AN BILLE AIRGEADAIS 2003
FINANCE BILL 2003

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EXPLANATORY MEMORANDUM

PART 1

Income Tax, Corporation Tax and Capital Gains Tax

Chapter 1

Interpretation

Section 1 contains a definition of ''Principal Act'' i.e. the Taxes Consolidation Act 1997, for the purposes of Part 1 of the Bill relating to income tax, corporation tax and capital gains tax.

Chapter 2

Income Tax

Section 2 increases, for the year 2003 and subsequent years, the income tax exemption limits for persons aged 65 years or over. The new limits will be €15,000 for single persons and €30,000 for married couples.

Section 3 increases, for the year 2003 and subsequent years, the value of the employee (PAYE) tax credit. The value of the credit is being increased from €660 to €800 per annum.

Section 4 reduces, for the year of assessment 2003 and subsequent years of assessment, the level of the specified interest rate used for determining the benefit-in-kind charge on certain preferential loans made to employees by their employers. The new rates will be 4.5 per cent (reduced from 5 per cent) in the case of mortgage loans and 11 per cent (reduced from 12 per cent) in the case of non-mortgage loans.

Section 5 continues until end-December 2004 the special exemption from taxation of the unemployment benefit payable to certain systematic short-time workers.

Section 6 provides with effect from 1 January 2004 for the direct application of PAYE and PRSI (including the training and health contribution levies) to the many current taxable benefits-in-kind. Under the new arrangements employers will deduct the appropriate PAYE income tax and PRSI from cash remuneration being paid to the employee at the same time as the benefit-in-kind is being provided. Where the cash remuneration is insufficient, the employer will be responsible for any shortfall in the relevant amount of tax. Where this shortfall is not made good by the employee to the employer by the end of the tax year, the tax borne by the employer will be regarded as a taxable benefit of the employee in the following tax year and subject to PAYE and PRSI in the same way as the original benefit.

In order to facilitate the introduction of the new system the existing system of valuing benefits is being changed and simplified as follows:

(1) under the current system the value of the private use of a company car is determined by reference to a percentage of the original market value of the car (OMV) which depends on whether only the car is supplied or whether the employer also bears running costs and also takes account of the business mileage of the employee. This has the potential for a multiplicity of percentage rates. For the future, this complicated system is being simplified as follows:

Business mileage	**Cash equivalent (% of OMV)**
	%
15,000 or less	30
15,001 to 20,000	24
20,001 to 25,000	18
25,001 to 30,000	12
over 30,000	6

(2) The cash equivalent of the private use of an employer's van is being set at 5% of the original market value of the van.

(3) the annual value of the use of an asset, other than premises, is being set at 5% of its market value when first provided by the employer.

Prior to the commencement of the new system the Revenue Commissioners will be making administrative regulations in relation to the timing of deductions and the accounting for such deductions.

Section 7 amends the tax treatment of share options granted under unapproved share option schemes. Under existing rules, when such an option is exercised, an income tax charge arises on the gain from the exercise of the option, that is, on the difference between the market value of the share on the date of exercise and the amount paid for the shares (i.e. the option price). The income tax is payable under self assessment. However, the taxpayer may elect to defer the payment of the tax for seven years or until the shares are disposed of, whichever is the earlier.

This section abolishes the option to defer payment of the tax for share options exercised on or after the date of enactment.

In the case of share options exercised before 6 February 2003, this section provides that payment of the income tax liability, whether currently due or deferred, may, at the choice of the taxpayer, be reduced to a payment on account equal to the market value, or disposal proceeds, of the shares. The date of valuation of market value or proceeds and the payment arrangements are:

- 6 February 2003, or date of disposal if earlier, for persons with unpaid liabilities due before or by 6 February 2003, who have not elected for the seven year deferral and who are not entitled to make that election after 6 February 2003 — in these cases the payment on account will be due on or before 30 June 2003;
- date of disposal in the case of persons who elect for the seven year deferral and then dispose of shares within that period — in these cases the payment on account will be due 21 days after the date of disposal or, if later, by 30 June 2003;
- 31 December at the end of the seven year deferral period for those who elect to defer and then retain ownership of their shares for the seven year period — in these cases the payment on account will be due by 21 days after the end of the deferral period, and
- 31 October 2003 or 2004, where the taxpayer is currently entitled to elect for the seven year deferral before one of those dates but does not do so or where the tax is only due to be paid by one of those dates — in these cases the payment on account will be due by 21 November 2003 or 2004. Where there is a disposal of the option shares before the relevant October date in these cases, the payment on account will be equal to the sale proceeds.

In all of these cases the balance of the income tax due after the payment on account will become due for payment where any other shares are disposed of, by reference to the gain on such sales net of taxes payable, and will be due by 31 October in the year of assessment following the year of disposal. The section provides for the immediate collection of the income tax where the conditions in relation to the further deferral are not met in full. Where the balance of income tax due is being deferred under this section, the capital gains tax loss arising (being the difference between the market value at date of acquisition of the shares and the date of disposal) may not be used until the full income tax liability is met.

Section 8 introduces a new Section 128B to the Taxes Consolidation Act 1997. The new section 128B provides that where a share option is exercised on or after 30 June 2003, the gain will be taxable at the higher rate of income tax, currently 42 per cent, in force for the tax year in which the share option is exercised. Where the taxpayer would be liable at the standard rate of tax only, he or she may make application for the charge to be applied at that rate. Payment of this tax must be made to the Collector General within 21 days of the option being exercised. Each payment of this tax must be accompanied by a return on a prescribed form, to include details of the gain and tax due and a declaration as to the return's veracity. Interest at the rate of 0.0322 per cent per day will apply to any outstanding tax payable without the making of an assessment.

This tax is essentially an immediate payment of the tax charge arising on exercise of the share option and will be taken into account in computing the person's liability to income tax for the tax year concerned but may not be used in calculating any preliminary tax payable by the person for that year. All of the provisions of the

Income Tax Acts relating to assessments, appeals, collection and recovery of tax and interest will apply to assessment of this tax. These provisions take effect from 30 June 2003.

Section 9 amends section 244 of the Taxes Consolidation Act 1997 to provide for an increase in the ceiling on mortgage interest payments by first-time buyers qualifying for tax relief. The ceiling is being increased from €3,175/€6,350 (single/married or widowed) to €4,000/€8,000 (single/married or widowed). In addition, the period of time in which this higher amount of relief may be claimed is being increased from five to seven years. First-time buyers who started to claim tax relief in respect of mortgage interest in the tax year 1998/99 or later will benefit from these new arrangements.

Section 10 relates to the withholding tax scheme which provides for the deduction of income tax at the standard rate by accountable persons (Government Departments, Local Authorities, etc.) when making payments for professional services to individuals and companies. The current list of accountable persons, which is set out in Schedule 13 to the Taxes Consolidation Act 1997, is being amended to take account of necessary changes including the addition of nineteen bodies, the removal of one body and a change of name in the case of another body. The Revenue Commissioners' powers of inspection of accountable persons are also being clarified and the Commissioners are also being empowered to raise assessments on accountable persons if such persons either refuse or neglect to pay over withholding tax to the Revenue Commissioners.

