

Relief for expenditure on significant buildings and gardens. FA82 s19; FA93 s29; FA94 s18; FA95 s20; FA97 s17 482.—(1) (a) In this section—

“approved building” means a building to which subsection (5) applies;

“approved garden” means a garden (other than a garden, being land occupied or enjoyed with an approved building as part of its garden or grounds of an ornamental nature) which, on application to the Minister and the Revenue Commissioners in that behalf by a person who owns or occupies the garden, is determined—

(i) by the Minister to be a garden which is intrinsically of significant horticultural, scientific, historical, architectural or aesthetic interest, and

(ii) by the Revenue Commissioners to be a garden to which reasonable access is afforded to the public;

“approved object”, in relation to an approved building, has the meaning assigned to it by subsection (6);

“authorised person” means—

(i) an inspector or other officer of the Revenue Commissioners authorised by them in writing for the purposes of this section, or

(ii) a person authorised by the Minister in writing for the purposes of this section;

“chargeable period” has the same meaning as in section 321 (2);

“the Minister” means the Minister for Arts, Heritage, Gaeltacht and the Islands;

“public place”, in relation to an approved building in use as a tourist accommodation facility, means a part of the building to which all patrons of the facility have access;

“qualifying expenditure”, in relation to an approved building, means expenditure incurred by the person who owns or occupies the approved building on one or more of the following—

(i) the repair, maintenance or restoration of the approved building or the maintenance or restoration of any land occupied or enjoyed with the approved building as part of its garden or grounds of an ornamental nature, and

(ii) to the extent that the aggregate expenditure in a chargeable period, being the year 1997-98 and any subsequent year of assessment, or an accounting period of a company beginning on or after the 6th day of April, 1997, does not exceed £5,000—

(l) the repair, maintenance or restoration of an approved object in the approved building,

(II) the installation, maintenance or replacement of a security alarm system in the approved building,
and

(III) public liability insurance for the approved building;

“relevant expenditure”, in relation to an approved garden, means—

(i) in the case of expenditure incurred in a chargeable period, being the year 1997-98 and any subsequent year of assessment, or an accounting period of a company beginning on or after the 6th day of April, 1997, expenditure incurred by the person who owns or occupies the approved garden on one or more of the following—

(I) the maintenance or restoration of the approved garden, and

(II) to the extent that the aggregate expenditure in a chargeable period does not exceed £5,000—

(A) the repair, maintenance or restoration of an approved object in the approved garden,

(B) the installation, maintenance or replacement of a security alarm system in the approved garden, and

(C) public liability insurance for the approved garden, and

(ii) in any other case, expenditure on the maintenance or restoration of the garden;

“security alarm system” means an electrical apparatus installed as a fixture in the approved building or in the approved garden which when activated is designed to give notice to the effect that there is an intruder present or attempting to enter the approved building or the approved garden, as the case may be, in which it is installed;

“tourist accommodation facility” means an accommodation facility—

(i) registered in the register of guest houses maintained and kept by Bord Fáilte Éireann under Part III of the Tourist Traffic Act, 1939 , or

(ii) listed in the list published or caused to be published by Bord Fáilte Éireann under section 9 of the Tourist Traffic Act, 1957 .

(b) For the purposes of this section, expenditure shall not be regarded as having been incurred in so far as any sum in respect of or by reference to the work to which the expenditure relates has been or is to be received directly or indirectly by the person making a claim in respect of the expenditure under subsection (2) from the State, from any public or local authority, from any other person or under any contract of insurance or by means of compensation or otherwise.

(c) For the purposes of this section, references to an approved building, unless the contrary intention is expressed, shall be construed as including a reference to any land occupied or enjoyed with an approved

building as part of its garden or grounds of an ornamental nature.

(2) (a) Subject to this section, where a person (in this section referred to as “the claimant”), having made a claim in that behalf, proves that the conditions specified in paragraph (b) have been met, then, the Tax Acts shall apply as if the amount of the qualifying expenditure referred to in subparagraph (i) of paragraph (b) were a loss sustained in the chargeable period referred to in that subparagraph in a trade carried on by the claimant separate from any trade actually carried on by the claimant.

(b) The conditions referred to in paragraph (a) are—

(i) that the claimant has incurred in a chargeable period qualifying expenditure in relation to an approved building,

(ii) that the claimant has on or before the 1st day of January in the chargeable period in respect of which the claim is made and in each of the chargeable periods comprising whichever is the shortest of the following periods—

(I) the period consisting of the chargeable periods since the 23rd day of May, 1994,

(II) the period consisting of the chargeable periods since a determination under subsection (5)(a)(ii) was made in relation to the building,

(III) the period consisting of the chargeable periods since the approved building was purchased or occupied by the claimant,

(IV) the period consisting of the 5 chargeable periods immediately preceding the chargeable period for which the claim is made,

provided Bord Fáilte Éireann (in this paragraph referred to as “the Board”) with particulars of—

(A) the name, if any, and address of the approved building, and

(B) the days and times during the year when access to the approved building is afforded to the public or the period or periods during the year when the approved building is in use as a tourist accommodation facility, as the case may be,

such particulars being provided to the Board on the understanding by the person and the Board that they may be published by the Board or by another body concerned with the promotion of tourism, and

(iii) where the approved building was in use as a tourist accommodation facility in any of the chargeable periods applicable for the purposes of subparagraph (ii), that the approved building was registered in the register of guest houses maintained and kept by the Board under Part III of the Tourist Traffic Act, 1939 , or listed in the list published or caused to be published by the Board under section 9 of the Tourist Traffic Act, 1957 , in those chargeable periods.

