30 September 1999 for entering into a qualifying lease for double rent allowance purposes in the case of such a project. The date of 30 September 1999 applies as a qualifying lease may be granted up to one year after the end of the qualifying period.

Duration of relief

The maximum period for which the double rent allowance is available is 10 years in respect of any one premises. If a person enters into a qualifying lease in respect of a qualifying premises, all previous periods for which rent was payable in respect of the premises under a qualifying lease are taken into account in establishing the period of entitlement to the double allowance. Thus, for example, if a previous tenant had claimed a double rent allowance for a period of 4 years in respect of rent paid for the premises, the maximum period for which the double rent allowance would be available to a new tenant would be 6 years. ***(2)***

The relief

A person who is carrying on a trade or profession in a qualifying premises under a qualifying lease and who is entitled, in computing the profits or gains of the trade or profession, to a deduction for rent paid in respect of the premises for any period for which the relief under this section is available (see ***subsection (2)***) is entitled to a further equivalent deduction, thereby giving a double allowance. In the case of a qualifying lease granted on or after 21 April, 1997, the double allowance is not given where the rent is payable to a connected person. ***(3)***

Prevention of abuse

A measure is included to counter possible abuse of the relief through cross-leasing between connected persons. Entitlement to the double rent allowance is conditional on both the claimant and any person connected with the claimant not having an interest in a premises which is itself leased and qualifies for a double rent allowance. This condition does not apply where the claimant can show that the renting by him/her of the premises which is the subject of his/her claim for the double rent allowance was not undertaken for the sole or main benefit of obtaining that allowance. ***(4)***

Relief in the case of hotels

A hotel is not a qualifying premises for the purposes of the double rent allowance unless the person who would be entitled to claim the capital allowances in respect of the expenditure incurred in the qualifying period on the construction or refurbishment of the hotel makes an election in writing to the inspector to disclaim all such allowances in respect of that expenditure. ***(5)(a)***

Such an election must be included in the return of income required to be made by the person concerned for the first year of assessment or, in the case of a company, accounting period for which capital allowances would otherwise have been available in respect of that expenditure. ***(5)(b)***

An election to disclaim the capital allowances is irrevocable. ***(5)(c)***

A person who has made such an election must furnish a copy of that election to any tenant to whom a qualifying lease in respect of the qualifying premises is granted. The tenant, in turn, must include the copy in the return of income required to be made by the tenant for the year of assessment or, in the case of a company, accounting period in which rent is first payable by the tenant under the qualifying lease. ***(5)(d)***

Where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a hotel makes an election to disclaim the capital allowances in respect of that expenditure — ***(6)***

- no capital allowances will be made to that person in respect of that expenditure,
- on the occurrence of any event in relation to the hotel which triggers a balancing allowance or charge, the residue of that expenditure will be deemed to be nil (this ensures that successors in title to the hotel will have no entitlement to capital allowances in respect of that expenditure), and
- ***section 279*** will not apply in relation to any person who purchases the relevant interest in the hotel (this puts beyond doubt that any person who buys the hotel unused or within one year of it commencing to be used will also have no entitlement to capital allowances, despite that the person who incurred the capital expenditure in the qualifying period on the construction or refurbishment of the hotel would have disclaimed the capital allowances in respect of that expenditure).

In determining title to the double rent allowance, and the amount of capital allowances to be disclaimed, in respect of hotels, only the amount of capital expenditure properly attributable to work on the construction or refurbishment of the hotel which is carried out during the qualifying period will be treated as having been incurred in that period. This provision operates despite any other provision of the Tax Acts as to the time when capital expenditure is or is deemed to be incurred. ***(7)***

Finance leases

A finance lease is not treated as a qualifying lease for the purposes of the double rent allowance. A lease is a finance lease if, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment, but excluding any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value (that is, open market value less any grants receivable towards the cost of purchase of the premises) of the premises. A lease is also a finance lease if, in substance, it provides the lessee with the risks and benefits of ownership of the premises other than legal title to the premises. ***(8)***

346 Rented residential accommodation: deduction for certain expenditure on construction

347 Rented residential accommodation: deduction for certain expenditure on conversion

348 Rented residential accommodation: deduction for certain expenditure on refurbishment

349 Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment

350 Provisions supplementary to *sections 346* to *349*

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 346***, ***347***, ***348***, ***349*** and ***350*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these sections, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

350A Provision against double relief

This section provides that capital expenditure or rent which is relieved under this Chapter will not be entitled to relief under any other provision of the Tax Acts. Double relief is therefore precluded.

CHAPTER 4
Qualifying resort areas

Overview

This Chapter provided for a scheme of tax reliefs aimed at promoting the renewal and improvement of tourist amenities and facilities in certain seaside resorts. The resorts in

question are Achill, Arklow, Ballybunion, Bettystown/Laytown/Mosney, Bundoran, Clogherhead, Clonakilty, Courtown, Enniscrone, Kilkee, Lahinch, Salthill, Tramore, Westport and Youghal. The precise qualifying areas are described in ***Schedule 8***. The qualifying period for the scheme of reliefs is from 1 July, 1995 to 30 June, 1998. (This has been extended to 31 December, 1999 where certain conditions are met.)

Provision was made —

- in ***section 352***, for a special capital allowances regime in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures, namely, hotels, holiday camps and holiday cottages registered with Bord Fáilte Éireann,
- in ***section 353***, for a scheme of capital allowances in respect of capital expenditure incurred on the construction or refurbishment of buildings or structures which are used in the operation of certain tourism facilities,
- in ***section 354***, for a double rent allowance in computing trading or professional income in respect of rent paid for the lease of buildings or structures, occupied for the purposes of the trade or profession, which have qualified for capital allowances under ***section 352*** or ***353***,
- in ***section 356***, for relief against rental income in respect of expenditure incurred on the construction of certain rented residential accommodation which is available for letting primarily to tourists, and
- in ***sections 357*** and ***358***, respectively, for relief against rental income in respect of expenditure incurred on the conversion of certain buildings into rented residential accommodation which is available for letting primarily to tourists and on the refurbishment of such accommodation.
- in ***section 359***, for measures which were supplementary to ***sections 356***, ***357***, and ***358***.

The scheme is now terminated, in so far as the termination date for incurring qualifying expenditure or entering into qualifying leases has passed. However, claims in relation to qualifying expenditure incurred, or rent paid under qualifying leases entered into, before the termination date may continue to arise.

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 356***, ***357***, ***358*** and ***359*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these sections, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

351 Interpretation (*Chapter 4*)

Summary

This section is the interpretation section for the Chapter. It contains definitions of terms used throughout the Chapter and, in particular, sets out the qualifying period for the scheme of reliefs provided by the Chapter.

Details

"lease", "lessee", "lessor", and "rent" have the same meanings as in ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage, and "lessee" and "lessor" include successors in title.

"market value" is the price which the unencumbered fee simple of the building or structure would fetch in an open market sale less the part of that price attributable to the site of the building or structure.

"qualifying period" is the period from 1 July, 1995 to 30 June, 1998. This period has been extended to 31 December, 1999 where the relevant local authority certified that at least 50 per cent of the total cost of the project was incurred by the end of June, 1999.

"qualifying resort area" is any of the areas described in ***Schedule 8***.

"refurbishment", other than for the purposes of ***section 358***, is any work of construction, reconstruction, repair or renewal, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure. Specifically included as refurbishment is the provision or improvement of water, sewerage or heating facilities.

"the relevant local authority" is the local authority in whose functional area the building being constructed or refurbished is located.

352 Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Summary

This section provides for a special capital allowances regime in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment in qualifying resort areas of certain industrial buildings or structures, namely, hotels, holiday camps and holiday cottages registered by Bord Fáilte Éireann. The special regime of capital allowances consists of —

- an industrial building (initial) allowance of 50 per cent (available to both owner-occupiers and lessors),
- annual writing-down allowances of 5 per cent (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 75 per cent (available only to owner-occupiers).

In the case of capital expenditure incurred on refurbishment, the regime applies only where the amount of such expenditure is not less than an amount equal to 20 per cent of the market value of the building or structure immediately before the refurbishment.

It should be noted that this regime displaces the capital allowances which would otherwise apply in respect of the buildings or structures in question, namely, the normal annual writing-down allowances of 15 per cent (10 per cent in year 7) for hotels and holiday camps and 10 per cent for holiday cottages.

Details

Qualifying industrial buildings or structures

(1) The section applies to certain industrial buildings or structures the sites of which are wholly within a qualifying resort area. The industrial buildings or structures covered are those in use for the purposes of a trade of hotel-keeping. By virtue of ***section 268(3)***, this includes, in addition to hotels, buildings or structures in use as a holiday camp or a Bord Fáilte registered holiday cottage.

Allowances available

Instead of the capital allowances which would normally be available (see ***section 272***) in respect of capital expenditure incurred on the construction or refurbishment of qualifying industrial buildings or structures (namely, annual writing-down allowances of 15 per cent (10 per cent in year 7) for hotels and holiday camps and 10 per cent for holiday cottages), a special regime of capital allowances apply. It should be noted, however, that this special regime applies only in the case of capital expenditure incurred in the qualifying period (see ***subsection (6)***). The following are the details of the special regime.

(2) An industrial building (initial) allowance of 50 per cent is made available under ***section 271*** in respect of qualifying expenditure on the construction or refurbishment of qualifying industrial buildings or structures. The allowance is available to both owner-occupiers and lessors of such buildings or structures.

(3) Annual writing-down allowances of 5 per cent are made available under ***section 272*** in respect of qualifying expenditure on the construction or refurbishment of qualifying industrial buildings or structures. The allowances are available to both owner-occupiers and lessors of such buildings or structures.

(4) Accelerated writing-down allowances (free depreciation) of 75 per cent are made available under ***section 273*** in respect of qualifying expenditure on the construction or refurbishment of qualifying industrial buildings or structures. Free depreciation is available only to owner-occupiers of such buildings or structures – it is not available to lessors.

Refurbishment – additional condition for entitlement to allowances

(5) In a case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying industrial building or structure, the special regime of capital allowances apply only if the amount of the capital expenditure so incurred at least equals 20 per cent of the market value of the building or structure immediately before that expenditure was incurred. It should be noted that the normal annual writing-down allowances of 15 per cent (10 per cent in year 7) for hotels and holiday camps and 10 per cent for holiday cottages would be available in cases where the refurbishment expenditure so incurred is less than 20 per cent of the market value of the building or structure immediately before that expenditure was incurred.

Qualifying expenditure

(6) The capital expenditure which is to qualify for the special regime of capital allowances must be expenditure incurred on construction or refurbishment work actually carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for the special regime. Of course, title to the normal writing-down allowances under ***section 272*** would still exist in relation to the part of the expenditure referable to work carried out outside the qualifying period.

This provision negates, for the purposes only of determining the amount of expenditure which is to qualify for the industrial building (initial allowance) and free depreciation, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of the special regime of allowances. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides

for certain expenditure to be treated as having been incurred when the purchase price becomes payable,

- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

353 Capital allowances in relation to construction or refurbishment of certain commercial premises

Summary

This section provides for the granting of capital allowances in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of commercial buildings or structures which are situated in a qualifying resort area and which are in use in the operation of certain tourism facilities. The facilities in question are tourist accommodation facilities which are registered or listed under the Tourist Traffic Acts, for example, Bord Fáilte registered bed and breakfast accommodation, and such other classes of facilities as may be approved of by the Minister for Tourism, Sport and Recreation in consultation with the Minister for Finance.

The capital allowances available are similar to those provided by ***section 352*** in relation to certain industrial buildings or structures (hotels, holiday camps and holiday cottages) in qualifying resort areas, namely —

- an industrial building (initial) allowance of 50 per cent (available to both owner-occupiers and lessors),
- annual writing-down allowances of 5 per cent (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 75 per cent (available only to owner-occupiers).

In the case of capital expenditure incurred on refurbishment, these allowances are available only where the amount of such expenditure is not less than an amount equal to 20 per cent of the market value of the building or structure immediately before the refurbishment.

Details

Definitions

(1) "qualifying premises": this definition outlines the types of buildings or structures, expenditure on the construction or refurbishment of which may qualify for capital allowances if the work is carried out in the qualifying period. Firstly, the site of the building or structure must be wholly within a qualifying resort area. Secondly, the building or structure must not be an industrial building or structure (for example, factory, hotel, holiday camp, registered holiday cottage). [***Section 352*** provides for a special regime of capital allowances in the case of hotels, holiday camps and holiday cottages in the qualifying resort areas.] Thirdly, the building or structure must be in use for the purposes of the operation of one or more "qualifying tourism facilities". Finally, any part of a building or structure in use as or as part of a dwelling house, other than a tourist accommodation facility of the type referred to in the definition of "qualifying tourism facilities", will not be treated as a qualifying premises.

"qualifying tourism facilities" are tourist accommodation facilities registered by Bord Fáilte Éireann under Part III of the Tourist Traffic Act, 1939, or specified in a list published under ***section 9*** of the Tourist Traffic Act, 1957, and such other classes of facilities as may be approved of by the Minister for Tourism, Sport and Recreation in consultation with the Minister for Finance.

Application of law relating to industrial buildings or structures

Subject to the modifications set out in ***subsections (3)*** to ***(6)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions. Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that capital allowances continue to be available only as long as the building or structure remains a qualifying premises. ***(2)(a)***

Allowances available

Allowances are available only in respect of capital expenditure incurred in the qualifying period (see ***subsection (7)***) on the construction or refurbishment of a qualifying premises. ***(2)(b)***

An industrial building (initial) allowance of 50 per cent is made available under ***section 271*** in respect of qualifying expenditure on the construction or refurbishment of qualifying premises. The allowance is available to both owner-occupiers and lessors of such premises. ***(4)(a)***

Annual writing-down allowances of 5 per cent are made available under ***section 272*** in respect of qualifying expenditure on the construction or refurbishment of qualifying premises. The allowances are available to both owner-occupiers and lessors of such premises. ***(4)(b)***

Accelerated writing-down allowances (free depreciation) of 75 per cent are made available under ***section 273*** in respect of qualifying expenditure on the construction or refurbishment of qualifying premises. Free depreciation is available only to owner-occupiers of such premises – it is not available to lessors. ***(4)(c)***

Refurbishment – additional condition for entitlement to allowances

In a case where capital expenditure is incurred in the qualifying period on the refurbishment of qualifying premises, the capital allowances are available only if the amount of the capital expenditure so incurred at least equals 20 per cent of the market value of the premises immediately before that expenditure was incurred. ***(3)***

Prevention of abuse

Provision is made to prevent abuse of the reliefs whereby a person could operate a premises as a registered or listed tourist accommodation facility for a short time, claim capital allowances (of up to 75 per cent free depreciation in year one) in respect of the expenditure incurred on its construction or refurbishment and then cease to operate as a registered or listed tourist accommodation facility (the premises could, for example, be turned into a private residence) without any consequences. ***(5)***

To prevent such abuse, the event of a tourist accommodation facility ceasing to be registered or listed by Bord Fáilte is treated as an event giving rise to a balancing charge

in respect of the capital allowances made in respect of the expenditure incurred on the premises.

For the purposes of the application of a balancing charge on the occurrence of such an event, "sale, insurance, salvage or compensation moneys" (defined in ***section 318***) are treated as arising in an amount equal to the aggregate of —

- the premises' written down value for capital allowance purposes immediately before the event, and
- the amount of the capital allowances granted in respect of the expenditure on the construction or refurbishment of the premises.

This ensures that a balancing charge arises on that event, and the amount of the charge will be the amount of the capital allowances granted. In effect, therefore, the allowances given will be clawed back.

Balancing charge

(6) Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, including the event of a tourist accommodation facility ceasing to be registered or listed by Bord Fáilte which is treated as a balancing event by virtue of ***subsection (5)***, a balancing charge is not to be made if that event occurs more than 11 years after the qualifying premises was first used or, in the case where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 11 years after that expenditure was incurred.

Qualifying expenditure

(7) The capital expenditure which is to qualify for the capital allowances must be expenditure incurred on construction or refurbishment work actually carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for the allowances.

This provision negates, for the purposes only of determining the amount of expenditure which is to qualify for the capital allowances, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of the allowances. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

Bar on double relief

(8) Where, by virtue of this section, capital allowances are given in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises, no relief is given in respect of that expenditure under any other provision of the Tax Acts.

354 Double rent allowance in respect of rent paid for certain business premises

Summary

A double deduction is allowed, as an expense in computing the profits or gains of a trade or profession, for rent paid on certain premises in qualifying resort areas which are occupied for the purposes of the trade or profession. The relief is available only where a bona fide commercial lease is entered into in the qualifying period for the letting of a building or structure in respect of which capital expenditure is incurred which qualifies for capital allowances under ***section 352*** or ***353***, and where the lessee is not connected with the lessor. The relief is available for a maximum rental period of 10 years in respect of any one qualifying premises taking into account all lease periods in respect of the premises under qualifying leases.

Details

Definitions

(1) "qualifying lease" is a lease in respect of a qualifying premises granted in the qualifying period on bona fide commercial terms to a lessee who is not connected with the lessor or with any other person who is entitled to a rent in respect of the premises under that lease or any other lease.

"qualifying premises" is a building or structure the site of which is wholly within a qualifying resort area and which is let on bona fide commercial terms and which is —

- an industrial building or structure within ***section 268(1)(d)*** (hotel, holiday camp or holiday cottage) and in respect of which capital expenditure is incurred in the qualifying period which qualifies for the special regime of capital allowances provided by ***section 352***, or
- a commercial premises in use in the operation of qualifying tourism facilities and in respect of which capital expenditure is incurred in the qualifying period which qualifies for the scheme of capital allowances provided by ***section 353***.

However, in any case where the title to capital allowances is based on expenditure incurred on refurbishment, the building, structure or premises is not treated as a qualifying premises unless the refurbishment expenditure amounts to not less than 20 per cent of the market value (defined in ***section 351***) of the building, structure or premises before its refurbishment.

Moreover, by virtue of ***section 355(2)***, a holiday cottage, apartment or other self-catering accommodation in the qualifying resort areas may not be treated as a qualifying premises for the purposes of the double rent allowance unless the person entitled to the capital allowances in respect of the expenditure incurred on its construction or refurbishment elects to disclaim those allowances.

Duration of relief

(2) The maximum period for which the double rent allowance is available is 10 years in respect of any one premises. If a person enters into a qualifying lease in respect of a qualifying premises, all previous periods for which rent was payable in respect of the premises under a qualifying lease are taken into account in establishing the period of entitlement to the double allowance. Thus, for example, if a previous tenant had claimed a double rent allowance for a period of 4 years in respect of rent paid for the premises, the maximum period for which the double rent allowance would be available to a new tenant would be 6 years.

The relief

A person who occupies a qualifying premises for the purposes of a trade or profession and who is entitled, in computing the profits or gains of the trade or profession, to a deduction for rent paid under a qualifying lease in respect of the premises for any period for which the relief under this section is available (see ***subsection (2)***) is entitled to a further equivalent deduction, thereby giving a double allowance. In the case of a qualifying lease granted on or after 21 April, 1997, the double allowance is not given where the rent is payable to a connected person. ***(3)***

Prevention of abuse

A measure is included to counter possible abuse of the relief through cross-leasing between connected persons. Entitlement to the double rent allowance is conditional on both the claimant and any person connected with the claimant not having an interest in a premises which is itself leased and qualifies for a double rent allowance. This condition does not apply where the claimant can show that the renting by him/her of the premises which is the subject of his/her claim for the double rent allowance was not undertaken for the sole or main benefit of obtaining that allowance. ***(4)***

Finance leases

A finance lease is not treated as a qualifying lease for the purposes of the double rent allowance. A lease is a finance lease if, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment, but excluding any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease) amounts to 90 per cent or more of the fair value (that is, open market value less any grants receivable towards the cost of purchase of the premises) of the premises. A lease is also a finance lease if, in substance, it provides the lessee with the risks and benefits of ownership of the premises other than legal title to the premises. ***(5)***

355 Disclaimer of capital allowances on holiday cottages, holiday apartments, etc

Summary

This section provides, subject to certain exceptions, that holiday cottages, holiday apartments and other self-catering accommodation in the qualifying resort areas may not be qualifying premises for the purposes of ***section 354*** (double rent allowance). If one of any of these types of buildings is to be such a qualifying premises then the person entitled to the capital allowances in respect of the expenditure incurred on its construction or refurbishment must elect to disclaim those allowances. [The double rent allowance itself under ***section 354*** is available only where the premises is occupied by the person for the purposes of a trade or profession.]

The section also provides, subject to exceptions, that where capital allowances are claimed in respect of capital expenditure incurred on the construction or refurbishment of apartments and other self-catering accommodation in qualifying resort areas, those allowances may only be offset against rental income (including rental income from other sources) or other income, if any, arising from the letting/operation of the apartments or other self-catering accommodation.

[While this second provision applies only to apartments and other self-catering accommodation in the qualifying resort areas, it should be noted that, by virtue of ***section 405***, the effective ring-fencing of the capital allowances also applies in the case of Bord Fáilte registered holiday cottages wherever situated. That section provides that where expenditure is incurred on or after 24 April, 1992 on the acquisition or construction of a

holiday cottage, the capital allowances attaching to the holiday cottage are not available for offset against income of the taxpayer other than the income arising from the letting/operation of the holiday cottage.]

Details

Application

The section applies to — ***(1)***

- Bord Fáilte registered holiday cottages which are situated in a qualifying resort area, and
- buildings or structures which are qualifying premises within the meaning of ***section 353*** by virtue of being a holiday apartment or other self-catering accommodation (for example, houses, unregistered cottages, apartments, villas) listed under the Tourist Traffic Acts.

Eligibility as qualifying premises for double rent allowance contingent on disclaimer of capital allowances

Subject to certain exceptions (see ***subsection (5)***), a building or structure to which this section applies may not be a qualifying premises for the purposes of the double rent allowance under ***section 354*** unless the person who would be entitled to claim the capital allowances in respect of the expenditure incurred in the qualifying period on the construction or refurbishment of the building or structure makes an election in writing to the inspector to disclaim all such allowances in respect of that expenditure. ***(2)(a)***

Such an election must be included in the return of income required to be made by the person concerned for the first year of assessment or, in the case of a company, accounting period for which capital allowances would otherwise have been available in respect of that expenditure. ***(2)(b)***

An election to disclaim the capital allowances is irrevocable. ***(2)(c)***

A person who has made such an election must furnish a copy of that election to any tenant to whom a qualifying lease in respect of the building or structure is granted. The tenant, in turn, must include the copy in the return of income required to be made by the tenant for the year of assessment or, in the case of a company, accounting period in which rent is first payable by the tenant under the qualifying lease. ***(2)(d)***

Where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a building or structure to which this section applies makes an election to disclaim the capital allowances in respect of that expenditure — ***(3)***

- no capital allowances will be made to that person in respect of that expenditure,
- on the occurrence of any event in relation to the building or structure which triggers a balancing allowance or charge, the residue of that expenditure will be deemed to be nil (this ensures that successors in title to the building or structure will have no entitlement to capital allowances in respect of that expenditure), and
- ***section 279*** will not apply in relation to any person who purchases the relevant interest in the building or structure (this puts beyond doubt that any person who buys the building or structure unused or within one year of it commencing to be used will also have no entitlement to capital allowances, despite that the person who incurred the capital expenditure in the qualifying period on the construction or refurbishment of the building or structure would have disclaimed the capital allowances in respect of that expenditure.).

Ring-fencing of capital allowances

This provision ring fences capital allowances in respect of buildings or structures to which the section applies other than Bord Fáilte registered holiday cottages. [Capital allowances in respect of such cottages are ring-fenced by ***section 405*** which provides that where expenditure is incurred on or after 24 April, 1992 on the acquisition or construction of a holiday cottage, the capital allowances attaching to the holiday cottage are not available for offset against income of the taxpayer other than the income arising from the letting/operation of the holiday cottage.] ***(4)***

Where a person incurs capital expenditure on the acquisition, construction or refurbishment of a building or structure to which this section applies, other than a Bord Fáilte registered cottage, and an industrial building (initial) allowance or writing-down allowance is to be made in respect of that expenditure, the following rules apply.

Firstly, neither ***section 305(1)(b)*** nor ***section 308(4)*** applies as respects the allowance. In effect, therefore, the allowance may be set off for income tax or corporation tax purposes only against income from the letting of the building or structure. It cannot be set off against other income. ***(4)(a)***

Secondly, neither ***section 381*** nor ***section 396(2)*** applies as respects the whole or part of any loss which would not have arisen but for the making of the allowance. [This provision is applicable only if trading income arises.] In effect, therefore, any such loss may only be set off for income tax or corporation tax purposes against trading income (if any) arising from the apartment, self-catering accommodation, etc. The allowance cannot be used to create or augment a loss for set-off against other income. ***(4)(b)***

Exceptions

The restrictions imposed by the section on the possibility of the dual availability of the double rent allowance and capital allowances (***subsections (2)*** and ***(3)***) and on the set-off of capital allowances (***subsection (4)***) do not apply in certain circumstances. ***(5)***

Those restrictions do not apply where before 5 April, 1996 — ***(5)(a)***

- a binding contract in writing had been entered into for the acquisition or construction of the building or structure,
- an application for planning permission for the construction of the building or structure had been received by a planning authority, or
- an opinion in writing had been issued by the Revenue Commissioners to the effect that ***section 408*** (restriction on tax incentives on certain property) would not apply in relation to capital allowances to be made in respect of expenditure incurred on the building or structure.

Also, the restrictions do not apply where before 5 April, 1996 the person who incurred the expenditure on the construction or refurbishment of the building or structure had incurred expenditure on the acquisition of the land on which the building or structure was to be constructed or refurbished or had entered into a binding contract in writing for the acquisition of that land. However, this is conditional on the person being able to demonstrate that plans had been prepared and that discussions had taken place with a planning authority between 8 February, 1995 and 5 April, 1996 and that the planning authority can give an affidavit to this effect. ***(5)(b)***

356 Rented residential accommodation: deduction for certain expenditure on construction

357 Rented residential accommodation: deduction for certain expenditure on conversion

358 Rented residential accommodation: deduction for certain expenditure on refurbishment

359 Provisions supplementary to *sections 356* to *358*

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 356***, ***357***, ***358*** and ***359*** were repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to these sections, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

CHAPTER 5
Designated islands

Overview

This Chapter provided for a scheme of tax reliefs aimed at encouraging the construction and refurbishment of residential accommodation to promote residency on 23 islands off the coasts of Cork, Donegal, Galway, Limerick, Mayo and Sligo. The reliefs applied in respect of qualifying expenditure incurred in the 3 year period from 1 August, 1996 to 31 July, 1999. This period was extended to 31 December, 1999 where the relevant local authority certifies that at least 15 per cent of the total cost of the project was incurred by the end of July, 1999.

Provision was made —

- in ***sections 361***, ***362*** and ***363***, respectively, for relief against rental income in respect of expenditure incurred on the construction of certain rented residential accommodation, the conversion of certain buildings into such accommodation and the refurbishment of such accommodation,
- in ***section 364***, for relief to owner-occupiers in respect of expenditure incurred on the construction or refurbishment of certain residential accommodation.
- in ***section 365***, for measures which were supplementary to ***sections 360***, ***361***, ***362*** and ***363***.

The scheme is now terminated, in so far as the termination date for incurring qualifying expenditure has passed. However, claims in relation to qualifying expenditure incurred before the termination date may continue to arise.

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***Chapter 5*** was repealed by section 24(3) Finance Act 2002. However, a saving provision in relation to the relevant provisions of the Chapter, which preserves title to relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances, is contained in ***Chapter 11*** of this Part in ***section 372AV***.

CHAPTER 6
Dublin Docklands Area

Overview

This Chapter provided enabling legislation in relation to a scheme of tax reliefs designed to encourage the renewal and redevelopment of the Dublin Docklands Area. The qualifying period for the scheme was the period 1 July 1997 to 30 June 2000. The scheme, however, was never commenced and no areas were designated under the scheme prior to the termination date. In view of fact that the legislation was redundant, ***Chapter 6*** was repealed by section 24(3) Finance Act 2002.