Section 11 amends subsection 3 of section 65 of the Taxes Consolidation Act 1997 to ensure that the rules of that subsection take precedence over the rules contained in subsection 2 of section 66 of that Act. Where a trader or professional changes his or her accounting period in a tax year, the previous tax year's liability must be reviewed by reference to the corresponding period in the previous tax year and, if the profits of that corresponding period exceed the profits originally assessed for that previous tax year, the extra profits are charged to income tax for that previous tax year. The amendment in Section 11 ensures that this previous tax year review will apply even where that year is the second year in which a trade or profession is carried on.

Section 12 is an anti-avoidance measure and is designed to counter schemes whereby tax reliefs available to a trading company (and relievable at the general corporation tax rate) are transferred to individuals (in which case the tax reliefs are set against income taxable at up to 42%) who, although nominally trading, are in substance passive investors. These passive investors do not actively participate in the day to day operation of the trade and subcontract the actual operation of the trade back to the company from which they obtained the trade.

The schemes (referred to in the section as ''specified trades'') are in the area of electricity generation, the film and music industries and oil and gas exploration.

The effect of the section is to ringfence the tax reliefs available to a specified trade carried on by an individual in a passive way to the actual income arising to the individual from that trade.

The section does not seek to deny or abolish entitlement to the tax reliefs concerned (i.e. capital allowance for plant and machinery and loss relief). Nor does it reduce the quantum of relief available to the individuals concerned. The section restricts the way the reliefs available to the individuals will operate.

The Budget Day Financial Resolution No. 1 on 4 December 2002 introduced measures to deal with such schemes in the area of electricity generation. This section confirms the Budget Day Financial Resolution as it applies to electricity generation for the year 2002 and subsequent years and extends the measures to additional trades (films, music industries, oil and gas exploration) for the year 2003 and subsequent years.

Section 13 gives legislative effect to the announcement made by the Minister for Finance in his press release of 20 January 2003 to close off a loophole relating to the effective transfer of capital allowances on buildings from companies to individual investors.

The legislation will operate where three criteria are met. These are:

- a company must, at any time on or after 1 January 2003, hold the relevant interest in relation to capital expenditure incurred on the construction or refurbishment of a building in respect of which expenditure a company (not necessarily the company currently holding that relevant interest) has claimed capital allowances;
- subsequent to 1 January 2003, an individual becomes entitled to that relevant interest, whether or not subsequent to that time (i.e. on or after 1 January 2003) any other person or persons had in the interim become entitled to that relevant interest; and
- the individual concerned is entitled to set off the capital allowances in respect of the capital expenditure concerned or the residue of that expenditure against his or her Irish rental income (i.e. the individual must be a lessor of the building).

Where these three criteria are met, then, any capital allowance to be made to such an individual for the tax year 2003 or any subsequent tax year in respect of the capital expenditure concerned or the residue of that expenditure may only be set off against the individual's profit rent from the relevant building for that tax year. If the capital allowance for that year exceeds that profit rent, the excess may be carried forward for set-off against the profit rent of the individual from the relevant building for the next tax year, and so on for subsequent tax years.

Section 14 makes a number of changes to the tax regime governing various pension products and also makes changes to the tax treatment of approved retirement funds (ARFs).

Capital gains tax exemption is being extended to Personal Retirement Savings Account (PRSA) assets; it already applied to assets of occupational pension schemes and to certain Retirement Annuity Contracts (RAC). All tax payable in respect of pension income is paid under PAYE as benefits are paid out.

The circumstances in which contributions made to an occupational pension scheme or a statutory pension scheme may be set back to earlier years are being restricted. At present discretion is given to the Revenue Commissioners as regards the years to which non-ordinary annual contributions are to be attributed. In practice, this means that the contributions are set against income of earlier years in certain circumstances. From 6 February 2003, the setting back of contributions will be confined to contributions deducted from a lump sum payable on retirement to provide for dependants' benefits or contributions made on retirement to pay back a previous refund of contributions or benefits previously provided to the member of a scheme (such as a marriage gratuity), where the contributor had previously left a scheme.

For 2003 and subsequent years non-ordinary annual contributions to a pension scheme paid for a tax year between the end of the tax year and the return filing date for that year will be allowed in the tax year, subject to limits, where a claim is made by the return filing date for the year. The return filing date is the 31 October following the end of the year. This mirrors the present carry-back relief available to those paying premiums under retirement annuity contracts.

The circumstances in which assets in an approved retirement fund (ARF) are treated as having been distributed are extended. With effect from 6 February 2003, assets will be treated as distributed in so far as they have been used for the following purposes:

- to make a loan or to secure a loan to the ARF holder or to a connected person;
- to acquire property from the ARF holder or a connected person;
- to acquire property to be used as holiday property or as a residence by the ARF holder or a connected person; where the property is acquired on or after 6 February 2003 for some other purpose (e.g. letting) and is subsequently used as holiday property or as a residence by the ARF holder or a connected person the distribution will arise at the time the property comes to be used for this purpose and will include any ARF assets used in the repair or improvement of the property;
- to acquire shares or other interests in a closely held company in which the ARF holder or a connected person is a participator;
- to acquire any tangible moveable property.

The sale of assets in the ARF to the ARF holder or a connected person will also be regarded as a distribution of the value of the assets in question.

In so far as ARF assets are treated as distributed they are no longer regarded as ARF assets; similarly, where the acquisition of assets is treated as giving rise to a distribution, the assets will not be regarded as assets in the ARF.

These new rules on distributions for ARFs will also apply to approved minimum retirement funds (AMRFs). Also the restriction on payments out of an amount of capital invested in approved minimum retirement fund is being strengthened to ensure that the restriction applies to distributions and amounts treated as distributions.

The person who manages assets in an ARF or an AMRF, known as a qualifying fund manager (QFM), will in future be required to notify the Revenue Commissioners when he or she commences to act as a QFM; managers already acting in this capacity will be required to notify the Revenue Commissioners within 3 months of the passing of the Act.

The differential in the rates of age-based tax relief which applied for PRSAs and other pension products is being removed. For 2003 and subsequent years the rate for all pension products will be as follows where at any time during the tax year the contributor was:

Aged under 30	15% of net relevant earnings /remuneration
Aged over 30 and under 40	20% of net relevant earnings /remuneration
Aged over 40 and under 50	25% of net relevant earnings /remuneration
Aged 50 or over	30% of net relevant earnings /remuneration

A single combined earnings cap of €254,000 is being applied to income that qualifies for relief in respect of pension contributions. The maximum relief will be the age based percentage of this amount. This will apply for the year 2002 and subsequent years in respect of contributions made on or after 4 December 2002 (Budget day).

For 2003 and subsequent years an individual will not be regarded as being in pensionable employment for the purposes of qualifying for relief for contributions to a PRSA or a Retirement Annuity Contract (RAC) where the individual is a member of an employer sponsored pension scheme for the purposes of survivor's and dependant's benefits only (up to now, an employee was not regarded as in pensionable employment for RAC purposes where the benefits provided by the pension scheme were limited to a lump sum payable on death or disability while in service). Such an employee will now be able to make PRSA contributions which are not linked to the pension scheme. Employee contributions to such a scheme will be treated as RAC contributions for the purpose of calculating the maximum RAC/PRSA relief on contributions.

