AN BILLE CANACH RACHMAIS, 1975

WEALTH TAX BILL, 1975

EXPLANATORY MEMORANDUM

Introduction

The Bill is intended to give effect, with certain modifications, to the proposals for the introduction of a wealth tax contained in the White Paper on Capital Taxation which was issued in February, 1974. The modifications have been made following consideration of the representations received from numerous individuals, corporations, organisations and others. The main changes from the original proposals are a reduction in the rate of tax and the raising of the thresholds for liability. In addition, new exemptions are being proposed for the principal private residence, livestock, bloodstock and pension rights. Reliefs are also proposed for productive assets which are used in the provision of employment in the State. The relief proposed for agricultural land has been extended to fishing boats and hotel bedroom accommodation. Finally, a ceiling is to be provided limiting the amount of total income to be charged to wealth tax and income tax subject, however, to a minimum charge to wealth tax.

Wealth tax will be charged each year at the rate of 1 per cent. on the net market value of the taxable wealth of a taxpayer. This is arrived at after deducting debts and appropriate reliefs and, where applicable, the relevant threshold. In the case of a person domiciled and ordinarily resident in the State, the taxable wealth is the global wealth; for other persons only the property in the State is liable. Where a life interest is included in such wealth, the underlying capital is treated as the property liable to the tax.

There are three categories of taxpayer, namely, the individual, the discretionary trust and the private non-trading company. The property of a wife and minor children is included in the taxable wealth of an individual. The threshold levels apply only to the individual and are £100,000 (married man); £90,000 (widow or widower); £70,000 (single person). An additional allowance of £2,500 is to be given for each minor child. Certain property, notably, a private residence and its contents, bloodstock, livestock, pension rights, important works of art and other objects of national, scientific or artistic interest will under certain conditions be exempt.

Tax will be chargeable on the net market value which is the market value less certain deductions and reliefs. The market value itself is, in general, the open market value. Special provisions will, however, apply to the determination of the market value of agricultural land close to an urban area and of shares in private trading companies. In arriving at the net market value for tax purposes of agricultural land, fishing boats and hotel bedroom accommodation a reduction of 50 per cent. of market value or £100,000, whichever is the lesser, will be allowed. In the case of assets used in the provision of employment in the State and shares in a trading company, a deduction of 20 per cent. will be allowed against the market value. Once a valuation for real property i.e. lands and houses or for unquoted shares has been agreed it may, at the option of the taxpayer, stand for three years.

The tax is a charge on lands and houses but the charge is extinguished on a sale of the property unless the sale price exceeds £50,000 or the particular sale is included in sales within the previous 2 years exceeding £50,000 in the aggregate between the same parties.

The combined liability of an individual to income tax and wealth tax may not exceed 80 per cent. of his income. To the extent that it does, the amount payable in respect of wealth tax is reduced subject, however, to a minimum of 50 per cent. of the wealth tax assessed.

An appeal against an assessment of tax lies to the Appeal Commissioners except as regards an appeal relating to the value of lands or houses where the appeal will, as for example in the case of estate duty, be to the Land Values Reference Committee.

Interpretation

1. *Section 1* is the interpretation section which sets out the special meaning to be given to certain words and expressions used throughout the Bill. Since practically all the definitions are mentioned in the course of the comments on the various sections, it is not necessary to refer to them in detail here. The section is not exhaustive and where certain terms are peculiar to particular sections, definitions are provided in these sections.

Charge of Wealth Tax

2. *Section 2* imposes the charge to wealth tax at the rate of 1 per cent. and provides that the tax shall be charged, levied and paid each and every year on and from April 5, 1975. Tax is payable on the net market value on the valuation date of the taxable wealth of an assessable person. There are three assessable persons, namely, the individual, the discretionary trust and the private non-trading company, each of whom is a taxable entity. The market value is ascertained in accordance with *sections 8* and *9* and the net market value is arrived at by making certain allowances for reliefs from that market value and for debts in accordance with the provisions of *sections 10* and *11*. Taxable wealth is, broadly speaking, all the property to which an assessable person is beneficially entitled in possession other than property exempted by *section 7*. In order to arrive at the amount which is assessed to tax, the amounts set out in *section 13* in respect of the various thresholds are excluded from the taxable wealth of an individual.

