

Capital allowances in relation to construction or refurbishment of certain commercial premises. FA95 s48; FA97 s146(1) and Sch9 Ptl par19 353.—(1) In this section—

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

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

(b) is in use for the purposes of the operation of one or more qualifying tourism facilities,

but does not include any part of a building or structure in use as or as part of a dwelling house, other than a tourist accommodation facility of the type referred to in the definition of “qualifying tourism facilities”;

“qualifying tourism facilities” means—

(a) tourist accommodation facilities registered by Bord Fáilte Éireann under Part III of the Tourist Traffic Act, 1939 , or specified in a list published under section 9 of the Tourist Traffic Act, 1957 , and

(b) such other classes of facilities as may be approved of for the purposes of this section by the Minister for Tourism, Sport and Recreation in consultation with the Minister for Finance.

(2) (a) Subject to 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 which is equal to 20 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 , 272 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,

(b) section 272 shall apply as if the following subsection were substituted for subsection (3) of that section:

“(3) A writing down allowance shall be of an amount equal to 5 per cent of the expenditure referred to in subsection (2)(c).”,

and

(c) 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 subsection:

“(b) As respects any qualifying expenditure, any allowance made under section 272 and increased under paragraph (a) in respect of that expenditure, whether claimed in one chargeable period or more than one such period, shall not in the aggregate exceed 75 per cent of the amount of that qualifying expenditure.”,

and

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

(5) In the case of a qualifying premises which is such a premises by virtue of being a tourist accommodation facility of a type referred to in paragraph (a) of the definition of “qualifying tourism

facilities”—

(a) the event of the premises ceasing to be registered or specified in the manner referred to in that paragraph of that definition shall be treated as if it were an event specified in section 274 (1), and

(b) for the purposes of the application of section 274 on the occurrence of any such event, there shall, notwithstanding anything to the contrary in section 318, be treated as arising in relation to that event sale, insurance, salvage or compensation moneys in an amount equal to the aggregate of—

(i) the residue of the expenditure ) incurred on the construction or refurbishment of the premises immediately before that event, and

(ii) the allowances made under Chapter 1 of Part 9 by virtue of subsection (2) in respect of the expenditure incurred on the construction or refurbishment of the premises.

(6) Notwithstanding section 274 (1), no balancing charge shall be made in relation to any qualifying premises by reason of any of the events specified, or by virtue of subsection (5) treated as specified, in section 274 (1) which occurs—

(a) more than 11 years after the qualifying premises was first used, or

(b) in a case where section 276 applies, more than 11 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

(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 any provision of the Tax Acts other than that Chapter.