The power governing the making of PAYE regulations is being changed to allow the Revenue Commissioners to apply the net pay arrangements to RAC premiums deducted by employers. Under the net pay arrangement, tax relief is given by the employer applying PAYE on the employee's salary after deducting allowable contributions to the pension scheme/PRSA or RAC.

Chapter 3

Income Tax, Corporation Tax and Capital Gains Tax

Section 15 makes a number of amendments to the provisions governing the Business Expansion Scheme (BES) and the Seed Capital Scheme (SCS). From 1 January 2003, it deletes the requirement that a company engaged in manufacturing must be entitled to claim manufacturing relief in order to qualify for the purposes of the BES. The SCS requirements relating to traders operating on an exchange facility in the Custom House Docks Area are modified so that from 1 January 2003, it will no longer be necessary for such traders to be in partnership with Exchange Axess Ltd in order to avail of the SCS. The section also clarifies that where traded services are certified by County Enterprise Boards, in order to ensure that such services qualify for the BES, certification will be carried out in accordance with guidelines agreed between the Board and the Minister for Enterprise, Trade and Employment with the consent of the Minister for Finance.

Section 16 is concerned with the tax relief for interest in respect of rental income from residential property. It counters contrived arrangements involving one spouse buying out the other spouse's interest in the family home using a loan, the letting of that property and the purchase by the couple of a second residence, again using a loan. This section disallows interest relief against rental income in such circumstances. It does not apply in the case of legal arrangements between separated or divorced spouses.

Section 17 provides, in relation to income tax, corporation tax and capital gains tax, for new arrangements to deal with claims for repayments, interest on repayments and Revenue's right to raise assessments. This is part of a general package of measures regarding repayments and interest on repayments covering direct and indirect taxes.

In relation to repayments, a general right to repayment of tax overpaid is being provided for. The repayment will be made irrespective of whether the tax was overpaid under an assessment or otherwise and irrespective of the presence or absence of any mistake on the part of the taxpayer. Any repayment must be subject to a valid claim and be made within 4 years from the end of the period to which it relates. Subject to transitional arrangements, this 4 year time limit replaces the existing longer time limits, the longest of which is 10 years. The new time limit applies to claims for repayment of tax overpaid in respect of the year 2003 onwards. The existing time limits will remain in place for claims made on or before 31 December 2004 for earlier years. From 1 January 2005, there will be a 4-year time limit for all claims.

In future, interest will be paid on repayments of tax by Revenue. Where the repayment arises because of a mistaken assumption by Revenue in the application of the law, interest will be paid from the date the tax was paid until the repayment is made. In all other cases, including repayments of preliminary tax, interest will be payable from the end of 6 months after a valid claim for the repayment has been made where the repayment has not been made by that time. The rate of interest provided is 0.011% per day or part of a day (approximately 4% per annum). The interest will be paid without deduction of tax and will not be taxable in the hands of the recipient.

In line with the new 4-year time limit for repayment claims, the period within which Revenue may raise assessments and make enquiries is, in general, being reduced to 4 years also. Time limits will not apply to fraud or neglect cases. Currently there are no time limits for such cases and this position will continue.

The new regime is subject to Commencement Order(*s*) by the Minister for Finance.

Section 18 amends section 666 of the Taxes Consolidation Act 1997. It provides for an extension of the existing 25 per cent scheme of stock relief for farmers for a further two years from 1 January 2003 until 31 December 2004.

Section 19 amends section 667 of the Taxes Consolidation Act 1997. It continues the special incentive stock relief of 100 per cent for certain young trained farmers for a further two years from 1 January 2003 until 31 December 2004. The section provides that the extension of this relief will be commenced by an Order of the Minister for Finance.

Section 20 makes a series of amendments to Chapter 4 of Part 29 of the Taxes Consolidation Act 1997 which Chapter provides for a writing-down allowance in respect of capital expenditure incurred by a company on the purchase of transmission capacity rights.

The Chapter is now commenced and applies as respects expenditure incurred on or after 1 April 2000. However, any capital expenditure incurred on or after 6 February 2003 in respect of licences issued on or after that date by the Commission for Communications Regulation under—

(*a*) the Wireless Telegraphy Acts 1926 to 1988, or

(*b*) the Postal and Telecommunications Services Act 1983

will not be eligible for the allowance.

The section also contains anti-avoidance provisions to prevent entitlement to the allowance being artificially created as respects sales of capacity rights within groups of companies where the allowance was not properly due.

Section 21 amends section 848A of the Taxes Consolidation Act 1997 which is concerned with tax relief for donations to approved bodies including eligible charities, schools, universities and other eligible bodies. With effect from 6 February 2003 an upper limit is placed on the level of tax relief given in respect of donations in a single tax year by an individual to approved bodies with which the individual is associated. Where the aggregate of donations in a single tax year by an individual to approved bodies with which he/she is associated exceeds 10% of his/her total income, the relief is capped at that level.

An individual is regarded as being associated with an approved body if he/she is an employee or member of that approved body or of an associated approved body. Two approved bodies are regarded as being associated with each other if the same person or a similar group of persons has control over or can direct the activities of both approved bodies.

Section 22 amends section 284 of the Taxes Consolidation Act 1997 so as to give effect to the Budget Day announcement to increase, from 5 years to 8 years, the write-off period for annual wear and tear allowances in respect of capital expenditure incurred on or after 4 December 2002 on plant and machinery. In effect, an allowance of 12.5% per annum on a straight line basis over 8 years will apply to expenditure incurred on or after 4 December 2002, subject to transitional arrangements.

The new regime will apply in the case of both general plant and machinery and business motor vehicles. It will not apply to taxis and short-term hire vehicles which will retain their 40% per annum reducing balance arrangement under section 286 of the Taxes Consolidation Act 1997. Neither will it apply in the case of certain fishing boats in the ‘‘white fish’’ fleet which attract a special enhanced regime of wear and tear allowances under section 284(3A) of the Taxes Consolidation Act 1997.

Finally, the new regime will not apply in the case of plant and machinery acquired under the terms of a binding contract evidenced in writing before 4 December 2002 and in respect of which capital expenditure is incurred on or before 31 January 2003.

Section 23 amends Chapter 1 of Part 9 of the Taxes Consolidation Act 1997 in relation to capital allowances for hotel buildings and registered holiday cottages.

Firstly, the section provides that a registered holiday cottage is no longer to be regarded as a building in use for the trade of hotel-keeping. Secondly, it provides that the annual rate of write-off for capital expenditure incurred on hotel buildings (including holiday camps) is reduced to 4 per cent, with a resulting 25 year tax life. Subject to transitional arrangements, both these amendments apply as respects construction or refurbishment expenditure incurred on or after 4 December 2002.

The transitional arrangements provide that these changes will not apply as respects capital expenditure incurred by 31 December 2004 on the construction or refurbishment of a building if a full and valid planning application, which the planning authority confirms was received on or before 31 May 2003, is made in accordance with the Planning and Development Regulations 2001. Where the transitional arrangements apply, the section provides that the existing Bord Fáilte certification requirement continues in relation to the expenditure involved.

Finally, in relation to construction or refurbishment expenditure incurred on hotel buildings on or after 1 January 2003, the section inserts a reference to the new 'Multisectoral framework on regional aid for large investment projects' dated 19 March 2002 prepared by the European Commission in addition to the reference to the previous framework (dated 7 April 1998). Where a project is subject to the notification requirements of either framework, approval of the potential capital allowances must be received from the EU Commission.

