

Capital allowances in relation to construction or refurbishment of certain commercial premises. FA94 s41; FA95 s35(1)(d) 342.—(1) (a) In this section, “qualifying premises” means a building or structure the site of which is wholly within a designated area, or which fronts on to a designated street, 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 any part of a building or structure in use as or as part of a dwelling house or an office.

(b) Notwithstanding paragraph (a)—

(i) in relation to a building or structure no part of the site of which is within any one of the county boroughs of Dublin, Cork, Limerick, Galway or Waterford, paragraph (a) shall be construed as if “or an office” were deleted;

(ii) where, in relation to a building or structure any part of the site of which is within any one of the county boroughs of Dublin, Cork, Limerick, Galway or Waterford, any part (in this paragraph referred to as “the specified part”) of the building or structure is not a qualifying premises and—

(I) the specified part is in use as, or as part of, an office, and

(II) the capital expenditure incurred in the qualifying period on the construction or refurbishment of the specified 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 specified part shall be treated as a qualifying premises.

(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) (a) In the case of a qualifying premises which fronts on to a designated street, subsection (2) shall apply only in relation to capital expenditure incurred in the qualifying period on the refurbishment of the qualifying premises and only if the following conditions are satisfied—

(i) that the qualifying premises were comprised in an existing building or structure (in this subsection referred to as “the existing building”) on the 1st day of August, 1994, which fronts on to the designated street, and

(ii) that, apart from the capital expenditure incurred in the qualifying period on the refurbishment of the qualifying premises, expenditure is incurred on the existing building which is—

(I) conversion expenditure within the meaning of section 347,

(II) relevant expenditure within the meaning of section 348, or

(III) qualifying expenditure within the meaning of section 349 (being qualifying expenditure on refurbishment within the meaning of that section),

and in respect of which a deduction has been given, or would on due claim being made be given, under section 347, 348 or 349, as the case may be.

(b) Notwithstanding paragraph (a), subsection (2) shall not apply in relation to so much (if any) of the capital expenditure incurred in the qualifying period on the refurbishment of the qualifying premises as exceeds the amount of the deduction, or the aggregate amount of the deductions, which has been given, or which would on due claim being made be given, under section 347, 348 or 349, as the case may be, in respect of the conversion expenditure, the relevant expenditure or, as the case may be, the qualifying expenditure.

(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 shall be reduced to one-half of the amount which apart from this subsection would be the amount of that allowance or charge.

(b) 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.

(c) 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.