(c) Relief authorised by this subsection shall not apply for any chargeable period before the chargeable period in which the application concerned is made to the Revenue Commissioners under subsection (5)(a).

(3) (a) Where—

(i) by virtue of subsection (2), qualifying expenditure in a chargeable period is treated as if it were a loss sustained in the chargeable period in a trade carried on by the person separate from any trade actually carried on by that person, and

(ii) owing to an insufficiency of income, relief under the Tax Acts cannot be given for any part of the qualifying expenditure so treated (in this subsection referred to as “the unrelieved amount”),

then, the Tax Acts shall apply as if the unrelieved amount were a loss sustained in the following chargeable period in a trade carried on by the person separate from any trade actually carried on by that person.

(b) Where owing to an insufficiency of income relief under the Tax Acts cannot be given by virtue of paragraph (a) for any part of the unrelieved amount, then, the Tax Acts shall apply as if that part of the unrelieved amount were a loss sustained in the chargeable period following the period referred to in paragraph (a) in a trade carried on by the person separate from any trade actually carried on by that person.

(c) Where in any chargeable period relief under the Tax Acts is due by virtue of 2 or more of the following provisions, that is, subsection (2) and paragraphs (a) and (b), then, the following provisions shall apply:

(i) any relief due under those Acts by virtue of paragraph (b) shall be given in priority to any relief due under those Acts by virtue of subsection (2) or paragraph (a), and

(ii) where relief has been given in accordance with subparagraph (i) or where no such relief is due, any relief due under those Acts by virtue of paragraph (a) shall be given in priority to relief due under those Acts by virtue of subsection (2).

(4) No relief shall be allowed under this section for expenditure in respect of which relief may be claimed under any other provision of the Tax Acts.

(5) (a) This subsection shall apply to a building in the State which, on application to the Minister and the Revenue Commissioners in that behalf by a person who owns or occupies the building, is determined—

(i) by the Minister to be a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, and

(ii) by the Revenue Commissioners to be a building either—

(I) to which reasonable access is afforded to the public, or

(II) which is in use as a tourist accommodation facility for at least 6 months in any calendar year (in this subsection referred to as “the required period”) including not less than 4 months in the period commencing on the 1st day of May and ending on the 30th day of September in any such year.

(b) Without prejudice to the generality of the requirement that reasonable access be afforded to the public, access to a building shall not be regarded as being reasonable access afforded to the public unless—

(i) access to the whole or a substantial part of the building is afforded at the same time,

(ii) subject to temporary closure necessary for the purposes of the repair, maintenance or restoration of the building, access is so afforded for not less than 60 days (including not less than 40 days during the period commencing on the 1st day of May and ending on the 30th day of September) in any year and on each such day access is afforded in a reasonable manner and at reasonable times for a period, or periods in the aggregate, of not less than 4 hours, and

(iii) the price, if any, paid by the public in return for that access is in the opinion of the Revenue Commissioners reasonable in amount and does not operate to preclude the public from seeking access to the building.

(c) Where under paragraph (a) the Minister makes a determination in relation to a building and, by reason of any alteration made to the building or any deterioration of the building subsequent to the determination being made, the Minister considers that the building is no longer a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, the Minister may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on which the Minister considers that the building ceased to be a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, and this subsection shall cease to apply to the building from that date.

(d) Where under paragraph (a) the Revenue Commissioners make a determination in relation to a building, and reasonable access to the building ceases to be afforded to the public or the building ceases to be used as a tourist accommodation facility for the required period, as the case may be, the Revenue Commissioners may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on which they consider that such access or such use, as the case may be, so ceased, and—

(i) this subsection shall cease to apply to the building from that date, and

(ii) if relief has been given under this section in respect of qualifying expenditure incurred in relation to that building in the period of 5 years ending on the date from which the revocation has effect, that relief shall be withdrawn and there shall be made all such assessments or additional assessments as are necessary to give effect to this subsection.

