



The Department of
Arts, Sport and Tourism

Mid-Shannon Corridor Tourism Infrastructure Investment Scheme

Guidelines on Approval and Certification for the mid-Shannon
Tourism Infrastructure Board issued by the Minister for Arts, Sport
and Tourism in consultation with the Minister for Finance

3 June 2008



An Roinn
Ealaíon, Spóirt agus Turasóireachta

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The Mid-Shannon Corridor Tourism Infrastructure Investment Scheme

Guidelines for the mid-Shannon Tourism Infrastructure Board

issued by the Minister for Arts Sport and Tourism, in consultation with the
Minister for Finance

1 June 2008

Introduction

1. Section 29, Finance Act 2007 amends the Taxes Consolidation Act 1997 (in these guidelines referred to as 'the Act') by inserting, in Part 10, a new Chapter 12 entitled The Mid-Shannon Corridor Tourism Infrastructure Investment Scheme (hereinafter known as the Scheme). Section 27, Finance Act 2008 also amends the Taxes Consolidation Act 1997 by providing that the qualifying expenditure under the scheme must comply with the European Commission's Regional Aid Guidelines and the State Aid Map for Ireland for the period 2007 - 2013 and that relief under the scheme cannot be availed of by beneficiaries that are subject to an outstanding recovery order following a previous decision of the Commission of the European Communities declaring aid in favour of the beneficiary to be illegal and incompatible with the common market.

2. These Guidelines are issued by the Minister for Arts Sport and Tourism, under the powers conferred on him by section 372AW of the Act, and are issued following consultation with the Minister for Finance.

3. The purpose of these Guidelines is to:

- (a) publish the classes of qualifying tourism infrastructure facilities which have been approved for the purposes of the scheme, and
- (b) provide criteria to which the mid-Shannon Tourism Infrastructure Board (hereinafter referred to as "the Board") shall have regard in deciding whether to grant approval in principle or to issue certification in relation to capital expenditure on any building or structure, the construction or refurbishment of which may give rise to a claim for tax relief under the Scheme.

4. Section 372AW of the Act provides that these Guidelines may be replaced or amended.

5. Additional Guidelines will be issued to expand or clarify aspects of these Guidelines, if necessary.

6. Section 372AW(3) of the Act provides that the Guidelines may include criteria in relation to some or all of the following matters:

- (a) the contribution which the project/building or structure makes to tourism development in the mid-Shannon corridor or the qualifying mid-Shannon area,
- (b) coherence with national tourism strategy,
- (c) environmental sensitivity, having particular regard to any area which is a European site (e.g. special area of conservation or special protection area), a natural heritage area, a nature reserve or a refuge for fauna,
- (d) the amenities and facilities required to be provided in each type of project,
- (e) the nature of, and maximum extent to which, accommodation buildings (if any) are allowable in each type of project,
- (f) specific standards of design and construction in relation to buildings and structures which may qualify for relief under the Scheme,
- (g) relevant planning matters, including the need for consistency with the requirements of a development plan or a local area plan,
- (h) the details and information required to be provided in applications to the Board for approval and certification,
- (i) matters relating to the provision of information in relation to investment in projects,

together with any other matters the relevant Ministers consider are required to be included.

7. Most of the Guidelines, which follow, consist of two parts – the Rationale and the Requirement. The "Rationale" describes the purpose of the Guideline and the "Requirement" sets out the conditions and procedures to be followed in light of same.

8. The Board shall also have regard to the relevant excerpts from the Notes for Guidance issued by the Revenue Commissioners (see Appendix 7) and any additions or amendments thereto.

The Role of the Board

The mid-Shannon Tourism Infrastructure Board makes decisions on approval and certification of construction and refurbishment of buildings or structures under the Scheme at three distinct stages of development.

a. Approval In Principle

Under section 372AW(2)(a)(i) of the Act, no tax relief may be granted in respect of capital expenditure incurred unless the Board has, *prior to expenditure being incurred*, granted approval in principle in relation to the construction or refurbishment of the building or structure in question.

Note Applications for approval in principle must be received by the Board within a year of the commencement of the Scheme (see Commencement Order appended).

The Board is required to have regard to the criteria for projects set out in these Guidelines in deciding whether to grant approval in principle.

b. Certification under section 372AW of the Act

Under section 372AW(2)(a)(ii) of the Act, even where approval in principle has been granted, no tax relief may be granted in respect of capital expenditure unless the Board has, *after the expenditure has been incurred*, certified in writing that the construction or refurbishment has been carried out in accordance with the criteria in these Guidelines, having regard to any relevant conditions and requirements imposed by the Board in the approval in principle.

c. Certification under sections 372AX and 372AY of the Act

Under section 372AX (for holiday camps) and section 372AY (for other buildings or structures) of the Act, the Board must also give a certificate in writing after the building or structure is first used (or, in the case of refurbishments, after it is first used after the expenditure is incurred).

The certificate must –

- state that the Board is satisfied that :
 - i. the site is wholly within a qualifying mid-Shannon area;
 - ii. conditions in relation to the use of the facility are consistent with the legislation and Guidelines;
 - iii. the Board has received data, for onward transmission to the Minister for Arts, Sport and Tourism and the Minister for Finance, on the amount of capital

expenditure incurred in the qualifying period and on the investors and financial structures (as set out in the legislation and in Guidelines below),

- confirm the date of first use (or first use after refurbishment), and
- include the certification received under section 372AW (or a copy of it).

Note. The ultimate decision to allow, withhold or claw-back capital allowances under the Scheme rests with the Revenue Commissioners. However, no tax relief can be granted unless approval and certification, as outlined above, has been issued by the Board.

PART I Classes of Qualifying Tourism Infrastructure Facilities approved for the purposes of the Scheme

S372AW – (1)"qualifying tourism infrastructure facilities" means such class or classes of facilities, comprising of buildings or structures only, as may be approved...by the Minister, in consultation with the Minister for Finance, and published in the relevant Guidelines

The purpose of this Part is to set out the classes of facilities that are being approved as qualifying tourism infrastructure facilities for the purposes of the Scheme.

This is a Tourism Scheme. The projects which generate eligible capital expenditure must be tourism projects. They must add to the tourism potential of the qualifying area. They must be targeted at increasing the inflow of tourist visitors to the area.

In particular, there is a large and growing market for water-based activities. This type of tourism is to be encouraged along the mid-Shannon Corridor, having regard to its specific natural characteristics, to allow for the creation of a distinctive competence in activity tourism thus increasing overseas visitors and the area's share in the tourism market. In addition to facilities for users of the river, the Scheme also encompasses attractions and activities to attract land-based tourists. Projects which are merely designed to serve a local residents' market are not eligible.

Ineligible Projects

Note. This is primarily a tourism scheme. Projects which are intended, designed or developed primarily for a local residents' market are not eligible.

The Act, in section 372AY, specifically **excludes** from eligibility as a qualifying premises:

- buildings or structures which are already industrial building or structures (as defined in section 268 of the Act) or are deemed to be such buildings
- buildings or structures used for certain purposes, namely those used as **Public Houses** and for **Gambling, Gaming** or **Wagering** of any sort.

Hotels and other industrial buildings/structures

As **Hotels, Guesthouses, Holiday Hostels** and **Caravan and Camping Sites** are deemed to be industrial buildings or structures for purposes of the Taxes Consolidation Act 1997, any building or structure which is part of a Hotel, Guesthouse, Holiday Hostel or Caravan and Camping Site that is registered in the relevant Register under the Tourist Traffic Acts 1939 to 2003 or which is part of any other type of industrial building or structure may not be approved as a qualifying tourism infrastructure facility.

Holiday Camps

While the above rule also excludes Holiday Camps from being qualifying tourism infrastructure facilities for the purposes of Section 372AY of the Act, holiday camps may qualify in their own right under section 372AX of the Act where they satisfy the requirements referred to in paragraph D of Part II of these Guidelines.

Alterations to Land

Only buildings or structures may be approved as qualifying tourism infrastructure facilities. In this regard, alterations to land (such as the development of **Golf Courses**, **Walkways**, etc.) and other works are not being approved for the purposes of this Scheme.

Plant and Machinery

Likewise, items that consist of machinery and plant for the purposes of the Taxes Acts are not being approved for the purposes of the Scheme. Any such item may already qualify for capital allowances and claims for such allowances should be made directly to the Revenue Commissioners, i.e., certification from the Board is not applicable.

List of Facilities Approved as Qualifying Tourism Infrastructure Facilities

The following classes of facilities are approved as **Qualifying Tourism Infrastructure Facilities** for the purposes of the Mid-Shannon Corridor Tourism Infrastructure Investment Scheme by the Minister for Arts, Sport and Tourism, in consultation with the Minister for Finance. These facilities are approved to the extent that they comprise buildings and structures only and approval does not cover any items that are machinery or plant.

- (a) Education Tourism Facilities
- (b) Visitor Attractions/Centres
- (c) Cultural Facilities
- (d) Wellness and Self Development Amenities and Facilities
- (e) Equestrian Facilities
- (f) Buildings and Structures that facilitate involvement in Water-Sports Activities
- (g) Buildings and Structures with Training Facilities for Adventure Activities and/or Simulated Facilities
- (h) Buildings and Structures that facilitate the development of Boat Rental and Inland Cruising
- (i) Other Outdoor Activity Centres
- (j) Certain Restaurants and Cafes

NB: This approval applies in order to indicate the classes of tourism infrastructure facilities that may be qualifying premises for the purposes of the Scheme under section 372AY of the Taxes Consolidation Act 1997. In order for tax relief to apply to capital expenditure actually incurred in relation to a particular project:

- ***approval and certification must be received from the mid-Shannon Tourism Infrastructure Board in relation to that capital expenditure, and***
- ***claimants of the tax relief involved must be in a position to show the Revenue Commissioners that all the conditions in the legislation have been satisfied.***

PART II – Guidelines on Criteria for Approval and Certification

A. Contribution to Tourism Development

S372AW - (3)(a) the contribution which the project/building or structure makes to tourism development in the mid-Shannon corridor or the qualifying mid-Shannon area,

Rationale

1. From a tourism perspective, the inner core of the country remains relatively underdeveloped. Its tourism intensity is low. The Tourism Product Audit commissioned by Fáilte Ireland during the preparation of its Tourism Product Development Strategy 2007-13 emphasised the fact that, in the "*Inner Core*" of the country, "*tourism is struggling and there is a limited product*".
2. In that context, it is considered that this scheme can help the region carve out a special niche for itself in tourism. The aim of the Scheme is to incentivise the sustainable development of tourism in the centre of Ireland with a particular reference to the Mid-Shannon Corridor.
3. The Scheme is an expression of the Government's commitment to promote sustainable development of tourism in the geographic centre of Ireland and, particularly, along the Shannon Corridor. This is consistent with the Government's overall regional policy of balanced regional development, as expressed, in particular, through the National Spatial Strategy and the National Development Plan 2007-2013.

Requirement

4. This is a Tourism Scheme. In order to qualify for relief under this Scheme, the promoters of a proposed project, in relation to which tax relief for capital expenditure is being sought, must be able to demonstrate to the Board's satisfaction that the proposed project, building or structure will enhance tourism development in the mid-Shannon corridor or the qualifying mid-Shannon area and, in particular, that the proposed investment—
 - i. will help bridge the gap in the tourism product within the area or complement existing products in the area;
 - ii. will lead to—
 - increased visitor numbers to the mid-Shannon Corridor region
 - a good mix of domestic and foreign visitors;
 - iii. is supported by an appropriate and properly resourced marketing plan;
 - iv. will not be solely or primarily focused on serving a local resident market.

B. Coherence with National Tourism Strategy

S372AW – (3)(b) Coherence with National Tourism Strategy,

Rationale

1. In order to optimise the potential sustainability, quality and effectiveness of proposed projects, they should be consistent with overall national tourism strategy as set out in the relevant tourism policy frameworks.