Section 24 amends Part 10 of the Taxes Consolidation Act 1997 mainly to provide for changes to certain expiry dates for a number of tax incentive schemes, as announced on Budget day.

In the case of the Urban Renewal Scheme, the section extends by 6 months, from 31 December 2002 to 30 June 2003, the date by which 15% of total project costs must be incurred in order to avail of the 2 year extension to the termination date of the scheme until 31 December 2004. The 2 year extension has already been provided for in the Finance Act 2002. This 15% requirement must be certified by the relevant local authority by 30 September 2003 and the application for the relevant certificate must be made to the local authority by 31 July 2003. The section also amends the definition of relevant local authority so as to provide that certification of the 15% total project cost requirement may be issued by the authorised company (under the aegis of the local authority) which prepared the integrated area plan in respect of the area involved.

The other changes in expiry dates mean that the Town Renewal Scheme, the Park and Ride Scheme and the Student Accommodation Scheme will all now cease on 31 December 2004. These schemes were previously set to end on 31 December 2003, 30 June 2004 and 30 September 2005 respectively. The section also confirms the 6 April 2001 commencement date for the qualifying period in relation to commercial and industrial properties under the Town Renewal Scheme.

Section 25 amends Chapter 7 of Part 10 of the Taxes Consolidation Act 1997, in the case of the Urban Renewal Scheme, to facilitate the making of orders in line with the original recommendations of the Expert Advisory Panel on Urban Renewal. Firstly, the section provides for the designation of an area for relief for certain commercial buildings solely in respect of either construction or refurbishment expenditure and allows for such designation to be confined to expenditure incurred on the refurbishment of the facade of such buildings. Secondly, it provides for the designation of an area for residential owner occupier relief solely for either construction, conversion or refurbishment expenditure.

In the case of the Living over the Shop Scheme, the section tidies up some obsolete text and cross-references which remained in Chapter 7 following the consolidation and codification of residential reliefs in Finance Act 2002. The section also clarifies that the power to make a designation Order under either scheme includes the power to amend or revoke that Order.

Finally, the section provides that where a project is subject to the notification requirements of the ‘Multisectoral framework on regional aid for large investment projects’ (dated either 7 April 1998 or 19 March 2002) prepared by the European Commission, capital allowances will not apply in relation to construction or refurbishment expenditure, incurred on or after 1 January 2003 on commercial or industrial premises, unless approval of the potential capital allowances is received from the Commission.

Section 26 amends section 372T of the Taxes Consolidation Act 1997 in relation to relief for commercial and industrial premises under the Rural Renewal Scheme.

The section provides that where a project is subject to the notification requirements of the ‘Multisectoral framework on regional aid for large investment projects’ (dated either 7 April 1998 or 19 March 2002) prepared by the European Commission, capital allowances will not apply in relation to construction or refurbishment expenditure, incurred on or after 1 January 2003 on commercial or industrial premises, unless approval of the potential capital allowances is received from the Commission.

Section 27 amends Chapter 10 of Part 10 of the Taxes Consolidation Act 1997, which deals with the Town Renewal Scheme, to facilitate the making of orders in line with the original recommendations of the Expert Advisory Panel on Town Renewal. Firstly, the section provides for the designation of areas or sites for relief for certain industrial and commercial buildings solely for either construction or refurbishment expenditure and also allows for the facades only of certain commercial, industrial and rented residential buildings to be designated for relief in respect of refurbishment expenditure only. Secondly, the section clarifies that the power to make a designation Order under the scheme includes the power to amend or revoke that Order.

Thirdly, the section tidies up some obsolete cross-references which remained in Chapter 10 following the consolidation and codification of residential reliefs in Finance Act 2002. Finally, the section provides that where a project is subject to the notification requirements of the ‘Multisectoral framework on regional aid for large investment projects’ (dated either 7 April 1998 or 19 March 2002) prepared by the European Commission, capital allowances will not apply in relation to construction or refurbishment expenditure, incurred on or after 1 January 2003 on commercial or industrial premises, unless approval of the potential capital allowances is received from the Commission.

Section 28 makes a number of technical amendments to Chapter 11 of Part 10 of the Taxes Consolidation Act 1997 which deals with residential reliefs under a number of tax incentive schemes. These include a provision which clarifies that the maximum square metre limit of 210 square metres for owner-occupied dwellings applies equally in cases of conversion as it does in cases of refurbishment. The section also inserts in section 372AS, in relation to qualifying urban areas and qualifying town areas, a provision which deals with apportionment of expenditure where the site of a building straddles the boundary of a qualifying area.

Section 29 amends section 749 of the Taxes Consolidation Act 1997 in relation to short-term purchases by dealers in securities. The dealer currently is denied a full deduction for the price paid for the securities, when computing trading profits, where accrued interest is payable to the dealer. The price paid is reduced by an appropriate amount in respect of the interest on the security.

The amendment provides that section 749 will not apply to overseas securities, purchased on a short term basis by a dealer in the ordinary course of the dealer's trade if the following conditions are satisfied. Firstly, the interest on all overseas securities to which Chapter 1 of Part 28 of the Taxes Consolidation Act 1997 applies must be taken into account as a trading receipt in computing the dealer's profits for the chargeable period. Secondly, the dealer must elect in writing, by return filing date for the chargeable period in question, that credit for foreign tax on all such securities, which might otherwise be due under a Double Taxation Agreement or under any unilateral or other provision, is not to be allowed. The dealer will be required to submit an election annually in writing along with the dealer's self-assessment tax return.

The section applies to securities purchased on or after 1 January 2003.

Section 30 gives effect to the announcement of the Minister for Finance, on 18 July 2002, to introduce legislation to close off a tax avoidance scheme relating to the relief for investors in respect of expenditure incurred on the provision of student accommodation. The section provides that the following new conditions must be satisfied in order for a house to be treated as qualifying student accommodation for the purposes of this relief:

- All the rent payable in respect of the letting of the house during the 10 year holding period for the relief must be paid to the investor. No other person must receive or be entitled to receive that rent or any part of that rent. Where the expenditure on the provision of the house is incurred by two or more investors, the share of the rent received by each investor must bear the same proportion to the total rent as the expenditure incurred by that investor on the provision of the house bears to the total expenditure incurred on such provision by all the investors.

- Where borrowed money is used by an investor to fund the provision of the house, that money must be borrowed from a financial institution (and no other person). The investor must be personally responsible for the repayment of the loan, the payment of interest on the loan and the provision of any security required in relation to the loan. In addition, there must be no arrangement or agreement, whether or not known to the lender, whereby some other person agrees to be responsible for the obligations of the investor in relation to the loan.

- Where the investor is claiming a tax deduction for management or letting fees payable in relation to the letting of the house, those fees must be bona fide fees which reflect the level and extent of the services provided and must not exceed an amount equal to 15% of the rent from the letting of the house.

These new conditions apply as respects expenditure incurred on or after 18 July 2002, unless a binding contract for the construction, conversion, refurbishment or, as the case may be, purchase of the house was evidenced in writing before that date.

