

# **Notes for Guidance - Taxes Consolidation Act 1997**

**Finance Act 2022 edition**

## **PART 9**

### **Principal Provisions Relating to Relief for Capital Expenditure**

**December 2022**



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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**PART 9 Principal Provisions Relating to Relief for Capital Expenditure**

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## **PART 9**

### **PRINCIPAL PROVISIONS RELATING TO RELIEF FOR CAPITAL EXPENDITURE**

#### **CHAPTER 1**

*Industrial buildings or structures: industrial building allowances, writing-down allowances, balancing allowances and balancing charges*

#### **Overview**

This Chapter provides, in the form of a system of capital allowances, relief in respect of capital expenditure incurred on the construction or refurbishment of “industrial buildings or structures” as defined in **section 268**. The system of capital allowances in the Chapter is also applied (in differing ways) in relation to other property based tax incentives schemes by the provisions of the various Chapters of **Part 10** and by **section 843** and **843A**.

The types of capital allowances available in respect of qualifying capital expenditure incurred are industrial building (initial) allowances, annual writing-down allowances and accelerated writing-down allowances (free depreciation). Balancing allowances or balancing charges may also apply.

The use of capital allowances which arise directly under this Chapter, or by virtue of its application, is affected by limitations under other provisions e.g. the limitation on certain reliefs used by high income individuals as provided by **Chapter 2A** of **Part 15** and **Schedule 25B**.

#### **268 Meaning of “industrial building or structure”**

##### **Summary**

Broadly, an industrial building or structure is a building or structure in use for the purpose of any of the following trades, namely, a trade carried on in a mill, factory or other similar premises, or in a laboratory the sole or main function of which is the analysis of minerals in connection with exploring for and extracting minerals; a dock undertaking; the growing of fruit, vegetables or other produce in the course of a trade of market gardening; the trade of hotel-keeping; the intensive production of cattle, sheep, poultry or eggs in the course of a trade other than farming; the operation or management of an airport; the operation or management of a registered private nursing home, including associated qualifying residential units for the aged or infirm; the operation or management of certain convalescent homes; the operation or management of a qualifying hospital, the operation or management of a qualifying sports injuries clinic and the operation or management of a qualifying mental health centre. The tax incentive schemes in relation to registered private nursing homes including associated qualifying residential units for the aged or infirm, convalescent homes, qualifying hospitals, qualifying sports injuries clinics and qualifying mental health centres have been terminated (please refer to subsection (3B) and (9) for the relevant dates). An airport runway or apron in use for the purposes of a trade consisting of the operation or management of an airport is also regarded as an industrial building or structure. Moreover, a building or structure provided by the person carrying on any of the trades mentioned above for the recreation and welfare of employees of that trade is also treated as an industrial building or structure. The Finance Act 2008 also provides that a building or structure in use for the purpose of the operation or management of a qualifying specialist palliative care unit may qualify – this provision requires EU approval and is subject to

commencement by way of order of the Minister for Finance. Finally, a building or structure in use for the purpose of the maintenance, repair or overhaul of commercial aircraft or the dismantling of such aircraft for the purposes of the salvaging or recycling of parts or materials may also be treated as an industrial building. This provision was included by section 27 of the Finance Act 2015 and commenced by Financial Resolution on 13 October 2015.

Registered holiday camps are treated as being in use for the purposes of the trade of hotel-keeping and, thus, qualify as industrial buildings or structures. Registered holiday cottages were also so treated but, subject to transitional arrangements which end on 31 July 2008, they ceased to qualify as an industrial building or structure as respects capital expenditure incurred on or after 4 December 2002. Registered guest houses and registered holiday hostels are treated as being in use for the purposes of the trade of hotel-keeping as respects capital expenditure incurred on or after 3 February 2005 as are registered caravan and camping sites as respects capital expenditure incurred on or after 1 January 2008.

### ***Restriction on the amount of expenditure in certain cases***

By virtue of the provisions of **sections 270** and **316** only 75 per cent of capital expenditure attributable to the year 2007 and 50 per cent of the capital expenditure attributable to the period 1 January 2008 to 31 July 2008 may qualify for relief in the case of the construction or refurbishment of registered hotels, holiday camps and holiday cottages. An overall cap also applies for the period 1 January 2007 to 31 July 2008. The restrictions to 75 per cent and 50 per cent also apply to capital expenditure incurred in relation to qualifying sports injuries clinics and qualifying residential units. However, in the case of such units, the 75 per cent restriction for 2007 applies from 25 March 2007 rather than from 1 January 2007. (Please refer to the notes on **sections 270(4)** to **(7)** and **section 316(2B)** for full details).

Following further changes made to the scheme of capital allowances for qualifying residential units in the Finance Act 2007, capital expenditure incurred under contracts entered into on or after 1 May 2007 will qualify only in relation to 50 per cent of the expenditure incurred in the period 1 May 2007 to 30 April 2010 in the case of individuals and in relation to 75 per cent of the expenditure incurred in that period in the case of companies.

### **Details**

#### ***Industrial building or structure – general meaning***

- An industrial building or structure is a building or structure in use for the purposes of — (1)
- a trade carried on in a mill, factory or other similar premises or in a laboratory the sole or main function of which is the analysis of minerals in connection with the exploration for, or the extraction of, minerals, (1)(a)
  - a dock undertaking, (1)(b)
  - growing fruit, vegetables or other produce in the course of market gardening, (1)(c)
  - the trade of hotel-keeping (see **subsections (2C), (2D), (3)** and **(11)** to **(15)** also), (1)(d)
  - the intensive production of cattle, sheep, pigs, poultry or eggs in the course of a trade other than farming, (1)(e)
  - the trade of the operation or management of an airport, but this provision extends only to structures which are airport runways or airport aprons, (1)(f)
  - the trade of the operation or management of a registered private nursing home, (see also **subsections (3A)** to **(3E)** as respects capital expenditure incurred in the period 25 March 2002 to 30 April 2010 in relation to qualifying residential units for the aged or infirm), (1)(g)

- the trade of the operation or management of an airport other than as regards runways or aprons, (1)(h)
- the trade of the operation or management of a convalescent home which provides medical and nursing care for persons recovering from treatment in a hospital which treats acutely ill patients. Moreover, to qualify as an industrial building or structure, the Health Service Executive must be satisfied that the home satisfies the requirements of sections 4 and 6 of the Health (Nursing Homes) Act, 1990, and any regulations made under section 6 of that Act, as if it were a nursing home, (1)(i)
- the trade of the operation or management of a qualifying hospital (but see *subsection (1A)* for certain exclusions), (1)(j)
- the trade of the operation or management of a qualifying sports injuries clinic (but see *subsection (1B)* for certain exclusions), (1)(k)
- the trade of the operation or management of a qualifying mental health centre (but see *subsection (1D)* for certain exclusions), (1)(l)
- the trade of the operation or management of a qualifying specialist palliative care unit (but see *subsection (1E)* for certain exclusions and *subsection (9)* regarding commencement), or (1)(m)
- a trade which consists of the maintenance, repair or overhaul of aircraft used to carry passengers or cargo for hire or reward or the dismantling of such aircraft for the purposes of the salvaging or recycling of parts or materials (but see *subsection (1F)* and *subsections (5A) to (5C)* for certain exclusions, limitations and conditions). These buildings or structures are referred to as aviation services facilities throughout Part 9. (1)(n)

In addition, as respects capital expenditure incurred on or after 6 April, 1969, any building or structure which is provided by the person carrying on any of the trades or undertakings mentioned above for the recreation or welfare of the employees of that trade or undertaking and is in use for that purpose is an industrial building or structure.

***Exclusion of qualifying hospitals, qualifying sports injuries clinics, qualifying mental health centres, qualifying specialist palliative care units and aviation services facilities where the relevant interest is held by certain persons***

A qualifying hospital, a qualifying sports injuries clinic, a qualifying mental health centre or a qualifying specialist palliative care unit will not be treated as an industrial building or structure as regards a claim for capital allowance by any of the following categories of persons where the relevant interest (see *section 269*) in relation to capital expenditure incurred on its construction or refurbishment is held by them. The excluded categories are: (1A), (1B), (1D)& (1E)

- a company,
- the trustees of a trust,
- an individual involved in the operation or management of the hospital, sports injuries clinic, mental health centre or qualifying specialist palliative care unit either as an employee or director or in any other capacity, or
- a property developer or a person connected with a property developer, where the capital expenditure on the construction or refurbishment is incurred by either of those persons or it is incurred by some other person connected with the property developer.

Capital allowances will be denied only to the person or persons in the excluded category or categories. The rule applies whether the relevant interest in the construction or refurbishment expenditure is held by any such person in a sole capacity or jointly or in partnership with another person or persons.

Where the relevant interest in relation to capital expenditure incurred on the construction or refurbishment of an aviation services facility is held by a property developer or a connected person and where either the property developer or the connected person incurred the capital (1F)

expenditure or it was incurred by some other person connected with the property developer, then the capital expenditure incurred will not be treated as specified capital expenditure for the purposes of the accelerated capital allowances provided under section 272(3)(k)(i). Again, this rule applies whether the relevant interest in the facility is held by the excluded category of person in a sole capacity or jointly or in partnership with another person or persons.

### ***Meaning of qualifying mental health centre***

A qualifying mental health centre is a centre (within the meaning of section 62 of the Mental Health Act 2001) which: (1C)

- is an approved centre (i.e. registered under Part 5 of the Mental Health Act 2001); (1C)(a)
- provides day-patient and out-patient services and has a minimum of 20 in-patient beds for overnight accommodation; (1C)(b)
- provides data regarding the investment being made in it to the Health Service Executive (HSE), for onward transmission to the Minister for Health and Children and the Minister for Finance, in order to assess the costs and benefits of the scheme (The data required includes amount of construction expenditure; number/nature of investors; amount invested by each; nature of structures put in place etc.), and (1C)(c)
- gives an undertaking to the HSE to make 20 per cent of its capacity available (at a 10 per cent discount) for public patients, if that capacity is required by the HSE, and (1C)(d)
- in respect of which the HSE certifies, on an annual basis for 15 years from first use, that it is satisfied that the above conditions have been complied with. (1C)(e)

Rooms used exclusively for the assessment or treatment of patients can qualify but no relief is available for the construction or refurbishment of consultants' rooms and offices as these are specifically excluded from the definition. (1C)(I) & (II)

### ***Meaning of dock undertaking***

A dock includes any harbour, wharf, pier, jetty or other works in or at which vessels can ship or unship merchandise or passengers, but does not include a pier or jetty used primarily for recreation, and “dock undertaking” is to be construed accordingly. (2)

### ***Meaning of qualifying hospital***

A qualifying hospital is a hospital which meets all of the following conditions: (2A)

- it is a private hospital (within the meaning of the Health Insurance Act, 1994 (Minimum Benefits) Regulations, 1996 (S.I. No. 83 of 1996)), (2A)(a)
- it has the capacity to, and normally does, provide medical and surgical services to persons every day of the year, (2A)(c)
- it has the capacity to provide: (2A)(d)
  - out-patient services and accommodation on an over-night basis of not less than 70 in-patient beds, or
  - in the case of capital expenditure incurred on the construction or refurbishment of a building or structure on or after 28 March 2003, day-case out-patient medical and surgical services and accommodation for such services of not less than 40 beds,
- it contains at least one operating theatre and related on-site diagnostic and therapeutic facilities, (2A)(e)
- it contains facilities to provide not less than 5 of the following services, namely, accident and emergency; cardiology and vascular; eye, ear, nose and throat; gastroenterology; geriatrics; haematology; maternity; medical; neurology; oncology; orthopaedic; respiratory; rheumatology; paediatric; and, as respects capital (2A)(f)

expenditure incurred on or after 1 January 2006, mental health services.

- it provides data regarding the investment being made in it to the Health Service Executive (HSE), for onward transmission to the Minister for Health and Children and the Minister for Finance, in order to assess the costs and benefits of the scheme (This applies to buildings and structures that are first used, or first used after refurbishment, on or after 1 February 2007 and the data required includes amount of construction expenditure; number/nature of investors; amount invested by each; nature of structures put in place etc.), (2A)(fa)
- it undertakes to the Health Service Executive — (2A)(g)
  - to make available annually, for the treatment of persons who have been awaiting in-patient or out-patient hospital services as public patients, not less than 20 per cent of its capacity, subject to service requirements to be specified by the Health Service Executive in advance and to the condition that the Health Service Executive will not be required to take up all or any part of the capacity so made available to it, and
  - that the fees to be charged for treatment afforded to any such person will not be more than 90 per cent of the fees which would be charged in respect of similar treatment afforded to a person who has private medical insurance,
- the Health Service Executive, in consultation with the Minister for Health and Children and with the consent of the Minister for Finance, must give an annual certificate in writing during the period of 15 years from first use stating that it is satisfied that the hospital complies with the conditions mentioned above. This 15-year period applies to buildings and structures that are first used (or first used after refurbishment) on or after 1 February 2007. The certification period for buildings and structures in use prior to that date is 10 years. (2A)(h)

Rooms used exclusively for the assessment or treatment of patients can qualify but no relief is available for the construction or refurbishment of consultants' rooms and offices as these are specifically excluded from the definition. (2A)(I) & (II)

### ***Meaning of qualifying sports injuries clinics***

A qualifying sports injuries clinic is a medical clinic which meets certain conditions. The conditions are that — (2B)

- the clinic must not, other than in accordance with (e)(i) below, provide health care services to public patients pursuant to their entitlements under the Health Act, 1970, (2B)(a)
- the sole or main business of the clinic must be the provision of health care consisting of the diagnosis, alleviation and treatment of sports-related injuries, and this care must be provided by or under the control of medical or surgical specialists, (2B)(b)
- the clinic must have the capacity to provide day-patient, in-patient and out-patient medical and surgical services and not less than 20 in-patient beds, (2B)(c)
- the clinic must contain at least one operating theatre and related on-site diagnostic and therapeutic facilities, (2B)(d)
- the clinic must undertake to the Health Service Executive — (2B)(e)
  - to make available annually, for the treatment of persons who have been awaiting day-patient, in-patient or out-patient hospital services as public patients, not less than 20 per cent of its capacity, subject to service requirements to be specified by the Health Service Executive in advance and to the condition that the Health Service Executive will not be required to take up all or any part of the capacity so made available to it, and
  - that the fees to be charged in respect of the treatment afforded to any such person will not be more than 90 per cent of the fees which would be charged in



respect of similar treatment afforded to a person who has private medical insurance,

- the Health Service Executive, in consultation with the Minister for Health and Children and with the consent of the Minister for Finance, must give an annual certificate in writing stating that it is satisfied that the clinic complies with the conditions mentioned above. The annual certificate must be given each year during the period of 10 years from first use. (2B)(f)

Rooms used exclusively for the assessment or treatment of patients can qualify but no relief is available for the construction or refurbishment of consultants' rooms and offices as these are specifically excluded from the definition. (2B)(I) &(II)

### ***Meaning of qualifying specialist palliative care unit***

The definitions of “palliative care” and “qualifying specialist palliative care unit” set out the meaning and requirements in relation to qualifying units. (2BA)

“palliative care” means the active total care of patients who suffer from illnesses or diseases which are active, progressive and advanced in nature and which are no longer curable by means of the administration of existing or available medical treatments;

Subject to **subsection (2BB)**, “qualifying specialist palliative care unit” is a building or structure:

- which is a hospital, hospice (within the meaning of section 47 (as amended) of the Public Health (Tobacco) Act 2002) or similar facility which has palliative care as its main activity, (a)
- which is approved by the Health Service Executive, with the consent of the Minister for Health and Children, as being in accordance with national development plans or national needs assessments for palliative care facilities, before a legal commitment is entered into for its design, commissioning, construction or refurbishment, (b)
- which, in relation to palliative care, has the capacity to provide day-patient and out-patient services with a minimum of 8 in-patient beds for overnight accommodation; (c)
- in respect of which data regarding the investment being made in it (including construction costs etc. and any grants received) is provided to the Health Service Executive (HSE), for onward transmission to the Minister for Health and Children and the Minister for Finance, in order to assess the costs and benefits of the scheme, (d)
- in relation to which an undertaking is given to the HSE— (e)
  - to make available annually, for the palliative care of persons who have been awaiting day-patient, in-patient or out-patient palliative care services as public patients, not less than 20 per cent of its capacity, subject to service requirements to be specified by the Health Service Executive in advance and to the condition that the Health Service Executive will not be required to take up all or any part of the capacity so made available to it, and
  - that the fees to be charged in respect of the palliative care afforded to any such person will not be more than 90 per cent of the fees which would be charged in respect of similar palliative care afforded to a person who has private medical insurance,
  - in respect of which the HSE certify, on an annual basis for 15 years from first use, that it is satisfied that the above conditions have been complied with. (f)

Rooms used exclusively for the assessment, treatment and care of patients can qualify but consultants' rooms and offices are specifically excluded from qualifying i.e. no relief is available for the construction or refurbishment of these. Likewise no relief applies in relation to any part of a unit where the majority of persons being maintained are being (2BB)

treated for acute illnesses.

***Registered guest houses and registered holiday hostels***

For the purposes of making capital allowances available under **Part 9**, a guest house or holiday hostel registered in the appropriate register kept under the Tourist Traffic Acts 1939 to 2003 is deemed to be a building or structure in use for the purposes of the trade of hotel-keeping. This provision applies as respects capital expenditure incurred on or after 3 February 2005 on the construction or refurbishment of the building involved. By virtue of the provisions of **section 272**, capital expenditure on these buildings will qualify for capital allowances at a rate of 4 per cent per annum. (2C)

***Registered caravan and camping sites***

For the purposes of making capital allowances available under **Part 9**, buildings and structures which are comprised in, and are in use as part of, premises which are registered in the register of caravan sites and camping sites kept under the Tourist Traffic Acts 1939 to 2003 are deemed to be buildings and structures in use for the purposes of the trade of hotel-keeping. This provision applies as respects capital expenditure incurred on or after 1 January 2008 on the construction or refurbishment of the building involved. By virtue of the provisions of **section 272**, capital expenditure on these buildings will qualify for capital allowances at a rate of 4 per cent per annum. (2D)

***Registered holiday camps and registered holiday cottages***

For the purposes of making capital allowances available under **Part 9**, a building or structure in use as a holiday camp registered in the register of holiday camps under the Tourist Traffic Acts 1939 to 2003 is deemed to be in use for the purposes of the trade of hotel-keeping. As respects capital expenditure incurred on or after 1 July 1968 and, subject to transitional arrangements (see **subsection (13)** for these), before 4 December 2002 a registered holiday cottage was, for such purposes, also deemed to be in use for the purposes of the trade of hotel-keeping. (3)

***“qualifying residential units” for the aged or infirm which are associated with a registered nursing home***

A qualifying residential unit means a house which satisfies a number of conditions. The conditions are that the house — (3A)

- is constructed on the site of, or on a site which is immediately adjacent to the site of, a registered nursing home. (3A)(a)
- is either: (3A)(b)
  - a single storey house, or
  - as respects capital expenditure incurred on or after 4 February 2004, a house which is comprised in a larger building of any number of storeys provided that a fire safety certificate is required and issued in relation to the building by the relevant building control authority, prior to the commencement of the construction works on the building,

where:

- the house and any building in which it is comprised are designed and constructed to meet the needs of persons with disabilities, including in particular persons confined to wheelchairs, and
- the house consists of 1 or 2 bedrooms, a kitchen, a living room, bath or shower facilities, toilet facilities and a nurse call system linked to the registered nursing home.

- is comprised in a development of at least 10 qualifying residential units (or, as respects capital expenditure incurred before 4 February 2004, 20 such units) where — (3A)(c)
  - that development also includes a day-care centre,
  - those units are operated or managed by the registered nursing home and an on-site caretaker is provided,
  - back-up medical care (including nursing care) is provided by the registered nursing home to the occupants of those units when required by those occupants,
  - not less than 20 per cent of those units are made available for renting to persons who are eligible for a rent subsidy from the Health Service Executive, subject to the service requirements of the Health Service Executive and at its discretion, and
  - the rent to be charged in respect of any such unit made available in accordance with the above condition is not more than 90 per cent of the rent which would be charged if that unit were rented to a person who is not in receipt of such a rent subsidy,
- and
- is leased to a person or persons who has or have been certified by a medical practitioner as requiring such accommodation by reason of old age or infirmity. With effect from 1 January 2006, a house may be leased directly to a registered nursing home – provided that it is leased on condition that it is subsequently leased by the registered nursing home to an elderly or infirm person and, in fact, it is used for no other purposes. (3A)(d)

In relation to capital expenditure incurred under contracts entered into on or after 1 May 2007, a qualifying residential unit may be leased to a person and, if applicable, the spouse or civil partner of that person provided that:

- neither person is connected with the lessor,
- their selection as occupants was made by the registered nursing home, and
- a Medical Practitioner certified one of them as requiring the accommodation by reason of old age or infirmity.

“Qualifying residential units” – provision to trigger capital allowances.

A “house” in the context of a qualifying residential unit has the same meaning as in **section 372AK**. (3B)(a)

For the purposes of making capital allowances available under **Part 9**, but subject to **subsection (3C)** and **sections 270** and **316**, a qualifying residential unit is deemed to be a building or structure in use for the purposes of a trade as referred to in **subsection (1)(g)** (i.e. registered nursing home trade). This rule, which is a mechanism to make the same regime of capital allowances available for qualifying residential units as applies to registered nursing homes, does not affect the nature of the income that arises from the property involved. [Because of the requirement in **subsection (3A)** above that the residential unit must be leased to qualify, the income arising from the leasing of the property itself will therefore be rental income chargeable under Case V]. This provision applies in relation to capital expenditure incurred in the period beginning on 25 March 2002 and ending on 30 April 2010. (3B)(b)

Capital allowances will not be available where any part of the expenditure incurred on the construction of a qualifying residential unit has been or is to be met by grant assistance from the State or any of its agencies. (3C)

Where a company owns all qualifying residential units in a development the provisions of (3D)

*paragraphs (c)(iv) and (v) of subsection (3A)* do not apply. These provisions require a minimum of 20 per cent of units to be made available to the HSE at a 10 per cent discount.

***“Qualifying residential units” HSE certification, provision of information and annual report***

A house will not be a qualifying residential unit, as respects capital expenditure incurred (3E) under a contract or agreement for the construction, refurbishment or development of a qualifying residential unit which is entered into on or after 1 May 2007, unless:

- the person who is entitled to claim capital allowances provides information to the HSE regarding the investment in the house (this includes the amount of capital expenditure incurred; the number and nature of the investors; the amount invested by each and the nature of the structures used to facilitate the investment. This information will be made available to the Minister for Health and Children and to the Minister for Finance),
- the HSE give a certificate in writing after first letting which certifies that the house complies with the various conditions in *subsection (3A)* and that the information in relation to the investment in the house has been provided, and
- an annual report in writing is provided by the person who is entitled to claim capital allowances which confirms whether the conditions of *subsection (3A)* are still being satisfied and which provides details of the level of occupation of the house for the previous year including the age and, as applicable, the nature of the infirmity of the occupants.

***Preparation of land for installation of machinery or plant***

If capital expenditure is incurred on preparing, cutting, tunnelling or levelling land for the purposes of the installation of machinery or plant, the machinery or plant in question is treated as an industrial building or structure in relation to that expenditure. (4)

***Buildings or structures outside the State***

Expenditure incurred on or after 23 April 1996 on the construction of, or on the acquisition of the relevant interest in, a building or structure outside the State is not to be treated as expenditure on an industrial building or structure. However, this provision does not apply where — (5)

- the person who incurs the expenditure entered into a binding contract in writing for the acquisition of the site for the building or structure, or an agreement in writing in relation to an option to acquire that site, before 23 April, 1996,
- that person entered into a binding contract in writing for the construction of the building or structure on or before 1 July, 1996,
- the construction of the building or structure commenced on or before 1 July, 1996 and is completed before 30 September, 1998, and
- the building or structure will be used for the purposes of a trade, the profits or gains from which are taxable in the State.

***Aviation services facilities***

The tax relief available under the scheme of accelerated allowances for specialist aviation services is restricted so that the aid granted per project does not breach the de minimis limits as set by the European Commission. The de minimis Guidelines stipulate that the aid granted must not exceed the €200,000 limit over any three consecutive fiscal years. In order to ensure that this level of aid is not breached, a cap on the amount of expenditure that can qualify for tax relief at the accelerated rate (specified capital expenditure) is imposed. The limits are €1.25 million for an individual and €5 million for a company. These limits reflect the fact that individuals are taxed at a higher rate than companies. These limits are per project and not per investor and were arrived at based on the Net Present Value of the aid, (5A)(a)

discounted at 1.44% as per European requirements.

In addition, there is a requirement that before any relief can be claimed in relation to this expenditure, the following information must be provided to the Revenue Commissioners: (5A)(b)

- name, address and tax reference number of the claimant,
- the address of the building or structure in respect of which the specified capital expenditure was incurred, and
- details of the aggregate amount of specified capital expenditure which was incurred by the claimant.

This information is necessary to ensure that the level of expenditure does not exceed the limits provided for in the EU de minimis Guidelines.

Notwithstanding the general prohibition on Revenue under *section 851A* on the disclosure of information relating to taxpayers, any information which has been submitted in accordance with *subsection (5A)(b)* may be disclosed by Revenue to one or more persons. However, this can only be done where the information is needed to ensure that the claim for relief is in compliance with the provisions of this Part and any European Commission guidelines, regulations or other reporting requirements that may be relevant. This essentially means that Revenue may disclose this information to officials of the European Commission, who are responsible for monitoring and supervising the de minimis Guidelines. (5B)

The amount of capital expenditure that will qualify as specified capital expenditure where a number of individuals or companies or both invest in a project will be determined by a formula. The specified capital expenditure must not exceed an amount that will give rise to tax relief greater than €625,000. This is the maximum amount of relief from corporation tax that is allowable given that a cap of €5 million of qualifying expenditure incurred over 7 years applies to a company. The formula reflects that individuals are taxed at a higher rate than companies. Revenue will not prescribe how the specified capital expenditure is actually apportioned between the individual or the company but rather imposes a cap on the maximum amount of relief that can be claimed over 7 years i.e. €625,000. (5C)

### ***Buildings or structures in use for part of a trade***

To qualify as an industrial building or structure, a building or structure must be in use for the purposes of any of the trades or undertakings referred to in *subsection (1)*. Where only part of a trade comes within *subsection (1)*, a building or structure is not an industrial building or structure unless it is in use for the purposes of that part of the trade. (6)

### ***Exclusion of dwelling houses, shops etc.***

Certain buildings and structures are specifically excluded from qualification as an industrial building or structure. These are dwelling houses (other than registered holiday cottages (see *subsection (3)*)) and qualifying residential units (see *subsections (3A) to (3E)*), retail shops, showrooms, offices and any buildings or structures in use for any purpose ancillary to such excluded dwelling houses, retail shops, showrooms and offices. (7)

Where, however, part of a building or structure qualifies as an industrial building or structure and part does not, the whole of the building or structure will still qualify as an industrial building or structure if the capital expenditure incurred on the construction of the “non-qualifying” part does not exceed 10 per cent of the total capital expenditure incurred on the construction of the whole building or structure. (8)

### ***Application dates of various schemes***

The dates from which certain types of buildings and structures qualify as an industrial (9)

building or structure (and accordingly for capital allowances) are as follows:

- capital expenditure on a laboratory for analysing minerals must be incurred on or after 25 January 1984, (9)(a)
- capital expenditure on a building or structure for the intensive production of cattle, sheep, pigs, poultry or eggs must be incurred on or after 6 April 1971, (9)(b)
- capital expenditure on airport runways and airport aprons must be incurred on or after 24 April 1992, (9)(c)
- capital expenditure on registered nursing homes must be incurred in the period 3 December 1997 to 31 December 2009. However, where the conditions of *subsection (17)* are satisfied, expenditure up to 30 June 2010 or 30 June 2011 may qualify. (9)(d)
- capital expenditure on airports (other than runways and aprons) must be incurred — (9)(e)
  - by “Dublin Airport Authority” on or after “vesting day” (see *subsection (10)* for the meaning of both of these terms), and
  - by any other person, on or after 27 March 1998, i.e. the date of the passing of the Finance Act 1998,
- capital expenditure on convalescent homes must be incurred in the period 2 December 1998 to 31 December 2009. However, where the conditions of *subsection (17)* are satisfied, expenditure up to 30 June 2010 or 30 June 2011 may qualify. (9)(f)
- capital expenditure on qualifying hospitals must be incurred in the period 15 May 2002 or 28 March 2003 (hospitals that provide day-case and out-patient services) to 31 December 2009. However, where the conditions of *subsection (17)* are satisfied, expenditure up to 30 June 2010 or 31 December 2013 may qualify. (9)(g)
- capital expenditure on qualifying sports injuries clinics must be incurred in the period 15 May 2002 to 31 December 2006. However, where the conditions of *subsection (16)* are satisfied, expenditure up to 31 July 2008 may qualify. (9)(h)
- capital expenditure on qualifying mental health centres must be incurred in the period 23 January 2007 to 31 December 2009. However, where the conditions of *subsection (17)* are satisfied, expenditure up to 30 June 2010 or 30 June 2011 may qualify. (9)(i)
- capital expenditure on qualifying specialist palliative care units must be incurred on or after 13 March 2008. However, the commencement of this scheme is awaiting the necessary EU approval and order of the Minister for Finance. (9)(j)
- specified capital expenditure (i.e. expenditure qualifying for the accelerated capital allowances under section 272(3)(k)(i)) on aviation services facilities must be incurred in the period starting from 13 October 2015 and ending on 13 October 2020 . (9)(k)(i)
- capital expenditure (other than specified capital expenditure) on aviation services facilities must be incurred on or after 13 October 2015. (9)(k)(ii)

***Meaning of “Dublin Airport Authority” and “Vesting Day”***

The term “Dublin Airport Authority” means the public limited company of that name but also includes the Cork Airport Authority or/and the Shannon Airport Authority where a day has been appointed under section 5 of the State Airports Act 2004 in relation to either or both of those companies. (10)

“vesting day” means—

in relation to the Dublin Airport Authority, the day appointed by order under section 9(6) of the State Airports Act 2004,

in relation to the Cork Airport Authority or/and the Shannon Airport Authority, such other day or days as may be appointed by order or orders under section 5 of that Act.

***Exclusion of certain hotels from meaning of industrial building or structure***

A building or structure in use for the purposes of the trade of hotel-keeping will not be (11)

treated as an industrial building or structure,

- in the case of capital expenditure incurred on or after 20 March 2001, if any part of that expenditure is met, directly or indirectly, by way of grant assistance, from the State or any other person, and
- in the case of capital expenditure incurred on or after 1 January 2002, if any part of that expenditure is met, directly or indirectly, by the State or any of its agencies.

Capital expenditure which has been incurred on the construction or refurbishment of an industrial building or structure for the purposes of aviation services facilities shall not be treated as specified capital expenditure where any part of that expenditure is met, directly or indirectly, by way of grant assistance, from the State or any of its agencies. (11A)

There is a requirement to obtain approval from the European Commission before capital allowances can be given for certain large projects. Under its State Aid rules the Commission must be notified where the potential level of aid, in the form of capital allowances, exceeds a certain threshold. In approving a project the Commission may reduce the amount of the expenditure that can qualify for capital allowances below the expenditure that was actually incurred and that would otherwise have qualified for capital allowances. Accordingly, a hotel will not be treated as an industrial building or structure unless the National Tourism Development Authority (Fáilte Ireland) certifies in writing — (12)

- that it has received a declaration from the person as to whether or not the person is — (12)(a)
  - a small or medium-sized enterprise within the meaning of Annex 1 to Commission Regulation (EC) No. 70/2001 [see page 33 of OJ No. L10 of 13 January 2001] on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises, or
  - a micro, small or medium-sized enterprise within the meaning of the Annex to Commission Recommendation of 6 May 2003 [see page 36 of OJ No. L124 of 20 May 2003],
- in the case of expenditure incurred on or after 1 January 2002, that the expenditure concerned falls within the meaning of ‘initial investment’ contained in point 4.4 of the ‘Guidelines on National Regional Aid’ prepared by the European Commission, (12)(b)
- in the case of expenditure incurred on or after 1 January 2003 on a building or structure provided for the purposes of a project which is subject to the notification requirements of the ‘Multisectoral framework on regional aid for large investment projects’ prepared by the European Commission and dated either 7 April 1998 or 19 March 2002, that approval of the potential capital allowances involved has been received from that Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance. [The rules of each framework will decide as to which is applicable in any case. The new framework is effective from 1 January 2004], (12)(c)
- that such person has undertaken to furnish to the Minister for Finance, or to such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance, upon request in writing by the Minister concerned or by that agency or body, such further information as may be necessary to enable compliance with the reporting requirements of: (12)(d)
  - the Regulation or Recommendation referred to in paragraph (a) or in the case of expenditure incurred on or after 1 January 2002, the Multisectoral framework referred to in paragraph (c),
  - in the case of expenditure incurred on or after 1 January 2002, ‘Community guidelines on State aid for rescuing and restructuring firms in difficulty’ prepared by the European Commission [page 2 of OJ No. C288 of 9 October 1999 or page 2 of OJ No. C244 of 1 October 2004], or

- any other European Communities Regulation or Directive under the European Communities Treaty governing the granting of State aid in specific sectors.

These certification requirements apply in the case of capital expenditure incurred on the construction or refurbishment of hotel buildings where construction or refurbishment first commenced on or after 6 April 2001 and annual allowances greater than 4% are involved. They apply to actual hotel buildings but do not apply to buildings deemed to be in use for the purposes of the trade of hotel-keeping.

Investors in large hotel projects will not be denied capital allowances because of delays in receiving European Commission approval. While capital allowances cannot be claimed until Commission approval is received, they will apply retrospectively if, and when, approval is given and the certificate is received, from the date that the hotel began operating as a hotel following the construction or refurbishment work. Any necessary adjustments to assessments for earlier years will be made at that stage. For the purposes of **Part 9**, including the reference to “the net price paid” in **section 279(2)(b)**, where the Commission has put a cap on the amount of capital allowances that can be given for a particular project, that lower amount is to be substituted for the amount of expenditure that would otherwise have qualified for capital allowances. (12A)

### ***Registered Holiday Cottages – termination of relief***

A registered holiday cottage may not, as respects capital expenditure incurred on its construction (including, by virtue of **section 270**, its refurbishment) on or after 4 December 2002, be regarded as a building in use for the trade of hotel-keeping. However this provision will not apply as respects capital expenditure incurred by 31 December 2006 or by 31 July 2008 where certain conditions are met. (13)(a)

Capital expenditure incurred by 31 December 2006 on the construction or refurbishment of a holiday cottage may qualify if: (13)(b)

- a planning application (other than for outline permission), in so far as planning permission is required, in respect of the holiday cottage is made in accordance with the Planning and Development Regulations 2001 to 2002, the planning authority acknowledge under article 26(2) of the Planning and Development Regulations 2001 that the application was received on or before 31 December 2004, and the application is not an invalid application under article 26(5) of those regulations,
- a planning application (other than for outline permission), in so far as planning permission was required, in respect of the holiday cottage was made in accordance with the Local Government (Planning and Development) Regulations 1994, the planning authority acknowledge under article 29(2)(a) of those regulations that the application was received on or before 10 March 2002, and the application was not an invalid application under article 29(2)(b)(i) of those regulations, or
- the construction or refurbishment work represented by the expenditure is exempted development for the purposes of the Planning & Development Act 2000, by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and the following conditions are satisfied not later than 31 December 2004:
  - a detailed plan in relation to the development work is prepared,
  - a binding contract in writing exists under which the expenditure on the development is incurred, and
  - work to the value of 5 per cent of the development costs is carried out.

Capital expenditure incurred by 31 July 2008 on the construction or refurbishment of a holiday cottage may qualify if: (13)(c)



- the relevant planning application etc. condition in **paragraph (b)** was met,
- work to the value of at least 15 per cent of the actual construction or refurbishment costs is carried out by 31 December 2006,
- a binding contract in writing in relation to the construction or refurbishment is in place by 31 July 2006, and
- any other conditions, relating to compliance with State aid issues, which the Minister for Finance may specify in regulations, have been satisfied.

By virtue of **paragraphs (a) and (b) of section 270(7)** (as inserted by section 26 of the Finance Act 2006) local authority certification is required in respect of the condition that work to the value of at least 15 per cent of the construction or refurbishment costs is carried out by 31 December 2006. Such certification must include details of actual expenditure incurred to 31 December 2006 and of projected expenditure post 31 December 2006

### ***Requirement to be registered as an hotel***

A building or structure in use for the purposes of the trade of hotel-keeping will not be regarded as an industrial building or structure, as respects capital expenditure incurred on or after 3 February 2005 on its construction or refurbishment, unless it is registered in the register of hotels kept under the Tourist Traffic Acts 1939 to 2003. This provision is subject to transitional arrangements [see **subsection (15)**] which maintain the previous rules up to 31 July 2006. **(14)**

The provisions of **subsection (14)** do not apply as respects capital expenditure incurred on or before 31 July 2006 on the construction or refurbishment of a building or structure where: **(15)**

- a valid planning application (other than for outline permission), in so far as planning permission was required, was received by the planning authority: **(15)(a) & (b)**
  - by 31 December 2004, where the application was made in accordance with the Planning & Development Regulations 2001 to 2004, or
  - by 10 March 2002, where the application was made in accordance with the Local Government (Planning and Development) Regulations 1994,
- the work involved is exempted development for the purposes of the Planning and Development Act 2000 and the following conditions had been met on or before 31 December 2004: **(15)(c)**
  - a detailed plan in relation to the development work was prepared,
  - a binding contract in writing existed under which the expenditure on the development was incurred, and
  - work to the value of 5 per cent of the development costs was carried out,

or
- the construction or refurbishment of the building or structure is development in respect of which a valid application is made for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 and the application is acknowledged by the Dublin Docklands Development Authority as having been received on or before 31 December 2004. **(15)(d)**

### ***Sports Injuries Clinics – extension to 31 July 2008***

This subsection applies in relation to capital expenditure incurred on the construction or refurbishment of a sports injuries clinic where work to the value of at least 15 per cent of the actual construction or refurbishment costs is carried out by 31 December 2006 and the person who carried out the work or, where that person sells the clinic, the person who is **(16)**

claiming the capital allowances can show that this 15 per cent condition was satisfied.