Taxable wealth of individual

3. *Section 3* deals with the scope of the tax where the individual is the assessable person. If he is domiciled and ordinarily resident in the State his taxable wealth is all his property wheresoever situate: if he is domiciled and ordinarily resident outside the State only his property in the State is subject to tax. The tax is chargeable on property to which the individual is beneficially entitled in possession. The definition of this expression is in *Section 1*. The intention of the Bill is to tax property in possession as opposed to future interests in property. However, to prevent avoidance there is one exception to this approach. A reversion which a person has, expectant on the ceasing of a limited interest which was created by himself, is treated, not as a future interest, but as an interest in possession and thus liable to tax.

Subsection (*3*) indicates what the taxable wealth is where the property of an individual includes a limited interest or an annuity. In the case of a limited interest, the underlying property in which the interest subsists is the subject of tax; in the case of an annuity, the part or fraction of the property required to produce the annuity is the taxable wealth. Separate treatment is provided for purchased annuities.

Subsection (*4*) deems a person who is entitled to a reversion expectant on the determination of a limited interest which was created by himself as being entitled to that limited interest. *Section 21* ensures that, in circumstances such as these where a charge to tax might arise twice in respect of the same property, tax shall be payable on one occasion only in respect of that limited interest.

Subsection (*5*) is explanatory of some expressions used in the section, in particular, limited interest. Broadly speaking, a limited

interest is an interest which is less than an absolute interest in property. The subsection sets out how the proportion of the underlying property necessary to provide the limited interest is arrived at and provides that an individual is deemed to be entitled to that proportion of every item comprised in that property. It provides also that, in certain circumstances, an individual may be deemed to be domiciled and ordinarily resident in the State.

Aggregation of taxable wealth of certain individuals

4. *Section 4* deals with the taxable wealth of the family, that is, of husband, wife and minor children. The wealth of these persons is aggregated and is treated as the taxable wealth of the husband. If the husband and wife are separated, the property of a minor child is aggregated with that of the parent who has the custody of that child.

Subsection (*2*) provides for an apportionment of tax between persons whose wealth has been aggregated but this apportionment does not affect the liability of the individual who remains primarily liable for the tax.

" Minor children " are defined in *section 1* as those who are under 21 years of age and have not married; children who have been adopted under the laws of foreign countries also come within this definition. The circumstances where spouses are regarded as separated are also dealt with in *section 1*.

Taxable wealth of discretionary trust

5. *Section 5* deals with another assessable person, the discretionary trust, which has been defined in *section 1*, broadly, as a trust where trustees have power to apply income or capital or both or to accumulate income for the benefit of certain objects. The section sets out the extent of the charge. In the first place, all property which is the subject of a discretionary trust on a valuation date and which is situate in the State is liable to tax. The property situate outside the State is liable only where (*a*) the settlor is living and domiciled in the State on that date or (*b*) was domiciled in the State when the trust was established or was so domiciled at his death or (*c*) the " principal objects " (nearest relatives of the settlor) are domiciled and resident in the State. In any other case, the property situate abroad is apportioned on the basis of the number of those objects who are domiciled and ordinarily resident in the State on that valuation date.

Subsections (*2*) *and* (*3*) are designed to deal with special cases where hardship might arise if the particular trust were treated as an entity for the purposes of the tax. Where a trust is for the benefit of a minor child, with or without the addition of his parents and other minor children of the family, the trust property is treated as property of the husband, wife or children, as the case may be. Where a discretionary trust is solely for the benefit of certain named persons, who are incapable of managing their own affairs or for spouses of a marriage, the property comprised in the trust is regarded as the property of the individuals concerned.

Subsection (*4*) defines certain words and expressions used in the section, the chief of which are " settlor " and " principal objects ". In the final subsection the treatment of life interests and annuities in *section 3* is extended to cases where similar interests are included in discretionary trusts.

Taxable wealth of private non-trading company

6. *Section 6*. The remaining assessable person, the private non-trading company, is dealt with in this section. It is defined as a company whose income is mainly investment income and which has not issued any of its shares to the public, and the number of whose shareholders does not exceed fifty and which is under the control of not more than five persons, as defined. The property,

wherever situate, of such a company is liable to tax if the company is incorporated in or has its effective centre of management in the State or if it is under the control of an Irish individual, trust or company. In any other case, only property of the company in so far as situate in the State is chargeable to tax.

Subsection (*2*) applies the provisions of *section 3* dealing with the treatment of life interests and annuities to cases where such property is included in the assets of a private non-trading company.

Subsection (*3*) defines the expressions "company" and "private non-trading company" and sets out the various ways in which control of a private non-trading company can arise for the purposes of the Bill. It also states what is meant by control by not more than five persons.

Subsection (*4*) contains further definitions, and indicates when a company may be regarded as a relative of an individual.

