

CERTIFICATION

FOR

CAPITAL ALLOWANCES ON  
CONSTRUCTION/REFURBISHMENT OF  
HOTELS

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# CAPITAL ALLOWANCES ON CONSTRUCTION/REFURBISHMENT OF HOTELS

## INTRODUCTION

This booklet gives an outline of the procedures to be followed when making an application to Fáilte Ireland for certification under section 268(12) of the Taxes Consolidation Act (TCA) 1997. Section 268(12) TCA 1997 provides that a hotel will only be treated as an industrial building or structure for capital allowances purposes where Fáilte Ireland issues the appropriate certificate under that section.

Section 38 of the *National Tourism Development Authority Act 2003* has transferred all functions previously vested in Bord Fáilte to a new body, Fáilte Ireland, from 27 May 2003. As a result the references to Bord Fáilte in section 268 TCA 1997 should be construed as meaning Fáilte Ireland.

This booklet is not intended as a detailed guide. Therefore if you are considering a project of this type you should consult a professional adviser to ensure that you fully understand all the rules before entering into any transaction. The information in this booklet incorporates the legislative amendments included in Finance Acts 2001 - 2006.

Fáilte Ireland's role is to certify if the person(s) incurring expenditure on the construction or refurbishment of a hotel building meet(s) the requirements set out in section 268(12) of the TCA 1997. Fáilte Ireland does not grant approval of claims for capital allowances and obtaining a certificate from Fáilte Ireland does not guarantee the applicant's entitlement to capital allowances. Ultimately the question of entitlement to capital allowances is a matter for applicants to agree with the Revenue Commissioners.

Fáilte Ireland will provide assistance in explaining its requirements as regards the certification process. However you should contact your solicitor, accountant or other adviser in order to obtain any detailed professional assistance, which you might require.

*This booklet does not purport to be a legal interpretation of the legislation. Nor is it intended as a comprehensive guide. It should be used for general information purposes only.*

Fáilte Ireland  
Baggot St. Bridge  
Dublin 2

September 2006

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## GUIDANCE NOTES

### **1. Background**

The European Commission in 2002 concluded an assessment, in line with the State aid articles (87 to 89) of the EC Treaty, of the accelerated capital allowance scheme for hotels in Ireland which is provided for in Chapter 1, Part 9 of the Taxes Consolidation Act (TCA) 1997. The assessment found that the scheme was compatible with the State aid articles of the Treaty and accordingly the Commission approved the scheme as a regional aid in line with the Commission's guidelines on national regional aid (Official Journal C 74, 10 March 1998, page 9). In granting the approval, certain requirements, which affect the entitlement to capital allowances and involves Fáilte Ireland certification, were placed on claimants. Additionally, certain obligations were placed on the Irish Government in relation to monitoring and reporting of the scheme. The guidelines in this booklet set out the new procedure necessary to enable these requirements and obligations to be met.

### **2. Finance Acts 2003, 2004 and 2005**

The Minister for Finance announced in Budget 2003 that the special capital allowance regime for hotels has been terminated as and from 4 December 2002 and aligned with the general industrial buildings allowance of 4% per annum over 25 years from that date. However, transitional arrangements were included in Finance Act 2003 (and extended in Finance Acts 2004 and 2005) to allow for the continued availability of the 7-year rate of write-off of capital expenditure in relation to hotel projects if certain conditions are met.

#### ***Developments Requiring Planning Permission***

Capital allowances will continue to be available over 7-years if:

- a full and valid planning application (not an application for outline permission) in respect of a hotel building or structure is made and is acknowledged as having been made:
  - on or before 10 March 2002 under the Local Government (Planning and Development) Regulations 1994 (S.I. No. 86 of 1994) or
  - on or before 31 December 2004 under the Planning and Development Regulations 2001 to 2002, or
- a valid application for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 in respect of a hotel building or structure is made and is acknowledged as having been made on or before 31 December 2004 to the Dublin Docklands Development Authority.

#### ***Exempted Developments***

Finance Act 2004 has extended the transitional arrangements (with effect from 4 December 2002) to include expenditure on the construction/refurbishment of a hotel building or structure which is exempt from planning permission. However where the qualifying expenditure is incurred on or after 1 January 2004 capital allowances will continue to be available over 7-years only where:

- the construction or refurbishment work is exempted development for the purposes of the Planning and Development Act 2000 by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and if the following conditions are satisfied not later than 31 December 2004:
  - a detailed plan in relation to the development work is prepared,

- a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and
- work to the value of 5 per cent of the development costs is carried out,

Where a hotel project qualifies under either of the above circumstances the 7-year rate of write-off is available **only** in respect of qualifying expenditure incurred **on or before 31 July 2006** (note below the additional time extension provided by Finance Act 2006 and which has been formally activated by order of the Minister for Finance on 26 June 2006). Finance Act 2004 and 2006 also provide that for the purpose of determining whether or not capital expenditure is incurred by 31 July 2006 (31 December 2006, 31 December 2007 and 31 July 2008), only such capital expenditure as is properly attributable to construction/refurbishment expenditure actually carried out on or before 31 July 2006 (31 December 2006, 31 December 2007 and 31 July 2008)<sup>1</sup> shall be treated as having been incurred by that date.

### **3. Finance Act 2006**

Finance Act 2006 includes measures to extend the transitional period during which expenditure incurred on the construction/refurbishment of hotel buildings/structures may qualify for the accelerated capital allowances. Subject to meeting the strict conditions set down in the Act, accelerated capital allowances (7 year write-off) may be claimed on all/part of the qualifying expenditure incurred as follows:

- |   |      |
|---|------|
| ➤ Period 1 January 2006 to 31 December 2006 | 100% |
| ➤ Period 1 January 2007 to 31 December 2007 | 75%  |
| ➤ Period 1 January 2008 to 31 July 2008     | 50%  |

In addition to meeting the planning permission/exempted developments requirements outlined in paragraph 2 above, to avail of the accelerated capital allowances in respect of qualifying expenditure (as restricted) incurred in 2007 and 2008 (to 31 July) the following conditions must all be met:

1. Work to the value of at least 15% of the construction/refurbishments costs of the hotel building/structure must have been carried out by 31 December 2006. This must be certified in writing by the Local Authority for the area in which the hotel/building or structure is situated, by 30 March 2007. The Local Authority certificate must also state the actual amount of capital expenditure incurred on the hotel/building or structure by 31 December 2006 and the projected amount of the balance of expenditure to be incurred and this latter amount will be the maximum permitted qualifying expenditure for 2007 and 2008 (to 31 July) to which the 75% or 50% restriction is applied. The application for the Local Authority certificate must be made by 31 January 2007.
2. A binding contract in writing in respect of the construction/refurbishment expenditure must be in place by 31 July 2006,
3. Such other conditions as specified in Regulations to be made by the Minister for Finance to ensure compliance with EU State Aid rules.

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<sup>1</sup> Finance Act 2006 changes activated by order of the Minister for Finance on 26 June 2006.

As a consequence of the extension of the transitional rules, outlined above, it is important to note that for expenditure incurred after 31 July 2006 to be regarded as ‘qualifying’ expenditure incurred on the construction/refurbishment of hotel buildings/structures under section 268 TCA 1997, the hotel building/structure must be registered in the Register of Hotels maintained by Fáilte Ireland under the Tourist Traffic Acts.

#### **4. Grants**

*What happens if the expenditure on the hotel is grant aided?*

It should be noted that capital allowances are not available in relation to capital expenditure *incurred on or after 20 March 2001* where any part of that 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. This rule applies regardless of the size classification of the enterprise and regardless of whether the expenditure falls within the meaning of “Initial Investment” contained in the European Commission’s “Guidelines on National Regional Aid”.

Accordingly an application for certification under the new procedure referred to above should **not** be made where any such assistance is receivable.

#### **5. Requirement for Fáilte Ireland Certification and application of these guidelines**

Please note that Fáilte Ireland Certification and these guidelines apply only to those projects where construction or refurbishment first commenced on or after 6 April 2001 and where the 7-year capital allowances regime is being availed of. Where projects qualify for capital allowances only over a 25-year period, certification from Fáilte Ireland is **not** required.

