AN BILLE AIRGEADAIS, 1990
FINANCE BILL, 1990

EXPLANATORY MEMORANDUM

PART I

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

Income Tax

Section 1 increases, for 1990-91 and subsequent years of assessment, the general income tax exemption limits and the exemption limits for aged persons.

In the case of single and widowed persons (and married persons assessed as single persons), the general exemption limit is raised from £3,000 to £3,250. Where such persons are aged 65 years or over but under 75 years, the exemption limit is increased from £3,400 to £3,750 and, where they are aged 75 years or over, the limit goes up from £4,000 to £4,350.

In the case of married persons, the general exemption limit is increased from £6,000 to £6,500. Where either spouse is aged 65 years or over and both are under 75 years, the limit is increased from £6,800 to £7,500 and, where either spouse is aged 75 years or over, the limit is raised from £8,000 to £8,700.

Where a person has a qualifying child, the general or age exemption limit, whichever is appropriate, is augmented by £300 in respect of each qualifying child *i.e.* an increase of £100 per child. Children under 16 years and children over 16 years in full-time education or in training as apprentices are qualifying children. In addition, if marginal relief applies, the rate of tax is being reduced from 60 per cent to 53 per cent.

Section 2 provides for the new rate structure which will apply for 1990-91 and subsequent years of assessment. The new rate structure is set out in the Table to the section. *Part I* of the Table sets out the rate bands applicable in the case of a single or widowed person (or a married person who is assessed to tax as a single person). The standard rate of income tax is reduced from 32 per cent to 30 per cent while the band of taxable income chargeable to tax at the standard rate is widened from £6,100 to £6,500. In addition, the top rate of income tax is reduced from 56 per cent to 53 per cent. *Part II* of the Table shows the bands applicable where a husband is assessed to tax in

respect of his own and his wife's income. These rate bands are double those applicable to single persons.

Section 3 continues, for the year 1990-91, the special allowance of £286 in the case of employees who pay the higher rates of pay-related social insurance.

Section 4 is concerned with income tax relief on life assurance premiums. In 1989-90 the relief was reduced to 80 per cent of what it otherwise would have been. This percentage is reduced to 50 per cent in respect of premiums paid on or after 6 April, 1990.

Broadly, the relief to be reduced comprises a deduction in respect of one-half of the allowable premiums. There is a limit of the lower of one-sixth of total income or £1,000 (£2,000 in the case of a married couple) on the amount of premiums which qualify for relief and, furthermore, the qualifying premiums are restricted to 7 per cent of the capital sum payable on death under the life assurance policy.

Section 5 amends section 13 of the Finance Act, 1976, which imposes a surcharge on income arising to certain trustees which is not distributed within the year of assessment or within eighteen months after the end of that year. Under the existing legislation the surcharge forms part of the liability of the year of assessment in which the income on which it is based arises. Therefore, in a case where a surcharge may arise for a year of assessment, it is not possible to finalise that year's tax liability with certainty until at least eighteen months after the end of the year. The effect of the amendment now being made is to provide that, in future, the surcharge will be part of the liability of the year of assessment in which the period of eighteen months ends so that it is possible to finalise each year's liability at the time the trustees make their returns.

Section 6 is concerned with stock relief in the case of farmers whose stock values decrease because of disease eradication measures. In such cases the period allowed for restocking before a claw-back of stock relief is incurred is extended by a year from one year to two years.

Section 7 provides that relief will not be allowed under section 34 of the Finance Act, 1974 or section 8 of the Finance Act, 1978 in respect of interest paid on a loan applied in acquiring shares in a company issued on or after 20 April, 1990 if a claim for relief is made under Chapter III (Income Tax: Relief for Investment in Corporate Trades) of Part I of the Finance Act, 1984 ("Business Expansion Scheme") in respect of the amount subscribed for those shares.

Section 8 ensures that, in calculating an individual's tax relief on an *ex-gratia* lump sum paid to him on retirement or termination of employment, account will be taken not only of any tax-free lump sums which, under the terms of an approved or statutory pension scheme, are received or receivable by him, but also of any such sums which, upon the exercise of an option or a right to commute a pension in favour of a lump sum, may be received by him in the future. The section also puts on a statutory basis the administrative practice of ignoring, for the purposes of calculating the tax relief on an *ex-gratia* lump sum, the value of a tax-free lump sum which an individual, upon the exercise of an option or right, may receive in the future, if the pension scheme rules permit him to surrender irrevocably the option or right in question and he has done so at the time of payment of the *ex-gratia* lump sum.

Section 9 exempts local authorities, health boards, vocational education committees and committees of agriculture from income tax (other than deposit interest retention tax) with effect from 1973-74. These bodies are already exempt from corporation tax and capital gains tax.

CHAPTER II

Change in Basis of Assessment and Consequential Provisions

Chapter II is concerned with the basis on which certain incomes are to be assessed to tax for the year 1990-91 and subsequent years of assessment. Implementation of the proposals in the Bill will mean that all incomes will in future be charged to tax on the basis of the income of the year of assessment.

The Chapter is a further development of the Self Assessment system of taxation for self-employed individuals which was introduced in 1988 and which was extended to companies last year. The main purpose of that system is to place more responsibility on taxpayers for meeting their own tax obligations. The changes being introduced this year are the next logical step in the development of the Self Assessment system. By permitting a taxpayer's liability to tax for a year to be finalised by reference to one return of income instead of two returns as heretofore, the changes will bring greater efficiency, finality and certainty into the tax system.

The incomes being subjected to the change are from the following sources—

(i) trades and professions (business profits),

(ii) interest, annuities, other annual payments and foreign income, which have not suffered Irish tax by deduction,

(iii) rents, and

(iv) employments which are not subject to tax under PAYE.

Under existing income tax law, these incomes, other than in the commencement and cessation years, are taxable for a year of assessment on the basis of the income from the source in the preceding year ("the preceding year basis"). In future, tax will be charged on the basis of the actual income from those sources for the year of assessment itself ("the current year basis"). All other sources of income are already chargeable to tax on a current year basis.

However, where business profits are computed by reference to annual accounts, the charge to tax for a year of assessment will be based on the profits of an account ending in the year rather than on the profits of the actual year to 5 April.

To facilitate the changeover to the current year basis changes are being made to the date of payment of tax and to the date by which a return of income for the year of assessment is due. Preliminary income tax will now be due on 1 November, instead of 1 October, in the year of assessment and preliminary corporation tax will be due 7 months, as opposed to 6 months, after the end of an accounting period. The balance of tax in either case will be due 1 month after the assessment. However, in the case of a balance of income tax, where the preliminary tax conditions have all been satisfied, the balance will be payable not

earlier than the return filing date for the year of assessment. In future, there will be no period of grace for which interest is not chargeable.

In the case of income tax the return filing date is being changed from 31 December in the year of assessment to 31 January in the year following the year of assessment.

On making the switch to a current year basis, the income for one year (1989-90) will not form the basis of assessment for any year of assessment. To accommodate this dropping of a basis period, but not a year of assessment, transitional provisions are included to deal with capital allowances in the changeover period in the case of unincorporated businesses.

With the move to the current year basis of assessment certain modifications are being proposed to the scheme of deduction of tax in respect of payments for professional services. The effects of these modifications will be to preserve the deduction, refund and credit rules along existing lines.

Section 10 deals with the basis of assessment for trades and professions and provides that, for the years of assessment 1990-91 *et seq.*, tax in respect of profits from those sources will be charged to tax on the current year basis rather than, as heretofore, on the preceding year basis. The section also makes adjustments to the existing rules governing commencements and cessations of trades and professions to bring them more into line with a current year basis of assessment.

The charge to tax for the year of assessment in which a business commences will, as at present, be based on the actual profits from the date of commencement to the following 5 April. In the second year of assessment the charge to tax will, again as at present, be by reference to the profits of the first 12 months trading. However, the taxpayer will no longer have the right to have the second year's assessment adjusted to the actual profits of that year. Instead, this adjustment will now be made, if the taxpayer so wishes, in the third year of assessment. The current year basis of assessment will apply for that third year but the taxpayer may claim to have the assessment reduced by the amount, if any, by which the assessment for the second year of assessment (the profits of the first 12 months trading) exceeds the actual profits of that second year (i.e. to 5 April in the year). Any balance of that excess not reflected in a reduction for the third year of assessment may be carried forward as a loss against subsequent years of assessment.

Where a business ceases, the assessment for the year of assessment in which the cessation occurs will, as at present, be based on the profits from 6 April in the year to the date of cessation. The assessment for the penultimate year of assessment can be amended to the actual profits of the year (to 5 April), if these exceed those assessed. There will be no review, as can happen at present, of the prepenultimate year.

Section 11 proposes to continue the arrangements whereby business profits are charged on the basis of annual accounts rather than on the basis of income for a year to 5 April. In future, however, the basis will be a year to an accounting date in the year of assessment rather than, as at present, to an accounting date in the preceding year.

