

Rented residential accommodation: deduction for certain expenditure on construction. FA94 s43; FA95 s35(1)(h) and (2)(d) 346.—(1) In this section—

“qualifying lease”, in relation to a house, means, subject to section 350 (2), a lease of the house the consideration for the grant of which consists—

(a) solely of periodic payments all of which are or are to be treated as rent for the purposes of Chapter 8 of Part 4, or

(b) of payments of the kind mentioned in paragraph (a), together with a payment by means of a premium which does not exceed 10 per cent of the relevant cost of the house;

“qualifying premises” means, subject to subsections (3), (4)(a), (4)(c) and (5) of section 350, a house—

(a) the site of which is wholly within a designated area,

(b) which is used solely as a dwelling,

(c) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 12th day of April, 1995, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres;

(d) in respect of which, if it is not a new house of the Housing (Miscellaneous Provisions) Act, 1979 ) provided for sale, there is in force a certificate of reasonable cost, the amount specified in which in respect of the cost of construction of the house is not less than the expenditure actually incurred on such construction, and

(e) which without having been used is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

“relevant cost”, in relation to a house, means, subject to subsection (3), an amount equal to the aggregate of—

(a) the expenditure incurred on the acquisition of, or of rights in or over, any land on which the house is constructed, and

(b) the expenditure actually incurred on the construction of the house;

“relevant period”, in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) Subject to subsection (3), where a person, having made a claim in that behalf, proves to have incurred expenditure on the construction of a qualifying premises—

(a) such person shall be entitled, in computing for the purposes of section 97 (1) the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of that expenditure as is to be treated under section 350 (7) or under this section as having been incurred by such person in the qualifying period, and

(b) Chapter 8 of Part 4 shall apply as if that deduction were a deduction authorised by section 97 (2).

(3) (a) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(b) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of section 97, the expenditure to be treated as having been incurred in the qualifying period on the construction of the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of subsection (2) to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in subparagraph (i) the same proportion as the amount of the expenditure actually incurred on the construction of the qualifying premises which is to be treated under section 350 (7) as having been incurred in the qualifying period bears to the whole of the expenditure incurred on that construction.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary—

(a) of the expenditure incurred on the construction of that building or those buildings, and

(b) of the amount which would be the relevant cost in relation to that building or those buildings if the building or buildings, as the case may be, were a single qualifying premises,

for the purposes of determining the expenditure incurred on the construction of the qualifying premises

and the relevant cost in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(a) the house ceases to be a qualifying premises, or

(b) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under subsection (2) in respect of expenditure incurred on the construction of the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) (a) Where the event mentioned in subsection (5)(b) occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of expenditure on the construction of the house equal to the amount which under section 350 (7) or under this section (apart from subsection (3)(b)) the lessor was treated as having incurred in the qualifying period on the construction of the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed the relevant price paid by such person on the purchase.

(b) For the purposes of this subsection and subsection (7), the relevant price paid by a person on the purchase of a house shall be the amount which bears to the net price paid by such person on that purchase the same proportion as the amount of the expenditure actually incurred on the construction of the house which is to be treated under section 350 (7) as having been incurred in the qualifying period bears to the relevant cost in relation to that house.

(7) (a) Subject to paragraph (b), where expenditure is incurred on the construction of a house and before the house is used it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the lesser of—

(i) the amount of such expenditure which is to be treated under section 350 (7) as having been incurred in the qualifying period, and

(ii) the relevant price paid by such person on the purchase;

but, where the house is sold more than once before it is used, this subsection shall apply only in relation to the last of those sales.

(b) Where expenditure is incurred on the construction of a house by a person carrying on a trade or part of a trade which consists, as to the whole or any part of the trade, of the construction of buildings with a

view to their sale and the house, before it is used, is sold in the course of that trade or, as the case may be, that part of that trade—

(i) the person (in this paragraph referred to as “the purchaser”) who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the relevant price paid by the purchaser on the purchase (in this paragraph referred to as “the first purchase”), and

(ii) in relation to any subsequent sale or sales of the house before the house is used, paragraph (a) shall apply as if the reference to the amount of expenditure which is to be treated as having been incurred in the qualifying period were a reference to the relevant price paid on the first sale.

(8) Section 350 shall apply for the purposes of supplementing this section.