#### **6. Definitions**

##### *Hotel*

A hotel for the purposes of this booklet is a building or structure in use for the purposes of the trade of hotel keeping in accordance with section 268 TCA 1997. However, please note the requirement under Finance Act 2006 that for expenditure incurred after 31 July 2006 to be regarded as ‘qualifying’ expenditure incurred on the construction/refurbishment of hotel buildings/structures under section 268 TCA 1997, the hotel building/structure must be registered in the Register of Hotels maintained by Fáilte Ireland under the Tourist Traffic Acts.

##### *Small or Medium Sized Enterprise (SME)*

The criteria for determining whether an enterprise is a small or medium sized enterprise, for projects where construction commenced prior to 1 January 2005, is set out in Annex 1 to Commission Regulation (EC) No 70/2001 (Official Journal L 10 of 13 January 2001, page 33). A detailed analysis of the requirements to be an SME is contained in **Appendix 1**. Briefly, an enterprise is regarded as a SME if:

- it has less than 250 employees,
- it has an annual turnover of less than €40 million or has an annual balance sheet value of less than €27 million, and
- 25% or more of its voting equity is not held by a non-SME.

### ***Micro, Small or Medium Sized Enterprise (MSME)***

For projects commencing after 1 January 2005 the SME thresholds have been updated and formal thresholds have been set for the category of micro sized enterprises. The revised criteria for determining whether an enterprise is a micro, small or medium sized enterprise is set out in the Annex to Commission Recommendation of 6 May 2003 (Official Journal L124 of 20 May 2003, page 36). A detailed analysis of the requirements to be an MSME is contained in **Appendix 1**. Briefly, an enterprise is regarded as a MSME if:

- it has less than 250 employees,
- it has an annual turnover of less than €50 million or has an annual balance sheet value of less than €43 million, and
- 25% or more of its voting equity is not held by a non-MSME.

### ***Expenditure on Construction/Refurbishment of Building or Structure***

The meaning of construction and refurbishment in relation to capital allowances for hotels (and other industrial buildings) is explained in section 270 TCA 1997 which is reproduced in **Appendix 2**. Refurbishment expenditure means any work of construction, reconstruction, repair or renewal, including the provision of water, sewerage or heating facilities carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure. Construction expenditure includes expenditure on the refurbishment of the building or structure, but excludes land costs, machinery and plant costs and certain expenditure relating to mining and scientific research.

### ***Initial Investment***

The term is defined in point 4.4 of the European Commission's Guidelines on National Regional Aid (Official Journal C 74, 10 March 1998, page 9) and is reproduced in **Appendix 2**. In broad terms the Commission has accepted that any capital expenditure which currently qualifies as capital expenditure on the construction or refurbishment (within the meaning of section 270 TCA 1997 – see above) of a building or structure in use for the purposes of the trade of hotel keeping will fall within the meaning of "Initial Investment".

### ***Large Investment Project***

For the purposes of this booklet a project is referred to as a "large investment project" where it is or may be subject to the notification requirements of the 1998 or 2002 "Multisectoral Frameworks on regional aid for large investment projects" as prepared by the Commission of the European Communities. The criteria for determining whether a project is subject to these requirements are set out in point 2.1 of the "Multisectoral Framework on regional aid for large investment projects" (Official Journal C 107, 7 April 1998, page 7) and are reproduced in **Appendix 3**.

In summary, a project is subject to these notification requirements where either of the following two criteria is met:

- (i) The total project cost is at least €50 million, and the cumulative aid intensity expressed as a percentage of the eligible investment costs is at least 50% of the regional aid ceiling for large companies in the area concerned and aid (State aid value of tax relief) per job created or safeguarded amounts to at least €40,000<sup>2</sup>; or
- (ii) The total aid (State aid value of tax relief) is at least €50 million.

A new Multisectoral Framework (the 2002 Framework) for regional aid to large investment projects (Official Journal C 70, 19 March 2002, page 8) became effective from 1 January 2004. As before, the threshold of €50 million in respect of capital costs is a key determination in the decision to notify. The new Framework obliges ex-post reporting on all projects with an investment cost in excess of €50

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<sup>2</sup> This is a factor of eligible expenditure, the aid intensity for the project and the number of jobs created.

million and provides for a reduction or limitation in the aid allowable where the cost of investment is over €50 million. The 2002 Framework applies to projects commencing on or after 1 January 2004, where a project commenced on or before 31 December 2003 the 1998 Framework applies.

Further details are provided in **Appendix 3**.

## **7. The New Procedure**

### ***What is the new procedure?***

Fáilte Ireland is required to certify the following in respect of capital expenditure *incurred on or after 1 January 2002* on the construction or refurbishment (where such construction or refurbishment first commenced on or after 6 April 2001) of hotels, in respect of which capital allowances under the 7-year capital allowances regime are being sought:

- (a) In respect of projects which commence on or before 31 December 2004 that sufficient information has been furnished to Fáilte Ireland to enable it to determine whether the applicant enterprise is or is not a small or medium-sized enterprise within the meaning of Annex 1 to Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the European Communities Treaty to State Aid to small and medium-sized enterprises (OJ No. L10 of 13 January 2001, page 33),

**or**

In respect of projects which commence on or after 1 January 2005 that it has received a declaration from the applicant as to whether or not the applicant is a micro small or medium-sized enterprise within the meaning of the Annex to Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, page 36).

- (b) that the expenditure concerned falls within the meaning of ‘initial investment’ contained in point 4.4 of the “Guidelines on National Regional Aid” prepared by the Commission of the European Communities,
- (c) where the project is subject to the notification requirements of the “Multisectoral framework on regional aid for large investment projects” prepared by the Commission of the European Communities, that approval of the potential capital allowances involved has been obtained from that Commission<sup>3</sup>,
- (d) that the applicant enterprise has undertaken to furnish to the Minister for Finance, or to such other Government Minister, agency or body as may be nominated for that purpose by the Minister for Finance, upon request in writing by that Minister, agency or body, such further information as may be necessary to enable compliance with the reporting requirements of:

- Commission Regulation (EC) No. 70/2001 or Commission Recommendation of 6 May 2003 (OJ No. 124 of 20 May 2003),
- the “Multisectoral Framework on regional aid for large investment projects”,
- the “Community guidelines on State aid for rescuing and restructuring firms in difficulty”,
- any other European Communities Regulation or Directive under the European Communities Treaty governing the granting of State Aid in specific sectors.

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<sup>3</sup> In general, where projected expenditure exceeds €50m, Fáilte Ireland will bring the project to the attention of the Department of Finance. From there, the Department will conduct an initial assessment to determine if a notification requirement might arise. If this assessment finds that this is so, additional information may need to be sought and direct communication between the Department and the project promoters will then commence.

***To what does the new procedure apply?***

It applies to capital expenditure incurred on hotel buildings on or after 1 January 2002<sup>4</sup>, be it a new hotel or re-development of an existing building where such construction or refurbishment first commenced on or after 6 April 2001. All such capital expenditure, regardless of amount, on which capital allowances are being sought, must be certified in accordance with the procedure in this booklet.

***Does the new procedure apply in respect of expenditure on holiday camps or holiday cottages?***

No, it only applies to buildings or structures actually in use for the purposes of the trade of hotel-keeping.

**8. Applying for a Certificate**

***How is certification obtained?***

All individuals, partnerships and companies seeking to claim capital allowances under the 7-year capital allowances regime in respect of capital expenditure incurred on or after 1 January 2002 on the construction/refurbishment of hotels (where such construction or refurbishment first commenced on or after 6 April 2001) must provide certain information to Fáilte Ireland who will then be in a position to consider whether a certificate as prescribed by section 268(12) TCA 1997 should be issued. The formats for information provision and certification are described within this booklet.

***Who should make the application?***

The business entity intending to claim the capital allowances should make the application. The business entity may, for example, be a sole proprietor, a public or private limited company, a partnership of individuals and/or companies or a consortium of investors. The business entity is referred to in this booklet as the "***Applicant Enterprise***".

The application must be accompanied by a letter from an auditor giving an opinion on the accuracy of the information contained in the application and expressing the auditor's opinion in connection with the certification requirements of section 268(12) TCA 1997 in relation to the following:

- the size classification of the Applicant Enterprise;
- whether the expenditure is capital expenditure within the meaning of section 270 TCA 1997,
- whether the expenditure is subject to EC notification requirements.

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

Where the applicant enterprise is not a corporate entity, the names, addresses, and percentage holding of each member of the Applicant Enterprise must be provided to Fáilte Ireland as part of the application.