The section also modifies the existing arrangements for dealing, for income tax purposes, with a change of accounting date. These arrangements require that, where there is a change of accounting date, such adjustments as appear to be just in the circumstances are

to be made to the profits. Non-statutory practices concerning these adjustments have evolved over the years. Statutory rules are now being set down to govern the treatment of accounting date changes.

Section 12 provides for a measure of relief in certain circumstances in the changeover year. In the course of the change from the preceding year basis of assessment to the current year basis, one basis period (i.e. accounting period) will fall out of reckoning. (For example, in a case where accounts are made up to 31 December, the assessment for 1989-90 will be based on year ended 31 December, 1988 and the assessment for 1990-91 will be based on year ended 31 December, 1990. Thus, the year ended 31 December, 1989 is not used as a basis for any year of assessment). The section provides that, where, in the case of a trade or profession set up and commenced before 6 April, 1988, the profits of the actual basis period for 1990-91 (in the example, profits for year ended 31 December, 1990) exceed the profits of the period which is not a basis period for any year of assessment (in the example, profits for the year ended 31 December, 1989) by 50 per cent or more, the assessment for 1990-91 will be reduced to the average profits of the two periods.

Section 13 provides for the switch to a current year basis in relation to income chargeable to tax under Case III of Schedule D. The income involved includes foreign income and certain categories of interest paid in the State without deduction of Irish income tax (e.g. credit union interest).

Section 14 proposes the changes in the law to cater for the current year basis of assessment in respect of rental income chargeable to tax under Case V of Schedule D.

Section 15 provides for the charge to taxation on a current year basis of income derived from employments, other than income dealt with under PAYE which is already on a current year basis.

Section 16 provides for some technical changes in tax law which are consequential on the change to a current year basis of assessment.

Section 17 contains transitional provisions to deal with capital allowances in the changeover year in the case of unincorporated businesses. Existing income tax law provides for accelerated capital allowances (capital allowances at a rate higher than the "normal" rate) in respect of expenditure incurred on new plant and machinery and industrial buildings. For the tax year 1990-91, expenditure in two periods has relevance — the actual basis period for the year 1990-91 and the period which is not a basis for any year of assessment (see note on *section 12* for an example). This section enables the taxpayer to choose the tranche of expenditure which will qualify for accelerated capital allowances — either the expenditure incurred in the basis period for 1990-91 or the expenditure incurred in the period which falls out of reckoning i.e. "the intervening period". The other tranche of expenditure will qualify for capital allowances at normal rates.

Section 18 provides for a number of technical amendments in relation to the granting of capital allowances consequent on the change to a current year basis of assessment. Certain references in sections 262 and 297 of the Income Tax Act, 1967, to the cessation of a single source of profits or gains are superfluous under a current year basis of assessment and are deleted.

Section 19 amends the existing legislation relating to tax returns by providing—

(*a*) that the income to be included in a return for a year of

assessment is the income of that year and not, as hitherto, of the preceding year,

(*b*) that the return is to be filed on or before 31 January in the year following the year of assessment instead of, as now, on or before 31 December in the year of assessment, and

(*c*) for an interim return, called the "1990 Income Tax Return" to be made in respect of income for the year ended 5 April, 1990.

Section 20 deals with the dates for payment of income tax and corporation tax. It provides—

(*a*) for a change in the dates of payment of income tax and corporation tax, including preliminary tax,

(*b*) for the abolition of the "period of grace" (of one month from the payment date) within which if tax is paid, interest on the late payment will not be chargeable,

(*c*) for a modification of the preliminary income tax payment requirements in the context of the current year basis, and

(*d*) for a change in the date on which a balance of tax is due for a year of assessment on the making of the assessment where the taxpayer has satisfied the preliminary tax payment requirements for that year.

Under the existing Self Assessment system, there is no interest charge in respect of income tax and corporation tax when the tax is paid within a period of one month from the statutory due date. This section proposes to change the statutory dates for payment of income tax and corporation tax to a date one month later than at present. The dates affected are

	Present	Change
Preliminary Tax		
Income Tax	1 October	1 November
Corporation Tax	6 months after end of accounting period	7 months after end of accounting period
Assessments		
Where preliminary tax paid is adequate	On the day after the assessment	One month from the assessment
Where preliminary tax paid is not adequate	On the date when preliminary tax is due	No change i.e. on the date when preliminary tax is due

At present, to avoid a charge to interest in respect of a balance of tax payable on an assessment for a year of assessment, the taxpayer must pay by the preliminary tax date not less than 90 per cent of his or her eventual liability — "the 90 per cent rule". Under the new arrangements, in an income tax case, the preliminary tax due date will be 1 November in the year of assessment and the liability for the year will be computed on the basis of the income of that same year. In these circumstances, it may be difficult for the taxpayer to calculate 90 per cent of his or her *current liability* and, in order to offer some certainty about preliminary tax obligations, there will be an alternative to the "90 per cent rule". If the taxpayer pays on the preliminary tax date *the same amount of tax as his or her liability for the preceding year*, there will be no interest charge . In other words, there will be

a "100 per cent rule" i.e. making a payment equal to 100 per cent of the preceding year's liability as preliminary tax will ensure that the taxpayer suffers no interest charge in respect of the amount of his preliminary tax payment.

This section also proposes that, where the preliminary tax obligations have been satisfied, any balance of tax due on the assessment for the year need not be paid earlier than the return filing date for that year of assessment. This is designed to encourage the early filing of tax returns. Under the present system, there is a tendency for the majority of taxpayers not to file their returns until the return filing date because any balance of tax due is not payable until after the return is filed and an assessment made. Early lodgement of returns brings forward the due date for payment of the balance of tax. This proposal will remove the implicit penalty on the taxpayer who files early. Moreover, as, under the new arrangements, taxpayers will have to pay preliminary tax for one year before the return filing date for the previous year, early filing will facilitate the payment of preliminary tax.

Section 21 amends section 48 of the Finance Act, 1986 so as to preserve the existing exclusion of PAYE taxpayers (i.e. those whose tax liability is dealt with through the PAYE system) from liability for the surcharge for late submission of returns. The section also brings a failure to submit a 1990 Income Tax Return (as defined in *section 19(4)*) within the ambit of the surcharge.

Section 22 deals with the scheme whereby tax is deducted from payments in respect of professional services. The scheme operates at present on the basis that tax, at the standard rate of income tax in force at the time of payment, is deducted in one period and credited against liability for the following year of assessment. The section ensures that this arrangement will continue in the future. The interim refund arrangements will also continue as heretofore whereby excess tax deducted may be refunded in certain circumstances.

Section 23 makes some miscellaneous changes to cater for the new circumstances which will prevail under a current year basis.

Subsection (1) changes the time limit by which a taxpayer may elect to have a retirement annuity premium paid in one year treated as having been paid in another. The existing time limit is six months after the date on which the assessment for the year becomes final and conclusive. The new provision requires that the payment is to be made on or before 31 January in the year following the year of assessment (the new return filing date) and that the election be made on or before that same date.

Subsection (2) abolishes the provisions of sections 307(1AA) and 546 of the Income Tax Act, 1967 and section 20 of the Finance Act, 1988 which, with the move to a current year basis, are no longer necessary.

At present, where a loss is incurred in a year of assessment, that loss may be claimed, under section 307, against the income of the taxpayer chargeable to tax for that year of assessment *and*, if there is any unabsorbed loss, also against any other income of the taxpayer chargeable for the year of assessment for which, if a profit had been made instead of a loss, the profit would be assessed to tax. For example, a loss, which was incurred in the year 1990-91 could, under the existing provisions, be set off against income assessable for the year 1990-91 or against any other income of the year 1991-92.

Under the current year basis, the year of assessment in which the loss is incurred and the year of assessment for which a profit instead of a loss would be chargeable to tax are the same and therefore there is no longer any need for the existing situation under section 307 which allows relief in respect of a loss over the two years. In future, relief under section 307 in respect of a loss will be given against any other income of the taxpayer for the year of assessment in which it was incurred. Any unabsorbed loss will continue to be carried forward to subsequent years under section 309 of the Income Tax Act, 1967.

Section 546 of the Income Tax Act, 1967, provides that where a source of income is chargeable to tax on the basis of the income of the preceding year, an assessment to the tax may be raised for a year of assessment despite the fact that no income actually arose from the source in that year of assessment. This provision is no longer relevant in the context of a current year basis.

Under existing law, certain sources of income and items of expenditure are already on a current year basis for tax purposes. To deal with the situation where these incomes or items of expenditure had to be reflected in an assessment or computation of liability to tax made before the actual amounts of them could be ascertained, section 20 of the Finance Act, 1988, provided that the amount of the income or expenditure, as the case may be, of the preceding year was to be taken into account, in the first instance, in the assessment or computation pending notification of the actual amounts to the inspector. Under the new provisions, an assessment or computation of tax liability will not be made until a considerable time after the end of the year of assessment and the actual amounts of the income or expenditure, as the case may be, should be readily ascertainable. In the circumstances there will be no need to resort to the amounts for the preceding year as permitted by section 20.

