

## **Section 23 Relief – Rented Residential Relief in a Tax Incentive Area**

### **Part 10-11-01**

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## 1. What is Section 23 Relief?

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

It should be noted that it is the first use of the property following construction, conversion or refurbishment that determines the type of relief that applies. If the property was first used by an individual as his or her sole or main residence, owner-occupier relief applies. If the property was first let by an individual under a qualifying lease, Section 23 Relief applies. It is not possible for both types of relief to apply to the same property at different times<sup>2</sup>.

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

## 2. What schemes does Section 23 Relief apply to?

Section 23 Relief was made available under the following schemes:

### 2.1 Schemes terminated in 1999

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

The period during which qualifying expenditure had to be incurred ended for the above schemes in 1999 (or earlier if certain conditions were not met). Section 23 Relief is no longer applicable to properties in these areas. It should be noted that some holiday cottages in the seaside resort areas that were registered or listed with Fáilte Ireland qualified for relief in the form of capital allowances rather than Section 23 Relief. This document does not apply to such properties.

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<sup>1</sup> The relief was first introduced by Section 23 Finance Act 1981.

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

## 2.2 Schemes terminated in 2008<sup>3</sup>

- Integrated area urban renewal
- Living over the shop
- Park and ride
- Rural renewal
- Town renewal
- Student accommodation

Qualifying expenditure could be incurred on these latter schemes up to 31 July 2008, provided that certain conditions were fulfilled. While the period during which qualifying expenditure had to be incurred has ended Section 23 Relief may still be applicable in relation to properties in these areas depending on when the properties were first let. Details of the qualifying periods for all the schemes are contained in [Appendix 2](#). A list of the qualifying areas for the integrated area urban renewal, town renewal and rural renewal schemes is contained in [Appendix 3](#). Details of the areas designated for the 1994 urban renewal scheme are contained in statutory instruments that are available at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

Further details about these schemes are available in Tax and Duty Manual [Part 10-00-02](#). Guidelines governing the park and ride scheme were issued by the Department of the Environment, Heritage and Local Government<sup>4</sup>. These were subsequently available from the Department of Transport<sup>5</sup>.

## 3. Qualifying period

Finance Act 2006 extended, subject to certain conditions, the termination date for the later schemes to 31 July 2008. However, where the various conditions were not met, earlier termination dates of 31 December 2002, 31 December 2004 or 31 December 2006 could have applied – see [Appendix 2](#).

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

<sup>4</sup> Now the Department of Housing, Planning and Local Government.

<sup>5</sup> Now the Department of Transport, Tourism and Sport.

The extension of the qualifying periods to either 31 December 2006 or 31 July 2008 was dependent on certain pre Finance Act 2006 conditions having been met in addition to a new condition introduced in Finance Act 2006 for the purposes of availing of the 31 July 2008 deadline. With the exception of the urban renewal scheme, the earlier condition required a valid application for full planning permission to have been submitted to the relevant local authority by 31 December 2004. Where this occurred, expenditure incurred up to 31 December 2006 in respect of the work covered by the planning application qualified for relief. In the case of the urban renewal scheme, the 31 December 2006 deadline applied where the local authority certified that 15% of the project costs were incurred by 30 June 2003. In order to qualify for the new extended deadline of 31 July 2008, Finance Act 2006 introduced a new condition requiring work to the value of at least 15% of the actual construction, refurbishment or conversion costs to have been carried out by 31 December 2006. Guidance on these conditions is available in Tax and Duty Manual [Part 09-01-04](#).

## 4. Qualifying expenditure

### 4.1 Work carried out during qualifying period

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

### 4.2 Certificates of reasonable cost/compliance

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

### 4.3 Costs taken into account in calculating qualifying expenditure

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

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

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

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

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

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

The examples in [section 6](#) illustrate how the various costs are treated.

#### 4.4 Grants

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

## 4.5 Value-Added Tax

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

A detailed analysis of how VAT applies in relation to property transactions is beyond the scope of this document. If you have a VAT related query you should consult the [“VAT on property and construction”](#) page on the Revenue website or contact your tax office.

## 4.6 Inducements to purchase property<sup>6</sup>

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

## 4.7 Premiums not treated as rent

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

## 4.8 Fitting out and furnishing the property

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

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<sup>6</sup> This issue was covered in Tax Briefing issue 65, December 2006

#### 4.9 Restriction on qualifying expenditure incurred in 2007 and 2008

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

### 5. How a property qualifies for relief

To qualify for relief the following conditions must have been satisfied:

- Expenditure must have been incurred on the construction, conversion or refurbishment of a property under the terms of a tax incentive scheme within the qualifying period for that scheme. It is not sufficient to merely own a property in a designated area,
- In the case of the integrated area urban renewal, living over the shop or town renewal schemes a certificate of consistency must have been issued by the local authority stating that the construction, refurbishment or conversion of the property was consistent with the objectives of the plan for those particular schemes. Relief is not due unless the final stage certificate of consistency issued. Use of the property before then would have jeopardised the relief,
- The property must be situated wholly within a qualifying tax incentive area, front onto a qualifying street (living over the shop scheme) be within an 8 km distance of a certifying educational institution (student accommodation scheme) or be situated within the site of a park and ride facility. As each individual dwelling must be situated **wholly** within a designated area, there is **no** relief available for dwellings situated partly inside and partly outside a designated area. Therefore, a single apartment block that straddles a designated/non-designated area may contain both qualifying and non-qualifying apartments; there was no provision for apportioning any of the qualifying expenditure to the non-qualifying apartments,
- The property must be suitable for use as a dwelling and be used **only** as a dwelling. For example, if part of a house that is let to a doctor is used as a surgery or office no relief is due,
- Where qualifying expenditure was incurred up to the 31 December 2006 or the 31 July 2008 extended deadlines, a valid application for full planning permission covering the work represented by that expenditure must have been submitted to the relevant local authority by 31 December 2004 (does not apply to urban renewal scheme). Guidance on this condition is available in Tax and Duty Manual [Part 09-01-04](#),
- Where qualifying expenditure was incurred up to the 31 December 2006 or the 31 July 2008 extended deadlines, and where the construction, refurbishment or conversion work did not require the submission of a planning application, work to the value of 5% of the development costs must have been carried out by 31 December 2004 and a detailed plan in relation to the development work and a binding written contract under which the expenditure was to be incurred must have been in place by that date,