***When should the application be made?***

The application should be made after the capital expenditure has been incurred. It is only at that stage that Fáilte Ireland will be in a position to review the facts to enable it determine if it may issue a

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<sup>4</sup> A more limited procedure applied in respect of expenditure incurred in the period from 6 April 2001 to 31 December 2001 where such construction or refurbishment first commenced on or after 6 April 2001. Details of the requirements to obtain a certificate for expenditure incurred in this period may be obtained from Fáilte Ireland on request.

certificate. In relation to established enterprises, which incur capital expenditure annually on hotel construction, applications should be made annually after the end of the enterprise's accounting period.

### ***Will Fáilte Ireland give advance opinions?***

Fáilte Ireland will be prepared to consider proposed projects and to give an advance opinion, based on the information provided by the applicant enterprise and its auditor, as to:

- (a) whether it will be in a position, after the expenditure on the proposed project has actually been incurred, to issue a certificate as prescribed in section 268(12) TCA 1997, in relation to each of the matters which are required to be certified by it;
- (b) whether the project will be subject to the notification requirements of the "Multisectoral framework on regional aid for large investment projects" prepared by the Commission of the European Communities, in which case approval of the potential capital allowances involved will need to be obtained from that Commission.<sup>5</sup>

**NB:** It will be necessary in all cases, where an advance opinion has been given, for the applicant enterprise to apply for an actual certificate after the capital expenditure has been incurred. The issue of an advance opinion does not guarantee that a certificate will issue.

## **9. What information must be provided by the applicant enterprise?**

### ***Certificate***

The applicant enterprise must provide the following information to Fáilte Ireland when applying for the Certificate:

- In respect of projects commenced on or before 31 December 2004 a declaration as to the accuracy of the information provided and an undertaking to furnish, upon request, such further information as is set out in Appendix 4. A template is included at **Appendix 5** in this respect, or  
For projects commencing on or after 1 January 2005 a declaration, regarding the size classification of the applicant and the accuracy of the information provided, and an undertaking to furnish, upon request, such further information as is set out in Appendix 4. A template is included at **Appendix 6** in this respect.
- Details as set out in application Form HCA No. 1 (**Appendix 7**),
- An opinion from its auditor (**Appendix 8**):
  - as to whether or not the enterprise is a micro, small or medium sized enterprise,
  - whether the expenditure incurred on the hotel project is capital expenditure incurred on the construction or refurbishment (within the meaning of section 270 TCA 1997) of a building or structure in use for the purposes of the trade of hotel keeping,
  - that in relation to the "Multisectoral Framework on regional aid for large investment projects" the hotel building is part of a project which is NOT subject to EC notification requirements. [Where the project is subject to such requirements, the auditor should confirm that approval of the potential capital allowances has been received from the EC Commission, where application for a certificate is being made.]

Applicants for a certificate should refer to Appendices 5, 6, 7 and 8.

### ***Advance Opinion***

The applicant enterprise must provide the following information to Fáilte Ireland when applying for an advance opinion:

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<sup>5</sup> While Fáilte Ireland may issue its advance opinion, confirmation that Commission approval, where necessary, of the potential capital allowances should be obtained.

- A declaration, regarding the size classification of the applicant and as to the accuracy of the information provided, and an undertaking (**Appendix 10**) to furnish, upon request, such further information as set out in Appendix 4.
- Details as set out in application Form HCA No. 2 (**Appendix 11**),
- An opinion from its auditor (**Appendix 12**):
  - as to whether or not the enterprise will be a micro, small or medium sized enterprise,
  - whether the proposed expenditure on the hotel project will be capital expenditure incurred on the construction or refurbishment (within the meaning of section 270 TCA 1997) of a building or structure in use for the purposes of the trade of hotel keeping,
  - that in relation to the “Multisectoral Framework on regional aid for large investment projects” the hotel building will be part of a project which will NOT be subject to EC notification requirements. [Where it is not clear if the project will be subject to EC notification requirements for large investment projects, adequate details should be provided to enable Fáilte Ireland consider whether the project is a large investment project for which it is required that prior approval of the potential capital allowances involved be obtained from the European Commission.]

Applicants for an Advance Opinion should refer to Appendices 10, 11 and 12.

## **10. Size Status**

*What financial 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 Fáilte Ireland to be reasonable. In such cases the basis used must be agreed with Fáilte Ireland in advance<sup>6</sup>. 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.

*What happens if an applicant enterprise is controlled by another enterprise?*

Where the applicant enterprise is controlled by another enterprise the determination of size status is dependent upon the determination of the size status of the controlling enterprise. Therefore this procedure must be carried out in respect of that controlling enterprise and likewise in respect of an enterprise which controls that enterprise. The determination of size status should be determined from the top down to incorporate all direct and indirect 25% relationships.

*What happens if the applicant enterprise has a 25% or more interest in another enterprise?*

Where the applicant enterprise (individually or collectively in the case of a group of individuals and/or companies or partnership of individuals and/or companies) has a 25% or more interest in any other enterprise this procedure must also be carried in respect of such other enterprise(s).

The position regarding the aggregation of turnover and balance sheet totals and staff headcounts for partner and/or linked enterprises in respect of projects where construction commenced on or after 1 January 2005 is set out in the next paragraph.

***Independence Criteria (Construction commenced on or after 1 January 2005)***

The revised Commission definition of SME/MSMEs 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. The criteria

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<sup>6</sup> If the accounting period runs for a period of less than 12 months the SME limits should be applied on a pro rata basis.

for classification under these 3 headings are set out in **Appendix 1**. 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.

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 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%.

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.

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 enterprise incurring the qualifying expenditure is or is not an SME/MSME. The criteria for establishing the data to be taken into consideration is as set out in **Appendix 1**.

#### ***Partnerships / Co-ownerships / Consortiums etc.***

##### *Construction commenced prior to 1 January 2005*

In the case of projects where construction commenced prior to 1 January 2005 where the applicant enterprise is a partnership, co-ownership, consortium or similar grouping, in the case of individuals who are members of such enterprises as passive investors it is not necessary to consider such individual's other business interests in assessing whether the enterprise is an SME under the definition of an SME which is effective to 31 December 2004. In addition corporate members of such enterprises which are holding the interest in the enterprise on behalf of individuals investing in a passive capacity may be similarly disregarded. However, where the corporate members are engaging actively in an economic activity, for example in a trading capacity, the interests of these corporate members cannot be disregarded.

##### *Construction commenced on or after 1 January 2005*

With regard to projects where construction commenced on or after 1 January 2005 the interests of individuals who are members of such enterprises as passive investors must be considered in the context of the new European Commission definition of a MSME where such individuals are separately engaged in the tourist accommodation sector. In such cases it will be necessary to consider their other business interests in the tourism accommodation sector in assessing whether the enterprise is a MSME.

In cases where such investors are separately engaged in the tourist accommodation sector and hold between 25% and 50% of the capital and/or voting rights in the partnership, co-ownership, consortium or similar grouping, the relevant financial and employment details of such individual's interest in the other enterprise (employee number, annual balance sheet and turnover totals) proportionate to the higher of their holding in either the capital or voting rights in the applicant enterprise should be

aggregated with the relevant financial and employment details of the applicant enterprise in order to establish the MSME status of the applicant enterprise.

In cases where investors who are separately engaged in the tourist accommodation sector have a holding in excess of 50 per cent 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 (OJ No. L124 of 20 May 2003, page 36) then the full amount of the individual's interest in the other enterprise (employee number, balance sheet and turnover totals) must be aggregated with the financial and employment details of the applicant enterprise when establishing the MSME status of the applicant enterprise.

## **11. Large Investment Projects: Prior approval of capital allowances from the EC**

### *Which projects need to be considered regarding prior approval?*

As a general rule, assessment of projects for compliance and/or notification under the Multisectoral Framework should only arise where the total project cost exceeds €50 million. Applicants submitting documentation to Fáilte Ireland for certification in relation to any project in excess of €50million are strongly advised to contact the Department of Finance to discuss the issue of compliance with the terms of the Multisectoral Framework. If, based on the project cost supplied, it appears to Fáilte Ireland that the project may constitute a "large investment project" then Fáilte Ireland will refer the details of the project proposed by the applicant enterprise to the Department of Finance to assess whether notification under the "Multisectoral Framework on regional aid for large investment projects" 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. The outcome of the assessment will be conveyed to the applicant enterprise by Fáilte Ireland. Details in relation to the Multisectoral Framework are set out in **Appendix 3**.

