Section 268 Industrial Buildings

Summary of Certain Schemes and Reliefs

Part 09-01-01

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Revenue
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Table of Contents

Introduction

This instruction briefly outlines some of the property-based tax incentives in Part 9 TCA 1997 that applied in Ireland. Capital allowances were made available for buildings (and structures), known for tax purposes as industrial buildings, that were used for particular purposes such as childcare and private hospitals. The instruction focuses on those buildings that had an 'accelerated' rate of capital allowances, i.e. greater than the annual rate of 4% over 25 years that applies to some buildings such as factories and mills. It also contains details about the schemes of relief for Third Level Education buildings and Childcare buildings although the provisions governing these reliefs are in Part 36 TCA 1997.[1]

Industrial buildings may qualify for capital allowances in their own right or as part of an area-based incentive scheme, such as the Urban Renewal Scheme. In the latter case, Tax and Duty Manual Part 10-00-02 outlines the relief that applied to such schemes.

The table in section 2 outlines the annual rates of write-off and the tax life/holding period that applied to the buildings listed in the table. Buildings outlined in more detail include:

- Third Level Education buildings
- Childcare buildings
- Private Hospitals
- Mental Health Centres
- Specialist Palliative Care Units
- Registered Nursing Homes
- Residential Units associated with Nursing Homes

1. Some general information

1.1 Amount of qualifying expenditure

Generally, capital expenditure on the construction, conversion, or refurbishment, as appropriate, of buildings or structures (both new and existing) qualifies for relief. Expenditure incurred on acquiring a site or acquiring an existing building (e.g. where refurbishment or conversion is involved) is not allowable. With the exception of Third Level Education buildings, grants must be deducted in arriving at the amount of capital expenditure that qualifies for relief. However, in the case of hotels (and buildings deemed to be in use for the trade of hotel-keeping)[2] and also Nursing Home residential units (but not the actual Nursing Home) any form of direct or indirect grant assistance disqualifies a building from availing of any relief.

[1] Sections 843 and 843A TCA 1997, respectively.

[2] Buildings deemed to be in use for the trade of hotel-keeping include holiday cottages, guest houses, holiday hostels, holiday camps and caravan parks that are included in the relevant Failte Ireland registers. The restriction on grants applies to expenditure incurred on or after 20 March 2001.

Relief for most of the industrial buildings in Parts 9 and 36 TCA 1997 has been terminated by now and qualifying capital expenditure must be incurred by a particular date.[3] In certain cases the amount of the qualifying expenditure is restricted depending on when it was incurred. Qualifying expenditure on Third Level Education buildings, Sports Injury Clinics and Nursing Home residential units (but not the actual Nursing Home) must be incurred by 31 July 2008[4]. Where the extended termination date of 31 July 2008 applies to a scheme, expenditure incurred in the year 2007 is restricted to 75% of the amount attributable to that year while expenditure for the period 1 January 2008 to 31 July 2008 must be restricted to 50% of the amount attributable to that period. In the case of Nursing Home residential units the 75% restriction applies to expenditure incurred between 25 March 2007 and 31 December 2007.

Tax and Duty Manual Part 09-01-04 contains details of the transitional arrangements that must be met to qualify for the extended termination dates of 31 December 2006 or 31 July 2008. This later date only applies to projects where existing scheme conditions (regarding time limits etc.) have been met **and** work to the value of at least 15 per cent of the **actual** construction, conversion or refurbishment costs of the building or structure involved has been carried out by 31 December 2006.

1.2 Restrictions on 'passive investors'

Where an **individual passive investor** incurs capital expenditure on buildings, an annual limit (under **section 409A TCA 1997**) of €31,750 applies in relation to any excess capital allowances over rental income (or passive partnership trading income, if applicable) which such an investor can offset against his or her other income.[5] These restrictions on the offset of capital allowances do **not** apply in the case of expenditure incurred by (active) traders or by corporate investors.

Under **section 1013 TCA 1997** there are restrictions on the set-off of losses, interest and capital allowances against non-partnership income by limited partners in limited partnerships and by non-active partners in general partnerships.

[3] Following Finance Act 2010 the only remaining open-ended scheme is for Specialist Palliative Care (subject to Commencement Order).

[4] The termination date for Nursing Home Residential Units was further extended to 30 April 2010 in certain circumstances and subject to certain restrictions on qualifying expenditure – see section 9.