CHAPTER 7
Qualifying areas

Overview

This Chapter provides for a scheme of tax reliefs designed to foster urban renewal and improvement in certain qualifying urban areas. The process of selection of areas is based on Integrated Area Plans produced by local authorities which address the physical and socio-economic renewal of areas. The Minister for Finance will make orders designating areas, recommended by the Minister for the Environment and Local Government, for one or more of the tax incentives available. Tax incentives, in the form of accelerated capital allowances for certain industrial and commercial premises and deductions for expenditure incurred on certain rented residential premises and owner-occupied accommodation are available under this scheme. However, there is no blanket entitlement to all the reliefs for any particular qualifying area; these incentives may vary in mix for different areas. Additionally, there is provision to discriminate as between specific types of expenditure and specific types of commercial development for tax incentive purposes. In certain circumstances relief may be confined to the refurbishment of facades only.

Originally, the qualifying period for the tax incentives in relation to qualifying areas ran from 1 August 1998 to 31 December 2002. However, in certain circumstances this period may be extended to 31 December 2006 or to 31 July 2008.

The Chapter also contained measures to promote “Living over the Shop” (LOTS) on certain qualifying streets. These measures are aimed at providing residential accommodation in the vacant space over commercial premises in the five cities of Cork, Dublin, Galway, Limerick and Waterford. Again, the streets in question are to be designated for the purposes of the Chapter by way of order of the Minister for Finance. Tax incentives similar to those available in relation to commercial and residential buildings in qualifying areas are provided, but additional conditions apply. The incentives are available in respect of buildings which existed on 13 September 2000 and which front on to a qualifying street. They also apply to replacement buildings where the original building has to be demolished following a demolition order or, in certain cases, due to structural reasons.

Originally, the qualifying period for the tax incentives in relation to qualifying streets ran from 6 April 2001 to 31 December 2004. Again, in certain circumstances this period may be extended to 31 December 2006 or to 31 July 2008.

Where the extended termination date of 31 July 2008 applies, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to

the period involved. These restrictions apply in relation to both the Urban and LOTS schemes. In the case of the Urban scheme, an overall cap also applies on the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify (see notes on ***sections 270(4)*** to ***(7)*** and ***316***).

Tax incentives, in the form of accelerated capital allowances for industrial buildings or structures and commercial premises, are not available in relation to either scheme under this Chapter in certain circumstances – see ***section 372K*** for full details.

Provision was made —

- in ***section 372A***, for the linking of the reliefs in relation to qualifying areas to the enactment of urban renewal legislation (see the Urban Renewal Act 1998) which incorporates the concept of Integrated Area Plans as a basic component of that legislation – this section also contains various definitions for the purposes of the Chapter,
- in ***section 372B***, to empower the Minister for Finance, on the recommendation of the Minister for the Environment and Local Government, to designate certain areas to be qualifying areas for one or more of the reliefs provided and to discriminate as between different certain types of expenditure and of commercial development as regards the reliefs in question,
- in ***section 372BA***, to empower the Minister for Finance, on the recommendation of the Minister for the Environment and Local Government, to designate certain streets to be qualifying streets for one or more of the reliefs provided. Additionally, the section empowers the Minister to confine incentives in relation to commercial premises to those used essentially for the retailing or supply of local goods and services,
- in ***section 372C***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures in qualifying areas,
- in ***section 372D***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain commercial premises in qualifying areas. Relief is also available for similar expenditure incurred in relation to buildings which front on to qualifying streets, but additional conditions apply,
- in ***section* 372E**, for a double rent allowance in respect of rent paid for the lease of certain buildings, [**NB**: No area was ever designated for the purpose of this section and it was repealed by section 24(3) Finance Act 2002],
- in ***section 372F***, for relief against rental income in respect of expenditure on the construction of certain rented residential accommodation in qualifying areas and on the necessary construction of such accommodation on qualifying streets,
- in ***section 372G***, for relief against rental income for expenditure on the conversion of certain buildings, in qualifying areas and on qualifying streets, into rented residential accommodation,
- in ***section 372H***, for relief against rental income for expenditure on the refurbishment of buildings, in qualifying areas and on qualifying streets, comprising rental accommodation, and
- in ***section 372I***, for relief for expenditure on the construction or refurbishment of owner-occupied residential accommodation in qualifying areas. Relief also applied for the necessary construction or refurbishment of such accommodation on qualifying streets.
- in ***section 372I***, for measures which were supplementary to ***sections 372F***, ***372G***, ***372H*** and ***372I***.
- in ***section 372K***, to deny capital allowances for industrial and commercial buildings in certain circumstances and to prevent claims for double relief.

As part of the codification of legislation governing relief under various tax incentive schemes, for expenditure incurred in relation to residential accommodation, ***sections 372F***, ***372G***, ***372H***, ***372I*** and ***372J*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

372A Interpretation and application (*Chapter 7*)

Summary

This section is the interpretation section for ***Chapter 7***. It contains definitions of terms used throughout the Chapter. It also makes the application of the Chapter and ***Chapter 11*** (residential reliefs) of this Part, in relation to qualifying areas, conditional on the enactment of legislation on urban renewal to include the concept of Integrated Area Plans as a basic feature of that legislation. (This legislation was subsequently enacted in the Urban Renewal Act 1998.)

Details

Definitions

(1) "existing building" means a building or structure which existed on 13 September 2000 and which fronts on to a qualifying street (LOTS).

"facade" in relation to a building or structure or part of a building or structure means the exterior wall of the building or structure or the part of the building or structure which fronts on to a street. Where relevant this definition includes a facade which incorporates a shop-front.

"lease", "lessee", "lessor", "premium" and "rent" have the same meanings as in ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage. "Lessee" and "lessor" include successors in title. "Premium" includes any like sum whether payable to an immediate or superior lessor or to a person connected with the immediate or superior lessor.

"market value" is the price which the unencumbered fee simple of the building, structure or house would fetch in an open market sale less the part of that price attributable to the site of the building, structure or house.

"multi-storey car park" is a building or structure of 2 or more storeys wholly or mainly in use for the purpose of providing car parking for the public generally. Parking facilities must be available (on payment of an appropriate charge) on a "first come, first served" basis.

"necessary construction" in relation to an existing building (LOTS), means:

- construction of an extension not exceeding 30% of the floor area of the building before any work was carried out where the extension was necessary to provide access to residential premises which qualify under ***Chapter 11*** of this Part,
- construction of an additional storey(s) to the building to restore or enhance the streetscape, or
- construction of a replacement building.

"property developer" means a person wholly or mainly involved in the trade of constructing or refurbishing buildings for sale.

"qualifying area" is an area specified as such under ***section 372B***.

"qualifying period", in relation to the business tax incentives provided in this Chapter, is:

- in the case of qualifying areas, subject to orders made under ***section 372B***, the period from 1 August 1998 to 31 December 2002. This period is extended to 31 December 2006 where ***subsection (1A)*** applies. [**NB**: The 31 December 2006 date is, subject to a commencement order, further extended to 31 July 2008 by section 30 FA 2006 – provided that the conditions of ***subsections (1A)*** and ***(3)*** are satisfied.]
- in the case of qualifying streets, subject to orders made under ***section 372BA***, the period from 6 April 2001 to 31 December 2004. This period is extended to 31 December 2006 where ***subsection (1B)*** applies. [**NB**: The 31 December 2006 date is, subject to a commencement order, further extended to 31 July 2008 by section 30 FA 2006 – provided that the conditions of ***subsections (1B)*** and ***(3)*** are satisfied.]

In relation to residential reliefs under both schemes, the "qualifying period" in relation to rented residential and owner-occupier relief is defined in ***section 372AL*** in ***Chapter 11*** of this Part.

"qualifying street" means a street specified under ***section 372BA***.

"refurbishment", is any work of construction, reconstruction, repair or renewal, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure. Specifically included as refurbishment is the provision or improvement of water, sewerage or heating facilities.

"replacement building" means a building or structure (or part thereof) which is constructed to replace an existing building (LOTS) where:

- the demolition of the existing building was required under the Local Government (Sanitary Services) Act 1964 and an order or notice to that effect was given or made on or after 13 September 2000 and before 31 March 2001 (the replacement building, in this case, must be consistent with the character and size of the existing building), or
- the demolition of the existing building, where it was a single storey building, was required for structural reasons so as to restore or enhance the streetscape by the construction of an additional storey(s).

"relevant local authority" means:

- in relation to a qualifying area, the county council, city council or town council in whose functional area the area is situated, or the authorised company (within the meaning of section 3(1) of the Urban Renewal Act 1998) which prepared the integrated area plan for the area, and
- in relation to a qualifying street means, the city council of Cork, Dublin, Galway, Limerick or Waterford, as appropriate.

"street" includes part of a street, road, square, quay or lane.

Extension of qualifying period to 31 December 2006 – Urban Renewal

(1A) The qualifying period for business incentives in relation to qualifying areas may extend to 31 December 2006 where the relevant local authority (which includes an authorised company) certified by 30 September 2003 that 15 per cent of the total costs of constructing or refurbishing a building or structure (or part of a building or structure) and of acquiring the site had been incurred by 30 June 2003. Application for the certificate had to be received on or before 31 July 2003.

Extension of qualifying period to 31 December 2006 – LOTS

The qualifying period is extended to 31 December 2006 in relation to the construction or refurbishment of a building or structure on a qualifying street if a valid planning application (other than for outline permission), in so far as planning permission is required, in relation to the work represented by the expenditure, is received by the planning authority: ***(1B)***

- by 31 December 2004, where the application is made in accordance with the Planning & Development Regulations 2001 to 2003, or
- by 10 March 2002, where the application was made in accordance with the Local Government (Planning and Development) Regulations 1994.

Where work is exempted development for the purposes of the Planning and Development Act 2000, the expiry date of 31 December 2006 may also apply provided the following conditions are met on or before 31 December 2004:

- a detailed plan in relation to the development work is prepared,
- a binding contract in writing exists under which the expenditure on the development is incurred, and
- work to the value of 5% of the development costs is carried out.

Extension of qualifying period to 31 July 2008 – Urban Renewal and LOTS

In the case of both schemes, a termination date of 31 July 2008 may apply provided that the relevant conditions of ***subsection (1A)*** or ***subsection (1B)*** were met **and** work to the value of at least 15 per cent of the actual construction or refurbishment costs (excluding site costs) of the building or structure is carried out by 31 December 2006. The person who carried out the work or, where that person sells the building or structure involved, the person who is claiming the capital allowances must be able to show that this 15% condition was satisfied. ***(3)(a) and (b)***

By virtue of ***paragraphs (a)*** and ***(b)*** of ***section 270(7)***, local authority certification is required in the case of the Urban Renewal Scheme (but not LOTS) in respect of this 15 per cent condition. Such certification must include details of actual expenditure incurred to 31 December 2006 and of projected expenditure post 31 December 2006.

In the case of industrial and commercial buildings and structures in qualifying urban areas (but not for LOTS), there is also a requirement that a binding contract in writing in relation to the construction or refurbishment is in place by 31 July 2006 and that any other conditions relating to compliance with State aid issues, that may be specified by the Minister for Finance in regulations, have been satisfied. ***(3)(c) and (d)***

Requirement in relation to Integrated Area Plans

The operation of the Chapter and ***Chapter 11*** of this Part in relation to qualifying areas is linked to the enactment of general urban renewal legislation by the Minister for the Environment and Local Government to provide for such renewal to be based on Integrated Area Plans drawn up for that purpose. (The Urban Renewal Act, 1998, was enacted to achieve this). ***(2)***

372B Qualifying areas

Summary

This section empowers the Minister for Finance, on the recommendation of the Minister for the Environment and Local Government, to designate by order certain areas to be qualifying areas for one or more of the reliefs provided for in this Chapter or in ***Chapter***

11 of this Part. The order may, as regards these reliefs, discriminate as between various categories of commercial development, various categories of expenditure for commercial and residential reliefs and may confine relief to the refurbishment of facades only of commercial buildings. Orders will prescribe, in relation to such areas, the period in which the scheme is to operate.

Details

Designation process – making of orders

The Minister for Finance, on the recommendation of the Minister for the Environment and Local Government (which recommendation takes account of an Integrated Area Plan submitted by a local authority), may make an order directing that — ***(1)***

- an area or areas described in the order is to be a qualifying area for the purposes of one or more sections of the Chapter or of ***Chapter 11*** of this Part; ***(1)(a)***
- if the area is to be a qualifying area: ***(1)(b)***
  - for the purposes of capital allowances for commercial premises under ***section 372D*** – the order can provide that one or more of the types of building or structure mentioned in ***subsection (2)*** may or may not be a qualifying premises within the meaning of ***section 372D***. Also relief may be confined to construction or refurbishment expenditure.
  - for the purposes of the owner-occupier designation under ***section 372AR***, relief may be confined to construction, conversion or refurbishment of a residential premises;
- if the area is to be a qualifying area for the purposes of ***section 372AP*** (which provides relief for rented residential accommodation) the order can provide that the section applies in relation to construction, conversion or refurbishment, as appropriate. ***(1)(b)(a)***

Qualifying period – Urban Renewal qualifying areas

The order will specify the qualifying period for availing of the reliefs covered by the order. In relation to the business incentives under this Chapter no such period may commence before 1 August 1998, or end after — ***(1)(c)***

- 31 December 2002, or
- 31 December 2006 where ***section 372A(1A)*** applies. [**NB**: The 31 December 2006 date is, subject to a commencement order, further extended to 31 July 2008 by section 30 FA 2006 – provided that the conditions of ***section 372A(1A)*** and ***(3)*** are satisfied].

In relation to the residential incentives under ***Chapter 11*** of this Part, no such period may commence before 1 August 1998 or end after — ***(1)(d)***

- 31 December 2002,
- 31 December 2006, where ***section 372AL(2)*** applies, or
- 31 July 2008, where ***section 372AL(2)*** and ***(3)*** apply.

Commercial buildings: selection of certain types

The types of commercial premises referred to in ***subsection (1)(b)*** are specified viz. multi-storey car parks, offices, the facades of offices, other commercial buildings with only a small office content and the facades of such other buildings. An order can provide that one or more of these types of building or structure may or may not be a qualifying premises within the meaning of ***section 372D***. ***(2)***

Power to amend or revoke an order)

The power to make an order under ***subsection (1)*** includes the power to amend or revoke the order. ***(2A)***

Laying of orders

Orders made designating areas as qualifying areas must be laid before Dáil Éireann in the normal way. ***(3)***

Accord with urban renewal law

Relief under this Chapter or ***Chapter 11*** of this Part will be available only where the requirements of the urban renewal legislation referred to in ***section 372A(2)*** [i.e. the Urban Renewal Act 1998] are met. ***(4)***

372BA Qualifying streets

Summary

This section empowers the Minister for Finance, on the recommendation of the Minister for the Environment and Local Government, to designate by order certain streets to be qualifying streets for one or more of the reliefs provided for in the Chapter or in ***Chapter 11***. Additionally, the section empowers the Minister to confine incentives in relation to commercial premises to those used essentially for the retailing or supply of local goods and services. Orders will prescribe in relation to each street the period in which the scheme is to operate. No such period may commence before 6 April 2001 or end after 31 December 2004. In certain circumstances the 31 December 2004 date is extended to 31 December 2006 or to 31 July 2008.

Details

Designation process – making of orders

The Minister for Finance, on the recommendation of the Minister for the Environment and Local Government (which recommendation takes account of proposals submitted by a local authority), may make an order directing that — ***(1)***

- a street described in the order is to be a qualifying street for the purposes of one or more sections of the Chapter or of ***Chapter 11***, ***(1)(a)***
- if the street is to be a qualifying street for the purposes of ***section 372D*** (which provides relief for the construction or refurbishment of commercial premises) the order must provide that the categories of building or structure mentioned in ***subsection (2)*** may not be a qualifying premises within the meaning of ***section 372D***, and ***(1)(b)***
- if the street is to be a qualifying street for the purposes of ***section 372AP*** (which provides relief for rented residential accommodation) the order can provide that the section applies in relation to construction, conversion or refurbishment, as appropriate. ***(1)(ba)***

Qualifying period – qualifying streets (LOTS)

The order will specify the qualifying period for availing of the reliefs covered by the order. No such period may commence before 6 April 2001.

The latest date that may appear in orders designating streets for commercial and industrial incentives under this Chapter (***Chapter 7*** of ***Part 10***) is 31 December 2004 or, where ***section 372A(1B)*** applies, 31 December 2006. [***NB***: The 31 December 2006 date is, ***(1)(bb)***

subject to a commencement order, further extended to 31 July 2008 by section 30 FA 2006 – provided that the conditions of ***section 372A(1B)*** and ***(3)*** are satisfied.]

The latest date that may appear in orders designating streets for residential incentives under ***Chapter 11*** of ***Part 10*** is 31 December 2004 or, where ***section 372AL(1A)*** applies, 31 December 2006. Where ***section 372AL(1A)*** and ***(3)*** apply, the final date is extended to 31 July 2008. ***(1)(c)***

Commercial buildings: non-qualification of certain types

The types of commercial premises referred to in ***subsection (1)(b)*** are specified viz. ***(2)***

- commercial premises other than those in use for retailing goods or providing services within the State,
- commercial premises in use as offices,
- commercial premises in use for mail order or financial services.

An order must provide that these types of building or structure may not be a qualifying premises within the meaning of ***section 372D***.

Power to amend or revoke an order

The power to make an order under ***subsection (1)*** includes the power to amend or revoke the order. ***(2A)***

Laying of orders

Orders made designating streets as qualifying streets must be laid before Dáil Éireann in the normal way. ***(3)***

Accord with Living over the Shop circular

Relief under this Chapter or ***Chapter 11*** of this Part will be available only where the relevant local authority certifies that the construction, conversion or refurbishment involved is consistent with the aims, objectives and criteria laid down in the Department of Environment and Local Government circular UR 43A dated 13 September 2000, or in any circular amending paragraph 6 of that circular in relation to street lengths. ***(4)***

372C Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Summary

Accelerated capital allowances are provided in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures such as factories, mills and similar type premises. The building or structure must be situated in ***a qualifying area*** and must be used for the purposes of carrying on a trade. Part of such a building or structure situated in a qualifying area will also qualify. The accelerated capital allowances are available only in respect of capital expenditure incurred on construction or refurbishment work which is carried out in the qualifying period. An initial allowance of 50 per cent may be claimed by both owner-occupiers and lessors with annual allowances of 4 per cent available for the balance of the qualifying expenditure. Alternatively, an accelerated allowance known as free depreciation of up to 50 per cent is available to owner-occupiers only. Refurbishment expenditure on an industrial building only qualifies for allowances if it is not less than 10 per cent of the value of the building before refurbishment.

The accelerated capital allowances provided by this section are not available in certain circumstances – see ***section 372K*** for full details.

By virtue of the provisions of ***sections 270(4)*** to ***(7)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. An overall cap also applies on the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify for relief.

Details

Qualifying industrial buildings or structures

The section applies to industrial buildings or structures such as mills, factories and other similar premises situated in *a qualifying area* used for the purposes of a trade and which are built or refurbished in the qualifying period. The section also applies to parts of such buildings or structures which are situated in *a qualifying area*. ***(1)***

Allowances available and rates

The normal industrial building writing-down allowances of 4 per cent per annum are already available under ***section 272*** in respect of capital expenditure incurred on the construction or refurbishment of qualifying industrial buildings or structures. Accelerated capital allowances are now made available as follows in respect of such construction or refurbishment expenditure.

An industrial building (initial) allowance of 50 per cent for capital expenditure incurred in the qualifying period on the construction or refurbishment of industrial buildings is made available under ***section 271*** to owner-occupiers and lessors. ***(2)***

Alternatively, free depreciation (an acceleration of the annual writing-down allowances) up to 50 per cent of construction or refurbishment expenditure incurred in the qualifying period may be claimed under ***section 273*** by owner-occupiers. Lessors cannot claim free depreciation. ***(3)***

The balance of the qualifying expenditure may be written off at 4 per cent per annum where initial allowance or free depreciation is claimed.

Restrictions on expenditure incurred in 2007 and 2008

The relieving provisions of this section (***subsections (2)*** and ***(3)***) are subject to ***sections 270(4)*** to ***(7)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the amount attributable to the period involved (see notes on ***section 270)***.

Additionally, by virtue of the provisions of ***section 270(7)***, the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may be taken into account in calculating capital allowances is capped at the amount of expenditure, projected to be incurred post 31 December 2006, which was certified by the local authority. This cap will apply prior to the application of the respective reductions to 75 per cent and 50 per cent of the capital expenditure for the period involved (see notes on ***section 270(7)***).

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Refurbishment expenditure

The allowances provided for in the section are only available in the case of refurbishment expenditure where the capital expenditure incurred on refurbishment is not less than 10 per cent of the market value of the building before refurbishment. ***(4)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying industrial building or structure, a balancing charge will not be made if that event occurs more than 13 years after the building or structure was first used or, in the case where refurbishment expenditure on the building or structure qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(5)***

Qualifying expenditure

The capital expenditure which is to qualify for the industrial building (initial) allowance and free depreciation must be expenditure incurred on construction or refurbishment work actually carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for those allowances. Of course, title to the normal writing-down allowances under ***section 272*** still exist in relation to the part of the expenditure referable to work carried out outside the qualifying period. ***(6)***

This provision negates, for the purposes only of determining the amount of expenditure which is to qualify for the industrial building (initial) allowance and free depreciation, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of those allowances. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

372D Capital allowances in relation to construction or refurbishment of certain commercial premises

Summary

This section provides for the granting of capital allowances for capital expenditure incurred on either or both the construction and refurbishment of certain commercial premises or parts of such premises which are situated in ***qualifying areas***. The construction or refurbishment work, whichever applies in relation to an area, must be carried out in the qualifying period. By virtue of ***section 372B*** certain types of commercial buildings viz. multi-storey car parks, offices, the facades of offices, commercial buildings with only a small office content and the facades of such buildings may or may not qualify.

The section also provides for the granting of capital allowances for capital expenditure incurred on the construction or refurbishment of certain commercial premises or parts of such premises which front on to ***qualifying streets***. The construction or refurbishment work must be carried out in the qualifying period. By virtue of ***section 372BA*** certain types of buildings may not qualify i.e. those not is use for the retailing or supply of local goods and services, those in use as offices or in use for mail order or financial services.

Generally, capital allowances are available for 100 per cent of the relevant expenditure. An initial allowance of 50 per cent is available to both lessors and owner-occupiers with annual allowances of 4 per cent for the balance. Alternatively, an accelerated allowance known as free depreciation of up to 50 per cent is available to owner-occupiers. Refurbishment expenditure only qualifies for allowances if it is not less than 10 per cent of the value of the premises before refurbishment.

The accelerated capital allowances provided by this section are not available in certain circumstances – see ***section 372K*** for full details.

By virtue of ***sections 270(4)*** to ***(7)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. These restrictions apply in relation to both the Urban Renewal and LOTS schemes. In the case of the Urban Renewal scheme, an overall cap also applies in relation to the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008.

Details

Qualifying premises

The section applies to commercial premises such as shops, restaurants etc. situated in a qualifying area, or fronting on to a qualifying street, which are used for the purposes of a trade or profession or are let on a commercial basis. A part of a building or structure in use as such a premises and which is situated in a qualifying area or which fronts on to a qualifying street will also qualify. Industrial buildings, hotels and any part of a premises used as a dwelling are excluded. ***(1)***

In relation to qualifying areas, certain types of buildings i.e. multi-storey car parks, offices, the facades of offices, commercial buildings with only a small office content and the facades of such buildings, may or may not be selected to qualify in orders made under ***section 372B***.

In relation to qualifying streets, certain types of buildings i.e. those not is use for the retailing or supply of local goods and services, those in use as offices, or those in use for mail order or financial services, must be excluded from qualification in orders made under ***section 372B***.

Application of law relating to industrial buildings or structures

Subject to the modifications set out in ***subsections (3)*** to ***(5)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions (for example, the exclusion of allowances for retail shops in ***section 268***). Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises (or in a building, the facade of which is a qualifying premises) which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that a change in the nature of the use of the premises from, say, use as a shop to use as a restaurant constitutes continuance of use as a qualifying premises. ***(2)(a)***

Restrictions on expenditure incurred in 2007 and 2008

The relieving provision of this section (***subsection (2)(a)***) is also subject to ***sections 270(4)*** to ***(7)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the ***(2)(a)***

year 2007 and the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the relevant amount attributable for the period involved. *These restrictions apply to both the Urban and LOTS schemes* (see notes on ***section 270***).

Additionally, *in the case of the Urban Renewal scheme*, by virtue of the provisions of ***section 270(7)***, the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may be taken into account in calculating capital allowances is capped at the amount of expenditure, projected to be incurred post 31 December 2006, which was certified by the local authority. This cap will apply prior to the application of the respective reductions to 75 per cent and 50 per cent of the capital expenditure for the period involved (see notes on ***section 270(7)***).

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Allowances available – qualifying areas

Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises during the qualifying period (see ***subsection (7)***). The effect of ***subsection (2)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. The writing-down allowances are available to both owner-occupiers and lessors. ***(2)(b)***

An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. The initial allowance is available to both owner-occupiers and lessors of qualifying premises. ***(4)(a)***

Alternatively, free depreciation (an acceleration of the annual writing-down allowances) of up to 50 per cent of qualifying expenditure is made available under ***section 273***. Free depreciation is available only to owner-occupiers of qualifying premises. ***(4)(b)***

The balance of the qualifying expenditure may be written off at 4 per cent per annum where initial allowance or free depreciation is claimed.

Refurbishment expenditure

The allowances provided for in the section are only available in the case of refurbishment expenditure where the capital expenditure incurred on refurbishment is not less than 10 per cent of the market value of the premises before refurbishment. ***(3)***

Allowances available – qualifying streets

The same regime of capital allowances (4 per cent annual writing-down allowances, 50 per cent industrial building (initial) allowance and 50 per cent accelerated writing-down allowances (free depreciation)) as is available in the qualifying areas is also available in the case of the qualifying streets. The allowances are available in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises during the qualifying period. In addition, in order for the allowances to apply, the following conditions must be satisfied: ***(3A)(a)***

- the qualifying premises must be comprised in the ground floor of an existing building (i.e. a building which existed on 13 September 2000 and which fronts on to a qualifying street) or a replacement building (i.e. a new building where the original building has to be demolished following a demolition order or, in certain cases, due to structural reasons),
- apart from the capital expenditure incurred in the qualifying period on the construction or refurbishment of the qualifying premises, expenditure must also be incurred on the existing building or the replacement building which is —

- eligible expenditure within the meaning of ***Chapter 11*** of this Part (i.e. expenditure incurred on necessary construction, conversion expenditure or refurbishment expenditure on rented residential accommodation), or
- qualifying expenditure within the meaning of ***Chapter 11*** of this Part (i.e. expenditure incurred on necessary construction, conversion or refurbishment of owner-occupied residential accommodation)

and in respect of which a deduction has been given or is available under ***section 372AP*** or ***372AR***.

Moreover, the amount of the capital expenditure incurred on the construction or refurbishment of the qualifying premises which qualifies for capital allowances is confined to an amount which does not exceed the aggregate amount of the expenditure incurred on the residential elements of the existing building or the replacement building which qualifies for relief under ***sections 372AP*** and ***372AR***. ***(3A)(b)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying premises was first used or, in the case where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(5)***

Qualifying expenditure

The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(7)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

372E Double rent allowance in respect of rent paid for certain business premises

Summary

This section contained a provision which provided for the availability of a double rent allowance for tax purposes, for rent paid under a bona fide commercial lease, to a person carrying on a trade or profession in a rented industrial building, commercial premises or hotel in a qualifying area.

NB: No area was (or will be) designated for the purpose of this section and it was repealed by section 24(3) Finance Act 2002.