### *How is approval of the capital allowances obtained from the European Commission?*

Should the initial assessment carried out by the Department of Finance determine that the project should be notified to the Commission under the Framework, the Department will require the applicant enterprise to complete the standard notification form which will then be sent to the Commission by the Department of Finance. The framework states that the Commission will take at least two 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 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.

## **12. Fáilte Ireland Certificate**

### *What should the applicant do with the Fáilte Ireland Certificate?*

The certificate provided by Fáilte Ireland to the Applicant Enterprise should be retained by the enterprise and forwarded to the Revenue Commissioners if requested.

### *To whom will Fáilte Ireland send a copy of the Certificate?*

Fáilte Ireland will pass a copy of all certificates and advance opinions issued to the Department of Finance. Where the Fáilte Ireland certificate declares that the enterprise is not a micro, small or medium sized enterprise as defined, the Department of Finance will incorporate this into its periodic reports on State Aids to the European Commission.

### **13. General**

#### ***Will Fáilte Ireland query the information provided?***

It is the responsibility of the applicant enterprise and the auditor to ensure the information provided to Fáilte Ireland is correct. However it should be noted that Fáilte Ireland, its agents or relevant European Union bodies or State bodies may query or seek to review the information provided.

#### ***For how long will a Fáilte Ireland advance opinion be valid?***

Fáilte Ireland's advance opinions will remain valid ***until 31 July 2008*** subject to any legislative amendments that may occur pending the obtaining of the certificate.

#### ***Does the Fáilte Ireland certificate cover later developments?***

No, the certificate will cover only the expenditure on the development detailed in the application. Where new developments take place an enterprise should renew the certification process, in accordance with the guidelines in force at that time, in order to ensure continuity of claims.

#### ***Are capital allowances on other capital expenditure relating to hotel projects affected?***

Capital allowances in relation to other capital expenditure, e.g. on Plant and Machinery, are not affected by these changes.

#### **Notice:**

**This booklet comprises guidelines only and does not constitute a legal interpretation of section 268 of the Taxes Consolidation Act 1997 or other relevant legislation. Before commencing any building work for which it is intended that capital allowances will be claimed, specific professional tax and legal advice should be obtained.**

## Appendix 1

### Size Classification and Independent Status

#### Analysis of the Definition of Small and Medium-Sized (SME) Enterprises as contained in Annex 1 to Commission Regulation (EC) No 70/2001 (OJ No L10 of 13 January 2001, page 33)

An enterprise must comply with criteria 1 and 4 below, plus either 2 or 3, to qualify under this definition if the enterprise is seeking certification for projects where construction commenced prior to 1 January 2005. Where construction commenced on or after 1 January 2005 the applicant enterprise must comply with the relevant criteria set out under the analysis of the definition of MSMEs.

Criteria	Small Enterprise	Medium Sized Enterprise
1. Maximum number of employees (in terms of full-time equivalents / annual working units)	50	250
2. Annual turnover not exceeding	Euro 7 million	Euro 40 million
3. Annual balance sheet total not exceeding	Euro 5 million	Euro 27 million
4. Independence Criteria  i.e. 25% or more of the capital or voting rights is not held by an enterprise (or enterprises) which itself does not qualify as a small or medium-sized enterprise.	Applies	Applies

Notes:

- (a) In calculating the thresholds in 1 to 3 above, the corresponding amounts for enterprises, in which the Applicant Enterprise has a 25% + interest, should also be included.
- (b) Where the determination of SME status for the Applicant Enterprise is dependent upon the determination also of an enterprise, which controls it (25%+), this procedure must also be carried out in respect of that controlling enterprise.
- (c) The threshold of 25% in 4 above may be exceeded:
  - if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly.
  - if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25% or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.
- (d) "Annual turnover" is defined as gross income from all sources, excluding VAT, before deduction of any costs, but after deduction of sales rebates and trade discounts.
- (e) "Balance Sheet Total" comprises fixed assets including intangible assets, financial assets and current assets.
- (f) The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full time workers employed during one year with part-time and seasonal workers being fractions of AWU. Qualification for SME status depends both on the average employment in the accounting year and on employment numbers at year-end.

**Micro, Small and Medium-Sized (MSME) Enterprises as contained in the Annex to Commission Recommendation of 6 May 2003 (OJ No L124 of 20 May 2003, page 36)**

The definition of SME, and the thresholds indicated for Criteria 2 and 3 above, set in 1996, have been reviewed by the European Commission. Formal thresholds have also been set for the category of micro sized enterprise. The revised guidelines became effective from 1 January 2005 and apply to projects which commence on or after 1 January 2005. The relevant employee, turnover and balance sheet total under the revised guidelines are as follows:

Criteria	Micro Enterprise	Small Enterprise	Medium Sized Enterprise
1. Maximum number of employees (in terms of full-time equivalents / annual working units)	10	50	250
2. Annual turnover not exceeding	Euro	Euro	Euro
	2 million	10 million	50 million
3. Annual balance sheet total not exceeding	Euro	Euro	Euro
	2 million	10 million	43 million

The independence criteria from the original guidelines continue to apply. However, the revised guidelines also introduce the concept of partner and linked enterprises which need to be taken into account in this respect in determining the size category of the applicant enterprise. The definitions of ‘partner’ and ‘linked’ enterprises are contained in the Commission Recommendation<sup>7</sup> of 6 May 2003 concerning the definition of micro, small and medium sized enterprises and also explained in the Commission Communication (Model declaration on the information relating to the qualification of an enterprise as an SME)<sup>8</sup>. The web addresses for the Commission Recommendation and Communication are respectively:

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_124/l\\_12420030520en00360041.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_124/l_12420030520en00360041.pdf)

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c\\_118/c\\_11820030520en00050015.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c_118/c_11820030520en00050015.pdf)

We have included in the following paragraphs an extract from the Commission communication but we recommend that applicants review the Commission Recommendation in addition to the Model Declaration. The revised guidelines also include clarification regarding what constitutes an enterprise as follows:

“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.”

**Extract from Model Declaration (OJ No. C118 of 20 May 2003, page 5)**

**Autonomous Enterprise**

This is by far the most common type of enterprise. It applies to all enterprises which are not one of the two other types of enterprise (partner or linked).

*An applicant enterprise is autonomous if it:*

<sup>7</sup> OJ No L124 of 20 May 2003, page 36.

<sup>8</sup> OJ No C118 of 20 May 2003, page 5.

- Does not have a holding of 25%<sup>9</sup> or more in any other enterprise,
- And is not 25%<sup>9</sup> or more owned by any enterprise or public body or jointly by several linked enterprises or public bodies, apart from some exceptions<sup>10</sup>.
- And does not draw up consolidated accounts and is not included in the accounts of an enterprise which draws up consolidated accounts and is thus not a linked enterprise<sup>11</sup>.

### **Partner Enterprise**

This type represents the situation of enterprises which establish major financial partnerships with other enterprises without the one exercising effective direct or indirect control over the other. Partners are enterprises which are not autonomous but which are not linked to one another.

*The applicant enterprise is a partner of another enterprise if:*

- It has a holding of more than 25% but less than 50% in the other enterprise.
- Or the other enterprise has a holding of more than 25% but less than 50% in the applicant enterprise.
- And the applicant enterprise does not draw up consolidated accounts which include the other enterprise by consolidation and is not included by consolidation in the accounts of the other enterprise or of an enterprise linked to it.

### **Linked Enterprise**

This type corresponds to the economic situation of enterprises which form a group through the direct or indirect control of the majority of the capital or voting rights (including through agreements or in certain cases through natural persons as shareholders), or through the ability to exercise a dominant influence on an enterprise. Such cases are thus less frequent than the two preceding types.

In order to avoid difficulties of interpretation for enterprises the Commission has defined this type of enterprise by taking over – wherever they are suitable for the purposes of the Definition – the

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<sup>9</sup> In terms of the share of the capital or voting right, whichever is higher is applied. To this percentage should be added the holding in that same enterprise of each enterprise which is linked to the holding company [Definition Article 3(2) – Annex to Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, page 36)].