- Where qualifying expenditure was incurred up to the 31 December 2006 or the 31 July 2008 extended deadlines under the integrated area urban renewal scheme, a certificate must have been issued by the relevant local authority stating that 15% of the total project cost had been incurred by 30 June 2003. This certificate must have been issued on or before 30 September 2003 (see note 1 to [Appendix 2](#) for further details). In strictness, the work on the project should have been carried out by the person who received the certificate from the local authority. However, Revenue was prepared to accept that, where a site was sold, the certificate could have been transferred to the new owner provided that he or she did not make any changes to the original project for which the certificate was issued,
- Where qualifying expenditure was incurred after 31 December 2006, work to the value of at least 15% of the actual construction, conversion or refurbishment costs must have been incurred by 31 December 2006. Guidance on this condition is available in Tax and Duty Manual [Part 09-01-04](#),
- Without being used, the property must have been let under a qualifying lease and continue to be so let for a period of 10 years from the date of the first qualifying lease. As the property must be used as a dwelling from this date, a lease with, for example, a management company prior to onward letting to a lessee, who will use the property as a dwelling, cannot be regarded as a qualifying lease. Reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease are acceptable. A qualifying lease is a lease drawn up at arm's length under which periodic payments of rent are received. Any premium payable by the lessee cannot exceed 10% of the combined site and construction costs of the property in the case of a property that was constructed. In the case of refurbishment and conversion projects, the premium cannot exceed 10% of the market value of the property at the time that the refurbishment or conversion work was completed. The lease cannot allow the tenant, or any other person, to acquire an interest in the property for less than the market value of the property,
- In the case of the rural renewal scheme, the duration of a qualifying lease cannot be for a period of less than 3 months. For the period 1 June 1998 to 5 April 1999, the minimum period of a qualifying lease was 12 months. The property must be used as the sole or main residence of the lessee. This rules out holiday lettings,
- In the case of the seaside resorts scheme, a property must have been used primarily for letting to tourists and have been occupied for no other purpose from April to October each year. Lettings to non-tourists were permitted in the remaining months but a property could not be let to, or occupied by the same person for more than two consecutive months at any one time or for more than six months in any year. A register of lessees must have been maintained in respect of each property,
- The property had to meet certain floor area specifications (see [Appendix 2](#) for details),
- A certificate of reasonable cost or a certificate of compliance must have issued in respect of the property (see [Appendix 4](#) for details). The Revenue practice was to allow a claim for relief where the certificates issued by the filing date for the claimant's return of income for the year for which the claim was made. This practice only applied for the year for which relief was first due,
- Where it was required, planning permission must have been granted for refurbishment and conversion work.

Guidelines outlining the conditions applying to the student accommodation scheme were published by the Department of Education and Skills. These guidelines together with some additional Revenue material are available in Tax and Duty Manual [Part 10-11-04](#). In the case of the park and ride scheme, the relevant local authority must have certified that there has been compliance with guidelines that were issued by the Department of the Environment, Heritage and Local Government. These were subsequently available from the Department of Transport. There was a limit on the amount of qualifying expenditure that could have been incurred on residential accommodation (both owner-occupied and rented) at a park and ride facility. If the construction expenditure on the residential element of a scheme exceeded 25% of the total allowable expenditure, there is no relief due for the residential element.

## 6. How qualifying expenditure could have been incurred

Qualifying expenditure could have been incurred in various ways as set out below.

### 6.1 Construction by site owner

Where a person owned a site or a building and carried out the construction, refurbishment or conversion himself or herself, or engaged a builder to carry out the work, the amount of the relief is the cost of having the property constructed, refurbished or converted. See [section 6.4](#) for the treatment that applies where a property was bought by means of a contract for the site and a separate building agreement. As indicated in [section 4.3](#), the expenditure qualifying for relief is the expenditure incurred directly on construction and the cost of site clearance and preparation. It does not include the costs of acquiring the site or the building, or any cost attributable to the person's own labour. Where a builder was engaged to carry out the work, the amount of the relief is the amount reflected in the building agreement with the builder and includes the builder's profit. As indicated in [section 4.5](#), VAT that was paid can only be included in the qualifying expenditure where it could not be claimed back by the person who paid it.

#### Example 1

Mrs. O'Connor owned a site and engaged a builder to construct a house on the site. She agreed to pay the builder €160,000 (VAT inclusive) for the completed house. The builder's direct construction costs were €120,000 and his profit was €40,000. Mrs. O'Connor was entitled to relief of €160,000.

#### Example 2

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

## 6.2 Purchase of a property from a builder<sup>7</sup>

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

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

A = construction expenditure incurred in the qualifying period

B = total construction expenditure

C = expenditure on the acquisition of the site

The price paid is the actual purchase price of the property (excluding stamp duty). The construction expenditure and site costs used in the formula are those incurred by the builder and not those charged to the purchaser by the builder. As indicated in [section 4.3](#), the expenditure qualifying for relief is the expenditure incurred directly on construction and the cost of site clearance and preparation. The formula operates to exclude the site cost so that relief is not available for the full amount paid to the builder. This is why Section 23 properties were advertised as qualifying for, for example, 80% relief or 90% relief, depending on the cost of the site, any costs attributable to the purchase of the site and any non-construction costs incurred by the builder. The amount of the relief includes a portion of the builder's profit. The formula is generally used where newly constructed properties were purchased unused from a builder. However, in the case of the **student accommodation scheme**, the formula could be used where a builder sold a property that had already been let by him under a qualifying lease. The period of such letting could not exceed one year. This provision applied to sales of property on or after 5 December 2001. It catered for situations where a builder let a property to students at the start of an academic year while awaiting the sale of the property.

The same formula applies to the purchase of a newly refurbished or converted property from a builder with A and B in the formula being the refurbishment or conversion costs and C being the cost of the building, including site, prior to refurbishment or conversion. See [section 6.4](#) for the treatment that applies where a property was bought by means of a contract for the site and a separate building agreement.

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<sup>7</sup> A builder means a builder, developer or other person who sells newly constructed, refurbished or converted property in the course of the trade of building/developing.