Requirement

2. In order to qualify for relief under this Scheme, the promoters of a proposed project, in relation to which tax relief for capital expenditure is being sought, must be able to demonstrate to the Board's satisfaction that the proposed project is in accord with relevant National Tourism Policy (setting out clearly how the proposed project will contribute to relevant policy), in particular, as laid down in –

a. *New Horizons for Irish Tourism – An Agenda for Action*

http://www.arts-sport-tourism.gov.ie/pdfs/tourism_review_report.pdf

b. *Fáilte Ireland's Tourism Product Development Strategy 2007-13*

<http://www.failteireland.ie/Developing-Enterprises/Investment-Support/ProductDevelopmentStrategy.aspx>

c. *Tourism Ireland's Brand and Marketing Strategies*

http://www.tourismireland.com/corporate/index.cfm/level/category/aID/575/Content_Key/4645/type/Category

d. *the Regional Tourism Development Strategies developed by the relevant Regional Tourism Development Boards and Shannon Development which apply to the Qualifying Area.*

FÁILTE IRELAND EAST & MIDLANDS Tourism Development Plan 2008-2010

[http://www.failteireland.ie/getdoc/e9e4ff5c-5bd5-4592-9958-b012ebae6380/61366_1-FI-regional-plan-EM-\(web\)](http://www.failteireland.ie/getdoc/e9e4ff5c-5bd5-4592-9958-b012ebae6380/61366_1-FI-regional-plan-EM-(web))

FÁILTE IRELAND WEST Regional Tourism Development Plan 2008-2010

[http://www.failteireland.ie/getdoc/b659f41e-4f52-4510-8422-7119f491d6d9/FI-Regional-Plans-WEST-\(Web-Ready\)](http://www.failteireland.ie/getdoc/b659f41e-4f52-4510-8422-7119f491d6d9/FI-Regional-Plans-WEST-(Web-Ready))

Shannon Regional Tourism Strategy Plan 2008-2010

<http://www.shannondev.ie/Tourism/TourismPublications/>

e. *Fáilte Ireland's Environmental Action Plan*

[http://www.failteireland.ie/getdoc/90fe82c6-fd23-497e-885b-72e8f37bf91f/Failte-Ireland-s-Environmental-Action-Plan-200-\(1\)](http://www.failteireland.ie/getdoc/90fe82c6-fd23-497e-885b-72e8f37bf91f/Failte-Ireland-s-Environmental-Action-Plan-200-(1))

C. Environmental Sensitivity

S372AW – (3)(c) environmental sensitivity, having particular regard to any area which is a European site (e.g. special area of conservation or special protection area), a natural heritage area, a nature reserve or a refuge for fauna,

Rationale

1. From an environmental perspective, certain conditions exist in the mid-Shannon Corridor. For example, significant areas along both shores of the river are designated as Special Areas of Conservation. The overall region includes the Shannon Callows which are important areas in terms of national and international biodiversity.
2. It is important, therefore, that any construction associated with investment under the Scheme, particularly in the areas referred to in S372AW(3)(c) is sensitive to the environmental conditions that exist.

Requirement

3. In order to qualify for relief under this Scheme, the promoters of a proposed project, in relation to which tax relief for capital expenditure is being sought, must be able to demonstrate to the Board's satisfaction that -
 - i. the project, in its purpose, design, construction and operation, takes account of environmental sensitivity, having particular regard to its impact, either on its own or in conjunction with other developments and activities, on any area which is a European site, (namely a Special Area of Conservation or Special Protection Area), a Natural Heritage area, a Nature Reserve or a Refuge for Fauna;
 - ii. where, under the provisions of Planning and/or Environmental legislation, environmental impact statements are required¹, such statements have been submitted and certified copies provided to the Board along with the application for approval;
 - iii. where, under the provisions of Planning and/or Environmental legislation, environmental consents are required², the requisite consents-
 - A. have been applied for prior to the application for approval, and
 - B. have been obtained prior to the beginning of any construction or refurbishment in relation to which relief is being claimed.

¹ For the purpose of this section, 'required' also includes any instance where a planning or environmental authority requires an applicant to prepare an environmental impact statement or other environmental statement, however so described, in respect of a development which is below the relevant threshold for mandatory assessment.

² See above footnote.

4. The Board may-

i. in respect of any specific application, seek the advice of,

or

ii. refer any application or environmental statement to

any appropriate State body for observations, and shall have regard to the views of such State bodies (including, in particular, the Department of the Environment, Heritage and Local Government) in deciding whether to grant approval in principle or to issue certification in relation to a project.

5. Evidence may be required that, in relation to a proposed project, the relevant Local Authority or other Agencies have invested or plan to invest in the necessary supporting infrastructure - especially in terms of non-national roads/access routes, signposting, visitor management, sanitary services and pollution, including effluent, litter and noise control.

6. Berthing areas, marinas, jetties, moorings and slipways developed under the Scheme must incorporate adequate pump-out facilities and should, having regard to the nature of the structure and the nature and extent of its proposed usage, have -

- On shore toilet facilities with a tertiary level of treatment;
- Facilities to manage waste from pump out boat toilets;
- Boom and treatments systems to deal with fuel spills and oil leaks;
- Landscaping to reduce visual impact and noise impacts.

D. Amenities and Facilities to be provided in each type of project

S372AW – (3)(d) the amenities and facilities to be provided in each type of project,

Rationale

The purpose of this Guideline is to indicate the requirements for the types of project that are potentially eligible for tax relief for capital expenditure incurred under the Scheme. It gives indications regarding the relevant amenities and facilities that are required to be provided.

Requirement

1. Holiday Camps

Under section 372AX of the Act, holiday camps potentially qualify in their own right under the Scheme. In order for the scheme to apply to a building or structure, it must be comprised in a development for use as a holiday camp and which will, on completion, be capable of being registered with Fáilte Ireland in the Register of Holiday Camps maintained by it under the Tourist Traffic Acts 1939-2003 and, prior to certification by the Board, will be so registered. The relevant Standards may be referenced at <http://www.failteireland.ie/Developing-Enterprises/Quality---Standards/Registration---Renewal-of-Registration-Regulations>

2. Qualifying Tourism Infrastructure Facilities – see List of Approved Facilities in Part 1

a. Education Tourism Facilities

Buildings and Structures for learning activities and "learn to" holidays open to residents and day visitors alike. Such facilities could include but are not confined to:

- English as a Foreign Language (EFL)*, Cultural Exchange, Languages
- Learning experiences in Arts (including Traditional Irish, Classic and Modern European, Non-European Traditions, Electronic, etc.),
- Learning experiences in Heritage, Nature, Ecology, Architectural Tradition, Design, Cookery, Crafts.

*Any EFL centre or school must comply with the requirements laid down by ACELS - <http://www.acels.ie/> - the Advisory Council for English Language Schools, which operates under the auspices of the Department of Education and Science, or any successor body.

b. Visitor Attractions/Centres

Includes buildings or structures built or refurbished for:

- Themed attractions/centres,
- Centres with educational-based experience and courses including those focusing on 2nd level geography and science syllabi and transition year activities,
- Centres with inter-active learning experiences,
- Interpretative Centres or Experiences open to the public which interpret a theme of international significance in the historical, cultural, landscape or environmental domain,
- Boda Borg.

c. Culture Facilities

Buildings and structures which are cultural facilities, such as Theatres, Concert Halls, Art Galleries and Centres, Museums and other Collection-based facilities, where the promoter can satisfy the Board that:

- The primary focus of such facilities will be tourism-based, and
- The facilities will operate and meet standards appropriate to their proposed cultural functions.

In relation to proposals for Museums, Galleries and other Collection-based Facilities for visitors, the Board should be provided with details of how the promoters propose to develop the facility over time to comply with the Museums Standards Programme for Ireland operated by the Heritage Council – see www.museumsireland.ie.

d. Wellness and Self-Development Amenities and Facilities

(d)(i) Wellness Amenities and Facilities

Destination Spas. Their sole purpose is to offer a comprehensive full service wellness spa experience for overnight or day guests. The property should be for the exclusive use by residential and day spa guests - there may be a small percentage of non-residential dinner guests visiting the spa restaurant which does not affect the spa experience. The facility must include:

- Dedicated Reception within the Spa area,
- Thermal/Wet area offering a variety of water-based treatments and therapies, including Sauna/Steam facilities,
- Dedicated relaxation room,
- Fitness area and exercise room,
- Spa cuisine and healthy diet programme options.

The facility must accord with Fáilte Ireland's categorisation of a Destination Spa.

Resort Spas. Defined as a holiday resort that offers a wide range of leisure activities on site as well as a dedicated full service spa facility. Resort guests may use the spa which may also be open to day guests. The facility must include:

- Dedicated Reception within the Spa area,
- Thermal/Wet area offering a variety of water-based treatments and therapies, including Sauna/Steam facilities,
- Dedicated relaxation room,
- Fitness area and exercise room,
- Spa cuisine and healthy diet programme options.

The facility must accord with Fáilte Ireland's categorisation of a Resort Spa.

Specialised Retreats :

Health Farm Category. Defined as retreats solely dedicated to offering a wide range of life enhancing health and wellness spa programmes for overnight and day guests which provides exclusive use of the facilities for Health Farm residents or day guests. The facility must include:

- Dedicated Reception within the Spa area,
- Spa treatments,
- Dedicated relaxation room,
- Fitness area and exercise room,
- Spa cuisine and healthy diet programme options.

The facility must accord with Fáilte Ireland's categorisation of a Health Farm.

Complementary Therapy Centres. Defined as retreats solely dedicated to offering a range of complementary health and wellness spa programmes for overnight and day guests. The Board should satisfy itself, by seeking appropriate documentary evidence, that the facility will be operated in accordance with standards set by a recognised professional authority in the relevant area, including, where appropriate interim or agreed qualifications have been agreed under the National Framework of Qualifications, the employment of suitably qualified staff.

(d)(ii) Self Development Facilities

Includes purpose-built centres for self development courses like yoga, retreats and meditation but not those built primarily for local residents' market. In order to enhance the experience provided, such centres should consider activity-specific design criteria.

e. Equestrian Facilities

Buildings and structures that facilitate equestrian tourism i.e. people taking part in horse-related activities outside of their usual environment (including cross-country riding, trekking, trail riding, hacking, show-jumping, horse trials, dressage, carriage driving etc). Centres intended, designed or developed primarily for a local market are not eligible. Equestrian establishments should, at a minimum, comply with the requirements of AIRE - <http://www.aire.ie/> - the Association of Irish Riding Establishments.

f. Buildings and Structures that facilitate involvement in Water-Sports Activities

Includes buildings and structures for servicing the needs of people taking part in Canoeing, Kayaking, Sailing, Wind-surfing, Water-skiing, Kite surfing. Also includes buildings and structures that are Play boat centres and buildings and structures, where relevant, that facilitate rental, touring and expedition services.

g. Buildings and Structures with Training Facilities for Adventure Activities and/or Simulated Facilities

Includes buildings and structures that facilitate teaching and training (including buildings and structures for the storage and maintenance of equipment) in water-sports activities (including those set out in the foregoing class of facilities), such as Sail training centres and diving centres. Also buildings and structures that facilitate the involvement of people in adventure activities and outdoor pursuits (e.g. climbing, abseiling, bungee-jumping and similar activities).

h. Buildings and Structures that facilitate the development of Boat Rental and Inland Cruising

This includes buildings and structures that comprise Marinas, other Mooring and Docking facilities and Slipways which are primarily used for recreation. All such facilities must have at least 30% of all berths designated as public berths and clearly signed and available as such. (Note that Revenue Commissioners precedents regard a significant amount of marina furniture as plant – see attached link <http://www.revenue.ie/services/foi/precednt/T00948.htm> and also regard jetties as industrial buildings - see <http://revenue.ie/services/foi/precednt/T00958.htm>.)

i. Other Outdoor Activity Centres

Includes buildings or structures that facilitate the involvement of people in Golf, Tennis, Cycling, Fishing, etc. (Golf courses themselves and cycleways are not approved.) Centres intended, designed or developed primarily for a local market are not eligible.

j. Certain Restaurants and Cafes

Restaurants and Cafes are eligible to the extent that they are either;

- an integral part of another qualifying tourism infrastructure facility (as set out in these Guidelines) which is situated within a qualifying area. The restaurant or cafe must be structurally adapted and used for the purposes of supplying meals to the public for consumption on the premises which purpose and use is ancillary and subsidiary to the activity carried on in the qualifying tourism infrastructure facility, or
- where the restaurant or cafe is not an integral part of another qualifying tourism infrastructure facility, it is sited within 100 metres of those parts of the navigable waters of the Shannon Navigation and the Grand Canal, as defined by law, which fall within a qualifying area. The restaurant or cafe must be structurally adapted and used for the purpose of supplying substantial meals to the public for consumption on the premises and any other activity or business carried on in the premises containing such cafe or restaurant is ancillary and subsidiary to the provision of such meals.

NB: A building or structure or part of a building or structure which is a licensed premises is specifically excluded under the Scheme. However, a restaurant may be eligible if it is one in relation to which—

- ***a wine retailer's on-licence, within the meaning of the Finance (1909-10) Act 1910, is currently in force, or***
- ***a special restaurant licence, within the meaning of the Intoxicating Liquor Act 1988, has been granted under section 9 of that Act.***

E. Nature and Extent of Allowable Accommodation

S372AW – (3)(e) the nature of, and maximum extent to which, accommodation buildings (if any) are allowable in each type of project,

Rationale

1. Some previous area-based, tax incentive schemes in the tourism sector had a strong focus on accommodation. This is not the focus of this scheme. In this regard, it should be noted that investment in Hotels, Guesthouses, Holiday Hostels and Caravan and Camping Sites and any other building and structure, which is for the purposes of the Taxes Consolidation Act 1997 deemed to be an industrial building or structure (other than a Holiday Camp) is not eligible.
2. The legislation provides for a maximum limit in relation to the extent to which capital expenditure on eligible accommodation buildings may be certified. An ‘accommodation building’ is defined in section 372AW of the Act as a building or structure or part of a building or structure which consists of accommodation facilities or which is used or is suitable for use for the provision of such facilities.
3. The Board may not, by law, grant approval or issue certification in relation to accommodation facilities comprised in a project to the extent that expenditure on such facilities exceeds a “*limit amount*” which is the lesser of:
 - i. 50% (or any lower percentage as may be specified in these guidelines) of the total amount of capital expenditure incurred in the qualifying period on the construction or refurbishment of all buildings or structures comprised in the project, and
 - ii. the amount of the capital expenditure incurred in the qualifying period on the construction or refurbishment of buildings and structures comprised in the project which are other than accommodation buildings.
4. The legislation also provides that where there are a number of accommodation buildings in a project and the aggregate of the capital expenditure incurred on their construction or refurbishment exceeds the “*limit amount*”, then the aggregate expenditure is to be reduced to an amount equivalent to the limit amount and apportioned on a just and reasonable basis over all the accommodation buildings.