<sup>10</sup> An enterprise may continue being considered as autonomous when this 25% threshold is reached or exceeded if that percentage is held by the following categories of investors (provided that those are not linked with the applicant enterprise):

- a) Public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses ('business angels'), provided the total investment of those business angels in the same enterprise is less than €1,250,000;
- b) Universities or non-profit research centres;
- c) Institutional investors, including regional development funds. [Definition, Article 3(2), second subparagraph – Annex to Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, page 36)].

<sup>11</sup> - If the registered office of the enterprise is situated in a Member State which has provided for an exception to the requirement to draw up such accounts pursuant to the Seventh Council Directive 83/349/EEC of 13 June 1983, the enterprise should nevertheless check specifically whether it does not meet one or other of the conditions laid down in Article 3(3) of the Definition [Annex to Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, page 36)].

- There are also some very rare cases in which an enterprise may be considered linked to another enterprise through a person or a group of natural persons acting jointly [Definition Article 3(3) – Annex to Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, page 36)].

- Conversely, there are very few cases of enterprises drawing up consolidated accounts voluntarily, without being required to do so under the Seventh Directive. In that case, the enterprise is not necessarily linked and can consider itself only a partner.

To determine whether the enterprise is linked or not in each of the three situations it should be checked whether or not the enterprise meets one or other of the conditions laid down in Article 3(3) of the Definition [Annex to Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, page 36)] where applicable through a natural person or group of natural persons acting jointly.

conditions set out in Article 1 of Council Directive 83/349/EEC on consolidated accounts<sup>12</sup>, which has been applied for many years.

An enterprise thus generally knows immediately that it is linked, since it is already required under that Directive to draw up consolidated accounts or is included by consolidation in the accounts of an enterprise which is required to draw up such consolidated accounts.

The only two cases, which are however not very frequent in which an enterprise can be considered linked although it is not already required to draw up consolidated accounts are described in the first two indents of footnote 10. In those cases, the enterprise should check whether it meets one or other of the conditions set out in Article 3(3) of the Definition.

## II. THE HEADCOUNT AND THE ANNUAL WORK UNITS

The headcount of an enterprise corresponds to the number of annual work units (AWU).

### **Who is included in the headcount?**

- The employees of the applicant enterprise.
- Persons working for the enterprise being subordinate to it and considered to be employees under national law.
- Owner-managers.
- Partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not taken into account in the headcount.

### **How is the headcount calculated?**

One AWU corresponds to one person who worked full-time in the enterprise in question or on its behalf during the entire reference year. The headcount is expressed in AWUs.

The work of persons who did not work the entire year or who worked part-time – regardless of its duration – and seasonal work is counted as fractions of AWU.

The duration of maternity or parental leaves is not counted.

*End of Extract*

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<sup>12</sup> Seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54(3)(g) of the Treaty and concerning consolidated accounts (OJ L 193 of 18 July 1993, page 1) as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L283 of 27 October 2001, page 28)

## Appendix 2

### Expenditure Definitions

#### Meaning of Initial Investment

**Meaning of “initial investment” contained in point 4.4 of the European Commissions “Guidelines on National Regional Aid” (Official Journal C 74, 10 March 1998).**

Point 4.4 of the above states:

“Initial investment means an investment in fixed capital relating to the setting up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment (through rationalisation, diversification or modernisation).

An investment in fixed capital undertaken in the form of the purchase of an establishment which has closed or which would have closed had it not been purchased may also be regarded as an initial investment, unless the establishment concerned belongs to a firm in difficulty. In the latter case, aid for the purchase of an establishment may include an advantage for the firm in difficulty, which must be examined in accordance with the Guidelines on State aid for rescuing and restructuring firms in difficulty.”

#### Meaning of Expenditure on construction of building or structure

This is defined in section 270 Taxes Consolidation Act 1997 as follows:

270. (1) In this section, "refurbishment", in relation to a building or structure, means any work of construction, reconstruction, repair or renewal, including the provision of water, sewerage or heating facilities carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure.

(2) A reference in this Chapter to expenditure incurred on the construction of a building or structure includes expenditure on the refurbishment of the building or structure, but does not include -

- (a) any expenditure incurred on the acquisition of, or of rights in or over, any land,
- (b) any expenditure on the provision of machinery or plant or on any asset treated for any chargeable period as machinery or plant, or
- (c) any expenditure in respect of which an allowance is or may be made for the same or for any other chargeable period under section 670 [Mine development allowance] or 765(1) [Allowance for capital expenditure on scientific research].

(3) Where a building or structure which is to be an industrial building or structure forms part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the construction of the whole building or number of buildings, as the case may be, for the purpose of determining the expenditure incurred on the construction of the building or structure which is to be an industrial building or structure.

### Large Investment Projects

**If you require clarification regarding potential notifications under either the 1998 or 2002 Multisectoral Framework, you are strongly advised to contact the Department of Finance directly at 01-6045559 or 01-6045860 for further details. All projects involving an investment cost in excess of €50 million need to be reviewed to determine whether or not contact with the Commission in the context of either Framework is required.**

**Criteria for determining whether a building or structure is provided for the purposes of a project which is subject to the notification requirements of the European Commissions “Multisectoral framework on regional aid for large investment projects”**

#### Multisectoral Framework – Valid to 31 December 2003

The criteria are contained in point 2.1 of Official Journal C 107, 07 April 1998 and are as follows:

“2.1 Under this framework Member States are required to notify pursuant to Article 93(3) of the Treaty any proposal to award regional investment aid within the scope of an approved scheme, where either of the following two criteria are met:

- (i) The total project cost is at least ECU<sup>13</sup> 50 million, and the cumulative aid intensity expressed as a percentage of the eligible investment costs is at least 50% of the regional aid ceiling for large companies in the area concerned and aid per job created or safeguarded amounts to at least ECU 40,000; or
- (ii) The total aid is at least ECU 50 million.”

#### Multisectoral Framework – Effective from 1 January 2004

A new Multisectoral Framework for regional aid to large investment projects (Official Journal C 70, 19 March 2002, page 8) became effective from 1 January 2004.

The starting point for determining the admissible aid level for a specific project under the new Framework remains the aid ceilings laid down in the Regional aid maps agreed between the European Commission and Ireland. This aid map, which is valid until the end of 2006, identifies the aid rates that apply in Ireland where investments are eligible for support from national or regional State resources, together with the maximum aid intensity (expressed in percentages of the investment) for each sub-area.

Under the new Framework, below an investment amount of €100 million, there will not be any notification requirement. Above €100 million, the notification of individual cases will be compulsory only if the aid proposed is higher than what a €100 million project could obtain as a maximum amount by applying the reduction scale set out below. However, for any project where the investment cost exceeds €50million but is below €100million, there is a limitation on the aid permissible under the Framework. Applicants submitting documentation to Fáilte Ireland for certification in relation to any project in excess of €50million are strongly advised to contact the Department of Finance to discuss the issue of compliance with the terms of the Multisectoral Framework.

According to the new framework, the actual aid intensity that a large project can receive will then be automatically reduced in accordance with the following reduction scale:

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<sup>13</sup> ECU1 = €1

Eligible expenditure on the project	Adjusted Aid ceiling
Up to € 50 million	No reduction. 100% of regional State aid ceiling
For the part between € 50 million and € 100 million	50% of regional State aid ceiling
For the part exceeding € 100 million	34% of regional State aid ceiling

The formula to be used to calculate the maximum aid allowable through the adjustment of the regional aid ceiling for the area involved can be expressed as follows:

Regional aid ceiling for the area x (€50m + (.5 x amount over €50m) + (.34 x amount over €100m).

In its assessment of notified projects, the Commission will use competition considerations, i.e. it will look at the situation of the specific sector concerned. If such a project reinforces a high market share (>25%) of the company concerned, or increase capacity in a non-growing sector by more than 5%, no aid will be authorised.

In relation to the Regional aid ceilings applicable to Ireland, these are set out in the regional aid map for Ireland which is available from the European Commission's Competition Directorate website at [http://ec.europa.eu/community\\_law/state\\_aids/industrie/n523-99.pdf](http://ec.europa.eu/community_law/state_aids/industrie/n523-99.pdf).

Further details on these aid ceilings and EU state aid rules and procedures are contained in a publication entitled "State aid - A guide for Public Bodies in Ireland" which has been prepared by the Department of Enterprise, Trade and Employment and is available from that Department's website at [www.entemp.ie/publications/enterprise/2004/stateaid.pdf](http://www.entemp.ie/publications/enterprise/2004/stateaid.pdf).