**Example 1**

A builder bought a derelict property for €100,000. He spent €60,000 directly on refurbishment and €4,000 on marketing and selling the refurbished property. A delay in obtaining planning permission resulted in him being unable to get all of the work done within the qualifying period. Work to the value of €10,000 was carried out outside of the qualifying period. He sold the refurbished property for €250,000 (VAT inclusive) to Mr. Nolan. The qualifying expenditure according to the formula was as follows:

$$\begin{array}{rcl} \text{€250,000} & \times & \frac{\text{€50,000}}{\text{€60,000} + \text{€100,000}} \\ & & = \text{€78,125} \end{array}$$

Mr. Nolan's qualifying Section 23 expenditure was €78,125

**Example 2**

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

$$\begin{array}{rcl} \text{€230,000} & \times & \frac{\text{€50,000}}{\text{€60,000} + \text{€100,000}} \\ & & = \text{€71,875} \end{array}$$

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

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

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

- the direct cost of construction, excluding site cost and costs attributable to the purchase of the site - see example in [section 6.1](#),

**or**

- the amount produced by the formula in [section 6.2](#) above.

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

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

**Example**

John and Jane McDonald purchased a site for €50,000 with the intention of building a house to let. They engaged a builder to construct a house at a cost of €200,000. €150,000 was spent on building materials and labour costs were €50,000. All of the work was carried out during the qualifying period. Due to personal circumstances the McDonalds decided to emigrate and sold the house, unused, to Mr. Moore for €350,000. The qualifying expenditure according to the formula was as follows;

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

A = construction expenditure incurred in the qualifying period

B = total construction expenditure

C = expenditure on the acquisition of the site

$$\begin{array}{rcl} \text{€350,000} & \times & \frac{\text{€200,000}}{\text{€200,000} + \text{€50,000}} \\ & & = \text{€280,000} \end{array}$$

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

#### 6.4 Property purchased by means of site contract and building agreement

Where a person purchased a property by means of separate but connected contracts - a contract for the purchase of the site and a building agreement for the construction of the property – for relief calculation purposes Revenue treated both transactions as a single contract for the purchase of a completed property and the formula in [section 6.2](#) was used accordingly. This was because the person effectively purchased a completed property and did not enter into unconnected agreements for the purchase of a site and the engagement of a builder to carry out the construction. This treatment applied whether the property was purchased from a builder or a person who was not a builder.

**Example**

A builder owned a site and constructed a number of houses for sale to purchasers by means of a site contract and a building agreement. Mr. O' Dwyer entered into a contract for the purchase of a site from the builder for €60,000 and entered into a building agreement for the construction of a house for €200,000 with a construction company connected to the builder. The sale of the site was dependent on Mr. O'Dwyer entering into the agreement with the builder's company to carry out the construction. The site had previously cost the builder €50,000 and the company incurred €150,000 directly on construction costs. Mr. O'Dwyer's qualifying expenditure was not the amount reflected in the building agreement for the house. Instead, it was the amount produced by the formula in [section 6.2](#). His qualifying expenditure according to this formula was;

$$\begin{array}{rcl} \text{€260,000} & \times & \frac{\text{€150,000}}{\text{€150,000} + \text{€50,000}} \\ & & = \text{€195,000} \end{array}$$

## 6.5 Expenditure incurred during 2007 and 2008

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

Guidance on these transitional arrangements is available on our website under in Tax and Duty Manual [Part 09-01-04](#).

### Example

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

The allowable construction costs were:

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

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

Adjusting the formula in [section 6.2](#) the appropriate fraction was:

construction expenditure incurred in qualifying period reduced by restrictions  
overall construction expenditure incurred + site cost

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

$$\frac{^8\text{€}2,640,000}{^9\text{€}3,280,000 + \text{€}800,000} = 65\%$$

If the houses were sold for €350,000, each purchaser would have been entitled to Section 23 Relief of €227,500 (€350,000 x 65%).

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

$$\frac{^{10}\text{€}535,000}{^{11}\text{€}820,000 + \text{€}200,000} = 52\%$$

If the houses were sold for €350,000, each purchaser would have been entitled to Section 23 Relief of €182,000 (€350,000 x 52%).

## 7. What to check before purchase

The purchaser should have established the scheme under which the property qualified for relief. This is important as different conditions applied to the various schemes. [Section 2](#) above has details of the relevant information sources for the various schemes. A list of the qualifying areas for the integrated area urban renewal, town renewal and rural renewal schemes is contained in [Appendix 2](#). Details of the areas designated for the 1994 urban renewal scheme are contained in statutory instruments available at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

### 7.1 Documentation required

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

<sup>8</sup> €2,640,000 = €720,000 (€45,000 x 16) + €1,920,000 (€2.56m x 75%)

<sup>9</sup> €3,280,000 = €720,000 (€45,000 x 16) + €2.56m; €800,000 = €50,000 x 16

<sup>10</sup> €535,000 = €180,000 (€45,000 x 4) + €105,000 (€140,000 x 75%) + €250,000 (€500,000 x 50%)

<sup>11</sup> €820,000 = €180,000 (€45,000 x 4) + €140,000 + €500,000; €200,000 = €50,000 x 4

- A certificate of consistency from the local authority stating that the construction, refurbishment or conversion of the property is consistent with the objectives of the integrated area urban renewal, living over the shop or town renewal plans. The property cannot be a qualifying property unless the final stage certificate of consistency issued,
- Where expenditure was incurred up to 31 December 2006 or 31 July 2008 for the integrated area urban renewal scheme, a certificate must have been issued by the relevant local authority by 30 September 2003 stating that 15% of the total project cost had been incurred by 30 June 2003. (see note 1 to [Appendix 2](#) for further details)<sup>12</sup>,
- Where expenditure was incurred up to 31 December 2006 or 31 July 2008 for schemes other than the urban renewal scheme, evidence that a valid application for full planning permission was submitted by 31 December 2004. Expenditure on any work that did not form part of that particular planning application did not qualify for relief,<sup>12</sup>
- Where expenditure was incurred up to 31 December 2006 or 31 July 2008 for schemes other than the urban renewal scheme, and where the construction, refurbishment or conversion did not require the submission of a planning application, there must be evidence that work to the value of 5% of the development costs had been carried out by 31 December 2004 and that certain documentation was in existence by that date. The documents are a detailed plan in relation to the development work and a binding written contract under which the expenditure was to be incurred,
- Where expenditure was incurred between 1 January 2007 and 31 July 2008, evidence that work to the value of at least 15% of the actual construction costs was carried out by 31 December 2006. Revenue expects that builders and developers would have provided a statement prepared by a quantity surveyor or architect showing clearly the work that was carried out up to 31 December 2006, the construction, conversion or refurbishment costs attributable to this work, the projected costs to completion of the project and the percentage of the total figure represented by the work that was carried out by 31 December 2006<sup>12</sup>,
- Where expenditure was incurred between 1 January 2007 and 31 July 2008, details of the construction, conversion or refurbishment expenditure relating to work carried out during 2007 and in the period 1 January 2008 to 31 July 2008, which expenditure had to be restricted to 75% and 50% respectively<sup>12</sup>,
- A certificate of compliance in the case of a newly constructed refurbished or converted house purchased from a builder. This was issued by the Housing Grants Section of the Department of the Environment, Heritage and Local Government in Ballina. The certificate should have been obtained before tax relief was claimed but where there was a delay in its issue, Revenue would have accepted a claim for relief where the certificate issued by the filing date for the claimant's return of income for the year for which the claim was made (see [Appendix 4](#) for details). This Revenue practice only applied for the year for which relief was first due,

