Appendix 1.

Title of and Number of Approved Aid Scheme.

1. State aid No N 832/2000 – Ireland Capital Allowances Depreciation Regime for Hotels. Related Case State Aid No 232/2006 Transitional Extension to Capital Allowances Depreciation Regime for Hotels in Ireland (ex 832/2000).

Summary of Scheme.

2. The scheme provides for aid in the form of capital allowances (accelerated depreciation). The normal depreciation period for industrial buildings in Ireland is 4% per annum over 25 years. Under the scheme investments for the trade of hotel keeping can be depreciated over a period of seven years. This can be done during the first six years at a rate of 15%, and in the last year at a rate of 10% of the expenditure incurred. The maximum aid intensity under the scheme is 12.5%. With regard to this project the aid intensity is 11.37%. Eligible costs are limited to the cost of productive investment (buildings). No operating aid is involved. The scheme does not allow any cumulation with other aid.

3. The scheme as approved under State aid No N 832/2000 – Ireland Capital Allowances Depreciation Regime for Hotels was due to terminate on 31 December 2006. However, the scheme was amended in Finance Act 2006 whereby the termination date for incurring qualifying expenditure was extended until 31 July 2008. The Finance Act 2006 amendment also provided transitional measures to ensure that the extended qualifying period could only be availed of by pipeline projects and that relief can apply for 75% of qualifying expenditure incurred in 2007 and 50% for the period 1 January 2008 to 31 July 2008. These transitional arrangements were introduced on the basis of approval under Aid No 232/2006 Transitional Extension to Capital Allowances Depreciation Regime for Hotels in Ireland (ex 832/2000).

Background.

4. Your services 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 scheme was approved as a regional aid in line with the Commission's guidelines on national regional aid (Official Journal C 74, 10 March 1998, page 9). On 31 May 2006 your services approved transitional arrangements for the period 1 January 2007 to 31 July 2008 to allow for the completion of already commenced "pipeline projects".

5. In the case of the hotels scheme, as is the case with all tax incentive schemes approved under the Regional Aid Guidelines, there are restrictions on the application of the approved scheme to large projects. These restrictions are set out in section 268 (12) of the Taxes Consolidation Act 1997. That section provides that expenditure incurred on or after 1 January 2003 on a hotel provided for the purposes of a project which is subject to the notification requirements of the 1998 and 2002 Multisectoral Framework on regional aid for large investment projects cannot qualify for capital allowances unless approval of the potential capital allowances involved has been received from that 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.

6. Section 268(12) Taxes Consolidation Act 1997 also provides that a hotel will only be treated as an industrial building or structure for capital allowances purposes where the national tourism agency, Fáilte Ireland, issues an appropriate certificate under that section confirming that a number of State aid related conditions are satisfied. These conditions include confirmation having been received from the applicant enterprise (in the form of a declaration from the applicant enterprise and its auditor) that approval of the potential capital allowances involved has been obtained from the Commission where such approval is required.

Description of Project.

7.

- The hotel comprises of 200 rooms.
- The original planning permission was granted for the development in 1999 and further revisions were made subsequent to this. Construction work on the project commenced in January 2005 and concluded in October 2007. The hotel opened for business in October 2007
- The hotel is a large but compact 7 storey building.
- It is run by the operating firm Carrylane Limited, which has a management agreement in place with the Ritz Carlton Hotel Group.
- The construction was undertaken by a subsidiary, Carrylane Limited of one property development company Treasury Holdings.
- The total amount of (eligible expenditure) qualifying expenditure for hotel capital allowances is circa €212.4m.
- The hotel is located in Powerscourt Demesne, Powerscourt, Co Wicklow.

It should be noted that no aid has been granted to date.

Breakdown of Aid Beneficiaries.

8. The aid beneficiaries are a large number of individuals together with a small number of corporate entities (as set out in Appendix 2 attached) sharing ownership of the hotel. In this case the amount of qualifying expenditure is €212,360,683. The various investors who own distinct elements of the hotel have leased their element of the hotel to the hotel operator (Carrylane Limited) who in turn has entered into a management agreement with the Ritz Carlton Hotel Group to manage the hotel.