Section 31 amends the law governing Relevant Contracts Tax (RCT), the tax which principal contractors are obliged to deduct from payments made to certain subcontractors in the construction, meat processing and forestry industries.

To combat deliberate late payment of RCT, the section provides that where a principal contractor makes an RCT remittance for a tax year or a period included in a tax year and that remittance is not included in a monthly return, the remittance will be treated as a remittance for the first income tax month of the tax year. However, if within one month of interest (on late payment) being demanded by virtue of the operation of that rule, the principal contractor makes a return for the income tax month or months to which the remittance relates, then that rule will be disapplied and the remittance will be treated as a remittance or remittances for the income tax month or months in question. This will then enable interest to be charged on the basis of the due date for the RCT remittance for the month or months in question.

The section also provides that where an amount of RCT is payable on foot of a yearly estimate notice issued by an inspector of taxes, interest on the overdue tax will be calculated on the basis that the tax was due for the first income tax month of the tax year to which the notice relates. There is provision for the inspector of taxes or, on appeal against the notice, for the Appeal Commissioners to determine the amount of RCT which was unpaid for each income tax month in the tax year to which the notice relates. Where the inspector of taxes or Appeal Commissioners so determine, the interest on overdue tax will be calculated on the basis of the due date for the RCT remittance for the month or months in question.

These two measures will apply for the tax year 2003 and subsequent tax years.

In addition, the section amends the rules governing bulk applications by principal contractors for relevant payments cards in respect of subcontractors. When a principal contractor receives a relevant payments card, he/she may then make payments to the subcontractor without deduction of tax. Currently, the rules permit a principal contractor to make a bulk application for relevant payment cards in respect of subcontractors whose contracts are still in operation at the turn of the tax year, without the normal requirement for those subcontractors to produce for inspection to the principal contractor their certificates of authorisation (C2s) to receive payments without deduction of tax. The facility is being modified so as to provide that, in making such an application, principal contractors will be required to obtain the number of the C2 for the relevant tax year of each subcontractor listed on the bulk application. This measure will apply to applications for relevant payments cards made on or after the date of the passing of the Act.

Section 32 puts beyond doubt that 31 January 2002 was the latest day for the filing of certain returns and elections for the tax year

2000-2001. The returns and elections in question are elections to defer income tax arising on the exercise of a share option, third party returns, returns in relation to foreign accounts, and income tax and capital gains returns due under the self-assessment system. The section also confirms that the latest filing date for such returns and elections for the short tax ‘‘year’’ 2001 (6 April 2001 to 31 December 2001) and subsequent tax years is 31 October in the following year.

Section 33 amends sections 231, 232 and 233 of the Taxes Consolidation Act 1997, which are concerned with exemptions from tax in respect of the profits or gains arising from stallion fees, occupation of certain woodlands and stud greyhound service fees, respectively. A requirement is being introduced that the profits or gains arising from the above activities must be included in the annual return of income even though the income or gains are exempt from tax. This new requirement will apply in respect of chargeable periods commencing on or after 1 January 2004.

Section 34 counteracts a tax avoidance scheme which is being used by individuals to reduce their exposure to the 42% income tax rate on rental income. Under the scheme, a capital sum is paid to an individual in return for the transfer of a right to receive rent. Where the right to receive rent is transferred to a company the income from the right would be taxed at the corporation tax rate. The section provides that—

- the capital sum will be taxed as income of the person who receives it in the year of assessment in which the person becomes entitled to it (or, if earlier, the year of assessment in which it is received), and
- any income arising to the person who pays the capital sum will be chargeable under Case V of Schedule D in respect of that income. Where that person is a company, the income will be subject to the 25% corporation tax rate.

Section 35 allows companies to match foreign exchange gains and losses on certain assets and liabilities for capital gains tax purposes on certain conditions.

Section 36 permits the Government to enter into Tax Information Exchange Agreements with the governments of other jurisdictions. These agreements provide for the exchange of information between tax authorities on a reciprocal basis. Double Taxation Treaties already provide for exchange of information but this section facilitates agreements with any jurisdiction specifically on exchange of information. The section also facilitates Revenue’s access to information which relates to a tax liability in a territory with which Ireland has a Double Tax Treaty or a Tax Information Exchange Agreement.

Section 37 makes a minor change to section 404 of the Taxes Consolidation Act 1997. That section restricts the offset of capital allowances in the case of a lessor of machinery or plant under a ‘‘balloon lease’’ (i.e. a lease that does not involve a broadly even spread of lease payments over the primary leasing period under the lease). That restriction does not apply to lease of machinery or plant by lessors who are certified IFSC or Shannon companies. The amendment clarifies that the restriction will not apply to a lease written by an IFSC or Shannon company before its IFSC/Shannon certificate expires but which will extend beyond that time.

Section 38 removes from the Taxes Consolidation Act 1997 redundant references to tax credits which attached to distributions made by companies prior to 6 April 1999. It also removes provisions relating to advance corporation tax (ACT). Where companies made distributions prior to 6 April 1999 they were obliged to pay an amount of ACT equal to the tax credits attaching to the distributions. The ACT was then available for offset against their corporation tax. Where it could not be offset in the year to which it related, it could be carried forward for offset in future years. A provision allowing companies, which have surplus advance corporation tax carried forward from earlier years, to offset such surplus ACT against their corporation tax in future accounting periods is retained.

Section 39 amends Part 41 of the Taxes Consolidation Act 1997. That Part is concerned with the Self-Assessment system and applies for income tax, corporation tax and capital gains tax purposes. Accordingly, the section implements a number of 2003 Budget announcements concerning these taxes and provides for certain other changes as follows:

- The Budget announcement that, as respect capital gains tax due as and from the year of assessment 2003, payment of capital gains tax will be required to be made by 31 October in the year of assessment as respects chargeable gains arising in the period from 1 January to 30 September and by 31 January in the next following year of assessment as respects chargeable gains arising in the period from 1 October to 31 December.

- The Budget announcement that, in relation to corporation tax, a pay and file system will apply. This will mean that companies will be obliged to pay any balance of tax due in respect of an accounting period at the same time as they make their tax return (currently companies pay the balance of tax within one month of the tax assessment issuing). The change applies as respects accounting periods ending on or after 1 January 2003.

- All corporation tax (that is, the two instalments of preliminary tax and the balance of tax) will be paid by the 21st of a month where it would otherwise be due on a day later than the 21st in that month. This change applies as respects corporation tax payments to be made from June 2003 onwards. Where this applies to the balance of tax, the tax return will also have to be made by the 21st day of the month.

- The balance of corporation tax will be payable by the return filing date even if the return is filed early (Currently, where a return is filed early and an assessment issues, the tax must be paid within one month of the assessment).

Section 40 deals with the tax status of the National Development Finance Agency. The Agency will have certain exemptions from tax, in the performance of its statutory functions. The relevant tax provisions are as follows:

- The Agency will be exempt from corporation tax on any profits arising to it.

- Any interest, annuity or other annual payment by the Agency will be payable without deduction of income tax.

- The Agency will be exempt from DIRT.

- Securities issued by the Agency will not be chargeable assets for capital gains tax purposes.

The section also disapplies section 38 of the Taxes Consolidation Act 1997 in respect of companies established under section 5 of the National Development Finance Agency Act 2002. Section 68 and 134 provide exemption from capital gains tax for any gain accruing to the Agency and from stamp duty.