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<sup>12</sup> More detailed information is available in Tax and Duty Manual [Part 09-01-04](#).



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- A certificate of reasonable cost where a new house was to be let by the person who built it, or had it built, or where a refurbished or converted house was to be let by the person who refurbished or converted it, or had it refurbished or converted. This was issued by the Housing Grants Section of the Department of the Environment, Heritage and Local Government in Ballina. The certificate should have been obtained before tax relief was claimed but where there was a delay in its issue, Revenue would have accepted a claim for relief where the certificate issued by the filing date for the claimant's return of income for the year for which the claim was made (see [Appendix 4](#) for details). This Revenue practice only applied for the year for which relief was first due,
  - Where planning permission was required for conversion or refurbishment work, a copy of the planning permission,
  - A copy of the purchase contract between the vendor and the purchaser showing the purchase price or a copy of the contract for the purchase of the site and a copy of the building agreement. Where a composite price was paid for a property and any other item(s), the part of the price relating solely to the purchase of the property should be separately identified,
  - Details of the total cost of the construction, conversion or refurbishment, including (separate) details of any work carried out outside of the qualifying period. (see [Appendix 2](#) for details of qualifying periods). In the case of the purchase of a property from a builder, a statement of the builder's costs is required. The statement should provide separate details of the site acquisition costs and the direct construction, conversion or refurbishment costs incurred by the builder. As stated in [section 4](#), only the costs directly attributable to construction, conversion or refurbishment were allowed. This information is required by the claimant to calculate the amount of the relief. In the case of the purchase of a newly refurbished or newly converted property, evidence of the cost of the building before refurbishment or conversion is required,
  - A copy of the first qualifying lease and any other qualifying leases drawn up during the 10-year period following the first qualifying lease (see [section 5](#) for more detail on qualifying leases),
  - In the case of the student accommodation scheme, a certificate from the relevant educational institution(s) in accordance with section 4 of the Department of Education and Skills guidelines,
  - In the case of the park and ride scheme, a certificate from the relevant local authority stating that the development complied with the requirements laid down in guidelines issued by the Department of the Environment, Heritage and Local Government (that were subsequently available from the Department of Transport) in relation to residential accommodation at a park and ride facility.

## 8. How to claim Section 23 Relief

The mere purchase of a Section 23 property does not entitle a person to tax relief. The property must be let under a qualifying lease before the relief can be claimed. [Section 5](#) contains more detail on qualifying leases and on the other conditions to be fulfilled. The property must continue to be let under a qualifying lease(s) for a period of 10 years from the date it was first let under a qualifying lease, apart from reasonable periods of temporary disuse between the ending of one lease and the commencement of another. A claimant does not need to obtain any form of advance approval or permission from Revenue to apply for the relief. Provided that all of the conditions of a scheme are fulfilled, the relief can be claimed in an individual's annual income tax return under the self-assessment system. Under the self-assessment system, a return of income must be made on or before 31 October in the year following the year of assessment. Certain persons who pay tax under the PAYE system may not be obliged to make a return of income. A person with PAYE income who also has gross income from a non-PAYE source(s) of €30,000<sup>13</sup> or more (even though this income may be reduced to nil or to a negligible amount because of deductions, losses, allowances and other reliefs such as Section 23 Relief) is regarded as a 'chargeable person' and is required to make a return of income under the self-assessment system. The €30,000 limit applies to gross income from **all** non-PAYE sources and not from each separate source. A person who becomes a 'chargeable person' in a year continues to be a 'chargeable person' for future years, as long as the source(s) of the non-PAYE income continues to exist, irrespective of the amount of the annual gross income. A person with assessable non-PAYE income of €5,000<sup>14</sup> or more for any year is also regarded as a 'chargeable person' for self-assessment purposes and must file a return of income.

## 9. How Section 23 Relief is granted

[Section 6](#) contains details of how to calculate the amount of the relief. The full amount of the relief is deducted from the rental income of the particular property in the first year of letting, together with other allowable deductions such as management expenses and interest relief etc. If, as is most likely, the deductions exceed the rental income from the property, the excess can be deducted from other Irish rental income for that year. Any remaining excess deductions are treated as a rental loss for that first year and can be carried forward against any Irish rental income arising in later years until the loss is used up. If an individual does not have sufficient rental income to absorb a rental loss, the carry forward of the rental loss can continue beyond the 10-year period following the first letting of the property under a qualifying lease. Section 23 Relief cannot be set against rental income from properties outside Ireland or against income from an individual's employment, profession, trade, investments or gains arising on the sale of capital assets.

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<sup>13</sup> €50,000 for 2015 and prior years

<sup>14</sup> €3,175 for 2015 and prior years

Where more than one person has incurred qualifying expenditure on a property, both the relief and the rental income/expenses are apportioned among those persons according to the amount of the expenditure incurred by each person. For example, if a property was purchased by a number of people for €400,000 and one person paid €100,000 of this amount, he or she is entitled to 25% of the Section 23 Relief and 25% of the rental income/expenses available in respect of the property.