CHAPTER III

Income Tax, Corporation Tax and Capital Gains Tax

Section 24 is concerned with the tax treatment of profits or losses resulting from the activities of European Economic Interest Groupings (EEIGs). An EEIG is a new form of business entity established under EC Council Regulation 2137/85 of 25 July, 1985, and can be set up by residents (individuals, companies, trusts etc.) of two or more EC member states. That governing Regulation requires that profits or losses resulting from the activities of an EEIG are to be taxable only in the hands of its members, that is, the EEIG itself is not to be charged to tax.

An EEIG registered in this country will be a body corporate having a legal personality. As such, it could come within the charge to income tax, corporation tax and capital gains tax in its own right. This section specifically excludes EEIGs from a charge to these taxes. It applies the partnership provisions of the Income Tax Act, 1967, and the Capital Gains Tax Act, 1975, modified as necessary, to the activities of EEIGs so that profits, losses and capital gains of an EEIG will be attributed to its members who will then be chargeable on their appropriate share.

Sections 25 and *26* provide for the extension from 31 May, 1991 to 31 May, 1993 of the time limits applying to qualifying expenditure for the purposes of the urban renewal reliefs which apply in certain designated areas.

Section 27 provides that a double rent deduction under section 45 of the Finance Act, 1986, will be conditional, (i) on the tax relief provided by the double rent deduction not exceeding the rent paid and, (ii) on a claimant for a further rent deduction under section 45 not having an interest in a building or structure which is itself leased for the purposes of section 45, unless that person can show that the renting by him of the premises which is the subject of his claim for the double rent deduction was not undertaken for the sole or main benefit of obtaining that deduction.

Section 28 provides that a finance lease in respect of a premises, that is, a lease which transfers in substance to the lessee the benefits and risks of ownership of the premises other than legal title, will not be a qualifying lease for the purpose of the double rent deduction provided by section 45 of the Finance Act, 1986.

Section 29 provides that shareholders will be denied tax relief in respect of subscriptions for, or dividends from, certain shares in a company where there are arrangements which assure the shareholder of a return of capital or an income return on his investment whether or not the company is successful. Relief will be denied if an arrangement eliminates the risk (a) that shareholders might be unable to recover an agreed amount in respect of their investment within an agreed period or (b) that they might not receive an agreed amount of dividends in respect of the shares. Accordingly the section ensures that only genuine equity participators in companies will qualify for the reliefs in question — principally Shannon, Export Sales and Business Expansion Scheme Relief.

As respects schemes guaranteeing an agreed amount of tax-free dividends the section will have effect from 21 July, 1989 — the date on which the Minister for Finance announced that he would take whatever action was necessary to counteract unintended uses of Shannon or Export Sales Relief.

The section will apply to shares which might otherwise attract BES relief where such shares are issued on or after 20 April, 1990.

Section 30 prevents certain unit trusts which have been used as investment vehicles for the purposes of life assurance-linked investment from being treated as collective investment undertakings for the purposes of section 18 of the Finance Act, 1989. The tax exemptions under section 18 will not apply to unit trusts where the participation in the trusts is linked to life assurance. Since investors in life assurance-linked investment schemes are not charged to tax on their gains from their investment, the section ensures that the unit trust in which their money is effectively invested will not also be exempt from tax on its gains.

Section 31 and the *First Schedule* provide that, following the reduction of the basic rate of corporation tax from 43 per cent to 40 per cent from 1 April, 1991, the normal tax credit applicable to company distributions will be reduced from 28/72nds to 25/75ths of distributions made after 5 April, 1991. No change is required in the tax credit of 1/18th of distributions out of profits relieved under the special scheme of relief available to manufacturing companies since the 10 per cent rate of corporation tax remains unchanged.

Certain technical amendments are also provided for in relation to distributions out of profits which have been accorded Export Sales Relief and in relation to the allowance against corporation tax of tax credits carried by distributions received by overseas life assurance companies.

CHAPTER IV

Corporation Tax

Section 32 reduces the rate of corporation tax which applies to the profits of companies from 1 April, 1991 to 40 per cent from 1 April, 1991.

Part I of the *Second Schedule* contains technical adaptations which clarify how corporation tax is to be charged where two rates of corporation tax respectively apply to two parts of one accounting period of a company.

Part II of the *Second Schedule* principally ensures that the reduction of corporation tax enjoyed by manufacturing companies will be such that their income from sales of manufactured goods will continue to be effectively charged at 10 per cent.

Section 33 amends section 39 of the Finance Act, 1980, which contains a definition of goods for the purposes of manufacturing relief. Section 39 is amended by the addition of a number of activities which are deemed to be the manufacture of goods and by the addition of a list of categories which are not regarded as the manufacture of goods. While the activities which are deemed to be the manufacture of goods were always regarded as such, their inclusion is necessary for the purposes of clarity in the context of the list of categories which are not regarded as such manufacture. There are a number of transitional arrangements included in the section.

Subsection (1) inserts new subsections into section 39. The new subsection (1CC4) provides that the repair or maintenance of aircraft is to be regarded as the manufacture of goods. The new subsection (1CC5) provides that the production of a film on a commercial basis for exhibition to the public in cinemas or on television, other than an advertising programme or a commercial, will be treated as the manufacture of goods provided that not less than 75 per cent of the work on its production is carried out in the State. The new subsection (1CC6) provides that the processing of meat in an establishment approved in accordance with the European Communities (Fresh Meat) Regulations, 1987 (S.I. No. 284 of 1987) will be treated as the manufacture of goods.

The new subsection (5) provides that certain categories of activity are not to be regarded as the manufacture of goods. The categories are processes applied to material acquired in bulk to prepare it for sale or distribution, the application of methods of preservation, pasteurisation or maturation to foodstuffs, the preparation of food for human consumption where the food is intended to be consumed at or about the time it is prepared, the improvement or alteration of articles or materials without imposing on them a change in character and the repair, refurbishment and reconditioning of items.

Under the new paragraph (*b*) a company will not be entitled to manufacturing relief if it does not itself carry out the process in respect of which relief is being claimed. This is subject to the proviso to subsection (1) of section 39 which allows relief to a company selling goods manufactured by a closely connected company.

To qualify for manufacturing relief a company is required to carry out the process in an industrial building or structure which is occupied for that purpose and not for any purpose of a retail or service

activity carried on by that, or a connected, company unless that other occupation is incidental to the main purpose.

Subsections (2) and *(3)* provide transitional relief for the purposes of the Business Expansion Scheme and Relief for Investment in Research and Development. The transitional measures ensure that a person will not be denied relief under those provisions by virtue of the new section in respect of shares issued before 20 April, 1990.

Section 34 provides that, where a non-resident company, which is carrying on a trade in the State through a branch or agency, pays a royalty or certain other payments for the purposes of that trade to a person who is also not resident in the State, the profits for corporation tax purposes of the paying company will be reduced by the amount of the payment. The relief will not be given unless the paying company has deducted income tax from the payment (subject to confirmation by the Revenue Commissioners of the application of relief or exemption due under the relevant double taxation agreements).

Section 35 provides for tax relief for donations made by companies to the Trust for Community Initiatives. The trust was set up by the business community in response to an invitation to do so by the Minister for Finance in his 1989 Budget Statement. A company which makes a gift to the trust between 9 April, 1990 and 31 March, 1991 will be entitled to treat the payment as a trading expense or as an expense of management, as appropriate.

Section 36 amends section 84A of the Corporation Tax Act, 1976, to provide that with effect on and from 31 January, 1990 the ceiling on new "section 84" loans will be 75 per cent of the volume of loans outstanding on 12 April, 1989. However, special provision is being made to permit additional section 84 loans in the period 31 January, 1990 to 31 December, 1991, in exceptional cases where loans could not otherwise be made, up to a total limit of £170 million. The exceptional cases are specified as new manufacturing projects or existing manufacturing projects with employment creation plans where certain conditions are met. Where the volume of loans outstanding on 1 April, 1990 in the case of any lender is less than the 75 per cent ceiling, the company is obliged to make "section 84" loans as far as possible to the exceptional cases in the period to 31 December, 1991. If it does not, the ceiling will be reduced to the balance of loans outstanding on 1 April, 1990.

Sections 37 to *45* contain provisions to streamline the form-filling and payment requirements for companies under the Self Assessment system. The provisions are designed to ensure as far as possible that a company will be able to satisfy its tax obligations by filing a return to the inspector containing all information necessary to finalise its liability for an accounting period and by making one payment of tax. When advance corporation tax liability arises, however, there may be two payments of tax.

Section 37 amends section 101 of the Corporation Tax Act, 1976, which imposes a surcharge on the undistributed income of certain companies. Under existing legislation the surcharge liability cannot be determined with certainty until eighteen months after the end of the companies' accounting periods. The effect of the amendment is to impose the charge at the end of that eighteen month period so that it is possible to finalise each year's liability at the time that a company makes its return.