Requirement

5. A percentage of total capital expenditure, lower than the percentage of 50% referred to in paragraph 3, is not at this time being specified for the purposes of the limit amount relating to accommodation buildings.

6. Accordingly, the limit amount which applies for all projects in relation to the extent to which expenditure on accommodation facilities may be certified as a qualifying part of a project is as outlined in paragraph 3 above. i.e. the lesser of:

- i. 50% of the overall capital expenditure incurred in the qualifying period on the construction or refurbishment of all buildings or structures comprised in the project, and
- ii. the amount of capital expenditure incurred in the qualifying period on the construction or refurbishment of buildings and structures comprised in the project which are non-accommodation buildings.

7. Accommodation facilities provided solely or primarily for the use of:

- i. any staff of the facility,
- ii. consultants or contractors to the facility, or
- iii. the owners of the facility and/or their families,

are not eligible.

8. The Scheme only applies to accommodation facilities where

- i. the accommodation is an integral part of the operation of a qualifying tourism infrastructure facility which is purpose-built for the carrying on of the activities being provided by the facility, and
- ii. at least 80% of the accommodation will, on an annual basis, be used solely by those engaged in the activities being provided by the facility.

9. To be eligible, any accommodation provided, including self-catering accommodation, must be on the same ground as the qualifying tourism infrastructure facility.

10. Any eligible accommodation facility provided under this Scheme, which is, by law required to be registered in a Register maintained by Fáilte Ireland under the Tourist Traffic Acts 1939-2003 must, at a minimum, comply with the standards laid down for such registered accommodation. Where draft Regulations governing particular classes of registered accommodation have been prepared by Fáilte Ireland and made available to the relevant sector for consultation, the Board may have regard to such draft Regulations.

11. Any accommodation facility provided under this Scheme, which is capable of being listed or approved by Fáilte Ireland under a voluntary Scheme, must, at a minimum, comply with the standards laid down for such listed or approved accommodation. Where draft criteria governing particular classes of listed or approved accommodation have been prepared by Fáilte Ireland and made available to the relevant sector for consultation, the Board may have regard to such draft criteria.

12. Where, prior to the commencement of the Scheme, Fáilte Ireland had been involved in the listing or approving of a certain class or classes of accommodation and has now ceased to be so involved, the Board may have regard to the standards which had been laid down for such listed or approved accommodation immediately before the cessation of Fáilte Ireland's involvement and also to such arrangements as may have been put in place for such class or classes of accommodation after the cessation of Fáilte Ireland's approval or listing function.

13. Where accommodation buildings are comprised in a project, the following details should be provided:

- i. the number of accommodation and non-accommodation buildings in the project together with a description of each to include floor area etc.;
- ii. the total capital expenditure incurred on the project and a breakdown of such expenditure as between accommodation and non-accommodation buildings;
- iii. the *limit amount* which applies and how such amount was calculated;
- iv. where relevant, the amount of capital expenditure apportioned to each accommodation building in accordance with section 372AW(4) of the Act and an explanation of the basis on which such apportionment was made.

In this regard, please refer to **paragraphs H4** and **H5** also.

F. Specific Standards of Design and Construction

S372AW – (3)(f) specific standards of design and construction in relation to buildings and structures which may qualify for relief under this Chapter,

Rationale

1. It is intended that projects undertaken under this scheme will be of such a nature in terms of design and construction as to be sympathetic, both aesthetically and ecologically, to the surrounding environment.
2. Projects should have regard to standards and sources of best practice in the area of sustainable design. **See Appendix 6.**

Requirement

3. In order to qualify for relief under this Scheme, the promoters of a proposed project must be able to demonstrate to the Board's satisfaction that the proposed buildings and structures, in relation to which relief for capital expenditure is being sought, in their design, construction and fit-out, satisfy the standards specified by the appropriate statutory authorities i.e. planning requirements and building regulations.
4. Buildings/structures eligible under the scheme should:
 - Have a Waste Management Plan for its development and operation, which shall inter alia include a provision for the management of all construction waste on site, and for the recovery or disposal of this waste to authorised facilities. Where possible, the use of excavated material on site shall be reused for landscaping, land restoration etc.
 - The Project must have suitable access and the necessary facilities (including bathrooms) for people with disabilities or impaired mobility.

G. Planning Matters

S372AW – (3)(g) relevant planning matters, including the need for consistency with the requirements of a development plan or a local area plan, within the meaning of those terms in the Planning and Development Act 2000,

Rationale

1. Developments under the Scheme must comply with proper planning.

Requirement

2. In order to qualify for relief under this Scheme, the promoters of a proposed project, in relation to which relief for capital expenditure is being sought, must provide documentary evidence to the Board that:

- i. the proposed project is consistent with the requirements of the County Development Plan, and, where relevant, the Local Area Plan, governing the area in which the proposed project is to be located,
- ii. full Planning Permission has been sought at the time of seeking approval in principle, and
- iii. prior to the beginning of any construction or refurbishment in relation to which relief is being claimed, full Planning Permission has been granted for the proposed building or structure, which, in its terms and conditions, is consistent with these Guidelines and the Board's approval in principle.

3. In considering application for approval in principle and certification, the Board shall have regard to best Planning Authority practice in the qualifying area in terms of Policy for Sustainable Tourism, and in terms of tourism appraisal in Development Standards and Controls.

H. Details and Information to be Provided in Applications for Approval and Certification

S372AW - (3)(h) the details and information required to be provided in an application for approval or certification in accordance with section 372AW(2) and, as the case may be, an application for certification in accordance with section 372AX(1)(d) or 372AY(1)(g),

1. Generally, application for approval or certification must provide sufficient information for the Board to determine whether the proposed or completed infrastructure investment meets the eligibility criteria and for the Board to exercise its functions in accordance with the legislation and these Guidelines.
2. The legislation and these Guidelines set out the information required at each stage.
3. For approval in principle and certification under section 372AW, information should be supplied on all the criteria set out in paragraphs (a) to (g) and (i) of section 372AW(3) - as set out in these Guidelines.
4. Applications for approval or certification must also provide information for the Board to determine whether a proposal complies with Section 372AW(4)(a) i.e. on the capital expenditure incurred or proposed to be incurred on construction or refurbishment of accommodation buildings, and on all other buildings.
5. Information must also be provided on the reduction and apportionment of aggregate capital expenditure where there is more than one accommodation building and the aggregate capital expenditure is more than the limit set in section 372AW(4)(a).
6. Information may also be required in relation to State Aid requirements as set out in section J of these Guidelines – “Other Matters - Compliance with State Aid Rules”

I. Provision of Data in Relation to Investments in Projects

S372AW - (3)(i) matters relating to the provision of information in accordance with sections 372AX(1)(c) and 372AY(1)(f)

1. For certification under sections 372AY and 372AZ, applicants must provide the following information to the Board for onward transmission to the Ministers :
 - (i) the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the building or structure, and
 - (ii) in the case of an accommodation building (where subsection (4) of Section 372AW applies) the amount of such expenditure which is eligible for certification;
 - (iii) the number of the investors that are investing in the building or structure;
 - (iv) the nature of the investors that are investing in the building or structure indicating whether they are individuals, corporate or otherwise;
 - (v) the amount to be invested by each investor;
 - (vi) the nature of the legal, administrative and financial structures which are being put in place to facilitate the investment in the building or structure; In this regard, details of the following should be provided:
 - all corporate and unincorporated bodies including partnerships, co-ownerships, consortiums or other groupings involved in the development of the project, including the purpose of each;
 - the financing and security arrangements used;
 - nature of structures/contracts used to transfer ownership of the property involved including nature of agreements regarding transfer of ownership after the tax life ends.

The various structures proposed should also be presented in diagram format.
2. The date of first use or, as the case may be, the first use after refurbishment should also be confirmed together with appropriate evidence of such first use.

J. Other Matters - Compliance with State Aid Rules.

Matters which the Minister for Arts, Sports and Tourism in consultation with the Minister for Finance considers are required to be included.

1. Before approval or certification by the Board may be given, information is required to ensure that any tax relief for capital expenditure is consistent with State Aid provisions.
2. For the purposes of these Guidelines, the beneficiary of the aid is the entity that will be entitled to claim the capital allowances provided under the Scheme, and depending on the investment structures put in place, this entity could be a sole proprietor, a public or private limited company, a partnership of individuals and/or companies or a consortium of investors.

The State Aid Annex ([Appendix 4](#)) to these Guidelines sets out these requirements in more detail, including sample forms for completion as part of any application for approval or certification. The following is a summary of the requirements and procedures that should be followed by applicants for approval and certification.

Large Projects that are subject to Individual Notification to the European Commission.

Criteria to be met for Approval and Certification

3. Large Projects that are subject to the individual notification requirements of the Guidelines on National Regional Aid 2007-2013 must have received State Aid approval from the European Commission of the potential capital allowances involved – see [Appendix 4](#) which sets out when notification is required.

Requirement

4. The Board cannot provide approval in principle or issue certification in relation to a project unless the applicant provides a letter from the Department of Finance confirming that the European Commission has formally approved the aid relating to the project concerned.

Large Projects that are not subject to Individual Notification to the European Commission.

Criteria to be met for Approval and Certification

5. Large Projects that are not subject to the individual notification requirements of the Guidelines on National Regional Aid 2007-2013 must provide certain information to the Board for transmission to the European Commission through the Department of Finance.

Requirement

6. The Board cannot grant approval or issue certification unless the applicant provides information to the Board in respect of the project in the format laid down in Annex III to the European Commission Guidelines on National Regional Aid 2007-2013 – see link below.

http://eurlex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf

Projects located in Mid-West Sub-Region (Clare and North Tipperary) where work commences on or after 1 January 2009.

7. The European Commission National Regional Aid Map 2007-2013 for Ireland does not permit State aid after 1 January 2009 for large enterprises in the Mid-West Sub-Region. Also, while State aid is permitted for small and medium enterprises in this Sub-Region after 1 January 2009, State aid is not permitted for investment projects with eligible expenditure³ exceeding €25 million.

Criteria to be met for Approval and Certification

8. Applicants seeking approval or certification in respect of projects where construction or refurbishment work commences on or after 1 January 2009 must provide information confirming that the beneficiaries of the aid provided under the scheme are micro, small or medium enterprises and that the level of eligible expenditure on the project does not exceed €25 million.

Requirement

9. The Board cannot grant approval in principle or issue certification unless the applicant provides:
 - (I) A declaration to the Board, in the format set out in [Annex A](#) to Appendix 4, that the beneficiary(ies) is (are) micro, small or medium enterprises,
 - (II) A declaration to the Board, in the format set out in [Annex A](#) to Appendix 4, that the amount of eligible expenditure does not exceed €25 million, and
 - (III) A letter from an auditor, in the format set out in [Annex B](#) to Appendix 4, giving an opinion regarding the accuracy of the information provided regarding the size classification of the beneficiary (ies) and the amount of eligible expenditure.

³ For the purposes of these Guidelines the term eligible expenditure can be taken as also meaning and equating to the qualifying construction or refurbishment expenditure incurred on a project.

Declaration and Reporting Requirements for all Projects

Criteria to be met for Approval and Certification

10. Applicants must declare that the financial and other information on which the application is based is true and correct in all respects and provide an undertaking to the Board that they will provide such information in respect of the project as may be necessary to enable compliance with the reporting requirements of certain European Commission State Aid Guidelines.

Requirement

11. The Board cannot grant approval in principle or issue certification unless the applicant enterprise completes a declaration to the Board, in the format set out in [Annex C](#) to Appendix 4, that the financial and other information on which the application is based is true and correct in all respects, that the applicant enterprise is not subject to an outstanding recovery order following a previous decision of the Commission of the European Communities declaring aid in favour of that undertaking to be illegal and incompatible with the common market and undertakes to provide such information in respect of the project as may be necessary to enable compliance with the requirements of:
 - The Community Guidelines on Regional Aid for 2007-2013, (OJ C 54, 4.3 2006, p. 13)
 - the “Community guidelines on State aid for rescuing and restructuring firms in difficulty” (OJ No. C288, 9 October 1999, page 2, and OJ No. C244 of 1 October 2004, page 2),
 - any other European Communities Regulation or Directive under the European Communities Treaty governing the granting of State Aid in specific sectors.

PART III – Miscellaneous Matters

Administration

1. Decisions on Approval and Certification will be made by the Board.
2. As the Scheme is a tax scheme, the Revenue Commissioners shall retain overall responsibility in relation to granting or refusal of tax relief.

Ethics

The Code of Ethics governing State-sponsored Bodies shall apply to the operation of the Board and the Administration of the Scheme.

Report to the Minister

The Board shall prepare and submit to the Minister for Arts, Sports and Tourism and the Minister for Finance an annual report on the administration of the Scheme.