The following example shows how the relief is granted:

### Example

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

$$\begin{array}{rcl} \text{€379,000} & \times & \frac{\text{€298,000}}{\text{€298,000} + \text{€43,000}} \\ & & = \text{€331,208} \end{array}$$

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

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

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

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

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

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

## 9.1 Restriction on use of tax reliefs by high-income individuals<sup>15</sup>

Finance Acts 2006 and 2007 introduced, with effect from 1 January 2007, measures to limit the use of certain tax reliefs and exemptions (known as specified reliefs) by high-income individuals. Changes introduced by Finance Act 2010 extended the restriction, with effect from the tax year 2010, to ensure that individuals who are fully subject to the restriction pay an effective rate of income tax of approximately 30 per cent. Section 23 Relief is one of the specified reliefs<sup>16</sup>.

## 9.2 Property relief surcharge<sup>17</sup>

An additional rate of Universal Social Charge (property relief surcharge) of 5% applies on that part of an individual's taxable income which is sheltered by any of the property or area-based incentive reliefs including Section 23-type relief. It applies to a Section 23-type deduction granted in 2012 or a subsequent year and any rental losses carried forward into 2012 or a subsequent year, which are attributable to Section 23-type relief.

# 10. Withdrawal of Section 23 Relief

## 10.1 Property ceases to be a qualifying property

The Section 23 Relief is withdrawn if, at any time during the 10-year period following the first letting of the property under a qualifying lease, the property ceases to be a qualifying property. If this happens, the relief already granted will be withdrawn by treating the amount of the relief granted to date as if it were rent received in the year in which the property ceased to be a qualifying property. Any such withdrawal of relief should be accounted for under the self-assessment system as the receipt of rent on the relevant income tax return. A property ceases to be a qualifying property if there is a breach of the conditions pertaining to a scheme. Examples of such breaches are the use of the property, at any stage, as the claimant's residence, the enlargement of the property beyond the permitted floor area, the rent-free occupation of the property or the letting of the property under the rural renewal scheme for periods of less than 3 months. [Section 5](#) contains details of the conditions to be fulfilled.

## 10.2 Sale of a Section 23 property

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

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<sup>15</sup> See Tax and Duty Manual Part 15-02a-05 for further information.

<sup>16</sup> Relief under the student accommodation scheme which is sometimes referred to as Section 50 Relief is a Section 23 type relief and is also subject to the restriction.

<sup>17</sup> See Tax and Duty Manual [Part 18D-00-01](#) for further information.

**Example**

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

<b>2003</b>	<b>€</b>	<b>2004</b>	<b>€</b>
Rental Income	5,000	Rental Income	6,000
Section 23 Relief	<u>50,000</u>	Loss forward from 2003	<u>45,000</u>
Loss	(45,000)	Loss	(39,000)
 <b>2005</b>	 <b>€</b>		
Rental Income	8,000		
Loss forward from 2004	<u>39,000</u>		
Loss	(31,000)		

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

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

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

Section 16 of Finance Act 2012 made a minor technical correction to the method of calculating a Section 23 clawback. This was necessary to address an unintended interaction between the clawback and the High Earners Restriction. Where a property ceases to be a qualifying property or it is sold<sup>18</sup> on or after 1 January 2012 the clawback is calculated using the following formula:

A – B

Where -

A = The amount of relief originally given

B = The amount of unused Section 23-type relief which has been carried forward under Section 384<sup>19</sup> as a rental (Case V) loss

It is the net amount rather than the gross amount that is to be taken into account as deemed rental income. The amount of the Cave V loss carried forward under Section 384 into the year the property is sold is also reduced by the amount at B above to ensure the individual does not receive double relief.

### 10.3 Where share of ownership in a property is varied

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

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<sup>18</sup> Or where the lessors interest in the property passes by other means to another person e.g. gift.

<sup>19</sup> As Case V losses of a company are carried forward under Section 399 the amount at B would be nil.

Therefore, in effect, the calculation of the clawback for a company remains the same as prior to the Finance Act 2012 amendments.

**Example**

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

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

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

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

## 10.4 Death of a claimant

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

These clawback provisions also apply in the case of **married couples and civil partners**<sup>20</sup>. There is no statutory basis for rental income losses to pass between spouses, whether living or deceased.<sup>21</sup> This may result in a situation where a tax liability of the deceased spouse's estate cannot be relieved by losses accruing to the spouse who has inherited the property and entitlement to the Section 23 Relief. However, it is Revenue practice in death cases involving spouses to allow a surviving spouse to set Section 23 Relief due to him or her (that might otherwise have created a rental loss) against the amount of rent assessable on the deceased spouse as a result of the clawback of relief. This practice applies, for the year of death, in situations where the surviving spouse was the assessable spouse, where the deceased was the assessable spouse and where the couple were taxed as single persons. A formal undertaking has to be given by the surviving spouse that if any event occurs that gives rise to a further clawback of relief within the 10-year period from the date the property was first let by the deceased spouse, the amount of the relief to be withdrawn from the surviving spouse will be the full amount of the Section 23 Relief allowed in relation to the property both in the pre-death and post-death periods.

A further option is available to a surviving spouse in cases where the ownership of a property passes on or after **1 January 2010**.<sup>22</sup> Under this 'further option', an election may be made that:

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

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<sup>20</sup> A reference to spouse/spouses in this section should be read as including a reference to civil partner/civil partners.

<sup>21</sup> Tax and Duty Manual [Part 04-08-08](#) contains information in relation to the use of rental losses (and excess capital allowances) between spouses or civil partners.

<sup>22</sup> This Revenue practice was published in Tax Briefing issue 8 (June 2010). It is available to all married couples and civil partners and not just those 'high worth' individuals who are subject to the restrictions on the use of certain tax reliefs.



Any election will apply to **all** 'Section 23 type' property held by the deceased spouse i.e. elections will not apply to individual properties where more than one property is involved. The election should be made to the relevant local Revenue office and should be made jointly by the personal representative of the deceased spouse (e.g. the executor of the will or the administrator of the estate) and by the surviving spouse. Where the surviving spouse is also the personal representative of the deceased, the election may be made solely by that person.

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

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

### Example

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

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

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

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

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

In both scenarios, Mrs. Browne must give a formal undertaking that if, for whatever reason, she becomes subject to a withdrawal of the Section 23 Relief granted, the amount to be withdrawn will be €50,000, the full amount of the Section 23 Relief, and not just whatever amount she may have claimed in the post-death period. Without such an undertaking, Mr. Browne's estate would have additional taxable income of €20,200.