Exemption of certain property

7. *Section 7* sets out the property which is exempted from tax and, where appropriate, the conditions necessary for exemption. The section is for the most part self-explanatory and calls for little comment. The exemptions, in the order in which they appear are—

(*a*) a principal private residence and grounds up to one acre;

(*b*) normal furniture and effects in such a residence;

(*c*) livestock owned by a genuine farmer;

(*d*) bloodstock;

(*e*) the right to receive certain superannuation benefits and annuities;

(*f*) the funds held in certain superannuation schemes;

(*g*) property held for charitable purposes;

(*h*) certain securities issued under the authority of the Minister for Finance and which are owned by persons who are neither domiciled nor ordinarily resident in the State;

(*i*) certain objects of national, scientific, historic or artistic interest which are kept in the State and in respect of which reasonable facilities for viewing are allowed to the public or recognised bodies, and

(*j*) shares in a private non-trading company all of whose property is liable to tax under *section 6*.

Subsection (*2*) empowers the Revenue Commissioners to obtain such particulars and information regarding exempted property as they would require if it were not exempt.

Market value of property

8. *Section 8* defines market value as the price which, in the opinion of the Revenue Commissioners, property would fetch on a sale in the open market in circumstances calculated to result in the best price for the vendor. Provision is made for the inspection of property and for payment by the Commissioners of the costs of a valuation where they require a valuation to be made by a person named by them.

Market value of shares in private trading companies

9. *Section 9* deals with the valuation of shares in a private trading company which is controlled by an assessable person. In these circumstances the control element is taken into account in arriving at the value of such shares.

Subsection (*2*) states the circumstances where control arises in the case of each of the three assessable persons. It also defines what is meant by the terms " nominee ", " private trading company " and " relative ". A control situation arises, for example, in the case of an individual where he, his wife, minor children or nominees of those persons are in a position to regulate and manage the affairs of the company. Where no question of control arises, shares in a private trading company are valued in accordance with *section 8*—the general valuation section.

Net market value of productive property

10. *Section 10* shows how the net market value of productive property is arrived at. This is the value upon which tax is charged by *section 2*. The net market value of all other property is dealt with in *section 11*.

Subsection (*1*) deals with agricultural property, fishing boats and bedroom accommodation in hotels in the ownership of individuals. From the market value of such property is deducted 50 per cent. thereof or £100,000 whichever is the lesser and, from that reduced value, there is deducted the proportion of the debts appropriate to the reduced value. The value then remaining is the net market value. The concession for agricultural property is confined to genuine farmers who are domiciled and ordinarily resident in the State.

Subsection (*2*) provides a separate formula for ascertaining the market value of agricultural property, situated within a mile of an urban area, whose value is enhanced by the probability that it will be used within five years for the building of houses or factories. In such circumstances, the market value will be ascertained by adding 25 per cent to the agricultural value of the property. The agricultural value will be taken to be the market value which it would have if it were subject to a covenant prohibiting its use otherwise than as agricultural property.

Subsection (*3*) deals with other forms of productive assets including stocks and shares of a public company or private trading company and allows for a 20 per cent. deduction from their market value, together with the appropriate allowance for debts, to arrive at the net market value. Provision is made for adopting whichever one of this section's reliefs gives the more favourable net market value in the case of agricultural property, fishing boats and bedroom accommodation in hotels in the ownership of an individual.

Subsection (*4*) defines certain expressions used in the section and is self explanatory. It might be noted that in ascertaining whether a person is a " farmer," certain exempt assets are taken into account and the normal market value of agricultural property is the criterion.

Net market value of other property

11. *Section 11* provides that the net market value of all property, (other than the property to which *Section 10* applies), is the market value thereof less any debts or incumbrances which are outstanding on the valuation date. The following deductions, however, are not allowable—

(*a*) debts which were not incurred for full consideration;

(*b*) debts which were incurred in the purchase of property exempt from the tax;

(*c*) surety or guarantee debts unless the surety or guarantor has to pay the debt;

(*d*) future and contingent debts which were not incurred for full consideration;

(*e*) contingencies affecting the property, and

(*f*) debts which cannot be legally enforced.

Subsection (*2*) provides that foreign debts should be allowed primarily against foreign property in cases where that property is not liable to tax here.

Subsection (3) applies the same criteria to debts due by a wife or minor child whose property is aggregated with that of an individual under *section 4*.

Finally, *subsection (4)* prohibits an allowance for debts and incumbranches which have been allowed in part in *section 10*.

Values agreed or determined

12. *Section 12* deals with agreements and determinations of values.