Where these conditions are satisfied then the termination date for incurring qualifying expenditure on the sports injuries clinic involved is 31 July 2008 rather than 31 December 2006 – see **subsection (9)(h)** above.

### ***Certain health-related facilities – extension beyond 31 December 2009***

This subsection applies to determine the termination date for incurring qualifying capital expenditure in relation to the construction or refurbishment of a registered nursing home, a convalescent home, a qualifying hospital or a qualifying mental health centre where development has reached a certain stage by 31 December 2009. Where the work to be carried out does not require planning permission as, for example, with certain types of refurbishment work, the termination date will be 30 June 2010 so long as at least 30% of the construction or refurbishment cost has been incurred on or before 31 December 2009. Where the work to be carried out requires planning permission, a termination date beyond 31 December 2009 will apply so long as a full and valid application for planning permission has been submitted on or before that date and is acknowledged by the relevant planning authority. Where this latter condition is met, the termination date will be 30 June 2011 in the case of registered nursing homes, convalescent homes and mental health centres and 31 December 2013 in the case of qualifying hospitals. (17)

## **269 Meaning of “the relevant interest”**

### **Summary**

This section contains the rules relating to the interpretation of the term “the relevant interest”. The term is defined in relation to expenditure incurred on the construction of a building or structure, and means the legal interest (whether freehold or leasehold) to which the person who incurred the expenditure was entitled when that expenditure was incurred. Entitlement to writing-down allowances (**section 272**) and balancing allowances (**section 274**), and liability to balancing charges (**section 274**), in respect of any capital expenditure follows the relevant interest in relation to that expenditure whether or not that interest is subsequently transferred to another person.

### **Details**

In relation to any expenditure incurred on the construction of a building or structure, the relevant interest is the interest in that building or structure to which the person who incurred that expenditure was entitled when he/she incurred it. (1)

#### **Example**

B incurs capital expenditure of €100,000 in 2002 on the construction of an industrial building or structure on land on which the various interests at the time the expenditure was incurred were as follows —

A held the freehold interest in the land, subject to B’s leasehold interest of 99 years.

The relevant interest in relation to the €100,000 capital expenditure is the 99 year lease held by B. If B were to sell this lease to C in 2006, C would become the holder of the relevant interest in relation to the expenditure and would be entitled to writing-down allowances in respect of that expenditure from that year onwards, provided the building or structure is in use for the purposes specified in **section 268(1)**.

Where the person incurring the expenditure on the construction of a building or structure has 2 or more interests in it, the interest which is reversionary on all other interests is the relevant interest. (2)

#### **Example**

A holds a sub-lease of land from B who in turn holds a lease from C, the freeholder. If A’s sub-lease is about to expire shortly, she would be reluctant to incur expenditure on constructing a new building; but,

if she were able to purchase the freehold reversion from C, she could incur such expenditure secure in the knowledge that the land and building would revert to her when B's lease expired. Where the lease and sub-lease would expire at more or less the same time, A would not normally bother to buy out B's interest. In such circumstances A would own 2 interests in the land at the time she incurred capital expenditure on the building – viz the original sub-lease and the freehold reversion acquired from C. In such a case the larger interest – that is, the freehold – is to be taken as the relevant interest.

A relevant interest does not cease to be the relevant interest where a lease or other interest is created out of it. Where the relevant interest is a leasehold interest and it merges into the freehold (or a superior lease) either because the owner of the relevant interest acquires the reversion or the owner of the reversion acquires the relevant interest, the freehold (or the superior lease) becomes the relevant interest. (3)

#### **Example**

A trader holding a lease of land built a factory on it in 2002 when there was 20 years of the lease to run. He is entitled to writing-down allowances of 4 per cent per annum. If, with 5 years of the lease still to run, he acquires the freehold, this does not trigger a balancing allowance because he has ceased to own the relevant interest, that is, the leasehold interest. Instead, the freehold is treated as the relevant interest and this ensures that no balancing allowance will arise but that the trader may continue to receive writing-down allowances until the expenditure on the factory is fully written off.

## **270 Meaning of “expenditure on construction of building or structure”**

### **Summary**

This section provides that capital expenditure on refurbishment of industrial buildings or structures qualifies for capital allowances. It also provides that certain expenditure is not to be treated as expenditure on the construction of a building or structure.

additionally, the section restricts the amount of capital expenditure incurred on the construction and refurbishment of certain industrial and commercial buildings and structures which can qualify for capital allowances under a number of *tax incentive schemes* – whether the allowances are annual, initial or free depreciation. The restrictions and the buildings and schemes affected are detailed below.

### **Details**

#### **Definition**

The term “refurbishment” means any work of construction, reconstruction, repair or renewal, including the provision of water, heating or sewerage facilities, carried out in the course of the repair or restoration of the building or structure. (1)

#### **Refurbishment expenditure**

References in this Chapter to expenditure incurred on the construction of a building or structure include expenditure on refurbishment of the building or structure. This enables capital expenditure incurred on the refurbishment of industrial buildings or structures to qualify for capital allowances. (2)

#### **Exclusion of certain expenditure**

Expenditure on the construction of a building or structure does not include any expenditure incurred on the acquisition of, or of rights in or over, any land. In other words, site cost is excluded. Also excluded is expenditure on the provision of machinery or plant (or an asset treated as machinery or plant) or expenditure which qualifies for a mine development allowance (*section 670*) or a scientific research allowance (*section 765(1)*). (2)

### ***Apportionment of expenditure***

Where expenditure is incurred on an industrial building or structure which forms part of a building, is one of a number of buildings in a single development or forms part of a building which is one of a number of buildings in a single development, the expenditure is to be apportioned in order to determine the expenditure incurred on the industrial building or structure. (3)

### ***Tax Incentive schemes – restrictions on qualifying expenditure*** (4) to (8)

**Subsections (4), (5), (6) and (7)** which were inserted in this section by *section 26 Finance Act 2006* concern transitional arrangements relating to the ending of certain property incentive schemes or capital allowance regimes. **Subsection (5)** limits the amount of capital expenditure which can qualify for capital allowances purposes to 75 per cent and 50 per cent, respectively, of expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008. The types of buildings and schemes affected are set out in **subsection (4)**.

Additionally, for some of these buildings/schemes, **subsection (7)** puts an overall cap in place on the amount of expenditure eligible to qualify for relief in respect of the period 1 January 2007 to 31 July 2008. This cap applies prior to the application of the 75 per cent and 50 per cent limits. **Subsection (6)** clarifies how **section 279** (transfer of allowances on a new building to a purchaser) is to apply where the various limits and restrictions apply.

Finally, **subsection (8)** (inserted by *section 28 Finance Act 2007*) provides, in relation to qualifying residential units, that capital expenditure incurred under contracts entered into on or after 1 May 2007 will qualify only in relation to 50 per cent of the amount involved in the case of individuals and in relation to 75 per cent of the amount involved in the case of companies.

Expenditure is treated as incurred in a period only to the extent that it is attributable to work actually carried out in that period – see **section 316(2B)**.

### ***Buildings and schemes affected***

**Subsection (4)** applies to the following buildings and structures:

- hotels, holiday camps and registered holiday cottages – under **section 268(1)(d)** and **268(3)**; (4)(a)
- sports injuries clinics – under **section 268(1)(k)**; (4)(b)
- multi-storey car-parks – under **section 344**; (4)(c)
- industrial buildings and commercial premises located in Urban Renewal areas and commercial premises on qualifying streets under the Living over the Shop scheme – under **sections 372C** and **372D**; (4)(d)
- industrial buildings and commercial premises located in Rural Renewal areas – under **sections 372M** and **372N**; (4)(e)
- Park and Ride facilities and commercial premises on the sites of Park and Ride facilities – under **sections 372U** and **372W**; (4)(f)
- industrial buildings and commercial premises located in Town Renewal areas – under **sections 372AC** and **372AD**; (4)(g)
- Third-Level College buildings – under **section 843**, and (4)(h)
- qualifying residential units associated with registered nursing homes – under **section 268(3A)**. (4)(i)

The provision applies where capital expenditure on the construction or refurbishment of these buildings and structures (or “qualifying expenditure” in the case of a **section 843** building) is incurred between 1 January 06 and 31 July 2008. (*This latter date is to be read*

as 30 April 2010 in the case of qualifying residential units where **subsection (8)** applies). The year 2006 is included in this provision (and in **section 316(2B)**) to ensure that expenditure is not brought forward into that year to try and avoid the respective reductions, to 75 per cent and 50 per cent, that apply in relation to expenditure attributable to the year 2007 and the first 7 months of 2008 – see below.

***Expenditure limited to 75 per cent and 50 per cent respectively***

In the case of buildings or structures to which **subsection (4)** applies and notwithstanding any other provisions of the Taxes Acts (but subject to **subsections (6) (7) and (8)**), the amount of capital expenditure or qualifying expenditure which is to be taken into account for the purposes of making any allowances and charges under **Part 9** is to be reduced to 75 per cent of the capital expenditure attributable to the year 2007 and to 50 per cent of the capital expenditure attributable to the period 1 January 2008 to 31 July 2008. Expenditure that is proper to the year 2006 can qualify without restriction. In the case of qualifying residential units, the restriction to 75 per cent for 2007 applies only from 25 March 2007 and in this case expenditure incurred in 2006 and up to 24 March 2007 can qualify without restriction. (See **subsection (8)** also, which applies a revised version of **paragraphs (a) and (b)** of this provision, in relation to expenditure incurred on qualifying residential units between 1 May 2007 and 30 April 2010). (5)

The restrictions apply whether or not allowances arise directly under **Part 9** or by virtue of a provision of **Part 10** or of **section 843** e.g. some industrial buildings and structures located in Urban etc. areas may be entitled to accelerated allowances by virtue of the provisions of **Part 10** but would be entitled to annual allowances under **Part 9**. In such cases the expenditure incurred is restricted to 75 per cent and 50 per cent respectively for the purposes of granting all allowances in relation to the building or structure.

***Local Authority certification of 15 per cent condition and overall cap on expenditure for period 1 January 2007 to 31 July 2008***

Local authority certification is required of certain matters in relation to some of the schemes listed in **subsection (4)** and, for those schemes, an overall cap is placed on the amount of capital expenditure, relating to the period 1 January 2007 to 31 July 2008, which may be taken into account for capital allowances purposes. This cap applies prior to the application of the 75 per cent and 50 per cent limits. (7)

The buildings and schemes affected are:

(7)(a)

- hotels, holiday camps and registered holiday cottages (**subsection (4)(a)**),
- industrial buildings and commercial premises located in Urban Renewal areas (**subsection (4)(d)**) (but excluding commercial premises on qualifying streets under the Living over the Shop scheme),
- industrial buildings and commercial premises located in Rural Renewal areas (**subsection (4)(e)**), and
- industrial buildings and commercial premises located in Town Renewal areas (**subsection (4)(g)**).

In relation to these buildings or premises a person must show that work to the value of 15 per cent of the construction or refurbishment costs was carried out by 31 December 2006. This condition, as inserted by Finance Act 2006, is contained in the legislation for each of these schemes and the relevant sections are listed in this provision. Where the 15 per cent condition is not met the earlier termination date of 31 December 2006 will apply or, in the case of hotels and holiday camps, the lower 4 per cent annual allowance rate will apply after that day. (7)(a)(i) to (iv)

### **Local Authority certification of 15 per cent condition**

The relevant 15 per cent condition will not be treated as having been met in relation to the above schemes unless a local authority certificate is issued by 30 March 2007 stating: (7)(b)(i)

- that the local authority is satisfied that work to the value of not less than 15 per cent of the construction or refurbishment costs was carried out by 31 December 2006, (7)(b)(i)(A)
- the actual amount of construction or refurbishment expenditure incurred by 31 December 2006, and (7)(b)(i)(B)
- the balance of construction or refurbishment expenditure that is projected to be incurred post 31 December 2006. (7)(b)(i)(C)

Applications for certificates must be made by 31 January 2007 and certificates are to be issued having regard to guidelines issued by the Dept. of the Environment, Heritage and Local Government. (7)(b)(ii)

### **Overall cap on expenditure for period 1 January 2007 to 31 July 2008**

The amount of capital expenditure which is taken into account for the period 1 January 2007 to 31 July 2008 for the purposes of making capital allowances may not exceed the amount of the post December 2006 projected expenditure – as was certified by the local authority under *paragraph (b)(i)(C)* above. (7)(c)

Any restriction under this subsection is to take place before the application of the restrictions to 75 per cent and 50 per cent (see *subsection (5)*) and the revised application of *section 279* (see *subsection (6)*). Also where expenditure for the period 1 January 2007 to 31 July 2008 is to be reduced, such reduction is to take place first in relation to the period 1 January 2008 to 31 July 2008. (7)(d)

Where a building is sold, a copy of the local authority certificate should be passed on so that the purchaser is in a position to make appropriate claims for allowances. (7)(e)

### **Application of section 279 in relation to purchases of unused buildings**

*Section 279* provides that the purchaser of a building or structure is treated as having incurred the expenditure on the construction of the building or structure where it is purchased unused, or within a year of first use, from the person who actually incurred the expenditure – provided that no allowances were claimed by that person. Where the seller is a builder/developer the purchaser is also entitled to claim allowances on an element of the builder/developer's profit by virtue of the formula in the section relating to "the net price paid" (see notes on *section 279*).

Certain amendments are made to the operation of *section 279* where *subsections (4) and (5)* and, as the case may be, *subsection (7)* apply. (6)

These are to ensure that where a building is sold, the purchaser will not be entitled to claim allowances on the full expenditure incurred but rather on that expenditure as reduced in accordance with the respective reductions to 75 per cent and 50 per cent under *subsection (5)* which apply to expenditure incurred in the year 2007 and the first 7 months of 2008 and any restriction on post December 2006 expenditure which may arise under *subsection (7)*. Similarly, the revised application of *section 279* will apply in relation to the reduced levels of qualifying expenditure on qualifying residential units where that expenditure is incurred under contracts entered into on or after 1 May 2007 – see *subsection (8)*.

When calculating the formula for "the net price paid" in *section 279* the numerator "C" in the formula should be the amount of construction expenditure (incurred in the qualifying period for the scheme) as reduced in accordance with *subsections (5) and (7)* of this section. The denominator "C" in the original formula – now "D" in the revised formula –

should include the full amount of expenditure incurred on the construction of the building or structure i.e. before any restrictions and whether or not incurred in the qualifying period for the particular scheme.

### Example

A builder purchases a site in a qualifying Urban Renewal area for €100,000 and constructs a commercial building, which qualifies for industrial buildings allowances, on it for a cost of €420,000. The building is completed in August 2008 and, without having been used, the builder sells it to X on 1 October 2008 for €600,000 and X immediately takes it into use for the purposes of his trade.

Construction expenditure attributable to the various periods is as follows:

Year 2006: €100,000; Year 2007: €220,000; 1 Jan. 2008 to 31 July 2008: €80,000; August 2008 €20,000.

The projected amount of post December 2006 expenditure, as certified by the local authority, was €280,000. Therefore the combined expenditure for the period 1 January 2007 to 31 July 2008 (€300,000) must be restricted to €280,000 and the restriction (€20,000) must be made in relation to the period Jan. to July 2008 in priority to the year 2007. Accordingly, expenditure treated as incurred in the period Jan. to July 2008 (before the 50 per cent restriction is applied) is €60,000 (€80,000 less 20,000).

The amount of qualifying expenditure in each period after application of the 75 per cent and 50 per cent restrictions is as follows:

Year 2006: €100,000; Year 2007: €220,000 x 75% = €165,000; Jan to July 2008: €60,000 x 50% = €30,000; August 2008: Nil (outside of the qualifying period). Total expenditure for the purposes of the numerator “C” in the formula is therefore €295,000.

The net price paid by X is —

$$600,000 \times \frac{295,000}{420,000 + 100,000} = 340,000$$

X is deemed to have incurred construction expenditure on 1 October 2008 equal to the net price paid by him, that is, €340,385, and his entitlement to capital allowances will be based on that amount.

### ***Qualifying residential units – expenditure incurred on or after 1 May 2007***

Where capital expenditure is incurred on or after 1 May 2007 (and up to 30 April 2010) (8) under a contract or agreement for the construction, refurbishment or development of a qualifying residential unit which is entered into on or after 1 May 2007, then the level of qualifying expenditure is reduced. The reduction is to 75 per cent in the case of a company and to 50 per cent in any other case e.g. an individual etc. This provision applies a revised version of **subsection (5)** to achieve this.

## **271 Industrial building allowances**

### **Summary**

This section provides for the granting of an industrial building allowance (commonly referred to as an “initial allowance”) to a person who incurs capital expenditure on the construction (including, by virtue of **section 270**, refurbishment) of certain industrial buildings or structures. For the allowance to apply, the building or structure must be one which is to be occupied for the purposes of a trade to be carried on by the person who incurred the expenditure or by a qualifying lessee. A qualifying lessee is one who occupies the building or structure under a lease (called a “relevant lease”) to which the relevant interest in the building is reversionary or under a lease to which a relevant lease granted to an industrial development agency is reversionary.

The industrial building (initial) allowance is given for the chargeable period related to the expenditure or, where a lessee is involved, the chargeable period related to the commencement of the tenancy by an industrial user of the building or structure or, where an industrial development agency takes the first lease of the building or structure, the

chargeable period related to the commencement of the tenancy of the agency.

The allowance is available for expenditure incurred on the construction (including, by virtue of **section 270**, refurbishment) of —

- industrial buildings or structures provided for use for the purposes of certain trades carried on in the Shannon Airport Area or the Custom House Docks Area, and
- industrial buildings or structures provided for the purposes of certain projects approved by an industrial development agency before certain specified dates, subject to the actual expenditure being incurred before stated dates.

The rates of allowance are —

- in the case of a building or structure which is to be used for the purposes of a trade carried on in a mill, factory, etc, or in a mineral laboratory, or for the purposes of a dock undertaking, 50 per cent of the capital expenditure incurred on the building or structure,
- in the case of a building or structure which is to be used for the purposes of a trade of market gardening or the intensive production of cattle, etc, 20 per cent of the capital expenditure incurred on the building or structure, and
- in any other case, 10 per cent of the capital expenditure incurred on the building or structure.

## Details

### Definitions

“industrial development agency” is the Industrial Development Authority, Shannon Free Airport Development Company Limited or Údarás na Gaeltachta. (1)

“appropriate chargeable period” is the chargeable period (defined in **section 321** as an accounting period of a company or a year of assessment) for which the industrial building allowance will be granted. This will be —

- the chargeable period related to the expenditure, that is, in the case of corporation tax, the accounting period in which the expenditure was incurred and, in the case of income tax, the year of assessment in the basis period (see **section 306**) for which the expenditure was incurred, or
- if later, the chargeable period related to the commencement of a tenancy by an industrial user of the building or structure or, in a case where an industrial development agency takes the first lease of the building or structure, the chargeable period related to the commencement of that tenancy. [The chargeable period related to the commencement of a tenancy is, in the case of corporation tax, the accounting period in which the tenancy commences and, in the case of income tax, the year of assessment in the basis period (see **section 306**) for which the tenancy commenced.]

“relevant lease” is a lease to which the relevant interest is reversionary.

### Conditions for allowance

The industrial building (initial) allowance is given for the appropriate chargeable period (2)(a) where capital expenditure is incurred on the construction (including, by virtue of **section 270**, refurbishment) of a qualifying industrial building or structure which is to be occupied for the purposes of a trade by the person incurring the expenditure or by a qualifying lessee.

A qualifying lessee is a lessee who occupies the building or structure under a relevant lease (2)(b) (that is, a lease to which the relevant interest in the building or structure is reversionary) or under a lease to which a relevant lease granted to an industrial development agency is reversionary.



A qualifying industrial building or structure is one which is provided — (3)

- before 23 April, 1996 for use for the purposes of relevant trading operations carried on by companies in the Shannon Airport Area (*section 445*) or the Custom House Docks Area (*section 446*); but, in the case of capital expenditure incurred on or after 6 May 1993, excluding any building or structure provided by a lessor to a lessee other than where the letting is part of those relevant trading operations,
- by a company on or after 23 April 1996 for use for the purposes of such relevant trading operations carried on by the company, excluding any building or structure provided by a lessor to a lessee other than where the letting is part of those relevant trading operations,
- for a project approved by an industrial development agency on or before 31 December 1988 and in respect of the provision of which expenditure was incurred before 31 December 1995 or, in a case where the project was so approved in the period from 1 January 1986 to 31 December 1988, before 31 December 1996, or
- for a project approved for grant assistance by an industrial development agency in the period from 1 January 1989 to 31 December 1990 and in respect of the provision of which expenditure is incurred before 31 December 1997 (or before 30 June 1998 where a legal dispute gave rise to a delay) or, in a case where the project is on an approved list for “*section 130*” loan financing, before 31 December 2002.

#### ***Rates of allowance***

The rates of industrial building (initial) allowance for capital expenditure incurred on the construction (including, by virtue of *section 270*, refurbishment) of a qualifying industrial buildings or structures are — (4)

- in the case of a building or structure which is to be used for the purposes of a trade carried on in a mill, factory, etc, or in a mineral laboratory, or for the purposes of a dock undertaking, 50 per cent of the capital expenditure incurred on the building or structure; but, in the case of such buildings or structures provided for the purposes of relevant trading operations carried on by companies in the Shannon Airport Area (*section 445*) or the Custom House Docks Area (*section 446*), this rate only applies where the capital expenditure is incurred before 25 January 1999,
- in the case of a building or structure to be used for the purposes of a trade of market gardening or the intensive production of cattle, etc, 20 per cent of the capital expenditure incurred on the building or structure, and
- in any other case, 10 per cent of the capital expenditure incurred on the building or structure.

#### ***Non-availability of writing-down allowance or increased writing-down allowance***

Where an industrial building (initial) allowance is given for any chargeable period in respect of capital expenditure incurred on an industrial building or structure provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from 1 January 1989 to 31 December 1990, a writing-down allowance under *section 272* in respect of that expenditure will not be given for the same chargeable period. In addition, any writing-down allowance in respect of that expenditure for a later chargeable period may not be increased under *section 273*. (5)

#### ***Withdrawal of industrial building allowance***

An industrial building (initial) allowance is not given in respect of any expenditure on a building or structure if, when the building or structure comes to be used, it is not an industrial building or structure. If an allowance has been given in respect of expenditure on any such building or structure, the allowance may be withdrawn by way of an amended assessment. (6)

## 272 Writing-down allowances

### Summary

An industrial building writing-down allowance (also known as an industrial building “annual allowance”) is given to a person who at the end of a chargeable period holds the relevant interest in relation to the capital expenditure incurred on the construction (including, by virtue of **section 270**, refurbishment) of an industrial building or structure, provided that at the end of the chargeable period or its basis period the building or structure is actually in use as an industrial building or structure. The annual rates of writing-down allowances are —

- in the case of registered hotels and registered holiday camps, 4 per cent of the qualifying capital expenditure incurred on the building or structure. (Annual rates of 15 per cent and 10 per cent previously applied – depending on when the capital expenditure was incurred (see **subsection (3)(c)** for details);
- in the case of registered guest houses and registered holiday hostels, 4 per cent of the capital expenditure incurred on the building or structure. The same rate also applies in the case of registered caravan and camping sites, in relation to capital expenditure incurred on buildings or structures on or after 1 January 2008;
- in the case of registered nursing homes (including associated qualifying residential units for the aged or infirm – but subject to restrictions on the level of allowable expenditure), convalescent homes, qualifying hospitals, qualifying sports injuries clinics (this scheme ceases on 31 July 2008) and qualifying mental health centres (applies from 23 January 2007), 15 per cent of the qualifying capital expenditure incurred on the building or structure over 6 years and 10 per cent in year 7. This rate will also apply to capital expenditure incurred on the construction or refurbishment of qualifying specialist palliative care units once the scheme is commenced (see **section 26 Finance Act 2008**);
- in the case of buildings or structures used for a trade of market gardening and buildings or structures used for the intensive production of cattle, etc, 10 per cent of the capital expenditure incurred on the building or structure. This rate also applied to qualifying capital expenditure incurred on registered holiday cottages prior to the termination of the scheme of relief for such buildings;
- in the case of an aviation services facility:
  - where the capital expenditure incurred on the building or structure is specified capital expenditure, 15 per cent of that expenditure over 6 years and 10 per cent in year 7.
  - 4 per cent of the capital expenditure incurred on the building or structure where the expenditure is not specified capital expenditure.
- in any other case, 4 per cent of the capital expenditure incurred on the building or structure (or, where applicable, where the expenditure was incurred before 16 January 1975, 2 per cent of that expenditure).

The allowances are given on a straight-line basis. This means that the qualifying capital expenditure incurred is written off by means of the annual writing-down allowance over a period of —

- in the case of registered hotels and registered holiday camps, 25 years. (Periods of 7 years and 10 years previously applied – depending on when the qualifying capital expenditure was incurred (see **subsection (4)(c)** for details);
- in the case of registered guest houses, registered holiday hostels and registered caravan and camping site, 25 years;
- in the case of registered nursing homes (including associated qualifying residential

units for the aged or infirm), convalescent homes, qualifying hospitals, qualifying sports injuries clinics and qualifying mental health centres, 7 years. A similar write-off period will apply in relation to qualifying specialist palliative care units once the scheme is commenced;

- in the case of buildings or structures used for a trade of market gardening and buildings or structures used for the intensive production of cattle, etc, 10 years. This period also applied to registered holiday cottages which qualified prior to the termination of relief for such buildings,
- in the case of an aviation services facility:
  - 7 years where the capital expenditure incurred is specified capital expenditure,
  - 25 years where the capital expenditure incurred is not specified capital expenditure.
- in any other case, 25 years (or, where the expenditure was incurred before 16 January 1975, 50 years).

Where an industrial building or structure is sold, then any residue of capital expenditure (within the meaning of *section 277*) is to be written off over the remaining tax life. This tax life is, in the case of some buildings, greater than the periods mentioned above – see *subsection (4)* for details.

**NB:** By virtue of the provisions of *sections 270(5) and (7)*, capital expenditure incurred in the year 2007 and the period 1 January 2008 to 31 July 2008 is to be restricted in the case of certain buildings when calculating capital allowances due – see the notes at the end on this section. In the case of qualifying residential units associated with registered nursing homes, reduced levels of qualifying capital expenditure apply up to 30 April 2010 when this scheme is due to terminate – see *section 270(8)*.

## Details

### Conditions

A building or structure qualifies for the writing-down allowances if the capital expenditure (1) on its construction was incurred on or after 30 September 1956.

To qualify for a writing-down allowance for a chargeable period — (2)

- a person must at the end of the chargeable period or its basis period be entitled to an interest in a qualifying building or structure,
- at the end of the chargeable period or its basis period that building or structure must be an industrial building or structure (see *section 268*), and
- the interest to which the person is entitled in the building or structure must be the relevant interest in relation to the capital expenditure incurred on its construction (including, by virtue of *section 270*, its refurbishment).

### Rates of allowance – general

The annual writing-down allowance to be made in relation to qualifying capital expenditure (3) incurred on the construction (including, by virtue of *section 270*, refurbishment) of a building or structure is (subject to *subsection (4)*) an amount equal to —

- in the case of a building or structure in use for the purposes of a trade carried on in a mill, factory, etc, or in a mineral laboratory, or for the purposes of a dock undertaking, 4 per cent of the capital expenditure incurred (or, where the expenditure was incurred before 16 January 1975, 2 per cent of that expenditure), (3)(a)
- in the case of a building or structure in use for the purposes of a trade of market gardening or for the intensive production of cattle, etc, 10 per cent of the capital expenditure incurred, (3)(b)
- in the case of a building or structure in use for the purposes of a trade of hotel- (3)(c)

keeping, including a holiday camp (but not including a registered holiday cottage, a registered guest house, a registered holiday hostel or any other building or structure deemed to be in use for such purposes):

- 4 per cent of the capital expenditure where that expenditure is incurred on or after 4 December 2002 [or after 31 December 2006 where **subsection (8)** applies or after 31 July 2008 where **subsections (8) and (9)** apply],
- 15 per cent of the qualifying capital expenditure over 6 years and 10 per cent in year 7 where the expenditure was incurred on or after 27 January 1994,
- 10 per cent of the capital expenditure where that expenditure was incurred before 27 January 1994,
- in the case of a registered holiday cottage which qualified prior to the termination of relief for such buildings, 10 per cent of the qualifying capital expenditure incurred, (3)(d)
- in the case of a registered guest house or a registered holiday hostel to which **section 268(2C)** applies (i.e. which is deemed to be a building or structure in use for the purposes of a trade of hotel-keeping), 4 per cent of the capital expenditure incurred where that expenditure is incurred on or after 3 February 2005, (3)(da)
- in the case of buildings and structures which are comprised in, and are in use as part of, premises which are registered in the register of caravan sites and camping sites, 4 per cent of the capital expenditure incurred where that expenditure is incurred on or after 1 January 2008, (3)(db)
- in the case of an airport runway or an airport apron, 4 per cent of the capital expenditure incurred, (3)(e)
- in the case of a building or structure in use for the purposes of a trade of operating or managing a registered private nursing home (including associated qualifying residential units for the aged or infirm) or for the purposes of a trade of operating or managing a convalescent home, 15 per cent of the qualifying expenditure over 6 years and 10 per cent in year 7, (3)(f)
- in the case of a building or structure in use for the purposes of a trade of operating or managing an airport (other than as regards runways and aprons), 4 per cent of the capital expenditure incurred, (3)(g)
- in the case of a building or structure in use for the purposes of a trade of operating or managing a qualifying hospital or a qualifying sports injuries clinic, 15 per cent of the qualifying expenditure over 6 years and 10 per cent in year 7. (3)(h)
- in the case of a building or structure in use for the purposes of a trade of operating or managing a qualifying mental health centre, 15 per cent of the expenditure over 6 years and 10 per cent in year 7 where that expenditure is incurred on or after 23 January 2007 i.e. date of commencement of this scheme. (3)(i)
- in the case of a building or structure in use for the purposes of a trade of operating or managing a qualifying specialist palliative care unit, 15 per cent of the expenditure over 6 years and 10 per cent in year 7 where that expenditure is incurred on or after the date of commencement of this scheme. This scheme is, subject to EU approval, to be commenced by order of the Minister for Finance. (3)(j)
- in the case of an aviation services facility (3)(k)(i)
  - where the capital expenditure incurred is specified capital expenditure, 15 per cent of that expenditure over 6 years and 10 per cent in year 7.
  - 4 per cent of the capital expenditure incurred where that expenditure is not specified capital expenditure. (3)(k)(ii)

### **Airports**

The capital allowances (introduced in the Finance Act 1998) for airport buildings or structures (i.e. other than aprons and runways) also apply for such buildings or structures

that were in existence at the time. The allowances apply from vesting day – 1 January 1999 – in the case of Aer Rianta (now known as the Dublin Airport Authority and including the Cork Airport Authority and the Shannon Airport Authority where relevant) and from the date of the passing of the 1998 Finance Act – 27 March 1998 – for other airport operators.

Expenditure is deemed to be a **net** amount i.e. the original construction cost less writing-down allowances at **4** per cent per annum which *would have been granted* had those buildings qualified for relief prior to those dates. (3A)

In the case of airport runways and aprons existing on 1 January 1999 and vested in Aer Rianta (now known as the Dublin Airport Authority and including the Cork Airport Authority and the Shannon Airport Authority where relevant) on that day, expenditure is deemed to have been incurred by Aer Rianta on that day on a net amount i.e. original cost less writing-down allowances that would have been granted up to the vesting day. (3B)

### ***Sale of an industrial building or structure and “tax life”***

Where the relevant interest in an industrial building or structure is sold, a balancing allowance or charge may arise (see **section 274**) and such an allowance or charge is taken into account in determining the residue (if any) of the expenditure incurred on its construction (see **section 277**) immediately after the sale. Subject to the building or structure continuing to be an industrial building or structure, the purchaser of the relevant interest is entitled to writing-down allowances based on the residue of the expenditure. The rate of writing-down allowance in such cases is that which would write off the residue of the expenditure on a straight-line basis evenly over the remainder of the “tax life” of the particular building or structure at the date of sale. (4)

For example, an industrial building has a tax life of 10 years and construction expenditure was to be written-off over 10 years. If the industrial building were sold at the end of year 6, the residue of the expenditure would be written off by way of annual writing-down allowances of 25 per cent of that residue over the remaining 4 years of the tax life of the building.

[In many cases the tax life of a building will be the same as the original period over which the expenditure on its construction was to be written off by means of writing-down allowances. However, in more recent times the tax life of a building may be greater than the writing-down period for the building e.g. the tax life of private hospitals and other health related facilities is now 15 years whereas the writing down period is only 7 years. In these cases if a building is sold at the end of year 6, the residue of expenditure will be written-off over the remaining 9 years of the 15-year period].

The extent of the tax life depends on the type of industrial building or structure involved and the time when the expenditure on its construction was incurred. The tax life generally runs from the time when the building was first used. The tax life is a period of —

- in the case of a building or structure in use for the purposes of a trade carried on in a mill, factory, etc, or in a mineral laboratory, or for the purposes of a dock undertaking, 25 years from first use (or, where the expenditure was incurred before 16 January 1975, 50 years from first use), (4)(a)
- in the case of a building or structure in use for the purposes of a trade of market gardening or for the intensive production of cattle, etc, 10 years from first use, (4)(b)
- in the case of a building or structure in use for the purposes of a trade of hotel-keeping, including a holiday camp (but not including a registered holiday cottage, a registered guest house, a registered holiday hostel or any other building or structure which is deemed to be in use for such purposes): (4)(c)
  - 25 years from first use, where the capital expenditure is incurred on or after 4 December 2002 [or after 31 December 2006 where **subsection (8)** applies or

after 31 July 2008 where **subsections (8) and (9)** apply],

- 7 years from first use, where the capital expenditure was incurred on or after 27 January 1994,
- 10 years from first use, where the capital expenditure was incurred before 27 January 1994,
- in the case of a registered holiday cottage which qualified prior to the termination of relief for such buildings, 10 years from first use, (4)(d)
- in the case of a registered guest house or a registered holiday hostel to which **section 268(2C)** applies (i.e. which is deemed to be a building or structure in use for the purposes of a trade of hotel-keeping), 25 years from first use where the capital expenditure is incurred on or after 3 February 2005, (4)(da)
- in the case of buildings and structures which are comprised in, and are in use as part of, premises which are registered in the register of caravan sites and camping sites, 25 years from first use where the capital expenditure is incurred on or after 1 January 2008, (4)(db)
- in the case of an airport runway or an airport apron, 25 years from first use, (4)(e)(i)
- in the case of such runways or aprons existing on vesting day (1 January 1999) and vested in Aer Rianta (now known as the Dublin Airport Authority and including the Cork Airport Authority and the Shannon Airport Authority where relevant) on that day, 25 years from that day, (4)(e)(ii)
- subject to **paragraph (fa)**, in the case of a registered private nursing home (including qualifying residential units – see **section 268(3A)**) or a convalescent home, 7 years from first use, or 15 years from first use (or first use after refurbishment) where such first use occurs on or after 1 February 2007, (4)(f)
- in the case of qualifying residential units – see **section 268(3A)**) – where capital expenditure on construction or refurbishment is incurred under contracts or agreements entered into on or after 1 May 2007, 20 years from first use or first use after refurbishment, (4)(fa)
- in the case of airport buildings or structures (other than runways and aprons) —
  - where new, 25 years from first use, or (4)(g)(i)
  - where existing on: (4)(g)(ii)
- in the case of Aer Rianta (now known as the Dublin Airport Authority and including the Cork Airport Authority and the Shannon Airport Authority where relevant), vesting day (1 January 1999), 25 years from that day, and
- in the case of other airport operators, 27 March 1998, 25 years from that date,
- in the case of a qualifying hospital, 7 years from first use, or 15 years from first use (or first use after refurbishment) where this occurs on or after 1 February 2007, (4)(ga)
- in the case of a qualifying sports injuries clinic, 7 years from first use, and (4)(h)
- in the case of a qualifying mental health centre, 15 years from first use (or first use after refurbishment). This scheme commenced by order of the Minister for Finance with effect from 23 January 2007. (4)(i)
- in the case of a building or structure in use for the purposes of a trade of operating or managing a qualifying specialist palliative care unit, 15 years from first use (or first use after refurbishment) where the capital expenditure is incurred on or after the date of commencement of this scheme. (4)(j)
- in the case of an aviation services facility: (4)(k)(i)
  - 7 years from first use (or first use after refurbishment) where the capital expenditure is specified capital expenditure,
  - 25 years from first use (or first use after refurbishment) where the capital (4)(k)(ii)

expenditure is not specified capital expenditure.

Where the sale price of the building or structure is less than the residue of the expenditure immediately after the sale, the sale price is treated as the residue of the expenditure for the purposes of determining the writing-down allowances to be made under **subsection (4)**. (5)

***Limit on writing-down allowances***

The amount of a writing-down allowance to be made for a chargeable period (whether under **subsection (3)** or **(4)**) cannot exceed what, apart from that allowance, would be the residue of the capital expenditure at the end of the chargeable period or its basis period. In effect, this ensures that writing-down allowances are given only up to the amount of the capital expenditure incurred on the construction of the building or structure. No writing-down allowances will be given once the whole of that expenditure has been written off (whether through writing-down allowances only, or through such allowances and an industrial building allowance under **section 271**). (6)

***Hotels converted to nursing homes***

A hotel which is converted into a registered private nursing home will not lose entitlement to any unclaimed capital allowances as a result of it ceasing to be a hotel. (7)

***Transitional arrangements: Hotels and holiday camps***

The reduction in the annual writing-down allowance to be made in relation to capital expenditure incurred on the construction (including, by virtue of **section 270**, refurbishment) of hotel buildings and holiday camps (see **subsection (3)(c)**) and the resulting increase in the tax life of such buildings to 25 years (see **subsection (4)(c)**) will not apply as respects capital expenditure incurred by 31 December 2006 or by 31 July 2008 where certain conditions are met. (8) and (9)

These changes will not apply in relation to capital expenditure incurred by 31 December 2006 if: (8)

- a planning application (other than for outline permission), in so far as planning permission is required, in respect of the building or structure is made in accordance with the Planning and Development Regulations 2001 to 2002, the planning authority acknowledge under article 26(2) of the Planning and Development Regulations 2001 that the application was received on or before 31 December 2004, and the application is not an invalid application under article 26(5) of those regulations, (8)(a)
  - a planning application (other than for outline permission), in so far as planning permission was required, in respect of the building or structure was made in accordance with the Local Government (Planning and Development) Regulations 1994, the planning authority acknowledge under article 29(2)(a) of those regulations that the application was received on or before 10 March 2002, and the application was not an invalid application under article 29(2)(b)(i) of those regulations, (8)(b)
  - the construction or refurbishment work represented by the expenditure is exempted development for the purposes of the Planning & Development Act 2000, by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and the following conditions are satisfied not later than 31 December 2004: (8)(ba)
    - a detailed plan in relation to the development work is prepared,
    - a binding contract in writing exists under which the expenditure on the development is incurred, and
    - work to the value of 5 per cent of the development costs is carried out,
- or

- the construction or refurbishment of the building or structure is development in respect of which a valid application is made for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 and the application is acknowledged by the Dublin Docklands Development Authority as having been received on or before 31 December 2004. (8)(c)

These changes will not apply in relation to capital expenditure incurred by 31 July 2008 if: (9)

- the relevant planning application etc. condition in **subsection (8)** was met, (9)(a)
- work to the value of at least 15 per cent of the actual construction or refurbishment costs is carried out by 31 December 2006, (9)(b)
- a binding contract in writing in relation to the construction or refurbishment is in place by 31 July 2006, and (9)(c)
- any other conditions, relating to compliance with State aid issues, which the Minister for Finance may specify in regulations, have been satisfied. (9)(d)

By virtue of **paragraphs (a) and (b)** of **section 270(7)** local authority certification is required in respect of the condition that work to the value of at least 15 per cent of the construction or refurbishment costs is carried out by 31 December 2006. Such certification must include details of actual expenditure incurred to 31 December 2006 and of projected expenditure post 31 December 2006.