Section 38 amends the surcharge provisions applying to service companies and has the same effect as *section 37*.

Section 39 which amends section 151 of the Corporation Tax Act, 1976 has the effect of streamlining the form-filling and payment requirements for companies and the assessing procedures in tax offices. All taxpayers are required to deliver to the Revenue Commissioners an account of payments from which income tax is required to be deducted and of the tax deducted. Under existing legislation companies are required to file a return of such payments as well as a return of profits and are required to pay income tax on such payments and corporation tax on their profits. This section ensures that the return of payments will be made at the same time as the return of profits and that income tax on the payments will be treated as corporation tax payable for the company's accounting period. Section 151 of the Corporation Tax Act, 1976 regulates the time and manner in which companies resident in the State are to account for payments made under deduction of tax. In the case of companies which are not so resident, *section 41* contains provisions similar to the above.

The original provisions of section 151 will continue to apply where a company makes payments under deduction of tax in a period which is not an accounting period of the company.

Section 40 provides for the removal of subsections (1), (2) and (3) of section 152 of the Corporation Tax Act, 1976, which are no longer required following the provisions of *section 39* except in the case where a payment is made by a company under deduction of tax in a period which is not an accounting period of the company.

Section 41 contains provisions similar to those in *section 39* in relation to companies which are not resident in the State. The effect of the section is that companies not so resident but which are carrying on a trade in the State will be required to make a return of payments from which income tax has been deducted at the time of making a return of their profits, and income tax so deducted will be treated as part of their corporation tax liability.

Sections 42 and *43* provide that income tax which under *sections 37, 38, 39* and *41* is treated as corporation tax is not to be taken into account in calculating relief under Chapter VI of the Finance Act, 1980 (Relief in Relation to Certain Income of Manufacturing Companies).

Section 44 ensures that companies may be required to include in a return to be made by virtue of section 143 of the Corporation Tax Act, 1976, amounts paid by companies under deduction of tax and amounts which are deemed to be annual payments. The income tax deducted from such payments will be treated as corporation tax under *sections 37, 38, 39* and *41*.

Section 45. Section 50 of the Finance Act, 1983, regulates the time and manner in which advance corporation tax is to be accounted for and paid by companies. Under the section, the company is required to make a return to the Collector-General within six months after the end of the accounting period and to pay the advance corporation tax at the time by which the return is to be made.

The present section provides that the return is to be made to the inspector rather than to the Collector-General and that it is to be made within nine months after the end of the accounting period. The effect of the amendment is that the advance corporation tax return can be included with the company's return of profits. The payment due date remains at six months after the end of the accounting period.

CHAPTER V

Taxation of Building Societies

Section 46 and the *Third Schedule* contain provisions relating to the conversion of a building society into a company. Under the Building Societies Act, 1989, a building society may convert itself into a company. On registration as a company, it ceases automatically to be a building society.

Paragraph 1 of the *Third Schedule* provides that the conversion will not be treated as an event which gives rise to a balancing allowance or charge. The company into which the society converts itself will be entitled to capital allowances as if it had been in existence and had carried on the trade since the society began to do so.

Paragraph 2 provides that the company will be treated as acquiring financial assets of the building society on conversion at their cost to the society and any profits or gains on the disposal of those assets will be calculated on that basis.

Paragraph 3 provides that the conversion will not be treated as giving rise to a charge to capital gains tax. The company will be treated for capital gains tax purposes as if it had acquired the assets at the time and for the consideration at which they were acquired by the building society.

Paragraph 4 contains provisions to ensure that members of the building society who acquire shares in the company will be treated as having acquired those shares for either no consideration or the value of any actual consideration given.

Section 47 ensures that a building society comes within Part XII of the Corporation Tax Act, 1976, which contains provisions covering certain transfers within a group.

CHAPTER VI

Taxation of Trustee Savings Banks

Section 48 deals with the amalgamation of two or more trustee savings banks and provides that for tax purposes the merged bank and the former banks will be treated as the same person.

Section 49 and the *Fourth Schedule* contain provisions relating to the reorganisation by the Minister for Finance of trustee savings banks into companies. The trustee savings banks may be reorganised into companies controlled by the Minister or companies not so controlled. *Paragraph 1* of the *Schedule* contains definitions. In addition, a company controlled by the Minister may be reorganised into a company not so controlled.

Paragraph 2 deals with capital allowances. The paragraph ensures that the reorganisation is not to be treated as an event which gives rise to a balancing allowance or charge. The successor bank will be entitled to capital allowances and assessed on balancing charges that would have arisen to the trustee savings bank if it had continued to carry on the trade. It will not, however, be entitled to capital allowances which were unused by the trustee savings bank and which were carried forward.

Paragraph 3 prevents the carry forward of unused trading losses

for set off against profits of a company not controlled by the Minister for Finance where the losses were incurred by a company controlled by the Minister.

Paragraph 4 deals with financial assets. The financial trading stock of the trustee savings banks is not to be regarded as sold at its market value by virtue of the reorganisation. It is treated as transferred to the successor at its original cost and, in computing profits accruing to the successor, that trading stock will be treated as having been acquired at its cost to the original bank.

Paragraph 5 deals with chargeable gains and ensures that the transfer of business to a company will not give rise to chargeable gains. Assets are deemed to be transferred for a consideration which gives rise to neither a gain nor a loss. On the disposal of an asset by the successor company, it will be treated as having acquired the asset at the same time and for the same consideration at which it was acquired by the trustee savings bank.

Section 50 extends the exemption provided under section 337 of the Income Tax Act, 1967. The section provides that exemption, which will be available to trustee savings banks and to companies controlled by the Minister for Finance, will be extended to both income and gains arising from investments in Government securities.

CHAPTER VII

Offshore Funds

Chapter VII and the *Fifth* and *Sixth Schedules* counteract the tax avoidance opportunities presented by offshore "roll-up" funds. These funds are usually set up outside the State in low tax jurisdictions. Investments in such a fund are redeemable at a price linked directly to the value of the fund's underlying assets. Income arising to the fund in respect of the underlying assets is reinvested. For taxpayers who would not otherwise have utilised their annual exemption from capital gains tax such funds could be used to convert taxable income (i.e. the income which the investor would have received upon investing directly in the underlying assets of the fund) into tax-free capital gains. For taxpayers with larger investments, offshore roll-up funds present an opportunity to convert income which would otherwise be chargeable at the top rate of income tax or the standard rate of corporation tax into capital gains chargeable at lower rates.

Chapter VII and the *Fifth* and *Sixth Schedules* provide that, on a disposal of a material interest in a non-qualifying offshore fund, so much of a gain as accrues after 5 April, 1990 will be charged to tax as income without the benefit of any indexation. *Section 51* indicates where the meaning of various terms may be found in *Chapter VII* and the related Schedules. The "Principal Act" means the Capital Gains Tax Act, 1975 throughout those provisions.

An "offshore fund" may be a company resident outside the State (a "non-resident" company), a unit trust scheme with non-resident trustees or an arrangement under foreign law creating rights of co-ownership. Such a fund will be a "non-qualifying fund" if it fails to distribute 85 per cent of its profits i.e. if it is not a "distributing fund". A person's interest in an offshore fund will be a "material interest" if, at the time the interest was acquired, it could reasonably be expected that the investor would be able to realise the value of his investment within seven years.

Section 52 applies the provisions of the Chapter to the disposal of a material interest in an offshore fund which has at any time since 5 April, 1990 been a non-qualifying offshore fund, which is essentially a non-distributing offshore fund. The Chapter will also apply to a disposal of a material interest in an onshore fund if the fund has not come onshore before 1 January, 1991 i.e. if it is a non-qualifying offshore fund at any time on or after that date.

The capital gains tax definition of a disposal applies, with two modifications. First, death is an occasion of charge, the gain being calculated by reference to the market value of the deceased's interest in the fund. Secondly, the provisions covering exchange of securities (on takeovers, reconstructions and amalgamations) are modified so as to prevent their use for avoidance of the charge imposed by the Chapter and Schedules.

Section 53 introduces special provisions for unit trust schemes and other offshore funds that operate equalisation arrangements. When a fund operating such arrangements redeems an interest in the fund it will pay the part of the next distribution in respect of that interest which has accrued to the date of the redemption, as a part of the proceeds of the redemption. [A person then acquiring that interest from the fund will pay for the right to receive the pre-acquisition part of the next distribution to be made by the fund. The new owner of the interest will receive a distribution equal to that made to all other participants in the fund. However that distribution to the new owner will effectively include a part refund of his payment to acquire the interest. The refund will not be treated as an income receipt of the new owner.]

The new provisions are intended to prevent investors in offshore funds receiving income as capital gains. Accordingly *section 53(3)* renders that part of the redemption proceeds, of a material interest in an offshore fund operating equalisation arrangements, representing the distribution accruing to the date of disposal, chargeable as income, if it would not otherwise be so chargeable, whether or not the fund pursues an 85 per cent distribution policy.