372F Rented residential accommodation: deduction for certain expenditure on construction

372G Rented residential accommodation: deduction for certain expenditure on conversion

372H Rented residential accommodation: deduction for certain expenditure on refurbishment

372I Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment

372J Provisions supplementary to sections 372F to 372I

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 372F***, ***372G***, ***372H***, ***372I*** and ***372J*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

372K Non-application of relief in certain cases and provision against double relief

Summary

The section provides, in line with EU requirements, that capital allowances under this scheme in relation to industrial buildings or structures and commercial premises are not available:

- to property developers in certain circumstances,
- where any part of the construction or refurbishment expenditure is met by grant assistance or any other assistance from the State or any of its agencies,
- unless the relevant interest in the construction or refurbishment expenditure is held by a micro, small or medium-sized enterprise as defined by the EU, or
- to owner-operators of buildings or structures or premises in use in certain sectors and industries (This restriction does not apply to lessors.)
- unless prior approval of such capital allowances are received from the European Commission where a project is subject to the notification requirements of either the "Multisectoral framework on regional aid for large investment projects", dated 7 April 1998 or the revised framework dated 19 March 2002, whichever applies.

The section provides for apportionment on the basis of floor area in cases where a part of a building or structure is outside the boundary of a qualifying area in order to determine the amount of expenditure attributable to the part within the area.

Finally, the section ensures that expenditure relieved under this Chapter will not be entitled to relief under any other provision of the Tax Acts. Thus, double relief is precluded.

Details

Restrictions on the availability of capital allowances

Capital allowances under ***sections 372AC*** and ***372AD*** in relation to industrial buildings or structures and commercial premises will not apply: ***(1)***

- to a property developer, where the expenditure on the construction or refurbishment of a building or structure or premises is incurred by the property developer or by a person connected with the property developer. A property developer is defined in ***section 372AA*** as a person who devotes the greater part of his or her trading activity (taking account of all of the person's trading activities) to the construction or refurbishment of buildings or structures for sale. Thus, where a property developer constructs or refurbishes an industrial or commercial premises or buys one from a connected person who constructed or refurbished it, there will be no relief available to the property developer. ***(1)(a)***
- where the expenditure on the construction or refurbishment of a building or structure or premises is met directly or indirectly by way of grant assistance or any other assistance from the State, any board established by statute, any public or local authority or any other agency of the State. ***(1)(aa)***
- unless the relevant interest in the construction or refurbishment expenditure is held by: ***(1)(ab)***
  - a small or medium-sized enterprise – as defined by the EU in Commission Regulation (EC) No. 70/2001 (OJ No. L10 of 13 January 2001, p.33), or
  - a micro, small or medium-sized enterprise – as defined in the Annex to Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, p.36).
- in respect of expenditure incurred on the construction or refurbishment of a building or structure or premises by an owner-operator whose trade is carried on wholly or mainly in the agricultural sector, the coal, fishing or motor vehicle industries, or the transport, steel, shipbuilding, synthetic fibres or financial services sectors. This restriction does not apply to lessors. ***(1)(b)***
- as respects construction or refurbishment expenditure incurred on or after 1 January 2003, where a project is subject to the notification requirements of the "Multisectoral framework on regional aid for large investment projects", prepared by the European Commission and dated either 7 April 1988 or 19 March 2002, unless prior approval of the potential capital allowances involved has been received from the EU Commission. [The rules of each framework will decide as to which is applicable in any case. The new framework is due to become effective from 1 January 2004.] Approval must be received from the Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance. ***(1)(c)***

Apportionment

There is provision for apportionment on a floor area basis to determine the amount of expenditure incurred on the part of a building or structure within the boundary of a designated area where part of the building or structure is also outside that boundary. This provision applies for the purposes of ***sections 372AC*** and ***372AD***. ***(2)***

Provision against double relief

Expenditure relieved under this Chapter cannot get relief under any other provision of the Tax Acts. Double relief is, therefore, precluded. ***(3)***

CHAPTER 8
Qualifying Rural Areas

Overview

This Chapter provides for a scheme of tax reliefs aimed at invigorating certain areas of rural Ireland on similar lines to the renewal schemes which were previously made available in an urban context. The scheme covers all of the counties of Leitrim and Longford as well as certain areas in counties Cavan, Roscommon and Sligo designated on a District Electoral Division basis under the scheme.

Schedule 8A describes the rural areas which are to be qualifying areas for the purposes of this scheme.

The qualifying period for the business (industrial and commercial) tax incentives started on 1 July 1999 and originally was due to end on 31 December 2004. However, in certain circumstances this period may be extended to 31 December 2006 or to 31 July 2008.

Where the extended termination date of 31 July 2008 applies, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. There is also an overall cap on the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify (see notes on ***sections 270(4)*** to ***(7)*** and ***316***).

The qualifying period for the residential reliefs available under the scheme is set out in ***Chapter 11*** of this Part.

Tax incentives, in the form of capital allowances for industrial buildings or structures and commercial premises, are not available under ***Chapter 8*** in certain circumstances – see ***section 372T*** for full details.

Provision was made —

- in ***section 372M***, for accelerated capital allowances in respect of capital expenditure incurred in the construction or refurbishment of certain industrial buildings or structures in qualifying rural areas,
- in ***section 372N***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain commercial buildings or structures such as shops, offices, etc. Also included are buildings or structures in use for the provision of sewerage facilities, water supplies and roads for public purposes,
- in ***section 372O***, for a double rent allowance in respect of rent paid for the lease of certain industrial buildings and commercial premises used for the purposes of a qualifying trade or profession. [**NB**: No trade or profession was ever specified as qualifying for the purpose of this section, and the section was repealed by section 24(3) Finance Act 2002],
- in ***section 372P***, for relief against rental income in respect of expenditure on the construction of certain residential accommodation in qualifying rural renewal areas,
- in ***section 372Q***, for relief against rental income for expenditure on the conversion of certain buildings in those areas into rented residential accommodation,
- in ***section 372R***, for relief against rental income for expenditure on refurbishment of buildings comprising rental accommodation, and
- in ***section 372RA***, for relief for expenditure by owner-occupiers on the construction or refurbishment of their residential accommodation.
- in ***section* 372S**, for measures which were supplementary to ***sections 372P***, ***372Q***, ***372R*** and ***372RA***.

- in ***section 372T***, to deny capital allowances for industrial buildings or structures and commercial premises in certain circumstances and to prevent claims for double relief.

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 372P, 372Q, 372R, 372RA*** and ***372S*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

372L Interpretation (Chapter 8)

Summary

This section is the interpretation section for the Chapter. It contains definitions of terms used throughout the Chapter and, in particular, sets out the qualifying period for the scheme of reliefs provided by the Chapter.

Details

Definitions

"lease", "lessee", "lessor", "premium" and "rent" have the same meanings as in ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage. "Lessee" and "lessor" include successors in title. "Premium" includes any like sum whether payable to an immediate or superior lessor or to a person connected with the immediate or superior lessor. ***(1)***

"market value" is the price which the unencumbered fee simple of the building, structure or house would fetch in an open market sale less the part of that price attributable to the site of the building, structure or house.

"property developer" means a person wholly or mainly involved in the trade of constructing or refurbishing buildings for sale.

"qualifying period" is, in the case of the business incentives covered by ***sections 372M*** and ***372N***, the period beginning on 1 July 1999 (the date appointed by order of the Minister for Finance) and —

- ending on 31 December 2004, or
- where ***subsection (2)*** applies, ending on 31 December 2006, or
- where ***subsections (2)*** and ***(3)*** apply, ending on 31 July 2008. [**NB**: This extension to 31 July 2008, as provided for in section 31 Finance Act 2006, is subject to a commencement order.]

The "qualifying period" in relation to rented residential accommodation and owner-occupied accommodation is now contained in ***section 372AL*** in ***Chapter 11*** of this Part.

"qualifying rural area" means the rural areas which are to be qualifying areas for the purposes of the scheme and these are described in ***Schedule 8A***.

"refurbishment" is any work of construction, reconstruction, repair or renewal, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure. Specifically included as refurbishment is the provision or improvement of water, sewerage or heating facilities.

Extension of qualifying period to 31 December 2006

(2)

This subsection, which relates to the extension of the qualifying period to 31 December 2006 for commercial and industrial premises, applies as respects expenditure incurred on the construction or refurbishment of a building or structure if a valid planning application (other than for outline permission), in so far as planning permission is required, in relation to the work represented by the expenditure, is received by the planning authority:

- by 31 December 2004, where the application is made in accordance with the Planning & Development Regulations 2001 to 2003, or
- by 10 March 2002, where the application was made in accordance with the Local Government (Planning and Development) Regulations 1994.

Where the work involved is exempted development for the purposes of the Planning and Development Act 2000 the extension to 31 December 2006 may also apply provided the following conditions are met on or before 31 December 2004:

- a detailed plan in relation to the development work is prepared,
- a binding contract in writing exists under which the expenditure on the development is incurred, and
- work to the value of 5% of the development costs is carried out.

Extension of qualifying period to 31 July 2008

(3)(a) and (b)

This subsection, which relates to the possible extension of the qualifying period to 31 July 2008 for commercial and industrial premises, applies as respects expenditure on the construction or refurbishment of a building or structure if the relevant conditions of ***subsection (2)*** were met **and** work to the value of at least 15 per cent of the actual construction or refurbishment costs (excluding site costs) of the building or structure is carried out by 31 December 2006. The person who carried out the work or, where that person sells the building or structure involved, the person who is claiming the capital allowances must be able to show that this 15% condition was satisfied.

By virtue of ***paragraphs (a)*** and ***(b)*** of ***section 270(7)***, local authority certification is required in respect of this 15 per cent condition. Such certification must include details of actual expenditure incurred to 31 December 2006 and of projected expenditure post 31 December 2006.

(3)(c) and (d)

There is also a requirement that a binding contract in writing in relation to the construction or refurbishment is in place by 31 July 2006 and that any other conditions relating to compliance with State aid issues, that may be specified by the Minister for Finance in regulations, have been satisfied.

372M Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Summary

Accelerated capital allowances are provided in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures such as factories, mills and similar type premises as well as dock undertakings. The building or structure must be situated in a qualifying rural area and must be used for the purposes of carrying on a trade. The accelerated capital allowances are available only in respect of capital expenditure incurred on construction or refurbishment work on a building or structure which is carried out in the qualifying period. An initial allowance of 50 per cent may be claimed by both owner-occupiers and lessors with annual allowances of 4 per cent available for the balance of the qualifying expenditure. Alternatively, an accelerated

allowance known as free depreciation of up to 50 per cent is available to owner-occupiers only. Refurbishment expenditure on an industrial building only qualifies for allowances if it is not less than 10 per cent of the value of the building before refurbishment.

The accelerated capital allowances provided by this section are not available in certain circumstances – see ***section 372T*** for full details.

By virtue of the provisions of ***sections 270(4)*** to ***(7)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. An overall cap also applies on the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify for relief.

Detail

Qualifying industrial buildings or structures

The section applies to industrial buildings or structures such as mills, factories and other similar premises and also to facilities such as piers and jetties situated in a qualifying rural area used for the purposes of a trade and which are built or refurbished in the qualifying period. ***(1)***

Allowances available and rates

The normal industrial building writing-down allowances of 4 per cent per annum are already available under ***section 272*** in respect of capital expenditure incurred on the construction or refurbishment of qualifying industrial buildings or structures. Accelerated capital allowances are now made available as follows in respect of such construction or refurbishment expenditure.

An industrial building (initial) allowance of 50 per cent for capital expenditure incurred in the qualifying period on the construction or refurbishment of industrial buildings to which this section applies is made available under ***section 271*** to owner-occupiers and lessors. ***(2)***

Alternatively, free depreciation (an acceleration of the annual writing-down allowances) up to 50 per cent of construction or refurbishment expenditure incurred in the qualifying period may be claimed under ***section 273*** by owner-occupiers. Lessors cannot claim free depreciation. ***(3)***

The balance of the qualifying expenditure may be written off at 4 per cent per annum where initial allowance or free depreciation is claimed.

Restrictions on expenditure incurred in 2007 and 2008

The relieving provisions of this section (***subsections (2)*** and ***(3)***) are subject to ***sections 270(4)*** to ***(7)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the amount attributable to the period involved (see notes on ***section 270)***.

Additionally, by virtue of the provisions of ***section 270(7)***, the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may be taken into account in calculating capital allowances is capped at the amount of expenditure, projected to be incurred post 31 December 2006, which was certified by the local authority. This cap will apply prior to the application of the respective reductions to 75 per cent and 50 per cent of the capital expenditure for the period involved (see notes on ***section 270(7)***).

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Refurbishment expenditure

The allowances provided for in the section are only available in the case of refurbishment expenditure where the capital expenditure incurred on refurbishment is not less than 10 per cent of the market value of the building before refurbishment. ***(4)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying industrial building or structure, a balancing charge will not be made if that event occurs more than 13 years after the building or structure was first used or, in the case where refurbishment expenditure on the building or structure qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(5)***

Qualifying expenditure

The capital expenditure which is to qualify for the industrial building (initial) allowance and free depreciation must be expenditure incurred on construction or refurbishment work actually carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for those allowances. Of course, title to the normal writing-down allowances under ***section 272*** still exist in relation to the part of the expenditure referable to work carried out outside the qualifying period. ***(7)***

This provision negates, for the purposes only of determining the amount of expenditure which is to qualify for the industrial building (initial) allowance and free depreciation, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of those allowances. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

372N Capital allowances in relation to construction or refurbishment of certain commercial buildings or structures

Summary

This section provides for the granting of capital allowances for capital expenditure incurred on the construction or refurbishment of certain commercial premises including office accommodation, shops etc. in qualifying rural areas. The construction or refurbishment work must be carried out in the qualifying period.

Generally, capital allowances are available for 100 per cent of the relevant expenditure. An initial allowance of 50 per cent is available to both lessors and owner-occupiers with annual allowances of 4 per cent for the balance. Alternatively, an accelerated allowance known as free depreciation of up to 50 per cent is available to owner-occupiers.

Refurbishment expenditure only qualifies for allowances if it is not less than 10 per cent of the value of the premises before refurbishment.

The accelerated capital allowances provided by this section are not available in certain circumstances – see ***section 372T*** for full details.

By virtue of ***sections 270(4)*** to ***(7)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. An overall cap also applies in relation to the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify for relief.

Details

Qualifying premises

The section applies to commercial premises such as shops, pubs etc. situated in a qualifying rural area which are used for the purposes of a trade or profession or are let on a commercial basis. Also included are buildings or structures used for the purposes of an approved scheme relating to the provision of water supplies, sewerage facilities and certain roads. Industrial buildings, hotels and any part of a premises used as a dwelling are excluded. ***(1)***

Application of law relating to industrial buildings or structures ***(2)(a)***

Subject to the modifications set out in ***subsections (3)*** to ***(5)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions (for example, the exclusion of allowances for retail shops in ***section 268***). Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that a change in the nature of the use of the premises from, say, use as a shop to use as a restaurant constitutes continuance of use as a qualifying premises.

Restrictions on expenditure incurred in 2007 and 2008

The relieving provision of this section (***subsection (2)(a)***) is also subject to ***sections 270(4)*** to ***(7)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the relevant amount attributable for the period involved (see notes on ***section 270)***. ***(2)(a)***

Additionally, by virtue of the provisions of ***section 270(7)***, the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may be taken into account in calculating capital allowances is capped at the amount of expenditure, projected to be incurred post 31 December 2006, which was certified by the local authority. This cap will apply prior to the application of the respective reductions to 75 per cent and 50 per cent of the capital expenditure for the period involved (see notes on ***section 270(7)***).

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Allowances available and rates

Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises during the qualifying period (see ***subsection (7)***). ***(2)(b)***

The effect of ***subsection (2)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. The writing-down allowances are available to both owner-occupiers and lessors of qualifying premises.

An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. The initial allowance is available to both owner-occupiers and lessors of qualifying premises. ***(4)(a)***

Alternatively, free depreciation (an acceleration of the annual writing-down allowances) of up to 50 per cent of qualifying expenditure is made available under ***section 273***. Free depreciation is available only to owner-occupiers of qualifying premises. ***(4)(b)***

The balance of the qualifying expenditure may be written off at 4 per cent per annum where initial allowance or free depreciation is claimed.

Refurbishment expenditure

The allowances provided for in the section are only available in the case of refurbishment expenditure where the capital expenditure incurred on refurbishment is not less than 10 per cent of the market value of the premises before refurbishment. ***(3)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying premises was first used or, in the case where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 13 years after that expenditure was incurred. ***(5)***

Qualifying expenditure

The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(7)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

372O Double rent allowance in respect of rent paid for certain business premises

Summary

This section contained a provision which provided for the availability of a double rent allowance for tax purposes, for rent paid under a bona fide commercial lease, to a person carrying on a qualifying trade or profession (to be specified as such by the Minister for Finance by regulation) in a qualifying premises in a qualifying area.

NB: No trade or profession was specified as qualifying for the purpose of this section, and the section was repealed by section 24(3) Finance Act 2002.

372P Rented residential accommodation: deduction for certain expenditure on construction

372Q Rented residential accommodation: deduction for certain expenditure on conversion

372R Rented residential accommodation: deduction for certain expenditure on refurbishment

372RA Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment

372S Provisions supplementary to *sections* 372P to 372R

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 372P***, ***372Q***, ***372R***, ***372RA*** and ***372S*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

372T Non-application of relief in certain cases and provision against double relief

Summary

This section provides, in line with EU requirements, that capital allowances under this scheme in relation to industrial buildings or structures and commercial premises are not available:

- to property developers in certain circumstances,
- where any part of the construction or refurbishment expenditure is met by grant assistance or any other assistance from the State or any of its agencies,
- unless prior approval of such capital allowances are received from the European Commission where a project is subject to the notification requirements of either the "Multisectoral framework on regional aid for large investment projects" dated 7 April 1998 or the revised Multisectoral Framework dated 19 March 2002, whichever is appropriate, or
- to owner-operators of buildings or structures or premises in use in certain sectors and industries (This restriction does not apply to lessors.)

The section also confines these "business" reliefs (i.e. capital allowances for industrial and commercial premises) to firms employing less than 250 people.

Finally, the section prevents claims for relief being made under any other provision of the Tax Acts where relief is given under this Chapter.

Details

Restrictions on the availability of capital allowances

Capital allowances under ***sections 372M*** and ***372N*** in relation to industrial buildings or structures and commercial premises will not apply: ***(1)***

- to a property developer, where the expenditure on the construction or refurbishment of a building or structure or premises is incurred by the property developer or by a person connected with the property developer. ***(1)(a)***
- where the expenditure on the construction or refurbishment of a building or structure or premises is met directly or indirectly by way of grant assistance or any other assistance from the State, any board established by statute, any public or local authority or any other agency of the State. ***(1)(aa)***
- as respects construction or refurbishment expenditure incurred on or after 1 January 2003, where a project is subject to the notification requirements of the "Multisectoral framework on regional aid for large investment projects", prepared by the European Commission and dated either 7 April 1988 or 19 March 2002, unless prior approval of the potential capital allowances involved has been received from the EU Commission. [The rules of each framework will decide as to which is applicable in any case. The new framework is due to become effective from 1 January 2004.] Approval must be received from the Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance. ***(1)(ab)***
- in respect of expenditure incurred on the construction or refurbishment of a building or structure or premises by an owner-operator whose trade is carried on wholly or mainly in the agricultural sector, the coal, fishing or motor vehicle industries, or the transport, steel, shipbuilding, synthetic fibres or financial services sectors. This restriction does not apply to lessors. ***(1)(b)***
- in relation to a building or structure or premises which is in use for the purposes of a trade (or an activity treated as a trade) if the number of individuals employed or engaged in carrying on the trade or activity is 250 or more. ***(1)(c)***

Provision against double relief

This provision prevents claims for relief being made, in relation to capital or other expenditure or rent paid, under any other provision of the Tax Acts where relief is given under this Chapter. ***(2)***

CHAPTER 9
Park and ride facilities and certain related developments

Overview

This Chapter provides for a scheme of tax reliefs aimed at encouraging the establishment of park and ride facilities mainly in larger urban areas. The areas in question are the cities of Dublin, Cork, Galway, Limerick and Waterford as well as county council areas contiguous to those cities, namely, the county council areas of Clare, Cork, Dún Laoghaire-Rathdown, Fingal, Galway, Kildare, Kilkenny, Limerick, Meath, South Dublin,

Waterford and Wicklow. Urban district council areas in Kildare, Meath and Wicklow are also included.

Accelerated capital allowances up to 100 per cent are provided in respect of qualifying expenditure incurred on the construction or refurbishment of park and ride facilities which comply with Department of the Environment and Local Government guidelines on such facilities. Relief is also made available in respect of qualifying expenditure incurred on the construction or refurbishment of certain commercial premises as is relief for expenditure incurred on the construction of certain residential accommodation located at park and ride facilities. The latter is available under ***Chapter 11*** of this Part. However, these reliefs are subject to certain conditions and limits.

Firstly, commercial and residential development at a park and ride facility must conform to the requirements of guidelines issued by the Minister for the Environment and Local Government. Secondly, allowances are available in respect of expenditure incurred on commercial and residential developments, if any, provided that the total expenditure incurred on those developments does not exceed 50 per cent of total allowable expenditure at a park and ride facility. Thirdly, allowances are available in the case of expenditure incurred on residential accommodation at a park and ride facility up to a limit of 25 per cent of total allowable expenditure at the facility.

The qualifying period for the scheme commenced on 1 July 1999 and originally was due to end on 31 December 2004. In certain circumstances this period may be extended to 31 December 2006 or to 31 July 2008.

Where the extended termination date of 31 July 2008 applies, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved (see notes on ***sections 270(4)*** to ***(6)*** and ***316***).

Where the public transport element of a park and ride facility is delayed, and certification by a local authority in accordance with the guidelines of the Minister for the Environment and Local Government is not possible, provision is made so as to apply provisions of the law governing capital allowances in such a way as to suspend the availability of capital allowances until the public transport element of the park and ride facility is in place and the development can be certified. This will ensure that there will be no loss of entitlement to the allowances.

Tax incentives, in the form of capital allowances for park and ride facilities and commercial premises located at park and ride facilities are not available under ***Chapter 9*** to property developers in certain circumstances. Additionally, capital allowances for such commercial premises are restricted to premises used essentially for the retailing of goods and the provision of services within the State.

Provision was made —

- in ***section 372V***, for a special capital allowances regime in respect of capital expenditure incurred on the construction or refurbishment of certain park and ride facilities,
- in ***section 372W***, for a similar regime of allowances, subject to an overall limit, in respect of capital expenditure incurred on the construction or refurbishment of certain commercial premises at a park and ride facility,
- in ***section 372X***, for relief against rental income, subject to an overall limit, in respect of expenditure incurred on the construction of certain rented residential accommodation at a park and ride facility, and

- in ***section 372Y***, for relief to owner-occupiers, subject to an overall limit, in respect of expenditure incurred on the construction of certain residential accommodation at a park and ride facility.
- in ***section 372Z***, for measures which were supplementary to ***sections 372X*** and ***372Y***.

As part of the codification of legislation governing relief under various tax incentive schemes, for expenditure incurred in relation to residential accommodation, ***sections 372X***, ***372Y*** and ***372Z*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

372U Interpretation (*Chapter 9*)

Summary

This section is the interpretation section for the Chapter. It contains definitions of terms used throughout the Chapter and sets out the qualifying period for the scheme. It also sets out the matters to be covered by guidelines issued by the Minister for the Environment and Local Government. Certification of compliance with these guidelines is the responsibility of the local authorities involved. The definition of "the relevant local authority" lists the local authorities in question.

Definitions

"guidelines" are defined as guidelines in relation to — ***(1)***

- the location, development and operation of park and ride facilities, and
- the development of commercial and residential accommodation at those facilities.

The guidelines are issued by the Minister for the Environment and Local Government following consultation with the Minister for Public Enterprise and with the consent of the Minister for Finance. The issues to be covered by the guidelines are outlined in ***subsection (2)***.

"park and ride facility" is defined as a building or structure, served by a bus or train service, providing car parking for vehicles for the public generally on payment of a charge. This effectively means certain car parks whether multi-storey or surface car parks. The definition also covers any area provided under, over or adjoining the car park to be used for commercial or residential development.

"property developer" means a person wholly or mainly involved in the trade of constructing or refurbishing buildings for sale.

"qualifying park and ride facility" is one which has been certified by the relevant local authority as complying with the guidelines.

"qualifying period", in relation to the business tax incentives provided in this Chapter, means the period commencing on 1 July 1999 and ending on 31 December 2004 or, where ***subsection (1A)*** applies, 31 December 2006. This date is, subject to a commencement order, extended to 31 July 2008 by section 32 Finance Act 2006 where ***subsections (1A)*** and ***(3)*** apply..

The "qualifying period" in relation to the construction of rented residential accommodation is contained in ***section 372AL*** in ***Chapter 11*** of this Part.

"the relevant local authority" is defined to mean Cork, Dublin, Galway, Limerick and Waterford Corporations. It also covers the county council areas of Clare, Cork, Dún Laoghaire-Rathdown, Fingal, Galway, Kildare, Kilkenny, Limerick, Meath, South Dublin, Waterford and Wicklow as well as urban district councils in counties Kildare, Meath and Wicklow. In regard to the definition of "local authority", it should be noted that, by virtue of section 3(2) of, and Schedule 2 to, the Local Government Act 2001, references in any other enactment to "county borough corporation", "council of a county" and "council of an urban district", and to similar or analogous expressions, are now to be construed as references to "City council", "County council" and "Town council of a town mentioned in ***Chapter 2*** of Part 1 of Schedule 6 to the Local Government Act 2001", respectively.

Extension of qualifying period to 31 December 2006

(1A)

This subsection, which relates to the extension of the qualifying period to 31 December 2006 for park and ride facilities and commercial premises, applies as respects expenditure on the construction or refurbishment of a building or structure if a valid planning application (other than for outline permission), in so far as planning permission is required, in relation to the work represented by the expenditure, is received by the planning authority:

- by 31 December 2004, where the application is made in accordance with the Planning & Development Regulations 2001 to 2003, or
- by 10 March 2002, where the application was made in accordance with the Local Government (Planning and Development) Regulations 1994.

Where the work involved is exempted development for the purposes of the Planning and Development Act 2000 the expiry date of 31 December 2006 may also apply provided the following conditions are met on or before 31 December 2004:

- a detailed plan in relation to the development work is prepared,
- a binding contract in writing exists under which the expenditure on the development is incurred, and
- work to the value of 5% of the development costs is carried out.

Extension of qualifying period to 31 July 2008

(3)(a) and (b)

This subsection, which relates to the possible extension of the qualifying period to 31 July 2008 for park and ride facilities and commercial premises, applies as respects expenditure on the construction or refurbishment of a building or structure if the relevant conditions of ***subsection (1A)*** were met **and** work to the value of at least 15 per cent of the actual construction or refurbishment costs (excluding site costs) of the building or structure is carried out by 31 December 2006. The person who carried out the work or, where that person sells the building or structure involved, the person who is claiming the capital allowances must be able to show that this 15% condition was satisfied.

Matters for the guidelines

(2)

These may include provisions in relation to —

- the criteria for determining suitable park and ride sites,
- conditions to apply in relation to the provision of transport services to and from a park and ride facility, including provision for a formal agreement between a transport operator and a park and ride facility operator in certain circumstances,
- hours of operation and the level and structure of charges to be levied on users of a park and ride facility,
- the minimum number of parking spaces and the proportion, if any, of those spaces allocated to any commercial or residential development at a park and ride facility,

- the requirements to apply to ensure that commercial or residential development does not adversely affect the development of a park and ride facility.

372V Capital allowances in relation to construction or refurbishment of certain park and ride facilities

Summary

A scheme of capital allowances is made available in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of qualifying park and ride facilities.

The allowances available are —

- annual writing-down allowances of 4 per cent of qualifying expenditure (available to both owner-occupiers and lessors),
- an industrial building (initial) allowance of 50 per cent of qualifying expenditure (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 100 per cent of qualifying expenditure (available only to owner-occupiers).

These capital allowances are not available to property developers in certain circumstances.

By virtue of the provisions of ***sections 270(4)*** to ***(6)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved.

Where the public transport element of a park and ride facility is delayed, and certification by a local authority in accordance with the guidelines of the Minister for the Environment and Local Government is not possible, provision is made so as to apply provisions of the law governing capital allowances in such a way as to suspend the availability of capital allowances until the public transport element of the park and ride facility is in place and the development can be certified.