Ownership of Hotel.
The hotel is owned by 62 separate entities as follows:

Exhort Co-ownership.
9. The Exhort Co-ownership is a grouping of 156 individual investors and one corporate entity [redacted] who have come together to acquire the majority of the common areas associated with the Hotel Property (e.g. restaurants, reception areas, leisure centre etc.) and 18 Hotel Suites. [redacted] is [redacted] owned by one individual and [redacted] by another family member. This entity is not a

hotel operator and is not linked to any other corporate entity. The Exhort Co-ownership group of 157 investors is governed by a legal co-ownership agreement and have acquired their interests as one group. None of the members holds a controlling interest in terms of ownership or voting rights. [redacted]

Individual Hotel Suites.

10. There are 60 beneficiaries which have acquired one or more hotel suites, [redacted] of which are private individuals investing personal income, the remaining 5 entities comprise of 2 partnerships and 3 corporate entities. (See Appendix 2 for further details.) The partnerships or corporate bodies were created or combined for the sole purpose of passive investment in the project.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Ilesca Limited..

11. Ilesca Limited was incorporated to acquire part of the hotel development which has not yet been sold to third party purchasers. This company is a 100% subsidiary of Treasury Holdings. Treasury Holdings itself wholly owns the company

Carrylane Limited that constructed the hotel. [redacted]

Restriction on Amount of Qualifying Expenditure.

12. While there are provisions in the relevant tax legislation (paragraphs 5 and 6 above refer) to provide that projects subject to the State aid notification requirements for large projects cannot qualify for relief unless State aid approval is received from your services for such projects, there are, at present, no provisions to restrict the amount of qualifying expenditure if such approval is received with restriction. However, a legislative provision to restrict the amount of qualifying expenditure to the amount approved by the European Commission (if so restricted) has been included in the Finance No.2 Bill 2008 which is being progressed through the National Parliament and should be enacted in January 2009. A copy of the legislative amendment is attached as Appendix 4 for information.

Notification Thresholds and Reduction Scale applicable to this Project.

13. The following sets out our understanding of the notification thresholds and the application of the reduction scale for this project.

There are 2 levels of aid intensity involved.

1. For pre 2007 expenditure 12.5%. The amount of eligible expenditure for this period is circa €135.5m. The amount of aid is therefore €16,937,500.

2. For 2007 expenditure the aid intensity is 75% of 12.5% or 9.375%. The level of expenditure incurred after 1 January 2007 is circa. €76.9m. The amount of aid is therefore €7,209,375.

Total aid 1 + 2 = 24,146,875.

Applicable Aid Intensity for this project = $\frac{€24,146,875}{€212,400,000} \times 100 = 11.37\%$

The applicable aid ceiling is 18% for notification thresholds (i.e. the regional aid ceiling for the Mid East in for 2005 the date construction commenced was 18%.) The aid intensity provided under the Hotel Capital Allowances Scheme in this instance is 11.37%. The amount of eligible expenditure/qualifying expenditure is €212,360,683. As the aid intensity is 11.37% the potential amount of aid is 11.37% of €212,360,683 which equates to €24,145,410.

Applying the reduction scale set out above for the Mid East Region State aid ceiling of 18% the notification threshold is calculated as follows: 18 % of €50m + 9% (i.e 50% of 18%) of 50m = €13.5m.

As the potential level of aid provided in GGE terms is € 24,145,410 it exceeds the aid notification threshold amount of €13.5m. Therefore, the project falls under the notification requirement of the 2002 Framework.

Reduction in Aid Levels/Capital Allowances in Order to comply with Relevant State Aid Provisions.

14. Under the Framework the actual aid intensity that a large project can receive must be automatically reduced in accordance with the following reduction scale.

Eligible Expenditure	Adjusted Aid Ceiling
Up to €50m	100% of regional ceiling
The part between €50m and €100m	50% of regional ceiling
The part exceeding €100m	34% of regional ceiling

Applying the reduction scale to Qualifying Expenditure of €212,360,683

Eligible Expenditure	Adjusted Aid Ceiling	Permitted Level of Aid
Up to €50m **€50m**	18% (100% of regional ceiling)	€9m
The part between €50m and €100m. **€50m**	9% (50% of regional ceiling)	€4.5m
The part exceeding €100m. **€112,360,683**	6.12% (34% of regional ceiling)	<u>€6,876,474</u> Total €20,376,474

(Or 18% * (€50m + 0,5 *€ 50m + 0,34 * €112,360,683) = €20,376,474)

Based on the above it is our understanding the maximum amount of aid expressed in NGE terms for the project after the application of the reduction scale is €20,376,474 and that this equates to a corresponding amount of eligible expenditure/qualifying expenditure of 179,212,612. The Irish authorities commit to an equivalent reduction (if so required).