However if a fund operating equalisation arrangements pursues an 85 per cent distribution policy only the "equalisation element" of redemption proceeds and not the entire proceeds will be charged as income. Paragraph 2 of the Fifth Schedule ensures that the distribution of income included in the disposal proceeds of such interests is taken into account in determining whether the fund pursues an 85 per cent distribution policy.

Section 54 lists the offshore funds to which the Chapter applies as non-resident companies, unit trusts with non-resident trustees and arrangements which, under the laws of a foreign territory, create rights in the nature of co-ownership.

An interest is a "material interest" if, when it was acquired, it was reasonable to expect that the value of the interest could be realised within the next seven years. A person is deemed to be able to realise the value of his interest if he can realise an amount which is approximately equal to the proportion of the underlying assets of the company (or assets subject to the unit trust scheme or arrangements) which his interest represents. Realisation of an amount can be in money or in assets to the value of the amount.

Certain interests are excluded from the definition of material interests. They include an interest in respect of loan capital or other debt incurred for money lent in the ordinary course of a banking

business, and rights under an insurance policy. Substantial shareholdings by companies in overseas companies held for the development or maintenance of trade will also be excluded where the shareholding company could only expect to realise their value due to either a buyout agreement, or an agreement to wind up the overseas company, or both. Certain majority shareholdings in overseas companies are also excluded.

Section 55 and the *Fifth Schedule* set out the requirements for a fund to be certified as a distributing fund and the certification procedure.

Section 55(1) provides that an offshore fund is a non-qualifying fund except during an account period for which the Revenue Commissioners have certified the fund as a distributing fund. A fund will only be so certified if it has pursued a full distribution policy during the period.

Part I of the *Fifth Schedule* provides that a fund will be treated as pursuing a full distribution policy for an account period if—

(1) a distribution is made for the account period or for some other period which falls, in whole or in part, within the account period (account period being defined in *section 55(8), (9)* and *(10)*);

(2) the amount of the distribution made to holders of material or other interests in the fund represents at least 85 per cent of the fund's income for the period, and not less than 85 per cent of the fund's Irish equivalent profits (defined in *paragraph 5* of the *Fifth Schedule* as the profits, other than capital gains, in respect of which the fund would be chargeable to corporation tax if it were an Irish resident company);

(3) the distribution is made in the account period or within the following six months; and

(4) the distribution is made in such form that it would be chargeable under Case III of Schedule D if it were received by an Irish resident who did not receive it in the course of a trade or profession.

In applying (2) above, half of any income of an offshore fund which is derived from dealing in commodities is left out of account, so that commodity funds deriving their income wholly from such dealing must only distribute 42.5 per cent of their total income to be certified as distributing funds. The application of (4) above is also relaxed to enable funds operating equalisation arrangements, under which some of their income is distributed in capital form, to obtain distributor status.

The distribution test will be satisfied if there is no income in an account period but not if a fund fails to make up accounts. Allowance is made for legal restrictions on the amount which a fund may distribute.

In the absence of specific provisions, it would be possible to avoid the charge under the offshore fund legislation simply by rolling up the gain at one further remove from the investor. For example, Fund A, which receives investors' money could re-invest it in Fund B. Provided Fund B rolled up the income accruing, Fund A would have no income to distribute and would pass the distributor test. Thus, when the investors disposed of their interests in Fund A the gain

would not be chargeable as income. To prevent the 85 per cent distribution requirement being circumvented by such arrangements, *section 55(3)* provides that a fund will not be certified as a distributing fund—

(*a*) if more than 5 per cent of the value of assets of the fund comprise interests in other offshore funds;

(*b*) if more than 10 per cent of the value of the assets of the fund comprise interests in a single company;

(*c*) if the assets of the fund include more than 10 per cent of the issued share capital of any company or of any class of that share capital;

(*d*) if there is more than one class of material interest in the offshore fund and they do not all receive proper distribution benefits.

Part II of the *Fifth Schedule* modifies these general conditions in the case of

—reinvestment in another fund which distributes 85 per cent of its income,

—investment in a trading company,

—investment in a wholly-owned subsidiary,

—investment in a company providing management and administrative services, and

—*de minimis* holdings in companies.

Section 55(11) gives effect to the provisions of the *Fifth Schedule* which are concerned with the certification procedure as initiated by a fund (*Part III*) or by an investor in a fund (*Part IV*). In order to be certified as a distributing fund in respect of an account period a fund must apply to the Revenue Commissioners within six months of the end of the account period in question. If certification is refused, then the fund (or, as the case may be, its trustees) may appeal against the refusal within 30 days of the date of the notice of the refusal.

Where the fund fails to apply for certification and as a result is not certified, an investor in the fund who might otherwise be subject to the charge imposed by *Chapter VII* may require the Revenue Commissioners to invite the offshore fund concerned to apply for certification. If the fund declines to apply, the Revenue Commissioners will determine the matter on the basis of the available information including any accounts or other information supplied by investors.

Section 56 and the *Sixth Schedule* provide for the charging of offshore income gains as income and the calculation of the amount of those gains. *Section 56(1)* specifies that offshore gains are to be treated as income chargeable under Case IV of Schedule D. The charge is on persons who are resident or ordinarily resident in the State during the year of assessment in which the income gain arises and also on persons who are not so resident but who trade here through a branch or agency. Non-domiciled individuals who are resident or ordinarily resident are charged only on a remittance basis. Charities are exempted from the charge so long as the income gain is applied for charitable purposes.

The *Sixth Schedule* provides that, although they are to be charged as income, gains on disposals of material interests in non-qualifying offshore funds are to be calculated according to normal capital gains tax principles. However, costs of acquisition will not be indexed for inflation in calculating gains. The unindexed gains to be charged as income will be the gains arising from 6 April, 1990. A material interest held on 6 April, 1990 will be treated as disposed of and immediately reacquired at its market value on that day. The gain calculated on any subsequent disposal will therefore only include the gain arising from the date of the deemed reacquisition, i.e. 6 April, 1990. The charge will be on the actual gain on the disposal if that gain is less than the gain on 6 April, 1990 market value. Losses arising on disposals of material interests are ignored for the purposes of the charge under *Section 56* and the *Sixth Schedule*.

Part II of the *Sixth Schedule* provides, in the case of disposals of material interests in distributing funds operating equalisation arrangements, that the equalisation element of the disposal proceeds, i.e. the payment of the part of the next distribution to be made by the fund that has accrued to the date of disposal of the interest, will be charged as income. [Equalisation arrangements are therefore treated the same as roll-up funds to the extent that they convert income into gains. In general, the equalisation element is only part of the gain on the disposal of an interest in a fund operating equalisation arrangements. The charge as income is only applied to that equalisation element of the gain.]

The amount of the gain or equalisation element charged as income under the *Sixth Schedule* will be referred to in the rest of this explanatory note on *Chapter VII* as the "offshore income gain".

Section 57 applies certain provisions of the capital gains tax code for the purposes of charging gains on disposals of interests in offshore funds where the disposals are made outside the State on behalf of persons resident in the State. Under the capital gains tax code, capital gains realised by a non-resident company are attributed to its Irish shareholders, if it is a closely-held company. Similarly, capital gains realised by non-resident settlements may be attributed to Irish beneficiaries if the settlor is, or was at the time of settlement, Irish resident. The same provisions are applied to offshore income gains realised by non-resident companies or settlements, so that such offshore income gains are in the same circumstances attributed to the Irish resident shareholders and beneficiaries respectively. In the case of offshore income gains attributable to Irish resident shareholders, the amount of tax charged is treated as allowable expenditure on the subsequent disposal of their shares.

Section 57 also clarifies the interaction of the offshore fund provisions with previous provisions dealing with income derived by Irish residents from assets transferred abroad.

Section 58 ensures that there will be no double taxation of gains on disposals of material interests in offshore funds. A disposal which gives rise to an offshore income gain will usually also be a disposal for capital gains tax purposes. In order to avoid a double charge to tax, the consideration taken into account when computing the capital gain is reduced by the amount of the offshore income gain. So, for example, in the case of a material interest acquired before 6 April, 1990, the gain attributed to the period since that date will be taxed as an offshore income gain, while the gain attributed to the period of ownership before 6 April, 1990 will be taxed as a capital gain.

Where an offshore income gain is treated as arising on a reorganisation of shares which is disregarded for capital gains purposes, the offshore income gain will be added to the consideration (given for the original shares) to be deducted in calculating the gain on a subsequent disposal of the new shares.

In relation to offshore funds which operate equalisation arrangements, a potential double tax charge arises where a charge on the equalisation element of proceeds of a disposal of a material interest is followed by a distribution in respect of that interest to the disponer or to someone connected with him. The amount of the distribution is therefore treated as reduced by the equalisation element of the offshore income gain.