Section 41 counteracts a tax avoidance scheme which exploits a mismatch in the tax treatment of interest received and interest paid in certain circumstances. The scheme sought to achieve a situation where there is an early tax deduction by the person paying the interest and a deferral of taxation of the interest in the hands of the person entitled to it. The section provides that, where interest paid by a person to a connected person is a trading expense of the payer and not a trading receipt of the connected person, the interest will not be deductible as a trading expense until it has been accounted for as income of the connected person for tax purposes.

Section 42 removes a provision from section 438 of the Taxes Consolidation Act 1997 which affects companies resident in other EU countries. Section 438 imposes on a close company a charge to income tax at the standard rate on the grossed-up equivalent of a loan or advance made by the company to a participator or an associate of the participator, if the company's business does not include the making of loans. This charge also extends to a loan made by a close company to a non-resident company, so as to counter avoidance opportunities. The section amends section 438 in such a way that the extension of the scope of the section to non-resident companies will now only apply where the company is resident outside the EU.

One of the effects of this change is that avoidance opportunities which were previously closed-off are now re-opened in the case of non-resident companies resident in other EU countries. To counter this, a new provision is introduced which brings within the scope of section 438 a case where a close company does not itself make the loan, but sets up or acquires a subsidiary which then makes the loans to the participators in the parent close company. This provision applies regardless of the residence status of the various companies.

Section 43 amends section 249 of the Taxes Consolidation Act 1997. Section 249 is intended to prevent abuse of sections 247 and 249 and provides rules relating to recovery of capital and replacement loans. If the borrower recovers an amount of capital from the company invested in or from a connected company without using the capital so recovered to reduce the money borrowed, then the borrower loses tax relief on the interest paid on the loan corresponding to the amount of interest paid which would be referable to the amount recovered.

This section extends the application of the recovery of capital rules, in the case of relief under section 249, to recovery of capital by companies which are associated with the borrower (that is, broadly, companies which the borrower controls or which control the borrower or companies which are in common control). The section also extends the application of the section to a recovery of capital by any of these persons within a five year period before the proceeds of the loan are invested in the target company.

Section 44 is an anti-avoidance provision designed to counter tax avoidance schemes which either avoid a balancing charge (that is, a claw-back of capital allowances), arising following the disposal of machinery or plant, or which could result in any balancing charge arising being passed from an individual to a company.

The section amends section 289(6) of the Taxes Consolidation Act 1997 which allows a balancing charge to be postponed where machinery or plant is gifted or sold at an undervalue. In future, the provision will not apply in a case where machinery or plant is gifted or sold at an undervalue by an individual or other entity which is not a company to a company. Otherwise, where the machinery or plant is gifted or sold at an undervalue the provision will only apply where the persons concerned are connected for the purposes of the Tax Acts.

Section 45 updates the provisions of section 110 of the Taxes Consolidation Act 1997, which deal with the tax treatment of securitisation transactions to cater for recent developments and advances in the industry. The existing section facilitates the traditional model of securitisations, typically where a financial institution, which is seeking to raise finance in a more efficient manner than borrowing, sells a block of income-producing assets (e.g. mortgages or receivables) to an unconnected special purpose company (referred to as an SPV). The finance is raised from investors by the issue of securities by the SPV. More sophisticated transactions are now widely used, including synthetic securitisation. These transactions involves the transfer of the risk rather than the asset (e.g. the risk of default in a loan rather than the loan).

This section rewrites the provisions of section 110 by broadening the nature of the assets which may be securitised and the type of persons from whom they may be acquired. The section also relaxes the rules relating to the tax deductions available to a securitisation vehicle. Consequential amendments to section 246 of the Taxes Consolidation Act 1997 provide exemption from withholding tax on interest payments made to an SPV and interest payments made by an SPV where the interest is paid to a resident of another EU country or a resident of a country with which the State has a tax treaty.

Finally, the section makes a consequential amendment to section 198 of the Taxes Consolidation Act 1997 to extend the exemption provided by that section to interest paid to investors in an SPV where the investor is a resident of another EU country or a country with which the State has a tax treaty.

Section 46 amends the provisions of section 737 of the Taxes Consolidation Act 1997 which relate to Special Investment Schemes. Those schemes, which are unit trusts, were introduced in the Finance Act 1993. Their tax regime involved a favourable tax rate applicable to the aggregate of income and capital gains (both realised and unrealised) each year. Any balance of capital losses in any year could be carried forward and set off against income and capital gains of subsequent years. These schemes are now in the process of being wound up. This amendment allows any unused capital losses in the final year, to be set-off against capital gains that were taxed in any of the 3 previous years.

Section 47 inserts a new section into the Taxes Consolidation Act 1997. Under existing legislation a non-resident person could be liable to tax in the State in respect of a trade carried on in the State through an agent. The right to charge such a non-resident to tax in the State can be taken away under the provisions of Double Taxation Agreements where the agent is independent of the non-resident. This section removes the potential tax charge on all non-residents carrying on a financial trade in the State through an agent in certain circumstances. The agent must be a person whose activities are regulated by the Central Bank of Ireland (or the competent authority in another Member State of the EU) under Council Directive 93/22/EEC of 10

May 1993 or Directive 2000/12/EC of 20 March 2000. It is a requirement that such an agent act independently of the non-resident.

Section 48 allows assurance companies to merge their special investment fund with their general life assurance fund for accounting periods ending in 2003 and subsequently. Special investment funds were ring-fenced from other life assurance funds when they were created by Finance Act 1993 as they had at that time a different taxation regime. These funds held the investments made to Special Investment Policies issued by life assurance companies. As the taxation regime for special investment funds is no longer distinguishable from that which applies to life companies' general life assurance funds, they are being merged.

Section 49 amends the taxation regime that applies to ''gross-roll-up'' collective funds and their investors. These amendments allow payments to be made by the fund, without the deduction of an exit tax, where the payments are being made

- to an Irish resident company — in the case of a money market fund;
- to a credit union; or
- to the Courts Service (which administers the investment of funds lodged in Court).

The Courts Service will be required to operate the exit tax on payments to it by the collective fund when they allocate those payments to the beneficial owners.

A further amendment to this tax regime ensures that where units of an Irish domiciled collective fund are held on a recognised clearing system, the tax rate applicable to the investor mirrors that applicable to those who invest in a fund domiciled in another member State of the EU/EEA or a State with which Ireland has a double taxation treaty and which is a member of the OECD.

Section 50 makes technical changes to section 706 of the Taxes Consolidation Act 1997 to ensure that the following are regarded as pension business of an assurance company, namely—

- retirement annuity contracts taken out by a self-employed person which continue when the person ceases to be self-employed; and
- personal retirement savings account contracts (PRSA contracts) made with an assurance company.

Section 51 amends section 747E of the Taxes Consolidation Act 1997 to provide that the tax rate applicable to the profits accruing to a company on the disposal of an interest in certain non-Irish domiciled funds is the same rate (23 per cent) as applies to a disposal of an interest in a domestic fund. The funds concerned are those located in another Member State of the EU and EEA, and a State with which Ireland has a double taxation treaty and which is a member of the OECD.