The new Framework obliges ex-post reporting on all projects with an investment cost in excess of €50 million. Fáilte Ireland will forward details to the Department of Finance of hotel projects issued with certification where the total investment exceeds €50million. The Department will then submit the necessary details to the European Commission in line with the terms of the 2002 Multisectoral Framework which is effective from 1 January 2004.

**Note:**

If the applicant enterprise is seeking a certificate from Fáilte Ireland in respect of a building or structure provided for the purposes of a project which falls under the above then prior approval of the potential capital allowances involved must be received from the European Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance.

## Appendix 4

### Additional Information

One of the requirements to qualify for a Fáilte Ireland Certificate 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:

- Commission Regulation (EC) No. 70/2001 (OJ No. L10, 13 January 2001, page 33) or Commission Recommendation of 6 May 2003 (OJ No. L124 of 20 May 2003, page 36) regarding the size classification of the applicant enterprise,
- the “Multisectoral Framework on regional aid for large investment projects” (OJ No. C 107, 7 April 1998, page 7 and OJ No. C70, 19 March 2002, page 8),
- 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.

## Appendix 5

### **Draft on Applicant Enterprise's Letterhead in respect of projects commencing on or before 31 December 2004**

**Application for a CERTIFICATE under section 268(12) TCA 1997. Declaration by Applicant Enterprise to Fáilte Ireland as to the accuracy of the information provided and undertaking to furnish any further information as may be requested under section 268(12) TCA, 1997.**

Addressed to: Fáilte Ireland

Subject: Certification under section 268(12) Taxes Consolidation Act 1997.

Date:

Dear Sirs,

We enclose for your attention Application Form HCA 1. We declare that the financial and other information on which the application is based is true and correct in all respects.

We also enclose, as an Addendum, a letter from our Auditor expressing their opinion in connection with the certification requirements of section 268(12) TCA 1997.

We further 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 under section 268(12) TCA 1997 to enable compliance with the reporting requirements of:

- Commission Regulation (EC) No. 70/2001 or Commission Recommendation OJ No. L124 of 20 May 2003, page 36 (delete as appropriate),
- the 1998/2002 (delete as appropriate) "Multisectoral Framework on regional aid for large investment projects",
- 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 Fáilte Ireland to issue a certificate in accordance with section 268(12) TCA 1997.

All information forming the basis for this application, and the opinion of our auditor, is available for inspection by Fáilte Ireland or its agents on request.

Yours faithfully,

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for Applicant Enterprise

## Appendix 6

### **Draft on Applicant Enterprise's Letterhead in respect of projects commencing on or after 1 January 2005**

**Application for a CERTIFICATE under section 268(12) TCA 1997. Declaration by Applicant Enterprise to Fáilte Ireland as to the accuracy of the information provided and undertaking to furnish any further information as may be requested under section 268(12) TCA, 1997.**

Addressed to: Fáilte Ireland

Subject: Certification under section 268(12) Taxes Consolidation Act 1997.

Date:

Dear Sirs,

We enclose for your attention Application Form HCA 1. We declare that the financial and other information on which the application is based is true and correct in all respects.

We also enclose, as an Addendum, a letter from our Auditor expressing their opinion in connection with the certification requirements of section 268(12) TCA 1997.

We hereby declare that we are:

- 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 the Annex to Commission Recommendation OJ No L124 of 20 May 2003, page 36.

We further 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 under section 268(12) TCA 1997 to enable compliance with the reporting requirements of

- Commission Regulation (EC) No. 70/2001 or Commission Recommendation OJ No. L124 of 20 May 2003, page 36 (delete as appropriate),
- the 1998/2002 (delete as appropriate) "Multisectoral Framework on regional aid for large investment projects",
- 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 Fáilte Ireland to issue a certificate in accordance with section 268(12) TCA 1997.

All information forming the basis for this application, and the opinion of our auditor, is available for inspection by Fáilte Ireland or its agents on request.

Yours faithfully,

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for Applicant Enterprise

## Appendix 7

### Application Form HCA 1

Application Form to Fáilte Ireland for a certificate in accordance with section 268(12) TCA 1997.

Information regarding the applicant and the project.

#### Part A - The Applicant

Background Details	_____
Name of applicant	_____
Trade name, if any	_____
Company Registration Office No.	_____
Address of applicant	_____
Email address of applicant	_____
Phone No. of applicant	_____

#### Part B – The Project

1. Was the expenditure incurred between 4 December 2002 and 31 July 2008? If yes please confirm which of the following conditions have been satisfied:

##### *Developments Which Require Planning Permission*

A full and valid planning application (not an application for outline permission) in respect of this project was made and was acknowledged as having been made:

- on or before 10 March 2002 under the Local Government (Planning and Development) Regulations 1994 (S.I. No. 86 of 1994) or
- on or before 31 December 2004 under the Planning and Development Regulations 2001 to 2002.

OR

A valid application for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 in respect of a hotel building or structure was made and was acknowledged as having been made on or before 31 December 2004 to the Dublin Docklands Development Authority.

##### *Exempted Developments*

The construction or refurbishment work is exempted development for the purposes of the Planning and Development Act 2000 by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and in respect of expenditure incurred on or after 1 January 2004 -

- a detailed plan in relation to the development work is prepared,
  - a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and
  - work to the value of 5 per cent of the development costs is carried out,
- not later than 31 December 2004.

2. Was or will any part of the expenditure 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?
3. Description of the project.
4. Address of hotel at which construction/refurbishment has been carried out.
5. Full details of the nature of the expenditure should be provided, analysed as follows:

Expenditure on the construction/refurbishment of the hotel (amounts should be stated net of VAT)

Building / Structure (please describe)	_____
Expenditure on the acquisition of, or of Rights in or over any land	_____
Expenditure on the provision of machinery/ Plant in the structure	_____
Total expenditure on project	_____
Total qualifying construction expenditure in accordance with Chapter 1, Part 9 of TCA 1997	_____

6. Is all of the building / structure in respect of which this application is being made in use for the purposes of a trade of hotel keeping?
7. Does the applicant enterprise hold the relevant interest in respect of the expenditure incurred under section 269 TCA 1997?
8. Has/will any of the expenditure been/will be treated as an operating expense in the applicant enterprise's profit and loss account?
9. Is the project part of a larger project? If so, full details of the overall project will also be required.
10. Provide the following details in respect of the schedule for the project:

Date of commencement of works:	_____
Date of completion of works:	_____
Anticipated date of opening/bringing the capital asset into use:	_____

11. Do the restrictions relating to a "Room Ownership Scheme" as set out in section 409 of the Taxes Consolidation Act 1997 apply to this application?
  
12. Where certification is required in respect of any expenditure incurred after 31 July 2006, please confirm that the constructed premises are registered on the Failte Ireland register of hotels.
  
13. Where certification is required in respect of any expenditure incurred after 31 December 2006, please confirm that the conditions specified in sections 26 and 27 of Finance Act 2006 have been met in order to allow such a claim.

*Where the Applicant Enterprise is not a corporate entity, the names and addresses AND PERCENTAGE SHAREHOLDING OF EACH of the members of the Enterprise must be provided as part of the application.*

**Financial Details in respect of applications where the project commenced on or before 31 December 2004**

**The following table should be completed in respect of the financial details of the applicant:**

Financial Statements, year ended:	_____
Balance Sheet Date:	_____
Annual Turnover for above year (in €m):	_____
Applicant Enterprise	_____
Enterprises controlled (25%+) by applicant	_____
Overall Total	_____
Balance Sheet total at above date (in €m):	_____
Applicant Enterprise	_____
Enterprises controlled (25%+) by applicant	_____
Overall Total	_____
Average Number of Employees in above year:	_____
Applicant Enterprise	_____
Enterprises controlled (25%+) by applicant	_____
Overall Total	_____

(Note: amounts relating to enterprises controlled by Applicant Enterprise should be included above on the following bases:

- (a) where there is majority control, include full amounts,
- (b) where the control is in the range 25% to 50%, include amounts proportionate to the percentage control,
- (c) eliminate inter-enterprise transactions and balances.)