[5] In the case of hotels (and other buildings deemed to be used for the trade of hotel-keeping) section 409B ringfences the capital allowances to rental income only with no sideways set off against any other income. An exception is made for 3*** plus hotels in certain BMW counties.

1.3 Termination of carry forward of certain unused capital allowances

Chapter 4A of Part 12 (introduced in the Finance Act 2012) provides for a termination of the carry-forward of certain unused capital allowances after the tax life of the respective building has ended. These measures only come into effect in 2015 or later.

The arrangements apply only to the various accelerated property and area-based capital allowance schemes. The ordinary industrial buildings allowance is unaffected. The provisions apply solely to passive investors. Persons who are actively engaged in their respective trades are not affected.

With effect from 1 January 2015 any unused accelerated capital allowances which are carried forward beyond the tax life of the building or structure to which they relate are immediately lost. This essentially means that if the tax life has ended at any time up to the end of 2014, then the unused allowances are lost in 2015. Where the tax life is due to end later than 2014, then the allowances are lost going into the following year.

1.4 Property Relief Surcharge

Section 531AAE provides for an increase in the Universal Social Charge (USC) in respect of income of certain individuals. It potentially only applies to those whose gross income in the year is at least €100,000, and then only to income which is sheltered by any of the property or area-based incentive reliefs in that year. This means any of the accelerated property capital allowances under any of the incentive schemes as well as the residential lessor relief commonly known as section 23-type relief. The 5% property relief surcharge is payable, **in addition to** any other USC which the person is obliged to pay on the income in question.

Where a person's gross income is less than €100,000, no additional USC is payable, even if that person is using these property reliefs. See Tax and Duty Manual Part 18D-00-01 for further details. These details include examples illustrating the interaction between the computation of this property relief surcharge and the restrictions on tax relief claims by high-income individuals.

1.5 Restrictions on tax relief claims by high-income individuals

Chapter 2A of Part 15 TCA 1997 **came into operation on 1 January 2007** and aims to ensure that high income individuals who use property tax incentive schemes and other “specified reliefs” have an effective rate of income tax for each year from 2007 onwards of about 20% on the income sheltered by such schemes. Changes introduced in Finance Act 2010 extended the restriction to ensure that individuals who are fully subject to the restriction pay an effective rate of income tax of approximately 30%, with effect from the tax year 2010. The reliefs to be restricted include reliefs under various sectoral and area-based property tax incentive schemes. Normal business expenses and deductions for capital allowances on plant and machinery, genuine business related trading losses and genuine losses from a rental business will not be restricted. Tax and Duty Manual Part 15-02A-05 provides detailed guidance on the restrictions.

1.6 Second-hand buildings

Some tax relief may apply in relation to the purchase of certain second-hand buildings. For example capital allowances may be available in relation to second-hand industrial buildings where the purchase takes place within the tax life of the building **and** either:

- all the capital expenditure has not been written off, or
- the capital expenditure has been written off but a balancing charge applies in respect of the relief granted to the first owner.

Section 409E TCA 1997 restricts the use of capital allowances for certain second-hand industrial buildings. Where a company has claimed capital allowances and sells or transfers such a building to individual investors, those investors are entitled to set the capital allowances relating to the building against their rental income **only** from the building concerned.

1.7 Balancing Charges for "relevant facilities"[6]

By virtue of **section 274(2A)** TCA 1997, a clawback of tax relief for certain buildings and structures (defined as **relevant facilities**) applies where the building or structure involved ceases to be a relevant facility within its holding period for balancing event purposes[7]. This cessation could be because of a change of use e.g. where a building is converted into apartments. It could also be because some other condition in relation to the facility is broken e.g. where it ceases to be registered appropriately, does not have certification from the Health Service Executive or ceases to comply with appropriate underlying regulations etc. without actually changing use. Where, however, a building or structure ceases to be one type of relevant facility and, within 6 months, becomes another type of relevant facility a clawback of the tax relief is not required to be made.

The provision applies to the following types of facilities that are first used (or first used after refurbishment) on or after 1 January 2006:

- registered nursing homes under section 268(1)(g);
- qualifying residential units (associated with registered nursing homes) under section 268(3A);
- convalescent homes under section 268(1)(i);
- qualifying (private) hospitals under section 268(1)(j);
- qualifying mental health centres under section 268(1)(l),and
- qualifying specialist palliative care units under section 268(1)(m),and
- qualifying childcare facilities under section 843A.