Appendix 1

Section 29 Finance Act 2007

Mid-Shannon
corridor
tourism
infrastructure
investment
scheme.

29.__(1) The Principal Act is amended—

(a) in Part 10, by inserting the following after Chapter 11:

“CHAPTER 12

Mid-Shannon Corridor Tourism Infrastructure Investment Scheme

Interpretation,
applications
for approval
and
certification.

372AW.—(1) In this Chapter—

‘accommodation building’, in relation to a project, means a building or structure or part of a building or structure which consists of accommodation facilities or which is to be used or is suitable for use for the provision of such facilities;

‘market value’, in relation to a building or structure, means the price which the unencumbered fee simple of the building or structure would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building or structure, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building or structure is constructed;

‘mid-Shannon corridor’ means the corridor of land comprising all qualifying mid-Shannon areas;

‘mid-Shannon Tourism Infrastructure Board’ means a board consisting of not more than 5 persons selected for the purposes of this Chapter by the Minister in consultation with the Minister for Finance;

‘Minister’ means the Minister for Arts, Sport and Tourism;

‘project’ means the construction or refurbishment of buildings and structures

comprising—

(a) a holiday camp of the type referred to in section 372AX(1)(b), or

(b) one or more qualifying tourism infrastructure facilities,

the site or sites of which is or are wholly within a qualifying mid-Shannon area;

‘property developer’ means a person carrying on a trade which consists wholly or mainly of the construction or refurbishment of buildings or structures with a view to their sale;

‘qualifying mid-Shannon area’ means any area described in Schedule 8B;

‘qualifying period’ means a period of 3 years commencing on the date on which this Chapter comes into effect;

‘qualifying tourism infrastructure facilities’ means such class or classes of facilities, comprising of buildings and structures only, as may be approved for the purposes of this Chapter by the Minister, in consultation with the Minister for Finance, and published in the relevant guidelines;

‘refurbishment’, in relation to a building or structure, means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of—

(a) the repair or restoration, or

(b) maintenance in the nature of repair or restoration,

of the building or structure;

‘relevant guidelines’ mean guidelines issued in accordance with subsection (3) of this section or any guidelines issued in accordance with that subsection which amend or replace those guidelines.

(2)(a) Notwithstanding sections 372AX and 372AY, but subject to the subsequent provisions of this section and to section 372AZ, no relief from

income tax or corporation tax, as the case may be, may be granted by virtue of this Chapter in respect of capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure unless the mid-Shannon Tourism Infrastructure Board has—

(i) prior to such expenditure being incurred, but subject to paragraph (b), granted approval in principle in relation to the construction or refurbishment of the building or structure, and

(ii) after the expenditure is incurred, certified in writing that the construction or refurbishment which was carried out is in accordance with the criteria specified in the relevant guidelines having regard to any relevant conditions and requirements imposed by the Board in the approval granted under subparagraph (i).

(b) Approval in principle shall not be granted in accordance with paragraph (a)(i) unless an application for such approval, in which the information and details as may be required in accordance with subsection (3)(h) are included, is received by the mid-Shannon Tourism Infrastructure Board within a period of one year commencing on the date on which this Chapter comes into effect.

(3) Subject to subsection (4), for the purposes of approval and certification in accordance with subsection (2) and, as the case may be, certification in accordance with section 372AX(1)(d) or 372AY(1)(g) the Minister shall, in consultation with the Minister for Finance, issue guidelines to which the mid-Shannon Tourism Infrastructure Board shall have regard in deciding whether to grant approval in principle or to issue certification in relation to any building or structure and which guidelines may include criteria in relation to all or any one or more of the following:

(a) the nature and extent of the contribution which the project, in which the building or structure is comprised, makes to tourism development in the mid-Shannon corridor or the qualifying mid-Shannon area,

(b) coherence with national tourism strategy,

- (c) environmental sensitivity, having particular regard to any area which is—
 - (i) a European site within the meaning of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997), or
 - (ii) a natural heritage area, a nature reserve or a refuge for fauna for the purposes of the Wildlife Acts 1976 and 2000,
- (d) the amenities and facilities required to be provided in each type of project,
- (e) the nature of and maximum extent to which accommodation buildings (if any) are allowable in each type of project,
- (f) specific standards of design and construction in relation to buildings and structures which may qualify for relief under this Chapter,
- (g) relevant planning matters, including the need for consistency with the requirements of a development plan or a local area plan within the meaning of those terms in the Planning and Development Act 2000,
- (h) the details and information required to be provided in an application for approval or certification in accordance with section 372AW(2) and, as the case may be, an application for certification in accordance with section 372AX(1)(d) or 372AY(1)(g), and
- (i) matters relating to the provision of information in accordance with sections 372AX(1)(c) and 372AY(1)(f),

together with such other matters as the Minister, in consultation with the Minister for Finance, may consider are required to be included.

- (4)(a) Subject to paragraphs (b) and (c), approval and certification in accordance with subsection (2) shall not be granted or issued by the mid-Shannon Tourism Infrastructure Board in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of one or more than one accommodation building comprised in a project to the extent that such expenditure exceeds (or, where an application for approval is

involved, is projected to exceed) an amount (referred to in this subsection as the ‘limit amount’) which is equal to the lesser of —

- (i) 50 per cent, or such lower percentage as may be specified (in accordance with subsection (3)(e)) in the relevant guidelines for the type of project involved, of the total amount of the capital expenditure incurred in the qualifying period on the construction or refurbishment of all the buildings or structures comprised in the project, and
- (ii) the amount of the capital expenditure incurred in the qualifying period on the construction or refurbishment of buildings and structures comprised in the project which are other than accommodation buildings.

(b) In any case where—

- (i) there is more than one accommodation building comprised in a project, and
- (ii) the aggregate of the amounts of capital expenditure incurred in the qualifying period on the construction or refurbishment of each accommodation building exceeds the limit amount,

then that aggregate shall, for the purposes of an application for approval or for certification in accordance with subsection (2), be reduced to an amount equivalent to the limit amount and that equivalent amount shall be apportioned on a just and reasonable basis between all the accommodation buildings comprised in the project.

(c) Subject to the criteria in the relevant guidelines being satisfied, the mid-Shannon Tourism Infrastructure Board may grant approval or issue certification in accordance with subsection (2) in relation to an accommodation building—

- (i) where there is one accommodation building comprised in a project, only in relation to the amount of the capital expenditure incurred on

the construction or refurbishment of the building in the qualifying period as does not exceed the limit amount, and

- (ii) where paragraph (b) applies, provided that it is satisfied with the basis on which the apportionment has been made, only in relation to that part of the equivalent amount (as referred to in paragraph (b)) which is attributable to the building following the apportionment made in accordance with that paragraph.

Accelerated capital allowances in relation to the construction or refurbishment of certain registered holiday camps.

372AX.—(1) In this section ‘building or structure to which this section applies’ means a building or structure—

- (a) the site of which is wholly within a qualifying mid-Shannon area,
- (b) which is in use as a holiday camp—

- (i) registered in the register of holiday camps kept under the Tourist Traffic Acts 1939 to 2003, and

- (ii) which meets the requirements of the relevant guidelines in relation to the types of amenities and facilities that need to be provided in a holiday camp for the purposes of this Chapter,

- (c) in relation to which the following data has been provided to the mid-Shannon Tourism Infrastructure Board for onward transmission to the Minister and the Minister for Finance:

- (i) (I) the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the building or structure, and

- (II) where subsection (4) of section 372AW applies in relation to an accommodation building, the amount of such expenditure which is eligible for certification in accordance with that section,

- (ii) the number and nature of the investors that are investing in the building or structure,

(iii) the amount to be invested by each investor, and

(iv) the nature of the structures which are being put in place to facilitate the investment in the building or structure,

together with such other information as may be specified in the relevant guidelines as being of assistance to the Minister for Finance in evaluating the costs, including but not limited to exchequer costs, and the benefits arising from the operation of tax relief for buildings and structures under this Chapter, and

(d) in respect of which the mid-Shannon Tourism Infrastructure Board gives a certificate in writing after the building or structure is first used or, where capital expenditure is incurred on the refurbishment of a building or structure, first used subsequent to the incurring of that expenditure—

(i) stating that it is satisfied that the conditions in paragraphs (a), (b) and (c) have been met,

(ii) confirming the date of first use or, as the case may be, first use after refurbishment, and

(iii) which includes certification in accordance with section 372AW(2)(a)(ii) or a copy of such certification (if previously issued).

(2) Subject to subsections (3) and (4) and to section 372AZ, Chapter 1 of Part 9 applies in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(a) in section 272—

(i) in subsection (3), the following were substituted for paragraph (c):

‘(c) in relation to a building or structure to which section 372AX applies, 15 per cent of the capital expenditure referred to in subsection (2) of that section,’

and

(ii) in subsection (4), the following were substituted for paragraph (c):

‘(c) in relation to a building or structure to which section 372AX applies, 15 years beginning with the time when the building or structure was first used or, where capital expenditure on the refurbishment of the building or structure is incurred, 15 years beginning with the time when the building or structure was first used subsequent to the incurring of that expenditure,’

and

(b) in section 274(1)(b), the following were substituted for subparagraph (iii):

‘(iii) in relation to a building or structure to which section 372AX applies, 15 years after the building or structure was first used or, where capital expenditure on the refurbishment of the building or structure is incurred, 15 years after the building or structure was first used subsequent to the incurring of that expenditure.’

(3) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure to which this section applies, subsection (2) shall apply only if the total amount of the capital expenditure so incurred is not less than an amount equal to 20 per cent of the market value of the building or structure immediately before that expenditure was incurred.

(4) In determining for the purposes of this Chapter whether and to what extent capital expenditure incurred on the construction or refurbishment of a building or structure to which this section applies is incurred or not incurred in the qualifying period, such an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, refurbishment of the building or structure actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

Capital allowances in relation to the construction or refurbishment of certain tourism infrastructure facilities.

372AY.—(1) In this section ‘qualifying premises’ means a building or structure —

- (a) the site of which is wholly within a qualifying mid-Shannon area,
- (b) which apart from this section is not an industrial building or structure within the meaning of section 268 or deemed to be such a building or structure,
- (c) which is in use for the purposes of the operation of one or more qualifying tourism infrastructure facilities,
- (d) (i) subject to subparagraph (ii), which does not include a building or structure or part of a building or structure which is a licensed premises (as defined in section 2 of the Intoxicating Liquor Act 1988), but
 - (ii) which may include a building or structure or part of a building or structure which is a restaurant (as defined in section 6 of the Intoxicating Liquor Act 1988) in relation to which—
 - (I) a wine retailer’s on-licence, within the meaning of the Finance (1909-10) Act 1910, is currently in force, or
 - (II) a special restaurant licence, within the meaning of the Intoxicating Liquor Act 1988, has been granted under section 9 of that Act,
- (e) which does not include a building or structure or part of a building or structure in use as a facility in which gambling, gaming or wagering of any sort is carried on for valuable consideration or which supports the carrying on of such activities,
- (f) in relation to which the following data has been provided to the mid-Shannon Tourism Infrastructure Board for onward transmission to the Minister and the Minister for Finance:
 - (i) (I) the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the

building or structure, and

(II) where subsection (4) of section 372AW applies in relation to an accommodation building, the amount of such expenditure which is eligible for certification in accordance with that section,

(ii) the number and nature of the investors that are investing in the building or structure,

(iii) the amount to be invested by each investor, and

(iv) the nature of the structures which are being put in place to facilitate the investment in the building or structure,

together with such other information as may be specified in the relevant guidelines as being of assistance to the Minister for Finance in evaluating the costs, including but not limited to exchequer costs, and the benefits arising from the operation of tax relief for buildings and structures under this Chapter, and

(g) in respect of which the mid-Shannon Tourism Infrastructure Board gives a certificate in writing after the building or structure is first used or, where capital expenditure is incurred on the refurbishment of the building or structure, first used subsequent to the incurring of that expenditure—

(i) stating that it is satisfied that the conditions in paragraphs (a), (b), (c), (d), (e) and (f) have been met,

(ii) confirming the date of first use or, as the case may be, first use after refurbishment, and

(iii) which includes certification in accordance with section 372AW(2)(a)(ii) or a copy of such certification (if previously issued).

(2)(a) Subject to paragraph (b), subsections (3) to (5) and section 372AZ, the provisions of the Tax Acts relating to the making of allowances and charges in respect of capital expenditure incurred on the construction or

refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply—

(i) as if the qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter 1 of Part 9 by reason of its use for a purpose specified in section 268(1)(a), and

(ii) where any activity carried on in the qualifying premises is not a trade, as if (for the purposes only of the making of allowances and charges by virtue of subparagraph (i)), it were a trade.

(b) an allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises only in so far as that expenditure is incurred in the qualifying period.

(3) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, subsection (2) shall apply only if the total amount of the capital expenditure so incurred is not less than an amount equal to 20 per cent of the market value of the building or structure immediately before that expenditure was incurred.

