

Capital allowances in relation to construction or refurbishment of certain buildings or structures in enterprise areas. FA94 s41A; FA95 s35(1)(e) 343.—(1) In this section—

“the Minister”, except where the context otherwise requires, means the Minister for Enterprise, Trade and Employment;

“qualifying building” means a building or structure the site of which is wholly within an enterprise area and which is in use for the purposes of the carrying on of qualifying trading operations by a qualifying company, but does not include any part of a building or structure in use as or as part of a dwelling house;

“qualifying company” means a company—

(a) which has been approved for financial assistance under a scheme administered by Forfás, Forbairt or the Industrial Development Agency (Ireland), and

(b) to which the Minister has given a certificate under subsection (2) which has not been withdrawn in accordance with subsection (5) or (6);

“qualifying trading operations” means—

(a) the manufacture of goods within the meaning of Part 14, or

(b) the rendering of services in the course of a service industry ).

(2) Subject to subsection (4), the Minister may—

(a) on the recommendation of Forfás (in conjunction with Forbairt or the Industrial Development Agency (Ireland), as may be appropriate), in accordance with guidelines laid down by the Minister, and

(b) following consultation with the Minister for Finance,

give a certificate to a company certifying that the company is, with effect from a date to be specified in the certificate, to be treated as a qualifying company for the purposes of this section.

(3) A certificate under subsection (2) may be given either without conditions or subject to such conditions as the Minister considers proper and specifies in the certificate.

(4) The Minister shall not certify under subsection (2) that a company is a qualifying company for the purposes of this section unless—

(a) the company is carrying on or intends to carry on qualifying trading operations in an enterprise area, and

(b) the Minister is satisfied that the carrying on by the company of such trading operations will contribute to the balanced development of the enterprise area.

(5) Where, in the case of a company in relation to which a certificate under subsection (2) has been given—

(a) the company ceases to carry on or, as the case may be, fails to commence to carry on qualifying trading operations in the enterprise area, or

(b) the Minister is satisfied that the company has failed to comply with any condition subject to which the certificate was given,

the Minister may, by notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the notice.

(6) Where, in the case of a company in relation to which a certificate under subsection (2) has been given, the Minister is of the opinion that any activity of the company has had or may have an adverse effect on the use or development of the enterprise area or is otherwise inimical to the balanced development of the enterprise area, then—

(a) the Minister may, by notice in writing served by registered post on the company, require the company to desist from such activity with effect from such date as may be specified in the notice, and

(b) if the Minister is not satisfied that the company has complied with the requirements of the notice, the Minister may, by a further notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the further notice.

(7) (a) Subject to subsections (8) and (9), the provisions of the Tax Acts ) relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply as if a qualifying building were, at all times at which it is a qualifying building, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter 1 of Part 9 by reason of its use for a purpose specified in section 268 (1)(a).

(b) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying building only in so far as that expenditure is incurred in the qualifying period.

(8) For the purposes of the application, by subsection (7), of sections 271 and 273 in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying building—

(a) section 271 shall apply as if—

(i) in subsection (1) of that section the definition of “industrial development agency” were deleted,

(ii) in subsection (2)(a)(i) of that section “to which subsection (3) applies” were deleted,

(iii) subsection (3) of that section were deleted,

(iv) the following subsection were substituted for subsection (4) of that section:

“(4) An industrial building allowance shall be of an amount equal to 25 per cent of the capital expenditure mentioned in subsection (2).”,

and

(v) in subsection (5) of that section “to which subsection (3)(c) applies” were deleted,

and

(b) section 273 shall apply as if—

(i) in subsection (1) of that section the definition of “industrial development agency” were deleted,

(ii) the following paragraph were substituted for paragraph (b) of subsection (2) of that section:

“(b) As respects any qualifying expenditure, any allowance made under section 272 and increased under paragraph (a) in respect of that expenditure, whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed 50 per cent of the amount of that qualifying expenditure.”,

and

(iii) subsections (3) to (7) of that section were deleted.

(9) Notwithstanding section 274 (1), no balancing charge shall be made in relation to a qualifying building by reason of any of the events specified in that section which occurs—

(a) more than 13 years after the qualifying building was first used, or

(b) in a case where section 276 applies, more than 13 years after the capital expenditure on refurbishment of the qualifying building was incurred.

(10) For the purposes only of determining, in relation to a claim for an allowance by virtue of subsection (7), whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying building is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.