For the purposes of calculating a balancing charge, **section 318** of the TCA 1997 deems an amount of money to have been received where a building or structure ceases to be a relevant facility.

[6] Tax Briefing No. 63 (pages 8-9)

[7] Generally, this is 15 years for relevant facilities that are first used (or first used after refurbishment) on or after 1 February 2007. However, a 20-year holding period applies for qualifying residential units where capital expenditure is incurred under contracts entered into on or after 1 May 2007 – see section 28 Finance Act 2007.

2. Industrial Buildings – General Scheme

The annual rates of write-off, and the tax life/holding period which currently apply, for qualifying capital expenditure[8] incurred on the construction or refurbishment of various types of industrial buildings (as defined in **section 268 TCA 1997**) are listed below. In relation to most of the medical-related facilities listed, the tax life **and** holding period was increased to 15 years in Finance Act 2006 – previously the tax life was 7 years but the holding period (H/P) was 10 years.

Industrial Buildings are buildings or structures in use for the purposes of a trade carried on in a:	**Annual rate**	**Tax Life/ (H/P)**
Mill or Factory	4%	25 yrs
Laboratory in use for the analysis of minerals	4%	25 yrs
or in use for the purposes of any of the following trades or activities:		
a Dock Undertaking	4%	25 yrs
a trade of market gardening	10%	10 yrs
trade of hotel-keeping[9] (including holiday camps) - up to 31 Jul. 08	15%	7 yrs
- from 1 Aug. 08	4%	25 yrs
=>registered holiday cottages also deemed to qualify -up to 31 Jul 08	10%	10 yrs
- from 1 Aug.08	0%	n/a
=>registered guest houses and registered holiday hostels deemed to qualify[10]	4%	25 yrs
=>registered caravan and camping sites deemed to qualify[11]	4%	25 yrs
the intensive production of cattle, sheep, pigs, poultry or eggs [other than in the course of farming]	10%	10 yrs
an airport runway or apron in use in the operation or management	4%	25 yrs

[8] See section 1.2 regarding the limits which apply on the sideways set-off of capital allowances and section 1.1 regarding restrictions on the level of expenditure which is allowable.

[9] The rate of write off remains at 15% p.a. for expenditure incurred on hotels and holiday camps up to 31 Dec 2006 (or to 31 July 2008) if certain conditions are satisfied (4% thereafter). Holiday cottages qualify for 10% p.a. up to 31 Dec 2006 (or to 31 July 2008) if similar conditions are satisfied (no allowances thereafter). **See section 1.1 regarding restrictions to 75% and 50% and overall cap on expenditure incurred post December 2006.**

[10] Applies in relation to expenditure incurred on or after 3 February 2005.

[11] Applies in relation to expenditure incurred on buildings and structures on or after 1 January 2008.

of an airport		
other buildings/structures in use in the operation or management of an airport	4%	25 yrs
the operation or management of a registered nursing home[12] =>associated qualifying residential units also deemed to qualify [13]	15% 15%	15 yrs 20 yrs
the operation or management of an approved convalescent home[14]	15%	15 yrs
the operation or management of a qualifying hospital[15]	15%	15 yrs
the operation or management of a qualifying sports injury clinic[16] -from 1 Aug 08	15% 0%	7 (10) yrs n/a
the operation or management of a qualifying mental health centre[17]	15%	15 yrs
the operation or management of a qualifying specialist palliative care unit[18]	15%	15 yrs

3. Buildings used for Third Level Educational Purposes

Section 843 TCA 1997 provided for a scheme of capital allowances in respect of capital expenditure incurred on certain buildings or structures used for the purposes of third level education, including third level health and social services education or training. Such expenditure had to be approved by the Minister for Education and Science or, as may be appropriate, the Minister for Health and Children, and also had to have the consent of the Minister for Finance. The measure covered **construction**

[12] Applies in relation to expenditure incurred in the period 3 December 1997 to 31 December 2009. Where certain conditions are met a later termination date of either 30 June 2010 or 30 June 2011 may apply. **See section 8 for more details.**

[13] Period 25 March 2002 to 31 July 2008 (or, where s.28 FA 2007 applies, to 30 April 2010) applies for qualifying residential units. **Restrictions on level of expenditure incurred apply to these units – see section 1.1.** Tax life (h/p) is 20 years where s.28 FA 2007 applies – see section 9 (previously tax life (h/p) was 15 years; and 7(10) years).