### ***Restrictions on amount of qualifying expenditure incurred in 2007 and in first 7 months of 2008 – certain buildings and structures***

By virtue of **section 270(5)**, the amount of any capital expenditure incurred on the construction or refurbishment of registered hotels, holiday camps and holiday cottages for the year 2007 and the period 1 January 2008 to 31 July 2008 is restricted to 75 per cent and 50 per cent respectively of the amount attributable to the period involved. Similar restrictions apply in the case of qualifying sports injuries clinics and qualifying residential units associated with registered nursing homes. However, in the case of such units the 75 per cent restriction for 2007 applies only from 25 March 2007. s. 270(5)

Additionally, in the case of registered hotels, holiday camps and holiday cottages the amount of expenditure incurred in the period 1 January 2007 to 31 July 2008 which may be taken into account in calculating capital allowances is capped, under **section 270(7)**, at the amount of expenditure, projected to be incurred post 31 December 2006, which was certified by the local authority – see **subsection (9)** above. This cap will apply prior to the application of the respective reductions to 75 per cent and 50 per cent of expenditure. [See notes on **section 270** for more details]. s. 270(7)

Following further changes made to the scheme of capital allowances for **qualifying residential units** in Finance Act 2007, capital expenditure incurred under contracts entered into on or after 1 May 2007 will qualify only in relation to 50 per cent of the capital expenditure incurred in the period 1 May 2007 to 30 April 2010 in the case of individuals and in relation to 75 per cent of the expenditure incurred in that period in the case of companies. s. 270(8)

For the purposes of these restrictions, expenditure is treated as incurred in a period only to the extent that it is attributable to work actually carried out in that period. s. 316(2B)

## **273 Acceleration of writing-down allowances in respect of certain expenditure on certain industrial buildings or structures**

### **Summary**

This section provides that accelerated rates of writing-down allowances (known as “free depreciation”) may be availed of in certain circumstances in respect of qualifying



expenditure incurred on certain industrial buildings or structures. The qualifying expenditure is capital expenditure incurred on the construction (including, by virtue of **section 270**, refurbishment) of an industrial building or structure which is occupied by the person to whom the writing-down allowance under **section 272** is to be made for the purposes of —

- a trade carried on in a mill, factory or similar premises or of a trade carried on in a laboratory for the analysis of minerals,
- a dock undertaking, or
- a trade of hotel-keeping, provided the expenditure is incurred on the construction of premises which are registered with the National Tourism Development Authority (trading as Fáilte Ireland).

Accordingly, therefore, it is to be noted that the benefit of free depreciation under the section is not available to lessors.

Subject to restrictions, the writing-down allowance under **section 272** in respect of qualifying expenditure may be increased under this section by an amount specified by the person entitled to the allowance. Effectively, this provides for 100 per cent allowances to be taken by the person entitled to the writing-down allowance under **section 272** at his/her discretion. However, for qualifying expenditure incurred on or after 1 April, 1988, writing-down allowances as increased under this section, whether claimed for one or more chargeable periods, cannot exceed —

- 75 per cent of the expenditure incurred, where the qualifying expenditure was incurred before 1 April, 1989,
- 50 per cent of the expenditure incurred, where the qualifying expenditure was incurred in the period 1 April, 1989 to 31 March, 1991, and
- 25 per cent of the expenditure incurred, where the qualifying expenditure was incurred in the period 1 April, 1991 to 31 March, 1992.

Moreover, for qualifying expenditure incurred on or after 1 April, 1992, no acceleration of the writing-down allowances to be made under **section 272** is permitted and, for qualifying expenditure incurred before that date, no acceleration of the writing-down allowances to be made under **section 272** is permitted for chargeable periods ending on or after 6 April, 1999.

There are 2 categories of exceptions to the restrictions on the availability of accelerated writing-down allowances in respect of qualifying expenditure. Firstly, in the case of —

- industrial buildings or structures provided for use for the purposes of certain trading operations carried on in the Shannon Airport Area or the Custom House Docks Area,
- industrial buildings or structures the expenditure on the provision of which was incurred before 31 December, 1995 under a binding contract entered into on or before 27 January, 1988,
- industrial buildings or structures provided for the purposes of a project approved by an industrial development agency on or before 31 December, 1985 and in respect of the provision of which expenditure was incurred before 31 December, 1995, and
- industrial buildings or structures provided for the purposes of a project which was approved by an industrial development agency in the period from 1 January, 1986 to 31 December, 1988 and in respect of the provision of which expenditure was incurred before 31 December, 1996,

the writing-down allowance may be increased by whatever amount is specified by the person entitled to that allowance (that is, allowances of up to 100 per cent of the qualifying expenditure may be taken).

Secondly, in the case of —

- industrial buildings or structures provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from 1 January, 1989 to 31 December, 1990 and in respect of the provision of which expenditure is incurred before 31 December, 1997 (or before 30 June, 1998 where a legal dispute gave rise to a delay),
- industrial buildings or structures provided for the purposes of such a project which was also approved for “**section 130**” loan financing and in respect of the provision of which expenditure is incurred before 31 December, 2002, and
- industrial buildings or structures provided for use for the purposes of a trade of hotel-keeping and in respect of the provision of which expenditure was incurred before 31 December, 1995, where a binding contract for the provision of the building or structure was entered into before 31 December, 1990 and where the hotel is registered with the National Tourism Development Authority (trading as Fáilte Ireland) within 6 months of its completion,

the writing-down allowance may be increased up to 50 per cent of the qualifying expenditure incurred.

## Details

### Definitions

“industrial development agency” is the Industrial Development Authority, Shannon Free Airport Development Company Limited or Údarás na Gaeltachta. (1)

“qualifying expenditure” is capital expenditure incurred on or after 2 February, 1978 by the person entitled to a writing-down allowance under **section 272** in respect of a building or structure to be occupied by such person for one of the purposes described in **paragraph (a), (b) or (d) of section 268(1)**, namely, for the purposes of a trade carried on in a mill, factory or similar premises or in a laboratory for the analysis of minerals, or of a dock undertaking or of a trade of hotel-keeping. However, capital expenditure incurred on buildings or structures used for hotel-keeping will not be qualifying expenditure unless the premises is registered with the National Tourism Development Authority (trading as Fáilte Ireland).

The effect of the definition of “qualifying expenditure” is to confine the availability of accelerated writing-down allowances to the person who incurs capital expenditure on a building or structure to be occupied by such person for the purposes of a trade to be carried on by such person. Accordingly, the section does not apply to lessors.

### Rates of free depreciation – general

Subject to restrictions, a person who is entitled to a writing-down allowance under **section 272** for any chargeable period in respect of qualifying expenditure may require that the allowance be increased by such amount as the person may specify. Effectively, this provides for 100 per cent allowances to be taken by the person entitled to the writing-down allowance under **section 272** at his/her discretion. Thus, the person could take the full 100 per cent allowance in the first year for which entitlement to the writing-down allowance exists. Alternatively, the person could take the allowances in whatever tranches that person wishes, for example, 20 per cent in year 1, 30 per cent in year 2, 50 per cent in year 3, subject to at least the basic writing-down allowance being taken for any one year. (2)(a)

For qualifying expenditure incurred on or after 1 April, 1988, writing-down allowances as increased under this section, whether claimed for one or more chargeable periods, cannot exceed — (2)(b)

- 75 per cent of the expenditure incurred, where the qualifying expenditure was incurred before 1 April, 1989,

- 50 per cent of the expenditure incurred, where the qualifying expenditure was incurred in the period 1 April, 1989 to 31 March, 1991, and
- 25 per cent of the expenditure incurred, where the qualifying expenditure was incurred in the period 1 April, 1991 to 31 March, 1992.

Moreover, for qualifying expenditure incurred on or after 1 April, 1992, no acceleration of the writing-down allowances is permitted and, for qualifying expenditure incurred before that date, no acceleration of the writing-down allowances is permitted for chargeable periods ending on or after 6 April, 1999. (3)

***Continued entitlement to 100 per cent free depreciation for certain buildings or structures***

The restrictions (***subsection (2)(b)***) and prohibition (***subsection (3)***) on the acceleration of writing-down allowances do not apply in the case of certain buildings or structures. (4)

The buildings and structures concerned are — (5)

- industrial buildings or structures provided before 23 April, 1996 for use for the purposes of relevant trading operations carried on by companies in the Shannon Airport Area (***section 445***) or the Custom House Docks Area (***section 446***); but, in the case of capital expenditure incurred on or after 6 May, 1993, excluding any building or structure provided by a lessor to a lessee other than where the letting is part of those relevant trading operations,
- industrial buildings or structures provided by a company on or after 23 April, 1996 for use for the purposes of such relevant trading operations carried on by the company, but, in the case of capital expenditure incurred on or after 6 May, 1993, excluding any building or structure provided by a lessor to a lessee other than where the letting is part of those relevant trading operations,
- industrial buildings or structures the expenditure on the provision of which was incurred before 31 December, 1995 under a binding contract entered into on or before 27 January, 1988,
- industrial buildings or structures provided for the purposes of a project approved by an industrial development agency on or before 31 December, 1985 and in respect of the provision of which expenditure was incurred before 31 December, 1995, and
- industrial buildings or structures provided for the purposes of a project which was approved by an industrial development agency in the period from 1 January, 1986 to 31 December, 1988 and in respect of the provision of which expenditure was incurred before 31 December, 1996.

The writing-down allowance in respect of qualifying expenditure on such buildings or structures may continue to be increased by whatever amount is specified by the person entitled to that allowance (that is, free depreciation of up to 100 per cent of the qualifying expenditure may be taken).

***Continued entitlement to 50 per cent free depreciation for certain buildings or structures***

The prohibition (***subsection (3)***) on the acceleration of writing-down allowances does not apply, and the restrictions (***subsection (2)(b)***) on such acceleration are modified, in the case of certain industrial buildings or structures. (6)

The buildings and structures concerned are — (7)

- industrial buildings or structures provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from 1 January, 1989 to 31 December, 1990 and in respect of the provision of which expenditure is incurred before 31 December, 1997 (or before 30 June, 1998 where a legal dispute gave rise to a delay),

- industrial buildings or structures provided for the purposes of such a project which was also approved for “**section 130**” loan financing and in respect of the provision of which expenditure is incurred before 31 December, 2002, and
- industrial buildings or structures provided for use for the purposes of a trade of hotel-keeping and in respect of the provision of which expenditure was incurred before 31 December, 1995, where a binding contract for the provision of the building or structure was entered into before 31 December, 1990 and where the hotel is registered with the National Tourism Development Authority (trading as Fáilte Ireland) within 6 months of its completion.

The writing-down allowance in respect of qualifying expenditure on such buildings or structures may continue to be increased by whatever amount is specified by the person entitled to that allowance up to 50 per cent of the qualifying expenditure incurred (that is, free depreciation of up to 50 per cent of the qualifying expenditure may be taken).

### ***Restriction on availability of initial allowance where free depreciation claimed***

Where a writing-down allowance in respect of qualifying expenditure is accelerated for any chargeable period, no industrial buildings (initial) allowance is to be made in respect of that expenditure for the same or any subsequent chargeable period. (8)

## **274 Balancing allowances and balancing charges**

### **Summary**

Where capital expenditure has been incurred on the construction (including, by virtue of **section 270**, refurbishment) of an industrial building or structure and capital allowances have been made in respect of that expenditure, a balancing allowance or charge (that is, an adjustment to the quantum of the allowances made) may arise in a chargeable period where any of the following events occurs —

- the relevant interest in the industrial building or structure is sold,
- the relevant interest, being a leasehold interest, comes to an end except where the interest holder acquires the reversionary interest,
- the building or structure is demolished or destroyed or otherwise ceases altogether to be used, or
- consideration (other than rent or an amount treated or partly treated as rent under **section 98**) is received by the person entitled to the relevant interest in respect of an interest subject to that relevant interest.

A balancing charge may also arise where certain health related and childcare facilities (defined as “relevant facilities” – see **subsection (2A)**) cease to be relevant facilities.

Where any of the above events occurs —

- a balancing allowance arises where the amount of the residue of the expenditure (the unused capital allowances) is greater than the sale, insurance, salvage or compensation moneys or other consideration,
- a balancing charge arises where the amount of the residue of the expenditure is less than the sale, insurance, salvage or compensation moneys or other consideration, but any such charge cannot exceed the amount of any capital allowances actually made in respect of the industrial building or structure.

However, no balancing charge or allowance can arise where the event occurs outside the industrial building or structure’s relevant “holding period” for balancing event purposes. In some case, this may be the length of time it takes to write off the capital expenditure on the construction of the industrial building or structure by way of annual writing-down allowances. However, in more recent times the holding period of a building or structure for

balancing event purposes may be greater than the writing-down period for the building or structure e.g. the holding period for private hospitals and other health related facilities is, generally, now 15 years whereas the writing down period is only 7 years.

Thus, the holding period of any particular industrial building or structure depends on the type of building or structure involved.

## Details

### *Events giving rise to a balancing allowance or charge*

Where an industrial building (initial) allowance or a writing-down allowance has been made in respect of capital expenditure incurred on the construction (including, by virtue of **section 270**, refurbishment) of an industrial building or structure, a balancing allowance or a balancing charge will arise on the occurrence of any of the following events — (1)(a)

- the relevant interest in the industrial building or structure is sold (this may cover the sale of a freehold interest or the sale or assignment of a leasehold interest), (1)(a)(i)
- the relevant interest, being a leasehold interest, comes to an end except where the interest holder acquires the reversionary interest (the exclusion covers the case where, for example, a person with a leasehold interest in a building or structure acquires the freehold), (1)(a)(ii)
- the building or structure is demolished or destroyed or otherwise ceases altogether to be used, or (1)(a)(iii)
- consideration (other than rent or an amount treated or, as respects consideration received on or after 26 March 1997, partly treated as rent under **section 98**) is received by the person entitled to the relevant interest in respect of an interest subject to that relevant interest. [**Section 98** deals with the treatment of premiums payable under short leases (50 years or less) and, essentially, apportions part of the premium as rent.] (1)(a)(iv)

The provision in **subparagraph (iv)** is essentially designed to prevent avoidance of a balancing charge through the device of creating a new interest out of the relevant interest in a building or structure which is marginally inferior to the relevant interest (for example, a 999 year lease is created out of the freehold interest). In the absence of that provision, the consideration received for the creation of such an interest would avoid the balancing charge procedure and, thus, escape a charge to income tax or corporation tax. It should be noted that the inclusion of the words “or partly treated” secures that most premiums for short leases are excluded from the provision. In effect, the provision principally applies in the case of long leases (50 years or more). The provision does not apply, however, in the case of buildings or structures covered by **subsection (2)**.

A balancing allowance or charge is to be made on the person holding the relevant interest in the building or structure immediately before the event giving rise to the allowance or charge. The allowance or charge is made for the chargeable period related to the event, that is, in the case of corporation tax, for the accounting period in which the event occurred and, in the case of income tax, for the year of assessment in the basis period for which the event occurred.

### *Balancing charge for “relevant facilities”*

A balancing charge may also arise where certain health related and childcare facilities (defined as “relevant facilities”) cease to be relevant facilities. This provision applies to such facilities that are first used (or first used after refurbishment) on or after 1 January 2006. For the purposes of calculating the balancing charge to be made, **section 318(e)** deems an amount of money to have been received. (2A)

The types of buildings and structures involved are: (2A)(a)

- a registered nursing home under **section 268(1)(g)**;
- a qualifying residential unit (associated with a registered nursing home) under **section 268(3A)**;
- a convalescent home under **section 268(1)(i)**;
- a qualifying (private) hospital under **section 268(1)(j)**;
- a qualifying mental health centre under **section 268(1)(l)**,
- a qualifying specialist palliative care unit under **section 268(1)(m)**, or
- a childcare facility within the meaning of **section 843A**.

Subject to **paragraph (c)**, a balancing charge will arise where: (2A)(b)

- a building or structure is a relevant facility,
- allowances have been made under this Chapter in respect of capital expenditure incurred, and
- the building or structure ceases to be a relevant facility. This cessation could be because of a change of use, for example, where a building is converted into apartments. It could also be because some other condition in relation to the facility is broken e.g. where it ceases to be registered appropriately, does not have certification from the Health Service Executive or ceases to comply with appropriate underlying regulations etc. without actually changing use.

A balancing charge will not be imposed under **paragraph (b)** where a building or structure ceases to be one type of relevant facility but becomes another type of relevant facility within 6 months. (2A)(c)

***No balancing allowance/charge after the end of the holding period***

Generally, no balancing allowance or charge is made where the event occurs after the end of the holding period of the building or structure for balancing event purposes. The length of this period depends on the type of industrial building or structure involved and the time when the expenditure on its construction was incurred. The holding period generally runs from the time when the building was first used. The holding period is a period of — (1)(b)

- in the case of a building or structure in use for the purposes of a trade carried on in a mill, factory, etc, or in a mineral laboratory, or for the purposes of a dock undertaking, 25 years from first use (or, where the expenditure was incurred before 16 January 1975, 50 years from first use), (1)(b)(i)
- in the case of a building or structure in use for the purposes of a trade of market gardening or for the intensive production of cattle, etc, 10 years from first use, (1)(b)(ii)
- subject to **subparagraph (iib)**, in the case of a building or structure in use for the purposes of a trade which consists of the operation or management of a registered private nursing home (including associated qualifying residential units for the aged or infirm), or a convalescent home, 10 years from first use, or 15 years from first use (or first use after refurbishment) where this occurs on or after 1 February 2007, (1)(b)(iia)
- in the case of qualifying residential units – see **section 268(3A)** – where capital expenditure on construction or refurbishment is incurred under contracts or agreements entered into on or after 1 May 2007, 20 years from first use or first use after refurbishment, (1)(b)(iib)
- in the case of a building or structure in use for the purposes of a trade of hotel-keeping, including a holiday camp (but not including a registered holiday cottage, a registered guest house, a registered holiday hostel or any other building or structure which is deemed to be in use for such purposes): (1)(b)(iia)
  - 25 years from first use, where the capital expenditure is incurred on or after 4

December 2002 [or after 31 December 2006 where **subsection (1A)** applies or after 31 July 2008 where **subsections (1A) and (1B)** apply,

- 7 years from first use, where the capital expenditure was incurred on or after 27 January 1994,
- 10 years from first use, where the capital expenditure was incurred before 27 January 1994,
- in the case of a registered holiday cottage which qualified prior to the termination of relief for such buildings, 10 years from first use, (1)(b)(iv)
- in the case of a registered guest house or a registered holiday hostel to which **section 268(2C)** applies (i.e. which is deemed to be a building or structure in use for the purposes of a trade of hotel-keeping), 25 years from first use where the capital expenditure is incurred on or after 3 February 2005, (1)(b)(iva)
- in the case of buildings and structures which are comprised in, and are in use as part of, premises which are registered in the register of caravan sites and camping sites, 25 years from first use where the capital expenditure is incurred on or after 1 January 2008, (1)(b)(ivb)
- in the case of an airport runway or an airport apron, 25 years from first use, or in the case of Aer Rianta (now known as the Dublin Airport Authority and including the Cork Airport Authority and the Shannon Airport Authority where relevant), 25 years from vesting day (1 January 1999), (1)(b)(v)
- in the case of other categories of airport buildings or structures, 25 years from first use (for new expenditure) or, in the case of buildings or structures which existed on vesting day (Aer Rianta) or on 27 March 1998 (other airport operators), 25 years from that day or date, (1)(b)(vi)
- in the case of a building or structure in use for the purposes of the operation or management of a qualifying hospital, 10 years from first use, or 15 years from first use (or first use after refurbishment) where this occurs on or after 1 February 2007, (1)(b)(via)
- in the case of a building or structure in use for the purposes of the operation or management of a qualifying sports injuries clinic, 10 years from first use, and (1)(b)(vii)
- in the case of a building or structure in use for the purposes of the operation or management of a qualifying mental health centre, 15 years from first use. This scheme commenced with effect from 23 January 2007. (1)(b)(viii)
- in the case of a building or structure in use for the purposes of the operation or management of a qualifying specialist palliative care unit, 15 years from first use. [This scheme is, subject to EU approval, to be commenced by order of the Minister for Finance]. (1)(b)(ix)
- in the case of an aviation services facility: (1)(b)(x)(I)
  - 7 years from first use (or first use after refurbishment) where the capital expenditure incurred is specified capital expenditure,
  - 25 years from first use (or first use after refurbishment) where the capital expenditure incurred is not specified capital expenditure.

(1)(b)(x)(I)  
I)

### ***Transitional arrangements: Hotels and holiday camps***

The increase in the length of the holding period for hotel buildings and holiday camps to 25 years (see **subsection (1)(b)(iii)**) will not apply as respects capital expenditure incurred on the construction or refurbishment of a building or structure by 31 December 2006 or by 31 July 2008 where certain conditions are met. (1A) and (1B)

The increase in the holding period will not apply in relation to capital expenditure incurred by 31 December 2006 if: (1A)

- a planning application (other than for outline permission), in so far as planning permission is required, in respect of the building or structure is made in accordance with the Planning and Development Regulations 2001 to 2002, the planning authority acknowledge under article 26(2) of the Planning and Development Regulations 2001 that the application was received on or before 31 December 2004, and the application is not an invalid application under article 26(5) of those regulations,
- a planning application (other than for outline permission), in so far as planning permission was required, in respect of the building or structure was made in accordance with the Local Government (Planning and Development) Regulations 1994, the planning authority acknowledge under article 29(2)(a) of those regulations that the application was received on or before 10 March 2002, and the application was not an invalid application under article 29(2)(b)(i) of those regulations,
- the construction or refurbishment work represented by the expenditure is exempted development for the purposes of the Planning & Development Act 2000, by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and the following conditions are satisfied not later than 31 December 2004:
  - a detailed plan in relation to the development work is prepared,
  - a binding contract in writing exists under which the expenditure on the development is incurred, and
  - work to the value of 5 per cent of the development costs is carried out,
 or
- the construction or refurbishment of the building or structure is development in respect of which a valid application is made for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 and the application is acknowledged by the Dublin Docklands Development Authority as having been received on or before 31 December 2004.

The increase in the holding period will not apply in relation to capital expenditure incurred by 31 July 2008 if: **(1B)**

- the relevant planning application etc. condition in **subsection (1A)** was met, **(1B)(a)**
- work to the value of at least 15 per cent of the actual construction or refurbishment costs is carried out by 31 December 2006, **(1B)(b)**
- a binding contract in writing in relation to the construction or refurbishment is in place by 31 July 2006, and **(1B)(c)**
- any other conditions, relating to compliance with State aid issues, which the Minister for Finance may specify in regulations, have been satisfied. **(1B)(d)**

By virtue of **paragraphs (a) and (b) of section 270(7)** local authority certification is required in respect of the condition that work to the value of at least 15 per cent of the construction or refurbishment costs is carried out by 31 December 2006. Such certification must include details of actual expenditure incurred to 31 December 2006 and of projected expenditure post 31 December 2006.

**Exception from the rule in subsection (1)(a)(iv)**

The rule that a balancing event arises where consideration (other than rent or an amount treated or partly treated as rent under **section 98**) is received by the person entitled to the relevant interest in respect of an interest subject to that relevant interest does not apply where the relevant interest is in a building or structure in use for the purposes of hotel-keeping and a binding contract for the provision of the building or structure had been entered into in the period from 28 January 1988 to 31 May 1988. **(2)**



### ***Balancing allowance***

In the case where there are no sale, insurance, salvage or compensation moneys (defined in **section 318**) or consideration of the type referred to in **subsection (1)(a)(iv)**, or where the residue of the expenditure (defined in **section 277**) on the building or structure immediately before the event exceeds those moneys or that consideration, a balancing allowance is made. The amount of the allowance is the amount of the residue or, where such moneys or consideration are received, the excess of the amount of the residue over those moneys or that consideration. It should be noted, however, that this subsection will not apply in the case of consideration of the type referred to in **subsection (1)(a)(iv)** which is received on or after 5 March 2001. (3)

#### **Example**

A factory was constructed in 1981 at a cost of €100,000. No industrial building (initial) allowance or free depreciation was claimed in respect of the expenditure. For the years of assessment 1981–82 to 2000–2001 annual writing-down allowances of 4% per annum were claimed (20 @ 4%), totalling €80,000. Thus, the residue is €20,000.

If the building is scrapped in the short tax year 2001 and no sale, insurance, etc moneys are received, a balancing allowance equal to the residue will be made, that is, €20,000. If, however, the building were sold in the short tax year 2001 for €15,000, the allowance to be made would be €5,000, being the excess of the residue over the sale price.

### ***Balancing charge***

In the case where the sale, insurance, salvage or compensation moneys or consideration of the type referred to in **subsection (1)(a)(iv)** exceed the residue, if any, of the expenditure on the building or structure immediately before the event, a balancing charge is made. The amount of the charge is the excess of those moneys or that consideration over the residue or, where the residue is nil, the amount of those moneys or that consideration. (4)

#### **Example**

If in the last example the factory had been sold in the short tax “year” 2001 for €35,000, a balancing charge of €15,000 would be made, being the excess of the sale price over the residue of €20,000.

### ***Balancing allowance/charge where building or structure in use for industrial purposes for part of its life***

The “relevant period” is the period beginning when the building or structure was first used and ending on — (5)(a)

- if the event giving rise to the balancing allowance or charge occurs on the last day of the chargeable period or (in the case of income tax) its basis period, that day, or
- if that event occurs on some other day, the last day of the preceding chargeable period or (in the case of income tax) its basis period.

However, if before the event giving rise to the balancing allowance or charge the building or structure had been sold while an industrial building or structure, the “relevant period” begins on the day following that sale or, if there had been more than one such sale, on the day following the last of those sales.

In order to ensure that an excessive balancing allowance or charge does not arise in relation to a building or structure which for part of the “relevant period” was not an industrial building or structure, any balancing allowance or charge arising is to be reduced in the same proportion that the years of industrial use bear to the total years of use (the “relevant period”) of the building or structure at the time of the event giving rise to the balancing allowance or charge. For this purpose, non-industrial use is use in a chargeable period for which a writing-down allowance has not been made. (5)(b)

The availability of industrial buildings (initial) allowances under **section 271** and (5)(c) accelerated writing-down allowances (free depreciation) under **section 273** could mean that in many cases writing-down allowances will not be made for chargeable periods for the reason that the allowances which would otherwise have been made for those periods have been aggregated by acceleration into an earlier period. In the absence of a provision to the contrary, this could result in periods of genuine industrial use being treated for the purposes of **subsection (5)(b)** as periods of non-industrial use. Thus, where a writing-down allowance would have been given for a chargeable period but for **section 272(6)** (which ensures that no further writing-down allowances will be given once the whole of the original cost of a building or structure has been written off) or **section 321(5)** (which limits the aggregate amount of writing-down allowances and initial allowance to the expenditure incurred), it is provided that the writing-down allowance will be deemed to have been given and, accordingly, any balancing allowance or charge will not be reduced by reference to such a chargeable period.

### Example

On 1 January 2002 a company whose accounting year ends on 31 December buys a building which was first used in January 1997. At the time of sale the building is an industrial building. The tax life of the building is 25 years and the residue of expenditure after taking into account a balancing charge on the seller is €100,000. Accordingly, the buyer has the expectation of writing off the €100,000 by way of annual writing-down allowances of €5,000 over the years 2002–2021 (the remaining 20 years of the tax life).

The company does not continue to own the building until the year 2021; instead the company sells it during the year 2017 for €40,000. Also, the company did not use the building for industrial purposes throughout its period of ownership but diverted it to non-industrial use from 1 January 2007 to 31 December 2011 so that no writing-down allowances were made for the 5 years 2007 to 2011. The calculation of the balancing charge on the sale in the year 2007 is as follows:

Residue at time of purchase in January 2002	€100,000	
Writing-down allowances for years 2002 to 2006 (5 years @ €5,000)	€25,000	
Notional writing-down allowances (see section 277(4)) for years 2007 to 2011 (5 years @ €5,000)	€25,000	
Writing-down allowances for years 2012 to 2016 (5 years @ €5,000)	€25,000	€75,000
Residue		€25,000
Sale proceeds		€40,000
Provisional balancing charge		€15,000
Relevant period 1/1/2002 – 31/12/2016 (15 years)		
Industrial use within relevant period (10 years)		
Balancing charge is reduced to €15,000 x 10/15	=	€10,000

The new owner takes over the residue of expenditure computed as follows —

Original residue on 2nd sale (as computed above)	€25,000
Add balancing charge	<u>€10,000</u>
Residue	<u>€35,000</u>

Assuming the new owner continues to use the building for industrial purposes, such owner will be entitled under **section 272(4)** to writing-down allowances in respect of the residue of the expenditure which will be written off on a straight-line basis over the un-expired part of the tax life of the building.

### ***Holiday cottages***

A holiday cottage is an industrial building or structure (i.e. in relation to capital expenditure incurred prior to the termination of relief for such cottages) only if it is registered in the register of holiday cottages. If a holiday cottage ceases to be so registered in circumstances where (apart from this provision) a balancing allowance or charge could not be made under this section (for example, the cottage is converted into a family home by the owner), then, the holiday cottage is deemed to have been sold while it was an industrial building or structure at a price equivalent to the expenditure incurred on its construction. The effect of this provision is to enable a balancing charge to be made which will recover the total capital allowances granted in respect of the capital expenditure incurred on the construction of the holiday cottage. The exclusion of **section 272(4)** from the application of this provision is designed to ensure that, where a holiday cottage is sold while it is not in use as such, the buyer will not have any entitlement to capital allowances even if the cottage is subsequently re-registered. (6)

However, if the holiday cottage is not sold during the period of its non-registration and is subsequently re-registered by the person on whom the balancing charge was made under **subsection (6)**, that person will be entitled to writing-down allowances equivalent to what a buyer of the holiday cottage would be entitled. The normal provisions relating to balancing allowances and charges would apply if, during the second period of registration, the holiday cottage were sold by the person on whom the balancing charge was made under **subsection (6)**. (7)

### ***Limit on balancing charge***

Where a balancing event arises in relation to an industrial building or structure, the amount of a balancing charge to be made on a person cannot in any circumstances exceed the amount of any capital allowances made to the person in respect of the capital expenditure incurred on the industrial building or structure. (8)

## **275 Restriction of balancing allowances on sale of industrial building or structure**

### **Summary**

This section is designed to prevent a tax avoidance device whereby certain contrived transactions would otherwise enable the cost of an industrial building or structure to be written off for tax purposes at a greatly accelerated rate. For example, a company which has incurred expenditure on an industrial building or structure might grant a long lease (say, for 999 years) of the premises to an associated company and merely retain the reversion. The reversion would be of little value and the company might sell it (its “relevant interest”) at the very low market value to another associated company. By so doing, it could claim a large balancing allowance by reference to the original cost of the building or structure less the proceeds of sale and the capital allowances already granted. **Section 275** prevents this by withdrawing the right to a balancing allowance where such sales take place within

groups of companies or where they are designed solely or mainly to achieve a tax advantage.

## Details

### *Definitions*

“inferior interest” is any interest in or right over the building or structure. (1)

“premium” is defined so as to exclude any part of a premium which may be treated as income under **section 98**. This avoids what would otherwise be an effective double charge to tax.

“capital consideration” is a capital sum or consideration which would be a capital sum if it had been a payment of money.

“rent” includes any consideration which is not capital consideration.

“commercial rent” is the rent which would have been required in respect of the inferior interest, having regard to any premium payable for that interest, if the transaction had been at arm’s length.

### *Application*

The section applies where — (2)

- the relevant interest in a building or structure is sold subject to an inferior interest,
- (apart from this section) a balancing allowance under **section 274** would arise on the person (“the relevant person”) who immediately before the sale was entitled to the relevant interest, and
- the relevant person, the person who buys the relevant interest and the person to whom the inferior interest was granted, or any 2 of those persons, are connected persons (see **section 10**), or it appears that the sole or main benefit of the sale or grant of the inferior interest was the securing of a capital allowance.

### *Restriction of balancing allowance*

For the purpose of computing a balancing allowance or balancing charge on the sale of the relevant interest, the proceeds of sale are to be taken as — (3)

- the actual sales proceeds increased by the amount of any premium received by the seller on the grant of the inferior interest, or
- where no rent is payable, or a commercial rent is not payable, for the grant of the inferior interest, the amount of any premium received by the seller on the grant of the inferior interest plus an amount equal to what the sales proceeds would have been if a commercial rent (having regard to any premium actually payable) had been payable on an open market sale of the relevant interest.

The proceeds of the sale as so taken, however, cannot exceed the amount necessary to secure that no balancing allowance is made.

### *Residue of expenditure available to purchaser of relevant interest*

Where a balancing allowance has been denied or reduced under **subsection (3)**, the residual capital allowances available to the purchaser of the relevant interest are to be calculated as if the seller had in fact obtained the balancing allowance so denied or reduced. This provision is necessary to prevent the purchaser in turn from claiming an artificially contrived balancing allowance. (4)

### *Variation of terms on which inferior interest is granted*

Where the terms on which an inferior interest was granted are varied before the sale of the (5)

relevant interest, any capital consideration payable for the variation is treated as a premium payable for the grant of the interest. Also, in any such case, the question of what rent, if any, is payable in respect of the interest is determined by reference to the terms in force immediately before the relevant interest is sold. This provision effectively prevents persons avoiding the effect of the section by varying the terms of the grant of the inferior interest between the time of the granting of that interest and the time of the sale of the relevant interest.

## **276 Application of sections 272 and 274 in relation to capital expenditure on refurbishment**

### **Summary**

In general, capital allowances in respect of industrial buildings or structures apply over the particular “tax life” (or writing-down life) of the building or structure and this life commences on the date the building or structure first comes into use. However, in the case of allowances granted in respect of capital expenditure incurred on the refurbishment of an industrial building or structure, *section 276* provides that the particular tax life of the building or structure in relation to that expenditure commences from the date on which such expenditure is incurred and not from the date the building or structure was first used.

### **Details**

#### ***Definition***

“refurbishment” is any work of construction, reconstruction, repair or renewal which is carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure. Specifically, this includes work involving the provision or improvement of water, sewerage or heating facilities. (1)

#### ***Tax life of refurbishment expenditure***

Where capital expenditure is incurred on the refurbishment of an industrial building or structure, then, *sections 272* (writing-down allowances) and *274* (balancing allowances and balancing charges) are to apply as if “the capital expenditure on refurbishment of the building or structure was incurred” were substituted for “the building or structure was first used” in each place where it occurs in *section 272(4)* and *section 274(1)(b)*. This secures that, in the case of allowances granted in respect of capital expenditure incurred on the refurbishment of an industrial building or structure, the tax life of the building or structure in relation to that expenditure commences from the date on which that expenditure is incurred and not from the date the building or structure was first used. (2)

#### ***Apportionment***

In applying this section when computing a balancing allowance or a balancing charge, apportionment of the sale, insurance, salvage or compensation moneys is to be made between refurbishment expenditure and construction expenditure on a just and reasonable basis. (3)

## **277 Writing off of expenditure and meaning of “residue of expenditure”**

### **Summary**

This section contains the rules relating to the writing off of expenditure on industrial buildings or structure in order to ascertain the “residue of expenditure” at any relevant time, and prescribes the dates at which particular allowances are to be deemed to be written off.

The importance of this section lies in the fact that the amounts of all balancing allowances, balancing charges and subsequent writing-down allowances depend upon the amounts previously written off in respect of the particular expenditure. In order to safeguard against the possibility of double allowance, it is necessary to be precise as to the dates at which the amounts are written off. Similar precision is necessary in order to ensure that in no case will the allowances amount to more than 100 per cent of the original expenditure.

## Details

### *General*

Expenditure on the construction of buildings or structures is to be treated as written off to the extent and at the times specified in this section and references to the residue of such expenditure are to be construed accordingly. (1)

### *Industrial building (initial) allowance*

An industrial building (initial) allowance is to be written off as at the time when the building or structure is first used. (2)

### *Writing-down allowances*

A writing-down allowance is to be written off as at the time by reference to which the title to that allowance is determined. The title to a writing-down allowance arises if the building or structure was in use as an industrial building or structure at the end of the chargeable period or its basis period. By virtue of **section 321(2)**, this means at the end of the accounting period in the case of corporation tax while, in the case of income tax, it means at the end of the basis period (see **section 306**) for the year of assessment. In the case of a sole trader, his/her basis period for a year of assessment is normally the 12 month period of account ending in the year of assessment while, in the case of a lessor, the basis period is the year of assessment itself. Thus, if a trader made up his/her accounts to 30 June, his/her writing-down allowance for, say, the tax year 2003 would be written off as at 30 June, 2003. In the case of a lessor, the writing-down allowance for the tax year 2003 would be written off as at 31 December, 2003. (3)

Where a writing-down allowance is to be written off at the time when an event occurs which gives rise to a balancing allowance or charge (for example, when an industrial building or structure is sold and the time of the sale is also the end of the chargeable period or its basis period), the writing-down allowance in question is to be deducted in determining the residue of expenditure immediately before the event for the purpose of computing the balancing allowance or charge. The danger of a double allowance is thus avoided.