(4) For the purposes of the application, by subsection (2), of Chapter 1 of Part 9 in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises—

(a) section 272 shall apply as if —

(i) in subsection (3), the following were substituted for paragraph (a):

‘(a) in relation to a building or structure to which section 372AY applies, 15 per cent of the capital expenditure referred to in subsection (2)(b) of that section,’

and

(ii) in subsection (4), the following were substituted for paragraph (a):

‘(a) in relation to a building or structure to which section 372AY applies, 15 years beginning with the time when the building or structure was first used or, where capital expenditure on the refurbishment of the building or structure is incurred, 15 years beginning with the time when the building or structure was first used subsequent to the incurring of that expenditure,’

and

(b) section 274(1)(b) shall apply as if the following were substituted for subparagraph (i):

‘(i) in relation to a building or structure to which section 372AY applies, 15 years after the building or structure was first used or, where capital expenditure on the refurbishment of the building or structure is incurred, 15 years after the building or structure was first used subsequent to the incurring of that expenditure,’.

(5) In determining for the purposes of this Chapter whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, such an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

Restrictions on relief, non-application of relief in certain cases and provision against double relief.

372AZ.— (1) Notwithstanding any other provision of this Chapter, sections 372AX and 372AY shall not apply in respect of expenditure incurred on the construction or refurbishment of a building or structure—

(a) (i) where a property developer is entitled to the relevant interest, within the

meaning of section 269, in relation to that expenditure, and

(ii) either the person referred to in subparagraph (i) or a person connected (within the meaning of section 10) with that person incurred the expenditure on the construction or refurbishment of the building or structure concerned,

(b) where any part of such expenditure has been or is to be met, directly or indirectly, by grant assistance or any other assistance which is granted by or through the State, any board established by statute, any public or local authority or any other agency of the State,

(c) unless the potential capital allowances in relation to the building or structure concerned and the project in which it is comprised comply with the requirements of Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the European Communities Treaty to national regional investment aid⁴.

(2) Where relief is given by virtue of section 372AX or 372AY in relation to capital expenditure incurred on the construction or refurbishment of a building or structure, relief shall not be given in respect of that expenditure under any other provision of the Tax Acts.

(3) Where—

(a) capital expenditure is incurred in the qualifying period on the construction or refurbishment of an accommodation building, and

(b) subsection (4) of section 372AW applies so as to reduce the amount of such expenditure which is eligible for certification in accordance with that section by the mid-Shannon Tourism Infrastructure Board,

then the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the accommodation building which is to be treated as incurred—

⁴ OJ No. L 302 of 1.11.2006 p.29

(i) for the purposes of the making of allowances and charges under Chapter 1 of Part 9, by virtue of section 372AX or 372AY, (including the making of balancing allowances and charges under section 274 and the calculation of the residue of expenditure under section 277), but

(ii) prior to the operation of subsection (4),

shall be reduced to the amount of the capital expenditure which was eligible for certification by the mid-Shannon Tourism Infrastructure Board in relation to that building.

(4) Where relief under Chapter 1 of Part 9 is, by virtue of section 372AX or 372AY, to apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure the site of which is wholly within a qualifying mid-Shannon area described in either Part 1 or Part 5 of Schedule 8B (as inserted by the Finance Act 2007), then the amount of that capital expenditure which is to be treated as incurred for the purposes of the making of allowances and charges under that Chapter (including the making of balancing allowances and charges under section 274 and the calculation of the residue of expenditure under section 277) shall be reduced to 80 per cent of the amount which, apart from this subsection, would otherwise be so treated.

(5)(a) For the purposes of the making of allowances and charges under Chapter 1 of Part 9 as is referred to in subsections (3) and (4), references in the Tax Acts, other than those in section 279 as applied by paragraph (b), to expenditure incurred on the construction or, as the case may be, refurbishment of a building or structure shall be construed as a reference to such expenditure as reduced in accordance with either or both of those subsections.

(b) Section 279 shall apply in relation to a building or structure to which either or both subsections (3) and (4) apply as if—

(i) in subsection (1) of that section, the following were substituted for the definition of ‘the net price paid’:

‘“the net price paid” means the amount represented by A in the equation—

$$A = B \times \frac{C}{D + E}$$

where—

B is the amount paid by a person on the purchase of the relevant interest in the building or structure,

C is the amount of the expenditure actually incurred on the construction of the building or structure as reduced in accordance with either or both subsections (3) and (4) of section 372AZ,

D is the amount of the expenditure actually incurred on the construction of the building or structure, and

E is the amount of any expenditure actually incurred which is expenditure for the purposes of paragraph (a), (b) or (c) of section 270(2).’,

(ii) in subsection (2) of that section, the following were substituted for paragraph (b):

‘(b) the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure equal to that expenditure as reduced in accordance with either or both subsections (3) and (4) of section 372AZ or to the net price paid (within the meaning of that term as applied by section 372AZ(5)) by such person for that interest, whichever is the less;’,

and

(iii) in subsection (3) of that section, the reference to ‘that expenditure or to’ were a reference to ‘that expenditure as reduced in accordance with

were a reference to ‘that expenditure as reduced in accordance with either or both subsections (3) and (4) of section 372AZ or to’.’,

(b) by inserting the following after Schedule 8A

“SCHEDULE 8B

Section 372AW.

DESCRIPTION OF QUALIFYING MID-SHANNON AREAS

PART 1

Description of qualifying mid-Shannon areas of Clare

The District Electoral Divisions of Ayle, Ballynahinch, Boherglass, Caherhurley, Cappaghbaun, Carrowbaun, Cloonusker, Coolreagh, Corlea, Derrynagittagh, Drummaan, Fahymore, Feakle, Inishcaltra North, Inishcaltra South, Killaloe, Killokennedy, Killuran, Kilseily, Lackareagh, Loughlea, Mountshannon, O’Briensbridge, Ogonnelloe and Scarriff.

PART 2

Description of qualifying mid-Shannon areas of Galway

The District Electoral Divisions of Abbeygormacan, Abbeyville, Balinasloe Rural, Ballinasloe Urban, Ballyglass, Ballynagar, Bracklagh, Clonfert, Clontuskert, Coos, Derrew, Drumkeary, Drummin, Eyrecourt, Kellysgrove, Killimor (Portumna rural area), Kilmacshane, Kilmalinoge, Kilquain, Kiltormer, Kylemore, Laurencetown, Leitrim, Lismanny, Loughatorick, Marblehill, Meelick, Moat, Pallas, Portumna, Tiranascragh, Tynagh and Woodford.

PART 3

Description of qualifying mid-Shannon areas of Offaly

The District Electoral Divisions of Ballycumber, Banagher, Birr Rural, Birr Urban, Broughal, Cloghan, Clonmacnoise, Derryad, Doon, Drumcullen, Eglisk, Ferbane, Gallen, Hinds, Hunston, Killyon, Lumcloon, Lusmagh, Mounterin, Moyclare, Shannonbridge, Shannonharbour, Srah and Tinamuck.

PART 4

Description of qualifying mid-Shannon areas of Roscommon

The District Electoral Divisions of Athleague East, Athleague West, Athlone West Rural, Ballydangan, Ballynamona, Castlesampson, Caltragh, Cams, Carnagh, Carrowreagh, Cloonburren, Cloonown, Crannagh, Creagh, Culliagh, Drumlosh, Dysart, Fuerty, Kilcar, Kiltoom, Lackan, Lecarrow, Lismaha, Moore, Mote, Rockhill, Roscommon Rural, Roscommon Urban, Scregg, Taghmaconnell, Thomastown and Turrock.

PART 5

Description of qualifying mid-Shannon areas of Tipperary

The District Electoral Divisions of Aglishcloghane, Ardcroney, Ballina, Ballingarry (in Borrisokane rural area), Ballygibbon, Ballylusky, Ballymackey, Ballynaclogh, Birdhill, Borrisokane, Burgesbeg, Carrig, Carrigatogher, Castletown, Cloghprior, Clohaskin, Cloughjordan, Derrycastle, Finnoe, Graigue (in Borrisokane rural area), Greenhall, Kilbarron, Kilcomenty, Killoscully, Kilkeary, Kilmore, Kilnarath, Knigh, Lackagh, Lorrha East, Lorrha West, Mertonhall, Monsea, Nenagh East Urban, Nenagh Rural, Nenagh West Urban, Newport, Rathcabban, Redwood, Riverstown, Terryglass, Uskane and Youghalarra.

PART 6

Description of qualifying mid-Shannon areas of Westmeath

The District Electoral Divisions of Athlone East Rural, Athlone East Urban, Athlone West Urban, Ardnagragh, Auburn, Ballymore, Bellanalack, Carn, Castledaly, Doonis, Drumraney, Glassan, Killinure, Moate, Mount Temple, Moydrum, Muckanagh, Noughaval, Templepatrick, Tubbrit, Umma and Winetown.”,

and

(c) in Schedule 25B by inserting the following after matter set out opposite reference number 36:

“		
36A.	Section 372AX (accelerated capital allowances in relation to the construction or refurbishment of certain registered holiday camps).	<p>An amount equal to—</p> <p>(a) the aggregate amount of allowances (including balancing allowances) made to the individual for the tax year under Chapter 1 of Part 9 as that Chapter is applied by section 372AX, including any such allowances or part of any such allowances made to the individual for a previous tax year and carried forward from that previous year in accordance with Part 9, or</p> <p>(b) where full effect has not been given in respect of that aggregate for that tax year, the part of that aggregate to which full effect has been given for that tax year in accordance with section 278 and section 304 or 305, as the case may be, or any of those sections as applied or modified by any other provision of the Tax Acts.</p>
36B.	Section 372AY (capital allowance in relation to the construction or refurbishment of certain tourism infrastructure facilities).	<p>An amount equal to—</p> <p>(a) the aggregate amount of allowances (including balancing allowances) made to the individual for the tax year under Chapter 1 of Part 9 as that Chapter is applied by section 372AY, including any such allowances or part of any such allowances made to the individual for a previous tax year and carried forward from that previous year in accordance with Part 9, or</p> <p>(b) where full effect has not been given in respect of that aggregate for that tax year, the part of that aggregate to which full effect has been given for that tax year in accordance with section 278 and section 304 or 305, as the case may be, or any of those sections as applied or modified by any other provision of the Tax Acts.</p>

”.

(2) This section comes into operation on such day or days as the Minister for Finance may by order appoint and different days may be appointed for different purposes or different provisions.

Appendix 2

Section 27 Finance Act 2008

Mid-Shannon
corridor tourism
infrastructure
investment
scheme.

27 .— Section 372AZ(1) of the Principal Act is amended by substituting the following for paragraph (c):

“(c) unless the potential capital allowances in relation to the building or structure concerned and the project in which it is comprised comply with—

(i) the requirements of the Guidelines on National Regional Aid for 2007-2013 prepared by the Commission of the European Communities and issued on 4 March 2006⁵, and

(ii) the National Regional Aid Map for Ireland for the period 1 January 2007 to 31 December 2013 which was approved by the said Commission on 24 October 2006⁶,

or

(d) where the person who is entitled to the relevant interest, within the meaning of section 269, in relation to that expenditure is subject to an outstanding recovery order following a previous decision of the Commission of the European Communities declaring aid in favour of that person to be illegal and incompatible with the common market.”.

⁵ OJ No. C 54 of 4 March 2006, p.13

⁶ OJ No. C292 of 1 December 2006, p.11

Appendix 3

Commencement Order

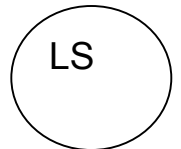
S.I. No. 159 of 2008

FINANCE ACT 2007 (COMMENCEMENT OF SECTION 29) ORDER 2008

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 29(2) of the Finance Act 2007 (No. 11 of 2007) hereby order as follows:

1. This Order may be cited as the Finance Act 2007 (Commencement of Section 29) Order 2008.
2. The 1st day of June 2008 is appointed as the day on which section 29 of the Finance Act 2007 (No. 11 of 2007) comes into operation.

GIVEN under my Official Seal,
26 May 2008



BRIAN LENIHAN,
Minister for Finance.

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 30th May, 2008.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

This Order appoints the 1 June 2008 as the date of the coming into operation of section 29 of the Finance Act 2007 which provides for the Mid-Shannon Corridor Tourism Infrastructure Investment Scheme.

Appendix 4

State Aid Notes and Sample Forms

1. Introduction.

This Scheme of tax relief was approved by the European Commission (case no. N 751 / 2007) under the Commission's Guidelines on Regional Aid for 2007-2013, (OJ C 54, 4.3 2006, p. 13) and the National Regional Aid Map 2007-2013 which was approved by the Commission in October 2006.

Arising out of the terms of the Commission approval and the limits on regional aid set out in the Regional Aid Map, there are restrictions on the level of aid permitted for certain large projects in all the areas designated under the Scheme. In certain cases such projects may also have to be notified individually to the European Commission for State aid approval. In addition, the availability of the reliefs provided under the Scheme for projects, where construction commences from 1 January 2009 in the mid-West sub-Region must be restricted to small and medium enterprises and the level of qualifying expenditure on such projects cannot exceed €25 million.

The following sections set out the position in further detail for large projects in all the areas designated under the Scheme and also sets out a supplementary certification/declaration procedure which is required for projects located in the mid-West sub-Region.

The Mid-Shannon Corridor Tourism Infrastructure Investment Scheme qualifying areas are included in two separate Regions eligible for aid under the Regional Aid Map 2007-2013. The Regions are the:

- Border Midlands and West Region which includes the scheme qualifying areas in Counties Galway, Offaly, Roscommon and Westmeath
- Mid West sub-Region which includes the scheme qualifying areas in Counties Clare and Tipperary.

