

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2022 edition

Part 11D

Income Tax and Corporation Tax: Reliefs for the removal and relocation of certain Industrial Facilities

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PART 11D

INCOME TAX AND CORPORATION TAX: RELIEFS FOR THE REMOVAL AND RELOCATION OF CERTAIN INDUSTRIAL FACILITIES

Overview

This Part provides for a scheme of increased capital allowances and “additional relocation allowances”, to facilitate the removal and relocation of certain facilities where potentially dangerous activities are undertaken.

The scheme arises from the EU Seveso II Directive, which seeks to protect public safety near locations where potentially dangerous activities are undertaken. In the context of a docklands setting, Seveso-type industrial activities may include the following: fuel (oil, petrol, gas) storage facilities; storage facilities for fertiliser and other similar potentially hazardous substances; oil/petrol refining facilities; etc.

The scheme provides a relocation allowance to cover the removal costs of the industrial facilities and the cost of relocating these facilities. In this context, removal covers the removal and scrapping, if necessary, of an existing industrial premises while relocation covers the cost of building a new premises and associated land purchase costs. The costs of remediating the lands occupied by the facility will not be covered by the scheme in accordance with the EU Commission ‘Polluter Pays’ principle. This ensures that an industry that creates a pollution incident (or in this case, which undertakes the land-use that has damaged a particular location) must bear the cost of remediating the property back to a pre-pollution/pre-damaging land-use basis.

The relocation allowance is limited to the net costs of the removal and relocation. This means that the benefits from the sale of the land where the industrial facilities were previously located will be deducted. In addition to the relocation allowance a further 50% additional allowance is provided. The relief is given by allowing 100% increased wear and tear and industrial buildings allowances with a further 50% allowance on top.

In order to prevent abuse of the scheme there is a facility for a claw-back where machinery, plant or buildings on which wear and tear and industrial buildings allowances were claimed, are sold within two years of first use. The claw-back facility and the provisions to net-off the benefits from the sale of the land of the initial site will ensure that the scheme will be fair and equitable by only meeting costs necessitated by the removal and relocation of Seveso-listed industrial facilities which are hindering the regeneration of urban dockland areas.

Any costs incurred in generating productivity gains or an increase in capacity over and above the costs of the relocation itself will not qualify for relief.

Expenditure incurred on or after 1 January 2009 and before 1 January 2014 will be allowed for the purposes of this section. It should also be noted that to avail of the scheme, the area where the industrial facility is located must be an area which is the subject of either a local area plan adopted by the relevant Local Authority under the Planning and Development Acts 2000 to 2006 or a planning scheme approved by the Minister for the Environment, Heritage and Local Government under section 25 of the Dublin Docklands Development Authority Act 1997 and the relocation must be for the purposes set out in that plan.

In addition, the docklands area where the industrial facility is located must be

covered by an area designated by the Minister for the Environment, Heritage and Local Government, with the approval of the Minister for Finance, to be regenerated for the purposes set out in the local area plan or planning scheme.

This Part is subject to a commencement order to be made by the Minister for Finance.

380Q Interpretation (*Part 11D*)

Summary

The section is the interpretation section for *Part 11D*. It defines the various terms used in the Part.

Details

Definitions

‘**dangerous substance**’ has the meaning assigned to it by Regulation 3 of the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 (S.I. No. 476 of 2000); (1)

‘**enhancement expenditure**’, in relation to establishment land, means the amount of any capital expenditure wholly and exclusively incurred on the land for the purpose of enhancing the value of the land, being expenditure reflected in the state or nature of the land at the time of the disposal but does not include expenditure for which relief may be claimed under this Part;

‘**establishment**’, in relation to a person who carries on a relevant trade, means the whole area under that person's control where dangerous substances are present in one or more installations, including common or related infrastructure or activities;

‘**establishment land**’, in relation to a relevant trade, means the area of land of the establishment of which the old installation is a unit;

‘**local authority**’ means—

- (a) in the case of a city, the city council, and
- (b) in the case of a county, the county council,

being a city council or a county council, as the case may be, for the purposes of the Local Government Act 2001;

‘**installation**’ means a unit within an establishment in which dangerous substances are produced, used, handled or stored, and includes—

- (a) equipment, structures, pipework, machinery and tools,
- (b) docks and unloading quays serving the installation, and
- (c) jetties, warehouses or similar structures, whether floating or not,

which are necessary for the operation of the installation;

‘**land**’ includes any interest in land and references to establishment land include references to any interest in that land;

‘**market value**’, in relation to the whole or part of establishment land, means the price that whole or part might reasonably be expected to fetch on a sale in the open market if the old installation was removed;

‘**new installation**’ means an installation which replaces an old installation;

‘**old installation**’ means an installation located in an urban dockland area which, by

agreement with the relevant local authority, an operator relocates to facilitate the regeneration of that area;

‘**operator**’ means any person who in the course of a trade operates an establishment or installation;

‘**relocation expenditure**’ means relevant expenses incurred by a person who carries on a relevant trade in an establishment situated within an urban dockland area in relocating that trade to an establishment in a new location.