### *Notional writing-down allowances*

If, for any period or periods between the time when a building or structure is first used and the time when the residue of expenditure is to be determined, a building or structure does not qualify for a writing-down allowance because the building or structure was not being used for industrial purposes at the material time, then, in computing the residue of expenditure, notional writing-down allowances equal to the writing-down allowance which would have been made if the building or structure had qualified for the allowances are to be treated as having been previously written off. (4)(a)

Where the building or structure was in use as an industrial building or structure at the end of the basis period for any year of assessment before 1960–61, a notional writing-down allowance equal to 2 per cent of the expenditure on the construction of the building or structure is to be treated as written off at the end of the previous year of assessment. (4)(b)

### ***Balancing allowances and balancing charges***

If on the occasion of a sale a balancing allowance is made in respect of expenditure on a building or structure, then, in determining the residue of expenditure, the amount by which the residue of the expenditure before the sale exceeds the net proceeds of the sale is to be treated as written off at the time of the sale. (5)

If on the occasion of a sale a balancing charge is made in respect of expenditure on a building or structure, the residue of expenditure is to be increased at the time of the sale by the amount on which the charge is made. (6)

Where a person entitled to the relevant interest in the building or structure creates an interest subject to that relevant interest and receives consideration (other than rent or an amount treated or partly treated as rent under **section 98**) for the creation of that interest which results in a balancing allowance, the amount by which the residue of the expenditure before the receipt exceeds the consideration received is to be treated as written off at the time of the receipt (or, if later, 26 March, 1997). (7)

### **278 Manner of making allowances and charges**

#### **Summary**

Except in certain cases, industrial building (initial) allowances, writing-down allowances and balancing allowances and charges are to be made in taxing the trade of the person entitled to the allowance. By virtue of **section 321(4)**, this means that the allowances or charges are to be made, in the case of income tax, in charging the profits or gains of the trade and, in the case of corporation tax, in computing the income of the trade. Where the person entitled to the allowance or who is subject to a balancing charge is a lessor chargeable under Case V of Schedule D, the allowance or charge is to be made in charging that person's income under that Case. In certain stated instances the allowances are made by means of repayment or discharge of tax.

#### **Details**

#### ***Allowances to be made in taxing the trade or in charging income under Case V of Schedule D***

Any allowance or charge made to or on a person in respect of capital expenditure on an industrial building or structure is to be made to or on the person in taxing the person's trade or, in the case of a lessor of an industrial building or structure who is chargeable under Case V of Schedule D, in charging the person's income under that Case. For income tax purposes, the making of an allowance or charge in taxing the trade requires the allowance to be deducted from, or the charge to be added to, the taxable profits of the trade as computed under Case I of Schedule D. For the purposes of corporation tax, it requires the allowance to be deducted, or the charge to be added, in computing the trading income. (1)

#### ***Lessors not chargeable under Case V of Schedule D***

In the exceptional case where the person entitled to an industrial building (initial) allowance, a writing-down allowance or a balancing allowance is a lessor who is not chargeable to tax under Case V of Schedule D, the industrial building allowance, writing-down allowance or balancing allowance is made by way of discharge or repayment of tax. Similarly, where a lessor of an industrial building or structure is not chargeable under Case V of Schedule D, any balancing charge to be made on the lessor is made under Case IV of that Schedule. (2) to (5)



***Allowances to lessors available primarily against rental income***

Any industrial building (initial) allowance, writing-down allowance or balancing allowance (6) to be made to a lessor is, in the case of a lessor chargeable under Case V of Schedule D, available primarily against income chargeable under that Case or any balancing charge under that Case and, in the case of a lessor chargeable under Case IV of Schedule D, available primarily against income chargeable under that Case or any balancing charge under that Case.

**279 Purchases of certain buildings or structures****Summary**

In general, capital allowances in respect of industrial buildings or structures are given to the person who actually incurred the capital expenditure on construction of the building or structure or who holds the relevant interest in relation to that expenditure. Special rules apply, however, in the case of expenditure incurred on the construction of an industrial building or structure which is sold before it is used or within a period of two years (or one year in the case of sales that took place before 14 October 2008) after it commences to be used. In such cases, the purchaser (even though no expenditure has actually been incurred on construction by the purchaser) is entitled to capital allowances provided no allowances in respect of the construction expenditure have been claimed by any other person. In effect, the purchaser is deemed to have incurred capital expenditure on the construction of the building or structure on the date the purchase price is payable and not when the actual construction expenditure was incurred. The amount of this deemed construction expenditure depends on whether the actual expenditure on the construction of the building or structure was incurred by a builder or a non-builder.

In the case of buildings and structures qualifying under certain tax incentives schemes, the provisions of this section are applied in a modified way by **subsection (6)** of **section 270** to take account of restrictions, under that section, on the amount of expenditure which may qualify for capital allowances (see notes on **section 270**).

**Details*****Definition***

“the net price paid” is the amount determined by the formula — (1)

$$B \times \frac{C}{C + D}$$

- B is the amount paid by a person on the purchase of the relevant interest.
- C is the amount of the expenditure actually incurred on the construction of the building or structure.
- D is the amount of any expenditure incurred on the acquisition of, or of rights in or over, any land, or on the provision of machinery or plant or on any asset treated as machinery or plant, or in respect of which a mine development allowance or a scientific research allowance is or may be made.

***Construction expenditure incurred by non-builder***

Where the expenditure on the construction of a building or structure is incurred by a non-builder and the relevant interest in the building or structure is sold before the building or structure is used or within a period of two years (or one year in the case of sales that took place before 14 October 2008) after it commences to be used, then, provided no capital allowances have been claimed in respect of that expenditure by any other person, the (2)



purchaser is deemed to have incurred capital expenditure on the construction of the building or structure equal to the lower of the actual construction expenditure incurred by the non-builder and the net price paid by the purchaser for the relevant interest. Where there is more than one sale before the building or structure is used or within the two year period after it commences to be used, the deemed expenditure is the lower of the actual construction expenditure incurred by the non-builder and the net price paid by the last purchaser of the relevant interest. In either case the capital expenditure deemed to have been incurred by the purchaser is treated as having been incurred on the date the purchase price is payable and not when the actual construction expenditure was incurred.

#### Example

A purchases a site for €100,000. He then engages a builder to construct a building on the site for a cost of €400,000. The building is completed in June 2008 and, without having been used, A sells the building to B on 1 September 2008 for €600,000 and B immediately takes it into use for the purposes of her manufacturing trade. The net price paid by B is —

$$600,000 \times \frac{400,000}{400,000 + 100,000} = 480,000$$

As this is greater than the actual expenditure incurred on the construction of the building, B is deemed to have incurred construction expenditure on 1 September 2008 equal to the actual construction expenditure incurred, that is, €400,000, and her title to capital allowances will be based on that amount.

#### ***Construction expenditure incurred by builder***

Where the expenditure on the construction of a building or structure is incurred by a builder (3) and the relevant interest in the building or structure is sold before the building or structure is used or within a period of two years (or one year in the case of sales that took place before 14 October 2008) after it commences to be used, then, provided no capital allowances have been claimed in respect of that expenditure by any other person, the purchaser is deemed to have incurred capital expenditure on the construction of the building or structure equal to the net price paid by the purchaser for the relevant interest. Where there is more than one sale before the building or structure is used or within the two year period after it commences to be used, the deemed expenditure is the lower of the net price paid on the first sale and the net price paid on the last sale. Again, the capital expenditure deemed to have been incurred by the purchaser is treated as having been incurred on the date the purchase price is payable and not when the actual construction expenditure was incurred.

#### Example

A builder purchases a site for €100,000 and constructs a building on it for a cost of €400,000. The building is completed in June 2008 and, without having been used, the builder sells it to X on 1 September 2008 for €600,000 and X immediately takes it into use for the purposes of his manufacturing trade. The net price paid by X is —

$$600,000 \times \frac{400,000}{400,000 + 100,000} = 480,000$$

X is deemed to have incurred construction expenditure on 1 September 2008 equal to the net price paid by him, that is, €480,000, and his title to capital allowances will be based on that amount.

#### ***Tax Incentive schemes – modified application of this section***

Under **section 270**, capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 on the construction and refurbishment of industrial and commercial buildings and structures under a number of tax incentive schemes must be restricted to 75 per cent and 50 per cent respectively. Restrictions also apply in the case of qualifying residential units up to 30 April 2010. The schemes affected are set out in **section 270(4)**. Additionally an overall cap applies under **section 270(7)** for some of these schemes

on the amount of such expenditure which may qualify in the period 1 January 2007 to 31 July 2008.

Where these restrictions apply, **subsection (6) of section 270** makes certain amendments to the operation of this section. These are to ensure that where a building is sold, the purchaser will not be entitled to claim allowances on the full expenditure incurred but rather on that expenditure as reduced in accordance with the respective reductions to 75 per cent and 50 per cent under **section 270(5)** which apply to expenditure incurred in the year 2007 and the first 7 months of 2008 and any restriction on post December 2006 expenditure which may arise under **section 270(7)**. Likewise restrictions on expenditure up to 30 April 2010 in the case of qualifying residential units (under **section 270(5)** but by virtue of **section 270(8)**) are covered. **s. 270(6)**

When calculating the formula for “the net price paid” the numerator “C” in the formula should be the amount of construction expenditure (incurred in the qualifying period for the scheme) as reduced in accordance with **sections 270(5) and 270(7)**. The denominator “C” in the original formula – now “D” in the revised formula as applied by **section 270** – should include the full amount of expenditure incurred on the construction of the building or structure involved i.e. before any restrictions and whether or not incurred in the qualifying period for the particular scheme. **s. 270 (6)(a)**

Likewise references in **subsections (2) and (3)** of this section to expenditure on the construction or refurbishment of a building or structure are to be treated as references to that expenditure as reduced in accordance with **section 270**. **s. 270 (6)(b) & (c)**

### Example

A builder purchases a site in a qualifying Urban Renewal area for €100,000 and constructs a commercial building, which qualifies for industrial buildings allowances, on it for a cost of €420,000. The building is completed in August 2008 and, without having been used, the builder sells it to X on 1 October 2008 for €600,000 and X immediately takes it into use for the purposes of his trade.

Construction expenditure attributable to the various periods is as follows:

Year 2006: €100,000; Year 2007: €220,000; 1 Jan. 2008 to 31 July 2008: €80,000; August 2008 €20,000.

The projected amount of post December 2006 expenditure, as certified by the local authority, was €280,000. Therefore the combined expenditure for the period 1 January 2007 to 31 July 2008 (€300,000) must be restricted to €280,000 and the restriction (€20,000) must be made in relation to the period Jan to July 2008 in priority to the year 2007. Accordingly, expenditure treated as incurred in the period Jan. to July 2008 (before the 50 per cent restriction is applied) is €60,000 (€80,000 less 20,000).

The amount of qualifying expenditure in each period after application of the 75 per cent and 50 per cent restrictions is as follows:

Year 2006: €100,000; Year 2007: €220,000 x 75% = €165,000; Jan to July 2008: €60,000 x 50% = €30,000; August 2008: Nil (outside of the qualifying period). Total expenditure for the purposes of the numerator “C” in the formula is therefore €295,000.

The net price paid by X is —

$$600,000 \times \frac{295,000}{420,000 + 100,000} = 340,385$$

X is deemed to have incurred construction expenditure on 1 October 2008 equal to the net price paid by him, that is, €340,385, and his entitlement to capital allowances will be based on that amount.

## 280 Temporary disuse of building or structure

### Summary

This section deals with the position which arises when a building or structure which has been in use for the purposes of an industrial trade becomes temporarily disused, and

provides that during such a period of temporary disuse the building will continue to be treated as an industrial building or structure. Thus, writing-down allowances continue to be available and a balancing allowance or charge may also arise during this period. The section is necessary because writing-down allowances can be made only if a building or structure is an industrial building or structure at the material time. Where a building or structure which has always been used for industrial purposes is temporarily disused, it would not be right to deny the owner writing-down allowances. Similarly, if it is sold during a period of temporary disuse, it would not be right to deny a balancing allowance or, indeed, prohibit a balancing charge.

## Details

### ***Continued treatment as industrial building or structure during period of temporary disuse***

A building or structure is not treated as ceasing altogether to be used by reason that it is temporarily out of use and, if immediately before the period of temporary disuse it had been an industrial building or structure, it continues to be treated as such during the period of temporary disuse. (1)

### ***Manner of making allowances and charges during period of temporary disuse***

In the case of a trader, where the period of temporary disuse occurs while the trade is still being carried on, any writing-down allowances and any balancing allowance or charge arising continue to be made in taxing the trade. Where, however, the trade has been permanently discontinued, any writing-down allowance or balancing allowance to be made during any period of temporary disuse after the discontinuance of the trade is made by means of discharge or repayment of tax, and any balancing charge to be made during that period is made under Case IV of Schedule D. (2)(a)

In the case of a lessor, if the lease of the building or structure has come to an end, any writing-down allowance or balancing allowance to be made during any period of temporary disuse after the coming to an end of the lease is made by means of discharge or repayment of tax, and any balancing charge to be made during that period is made under Case IV of Schedule D.

However, if for the chargeable period the lessor has income chargeable to tax under Case V of Schedule D, any writing-down allowance, balancing allowance or balancing charge to be made in respect of the industrial building or structure is to be made in charging the lessor's income under Case V of Schedule D. (2)(b)

### ***Construction of "permanent discontinuance of a trade"***

The permanent discontinuance of a trade does not include the happening of any event (for example, a change of proprietorship – see **section 69**) which is treated under the Income Tax Acts as equivalent to the discontinuance of a trade. (3)

## 281 Special provisions in regard to leases

### Summary

A lessee may incur capital expenditure on the construction of an industrial building or structure or may have acquired the leasehold interest that is the relevant interest in relation to that expenditure. In such a case, the lessee would be entitled to writing-down allowances provided the lessee retains the relevant interest and the building or structure is in use as an industrial building or structure. Where the leasehold interest comes to an end while the building or structure is an industrial building or structure, the lessee's entitlement to

writing-down allowances would normally cease and the termination would be an event which gives rise to a balancing allowance or charge. This section now provides for special rules relating to the termination of leasehold interests.

### Details

#### *Lessee permitted to remain in possession on termination of lease*

Where a lease terminates and the lessee is allowed by the lessor to remain in possession of the building or structure without a new lease being granted, the lease is deemed to continue so long as the lessee remains in possession of the building or structure. This means that for so long as the lessee continues in possession a balancing event will not arise and the lessee will continue to have title to writing-down allowances. (1)

#### *New lease granted on termination of lease*

Where a lease terminates and the lessee is granted a new lease due to being entitled to such a new lease under law or under the terms of the original lease, the new lease is treated as if it were a continuation of the first lease. Thus, a balancing event will not arise on the termination of the first lease and the lessee will continue to have title to writing-down allowances. (2)

#### *Compensation received by lessee on termination of lease*

Where a lease terminates and the lessor pays any sum to the lessee in respect of a building or structure comprised in the lease, the lease is treated as if it had come to an end by reason of the surrender of the lease in consideration of the payment. (This could arise for instance where the lessor is obliged to compensate the lessee for an early surrender of the lease.) This means that the sum paid to the lessee has to be taken into account as “sale, insurance, salvage or compensation moneys” in computing any balancing allowance or charge to be made to the lessee on the termination of the lease. (3)

### 282 Supplementary provisions (Chapter 1)

Capital expenditure may be incurred on the construction of an industrial building or structure before a start is actually made on the construction of the building (for example, a trader may pay an instalment of the cost of construction before any building operations have commenced). In such a case, the person incurring the expenditure is deemed to have, at the time the expenditure is incurred, the same interest in the future building or structure as that person would have had if the building or structure had been finished at that time. This ensures that for capital allowance purposes a person has a relevant interest in a building or structure when the expenditure is incurred despite the fact that there is no building or structure in existence at that time. (1)

In the computation of a balancing allowance or charge in respect of an industrial building or structure, there is to be left out of account any part of the sale price or insurance money, etc, attributable to assets which have not qualified for capital allowances as part of the expenditure on construction (for example, site cost). (2)

## CHAPTER 2

*Machinery or plant: initial allowances, wear and tear allowances, balancing allowances and balancing charges*

### Overview

This Chapter provides relief, in the form of capital allowances, in respect of capital

expenditure incurred on the provision of machinery or plant. The types of capital allowances available in respect of such expenditure are initial allowances, wear and tear allowances and accelerated wear and tear allowances (free depreciation). Balancing allowances or balancing charges may also apply.

## 283 Initial allowances

### Summary

An initial allowance is given in respect of capital expenditure incurred on the provision of new machinery or plant (other than road vehicles) for the purposes of a trade. The allowance is given for the accounting period in which the expenditure is incurred in the case of corporation tax and for the year of assessment in the basis period for which the expenditure is incurred in the case of income tax, and is available only in certain cases.

The allowance is available where such machinery or plant is provided for use in certain trades carried on in the Shannon Airport Area or the Custom House Docks Area, or for the purposes of a project approved of by an industrial development agency in the period from 1 January, 1986 to 31 December, 1988 where the capital expenditure on its provision was incurred before 31 December, 1996. In such cases, an initial allowance of 100 per cent of the capital expenditure incurred is available.

The allowance is also available where such machinery or plant is provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from 1 January, 1989 to 31 December, 1990 and the capital expenditure on its provision is incurred before 31 December, 1997 (or before 30 June, 1998 where a legal dispute gave rise to a delay) or, in the case of any such project which is on the approved list for “*section 130* loan financing”, before 31 December, 2002. In such cases, an initial allowance of 50 per cent of the capital expenditure incurred is available. Where in any such case an initial allowance is made for a chargeable period in respect of capital expenditure incurred on or after 1 April, 1989, a wear and tear allowance under *section 284* cannot be made in respect of the machinery or plant for the same chargeable period and no accelerated wear and tear allowances under *section 285* can be made in respect of the machinery or plant for any subsequent chargeable period.

### Details

#### Definitions

“industrial development agency” is the Industrial Development Authority, Shannon Free (1) Airport Development Company Limited or Údarás na Gaeltachta.

“new” means unused and not secondhand, but a ship is treated as new even if it has been used or is secondhand.

#### Conditions for allowance

An initial allowance is given where — (2)

- a person carrying on a trade chargeable under Case I of Schedule D incurs capital expenditure on the provision for the purposes of the trade of new machinery or plant other than road vehicles,
- that machinery or plant is qualifying machinery or plant (see *subsections (4) and (5)*), and
- that machinery or plant while used for trading purposes is wholly and exclusively so used.

The allowance is made for the chargeable period related to the expenditure, that is, in the

case of corporation tax, for the accounting period in which the expenditure is incurred and, in the case of income tax, for the year of assessment in the basis period (see **section 306**) for which the expenditure is incurred.

### ***Qualifying machinery or plant and rates of initial allowance***

An initial allowance of 100 per cent of the capital expenditure incurred is available where new machinery or plant (other than road vehicles) is provided — (3)(a)

- before 23 April, 1996 for use for the purposes of relevant trading operations carried on by companies in the Shannon Airport Area (**section 445**) or the Custom House Docks Area (**section 446**); but, in the case of capital expenditure incurred on or after 6 May, 1993, excluding any machinery or plant provided by a lessor to a lessee other than where the leasing of the machinery or plant is part of those relevant trading operations, (4)(a)(i)
- by a company on or after 23 April, 1996 for use for the purposes of such relevant trading operations carried on by the company, excluding any machinery or plant provided by a lessor to a lessee other than where the leasing of the machinery or plant is part of those relevant trading operations, or (4)(a)(ii)
- for a project approved by an industrial development agency in the period from 1 January, 1986 to 31 December, 1988 where the expenditure on the provision of the machinery or plant was incurred before 31 December, 1996. (4)(b)

An initial allowance of 50 per cent of the capital expenditure incurred is available where new machinery or plant (other than road vehicles) is provided for a project approved for grant assistance by an industrial development agency in the period from 1 January, 1989 to 31 December, 1990 and the expenditure on the provision of the machinery or plant is incurred before 31 December, 1997 (or before 30 June, 1998 where a legal dispute gave rise to a delay) or, in a case where the project is on an approved list for “**section 130**” loan financing, before 31 December, 2002. (3)(b) & (5)

### ***Availability of wear and tear allowances and accelerated wear and tear allowances***

In the case of machinery or plant which qualifies for the initial allowance of 50 per cent (see **subsection (5)**), if the initial allowance is given for a chargeable period in respect of capital expenditure incurred on or after 1 April, 1989 — (6)

- a wear and tear allowance under **section 284** in respect of the machinery or plant is not to be given for the same chargeable period, and
- accelerated wear and tear allowances under **section 285** in respect of the machinery or plant is not available for any subsequent chargeable period.

### ***Limit on initial allowance***

An initial allowance made to a person for any chargeable period cannot exceed such amount as, when added to the aggregate of any wear and tear allowances (**section 284**) made to the person in respect of the machinery or plant for that chargeable period or previous chargeable periods and any initial allowance made to the person in respect of the machinery or plant for previous chargeable periods, equals the amount of the expenditure incurred by the person on providing the machinery or plant. (7)

## **284 Wear and tear allowances**

### **Summary**

An annual allowance (known as a “wear and tear allowance”) is available to persons who incur capital expenditure on the provision of machinery or plant for the purposes of a trade. The allowance is given for a chargeable period (accounting periods in the case of

corporation tax and years of assessment in the case of income tax) where at the end of the chargeable period or its basis period (that is, in the case of corporation tax, at the end of the accounting period and, in the case of income tax, at the end of the basis period for the year of assessment) the machinery or plant belongs to the person and is in use for trade purposes. While used for trade purposes, the machinery or plant must be wholly and exclusively so used.

The rate at which wear and tear allowances are given has changed on a number of occasions in recent years. The rate which applies in respect of any particular item of machinery and plant is determined by the date on which the expenditure is incurred as well as the category of machinery and plant which has been acquired.

Where expenditure is incurred on or after 4 December 2002, wear and tear allowances are granted on a straight-line basis over 8 years at the rate of 12.5 per cent per annum of the actual cost of the machinery or plant. This regime applies for both general machinery and plant and road vehicles. These rules do not apply to taxis and short-term hire vehicles which retain their 40 per cent per annum reducing balance arrangements. Furthermore, where expenditure was incurred on or before 31 January 2003 under a binding written contract which existed prior to 4 December 2002, the previous 20 per cent rate (see below) rather than the 12.5 per cent rate applies.

In general, as respects capital expenditure incurred on or after 1 January 2001 and before 4 December 2002 the allowances are granted on a straight-line basis over 5 years at the rate of 20 per cent per annum of the actual cost of the machinery or plant. This regime applies for both general machinery and plant and road vehicles.

As respects capital expenditure incurred prior to 1 January 2001, the allowances are granted on a straight-line basis over 7 years at a rate of 15 per cent of the actual cost of the machinery or plant for the first 6 years and 10 per cent of that cost for the final year. In the case of road vehicles, however, the allowances are given at the rate of 20 per cent per annum granted on a reducing balance basis.

However, taxpayers may elect to have the tax written-down value of all expenditure incurred prior to 1 January 2001 “pooled together” to qualify for write-off on a straight-line basis at 20 per cent per annum over the following 5 years. It is necessary to give taxpayers the option of sticking with the earlier regime. This is because the application of the 5-year write-off regime to tax written-down values could have resulted in smaller allowances being given for individual items of plant and machinery, depending on when the capital expenditure was incurred. In such cases, taxpayers choose between the easier computation rules of the “pooling system” and larger allowances for individual items of plant and machinery under the earlier regime. The “pooling arrangements” are available in respect of chargeable periods ending on or after 1 January 2002.

A special regime of wear and tear allowances (40 per cent per annum on a reducing balance basis) applies in the case of taxis and short-term hire vehicles (see **section 286**). In addition, certain fishing boats attract an enhanced regime of wear and tear allowances (see **subsection (3A)**).

The total wear and tear allowances and initial allowances (**section 283**) made to a person in respect of any machinery or plant cannot exceed the actual cost to the person of that machinery or plant.

Wear and tear allowances are also available where the machinery or plant is provided for the purposes of the renting or letting on bona fide commercial terms of furnished dwelling houses.



## Details

### Conditions for wear and tear allowance

A person who carries on a trade in a chargeable period and who has incurred capital expenditure on the provision of machinery or plant for the purposes of the trade is, subject to conditions, entitled to a wear and tear allowance for the chargeable period in respect of that machinery or plant. The conditions are that — (1)

- at the end of the chargeable period or its basis period (that is, in the case of corporation tax, at the end of the accounting period and, in the case of income tax, at the end of the basis period for the year of assessment) the machinery or plant continued to belong to the person,
- at the end of the chargeable period or its basis period the machinery or plant is in use for the purposes of the person's trade, and
- the machinery or plant while being used for the purposes of the trade was wholly and exclusively so used.

It should be noted that the allowance is available even if the machinery or plant is acquired and put into use for trade purposes towards the end or, indeed, on the last day of the chargeable period or its basis period. Thus, in the case of a chargeable period or its basis period of 12 months ending 31 December, if machinery or plant is provided and put into use for trade purposes on 31 December, title to the full wear and tear allowance still exists. See, however, **subsection (2)(b)** which restricts the allowance where the chargeable period or its basis period is less than one year in length.

### Rate of allowance

As respects capital expenditure incurred before 1 January 2001, a wear and tear allowance (2)(a) for a chargeable period will be of an amount equal to —

- in the case of machinery or plant other than road vehicles, 15 per cent of the actual cost of the machinery or plant, including in that cost any capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement. (i)  
[Effectively, this means a straight-line 7-year write-off period with allowances of 15 per cent for the first 6 years and 10 per cent in year 7.]
- in the case of road vehicles, 20 per cent of their value at the commencement of the chargeable period. (ii)  
[Effectively, this means that the cost is written off on a 20 per cent reducing balance basis.]

As respects capital expenditure incurred on or after 1 January 2001 but before 4 December 2002, a wear and tear allowance for a chargeable period will be of an amount equal to 20 per cent of the actual cost of the machinery or plant, including in that cost any capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement. (2)(aa)  
[Effectively, this means a straight-line write-off of the cost over a 5-year period at 20 per cent per annum.]

However, where for any chargeable period ending on or after 1 January 2002 a wear and tear allowance would be due to be made to a person in respect of plant and machinery at the rate of 15 per cent per annum (10 per cent in year 7) on a straight-line basis in accordance with **subsection (2)(a)(i)** or, in the case of road vehicles, at 20 per cent per annum on a reducing balance basis in accordance with **subsection (2)(a)(ii)**, the person may make an election in respect of each and every item of the plant and machinery concerned. The election is to the effect that, instead of having the amount of the wear and tear allowances for that chargeable period in respect of the plant and machinery determined in accordance with **subsection (2)(a)**, the amount (2)(ab)



of the allowances for that chargeable period and any subsequent chargeable period will be —

- in the case where the allowances would otherwise be determined in accordance with **subsection (2)(a)(i)**, an amount equal to 20 per cent of the amount which is still unallowed (defined in **section 292**) in respect of the capital expenditure incurred on the plant and machinery at the commencement of the chargeable period for which the election is made, and
- in the case where the allowances would otherwise be determined in accordance with **subsection (2)(a)(ii)** (i.e. road vehicles), an amount equal to 20 per cent of the value of the plant and machinery at the commencement of the chargeable period for which the election is made. Such value is determined in accordance with **subsection (3)**, as modified by **section 374** which restricts capital allowances where cars cost over a certain amount.

In essence, therefore, taxpayers will be allowed to elect to have the tax written-down value of all pre-1 January 2001 expenditure on plant and machinery “pooled together” to qualify for write-off on a straight-line basis at 20 per cent per annum over the following 5 years.

Any election made under **subsection (2)(ab)** will be irrevocable, and will have to be included in the taxpayer’s annual tax return for the first year of assessment or accounting period for which wear and tear allowances in relation to the plant and machinery concerned are to be made under the pooling arrangements. (2)(ac)

Where capital expenditure is incurred on or after 4 December 2002 on the provision of machinery or plant a wear and tear allowance for a chargeable period will be of an amount equal to 12.5 per cent of the actual cost of the machinery or plant, including in that cost any capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement. (2)(ad)

[Effectively, this means a straight-line write-off of the cost over an 8-year period at 12.5 per cent per annum.]

However, this rate will not apply in the case of —

- machinery or plant (certain fishing vessels) covered by **subsection (3A)**,
- machinery or plant consisting of a car within the meaning of **section 286** used for qualifying purposes within the meaning of that section, that is, taxis and vehicles used for short-term hire purposes, and
- machinery or plant provided under the terms of a binding contract evidenced in writing before 4 December 2002 and where the expenditure incurred on the provision of such machinery or plant is incurred on or before 31 January 2003.

Where the chargeable period or its basis period (the accounting period for corporation tax purposes and the basis period for the year of assessment for income tax purposes) is less than a year long, the wear and tear allowance is reduced proportionately. (2)(b)

For the purposes of wear and tear allowances for road vehicles, the value of the vehicles at the commencement of the chargeable period is the actual cost to the person of the vehicles reduced by the total of the wear and tear allowances made to the person in respect of the vehicles for previous chargeable periods. This provision is not relevant to expenditure incurred on road vehicles on or after 1 January 2001 since such expenditure is written off on a straight-line and not a reducing balance basis. (3)

### ***Certain fishing vessels***

Fishing vessels are regarded as machinery or plant for capital allowance purposes and as such are entitled to the general regime of wear and tear allowances under **subsection (2)**. However, certain fishing vessels are entitled to a special enhanced year 1 regime of (3A)

allowances. The vessels in question are those on the Register of Fishing Boats and in respect of which capital expenditure is incurred in the 3-year period from 4 September 1998 (“the appointed day”) to 3 September 2001. The expenditure must be certified by Bord Iascaigh Mhara as having been incurred for fleet renewal purposes in the polyvalent and beam trawl segments of the Irish fishing fleet. The allowances consist of 50 per cent of the actual cost in year 1 with the balance (the other 50 per cent) being written off at the rate of 15 per cent per annum of the balance in years 2 to 7 and 10 per cent of the balance in year 8. Allowances are apportioned where a chargeable period or its basis period is less than one year in length.

Provision is made for an extension to 3 September 2004 (i.e. 6 years from 4 September 1998) of the period in which capital expenditure qualifying for the enhanced regime of allowances must be incurred.

Moreover, a different enhanced regime of allowances applied in the case of capital expenditure incurred on or after the date of the coming into operation of section 52 of the Finance Act, 2001 (but not later than 3 September 2004). This regime consisted of an allowance of 50 per cent in year 1 with the balance (the other 50 per cent) being written off at 20 per cent per annum of the balance in years 2 to 6. The allowances will be apportioned where a chargeable period or its basis period is less than one year in length.

#### ***Length of basis period for year of assessment 2001***

For the purposes of computing wear and tear allowances, the length of the basis period for the short tax “year” 2001 is deemed to be the lesser of the length of that period, as determined under **section 306**, and 270 days. [270 days is the length of the short tax “year” 2001, i.e. 6 April to 31 December 2001.] **(3B)**

#### ***Limit on wear and tear allowance***

A wear and tear allowance to be made to a person for a chargeable period in respect of machinery or plant cannot exceed such sum as when added to — **(4)**

- the wear and tear allowances made to the person in respect of the machinery or plant for previous chargeable periods, and
- any initial allowance made to the person under **section 283** in respect of the machinery or plant,

exceeds the actual cost to the person of the machinery or plant, including in that cost any capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement. This secures that the total wear and tear allowances and initial allowances cannot exceed that actual cost.

#### ***No wear and tear allowance in respect of industrial buildings or structures***

No wear and tear allowance is to be made in respect of capital expenditure incurred on the construction of a building or structure which is or is deemed to be an industrial building or structure within the meaning of **section 268**. **(5)**

#### ***Machinery or plant provided for the purposes of the letting of furnished dwelling houses***

Wear and tear allowances are also available in respect of capital expenditure incurred on fixtures and fittings (for example, furniture, kitchen appliances, etc) provided by a lessor for the purposes of furnishing rented residential accommodation. The allowances are available only where the expenditure is incurred wholly and exclusively in respect of a house used solely as a dwelling which is, or is to be, let as a furnished house on bona fide commercial terms in the open market. **(6) & (7)**

## ***Aer Rianta***

Aer Rianta (now known as the Dublin Airport Authority and including the Cork Airport Authority and the Shannon Airport Authority where relevant) is deemed to have incurred, on the vesting day (1 January 1999), capital expenditure on the provision of machinery or plant on a net amount which is arrived at by deducting from the original cost of the machinery or plant the amount of any wear and tear allowance that would have been made to Aer Rianta had an appropriate claim been made and allowed. (8)

## **285 Acceleration of wear and tear allowances**

### **Summary**

Increased rates of wear and tear allowances (known as “accelerated wear and tear allowances” or “free depreciation”) are available in certain limited circumstances. Accelerated wear and tear allowances are made in respect of capital expenditure incurred on the provision of new machinery or plant (other than road vehicles) for the purposes of a trade. Subject to restrictions, the mechanism for granting accelerated allowances is for the wear and tear allowance to be made under **section 284** to be increased by an amount to be specified by the person entitled to the allowance. Effectively, this provides for 100 per cent allowances to be taken by the person entitled to the wear and tear allowance under **section 284** at his/her discretion. However, where the qualifying machinery or plant is provided for use on or after 1 April, 1988, the wear and tear allowance as increased under this section whether claimed for one or more chargeable periods cannot exceed —

- 75 per cent of the expenditure incurred, where the machinery or plant is provided before 1 April, 1989,
- 50 per cent of the expenditure incurred, where the machinery or plant is provided in the period 1 April, 1989 to 31 March, 1991, or
- 25 per cent of the expenditure incurred, where the machinery or plant is provided for use in the period 1 April, 1991 to 31 March, 1992.

Moreover, for machinery or plant provided for use on or after 1 April, 1992, no wear and tear allowance may be increased under this section and, for machinery and plant provided for use before that date, no wear and tear allowance may be increased under this section for chargeable periods ending on or after 6 April, 1999.

There are 2 categories of exceptions to the restriction on the availability of accelerated wear and tear allowances. Firstly, in the case of —

- machinery or plant provided for use for the purposes of certain trading operations carried on in the Shannon Airport Area or the Custom House Docks Area,
- machinery or plant the expenditure on the provision of which was incurred before 31 December, 1995 under a binding contract entered into before 28 January, 1988,
- machinery or plant provided for use for the purposes of a project approved by an industrial development agency on or before 31 December, 1985 and in respect of the provision of which expenditure was incurred before 31 December, 1995,
- machinery or plant provided for use for the purposes of a project approved by an industrial development agency in the period from 1 January, 1986 to 31 December, 1988 and in respect of the provision of which expenditure was incurred before 31 December, 1996, and
- machinery or plant provided for use in a trade of hotel-keeping before 1 April, 1991, including machinery or plant provided by a lessor to a lessee for use in such a trade, where a binding contract for the provision of the hotel building was entered into in the period from 28 January, 1988 to 31 May, 1988,

the wear and tear allowance may be increased by whatever amount is specified by the

person entitled to it, that is, 100 per cent accelerated wear and tear allowances are available.

Secondly, in the case of —

- machinery or plant provided for use for the purposes of a project approved for grant assistance by an industrial development agency in the period from 1 January, 1989 to 31 December, 1990 and in respect of the provision of which expenditure is incurred before 31 December, 1997 (or before 30 June, 1998 where a legal dispute gave rise to a delay),
- machinery or plant provided for the purposes of such a project which was also approved for “**section 130**” loan financing and in respect of the provision of which expenditure is incurred before 31 December, 2002, and
- machinery or plant provided for use for the purposes of a trade of hotel-keeping and in respect of the provision of which expenditure was incurred before 31 December, 1995, where a binding contract for the provision of the hotel building was entered into before 31 December, 1990 and where the hotel is registered with the National Tourism Development Authority (trading as Fáilte Ireland) within 6 months of its completion,

the wear and tear allowance may be increased up to 50 per cent of the capital expenditure incurred on the machinery or plant.

Where an accelerated wear and tear allowance is made for any chargeable period in respect of machinery or plant, no initial allowance under **section 283** can be made in respect of the machinery or plant for the same or any subsequent chargeable period.

## Details

### Definitions

“designated area” is an area designated for the purposes of the Industrial Development Act, 1969. (1)

“industrial development agency” is the Industrial Development Authority, Shannon Free Airport Development Company Limited or Údarás na Gaeltachta.

“qualifying building or structure” is a building or structure which is to be an industrial building or structure in use for the purposes of a trade of hotel-keeping and in respect of the provision of which expenditure was incurred before 31 December, 1995, where a binding contract for the provision of the building or structure was entered into before 31 December, 1990.

“qualifying machinery or plant” is machinery or plant (other than road vehicles) which is provided on or after 1 April, 1967 for use in any designated area, or on or after 1 April, 1971 for use in any other area, for the purposes of a trade and which at the time it is so provided is unused and not secondhand.

### Rates of free depreciation – general

Subject to restrictions, a person who is entitled to a wear and tear allowance under **section 284** for any chargeable period in respect of qualifying machinery or plant may require that the allowance be increased by such amount as the person may specify. Effectively, this provides for 100 per cent allowances to be taken by the person entitled to the wear and tear allowance under **section 272** at his/her discretion. Thus, the person could take the full 100 per cent allowance in the first year for which entitlement to the wear and tear allowance exists. Alternatively, the person could take the allowances in whatever tranches that person wishes, for example, 20 per cent in year 1, 30 per cent in year 2, 50 per cent in year 3, subject to at least the basic wear and tear allowance being taken for any one year. (2)(a)

For qualifying machinery or plant provided on or after 1 April, 1988, wear and tear allowances as increased under this section, whether claimed for one or more chargeable periods, cannot exceed — (2)(b)

- 75 per cent of the expenditure incurred, where the machinery or plant was provided before 1 April, 1989,
- 50 per cent of the expenditure incurred, where the machinery or plant was provided in the period 1 April, 1989 to 31 March, 1991, or
- 25 per cent of the expenditure incurred, where the machinery or plant was provided in the period 1 April, 1991 to 31 March, 1992.