Subsection (1) provides that, where the value on a particular valuation date of land, houses or unquoted shares has been agreed, the agreed value will hold good for the two succeeding valuation dates. This agreement can be reopened if there is a material change in the circumstances affecting the property over and above any change which might normally be expected.

Subsection (2) enables an accountable person to apply to the Commissioners two years after an assessment for a determination of the value of any property as of the relevant valuation date and the value thus determined, subject to the appeal provisions in *section 23* or *24*, is final.

Subsection (3) makes an agreement or determination binding on the relevant assessable person and all persons accountable for tax in his case.

Exclusions from net market value

13. *Section 13* sets out the threshold points at which tax becomes payable. These thresholds are £100,000 for a married couple, £90,000 for a widow or widower and £70,000 for a single person. The tax is assessed after deducting the appropriate threshold from the net market value of the taxable wealth of the individual (which excludes the property exempted by *section 7*). Where the wealth of minor children is aggregable, a further deduction of £2,500 is made in respect of each child. This section applies to the individual only and does not apply to the other assessable persons, *viz.* to a discretionary trust or to a private non-trading company.

Accountable persons

14. *Section 14* indicates the persons who are accountable for the payment of the tax. These persons fall into two categories—those who have the primary liability and those who normally will not be called upon unless there is a failure to account on the part of those who are primarily liable. The primary liability rests, in the case of—

(*a*) the individual, on the individual, his personal representative, guardian or committee;

(*b*) the discretionary trust, on the trustee of the trust;

(*c*) the private non-trading company, on the secretary of the company.

The secondary liability falls, in the case of—

(*a*) the individual, on persons such as trustees, agents and managers of the property of the individual;

(*b*) the discretionary trust, on beneficiaries and persons such as trustees, agents and managers;

(*c*) the private non-trading company, on directors, shareholders and persons such as trustees, agents and managers

and, in all cases, on transferees other than purchasers.

The persons with secondary liability are liable only to the extent of the property which they have received on behalf of or from the assessable person and they are entitled to be reimbursed by the persons primarily liable for any tax they pay. The persons primarily accountable are themselves entitled to be reimbursed when they are

liable as company secretaries, trustees of a discretionary trust or as individuals who have paid tax in respect of the taxable wealth of a wife or minor children.

Under *subsection* (*5*) any person who has information relevant to the ascertainment of liability to tax or to the collection of tax may be required by the Revenue Commissioners to furnish such information.

Delivery of returns

15. *Section 15* requires a person, who is primarily liable for the payment of tax by virtue of *section 14*, to furnish to the Revenue Commissioners a return within three months of every valuation date in respect of the property of the assessable person. In the case of an individual, however, a return is not normally required if the net market value of his taxable wealth is under 75 per cent. of the appropriate threshold in *section 13*. For instance, a married man will not have to furnish a return unless his taxable wealth exceeds £75,000, that is, three-fourths of the threshold of £100,000.

Under *subsection* (*2*) a person who is not primarily liable for the tax is obliged to furnish a return only if he is called upon to do so.

Assessment of tax

16. *Section 16* deals with the assessment of tax.

Under *subsection* (*1*) an assessment may be made on the basis of the return which is delivered pursuant to *section 15*.

Subsection (*2*) provides for a review of an assessment and permits the Revenue Commissioners either to make an amended assessment or to call for an additional return. Any accountable person who is aware that or discovers that a return is materially defective is obliged to deliver an additional return without application from the Commissioners. Where returns are not delivered or where, if delivered, they are unsatisfactory, the Commissioners are empowered by *subsection* (*3*) to make an assessment. If a satisfactory return is delivered, the assesment may be withdrawn and another made on the basis of the return.

The remaining subsections are procedural.

Signing of returns

17. *Section 17* provides that returns should be signed by an accountable person. The Revenue Commissioners may, however, require that a return be sworn: they may, on the other hand, waive the necessity of having a return signed.

Payment of tax and interest on tax

18. *Section 18* contains the provisions regarding the payment of tax and the charging of interest on overdue tax. The tax is due on the valuation date and simple interest, at the rate of 1·5 per cent., per month or part of a month, runs from that date until the date of payment. If tax is paid within three months of the valuation date, no interest is payable. A payment may be made on account of tax due irrespective of whether or not an assessment of the tax has been made. A payment on account is applied in the first instance against any interest which may have accrued and the balance is applied in the discharge of tax. Interest under £5 is disregarded and, if an assessment of tax is paid within a period of 30 days from the date of the assessment, interest is not chargeable for this period.

Tax to be a charge on property

19. *Section 19* makes the tax on real property, that is, land and houses a charge. It is also a charge on all other property while that property remains in the ownership of an assessable person.