[14] Applies in relation to expenditure incurred in the period 2 December 1998 to 31 December 2009. Where certain conditions are met a later termination date of either 30 June 2010 or 30 June 2011 may apply.

[15] Applies in relation to expenditure incurred in the period 15 May 2002 (private hospitals generally) or 28 March 2003 (day-case hospitals) to 31 December 2009. Where certain conditions are met a later termination date of either 30 June 2010 or 31 December 2013 may apply. Certain categories of claimant are **excluded** from the relief. **See section 5 for more details.**

[16] Applies in relation to expenditure incurred in the period 15 May 2002 to 31 December 2006 or 31 July 2008. Certain categories of claimant are **excluded**. **Restrictions to 75% and 50% apply to these clinics – see section 1.1.**

[17] Applies in relation to expenditure incurred in the period 23 January 2007 to 31 December 2009. Where certain conditions are met a later termination date of either 30 June 2010 or 30 June 2011 may apply. Certain categories of claimant are excluded. **See section 6 for more details.**

[18] S. 26 FA 2008. Will apply in relation to expenditure incurred on or after 13 March 2008 subject to EU approval and Commencement Order. **See section 7 for more details.**

expenditure and expenditure on the provision of machinery or plant. Capital allowances were provided in respect of qualifying expenditure incurred in the qualifying period, at the rate of 15 per cent per annum for 6 years with the balance (10 per cent) being written off in year 7.

To be eligible for the allowances, the premises must be in use for the purposes of third level education or, as respects expenditure incurred on or after 1 October 1999, associated sporting or leisure activities provided by an approved institution and must be let to that institution.

In addition, the approved institution must have raised a sum of money (none of which has been met directly or indirectly by the State), which amounts to the equivalent of at least 50% of the total qualifying expenditure, before construction begins. The Minister for Finance must certify this and that this sum is to be used solely for the purpose of paying interest, rent and eventually buying back the premises at the end of the lease period. No certificate may be issued by the Minister unless an application was made **by 31 December 2004**. With effect from 6 April 1999, there is provision for the delegation to An tÚdarás[19] of the powers and functions of the Minister for Education and Science and the Minister for Finance in relation to the scheme as it applies to institutions under the aegis of the Minister for Education and Science - where both those Ministers agree to such delegation.

The **qualifying period** for this scheme originally ran from 1 July 1997 to **31 December 2006** but, where work to the value of at least 15 per cent of the construction costs of the building or structure was carried out by 31 December 2006, it runs to **31 July 2008**.

NB: Expenditure incurred in the year 2007 is restricted to 75% of the amount attributable to that year while expenditure for the period 1 January 2008 to 31 July 2008 must be restricted to 50% - see section 1.1**.**

[19] Body established by Higher Education Authority.

3.1 Rates of Capital Allowances

Capital Allowances - Section 843		**Lessor**[20]
Qualifying Buildings	**Relief for:**	Construction of Building and Provision of Machinery & Plant 100% in total
Annual Allowance	Year 1 to 6 Year 7	15% 10%
Balancing Charge	**none after 7 years**	

[20] The €31,750 annual limit (under *section 409A*) on the sideways set-off of capital allowance applies to expenditure incurred on or after 3 December 1997.

4. Buildings used for certain Childcare Purposes

Section 843A TCA 1997 provides for a scheme of capital allowances for expenditure incurred on the construction, conversion or refurbishment of buildings, used for certain childcare services, where the requirements of the Child Care (Pre-School Services) (No. 2) Regulations 2006 have been met. Expenditure on any part of a building in use as (or as part of) a dwelling house does not qualify.

Qualifying expenditure is written off at the rate of 15% per annum for the first 6 years with the remaining 10% available in year 7. Accelerated capital allowances at a rate of 100% are also available. The 100% allowance came into operation on 21 June 2000 following clearance by the European Commission. The Finance Act 2006 made changes to the tax life and holding period for qualifying premises. These changes apply to such buildings that are first used (or first used after refurbishment) on or after 1 February 2007. The write off period of 7 years remains unchanged. The tax life (within which allowances may be transferred to a subsequent purchaser) has been increased from 7 to 15 years. Also increased to 15 years is the 10-year holding period within which a clawback of allowances can apply if the building is sold.

