

Appendix A

Final Responses to questions 1 to 11 of Commission Letter 23 July 2009 Reference NN30/2008 (Ex N 660/2008]

1 AID AMOUNT AND AID INTENSITY

(1) The Irish authorities are invited to specify the following parameters:

(a) For each group of beneficiary separately the tax rate applicable in 2005

(1)(a) We set out in the table below the tax rate applicable in 2005 for each group of Investors that benefited from the capital allowances:

Tax type	2002 Rate ¹	2005 Rate
Corporate tax rate (for companies)	16%	12.5%
Top personal income tax rate (for individual co-owners/suite owners)	42%	42%

(b)/(c) For each group of beneficiary separately the expenditure incurred pre 2007 (eligible at a rate of 100 %) and the expenditure incurred in 2007 (eligible at a rate of 75 %)

[REDACTED]

2. APPLICATION OF THE AID SCHEME AND BENEFICIARIES OF THE AID

• Additional background and explanations

We set out to follow some additional information with a view to addressing the comments made by the Commission in the first two paragraphs of Section 2.

(i) Options open to Carrylane for structuring the development

In starting out this venture Carrylane Limited (“Carrylane”) had two options available to it in terms of structuring the development of the hotel.

Option 1.

Firstly, it could have built the hotel for its own use and retention for the foreseeable future such that the hotel would represent a capital asset of Carrylane for use in its hotel operations. In this instance, Carrylane, provided it complied with the various conditions associated with the Irish hotel capital allowances regime, would have been in a position to claim capital allowances in respect of its qualifying expenditure on the construction of the hotel. This option was not pursued.

¹ The 2002 rates are taken directly from Paragraph 29 of Case No N 832/2000

Option 2.

Alternatively (and this was the approach adopted), Carrylane as property developer developed the hotel on behalf of a group of third party Investors who took full ownership of the hotel and, subject to complying with the necessary conditions, are entitled to claim capital allowances in respect of the qualifying expenditure incurred by them on the construction of the hotel. In these circumstances, the only expenditure qualifying for capital allowances is that which is incurred by the owners of the property, i.e. those third party Investors. Carrylane is not entitled to claim capital allowances.

Accordingly the statement under Question 6(c) - paragraph 3 in our letter of 1 April 2009, that “Carrylane has effectively sold its entitlement to tax allowances to the Exhort Co-ownership”, is not correctly explained due to the shortened nature of the response at that time. In light of the above more detailed explanations, the Commission will see that Carrylane, by structuring the transaction such that it acted as property developer rather than hotel owner and operator was not entitled to claim hotel capital allowances under Irish tax law.

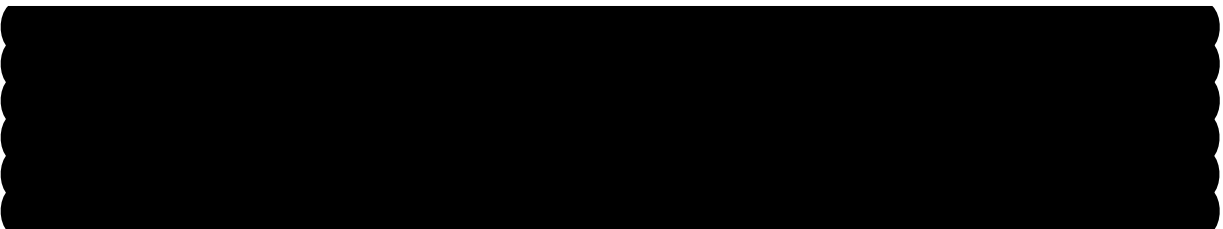
Separately, Carrylane in its capacity as hotel operator has taken a leaseback of the hotel from the Investors at an open market rent. Furthermore it should be noted that none of the Investors are operators in the hotel/accommodation sector.

(ii) Distinction between Exhort Co-owners and Suite Owners

An important distinction exists between the Exhort Co-ownership Investors and the Suite Owner Investors which the Commission may wish to take into account when reviewing the role played by the various parties, including Carrylane. This distinction is summarised below.

The Suite Owners are Investors who incurred expenditure on the construction of the hotel under their development agreements with Carrylane (in its capacity as a property developer) and who retain long term ownership of their hotel suites. They have leased back their hotel suites at an arms length rate to Carrylane (in its capacity as hotel operator). The Suite Owner Investors, as arms length landlords, are entitled under Irish law to obtain the capital allowances.

