

Capital allowances in relation to construction or refurbishment of certain commercial premises. FA97 s55
369.—(1) (a) In this section—

“qualifying multi-storey car park” means a building or structure consisting of 2 or more storeys wholly or mainly in use for the purpose of providing, for members of the public generally without preference for any particular class of person, on payment of an appropriate charge, parking space for mechanically propelled vehicles;

“qualifying premises” means a building or structure the site of which is wholly within a qualifying area and which—

(i) apart from this section is not an industrial building or structure within the meaning of section 268, and

(ii) (I) is in use for the purposes of a trade or profession, or

(II) whether or not it is so used, is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but does not include a car park (other than a qualifying multi-storey car park) or any part of a building or structure in use as or as part of a dwelling-house.

(b) Where part of a building or structure is a qualifying premises and part of it (in this paragraph referred to as “the second-mentioned part”) is not a qualifying premises and the capital expenditure incurred in the qualifying period on the construction or refurbishment of the second-mentioned part is not more than 10 per cent of the total capital expenditure incurred in that period on the construction or refurbishment of the building or structure, then, the building or structure and every part of it shall be treated as a qualifying premises.

(2) (a) Subject to paragraph (b) and subsections (3) to (6), 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—

(i) as if a qualifying premises were, at all times at which it is a qualifying premises, 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), and

(ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(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 premises only in so far as that expenditure is

incurred in the qualifying period.

(3) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, subsection (2) shall apply only if the total amount of the capital expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the qualifying premises immediately before that expenditure is incurred.

(4) For the purposes of the application, by subsection (2), of sections 271 and 273 in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises—

(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 50 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, and

(ii) subsections (2)(b) and (3) to (7) of that section were deleted.

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

(a) more than 13 years after the qualifying premises 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 premises was incurred.

(6) (a) Notwithstanding subsections (2) to (5), any allowance or charge which apart from this subsection would be made by virtue of subsection (2) in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises may be reduced to one-half of the amount which apart from this subsection would be the amount of that allowance or charge.

(b) Paragraph (a) shall apply where, in respect of an area, the Minister for Finance, having had regard to the criteria set out in subsection (2) of section 367, has specified in an order under subsection (1) of that section that the area is a qualifying area for the purposes of this section and that the relief to apply is subject to this subsection.

(c) For the purposes of paragraph (a), the amount of an allowance or charge to be reduced to one-half shall be computed as if—

(i) this subsection had not been enacted, and

(ii) effect had been given to all allowances taken into account in so computing that amount.

(d) Nothing in this subsection shall affect the operation of section 274 (8).

(7) For the purposes only of determining, in relation to a claim for an allowance by virtue of subsection (2), whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises 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 premises 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.

(8) Where by virtue of subsection (2) an allowance is given under Chapter 1 of Part 9 in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises, relief shall not be given in respect of that expenditure under that Chapter by virtue of any provision of the Tax Acts other than subsection (2).