CHAPTER VIII

Capital Allowances

Sections 59 to *70* provide in general for the reduction of accelerated capital allowances and certain ancillary matters. Accelerated annual allowances are being reduced:

—from 50 per cent to 25 per cent for the year 1 April, 1991 to 31 March, 1992 and

—from 25 per cent to nil thereafter.

Normal annual wear and tear allowances are unaffected by these changes. The reductions do not affect the special building incentives in the designated areas for urban renewal relief under the Finance Act, 1986, nor do they apply in respect of qualifying service companies in the Custom House Docks Area of Dublin or in Shannon Customs-free Airport. Accelerated capital allowances are being preserved at 50 per cent for projects which are approved for grant assistance by industrial development agencies on or before 31 December, 1990.

Section 59 introduces into section 241 of the Income Tax Act, 1967, a requirement that for wear and tear allowance to be granted in respect of plant in use in a trade it must at any time that it is being used for trade purposes be "wholly and exclusively" used for those purposes. The section will not prevent the making of an allowance where an item of plant is used partly for business purposes and partly for other purposes. Plant which when in use in a trade also has a contemporaneous non-trading use will not qualify for any allowance.

Sections 60 and *61* provide for the restriction of accelerated writing-down allowance (free depreciation) to 25 per cent of capital expenditure in the period 1 April, 1991 to 31 March, 1992 and to nil from 1 April, 1992 in relation to machinery and plant.

Section 62 amends section 251 of the Income Tax Act, 1967—

(i) to provide that initial allowance will be granted under section 251 in relation to machinery and plant provided for the purposes of the trade only if it is used "wholly and exclusively" for those purposes, and

(ii) to provide for the restriction of initial allowance to 25 per cent in the period 1 April, 1991 to 31 March, 1992 and to nil from 1 April, 1992 in relation to machinery and plant.

Section 63 amends section 254 of the Income Tax Act, 1967 —

(i) to provide for the restriction of initial allowance to 25 per cent of capital expenditure in the period 1 April, 1991 to 31 March, 1992 and to nil from 1 April, 1992 in relation to industrial buildings, and

(ii) to provide for apportionment of capital expenditure as between qualifying expenditure on an industrial building and non-qualifying elements where an industrial building forms part of a larger building or complex of buildings.

Section 64 amends section 19 of the Finance Act, 1970, to preclude the granting of industrial building allowance in relation to the element of expenditure attributable to site cost where an industrial building is bought unused from a developer.

Section 65 amends section 25 of the Finance Act, 1978, to provide for the restriction of accelerated writing-down allowance (free depreciation) to 25 per cent of capital expenditure in the period 1 April, 1991 to 31 March, 1992 and to nil from 1 April, 1992 in relation to industrial buildings.

Section 66 amends section 22 of the Finance Act, 1974, which provides for the granting of annual allowance for certain farm buildings and other works, by restricting accelerated allowances to 25 per cent in the period 1 April, 1991 to 31 March, 1992 and to nil from 1 April, 1992.

Section 67 is an anti-avoidance provision which amends section 265 of the Income Tax Act, 1967, to provide that the sale, or termination otherwise, of an interest in an industrial building while the building is not actually in use as an industrial building will not prevent the application of a balancing charge to claw back capital allowances already given in respect of the building. Previously, for example, a building could be let for a non-industrial use immediately prior to sale and as it would not be an industrial building at the time of sale, a balancing charge could be avoided.

Section 68 amends section 276 of the Income Tax Act, 1967, which provides for taking into account the non-business use of machinery and plant, which has been used both for trading and non-trading purposes, in determining the amount of any appropriate balancing allowance or balancing charge to be applied in relation to that machinery and plant. The section provides that the use of the machinery and plant for the purposes of the trade must be use which is "wholly and exclusively" for those purposes.

Section 69 amends section 51 of the Finance Act, 1988, which excluded from the scope of reductions in accelerated capital allowances under the Finance Act, 1988, certain types of expenditure and expenditure in certain areas. This section continues this exceptional treatment in relation to the further reductions in accelerated annual allowances provided for by this Bill. Unrestricted accelerated capital allowances continue to be available principally for the special building incentives for areas designated for urban renewal and for qualifying services companies in the Custom House Docks Area of Dublin and in Shannon Customs-free Airport.

Section 70 preserves accelerated capital allowances at a maximum of 50 per cent in relation to expenditure incurred on machinery and

plant and industrial buildings provided for the purposes of any project approved for grant aid by an industrial development agency on or before 31 December, 1990. Such projects will be able to avail of capital allowances at 50 per cent in the form of initial allowances or accelerated annual allowances in respect of relevant expenditure which thereafter will attract allowances at normal writing-down rates.

CHAPTER IX

Capital Gains Tax

Section 71 amends section 3 of the Capital Gains Tax Act, 1975 to provide for the deletion of the top rate of charge to capital gains tax of 60 per cent.

Section 72 amends section 36 of the Finance Act, 1982, which relates to chargeable gains on disposals of development land, to delete the top rate of charge of 60 per cent.

Section 73 amends section 26 of the Capital Gains Tax Act, 1975, which provides relief from capital gains tax on the disposal of certain business assets including shares in a family company, by an individual aged 55 years or over. This section extends the relieving provisions of section 26 to disposals of assets in a family business where that business consists of a group of companies having at their head a holding company.

Section 74 provides for a minor technical amendment in section 27 of the Capital Gains Tax Act, 1975, to reflect the amendment of section 26 provided for by *section 73*.

Section 75 deletes subparagraph (3) of paragraph 15 of the computational rules of Schedule 1 to the Capital Gains Tax Act, 1975. The original purpose of the paragraph was to obviate a charge to capital gains tax by enabling a company, in certain circumstances, to opt to appropriate an asset as stock in trade at original cost rather than market value. Where an asset had increased in value since originally purchased, capital gains tax liability would arise in respect of that increase on appropriation of the asset as stock in trade at market value. Paragraph (3) of Schedule 1 enabled the company appropriating the asset to obviate this charge by opting to take the asset into trading stock at its original cost instead of market value. In practice, the provision was being availed of increasingly not for this purpose but to appropriate into trading stock at original cost assets which had depreciated in value since purchased thereby creating trading losses. This section curtails this practice by repealing paragraph (3). As the option, intended for the purpose of postponing a charge, can no longer be availed of, provision is made in this section for deferment of any charge to capital gains tax arising on appropriation of an asset into trading stock until the disposal of the asset.

Section 76 extends to unit trusts the provisions of paragraph 2 of Schedule 2 to the Capital Gains Tax Act, 1975, which enable reorganisations or reductions of a company's share capital to take place without such rearrangements of share capital being regarded as disposals for capital gains tax purposes. Under paragraph 2, a switch of funds from one sub-fund to another within the same umbrella investment company (e.g. an undertaking for collective investment in transferable securities or UCITS) does not constitute a disposal for capital gains tax purposes. However, a unit trust is not a company and heretofore switching of units from one sub-fund to another within

an "umbrella" unit trust constituted disposals for capital gains tax purposes. Unit trusts are now being placed on equal terms with UCITS in this respect by the extension of the provisions of paragraph 2 to unit trusts.

PART II

Customs and Excise

Section 77 defines abbreviations.

Section 78 increases the rebate of excise duty on unleaded petrol from £1.68 to £2.56 per hectolitre. The section also reduces the rate of excise duty on auto-LPG from £0.785 to £0.393 per gallon.

Section 79 reduces the rate of excise duty on table waters from £0.36 to £0.29 per gallon.

Section 80 abolishes excise duty on all black and white televisions and on colour televisions with screens not exceeding 17″. The section also reduces the rate of excise duty on colour televisions with screens from 17″ to 24″ from £49 to £30 and on colour televisions with screens in excess of 24″ from £60.50 to £45.

Section 81 reduces the rate of excise duty on video players from £40 to £20.

Section 82 abolishes excise duty on gramophone records and compact discs.

Section 83 abolishes excise duty on matches.

Section 84 abolishes excise duty on mechanical lighters.

Section 85 adjusts the structure of excise duty on cigarettes to comply with the provisions of EC Directive 77/805/EEC. This adjustment which is necessary following the reduction in the rate of VAT will leave the overall taxation of cigarettes unchanged.

PART III

Value-Added Tax

Section 86 is a definitions section.

Section 87 inserts "horses" into the definition of livestock in section 1(1) of the Value-Added Tax Act, 1972. Taxation of the supply of horses is necessary following the adoption of the Eighteenth VAT Directive by the EC Council. At present Ireland has a derogation which exempts live horses and greyhounds but this derogation is being withdrawn with effect from 1 January, 1991. Accordingly, horses will become taxable at the 2.3 per cent rate which is applied to livestock generally by *section 91*.

Section 88 removes references to live horses in section 3(3) of the VAT Act following the redefinition of livestock, to include horses, by *section 87* (livestock is already referred to in section 3(3)). The section has effect from 1 January, 1991.