A property developer or a person connected with a property developer may not avail of any capital allowances in certain circumstances – Tax and Duty Manual Part 09-01-05 has details on the restriction.

4.1 Qualifying period

The scheme applies in respect of expenditure incurred on or after 1 December 1999. The termination date for incurring qualifying expenditure is 30 September 2010 unless certain qualifying conditions are met, in which case a later termination date may apply. Where the work to be carried out does not require planning permission the termination date is 31 March 2011 provided at least 30% of the construction, refurbishment or conversion costs have been incurred on or before 30 September 2010. Where the work to be carried out requires planning permission the termination date is 31 March 2012 provided that a full and valid application for planning permission was submitted on or before 30 September 2010 and was acknowledged by the relevant planning authority.

4.2 Childcare services

The childcare services that must be provided are:

- A pre-school service (as defined in the Child Care Act 1991), or
- A pre-school service and a day-care or other service to cater for children other than pre-school children.

The **Child Care Act 1991** applies to services for pre-school children i.e. children under the age of 6 who are not attending National School. It applies to any pre-school, play group, day nursery, crèche, day-care or other similar service for pre-school children. Childcare facilities must cater for pre-school children in order for a building to qualify. However, buildings with facilities that cater for other children will qualify for allowances as long as they also cater for pre-school children.

4.3 Rates of Capital Allowances

Capital Allowances - Section 843A	**Owner-Occupier** **(Trader)**	**Lessor**[21]
Qualifying Buildings	Construction, Conversion or Refurbishment 100% in total	Construction, Conversion or Refurbishment 100% in total
Year One Allowance **or** Free Depreciation Annual Allowance	100% **up to** 100% 15%	100% None 15%
Balancing Charge[22]	**none after 10 years**, or **none after 15 years** - if first used on or **after 1 February 2007**	

[21] The €31,750 annual limit (under *section 409A*) on the sideways set-off of capital allowances applies to expenditure incurred.

[22] Tax Briefing No. 63 (page 8) dated May 2006.

5. Private Hospitals

Chapter 1 of Part 9[23] TCA 1997 provides for a scheme of capital allowances for expenditure incurred on the construction or refurbishment of buildings and structures in use for the purposes of a trade which consists of the operation and management of a qualifying hospital.

Qualifying expenditure is to be written off at the rate of 15% per annum for the first 6 years with the remaining 10% available in year 7. The Finance Act 2006 made changes to the tax life and holding period for qualifying hospitals. These changes apply to such buildings that are first used (or first used after refurbishment) on or after 1 February 2007. The write-off period of 7 years remains unchanged. The tax life (within which allowances may be transferred to a subsequent purchaser) has been increased from 7 to 15 years. Also increased to 15 years is the 10-year holding period within which a clawback of allowances can apply if the building is sold.

5.1 Qualifying period

The scheme applies in respect of expenditure incurred on or after 15 May 2002 for private hospitals generally and from 28 March 2003 for day-case hospitals. The termination date for incurring qualifying expenditure is 31 December 2009 unless certain conditions are met, in which case a later termination date may apply. Where the work to be carried out does not require planning permission, the termination date is 30 June 2010, provided at least 30% of the construction or refurbishment costs have been incurred on or before 31 December 2009. Where the work to be carried out requires planning permission, a termination date of 31 December 2013 applies, provided a full and valid application for planning permission was submitted on or before 31 December 2009 and was acknowledged by the relevant planning authority.

[23] Qualifying hospitals treated as industrial buildings. See section 268(1)(j), 1(A) & 2(A)

5.2 Qualifying conditions

A qualifying hospital must meet the following conditions:

- It must be a private hospital (within the meaning of the Health Insurance Act, 1994 (Minimum Benefits) Regulations, 1996 (SI No. 83 of 1996).
- It must have the capacity to and normally does provide medical and surgical services 365 days of the year.
- It must have the capacity to provide:

  (i) out-patient services and accommodation on an overnight basis for in-patients with the provision of a least 70 in-patient beds, or

  (ii) day-case and out-patient medical and surgical services and accommodation for such services of at least 40 beds (as respects capital expenditure incurred on or after 28 March 2003).