‘**relevant expenses**’ means capital expenditure, incurred in connection with the removal of an old installation and the set up of a replacement installation including the cost of acquiring such land as is necessary for the operation of the new installation but not including expenditure relating to –

- (a) any building or structure on that land other than a building or structure which is demolished in the course of the set-up,
- (b) the construction of any building or structure, or
- (c) machinery or plant;

‘**relevant trade**’ means a trade of operating an establishment or installation;

‘**urban dockland area**’ means a dockland area which is the subject of either a local area plan adopted by the relevant local authority under the Planning and Development Acts 2000 to 2006 or a planning scheme approved by the Minister for the Environment, Heritage and Local Government under section 25 of the Dublin Docklands Development Authority Act 1997 and comprises an area designated by that Minister, with the approval of the Minister for Finance, to be regenerated for the purposes set out in the local area plan or planning scheme.

Termination date

Expenditure incurred on or after 1 January 2009 and before 1 January 2014 will be allowed for the purposes of this Part. (2)

380R Relocation allowance

Summary

An allowance (known as a relocation allowance) is available to a person carrying on a relevant trade in an establishment situated within an urban dockland area who incurs relocation expenditure in relocating that trade to an establishment in a new location. The section provides certain rules for calculating the amount of the allowance due.

Details

Relocation allowance

A person carrying on a relevant trade who incurs relocation expenditure in relation to that trade may claim a relocation allowance in respect of that expenditure. (This allowance is not available for expenditure for which industrial buildings or wear and tear allowances may be made but provision is made for accelerating these allowances in a subsequent provision below.) (1)

Allowance in taxing the trade

The relocation allowance is made in taxing the trade. This Part requires that only net costs are allowable. (2)

Part disposal of establishment land

The situation where all or part of the original site from which the operator is moving (3) has not been disposed of is provided for. For the purposes of calculating the allowable costs for the purpose of claiming the relocation allowance the market value of the establishment land, where it is not all disposed of, must be deducted from the relevant expenses.

Full disposal of establishment land

When the establishment land is disposed of, the consideration received and not the (4) market value of the land, is deducted from the relevant expenses before granting the allowance. Enhancement expenditure incurred at any time after all the old installations have been removed is also to be deducted from the consideration received.

Claw back & net-off provisions

Where a relocation allowance has been claimed and a disposal of establishment land (5) subsequently takes place and the aggregate of all consideration received for that land (reduced by any enhancement expenditure) is less than the market value of the land at the date the relevant expenses were first incurred, then a further relocation allowance is to be made in respect of the difference. Similarly, where the consideration received for the establishment land exceeds the market value at the date the relevant expenses were first incurred, the difference is to be treated as a trading receipt of the trade. The extent to which an amount is to be treated as a trading receipt is limited to the aggregate of relocation allowances granted.

Deemed disposal of establishment land

Where an operator ceases the trade at the original site but does not dispose of the site (6) or part of it within two years of cessation, then the site is deemed to have been disposed of for the sum of any consideration received for the part sold and the market value of the part remaining.

Retention of establishment land

The situation where the operator decides to retain the original site or part of it to (7) develop it is provided for. In such a case the land becomes trading stock and **section 596(1)** applies for the purposes of calculating the relocation allowance or any claw back.

Cessation of a relevant trade

Where the relevant trade ceases before all or part of the original land is disposed of, (8) then, for the purposes of calculating the relocation allowance, the land is deemed to have been disposed of at market value on the date of cessation.

Connected persons

Relief under this Part is allowed in situations where the establishment land is owned (9) by a connected person. The actions of the person who owns the land are deemed to be the actions of the person who is claiming the relief.

380S Additional allowance for relocation expenditure

Summary

An additional allowance (known as a additional relocation allowance) is available to

a person carrying on a relevant trade who has incurred relocation expenditure to which the provisions of **section 380R** apply. The additional relocation allowance is an amount equal to 50% of the expenditure, which qualifies for the relocation allowance under **section 380R**.