Subsections (*2*) and (*3*) provide that, where real property is sold to a purchaser, the charge on that property lapses at the end of twelve years from a valuation date. However, in any case where there is a

sale for less than £50,000 the charge is extinguished unless there have been sales between the same parties in the previous two years in excess, in the aggregate, of £50,000 in which case the charge remains.

Receipts and certificates

20. *Section 20* provides for the issue of receipts for tax paid and for the issue of a certificate of the amount of tax paid in respect of any property. It also provides that the Revenue Commissioners shall issue certificates discharging any property if they are satisfied that the tax has been or will be paid. These certificates of discharge protect a purchaser for value of real property even though issued on the basis of information which is incorrect.

Relief in certain cases

21. *Section 21* ensures that the total liability of an individual who is domiciled and ordinarily resident in the State in respect of income tax and wealth tax does not exceed 80 per cent of his total income. Where there is aggregation of family wealth under the provisions of *section 4*, regard must be had to the total income tax liability of the members of the family whose wealth is aggregated. If the ceiling of 80 per cent. is exceeded the amount of the excess of wealth tax is repaid to the individual, subject to the condition that the liability to wealth tax is not reduced to less than 50 per cent. of the wealth tax originally paid.

Subsection (2) ensures that tax is not paid more than once in respect of the same property or that it is not aggregated more than once.

Overpayment of tax

22. *Section 22* provides that, where there is an overpayment of tax, the amount overpaid is to be repaid to the person who paid the excess, his nominees or personal representatives. If there is tax outstanding in respect of the taxable wealth of that assessable person (by the person who paid the excess) as at another valuation date, the amount of the overpayment may be offset against the outstanding liability. Overpaid tax carries interest at the rate of 1·5 per cent. per month or part of a month from the date of payment to the date of the assessment of the overpayment. These provisions do not apply to repayments arising under *section 21*.

Appeals in relation to value of real property

23. *Section 23* gives a right of appeal where a person is dissatisfied with the value placed by the Revenue Commissioners on any land or houses. The appeal lies to the Land Values Reference Committee under the Property Values (Arbitrations and Appeals) Act, 1960 which provides the machinery for appeals under Section 33 of the Finance (1909-10) Act, 1910.

Subsection (2) makes a determination of value on an appeal binding on all accountable persons.

Appeals in other cases

24. *Section 24* allows for appeals in any other case in which a person is aggrieved by the amount of an assessment of tax. The appeal lies to the Appeal Commissioners and, broadly speaking, the provisions of the Income Tax Act, 1967 regarding an appeal against an assessment to income tax apply to an appeal under this section. The right of appeal can be exercised only on the payment of 75 per cent. of the tax assessed.

Recovery of tax

25. *Section 25* makes the tax a debt due to the Minister for Finance for the benefit of the Central Fund and recoverable by appropriate action in the Courts.

Evidence in proceedings for recovery of tax

26. This section applies the provisions of section 39 of the Finance Act, 1926 whose object was to facilitate the collection of assessed tax and diminish the costs of defendants by rendering unnecessary the attendance of officials and the production of documents which would otherwise be necessary.

Penalties

27. *Section 27* sets out the penalties which may be incurred for failure to furnish returns, information, evidence etc., or for fraudulently or negligently furnishing incorrect information. The section also contains procedural provisions as regards penalties.

Agreements for relief from double taxation

28. *Section 28* enables the Government by order to make arrangements for double taxation relief in respect of wealth tax or tax of a similar character imposed in another country. The draft of the order must be laid before Dáil Éireann and approved of by it before the order can be made.

Loss of documents

29. *Section 29* ensures that the fact that any return, assessment or other document relating to tax has been lost, destroyed or damaged shall not prejudice the recovery of tax. Where, however, it is shown that tax has in fact been paid, relief will be given to the extent of the payment.

Extension of certain Acts

30. *Section 30* enables a change in the rate of tax to be made by a Financial Resolution of Dáil Éireann and places on the Revenue Commissioners the same responsibilities to account for the tax as are already imposed on them in relation to other duties.

Regulations

31. *Section 31* empowers the Revenue Commissioners to make regulations which may be necessary for giving effect to the Act and every such regulation must be laid before Dáil Éireann.

Care and management

32. *Section 32* places the tax under the care and management of the Revenue Commissioners.

Short title and construction

33. *Section 33* specifies the short title of the Bill.

An Roinn Airgeadais,
Feabhra, 1975.

Wt. 111810/F/2. 950. 2/75. C.&Co. (6654). G.16.

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