Details

Application of law relating to industrial buildings or structures

Subject to the modifications set out in ***subsections (2)*** to ***(4A)***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying park and ride facilities, despite anything to the contrary in those provisions. Those provisions, which specifically relate to the use of buildings or structures for a trade, are so applied as if a qualifying park and ride facility were, at all times it is such a qualifying facility, an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises). ***(1)(a)***

Restrictions on expenditure incurred in 2007 and 2008

The relieving provision of this section (***subsection (1)(a)***) is also subject to ***sections 270(4)*** to ***(6)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the relevant amount attributable for the period involved (see notes on ***sections 270)***. ***(1)(a)***

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Refurbishment – additional condition for entitlement to allowances

(2) In a case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying park and ride facility, the special scheme of capital allowances applies only if the amount of the capital expenditure so incurred at least equals 10 per cent of the market value of the qualifying facility immediately before that expenditure was incurred.

Non-availability of capital allowances to property developers

(2A) A property developer may not claim capital allowances in respect of expenditure incurred on the construction or refurbishment of a qualifying park and ride facility where the property developer holds the relevant interest in that expenditure and either the property developer or a person connected with the property developer incurred the expenditure. Thus, where a property developer constructs or refurbishes a park and ride facility or buys one from a connected person who constructed or refurbished it, there will be no relief available to the property developer.

Allowances available and rates

(1)(b) Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying park and ride facility during the qualifying period (see ***subsection (5)***).

The effect of ***subsection (1)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. The writing-down allowances are available to both owner-occupiers and lessors of qualifying premises.

(3)(a) An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. The initial allowance is available to both owner-occupiers and lessors of qualifying park and ride facilities.

(3)(b) Free depreciation (an acceleration of the annual writing-down allowances) of up to 100 per cent of qualifying expenditure is made available under ***section 273***. Free depreciation is available only to owner-occupiers of qualifying park and ride facilities.

Balancing charge

(4) Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying park and ride facility, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying facility was first used or, in the case where refurbishment expenditure on the qualifying facility qualified for capital allowances, more than 13 years after that expenditure was incurred. Where the public transport element of a park and ride facility is delayed, the 13-year limit applies from the date the facility is first used as a qualifying park and ride facility.

Delay with public transport element

(4A) Where it is shown that the public transport element of a park and ride facility is delayed, and certification by a local authority (in accordance with the guidelines of the Minister for the Environment and Local Government) that a facility is a qualifying park and ride facility is not possible, then:

- ***(4A)(a)*** the 50 per cent initial allowance available under ***section 271*** is deferred to the chargeable period in which the facility becomes a qualifying park and ride facility, provided that this happens within 5 years of the facility being first used,
- ***(4A)(b)*** the writing down period under ***section 272*** for annual allowances will commence when the facility is first used as a qualifying park and ride facility and not from the time of its first use,

- the 25 year tax life of the facility under ***section 274*** will run from the time the facility is first used as a qualifying park and ride facility and not from the time of its first use, ***(4A)(c)***
- under ***section 277***, the initial allowance is treated as written off at the time the facility is first used as a qualifying park and ride facility and not at the time of its first use. Also the application of deemed industrial building annual allowances for periods of non-use as an industrial building or structure will only arise from the time the facility is a qualifying park and ride facility and not from the time of its first use for any purpose, ***(4A)(d)***
- under ***section 278***, except in the case of income chargeable under Case V of Schedule D, an initial allowance in respect of a qualifying park and ride facility will be given by way of discharge or repayment of tax if the taxpayer's interest in the facility is subject to any lease before the facility is first used as a qualifying park and ride facility (and not before it is first used for any purpose), ***(4A)(e)***
- the rules of ***section 279*** in relation to the purchase of certain industrial buildings or structures will apply, in the case of a qualifying park and ride facility, where such a facility is bought unused or within one year of commencing to be used as a qualifying park and ride facility (and not within one year of commencing to be used for any purpose). ***(4A)(f)***

Qualifying expenditure

The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(5)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

Bar on double claims

Where an allowance is given under the section in respect of capital expenditure incurred on a qualifying park and ride facility, an allowance cannot be given under any other provision of the Tax Acts in respect of that expenditure. ***(6)***

372W Capital allowances in relation to construction or refurbishment of certain commercial premises

Summary

A scheme of capital allowances is made available in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of certain commercial

premises (that is, buildings which are not industrial buildings or structures for tax purposes, for example, shops and other retail outlets, etc) within the site of a qualifying park and ride facility. The commercial premises must be in use for the retailing of goods or the provision of services within the State. Premises in use as offices or for the purposes of mail order or financial services do not qualify.

The allowances available are —

- annual writing-down allowances of 4 per cent of qualifying expenditure (available to both owner-occupiers and lessors),
- an industrial building (initial) allowance of 50 per cent of qualifying expenditure (available to both owner-occupiers and lessors), and
- accelerated writing-down allowances (free depreciation) of 100 per cent of qualifying expenditure (available only to owner-occupiers).

These capital allowances are not available to property developers in certain circumstances.

By virtue of ***sections 270(4)*** to ***(6)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved.

Where the public transport element of a park and ride facility is delayed, and certification by a local authority in accordance with the guidelines of the Minister for the Environment and Local Government is not possible, provision is made so as to apply provisions of the law governing capital allowances in such a way as to suspend the availability of capital allowances until the public transport element of the park and ride facility is in place and the development can be certified.

Details

Qualifying premises

(1) This provision sets out the types of buildings or structures, expenditure on the construction or refurbishment of which qualifies for relief if the work is carried out in the qualifying period. Firstly, the site of the building or structure must be wholly within the site of a qualifying park and ride facility. Secondly, the building or structure must be the subject of a certificate from the relevant local authority indicating compliance with the guidelines in relation to commercial premises at a park and ride facility. Thirdly, it must not be an industrial building or structure, nor must it be in use as or as part of a dwelling house. Fourthly, the building or structure must be in use for the retailing of goods or the provision of services within the State (but not including use as offices or for the purposes of mail order or financial services) or, otherwise must be let on a commercial basis.

Application of law relating to industrial buildings or structures

(2)(a) Subject to the modifications set out in ***paragraphs (b)*** and ***(c)*** and in ***subsections (3)*** to ***(5A),*** the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions (for example, the exclusion of allowances for retail shops in ***section 268***). Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that a change in the nature of the use of the premises from, say, use as a shop to use for some other certified activity constitutes continuance of use as a qualifying premises.

Restrictions on expenditure incurred in 2007 and 2008

The relieving provision of this section (***subsection (2)(a)***) is also subject to ***sections 270(4)*** to ***(6)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the relevant amount attributable for the period involved (see notes on ***section 270)***. ***(2)(a)***

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Non-availability of capital allowances to property developers

A property developer may not claim capital allowances in respect of expenditure incurred on the construction or refurbishment of a commercial premises located at a qualifying park and ride facility where the property developer holds the relevant interest in that expenditure and either the property developer or a person connected with the property developer incurred the expenditure. Thus, where a property developer constructs or refurbishes a commercial premises located at a park and ride facility or buys one from a connected person who constructed or refurbished it, there will be no relief available to the property developer. ***(3A)***

Allowances available and rates

Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises during the qualifying period (see ***subsection (6)***). ***(2)(b)***

The effect of ***subsection (2)(a)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. The writing-down allowances are available to both owner-occupiers and lessors of qualifying premises.

An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. The initial allowance is available to both owner-occupiers and lessors of qualifying premises. ***(4)(a)***

Free depreciation (an acceleration of the annual writing-down allowances) of up to 100 per cent of qualifying expenditure is made available under ***section 273***. Free depreciation is available only to owner-occupiers of qualifying premises. ***(4)(b)***

Overall limit on allowable expenditure

There is a limit on the amount of expenditure which is to qualify for allowances under the section. Thus, allowances will only be given provided that the allowable expenditure for all qualifying commercial premises at a park and ride facility when aggregated with deductible expenditure, if any, in respect of residential accommodation (see ***sections 372AP*** and ***372AR***) at that park and ride facility, does not exceed 50 per cent of total allowable or deductible expenditure incurred at that facility. The onus to certify compliance with the requirement is placed on the relevant local authority. ***(2)(c)***

Refurbishment – additional condition for entitlement to allowances

In a case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, the special scheme of capital allowances applies only if the amount of the capital expenditure so incurred at least equals 10 per cent of the market value of the premises immediately before that expenditure was incurred. ***(3)***

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying premises was first used or, where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 13 years after that expenditure was incurred. Where the public transport element of a park and ride facility is delayed, the 13-year limit applies from the date the building or structure is first used as a qualifying premises. ***(5)***

Delay with public transport element

Where it is shown that the public transport element of a park and ride facility is delayed, and certification by a local authority (in accordance with the guidelines of the Minister for the Environment and Local Government) that a building or structure is a qualifying premises is not possible, then: ***(5A)***

- the 50 per cent initial allowance available under ***section 271*** is deferred to the chargeable period in which the building or structure becomes a qualifying premises, provided that this happens within 5 years of the building or structure being first used, ***(5A)(a)***
- the writing down period under ***section 272*** for annual allowances will commence when the building or structure is first used as a qualifying premises and not from the time of its first use, ***(5A)(b)***
- the 25 year tax life of the building or structure under ***section 274*** will run from the time the building or structure is first used as a qualifying premises and not from the time of its first use, ***(5A)(c)***
- under ***section 277***, the initial allowance is treated as written off at the time the building or structure is first used as a qualifying premises and not at the time of its first use. Also the application of deemed industrial building annual allowances for periods of non-use as an industrial building or structure will only arise from the time the building or structure is a qualifying premises and not from the time of its first use for any purpose, ***(5A)(d)***
- under ***section 278***, except in the case of income chargeable under Case V of Schedule D, an initial allowance in respect of a qualifying premises will be given by way of discharge or repayment of tax if the taxpayer's interest in the building or structure is subject to any lease before the building or structure is first used as a qualifying premises (and not before it is first used for any purpose), ***(5A)(e)***
- the rules of ***section 279*** in relation to the purchase of certain industrial buildings or structures will apply, in the case of a qualifying premises, where such a premises is bought unused or within one year of commencing to be used as a qualifying premises (and not within one year of commencing to be used for any purpose). ***(5A)(f)***

Qualifying expenditure

The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(6)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides

for certain expenditure to be treated as having been incurred when the purchase price becomes payable,

- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

Bar on double claims

Where an allowance is given under the section in respect of capital expenditure incurred on a qualifying premises, an allowance cannot be given under any other provision of the Tax Acts in respect of that expenditure. ***(7)***

372X Rented residential accommodation: deduction for certain expenditure on construction

372Y Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction

372Z Provisions supplementary to *sections 372X* to *372Y*

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 372X***, ***372Y*** and ***372Z*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

CHAPTER 10
Designated areas of certain towns

Overview

This Chapter provides for a scheme of tax reliefs aimed at fostering the renewal and improvement of certain towns. The scheme is aimed at towns with populations between 500 and 6,000. However, towns which either benefited under the 1999 Urban Renewal Scheme, the Seaside Resorts Scheme or which are in the area covered by the Rural Renewal Scheme are excluded, as are towns within the administrative counties of Fingal, South Dublin, and Dún Laoghaire-Rathdown.

The scheme requires the preparation of Town Renewal Plans by relevant county councils in conjunction with local community/business interests, identifying areas where effective improvement may be achieved with the aid of tax incentives. Completed Town Renewal Plans are assessed by an expert advisory panel and the panel advises the Minister for Housing and Urban Renewal in relation to proposals for designation having regard to guidelines published on the scheme. The Minister for Finance will make orders applying one or more of the tax incentives provided for in the Chapter to areas recommended by the Minister for the Environment and Local Government.

The qualifying period for the scheme commenced on 1 April 2000 in the case of residential reliefs, and on 6 April 2001 in the case of business incentives, and was due to cease on 31 December 2004. However, in certain circumstances the period may extend to 31 December 2006 or to 31 July 2008. These dates are subject to any dates within these ranges which may be specified in orders made under ***section 372AB***.

Where the extended termination date of 31 July 2008 applies, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. An overall cap also applies on the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify (see notes on ***sections 270(4)*** to ***(7)*** and ***316***).

Tax incentives, in the form of accelerated capital allowances for industrial buildings or structures and commercial premises, are not available under ***Chapter 10*** in certain circumstances – see ***section 372AJ*** for full details.

Provision was made —

- in ***section 372AA***, for the linking of reliefs to the enactment of town renewal legislation which envisages the concept of Town Renewal Plans as a central component of that legislation;
- in ***section 372AB***, to empower the Minister for Finance, on the recommendation of the Minister for the Environment and Local Government, to designate certain areas to be qualifying areas for one or more of the reliefs being provided and to discriminate as between different types of commercial development (such as offices only or other commercial buildings with a small office content) as regards the reliefs in question. Designation can also discriminate as between different types of expenditure and may be confined to the refurbishment of the facade of industrial, commercial and residential premises where required;
- in ***section 372AC***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures in qualifying areas;
- in ***section 372AD***, for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain commercial premises;
- in ***section 372AE***, for relief against rental income in respect of expenditure on the construction of certain rented residential accommodation in qualifying areas;
- in ***section 372AF***, for relief against rental income for expenditure on the conversion of certain buildings into rented residential accommodation;
- in ***section 372AG***, for relief against rental income for expenditure on the refurbishment of buildings comprising rental accommodation;
- in ***section 372AH***, for relief for expenditure by owner-occupiers on the construction or refurbishment of their residential accommodation;
- in ***section 372AI***, for measures which were supplementary to ***sections 372AE***, ***372AF***, ***372AG*** and ***372AH***, and
- in ***section 372AJ***, to deny capital allowances for industrial and commercial buildings in certain circumstances and to prevent claims for double relief.

As part of the codification of legislation governing relief under various tax incentive schemes, for expenditure incurred in relation to residential accommodation, ***sections 372AE***, ***372AF***, ***372AG***, ***372AH*** and ***372AI*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period

had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

372AA Interpretation and application (*Chapter 10*)

Summary

This section is the interpretation section for ***Chapter 10***. It contains definitions of a number of terms used throughout the Chapter. It makes the application of the Chapter and of ***Chapter 11*** of this Part conditional on the enactment of legislation on town renewal which will provide for Town Renewal Plans. (This legislation was enacted in the Town Renewal Act 2000.)

Details

Definitions

(1) "facade" means the exterior wall of a building or structure, of a part of a building or structure, or of a house, which fronts on to a street. Where relevant this definition includes a facade which incorporates a shop-front.

"lease", "lessee", "lessor", "premium" and "rent" are linked back to the definitions of those terms in ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage. "Lessee" and "lessor" are to be construed accordingly and include successors in title. "Premium" includes any like sum whether payable to an immediate or superior lessor or to a person connected with the immediate or superior lessor.

"market value" means, essentially, the price which the unencumbered fee simple of the building would fetch in an open market sale. However, that price is to be computed on a site-exclusive basis.

"property developer" means a person wholly or mainly involved in the trade of constructing or refurbishing buildings or structures for sale. Thus, the greater part of a person's trading activity, taking account of all of the person's trading activities, must be devoted to the construction or refurbishment of buildings or structures for sale.

"qualifying area" is an area specified as such under ***section 372AB***.

"qualifying period", in the case of the business tax incentives is, subject to orders made under ***section 372AB***, the period commencing on 6 April 2001 and ending on 31 December 2004 or, where ***subsection (1A)*** applies, 31 December 2006. [***NB***: The 31 December 2006 date is, subject to a commencement order, further extended to 31 July 2008 by section 33 FA 2006 – provided that the conditions of ***subsections (1A)*** and ***(3)*** are satisfied.]

The "qualifying period" in relation to rented residential accommodation and owner-occupied accommodation is contained in ***section 372AL*** in ***Chapter 11*** of this Part.

"refurbishment" is defined as any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure.

"street" includes part of a street and the whole or part of any road, square, quay or lane.

Extension of qualifying period to 31 December 2006

(1A) This subsection, which relates to the extension of the qualifying period to 31 December 2006 for industrial and commercial premises, applies as respects expenditure on the

construction or refurbishment of a building or structure if a valid planning application (other than for outline permission), in so far as planning permission is required, in relation to the work represented by the expenditure, is received by the planning authority:

- by 31 December 2004, where the application is made in accordance with the Planning & Development Regulations 2001 to 2003, or
- by 10 March 2002, where the application was made in accordance with the Local Government (Planning and Development) Regulations 1994.

Where the work involved is exempted development for the purposes of the Planning and Development Act 2000 the expiry date of 31 December 2006 may also apply provided the following conditions are met on or before 31 December 2004:

- a detailed plan in relation to the development work is prepared,
- a binding contract in writing exists under which the expenditure on the development is incurred, and
- work to the value of 5% of the development costs is carried out.

Extension of qualifying period to 31 July 2008

This subsection, which relates to the extension of the qualifying period to 31 July 2008 for industrial and commercial premises, applies as respects expenditure on the construction or refurbishment of a building or structure if the relevant conditions of ***subsection (1A)*** were met **and** work to the value of at least 15 per cent of the actual construction or refurbishment costs (excluding site costs) of the building or structure is carried out by 31 December 2006. The person who carried out the work or, where that person sells the building or structure involved, the person who is claiming the capital allowances must be able to show that this 15% condition was satisfied. ***(3)(a) and (b)***

By virtue of ***paragraphs (a)*** and ***(b)*** of ***section 270(7)***, local authority certification is required in respect of this 15 per cent condition. Such certification must include details of actual expenditure incurred to 31 December 2006 and of projected expenditure post 31 December 2006.

There is also a requirement that a binding contract in writing in relation to the construction or refurbishment is in place by 31 July 2006 and that any other conditions relating to compliance with State aid issues, that may be specified by the Minister for Finance in regulations, have been satisfied. ***(3)(c) and (d)***

Requirement in relation to Town Renewal Plans

The operation of the Chapter and ***Chapter 11*** of this Part is linked to the enactment of general town renewal legislation by the Minister for the Environment and Local Government which provides for such renewal to be based on Town Renewal Plans drawn up for that purpose. (The Town Renewal Act 2000 was enacted to achieve this.) ***(2)***

372AB Qualifying areas

Summary

This section empowers the Minister for Finance, on the recommendation of the Minister for the Environment and Local Government, to designate by order certain areas to be qualifying areas for one or more of the reliefs provided for in the Chapter or in ***Chapter 11*** of this Part. The order may, as regards these reliefs discriminate as between certain categories of commercial development, certain categories of expenditure and may confine relief to the refurbishment of the facade. Orders will prescribe in relation to such areas the period in which the scheme is to operate.

Details

Designation process – making of orders

The Minister for Finance, on the recommendation of the Minister for the Environment and Local Government (which recommendation takes account of a Town Renewal Plan submitted by a local authority) may make an order directing that: ***(1)***

- an area or areas described in the order is to be a qualifying area for the purposes of one or more sections of the Chapter or of ***Chapter 11*** of this Part, ***(1)(a)***
- if the area is to be a qualifying area: ***(1)(b)***
  - for the purposes of capital allowances for industrial premises under ***section 372AC*** – the order can provide that relief may be confined to the construction, the refurbishment, or the refurbishment of the facade of, such a building or structure;
  - for the purposes of capital allowances for commercial premises under ***section 372AD*** – the order can provide that one or more of the types of building or structure referred to in ***subsection (2)*** may or may not be a qualifying premises for relief purposes. Also relief may be confined to construction or refurbishment of such premises;
  - for the purposes of the owner-occupier designation under ***section 372AR*** – the order can provide that relief may be confined to construction, conversion, refurbishment, and/or the refurbishment of the façade, of a residential premises;
- if the area is to be a qualifying area for the purposes of ***section 372AP*** (which provides relief for rented residential accommodation) the order can provide that the section applies in relation to construction, conversion, refurbishment, or the refurbishment of a facade, as appropriate. ***(1)(ba)***

Qualifying Period –Town Renewal qualifying areas

The order will specify the qualifying period for availing of the reliefs covered by the order. In the case of the business incentives covered by ***sections 372AC*** and ***372AD***, any such period specified in the order may not commence before 6 April 2001 or end after 31 December 2004 or, where ***section 372AA(1A)*** applies, end after 31 December 2006. [***NB***: The 31 December 2006 date is, subject to a commencement order, further extended to 31 July 2008 by section 33 FA 2006 – provided that the conditions of ***section 372AA(1A)*** and ***(3)*** are satisfied]. ***(1)(c)***

In the case of the residential incentives covered by ***Chapter 11***, any such period specified in the order may not commence before 1 April 2000 or end:

- after 31 December 2002, or
- after 31 December 2006, where ***section 372AL(1A)*** applies, or
- after 31 July 2008, where ***section 372AL(1A)*** and ***(3)*** apply.

Commercial buildings: selection of certain types

The types of commercial premises referred to in ***subsection (1)(b)*** are specified viz. offices, the facade of offices, other commercial buildings with only a small office content and the facade of such buildings. An order can provide that one or more of these may or may not be a qualifying premises within the meaning of ***section 372AD***. ***(2)***

Power to amend or revoke an order

The power to make an order under ***subsection (1)*** includes the power to amend or revoke the order. ***(2A)***

Laying of orders

Orders made designating areas as qualifying areas must be laid before Dáil Éireann in the normal way. ***(3)***

Accord with town renewal law

Relief under this Chapter or ***Chapter 11*** of this Part will be available only where the requirements of the town renewal legislation referred to in ***section 372AA(2)*** [i.e. the Town Renewal Act 2000] are met. ***(4)***

372AC Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures

Summary

This section provides for accelerated capital allowances in respect of capital expenditure incurred on the construction or refurbishment of certain industrial buildings or structures such as factories, mills and similar type premises. The building or structure must be situated in a qualifying area and must be used for the purposes of carrying on a trade. Part of such a building or structure situated in a qualifying area may also qualify. An order under ***section 372AB*** designating an area for the purposes of the section may confine relief to construction or refurbishment work only or to the refurbishment of the facade of a building or structure. The accelerated capital allowances are available only in respect of capital expenditure incurred on construction or refurbishment work which is carried out in the qualifying period. An initial allowance of 50 per cent may be claimed by both owner-occupiers and lessors with annual allowances of 4 per cent available for the balance of the qualifying expenditure. Alternatively, an accelerated allowance known as free depreciation of up to 50 per cent is available to owner-occupiers only.

By virtue of the provisions of ***sections 270(4)*** to ***(7)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. An overall cap also applies on the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify for relief.

To comply with EU requirements, the accelerated capital allowances provided for by this section are not available in certain circumstances – see ***section 372AJ*** for full details.

Details

Qualifying industrial buildings or structures

The section applies to industrial buildings or structures such as mills, factories and other similar premises situated in a qualifying area used for the purposes of a trade and which are built or refurbished in the qualifying period. The section also applies to parts of such buildings or structures which are situated in a qualifying area. By virtue of ***section 372AB*** the application of the section may be confined to construction or refurbishment work only or to the refurbishment of the facade of a building or structure. ***(1)***

Allowances available and rates

The normal industrial building writing-down allowances of 4 per cent per annum are already available under ***section 272*** in respect of capital expenditure incurred on the construction or refurbishment of qualifying industrial buildings or structures. Subject to ***section 372AJ***, accelerated capital allowances are now made available as follows in respect of such construction or refurbishment expenditure.

(2) An industrial building (initial) allowance of 50 per cent for capital expenditure incurred in the qualifying period on the construction or refurbishment of industrial buildings is made available under ***section 271*** to owner-occupiers and lessors.

(3) Alternatively, free depreciation (an acceleration of the annual writing-down allowances) up to 50 per cent of construction or refurbishment expenditure incurred in the qualifying period may be claimed under ***section 273*** by owner-occupiers. Lessors cannot claim free depreciation.

The balance of the qualifying expenditure may be written off at 4 per cent per annum where initial allowance or free depreciation is claimed.

Restrictions on expenditure incurred in 2007 and 2008

The relieving provisions of this section (***subsections (2)*** and ***(3)***) are subject to ***sections 270(4)*** to ***(7)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the amount attributable to the period involved (see notes on ***section 270)***.

Additionally, by virtue of the provisions of ***section 270(7)***, the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may be taken into account in calculating capital allowances is capped at the amount of expenditure, projected to be incurred post 31 December 2006, which was certified by the local authority. This cap will apply prior to the application of the respective reductions to 75 per cent and 50 per cent of the capital expenditure for the period involved (see notes on ***section 270(7)***).

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Balancing charge

(4) Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying industrial building or structure, a balancing charge will not be made if that event occurs more than 13 years after the building or structure was first used or, in the case where refurbishment expenditure on the building or structure qualified for capital allowances, more than 13 years after that expenditure was incurred.

Qualifying expenditure

(5) The capital expenditure which is to qualify for the industrial building (initial) allowance and free depreciation must be expenditure incurred on construction or refurbishment work actually carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for those allowances. Of course, title to the normal writing-down allowances under ***section 272*** still exist in relation to the part of the expenditure referable to work carried out outside the qualifying period.

This provision negates, for the purposes only of determining the amount of expenditure which is to qualify for the industrial building (initial) allowance and free depreciation,

other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of those allowances. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

372AD Capital allowances in relation to construction or refurbishment of certain commercial premises

Summary

This section provides for the granting of capital allowances for capital expenditure incurred on the construction or refurbishment of certain commercial premises or parts of such premises which are situated in qualifying areas. The construction or refurbishment work must be carried out in the qualifying period.

However, where under ***section 372AB*** a Ministerial order designating an area as a qualifying area so specifies, certain of the commercial buildings in that area may or may not qualify for relief under this section. Relief may also be confined to construction or refurbishment work or to the refurbishment of the facade of certain commercial premises.

Generally, capital allowances are available for 100 per cent of the relevant expenditure. An initial allowance of 50 per cent is available to both lessors and owner-occupiers with annual allowances of 4 per cent for the balance. Alternatively, an accelerated allowance known as free depreciation of up to 50 per cent is available to owner-occupiers.

To comply with EU requirements, relief under the section is not available in certain circumstances – see ***section 372AJ*** for full details

By virtue of ***sections 270(4)*** to ***(7)*** and ***316***, the amount of capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. An overall cap also applies in relation to the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may qualify for relief.

Details

Qualifying commercial buildings or structures

(1) The section applies to commercial premises such as shops, restaurants etc. situated in a qualifying area which are used for the purposes of a trade or profession or are let on a commercial basis. A part of a building or structure which is situated in a qualifying area may also qualify. Industrial buildings, hotels and any part of a premises used as a dwelling are excluded. Offices and premises with a small office content or the facade of either of these categories may or may not be selected, to qualify for relief under this section, in orders made under ***section 372AB***. Additionally, the orders may have confined relief to either construction or refurbishment work.

Application of law relating to industrial buildings or structures

Subject to the modifications set out in ***subsections (3)*** and ***(4)*** and ***section 372AJ***, the provisions of the Tax Acts relating to capital allowances for industrial buildings or structures apply to qualifying premises, despite anything to the contrary in those provisions (for example, the exclusion of allowances for retail shops in ***section 268***). Those provisions, which specifically relate to the use of premises for a trade, are so applied as if a qualifying premises were at all times it is a qualifying premises an industrial building or structure within ***section 268(1)(a)*** (for example, a mill, factory or other similar premises) and as if any activity carried on in the qualifying premises (or in the building, the facade of which is a qualifying premises) which is not a trade were a trade. The reference to the qualifying premises being so treated "at all times at which it is a qualifying premises" ensures that a change in the nature of the use of the premises from, say, use as a shop to use as a restaurant constitutes continuance of use as a qualifying premises. ***(2)(a)***

Restrictions on expenditure incurred in 2007 and 2008

The relieving provision of this section (***subsection (2)(a)***) is also subject to ***sections 270(4)*** to ***(7)*** and ***section 316(2B)***. Under those sections, any capital expenditure incurred in the year 2007 and the period 1 January 2008 to 31 July 2008 is subject to the respective reductions to 75 per cent and 50 per cent of the relevant amount attributable for the period involved (see notes on ***section 270)***. ***(2)(a)***

Additionally, by virtue of the provisions of ***section 270(7)***, the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may be taken into account in calculating capital allowances is capped at the amount of expenditure, projected to be incurred post 31 December 2006, which was certified by the local authority. This cap will apply prior to the application of the respective reductions to 75 per cent and 50 per cent of the capital expenditure for the period involved (see notes on ***section 270(7)***).