- It must contain an operating theatre or theatres and related on-site diagnostic and therapeutic facilities.
- The hospital must contain facilities to provide at least 5 of the following services:
  - accident & emergency
  - cardiology & vascular
  - eye, ear, nose and throat
  - gastroenterology
  - geriatrics
  - haematology
  - maternity
  - medical
  - neurology
  - oncology
  - orthopaedic
  - respiratory
  - rheumatology
  - paediatric, and
  - mental health services.
- It must make available annually to the Health Service Executive (HSE) at least 20% of the hospital's bed capacity for the treatment of individuals awaiting in-patient or out-patient hospital services as public patients.
- Where the hospital is first used (or first used following refurbishment) on or after 1 February 2007, information must be provided to the HSE in relation to:

  i. The amount of capital expenditure actually incurred
  ii. The number and nature of the investors
  iii. The amount to be invested by each investor, and

iv. The nature of the structures that are being put in place to facilitate the investment in the hospital, together with any other information as may be specified by the Minister for Finance.

- It must obtain an annual certificate from the HSE stating that it is a qualifying hospital. Where the hospital is first used (or first used following refurbishment) before 1 February 2007 the annual certificate must be obtained for 10 years. After that date the certificate must be obtained for 15 years.

Consultants' rooms and offices are excluded from qualifying. This exclusion applies even where consultants' rooms might be used exclusively for the assessment or treatment of patients. Also the following categories of claimants are precluded from getting relief:

- Companies
- The trustees of a trust
- Any individual who is involved in the operation or management of the qualifying hospital concerned either as an employee or director or in any other capacity[24], and
- Property developers or connected persons in certain circumstances.[25]

6. Qualifying Mental Health Centres

Chapter 1 of Part 9[26] TCA1997 provides for a scheme of capital allowances for expenditure incurred on the construction and refurbishment of buildings and structures in use for the purposes of a trade which consists of the operation or management of a qualifying mental health centre. Qualifying expenditure is to be written off at the rate of 15% per annum for the first 6 years with the remaining 10% available in year 7. The tax life of a qualifying mental health centre (within which allowances may be transferred to a subsequent purchaser) and its holding period for balancing allowance and balancing charge purposes is set at 15 years.

6.1 Qualifying period

The scheme applies in respect of expenditure incurred on or after 23 January 2007. The termination date for incurring qualifying expenditure is 31 December 2009 unless certain conditions are met, in which case a later termination date may apply. Where the work to be carried out does not require planning permission, the termination date is 30 June 2010, provided at least 30% of the construction or

[24] By virtue of this provision all consultants and other individuals associated with the operation or management of a private hospital – whether employed or self-employed or involved in any other capacity – are excluded from entitlement to capital allowances in relation to expenditure incurred by them on any part of that private hospital building – Tax Briefing No. 61.

[25] Tax and Duty Manual Part 09-01-05 has details on the restrictions on property developers and connected persons.

[26] Qualifying centres treated as industrial buildings. See section 268(1)(*l*), (1C) and (1D).

refurbishment costs have been incurred on or before 31 December 2009. Where the work to be carried out requires planning permission, a termination date of 30 June 2011 applies, provided a full and valid application for planning permission was submitted on or before 31 December 2009 and was acknowledged by the relevant planning authority.

6.2 Qualifying conditions

For expenditure to qualify it must be on a "centre" within the meaning of section 62 of the Mental Health Act 2001 and the Health Service Executive (HSE) must certify, on an annual basis for 15 years from first use:

- that the centre is an approved centre (i.e. registered under Part 5 of the Mental Health Act 2001);
- that the centre provides day-patient and out-patient services and has a minimum of 20 in-patient beds for overnight accommodation;
- that data regarding the investment being made in it has been provided to the HSE, for onward transmission to the Minister for Health and Children and the Minister for Finance, in order to assess the costs and benefits of the scheme, and
- that it has given an undertaking to the HSE to make 20% of its capacity available (at a 10% discount) for public patients, if that capacity is required.

Consultants' rooms and offices are excluded from qualifying. Also, the following categories of claimants are precluded from getting relief:

- companies,
- the trustees of a trust,
- any individual who is involved in the operation or management of the centre either as an employee or director or in any other capacity, and
- property developers or connected persons in certain circumstances[27]

[27] Tax and Duty Manual Part 09-01-05 has details on the restriction on property developers and connected persons.