	Balance Sheet Dates		
	(A)	(B)	(C)
Number of Employees at above Balance Sheet date (in terms of full time equivalents or annual working units):	Above Date	1 year Previously	2 years Previously
Applicant Enterprise			
Enterprises controlled (25% +) by applicant			
Overall total			

(Note: complete columns B and C if total of Column A exceeds 250)

**Enterprises controlled (25%+ of capital or voting rights) by Applicant Enterprise and included in above amounts:**

Name and Address of Enterprise	Percentage of ordinary share capital held	Percentage of voting rights held

**Note:**

- (a) Where the enterprise is not incorporated, please substitute the share capital details requirement above with another appropriate basis such as percentage entitlement to share of profits and other distributions. Please provide explanation of any such alternative basis.
- (b) Where the applicant enterprise (individually or collectively in the case of a group of individuals and/or companies or partnership of individuals and/or companies) has a 25% or more interest in any other enterprise this procedure must also be carried in respect of such other enterprise(s).

**Details of Persons/Bodies owning/controlling 25%+ of Applicant Enterprise:**

Name and Address of Enterprise	Percentage of ordinary share capital held	Percentage of voting rights held

**Notes:**

- (a) Where the enterprise is not incorporated, please substitute the share capital details requirement above with another appropriate basis such as percentage entitlement to share of profits and other distributions. Please provide explanation of any such alternative basis.
- (b) Where an enterprise controls 25% or more of the Applicant Enterprise, this certification procedure should also be carried out in respect of that controlling enterprise, so that Criterion 4 of the SME definition can be addressed. Likewise the procedure should be carried out in respect of any enterprise controlling that controlling enterprise.

**Additional Financial Information:**

Please also supply a copy of the Financial Statements of the Applicant Enterprise and of other enterprises which control, or are controlled by, the Applicant Enterprise.

**Note, for projects where construction commenced on or after 1 January 2005, applicants must complete and retain the declaration specified in Commission communication (Model declaration on the information relating to the qualification of an enterprise as an SME)<sup>14</sup>. The web address for this communication is:**

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c\\_118/c\\_11820030520en00050015.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c_118/c_11820030520en00050015.pdf)

<sup>14</sup> OJ No. C118 of 20 May 2003, page 5.

## Appendix 8

### Draft (On Auditor's Letterhead)

FORM OF AUDITOR'S OPINION TO FÁILTE IRELAND IN CONNECTION WITH APPLICATION FOR CERTIFICATION UNDER SECTION 268(12) TAXES CONSOLIDATION ACT 1997.

**Addressed to:** Fáilte Ireland

**Subject:** Applicant Enterprise Name

***Re: Certification under section 268 (12) Taxes Consolidation Act (TCA) 1997.***

**Date:**

Dear Sirs,

We have examined the above-named Applicant Enterprise in connection with the certification requirements of section 268(12) TCA 1997.

### **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

*(Delete where not applicable)*

within the meaning of Annex 1 to Commission Regulation (EC) No. 70 / 2001 of 12 January 2001, or within the meaning of the Annex to Commission Recommendation OJ No. L124 of 20 May 2003, page 36.

*(Delete as appropriate)*

### **Nature of Expenditure**

We have considered the expenditure incurred by the Applicant Enterprise and it is our opinion that the expenditure concerned is capital expenditure incurred on the construction or refurbishment (within the meaning of section 270 Taxes Consolidation Act 1997) of a building or structure in use for the purposes of the trade of hotel keeping.

### **Project Size**

We have considered the expenditure incurred by the Applicant Enterprise and it is our opinion that the building or structure is provided as part of a project which is **not** subject to the notification requirements of the 1998/2002 (delete as appropriate) "Multisectoral framework on regional aid for large investment projects" prepared by the Commission of the European Communities.

**OR**

This project is subject to the notification requirements of the 1998/2002 (delete as appropriate) “Multisectoral framework on regional aid for large investment projects” prepared by the Commission of the European Communities and approval of the potential capital allowances involved has been obtained from that Commission.

*(Delete where not applicable)*

The information on which this opinion is based is set out in the Application Form HCA 1 attached. We have obtained sufficient information to satisfy ourselves as to the accuracy of the information contained therein. Copies of all relevant financial statements are also enclosed.

All information forming the basis for our opinion is available for inspection by Fáilte Ireland or its agents on request.

Yours faithfully,

\_\_\_\_\_

for Auditors

### Draft of Fáilte Ireland Certificate

Addressed to: Person who has undertaken Capital Expenditure on Building / Structure to use for purpose of trade of hotel keeping (i.e. Applicant Enterprise)

Project: Description of Project

Commencement Date:

Cessation Date:

Capital Expenditure Incurred on Construction or Refurbishment of hotel buildings/structures:

Subject: Certification under section 268(12) Taxes Consolidation Act 1997.

Certificate No:

Date:

With reference to section 268(12) Taxes Consolidation Act 1997 we hereby certify, in relation to the capital expenditure referred to above (being capital expenditure incurred on or after 1 January 2002 where the construction or refurbishment first commenced on or after 6 April 2001), ***based on the information provided:***

- (a) that sufficient information has been furnished to us to enable us to determine that you/your enterprise are/are not a small or medium-sized enterprise within the meaning of Annex 1 to Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the European Communities Treaty to State Aid to small and medium-sized enterprises,  
**or**  
that a declaration has been furnished to us stating that you/your enterprise are/are not a micro, small or medium-sized enterprise within the meaning of the Annex to Commission Recommendation OJ No. L124 of 20 May 2003, page 36 concerning the definition of micro, small or medium-sized enterprises.  
*(Delete where not applicable)*
- (b) that the expenditure concerned falls within the meaning of ‘initial investment’ contained in point 4.4 of the “Guidelines on National Regional Aid” prepared by the Commission of the European Communities,
- (c) that approval of the potential capital allowances involved in relation to the expenditure has been obtained from the Commission of the European Communities as the building or structure is provided as part of a project which is subject to the notification requirements of the 1998/2002 (delete as appropriate) “Multisectoral framework on regional aid for large investment projects” [Text in this paragraph to be deleted where it is **not** applicable]\*,
- (d) that you/your enterprise has undertaken to furnish to the Minister for Finance, or to such other Government Minister, agency or body as may be nominated for that purpose by the Minister for Finance, upon request in writing by that Minister, agency or body, such further information as may be necessary to enable compliance with the reporting requirements of:

- Commission Regulation (EC) No. 70/2001 or Commission Recommendation OJ No. L124 of 20 May 2003, page 36 (delete as appropriate),
- the 1998/2002 (delete as appropriate) “Multisectoral Framework on regional aid for large investment projects”,
- 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.

\*Based on the information provided, it is our opinion that the project is **not** subject to the notification requirements of the “Multisectoral framework on regional aid for large investment projects” prepared by the Commission of the European Communities and accordingly certification under paragraph (c) above is **not** applicable.

The issue by Fáilte Ireland of this certificate does not guarantee any entitlement to capital allowances in respect of the expenditure referred to above. Ultimately the question of entitlement to capital allowances is a matter for you to agree with the Revenue Commissioners.

## Appendix 10

### Draft on Applicant Enterprise's Letterhead

**Application for AN ADVANCE OPINION in relation to certification under section 268(12) TCA 1997. Declaration by Applicant Enterprise to Fáilte Ireland as to its size category and the accuracy of the information provided and undertaking to furnish any further information as may be requested under section 268(12) TCA, 1997.**

Addressed to: Fáilte Ireland

Subject: Request for Advance Opinion in connection with certification under section 268(12) Taxes Consolidation Act (TCA) 1997.

Date:

Dear Sirs,

We enclose for your attention Application Form HCA 2. We declare that the financial and other information on which the application is based is true and correct in all respects.

We also enclose, as an Addendum, a letter from our Auditors expressing their opinion in connection with the certification requirements of section 268(12) TCA 1997.

We confirm that the requirement to submit the Auditor's Opinion and Form HCA1 will be addressed so as to enable Fáilte Ireland consider the issue of a certificate under section 268(12) TCA 1997.

We hereby declare that we will be:

- a micro-sized enterprise
- a small-sized enterprise
- a medium-sized enterprise
- neither a micro, small nor medium-sized enterprise

*(Delete as appropriate)*

within the meaning of the Annex to Commission Recommendation of 6 May 2003 OJ No. L124 of 20 May 2003, page 36<sup>15</sup>.