Capital expenditure is regarded as incurred in a period only if it is attributable to work carried out in that period (see notes on ***section 316(2B)***).

Allowances available and rates

Allowances are available only in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises during the qualifying period (see ***subsection (5)*** also). ***(2)(b)***

The effect of ***subsection (2)*** is to make annual writing-down allowances of 4 per cent available under ***section 272*** in respect of qualifying expenditure. The writing-down allowances are available to both owner-occupiers and lessors of qualifying premises.

An industrial building (initial) allowance of 50 per cent of qualifying expenditure is made available under ***section 271***. The initial allowance is available to both owner-occupiers and lessors of qualifying premises. ***(3)(a)***

Alternatively, free depreciation (an acceleration of the annual writing-down allowances) of up to 50 per cent of qualifying expenditure is made available under ***section 273***. Free depreciation is available only to owner-occupiers of qualifying premises. ***(3)(b)***

The balance of the qualifying expenditure may be written off at 4 per cent per annum where initial allowance or free depreciation is claimed.

Balancing charge

Where a sale or other event which normally might give rise to a balancing charge under ***section 274*** occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 13 years after the qualifying premises was first used ***(4)***

or, in the case where refurbishment expenditure on the qualifying premises qualified for capital allowances, more than 13 years after that expenditure was incurred.

Qualifying expenditure

The capital expenditure which is to be relieved must be expenditure incurred on work carried out during the qualifying period. Where work commences, but is not completed, in the qualifying period, only the part of the expenditure referable to the work carried out in that period qualifies for relief. ***(5)***

This provision negates, for the purposes only of determining the amount of expenditure to be relieved under this section, other provisions of the Tax Acts which, by treating expenditure as incurred later than the carrying out of the work, might otherwise deprive a person of relief under this section. The provisions so negated are —

- ***section 279*** which deals with a case where an industrial building or structure is bought before it is used or within one year of it commencing to be used and provides for certain expenditure to be treated as having been incurred when the purchase price becomes payable,
- ***section 316(2)*** which for the purposes of capital allowances for industrial buildings or structures treats expenditure as incurred when the sum in question becomes payable, and
- ***section 316(3)*** which for the purposes of industrial building (initial) allowances treats expenditure incurred before a trade commences as incurred when the trade commences.

372AE Rented residential accommodation: deduction for certain expenditure on construction

372AF Rented residential accommodation: deduction for certain expenditure on conversion

372AG Rented residential accommodation: deduction for certain expenditure on refurbishment

372AH Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment

372AI Provisions supplementary to *sections 372AE* to *372AH*

Summary

As part of the codification of legislation governing relief, under various tax incentive schemes, for expenditure incurred in relation to residential accommodation ***sections 372AE***, ***372AF***, ***372AG***, ***372AH***, and ***372AI*** were repealed by section 24(3) Finance Act 2002.

The provisions of these sections and of the legislation governing relief in relation to residential accommodation under a number of other schemes, where the qualifying period had not expired, were consolidated by Finance Act 2002 and are now contained in ***Chapter 11*** of this Part.

372AJ Non-application of relief in certain cases and provision against double relief

Summary

The section provides, in line with EU requirements, that capital allowances under this scheme in relation to industrial buildings or structures and commercial premises are not available:

- to property developers in certain circumstances,
- where any part of the construction or refurbishment expenditure is met by grant assistance or any other assistance from the State or any of its agencies,
- unless the relevant interest in the construction or refurbishment expenditure is held by a Small or Medium-sized Enterprise (SME) as defined by the EU, or
- to owner-operators of buildings or structures or premises in use in certain sectors and industries (This restriction does not apply to lessors.)
- unless prior approval of such capital allowances are received from the European Commission where a project is subject to the notification requirements of either the "Multisectoral framework on regional aid for large investment projects", dated 7 April 1998 or the revised framework dated 19 March 2002, whichever applies.

The section provides for apportionment on the basis of floor area in cases where a part of a building or structure is outside the boundary of a qualifying area in order to determine the amount of expenditure attributable to the part within the area.

Finally, the section ensures that expenditure relieved under this Chapter will not be entitled to relief under any other provision of the Tax Acts. Thus, double relief is precluded.

Details

Restrictions on the availability of capital allowances

Capital allowances under ***sections 372AC*** and ***372AD*** in relation to industrial buildings or structures and commercial premises will not apply: ***(1)***

- to a property developer, where the expenditure on the construction or refurbishment of a building or structure or premises is incurred by the property developer or by a person connected with the property developer. A property developer is defined in ***section 372AA*** as a person who devotes the greater part of his or her trading activity (taking account of all of the person's trading activities) to the construction or refurbishment of buildings or structures for sale. Thus, where a property developer constructs or refurbishes an industrial or commercial premises or buys one from a connected person who constructed or refurbished it, there will be no relief available to the property developer. ***(1)(a)***
- where the expenditure on the construction or refurbishment of a building or structure or premises is met directly or indirectly by way of grant assistance or any other assistance from the State, any board established by statute, any public or local authority or any other agency of the State. ***(1)(aa)***
- unless the relevant interest in the construction or refurbishment expenditure is held by a Small or Medium-sized Enterprise (SME) as defined by the EU in Commission Regulation (EC) No. 70/2001 (OJ No. L10 of 13 January 2001, p.33). ***(1)(ab)***
- in respect of expenditure incurred on the construction or refurbishment of a building or structure or premises by an owner-operator whose trade is carried on wholly or mainly in the agricultural sector, the coal, fishing or motor vehicle industries, or the transport, steel, shipbuilding, synthetic fibres or financial services sectors. This restriction does not apply to lessors. ***(1)(b)***
- as respects construction or refurbishment expenditure incurred on or after 1 January 2003, where a project is subject to the notification requirements of the "Multisectoral framework on regional aid for large investment projects", prepared by the European ***(1)(c)***

Commission and dated either 7 April 1988 or 19 March 2002, unless prior approval of the potential capital allowances involved has been received from the EU Commission. [The rules of each framework will decide as to which is applicable in any case. The new framework is due to become effective from 1 January 2004.] Approval must be received from the Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance.

Apportionment

There is provision for apportionment on a floor area basis to determine the amount of expenditure incurred on the part of a building or structure within the boundary of a designated area where part of the building or structure is also outside that boundary. This provision applies for the purposes of ***sections 372AC*** and ***372AD***. ***(2)***

Provision against double relief

Expenditure relieved under this Chapter cannot get relief under any other provision of the Tax Acts. Double relief is, therefore, precluded. ***(3)***

CHAPTER 11

Reliefs for lessors and owner-occupiers in respect of expenditure incurred on the provision of certain residential accommodation

Overview

This Chapter contains the codified legislation in relation to reliefs for lessors and owner-occupiers, in respect of expenditure incurred on the provision of certain residential accommodation under the current Urban Renewal Scheme, the Living over the Shop Scheme, the Rural Renewal Scheme, the Park and Ride Scheme, the Town Renewal Scheme, the Student Accommodation Scheme and the general countrywide scheme for the Refurbishment of Rented Residential Accommodation.	
The Chapter includes a provision which deals with continuity issues arising from the codification of the legislation which dealt with these residential reliefs under the various schemes listed above.	
It also contains a saving provision in relation to the legislation (repealed by section 24(3) of the Finance Act 2002) which governed residential reliefs under the Customs House Docks Area Scheme, the Temple Bar Area Scheme, the 1994 scheme for Designated Areas and Designated Streets, the Qualifying Resort Areas Scheme, and the Designated Islands Scheme. This saving provision preserves title to the relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances.	
NB: In relation to schemes where a termination date of ***31 July 2008*** applies, any expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 must be reduced to 75 per cent and 50 per cent respectively of the expenditure attributable to the period involved before calculating any allowances due to lessors and owner-occupiers (see ***section 372AS*** for details).	
The various sections in ***Chapter 11*** are as follows:	
• ***Section 372AK*** is the interpretation section for the Chapter and contains definitions of various terms used in the Chapter.	
• ***Section 372AL*** sets out the qualifying period in relation to each scheme.	
• ***Section 372AM*** deals with the grant of certain certificates and the issue of certain guidelines. It also sets out the conditions which must be met in order that a house	

	may be a special qualifying premises (countrywide refurbishment scheme for rented residential accommodation) or a qualifying premises (all other schemes).	
•	***Section 372AN*** sets out what constitutes eligible expenditure, in the case of lessors, for the purposes of the Chapter.	
•	***Section 372AO*** sets out the conditions which must be met in order that a lease may be a qualifying lease.	
•	***Section 372AP*** provides relief for lessors against rental income in respect of eligible expenditure incurred in relation to residential accommodation.	
•	***Section 372AQ*** sets out what constitutes qualifying expenditure, in the case of owner-occupiers, for the purposes of the Chapter.	
•	***Section 372AR*** provides relief against total income for owner-occupiers in respect of qualifying expenditure incurred in relation to their residential accommodation.	
•	***Section 372AS*** sets out the rules for determining whether expenditure is or is not incurred in the qualifying period. This section includes restrictions, to 75 per cent and 50 per cent respectively, where expenditure is incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008. It also establishes the date expenditure is treated as incurred for relief purposes.	
•	***Section 372AU*** contains a saving provision in respect of relief due and the clawback of relief given, in relation to residential reliefs under a number of older schemes where the qualifying period has expired.	

372AK Interpretation (*Chapter 11*)

Summary

This section is the interpretation section for the Chapter. Most of the definitions which appear in the section replicate the definitions which appeared previously in sections, dealing with residential accommodation, which were repealed by ***section 24(3)*** Finance Act 2002. These are however a small number of new definitions and some alterations to previous definitions in relation to the terms used etc.

Details

Definitions

"certificate of compliance" and "certificate of reasonable cost" are to be construed, respectively, in accordance with ***section 372AM***.

"conversion expenditure" is to be construed in accordance with ***section 372AN***.

"eligible expenditure" is to be construed in accordance with ***section 372AN***. This is a new term in relation to expenditure incurred on the construction, conversion or refurbishment of rented residential accommodation.

"existing building" has the same meaning as in ***section 372A***. This term is relevant only in relation to the Living over the Shop scheme.

"facade", in relation to a house, means the exterior wall of the house which fronts on to a street.

"guidelines", in relation to a house within the site of a qualifying park and ride facility, has the same meaning as in ***section 372U***.

"house" includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building.

"lease", "lessee" and "lessor" are linked back to the definitions of those terms in ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "lease" includes an agreement for a lease and any tenancy but does not include a mortgage. "Lessee" and "lessor" are to be construed accordingly and include successors in title.

"Minister", except where the context otherwise requires, means the Minister for the Environment and Local Government.

"necessary construction" has the same meaning as in ***section 372A***. This term is relevant only in relation to the Living over the Shop scheme. Any reference in the Chapter (other than in ***section 372AR(1)(a)***) to construction applies, in the case of a house which fronts on to a qualifying street or is comprised in a building or part of a building which fronts on to a qualifying street, as if it were a reference to necessary construction. This is provided that the context does not require otherwise.

"premium" has the same meaning as in ***Chapter 8*** of ***Part 4*** which deals with the taxation of rental income. Thus, "premium" includes any like sum whether payable to an immediate or superior lessor or to a person connected with the immediate or superior lessor.

"qualifying expenditure" is to be construed in accordance with ***section 372AQ***. This is, as before, the term used in relation to expenditure incurred on owner-occupied accommodation. It now, however, includes a reference to conversion expenditure.

"qualifying lease" is to be construed in accordance with ***section 372AO***.

"qualifying period" is to be construed in accordance with ***section 372AL***.

"qualifying park and ride facility" has the same meaning as in ***section 372U(1)***.

"qualifying premises" is to be construed in accordance with ***section 372AM***.

"qualifying rural area" means any area described in ***Schedule 8A***.

"qualifying street" means a street specified as a qualifying street under ***section 372BA***.

"qualifying town area" means an area or areas specified as a qualifying area under ***section 372AB***.

"qualifying urban area" means an area or areas specified as a qualifying area under ***section 372B***.

"refurbishment" in relation to:

- a building or a part of a building other than a special specified building, means the carrying out of any works of construction, reconstruction, repair or renewal, and the provision or improvement of water, sewerage or heating facilities, which is certified by the Minister in a certificate of reasonable cost or certificate of compliance which is granted under ***section 372AM***.
- in relation to a facade, means any work of construction, reconstruction, repair or renewal carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration of a facade, and
- in relation to a special specified building, any works of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or for the purposes of compliance with the requirements of the Housing (Standards for Rented Houses) Regulations 1993 (S.I. No. 147 of 1993). This provision does not apply in relation to owner-occupied accommodation for the purposes of ***sections 372AQ*** and ***372AR***.

"refurbishment expenditure" is to be construed in accordance with ***section 372AN***. The term "relevant expenditure" was previously used to describe this.

"relevant cost" has the same meaning as in ***section 372AP***. This definition now incorporates situations involving conversion and refurbishment expenditure.

"relevant guidelines", in relation to a house or building in a qualifying student accommodation area, means guidelines entitled "Guidelines on Residential Developments for 3rd Level Students" issued by the Minister for Education and Science in consultation with the Minister and with the consent of the Minister for Finance, or such other guidelines amending or replacing those guidelines issued in accordance with ***section 372AM(1)(c)***.

"relevant local authority" in relation to —

- a qualifying urban area, means the county council or the city council or the borough council or the town council in whose functional area the area is situated, or the authorised company (within the meaning of section 3(1) of the Urban Renewal Act 1998) which prepared the integrated area plan for that area.
- the construction of a house within the site of a qualifying park and ride facility has the same meaning as it has in ***section 372U(1)*** in relation to the construction or refurbishment of a park and ride facility or a qualifying premises within the meaning of ***section 372W***.

"relevant period" has the meaning assigned to it in ***section 372AP***.

"rent" has the same meaning as in ***Chapter 8*** of ***Part 4***.

"replacement building" has the same meaning as in ***section 372A***. This term is relevant only in relation to the Living over the Shop scheme.

"special qualifying premises" is to construed in accordance with ***section 372AM*** and "special specified building" has the same meaning as in ***section 372AN(6)***. These are the terms which are now used in relation to the countrywide scheme for the refurbishment of rented residential accommodation.

"specified building" has the same meaning as in ***section 372AN(6)***.

"street" includes part of a street and the whole or part of any road, square, quay or lane.

"tax incentive area" means a qualifying urban area, a qualifying rural area, the site of a qualifying park and ride facility, a qualifying town area, or a qualifying student accommodation area.

"total floor area" means the total floor area of a house measured in the manner referred to in section 4(2)(*b*) of the Housing (Miscellaneous Provisions) Act 1979.

372AL Qualifying period

Summary

This section outlines the "qualifying period" which applies in relation to each residential scheme covered by ***Chapter 11*** i.e. the residential elements of the Urban Renewal, Living over the Shop, Rural Renewal, Park and Ride and Town Renewal schemes as well as the Student Accommodation scheme and the general countrywide scheme for the Refurbishment of Rented Residential Accommodation.

Details

Qualifying periods – various schemes

The qualifying periods for the various schemes are as follows: ***(1)***

Qualifying urban areas (Urban Renewal Scheme)

The qualifying period commenced on 1 August 1998 and ends on 31 December 2002 or, where ***subsection (2)*** applies it ends on 31 December 2006. Where ***subsections (2)*** and ***(3)*** apply it ends on 31 July 2008. These dates are subject to any dates, within these ranges, which may appear in orders made under ***section 372B***. ***(1)(a)***

Qualifying streets (Living Over the Shop Scheme):

The qualifying period commenced on 6 April 2001 and ends on 31 December 2004 or, where ***subsection (1A)*** applies, it ends on 31 December 2006. Where ***subsections (1A)*** and ***(3)*** apply it ends on 31 July 2008. These dates are subject to any dates, within this range, which may appear in orders made under ***section 372BA***. ***(1)(b)***

Qualifying rural areas (Rural Renewal Scheme):

The qualifying period for the purposes of rented residential relief under ***section 372AP*** commenced on 1 June 1998 and ends on 31 December 2004 or, where ***subsection (1A)*** applies, it ends on 31 December 2006. Where ***subsections (1A)*** and ***(3)*** apply it ends on 31 July 2008. ***(1)(c)(i)***

In the case of owner-occupier relief under ***section 372AR*** the qualifying period commenced on 6 April 1999 and ends on 31 December 2004 or, where ***subsection (1A)*** applies, it ends on 31 December 2006. Again, where ***subsections (1A)*** and ***(3)*** apply it ends on 31 July 2008. ***(1)(c)(ii)***

Site of a qualifying park and ride facility (Park and Ride Scheme):

The qualifying period commenced on 1 July 1999 and ends on 31 December 2004 or, where ***subsection (1A)*** applies, it ends on 31 December 2006. Where ***subsections (1A)*** and ***(3)*** apply it ends on 31 July 2008. ***(1)(d)***

Qualifying town areas (Town Renewal Scheme)

The qualifying period commenced on 1 April 2000 and ends on 31 December 2004 or, where ***subsection (1A)*** applies, it ends on 31 December 2006. Where ***subsections (1A)*** and ***(3)*** apply it ends on 31 July 2008. These dates are subject to any dates, within this range, which may appear in orders made under ***section 372AB***. ***(1)(e)***

Qualifying student accommodation areas (Student Accommodation Scheme):

The qualifying period commenced on 1 April 1999 and ends on 31 March 2003 or, where ***subsection (1A)*** applies, it ends on 31 December 2006. Where ***subsections (1A)*** and ***(3)*** apply it ends on 31 July 2008. ***(1)(f)***

Special specified building (Countrywide Refurbishment Scheme):

The qualifying period for this scheme, which is aimed at the refurbishment of buildings with one or more than one rented residential unit, commenced on 6 April 2001 and ends on 31 July 2008. ***(1)(g)***

Extension of qualifying period to 31 December 2006 – schemes other than Urban Renewal

This subsection, which relates to the extension of the qualifying period to 31 December 2006 for residential reliefs under a number of incentives schemes (see ***subsection (1)*** above), applies as respects expenditure incurred on the construction, conversion or, as the case may be, refurbishment of a building or structure if a valid planning application (other ***(1A)***

than for outline permission), in so far as planning permission is required, in relation to the work represented by the expenditure, is received by the planning authority:

- by 31 December 2004, where the application is made in accordance with the Planning & Development Regulations 2001 to 2003, or
- by 10 March 2002, where the application was made in accordance with the Local Government (Planning and Development) Regulations 1994.

Where the work involved is exempted development for the purposes of the Planning and Development Act 2000 the 31 December 2006 expiry date will also apply provided the following conditions are met on or before 31 December 2004:

- a detailed plan in relation to the development work is prepared,
- a binding contract in writing exists under which the expenditure on the development is incurred, and
- work to the value of 5 per cent of the development costs is carried out.

Extension of qualifying period to 31 December 2006 – Urban Renewal scheme

The termination date of 31 December 2002 is extended to 31 December 2006, in relation to a qualifying urban area, where the relevant local authority (which includes an authorised company) gives a certificate in writing by 30 September 2003, to the person constructing, converting or refurbishing a building or part of a building within such an area. The certificate must state that the local authority is satisfied that not less than 15 per cent of the total cost of constructing, converting or refurbishing the building or the part of the building and of acquiring the site had been incurred by 30 June 2003. Application for the certificate must be received by the local authority on or before 31 July 2003. ***(2)(a)***

In considering whether to give a certificate, the relevant local authority must have regard to guidelines issued by the Department of the Environment and Local Government. ***(2)(b)***

Extension of qualifying period to 31 July 2008 – schemes other that rental refurbishment scheme

The termination date for the various schemes (other that the general rental refurbishment scheme) is extended to 31 July 2008 where the conditions of this provision are met. This date applies without condition for the general rental refurbishment scheme.

The extended date will apply provided that work to the value of not less that 15 per cent of the actual construction, conversion or refurbishment costs of a building or part of a building is carried out by 31 December 2006 by the person who is constructing, converting or refurbishing. The provision also provides that such person must be able to show that the condition has been satisfied. Alternatively, where the building is sold, the person who is claiming the relief under ***section 372AP*** (lessor) or ***section 372AR*** (owner-occupier) must be able to show that the condition was satisfied. ***(3)***

Restrictions on expenditure incurred in 2007 and 2008 – all schemes

Section 372AS provides that that only 75 per cent of eligible expenditure (lessors) or qualifying expenditure (owner-occupiers) incurred in the year 2007 and 50 per cent of such expenditure incurred in the period 1 January 2008 to 31 July 2008 is to be taken into account in granting allowances under ***sections 372AP*** and ***372AR***. These restrictions apply to "qualifying premises" under all schemes and "special qualifying premises" under the general Rental Refurbishment scheme (see notes on ***section 372AS)***.

372AM Grant of certain certificates and guidelines, qualifying and special qualifying premises

Summary

This section provided for the grant of certificates of compliance and certificates of reasonable cost by the Minister for the Environment and Local Government in relation to residential accommodation generally. It provides for the issue of guidelines in relation to rented residential accommodation in qualifying student accommodation areas.

The section also outlines the conditions which must be met in relation to a house in order that it may be:

- a qualifying premises for the purposes of rented residential relief under ***section 372AP*** or owner-occupier relief under ***section 372AR***, or
- a special qualifying premises under ***section 372AP*** for the purposes of the countrywide scheme for the refurbishment of rented residential accommodation

These conditions include the minimum and maximum floor area of a house, terms in relation to its occupation and inspection, compliance with objectives of urban renewal and with various housing regulations.

Details

Certificates of compliance and certificates of reasonable cost

The grant of certificates of compliance and certificates of reasonable cost by the Minister for the Environment and Local Government in relation to residential accommodation is provided for in this section for the purposes of rented residential relief under ***section 372AP*** and owner-occupier relief under ***section 372AR***. In both of these certificates the Minister certifies that: ***(1)(a) & (b)***

- the house involved complies in the case of construction, with section 4 of the Housing (Miscellaneous Provisions) Act 1979, and in the case of conversion or refurbishment, with section 5 of that Act.
- the total floor area of that house is within the relevant floor area limits as specified in ***subsection (4)***, and
- in the case of refurbishment, that the work was necessary to ensure the suitability of any house in the building or the part of the building as a dwelling and whether or not the number or the shape or size of houses in the building or the part of the building is altered in the course of such refurbishment.

In the case of a certificates of reasonable cost:

- the Minister also certifies that the amount specified in the certificate in relation to the cost of construction, conversion or refurbishment of the house to which the certificate relates appears to the Minister to be reasonable,
- section 18 of the Housing (Miscellaneous Provisions) Act 1979 applies, with any necessary modifications, as if it were a certificate of reasonable value within the meaning of that section.

In the case of a house within a qualifying town area, neither certificate may be granted unless an application has been received by the Minister within a period of one year from the day next after the end of the qualifying period. In the case of a house within a qualifying student accommodation area, any certificate granted must have regard to the relevant guidelines in relation to such accommodation.

Guidelines – qualifying student accommodation areas

The section provides for the issue of guidelines by the Minister for Education and Science, in relation to a house or building within a qualifying student accommodation area. That Minister has already issued “relevant guidelines” entitled “Guidelines on Residential ***(1)(c)***

Developments for 3rd Level Students". This subsection provides that that Minister may amend or replace those guidelines in like manner to which he or she may issue guidelines. The subsection makes provision for the inclusion of a number of specific issues in the guidelines.

Qualifying premises – basic requirements

Subject to other provisions of this section, a house will be a qualifying premises for the purposes of rented residential relief under ***section 372AP*** or owner-occupier relief under ***section 372AR*** where: ***(2)***

- it fronts on to a qualifying street or is comprised in a building or part of a building which fronts on to a qualifying street, or its site is wholly within a tax incentive area, ***(2)(a)***
- it is used solely as a dwelling, ***(2)(b)***
- it complies with ***subsection (4)*** in respect of its total floor area, ***(2)(c)***
- there is in force in respect of the house either a certificate of compliance or, if it is not a house provided for sale, a certificate of reasonable cost. The amount specified in this latter certificate must be not less than the expenditure actually incurred on the construction, conversion or refurbishment of the house. These certificates are not required where only the refurbishment of a facade is involved. ***(2)(d)***
- in the case of a house wholly within the site of a qualifying park and ride facility, the relevant local authority issues a written certificate stating that the house or the development involved complies with the requirements laid down in the guidelines in relation to the development of residential accommodation at a park and ride facility, and ***(2)(e)***
- in so far as rented residential relief under ***section 372AP*** is concerned, the house is, in the case of construction, without having been used, first let in its entirety under a qualifying lease, or, in the case of conversion expenditure, without having been used subsequent to the incurring of that expenditure, is first let in its entirety under a qualifying lease, and in the case of refurbishment expenditure, on the date of completion of the refurbishment is let in its entirety under a qualifying lease (or is, without having been used after that date, so first let). This type of letting must continue throughout the remainder of the 10-year relevant period except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another. ***(2)(f)***
- the house is not a house on which expenditure has been incurred which qualified or would qualify for relief under ***section 372AP*** on the basis that the house is a qualifying premises, or which qualified or would qualify for relief under any other provision of this Part. (i.e. Part 10). ***(3)(d)***

Floor area requirements – qualifying premises

A house is not a qualifying premises for the purposes of rented residential relief under ***section 372AP*** or owner-occupier relief under ***372AR*** unless: ***(4)***

- in the case of the Living over the Shop Scheme, the Urban Renewal Scheme and the Park and Ride Scheme, the total floor area of the house is not less than 38 square metres and not more than 125 square metres ***(4)(a)***
- in the case of the Rural Renewal Scheme, the total floor area of the house is not less than 38 square metres and ***(4)(b)***
    - in relation to rented residential relief under ***section 372AP***, it is not more than 175 square metres as respects eligible expenditure incurred on or after 6 December 2000 or, in relation to expenditure incurred before that date, it is not more than 140 square metres in the case of construction expenditure, and

not more than 150 square metres in the case of conversion expenditure or refurbishment expenditure,

- in relation to owner-occupier relief under ***section 372AR***, it is not more than 210 square metres,

- in the case of the Town Renewal Scheme, the total floor area of the house is not less than 38 square metres and ***(4)(c)***
  - in relation to rented residential relief under ***section 372AP***, it is not more than 125 square metres, unless the expenditure is conversion expenditure or refurbishment expenditure incurred on or after 6 April 2001 in which case it may be up to 150 square metres.
  - in relation to owner-occupier relief under ***section 372AR***, it is not more than 125 square metres, unless the expenditure is expenditure on the conversion or refurbishment of the house which is incurred on or after 6 April 2001 in which case it may be up to 210 square metres.
- in the case of the Student Accommodation Scheme, the total floor area of the house complies with the requirements of the relevant guidelines. ***(4)(d)***

Other conditions – qualifying premises/ special qualifying premises

Connected persons

A house is not a qualifying premises or a special qualifying premises for the purposes of rented residential relief under ***section 372AP*** if it is occupied by any person connected with the person entitled to a deduction under that section in respect of the eligible expenditure incurred, and the terms of the qualifying lease involved are not on an arm's length basis. ***(5)***

Compliance with urban renewal guidelines

In the case of the Living over the Shop Scheme, the Urban Renewal Scheme and the Town Renewal Scheme, a house is not a qualifying premises for the purposes of rented residential relief under ***section 372AP*** or owner-occupier relief under ***372AR*** unless the house or the development involved complies with guidelines issued by the Minister for the Environment and Local Government for the purposes of furthering urban renewal. The subsection makes provision for the inclusion of a number of specific issues in the guidelines. ***(6)***

Rural Renewal scheme – occupation as sole or main residence

In the case of the Rural Renewal Scheme, a house is not a qualifying premises for the purposes of rented residential relief under ***section 372AP*** unless the house is used as the sole or main residence of the lessee throughout the period of any qualifying lease related to that house. ***(7)***

Living over the Shop scheme – location on upper floor(s) required

In the case of the Living over the Shop Scheme, a house is not a qualifying premises the purposes of rented residential relief under ***section 372AP*** or owner-occupier relief under 372AR unless the house is comprised in the upper floor or floors of an existing building or a replacement building (see definitions in ***section 372AK***) and the ground floor is in use for commercial purposes or it is subsequently used for commercial purposes where it is temporarily vacant. ***(8)***

Student accommodation area – letting to and occupation by students

In the case of the Student Accommodation Scheme, a house is not a qualifying premises for the purposes of rented residential relief under ***section 372AP*** unless it is used for letting to and occupation by students in accordance with the relevant guidelines (see definition in ***section 372AK***) throughout the 10-year relevant period. ***(9)***

Student accommodation – other conditions

A house, the site of which is wholly within a "qualifying student accommodation area" is not a qualifying premises or a special qualifying premises for the purposes of rented residential relief under ***section 372AP*** unless certain conditions are satisfied. The conditions are: ***(9A)***

- no person, other than the person (referred to as the "investor") who incurred or, by virtue of ***subsection (8)***, ***(9)*** or ***(10)*** of ***section 372AP***, is treated as having incurred "eligible expenditure" (defined in ***section 372AK***) on or in relation to the house, must receive or be entitled to receive the rent or any part of the rent from the letting of the house during the "relevant period" (defined in ***section 372AK***) in relation to the house. Essentially, this is 10-year period during which the house must continue to be owned and let by the investor. ***(9A)(a)(i)***
- where two or more investors have incurred or, by virtue of ***subsection (8)***, ***(9)*** or ***(10)*** of ***section 372AP***, are treated as having incurred the "eligible expenditure" on or in relation to the house, the rent received by each investor in such situations must be in the same proportion to the total rent as the expenditure incurred by each investor is to the total eligible expenditure incurred by all the investors. ***(9A)(a)(ii)***
- if a loan is used to fund the construction of, conversion into, refurbishment of, or, as the case may be, the purchase of, the house? ***(9A)(b)***
  - the loan must be obtained directly by the investor from a financial institution,
  - the investor must be personally responsible for the repayment of the loan, the payment of interest on the loan and any security that may be required in relation to the loan, and
  - there must be no arrangement or agreement, whether in writing or otherwise and whether or not known to the lender, whereby some other person agrees to be responsible for the obligations of the investor in relation to the loan.
- if, for any chargeable period (that is, a year of assessment in the case of income tax and an accounting period in the case of corporation tax) during the relevant period in relation to the house, the investor claims relief (against rental income) under ***section 97(2)*** for management or letting fees payable to a person in relation to the letting of the house? ***(9A)(c)***
  - such fees must be bona fide fees that reflect the level and extent of the services rendered by the person, and
  - the aggregate fees for the chargeable period must not be more than an amount equal to 15 per cent of the gross rent from the letting of the house for that chargeable period.

