

## **Section 268 Industrial Buildings – Expenditure Qualifying for Capital Allowances**

### **Part 09-01-08**

This document should be read in conjunction with sections 268 to 279 and section 319 of the Taxes Consolidation Act 1997

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## Introduction

The purpose of this manual is to outline how qualifying expenditure for capital allowances purposes should be calculated and the type of expenditure that is taken into account in the different circumstances in which industrial buildings are constructed or acquired. This information was originally published in Tax Briefing 60.

## 1. Qualifying Expenditure

Capital allowances are given by reference to the capital expenditure incurred on the construction of an industrial building or structure. Refurbishment costs also qualify. In general, what constitutes an industrial building is set out in Section 268 TCA, 1997.

Capital allowances are generally only available to the person who incurs the capital expenditure on construction and who holds the “relevant interest” in relation to that expenditure. However, they are also available where the person who incurs the expenditure sells the building before it is used or within two years after it commences to be used<sup>1</sup>. Capital allowances are also available to the purchaser of a used building provided that the building is sold within its tax life and there has been a balancing adjustment on the vendor.

### 1.1 Amount of qualifying expenditure

The amount of the qualifying construction expenditure depends on how the expenditure is incurred.

#### 1.1.1 Construction by site owner

Where a person owns a site and engages a builder to carry out the construction work, the amount of the qualifying expenditure is the cost of having the property constructed i.e. the amount reflected in the contract with the builder. This will include the capital expenditure incurred directly on construction and the cost of site clearance and preparation as well as the builder’s profit. It does not include the costs of acquiring the site or any cost attributable to the person’s own labour. The same treatment applies in the case of a refurbishment project. The costs of acquiring the building or the cost of own labour are not allowable costs.

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<sup>1</sup> Previously one year where the sale took place prior to 14 October 2008.

### 1.1.2 Purchase of a property from a builder

A builder means a builder, developer or other person who sells newly constructed or refurbished buildings in the course of the trade of building/developing. Where a newly constructed building is purchased from a builder, the amount of the qualifying expenditure is calculated by using the “net price paid” formula in Section 279 TCA, 1997 -

$$A = B \times \frac{C}{C + D}$$

where -

A = amount of qualifying expenditure

B = amount paid for purchase of building

C = construction expenditure

D = expenditure on the acquisition of the site.

The construction expenditure and the site costs used in the formula are those incurred by the builder and not those charged to the purchaser by the builder. Expenditure qualifying for capital allowances is the expenditure incurred directly on construction and the cost of site clearance and preparation as well as a portion of the builder's profit. The formula operates to exclude the site cost so that capital allowances are not available for the full amount paid to the builder. The same treatment applies in the case of a refurbishment project. The site cost and the cost of any buildings on the site are excluded.

### 1.1.3 Purchase of a building from a person who is not a builder

Where a newly constructed building is purchased from a person who is not a builder, the amount of the qualifying expenditure is the **lower** of;

- the expenditure actually incurred on construction, excluding the site cost,
- or**
- the amount produced by the formula in paragraph [1.1.2](#) above.

## 1.2 Costs taken into account in calculating qualifying expenditure

Not all of the costs incurred by the purchaser, developer or builder in relation to the purchase of a newly constructed building are taken into account in calculating the amount of the qualifying expenditure for capital allowance purposes. Broadly speaking, only the direct costs of construction and site clearance and preparation are allowed. Costs that are allowed in calculating the amount of the qualifying expenditure include:

- Direct construction costs (or refurbishment costs where a building is being refurbished) such as cost of building materials, hire of equipment, labour costs, administrative overheads, architects' fees, legal fees
- Site clearance and preparation costs such as laying foundations, walls, power supply, drainage, sanitation and water supply
- Interest paid on money borrowed to fund direct construction or refurbishment costs
- Fees paid to local authorities for the provision of certain infrastructure and services.

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

- Cost of site acquisition or the cost of the acquisition of a pre-refurbished building in the case of a refurbishment project
- Costs associated with the acquisition of the site or building such as legal fees and stamp duty
- Interest paid on money borrowed to fund the purchase of the site or building and interest on other borrowings not directly related to the construction or refurbishment work
- Marketing and selling costs such as money spent on advertising the building and auctioneers' fees
- Costs attributable to a person's own labour where the person carries out work themselves.

In calculating relief, the purchase price or amount paid for a building (see formula at [1.1.2](#) above) should not include legal and other professional fees or stamp duty paid in connection with the purchase.

Grants and other payments received directly or indirectly from the State, any local authority or any public body must be deducted from the allowable construction costs in arriving at the amount of the expenditure that qualifies for relief.

### 1.4 Treatment of VAT

In accordance with Section 319 TCA, 1997 VAT should only form part of the allowable construction costs if it is a net cost to the person who constructs the building, i.e. where the person is not entitled to a VAT input credit for the VAT paid. The allowable construction costs should exclude VAT where the person carrying out the work is able to reclaim VAT paid by them as part of those costs. Generally, therefore, where the work is carried out by a builder or a developer, the allowable construction costs will not include VAT. On the other hand, where a person who is not registered for VAT carries out the work themselves, or engages a builder to carry out the work, the allowable construction costs will include VAT. Likewise, where the "net price paid" formula is being used (see [1.1.2](#) above), the price paid for the building and the construction and site costs should only include VAT where there is no entitlement to a VAT input credit.