7. Qualifying Specialist Palliative Care Units

Chapter 1 of Part 9[28] TCA1997 provides for a scheme of capital allowances for capital expenditure incurred on the construction and refurbishment of buildings and structures in use for the purposes of a trade which consists of the operation or management of a qualifying specialist palliative care unit. Subject to the Commencement Order being made, qualifying expenditure may be incurred on or after 13 March 2008.[29] As of July 2019, the Commencement Order has not been made.

Once the scheme is commenced, relief for qualifying capital expenditure will be available at the rate of 15% per annum in the first six years with 10% in year seven. Eligible expenditure is net of any grants or other financial assistance received towards development costs. The tax life of a qualifying unit and its holding period for balancing allowance and balancing charge purposes is 15 years.

A qualifying specialist palliative care unit must:

- be a hospital, hospice (within the meaning of section 47 (as amended) of the Public Health (Tobacco) Act 2002) or similar facility which has palliative care as its main activity,
- be approved by the Health Service Executive (HSE), with the consent of the Minister for Health and Children, as being in accordance with national development plans or national needs assessments for palliative care facilities, before a legal commitment is entered into for its design, commissioning, construction or refurbishment,
- in relation to palliative care, have the capacity to provide day-patient and out-patient services with a minimum of 8[30] in-patient beds for overnight accommodation,
- provide data to the HSE of the investment being made in it (including construction costs etc. and any grants received), for onward transmission to the Minister for Health and Children and the Minister for Finance, in order to assess the costs and benefits of the scheme,
- give an undertaking to the HSE to make 20 per cent of its capacity available (at a 10 per cent discount) for public patients, if that capacity is required.

[28] Qualifying centres treated as industrial buildings – introduced by section 26 Finance Act 2008. See section 268(m), (1E), (2BA) and (2BB).

[29] The date of the passing of Finance Act 2008.

[30] Number of in-patient beds reduced from 20 to 8 by Finance (no 2) Act 2008. This amendment was introduced prior to the coming into operation of the scheme and will apply from its commencement.

The HSE must also certify, on an annual basis for 15 years from first use, that a facility has satisfied the terms and conditions in the legislation. A claw back of the allowances will apply if a facility is sold or ceases relevant use during this 15-year period.

Consultants' rooms and offices are excluded from qualifying. Likewise no relief applies in relation to any part of a unit where the majority of persons being maintained are being treated for acute illnesses. Also, the following categories of claimants are precluded from getting relief:

- companies,
- the trustees of a trust,
- any individual who is involved in the operation or management of the unit either as an employee or director or in any other capacity, and
- property developers or connected persons, where either the property developer or the connected person incurred the capital expenditure on the construction or refurbishment of the unit or it was incurred by some other person connected with the property developer.

8. Registered Nursing Homes

Chapter 1 of Part 9[31] TCA 1997 provides for a scheme of capital allowances for expenditure incurred on the construction and refurbishment of buildings and structures in use for the purposes of a nursing home. The nursing home must come within the meaning of section 2 of the Health (Nursing Homes) Act, 1990 and must be registered under section 4 of that Act.

Qualifying expenditure can be written off at a rate of 15% per annum for the first 6 years with the remaining 10% available in year 7. Following changes in Finance Act 2006 that apply to buildings that are first used (or first used after refurbishment) on or after 1 February 2007, the write-off period remains at 7 years but the tax life (within which allowances may be transferred to a subsequent purchaser) was increased from 7 to 15 years. The 10-year holding period, within which a clawback of allowances can apply if the building is sold[32], was also increased to 15 years.

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[31] Section 268(1)(g),

[32] Tax Briefing No. 63

8.1 Qualifying period

The allowances are available in respect of qualifying expenditure incurred on or after 3 December 1997.[33] The termination date for incurring qualifying expenditure is 31 December 2009 unless certain conditions are met, in which case a later termination date may apply. Where the work to be carried out does not require planning permission, the termination date is 30 June 2010, provided at least 30% of the construction or refurbishment costs have been incurred on or before 31 December 2009. Where the work to be carried out requires planning permission, a termination date of 30 June 2011 applies, provided a full and valid application for planning permission was submitted on or before 31 December 2009 and was acknowledged by the relevant planning authority.