The above conditions apply — ***(9B)***

- as respects eligible expenditure incurred on or after 18 July 2002, unless a binding written contract for the construction of, conversion into or refurbishment of the house was in place before that date, and
- where ***subsection (9)*** or ***(10)*** of ***section 372AP*** applies (that is, in the case of purchases), as respects expenditure incurred on or after 18 July 2002 on the purchase

of a house unless a binding written contract for the purchase of the house was in place before that date.

However, ***paragraphs (a)*** and ***(c)*** of ***subsection (9A)*** will not apply as respects eligible expenditure incurred on or in relation to a house or, where ***subsection (9)*** or ***(10)*** of ***section 372AP*** applies, as respects expenditure incurred on the purchase of a house where, before 6 February 2003, Revenue have given an opinion in writing to the effect that the lease of the house between an investor and an educational institution referred to in the relevant guidelines, or a subsidiary (within the meaning of section 7 of the Companies Act 2014) of such an institution, would be a qualifying lease. ***(9C)***

Special qualifying premises – compliance with Housing regulations and refurbishment guidelines

In the case of the Countrywide Refurbishment Scheme, a house is not a special qualifying premises for the purposes of rented residential relief under ***section 372AP***: ***(10)***

- if the lessor has not complied with all the requirements of the Housing (Standards for Rented Houses) Regulations 1993 (S.I. No. 147 of 1993), the Housing (Rent Books) Regulations 1993 (S.I. No. 146 of 1993), and the Housing (Registration of Rented Houses) Regulations 1996 (S.I. No. 30 of 1996), as amended by the Housing (Registration of Rented Houses) (Amendment) Regulations 2000 (S.I. No. 12 of 2000).
- unless the house or the development involved complies with guidelines issued by the Minister for the Environment and Local Government in relation to the refurbishment of houses as special qualifying premises. These guidelines may include provisions in relation to provision of ancillary facilities and amenities for houses.

Inspection by authorised persons

A house is not a qualifying premises for the purposes of rented residential relief under ***section 372AP*** or owner-occupier relief under ***372AR***, or a special qualifying premises for the purposes of rented residential relief under ***section 372AP***, unless any person authorised in writing by the Minister for the Environment and Local Government for the purposes of those sections is permitted to inspect the house at all reasonable times. ***(11)***

372AN Eligible expenditure: lessors

Summary

This section sets out what constitutes “eligible expenditure” in the case of lessors. This term is a new global term which is used to describe expenditure on rented residential accommodation. The expenditure can be expenditure on the construction of a house or, in the case of the Living over the Shop Scheme, the necessary construction of a house. It also covers “conversion expenditure” and “refurbishment expenditure”. Both these terms are explained further in the section. They do not, however, apply in relation to a building which is within the site of a qualifying park and ride facility as only construction expenditure qualifies.

Details

Eligible expenditure

Expenditure is eligible expenditure for the purposes of ***Chapter 11***, in relation to rented residential accommodation, where it is expenditure incurred on: ***(1)***

- the construction of a house, or in the case of the Living over the Shop Scheme where it must be on necessary construction,
- conversion expenditure, or
- refurbishment expenditure.

Conversion expenditure

The term "conversion expenditure" applies only in relation to the Living over the Shop Scheme, the Urban Renewal Scheme, the Rural Renewal Scheme, the Town Renewal Scheme and the Student Accommodation Scheme. It means expenditure incurred on the conversion: ***(2)***

- into a house of a building where before the conversion the building had not been in use as a dwelling. Conversion of a part of such a building will qualify under the Living over the Shop Scheme, the Urban Renewal Scheme and the Town Renewal Scheme.
- into 2 or more houses of a building where before the conversion the building had not been in use as a dwelling or had been in use as a single dwelling. Again conversion of a part of such a building will qualify under the Living over the Shop Scheme, the Urban Renewal Scheme and the Town Renewal Scheme.

Conversion expenditure also includes expenditure incurred on the carrying out of any works of construction, reconstruction, repair or renewal, and the provision or improvement of water, sewerage or heating facilities. In effect, it includes refurbishment type expenditure. However, it does not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts e.g. under the normal rules of Case V. Also expenditure attributable to any "non-residential unit" is to be excluded. ***(3)***

Provision is made for the apportionment of conversion expenditure on a floor area basis, for the purposes of excluding expenditure attributable to any "non-residential unit", where the expenditure is attributable to a building or a part of a building in general. ***(4)***

Refurbishment expenditure

The term "refurbishment expenditure" means expenditure, other than expenditure attributable to a "non-residential unit", incurred on the refurbishment of: ***(5)(a)***

- a specified building, and in the case of a specified building which is wholly within a qualifying town area, the refurbishment of a facade, or
- the refurbishment of a special specified building.

Apportionment of refurbishment expenditure is provided, for the purposes of excluding expenditure attributable to any "non-residential unit", where the expenditure is attributable to a specified building or a special specified building in general. ***(5)(b)***

Special specified building and specified building

The terms "special specified building" and "specified building" which are applicable in the case of the refurbishment of rented residential accommodation are explained. ***(6)***

A "special specified building" means a building or part of a building in which both before and after the refurbishment there is one or more than one house. This term is the term used to describe buildings which may qualify under the Countrywide Refurbishment Scheme.

The term "specified building" applies only to buildings which are to be refurbished under the Living over the Shop Scheme, the Urban Renewal Scheme, the Rural Renewal Scheme, the Town Renewal Scheme and the Student Accommodation Scheme. A part of

a building will also qualify under the Living over the Shop Scheme, the Urban Renewal Scheme and the Town Renewal Scheme.

In the case of the Rural Renewal Scheme and Town Renewal Scheme there must be one or more than one house both before and after the refurbishment. In the case of the Living over the Shop Scheme, the Urban Renewal Scheme and the Student Accommodation Scheme there must be 2 or more houses both before and after the refurbishment.

Site development

References in this section to the construction of, conversion into, or refurbishment of, any premises are to include all normal site development costs. The provision, however, does not apply in the case of the Countrywide Refurbishment Scheme. ***(7)***

372AO Qualifying lease

Summary

This section outlines the various conditions which must be satisfied in order that a lease will be a qualifying lease for the purposes of the Chapter.

Details

Definition

"market value", in relation to a building, structure or house, means the price which the unencumbered fee simple would fetch if sold in the open market less the part of that price attributable to site acquisition costs. ***(1)***

Premium must not exceed 10% of the relevant cost or market value

Provision is made that, subject to ***subsection (4)***, a lease of a house is a qualifying lease for the purposes of the Chapter where the lease provides only for normal rental payments taxable under ***Chapter 8*** of ***Part 4***. ***(2)(a)***

If a premium is payable in addition to those payments, the premium must not exceed 10 per cent of the relevant cost of the house in the case of construction, or 10 per cent of the market value of the house at the time of completion of works in the case of conversion or refurbishment. In the latter case, the premium must be payable on or subsequent to the date of the completion of the refurbishment or, if payable before that date, must be payable by reason of or in connection with the refurbishment. ***(2)(b)***

Apportionment

In the case of conversion or refurbishment, provision is made for the apportionment of the market value of a building where a house is a part of a building and is not saleable apart from the building of which it is a part. This apportionment is of the market value at the time the works are completed and is done on a floor area basis. ***(3)***

Other conditions

A lease does not qualify for the purposes of ***Chapter 11***:

- if the terms of the lease enable the lessee or any other person to acquire an interest in the house involved for less than that which might be expected to be given if the acquisition were conducted in the open market at arm's length, ***(4)(a)***
- in the case of the Rural Renewal Scheme, if the duration of the lease is for a period of less than 3 months, or ***(4)(b)***

- in the case of the Student Accommodation Scheme, if the lease does not comply with the requirements of the relevant guidelines. ***(4)(c)***

372AP Relief for lessors

Summary

This section provides relief to lessors in respect of eligible expenditure incurred in a qualifying period in relation to a house which is a special qualifying premises (i.e. Countrywide Refurbishment Scheme) or a qualifying premises (i.e. all other schemes). The relief takes the form of a deduction which may be set off against rental income from the premises in computing liability to tax in respect of such income. Under the rules governing the taxation of rental income the relief is, in effect, available against all rental income arising in the State, whether it arises from the premises in question or from other lettings.

Provision is made for the apportionment of eligible expenditure and of relevant cost (see definition in ***subsection (1)***) where a premises is part of a building or of a development.

Provision is also made for a clawback of relief granted if during the relevant period of 10 years a premises ceases to be let or otherwise ceases to be a qualifying premises or a special qualifying premises (for example, by being extended beyond the space limitations provided). A clawback also applies if a premises is sold by the lessor or passes by way of gift, inheritance, etc. during this 10 year period but in such cases the relief may be passed on to the successor or purchaser where the premises does not cease to be a qualifying premises or a special qualifying premises. Provision is included to ensure that the transfer of property to be held in trust for the benefit of creditors under any of the arrangements provided for under the Personal Insolvency Act 2012 will not, of itself, trigger a clawback of relief.

Expenditure in relation to the cost of a site is excluded from relief as is the appropriate portion of the cost of an existing building in which a house is comprised where conversion or refurbishment expenditure is involved. Special rules apply in the case of a house which is sold by a builder before being used (or within a period of one year of being used in the case of the Student Accommodation Scheme) and before a deduction has been allowed in respect of it.

Section 372AS contains provisions which supplement this section.

Details

Definitions

"chargeable period" means an accounting period of a company or a year of assessment. ***(1)***

"relevant cost", in relation to a house, means, subject to the apportionment provisions in ***subsection (6)***, the aggregate of —

- in the case of construction of the house, the cost of the site of the house, or in the case of conversion or refurbishment, the cost of the site of the house and of any building in which the house is comprised, and
- the expenditure actually incurred on the construction of, conversion into, or refurbishment of the house.

"relevant period", in relation to eligible expenditure on a qualifying premises or a special qualifying premises, means —

- in the case of the construction of, or conversion of a building into, a qualifying premises, the period of 10 years beginning on the date of the first letting of the qualifying premises under a qualifying lease, and
- in the case of the refurbishment of a qualifying premises or a special qualifying premises, the period of 10 years beginning on the date of the completion of the refurbishment. Where the premises was not let under a qualifying lease on that date, the 10-year period begins on the date of first letting after completion.

"relevant price paid" means the amount which bears to the net price of a house the same proportion as the amount of the eligible expenditure actually incurred, which is to be treated under ***section 372AS(1)*** as having been incurred in the qualifying period, bears to the relevant cost in relation to that house.

The relief

Provision is made, subject to ***subsections (3)***, ***(4)*** and ***(5)***, that, in computing the profit rent from a qualifying premises or a special qualifying premises, a person is entitled to deduct so much of the eligible expenditure on the premises which is treated as having been incurred in the qualifying period. The deduction is given by treating the expenditure as an allowable deduction in calculating a surplus or deficiency on the rental income from the premises. ***(2)***

Under the rules governing the taxation of rental income, where the deficiencies exceed the surpluses in computing units of rental income, a taxpayer may claim to have any excess set off against other rental income of the taxpayer of the same year and any overall excess carried forward for set-off against the taxpayer's rental income for any subsequent year. In effect, therefore, the relief given is available for offset against all rental income and not just income from the particular premises.

In the case of the refurbishment of a special qualifying premises the deduction to be given by virtue of ***subsection (2)*** is a deduction of 15 per cent of the eligible expenditure for: ***(3)(a)***

- the chargeable period in which the expenditure is incurred or, if the premises was not let under a qualifying lease during that period, the chargeable period in which the premises is first let after the expenditure is incurred, and
- any subsequent chargeable period in which that premises continues to be a special qualifying premises.

The aggregate amount to be so deducted cannot exceed 100 per cent of the expenditure involved, and where a chargeable period is less than one year, the amount of the deduction is proportionately reduced. ***(3)(b)***

Impact of a premium on the amount of relief

Under ***section 372AO***, if a premium payable on the lease of a house exceeds 10 per cent of the "relevant cost" of the house in the case of construction, or 10 per cent of the market value of the house at the time of completion of works in the case of conversion or refurbishment, the lease is not to be a qualifying lease and, accordingly, no relief is due under this section. Where a premium does not exceed this 10 per cent limit, then, if all or any part of the premium is not taxed as rent, all or the appropriate proportion of the premium is to be subtracted from the amount of the eligible expenditure allowable as a deduction under ***subsection (2)***. ***(4)***

[Where a premium is required under a lease the duration of which does not exceed 50 years, ***section 98*** provides that a proportion of the premium is to be treated as rent. The proportion to be so treated is 100 per cent where the term of the lease does not exceed 1 year, 98 per cent where the lease is for 2 years, 96 per cent where the lease is for 3 years, and so on.]

Where only part of the eligible expenditure is treated as incurred in the qualifying period, an appropriate proportion of the premium is subtracted. This is the same proportion as the amount of the eligible expenditure, which is treated as incurred in the qualifying period, bears to the whole of the eligible expenditure incurred.

Example

Site cost		€30,000
Construction expenditure (all in qualifying period)		€90,000
Relevant cost		€120,000
Premium must not exceed 10% i.e. not more than	€12,000	
Annual rent of qualifying premises		€7,500
Premium (lease less than 50 years), say		€6,000
Amount of premium treated as rent for income tax,	say	€2,000
Relief under ***section 372AP***—		
Construction cost		€90,000
Less non-rent portion of premium		€4,000
Net Relief		€86,000

Limit on deductible expenditure at a park and ride facility

There is a limit on the amount of eligible expenditure incurred on qualifying premises at a park and ride facility which is to qualify for a deduction under this section. Thus, a deduction will only be made provided that all eligible expenditure under the section when aggregated with qualifying expenditure, if any, on owner-occupied accommodation under ***section 372AR*** at the park and ride facility, does not exceed 25 per cent of total allowable or deductible expenditure at that facility. The onus to certify compliance with this requirement is placed on the relevant local authority. ***(5)***

Apportionment

Subsection (6) provides for the apportionment of eligible expenditure and relevant cost of a building or buildings where a qualifying premises or a special qualifying premises forms a part of a building or of a development, in order to determine the amounts related to the individual premises. ***(6)***

Clawback of relief

There is a clawback of relief where a house ceases to be a qualifying premises or a special qualifying premises during the 10-year relevant period (e.g. it is used as the residence of the lessor). A clawback also applies where the lessor's interest in the house passes (e.g. by way of sale or gift) to any other person but the house does not cease to be a qualifying premises or a special qualifying premises. The clawback deems the lessor to have received rent from the premises equal to an amount expressed by the formula ***(7)***

$$A - B$$

Where A is the amount of relief originally given, and B is the amount of unused section 23-type relief, which has been carried forward under ***section 384*** into that tax year. It is the net figure, rather than the gross figure, which is to be taken into account as deemed income. This is important because for the purposes of both the high earners restriction and the application of Universal Social Charge (USC) the amount of deemed income is treated as part of income.

In order to ensure the person does not receive "double" relief, the amount of the deficiency which has been carried forward into that year is reduced by an amount represented by B in the above formula.

Example

Allowable construction expenditure		€100,000
Net Rent per annum		€10,000
Year 1	Rent	€10,000
	Relief	€100,000
Deficiency c/forward		€90,000
Year 2	Rent	€10,000
Deficiency forward		€90,000
Deficiency c/forward		€80,000
Year 3 (lessor sells house midway through the year)	Rent	€5,000
Rent deemed received (€100,000 □ €80,000)		€20,000
	Total	€25,000
Case V assessment		€25,000

Circumstances in which clawback of relief will not arise

The transfer of a "qualifying premises" or a "special qualifying premises" to be held in trust for the benefit of creditors under a Debt Settlement Arrangement or a Personal Insolvency Arrangement, in accordance with section 66(2)(c) or section 100(2)(c) respectively, of the Personal Insolvency Act 2012, shall not trigger a clawback of relief under this section. ***(7A)***

Successors in title to a qualifying premises or a special qualifying premises

Where a person succeeds, within the 10-year relevant period, to the lessor's interest in a qualifying premises or a special qualifying premises, then that person is treated as having incurred the same amount of eligible expenditure as the lessor was treated as having incurred in the qualifying period. (This provision ignores any reduction made to the lessor's expenditure under ***subsection (4)(b)*** in relation to premiums). However, where a ***(8)***

purchase is involved the amount treated as having been incurred by the purchaser may not exceed the relevant price paid.

Example

A house cost €120,000 to build of which €100,000 was incurred on its construction in the qualifying period and qualified for relief. The site cost was €30,000. The "relevant cost" of the house is therefore €150,000. The house is sold by the original lessor for €160,000 (and the relief of €100,000 already granted is clawed back). The "relevant price paid" is:

$$€160,000 \times \frac{€100,000}{€150,000} = €106,667$$

As this amount is greater than the expenditure of €100,000 incurred by the original lessor in the qualifying period, then the purchaser is deemed to have incurred €100,000. If, however, the house were sold for €140,000, the "relevant price paid" would be:

$$€140,000 \times \frac{€100,000}{€150,000} = €93,333$$

As this amount is less than the expenditure of €100,000 incurred by the original lessor in the qualifying period, then the purchaser is deemed to have incurred €93,333.

House sold before being used

(9) Provision is made, subject to ***subsection (10)*** (which deals with the sale of a house by a builder in the course of a trade), that where a newly constructed house is sold before it used, or a newly converted or refurbished house is sold before it is used subsequent to the incurring of the expenditure involved, then the purchaser is treated as having incurred eligible expenditure in the qualifying period on the house equal to the lower of the amount of the expenditure which is treated under ***section 372AS(1)*** as having been incurred in the qualifying period and the relevant price paid. Where the house is sold more than once this provision applies only in relation to the last of those sales.

Sale of a house by a builder in the course of a trade

(10) This provision deals with situations where eligible expenditure is incurred in relation to a house by a builder who carries on a trade which consists of the construction, conversion or refurbishment of buildings with a view to their sale. Where the house is sold in the course of that trade:

- before the house is used, in the case of construction, and
- before the house is used subsequent to the incurring of expenditure, in the case of conversion or refurbishment,

then the purchaser is treated as having incurred eligible expenditure on the house in the qualifying period equal to the relevant price paid by the purchaser (i.e. the first purchase).

Example

A house cost €120,000 to build and all this expenditure is incurred in the qualifying period. The cost of the site was €30,000 making the "relevant cost" €150,000. The builder sells the house unused for €180,000 to a person who will let it as a qualifying premises. The "relevant price paid" on which the purchaser's relief will be based is:

$$€180,000 \times \frac{€120,000}{€150,000} = €144,000$$

In effect, relief is given for the appropriate proportion of the builder's profit attributable to the expenditure on construction.

Sale of a house in a qualifying student accommodation area by a builder

This provision applies, in the case of a house under the Student Accommodation Scheme, which is sold on or after 5 December 2001, where the house is sold within one year after it is used, or within one year after it is used subsequent to the conversion or refurbishment expenditure being incurred. This caters for situations where a builder lets a house under a qualifying lease to students at the commencement of an academic year while awaiting sale of the house. In such situations, if the sale takes place within a year of first use, the purchaser is entitled to relief on an amount which includes an appropriate proportion of the builder's profit. ***(10)(a)(ii) and (b)(ii)***

Subsequent sale of a house which was built and sold unused by a builder

If there is any subsequent sale of a house, which was built and sold unused by a builder, before it is used, then relief in respect of the later purchase is granted under ***subsection (9)***. However many times such a house is subsequently resold unused, the relief under ***subsection (9)*** (which is confined to the final purchaser) is limited to the lower of the relevant price paid on the first purchase and the relevant price paid on the final purchase. ***(10)(II)***

Example

The house mentioned in the last example (which cost €150,000 for its construction and site) which was first sold for €180,000 was subsequently sold unused for €190,000 and later sold unused for €200,000. The final purchaser's relief is limited to the "relevant price paid" on the first purchase (that is, €144,000) because this is lower than the relevant price related to the final purchase. The "relevant price paid" in relation to the final purchase is:

$$€200{,}000 \times \frac{€120{,}000}{€150{,}000} = €160{,}000$$

However, if the same house which was first sold for €180,000 was subsequently sold unused for €170,000, the relief would be €136,000 as this is lower than the "relevant price paid" on the first purchase (€144,000). This relevant price in relation to the final purchase is calculated as follows:

$$€170{,}000 \times \frac{€120{,}000}{€150{,}000} = €136{,}000$$

Provision against double claims

Expenditure which qualifies for relief under this section may not include expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts. ***(11)***

Grants to be deducted from amount of expenditure

Expenditure is not regarded as incurred by a person in so far as it has been or is to be met, directly or indirectly, by the State or by any board established by statute or by any public or local authority. ***(12)***

Interaction of relief with Capital gains tax

Section 555 applies as if a deduction under this section were a capital allowance and as if any rent deemed to have been received by a person under this section were a balancing charge. Thus, where relief (which has not been clawed back) is granted to a lessor who subsequently disposes of the house involved, the lessor will not be denied a deduction for Capital Gains Tax purposes unless it is necessary to take the relief into account to reduce a loss for those purposes. ***(13)***

In the following examples, which illustrate the operation of this provision, capital gains tax indexation relief is ignored for the sake of simplicity.

Example 1

A person sells a house for €200,000 after the end of the 10-year relevant period. He bought the house for €120,000 and he received relief under ***section 372AP*** of €96,000. There is no clawback of relief. Under this subsection the gain for capital gains tax purposes is computed as follows:

Sale price	€200,000
Cost*	€120,000
Gain	€80,000

* The cost will not be reduced because of the €96,000 relieved under ***section 372AP***.

Example 2

A person sells a house for €200,000 within the 10-year relevant period. She bought the house for €220,000 and she received relief under ***section 372AP*** of €155,000. The disposal resulted in a clawback of the relief of €155,000. The loss for capital gains tax is computed as follows:

Sale price		€200,000
Cost*		€220,000
Deduct amount relieved under ***section 372AP***		€155,000
Add clawback (treated as a balancing charge)	€155,000	€220,000
Loss		€20,000

The relief given in this case for income tax under ***section 372AP*** will not affect the capital gains tax position.

Where an event, referred to in paragraph (a) or (b) of subsection (7), which gives rise to a clawback of section 23 relief, occurs on or after 1 January 2012, ***section 555*** applies as if a deduction under this section were a capital allowance and as if the amount represented by 'A' in the formula in subsection (7) were a balancing charge. Thus, where a clawback occurs and is calculated under the provisions of subsection (7), (as amended by Finance Act 2012), a Capital Gains Tax loss arising on a disposal of such a property will not be restricted as a consequence of that amendment. Where there is no clawback of section 23 relief or the clawback occurred prior to 1 January 2012, the provisions of subsection (13) apply. ***(13A)***

Need for planning permission

Provision is made that this section will not apply in the case of any conversion or refurbishment unless planning permission, in so far as it is required, has been granted under the Local Government (Planning and Development) Acts 1963 to 1999 or the Planning and Development Act 2000. ***(14)***

Miscellaneous

The provisions of ***section 372AS*** supplement this section. ***(15)***

372AQ Qualifying expenditure: owner-occupiers

Summary

This section sets out what constitutes "qualifying expenditure" in the case of owner-occupiers. The term is used to describe expenditure by such owner-occupiers on qualifying

residential accommodation. The expenditure can be expenditure on the construction of, conversion into, or refurbishment of a qualifying premises which is first used by the individual who incurs the expenditure as his or her sole or main residence. The refurbishment of a facade will also qualify in the case of a qualifying premises which is within a qualifying town area.

In the case of the Living over the Shop Scheme, expenditure on "necessary construction" rather than on construction will qualify. In the case of a building which is within the site of a qualifying park and ride facility only construction expenditure qualifies.

Site development costs will also qualify but any grants received must be deducted.

Details

Definition of qualifying expenditure – grants are excluded

Subject to ***subsection (3)***, "qualifying expenditure" for the purposes of the Chapter means expenditure incurred by an individual on the construction, conversion, or refurbishment of a qualifying premises, and in the case of a qualifying premises which is wholly within a qualifying town area, the refurbishment of a facade. The qualifying premises must be a qualifying owner-occupied dwelling. Also the expenditure which qualifies is reduced by any sum which the individual receives, directly or indirectly, from the State, any board established by statute or any public or local authority. ***(1)***

Sole or main residence

A "qualifying owner-occupied dwelling" means a qualifying premises which is first used by the individual as his or her only or main residence, after the qualifying expenditure has been incurred. ***(2)***

Living over the Shop scheme – Park and Ride scheme

Reference in ***subsection (1)*** to "construction" is to be treated as a reference to "necessary construction", in the case of the Living over the Shop scheme i.e. relief is restricted to "necessary construction". In the case of the Park and Ride scheme, reference to "construction of, conversion into, or, as the case may be, refurbishment of" is to be treated as a reference to "construction of" i.e. relief is restricted to "construction" only. ***(3)***

Site development costs

Provision is made that ***section 372AN(7)***, which treats references to construction, conversion, or refurbishment as including site development costs, applies with any modification for the purposes of this section. ***(4)***

372AR Relief for owner-occupiers

Summary

This section provides relief in respect of qualifying expenditure incurred by an individual in the qualifying period in relation to qualifying owner-occupied residential accommodation. The relief consists of an annual deduction from total income of an amount equal to:

- 5 per cent of the expenditure incurred in the case of the construction of a qualifying premises,
- 10 per cent of the expenditure, in the case of the necessary construction of a qualifying premises under the Living over the Shop scheme, or
- 10 per cent of the expenditure, in the case of the conversion into or the refurbishment of a qualifying premises.

The relief may be claimed for the tax year in which the expenditure is incurred and for any of the following 9 tax years provided that the dwelling is the sole or main residence of the individual.

The section provides for apportionment of expenditure where qualifying expenditure is incurred by 2 or more persons and applies certain provisions of ***section 372AP***, in order to determine the amount of qualifying expenditure incurred in relation to a qualifying premises, and the amount of qualifying expenditure to be treated as incurred in the qualifying period. It also deals with the interaction of the relief with the short tax "year" 2001.