Details

The section grants an additional relocation allowance of 50% of the relocation allowance already granted under **section 380R(2)**. It also provides for a claw back of an additional amount equal to 50% of the allowance clawed back under **section 380R(5)**. This claw back would occur where the consideration received for the establishment land exceeds the market value at the date the relevant expenses were first incurred, the difference is to be treated as a trading receipt of the trade and is limited to 50% of the aggregate amount of relocation allowances granted. (1) & (2)

380T Allowance for machinery or plant.

Summary

Increased rates of wear and tear allowances are available in respect of capital expenditure incurred on plant or machinery (other than road vehicles) where such expenditure is incurred as part of the expenditure incurred on the provision of a new installation. The mechanism for granting the increased allowances is for the wear and tear allowances to be made under **section 284** to be increased to 100%. Furthermore, an additional allowance of 50% of the qualifying expenditure relating to the machinery or plant is also available.

Details

Accelerated wear and tear allowances –new machinery or plant

Where expenditure incurred on the new installation includes expenditure on new machinery or plant then increased rates of wear and tear allowances will apply to the expenditure on such plant & machinery used in the relevant trade. The wear and tear allowances to be made under **section 284** are increased to 100% plus an additional allowance of 50% of the qualifying expenditure on plant and machinery is also allowed. In ascertaining the amount of expenditure qualifying for wear and tear allowances under **section 284** no account is to be taken of the additional 50% allowance. (1) & (2)

380U Allowance in respect of certain buildings.

Summary

Increased rates of writing down allowances are available in respect of capital expenditure incurred on certain industrial buildings or structures. The qualifying expenditure is capital expenditure on a new installation which includes capital expenditure on the construction of a new building or structure which is to be an industrial building or structure occupied for the purpose of a relevant trade. The mechanism for granting the increased allowances is for the wear and tear allowances to be made under **section 271** to be increased to 100%. Furthermore, an additional allowance of 50% of the qualifying expenditure relating to the qualifying building or structure is also available.

Details

Increased industrial buildings allowances- new buildings or structure

Where expenditure incurred on the new installation includes capital expenditure on new buildings or structures occupied for the purpose of a relevant trade, then increased rates of wear and tear allowances will apply to such expenditure. The industrial buildings allowances to be made under **section 271** are increased to 100% plus an additional allowance of 50% is allowed.

380V Improvement

Summary

Where expenditure is incurred on a new installation and that expenditure includes expenditure, which will enable the new installation to increase its capacity or improve its productivity, then the amount of expenditure qualifying for relief under this Part is restricted to the costs of relocation only. Provision is made to allow an Inspector of Taxes (or on appeal, the Appeal Commissioners) to determine on a just and reasonable basis the amount of the improvement expenditure related to the increased capacity or improvement.

Details

Improved installation

A new installation is an improved installation where its capacity is greater or where it has improved efficiency or productivity beyond what would be considered to be the normal modernisation or upgrading of the old installation. (1)

Improvement expenditure

Where expenditure on an improved installation includes expenditure on new machinery or plant or new industrial buildings or structures, then the expenditure qualifying for relief under **section 380T(1)(b)** or **section 380U(b)** is that expenditure reduced by the amount of the improvement expenditure. The amount representing improvement expenditure is to be determined on a just and reasonable basis by the Inspector of Taxes or on appeal, by the Appeal Commissioners. (2)

380W Supplementary provisions

Summary

This section provides for a claw back of the additional 50% allowance for wear and tear and industrial buildings allowances if the machinery, plant or buildings are sold without being used for the purposes of a relevant trade, or within two years of being used.

Details

Withdrawal of additional allowance

Where an additional allowance has been made under **section 380T(1)(b)** or **380U(b)** in respect of expenditure incurred on the provision of new plant, machinery or industrial buildings or structure and the machinery, plant or building or structure is sold without having been used for the purposes of a relevant trade or within 2 years of being so used, then the allowance may be withdrawn by way of amended (1)

assessment.

Expenditure allowed as a deduction in taxing a trade

For the purposes of this Part capital expenditure does not include any expenditure for which a deduction is allowed in computing the profits or gains of a trade. (2)

Bar on double relief

Where, by virtue of this Part, relief is given in relation to relocation expenditure, no relief is given in respect of that expenditure under any other provision of the Tax Acts. (3)

Miscellaneous

(4)

The provisions of *Chapter 4* of *Part 9* are deemed to apply as if this Part were contained in *Part 9*.

380X Restrictions on relief – non-application of relief in certain cases

This section ensures that the legislation conforms to EU Commission and EU State Aid requirements. It also provides that the scheme will come into operation on the making of an order by the Minister for Finance.