Under the Regional Aid Map, all of the Border Midlands and West Region is classified as an "economic development region" and all enterprises, irrespective of size status, can qualify for regional aid throughout 2007-2013 but subject to the regional aid ceilings set out in the Regional Aid Map for this Region, which are:

- 30 % for the period 1 January 2007 to 31 December 2010, and
- 15 % for the period 1 January 2011 to 31 December 2013.

The Regional Aid Map also provides for an additional uplift of:

- 10% for medium sized enterprises, and
- 20 % for small sized enterprises,

over and above the levels of aid permitted for large enterprises.

In the Mid West Sub-Region regional aid is available as follows:

- 10 % for large firms, for the period 1 January 2007 to 31 December 2008
- 20 % for medium firms, for the period 1 January 2007 to 31 December 2013
- 30 % for small firms for the period 1 January 2007 to 31 December 2013.

In addition, the Regional Aid Map also stipulates that no aid is permitted after 1 January 2009 in this sub-Region for projects with eligible expenditure exceeding €25 million.

2. Large Scale Projects

Large projects that are subject to the individual notification requirements of the Guidelines on National Regional Aid 2007-2013 must have received State aid approval from the European Commission of the potential capital allowances involved. The Board, therefore, cannot provide approval in principle or issue certification in relation to such a project, unless the applicant provides a letter from the Department of Finance confirming that the European Commission has formally approved the aid relating to the project concerned.

Applicants submitting documentation to the Mid-Shannon Tourism Infrastructure Board for approval in principle or certification in relation to any project with eligible expenditure in excess of €50 million should contact the Department of Finance to discuss the issue of compliance with the terms of the Regional Aid Guidelines and to assess whether individual notification under the Regional Aid Guidelines is required. Should further information be required in order to make a decision in relation to notification to the Commission, the Department will contact the applicant enterprise directly.

Should the initial assessment carried out by the Department of Finance determine that the project should be notified to the Commission under the Regional Aid Guidelines, the Department will require the applicant enterprise to provide the necessary information to enable the Department to complete the standard electronic notification form, which will then be sent to the Commission.

The Regional Aid Guidelines state that the Commission will take at least 2 months to make a decision in relation to notifications submitted. As the Commission generally will only deal with Government representatives of Member States in relation to notifications on State aid, it is anticipated that the Department of Finance will liaise with the Commission in relation to the notification and will inform the applicant enterprise and the Board of ongoing developments and the final outcome.

It is common for decisions in relation to notification submitted under the Framework to appear in the Official Journal of the European Communities some time after the Commission has taken the decision.

The Regional Aid Guidelines also stipulate that, when aid is granted to large investment projects with eligible expenditure in excess of €50m where the level of aid is below the notification threshold, Member States must provide information (in the format set out in Annex III to the

Regional Aid Guidelines see URL below) on such projects to the European Commission. Accordingly, the relevant details on such large projects will be submitted to the European Commission within 20 days of the issue of a certificate by the Board.

http://eurlex.europa.eu/LexUriServ/site/en/oj/2006/c_054/c_05420060304en00130044.pdf

3. Need to notify large projects to the EU Commission.

Notification Thresholds.

The Regional Aid Guidelines restrict the amount of aid that can apply to large projects (i.e., projects with eligible expenditure greater than €50m) by applying the reduction scale set out below in Table 1. In addition, Member States are required to notify, individually, aid for large projects where the amount of aid proposed exceeds the level allowed for a project with €100 million eligible expenditure after the reduction scale set out below is applied.

Table 1

ELIGIBLE EXPENDITURE	ADJUSTED AID CEILING
Up to € 50 million	100% of regional ceiling
For the part between € 50 M and € 100 M	50% of regional ceiling
<u>For the part exceeding € 100 M</u>	<u>34% of regional ceiling</u>

The formula to be used to calculate the maximum amount of aid that can be awarded to a project without exceeding the individual notification requirement of the Regional Aid Guidelines for 2007-2013 can be expressed as follows: €50m * Regional Aid Ceiling + €50m * .5 Regional Aid Ceiling.

For example, the current State aid ceiling for large enterprises in the Border Midland and West Region is 30%. On this basis, the level of aid above which there is a notification requirement under the Regional Aid Guidelines in the Border, Midland and West Region is €22.5 million (€50m * 30% + €50m * .5 of 30% = €22.5m.). The Mid Shannon Corridor Tourism Infrastructure Investment Scheme is a tax incentive scheme and the aid is granted by way of an acceleration of tax relief rather than direct grant aid. The European Commission in their approval of the scheme have indicated that the level of aid provided by the scheme for projects located in the BMW region, expressed in Net Grant Equivalent terms, is 12.08%. On this basis the level of eligible expenditure under the scheme which would entail the granting of aid totalling €22.5 million, equates to €186,258,270 (€22.5m/12.08*100) and projects with eligible expenditure exceeding this amount in the BMW area must be notified individually to the European Commission.

The equivalent eligible expenditure threshold above which individual notification to the Commission is required for projects located in the mid-West sub region is €150,300,601 and projects with eligible expenditure exceeding this amount in these areas must be notified individually to the European Commission. (NB It should be noted that after 1 January 2009 projects in the mid-West sub region with eligible expenditure in excess of €25m cannot qualify for regional aid).

4. Declaration and Reporting Requirements for All Projects

One of the requirements to qualify for approval in principle or certification is that the applicant enterprise must give an undertaking 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 that agency or body, such information as may be necessary to enable compliance with the reporting requirements of:

- The Community Guidelines on Regional Aid for 2007-2013, (OJ C 54, 4.3 2006, p. 13)
- the “Community guidelines on State aid for rescuing and restructuring firms in difficulty” (OJ No. C288, 9 October 1999, page 2, and OJ No. C244 of 1 October 2004, page 2),
- any other European Communities Regulation or Directive under the European Communities Treaty governing the granting of State Aid in specific sectors.

In addition, the applicant enterprise must make a declaration to the Board that the financial and other information on which the application is based is true and correct in all respects and the beneficiary enterprise is not subject to an outstanding recovery order following a previous decision of the Commission of the European Communities declaring aid in favour of that undertaking/enterprise to be illegal.

The Board, therefore, cannot grant approval in principle or issue certification unless the applicant enterprise completes a declaration to the Board, in the format set out in [Annex C](#).

5. Certification of Projects located in Mid-West sub-Region

In order to comply with both the Commission’s Guidelines on Regional Aid for 2007-2013, (OJ C 54, 4.3 2006, p. 13) and the National Regional Aid Regional Aid Map 2007-2013 the Board will not be in a position to certify projects where construction commences on or after 1 January 2009 and the following occurs.

- A. Where the beneficiaries of the aid are large enterprises. For the purposes of these Guidelines a large enterprise is an undertaking which does not fall under the definition of a micro, small or medium enterprise set out in Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises (OJ L 124, 20.5.2003 P. 36) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:EN:PDF>
- B. Where the amount of qualifying expenditure for the purposes of the Scheme exceeds €25 million.

In order to establish that projects comply with both the Commission’s Guidelines on Regional Aid for 2007-2013, (OJ C 54, 4.3 2006, p. 13) and the National Regional Aid Regional Aid Map

2007-2013 promoters of projects must make a declaration in the format set out in [Annex A](#) regarding:

- the size classification of the beneficiary of the aid,
- whether the planned amount of qualifying expenditure is below €25 million.

For the purposes of these Guidelines the beneficiary of the aid is the entity that will be entitled to claim the capital allowances provided under the Scheme, and depending on the investment structures put in place, this entity could be a sole proprietor, a public or private limited company, a partnership of individuals and/or companies or a consortium of investors.

The application must be accompanied by a letter from an auditor, in the format set out in [Annex B](#) giving an opinion in connection with the certification requirements of this section of the Guidelines in relation to the following:

- the size classification of the beneficiary;
- whether the planned qualifying expenditure is below €25 million, and
- the accuracy of the information provided.

Where the beneficiary is a company, which is required by law to have an auditor this letter must be provided to the Board by the person appointed as auditor to the company. In any other case, this letter must be provided to the Board by a person who, if the beneficiary enterprise were a company, would be qualified, by law, to be appointed as auditor to that company.

Where the beneficiary is not a corporate entity, the names, addresses, and percentage holding of each member of the beneficiary enterprise must be provided to the Board as part of the application.

5.1 Determination of Size Status of Beneficiary Enterprises for projects located in Mid-West sub-Region

It is strongly recommended that promoters of projects and their advisors are aware of the criteria set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises (OJ L 124, 20.5.2003 P. 36) http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_124/l_12420030520en00360041.pdf for classifying the size status of the enterprise that will be claiming the reliefs available under the Scheme.

For the purposes of the Recommendation “*An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.*” On this basis, the size status of entities such as partnerships, co-ownerships, consortiums or similar groupings also needs to be established.

What details are required to determine if the enterprise is a micro, small or medium enterprise?

The thresholds for turnover, balance sheet totals and employee numbers, included in the criteria for determining the size status of the applicant enterprise, are those of the latest 12-month period for which annual financial statements must be prepared. Where the financial statements have been prepared for a period which is greater or less than 12 months, then the figures should be adjusted pro rata or on a basis deemed by the Board to be reasonable. In such cases the basis used must be agreed with the Board in advance. If the first set of financial statements for the applicant has not yet been prepared, the estimated annual turnover, balance sheet and employee numbers should be provided.

The Commission Recommendation introduced three different categories of enterprises. Each corresponds to a type of relationship which an enterprise might have with another. These categories are **Autonomous Enterprises**, **Partner Enterprises** and **Linked Enterprises**.

Where an enterprise is not an autonomous enterprise the relevant turnover, balance sheet totals and employee numbers of the partner and/or linked enterprise(s) must also be taken into consideration in order to determine whether or not the beneficiary enterprise is or is not an SME/MSME.

The criteria for establishing the various data to be taken into consideration when dealing with each category of enterprise is as set out in Article 6 of annex 1 to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_124/l_12420030520en00360041.pdf

Autonomous Enterprise

Broadly speaking an enterprise can be considered to be autonomous if it is totally independent and does not have a holding or voting rights of 25% or more in one or more other enterprises and/or outside enterprises do not have a stake of 25% or more of the capital or voting rights in the enterprise in question.

Partner Enterprise

A partner enterprise is an unlinked enterprise, which has a holding equal to or greater than 25% in another enterprise, and/or another enterprise has a holding equal to or greater than 25% in the enterprise in question.

This means, among other things, that the voting rights in the partner enterprise (or vice versa) do not exceed 50%.

Linked Enterprise

Two or more enterprises can be considered to be linked when they have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another.
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another.
- A contract between the enterprises, or a provision in the Memorandum or Articles of Association of one of the enterprises, enables one to exercise a dominant influence over the other.
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

Where relations between enterprises pass through natural persons, the account taken of such relations is restricted to the relevant market or adjacent market.

Partnerships, Co-ownerships, Consortiums, etc.

In the case of projects where the beneficiary of the aid are partnerships, co-ownerships, consortiums or similar groupings, the interests of individuals who are members of such enterprises as passive investors must be considered in the context of the European Commission definition of a Micro, Small or Medium Enterprise (MSME), where such individuals are separately engaged in the tourism sector. In such cases it may be necessary to consider their other business interests in the tourism sector in assessing whether the beneficiary enterprise is a MSME.

In cases where such investors who are separately engaged in the tourist sector have a holding in excess of 50 % in the applicant enterprise and/or exert a controlling influence on the applicant enterprise through any of the relationships described in Article 3(3) of the Annex to Commission Recommendation of 6 May 2003, then the full amount of the individual's interest in the other enterprises in the tourism sector (employee number, balance sheet and turnover totals) must be aggregated with the financial and employment details of the beneficiary enterprise when establishing the MSME status of the applicant enterprise.

Annex A

Draft on Applicant Enterprise's Letterhead.

Declaration to Mid-Shannon Tourism Infrastructure Board for projects located in the Mid-West sub-Region regarding the size status of the beneficiary enterprises and the Level of Planned Expenditure

Addressed to: Mid-Shannon Tourism Infrastructure Board.

Subject: Approval in Principle/Certification under Chapter 12 of Part 10 of the Taxes Consolidation Act 1997

Date:

Dear Sir/Madam,

We hereby declare that the beneficiary(ies) of the capital allowances is (are):xx (will be)xx

- a micro-sized enterprise
- a small-sized enterprise
- a medium-sized enterprise
- not a micro, small or medium-sized enterprise

(Delete as appropriate)

within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises (OJ L 124, 20.5.2003 P.36) .

We also declare that the amount of qualifying expenditure as provided under Chapter 12 of Part 10 of the Taxes Consolidation Act 1997 is approximately €_____ and will not exceed 25 million Euro.

We enclose, as an Addendum, a letter from our Auditor expressing their opinion with regard to the above in connection with the approval and certification requirements of Chapter 12 of Part 10 of the Taxes Consolidation Act 1997.