### 10.5 Transfer of property between spouses or civil partners

The Revenue practice referred to in the 2<sup>nd</sup> paragraph of [section 10.4](#) also applies where a Section 23 property passes between spouses or civil partners as a result of a legally enforceable maintenance arrangement (as defined in Section 1025 or 1031J Taxes Consolidation Act, 1997) or in circumstances where a property is transferred from the name of one spouse or civil partner into the joint names of both spouses or civil partners. Where one of the spouses or civil partners was the sole owner of the property and becomes a joint owner, 50% of the full amount of the relief granted is withdrawn from that person and the other spouse/civil partner becomes entitled to that relief. **The practice applies only to transfers of property between spouses or civil partners and does not apply to transfers between parents and children or between any other persons.** See [section 10.3](#) for the treatment of transfers of property who are not married or who are not in civil partnership.

The 'further option' referred to in the 3<sup>rd</sup> paragraph of [section 10.4](#) does not apply in either of the circumstances referred to above.

## 11. Purchase of a second-hand Section 23 property

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

## 11.1 Documentation required

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

## 11.2 Amount of relief on second-hand property

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

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

A = construction expenditure incurred in the qualifying period

B = total construction expenditure

C = expenditure on site acquisition

The same formula applies to the purchase of a previously refurbished or converted property, with A and B in the formula being the refurbishment or conversion costs and C being the cost of the building, including site, prior to refurbishment or conversion. Generally, in a market where property prices are rising the relief due to a second (or subsequent) purchaser will be the amount of relief that was available to the original purchaser. This is because the price paid for the property by the subsequent purchaser will be higher than the price paid by the original owner.

### Example

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

$$\begin{array}{r} \text{€250,000} \quad \times \quad \frac{\text{€60,000}}{\text{€60,000} + \text{€100,000}} \quad = \quad \text{€93,750} \end{array}$$

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

$$\begin{array}{rcl} \text{€300,000} & \times & \frac{\text{€60,000}}{\text{€60,000} + \text{€100,000}} \\ & & = \text{€112,500} \end{array}$$

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

### 11.3 Obligations on new owner

As with the first purchase of a qualifying property, the property must be let by any subsequent purchaser under a qualifying lease before relief can be claimed. It must continue to be let under a qualifying lease(s) for the remainder of the period of 10 years from the date of the original first qualifying lease, apart from reasonable periods of temporary disuse between the ending of one lease and the commencement of another. A new claimant does not need to obtain any form of advance approval or permission from Revenue to apply for the relief. Provided that all of the conditions pertaining to a scheme are fulfilled, a claimant can claim the relief in his or her annual income tax return under the self-assessment system. The claim can be made for the year in which the first qualifying lease is drawn up by the new owner. See [sections 8](#) and [9](#) for details of how to make a claim and how Section 23 Relief is granted. As with the first purchase of a qualifying property, the relief is withdrawn if, at any time during the remainder of the 10-year period from the time the property was first let under a qualifying lease, the property is either sold or ceases to be a qualifying property. [Section 10](#) contains details of how a property might cease to be a qualifying property and how to account for the withdrawal of relief.

## Appendix 1

### Construction, Refurbishment, Conversion

#### Construction

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

#### Refurbishment

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

#### Conversion

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

## Alterations to Land

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

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

## Appendix 2

## Schemes Terminated In 2008

Scheme	Qualifying period	Floor area
Integrated area urban renewal	1 August 1998 <sup>23</sup> to 31 July 2008. If 15% certificate not issued, end date is 31 December 2002 (see note 1). Where this condition was met but work to value of at least 15% of actual construction costs was <b>not</b> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 125 square metres
Town renewal	1 April 2000 to 31 July 2008. If valid application for full planning permission <b>not</b> submitted on or before 31 December 2004, end date is 31 December 2004. Where this condition was met but work to value of at least 15% of actual construction costs was <b>not</b> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 125 square metres, or 150 square metres in the case of conversion or refurbishment expenditure incurred on or after 6 April 2001
Rural renewal	1 June 1998 to 31 July 2008. If valid application for full planning permission <b>not</b> submitted on or before 31 December 2004, end date is 31 December 2004. Where this condition was met but work to value of at least 15% of actual construction costs was <b>not</b> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 140 square metres for construction expenditure incurred before 6 December 2000, or 150 square metres for conversion or refurbishment expenditure incurred before 6 December 2000, or 175 square metres for expenditure incurred on or after 6 December 2000
Living over the shop	6 April 2001 to 31 July 2008. If valid application for full planning permission <b>not</b> submitted on or before 31 December 2004, end date is 31 December 2004. Where this condition was met but work to value of at least 15% of actual construction costs was <b>not</b> carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 125 square metres

<sup>23</sup> Residential reliefs apply from 1 March 1999.

Student accommodation	1 April 1999 to 31 July 2008. If valid application for full planning permission <b>not</b> submitted on or before 31 December 2004, end date is 31 March 2003. Where this condition was met but work to value of at least 15% of actual construction costs was not carried out by 31 December 2006, end date is 31 December 2006	Not less than 55 square metres and not more than 160 square metres (see guidelines for further details)
Park and ride	1 July 1999 to 31 July 2008. If valid application for full planning permission not submitted on or before 31 December 2004, end date is 31 December 2004. Where this condition was met but work to value of at least 15% of actual construction costs was not carried out by 31 December 2006, end date is 31 December 2006	Not less than 38 square metres and not more than 125 square metres

**Note 1:** The termination date was originally extended from 31 December 2002 to 31 December 2004 where 15% of the total project cost was incurred by 31 December 2002, and a local authority certificate to this effect was issued by 30 April 2003. The dates for the local authority certificates were later changed; the current position is that 15% of the total project cost must have been incurred by 30 June 2003, and the local authority certificate to this effect must have been issued by 30 September 2003.