Section 89 amends section 5 of the VAT Act. It provides that the recipient of certain foreign services for business purposes, who has

an establishment in the State and his principal establishment in the supplier's country, and who would not otherwise be chargeable with VAT on such services, is made so chargeable in this country where the services are for the use of his establishment here.

Section 90 removes the reference to live horses in section 8(9) of the VAT Act. Following the redefinition of livestock to include horses, by *section 87*, agricultural produce will include horses. The section has effect from 1 January, 1991.

Section 91, in confirmation of Financial Resolution No. 8 of 1 February, 1990, amends section 11(1) of the VAT Act to provide, with effect from 1 March, 1990, for the reduction in the 25 per cent rate to 23 per cent, the increase in the rate on livestock from 2 to 2.3 per cent and the removal of paragraph (*bb*), which provided for the taxation of electricity at the 5 per cent rate, consequent on the insertion of electricity into the Sixth Schedule to the VAT Act (goods and services liable at 10 per cent) by *section 96*. The section also provides for the application of the 2.3 per cent rate to greyhounds and the hire of horses with effect from 1 January, 1991. The supply of horses and greyhounds becomes taxable as a result of the adoption of the Eighteenth VAT Directive (the supply of horses becomes taxable at the 2.3 per cent rate as a result of the redefinition of livestock by *section 87*).

Section 92, in confirmation of Financial Resolution No. 8 of 1 February, 1990, amends section 12A of the VAT Act to provide for the increase, from 2 to 2.3 per cent, in the compensatory flat-rate credit allowed to taxable persons purchasing agricultural produce or agricultural services from unregistered farmers. This credit is transmitted to unregistered farmers as an addition to prices. The section has effect from 1 March, 1990.

Section 93 amends section 15(1) of the VAT Act to provide for the application of the 2.3 per cent rate to imports of greyhounds (the 2.3 per cent rate will apply to the importation of horses as a result of the redefinition of livestock by *section 87*). The section also makes a technical amendment to section 15(2) of the VAT Act following the deletion of paragraphs (xx) and (xxi) of the First Schedule to the VAT Act (exempted activities) by *section 95*. The section has effect from 1 January, 1991.

Section 94 provides that the proposed application of the 10 per cent rate to telephone and related services is suspended in respect of all such services invoiced prior to 1 January, 1991. This suspension is being made to facilitate Bord Telecom Éireann, the only supplier of such services in the State, in their changeover from exempt to taxable status and is subject to the company paying to the Exchequer an amount equal to the net VAT yield that would have accrued in the second half of 1990 had normal taxation taken effect from 1 July, 1990, as originally envisaged.

Section 95 makes four amendments to the First Schedule to the VAT Act (exempted activities).

Subsection (a) amends paragraph (ii) so that, insofar as instruction in the driving of vehicles is concerned, only tuition in the driving of heavy goods vehicles can be regarded as vocational training within the meaning of that paragraph (and thereby exempt). Instruction in the driving of all other vehicles will continue to be liable at the 10 per cent rate in accordance with paragraph (xiiig) of the Sixth Schedule to the VAT Act.

Subsection (b) is a technical amendment relating to the implementation of the Eighteenth VAT Directive. It provides for the exemption of cultural services in line with Article 13.A.1.(n) of the Sixth VAT Directive. Such services are already partially covered by paragraph (viii) and other suppliers of such services are regarded as being outside the scope of VAT because they do not operate in the course or furtherance of business. Accordingly, it is expected that there will be no significant effect in practice on the treatment of cultural services.

Subsection (c) deletes paragraph (xx) following the inclusion of "horses" in the definition of livestock by *section 87* and their consequent taxation at the 2.3 per cent rate applicable to livestock generally. This subsection also deletes paragraph (xxi) following the taxation of greyhounds at the 2.3 per cent rate by *section 91*. The subsection has effect from 1 January, 1991.

Subsection (d) is a technical amendment relating to the implementation of the Eighteenth VAT Directive. It provides for the exemption, in certain circumstances, of the activities of certain independent groups of persons in line with Article 13.A.1.(f) of the Sixth VAT Directive. Only a small number of groups of this type exist in the State and these are already treated as being exempt from VAT. This technical amendment will have no practical effect.

Section 96 makes four amendments to the Sixth Schedule to the VAT Act (goods and services liable at 10 per cent).

Subsection (a), in conjunction with *section 91*, and in confirmation of Financial Resolution No. 8 of 1 February, 1990, provides for the application of the 10 per cent rate to electricity with effect from 1 March, 1990.

Subsection (b) implements the Budget proposal to apply the 10 per cent rate to telephone and related services. The application of VAT to these services is being suspended until 1 January, 1991 by *section 94*.

Subsection (c) amends the definition of newspapers to which the 10 per cent rate applies. The revised definition extends the application of the 10 per cent rate to those periodicals which are predominantly news-oriented and which were previously liable at the 23 per cent rate. The subsection has effect from 1 July, 1990.

Subsection (d) inserts a necessary reference in paragraph (xiiih) to the cultural services specified in new paragraph (viiia) of the First Schedule to the VAT Act inserted by *section 95*.

PART IV

Stamp Duties

Section 97 imposes a levy of £36,000,000 on the banks which was announced in the Budget. The duty will be assessed on the average amount in current and deposit accounts as at stated dates in each of the months in 1989 subject to certain adjustments including a threshold of £15,000,000. A rate of 0.3 per cent will apply to amounts under £130,000,000 and 0.4055 per cent will apply to amounts over £130,000,000.

Section 98 imposes a levy of 3 per cent on the gross investment by a person in any collective investment undertaking. Certain investments are exempt from the levy. All persons engaged in a transaction

involving the purchase of units or shares in such an undertaking are accountable for payment of the levy but two or more accountable persons may make arrangements among themselves so that only one of their number shall actually make returns and payments. All accountable persons, other than unit holders or share-holders, are obliged to register with the Revenue Commissioners.

Subsection (1) contains definitions and a listing of exempt investments.

Subsection (2) requires an accountable person to deliver a statement showing the assessable amount at the end of each quarter and provides that one accountable person may deliver a statement and pay the duty on behalf of several such persons.

Subsection (3) charges a duty of 3 per cent on the assessable amount.

Subsection (4) obliges accountable persons to pay the duty on delivery of the statement.

Subsection (5) contains provisions for charging interest on late delivery or late payment.

Subsection (6) requires the provision of information relevant to the statement.

Subsection (7) contains provisions enabling the Revenue Commissioners to seek certain information.

Subsection (8) provides that the Revenue Commissioners may require any person to provide information concerning any units or shares in an undertaking sold or purchased by that person.

Subsection (9) provides for penalties in the event that inadequate duty is paid due to inaccurate information having been supplied or failure to pay full duty.

Subsection (10) sets out the persons from whom the duty may be recovered.

Subsection (11) provides for penalties where an accountable person refuses to co-operate, or co-operates inadequately, with a notice concerning the payment of the duty.

Subsection (12) empowers the Revenue Commissioners to set up a register of accountable persons and to provide access to it by the public.

Subsection (13) obliges persons who are accountable persons on the passing of this Act to register within 30 days of that passing.

Subsection (14) contains provisions relating to registration by persons who become accountable persons after the passing of this Act.

Subsection (15) provides penalties for failure to register.

Subsection (16) provides penalties for persons who invest through non-registered persons unless they make arrangements to pay the duty themselves.

Section 99 updates and rationalises the rate structure in the five major charging headings in the First Schedule, Stamp Act, 1891.

Under the headings of Bond, Covenant and Mortgage, Bond etc the exemption limit, below which stamp duty is not payable, is increased from £10,000 to £20,000; the duty for a principal security is changed from 25p for every £200 or part thereof to £1 for every £1,000 or part thereof, with a minimum charge of £1 and a maximum charge of £3,000; the collateral charge is increased from £5 to £10 and the duty on surrender or release is abolished.

Under the heading of Conveyance or Transfer on sale of stocks and marketable securities a minimum charge of £1 is introduced. Transfers of units in collective investment undertakings (approved unit trusts and UCITS) will be exempt from stamp duty.

A number of consequential changes is being made under other headings in the First Schedule.

Duty on Stock Certificates issued to bearer and denominated in a foreign currency is being abolished.

The above changes shall have effect with respect to instruments executed on or after the passing of this Act.

The 14 rate bands are reduced with effect from 1 September, 1990, to 6 rate bands, under the heading of Conveyance or Transfer on sale of property other than stocks or marketable securities. A similar reduction in the number of rate bands is applied under the heading of Lease, in respect of the premium or fine. The exemption limit below which stamp duty is not payable is increased from £1,000 to £5,000. In addition, under the heading of Lease, a minimum charge of £1 is introduced.

Section 100 imposes a stamp duty charge in the case of certain transfers of land on which a house or apartment has been, is being, or will be built.

When the actual consideration for the construction of a house or apartment cannot be ascertained, stamp duty will be based on a multiple of the open market value of the land. A refund will be given where excess stamp duty is later shown to have been paid. The section comes into effect for conveyances executed on or after 1 September, 1990.