Section 52 inserts a new paragraph into Schedule 2B to the Taxes Consolidation Act 1997 to provide the terms of the declaration which credit unions are required to make to a collective fund in order to receive the proceeds of their investment therein, gross.

Section 53 amends the ''gross-roll-up'' taxation regime of life assurance companies and their policyholders that applies to policies issued on or after 1 January 2001. Under that regime a policyholder's investment is allowed to grow without the imposition of tax until such time as there is an assignment or encashment of the policy when, subject to certain exceptions, the growth in the investment is taxed (an exit tax) at 23%. Non-residents and certain resident entities are exempted from this exit tax. The amendments being made to this taxation regime provide as follows:

- assignment of a policy to a financial institution in the EU will not trigger the exit tax (currently only assignments to domestic banks were exempt);
- credit unions, through a declaration procedure, are being exempted from the exit tax;
- the Courts Service is being exempted from the exit tax in respect of Court funds invested in life assurance products — the Courts Service will be required to operate the exit tax on payments to it by the life assurance company when they allocate those payments to the beneficial owners.
- assurance companies will be obliged to retain all declarations, required to be made to it, for 6 years from the time the life policy, in respect of which the declaration was made, ceases; and
- the amount of exit tax which can be offset against capital acquisitions tax under the provisions of section 63 of the Finance Act, 1985 will be limited to the amount of such tax calculated at the normal 23 per cent rate, rather than the higher rate that applies in the case of Personal Portfolio Life Policies.

Section 54 amends section 481 of the Taxes Consolidation Act 1997 which provides relief for investments in qualifying films by companies or individuals. The section amends section 481 in a number of aspects. It gives effect to the 2003 Budget announcement that the date of the end of the scheme is being brought forward from 5 April 2005 to 31 December 2004. It also makes a number of technical changes to section 481 — (*a*) to clarify the formula used to calculate the ''specified percentage'' of the cost of the production of a film which may be met by tax relieved investments and (*b*) to limit the period beyond which tax relief may not be claimed to the year of assessment 2004. Finally, there is an amendment to section 481(14) which gives the Revenue Commissioners the power to refuse to give a certificate to a film company (without which tax relief cannot be claimed) if they are not satisfied that they have received adequate information or they have reason to believe that the conditions for granting the relief will not complied with. There is a right of appeal against a refusal to issue such a certificate.

Chapter 4

Corporation Tax

Section 55 makes four minor changes in relation to loss relief —

- It clarifies that loss relief on a value basis will only be given to the extent that losses cannot be relieved under other provisions.
- It clarifies that a 2 year time limit applies in the case of certain claims for loss relief.

- It clarifies the wording in section 420B of the Taxes Consolidation Act 1997 that provides that relief may not be given under that section for losses already allowed under other provisions of the Act.

- It inserts into section 1085 of the Taxes Consolidation Act 1997 a reference to two loss relief sections (which were introduced in the 2001 and 2002 Finance Acts). That section restricts the amount of relief that can be given under certain specified provisions to a company which fails to file its tax return on time.

Section 56 makes minor adjustments to the rules in section 449 and Schedule 24 to the Taxes Consolidation Act 1997 for computing unilateral credit relief for certain companies in respect of withholding tax suffered in a country with which Ireland does not have a tax treaty. The adjustments ensure that excessive relief from double taxation cannot be claimed.

Section 57 provides that interest will not be treated as a distribution if it is payable to a company that is resident for tax purposes in an EU member state other than Ireland. This will not apply, however, if the interest is subject to sections 452 and 845A. Under those sections, a company can elect whether interest paid to a non-resident associated company is to be so treated.

Section 58 amends the scheme of tonnage tax introduced by the Finance Act 2002 to conform more fully with EU requirements. Tonnage tax is a scheme whereby as an alternative to charging corporation tax on certain profits of a qualifying shipping company, a tax charge is levied each year instead on the tonnage of the ships operated by the company. On 11 December 2002 the European Commission gave State aid clearance to the scheme of tonnage tax introduced by section 53 of the Finance Act 2002. This clearance was given following a commitment to amend certain of the provisions of the legislation as enacted so as to make the scheme conform more closely with the Commission's tonnage tax policy.

The amendments to the scheme made by this section are:

- Confining the tonnage tax regime to profits derived from shipping activities. In the case of profits which are referable to mixed activity (for example, sale of a holiday plus transport by ferry) only the profit on the shipping activity is included in the tonnage tax regime.

- Requiring separate accounting where a company engages in tonnage tax activities and other activities.

- Goods and services provided to a tonnage tax company by an associated non-tonnage tax company and goods and services provided by a tonnage tax company to an associated non-tonnage tax company are to be on an arm's length basis. Similar pricing rules to apply where a company operates both a tonnage tax trade and other business activities.

- The practice of capitalising a tonnage tax company or a tonnage tax trade through a preponderance of equity (known as ''thick'' capitalisation) rather than debt and capitalising other activities by means of tax deductible borrowings is countered.

- Excluding from tonnage tax any work undertaken by tug-boats in ports and port areas.

- Profits from the sale of goods on board ships to be included in the tonnage tax regime only to the extent that the goods are consumed on board ship.

- Income from maritime research to be excluded from tonnage tax.

- Excluding from tonnage tax the provision which allows profits from non-tonnage tax activities to be included where such profits do not exceed 0.25% of the total turnover of the company.

The section also amends the way the scheme may be commenced so as to dispense with the need for a Ministerial order and to provide that the scheme begins with effect from the passing of the Finance Act 2003.

Section 59 amends Section 430 of the Taxes Consolidation Act 1997 which defines close companies. Companies owned by the State are excluded from the definition of a close company by virtue of paragraph (*d*) of subsection (1) of section 430 and this exclusion is now extended to companies owned by EU Member States and countries with which Ireland has a double tax treaty.

Section 60 adds a number of organisations to the Schedule of non-commercial State sponsored bodies having an exemption from tax in respect of non-trading income which would otherwise be chargeable to income tax or corporation tax. The organisations are Tourism Ireland Ltd, The Occupational Safety and Health Institute of Ireland, The National Consultative Committee on Racism and Interculturalism, The National Qualification Authority of Ireland and The Irish Sports Council.

Chapter 5

Capital Gains Tax

Section 61 amends section 556 of the Taxes Consolidation Act 1997, which provides for the indexation (based on changes in the consumer price index) of the cost of an asset when a gain on its disposal is being computed for capital gains tax purposes. This amendment gives effect to the Budget announcement that such indexation will not apply after 2002 and inserts a Table that shows what indexation is allowable in respect of assets disposed of in the year 2004 and subsequent years. The indexation allowable for disposals in 2003 is already set out in regulations made by the Revenue Commissioners (S.I. No. 12 of 2003).

Section 62 removes the facility to defer capital gains tax by the issue of debentures, loan stock or other similar securities under the following provisions of the Taxes Consolidation Act 1997:

- section 584 (reorganisation or reduction of share capital);

- section 585 (conversion of securities)

- section 586 (company amalgamations by exchange of shares); and

- section 587 (company reconstructions and amalgamations).