Section 372AS contains provisions which are necessary to supplement this section.

By virtue of the provisions of ***section 458***, the general provisions relating to allowable deductions and reliefs contained in ***sections 458*** to ***460*** apply for the purposes of the relief provided by this section.

Details

The relief

Where an individual incurs qualifying expenditure in a year of assessment in respect of a qualifying premises, the individual is entitled to a deduction from his or her total income for that year and for any of the 9 subsequent years of assessment in which the qualifying premises is the only or main residence of the individual. The amount of the deduction is: ***(1)***

- 5 per cent of the expenditure, in the case of the construction of a qualifying premises,
- 10 per cent of the expenditure, in the case of the necessary construction of a qualifying premises which fronts on to a qualifying street or is comprised in a building or part of a building which fronts on to a qualifying street, or
- 10 per cent of the expenditure, in the case of the conversion into or the refurbishment of a qualifying premises.

Interaction of the relief with the short tax "year" 2001

Provision is made that where the year of assessment 2001 is one of the years in which relief is due, then the reference in ***subsection (1)*** to "any of the 9 subsequent years of assessment" will be to "any of the 10 subsequent years of assessment". Also the relief for the year of assessment 2001, as a percentage of expenditure, is to be "3.7 per cent" and "7.4 per cent" instead of "5 per cent" and "10 per cent" and the relief for the 10th year of assessment will be "1.3 per cent" and "2.6 per cent" instead of "5 per cent" and "10 per cent", respectively. ***(2)***

Deduction available against income of spouse or civil partner

Where an individual is assessed to tax under joint assessment then, unless separate assessment applies, the individual can claim the deduction under this section from his or her total income and the total income, if any, of his or her spouse or civil partner. ***(3)***

Expenditure to be incurred in the qualifying period

Expenditure will qualify only in so far as it is treated under ***section 372AS(1)*** as having been incurred in the qualifying period. ***(4)***

Limit on deductible expenditure at a park and ride facility

There is a limit on the amount of qualifying owner-occupier expenditure incurred on qualifying premises at a park and ride facility which is to qualify for a deduction under this section. Thus, a deduction will only be made provided that all qualifying owner- ***(5)***

occupier expenditure under the section when aggregated with eligible expenditure, if any, on rented residential accommodation under ***section 372AP*** at the park and ride facility, does not exceed 25 per cent of total allowable or deductible expenditure at that facility. The onus to certify compliance with this requirement is placed on the relevant local authority.

Apportionment of expenditure and purchases of new unused premises

Apportionment of expenditure is provided for where qualifying expenditure is incurred by 2 or more persons in relation to a qualifying premises. ***(6)***

The provisions of ***subsections (6)***, ***(9)*** and ***(10)*** of ***section 372AP*** are applied for the purposes of this section, in order to determine the amount of qualifying expenditure incurred in relation to a qualifying premises, and the amount of qualifying expenditure to be treated as incurred in the qualifying period. These provisions deal with apportionment and with the calculation of allowable expenditure where a newly constructed, converted or refurbished house is purchased from the person (including a builder) who incurred the expenditure in relation to the house. ***(7)***

Provision against double claims

Expenditure qualifying under this section may not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts. ***(8)***

Need for planning permission

Relief will not apply in the case of conversion or refurbishment unless planning permission, in so far as it is required, has been granted under the Local Government (Planning and Development) Acts 1963 to 1999 or the Planning and Development Act 2000. ***(9)***

Miscellaneous

The provisions of ***section 372AS*** supplement this section. ***(10)***

372AS Determination of expenditure incurred in the qualifying period and date expenditure treated as incurred for relief purposes

Summary

The provisions of this section determine whether and to what extent expenditure on the construction of, conversion into, or refurbishment of a qualifying premises or a special qualifying premises is incurred in the qualifying period.

In particular, the section provides that only 75 per cent of such expenditure incurred in the year 2007 and 50 per cent of such expenditure incurred in the period 1 January 2008 to 31 July 2008 is to be regarded as incurred in the qualifying period. These restrictions apply across all the residential schemes covered by ***Chapter 11***. Expenditure that is proper to the year 2006 is not affected. For the purposes of deciding whether or not expenditure is incurred in a period, only the amount of the expenditure that is attributable to work actually carried out in the period is taken into account.

The provisions of the section likewise determine whether and to what extent site development costs in relation to a qualifying premises are incurred in the qualifying period. The section also contains a provision which deals with apportionment of expenditure where the site of a building straddles the boundary of a qualifying urban area

or a qualifying town area. Finally, the section determines the date expenditure is treated as incurred for relief purposes.

Details

Expenditure on construction, conversion, or refurbishment

(1) For the purposes of granting rented residential relief to lessors under ***section 372AP(2)*** or owner-occupier relief under ***section 372AR(1)***, only the amount of the expenditure which is attributable to work actually carried out during the qualifying period is to be treated as incurred during that period in relation to the construction, conversion, or refurbishment of a qualifying premises, or the refurbishment of the special qualifying premises.

(1A) However, any eligible expenditure (lessors) or qualifying expenditure (owner-occupiers) incurred in the year 2007 is to be reduced to 75 per cent of the expenditure incurred when calculating allowances due under ***section 372AP*** or ***section 372AR***. For the period 1 January 2008 to 31 July 2008 such expenditure is to be reduced to 50 per cent of the expenditure incurred in that period. These restrictions apply to "qualifying premises" under all schemes and "special qualifying premises" under the general Rental Refurbishment scheme. Expenditure that is proper to the year 2006 is not affected.

(1A)(a) The restrictions are applied by reducing the amount of expenditure incurred in each period to the relevant percentage when determining the amount of expenditure which is to be treated as incurred in the qualifying period. The reduced expenditure is then, automatically, the amount which is taken into account in calculating relief due to purchasers of residential property, as the legislation already compares the "amount of expenditure which is to be treated under ***section 372AS(1)*** as having been incurred in the qualifying period" with "relevant cost" (all building costs and site costs) when calculating the "relevant price paid" (see definitions in ***section 372AP(1)***).

(1A)(b) For the purposes of deciding whether or not expenditure is incurred in a period only the amount of the expenditure that is attributable to work actually carried out in the period is taken into account.

The year 2006 is included in the provisions of this subsection to ensure that expenditure is not brought forward into that year to try and avoid the restrictions that apply in relation to the year 2007 and the period 1 January 2008 to 31 July 2008.

Example

Construction expenditure is incurred in relation to a house situated in a qualifying area by a builder who carries on a trade which consists of the construction of buildings with a view to their sale. The house is sold in the course of that trade and the provisions of ***section 372AP(10)*** apply.

The house cost €260,000 to build and this expenditure is incurred as follows: Year 2006: €60,000; Year 2007: €140,000; Jan to July 2008: €50,000; August 2008 €10,000. The cost of the site was €70,000 making the "relevant cost" €330,000 (i.e. building costs of €260,000 and site cost of €70,000).

Eligible expenditure as reduced in accordance with the 75 per cent and 50 per cent restrictions is as follows:

Year 2006: €60,000; Year 2007: €140,000 x 75% = €105,000; Jan to July Year 2008: €50,000 x 50% = €25,000; August 2008; Nil (outside the qualifying period). Total eligible expenditure is €190,000.

The builder sells the house for €375,000 before the house is used to a person who will let it as a qualifying premises. The "relevant price paid" on which the purchaser's relief will be based is:

$$375{,}000 \times \frac{190{,}000}{330{,}000} = \quad 215{,}910$$

Site development costs

Where site development costs are, by virtue of ***section 372AN(7)*** or ***372AQ(4)***, included in the expenditure on the construction, conversion or refurbishment of a qualifying premises, then the rule in ***subsection (1)*** applies with any necessary modifications to the development costs.

Building partly outside qualifying Urban or Town area ***(2A)***

Apportionment of expenditure, where the site of a building is partly inside and partly outside the boundary of a qualifying urban area or a qualifying town area, is provided for in order to determine the amount of eligible expenditure (see ***section 372AN***) or qualifying expenditure (see ***section 372AQ***) incurred on or in relation to a building. Expenditure is to be apportioned on a floor area basis.

Date expenditure treated as incurred for relief purposes ***(3)***

Apart from deciding when expenditure is incurred for the purposes of ***subsection (1)***, expenditure is to be treated as incurred:

- in the case of the construction or the conversion of a qualifying premises under ***section 372AP*** (rented residential relief), on the date of its first letting under a qualifying lease,
- in the case of the refurbishment of a qualifying premises or a special qualifying premises under ***sections 372AP*** (rented residential relief), on the date the relevant period (within the meaning of that section) starts in relation to the premises, and
- in the case of expenditure incurred on the construction, conversion, or refurbishment of a qualifying premises under ***section 372AR*** (owner-occupier relief), on the date on which the premises is first used as a dwelling after the expenditure was actually incurred.

372AT Appeals

This section was deleted in Finance Act 2015.

372AU Saver for relief due, and for clawback of relief given under, old schemes

Summary

This section contains a saving provision in relation to the legislation, repealed by section 24(3) of the Finance Act 2002, which dealt with residential reliefs (both rented residential and owner-occupier relief) under a number of old schemes. This saving provision preserves title to the relief for existing beneficiaries and Revenue's right to withdraw relief in appropriate circumstances.

Details

Rented residential relief ***(1)***

A saving provision is provided for in relation to sections of the Taxes Consolidation Act 1997, dealing with rented residential reliefs under a number of old schemes, which were repealed by section 24(3) of the Finance Act 2002. These are ***sections 325***, ***326*** and ***327*** (Customs House Docks Area Scheme), ***sections 334***, ***335*** and ***336*** (Temple Bar Area Scheme), ***sections 346***, ***347*** and ***348*** (1994 scheme for Designated Areas and Streets), ***sections 356***, ***357*** and ***358*** (Qualifying Resort Areas Scheme) and ***sections 361***, ***362*** and ***363*** (Designated Islands Scheme).

Where a person would, but for the repealed section, be entitled to a deduction or be deemed to have received an amount as rent, for the purposes of computing rental profits from any premises then, notwithstanding that repeal, the person is entitled to that deduction or is deemed to have received that amount as rent under this Chapter.

Owner-occupier relief

A saving provision is also provided for in relation to sections of the Taxes Consolidation Act 1997, dealing with residential owner-occupier reliefs under a number of old schemes, which were repealed by section 24(3) of the Finance Act 2002. The sections involved are ***section 328*** (Customs House Docks Area Scheme), ***section 337*** (Temple Bar Area Scheme), ***section 349*** (1994 scheme for Designated Areas and Streets) and ***section 364*** (Designated Islands Scheme). ***(2)***

Where a person would, but for the repealed section, be entitled to a deduction for a year of assessment in computing his or her total income then, notwithstanding that repeal, the person is entitled to that deduction under this Chapter.

372AV Continuity

Summary

This section deals with continuity issues arising from the codification of the legislation dealing with residential reliefs (both rented residential and owner-occupier relief) under a number of schemes.

Details

Definition of old enactments

The term "old enactments" means the legislation, repealed by section 24(3) Finance Act 2002, which deal with residential reliefs under a number of current schemes i.e. ***sections 372F***, ***372G***, ***372H***, ***372I*** and ***372J*** (Urban Renewal Scheme and Living over the Shop Scheme), ***sections 372P***, ***372Q***, ***372R***, ***372RA*** and ***372S*** (Rural Renewal Scheme), ***sections 372X***, ***372Y*** and ***372Z*** (Park and Ride Scheme), ***sections 372AE***, ***372AF***, ***372AG***, ***372AH*** and ***372AI*** (Town Renewal Scheme), ***Parts 11A*** (Student Accommodation Scheme) and ***Part 11B*** (Countrywide Refurbishment Scheme for rented residential accommodation). ***(1)***

Continuity of the law, references in documents or legislation etc.

The continuity of the operation of the law relating to income tax, corporation tax and capital gains tax is not affected by the substitution of this Chapter for the old enactments. ***(2)***

Any reference in any enactment or document to this Chapter or to things done or to be done under or for the purposes of this Chapter, in relation to matters to which the old enactments applied, is to be construed as including a reference to, or to things done or to be done under, the old enactments. ***(3)***

Any reference in any enactment or document to the old enactments, or to things done or to be done under or for the purposes of the old enactments, in relation to matters to which this Chapter applies, is to be construed as including a reference to things done or deemed to be done or to be done under or for the purposes of this Chapter. ***(4)***

Anything done or having effect as if done under the old enactments before the date of passing of the Finance Act 2002 is to be treated on and from that date as if it were a thing done under this Chapter. ***(5)***

Deductions given under old enactments

This Chapter applies as if a deduction given to a person under the old enactments were a deduction given to such person under this Chapter in respect of, as appropriate, eligible expenditure incurred in the qualifying period on a qualifying premises or a special qualifying premises, or qualifying expenditure incurred in the qualifying period on a qualifying premises. ***(6)***

Construction of references to old enactments in certain orders

Any reference in an order made: ***(7) & (8)***

- under ***section 372B(1)*** or ***372BA(1)*** to ***section 372F***, ***372G***, ***372H*** or ***372I***, or
- under ***section 372AB(1)*** to ***section 372AE***, ***372AF***, ***372AG*** or ***372AH***,

is, from the date of passing of the Finance Act 2002, to be construed respectively as if it were a reference:

- ***section 372AP***, in so far as it relates to expenditure on construction,
- ***section 372AP***, in so far as it relates to conversion expenditure,
- ***section 372AP***, in so far as it relates to refurbishment expenditure, and
- ***section 372AR***.

Authorised officers etc.

All officers who were authorised or nominated for the purposes of the old enactments immediately before the date of passing of the Finance Act 2002 are deemed to be authorised or nominated for the purposes of ***Chapter 11***. ***(9)***

All instruments, documents, authorisations and letters or notices of appointment made or issued under the old enactments and in force immediately before the date of passing of the Finance Act 2002 are to continue in force as if made or issued under ***Chapter 11***. ***(10)***

CHAPTER 12
Mid-Shannon Corridor Tourism Infrastructure Investment Scheme

Overview

This Chapter provides for a targeted tax-based scheme for tourism facilities in the mid-Shannon corridor. The scheme is aimed at encouraging the development of new tourism infrastructure and the refurbishment of existing tourism infrastructure in that area which is relatively underdeveloped from the point of view of tourism.

The individual areas which qualify under the scheme are listed in ***Schedule 8B*** to the Taxes Consolidation Act 1997 and include various District Electoral Divisions in the counties of Clare, Galway, Offaly, Roscommon, Tipperary and Westmeath.

The scheme is time-limited to the period commencing on 1 June 2008 and ending on 31 May 2015, within which period qualifying capital expenditure may be incurred. Projects wishing to avail of relief must get approval in advance (for which an application must be made within 4 years of the commencement of the scheme) and also must get formal certification after completion. This approval and certification will be given by a special board established for the purposes of the scheme and will be carried out in accordance with guidelines issued by the Minister for Arts, Sport and Tourism in consultation with the Department of Finance.

Capital allowances are available in relation to certain registered holiday camps and other tourism infrastructure facilities. The nature of the tourism infrastructure buildings and

structures that may qualify under the scheme are set out in the guidelines. Certain buildings such as those that facilitate gaming or gambling are specifically excluded from the scheme, as are licensed premises (but not restaurants). Also, tourism facilities, other than qualifying holiday camps that already qualify for capital allowances such as hotels, guesthouses, holiday hostels and caravan and camping sites registered under the Tourist Traffic Acts are excluded. However, other accommodation facilities that are provided as part of a qualifying tourism project may qualify for relief but qualifying expenditure on such accommodation facilities cannot be more than 50 per cent of the overall expenditure on the project or cannot be more than the expenditure on the non-accommodation facilities in the project.

Relief is available over 7 years for qualifying construction and refurbishment expenditure incurred in the qualifying period at the rate of 15 per cent per annum in years 1 to 6 and at the rate of 10 per cent in year 7. In the case of refurbishment, the qualifying expenditure must exceed 20 per cent of the market value of the property before work commences. In areas that are not in the BMW region (i.e. areas in Clare and Tipperary) only 80 per cent of construction and refurbishment expenditure may qualify for relief.

There is a 15-year holding period in order to avoid a clawback of allowances given. Existing restrictions on the sideways set-off of excess capital allowances against non-rental income for passive investors apply as does the restriction on the use of specified reliefs by high-income individuals which is effective from 1 January 2007.

The scheme commenced by way of order of the Minister for Finance with effect from 1 June 2008 (S.I. No. 159 of 2008).

The termination date of 31 May 2015 and the period of 4 years (see ***section 372AW***) were introduced in the Finance Act 2010 (section 27) and are subject to a commencement order of the Minister for Finance. Until such commencement order is made the termination date and period are 31 May 2013 and 2 years, respectively.

372AW Interpretation, applications for approval and certification

Summary

This section is an interpretation section. It also provides for the approval and certification of projects by the mid-Shannon Tourism Infrastructure Board and for the issue of relevant guidelines by the Minister for Arts, Sport and Tourism in consultation with the Minister for Finance. The section also sets limits in relation to the levels of expenditure on accommodation buildings which may qualify for certification.

Details

Definitions

(1) Definitions of the various terms used in ***Chapter 12*** are provided. Most of these are self-explanatory but the following are highlighted:

"mid-Shannon Tourism Infrastructure Board" means a board selected for the purposes of the Chapter by the Minister for Arts, Sport and Tourism in consultation with the Minister for Finance. The board may not exceed 5 persons. [This board is responsible for granting advance approval in relation to projects and formal certification after building work has taken place].

"qualifying period" is the period commencing on 1 June 2008 and ending on 31 May 2015.

"qualifying tourism infrastructure facilities" means a class or classes of facilities (but confined to buildings and structures) that are approved by the Minister for Arts, Sport and

Tourism in consultation with the Minister for Finance and which are published in the relevant guidelines.

"relevant guidelines" means guidelines issued in accordance with ***subsection (3)***, including any amending or replacement guidelines.

Approval and certification by mid-Shannon Tourism Infrastructure Board

(2)(a) ***Subsection (2)(a)*** (which is subject to the subsequent provisions of this section and to ***section 372AZ***) provides that no relief from income tax or corporation tax may be granted by virtue of this Chapter in respect of construction or refurbishment expenditure unless the mid-Shannon Tourism Infrastructure Board has:

- in advance, granted approval in principle in relation to the construction or refurbishment of the building or structure involved, and
- after the expenditure is incurred, certifies in writing that the work carried out is in accordance with the criteria specified in the relevant guidelines. Any relevant conditions imposed by the Board in the advance approval must also have been satisfied.

(2)(b) Approval in principle cannot be granted unless the Board receives an application within four years of the commencement of the qualifying period, i.e. by 31 May 2012. Such an application must also contain whatever information and details are specified in the relevant guidelines in accordance with ***subsection (3)(h)***.

Relevant guidelines to be issued by Minister for Arts, Sport and Tourism

(3) This provision, which is subject to ***subsection (4)***, provides that the Minister for Arts, Sport and Tourism in consultation with the Minister for Finance shall issue guidelines for the purposes of approval and certification under ***subsection (2)*** and also for the purposes of certification under ***section 372AX(1)(d)*** or ***372AY(1)(g)***. The mid-Shannon Tourism Infrastructure Board must have regard to these guidelines in deciding whether to grant approval in principle or to issue a certificate in relation to a building or structure. The guidelines may include criteria in relation to some or all of the following matters:

(a) the contribution which the project, in which the building or structure is comprised, would make to tourism development in the mid-Shannon corridor or the qualifying mid-Shannon area,
(b) coherence with national tourism strategy,
(c) environmental sensitivity, having particular regard to any area which is a European site (e.g. special area of conservation or special protection area), a natural heritage area, a nature reserve or a refuge for fauna,
(d) the amenities and facilities required to be provided in each type of project,
(e) the nature of, and maximum extent to which, accommodation buildings (if any) are allowable in each type of project, (see ***subsection (4)*** also for maximum expenditure limits),
(f) specific standards of design and construction in relation to buildings and structures which may qualify for relief under this Chapter,
(g) relevant planning matters, including the need for consistency with the requirements of a development plan or a local area plan,
(h) the details and information required to be provided in applications for approval and certification in accordance with the relevant sections of ***Chapter 12***, and
(i) matters relating to the provision of information in accordance with sections ***372AX(1)(c)*** and ***372AY(1)(f)***,

together with any other matters the relevant Ministers consider are required to be included.

Limits in relation to expenditure on accommodation facilities

A maximum limit applies in relation to the extent to which expenditure on accommodation facilities may be certified as a qualifying part of a project. ***(4)***

This provision, which is subject to ***paragraphs (b)*** and ***(c)***, provides that the mid-Shannon Tourism Infrastructure Board may not grant approval or issue certification in relation to accommodation facilities to the extent that expenditure on such facilities exceeds a "limit amount" which is the lesser of: ***(4)(a)***

- 50 per cent (or any lower percentage specified in the guidelines in relation to a type of project) of the overall expenditure on the project, or
- the expenditure on non-accommodation buildings.

Where there are a number of accommodation buildings in a project and the aggregate of the capital expenditure incurred on their construction or refurbishment exceeds the "limit amount", then the aggregate expenditure is to be reduced to an amount equivalent to the limit amount and apportioned on a just and reasonable basis over all the accommodation buildings. ***(4)(b)***

Where the criteria in the relevant guidelines have been satisfied, the mid-Shannon Tourism Infrastructure Board may grant approval or issue certification in relation to an accommodation building: ***(4)(c)***

- up to the limit amount where there is only one such building, and
- where they are satisfied with the apportionment made under ***paragraph (b)***, in relation to so much of the expenditure which is attributable to each accommodation building following such apportionment.

372AX Accelerated capital allowances in relation to the construction or refurbishment of certain registered holiday camps

Summary

This section provides for accelerated capital allowances over 7 years in relation to certain registered holiday camps. The section sets out the type of such camps which may qualify and provides that the tax life and holding period of qualifying camps will be 15 years.

Details

Type of registered holiday camp which may qualify

The type of registered holiday camp to which this section applies is a building or structure: ***(1)***

(a) the site of which is wholly within a qualifying mid-Shannon area,

(b) which is in use as a holiday camp registered under the Tourist Traffic Acts 1939 to 2003 and which meets the requirements of the relevant guidelines in relation to the types of amenities and facilities that need to be provided,

(c) in relation to which relevant data has been provided to the mid-Shannon Tourism Infrastructure Board for onward transmission to the Minister and the Minister for Finance in relation to:

- the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the building or structure, and in relation to an accommodation building, the amount of such expenditure which is eligible for certification (see ***subsection (4)*** of ***section 372AW***),
- the number and nature of the investors that are investing in the building or structure,

- the amount to be invested by each investor, and
- the nature of the structures which are being put in place to facilitate the investment in the building or structure,

together with any other information specified in the relevant guidelines as being of assistance to the Minister for Finance in evaluating the costs and the benefits arising from the operation of tax relief for buildings and structures under this Chapter, and

(d) in respect of which the mid-Shannon Tourism Infrastructure Board gives a certificate in writing after the building or structure is first used or, where capital expenditure is incurred on the refurbishment of a building or structure, first used subsequent to the incurring of that expenditure —

- stating that it is satisfied that the conditions in ***paragraphs (a), (b)*** and ***(c)*** above have been met,
- confirming the date of first use or, as the case may be, first use after refurbishment, and
- which includes certification in accordance with ***section 372AW(2)(a)(ii)*** or a copy of such certification if it was already issued.

Rate of allowances, tax life and holding period

A revised application of the provisions of ***Chapter 1*** of ***Part 9*** applies in relation to registered holiday camps which qualify under the section. This is subject to ***subsections (3)*** and ***(4)*** of the section and to ***section 372AZ***. ***(2)***

Section 272 is to apply:

- as if a revised ***subsection (3)(c)*** were inserted – this provides that capital expenditure incurred in the qualifying period is to be written off at the rate of 15 per cent per annum, ***(2)(a)***
- as if a revised ***subsection (4)(c)*** were inserted – this provides that the tax life of registered holiday camps which qualify under the section is to be 15 years from first use or first use after refurbishment.

Section 274(1)(b) is amended by inserting a revised ***subparagraph (iii)*** which provides that the holding period, of registered holiday camps which qualify under the section, for balancing allowance and balancing charge purposes is to be 15 years from first use or first use after refurbishment. ***(2)(b)***

Minimum spend in refurbishment cases

In the case of refurbishment, a minimum of 20 per cert of the market value of a building or structure must be expended in the qualifying period to qualify. ***(3)***

Expenditure attributable to work actually carried out

Capital expenditure is to be treated as incurred in the qualifying period to the extent that it is attributable to work actually carried out in the qualifying period. ***(4)***

372AY Capital allowances in relation to the construction or refurbishment of certain tourism infrastructure facilities

Summary

This section provides for accelerated capital allowances over 7 years in relation to certain tourism infrastructure facilities. The section defines the “qualifying premises” involved and provides that the tax life and holding period of such premises will be 15 years.

Details

Qualifying tourism infrastructure facilities

(1) The type of building or structure to which the section applies is defined. Such "qualifying premises" must be a building or structure:

(a) the site of which is wholly within a qualifying mid-Shannon area,

(b) which apart from this section is not an industrial building or structure within the meaning of ***section 268*** or deemed to be such a building or structure. This provision therefore rules out any building or structure which already qualifies for capital allowances by virtue of ***section 268*** e.g. registered hotels, guesthouses, holiday hostels and caravan and camping sites;

(c) which is in use for the purposes of the operation of one or more qualifying tourism infrastructure facilities (these are the classes of facilities selected by the Minister for Arts, Sport and Tourism and published in the relevant guidelines);

(d) which is not a licensed premises (as defined in section 2 of the Intoxicating Liquor Act 1988), but which may be a restaurant (as defined in section 6 of that Act) which has a wine retailer's on-licence or a special restaurant licence;

(e) which is not a facility in which gambling, gaming or wagering of any sort is carried on for valuable consideration or which supports the carrying on of such activities,

(f) in relation to which relevant data has been provided to the mid-Shannon Tourism Infrastructure Board for onward transmission to the Minister and the Minister for Finance in relation to:

- the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the building or structure, and in relation to an accommodation building, the amount of such expenditure which is eligible for certification (see ***subsection (4)*** of ***section 372AW***),
- the number and nature of the investors that are investing in the building or structure,
- the amount to be invested by each investor, and
- the nature of the structures which are being put in place to facilitate the investment in the building or structure,

together with any other information specified in the relevant guidelines as being of assistance to the Minister for Finance in evaluating the costs and the benefits arising from the operation of tax relief for buildings and structures under this Chapter, and

(g) in respect of which the mid-Shannon Tourism Infrastructure Board gives a certificate in writing after the building or structure is first used or, where capital expenditure is incurred on the refurbishment of a building or structure, first used subsequent to the incurring of that expenditure —

- stating that it is satisfied that the conditions in ***paragraphs (a)*** to ***(f)*** above have been met,
- confirming the date of first use or, as the case may be, first use after refurbishment, and
- which includes certification in accordance with ***section 372AW(2)(a)(ii)*** or a copy of such certification if it was already issued.

Application of industrial buildings' provisions

The industrial buildings allowances provisions of ***Chapter 1*** of ***Part 9*** are applied in relation to capital expenditure incurred on the construction or refurbishment of premises which qualify under the section. The application of ***Chapter 1 of Part 9*** – subject to ***paragraph (b)***, to ***subsections (3) to (5)*** of the section and to ***section 372AZ –*** is: ***(2)(a)***

- as if the qualifying premises were a mill or factory under ***section 268(1)(a)***, and
- as if any non-trading activity carried on in the qualifying premises were a trade. This provision is a mechanism to ensure that the technical rules for entitlement to industrial buildings allowances apply and does not affect the nature of the actual income which arises from the qualifying premises.