Yours faithfully,

for Applicant Enterprise

Annex B

Draft (On Auditor's Letterhead)

Form of Auditor's Opinion to Mid-Shannon Tourism Infrastructure Board in connection with application for approval in principle or certification under Chapter 12 of Part 10 of the Taxes Consolidation Act 1997 for projects located in the Mid-West sub-Region regarding the size status of the beneficiary enterprises and the Level of Planned Expenditure

Addressed to: Mid Shannon Tourism Infrastructure Board.

Project. Name and location of project and promoter's name where the promoter enterprise is a separate entity from the beneficiary enterprise

Subject: Beneficiary Enterprise Name.

Re: Approval in principle/Certification under Chapter 12 of Part 10 of the Taxes Consolidation Act (TCA) 1997.

Date:

Dear Sir/Madam,

We have examined the above-named beneficiary enterprise in connection with the approval and certification requirements of Chapter 12 of Part 10 of the Taxes Consolidation Act (TCA) 1997 as set out in the Guidelines for the Mid-Shannon Tourism Infrastructure Board.

Part 1.

Size classification of enterprise.

It is our opinion that this enterprise is:

- a micro-sized enterprise
- a small-sized enterprise
- a medium-sized enterprise
- not a micro, small or medium-sized enterprise.

within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises (OJ L 124, 20.5.2003 P.36) .

Part 2.

Project Size

We have considered the details of the expenditure to be incurred in respect of the above project and it is our opinion that the amount of qualifying expenditure is €_____ and will not exceed €25 million.

This opinion is based on the information provided to us including that which is set out in the Application Form attached. We have obtained sufficient information including relevant financial statements to satisfy ourselves as to the accuracy of the information contained in Parts 1 and 2 of this opinion.

All information forming the basis for our opinion is available for inspection by mid-Shannon Tourism Infrastructure Board or its agents on request.

Yours faithfully,

for Auditors

Annex C

Draft on Applicant Enterprise's Letterhead.

Declaration by Applicant Enterprise on the accuracy of information provided and undertaking to furnish any further information as may be requested under Chapter 12 of Part 10 of the Taxes Consolidation Act 1997.

Addressed to: Mid Shannon Tourism Infrastructure Board.

Project. Name and location of project and promoter's name where the promoter enterprise is a separate entity from the beneficiary enterprise(s)

Subject: Beneficiary Enterprise Name.

Date:

Dear Sir/Madam,

We enclose for your attention Application Form SCA 1. We declare that the financial and other information on which the application is based is true and correct in all respects. We also declare that that the beneficiary enterprise is not subject to an outstanding recovery order following a previous decision of the Commission of the European Communities declaring aid in favour of that undertaking/enterprise to be illegal.

We also undertake to furnish to the Minister for Finance, or to such other person or body nominated by him, such further information as may be required to enable compliance with the requirements of:

- The Community Guidelines on Regional Aid for 2007-2013, (OJ C 54, 4.3 2006, p. 13)
- the "Community guidelines on State aid for rescuing and restructuring firms in difficulty" (OJ No. C288 of 9 October 1999 and OJ No. C244 of 1 October 2004),
- any other European Communities Regulation or Directive under the European Communities Treaty governing the granting of State Aid in specific sectors.

We now request the Mid Shannon Tourism Infrastructure Board to issue approval in principle/a certificate in accordance with Chapter 12 of Part 10 of the Taxes Consolidation Act 1997.

All information forming the basis for this application is available for inspection by Mid Shannon Tourism Infrastructure Board or its agents on request.

Yours faithfully,

for Applicant Enterprise

Appendix 5

Application for Approval in Principle/Certification – Form SCA1

A APPLICANT DETAILS

1. Name of Applicant

2. Investors in the building or structure

- (i) number of the investors that are investing in the building or structure;
- (ii) the nature of the investors that are investing in the building or structure indicating whether they are individuals, corporate or otherwise;
- (iii) the amount to be invested by each investor;
- (iv) the nature of the legal, administrative or financial structures which are being put in place to facilitate the investment in the building or structure to include details of the following:
 - all corporate and unincorporated bodies including partnerships, co-ownerships, consortiums or other groupings involved in the development of the project, including the purpose of each;
 - the financing and security arrangements used;
 - nature of structures/contracts used to transfer ownership of the property involved including nature of agreements regarding transfer of ownership after the tax life ends.

The various structures proposed should also be presented in diagram format.

3. Details of Proposed Operational Arrangements

B PROJECT INFORMATION

1. Name of Project

2. Description of Project/Facility, including details of each building or structure and their function and purpose, its relationship with existing buildings or structures and a statement of how any building falls within the classes of qualifying tourism infrastructure facilities.

3. Location of Project

4. Capital expenditure on each building or structure (new or refurbished)

(i) Proposed amount of capital expenditure for approval in principle

- total and
- broken down by refurbishment/construction and accommodation/other buildings or structures (including apportionment of the aggregate expenditure across buildings, where aggregate of expenditure on accommodation would exceed 50% and there is more than one accommodation building)

(ii) Actual amount of capital expenditure incurred

- total and
- broken down by refurbishment/construction and accommodation/other buildings or structures (including apportionment of the aggregate expenditure across buildings, where aggregate of expenditure on accommodation would exceed 50% and there is more than one accommodation building)

5. Nature and extent of contribution to tourism development in the mid-Shannon corridor or the qualifying area, including

- how it bridges any gaps or complements existing products
- visitor projections (domestic and overseas) and underpinning assumptions
- details of the marketing plan.

6. Consistency with National and Regional Tourism Strategies and Policies

7. Environmental Information including

- Details of environmental sensitivity, including proposed purpose, design, construction and operation, having particular regard to its impact, either on its own or in conjunction with other developments and activities, on any area which is a European site, (namely a Special Area of Conservation or Special Protection Area), a Natural Heritage area, a Nature Reserve or a Refuge for Fauna

- Environmental Impact Statements (if required)
- Water, air, waste or other environmental consents
- Evidence of local authority or other investment in/plans for infrastructure (non-national roads/access routes, signposting, visitor management, sanitary services)
- Details of wastewater treatment proposals and waste management
- Pollution Control Measures (if applicable)
- Landscaping and visual amenity

8. Requirements for Facilities

- Details of how each element of the facility/ies meets the requirements set down in the Guidelines to the Board for that class of qualifying facility

9. Nature and maximum extent of any accommodation buildings, including statement of why any accommodation is an integral part of a new facility purpose-built for an eligible activity and how at least 80% will be used solely by those engaged in such activity

- Information on how the facility meets registration or listing requirements for accommodation or those of a voluntary scheme (as appropriate)

10 Design Standards

- Details of how the proposed buildings/structures/refurbishment incorporate a high level of sustainability
- Plans for the building/structures
- waste management plans for construction and operation
- Accessibility measures

11 Planning Matters

Consistency with Development Plan and any Local Area Plan

Information on status of application for planning permission

12 State Aid Information

Confirmation that the proposal is consistent with State Aid provisions, including completed forms as set out in Appendix 4 to these Guidelines

13 Information on planned and actual dates of first use

(as appropriate to approval in principle or certification)

Appendix 6

Guidance on Best Practice

Guidance on Generic Sustainable Design Best Practice

1.
 - The BRE Group - www.bre.co.uk .
 - ‘A Green Vitruvius – Principles and Practice of Sustainable Architectural Design’ which illustrates issues relating to sustainability in architectural design and the built environment.
 - RIAI CPD publication ‘Sustainable Design Notes – Considerations for implementing greener design strategies’.
 - The advice on good energy management for all types of business which is available on Sustainable Energy Ireland's website - www.sei.ie/energymap.

Guidance on Energy Efficiency Best Practice

2. Key objectives for developments are:
 - Minimisation of energy demands.
 - Application where appropriate of renewable energy sources.
 - Efficient use of energy on-site.
 - Minimisation of water consumption.
 - Compliance with the National Climate Change Strategy
 - Analysis shall include all relevant facets of the building envelope, lighting energy input, daylight usage, domestic water heating, efficient use of local ambient weather conditions, building zoning from an energy-conservation perspective.
3. The recommendations, including whole-life cost and payback analysis, of Sustainable Energy Ireland and its published pilot energy efficient building programme provide the necessary guidance and benchmarks.
4. In order to assist in the achievement of the best possible target performances for energy efficiency for the Building or Structure, promoters could be advised to refer to the following website : www.thecarbontrust.co.uk/energy.

Guidance on Sustainable Tourism Accommodation Best Practice

5. EU Ecolabel at <http://www.ecolabel-tourism.eu/frameset/frameset.html>

Appendix 7

Notes for Guidance on the Taxes Consolidation Act 1997 issued by the Revenue Commissioners (relevant excerpt)

CHAPTER 12

Mid-Shannon Corridor Tourism Infrastructure Investment Scheme

Overview

This Chapter provides for a new targeted tax-based scheme for tourism facilities in the mid-Shannon corridor. The scheme is aimed at encouraging the development of new tourism infrastructure and the refurbishment of existing tourism infrastructure in that area which is relatively underdeveloped from the point of view of tourism.

The individual areas which will qualify under the scheme are listed in a new ***Schedule 8B*** to the Taxes Consolidation Act 1997 and include various District Electoral Divisions in the counties of Clare, Galway, Offaly, Roscommon, Tipperary and Westmeath.

The scheme is time-limited to a period of 3 years from the date of its commencement (which will be done by Ministerial order), within which period qualifying capital expenditure may be incurred. Projects wishing to avail of relief must get approval in advance (for which an application must be made within 1 year of the commencement of the scheme) and also must get formal certification after completion. This approval and certification will be given by a special board established for the purposes of the scheme and will be carried out in accordance with guidelines to be issued by the Minister for Arts, Sport and Tourism in consultation with the Department of Finance.

Capital allowances will be available in relation to certain registered holiday camps and other tourism infrastructure facilities. The nature of the tourism infrastructure buildings and structures that may qualify under the scheme will be set out in the guidelines. Certain buildings such as those that facilitate gaming or gambling are specifically excluded from the scheme, as are licensed premises (but not restaurants). Also, tourism facilities, other than qualifying holiday camps, that already qualify for capital allowances such as hotels, guesthouses, holiday hostels and caravan and camping sites registered under the Tourist Traffic Acts are excluded. However, other accommodation facilities that are provided as part of a qualifying tourism project may qualify for relief but qualifying expenditure on such accommodation facilities cannot be more than 50 per cent of the overall expenditure on the project or cannot be more than the expenditure on the non-accommodation facilities in the project.

Relief will be available over 7 years for qualifying construction and refurbishment expenditure incurred in the qualifying period at the rate of 15 per cent per annum in years 1 to 6 and at the rate of 10 per cent in year 7. In the case of refurbishment, the qualifying expenditure must exceed 20 per cent of the market value of the property before work commences. In areas that are not in the BMW region (i.e. areas in Clare and Tipperary) only 80 per cent of construction and refurbishment expenditure will qualify for relief.

There will be a 15-year holding period in order to avoid a clawback of allowances given. Existing restrictions on the sideways set-off of excess capital allowances against non-rental

income for passive investors will apply as will the restriction on the use of specified reliefs by high-income individuals which is effective from 1 January 2007.

The scheme will be commenced by way of order of the Minister for Finance. This is to allow the scheme to be notified to the EU Commission and for approval to be received. Once the scheme is formally commenced the relevant guidelines will be issued and the certification Board will be established.

372AW Interpretation, applications for approval and certification

Summary

This section is an interpretation section. It also provides for the approval and certification of projects by the mid-Shannon Tourism Infrastructure Board and for the issue of relevant guidelines by the Minister for Arts, Sport and Tourism in consultation with the Minister for Finance. The section also sets limits in relation to the levels of expenditure on accommodation buildings which may qualify for certification.

Details

Definitions

Definitions of the various terms used in *Chapter 12* are provided. Most of these are self-explanatory but the following are highlighted: (1)

“mid-Shannon Tourism Infrastructure Board” means a board selected for the purposes of the Chapter by the Minister for Arts, Sports and Tourism in consultation with the Minister for Finance. The board may not exceed 5 persons. [This board will be responsible for granting advance approval in relation to projects and formal certification after building work has taken place.]

“qualifying period” is a period of 3 years commencing on the date the Chapter comes into effect. This will happen when *section 29* of the *Finance Act 2007* is commenced by way of Ministerial order – the commencement provision is contained in *subsection (2)* of that section.

“qualifying tourism infrastructure facilities” means a class or classes of facilities (but confined to buildings and structures) that are approved by the Minister for Arts, Sports and Tourism in consultation with the Minister for Finance and which are published in the relevant guidelines.

“relevant guidelines” means guidelines issued in accordance with *subsection (3)* of *section 372AW*, including any amending or replacement guidelines.

Approval and certification by mid-Shannon Tourism Infrastructure Board

Subsection (2)(a) of *section 372AW* (which is subject to the subsequent provisions of *section 372AW* and to *section 372AZ*) provides that no relief from income tax or corporation tax may be granted by virtue of this Chapter in respect of construction or refurbishment expenditure unless the mid-Shannon Tourism Infrastructure Board has: (2)(a)

- in advance, granted approval in principle in relation to the construction or refurbishment of the building or structure involved, and
- after the expenditure is incurred, certifies in writing that the work carried out is in accordance with the criteria specified in the relevant guidelines. Any relevant conditions imposed by the Board in the advance approval must also have been satisfied.