Moreover, for qualifying machinery or plant provided on or after 1 April, 1992, no acceleration of the wear and tear allowances is permitted and, for qualifying machinery or plant provided before that date, no acceleration of the wear and tear allowances is permitted for chargeable periods ending on or after 6 April, 1999. (3)

***Continued entitlement to 100 per cent free depreciation for certain machinery or plant***

The restrictions (***subsection (2)(b)***) and prohibition (***subsection (3)***) on the acceleration of wear and tear allowances do not apply in the case of certain machinery or plant. (4)

In the case of —

- machinery or plant provided before 23 April, 1996 for use for the purposes of relevant trading operations carried on by companies in the Shannon Airport Area (***section 445***) or the Custom House Docks Area (***section 446***); but, in the case of capital expenditure incurred on or after 6 May, 1993, excluding any machinery or plant provided by a lessor to a lessee other than where the leasing of that machinery or plant is part of those relevant trading operations, (5)(a)(i)
- machinery or plant provided by a company on or after 23 April, 1996 for use for the purposes of such relevant trading operations carried on by the company, but, in the case of capital expenditure incurred on or after 6 May, 1993, excluding any machinery or plant provided by a lessor to a lessee other than where the leasing of that machinery or plant is part of those relevant trading operations, (5)(a)(ii)
- machinery or plant the expenditure on the provision of which was incurred before 31 December, 1995 under a binding contract entered into on or before 27 January, 1988, (5)(b)
- machinery or plant provided for the purposes of a project approved by an industrial development agency on or before 31 December, 1985 and in respect of the provision of which expenditure was incurred before 31 December, 1995, (5)(c)
- machinery or plant provided for the purposes of a project which was approved by an industrial development agency in the period from 1 January, 1986 to 31 December, 1988 and in respect of the provision of which expenditure was incurred before 31 December, 1996, and
- machinery or plant provided for use in a trade of hotel-keeping before 1 April, 1991, including machinery or plant provided by a lessor to a lessee for use in such a trade, where a binding contract for the provision of the hotel building was entered into in the period from 28 January, 1988 to 31 May, 1988, (5)(d)

the wear and tear allowance may continue to be increased by whatever amount is specified by the person entitled to it, that is, 100 per cent accelerated wear and tear allowances are available.

***Continued entitlement to 50 per cent free depreciation for certain machinery or plant***

The prohibition (***subsection (3)***) on the acceleration of wear and tear allowances does not apply, and the restrictions (***subsection (2)(b)***) on such acceleration are modified, in the case of certain machinery or plant. (6)

In the case of —

- machinery or plant provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from 1 January, 1989 to 31 December, 1990 and in respect of the provision of which expenditure is incurred before 31 December, 1997 (or before 30 June, 1998 where a legal dispute gave rise to a delay), (7)(a)(i)
- machinery or plant provided for the purposes of such a project which was also approved for “*section 130*” loan financing and in respect of the provision of which expenditure is incurred before 31 December, 2002, and
- machinery or plant provided for use for the purposes of a trade of hotel-keeping and in respect of the provision of which expenditure was incurred before 31 December, 1995, where a binding contract for the provision of the hotel building was entered into before 31 December, 1990 and where the hotel is registered with the National Tourism Development Authority (trading as Fáilte Ireland) within 6 months of its completion, (7)(a)(ii) & (b)

the wear and tear allowance may continue to be increased by whatever amount is specified by the person entitled to that allowance up to 50 per cent of the expenditure incurred (that is, free depreciation of up to 50 per cent of the expenditure may be taken).

***Restriction on availability of initial allowance where free depreciation claimed***

Where a wear and tear allowance in respect of qualifying machinery or plant expenditure is accelerated for any chargeable period, no industrial buildings (initial) allowance is to be made in respect of that expenditure for the same or any subsequent chargeable period. (8)

**285A Acceleration of wear and tear allowances for certain energy-efficient equipment**

**Summary**

This section provides for accelerated capital allowances in respect of expenditure incurred by persons<sup>1</sup> on certain energy-efficient equipment bought for their businesses. An accelerated wear and tear allowance of 100% of the capital expenditure incurred can be claimed in the year in which the equipment is first provided and used. The incentive runs until 31 December 2023. It applies to certain new equipment in ten designated classes of technology. These classes of technology are listed in the Table in *Schedule 4A*. Finance Act 2018 introduced some amendments to the scheme. A framework for the criteria that products must meet/comply with to be eligible under the scheme is now provided for in the section. This allows the SEAI to publish the list of products eligible under the scheme on their website and amend the list as appropriate, based on the criteria. Previously the products included on the list were published and regularly revised following Orders made by the Minister for the Environment, Climate and Communications.

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<sup>1</sup> Section 17 of Finance Act 2016 extended the availability of capital allowances in respect of energy-efficient equipment to non-incorporated businesses for expenditure incurred with effect from 1 January 2017.

## Details

### Definitions

“energy-efficiency criteria” has the meaning given to it by subsection (4). The criteria is defined in relation to the minimum levels of efficiency, performance, speed, storage or efficacy to be met and the specific certifications and standards to be complied with or tested, or both, as the case may be, for each class of technology specified in column (1) of the Table. (1)

“energy-efficient equipment” is defined as equipment that complies with the energy-efficient criteria and which is named on the specified list. It must also be new and provided for the purposes of a trade.

“fossil fuel” is defined as coal, oil, natural gas, peat or any derivative thereof intended for use in the production of energy by combustion.

“relevant period” means the period commencing on the date on which the TCA 1997 (Accelerated Capital Allowances for Energy Efficient Equipment) Order 2008 (S.I. 399 of 2008) was made and ending on 31 December 2023.

“specified list” is the list of equipment eligible under the scheme that will be established, maintained, published and amended by Sustainable Energy Ireland - The Sustainable Energy Authority of Ireland (SEAI).

“Table” is the table in *Schedule 4A*, which sets out the 10 classes of technology, a description of each and the minimum amount of money that must be spent in each class to qualify for the increased allowances.

### Wear and tear allowances

Subject to the rules in this section, when a “wear and tear” allowance is made under *section 284* to a person in respect of capital expenditure incurred on energy-efficient equipment (as defined), the rate of allowance will be 100%. [*Section 284* is the basic wear and tear allowances section for plant and machinery. *Section 284(2)(ad)* provides that, for capital expenditure incurred after 4 December 2002, the rate is 12.5%]. *Subsection (2) of section 285A* increases this rate to 100%. (2)

SEAI will publish the specified list on the website of SEAI and by such other means as it considers appropriate. SEAI will also amend the specified list, as necessary, and shall publish the amended specified list as appropriate. (2A)

### List of equipment

The specified list is confined to equipment in one of the ten technology classes included in column 1 of the Table in *Schedule 4A*. It must also meet the description specified in column 2 of the Table for the class of technology. From the 1<sup>st</sup> of January 2021, equipment on the specified list must not operate on fossil fuel, other than equipment that operates on electricity generated from using such fuel. (3)

### Regulations

Provision is made for the making of an Order (in the form of a Statutory Instrument) by the Minister for the Environment, Climate and Communications, (with the approval of the Minister for Finance) stating the energy efficiency criteria for each class of technology specified in column 1 of the Table in *Schedule 4A*. (4)

### Unavailability of accelerated allowances

The increased capital allowances for energy-efficient equipment do not apply where the (5)

equipment in question is leased, let or hired to any person.

### ***Expenditure limits***

The increased capital allowances for energy-efficient equipment do not apply unless the expenditure in the class of technology in question is equal to or above the limit specified in column 3 of the Table in ***Schedule 4A*** for that class. The limits range from €1,000 to €5,000. (6)

### ***Qualifying period***

Qualifying expenditure must be incurred in the relevant period which runs from the date the TCA 1997 (Accelerated Capital Allowances for Energy Efficient Equipment) Order 2008 (S.I. No. 399 of 2008) was made (it was made on 9 October 2008) to 31 December 2023. However, expenditure incurred on or after 31 January 2008, with regard to the first three classes of technology, listed in the Table in ***Schedule 4A*** but before the Order referred to above was made also qualifies for the increased capital allowances. This expenditure qualifies provided the equipment was an energy-efficient product that would have qualified under the first three classes of technology under the scheme had such an Order been made at the time the expenditure was incurred. (7)

### ***Machinery or plant***

Expenditure incurred by persons on energy-efficient equipment (as defined in the section) that would not qualify as machinery or plant for the purposes of wear and tear allowances will be treated as such for the purposes of the capital allowances provisions. (8)

In the case of cars coming under the category “Electric and Alternative Fuel Vehicles” the accelerated allowance is based on the lower of the actual cost of the vehicle or the specified amount of €24,000 (referred to in ***section 380K(4)***), which is the maximum limit applying in respect of capital allowances for business cars. This provision applies to cars only and not to other vehicles. (8A)

The emissions-based capital allowances scheme for cars, introduced in the Finance Act 2008 and included in ***Part IIC*** will not apply where a company opts to avail of accelerated capital allowances for fuel efficient cars under the scheme for energy-efficient equipment in ***section 285A***. The converse also applies so that a company can opt for one scheme or the other, but not both.

Provision is made for the laying of an Order by the Minister for the Environment, Climate and Communications (for the purposes of ***section 285A***) before Dáil Éireann and the annulment of such an Order if a resolution to that effect is passed by the Dáil. (9)

### ***Commencement***

#### ***First three classes of technology in the Table in Schedule 4A***

The Minister for Finance made an Order on 9 October 2008 (S.I. No. 397 of 2008) bringing the scheme into operation while a separate Order was made on that date by the Minister for the Environment, Climate and Communications, with the approval of the Minister for Finance, establishing the first three designated classes of technology listed in the Table in ***Schedule 4A***. A list of specified products eligible for the allowances under the first three classes of technology was included in the latter Order.

#### ***Next four classes of technology in the Table in Schedule 4A***

A Commencement Order giving effect to the extension of the scheme to include the next four categories of classes of technology listed in the Table in ***Schedule 4A*** was made by the Minister for Finance on 23 March 2009 (S.I. No. 91 of 2009).



*Final three classes of technology in the Table in Schedule 4A*

A Commencement Order giving effect to the extension of the scheme to include the final three categories of classes of technology listed in the Table in **Schedule 4A** was made by the Minister for Finance on 10 May 2010 (S.I. No. 196 of 2010).

SEAI updates, on a regular basis, the list of specified eligible products qualifying for the allowance under the designated classes of technology listed in the Table in **Schedule 4A**. The updated list can be viewed on the SEAI website.

**285B Acceleration of wear and tear allowances for childcare and fitness centre equipment**

**Summary**

This section provides for an accelerated wear and tear allowance of 100% in respect of expenditure incurred by employers on or after 1 January 2019 on equipment used in a building which qualifies for capital allowances under section 843B (i.e. a building in use for the purposes of providing childcare services or fitness centre facilities to their employees).

**Details**

**Definitions**

“qualifying expenditure” is defined as capital expenditure incurred on qualifying machinery or plant by a person carrying on a trade. (1)

“qualifying machinery or plant” is defined as machinery or plant in use in a qualifying premises.

“qualifying premises” is as defined in section 843B and means a building or structure which is in use for the purposes of providing childcare services or fitness centre facilities to employees of the employer, which is not accessible nor available for use by the general public and, where that employer is a company, the employees of that company or of a company connected with that company.

**Wear and tear allowances**

This subsection applies the provisions of Chapter 2 of Part 9 so that when a “wear and tear” allowance is made under **section 284** to a person in respect of capital expenditure incurred on qualifying machinery or plant (as defined), the rate of allowance will be 100%. [**Section 284** is the basic wear and tear allowances section for plant and machinery. **Section 284(2)(ad)** provides that, for capital expenditure incurred after 4 December 2002, the rate is 12.5%]. **Subsection (2)** of **section 285B** increases this rate to 100%. (2)

**285C Acceleration of wear and tear allowances for gas vehicles and refuelling equipment**

## Summary

This section provides for an accelerated wear and tear allowance of 100% in respect of capital expenditure incurred by persons on new gas-powered vehicles and new refuelling equipment used for the purposes of carrying on a trade. Finance Act 2021 introduced some amendments to the section to include hydrogen fuelled vehicles and related refuelling equipment in the scheme of accelerated allowances. Additionally, the termination date for incurring qualifying expenditure was extended to 31 December 2024. The incentive now runs from 1 January 2019 until 31 December 2024. Only expenditure incurred during this period can qualify for the 100% wear and tear allowance. Private passenger motor cars are excluded from the incentive. However, capital expenditure incurred on taxis and passenger motor cars for short term hire to members of the public may qualify for the accelerated allowance.

## Details

### *Definitions*

“biogas” is defined as gas produced from biomass. (1)

“biomass” is defined as the biodegradable fraction of products, waste and residues from agriculture, forestry and related industries and industrial and municipal waste.

“CN code” means a Community subdivision to the combined nomenclature of the European Communities referred to in Article 1 of the Council Regulation (EEC) No. 2658/87 of 23 July 1987 as amended by Commission Regulation (EC) No. 2031/2001 of 6 August 2001.

“compressed natural gas” is defined as petroleum gases and other gaseous hydrocarbons in gaseous state falling within CN code 2711 21 00.

“gas refuelling station” is defined as a premises, or part of a premises, at which gaseous fuel or hydrogen fuel is supplied to a gas-powered vehicle.

“gas-powered vehicle” is defined as a mechanically propelled road vehicle which is fuelled by gaseous fuel or hydrogen fuel.

“gaseous fuel” is defined as compressed natural gas, liquefied natural gas or biogas.

“hydrogen” is defined as the chemical element falling within CN code 2804 10 00.

“hydrogen fuel” is defined as gaseous or cryogenic liquid hydrogen of a fuel quality that complies with ISO 14687:2019 or SAE J2719.

“liquefied natural gas” is defined as petroleum gases and other gaseous hydrocarbons in liquefied state falling within CN code 2711 11 00.

“pre-cooling device” is defined as equipment, which complies with ISO 19880-1:2020, used for the process of cooling hydrogen fuel prior to dispensing of the fuel.

“qualifying expenditure” is defined as capital expenditure incurred during the relevant period on the provision of qualifying refuelling equipment or qualifying vehicles.

“qualifying refuelling equipment” is defined as refuelling equipment, which is unused and not second-hand, installed at a gas refuelling station.

“qualifying vehicle” means a gas-powered vehicle which is unused and not second-hand, is constructed or adapted for the conveyance of goods or burden of any description, the haulage by road of other vehicles or the carriage of passengers. Private passenger motor cars cannot qualify for the accelerated wear and tear allowance under this section. Such vehicles are subject to the CO<sub>2</sub> emissions regime in Part 11C. Vehicles used for the purpose of hire to, or the carriage of, members of the public in the ordinary course of a trade (e.g. taxis) may qualify.

“refuelling equipment” is defined as a storage tank for gaseous or hydrogen fuel, a compressor, pump, control or meter used for the purposes of refuelling gas-powered vehicles, a pre-cooling device, or equipment for supplying gaseous or hydrogen fuel to the fuel tank of a gas-powered vehicle.

“relevant period” is defined as the period commencing on 1 January 2019 and ending on 31 December 2024.

### ***Wear and tear allowances***

This subsection applies the provisions of Chapter 2 of Part 9 so that when a “wear and tear” allowance is made under **section 284** to a person in respect of capital expenditure incurred during the relevant period on a qualifying vehicle or qualifying refuelling equipment (as defined), the rate of allowance will be 100%. [**Section 284** is the basic wear and tear allowances section for plant and machinery. **Section 284(2)(ad)** provides that, for capital expenditure incurred after 4 December 2002, the rate is 12.5%]. **Subsection (2) of section 285C** increases this rate to 100%. (2)

This subsection ensures that if relief is claimed on capital expenditure under either section 285A (acceleration of wear and tear allowances for certain energy-efficient equipment) or 286 (increased wear and tear allowances for taxis and cars for short-term hire) the same expenditure cannot qualify for the accelerated wear and tear allowance under section 285C. (3)

## **285D Acceleration of wear and tear allowances for farm safety equipment**

### **Summary**

This section provides for a scheme of accelerated wear and tear allowances for expenditure incurred by farmers on farm safety equipment. The scheme is available to persons carrying on a trade of farming that incur capital expenditure on certain items of farm equipment between 1 January 2021 and 31 December 2023 for the purposes of the farming trade. The scheme is subject to an overall annual budget of €5 million. An initial application to the Department of Agriculture, Food and the Marine for certification will be required. Where expenditure is certified, the person will be entitled to claim wear and tear allowances on the expenditure over a period of 2 instead of 8 years, subject to a maximum tax benefit of €500,000 per undertaking.

### **Details**

#### ***Definitions***

(1)

“farming” has the same meaning as it has in Part 23, other than in section 664, which is farming farm land, that is, land in the State wholly or mainly occupied for the purposes of husbandry, other than market garden land;

“eligible person” means a person carrying on farming, the profits or gains of which are chargeable to tax in accordance with section 655<sup>2</sup>;

“Minister” means the Minister for Agriculture, Food and the Marine;

“qualifying certificate” means a certificate issued under subsection (4);

“qualifying equipment” means equipment of a type specified in Schedule 35;

“qualifying expenditure”, in relation to an item of qualifying equipment (i.e. equipment of a type specified in Schedule 35), means the amount which, in the reasonable opinion of the Minister Agriculture, Food and the Marine, is an appropriate purchase price;

“relevant tax” means corporation tax where the eligible person is a company and income tax, USC and PRSI where the eligible person is an individual;

“Rescuing and Restructuring Guidelines” means the Communication of the Commission on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>3</sup>;

“SME” has the same meaning as it has in Commission Regulation (EU) No 702/2014 of 25 June 2014<sup>4</sup>;

‘Tax reference number’ has the same meaning as it has in section 891B(1). In the case of an individual, this means the individual’s PPS number or in any other case, the reference number stated on any return of income form or notice of assessment issued by the Revenue Commissioners;

“undertaking” means the relevant economic unit that would be regarded as an undertaking for the purposes of the Rescuing and Restructuring Guidelines (i.e. the Communication of the Commission on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>5</sup>);

“undertaking in difficulty” is to be interpreted in accordance with section 2.2 of the Rescuing and Restructuring Guidelines (i.e. the Communication of the Commission on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>6</sup>).

Where a person acquires qualifying equipment, the person may apply to the Minister for Agriculture, Food and the Marine for a qualifying certificate in respect of that equipment. (2)

Where a person applies to the Minister for Agriculture, Food and the Marine for a qualifying certificate under subsection (2), the person is required to use the form provided by the Minister and include the following information: (3)

- (a) in respect of each item of qualifying equipment which the application relates to, a description of the equipment and its purchase price,
- (b) the name and address of the applicant,
- (ba) the tax reference number of the applicant and

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<sup>2</sup> Guidance on section 655 is available at: <https://www.revenue.ie/en/tax-professionals/documents/notes-for-guidance/tca/part23.pdf>.

<sup>3</sup> See: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731\(01\)&from=GA](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731(01)&from=GA).

<sup>4</sup> See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0702&from=EN>.

<sup>5</sup> See: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731\(01\)&from=GA](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731(01)&from=GA).

<sup>6</sup> See: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731\(01\)&from=GA](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731(01)&from=GA).

- (c) any other information, which will be specified in the application form, which the Minister considers necessary and appropriate for the purposes of determining (i) whether a certificate should be issued under subsection (4) and (ii) the qualifying expenditure in respect of an item of qualifying equipment.

Where a person makes an application to the Minister under subsection (2), the Minister will issue a certificate to the person if: (4)

- the Minister is satisfied that the equipment is qualifying equipment, and
- subsection (5) does not apply in respect of the equipment.

This subsection will apply where, on the date an application is made under subsection (2) in respect of qualifying equipment, the qualifying expenditure for that equipment exceeds an amount determined by the formula: (5)

€5,000,000 – M

“M” = an amount which is equal to the aggregate qualifying expenditure (exclusive of VAT) in respect of which:

- qualifying certificates have already been issued in the year to date, and
- qualifying certificates would be issued, if appeals of decisions (see section 285D(9)) in respect of applications already made under subsection (2) in the year to date were successful.

A qualifying certificate will include the following information: (6)

- (a) in respect of each item of qualifying equipment which the certificate relates to, a description of the equipment and the qualifying expenditure,
- (b) a unique sequential certificate identification number,
- (c) the name and address of the person the certificate is issued to,
- (ca) the tax reference number of the person the certificate is issued to and
- (d) any other information the Minister for Agriculture, Food and the Marine or the Revenue Commissioners consider necessary and appropriate.

The Minister for Agriculture, Food and the Marine is required to provide to the Revenue Commissioners, by 28 February each year, details of all qualifying certificates issued, and all qualifying certificates deemed to be cancelled under Section 13A during the preceding year, which is to include the information set out in subsection (6). (7)

Where an application is made by a person under subsection (2) and the Minister Agriculture, Food and the Marine decides: (8)

- not to issue a qualifying certificate, or
- to issue a qualifying certificate for less than the amount that was applied for
- the Minister is required to notify the person of that decision.

Where the Minister for Agriculture, Food and the Marine is required to notify a person of a decision in accordance with subsection (8), the notification is required to include the reasons for the decision and inform the person that: (9)

- within 21 days of the date of the notification, the person may appeal the decision by submitting a notice of appeal (which specifies the grounds for the appeal), to the appeals officer (within the meaning of section 667G<sup>7</sup>) and

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<sup>7</sup> Guidance on section 667G is available at: <https://www.revenue.ie/en/tax-professionals/documents/notes-for-guidance/tca/part23.pdf>.

- the decision will be suspended until either the decision becomes final under subsection (12) or an appeal made under this section is disposed of.

A notice of appeal must be accompanied by a fee, which will be determined by the Minister for Agriculture, Food and the Marine. (10)

Where the Minister for Agriculture, Food and the Marine makes a decision in accordance with subsection (8), the decision will be suspended until either: (11)

- where subsection (12) applies (i.e. an appeal is not made within the period of 21 days beginning on the date of a notification under subsection (8)), the decision becomes final under that subsection, or
- where subsection (12) does not apply (i.e. an appeal is made within the period of 21 days beginning on the date of a notification under subsection (8)), the disposal of the appeal of that decision.

Where an appeal of a decision made by the Minister for Agriculture, Food and the Marine is not made within the period of 21 days beginning on the date of a notification of that decision under subsection (8), the decision will become final. (12)

Where a decision is appealed under this section, subsections (5) to (10) of section 667G<sup>8</sup> will apply as they apply to an appeal under that section. (13)

Where two or more qualifying certificates are issued in respect of an item of qualifying equipment then only the certificate issued in respect of the first application made by the person shall be treated as a qualifying certificate for the purposes of the section. Any other certificate standing issued to that person in respect of that same item of qualifying equipment is deemed to be cancelled in so far as it relates to that item of qualifying equipment and shall not be treated as a qualifying certificate for the purposes of the section. (13A)

Where an eligible person incurs, between 1 January 2021 and 31 December 2023, capital expenditure on qualifying equipment for the purposes of the farming trade and has been issued with a qualifying certificate in respect of that equipment, then for any chargeable period a wear and tear allowance is to be made under section 284 in respect of any qualifying expenditure specified in that qualifying certificate, section 284(2) will apply as if the reference in section 284(2)(ad) to 12.5% were a reference to 50%. (14)

Subsection (14) will not apply where the eligible person is any of the following: (15)

- an undertaking in difficulty (which term is to be interpreted in accordance with section 2.2 of the Rescuing and Restructuring Guidelines (i.e. the Communication of the Commission on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty),
- part of an undertaking part of which is subject to an outstanding recovery order following a previous decision of the Commission of the European Union that declared an aid illegal and incompatible with the internal market, or
- part of an undertaking that is not an SME.

The aggregate amount of relief (see subsection (19) for the calculation of relief) granted to a person under this section shall not exceed €500,000. (16)

This subsection will apply to a person for a chargeable period where the aggregate of the (17)

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<sup>8</sup> Guidance on section 667G is available at: <https://www.revenue.ie/en/tax-professionals/documents/notes-for-guidance/tca/part23.pdf>.



amount of the relief (see subsection (19) for the calculation of relief) granted to the person in that chargeable period and in any previous chargeable periods exceeds than €60,000.

Where subsection (17) applies to a person for a chargeable period, then, notwithstanding section 851A (which provides for the confidentiality of taxpayer information), the Revenue Commissioners may disclose the following information in respect of the year in which the chargeable period ends: (18)

- the name of the person,
- the sector of activity at NACE group level,
- the territorial unit, within the meaning of the NUTS Level 2 classification specified in Annex 1 to Regulation (EC) No 1059/2003 (as amended), in which the person is located, and
- the year in which the relief is granted.

For the purpose of subsections (16) and (17), the amount of relief granted to a person in a chargeable period will be calculated using the formula: (19)

$$R = A - B$$

“R” = the amount of the relief granted to the person in the chargeable period,

“A” = the amount of relevant tax that would be payable by the eligible person for the chargeable period, but for subsection (14), and

“B” = the amount of relevant tax payable by the eligible person for that chargeable period.

## 286 Increased wear and tear allowances for taxis and cars for short-term hire

### Summary

This section provides for a 40 per cent annual rate of wear and tear allowance, on a reducing balance basis, for taxis and cars provided for short-term hire to the public. This compares with the normal 12.5 per cent annual rate given on a straight-line basis over 8 years under **section 284** for motor vehicles generally. The increased rate of allowance is not available for car leasing.

### Details

#### *Definitions and construction*

“car” is defined to include only vehicles normally used as private cars. The definition excludes vehicles which are not road vehicles (such as fork-lift trucks), vehicles designed for haulage or to carry goods (such as tow-cars or lorries) and vehicles not normally used as private vehicles (such as motor coaches or minibuses). Taxis have been specifically included in the definition (by reference to **paragraph (ii)** of the definition of “qualifying purposes”) since “black taxis” or “London taxis” as they are sometimes referred to would not normally be used as private cars. (1)(a)

“qualifying purposes” is defined as the use in the ordinary course of a trade of cars —

- for the purposes of short-term hire to members of the public, or
- as taxis.

“Taxi” is defined as a car which is a licensed public hire vehicle fitted with a taximeter. This definition excludes public hire vehicles without taximeters, sometimes referred to as “hackneys”. It also excludes limousines typically used for weddings and funerals.

“short-term hire” is the hire of a car to a person under a hire-drive agreement for a

continuous hire period which does not exceed 8 weeks. This means the hire of the car from its registered owner but excludes —

- a hire-purchase agreement,
- an agreement for carriage of persons or goods without the car itself being hired, and
- hire of the car where the owner drives or provides a driver for the vehicle.

Where a period of hire of a car to a person is followed within 7 days of the end of that period by another period of hire (whether of the same or a different car) to the same person or a connected person (see **section 10**), the number of periods of hire, though each is of less than 8 weeks duration, are aggregated to make up what is treated as one continuous period of hire, and where that one period exceeds 8 weeks duration none of the separate periods making up that longer period is regarded as a period of short-term hire. (1)(b)

### ***Qualifying condition***

In order to be regarded as having been used for qualifying purposes as respects any chargeable period, the car must have been used for short-term hire or as a taxi for at least 75 per cent of the time it is available for use. This is necessary in order to prevent, say, a leased car qualifying for the relief on the basis of an incidental use for short-term hire. (1)(c)

The “75 per cent” requirement is regarded as having been satisfied in a period where only 50 per cent of the use of the car is for qualifying purposes if in the immediately preceding or following period 75 per cent of the use of the car is for qualifying purposes. This easing of the “75 per cent” requirement is intended to allow a reasonably flexible access to the incentive and to take account of the peaks and valleys which can occur in tourism from year to year. (1)(d)

### ***Rate of wear and tear allowance***

The normal annual rate of wear and tear allowance under **section 284** is modified so as to provide that a 40 per cent rate, on a reducing balance basis, will apply in respect of cars used for qualifying purposes in the course of a trade which includes or consists of the short-term hire of cars or the operation of a taxi. (2)

## **286A Wear and tear allowances for licences for public hire vehicles.**

### **Summary**

This section provides for a scheme of wear and tear allowances in respect of capital expenditure incurred by a person on the cost of a taxi licence acquired on or before 21 November 2000 (the date the deregulation of taxi licences was announced). The allowances are effectively backdated in that, where capital expenditure was so incurred, the expenditure is deemed for the purposes of qualification for the allowances to have been incurred on 21 November 1997 or, if later, the date on which the person commenced the trade of taxi-driving. Also, the section is deemed to have come into operation on 6 April 1997. This will enable claims for the allowances to be made in respect of tax years back to 1997–98.

The allowances involve the write-off of qualifying expenditure at the rate of 20 per cent per annum over 5 years. The allowances will be allowed against the trading income of the licence owner who drives the associated taxi. The allowances will not be available where the licence-owner rents out the licence and associated vehicle to another person, except where the licence-owner both carries on the trade of taxi-driving and also receives income from renting the licence and the associated vehicle on a part-time basis. In such a case the allowances will be allowed against both the trading and the rental income from the vehicle in question. Where more than one licensed vehicle is operated in such a manner, the allowances will be available only in respect of the cost of a licence relating to one vehicle.



However, where a person inherited a licence from a deceased spouse who carried on the trade of taxi-driving, the person is deemed to have incurred the qualifying expenditure in respect of the licence and may set the wear and tear allowances against rental income arising from the letting of the licence, even though the person is not carrying on a taxi-driving trade. Where more than one licence is so inherited, the allowances will be available only in respect of the cost of one licence.

Finally, where inheritance tax or probate tax was paid in respect of a taxi licence, then, for the purposes of qualification for wear and tear allowances, the value used for inheritance tax or probate tax may be used instead of the actual capital expenditure cost, if that value is higher.

## Details

### *Definitions*

The term “licence” means a taxi licence or a wheelchair accessible taxi licence. (1)

The term “qualifying expenditure” is defined as capital expenditure incurred on acquiring a licence on or before 21 November 2000, but for the purposes of qualification for wear and tear allowances any such expenditure is deemed to have been incurred on 21 November 1997 or, if later, the date on which the trade (of taxi-driving) commenced.

However, where a licence is inherited by an individual and inheritance tax or probate tax was paid in respect of the licence, “qualifying expenditure” is defined as an amount equal to the value used for such tax purposes, if that amount is greater than the actual capital expenditure incurred on acquiring the licence. Where this rule applies, the amount in question is treated as capital expenditure incurred on the acquisition of a licence on 21 November 1997 or, if later, on the day the individual commences the taxi-driving trade.

A “qualifying trade” is defined as a trade carried on by an individual which consists of the carriage of members of the public for reward in a vehicle in respect of which a licence has been granted, that is, in a taxi or a wheelchair accessible taxi. However, any trade or part of a trade which consists of the letting of the taxi will not be treated as a “qualifying trade”.

### *Title to capital allowances*

Where an individual carrying on a qualifying trade proves to have incurred qualifying expenditure on a licence, then, for the purposes of capital allowances in respect of machinery or plant (other than for the purposes of *sections 298* and *299* which deal with allowances to lessors and lessees, respectively) — (2)(a)

- the licence will be treated as machinery or plant,
- that machinery or plant will be treated as having been provided for the purposes of the trade, and
- for so long as the individual is entitled to the licence, that machinery or plant will be treated as belonging to the individual.

Where the individual in question uses the licensed taxi partly for the purposes of the qualifying trade and partly for letting to another person, the licence will for the purposes of wear and tear allowances under *section 284(1)* be treated as being used only for the purposes of the qualifying trade. This ensures that wear and tear allowances will also be available where the licence owner is trading as a taxi driver but also lets the licensed vehicle to another person for part-time use. (2)(b)

Where an individual who is carrying on a trade of taxi-driving has incurred qualifying expenditure in respect of more than one licence and lets more than one licensed vehicle to another person or persons, title to capital allowances under *subsection (2)(a)* will be (2)(c)

confined to one licence only (the “relevant licence”).

### ***Licence inherited on death of spouse***

A special rule applies to cater for the case where an individual (who otherwise would not be entitled to the capital allowances) inherits a licence on the death of either his or her spouse or civil partner who had incurred qualifying expenditure in respect of the licence and had carried on a trade of taxi-driving. In such a case if the individual lets the licensed vehicle or the licence to another person for use by that person in a taxi-driving trade, then — (3)

- the individual will be treated as having incurred the qualifying expenditure in respect of the licence,
- the licence will be treated as machinery or plant, and
- the letting of the licensed vehicle or the licence will be deemed to be a qualifying trade carried on by the individual which commenced on the date of the first letting.

This special rule applies in respect of one licence only.

### ***Rate of wear and tear allowance***

This provision governs the rate of wear and tear allowance to be made under **section 284** in respect of qualifying expenditure on a licence in taxing a qualifying trade. Section 53 of the Finance Act 2001 inserted a new **subsection (2)(aa)** into **section 284** to provide that wear and tear allowances would apply in respect of capital expenditure incurred on general machinery or plant on or after 1 January 2001 at 20 per cent per annum on a straight-line basis over 5 years. For the purposes of determining the rate of wear and tear allowance to be made under **section 284** in respect of qualifying expenditure on a licence, the licence will be treated as machinery or plant to which **subsection (2)(aa)** of **section 284** applies and that subsection will apply as if the reference therein to 1 January 2001 were a reference to 21 November 1997. In effect, therefore, wear and tear allowances at a rate of 20 per cent per annum on a straight-line basis over 5 years will be available, in taxing a qualifying trade, in respect of qualifying expenditure on a licence. (4)

### ***Letting of licensed vehicles – treatment of losses referable to wear and tear allowances***

This provision applies to an individual who lets a licensed vehicle on a part-time basis (**subsection (2)(b)**) or who lets a vehicle relating to a “relevant licence” (**subsection (2)(c)**). It provides that notwithstanding **section 381**, where relief is claimed under that section by such an individual for a loss in a qualifying trade, the amount of the loss which is referable to wear and tear allowances granted under this section may be set off against the rental income from the letting but not against any other income. (5)

### ***No interest on repayments***

In general, where a person’s preliminary tax payment for a tax year exceeds the tax liability for the year, the excess is repayable with interest. However, interest will not be payable on any such repayment to the extent that it results from wear and tear allowances under this section. (6)

### ***Operative date***

To facilitate the back-dating of wear and tear allowances, the section is deemed to have come into operation as on and from 6 April, 1997. (7)

## **287 Wear and tear allowances deemed to have been made in certain cases**

### **Summary**

The purpose of **section 287** is to enable the amount of the wear and tear allowance to be

made for a chargeable period in respect of machinery or plant to be determined on the basis of the true written-down value of the machinery or plant. Thus, the section applies for the purposes of calculating the written-down value at the commencement of the chargeable period of motor vehicles (**section 284(3)**) and applying the overall limit on the amount of wear and tear allowances that may be made in respect of machinery or plant generally (**section 284(4)**). For those purposes, normal wear and tear allowances are deemed to have been made in respect of machinery or plant used during any chargeable period in circumstances in which it attracted no wear and tear allowance or a restricted wear and tear allowance. An example of the use of machinery or plant in such circumstances is where a motor vehicle is bought for trade purposes but in a chargeable period is used entirely or partly for private purposes.

## Details

### *Definitions*

“wear and tear allowance” is an allowance made under **section 284** apart from any increase (1) (free depreciation) in that allowance under **section 285**.

“normal wear and tear allowance” is defined as the wear and tear allowance or greater wear and tear allowance, if any, that would have been made for the chargeable period if the conditions specified in **subsection (3)** had been fulfilled in relation to that chargeable period. The reference to greater wear and tear allowance is designed to cater for the case where a restricted wear and tear allowance is given because, for example, the machinery or plant is used partly for business purposes and partly for other purposes.

### *Notional wear and tear allowances deemed to have been made*

Where for any chargeable period no wear and tear allowance or a wear and tear allowance (2) less than the normal wear and tear allowance is made in respect of machinery or plant used during the chargeable period, then, for certain purposes of **section 284**, the normal wear and tear allowance is deemed to have been made to the person concerned in respect of the machinery or plant for that chargeable period. The purposes in question are the calculation of the written-down value at the commencement of a chargeable period of motor vehicles (**subsection (3)** of that section refers) and the application of the overall limit on the amount of wear and tear allowances that may be made in respect of machinery or plant generally (**subsection (4)** of that section refers).

### *Principles on which normal wear and tear allowance is to be calculated*

The normal wear and tear allowance for a chargeable period is to be calculated on the basis (3) that —

- the trade had been carried on by the person concerned ever since that person acquired the machinery or plant in such circumstances that the full amount of the profits or gains of the trade were chargeable to tax,
- the trade had at no time consisted wholly or partly of exempted trading operations within the meaning of Chapter I of Part XXV of the Income Tax Act, 1967 or Part V of the Corporation Tax Act, 1976, that is, trading operations in Shannon Airport that were exempt from income tax and corporation tax,
- since its acquisition by the person concerned the machinery or plant had been used by that person solely for the purposes of the trade,
- a proper claim had been made by the person for a wear and tear allowance in respect of the machinery or plant for every relevant chargeable period, and
- as respects any chargeable period, no question arose as to any sums (subsidies, grants, etc) being payable to the person in respect of or on account of the wear and tear of the machinery or plant.

Where at any time after a company acquired machinery or plant it is not within the charge (4) to corporation tax, any year of assessment or part of a year of assessment falling within that time will be treated as a chargeable period as if it had been an accounting period of the company. Thus, a normal wear and tear allowance will be deemed to have been made in respect of machinery or plant used during any such period.

## 288 Balancing allowances and balancing charges

### Summary

A balancing charge or allowance (that is, an adjustment to the quantum of the allowances made) may arise in a chargeable period where any of the following events occurs in relation to any machinery or plant in respect of which capital allowances have been obtained by a person carrying on a trade —

- the machinery or plant ceases to belong to the person whether on a sale or otherwise,
- the machinery or plant ceases to be used for the purposes of the trade,
- the trade permanently ceases, or
- in the case of machinery or plant consisting of a specified intangible asset, computer software or the right to use or otherwise deal with computer software, the granting to another person of a right to use or otherwise deal with all or part of the software concerned.

Where any of the above events occurs —

- a balancing allowance arises where the amount of the capital expenditure still unallowed (that is, the unused capital allowances) in respect of the machinery or plant is greater than the sale, insurance, salvage or compensation moneys received for the machinery or plant, and
- a balancing charge arises where the amount of the sale, insurance, salvage or compensation moneys received exceed the unused capital allowances in respect of the machinery or plant, except (other than where the machinery or plant is disposed of to a connected person) where the amount of those moneys is less than €2,000.

Special apportionment rules apply where the balancing event arises as a result of granting a right to use or otherwise deal with all or part of machinery or plant which consists of computer software or the right to use or otherwise deal with computer software (see *subsection (3A)*).