Section 101 enables the Revenue Commissioners to enter into agreements at their discretion with any person for the payment of stamp duty on instruments under an agreement whereby, at regular intervals, stamp duty is paid in one sum equal to the total duty which would have been payable had each instrument been stamped individually.

Section 102 exempts from stamp duty all transfers of property from one spouse to another where the property upon the transfer becomes jointly owned by the spouses.

Section 103 exempts from companies capital duty undertakings for collective investment in transferable securities to which Council Directive 85/611 EEC relates. These essentially are corporate unit trusts with fixed or variable capital [UCITS].

Section 104 amends section 19 of the Finance Act, 1952, which provides for a reduction in the rate of stamp duty in the case of transfers of property between certain associated companies. The effect of this amendment is to extend the criteria required to be satisfied by companies in order to avail of the reduction in the rate.

Section 105 provides for the extension of the stamp duty relief which is available under section 31 of the Finance Act, 1965, in the case of reconstructions or amalgamations of companies to cover the situation where the particular existing company being acquired is registered in a Member State of the European Economic Community and the business being acquired is situated in the State.

Section 106 withdraws the various exemptions from stamp duty which applied to the Agricultural Credit Corporation. These exemptions are no longer appropriate following the passage of the Agricultural Credit Act, 1988 which allows the ACC to operate on the same basis as other similar financial institutions.

Section 107 provides that where a company issues shares in place of preference shares redeemed or to be redeemed a charge to companies capital duty will arise on an amount equal to the value of assets contributed in respect of the issue of shares less the value of the shares redeemed. The section amends the stamp duty provisions of section 64(4) of the Companies Act, 1963.

PART V

Residential Property Tax

Section 108 applies the provisions of this Part of the Bill to the residential property tax arising on 5 April in 1990 and in subsequent years.

Section 109 deletes the definition of "child" from section 95 of the Finance Act, 1983 — an amended definition is included in *section 112* of the Bill.

Section 110 is intended to facilitate self assessment of the tax by rounding up, to the nearest £1,000, the general exemption limit applying to the tax.

This general exemption limit (£65,000 when the tax was introduced in 1983) is indexed each year by reference to an index number for the three months ending on 31 March in the year prior to the relevant valuation date of 5 April. This index number, which is issued by the Department of the Environment, is not normally available until the June following the 5 April, which causes inconvenience and uncertainty for taxpayers. This section also eliminates this problem by taking the index number for the three months ending on 31 December, instead of 31 March, preceding the relevant 5 April, ensuring that the general exemption limit applying on 5 April is available on that date.

Section 111. The income exemption limit applying to this tax is indexed each year according to the consumer price index. This section rounds up, to the nearest £100, that limit applying on the 5 April in any year.

Section 112 re-applies to this tax the reduction of 1/10th of the tax, in respect of each qualifying child of an assessable person, which was withdrawn, save in respect of incapacitated children, by the Finance Act, 1986.

PART VI

Capital Acquisitions Tax

Section 113 is a definition section.

Section 114 extends to gifts between spouses the exemption already applying to inheritances between spouses.

Section 115. In his Budget Statement of 31 January, 1990, the Minister for Finance announced that the thresholds would be indexed to take account of inflation. For 1990 he stated that the three (class) thresholds would be increased by 4 per cent to £156,000, £20,800 and £10,400 respectively.

In order to ensure that the intention underlying the indexation statement is met, it has been necessary to draft the legislation so that the revised class thresholds (which are a technical but crucial feature of the aggregation computation) are also indexed. This has been accomplished by indexing the threshold amount, thus allowing for indexation of both the class thresholds and, where appropriate, the revised class thresholds.

Section 116 is intended to counter tax-avoidance by confining an existing exemption, from the once-off 3 per cent and the annual 1 per cent discretionary trust taxes, to a discretionary trust which is created in connection with a superannuation scheme and which has no object other than to benefit employees in that scheme.

Section 117 extends the provisions of section 60 of the Finance Act, 1985, which exempts from tax the proceeds of certain policies effected for the purposes of paying inheritance tax. It deals with certain of those policies effected by spouses, and provides that the proceeds of such a policy, payable on the death of one spouse, may also be used to pay inheritance tax arising under a disposition made by that spouse's predeceased spouse.

PART VII

Miscellaneous

Section 118 relates to the Capital Services Redemption Account. The section

(*a*) adjusts the provisional annuity for 30 years fixed last year, so as to take account of actual expenditure on Voted Capital Services in 1989 and

(*b*) fixes provisionally a new annuity for 30 years in respect of the estimated expenditure in 1990 on Voted Capital Services.

Section 119 amends section 51 (contracts of guarantee and loan contracts in connection with aid to developing countries) of the Finance Act, 1978 to give the Minister for Finance power to guarantee loans to developing countries up to a maximum of £20 million. Ireland's maximum liability under the Fourth Lomé Convention, which has recently been signed, together with our maximum liabilities under the Lomé I, II and III, will come to about £12 million. The present limit is £10 million.

Section 120 will give the Minister for Finance greater flexibility in relation to the terms and conditions under which he may make stock conversion offers. Formal stock conversion offers on Government

securities — whereby the holder of a stock is given the opportunity to convert his holding into another stock — are governed by the provisions of the Government Loans (Conversion) Act, 1951. The procedures laid down in that Act are outdated in today's market conditions and do not allow for the possible use of stock conversion as a tool in day-to-day debt management.

Section 121 will allow Ireland to exercise the option, which all Members of the European Investment Bank now have, to convert their capital share in the Bank from national currency to ECU thus eliminating the need for maintenance of value payments. To date the greater part of Ireland's payments in respect of its capital share in the EIB were made in Irish pounds and the total of these Irish pound payments must be adjusted in line with exchange rate changes between the Irish pound and the ECU. Ireland cannot avail of this conversion option currently as any gross payments involved in effecting the change would not be covered by existing legislation. The option would be exercised only if deemed beneficial.

Section 122 provides that the Revenue Commissioners may delegate to any of their officers any of their powers and functions under the 1982 approved profit sharing legislation.

Section 123 provides for a similar power of delegation in relation to the approved share option scheme legislation in the 1986 Finance Act.

Section 124 provides that, where Government Securities (including a new type of security to be known as Exchequer Notes) are issued at a discount, the discount will be chargeable to income tax. The section exempts the discount from income tax in the hands of non-residents and applies this exemption to existing discount securities, viz. Exchequer Bills and Agricultural Commodities Intervention Bills.

Section 125 deals with the "care and management" of taxes and duties.

Section 126 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais,
Aibreán, 1990.

Wt. P24956/B/4. 2,925. 4/90. Cahill. (A22788). G.16.

Section 114 extends to gift and inheritance tax the provisions applying to inheritances between spouses.

Section 121 will allow Ireland to exercise the option, which all Members of the European Investment Bank now have, to convert their capital share in the Bank from national currency to ECU, thus eliminating the need for maintenance of value payments. To date the greater portion of the Bank's payments in respect of its capital share in the EIB were made in Irish pounds and the total of these Irish pound payments must be adjusted in line with exchange rate changes between the Irish pound and the ECU. Ireland cannot avail of this conversion option currently as any gross payments involved in effecting the change would not be covered by existing legislation. The option would be exercised only if it deemed beneficial.

Section 122 provides that the Revenue Commissioners may delegate to any of their officers any of their powers and functions under the 1982 approved profit sharing legislation.

Section 116 is intended to counter tax-avoidance by confining an approved share option scheme to a scheme in connection with a superannuation scheme and which has no object other than to benefit employees in that scheme.

Section 124 provides that, where Government Securities (including a new type of security to be known as Exchequer Notes) are issued at a discount, the discount will be chargeable to income tax. The section exempts the discount from income tax in the hands of non-residents and applies this exemption to existing discount securities, viz. Exchequer Bills and Agricultural Commodities Intervention Bills.

Section 125 deals with the "care and management" of taxes and duties.

PART VII

Section 126 contains the provisions relating to short title, construction and commencement.

MISCELLANEOUS

Section 118 relates to the Capital Services Redemption Account. The section

(*a*) adjusts the provisional annuity for 30 years in respect of the Voted Capital Services in 1989 so as to take account of actual expenditure on Voted Capital Services in 1989 and

(*b*) fixes provisionally a new annuity for 30 years in respect of the estimated expenditure in 1990 on Voted Capital Services.

Section 119 amends section 51 (contracts of guarantee and loan contracts in connection with aid to developing countries) of the Finance Act, 1978 to give the Minister for Finance power to guarantee loans to developing countries up to a maximum of £20 million. Ireland's maximum liability under the Fourth Lomé Convention, which has recently been signed, together with our maximum liabilities under the Lomé I, II and III, will come to about £12 million. The present limit is £10 million.

Section 120 will give the Minister for Finance greater flexibility in relation to the terms and conditions under which he may make stock conversion offers. Formal stock conversion offers are Government