We further 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 under section 268(12) TCA 1997 to enable compliance with the reporting requirements of

- Commission Regulation (EC) No. 70/2001 in relation to SMEs, or Commission Recommendation OJ No. L124 of 20 May 2003, page 36 (delete as appropriate),
- the 1998/2002 (delete as appropriate) "Multisectoral Framework on regional aid for large investment projects",
- 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 Fáilte Ireland to issue an advance opinion as to:

- whether the project will be subject to the notification requirements of the "Multisectoral framework on regional aid for large investment projects" prepared by the Commission of the European Communities,

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<sup>15</sup> Note, this 'size' declaration is relevant only to projects which commence on or after 1 January 2005.

in which case approval of the potential capital allowances involved will need to be obtained from that Commission;

**AND/OR**

- whether it will be in a position, after the expenditure on the proposed project has actually been incurred, to issue a certificate as prescribed in section 268(12) TCA 1997, in relation to each of the matters which are required to be certified by it.

All information forming the basis for this application, and the opinion of our auditor, is available for inspection by Fáilte Ireland or its agents on request.

Yours faithfully,

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for Applicant Enterprise

**Application Form HCA 2**

**Application Form to Fáilte Ireland for an advance opinion in connection with the issue of a certificate under section 268(12) TCA 1997.**

**Information regarding the applicant and the project.**

**Part A - The Applicant**

Background Details	_____
Name of applicant	_____
Trade name, if any	_____
Company Registration Office No.	_____
Address of applicant	_____
Email address of applicant	_____
Phone No. of applicant	_____

**Part B – The Project**

1. Will the expenditure be incurred between 4 December 2002 and 31 July 2008?

If yes please confirm which of the following conditions have been satisfied:

***Developments Which Require Planning Permission***

A full and valid planning application (not an application for outline permission) in respect of this project was made and was acknowledged as having been made:

- on or before 10 March 2002 under the Local Government (Planning and Development) Regulations 1994 (S.I. No. 86 of 1994) or
- on or before 31 December 2004 under the Planning and Development Regulations 2001 to 2002.

OR

A valid application for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 in respect of a hotel building or structure was made and was acknowledged as having been made on or before 31 December 2004 to the Dublin Docklands Development Authority.

***Exempted Developments***

The construction or refurbishment work is exempted development for the purposes of the Planning and Development Act 2000 by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and in respect of expenditure incurred on or after 1 January 2004-

- a detailed plan in relation to the development work is prepared,

- a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and
- work to the value of 5 per cent of the development costs is carried out,

not later than 31 December 2004.

2. Has or will any part of the expenditure 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?
3. Description of the project
4. Address of hotel at which construction/refurbishment will be carried out.
5. Full details of the nature of the projected expenditure should be provided analysed as follows:

Projected expenditure on the construction/refurbishment of the hotel (amounts should be stated net of VAT)

Building/ Structure (please describe)	_____
Projected expenditure on the acquisition of, or of Rights in or over any land	_____
Projected expenditure on the provision of plant/ Machinery in the structure	_____
Total projected expenditure on project	_____
Total qualifying construction expenditure in accordance with Chapter 1, Part 9 of TCA 1997	_____

6. Will all of the building / structure in respect of which this application is being made be in use for the purposes of a trade of hotel keeping?
7. Will the applicant enterprise hold the relevant interest in respect of the expenditure incurred under section 269 TCA 1997?
8. Will any of the expenditure be treated as an operating expense in the applicant enterprise's profit and loss account?
9. Will the project be part of a larger project? If so, full details of the overall project will also be required.
10. Provide the following details in respect of the schedule for the project:

Anticipated date of commencement of works:	_____
Anticipated date of completion of works:	_____
Anticipated date of opening/bringing the capital asset into use:	_____

11. Will the restrictions relating to a "Room Ownership Scheme" as set out in section 409 of the Taxes Consolidation Act 1997 apply to this application?
  
12. Where certification is required in respect of any expenditure incurred after 31 July 2006, please confirm that the constructed premises are registered on the Failte Ireland register of hotels.
  
13. Where certification is required in respect of any expenditure incurred after 31 December 2006, please confirm that the conditions specified in sections 26 and 27 of Finance Act 2006 have been met in order to allow such a claim.

*Where the Applicant Enterprise is not a corporate entity, the names and addresses of the members of the Enterprise must be provided as part of the application*

## Appendix 12

### Draft (On Auditor's Letterhead)

FORM OF AUDITOR'S OPINION TO FÁILTE IRELAND IN CONNECTION WITH APPLICATION FOR AN ADVANCE OPINION IN RELATION TO CERTIFICATION UNDER SECTION 268(12) TAXES CONSOLIDATION ACT 1997.

**Addressed to:** Fáilte Ireland

**Subject:** Applicant Enterprise Name

***Re: Advance Opinion in connection with certification under section 268(12) Taxes Consolidation Act (TCA) 1997.***

**Date:**

Dear Sirs,

We have examined the above-named Applicant Enterprise in connection with its application for an advance opinion in relation to the certification requirements of section 268(12) TCA 1997.

#### **Size classification of enterprise**

It is our opinion that this enterprise will be:

- a micro-sized enterprise
- a small-sized enterprise
- a medium-sized enterprise
- neither a micro, small nor medium-sized enterprise

*(Delete as appropriate)*

within the meaning of Annex 1 to Commission Regulation (EC) No. 70 / 2001 of 12 January 2001, or within the meaning of the Annex to Commission Recommendation OJ No. L124 of 20 May 2003, page 36*(Delete as appropriate)*.

#### **Nature of Expenditure**

We have considered the expenditure proposed by the Applicant Enterprise and it is our opinion that the expenditure concerned will be capital expenditure incurred on the construction or refurbishment (within the meaning of section 270 TCA 1997) of a building or structure in use for the purposes of the trade of hotel keeping.

#### **Project Size**

We have considered the expenditure proposed by the Applicant Enterprise and it is our opinion that the building or structure will be provided as part of a project which will **not** be subject to the notification requirements of the 1998/2002 (delete as appropriate) "Multisectoral framework on regional aid for large investment projects" prepared by the Commission of the European Communities.

**OR**

This project may be subject to the notification requirements of the 1998/2002 (delete as appropriate) "Multisectoral framework on regional aid for large investment projects" prepared by the Commission

of the European Communities in which case approval of the potential capital allowances involved will need to be obtained from that Commission.

*(Delete where not applicable)*

The information on which this opinion is based is set out in the Application Form HCA 2 attached. We have obtained sufficient information to satisfy ourselves as to the accuracy of the information contained therein.

All information forming the basis for our opinion is available for inspection by Fáilte Ireland or its agents on request.

Yours faithfully,

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for Auditor

### Draft of Fáilte Ireland Advance Opinion

Addressed to: Person who is proposing to undertake Capital Expenditure on Building / Structure to use for purpose of the trade of hotel keeping (i.e. Applicant Enterprise)

Project: Description of Project

Commencement Date

Cessation Date

Projected Capital Expenditure To Be Incurred on the Construction or Refurbishment of hotel buildings/structures

**Subject: Advance Opinion - section 268(12) Taxes Consolidation Act (TCA) 1997.**

Opinion No:

Date:

With reference to the proposed capital expenditure on the hotel project detailed above it is the opinion of Fáilte Ireland based on the information advanced by the applicant enterprise and its auditor and the projections made:

- that the project will/will not be subject to the notification requirements of the 1998/2002 (delete as appropriate) “Multisectoral framework on regional aid for large investment projects” prepared by the Commission of the European Communities. [Where the project is subject to the notification requirements approval of the potential capital allowances involved will need to be obtained from that Commission.] .

*(Delete where not applicable)*

#### **AND/OR**

- that it will/will not be in a position, after the expenditure on the proposed project has actually been incurred and after examining the Auditor’s Opinion thereon and Form HCA1, to issue a certificate as prescribed in section 268(12) TCA 1997, in relation to each of the matters which are required to be certified by it.

We emphasise this opinion is not a certificate for the purposes of section 268(12) TCA 1997. An application for a certificate may be made after the expenditure has been incurred and the project is completed. Such application should provide full details of the actual expenditure incurred, the actual status of the applicant enterprise and the actual size of the project involved. It should be accompanied by supporting documentation, financial statements, applicant enterprise’s certification and undertaking, and auditor’s final opinion.

The issue by Fáilte Ireland of this advance opinion does not guarantee that a certificate will issue after the expenditure has been incurred. Neither does it guarantee any entitlement to capital allowances in respect of the proposed expenditure referred to above. Ultimately the question of entitlement to capital allowances is a matter for you to agree with the Revenue Commissioners.