

**“SECTION 23” TYPE
PROPERTIES**

The Conveyancing Committee has received a number of queries in relation to the respective obligations of the developer and the purchaser in Section 23 type properties.

It was suggested to the committee that the developers should agree in the contract to provide all necessary documents to evidence the availability of tax breaks, and that refusal to do so would be unreasonable, as the tax breaks are usually the principal reason why purchasers acquire such properties.

The committee considers that the foregoing is too broad a statement of the position, and considers that the following represents appropriate practice in the purchase of such properties.

Despite curtailments in recent budgets, the numbers of such schemes, and the particular requirements of each, make it impossible to give more than general guidance.

1. The availability of tax breaks may often depend on the purchaser's own circumstances and therefore it is unreasonable to expect a clause to be inserted by the developer guaranteeing the availability of any, or any particular tax relief.
2. When acting for a purchaser, a practitioner should ascertain the particular relief which the purchaser hopes to achieve, and advise them to take specialist tax advice in relation to the availability of such relief, and what documentation will be required by the Revenue Commissioners to grant such relief.
3. Where the documentation necessary to obtain the relief is wholly within the procurement of the developer e.g. a certificate of building cost, then it is reasonable that a condition requiring the furnishing of such documentation is inserted in the contract, specifying as appropriate any monetary amounts or a minimum figure or percentage.
4. Where the obtainment of the tax relief requires the issue of certificates by statutory bodies such as local authorities or the Department of the Environment, it is reasonable that the developer's solicitor insert a condition requiring his client to use his best endeavours to obtain such certification and in such circumstances, the purchaser's solicitor should advise his client of the possibility that for any reason such documentation may not be available. As with any such advice, it should be in writing to the client, pre-contract.
5. A purchaser should consider pre-contract what is to happen if the expected relief is not available for any reason, and should deal with the matter in the contract.