### Incentive Schemes Terminated In 1999

Scheme	Qualifying period	Floor area
Custom House Docks	30 January 1991 to 31 December 1999.	In the case of a separate self-contained flat or maisonette in a building of 2 or more storeys not less than 30 square metres and not more than 125 square metres or 90 square metres for construction expenditure incurred before 12/4/1995, or 90 square metres for conversion or refurbishment expenditure incurred before 26/1/94. Otherwise not less than 35 square metres and not more than 125 square metres.
Temple Bar	30 January 1991 to 5 April 1999 unless extension applies. If 50% of costs incurred by 5 April 1999 and certificate stating this issued by 31 July 1999, end date is 31 December 1999.	In the case of a separate self-contained flat or maisonette in a building of 2 or more storeys not less than 30 square metres and not more than 125 square metres or 90 square metres for construction expenditure incurred before 12/4/1995, or 90 square metres for conversion or refurbishment expenditure incurred before 26/1/94. Otherwise not less than 35 square metres and not more than 125 square metres.
1994 Urban Renewal	1 August 1994 to 31 July 1997 unless extension applies. If 15% of costs incurred by 31 July 1997 and certificate stating this issued by 30 September 1997, end date is 31 July 1998. If additional certificate issued by local authority, end date is 31 December 1998. If 50% of costs incurred by 31 December 1998 and certificate stating this issued by 28 February 1999, end date is 30 April 1999.	In the case of a separate self-contained flat or maisonette in a building of 2 or more storeys not less than 30 square metres and not more than 125 square metres or 90 square metres for construction expenditure incurred before 12/4/1995. Otherwise not less than 35 square metres and not more than 125 square metres.
Seaside Resorts	1 July 1995 to 30 June 1998 unless extension applies. If 15% of costs incurred by 30 June 1998 and certificate stating this issued by 30 September 1998, end date is 30 June 1999. If 50% of costs incurred by 30 June 1999 and certificate stating this issued by 30 September 1999, end date is 31 December 1999.	In the case of a separate self-contained flat or maisonette in a building of 2 or more storeys not less than 30 square metres and not more than 125 square metres. Otherwise not less than 35 square metres and not more than 125 square metres.

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Islands	1 August 1996 to 31 July 1999 unless extension applies. If 15% of costs incurred by 31 July 1999 and certificate stating this issued by 31 October 1999, end date is 31 December 1999.	In the case of a separate self-contained flat or maisonette in a building of 2 or more storeys not less than 30 square metres and not more than 125 square metres. Otherwise not less than 35 square metres and not more than 125 square metres
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## Appendix 3

**Integrated Area Urban Renewal Scheme Areas Designated**

<b>City/County</b>	<b>Area/Town</b>
Cork	Blackpool/Shandon City Docks Area
Dublin	Ballymun HARP Inchicore/Kilmainham Liberties/Coombe North East Inner City Millennium/O'Connell St
Galway	3 suburban local authority estates
Limerick	1 large central area
Waterford	Periphery of commercial centre
Carlow	Carlow
Clare	Shannon
Cork	Bandon Cobh Mallow (N) Passage West(S)/Glenbrook
Donegal	Buncrana
Dublin	Dun Laoghaire Balbriggan North West Blanchardstown North Clondalkin Tallaght
Galway	Tuam
Kerry	Tralee
Kildare	Athy Kildare
Kilkenny	Kilkenny
Laois	Portlaoise
Limerick	Newcastlewest

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Longford	Longford
Louth	Drogheda Dundalk
Mayo	Ballina
Meath	Navan
Monaghan	Monaghan
Offaly	Birr Tullamore Clara
Sligo	Sligo
Tipperary	Roscrea Thurles Carrick-on-Suir Tipperary
Waterford	Dungarvan
Westmeath	Athlone Mullingar
Wexford	New Ross
Wicklow	Arklow Wicklow

### Rural Renewal Scheme – Qualifying Areas

County	Area
Cavan	The District Electoral Divisions of Arvagh, Springfield, Killashandra, Milltown, Carrafin, Grilly, Kilconny, Belturbet Urban, Ardue, Carn, Bilberry, Diamond, Doogary, Lissanover, Ballymagauran, Ballyconnell, Bawnboy, Templeport, Benbrack, Pedara Vohers, Tircahan, Swanlinbar, Kinawley, Derrynananta, Dunmakeever, Dowra, Derrylahan, Tuam, Killinagh, Eskey, Teebane, Scrabby, Loughdawan, Bruce Hall, Drumcarban, Corr, Crossdoney, and Killykeen.
Leitrim	The administrative county of Leitrim.
Longford	The administrative county of Longford.
Roscommon	The District Electoral Divisions of Ballintober, Castleteheen, Carrowduff, Kilbride North, Lissonuffy, Killavackan, Termonbarry, Roosky, Kilglass North, Kilglass South, Bumlin, Cloonfinlough, Killukin (in Roscommon Rural District), Strokestown, Annaghmore, Tulsk, Coolougher, Ballinlough, Kiltullagh, Cloonfower, Artagh South, Artagh North, Ballagherreen, Edmondstown, Loughglinn, Buckill, Fairymount, Castlereagh, Frenchpark, Bellangare, Castleplunket, Baslick, Breedoge, Altagowlan, Lough Allen, Ballyfarnan, Keadue, Aghafin, Ballyformoyle, Crossna, Kilbryan, Boyle Rural, Boyle Urban, Tivannagh, Rushfield, Tumna North, Tumna South, Killukin (in Boyle No. 1 Rural District), Oakport, Rockingham, Danesfort, Cloontem, Kilmore, Elia, Ballygarden, Aughrim East, Aughrim West, Creeve (in Boyle No. 1 Rural District), Creeve (in Roscommon Rural District), Elphin, Rossmore, Cloonyquinn, Ogulla, Mantua, Lisgarve, Kilmacumsey, Kilcolagh, Estersnow, Croghan, Killummod, Cregga, Cloonygormican, Kilbride South, Kilgefin, Cloontuskert, Drumdaff, and Kiltreevan.
Sligo	The District Electoral Divisions of Ballintogher East, Ballynakill, Lisconny, Drumfin, Ballymote, Cloonohill, Leitrim, Tobercurry, Kilturra, Cuilmore, Kilfree, Coolavin, Killaraght, Templevanny, Aghanagh, Kilmactranny, Ballynashee, Shancough, Drumcolumb, Riverstown, Lakeview, Bricklieve, Drumrat, Toomour, Kilshalvy, Killadoon, Streamstown, Cartron, Coolaney, Owenmore, Temple, Annagh, Carrickbannagher, Collooney, and Ballintogher West.