The Exhort Co-owners are Investors who also incurred expenditure on the construction of the hotel under their development agreements with Carrylane (in its capacity as a property developer) and who have temporary ownership of the hotel for the duration of the transaction. It is fair to say that the capital allowances which the Exhort Co-owners obtain are to some extent and as a result of a contract between the Exhort Co-owners and Carrylane indirectly shared with Carrylane. We estimate Carrylane’s net benefit from this arrangement is circa €5.2m as set out in more detail in Appendix 1.



[REDACTED]

Notwithstanding the calculation of this net benefit, we would draw the Commission's attention to the comments in our reply of 1 April 2009 under the heading of "Le Levant" (ref: pages 4 to 5) whereby we stated that when one examines the development component of the Ritz Carlton project we believe that the Commission can be satisfied that any aid involved has contributed substantially to the regional development of the Mid East region and can reasonably conclude that the aid is proportionate to the regional development benefits and thus compatible with the common market. We remain of this view.

(2) In light of this, is the understanding of the Commission services correct that it was Carrylane, (i.e. the company that undertook the construction of the hotel and became the first owner of the hotel) which was eligible for the capital allowance in the first place, and sell this entitlement through the investor lease agreements it entered into with the different corporate entities and private individuals (i.e. the beneficiaries)? Please explain in detail.

- (2) No, as set out in detail above, Carrylane was not eligible for capital allowances in the first place as the development was structured to ensure that the entitlement to capital allowances accrued to the owners who incurred the expenditure on the construction of the hotel, i.e. the various categories of Investors.

As outlined above under "Additional background and explanations", because Carrylane agreed to construct the hotel on behalf of the Investors on trading account as a property developer and not for its own use and retention on capital account as a hotel operator, Carrylane was not entitled under Irish tax law to claim hotel capital allowances. The allowances accrue to the Investors.

Had Carrylane built the hotel for its own use and retention for the foreseeable future such that the hotel would have represented a capital asset of Carrylane for use in its hotel operations it would have been in a position to claim hotel capital allowances. However this approach was not pursued.

(3) If this is the case, can it be assumed that the lease agreements and the price to be paid by the beneficiaries to Carrylane took also the transfer of this entitlement to the capital allowance into account?

- (3) Based on the response to question 2, question 3 is not applicable. However for clarity we have included a response to the second aspect of question 3 below

(3) Should this be the case, can it be considered that the whole benefit resulting from the capital allowance accrued actually to one company, i.e. Carrylane?

- (3) No, based on the information set out above and to follow, it cannot be considered that the whole benefit resulting from the capital allowances accrued in full to Carrylane.

Carrylane did not and will not claim capital allowances in respect of the hotel. The capital allowance claims are made solely by the Exhort Co-ownership and the Suite Owners who are the direct beneficiaries of the capital allowances.

Hence the only possible advantage accruing to Carrylane which might be regarded as being related to the capital allowances is derived from the buy back arrangements which Carrylane has entered into with the Exhort Co-ownership. We have set out in Appendix 1 to this letter an estimate of the maximum net benefit earned by Carrylane from the Exhort transaction which amounts to €5.2m. This is a maximum figure and in under certain circumstances set out in more detail in Appendix 1 could be further reduced.

(4) In light of the fact that the eligible expenditure under the scheme N 832/2000 (extended by N 232/2006) is the expenditure on construction or refurbishment, could the Irish authorities explain how the expenditure described in Appendix 1 of the notification for the different beneficiaries, incurred after the hotel had been constructed, can qualify for the capital allowance?

- (4) The expenditure on the construction of the hotel was contracted for, and incurred by, the majority of the Investors in late 2005 and during 2006. The contracts were then formally completed in or around hotel opening in late 2007. Accordingly the expenditure represents eligible expenditure on the construction of a new hotel under the approved scheme No 832/2000.

The approved scheme No 832/2000 also incorporates the provisions of Irish Tax law (Ref: section 279 Taxes Consolidation Act 1997) which deems Investors to have incurred eligible expenditure on the construction of a new hotel if they acquire the suites within 12 months of the hotel first coming into use. This was the case for the remainder of the hotel suites.

Therefore the expenditure incurred by all Investor groups is eligible expenditure under scheme No 832/2000 as it represents expenditure on the construction of a new hotel.

(5) What does this expenditure by the beneficiaries refer to? Is it the price paid to Carrylane in the context of the investor leases? Is it the actualised amount of the rent to be paid by the beneficiaries for the lease?

