

Disclaimer of capital allowances on holiday cottages, holiday apartments, etc. FA95 s49A; FA96 s30 355.—(1)
This section shall apply to—

(a) a building or structure to which section 352 applies by virtue of the building or structure being a holiday cottage of the type referred to in section 268 (3), and

(b) a building or structure which is a qualifying premises within the meaning of section 353 by virtue of the building or structure being—

(i) a holiday apartment registered under Part III of the Tourist Traffic Act, 1939 , or

(ii) other self-catering accommodation specified in a list published under section 9 of the Tourist Traffic Act, 1957 .

(2) (a) Subject to subsection (5), a building or structure to which this section applies shall not be a qualifying premises for the purposes of section 354 unless the person to whom an allowance under Chapter 1 of Part 9 would but for subsection (3) be made for the purposes of income tax or corporation tax, as the case may be, in respect of the capital expenditure incurred in the qualifying period on the construction or refurbishment of the building or structure elects by notice in writing to the appropriate inspector) to disclaim all allowances under that Chapter in respect of that capital expenditure.

(b) An election under paragraph (a) shall be included in the return required to be made by the person concerned under section 951 for the first year of assessment or the first accounting period, as the case may be, for which an allowance would but for subsection (3) have been made to that person under Chapter 1 of Part 9 in respect of that capital expenditure.

(c) An election under paragraph (a) shall be irrevocable.

(d) A person who has made an election under paragraph (a) shall furnish a copy of that election to any person (in this paragraph referred to as “the second-mentioned person”) to whom the person grants a qualifying lease) in respect of a building or structure to which this section applies, and the second-mentioned person shall include the copy in the return required to be made by the second-mentioned person under section 951 for the year of assessment or accounting period, as the case may be, in which rent is first payable by the second-mentioned person under the qualifying lease in respect of such a building or structure.

(3) Subject to subsection (5), where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a building or structure to which this section applies makes an election under subsection (2)(a), then, notwithstanding any other provision of the Tax Acts—

(a) no allowance under Chapter 1 of Part 9 shall be made to the person in respect of that capital expenditure,

(b) on the occurrence, in relation to the building or structure, of any of the events referred to in

section 274 (1), the residue of expenditure) in relation to that capital expenditure shall be deemed to be nil, and

(c) section 279 shall not apply in the case of any person who buys the relevant interest) in the building or structure.

(4) Subject to subsection (5), where in the qualifying period a person incurs capital expenditure on the acquisition, construction or refurbishment of a building or structure which is or is to be a building or structure to which subsection (1)(b) applies and an allowance is to be made in respect of that expenditure under section 271 or 272, then—

(a) neither section 305 (1)(b) nor section 308 (4) shall apply as respects that allowance, and

(b) neither section 381 nor section 396 (2) shall apply as respects the whole or part, as the case may be, of any loss which would not have arisen but for the making of that allowance.

(5) This section shall not apply—

(a) to expenditure incurred in the qualifying period on the acquisition, construction or refurbishment of a building or structure (in this subsection referred to as “the holiday cottage or apartment”) which is or is to be a building or structure to which this section applies where before the 5th day of April, 1996—

(i) a binding contract in writing was entered into for the acquisition or construction of the holiday cottage or apartment,

(ii) an application for planning permission for the construction of the holiday cottage or apartment was received by a planning authority, or

(iii) in relation to the holiday cottage or apartment, an opinion in writing was issued by the Revenue Commissioners to the effect that an allowance to be made in respect of expenditure on the holiday cottage or apartment would not be restricted by virtue of section 408,

or

(b) where before the 5th day of April, 1996—

(i) expenditure was incurred on the acquisition of land on which the holiday cottage or apartment is to be constructed or refurbished, by the person who incurred the expenditure on that construction or refurbishment, or

(ii) a binding contract in writing was entered into for the acquisition of that land by that person,

and that person can prove to the satisfaction of the Revenue Commissioners that a detailed plan had been prepared and that detailed discussions had taken place with a planning authority in relation to the holiday cottage or apartment on or after the 8th day of February, 1995, but before the 5th day of April, 1996, and

that this can be supported by means of an affidavit from the planning authority.