The application of the subsection is confined to capital expenditure incurred in the qualifying period. ***(2)(b)***

Minimum spend in refurbishment cases

In the case of refurbishment, a minimum of 20 per cert of the market value of a building or structure must be expended in the qualifying period to qualify. ***(3)***

Rate of allowances, tax life and holding period

This provision sets out how the application, by ***subsection (2)***, of the provisions of ***Chapter 1*** of ***Part 9*** in relation to capital expenditure incurred on the construction or refurbishment of a qualifying premises is to apply in the case of ***sections 272*** and ***274***. ***(4)***

Section 272 is to apply: ***(4)(a)***

- as if a revised ***subsection (3)(a)*** were inserted – this provides that capital expenditure incurred in the qualifying period in relation to a qualifying premises is to be written off at the rate of 15 per cent per annum, and
- as if a revised ***subsection (4)(a)*** were inserted – this provides that the tax life of a qualifying premises is to be 15 years from first use or first use after refurbishment.

Section 274(1)(b) is to apply as if a revised ***subparagraph (i)*** were inserted. This provides that the holding period of a qualifying premises for balancing allowance and balancing charge purposes is to be 15 years from first use or first use after refurbishment. ***(4)(b)***

Expenditure attributable to work actually carried out

Capital expenditure is to be treated as incurred in the qualifying period to the extent that it is attributable to work actually carried out in the qualifying period. ***(5)***

372AZ Restrictions on relief, non-application of relief in certain cases and provision against double relief

Summary

This section contains restrictions in relation to circumstances in which relief may be claimed. It also provides that reduced levels of qualifying expenditure will apply in certain cases.

Details

Restrictions on the availability of capital allowances

Relief under ***sections 372AX and 372AY*** will not apply in relation to construction or refurbishment expenditure on a building or structure: ***(1)***

- where a property developer or a person connected with a property developer is entitled to the relevant interest in relation to the construction or refurbishment expenditure and such expenditure was incurred by either of those persons or by some other person connected with the property developer, ***(1)(a)***
- where any part of the construction or refurbishment expenditure is met directly or indirectly by the State or any State bodies [e.g. this provision would rule out relief where any part of the expenditure is met directly or indirectly by a grant or BES funding], ***(1)(b)***
- unless the potential capital allowances in relation to the building or structure concerned and the project in which it is comprised comply with the requirements of: ***(1)(c)***
  - the Guidelines on National Regional Aid for 2007-2013, and
  - the National Regional Aid Map for Ireland for the same period.
- where a person is subject to an outstanding recovery order following a previous decision of the Commission of the European Communities declaring aid in favour of that person to be illegal and incompatible with the common market. ***(1)(d)***

Provision against double relief

Relief will not be given in respect of capital expenditure incurred on the construction or refurbishment of a building or structure under any other provision of the Taxes Acts where relief is given by virtue of ***section 372AX*** or ***372AY***. ***(2)***

Reduced levels of qualifying expenditure

The amount of relief which may be given in relation to capital expenditure incurred on the construction or refurbishment of an accommodation building is restricted to the amount of such expenditure which was eligible for certification by the mid-Shannon Tourism Infrastructure Board. This provision is to apply prior to any restriction which may arise by virtue of ***subsection (4)***. ***(3)***

The amount of relief which may be given in relation to capital expenditure incurred on the construction or refurbishment of a building or structure which is located in a qualifying mid-Shannon area described in ***Part 1*** (Clare) or ***Part 5*** (Tipperary) of ***Schedule 8B*** (as inserted by section 29(1)(b) of the Finance Act 2007) is restricted to 80 per cent of the amount which otherwise would qualify for relief e.g. after the application of ***subsection (3)***. ***(4)***

The provisions of the Tax Acts (other than ***section 279***) are to apply as if references to capital expenditure incurred were references to such expenditure reduced in accordance with ***subsections (3)*** and/or ***(4)***. ***(5)(a)***

The provisions of ***section 279*** are reapplied to take account of any reductions which may be made to capital expenditure incurred in accordance with ***subsections (3)*** and/or ***(4)***. ***(5)(b)***

Commencement of Chapter 12 of Part 10

Chapter 12 of Part 10 took effect on the commencement of section 29 of the Finance Act 2007. That section was commenced with effect from 1 June 2008 by way of order of the Minister for Finance (see S.I. No. 159 of 2008).

CHAPTER 13
Living City Initiative

Overview

The "Living City Initiative" is a property incentive scheme for certain special urban regeneration areas, focusing on the conversion and refurbishment of dilapidated pre-1915 buildings for use as residential properties and also for the refurbishment and conversion of certain commercial properties. The urban areas have been described by order of the Minister for Finance for the purposes of these tax incentives. The scheme applies to qualifying expenditure incurred between 5 May 2015 and 31 December 2027 on owner-occupier residential property and commercial property and eligible expenditure incurred on rented residential property between 1 January 2017 and 31 December 2027. Provision is included to ensure that only expenditure properly attributable to works carried out within those periods will qualify for relief.

There are three separate elements to this property incentive scheme. The first relates to owner-occupied residences, the second to retail and other commercial development and the third to rented residential property. There is a reporting system in place for both the residential and commercial elements of this incentive and information will, in all cases, be submitted electronically. No relief will be available unless certain basic information regarding investors, property locations and the amount of qualifying expenditure/eligible expenditure on each project is first made available to the Revenue Commissioners. This is to allow continual review of the Initiative to be undertaken, to see if commercial or residential projects are actually being undertaken, where they are and at what cost to the Exchequer.

Owner-Occupier Residential Relief

The details of this element of the scheme are as follows:

- The relief is available in respect of expenditure incurred on the refurbishment or conversion of certain buildings, constructed before 1915 and referred to as relevant houses throughout this Chapter, at the rate of 10% per annum over 10 years for qualifying expenditure incurred up to and including 31 December 2022 and at a rate of 15% per annum for years 1 to 6 and 10% in year 7 for qualifying expenditure incurred on or after 1 January 2023. Relief is available provided the property remains the individual's principal private residence (PPR) during that time. If the property is not the PPR of the person in any of the relevant years, then the relief is not available for that year.
- An individual who incurs qualifying expenditure on or after 1 January 2023 may carry forward unused relief for up to 9 years after the year in which the qualifying expenditure was first incurred.
- Where a property is sold during that 10 year period there is no clawback of relief already given but no relief carries forward to the new owner.

- The refurbishment or conversion expenditure may be incurred by the owner of the property, or the property may be purchased immediately after refurbishment or conversion has been completed. In the latter case, the cost is apportioned so that the relief only applies to the refurbishment or conversion costs and not to any element of the site cost.

- Before the relief can apply, a letter of certification must be obtained from the relevant Local Authority stating that─

  — planning permission, insofar as it is required has been granted in respect of the work,

  — the work conforms to the relevant standards for construction and provision of water, sewerage and other services in houses, and

  — based on the information available at the time, the cost of the refurbishment or conversion seems reasonable.

- Expenditure which qualifies for this relief cannot include expenditure which qualifies for any other relief or deduction.

- In order for expenditure on refurbishment or conversion to qualify for this relief, it must exceed €5,000.

Accelerated Industrial Buildings Allowance

Capital allowances are available under this scheme in relation to the refurbishment or conversion of retail and other commercial premises and the refurbishment or conversion of rented residential property over a seven year period (15% per annum for years 1 to 6 and 10% in year 7). While rented residential property must have been constructed prior to 1915 there is no such requirement for commercial premises. The properties must be within the special regeneration areas and the commercial premises must be used for retail purposes or the provision of other services. The amount of the relief which can be obtained in respect of any refurbishment or conversion project is effectively capped at €200,000, regardless of how much expenditure is incurred or how many investors there are. The relief available is shared among the participants. This €200,000 limit is introduced so that the Initiative conforms to the EU de minimis rules for State Aid. Relief for the owner-occupier residential element is not limited since owner-occupier residences are not treated as undertakings for State aid purposes. Other details of the commercial and the rented residential elements of the scheme are as follows:

- All of the normal capital allowance rules regarding writing down allowances, balancing allowances and charges apply,

- The accelerated allowance may not be claimed by a property developer (as defined) or a person connected with one.

- Expenditure which qualifies for relief under the scheme must be reduced by a multiple of 3 times any grant received or receivable, directly or indirectly from or through the State or any of its agencies.

- In order for relief to apply, the amount of expenditure incurred must exceed €5,000

- Where relief is given under this measure, no relief is available in respect of the same expenditure under any other provisions of the Tax Acts.

- This relief comes within the ambit of the termination of carry forward of certain losses (***section 409F***), and the restriction on high income individuals (***section 485C***).
- The property relief surcharge (***section 531AAE***) applies to the commercial element of the scheme.

372AAA Interpretation (Chapter 13)

Summary

This section contains the definitions which are used in the Chapter.

Details

Definitions

"relevant house" means a building, constructed before 1915.

"market value" means, essentially, the price which the unencumbered fee simple of the building would fetch in an open market sale. However, that price is to be computed on a site-exclusive basis. Following FA 2016 this no longer has application.

"PPS number" and "tax reference number" have the same meanings as in ***section 477B(1)***.

"qualifying period" means the period starting from 5 May 2015 and ending on 31 December 2027.

"refurbishment" is defined as any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration of the building.

"special regeneration area" is defined as an area or areas specified as a special regeneration area by order of the Minister for Finance.

372AAB Residential accommodation: allowance to owner-occupiers in respect of qualifying expenditure incurred on the conversion and refurbishment of relevant houses

Summary

This section is concerned with the owner-occupier residential element of the incentive scheme.

Details

Definitions

"conversion" expenditure means expenditure incurred on the conversion ─ ***(1)***

- into a house, of a building where immediately prior to the conversion the building had not been in use as a dwelling. Conversion of part of such a building will also qualify for relief under this section.

- into 2 or more houses, of a building where immediately prior to the conversion the building had not been in use as a dwelling or had been is use as a single dwelling. Again, conversion of part of such a building will qualify for relief under this section.

"letter of certification" is one which has been issued by the relevant local authority stating that:

- planning permission, if required, has been granted,
- the refurbishment/conversion work complies with such conditions, if any, provided for in section 5 of the Housing (Miscellaneous Provisions) Act 1979 in relation to standards of improvement of houses and the provision of water, sewerage and other services in houses, and
- the expenditure incurred appears reasonable.

"qualifying expenditure" is expenditure incurred, in the qualifying period, by an individual, on the refurbishment or conversion of a relevant house, but excluding any State or public or local authority grants or payments received.

"qualifying premises" means a relevant house which meets certain conditions as follows:

- it must be within a special regeneration area,
- it must be used solely as a dwelling,
- a letter of certification must have been issued by the local authority, and
- it must be first used by the individual, following refurbishment or conversion, as his/her sole or main residence.

"relevant local authority" means the city council in whose functional area the special regeneration areas are situated.

The relief

(2)(a)

Where an individual incurs qualifying expenditure in a year of assessment before 1 January 2023, in respect of a qualifying premises, the individual is entitled to a deduction from his or her total income for that year and for any of the 9 subsequent years of assessment in which the qualifying premises is the sole or main residence of the individual. The amount of the deduction is equal to 10% of the qualifying expenditure, per annum, for 10 years.

(2)(b)

Where an individual incurs qualifying expenditure in a year of assessment on or after 1 January 2023, in respect of a qualifying premises, the individual is entitled to a deduction from his or her total income for that year and for any of the 6 subsequent years of assessment in which the qualifying premises is the sole or main residence of the individual. The amount of the deduction is equal to 15% of the qualifying expenditure, per annum, for the first 6 years and 10% in the final year.

Information/Reporting System

Relief under this section cannot be claimed unless the following information is first provided to the Revenue Commissioners: ***(2A)***

- the name and PPSN of the individual making the claim. Claimants will always be individuals,
- the address of the premises. This will be the principal private residence of the claimant since that is a key requirement for entitlement to the relief in the first place,
- the property ID number, if any, of the residence (used in the context of Local Property Tax), and
- details of the aggregate of all expenditure incurred on the conversion or refurbishment.

The information required under ***subsection (2A)*** is to be provided to the Revenue Commissioners by electronic means and through whatever electronic systems the Revenue Commissioners may make available. ***(2B)***

Deduction available against income of spouse or civil partner

Where an individual is assessed to tax under joint assessment then, unless separate treatment applies, the individual can claim the deduction under this section from his or her total income and the total income, if any, of his or her spouse or civil partner. ***(3)***

Expenditure incurred on work actually carried out

Refurbishment or conversion expenditure will be treated as incurred in the qualifying period only to the extent that it is attributable to work actually carried out in the qualifying period. ***(4)***

Apportionment of expenditure and purchases of new unused premises

Where two or more people have incurred qualifying expenditure on a property, the relief is apportioned among those persons according to the amount of the expenditure incurred by each person. ***(5)***

The provisions of ***subsections (6)***, ***(9)*** and ***(10)*** of ***section 372AP***, with any necessary modifications, are applied for the purposes of this section, in order to determine the amount of qualifying expenditure incurred, in relation to a qualifying premises, and the amount of qualifying expenditure to be treated as incurred in the qualifying period. These provisions deal with apportionment and with the calculation of allowable expenditure where a newly converted or refurbished house is purchased from the person (including a builder) who incurred the expenditure in relation to the house. ***(6)***

Provision against double relief

Relief shall not be given in respect of capital expenditure incurred under any other provision of the Tax Acts where relief has been given by virtue of this section. ***(7)***

Date expenditure treated as incurred for relief purposes

Expenditure incurred on the refurbishment or conversion of the property under this section is to be treated as incurred on the date on which the premises is first used as a dwelling after the expenditure is actually incurred. ***(8)***

Minimum spend

Refurbishment or conversion expenditure incurred in the qualifying period must exceed €5,000 for relief under this section to apply. ***(9)***

Carry forward of deduction to subsequent years of assessment

Where an individual is entitled to a deduction for qualifying expenditure incurred on or after 1 January 2023 and it is not wholly being utilised in that year of assessment, the individual may carry forward the unused portion and deduct from his or her total income in subsequent years of assessment. ***(11)(a)***

The deduction shall be carried forward to the first year of assessment following the year in which it was due and so on. ***(11)(b)***

No deduction is allowed in a year of assessment commencing more than 10 years after the year of assessment in which the qualifying expenditure was incurred. ***(11)(c)***

372AAC Capital allowances in relation to conversion or refurbishment of certain commercial premises

Summary

This section is concerned with the commercial element of the incentive scheme.

Details

Definitions

(1)

"qualifying expenditure" is defined as capital expenditure incurred on the conversion or refurbishment of a qualifying premises. However, the amount of relief available under this element of the Initiative is subject to an overall cap. European Union State Aid rules require that the total amount of aid going to any particular enterprise or undertaking in these circumstances cannot exceed €200,000. While, in general, State Aids are regarded as incompatible with the European Treaties, a certain de minimis level of aid is allowed on the grounds that the distorting effect on competition is not significant. The legislation ensures that the overall level of actual tax relief (state aid) for any project does not exceed the permitted amount.

This limit is intended to set a maximum amount of tax relief (State Aid) of €200,000 for any individual project. In the case of a company carrying on a trade from the qualifying premises the limit of qualifying expenditure is €1.6m (@ 12.5% tax rate this equals €200,000). In the case of a company in receipt of rental income from letting the qualifying premises the limit of qualifying expenditure is €800,000 (@25% tax rate this equals €200,000). If the investors are individuals, the expenditure limit is based on the assumption of an effective rate of tax of 50% and is set at €400,000. Where the individual is taxed at the standard rate of 20%, the amount of actual relief obtained will be lower but the limit on qualifying expenditure is not increased above €400,000. In addition, a cross reference is made to expenditure deemed to have been incurred under ***section 279*** to ensure that where such a commercial building is refurbished and sold, the purchaser is still restricted to the respective limits.

"qualifying premises" is defined as a building or structure the site of which is wholly within a special regeneration area and which –

- apart from this section is not an industrial building within the meaning of ***section 268*** or deemed to be such a building or structure (this provision therefore rules out any building or structure which already qualifies for capital allowances by virtue of ***section 268***), and is
    - in use for the purposes of the retailing of goods or the provision of services within the State, or
    - let under a lease at arms-length for either of those purposes.

Limit on Relief

(1A)

The meaning of "qualifying expenditure" is further refined in this paragraph. It addresses the scenario in which more than one person has incurred capital expenditure on an individual project. It could be that a number of individuals, a number of companies or a number of individuals and companies have invested. Without this provision it is possible that the aforementioned limits in the definition of qualifying expenditure would extend to each person who invests rather than being an overall cap on the level of tax relief for that project. The formula for individuals and companies trading from the qualifying premises is ─

(A x 50%) + (B x 12.5%) cannot exceed €200,000, where

A is the aggregate of all qualifying expenditure by individuals and

B is the aggregate of all qualifying expenditure by companies trading from the qualifying premises

The formula for individuals and companies in receipt of rental income from letting the qualifying premises is –

(A x 50%) + (B x 25%) cannot exceed €200,000, where

A is the aggregate of all qualifying expenditure by individuals and

B is the aggregate of all qualifying expenditure by companies letting the qualifying premises.

The formula seeks to ensure that the sum of all relief given to individuals (A x 50%) plus the sum of all relief given to companies (B x 12.5%) or (B x 25%), as the case may be, cannot exceed €200,000. If the overall amounts of expenditure are small, then it is likely that the equation is satisfied anyway. However, where the sums of money are large, then each participant's share of the overall qualifying expenditure will have to be reduced to make sure the equation is satisfied. The legislation is not prescriptive as to how this reduction should take place, other than to say that a person cannot obtain tax relief on expenditure which was not incurred. The precise apportionment of the qualifying expenditure can be agreed between the participants.

This provision does not set a limit on the amount of expenditure which can be incurred on any individual project, rather it limits the amount of that expenditure which can be treated as qualifying expenditure and which is eligible for the relief.

Application of industrial buildings' provisions

The provisions of ***Chapter 1 of Part 9*** (relief for capital expenditure on industrial buildings or structures) are applied to capital expenditure incurred on the conversion or refurbishment of premises, which qualify under this section. The application of ***Chapter 1*** (subject to ***paragraph (b)*** and to ***subsections (4)*** to ***(8)*** of this section) is: ***(2)(a)***

- as if the premises were a mill or factory under ***section 268(1)(a)***, and

- as if any non-trading activity carried on in the premises were a trade. This provision is a mechanism to ensure that the technical rules for entitlement to industrial buildings allowances apply and does not affect the nature of any income arising from the premises e.g. if a premises is let the income arising will be chargeable under Case V but capital allowances will be available even if the activity of the lessee is not a trade.

Allowances available

Allowances are available only in respect of capital expenditure incurred on the refurbishment or conversion of a qualifying premises during the qualifying period. ***(2)(b)***

Rate of allowances and tax life

This provision sets out how the application, by ***subsection (2)***, of the provisions of ***Chapter 1 of Part 9*** in relation to capital expenditure incurred on the conversion or refurbishment of a qualifying premises is to apply in the case of ***section 272.*** ***(4)***

- ***Section 272(3)(a)(ii)*** applies as if a reference in that subsection to 4% were a reference to 15% ─ this provides that qualifying expenditure incurred in the qualifying period in relation to a qualifying premises is to be written off at the rate of 15% per annum. ***(4)(a)***

- ***Section 272(4)(a)(ii)*** applies as if a ***revised subsection (4)(a)(ii)*** were inserted – this provides that the tax life (the period during which the relief attaching to the premises can be transferred to a new owner) of a qualifying premises in relation to qualifying expenditure incurred on its conversion or refurbishment is 7 years from its first use subsequent to the incurring of that expenditure. ***(4)(b)***

Balancing events

Where a sale or other event which might give rise to a balancing allowance or charge under ***section 274*** occurs in relation to a qualifying premises, a balancing allowance or charge is not to be made if that event occurs more than 7 years after the qualifying premises was first used subsequent to the incurring of the qualifying expenditure. ***(5)***

Minimum spend

Conversion or refurbishment expenditure incurred in the qualifying period must exceed €5,000 for relief under this section to apply. ***(6)***

Information to accompany Claim

The following information must be provided to the Revenue Commissioners before any claim for accelerated capital allowances under this section can be made: ***(6A)***

- the name, address and tax reference number of the person making the claim,
- the address of the premises in respect of which the expenditure was incurred,
- details of the aggregate of all expenditure incurred on the conversion or refurbishment of the qualifying premises, and
- a brief description of the nature of the retail or other commercial which is to be conducted from the premises

The information required under ***subsection (6A)*** will be provided to the Revenue Commissioners by electronic means and through whatever electronic systems the Revenue Commissioners may make available.

Subsections (6A) and (6B) will enable the results of the scheme to be evaluated on an on-going basis. ***(6B)***

Expenditure attributable to work actually carried out

Conversion or refurbishment expenditure is to be treated as incurred in the qualifying period only to the extent that it is attributable to work actually carried out in the qualifying period. ***(7)***

Non-availability of relief

Property developers or connected persons are precluded from getting relief in relation to a qualifying premises, where either the property developer or the connected person incurred the capital expenditure on the conversion or refurbishment of the premises or it was incurred by some other person connected with the property developer. ***(8)***

Expenditure that qualifies for relief under this section will be reduced by an amount equal to 3 times any grant received or receivable, directly or indirectly from the State or any of its agencies. ***(8A)***

Provision against double relief

Relief shall not be given in respect of capital expenditure incurred on the conversion or refurbishment of a qualifying premises, under any other provision of the Tax Acts where relief is given by virtue of this section. ***(9)***

Undertakings in difficulty

Undertakings in difficulty are now excluded from the commercial element of the scheme in accordance with the 2014 EU Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. ***(10)***

An undertaking is an entity that is involved in economic activity, irrespective of its legal form or how it is financed or whether it has a for profit orientation or not. An undertaking availing of relief under the commercial element of the Living City Initiative should ensure compliance with COMMISSION REGULATION (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.

372AAD Residential accommodation: capital allowances to lessors in respect of eligible expenditure incurred on the conversions and refurbishment of relevant houses

Summary

This section is concerned with the residential element of the incentive scheme as it applies to lessors.

Details

Definitions

(1)

"eligible expenditure" is defined as capital expenditure incurred on the conversion or refurbishment of a relevant house. However, the amount of relief available under this element of the Initiative is subject to an overall cap. European Union State Aid rules require that the total amount of aid going to any particular enterprise or undertaking in these circumstances cannot exceed €200,000. While, in general, State Aids are regarded as incompatible with the European Treaties, a certain de minimis level of aid is allowed on the grounds that the distorting effect on competition is not significant. The legislation ensures that the overall level of actual tax relief (state aid) for any project does not exceed the permitted amount.

This limit is intended to set a maximum amount of tax relief (State Aid) of €200,000 for any individual project. In the case of a company in receipt of rental income from letting the special qualifying premises the limit of eligible expenditure is €800,000. (@ 25% tax rate this equals €200,000). If the investors are individuals, the expenditure limit is based on the assumption of an effective rate of tax of 50% and is set at €400,000. Where the individual is taxed at the standard rate of 20%, the amount of actual relief obtained will be lower but the limit on eligible expenditure is not increased above €400,000. In addition, a cross reference is made to expenditure deemed to have been incurred under ***section 279*** to ensure that where such a premises is refurbished and sold, the purchaser is still restricted to the respective limits.

"relevant qualifying period" means the period commencing on 1 January 2017 and ending on 31 December 2027 .

"special qualifying premises" means a relevant house which meets certain conditions as follows:

- it must be within a special regeneration area,
- it must be used solely as a dwelling,
- a letter of certification must have been issued by the local authority, and
- it must be let on bona fide commercial terms under a lease at arm's length.

Limit on Relief

(2)

The meaning of "eligible expenditure" is further refined in this paragraph. It addresses the scenario in which more than one person has incurred capital expenditure on an individual project. It could be that a number of individuals, a number of companies or a number of individuals and companies have invested. Without this provision it is possible that the aforementioned limits in the definition of eligible expenditure would extend to each person who invests rather than being an overall cap on the level of tax relief for that project. The formula for individuals and companies is ─

(A x 50%) + (B x 25%) cannot exceed €200,000, where

A is the aggregate of all qualifying expenditure by individuals and

B is the aggregate of all qualifying expenditure by companies.

The formula seeks to ensure that the sum of all relief given to individuals (A x 50%) plus the sum of all relief given to companies (B x 25%) cannot exceed €200,000. If the overall amounts of expenditure are small, then it is likely that the equation is satisfied anyway. However, where the sums of money are large, then each participant's share of the overall

eligible expenditure will have to be reduced to make sure the equation is satisfied. The legislation is not prescriptive as to how this reduction should take place, other than to say that a person cannot obtain tax relief on expenditure which was not incurred. The precise apportionment of the eligible expenditure can be agreed between the participants.

This provision does not set a limit on the amount of expenditure which can be incurred on any individual project, rather it limits the amount of that expenditure which can be treated as eligible expenditure.

Application of industrial buildings' provisions

The provisions of ***Chapter 1 of Part 9*** (relief for capital expenditure on industrial buildings or structures) are applied to capital expenditure incurred on the conversion or refurbishment of relevant houses, which qualify under this section. The application of ***Chapter 1*** (subject to ***paragraph (b)*** and to ***subsections (4)*** to ***(10)*** of this section) is as if the relevant house were an industrial building under ***section 268(1)(a)***. ***(3)(a)***

Allowances available

Allowances are available only in respect of capital expenditure incurred on the refurbishment or conversion of a relevant house into a special qualifying premises during the relevant qualifying period. ***(3)(b)***

Rate of allowances and tax life

This provision sets out how the application, by ***subsection (2)***, of the provisions of ***Chapter 1 of Part 9*** in relation to capital expenditure incurred on the conversion or refurbishment of a relevant house into a special qualifying premises is to apply in the case of ***section 272***. ***(4)***

- ***Section 272(3)(a)(ii)*** applies as if a reference in that subsection to 4% were a reference to 15% ─ this provides that eligible expenditure incurred in the relevant qualifying period in relation to a special qualifying premises is to be written off at the rate of 15% per annum.

- Section ***272(4)(a)(ii)*** applies as if a revised subsection ***(4)(a)(ii)*** were inserted – this provides that the tax life (the period during which the relief attaching to the premises can be transferred to a new owner) of a relevant house in relation to eligible expenditure incurred on its conversion or refurbishment into a special qualifying premises is 7 years from its first use subsequent to the incurring of that expenditure.

Information to accompany Claim

The following information must be provided to the Revenue Commissioners before any claim for accelerated capital allowances under this section can be made: ***(5)***

- the name, address and tax reference number of the person making the claim,

- the address of the premises in respect of which the expenditure was incurred, and

- details of the aggregate of all expenditure incurred on the conversion or refurbishment of the special qualifying premises.

The information required under ***subsection (5)*** will be provided to the Revenue Commissioners by electronic means and through whatever electronic systems the Revenue Commissioners may make available.

Subsections (5) and (6) will enable the results of the scheme to be evaluated on an on-going basis.

Claims to be made electronically

Any claim made under this section shall be made by electronic means. ***(6)***

Balancing events

Where a sale or other event which might give rise to a balancing allowance or charge under ***section 274*** occurs in relation to a special qualifying premises, a balancing allowance or charge is not to be made if that event occurs more than 7 years after the special qualifying premises was first used subsequent to the incurring of the eligible expenditure. ***(7)***

Minimum spend

Conversion or refurbishment expenditure incurred in the qualifying period must exceed €5,000 for relief under this section to apply. ***(8)***

Expenditure attributable to work actually carried out

Conversion or refurbishment expenditure is to be treated as incurred in the relevant qualifying period only to the extent that it is attributable to work actually carried out in the relevant qualifying period. ***(9)***

Non availability of relief

Property developers or connected persons are precluded from getting relief in relation to a special qualifying premises, where either the property developer or the connected person incurred the capital expenditure on the conversion or refurbishment of the premises or it was incurred by some other person connected with the property developer. ***(10)***

Grants

Expenditure that qualifies for relief under this section will be reduced by an amount equal to 3 times any grant received or receivable, directly or indirectly from the State or any of its agencies. ***(11)***

Provision against double relief

Relief shall not be given in respect of capital expenditure incurred on the conversion or refurbishment of a special qualifying premises, under any other provision of the Tax Acts where relief is given by virtue of this section. ***(12)***

Undertakings in difficulty

Undertakings in difficulty are now excluded from the rented residential element of the scheme in accordance with the 2014 EU Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. ***(13)***

An undertaking is an entity that is involved in economic activity, irrespective of its legal form or how it is financed or whether it has a for profit orientation or not. An undertaking availing of relief under the rented residential element of the Living City Initiative should ensure compliance with COMMISSION REGULATION (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.