### Town Renewal Scheme – Designated Towns

<b>County</b>	<b>Towns</b>
Carlow	Hacketstown, Muinbheag, Tullow, Tinnahinch/Graiguenamanagh
Cavan	Cavan, Cootehill, Baileborough, Ballyjamesduff
Clare	Scarriff, Sixmilebridge, Kilrush, Miltown Malbay, Ennistymon
Cork	Cloyne, Skibbereen, Charleville (Rathluirc), Doneraile, Kanturk, Bantry, Fermoy
Donegal	Moville, Ardara, Ramelton, Ballyshannon, Ballybofey - Stranorlar
Galway	Portumna, Headford, Loughrea, Clifden, Ballygar
Kerry	Listowel, Castleisland, Killorglin, Caherciveen
Kildare	Kilcullen, Castledermot, Rathangan, Kilcock, Monasterevan
Kilkenny	Callan, Castlecomer, Thomastown, Urlingford, Pilltown
Laois	Mountrath, Rathdowney, Portarlinton, Mountmellick
Limerick	Abbeyfeale, Castleconnell, Croom, Kilmallock, Rathkeale
Louth	Carlingford, Ardee, Dunleer, Castlebellingham
Mayo	Ballinrobe, Belmullet, Claremorris, Foxford, Newport
Meath	Oldcastle, Duleek, Kells, Trim
Monaghan	Clones, Castleblayney, Ballybay
Offaly	Clara, Ferbane, Edenderry, Banagher
Roscommon	Roscommon
Sligo	Rosses Point, Bellaghy-Charlestown
Tipperary N.R.	Nenagh, Templemore, Borrisokane, Littleton
Tipperary S.R.	Cashel, Killenaule, Cahir, Fethard
Waterford	Cappoquin, Portlaw, Kilmacthomas, Tallow
Westmeath	Kilbeggan, Castlepollard, Moate
Wexford	Ferns, Bunclody, Taghmon, Gorey
Wicklow	Dunlavin, Rathdrum, Carnew, Baltinglass, Tinahely

### Seaside Resort Scheme – Designated Resorts

County	Resort (note)
Clare	Kilkee Lahinch
Cork	Clonakilty Youghal
Donegal	Bundoran
Galway	Salthill
Kerry	Ballybunion
Louth	Clogherhead
Mayo	Achill Westport
Meath	Bettystown Laytown Mosney
Sligo	Enniscrone
Waterford	Tramore
Wexford	Courtown
Wicklow	Arklow

**Note:** Schedule 8 to the Taxes Consolidation Act 1997 specifies the qualifying areas of the resorts.

**Designated Islands**

<b>County</b>	<b>Island</b>
Cork	Bere Clear Dursey Hare Long Sherkin Whiddy
Donegal	Arranmore Inishbofin Inishfree Tory
Galway	Inisbofin Inisheer Inishmaan Inishmore
Limerick	Foynes
Mayo	Claggan Clare Inishbiggle Inishcottle Inishlyre Inishturk
Sligo	Coney



## Appendix 4

### **Certificate Of Reasonable Cost / Compliance**

A Certificate of Reasonable Cost is required where the builder/developer retains ownership and then lets the newly constructed/refurbished/converted properties. It certifies that the cost of providing the accommodation is reasonable, that the dwelling unit is within the specified floor area limits and that it complies with the standards as outlined in the Department of the Environment, Heritage and Local Government Memorandum, HA1 – April, 2004. In the case of refurbishment projects it also certifies that the work was necessary for the purposes of ensuring the suitability of the property as a dwelling of accommodation.

An application may only be made by the builder/developer. Application forms and all supporting documentation should be submitted prior to the commencement of work. Where refurbishment work is proposed a prior inspection of the development, as it exists, is a requirement.

To apply for a Certificate of Reasonable Cost complete form HPF/1 and return it, together with the appropriate documentation and fee to the Department of the Environment, Heritage and Local Government, Housing Grants Section, Room F9/10, Government Buildings, Ballina, Co. Mayo. Each application for a Certificate of Reasonable Cost must be accompanied by the following:-

- (a) Fully dimensioned drawings of house/apartment to a scale of 1:50 showing floor plans, sections, and elevations.
- (b) Site location plan to a scale of 1:2500 and site plan showing details to a scale of 1:500 including numbering scheme, north point etc.
- (c) Detailed specification of construction
- (d) Copy of Planning Permission and in the case of apartments a copy of the Fire Safety Certificate.
- (e) Breakdown of Costs:-
  - i. where the applicant executes the works, details of labour and materials costs plus other expenses incurred
  - ii. where work is carried out under contract, details of tender, design fees, etc., and copy of final account.

The Department of the Environment, Heritage and Local Government at all times reserves the right to request a Bill of Quantities.

A fee of €63.49 for the first unit, plus €25.39 for each additional unit is payable in respect of an application for a Certificate of Reasonable Cost.

Where tax relief on rental income is being claimed by a person other than the developer (e.g. by the purchaser of a property), it is necessary to obtain a Certificate of Compliance. This certifies that the accommodation is within the specified floor area limits and that it complies with the standards set out in these guidelines and the standards as outlined in the Department of the Environment, Heritage and Local Government Memorandum, HA1 – April, 2004. In the case of refurbishment projects, it also certifies that the work was necessary for ensuring the suitability of the property as a dwelling of accommodation.

To apply for a Certificate of Compliance complete form HPF/2 and return it, together with the appropriate documentation, to the Department of the Environment, Heritage and Local Government, Housing Grants Section, Room F9/10, Government Buildings, Ballina, Co. Mayo. An application may only be made by the builder/developer. Application forms and all supporting documentation should be submitted prior to the commencement of work. Where refurbishment work is proposed a prior inspection of the development, as it exists, is a requirement.

Each application for a Certificate of Compliance must be accompanied by the following;

- (a) Fully dimensioned drawings of house/apartment to a scale of 1:50 showing floor plans, sections, and elevations
- (b) Site location plan to a scale of 1:2500 and site plan showing details to a scale of 1:500 including numbering scheme, north point etc.
- (c) Detailed specification of construction
- (d) Copy of Planning Permission and in the case of apartments a copy of the Fire Safety Certificate.

It may happen that the certificate of compliance or the certificate of reasonable cost is not available by the end of the tax year for which relief is being claimed. The relief may still be claimed, provided that the appropriate certificate is obtained by the date on which the income tax return is due to be submitted to the Revenue Commissioners.