A separate scheme of capital allowances is available for the construction of residential units associated with a registered nursing home.

9. Residential Units associated with Nursing Homes

Section 268(3A)-(3E) TCA 1997 provides for a scheme of capital allowances for expenditure incurred on the construction or refurbishment of residential units associated with a registered nursing home by treating the unit as if it were a building in use for a trade of operating or managing a registered nursing home.

Qualifying expenditure can be written off at a rate of 15% per annum for the first 6 years with the remaining 10% available in year 7. Following changes made in Finance Act 2006, that apply to buildings that are first used (or first used after refurbishment) on or after 1 February 2007, the write-off period remained at 7 years but the tax life (within which allowances may be transferred to a subsequent purchaser) was increased from 7 to 15 years. The 10-year holding period, within which a clawback of allowances can apply if the building is sold[34], was also increased to 15 years. Following further changes in Finance Act 2007, the tax life and holding period were increased from 15 to 20 years where the residential units were developed on foot of contracts entered into on or after 1 May 2007.

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[33] Section 268(9)(d)

[34] Tax Briefing No. 63

9.1 Qualifying period

The allowances were originally available for qualifying expenditure incurred in the five-year period commencing on 25 March 2002. Finance Act 2006 extended the qualifying period from 25 March 2007 to 31 July 2008 but, unlike some of the other terminating schemes, did not impose any particular conditions for availing of the extended termination date. However, the amount of the qualifying expenditure was restricted to 75% of that incurred in the period 25 March 2007 to 31 December 2007 and to 50% of that incurred in the period 1 January 2008 to 31 July 2008.

Finance Act 2007 further extended the qualifying period from 31 July 2008 to 30 April 2010. This latest date only applies where expenditure is incurred on or after 1 May 2007 where development was carried out on foot of contracts entered into on or after that date. Where contracts were entered into before that date the termination date remains at 31 July 2008 with qualifying expenditure being subject to the 75% and 50% caps on expenditure. Although an extended termination date to 30 April 2010 applies there is a further restriction on qualifying expenditure. Qualifying expenditure is reduced to 50% of that actually incurred in the case of individuals and to 75% in the case of companies.

9.2 Qualifying conditions

- A residential unit must be constructed on the site of, or on a site immediately adjacent to the site of, a registered nursing home.
- The units must be operated or managed by a registered nursing home and an on-site caretaker must be provided[35].
- The nursing home must provide back-up medical care, including nursing care when required to the occupants of the units.
- There must be a minimum of 10 residential units within the development. Where expenditure was incurred before 4 February 2004 a minimum of 20 units was required.
- Where expenditure was incurred before 4 February 2004 the units must be either single storey houses or comprised in a two-storey building. After that date the units can be comprised in a larger building of any number of storeys provided that a fire safety certificate is required and issued for that building.[36]
- The units and any building in which they are comprised must be designed to meet the needs of persons with disabilities including those of individuals confined to wheelchairs.
- Each unit must consist of one or two bedrooms, kitchen, living room, bath or shower facilities, toilet facilities, and a nurse call system linked to the nursing home.

[35] Tax Briefing No. 59

[36] A multi-storey house does not qualify as it does not require a fire safety certificate.

- The units must be leased only to those who are certified by a medical practitioner as requiring such accommodation because of old age or infirmity. From 1 January 2006 the unit can be first leased to the registered nursing home on condition that it will be subsequently leased by the nursing home to an elderly or infirm person. Where expenditure is incurred under contracts entered into on or after May 2007 the selection of the occupants of the units must be made by the nursing home and these occupants may not be connected with the owner-lessor of the unit.[37] However, the spouse or civil partner of an aged or inform person may now also occupy a unit even though that spouse or civil partner may not meet the medical certification requirements in his or her own right.
- There must be a day care centre on site complying with Health Service Executive (HSE) requirements. However, construction/refurbishment costs of the day care centre do not qualify for capital allowances.
- At least 20% of the residential units must be made available to the (HSE) although it might choose not to take up such units. This is not a requirement where a company owns all of the qualifying units in a development.

Where development contracts were entered into on or after 1 May 2007 the residential units must be certified by the HSE after they have been let for the first time and before an investor can start to claim capital allowances. Annual certification is not required. Investors must also provide an annual written report to the HSE during the 20-year holding period.

[37] Tax Briefing No. 59