

Property Developers and Capital Allowances

Part 09-01-05

This manual should be read in conjunction with Parts 9 and 10 and section 843A of the TCA 1997

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1. Introduction

By reason of E.U. State Aid rules property developers and persons connected with them are unable to claim capital allowances on certain industrial and commercial buildings. Restrictions were first introduced in Finance Act 2000 and extended by Finance Act 2008.

2. Restrictions on property developers and connected persons

Following Finance Act 2000 (effective from 21 June 2000), a property developer could not claim capital allowances where the capital expenditure on the particular building had been incurred by that property developer or by a person connected with that property developer. The restriction applied only to an actual property developer. Thus, a person could claim capital allowances where the capital expenditure on the building had been incurred by a company of which that person had control if that person was not a property developer in his/her own right. The fact that the company of which the person had control was a property developer was not relevant.

Finance Act 2008 (effective from 1 January 2008) extended the restriction on the availability of capital allowances to cover both property developers and persons connected with property developers. The restriction now applies in the following circumstances:

- A property developer holds the relevant interest in a building and incurs the capital expenditure on that building;
- A property developer holds the relevant interest in a building and a person connected with that property developer incurs the capital expenditure on that building;
- A person connected with a property developer holds the relevant interest in a building and incurs the capital expenditure on that building;
- A person connected with a property developer holds the relevant interest in a building and that property developer incurs the capital expenditure on that building;
- A person connected with a property developer holds the relevant interest in a building and another person connected with that property developer incurs the capital expenditure on that building.

A property developer or a connected person who engages an unconnected builder to carry out the construction is regarded as incurring the capital expenditure.

3. What is a property developer?

A property developer is defined as a person (includes a company) carrying on a trade that consists wholly or mainly of the construction or refurbishment of buildings with a view to their sale. Accordingly, if more than 50% of the turnover from a person's trading activities arises from such construction or refurbishment, the person is regarded as a property developer. Where the person is involved in a number of trading activities the test is applied to the aggregate of the turnover from all of those activities.

In the case of an individual, the turnover test is applied at the end of the basis period for the year of assessment to which the claim relates. In the case of a company, the test is applied at the end of the company's relevant accounting period.

4. What is a connected person?

Section 10 TCA, 1997 defines "connected person". Some common examples of connected persons are an individual and his or her spouse or civil partner, relatives and in-laws, partners in a partnership, companies under common control and a company and its controlling shareholder(s).

5. Joint ownership

The test for the entitlement of joint owners of a building to capital allowances is applied separately to each owner. Thus, where only one of the joint owners 'fails' the property developer test only that person's part of the capital allowances is restricted.

6. Purchase of new buildings

Section 279 TCA 1997 provides that where expenditure is incurred on the construction of a building and the relevant interest, for capital allowance purposes, in the building is sold, the person who buys that interest is deemed to have incurred the expenditure on the construction of the building equal to the lesser of the actual expenditure or the net price paid, provided that the building was sold before it was used or within a year of first use and no capital allowances had been claimed in respect of the building.

While a property developer, or a person connected with a property developer, cannot claim capital allowances where either party has incurred the capital expenditure, or it was incurred by some other person connected with the property developer, they can claim capital allowances where they **purchase** a newly constructed (or refurbished) building from an unconnected person who may or may not be a property developer. This arises from the Revenue interpretation and application of section 279 TCA, 1997. Revenue takes the view that because section 279 only deems the purchaser to have incurred the construction expenditure, the property developer, or a person connected with a property developer, has not incurred the **actual** capital expenditure where they purchase from an unconnected person who has incurred the expenditure and can, therefore, claim the capital allowances. The restriction would apply where the actual construction expenditure was incurred by either party, or it was incurred by some other person connected with the property developer.

7. What buildings are affected?

The original (Finance Act 2000) restriction on the availability of capital allowances applied to the following schemes:

- Urban Renewal scheme (industrial and commercial)
- Rural Renewal scheme (industrial and commercial)
- Town Renewal scheme (industrial and commercial)
- Enterprise Areas (adjacent to airports)
- Sports Injury Clinics
- Private Hospitals
- Mental Health Centres
- Childcare Facilities

The extended (Finance Act 2008) restriction was not applied to some of the above schemes because of their 31 July 2008 termination date. It applies to the following schemes:

- Private hospitals
- Mental Health Centres
- Childcare facilities
- Specialist Palliative Care Units
- Mid-Shannon Corridor Tourism Investment scheme

8. From when does restriction apply?

The effective date for commencement of the original restriction depended on the particular building/scheme. In general, the restriction was introduced at the same time as the schemes themselves with the exception of those for Enterprise Areas (adjacent to airports), Urban Renewal and Childcare Facilities. These latter schemes preceded the restriction which commenced from 1 July 1999 for the first two of these schemes and on 21 June 2000 for Childcare Facilities.

The effective date for commencement of the extended restriction was 1 January 2008. It was possible to interpret the enabling legislation in a way that could result in capital expenditure on certain buildings having to be apportioned between qualifying expenditure (pre 1 January 2008) and non-qualifying expenditure (post 1 January 2008). As such an apportionment could result in the unfair treatment of certain projects where work had commenced before 1 January 2008, Revenue decided to treat the extended restriction as applying where qualifying expenditure is first incurred on a building on or after 1 January 2008.