In the case of a disposal of a specified intangible asset within the meaning of *section 291A*, a balancing charge will not arise in certain circumstances (see *subsection (3C)*).

### Details

#### *Events giving rise to a balancing allowance or charge*

Where an initial allowance or a wear and tear allowance in respect of machinery or plant (1) has been made for any chargeable period to a person carrying on a trade, a balancing allowance or charge will arise in relation to the machinery or plant on the occurrence of any of the following events —

- while the trade is being carried on the machinery or plant ceases to belong to the trader (for example, by reason of its being sold or given away),
- where the machinery or plant permanently ceases to be used for the purposes of the trade (for example, where it is put out of use altogether, or transferred to private use or to use in another trade carried on by the same person),
- where the trade is permanently discontinued (by virtue of *section 320(5)*, this includes a case in which the trade is for tax purposes treated as having been discontinued), or

- in the case of machinery or plant consisting of computer software or the right to use or otherwise deal with computer software (see **section 291**), where the person grants to another person the right to use or otherwise deal with all or part of the machinery or plant concerned in circumstances such that the consideration in money for the grant constitutes (or, if there were consideration in money, would constitute) a capital sum.

The balancing allowance or balancing charge is made to or on the person concerned for the chargeable period related to the event, that is, in the case of corporation tax, for the accounting period in which the event occurred and, in the case of income tax, for the year of assessment in the basis period for which the event occurred.

### ***Balancing allowance***

In the case where there are no sale, insurance, salvage or compensation moneys (defined in **section 318**) or where the capital expenditure on the machinery or plant which is still unallowed at the time of the event (see **section 292**) exceeds any such moneys received, a balancing allowance is made. The amount of the allowance is an amount equal to the amount of the unallowed expenditure less the sale, insurance, salvage or compensation moneys (if any) received. (2)

#### **Example**

Machinery or plant bought for	€10,000	
Initial allowance	€5,000	
Wear and tear allowances	€3,000	€8,000
Expenditure unallowed at sale		€2,000
Sold for		<u>€1,500</u>
Balancing allowance		<u>€500</u>

### ***Balancing charge***

Where the sale, insurance, salvage or compensation moneys received in respect of the machinery or plant exceed the unallowed expenditure, if any, a balancing charge is made. The amount of the charge is subject to **subsections (3A), (3B) and (3C)** an amount equal to the excess of such moneys over the unallowed expenditure. (3)

#### **Example**

Machinery or plant bought for	€10,000	
Initial allowance	€5,000	
Wear and tear allowances	€3,000	<u>€8,000</u>
Expenditure unallowed at sale		€2,000
Sold for		<u>€5,000</u>
Balancing charge		€3,000

**Apportionment in the case of computer software**

With effect from 29 February 2000 special apportionment rules apply where a balancing allowance or balancing charge is to be made which arises as a result of the granting of a right to use or otherwise deal with all or part of machinery or plant which consists of computer software or the right to use or otherwise deal with computer software. These rules apply where the person granting the right to use etc. retains an interest in the machinery or plant. (3A)

**Firstly**, the amount of the unallowed capital expenditure relating to the machinery or plant in question is apportioned. The portion which the sale, insurance, salvage or compensation moneys bear to the aggregate of the sale etc. moneys and the market value of the machinery or plant which remains undisposed of, is taken into account in calculating the balancing allowance or charge arising as a result of the grant of the right to use etc. The balance is attributed to the machinery or plant which remains undisposed of.

**Secondly**, the amount of the original capital expenditure incurred on the machinery or plant in question is reduced by the portion which the sale etc. moneys bear to the aggregate of the sale etc. moneys and the market value of the machinery or plant which remains undisposed of. As a result, any further capital allowances to be made in respect of the computer software will be based on this reduced figure.

The effect of these rules and that in **subsection (4)(c)** is to effectively treat the original computer software held and the right to use etc. which is granted as two separate assets. This is illustrated in the following example:

**Example**

Computer Software developed – January 2002		€400,000
Wear and tear allowance 2002		<u>€80,000</u>
Capital Expenditure still unallowed		€320,000
Grant of right to use – January 2003		€100,000
Market Value of remaining software		<u>€250,000</u>
	Aggregate	€350,000
Apportion unallowed expenditure:	$320,000 \times \frac{100,000}{350,000}$	= €91,428
:	Balance	€258,572
Apportion original expenditure:	$400,000 \times \frac{100,000}{350,000}$	= €114,000
Balance:		€286,000
Apportion wear and tear allowance:	$800,000 \times \frac{100,000}{350,000}$	= €22,857
	Balance:	€57,143

Balancing allowance/charge

Unallowed expenditure related to grant	€91,428
Grant of right to use – January 2003	Proceeds <u>€100,000</u>
Balancing Charge	€8,572

Wear & Tear Allowance 2003

Balance of original expenditure:	€286,000 x 20%	€57,200
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### ***No balancing charge where “sale proceeds” less than €2,000***

With effect from 1 January 2002 no balancing charge will arise in respect of plant and machinery where the sale, insurance, salvage or compensation moneys for the plant or machinery is less than €2,000. This relaxation of the balancing charge rules will not apply in cases where plant and machinery is disposed of between connected persons (see **section 10**). **(3B)**

### ***No balancing charge on disposal of “specified intangible assets” in certain circumstances***

In the case of a specified intangible asset within the meaning of section 291A, where expenditure was incurred on the provision of an asset before 14 October 2020, no balancing charge will arise if, in relation to the asset, an event referred to in subsection (1) (including a disposal of the asset) occurs more than five years after the beginning of the accounting period of the company in which the asset was first provided. This is subject to the condition that the event may not result in a connected company claiming allowances under section 291A in excess of the tax written down value of the asset at the time of transfer (i.e. the amount of unclaimed allowances). **(3C)**

### ***Limit on balancing charge***

A balancing charge to be made on a person cannot exceed the aggregate of the amounts of any initial allowance, wear and tear allowances, scientific research allowance and previous balancing allowances made to the person in respect of the machinery or plant. A balancing charge, therefore, does not extend to any excess of sale, insurance, salvage or compensation moneys over the original cost of the asset. **(4)(a) & (b)**

Where **subsection (3A)** applies then, for the purposes of the Chapter, the allowances mentioned above which are granted in respect of the machinery or plant in question (which consists of computer software or the right to use or otherwise deal with computer software) are apportioned so that: **(4)(c)**

- the portion of the allowances which the sale, insurance, salvage or compensation moneys bear to the aggregate of those moneys and the market value of the machinery or plant in question which remains un-disposed, are attributed to the grant of the right to use or otherwise deal with the computer software.
- the balance is attributed to the machinery or plant in question which remains un-disposed.



### ***Balancing adjustments and treatment of grants***

Subject to certain exceptions, capital allowances in respect of machinery or plant are now given by reference to the capital expenditure incurred on a net of grant basis, that is, the grant is deducted in determining the expenditure qualifying for allowances. (See **section 317** for details of this rule and the exceptions to it.) Where an initial allowance and wear and tear allowances are made on a gross basis (that is, the grant was not deducted in determining the allowable expenditure), then, by virtue of **section 317(2)**, in calculating a balancing adjustment, the amount of the grant is deducted from the original cost of the machinery or plant in determining under **section 292** the amount of the expenditure unallowed. (5)(a)

A special measure is needed, however, to cater for the case where the allowances were made on a gross basis and the aggregate of the initial allowance and wear and tear allowances made exceed the actual expenditure incurred by the person on the provision of the machinery or plant. On the occurrence of a balancing event in any such case, the excess of the allowances made over the actual expenditure incurred is treated as sale, insurance, salvage or compensation moneys, and this gives rise to a balancing charge. The amount on which the charge is made is —

- where there are no actual sale, insurance, salvage or compensation moneys, the amount of that excess, and
- where there are actual sale, insurance, salvage or compensation moneys, the amount of that excess plus the amount of those moneys.

### ***Successive balancing events***

Where a balancing event in relation to machinery or plant occurs and is followed by another balancing event, any balancing allowance or charge to be made on the person on the later event must take account of any balancing allowance or charge previously made on the person in respect of the expenditure incurred on the provision of the machinery or plant. In effect, any previous allowance or charge must be deducted or as the case may be, added in determining the amount of the expenditure still unallowed for the purposes of calculating the allowance or charge to be made on the later event. Successive balancing adjustments could arise, for example, if the person ceased to use the machinery or plant for one trade and then used it for another trade. (5)(b)

### ***Balancing charges and decommissioning of fishing vessels***

A grant may be paid to a person under the scheme for compensation in respect of the decommissioning of fishing vessels implemented by the Minister for the Marine and Natural Resources under European Council Regulation No. 3699/93. Any balancing charge arising as the result of the receipt of such a grant may be spread in equal instalments over 3 chargeable periods, instead of being levied in full for the chargeable period in which the grant is received. (6)

This scheme has been superseded by a new one implemented by the Minister for Agriculture, Food and the Marine under European Council Regulation (EU) No. 508/2014. As with the previous scheme any balancing charge arising as a result of the receipt of a decommissioning payment will be spread evenly over 5 chargeable periods, the first in the year of receipt and the following 4 periods. This provision is subject to commencement order by the Minister for Finance with the consent of the Minister for Agriculture, Food and the Marine. (6A)

## **289 Calculation of balancing allowances and balancing charges in certain cases**



## Summary

Generally, the sale, insurance, salvage or compensation moneys received are used in computing a balancing allowance or charge in respect of machinery or plant. This section provides that in cases where there are no such moneys received the general rule is that the machinery or plant is deemed to have been sold at its open market value on the date of the event which gives rise to the balancing allowance or charge. In certain other cases, where machinery or plant is sold or otherwise transferred and the purchaser or recipient uses it for trade purposes and both the seller or donor and the purchaser or recipient elect in writing and are connected with each other, the transfer may be treated for tax purposes as taking place at the lower of market value or tax written down value. However, this option is not available where the transfer is from a person who is not a company to a company, even if the parties are connected.

## Details

### *Definition*

“open market price” is the price which the machinery or plant could have been sold in the open market at the time of the relevant event. In cases of dispute this price is to be determined by the Appeal Commissioners (see *section 314(2)*). (1)

### *Permanent discontinuance of a trade*

If, at or about the time of the permanent discontinuance of a trade (including, by virtue of *section 320(5)*, a deemed discontinuance) sale, insurance, salvage or compensation moneys are received, the actual amount of such moneys is to be taken into account in computing a balancing allowance or charge. In the absence of such a provision, such moneys arising after the permanent discontinuance of a trade could not be taken into account in computing the allowance or charge. In effect, the provision enables the actual sale, insurance, etc moneys received to be used where the machinery or plant is “disposed of” after the cessation of the trade. (2)

In general, the provision does not apply to sales at less than market price as *subsection (3)* caters for such cases. However, the provision does apply to certain sales at less than market price (generally sales between associated persons) which under *section 312* are deemed to have been made at market price.

### *Gifts and sales at less than open market price*

In certain cases balancing allowances and balancing charges are to be computed as if the machinery or plant had been sold at open market price. These cases are — (3)

- where on the permanent discontinuance of the trade the machinery or plant is retained and *subsection (2)* does not apply (for example, where the trader does not sell the machinery or plant),
- where on the permanent discontinuance of the trade the machinery or plant is sold at less than open market price and the sale is not one to which *section 312* applies, or the machinery or plant is given away,
- where the machinery or plant is sold at less than open market price and the sale is not one to which *section 312* applies, or the machinery or plant is given away, or
- where during the carrying on of the trade the machinery or plant is transferred from business use to private use or where, on the transfer of a business from one partnership to another which is not treated as a permanent discontinuance of the trade, the machinery or plant is retained by the transferor.

However, the open market price rule does not apply where machinery or plant is sold at less (4)

than market price or given away in circumstances where the purchaser or recipient is chargeable to income tax under **Chapter 3** of **Part 5** in respect of the “benefit in kind” received. In such a case only the net proceeds (if any) of the sale is taken into account in computing a balancing allowance or balancing charge.

### ***Treatment of purchaser or recipient***

Where the machinery or plant is sold at less than open market price or given away to another person for use by that person for the purposes of a trade but is treated as having been sold at open market price, that person is, in general, to be treated, for the purposes of wear and tear allowances and future balancing allowances and balancing charges, as if he/she had purchased the machinery or plant at the open market price. (5)

However, an option exists whereby the old and new owner of the machinery or plant may jointly elect to have the transfer treated as if the machinery or plant had been sold at a price equal to the amount of the expenditure unallowed immediately before the gift or sale but only if the expenditure unallowed is lower than the open market price. Where such an election is made — (6)

- no balancing allowance or charge is made to or on the old owner and the new owner’s title to wear and tear allowances and a balancing allowance (if any) in respect of the machinery or plant is based on an acquisition cost equal to the amount of the expenditure unallowed at the time of the gift or sale, and
- if on the occasion of a subsequent balancing event a balancing charge is to be made on the new owner, the amount of the charge to be made on the new owner will be equal to that which would have been made on the old owner if he/she had continued to own the machinery, had used it in the same way as it was in fact used by the new owner, and had been granted the allowances made to the new owner. In effect, the limit on the balancing charge is set at the aggregate of the capital allowances made to both the old and the new owners in respect of the machinery or plant.

This option is only available where the persons concerned are connected with each other (for example, transfers between relatives, partners or connected companies). Even where the parties are connected, the option is not available where the transfer is from a person who is not a company to a company. (6A)

## **290 Option in case of replacement**

### **Summary**

Where a balancing charge arises in relation to machinery or plant and the taxpayer replaces that machinery or plant, the taxpayer may elect that the charge be offset by providing that the wear and tear allowances due on the new machinery or plant be computed on the basis of its cost less the balancing charge. In any case where the balancing charge actually exceeds the cost of the new machinery or plant, the balancing charge to be made in relation to the old machinery or plant is reduced to the excess of the balancing charge over the cost of the new machinery or plant. In such cases, the taxpayer is not entitled to any capital allowance in respect of the new machinery or plant.

### **Details**

If machinery or plant in relation to which a balancing charge has arisen is replaced by the owner of that machinery or plant, the owner may make an election in writing to the inspector to have the charge either wholly or partially deferred depending on whether the capital expenditure incurred on providing the replacement machinery or plant is greater than, or less than or equal to, the amount of the charge.

***Amount of charge greater than expenditure on replacement machinery or plant***

Where the amount on which the balancing charge would have been made is greater than the capital expenditure incurred on the replacement machinery or plant — (a)

- the charge is made only on an amount equal to the difference,
- no initial allowance, wear and tear allowances or balancing allowances are allowed in respect of the replacement machinery or plant, and
- in calculating the amount of any future balancing charge to be made in respect of the replacement machinery or plant, an initial allowance will be deemed to have been made in respect of that machinery or plant equal to the amount of the expenditure incurred on its provision.

***Amount of charge less than or equal to expenditure on replacement machinery or plant***

Where the capital expenditure incurred on the replacement machinery or plant is equal to or greater than the amount on which the balancing charge would have been made — (b)

- no balancing charge is made,
- any initial allowance and wear and tear allowances in respect of the replacement machinery or plant are computed as if the cost of such machinery or plant had been equal to the actual expenditure incurred less the withheld balancing charge, and
- in considering the amount of any future balancing allowance or charge to be made in respect of the replacement machinery or plant, an initial allowance equal to the amount of the withheld balancing charge is deemed to have been granted in respect of it, in addition to any initial allowance or wear and tear allowances actually granted.

**Example**

Machine cost	€10,000
Initial and wear and tear allowances granted	<u>€6,000</u>
Expenditure unallowed	€4,000
Machine sold for	<u>€8,000</u>
Balancing charge would normally be	€4,000
Machine replaced by new one costing	€12,000
Deduct withheld balancing charge	€4,000
	€8,000

Any capital allowances in respect of the new machine will be based on expenditure of €8,000 and not the €12,000 actually incurred.

If the new machine is ultimately sold and not replaced, the amount of the withheld balancing charge will be treated as if it were an initial allowance. Thus —

Expenditure on new machine	€12,000
Withheld balancing charge	€4,000
Wear and tear allowances granted (say)	€5,000
	<u>€9,000</u>

Expenditure unallowed	€3,000
Sold for (say)	<u>€7,500</u>
Excess	€4,500

A balancing charge is made on the whole of this excess since it is less than the allowances made, €5,000, plus the withheld charge, €4,000.

The net result of the two transactions is as follows —

Total expenditure —

First machine	€10,000
Second machine	<u>€12,000</u>
Total	€22,000

Sale receipts —

First machine	€8,000
Second machine	<u>€7,500</u>
Total	<u>€15,500</u>

Loss	€6,500
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Allowances given —

First machine	€6,000
Second machine	<u>€5,000</u>
	€11,000

Balancing charge	<u>€4,500</u>
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Net Allowance	€6,500
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It will be seen that the net allowance is equal to the loss sustained.

## 291 Computer software

### Summary

Prior to the changes introduced in the Finance Act 2010, where a trader incurred capital expenditure in acquiring computer software or a right to use such software for the purposes of the trade, that acquisition was to be regarded as an acquisition of machinery or plant and, accordingly, capital allowances applied in respect of the expenditure so incurred. In effect, the expenditure so incurred could have been written off over the same period as is the case for conventional machinery or plant (see *section 284*).

The Finance Act 2010 introduced a more coherent treatment of computer software by

distinguishing between computer software for end use within a business and computer software acquired for commercial exploitation. The former will continue to qualify for the normal plant and machinery allowances under this section, whereby expenditure is written off over 8 years, while the software acquired for commercial exploitation will qualify for allowances under the intangible assets scheme in **section 291A**, with allowances based on accounting depreciation or a fixed rate over 15 years. To accommodate companies with planned investments, the Finance Act 2010 provided a transition period of 2 years during which a company may elect to claim relief under this section i.e. **section 291** in respect of capital expenditure on computer software acquired for commercial exploitation.

### Details

Subject to **subsection (3)** where capital expenditure has been incurred on the right to use or otherwise deal with computer software for the purposes of a trade, the right to use the software and the software itself is to be treated as machinery or plant provided for the purposes of the trade and, for so long as the person is entitled to that right, that machinery or plant will be treated as belonging to the person. In effect, this provision establishes title to machinery or plant capital allowances in respect of such expenditure. (1)

Where a person carrying on a trade has incurred capital expenditure on providing computer software for the purposes of the trade and, as a result of that expenditure, the computer software belongs to that person, then, if the computer software does not constitute machinery or plant (for example, the software may not be in tangible form such as on disk or CD-ROM but may have been transmitted electronically), it will nonetheless be treated as machinery or plant. (2)

**Subsection (3)** provides that, in the case of a company acquiring computer software of an end-user type for use in its trade and not for the purposes of the commercial exploitation of that software, then relief will be available subject to the provisions of this section. (3)

**Subsection (4)** applies transitional provisions to facilitate companies with planned capital expenditure investments. Companies may elect to claim capital allowances under this section for capital expenditure on computer software incurred in the 2-year period up to 4 February 2012. The claim must be made in the company's annual corporation tax return for the accounting period in which the capital expenditure is incurred and within 12 months from the end of that accounting period. (4)

## 291A Intangible assets

### Summary

The Finance Act 2009 introduced a new scheme of tax relief for expenditure incurred by a company on intangible assets after 7 May 2009.

Under the scheme, relief in the form of capital allowances against trading income is given on capital expenditure incurred by companies on the provision of intangible assets for the purposes of a trade. The scheme applies to a broad range of intangible assets – either externally acquired or internally developed - which are recognised as such under generally accepted accounting practice and which are listed in the section.

Allowances provided under the scheme reflect the standard accounting treatment of intangible assets and are based on the amount charged to the Profit and Loss account, or Income Statement, of the company for the accounting period in respect of the amortisation and any impairment of the specified intangible asset. However, companies may opt instead for a fixed write-down period of 15 years at a rate of 7 per cent per annum for 14 years and 2 per cent in the final year

Where expenditure was incurred on the provision of an asset before 14 October 2020, no balancing charge will arise if, in relation to the asset, the balancing event (as outlined in section 288(1)) occurs more than five years after the beginning of the accounting period of the company in which the asset was first provided. This is subject to the condition that the event may not result in a connected company claiming allowances under section 291A in excess of the tax written down value of the asset at the time of transfer (i.e. the amount of unclaimed allowances).

Certain restrictions apply to ensure that the scheme operates effectively. Activities which consist of managing, developing or exploiting specified intangible assets and carried on by a company as part of a trade are to be treated as a separate trade (referred to as a “relevant trade”). This is so that allowances may only be offset against income from such activities and not against any other profits. Also, for claims made in respect of capital expenditure incurred by a company on or after 11 October 2017, the aggregate amount of capital allowances and related interest deductions may not exceed 80% of relevant income for that period excluding such allowances and interest. However, any excess allowances and interest is available for carry forward to succeeding accounting periods.

A similar cap of 80% applied in respect of claims for capital allowances and related interest deductions made for accounting periods commencing before 1 January 2015. The cap was increased to 100% for claims made in respect of accounting periods commencing on or after 1 January 2015, and is reduced to 80% for claims made in respect of expenditure incurred by a company on or after 11 October 2017.

The scheme does not apply to capital expenditure on specified intangible assets to the extent that this expenditure is in excess of an arm’s length amount payable between independent parties. Provision is made to enable an authorised officer to consult with an expert on matters relating to the cost of the expenditure incurred.

Relief is also not available in respect of any expenditure not laid out wholly and exclusively for bona fide commercial reasons and that was incurred as part of a tax avoidance arrangement

The scheme does not apply to capital expenditure incurred by a company on specified intangible assets for which any relief or deduction may be given under the Tax Acts other than by virtue of this section.

In the case of transfers of specified intangible assets between group companies, the acquiring company will be able to claim capital allowances on the assets acquired where both it and the transferring company jointly elect not to avail of capital gains tax relief provisions under **section 617**. A similar facility will apply in the case of assets transferring under a company reconstruction or amalgamation under the provisions of **section 615**. In such situations it is important to note that it will not be possible to claim both CGT relief and capital allowances under this section.

## Details

### Definitions

The term “authorised officer”, “intangible asset”, “specified intangible asset” and “profit and loss account” are defined for the purpose of the section. The section applies to (1) intangible assets which-

- are recognised as intangible assets under generally accepted accounting practice, and

- are listed as specified intangible assets in the section.

### ***Accounts-based relief***

Capital expenditure incurred by a company on the provision of specified intangible assets for the purposes of a trade shall be treated as expenditure on machinery or plant for the purposes of **Chapter 2** and **Chapter 4** of **Part 9**. This ensures that the normal rules regarding wear and tear allowances, balancing allowances and charges for expenditure on machinery or plant will also apply for capital expenditure on specified intangible assets, subject to the specific provisions of this section. (2)

An allowance provided under this section for an accounting period shall be a percentage of the actual cost of the asset based on a formula- (3)

$$\frac{A}{B} \quad \times \quad 100$$

where-

- A is the amount, computed in accordance with generally accepted accounting practice, charged to the profit and loss account of the company for the accounting period in respect of the amortisation, impairment or depreciation of the specified intangible asset. [Provision is also made for apportionment where the accounting period for tax purposes and the company's period of account are not the same], and
- B is the actual cost of the asset or, if greater, the value of the asset on which the amortisation, impairment or depreciation charge is computed.

### ***Fixed Rate Relief***

A company may elect to claim relief over a fixed write-down period of 15 years at the rate of 7% per annum for 14 years and 2% in the final year in respect of capital expenditure incurred on the specified intangible asset. (4)(a)

An election under **subsection (4)(a)** must be made in the corporation tax return for the accounting period in which the expenditure on the specified intangible asset was first incurred by the company and such election will apply to all capital expenditure incurred on the asset. (4)(b)

### ***Relevant Trade***

Activities (referred to as “relevant activities”) which consist of the managing, developing or exploiting of a specified intangible asset which are carried on by a company wholly or as part of a trade, including activities comprising the sale of goods or services deriving the greater part of their value from specified intangible assets, such activities are to be treated as a separate trade (“relevant trade”) and profits from such activities are assessed separately. This ensures that capital allowances are only available for offset against the trading income from the relevant trade and not any other income. (5)(a), (c)

### ***Apportionment – Arm's length amount***

It may be necessary to apportion income to ensure that excessive income is not attributed to the relevant trade referred to in **paragraph (a)**. Where the relevant activities are carried on in a separate company there should be no difficulty in ascertaining the profits from such activities. However, where the managing, developing or exploiting of a specified intangible asset is carried on as part of a wider business, an apportionment of receipts and expenses will be necessary to ensure that the correct amount of income is attributable to the deemed separate trade. Such apportionment is to be done on a just and reasonable basis. The amount of income attributed to the relevant trade should not exceed the amount that would (5)(b)

be attributed to a distinct and separate company engaged in the relevant activities if it were independent of, and dealing at arm's length with, the company availing of relief under the scheme.

### ***80% cap on relief***

The aggregate amount of capital allowances and related interest deduction incurred in connection with the provision of a specified intangible asset for an accounting period shall not exceed 80% of the trading income of the relevant (i.e. separate) trade for that period (6)(a) excluding such allowances and interest. This means, in effect, that a minimum 20% of income from the relevant trade is left in charge for an accounting period and that a loss cannot be created by such allowances or interest expense. Where the deductible amounts exceed relevant trading income the excess will continue to be carried forward for offset against trading income of the relevant trade in subsequent periods. In applying this restriction, capital allowances for expenditure on the provision of specified intangible assets are restricted before interest on related borrowings is restricted. The 80% cap applies to claims made in respect of capital expenditure incurred by a company on or after 11 October 2017. Where a claim for an accounting period is made in respect of capital expenditure incurred by a company both before 11 October 2017 and on or after 11 October 2017, the cap will apply subject to ***paragraph (ba)***.

### ***Carry forward of unused amounts***

Where it is not possible to utilise all the capital allowances available for an accounting period under ***paragraph (a)*** and, where applicable ***paragraph (ba)***, the excess allowances will be carried forward and added to any allowances which are available for offset against trading income of the relevant trade for the next succeeding accounting period and so on for each succeeding accounting period. (6)(b)(i)

Similarly, any excess interest expense arising in an accounting period by virtue of ***paragraph (a)*** and, where applicable ***paragraph (ba)***, will be carried forward and added to any interest deductible against trading income of the trade for the next succeeding accounting period and so on for each succeeding accounting period. (6)(b)(ii)

### ***Streaming of income***

Where the trading income from the relevant trade comprises income relating to capital expenditure incurred by a company both before 11 October 2017 (referred to as “the earlier period”) and on or after 11 October 2017 (referred to as “the later period”) the company must stream the trading income from its relevant trade in the accounting period between that which relates to expenditure incurred before 11 October 2017 (referred to as “first income stream”) and that which relates to expenditure incurred on or after 11 October 2017 (referred to as “the second income stream”). (6)(ba)

The paragraph applies the cap in with any necessary modifications such that -

- the amounts of capital allowances and interest expense that relate to capital expenditure incurred in the earlier period shall not exceed the amount of the first income stream and
- the amounts of capital allowances and interest expense that relate to capital expenditure incurred in the later period shall not exceed 80% of the amount of the second income stream

### ***Apportionment of streamed income***

The trading income of the relevant trade must be apportioned between the two streams of trading income on a just and reasonable basis and an arm's length approach should be (6)(bb)



applied.

In computing the trading income from the relevant trade no account shall be taken of any income which is disregarded for the purposes of the Tax Acts. (6)(c)

### ***Prevention of double relief***

The section shall not apply to capital expenditure incurred by a company on specified intangible assets for which any relief or deduction may be given under the Tax Acts other than by virtue of this section. (7)(a)

The section shall not apply to capital expenditure on a specified intangible asset to the extent that it exceeds an arm's length amount payable in a transaction between independent persons. (7)(b)

### ***Wholly and exclusively/Bona Fide***

The section shall not apply to capital expenditure on the specified intangible asset which is not laid out wholly and exclusively for bona fide commercial reasons and was incurred as part of a tax avoidance scheme. (7)(c)

### ***Consultation with an expert***

An authorised officer may consult with an expert where in his/her opinion that person may be of assistance in ascertaining the extent to which expenditure is incurred on a specified intangible asset or in valuing such an asset where it is acquired from a connected person (within the meaning of *section 10*). (8)(a)

The authorised officer must notify the company of the identity of the expert they intend to consult and the information they intend to disclose to that person and permits the company, within a 30 day period, to prevent such disclosure where it demonstrates that disclosure of such information could prejudice the company's trade. (8)(b)

### ***Intra group transfers***

The section will not apply where-

- (i) another company acquires the specified intangible asset as part of the transfer of the whole or part of a business under a scheme of reconstruction or amalgamation where relief from CGT is available under *section 615*, or (9)
- (ii) another company within the same group acquires the specified intangible asset and relief from CGT is available under *section 617*

Where either *section 615* or *section 617* apply, no allowance may be claimed under this section in respect of the specified intangible asset(s) acquired by the transferee company. (9)(a)

However, if companies wish to obtain capital allowances, they can elect not to avail of CGT relief, in which case the acquiring company will be entitled to claim an allowance for capital expenditure on the specified intangible assets acquired while the transferring company will be subject to capital gains tax on the transfer of those assets. (9)(b)

Claims under this section must be notified to Revenue within 12 months from the end of the accounting period in which the capital expenditure giving rise to the claim is incurred. (10)

## **292 Meaning of “amount still unallowed”**

One of the factors in determining the amount of a balancing allowance or a balancing charge in respect of machinery or plant is the amount of the capital expenditure incurred on

the provision of the machinery or plant which is still unallowed at the time of the event giving rise to the allowance or charge. **Section 292** defines “the amount still unallowed as at any time of any expenditure on the provision of machinery or plant” as the amount of that expenditure less the total of —

- any initial allowance made or deemed to have been made in respect of that expenditure to the person who incurred the expenditure,
- any wear and tear allowances previously made or deemed to have been made to that person in respect of the machinery or plant on the provision of which the expenditure was incurred,
- any scientific research allowance made to that person in respect of the expenditure, and
- any balancing allowance made to that person in respect of the expenditure.

It should be noted that by virtue of **section 320(6)** references in this section to allowances made include references to allowances which are carried forward because effect cannot be given to them in the assessment for the year to which they relate.

## 293 Application to partnerships

### Summary

Specific provisions apply in regard to balancing allowances and charges in respect of machinery or plant used in a trade carried on in partnership. Balancing allowances and charges are made on the existing partners at the time of the event giving rise to the charge or allowance. This applies even where there has been a change in the members carrying on the partnership since the acquisition of the machinery or plant. The amount of any balancing allowance or charge arising is computed in the same fashion as it would be computed in the case of a sole trader. **Section 1010**, however, contains rules for the apportionment of allowances and charges between the partners.

Where machinery or plant used for the purposes of the partnership trade belongs to one or more of the partners but not to the partnership itself, the same capital allowances and charges are made in respect of the machinery or plant as would have been made if the machinery or plant had at all relevant times belonged to all the partners and had been partnership property.

No balancing allowance or charge arises where a partner sells or gifts machinery or plant used for the purposes of the partnership trade to another partner and the machinery or plant continues to be used for purposes of the partnership trade.

### Details

#### ***Balancing allowance or charge to be made on partners carrying on the trade in chargeable period related to the balancing event***

In the case of a partnership trade which has not been permanently discontinued, any balancing allowance or charge arising in respect of machinery or plant is to be made on the partners carrying on the trade in the chargeable period related to the event which gives rise to the allowance or charge. In effect, changes in the composition of the partnership since the acquisition of the machinery or plant are ignored. The allowance or charge is to be computed in the same way it would be computed in the case of a sole trader. **Section 1010**, however, contains rules for the apportionment of allowances and charges between the partners. (1)(a)

### ***Machinery or plant belonging to partners but not partnership property***

In the case of machinery or plant used for the purposes of a partnership trade which belongs to one or more of the partners but is not partnership property, the same initial allowances, wear and tear allowances, balancing allowances and balancing charges are to be made as would be due if the machinery or plant had at all material times been partnership property. (2)

### ***Machinery or plant transferred between partners***

Where machinery or plant used for the purposes of a partnership trade is sold or gifted by one partner to another partner, the sale or gift is not to be treated as giving rise to a balancing allowance or balancing charge if the machinery or plant continues to be used for the purposes of the partnership trade. This does not preclude a balancing allowance or balancing charge being made on the occasion of a change in the partnership which is treated as a discontinuance of the partnership trade. (3)

### ***Payments received from partnership for use of machinery or plant owned by partner***

The rules in *subsections* (2) and (3) do not apply in any case in which the partner who owns the machinery or plant obtains a rent or other payment from the partnership in respect of the use of the machinery or plant which is allowable as a deduction in computing the profits of the partnership trade. (4)

## **294 Machinery or plant used partly for non-trading purposes**

This section relates to the application of balancing allowances or charges in cases where machinery or plant has to some extent been used for non-trading purposes (for example, a motor car which has been used partly for business and partly for private purposes).

In such a case the wear and tear allowances which would be allowable if the asset were used exclusively for business purposes are in practice reduced by an appropriate fraction depending on the extent of the private use. In the absence of a special provision in relation to balancing allowances or balancing charges, the “expenditure unallowed” would be the full cost of the asset less the wear and tear deductions actually given. The result would be that on the sale of the asset the person concerned would be entitled to a balancing allowance which would in effect cancel the restrictions made in the wear and tear allowances. Thus, *section 294* provides that in such cases the amount of any balancing allowance or charge to be made will be such amount as is just and reasonable having regard to the circumstances of the case and, in particular, the extent of the use of the asset for non-trading purposes.

## **295 Option in case of succession under will or intestacy**

Since the death of a person carrying on a trade constitutes the permanent discontinuance of the trade (see *section 67(2)*), it is an event which may give rise to a balancing allowance or a balancing charge.

*Section 295* provides that a successor to a trader who has died may make an election in writing to the inspector to have the machinery or plant which was owned by the deceased and used for the purposes of the trade treated in a certain manner in relation to the succession and any previous succession occurring on or after the death (for example, where executors carry on a trade for a period before transferring it to the beneficiary).

In effect, the successor may elect to have that machinery or plant treated as if the successor had purchased it at a price equal to the amount of the expenditure unallowed immediately before the succession, or the open market value, if lower. Where such an election is made, there is to be no balancing charge on the deceased (or on the executors) but, where the market value basis applies, there may be a balancing allowance.

If a balancing allowance or a balancing charge is later to be made to or on the successor (for example, on the sale of the machinery or plant), the allowance or charge is to be computed as it would have been computed if the deceased had lived, had continued to own the machinery or plant and carry on the trade and had been allowed all such allowances as were allowed to the successor up to the time of the event giving rise to the balancing allowance or balancing charge.

## **296 Balancing allowances and balancing charges: wear and tear allowances deemed to have been made in certain cases**

### **Summary**

This section applies for the purposes of calculating the amount of a balancing allowance or charge to be made to or on a person for a chargeable period in respect of machinery or plant. For those purposes, normal wear and tear allowances are deemed to have been made in respect of machinery or plant for every previous chargeable period in which the machinery or plant belonged to the person in circumstances in which it attracted no wear and tear allowance or a restricted wear and tear allowance. An example of the use of machinery or plant in such circumstances is where a motor vehicle is bought for trade purposes but in a chargeable period is used entirely or partly for private purposes.

### **Details**

#### ***Notional wear and tear allowances deemed to have been made***

The section applies where a balancing allowance or charge in respect of machinery or plant is to be made to or on a person for a chargeable period in taxing a trade. In calculating the allowance or charge, a “normal” wear and tear allowance is deemed to have been made to the person in respect of the machinery or plant for every previous chargeable period (which is to be taken into account for the purposes of this section – see **subsection (2)**) in which the machinery or plant belonged to the person and no wear and tear allowance or a restricted wear and tear allowance had been made in respect of it. (1)

A “normal” wear and tear allowance is the wear and tear allowance or greater wear and tear allowance, if any, that would have been made for the chargeable period if the conditions specified in **subsection (3)** had been fulfilled in relation to that chargeable period. The reference to greater wear and tear allowance is designed to cater for the case where a restricted wear and tear allowance is given because, for example, the machinery or plant is used partly for business purposes and partly for other purposes.

#### ***Previous chargeable periods to be taken into account***

The previous chargeable periods for which a notional wear and tear allowance is to be deemed to have been made are every chargeable period in which the machinery or plant belonged to the person and — (2)

- during which the machinery or plant was not used for the purposes of the trade (for example, a period during which a car was used by a trader solely for private purposes),
  - during which the trade was not carried on (for example, where a person on setting up a business uses in it a motor car previously used for private purposes),
  - for which the profits of the trade were not fully taxable because (for example, the trader was solely resident in Britain or, in the case of a trade carried on abroad, because the trader was not resident in the State or, being resident, was not domiciled in the State so that the remittance basis applied under Case III of Schedule D),
- [However, excluded from this provision are trades which consisted wholly or partly

of exempted trading operations within the meaning of Chapter I of Part XXV of the Income Tax Act, 1967 or Part V of the Corporation Tax Act, 1976, that is, trading operations in the Shannon Airport Area that were exempt from income tax and corporation tax. **Section 315** contains special rules relating to balancing allowances and charges in the case of property used for such trades.]

- where the trade is that of mining non-bedded minerals the profits from which were wholly or partly exempt from tax, or
- in the case of a coal mining or a manufacturing exporting business, for which there was a complete or partial exemption from tax.

***Principles on which normal wear and tear allowance is to be calculated***

The “normal” wear and tear allowance for a chargeable period is to be calculated on the basis that — (3)

- the trade had been carried on by the person concerned ever since that person acquired the machinery or plant in such circumstances that the full amount of the profits or gains of the trade were chargeable to tax,
- the trade had at no time consisted wholly or partly of exempted trading operations within the meaning of Chapter I of Part XXV of the Income Tax Act, 1967 or Part V of the Corporation Tax Act, 1976 (that is, trading operations in the Shannon Airport Area that were exempt from income tax and corporation tax),
- since its acquisition by the person concerned the machinery or plant had been used by that person solely for the purposes of the trade, and
- a proper claim had been made by the person for a wear and tear allowance in respect of the machinery or plant for every relevant chargeable period.