Approval in principle cannot be granted unless the Board receives an application within one year of the commencement of this Chapter. Such an application must also contain whatever information and details are specified in the relevant guidelines in accordance with *subsection (3)(h)*. (2)(b)

Relevant guidelines to be issued by Minister for Arts, Sports and Tourism

This provision, which is subject to *subsection (4)*, provides that the Minister for Arts, Sports and Tourism in consultation with the Minister for Finance shall issue guidelines for the purposes of approval and certification under *subsection (2)* of *section 372AW* and also for the purposes of certification under *section 372AX(1)(d)* or *372AY(1)(g)*. The mid-Shannon Tourism Infrastructure Board must have regard to these guidelines in deciding whether to grant approval in principle or to issue a certificate in relation to a building or structure. The guidelines may include criteria in relation to some or all of the following matters: (3)

- (a) the contribution which the project/building or structure would make to tourism development in the mid-Shannon corridor or the qualifying mid-Shannon area,
- (b) coherence with national tourism strategy,
- (c) environmental sensitivity, having particular regard to any area which is a European site (e.g. special area of conservation or special protection area), a natural heritage area, a nature reserve or a refuge for fauna,
- (d) the amenities and facilities required to be provided in each type of project,
- (e) the nature of, and maximum extent to which, accommodation buildings (if any) are allowable in each type of project, (see *subsection (4)* also for maximum expenditure limits),
- (f) specific standards of design and construction in relation to buildings and structures which may qualify for relief under this Chapter,
- (g) relevant planning matters, including the need for consistency with the requirements of a development plan or a local area plan,
- (h) the details and information required to be provided in applications for approval and certification in accordance with the relevant sections of *Chapter 12*, and

- (i) matters relating to the provision of information in accordance with sections 372AX(1)(c) and 372AY(1)(f),

together with any other matters the relevant Ministers consider are required to be included.

Limits in relation to expenditure on accommodation facilities

A maximum limit applies in relation to the extent to which expenditure on accommodation facilities may be certified as a qualifying part of a project. (4)

This provision, which is subject to *paragraphs (b) and (c)*, provides that the mid-Shannon Tourism Infrastructure Board may not grant approval or issue certification in relation to accommodation facilities to the extent that expenditure on such facilities exceeds a “limit amount” which is the lesser of: (4)(a)

- 50 per cent (or any lower percentage specified in the guidelines in relation to a type of project) of the overall expenditure on the project, or
- the expenditure on non-accommodation buildings.

Where there are a number of accommodation buildings in a project and the aggregate of the capital expenditure incurred on their construction or refurbishment exceeds the “limit amount”, then the aggregate expenditure is to be reduced to an amount equivalent to the limit amount and apportioned on a just and reasonable basis over all the accommodation buildings. (4)(b)

Where the criteria in the relevant guidelines have been satisfied, the mid-Shannon Tourism Infrastructure Board may grant approval or issue certification in relation to an accommodation building: (4)(c)

- up to the limit amount where there is only one such building, and
- where they are satisfied with the apportionment made under *paragraph (b)*, in relation to so much of the expenditure which is attributable to each accommodation building following such apportionment.

372AX Accelerated capital allowances in relation to the construction or refurbishment of certain registered holiday camps

Summary

This section provides for accelerated capital allowances over 7 years in relation to certain registered holiday camps. The section sets out the type of such camps which may qualify and provides that the tax life and holding period of qualifying camps will be 15 years.

Details

Type of registered holiday camp which may qualify

The type of registered holiday camp to which this section applies is a building or structure: (1)

- (a) the site of which is wholly within a qualifying mid-Shannon area,

- (b) which is in use as a holiday camp registered under the Tourist Traffic Acts 1939 to 2003 and which meets the requirements of the relevant guidelines in relation to the types of amenities and facilities that need to be provided,
- (c) in relation to which relevant data has been provided to the mid-Shannon Tourism Infrastructure Board for onward transmission to the Minister and the Minister for Finance in relation to:
 - the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the building or structure, and in relation to an accommodation building, the amount of such expenditure which is eligible for certification (see *subsection (4) of section 372AW*),
 - the number and nature of the investors that are investing in the building or structure,
 - the amount to be invested by each investor, and
 - the nature of the structures which are being put in place to facilitate the investment in the building or structure,

together with any other information specified in the relevant guidelines as being of assistance to the Minister for Finance in evaluating the costs and the benefits arising from the operation of tax relief for buildings and structures under this Chapter, and

- (d) in respect of which the mid-Shannon Tourism Infrastructure Board gives a certificate in writing after the building or structure is first used or, where capital expenditure is incurred on the refurbishment of a building or structure, first used subsequent to the incurring of that expenditure —
 - stating that it is satisfied that the conditions in *paragraphs (a), (b) and (c)* above have been met,
 - confirming the date of first use or, as the case may be, first use after refurbishment, and
 - which includes certification in accordance with *section 372AW(2)(a)(ii)* or a copy of such certification if it was already issued.

Rate of allowances, tax life and holding period

A revised application of the provisions of *Chapter 1 of Part 9* applies in relation to registered holiday camps which qualify under the section. This is subject to *subsections (3) and (4)* of the section and to *section 372AZ*. (2)

Section 272 is to apply:

- as if a revised *subsection (3)(c)* were inserted – this provides that capital expenditure incurred in the qualifying period is to be written off at the rate of 15 per cent per annum, (2)(a)
- as if a revised *subsection (4)(c)* were inserted – this provides that the tax life of registered holiday camps which qualify under the section is to be 15 years from first use or first use after refurbishment.

Section 274(1)(b) is amended by inserting a revised *subparagraph (iii)* which provides (2)(b) that the holding period, of registered holiday camps which qualify under the section, for balancing allowance and balancing charge purposes is to be 15 years from first use or first use after refurbishment.

Minimum spend in refurbishment cases

In the case of refurbishment, a minimum of 20 per cent of the market value of a building or structure must be expended in the qualifying period to qualify. (3)

Expenditure attributable to work actually carried out

Capital expenditure is to be treated as incurred in the qualifying period to the extent that it is attributable to work actually carried out in the qualifying period. (4)

372AY Capital allowances in relation to the construction or refurbishment of certain tourism infrastructure facilities

Summary

This section provides for accelerated capital allowances over 7 years in relation to certain tourism infrastructure facilities. The section defines the “qualifying premises” involved and provides that the tax life and holding period of such premises will be 15 years.

Details

Qualifying tourism infrastructure facilities

The type of building or structure to which the section applies is defined. Such “qualifying premises” must be a building or structure: (1)

- (a) the site of which is wholly within a qualifying mid-Shannon area,
- (b) which apart from this section is not an industrial building or structure within the meaning of *section 268* or deemed to be such a building or structure. This provision therefore rules out any building or structure which already qualifies for capital allowances by virtue of *section 268* e.g. registered hotels, guesthouses, holiday hostels and caravan and camping sites;
- (c) which is in use for the purposes of the operation of one or more qualifying tourism infrastructure facilities (these are the classes of facilities selected by the Minister for Arts, Sport and Tourism and published in the relevant guidelines);
- (d) which is not a licensed premises (as defined in section 2 of the Intoxicating Liquor Act 1988), but which may be a restaurant (as defined in section 6 of that Act) which has a wine retailer’s on-licence or a special restaurant licence;
- (e) which is not a facility in which gambling, gaming or wagering of any sort is carried on for valuable consideration or which supports the carrying on of such activities,
- (f) in relation to which relevant data has been provided to the mid-Shannon Tourism Infrastructure Board for onward transmission to the Minister and the Minister for

Finance in relation to:

- the amount of the capital expenditure actually incurred in the qualifying period on the construction or refurbishment of the building or structure, and in relation to an accommodation building, the amount of such expenditure which is eligible for certification (see *subsection (4) of section 372AW*),
- the number and nature of the investors that are investing in the building or structure,
- the amount to be invested by each investor, and
- the nature of the structures which are being put in place to facilitate the investment in the building or structure,

together with any other information specified in the relevant guidelines as being of assistance to the Minister for Finance in evaluating the costs and the benefits arising from the operation of tax relief for buildings and structures under this Chapter, and

(g) in respect of which the mid-Shannon Tourism Infrastructure Board gives a certificate in writing after the building or structure is first used or, where capital expenditure is incurred on the refurbishment of a building or structure, first used subsequent to the incurring of that expenditure —

- stating that it is satisfied that the conditions in *paragraphs (a) to (f)* above have been met,
- confirming the date of first use or, as the case may be, first use after refurbishment, and
- which includes certification in accordance with *section 372AW(2)(a)(ii)* or a copy of such certification if it was already issued.

Application of industrial buildings' provisions

The industrial buildings allowances provisions of *Chapter 1 of Part 9* are applied in relation to capital expenditure incurred on the construction or refurbishment of premises which qualify under the section. The application of *Chapter 1 of Part 9* – subject to *paragraph (b)*, to *subsections (3) to (5)* of the section and to *section 372AZ* – is: (2)(a)

- as if the qualifying premises were a mill or factory under *section 268(1)(a)*, and
- as if any non-trading activity carried on in the qualifying premises were a trade. This provision is a mechanism to ensure that the technical rules for entitlement to industrial buildings allowances apply and does not affect the nature of the actual income which arises from the qualifying premises.

The application of the subsection is confined to capital expenditure incurred in the qualifying period. (2)(b)

Minimum spend in refurbishment cases

In the case of refurbishment, a minimum of 20 per cent of the market value of a building or structure must be expended in the qualifying period to qualify. (3)

Rate of allowances, tax life and holding period

This provision sets out how the application, by *subsection (2)*, of the provisions of *Chapter 1 of Part 9* in relation to capital expenditure incurred on the construction or refurbishment of a qualifying premises is to apply in the case of *sections 272 and 274*. (4)

Section 272 is to apply: (4)(a)

- as if a revised *subsection (3)(a)* were inserted – this provides that capital expenditure incurred in the qualifying period in relation to a qualifying premises is to be written off at the rate of 15 per cent per annum, and
- as if a revised *subsection (4)(a)* were inserted – this provides that the tax life of a qualifying premises is to be 15 years from first use or first use after refurbishment.

Section 274(1)(b) is to apply as if a revised *subparagraph (i)* were inserted. This provides that the holding period of a qualifying premises for balancing allowance and balancing charge purposes is to be 15 years from first use or first use after refurbishment. (4)(b)

Expenditure attributable to work actually carried out

Capital expenditure is to be treated as incurred in the qualifying period to the extent that it is attributable to work actually carried out in the qualifying period. (5)

372AZ Restrictions on relief, non-application of relief in certain cases and provision against double relief

Summary

This section contains restrictions in relation to circumstances in which relief may be claimed. It also provides that reduced levels of qualifying expenditure will apply in certain cases.

Details

Restrictions on the availability of capital allowances

Relief under *sections 372AX and 372AY* will not apply in relation to construction or refurbishment expenditure on a building or structure: (1)

- where a property developer or a person connected with a property developer is entitled to the relevant interest in relation to the construction or refurbishment expenditure and such expenditure was incurred by either of those persons or by some other person connected with the property developer, (1)(a)
- where any part of the construction or refurbishment expenditure is met directly or indirectly by the State or any State bodies [e.g. this provision would rule out relief where any part of the expenditure is met directly or indirectly by a grant or BES funding], (1)(b)
- unless the potential capital allowances in relation to the building or structure concerned and the project in which it is comprised comply with the (1)(c)

requirements of:

- the Guidelines on National Regional Aid for 2007-2013, and
 - the National Regional Aid Map for Ireland for the same period.
- where a person is subject to an outstanding recovery order following a previous decision of the Commission of the European Communities declaring aid in favour of that person to be illegal and incompatible with the common market. (1)(d)

Provision against double relief

Relief will not be given in respect of capital expenditure incurred on the construction or refurbishment of a building or structure under any other provision of the Taxes Acts where relief is given by virtue of *section 372AX* or *372AY*. (2)

Reduced levels of qualifying expenditure

The amount of relief which may be given in relation to capital expenditure incurred on the construction or refurbishment of an accommodation building is restricted to the amount of such expenditure which was eligible for certification by the mid-Shannon Tourism Infrastructure Board. This provision is to apply prior to any restriction which may arise by virtue of *subsection (4)*. (3)

The amount of relief which may be given in relation to capital expenditure incurred on the construction or refurbishment of a building or structure which is located in a qualifying mid-Shannon area described in *Part 1* (Clare) or *Part 5* (Tipperary) of *Schedule 8B* (as inserted by *section 29(1)(b) Finance Act 2007*) is restricted to 80 per cent of the amount which otherwise would qualify for relief e.g. after the application of *subsection (3)*. (4)

The provisions of the Tax Acts (other than *section 279*) are to apply as if references to capital expenditure incurred were references to such expenditure reduced in accordance with *subsections (3)* and/or *(4)*. (5)(a)

The provisions of *section 279* are reapplied to take account of any reductions which may be made to capital expenditure incurred in accordance with *subsections (3)* and/or *(4)*. (5)(b)

Commencement of Chapter 12 of Part 10

Chapter 12 of Part 10 will take effect on the commencement of *section 29* of the *Finance Act 2007*. That section is to be commenced by way of order of the Minister for Finance.