- (5) The expenditure referred to in the context of Question 5 is expenditure incurred by the Investors under their development agreement with Carrylane (as property developer) for the construction of the portion of the hotel owned by them. The figure does not relate to the annual rental payments due under the Investor leases.

(6) The Irish authorities specify that one of the owners, Ilesca Limited (which is, similarly to Carrylane, a subsidiary of the Treasury Holdings) is merely a temporary owner pending the sale of the suites to third party investors and will not be claiming capital allowances in respect of the property. Could the Irish authorities explain why the expenditure incurred by Ilesca Limited was included in the eligible costs of the project in case no capital allowance will be claimed? Or will the third party investors acquiring the ownership rights from Ilesca Limited be in a position to claim the allowance in the future?

- (6) Ilesca Ltd hoped to identify a number of other third party investors who would acquire ownership of the unsold suites from it, however in the current economic environment it has not been possible to achieve this. Neither Ilesca Ltd nor Carrylane will be claiming capital allowances in respect of these suites.

Ilesca Ltd was included in the Notification documentation so as to provide the full picture to the Commission and to avoid the need to revisit the matter in the event that new third party Investors are sourced to acquire the unsold suites from Ilesca Ltd and claim the capital allowances in the future.

[REDACTED]

[REDACTED]

[REDACTED]

3. MARKET ANALYSIS

(8) Given the characteristics of the hotel in question (e.g. location, closeness to special attractions, amenities available), please explain in detail what you consider to be the relevant product and geographic market in this case (i.e. what are the establishments and geographic areas with which the hotel can be considered to be in competition for the attraction of hotel guests). Please substantiate your answer as much as possible.

[REDACTED]

(9) The Irish authorities explained that the various beneficiaries act as passive investors and they are not involved in the operation of this particular hotel, nor are they involved in

other hotel operation business. As in light of the above Carrylane Limited could also be considered a beneficiary (and even the main beneficiary) of the notified aid, please specify if Carrylane and its parent company, Treasury Holdings are active in the hotel/accommodation business apart from their involvement in Ritz Carlton, Powerscourt. Please also describe the set up and activities of Treasury Holdings in general.

- (9) Both Carrylane and its parent company, Treasury Holdings have confirmed that, other than Carrylane's involvement in the Ritz Carlton Powerscourt Hotel, the group is not an operator in any other hotel/accommodation business. Treasury Holdings is a passive landlord of two hotels in Dublin but has no operational involvement with either hotel nor did it ever claim capital allowances in respect of either hotel.

Treasury Holdings was established in 1989 as a property investment and development vehicle and has a number of investments in wholly or partially owned subsidiaries involved in property investment, development and trading in the residential, retail and office sectors throughout Ireland, the UK and China. The company is also involved in the provision of management and support services to fellow group companies.

(10) In order to check compliance with p. 24(a) of the MSF 2002, please provide data enabling the calculation of markets shares (at group level) in the relevant product and geographic market (identified in response to question (8) above) in the year prior to the start and following completion of the project. Data should originate from independent sources and should normally be provided both in volume and value terms.

(11) In order to check compliance with p. 24(b) of the MSF 2002 please also provide data on capacity created by the project and the proportion of this capacity relative to the size of the relevant market in 2004, i.e. prior to the start of the project.

We would like to take the opportunity to point out to your services that even in the event that the relevant market is restricted to hotel accommodation in Ireland, the project would still satisfy the criteria of p.24 (a) and p.24 (b) of the MSF 2002 as it accounts for an additional 200 rooms to the national hotel room stock against a total national provision in 2008 of 57,388 hotel rooms and a total provision in the State of 43,382 rooms in 2004.

On the basis that the project is within the limits set by MSF 2002 24(a) and 24(b) in an Irish context, and then by definition it is clearly within same from an EEA perspective.

Appendix 1 – Calculation of potential benefit (if any) to Carrylane from its transaction with the Exhort Co-ownership

	€uro
1. Development Agreement Price Paid by Exhort Co-ownership to Carrylane	
2. Less approximate buy back price payable by Carrylane to Exhort Co-ownership	
3. Less: cost to Carrylane of capital allowances foregone @12.5% Corporate Tax Rate	
4. Less: stamp duty cost to Carrylane on buy back (6%)	
5. Less: additional costs of disposal/acquisition to be borne on buy back (estimate)	
Net Benefit to Carrylane from the Exhort Co-ownership transaction	5,191,835

- Additional points to note:**

The above figure of €5,191,835 represents the maximum benefit which Carrylane could be considered to receive from the Exhort transaction.

[REDACTED]