Where at any time after a company acquired machinery or plant it is not within the charge to corporation tax, any year of assessment or part of a year of assessment falling within that time is treated as a chargeable period as if it had been an accounting period of the company. (4)

***Limit on balancing charge***

Nothing in the section affects the standard rule that a balancing charge cannot, in any circumstances, exceed the aggregate of the capital allowances actually made in respect of the machinery or plant. (5)

**297 Subsidies towards wear and tear**

**Summary**

This section is concerned with the case where a person using machinery or plant for the purposes of a trade receives from another person payment by way of compensation for the depreciation resulting from such use and that payment is not taken into account as the income of the person concerned in computing the profits or gains of the trade. In the computation of a balancing allowance or charge in any such case, the amount of the expenditure unallowed in respect of the machinery or plant immediately before the event giving rise to the allowance or charge is reduced by a notional wear and tear allowance equal to the total of the payments received on account of the depreciation of the machinery or plant. In effect, this decreases the balancing allowance or creates or increases a balancing charge. However, the amount of any balancing charge cannot exceed the aggregate of the capital allowances actually made to the person concerned in respect of the machinery or plant.

## Details

### *Notional wear and tear allowance deemed to have been made*

The section applies where —

(1)

- a balancing event occurs in relation to machinery or plant used by a person for the purposes of a trade, and
- the person concerned received or is entitled to receive any sum in respect of or on account of the wear and tear of the machinery or plant by reason of such use and that sum is not taken into account as the person's income or in computing the profits or gains of the person's trade.

In determining in any such case the amount of any balancing allowance or charge to be made, a notional wear and tear allowance is deemed to have been made to the person for the chargeable period related to the event, that is, in the case of corporation tax, for the accounting period in which the event occurred and, in the case of income tax, for the year of assessment in the basis period for which the event occurred. The amount of this notional allowance is the amount of the sums received or receivable by the person on account of the wear and tear of the machinery or plant to the extent that such sums were or are not taxable in the person's hands.

Although the provision is expressed to relate to trades, in practice the position envisaged is most likely to arise in the case of employees and office holders to whom the provisions of this Chapter are extended by *section 301*. For example, where an employer pays a sum to an employee in respect of the depreciation of a motor car belonging to the employee and used by him/her in the course of his/ her employment, then, such sum is, prima facie, not taxable in the employee's hands for the reason that, unless the payment exceeds the amount of the employee's loss through depreciation, no profit can be said to have arisen to the employee. This position is not altered by *section 117* which imposes a liability under Schedule E in respect of a sum paid "in respect of expenses" as depreciation is not an expense in the income tax sense.

In such a case the wear and tear allowances made to the employee would normally be reduced to an amount which is just and reasonable.

In the absence of a special provision in relation to balancing allowances or balancing charges, however, the position would be that if any wear and tear allowances, however small, were made to the employee for any year, then, on selling the car, he/she would become entitled to a balancing allowance. The balancing allowance would be equal to the cost less the sale price plus any wear and tear allowance given (despite the fact that the "wear and tear subsidy" paid to the employee by the employer had not been treated as income in the employee's hands). In effect, the employee would obtain, for tax purposes, an allowance for depreciation the cost of which would have been borne, not by the employee but by his/her employer, and which would have been allowed as an expense of the employer's trade.

*Section 297* caters for such situations by providing that where subsidies towards wear and tear are received or to be received, the person concerned is to be treated as having been granted wear and tear allowance equal to the total amount of the subsidy; that is, in addition to the wear and tear allowances which have, in fact, been granted to that person.

### *Limit on balancing charge*

In no case will a balancing charge exceed the amount of the allowances actually given.

(2)

## 298 Allowances to lessors



A lessor is entitled to an initial allowance (if available) and wear and tear allowances in relation to machinery or plant where the burden of wear and tear of the machinery or plant falls directly on the lessor. The allowances available are equal to the amount which would have been allowed if during the period of letting the machinery or plant were used for the purposes of a trade carried on by the lessor. The lessor must make a claim for any such allowances within 24 months after the end of the relevant chargeable period. (1)

Where the burden of wear and tear of leased machinery or plant falls directly on the non-trading lessor, the balancing allowance and balancing charge provisions apply as if during the term of the letting the machinery or plant were in use for the purposes of a trade carried on by the lessor. (2)

## 299 Allowances to lessees

### Summary

In the case of a lessee carrying on a trade, where the terms of a lease of machinery or plant provide that the lessee is bound to maintain the machinery or plant and deliver it over in good condition at the end of the lease and the burden of wear and tear of the machinery or plant falls directly on the lessee (and not the lessor), the lessee is entitled to an initial allowance (if available) and wear and tear allowances in respect of the machinery or plant. In effect, for the purposes of those allowances, the lessee is treated as if the capital expenditure incurred on the provision of the machinery or plant had been incurred by the lessee and as if the machinery or plant belonged to the lessee.

With effect from 4 April 2010, this section will only apply where the machinery or plant is let by means of a finance lease.

### Details

A lessee may claim a wear and tear allowance in respect of machinery or plant where- (1)

- the machinery or plant is let under a finance lease (within the meaning of *section 76D*),
- the terms of the lease provides that the lessee is bound to maintain the machinery or plant and deliver it over in good condition at the end of the lease term,
- and
- the burden of wear and tear in fact falls directly on the lessee.

A lessee carrying on a trade is not entitled to accelerated wear and tear allowances (free depreciation) in respect of machinery or plant unless the contract of letting provides that the lessee will or may become the owner of the machinery or plant at the end of the letting period. If free depreciation is claimed but the lessee does not become the owner of the machinery or plant, the allowances are withdrawn to the extent that they exceed the normal wear and tear allowances, and any necessary amended assessments or adjustments of assessments are to be made to recover that excess. However, there will be no withdrawal of the allowances where the lessee dies before being able to become the owner of the machinery or plant. (2)

The provision of *subsection (1)* will only apply where a “lessee” and “lessor” make a joint election to have the section applied or, where the “lessor” is not within the charge to tax under Schedule D, the “lessee” elects that the provisions should apply. The election must be made in writing on a form approved by the Revenue Commissioners. (3)(a) & (b)

Where an election is made, the amount to be deducted for any chargeable period of the lessee in respect of the “lease payments”, is to be the amount of the “lease payments” which have been deducted in the profit and loss account for the period in accordance with (3)(c)(i)

generally accepted accounting practice.

The aggregate amount (referred to in *subparagraph (ii)* as “the aggregate deductible amount”) of “lease payments” to be deducted in the tax computation over the term of the lease should be the aggregate amount of such payments which in accordance with generally accepted accounting practice would be deducted from the profit and loss account over the terms of the lease.

The amount of expenditure on which wear and tear allowance will be granted will be the difference between the aggregate amount of “lease payments” made to the lessor over the terms of the lease and “the aggregate deductible amount” as defined in *subparagraph (i)*. (3)(c)(ii)

### 300 Manner of making allowances and charges

#### Summary

Initial allowances, wear and tear allowances (including accelerated wear and tear allowances), balancing allowances and balancing charges are to be made in taxing the trade of the person entitled to the allowance or subject to the charge except in the case of a person —

- who leases machinery or plant other than in the course of a trade (a non-trading lessor), or
- who is entitled to wear and tear allowances in respect of expenditure incurred on fixtures and fittings in rented residential accommodation.

By virtue of *section 321(4)*, this means that the allowances or charges are to be made, in the case of income tax, in charging the profits or gains of the trade and, in the case of corporation tax, in computing the income of the trade.

Where the person entitled to the allowances is a non-trading lessor, the allowances are to be made by means of discharge or repayment of tax and are to be available primarily against income from the letting of machinery or plant. Any balancing charge to be made on a non-trading lessor is to be made under Case IV of Schedule D.

Where an allowance arises in respect of expenditure incurred on fixtures and fittings in rented residential accommodation, the allowance is to be made in charging the person’s rental income under Case V of Schedule D.

#### Details

##### *Allowances to be made in taxing the trade*

Except in the case of a non-trading lessor and the case of wear and tear allowances in respect of fixtures and fittings in rented residential accommodation, any initial allowance, wear and tear allowance (including accelerated wear and tear allowances), balancing allowance or balancing charge to be made to or on a person in respect of capital expenditure on machinery or plant is to be made to or on the person in taxing the person’s trade. For income tax purposes, the making of an allowance or charge in taxing the trade requires the allowance to be deducted from, or the charge to be added to, the taxable profits of the trade as computed under Case I of Schedule D. For the purposes of corporation tax, it requires the allowance to be deducted, or the charge to be added, in computing the trading income. (1)

##### *Non-trading lessors*

In the case of a non-trading lessor, any initial allowance, wear and tear allowance (including accelerated wear and tear allowances) or balancing allowance in respect of capital expenditure on machinery or plant is to be made by means of discharge or repayment of tax and is to be available primarily against income from the letting of (2)



machinery or plant.

Any balancing charge to be made on a non-trading lessor in respect of such expenditure is to be made under Case IV of Schedule D. (3)

### ***Fixtures and Fittings***

In the case of a wear and tear allowance in respect of capital expenditure on machinery or plant (fixtures and fittings) being expenditure which is incurred wholly and exclusively in respect of a house used solely as a dwelling and which is let as furnished, the allowance is to be made in charging the person's rental income under Case V of Schedule D. (4)

## **301 Application to professions, employments and offices**

Capital allowances are also available in respect of capital expenditure incurred on the provision of machinery or plant for the purposes of a profession. The allowances apply in the same manner as they apply in relation to trades. Thus, initial allowances (if available) and wear and tear allowances (including free depreciation if available) apply in respect of capital expenditure incurred on the provision of machinery or plant for the purposes of a profession, and balancing allowances and charges also apply in relation to such expenditure. However, **section 286** (increased wear and tear allowances for taxis and cars for short-term hire) does not apply to professions – it is clearly confined to traders as the operation of a taxi service or a car hire business are trading activities.

Capital allowances are also available in respect of capital expenditure incurred on the provision of machinery or plant for the purposes of an office or employment. The allowances apply in the same manner as they apply in relation to trades except that no initial allowance (**section 283**) or free depreciation (**section 285**) is available. Thus, wear and tear allowances, balancing allowances and balancing charges apply in respect of capital expenditure incurred on the provision of machinery or plant for the purposes of an office or employment. **Section 286** (increased wear and tear allowances for taxis and cars for short-term hire) does not apply in the case of an office or employment – it is clearly confined to traders as the operation of a taxi service or a car hire business are trading activities.

## **CHAPTER 3**

### ***Dredging: initial allowances and annual allowances***

#### **Overview**

This Chapter provides that certain capital expenditure on dredging qualifies for a scheme of capital allowances consisting of an initial allowance of 10 per cent, and annual writing-down allowances of 2 per cent, of the expenditure incurred. Balancing allowances may also apply in certain circumstances.

## **302 Interpretation (Chapter 3)**

### **Summary**

This section provides for the interpretation of certain terms used in the Chapter.

### **Details**

#### ***Definitions***

“dredging” includes the removal of anything forming part of, or projecting from, the bed of the sea or of any inland water in order to facilitate navigation. It also includes the widening (1)

of an inland waterway in order to facilitate navigation.

“qualifying trade” is a trade or undertaking which, or part of which, consists of the maintenance or improvement of the navigation of a harbour, estuary or waterway, or is carried on in an industrial building or structure as defined in **section 268(1)**. Where part only of a trade satisfies these conditions, that part is to be treated as a separate trade and expenditure on dredging must be apportioned between the part treated as a qualifying trade and the other part.

Thus, a harbour authority which may not itself occupy a dock may qualify for the allowances on the grounds that it is carrying on a “qualifying trade” which or part of which consists of the maintenance or improvement of the navigation of a harbour. In other words, take the case of a harbour authority which deepens or widens the channel leading to a private dock occupied by a trader. The harbour authority’s interest is, of course, that it receives dues from ships using the facilities provided. Although the harbour authority does itself not occupy the dock, it may still obtain allowances under this section in respect of the capital expenditure it incurs in deepening or widening the channel. Any other trader must, however, satisfy the condition that the dock or other premises is occupied by that trader for the purpose of a qualifying trade and that the dredging expenditure was incurred for the benefit of that dock or premises.

### ***The first relevant chargeable period***

The “first relevant chargeable period” is the chargeable period for which the initial allowance and the first of the annual writing-down allowances are to be given under **section 303(1)**. In the case of income tax, this is normally the year of assessment in the basis period (see **section 306**) for which the expenditure is incurred while, in the case of corporation tax, it is normally the accounting period in which the expenditure is incurred. Where, however, the case is one to which **section 303(6)** applies (that is, where the expenditure is incurred before trading begins or before the dock or other premises is occupied), the “first relevant chargeable period” is, in the case of income tax, the first year of assessment in the basis period for which the person is carrying on the trade and is also occupying the dock or other premises and, in the case of corporation tax, the first accounting period in which the company is carrying on the trade and is also occupying the dock or other premises. (2)

## **303 Allowances for expenditure on dredging**

### **Summary**

This section provides that certain capital expenditure on dredging qualifies for capital allowances consisting of an initial allowance of 10 per cent, and annual writing-down allowances of 2 per cent, of the expenditure incurred. Where a trade is permanently discontinued, the trader qualifies for a balancing allowance equal to the remainder of the capital expenditure not already writing off by way of initial and annual allowances.

### **Details**

#### ***Initial allowance and annual writing-down allowances***

The initial allowance and annual writing-down allowances apply where a person carrying on a qualifying trade incurs capital expenditure on dredging for the purposes of the trade, and the trade consists of the maintenance or improvement of the navigation of a harbour, estuary or waterway or the dredging is for the benefit of vessels coming to, leaving or using any dock or other premises occupied by the person for the purposes of the trade. (1)(a)

An initial allowance equal to 10 per cent of the expenditure incurred is made for the first relevant chargeable period to the person who incurred the expenditure. Annual writing-

down allowances equal to 2 per cent of that expenditure are made to the person for the time being carrying on the trade beginning with the first relevant chargeable period. Where a writing-down allowance is to be made for a year of assessment to a person who is within the charge to income tax in respect of the trade for part only of that year, that part is treated as a separate chargeable period for the purposes of computing allowances under this section.

No allowances are available for expenditure incurred before 30 September, 1956. (1)(b)

### ***Balancing allowances***

Where a trade is permanently discontinued in a chargeable period, the person last carrying on the trade is entitled to a balancing allowance equal to the remainder of the capital expenditure not already writing off by way of initial and writing-down allowances. (2)

A balancing allowance will be given only on an actual permanent discontinuance of a trade as distinct from a change of ownership which for assessment purposes is treated as a permanent discontinuance. (3)

### ***Allowances to be made in taxing the trade***

Allowances under this section are to be made in taxing the trade. By virtue of **section 321(4)**, this means that the allowances are to be made, in the case of income tax, in charging the profits or gains of the trade and, in the case of corporation tax, in computing the income of the trade. (4)

### ***Apportionment of expenditure in certain cases***

Where capital expenditure on dredging is incurred partly for the purpose of a qualifying trade and partly for other purposes, a just apportionment of the expenditure is to be made, and capital allowances are to be given only in respect of the expenditure apportioned to the qualifying trade. (5)

### ***Pre-trading expenditure***

Where a person incurs capital expenditure on dredging either before commencing to trade or before occupying the dock or other premises, the person is treated as if the person had been carrying on the trade or occupying the dock or other premises, as the case may be, at the time when the expenditure was incurred. (6)

### ***Contribution to cost of dredging incurred by another person***

Where a person contributes to the cost of dredging incurred by another person (for example, where a trader occupying a private dock contributes to the cost of the dredging carried out by a harbour authority), the contributor is treated as if that contribution were capital expenditure on dredging. Thus, if the contributor satisfies the tests laid down in **subsection (1)**, the contributor qualifies for capital allowance in respect of that contribution. Any allowances to be made to the recipient of the contribution are to be computed by reference to the recipient's net expenditure after deducting the contribution. (7)

### ***Bar on double relief***

Expenditure which qualifies for capital allowances under **Chapter 1 of Part 9** on the basis that it is expenditure on an industrial building or structure cannot also qualify for capital allowances under this section. (8)

### ***Notional allowances for years before 1960–61***

Capital allowances for dredging were originally introduced with effect from 1960–61 but by reference to expenditure incurred on or after the 30 September, 1956. For the purpose of (9)

computing balancing allowances, any writing-down allowances which could have been made for years before 1960–61, if the section had been in operation, are treated as having been made, so that the total capital allowances to be given are restricted, in effect, to the written down value of the expenditure at 6 April, 1960.

## CHAPTER 4

### *Miscellaneous and general*

#### Overview

This Chapter sets out miscellaneous and general provisions in relation to the application of capital allowances for income tax and corporation tax purposes.

#### 304 Income tax: allowances and charges in taxing a trade, etc

##### Summary

This section provides that persons liable to income tax who are claiming capital allowances under **Part 9** are obliged to include details of such claims in their annual income tax return required to be delivered under the Income Tax Acts. In general, where full effect cannot be given for such capital allowances in taxing a trade due to there being no profits or an insufficiency of profits of the trade, the unused allowances may be carried forward to the following and succeeding years and treated as part of the allowances due for those years. The section also provides for the carry-back of certain unused allowances to the tax year 2019, where such allowances are in respect of the period 1 January to 31 December 2020.

##### Details

##### *Application*

This section and **section 305** apply in relation to capital allowances and charges which are to be made under **Part 9** as it applies for income tax purposes. (1)

##### *Claims for allowances*

A claim by a person for any allowance in charging profits or gains of any description must be included in the person's annual income tax return, and the allowance is to be made as a deduction in charging those profits or gains (and not as a deduction in computing those profits or gains for assessment). (2)

A claim for an industrial building (initial) allowance under **section 271** must include a certificate signed by the claimant stating that the expenditure was incurred on the construction of an industrial building or structure and must give such particulars as show that the allowance is to be made. (3)(a)

A claim for an initial allowance under **section 283** must include a certificate signed by the claimant stating that the expenditure was incurred on new machinery or plant and must give such particulars as show that the allowance is to be made. (3)(b)

##### *Covid-19 allowances* (3A)

A number of key terms are defined for the purpose of **subsection (3A)**: (3A)(a)(i)

- The “relevant period” is defined as the period 1 January to 31 December 2020.
- A “specified allowance” means an allowance referred to in **section 531AU(2)**. The allowances that section 531AU(2) refers to, and in respect of which this relief may apply, are: wear and tear allowances for plant and machinery (section 284(1)),

writing-down allowances for industrial buildings and structures (section 272(3)) and allowances for farm buildings and structures (section 658(2)).

- The term “relevant allowances” has the meaning given to it in **paragraph (b)**.

Where the basis period for the year of assessment 2020 is not the same as the relevant period (i.e. is not 1 January 2020 to 31 December 2020), the specified allowances of any basis period which overlaps with the relevant period are to be apportioned to the relevant period in proportion to the number of months (or fractions of months) in the respective periods. (3A)(a)(ii)

Where an individual carrying on a trade<sup>9</sup>, either solely or in a partnership, claims, in respect of the relevant period (1 January 2020 to 31 December 2020), a specified allowance (or part thereof), and that specified allowance (or part thereof) could, but for the making of a claim under paragraph (c), be carried forward to the following year or years under subsection (4), then the individual may make a claim for relief under paragraph (c). These are referred to as “relevant allowances”. (3A)(b)

Subject to **section 395C**, an individual may make a claim to have any portion of the relevant allowances carried back to the year 2019. Where such a claim is made, the relevant allowances will be added to the allowances to be given as a deduction in charging the profits of the same trade<sup>10</sup> for that year. (3A)(c)(i)

Where relevant allowances are carried back under this subsection, relief will be given for allowances from an earlier period before relief is given for allowances from a later period. (3A)(c)(ii)

Where a claim for relief is made under this subsection, the relevant allowances cannot be used to create or augment a loss under **Chapter 2 of Part 12**. (3A)(c)(iii)

Where relief for relevant allowances is given to an individual under this subsection, the individual will not be entitled to relief in respect of those relevant allowances under any other provision of the Income Tax Acts. (3A)(d)

### ***Carry forward of unutilised allowances***

Subject to the exception outlined in **subsection (6)(c)**, if full effect cannot be given in any year to an allowance to be made under **Part 9** in taxing a trade or in charging any other profits, either because there are no assessable profits for that year or because the assessable profits are too small to cover the allowance, then, so much of the allowance as is not given in that year may be carried forward for allowance in subsequent years. (4)

### ***Balancing charges***

Any balancing charge to be made for any year under **Part 9** in taxing a person’s trade or in charging a person’s income under Case V of Schedule D is to be made by means of an assessment on the person. (5)

### ***Professions, employments and offices***

In general, the above rules apply to professions, offices and employments as they apply to (6)(a) &

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<sup>9</sup> By virtue of subsection (6)(a), subsection (3A) also applies in relation to professions, employments and offices.

<sup>10</sup> By virtue of subsection (6)(a), subsection (3A) also applies in relation to professions, employments and offices.

trades. However, the requirement in **subsection (3)(b)** regarding the making of a claim for an initial allowance under **section 283** is so applied only in relation to professions as there is no entitlement to an initial allowance in the case of employments and offices. (b)

Additionally, the treatment of unutilised allowances outlined in **subsection (4)** does not apply to allowances given by means of discharge or repayment of tax or in charging a person's rental income under Case V of Schedule D. The treatment of these allowances is outlined in **section 305**. (6)(c)

### 305 Income tax: manner of granting, and effect of, allowances made by means of discharge or repayment of tax

#### Summary

This section deals with the position for income tax where a capital allowance under **Part 9** is to be made by discharge or repayment of tax, or in charging a person's rental income under Case V of Schedule D, and is to be available, or available primarily, against a specified class of income. In general, where there is insufficient income of that class to absorb the allowance, any remaining allowance may be carried forward for set-off against similar income in future years. However, in the case of an allowance available primarily against a specified class of income, the taxpayer may elect to have the unabsorbed allowance set off against other income for the tax year in which the allowance became due. In certain cases allowances are ring-fenced, that is, they may be set off only against specific income.

#### Details

##### ***Capital allowances to be available or available primarily against income of a specified class***

This provision deals with the position for income tax purposes where a capital allowance under **Part 9** is to be made for any year of assessment by discharge or repayment of tax, or in charging a person's rental income under Case V of Schedule D, and is to be available, or available primarily, against a specified class of income. An example of such an allowance is an initial allowance or a wear and tear allowance in respect of machinery or plant which is to be made to a non-trading lessor and is to be available primarily against the income from the leasing of the machinery or plant (see **section 300(2)**). Where such an allowance is due, the allowance may be set against the person's income from the particular class (in the example quoted the income from the leasing of the machinery or plant) for the year of assessment and, if there is insufficient income of that class to absorb the allowance, any excess may be carried forward for set-off against similar income in subsequent years. (1)(a)

##### ***Set-off against other income***

However, in the case of an allowance available primarily against a specified class of income, instead of having the excess allowance carried forward to subsequent years, the taxpayer may elect to have it set off against any other income of that year. The excess to be set off is calculated after first deducting or setting off against the specified class of income any allowances brought forward from earlier years. Where an individual or his/her spouse or civil partner is assessed under joint assessment (**section 1017**) the individual may elect to have the excess set firstly against his/her own other income and then against the income of his/her spouse or civil partner of that year. (1)(b)

An election must be made in writing to the inspector within 2 years of the end of the year involved. Where this option is exercised, only the balance of any allowance (that is, the amount of the excess allowance not given effect to against the other income) will be

available for carry forward to future years.	
<b><i>Ring-fence on use of certain allowances</i></b>	
A special rule is provided to deal with the case where a capital allowance under <b>Part 9</b> , the amount of which has been determined in accordance with <b>section 409E(3)(i)</b> , is to be made to an individual for a year of assessment in charging the “specified amount of rent” (i.e. the profit rent from the specified building, as defined in <b>section 409E</b> ) of the individual under Case V of Schedule D for that year of assessment and is to be available only in charging that specified amount of rent.	(1)(c)
In such cases, in charging income under Case V of Schedule D, the amount of the allowance is to be deducted from or set off against that specified amount of rent. In addition, if the amount of the allowance which would have been made to the individual if <b>section 409E</b> had not been enacted is greater than that specified amount of rent, there is a specific measure to deal with the excess. This measure provides that the excess is to be added to the amount of the allowance to be made to the individual for the next year of assessment in respect of the capital expenditure incurred on the construction or refurbishment of the “specified building” (as defined in <b>section 409E</b> ) or the “residue of that expenditure” (as defined in <b>section 409E</b> ), and is deemed to be part of the allowance for that next year, and so on for subsequent tax years. <b>Section 409E(3)</b> will apply in relation to the resulting allowance for that next year or any subsequent year of assessment.	
<b><i>Claims and appeals</i></b>	
A claim for an allowance which is to be given by means of discharge or repayment of tax, or in charging a person’s rental income under Case V of Schedule D, is to be made to and determined by the inspector.	(2)
A person aggrieved by a decision of the inspector may appeal the decision by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of the decision. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A.	(3)
<b><i>Penalties</i></b>	
There is a provision for a penalty of €3,000 for making a false claim, or for aiding or abetting a false claim, in respect of an allowance.	(4)

### 306 Meaning of basis period

#### Summary

For income tax purposes, allowances and charges under **Part 9** are made by reference to events occurring in what is termed a “basis period” or by reference to conditions pertaining at the end of a “basis period”. The expression “basis period” is defined as the period the profits of which form the basis for the final computation of income tax for a year of assessment. Specific rules apply to determine the basis period where such periods overlap or are not continuous.

#### Details

#### Application

For the purposes of **Part 9** as it applies for income tax, “basis period” is to have the meaning assigned to it by this section. (1)



### **General rule**

The basis period for a year of assessment is the period on the profits of which income tax for that year is finally computed under Case I of Schedule D in respect of a trade or, as the case may be, under Case V of that Schedule in respect of income arising from rents or receipts in respect of land, premises or easements. (2)(a)

The following provisions which deal with overlapping basis periods and intervals between basis periods are designed to ensure that any day during the life of a trade on which an event can happen that is of significance in relation to allowances or charges will be included in one, but not more than one, basis period. Thus, any loss on a sale, etc for which a balancing allowance can be given qualifies for the allowance once, but not more than once, and any surplus liable to a balancing charge is charged once and once only. (2)(b)

### **Overlapping basis periods**

A period may be part of the basis period for more than one year of assessment, for example, on the commencement of a business (see *section 66*). For the purposes of capital allowances and charges under *Part 9*, however, where the basis periods for 2 years of assessment overlap, the period common to both is deemed to be part of the first basis period only. (2)(b)(i)

#### **Example**

Accounts are regularly made up to 30 November each year until 30 November, 2002. The accounting date is then changed to 30 September and accounts are made up for the 10 month period to 30 September, 2003. An industrial building or structure is sold in October, 2002, that is, during the accounting year to 30 November, 2002, at a price in excess of the written-down value. A balancing charge will be made for the tax year 2002 for which the accounting year to 30 November, 2002 forms the basis period.

Under *section 65(2)(b)* the year ending on 30 September, 2003 is fixed as the basis period for the assessment for the tax year 2003. Were it not for *section 306(2)(b)(i)*, a balancing charge in respect of the building sold in October 2002 would again be required for the tax year 2003. *Section 306(2)(b)(i)* prevents this by providing, in effect, that the sale which took place in the period common to the 2 basis years (namely, the 2 months October to November 2002) will be deemed to have taken place only in the first basis period, that is, in the year to 30 November, 2002.

### **Interval between basis periods**

Where there is an interval between the basis periods for 2 successive years of assessment and the later year is not the year of the permanent discontinuance of the trade, then, for the purposes of capital allowances and charges under *Part 9*, the interval is treated as part of the second basis period only. (2)(b)(ii)

#### **Example**

Accounts are regularly made up to 30 June in each year until 30 June, 2002. The accounting date is then changed to 31 October and the first accounts on the new basis are for the 16 months to 31 October, 2003. The basis period for the 2002 assessment is the year to 30 June, 2002, and a sale in that year of machinery or plant at a price below the written down value will qualify for a balancing allowance for the year 2002. The basis period for the year 2003 as determined under *section 65(2)(b)* is the year to 31 October, 2003, and a similar sale of machinery or plant in that year will qualify for a balancing allowance for year 2003.

Were it not for *section 306(2)(b)(ii)*, such a sale of machinery or plant in the interval between the 2 basis periods (July 2002 to October 2002) would not entitle the trader to a balancing allowance for any year. *Section 306(2)(b)(ii)* prevents this, however, by providing that any sale during that interval will, in effect, be deemed to be a sale in the second basis period (namely, the year to 31 October, 2003), thus qualifying for a balancing allowance (or, as the case may be, giving rise to a balancing charge) for the year 2003.

Where there is an interval between the basis periods for 2 successive years of assessment (2)(b)(iii)



and the later year is the year of the permanent discontinuance of the trade, then, for the purposes of capital allowances and charges under **Part 9**, the interval is treated as part of the first basis period only.

#### **Example**

Accounts are made up regularly to 30 June each year until 30 June, 2002. Trading ceases on 30 September, 2003 and accounts for the 15 months period from July 2002 to September 2003 are made up. The 12 months' account to 30 June, 2002 is the normal basis for the 2002 assessment. The assessment for 2003 (the last year of the trade) is on the actual profits from 1 January, 2003 to 30 September, 2003.

The period from 1 July, 2002 to 31 December, 2002 does not fall into any basis period, and an event occurring during that period would not, but for **section 306(2)(b)(iii)**, entitle the trader to a balancing allowance or make him liable to a balancing charge. **Section 306(2)(b)(iii)** prevents this, however, by providing that an event occurring in that period will, in effect, be deemed to have occurred in the basis period to the 30 June, 2002, thus giving rise to a balancing allowance or a balancing charge for the year 2002.

#### **Construction of certain references**

The reference in **subsection (2)(b)** to the overlapping of 2 periods is to be taken as covering cases where 2 periods coincide or where one of 2 basis periods is wholly included in the other. (3)(a)

The references in **subsection (2)(b)** to the permanent discontinuance of a trade include, by virtue of **section 320(5)**, references to changes of ownership which are treated as equivalent to the permanent discontinuance of a trade. (3)(b)

#### **Professions, employments and offices**

The above rules (as expressed in relation to trades) apply also in the case of claimants for capital allowances under **Part 9** who are assessable to income tax under Case II of Schedule D (professions) or Schedule E (employments and office holders). (4)

#### **Other cases**

In any other case, for example, a person leasing machinery or plant other than in the course of a trade, the basis period is to be year of assessment itself. (5)

### **307 Corporation tax: allowances and charges in taxing a trade**

#### **Summary**

This section provides that, in computing a company's trading profits assessable to corporation tax, capital allowances are to be treated as trading expenses and balancing charges as trading receipts. A company may, if it so desires, disclaim its entitlement to an industrial building (initial) allowance under **section 271** and to initial allowances under **sections 283** (machinery or plant) and **303** (dredging).

#### **Details**

##### **General**

In computing for corporation tax purposes a company's profits for any accounting period, there are to be made in accordance with the rules of this section and **section 308** such deductions and additions as are necessary to give effect to the provisions of the Tax Acts relating to capital allowances and balancing charges. (1)

##### **Capital allowances and balancing charges in taxing a trade**

In the case of a trade, allowances are to be treated as trading expenses and balancing (2)(a)

charges as trading receipts. (Thus, any excess of capital allowances over trading income would create a loss which would be available for relief under **section 396** or **397**.) It follows, therefore, that the capital allowances are granted as a matter of course, but certain allowances may be disclaimed (see **subsection (2)(b)**).

***Option to disclaim certain allowances***

A company may, by notice in writing to the inspector, disclaim certain capital allowances. (2)(b)(i)  
These are an industrial building (initial) allowance under **section 271** and initial allowances under **sections 283** (machinery or plant) and **303** (dredging). [A company might wish to disclaim the allowance to avoid creating a trading loss in a year in which it has no other income with which to absorb the loss.] The notice to disclaim must be given to the inspector within 2 years after the end of the accounting period for which the allowance would otherwise have been made.

The notice must be accompanied by a certificate signed by the claimant giving such particulars as show that the allowance would have been made if no notice were given. (2)(b)(ii)

Where such a notice is given, the inspector may make an assessment on the company for the accounting period in question on the amount or further amount which in the inspector's opinion ought to be charged. (2)(b)(iii)

**308 Corporation tax: manner of granting, and effect of, allowances made by means of discharge or repayment of tax**

**Summary**

Capital allowances in relation to capital expenditure incurred by a company which are to be given by discharge or repayment of tax, or in charging income under Case V of Schedule D (that is, rental income), and which are available primarily against a specified class of income are to be treated primarily as deductions from that specified class of income. Balancing charges made otherwise than as trading receipts are treated as income of the same class as that against which corresponding allowances are given. Where an allowance due to a company cannot be fully absorbed due to insufficiency of income of the particular class, the unabsorbed amount may, subject to conditions, be set off against other income of the accounting period or, if necessary, of the immediately preceding accounting period. Any remaining amounts may be carried forward to the next accounting period and treated as an allowance for that period.

**Details**

***Allowances given by discharge or repayment of tax or in charging income under Case V of Schedule D***

This provision deals with cases where capital allowances to be made to a company for an accounting period are to be given by way of discharge or repayment of tax, or in charging income such as rents under Case V of Schedule D, and are to be available primarily against a specified class of income. Examples of such a case are an industrial building (initial) allowance and writing-down allowances in respect of a leased industrial building or structure and wear and tear allowances in respect of a leased item of machinery or plant where the lessor is not a trading company. In any such case, the allowances are to be given as far as possible by deduction from income of the specified class. An example of a provision specifying a class of income is **section 278(6)**. (1)

***Balancing charges made otherwise than in taxing a trade***

Balancing charges made on a company otherwise than as trading receipts are to be given (2)

effect by treating them as income of the same class as that against which the corresponding allowances are given. This rule supersedes any other provision enabling the charge to be made by way of assessment under Case IV or V of Schedule D.

This subsection allows for excess Case V capital allowances carried forward as at 31 December 2021 by non-Irish resident companies under section 305(1)(a) (being an income tax provision) to be treated as an amount of excess Case V capital allowances carried forward under section 308(3) (being the corporation tax equivalent). **(2A)**

This subsection ensures that any balancing allowance or charge made to or on a non-Irish resident company, in respect of a capital allowance made to the company in a chargeable period ending on or before 31 December 2021, is adjusted such that the value of the balancing charge does not exceed the value of the capital allowance given and the value of any balancing allowance in respect of such allowances is given at the 20% tax rate. **(2B)**

### ***Carry forward of unutilised allowances***

Where capital allowances for an accounting period which are to be made by discharge or repayment of tax, or in charging income under Case V of Schedule D, exceed the income of the class to which they relate, any excess may be carried forward to the next accounting period (in so far as it is not allowed under **subsection (4)**) and treated as an allowance for that period, with further carry-forward if necessary. **(3)**

### ***Set-off of excess allowances against other profits***

If an allowance (other than allowance carried forward under **subsection (3)**) cannot be given for an accounting period because the income of the particular class to which it relates is insufficient, the company may claim that the excess of the allowance over that income (instead of being carried forward under **subsection (3)**) be set against other profits (income and chargeable gains) of the same accounting period. The company may also claim that the excess be carried back and set against profits of previous accounting periods, subject to the limits set out in **subsection (5)**. **(4)**

The limits for carrying back an allowance under **subsection (4)** are fixed by reference to the length of the accounting period for which the allowance is originally available. The unallowed amount may be set against profits of any description of a time of equal length immediately preceding that accounting period. **(5)**

### **Example**

A company has trading income (assessable under Case I of Schedule D), and also rents (assessable under Case V of Schedule D) from an industrial building in respect of which it is entitled to industrial building writing-down allowances. The income of the accounting period of 12 months to 31 December, 2003, before deducting the writing-down allowance in respect of the let building is —

Trading income	€25,000
	<u>€20,000</u>
Rents	€45,000

The industrial building writing-down allowance for the accounting period is €60,000. This is first set off against the rents, €20,000, and then, on due claim, against the trading income of the accounting period, €25,000. The balance of €15,000 which cannot be so allowed may then be set off against the profits (of whatever description) of immediately preceding accounting periods ending within a time equal in length to the accounting period to 31 December, 2003, that is, 12 months.

If the company has made up accounts for the 12 months to 31 March, 2002 (profits €12,000) and the 9 months to 31 December, 2002 (profits €10,000), the unallowed balance of industrial building writing-down allowance, €15,000, can be carried back and set off first against the profits for the 9 months to 31

December, 2002, €10,000. The remaining €5,000 can be carried back for a further 3 months, that is, it can be set off against 3/12ths of the 12 months to 31 March, 2002, that is, 3/12ths x €12,000 = €3,000. There is a balance of the allowance left, €2,000. This €2,000 can be carried forward for set-off against future income from rents (but not from any other source) under *subsection (3)*.

A claim for the set-off of unabsorbed capital allowances against other profits must be made (6) within 2 years of the end of the accounting period to which the allowances relate.

### 308A Assets transferred in course of scheme of reconstruction or amalgamation

#### Summary

This section provides that the transfer of trade assets in the course of a merger will not give rise to a balancing charge. The balancing charge is deferred by providing that any capital allowances due to (or balancing charge on) the acquiring company in respect of the assets transferred are computed according to the rules that would have applied if the merger or division had not taken place. The section ensures that Irish legislation is in accord with the EU Mergers Directive<sup>11</sup>. This section has effect in relation to assets transferred on or after 1 January 2010.

#### Details

##### Definition

A scheme of reconstruction or amalgamation is defined as a scheme for the reconstruction (1) of any company or companies, or the amalgamation of two or more companies.

##### Application

The section applies where the whole or part of the trade of a company which is resident in (2) the State or is carrying on the trade in the State through a branch or agency up to the time of the transfer, is-

- (a) transferred to another company, which is resident in the State at the time of transfer or which is going to use the assets of the transferred trade to carry on a trade in the State through a branch or agency immediately after the transfer, and
- (b) the transferring company receives no consideration for the transfer other than the taking over of its liabilities by the other company,

then *subsection (3)* applies to the assets transferred.

The company receiving the assets gets the allowances which the disposing company would (3) have received if it had continued to carry on the trade and use the assets for the purposes of the trade. The transfer of the assets does not give rise to a balancing allowance or a balancing charge under *section 307* or *section 308*.

##### Application of section 400

The provisions of *subsection (3)* do not apply to assets transferred where *subsections (6) to (4) (9) of section 400* apply. *Section 400* provides a similar relief where a trade carried on by a company within the charge to Irish corporation tax becomes carried on by another company within that charge, provided that the trade (or a 75% per cent interest in it) is owned by the same persons before and after the transaction. If both sections apply to a transaction, *section 400* applies to it and this section does not.