(e) Where—

(i) the Revenue Commissioners make a determination (in this paragraph referred to as the “first-mentioned determination”) that a building is either a building to which reasonable access is afforded to the

public or a building which is in use as a tourist accommodation facility for the required period,

(ii) such access ceases to be so afforded or such building ceases to be so used, as the case may be, in a chargeable period subsequent to the chargeable period in which the first-mentioned determination was made, and

(iii) on application to them in that chargeable period in that behalf by the person who owns or occupies the building, the Revenue Commissioners revoke the first-mentioned determination and make a further determination (in this paragraph referred to as the “second-mentioned determination”) with effect from the date of revocation of the first-mentioned determination—

(I) in the case of a building in respect of which a determination was made that it is a building to which reasonable access is afforded to the public, that the building is a building which is in use as a tourist accommodation facility for the required period, or

(II) in the case of a building in respect of which a determination was made that it is a building which is in use as a tourist accommodation facility for the required period, that the building is a building to which reasonable access is afforded to the public,

then, paragraph (d) shall not apply on the revocation of the first-mentioned determination and for the purposes of that paragraph the second-mentioned determination shall be treated as having been made at the time of the making of the first-mentioned determination.

(6) (a) In this subsection, “approved object”, in relation to an approved building, means an object (including a picture, sculpture, print, book, manuscript, piece of jewellery, furniture, or other similar object) or a scientific collection which is owned by the owner or occupier of the approved building and which, on application to them in that behalf by that person, is determined—

(i) by the Minister, after consideration of any evidence in relation to the matter which such owner or occupier submits to the Minister and after such consultation (if any) as may seem to the Minister to be necessary with such person or body of persons as in the opinion of the Minister may be of assistance to the Minister, to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and

(ii) by the Revenue Commissioners, to be an object reasonable access to which is afforded, and in respect of which reasonable facilities for viewing are provided, in the building to the public.

(b) Without prejudice to the generality of the requirement that reasonable access be afforded, and that reasonable facilities for viewing be provided, to the public, access to and facilities for the viewing of an object shall not be regarded as being reasonable access afforded, or the provision of reasonable facilities for viewing, to the public unless, subject to such temporary removal as is necessary for the purposes of the repair, maintenance or restoration of the object as is reasonable—

(i) in a case where the approved building is a tourist accommodation facility, the object is displayed in a public place in the building, or

(ii) in the case of any other approved building—

(I) access to the object is afforded and such facilities for viewing the object are provided to the public on the same days and at the same times as access is afforded to the public to the approved building in which the object is kept, and

(II) the price, if any, paid by the public in return for such access is in the opinion of the Revenue Commissioners reasonable in amount and does not operate to preclude the public from seeking access to the object.

(c) Where under paragraph (a) the Minister makes a determination in relation to an object and, by reason of any alteration made to the object, or any deterioration of the object, subsequent to the determination being made, the Minister considers that the object is no longer an object which is intrinsically of significant national, scientific, historical or aesthetic interest, the Minister may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on which the Minister considers that the object ceased to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and this subsection shall cease to apply to the object from that date.

(d) Where under paragraph (a) the Revenue Commissioners make a determination in relation to an object and—

(i) reasonable access to the object ceases to be afforded, or reasonable facilities for the viewing of the object cease to be provided, to the public, or

(ii) the object ceases to be owned by the person to whom relief in respect of that qualifying expenditure has been granted under this section,

the Revenue Commissioners may, by notice in writing given to the owner or occupier of the approved building in which the object is or was kept, revoke that determination with effect from the date on which they consider that such access, such facilities for viewing or such ownership, as the case may be, so ceased, and—

(I) this subsection shall cease to apply to the object from that date, and

(II) if relief has been given under this section in respect of qualifying expenditure incurred in relation to that object in the period of 2 years ending on the date from which the revocation has effect, that relief shall be withdrawn and there shall be made all such assessments or additional assessments as are necessary to give effect to this subsection.

(7) (a) Where a person makes a claim under subsection (2), an authorised person may at any reasonable time enter the building in respect of which the qualifying expenditure has been incurred for the purpose of inspecting, as the case may be, the building or an object or of examining any work in respect of which the expenditure to which the claim relates was incurred.

(b) Whenever an authorised person exercises any power conferred on him or her by this subsection, the authorised person shall on request produce his or her authorisation for the purposes of this section to any person concerned.

(c) Any person who obstructs or interferes with an authorised person in the course of exercising a power conferred on the authorised person by this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(8) Notwithstanding that the Revenue Commissioners have before the 23rd day of May, 1994, made a determination in accordance with subsection (5)(a)(ii) that a building is a building to which reasonable access is afforded to the public, relief under subsection (2), in relation to qualifying expenditure incurred in a chargeable period beginning on or after the 1st day of January, 1995, in respect of the building shall not be given unless the person who owns or occupies the building satisfies the Revenue Commissioners on or before the 1st day of January in the chargeable period that it is a building to which reasonable access is afforded to the public having regard to subsection (5)(b)(ii).

(9) In respect of relevant expenditure incurred on or after the 6th day of April, 1993, this section shall, with any necessary modifications, apply in relation to an approved garden as it applies in relation to qualifying expenditure incurred in relation to an approved building.

(10) Any claim for relief under this section—

(a) shall be made in such form as the Revenue Commissioners may from time to time prescribe, and

(b) shall be accompanied by such statements in writing as regards the expenditure for which relief is claimed, including statements by persons to whom payments were made, as may be indicated by the prescribed form.