This section has effect in relation to assets transferred on or after 1 January 2010.

<sup>11</sup> Council Directive 2009/133/EC of 19 October 2009. OJ No. L310, 25.11.2009, p 34.

### 309 Companies not resident in the State

A non-resident company may be liable to corporation tax in respect of one source of income (for example, profits from a trade carried on in the State through a branch or agency) and to income tax in respect of another source of income (for example, rental income which does not arise directly through or from a branch or agency in the State). In any such case, capital allowances relating to each source are to be given effect against income chargeable to the tax on income from that source.

### 310 Allowances in respect of certain contributions to capital expenditure of local authorities

#### Summary

Where for the purposes of a trade carried on by a trader the trader contributes to capital expenditure incurred by a local authority on the provision of an asset for an approved scheme of effluent control or the supply of water under a written agreement between the trader and the local authority, the contribution qualifies for certain capital allowances for which it would have qualified if it were expenditure incurred directly by the trader on the provision of that asset. The capital allowances which may be given are writing-down allowances in respect of industrial buildings or structures and wear and tear allowances in respect of machinery and plant.

#### Details

##### *Definitions*

“approved scheme” is defined so as to restrict the scope of the section to schemes of effluent control undertaken by local authorities with the approval of the Minister for the Environment and Local Government. (1)

“local authority” means a county council, the corporation of a county or other borough or an urban district council.

“trade effluent”: in order to come within this definition the matter for treatment must be discharged from trading premises into public sewers.

##### *Qualification for capital allowances*

The section applies where a person contributes a capital sum to a local authority towards expenditure incurred by a local authority on the provision of an asset to be used for the purposes of an approved scheme or the supply of water under a written agreement between the person and the local authority, and the contribution was made by the person for the purposes of a trade carried on or to be carried on by the person. In any such case, the contribution is treated, for the purposes of certain capital allowances, as if it were expended by the contributor on the provision of a similar asset which is to be regarded as in use for the purposes of the person’s trade at all material times. The capital allowances concerned are writing-down allowances (*section 272*) in respect of industrial buildings or structures and wear and tear allowances (*section 284*) in respect of machinery or plant. (2)

Where, by virtue of *subsection (2)*, a person is entitled to wear and tear allowances under *section 284*, then, in determining the amount of the allowance to be made for any chargeable period or its basis period (defined in *section 321*), *paragraph (aa)* or *paragraph (ad)* of *section 284(2)* are to apply in a modified manner such that the 20 per cent wear and tear allowance or the 12 per cent wear and tear allowance, as appropriate, will be given in respect of the actual capital contribution made in the chargeable period or basis period (2A)

concerned. (Paragraph (ad) applies where the expenditure is incurred on or after 4 December 2002.) In other words, the allowances will be given on an “as you pay” basis – it will not be possible for the taxpayer to immediately draw down allowances in respect of the full contribution to be made to the local authority over a period of time.

### ***Transfer of a trade***

Where the person’s trade is sold or transferred to another person, any unused industrial buildings writing-down allowances (**section 272**) and wear and tear allowances (**section 284**) relating to the contribution will continue to be made after the sale or transfer, but are to be made to the successor (not to the seller or transferor). Where the sale or transfer is of part only of the trade, this rule applies only in relation to so much of the unused allowances as are properly referable to that part of the trade. (3)

## **311 Apportionment of consideration and exchanges and surrenders of leasehold interests**

### **Summary**

This section provides that where 2 or more assets are sold in one transaction, the net proceeds attributable to each asset are to be ascertained on the basis of a just apportionment of the full proceeds. The same principle applies in the case of the receipt of insurance, salvage or compensation moneys in respect of 2 or more assets.

### **Details**

#### ***Multiple sales***

It often happens that several assets of the same kind or that assets of several kinds change hands as part of the same bargain (for example, where a business is sold as a going concern, a single lump sum may be paid by the purchaser in order to acquire, say, industrial buildings or structures, machinery and plant, and goodwill.) In any case where there is a sale of property together with other property, then, for the purposes of capital allowances and charges under **Part 9**, there must be a just apportionment of the sale price so as to isolate the part of the net proceeds attributable to each particular asset. In effect, this is done for the purpose of making a balancing allowance or a balancing charge to or on the vendor, and also for the purpose of determining the capital allowances to be made to the purchaser in respect of his acquisition of the particular asset. (1)(a)

The above rule applies even where separate prices are, or purport to be, agreed for separate assets or that there are, or purport to be, separate sales of separate assets. This enables the Revenue to disregard an allocation of an aggregate price amongst different assets sold together (see, however, **section 314** which provides for a right of appeal against an apportionment made by an inspector under this section). (1)(b)

#### ***Insurance, salvage or compensation moneys***

The same just apportionment rules apply where insurance, salvage or compensation moneys are received in respect of a number of assets (for example, where the fixed and moveable assets of a business are destroyed by fire and a single lump sum is recovered from the insurance company in respect of their destruction). (2)

#### ***Exchanges of property and surrender of leasehold interests***

The meaning of sale is extended to include a transaction where assets are exchanged. (3)

The meaning of sale also covers a case where a lessor pays a sum of money to a tenant in return for the latter surrendering a lease. Thus, if a tenant, having received capital



allowances in respect of capital expenditure incurred on an industrial building or structure, gives up the tenancy before the due date of expiry and receives compensation from the lessor for doing so, the tenant's balancing allowance (if any) is to be equal to the expenditure unallowed less the compensation payment received from the lessor. Alternatively, a balancing charge arises if the compensation payment exceeds the expenditure unallowed.

[It should be noted that **section 281(3)** deals with the case where a lessor terminates a lease before the expiration of its full term, subject to payment of compensation to the lessee. In such a case, the compensation paid is deemed to be a sum paid in consideration of the surrender of a lease and the above-mentioned rule applies accordingly.]

### ***Certain transfers not to be treated as an exchange of property***

The transfer of a building or structure (within the meaning of section 268), to be held in trust for the benefit of creditors under a Debt Settlement Arrangement or a Personal Insolvency Arrangement, in accordance with section 66(2)(c) or section 100(2)(c) respectively, of the Personal Insolvency Act 2012, shall not be treated as an exchange of property for the purpose of Part 9. (3A)

### ***Capital allowances for mining and scientific research***

The rules in this section also apply in relation to capital allowances for mining and scientific research. (4)

## **312 Special provisions as to certain sales**

### **Summary**

For the purposes of certain capital allowances, where property is sold at a price other than its open market value price and the sale is between associated persons, or where it appears that the sole or main benefit which might appear to have expected to accrue from a sale was the obtaining of the capital allowances, the open market price is substituted for the actual sale price of the property. The capital allowances to which this rule applies are allowances in respect of industrial buildings or structures, machinery or plant, dredging, mining and scientific research.

The rule is essentially directed to protecting the various allowances from abuse by means of artificial transactions. For example, in the absence of the rule, a building might be sold by A to B at a merely nominal figure, thus enabling A to claim a balancing allowance which would represent an almost complete writing-off of the expenditure, thus anticipating all the allowances due to the given in respect of the building in the future. Again, A might sell a machine to B at a nominal price and become entitled to a balancing allowance which, with the wear and tear allowances already given, would amount to almost the entire cost. B does not use the machine but sells it to C at an inflated price – possibly more than the original cost – by reference to which C could claim wear and tear allowances and in due course a balancing allowance.

Although the rule is mainly aimed at cases of common control (for example, where the buyer is a body of persons over whom the seller has control, where the seller is a body of persons over whom the buyer has control, or where the buyer and seller are bodies of persons and some other person has control over both of them), it also applies even if there is no community of interest in the sense of common ownership so as to prevent abuse of the allowances by means of reciprocal sales of similar assets.

For example, assume that 2 manufacturers own exactly similar machines, each of which cost €10,000 and has attracted wear and tear allowances of €2,000. In the absence of the

rule, if they were to sell their machines to each other for, say, €100, both would be entitled to a balancing allowance of €7,900 thus anticipating the wear and tear allowances which should be given over the next 4 years. Again, 2 traders could buy at the same time 2 exactly similar machines, each costing €10,000. Before using them each sells the machine to the other for, say, €20,000. In the absence of the rule, both would then be entitled to wear and tear allowances and, in due course, a balancing allowance by reference to a cost of €20,000.

## Details

### *Meaning of control*

A person controls a body corporate if, through the holding of shares or the possession of voting power in or in relation to that or any other body corporate, the person can secure that the affairs of the body corporate are conducted in accordance with that person's wishes. A person also controls a body corporate if, by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, the person can secure that the affairs of the body corporate are conducted in accordance with that person's wishes. A person controls a partnership if the person has a right to more than 50 per cent of the income or the assets of the partnership. (1)

### *Application*

The section applies in relation to 2 kinds of sales of property. These are where — (2)

- the buyer or seller (being a company or a partnership) is controlled by the other party to the sale or where both parties are controlled by a third party, or
- the sale appears to have been arranged primarily for the sake of obtaining a tax benefit by way of an allowance (particularly a balancing allowance), being an allowance in respect of an industrial building or structure, machinery or plant, dredging, mining or scientific research (this provision is intended to cover the case of the exchange of similar assets at prices above or below their proper value).

### *Substitution of open market price*

In the case of any such sale, if the property is sold at a price other than its market value, then, for the purposes of capital allowances in respect of industrial buildings or structures, machinery or plant, dredging, mining and scientific research, the sale is treated as if it were made at the open market price and not at the price actually paid. This rule may be varied in certain circumstances (see *subsections (4) and (5)*). (3)

### **Example**

Company A has 2 subsidiaries B and C, both manufacturing companies. B constructs a factory for €100,000, obtains 2 annual writing-down allowance of €4,000 each, and then immediately sells the factory to C for €1,000. The residue of the expenditure at the time of sale is €92,000 and B would be entitled to a balancing allowance of €91,000 (€92,000 less €1,000). C would be entitled to write off the price it paid, €1,000, over the next 23 years. Thus €99,000 of the total cost of €100,000 would have been written off in 2 years. *Subsection (3)*, however, enables the Revenue to substitute market value, say, €110,000, for the sale price, and to deal with the transaction as follows —

Company B —

Cost of building	€100,000
Deduct: annual writing-down allowances	€8,000
Residue before sale	€92,000
Assumed sale price	€110,000



Balancing charge on B (confined to allowances given)	€8,000
Company C —	
Residue before sale	€92,000
Balancing charge on B	€8,000
Residue after sale	€100,000

Company C will thus get an annual allowance of 1/23rd of €100,000 over the balance (23 years) of the 25 year tax life of the building.

### ***No initial allowance to be made***

Where the sale is of machinery or plant, no initial allowance under **section 283** is to be made to the buyer. This provision is now of limited application, if applicable at all. The initial allowance is now available only in certain limited circumstances and, in general, in order to qualify for the allowance the machinery or plant must be new and unused and not secondhand. For the latter purposes, a ship is deemed to be new even if it has been used or is secondhand but, given the limited availability of the initial allowance, it is improbable that a ship could now qualify for the allowance. **(4)(a)(i)**

### ***Exception to open market price rule in case of certain sales of machinery or plant***

There is an exception to the requirement of **subsection (3)** that open market price be substituted for the actual price paid on the sale. The exception applies where on the sale of machinery or plant (not other property) the open market price is greater than the amount which, for the purposes of calculating a balancing charge on the seller, would be taken into account as the seller's original capital expenditure in providing the machinery or plant. (Normally this would be the amount of the expenditure actually incurred by the seller in providing the asset less any grants received, but in circumstances where the seller's title to capital allowances was based on an amount other than the net of grant expenditure incurred it would be that other amount.) In any such case, the machinery or plant is to be treated as having been sold for an amount equal to that amount of expenditure and not at the open market price. **(4)(a)(ii)**

The exception does not apply to new machinery or plant sold in the ordinary course of a business which consists of the manufacture or supply of machinery or plant of that class. In such a case, the sale would be deemed to be at the open market price. **(4)(b)**

### ***Option, in cases of common control, to have asset treated as sold at its tax written down value instead of open market price***

In a common control case (**subsection (2)(a)(i)**), the seller and buyer may make a joint election in writing to the inspector to have the sale of an asset treated as if it were made at its tax written down value instead of the open market price. Such an election may only be made where the tax written down value of the asset is less than the open market price and **subsection (2)(a)(ii)** does not apply (that is, it is not a sale the sole or main benefit of which is to obtain a capital allowance). In any such case, the seller will not have a balancing charge and the buyer will effectively be granted capital allowances on a reduced amount over the remainder of the writing-down period of the asset. However, in computing any future balancing charge to be made on the buyer in respect of the asset, account will be taken not only of the capital allowances granted to the buyer but also of the capital allowances granted to the seller. **(5)**

The tax written down value of an asset is, in the case of an industrial building or structure,

the residue of the capital expenditure on its construction immediately before the sale (see **section 277**) and, in the case of machinery or plant, the amount of the expenditure on its provision still unallowed immediately before the sale (see **section 292**).

A joint election to have the sale of an asset treated as if it were made at its tax written down value instead of the open market price may not be made if, at the time of the sale, any of the parties to the sale are not resident in the State. This rule does not apply if the non-resident party or parties is or are entitled to a capital allowance, or subject to a balancing charge, as a result of the sale. This would arise where a non-resident company is carrying on a trade in the State through a branch or agency. (6)

### 313 Effect, in certain cases, of succession to trade, etc

#### Summary

Where a person succeeds to a trade or profession and the original trade or profession is treated as discontinued, any property belonging to the discontinued trade which is taken over by the successor without being sold is regarded as having been sold to the successor at its market value.

#### Details

##### *Succession to a trade or profession*

This provision applies where — (1)

- a person succeeds to a trade or profession which until that time had been carried on by another person,
- the trade or profession is treated as discontinued by virtue of **section 69** [That section treats a trade or profession as being discontinued where the person (the predecessor) carrying on the trade or profession immediately before the succession is an individual and where the successor to the trade or profession is another individual or a partnership (which may include the predecessor).], and
- any property which immediately before the succession was in use for the discontinued trade or profession is taken over by the successor without being sold and is immediately put to use in the new trade or profession.

In any such case, the property is treated for the purposes of **Part 9** (capital allowances for industrial buildings or structures, machinery or plant and dredging) as having been sold to the successor at the time of the succession for the price it would have fetched in an open market sale. The normal consequences of a sale follow, that is, a balancing allowance or balancing charge to or on the predecessor and writing-off allowances to the successor.

##### *Trade or profession carried on in partnership*

This provision applies in the case of a continuing partnership trade or profession. By virtue of **section 1009**, where a trade or profession is being carried on in partnership, the trade or profession is treated as continuing so long as there are at least 2 partners in the partnership and on each change in the composition of the partnership there is at least one common partner before and after the change. In any such circumstances, the introduction of a new partner or the retirement of an existing partner does not result in the discontinuance of the partnership trade or profession. (2)

In the case of a continuing partnership trade or profession, allowances and charges under **Part 9** (capital allowances for industrial buildings or structures, machinery or plant and dredging) are to be made to or on the persons carrying on the partnership on the assumption that the trade or profession had at all times been carried on by one and the same person, that is, changes in the composition of the partnership are ignored. The amount of any allowance (3)

or charge to be made at any time to or on the persons then carrying on the partnership trade or profession is to be computed as if those persons had at all times been carrying on that trade or profession and as if everything done by their predecessors in that trade or profession had been done by them. [This provision is made subject to **section 1010** which contains rules for the apportionment of allowances and charges among persons in a partnership.]

### ***Succession to trade or profession under will or intestacy – machinery or plant***

This section does not impact on the right of a person who succeeds to a trade or profession under a will or intestacy to elect under **section 295** to have the machinery or plant owned by the deceased and used in that trade or profession treated as if the person had bought it for the lower of its written down value for tax purposes or its market value.

## **314 Procedure on apportionment**

### **Summary**

For the purposes of capital allowances and charges under **Part 9**, provision is made in **section 311** for the apportionment of a lump sum payment made in connection with the sale and purchase of a number of different assets. **Section 314** is designed to deal with cases where different interests may conflict on a question of apportionment of purchase price or value between different assets, or on a question of the valuation of assets. From the point of view of the Revenue it is important to secure that the same basis of apportionment is adopted in connection with the income tax or corporation tax liability of both the vendor and of the purchaser. In any case where there is a dispute between 2 or more taxpayers involving apportionment of any sum, including the purchase price of any property sold, the apportionment is determined by the Appeal Commissioners.

### **Details**

Where for the purposes of capital allowances or charges under **Part 9** any sum is to be apportioned (see **section 311**) and the apportionment affects the liability to tax of 2 or more persons, then, if there is any dispute as to the basis of apportionment, the inspector shall issue a determination in respect of the apportionment. (1)

A person aggrieved by a determination made under this section may appeal the determination by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of that determination. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A.

These rules also apply in relation to cases where under **Part 9** it is necessary to determine the market price of any property. (2)

## **315 Property used for purposes of “exempted trading operations”**

### **Summary**

No balancing allowance or balancing charge will arise in respect of any property of a company used exclusively by it in carrying on tax exempt trading operations in the Shannon Free Airport Area. Where the property was used only partly for such purposes, a balancing allowance or charge as is just and reasonable is to be made to or on the company.

## Details

### *Application*

The section applies where an event occurs in respect of any property which gives rise (or but for this section would give rise) to a balancing allowance or charge to be made to or on a company which obtained a certificate from the Minister for Finance under section 374(2) of the Income Tax Act, 1967 or section 70(2) of the Corporation Tax Act, 1976. Such a certificate would have exempted (the exemption ceased to apply from 1990) from income tax or corporation tax certain trading operations carried on by the company in the Shannon Free Airport Area. (1)

### *Property used exclusively for exempted trading operations*

If the particular property has been used exclusively for exempted trading operations, no balancing allowance or charge is to be made in respect of the property. (2)

### *Property used partially for exempted trading operations*

Where the property has been used partly for exempted trading operations and partly for other trading operations, the amount of the balancing allowance or charge to be made in respect of the property is to be such amount as is just and reasonable. (3)

## 316 Interpretation of certain references to expenditure and time when expenditure is incurred

### Summary

This section provides rules for the interpretation of references to “capital expenditure” and “capital sums” as used in **Part 9**. It also provides, in general, that references in **Part 9** to the date on which expenditure is incurred are to be taken as references to the date when the sum in question becomes payable.

However, in the case of capital expenditure incurred on the construction or refurbishment of buildings and structures under a number of tax incentive schemes, expenditure is treated as incurred in a period, or on or before a specified date, only to the extent that it is attributable to work actually carried out in the period or on or before that date.

For the purposes of the industrial buildings (initial) allowance and the initial allowance in respect of machinery or plant, expenditure incurred before trading commences is deemed to have been incurred on the first day of trading.

## Details

### *Capital expenditure and capital sums*

For the purposes of **Part 9** (capital allowances for industrial buildings or structures, machinery or plant and dredging), capital expenditure and capital sums do not include any expenditure or sum which may be deducted in computing the profits or gains of a trade, profession, office or employment for tax purposes. In other words, the terms in question do not include revenue type expenditure. Similarly, capital sums received do not include any amount which is to be treated as a receipt in computing the profits or gains of a trade, profession, office or employment, that is, revenue type receipts are excluded. Finally, capital expenditure and capital sums do not include any expenditure or sum from which tax is or may be deducted under **section 237** (annual payments made wholly out of taxed income) or **section 238** (annual payments not payable out of taxed income). (1)

### ***Date on which expenditure is incurred***

For the purposes of **Part 9** (capital allowances for industrial buildings or structures, machinery or plant and dredging), the date when expenditure is incurred is to be taken as the date when the sum in question becomes payable. However, in the case of wear and tear allowances for machinery or plant (**section 284**), this rule applies only in respect of machinery or plant provided on or after 6 April 1996. (2)

### ***Hotels, holiday camps and registered holiday cottages***

In relation only to claims for allowances under **Chapter 1** of this Part, capital expenditure incurred on the construction or refurbishment of a building or structure in use for the purposes of the trade of hotel keeping (or a building or structure deemed to be in use for such purposes by virtue of **section 268(3)** i.e. registered holiday camps and registered holiday cottages) will be treated as having been incurred on or before 31 July 2008 to the extent that such expenditure is attributable to work on the construction or refurbishment of the building or structure which is actually carried out on or before that date. [This date relates to the change in annual rates of allowances for hotels and holiday cottages from 15 per cent per annum to 4 per cent per annum, and the termination of allowances for holiday cottages]. (2A)

### ***Tax Incentive schemes – when expenditure incurred***

In the case of capital expenditure incurred on the construction or refurbishment of buildings and structures under a number of tax incentive schemes, expenditure is treated as incurred in the year 2006, the year 2007 and the period 1 January 2008 to 31 July 2008 only to the extent that it is attributable to work actually carried out in the period involved. The same rule applies in relation to expenditure incurred in the period 1 May 2007 to 30 April 2010 in relation to qualifying residential units – where **section 270(8)** applies. (2B)

The schemes involved are those listed in **paragraphs (a) to (i)** of **section 270(4)**. They are:

- (a) hotels, holiday camps and registered holiday cottages – under **section 268(1)(d)** and **268(3)**;
- (b) sports injuries clinics – under **section 268(1)(k)**;
- (c) multi-storey car-parks – under **section 344**;
- (d) industrial buildings and commercial premises located in Urban Renewal areas and commercial premises on qualifying streets under the Living over the Shop scheme – under **sections 372C** and **372D**;
- (e) industrial buildings and commercial premises located in Rural Renewal areas – under **sections 372M** and **372N**;
- (f) Park and Ride facilities and commercial premises on the sites of Park and Ride facilities – under **sections 372U** and **372W**;
- (g) industrial buildings and commercial premises located in Town Renewal areas – under **sections 372AC** and **372AD**;
- (h) Third-Level College buildings – under **section 843**, and
- (i) qualifying residential units associated with registered nursing homes – under **section 268(3A)**.

This provision is required in view of the restrictions, to 75 per cent and 50 per cent respectively, which apply under **section 270(5)** to expenditure incurred in the year 2007 and the period 1 January 2008 to 31 July 2008 (or the period 1 May 2007 to 30 April 2010 for qualifying residential units), and of the overall cap on expenditure, under **section 270(7)**, which applies for the period 1 January 2007 to 31 July 2008 in the case of some of these schemes (see notes on **section 270**). The year 2006 is included in this provision (and in **section 270(4)**) to ensure that expenditure is not brought forward into that year to try and

avoid the restrictions mentioned above.

In the case of qualifying residential units, where **section 270(8)** applies, the period 1 May 2007 to 30 April 2010 is included as reduced levels of capital expenditure apply i.e. 75 per cent for companies and 50 per cent for individuals. Where **section 270(8)** does not apply, the restriction for 2007 to 75 per cent is applicable for all claimants for the period 25 March 2007 to 31 December 2007 and the 50 per cent restriction applies for the period 1 January 2008 to 31 July 2008. **(2B)(d)**

***Certain health-related facilities and aviation services facilities - when expenditure incurred***

In the case of capital expenditure incurred on the construction or refurbishment of a building or structure in use as a registered nursing home (**section 268(1)(g)**), a convalescent home (**section 268(1)(i)**), a qualifying hospital (**section 268(1)(j)**), a qualifying mental health centre (**section 268(1)(l)**) or an aviation services facility (**section 268(1)(n)**), expenditure is treated as incurred on or before the termination dates for those schemes only to the extent that it is attributable to work actually carried out on or before those dates. The termination dates are contained in **paragraphs (d), (f), (g), (i) and (k) of section 268(9)**. **(2C)**

***Pre-trading expenditure***

For the purposes of the industrial buildings (initial) allowance (**section 271**) and the initial allowance in respect of machinery or plant (**section 283**), expenditure incurred before trading commences is deemed to have been incurred on the first day of trading. **(3)**

## **317 Treatment of grants**

### **Summary**

In general, capital allowances in respect of capital expenditure on industrial buildings or structures, machinery or plant and dredging are computed on the basis of the amount of expenditure incurred net of any grants received. However, in the case of certain machinery or plant, the “net of grant” restriction does not apply. This exception applies only where the machinery or plant is used by a company solely in the manufacture of processed food and is purchased by the company carrying on the food processing trade for use in that trade; it does not apply in the case of lessors or lessees of such machinery or plant.

### **Details**

#### **Definitions**

“food processing trade” is as a trade which consists entirely of, or partly of, the manufacture of processed food. **(1)**

“processed food”: this definition is defined so as to limit the benefit of the exception to the treatment of capital allowances on a net of grant basis to machinery or plant used in genuine food processing. The processed food must be manufactured in the State in the course of a trade. The definition spells out the meaning of “manufacture” for this purpose so as to exclude any low-level handling or packaging activities or processes designed only to preserve or sterilise food or to influence natural processes by which food is produced.

Processed food must be food intended for human consumption as a food. Thus, animal foodstuffs are excluded as are medicines and other non-food items for human consumption. Food in the form of drink (for example, a meal substitute in the form of a drink) would come within the definition but spring waters, soft drinks and alcoholic beverages would be excluded by virtue of not being food.

To qualify as processed food, the food must be produced as a result of a mechanical process of manufacture which significantly alters the form and value of the raw materials used. Specifically ruled out as processed food are food products which have been subjected only to methods of accelerating or retarding natural processes such as growth, ripening or decay. Also ruled out is food subjected to a process which merely preserves it in its original state, or which sterilises it (such as pasteurisation) or similarly processes it.

#### **Examples**

The definition of “processed food” would exclude pasteurised milk, washed, graded and packaged produce which has not been subjected to any manufacturing process, frozen “fresh” fish which has been frozen whole without any other treatment, and whole fresh fruit irrespective of what process it has been subjected to.

The definition would include products such as butter or cheese, tinned, frozen or dried produce where the produce has been shelled, peeled, diced or otherwise altered in form, tinned fish, “fish-fingers”, “breaded plaice” and other fish which has been processed in some way, fresh meat, poultry, etc which has been butchered, cleaned or otherwise prepared for consumption, and bread and similar produce (though not commonly considered to be “processed” food, bread and similar produce could not reasonably be excluded from qualification).

“qualifying machinery or plant” is machinery or plant used solely in the course of manufacturing processed food.

#### ***Capital allowances to be given on a net of grant basis***

For the purposes of capital allowances under **Part 9** (other than the initial allowance and wear and tear allowances in respect of machinery or plant under **sections 283** and **284** for which special rules set out in **subsections (3)** and **(4)** apply), expenditure is treated as having been incurred by a person net of any grants received. Specifically, for those purposes, expenditure incurred by a person before 6 May, 1993 is not to be treated as having been incurred by the person in so far as it has been or is to be met directly or indirectly by the State, any statutory board or any public or local authority, while expenditure incurred by a person on or after that date is not to be treated as having been incurred by the person in so far as it has been or is to be met directly or indirectly by any other person. (2)

#### ***Initial allowance and wear and tear allowances for machinery or plant***

Except for certain transitional cases (see **subsection (3)(b)**) and certain machinery or plant provided for the food processing trade (see **subsection (4)**), expenditure incurred on or after 29 January, 1986 is, for the purposes of determining title to the initial allowance and wear and tear allowances in respect of machinery or plant under **sections 283** and **284**, treated as having been incurred by a person net of any grants received. Specifically, for those purposes, expenditure incurred by a person before 6 May, 1993 is not to be treated as having been incurred by the person in so far as it has been or is to be met directly or indirectly by the State, any statutory board or any public or local authority, while expenditure incurred by a person on or after that date is not to be treated as having been incurred by the person in so far as it has been or is to be met directly or indirectly by any other person; and, for the purposes of wear and tear allowances under **section 284**, the “actual cost” of any machinery or plant is the capital expenditure incurred on the machinery or plant as reduced by the amount of any expenditure which has been or is to be so met. (3)(a)

The above rule (**subsection (3)(a)**) does not apply where the expenditure is met by a grant which was approved on or before 29 January, 1986 by a Government Department, a statutory board or a public or local authority. Neither does it apply where the expenditure is met under the terms of an agreement which was the subject of negotiations which were in progress on that day with a Government Department, a statutory board or a public or local (3)(b)



authority, provided that the grant was finally approved for payment not later than 31 December, 1986.

### ***Machinery or plant in use for food processing trade***

Where an initial allowance (**section 283**) or a wear and tear allowance (**section 284**) is to be made in taxing a company's food processing trade in respect capital expenditure incurred on providing machinery or plant which is used solely in the manufacture of processed food, the "net of grant" rule in **subsection (3)** does not apply. Thus, the allowances in any such case are determined without deducting any grants received. It should be noted that this exception to the "net of grant" rule applies only where the machinery or plant is purchased by a company for use in its own food processing trade. It does not apply in the case of lessors of such machinery or plant since the exception applies only in taxing a food processing trade. (4)(a)

A lessee is in certain circumstances (see **section 299**) deemed for tax purposes to have incurred the purchase costs of machinery or plant leased by it. The reference in **subsection (4)(b)** to expenditure incurred by a company does not include any expenditure which it is deemed to have incurred in accordance with that section. Thus, lessees are also excluded from the exception to the "net of grant" rule. (4)(b)

### **318 Meaning of "sale, insurance, salvage or compensation moneys"**

This section defines the phrase "sale, insurance, salvage or compensation moneys" in relation to an event which gives rise or might rise to a balancing allowance or a balancing charge to or on any person. It is by reference to such moneys that a balancing allowance or balancing charge is computed. The phrase means —

- where there is a sale of property, the net proceeds of the sale (this covers straight sales of property or an event which is equivalent to a sale, for example, the surrender of a lease), (a)
- where there is a grant of a right to use or otherwise deal with all or part of machinery or plant consisting of computer software or the right to use or otherwise deal with computer software, the consideration in money or money's worth, (aa)
- where the property is demolished or destroyed, any amount received from the sale of, say, scrap machinery, and any amount received as insurance moneys or compensation for the demolition or destruction of the property, (b)
- where machinery or plant is stolen or otherwise lost (other than by its demolition or destruction), any insurance moneys or compensation received in respect of the loss of the property, and (c)
- where an industrial building or structure ceases altogether to be used, any compensation received in respect of that event. (d)
- where an industrial building or structure ceases to be a relevant facility (see **section 274(2A)(b)**), the aggregate of the residue of expenditure incurred and the allowances already made under **Chapter 1 of Part 9**. (e)

The references in the definition to "compensation" relate only to compensation in so far as it consists of capital sums i.e. which is not treated as a revenue receipt of the recipient.

### **319 Adjustment of allowances by reference to value-added tax**

#### **Summary**

This section secures that where the cost of any machinery or plant or any other capital expenditure is being taken into account for the purposes of capital allowances, the cost or expenditure to be taken into account is to be reduced by value-added tax deductions or

repayments which may be claimed in respect of that cost or expenditure under Chapter 1 of Part 8 of the Value-Added Tax Consolidation Act 2010, or under an order made by the Minister for Finance under section 103 of that Act. Similarly, in computing a balancing allowance or charge, no account is to be taken of value-added tax chargeable on the amount of the sale, insurance, salvage or compensation moneys received.

### Details

The cost to a person of any machinery and plant, or the amount of any other expenditure incurred by a person, to be taken into account for the purposes of certain deductions, allowances and reliefs is to be reduced by any value-added tax included in that cost or expenditure for which the person may claim a deduction under Chapter 1 of Part 8 of the Value-Added Tax Consolidation Act 2010 or a refund under any order made by the Minister for Finance under section 103 of that Act. The deductions, allowances and reliefs to which this rule applies are those given under —

- **Part 9** (which provides capital allowances for capital expenditure on industrial buildings or structures, machinery or plant, and dredging),
- **sections 658 and 659** (which provide capital allowances for capital expenditure on farm buildings and other works),
- **Chapter 1 of Part 24** (which provides capital allowances for capital expenditure on certain mining), and
- **sections 764, 765 and 769** (which provide allowances for expenditure on scientific research and training of local staff).

In calculating a balancing allowance or charge under **Part 9** (industrial buildings or structures, machinery or plant, and dredging), the amount of the sale, insurance, salvage or compensation moneys to be taken into account is not to include the amount of any value-added tax chargeable on the person in respect of those moneys.

## 320 Other interpretation (Part 9)

### Summary

This section gives the meaning of certain terms and sets out rules for the construction of certain references used in **Part 9**.

### Details

#### Definitions

“income” includes the amount on which a balancing charge is made. This enables allowances which are being carried forward, because of insufficiency of income in previous years, to be given effect to by discharging or repaying the tax in respect of any balancing charge. (1)

“lease” includes an agreement for a lease where the term to be covered by the lease has begun, and any tenancy (but not a mortgage).

#### Construction

References to any building, structure, machinery or plant include references to a part of any building, structure, machinery or plant except, in the case of a building or structure, where the reference is to the whole of the building or structure. Accordingly, where capital expenditure is incurred on, say, the construction of an addition to a factory, the addition is treated as if it were a separate building for the purposes of writing-off the expenditure over the usual 25-year period. (2)

**Part 9** applies to shares in machinery or plant as it applies to part of machinery or plant. A share in machinery or plant is deemed to be used for the purposes of a trade only where the machinery or plant is used for the purposes of the trade. (3)

The time of any sale is to be taken as the time of completion of the sale or the time when possession is given, whichever is the earlier. (4)

References to the setting up of a trade and the permanent discontinuance of a trade include references to cases where the Income Tax Acts deem an event to be the permanent discontinuance of a trade, for example on a change of ownership (see *section 69*). (5)

The amount of any allowance which is carried forward, owing to an insufficiency of income in the year for which it was to be made, is to be regarded as allowed in that year for the purposes of construing references to the amount of expenditure unallowed at any time. (6)

## 321 Provisions of general application in relation to the making of allowances and charges

### Summary

Certain general provisions applicable to the making of allowances and charges are applied for the purposes of **Part 9** (capital allowances for industrial buildings or structure, machinery or plant, and dredging) and other provisions of the Tax Acts relating to capital allowances or charges.

### Details

#### Application

The provisions of *subsections (2) to (7)* apply for the purposes of interpreting — (1)

- **Part 9** (capital allowances for industrial buildings or structures, machinery or plant, and dredging),
- *section 374* (capital allowances for cars costing over a certain amount),
- *sections 658 to 660* (farming capital allowances),
- *Chapter 1 of Part 24* (capital allowances for certain mining),
- *sections 764 and 765* (allowances for scientific research),
- *section 769* (allowances for training of local staff), and
- any other provision of the Tax Acts relating to the making of allowances or charges under or in accordance with the provisions referred to above.

#### Chargeable periods

“chargeable period” is an accounting period of a company or a year of assessment. A reference to a chargeable period or its basis period (“basis period” is defined in *section 306*) is a reference to the chargeable period if it is an accounting period and to the basis period for it if it is a year of assessment. A reference to a chargeable period related to expenditure or a sale or other event is, in the case of corporation tax, a reference to the accounting period in which the expenditure is incurred or the sale or other event takes place and, in the case of income tax, a reference to the year of assessment in the basis period for which the expenditure is incurred or the sale or other event takes place. (2)

**Subsection (2A)** provides that, for the purposes of ascertaining the cost of expenditure on an asset for capital allowance purposes, references to expenditure in relation to an asset are to include expenditure on labour costs that, under IFRS, are taken into account for accounting purposes as part of the value of the asset. It also provides that interest paid which is taken into account for accounting purposes as part of the cost of an asset is not to (2A)

be included as expenditure for capital allowance purposes.

In so far as corporation tax is concerned, references to tax for a chargeable period are to be taken as references to the tax for any financial year which is chargeable in respect of that period, that is, the tax chargeable for that period by reference to the tax rates applicable to the financial year or years within which that period lies. (3)

### ***Allowances or charges in taxing a trade***

In the case of corporation tax, a reference to allowances or charges being made in taxing a trade is a reference to their being made in computing a company's trading income for corporation tax purposes. In the case of income tax, a reference to allowances or charges being made in taxing a trade is a reference to their being made in charging the profits or gains of a person's trade to income tax. (4)

### ***Writing-down allowances***

Where expenditure is written off on a "straight-line" basis over a specified length of time (for example, mine development allowance under **section 670**) the amount of the allowance for a chargeable period (accounting period for corporation tax purposes, year of assessment for income tax purposes) will bear the same relationship to the total qualifying expenditure as the length of the chargeable period bears to the total period of the writing off. (5)(a)

The aggregate amount of the writing-down allowances made, whether to the same or to different persons, together with the amount of any initial allowance (but not any investment allowance), cannot exceed the amount of the expenditure. (5)(b)

Where the reference is partly to years of assessment before 1976–77, a writing-down allowance includes an annual allowance, and an allowance on account of wear and tear of machinery or plant includes a deduction on account of wear and tear of machinery or plant, in the sense which in the context those expressions had immediately before the commencement of the Corporation Tax Act, 1976. In essence, this provision provides for continuity between pre and post-corporation tax allowances. (6)

Writing-down allowances and allowances on account of the wear and tear of machinery or plant which are to be made for a chargeable period of less than one year in length are to be proportionately reduced. (7)

### ***Miscellaneous***

This provision adapts for corporation tax any income tax provisions relating to capital allowances not specifically referred to in **subsection (1)**. In any such provision, unless the context otherwise requires, any reference to an allowance or charge for a year of assessment under a provision referred to in that subsection is to include the like allowance or charge for an accounting period of a company, and any reference to the making of an allowance or charge in charging profits or gains of a trade is to be construed as a reference to making the allowance in taxing a trade. (8)

### ***Change in ownership of a trade***

This subsection applies for the purposes of — (9)

- **Part 9** (capital allowances for industrial buildings or structures, machinery or plant, and dredging),
- **section 670** (mine development allowance),
- **sections 764** and **765** (allowances for scientific research),
- **section 769** (allowances for training of local staff), and
- any other provision of the Tax Acts relating to the making of allowances or charges

under or in accordance with the provisions referred to above.

Any provision of the Income Tax Acts which for those purposes treats a trade as or as not permanently discontinued or treats a new trade as set up and commenced applies in the like manner in the case of a trade so treated by virtue of the Corporation Tax Acts. In other words, where there is a change in ownership (either in whole or in part) of a trade which under the Income Tax Acts is a cessation of the trade or is treated as a cessation of the trade for the purposes of computing capital allowances under the provisions mentioned above, the same position applies for the purpose of computing such capital allowances in the case of companies.

***Saver provision***

Any allowance or charge which would be made to certain Shannon and IFSC companies (10) for an accounting period under this Part is, notwithstanding the deletion of ***sections 445*** and ***446***, preserved and ***Part 14*** shall apply with any modifications necessary to give effect to this subsection.