The change takes effect in relation to an issue or allotment of debentures etc. on or after 4 December 2002, unless such an issue or allotment is made pursuant to a written binding agreement made before that date. However, capital gains tax deferral will still apply where debentures are issued on or after that date by one company to another company under a company amalgamation by exchange of shares (section 586) or under a company reconstruction and amalgamation (section 587) where both companies are members of the same group for the purposes of section 616 of the Taxes Consolidation Act 1997.

Section 63 amends Part 19 of the Taxes Consolidation Act 1997 in four separate sections

- section 591 (relief for individuals on certain reinvestment)
- section 597 (replacement of business and other assets)
- section 600A (replacement of qualifying premises), and
- section 605 (disposal to an authority possessing compulsory purchase powers)

Each of these sections allowed the deferral of a capital gains tax charge on gains accruing on the disposal of certain assets (''old assets'') where the consideration for their disposal is reinvested in certain other assets (''new assets''). Section 63 implements the Budget announcement that such deferrals are not available for disposals on or after 4 December 2002. However, any capital gains arising on the disposal of ''old assets'' which, under these sections, have been deferred on the acquisition of ''new assets'' before that date, can continue to be deferred so long as the consideration for the disposal of the ''new assets'' continues to be reinvested in other permitted assets. The gain on the disposal of the ''new assets'' themselves cannot, however, be deferred. Furthermore, as respects sections 597, 600A and 605 where ''new assets'' were acquired before 4 December 2002, but the related ''old assets'' were disposed of on or of after that date, the gain on the disposal may still be deferred so long as the disposal takes place within the time frame allowed by the existing legislation.

Section 64 contains a number of amendments to section 598 of the Taxes Consolidation Act 1997, which provides relief from capital gains tax where an individual, having attained the age of 55, disposes of certain business assets or shares in his or her family company. Firstly, the section is being amended so that disposals of land which has been leased under the EU ''Early Retirement from Farming'' Scheme introduced by the Minister for Agriculture, Food and Rural Development on 27 November 2000, will come within the scope of the relief. The section is also being amended so that the use of an asset by a deceased spouse of an individual will be taken into account for the purposes of determining whether the individual qualifies for the relief. It is also being provided that the period that an individual was a director of a company will be deemed to include the period during which the individual was a director of another company where, under a scheme of reconstruction or amalgamation, shares in that other company were exchanged for shares in the first-mentioned company. Finally, the limit to the consideration for the disposal of assets eligible for relief is being rounded up from €476,250 to €500,000.

Section 65 imposes a capital gains tax charge in respect of a deemed disposal of certain assets owned by an individual on the last day of the last year of assessment for which the individual is taxable in the State, prior to becoming taxable elsewhere. However this capital gains tax charge will only arise

- if the individual is not taxable in the State for a period of 5 years or less before again becoming so taxable, and
- to the extent that the individual disposes of those assets during that period.

The assets concerned are a holding of the issued share capital in any company (wherever located) with a value of either 5% or more of all that company's issued share capital or exceeding €500,000. Whereas the gain on the deemed disposal arises before the individual ceases to be resident in the State, the gain is required to be included in the individual's tax return and the tax in respect of it accounted for in the year in which the individual again becomes taxable in the State. Credit will be given in respect of any foreign tax payable on an actual disposal of the assets involved where such tax is payable in a territory with which Ireland has a double taxation treaty.

Section 66 inserts a new section into the Taxes Consolidation Act 1997. The new section imposes a charge to capital gains tax on any amount received by a person in respect of a non-competition agreement, where such amount is not liable to income tax or not otherwise liable to capital gains tax by virtue of it not being consideration for the disposal, in whole or in part, of an asset.

Section 67 amends section 980(8) of the Taxes Consolidation Act 1997. Section 980 requires a purchaser of certain assets to retain 15 per cent of the consideration to be paid to the vendor, unless the vendor produces a certificate (CG50A) issued by the Revenue Commissioners. Previously, an application for a CG50A certificate had to be completed and signed by the vendor. This amendment will allow an agent (e.g. a solicitor/tax practitioner etc.) to complete and sign the application form on the vendor's behalf. However, the agent will be required to supply certain details in relation to the vendor (viz. name, address, and, for residents, the tax reference number).

Section 68 adds certain persons to the list of persons in Schedule 15 of the Taxes Consolidation Act 1997, who are entitled to exemption from capital gains tax by virtue of section 610 of that Act. These include certain sports bodies and registered trade unions, subject to certain conditions being fulfilled.

PART 2

Excise

Chapter 1

Alcohol Products Tax

The purpose of this Chapter is to consolidate and modernise excise legislation covering the various alcohol products in order to make it more accessible to users. Much of the existing law in this area dates back to the nineteenth century and is obsolete in the modern excise context. In addition many provisions have been supplemented and amended over time to the extent that they have become very fragmented and disjointed. These provisions are being replaced by a structure of law which is based more closely on the EU law relating to alcohol products which is set down in Directive 92/83/EEC.

This Chapter does not alter either the rate of duty on any alcohol product or any relief from duty which applies at present. The opportunity is taken however to streamline existing provisions and to make some minor changes in the area of offences.

Section 69 is an interpretation section.

Section 70 qualifies the definitions of the various alcohol products in *section 69* in accordance with EU customs classifications.

Section 71 provides, together with *Schedule 2*, for the charging of different rates of alcohol products tax on the various alcohol products produced in the State or imported into it. It also includes a technical provision allowing tax to be charged on the raw materials involved in a distillation process in the very rare situations where the amount of spirits produced from that process cannot be otherwise established.

Section 72 establishes the time of liability to alcohol products tax. It also allows the Revenue Commissioners to permit payment of that liability to be deferred to a date not later than the last day of the month following that in which the tax is payable.

Section 73 provides for relief from alcohol products tax in respect of products used for particular purposes, and in other particular situations. These reliefs are allowed under EU law and include usage in certain production processes, and where the alcohol products have been rendered unfit for human consumption by the addition of an approved denaturant.

Section 74 provides that relief under *section 73* may be effected by way of repayment. It also provides for relief by way of repayment for alcohol products which have become unfit to be marketed as beverages and sets down the period and time limits for repayment claims.

Section 75 makes it an offence to fail to comply with the provisions of the Chapter or of any regulations made to support it. It also provides for specific offences in relation to removing denaturants from alcohol products and in relation to inaccurate records. The former provision is expanded to introduce an offence of keeping of equipment and materials for such removal. Penalties are set down for all these offences and forfeiture of goods is provided for. The section also provides for prosecution of individuals responsible in the case of offences committed by bodies corporate.

Section 76 concerns the law relating to proceedings for offences in relation to removing denaturants from alcohol products and provides that indictable offences of that kind may be subject to proceedings in the District Court where the defendant pleads guilty.

Section 77 empowers the Revenue Commissioners to make regulations required to implement and administer the provisions of the Chapter.

Section 78 applies existing customs and excise law to the provisions of the Chapter.

Section 79 repeals and revokes certain existing provisions in primary and secondary law which are either obsolete or are being replaced by provisions in the Chapter. The provisions to be repealed and revoked are listed in *Schedule 1.* The section also provides for the continuity of orders and regulations made under the provisions which are repealed or revoked.

Section 80 provides for the general continuity of the operation of excise law in relation to the Chapter.

Section 81 provides that alcohol products tax is placed under the care and management of the Revenue Commissioners.

Section 82 provides that the provisions of the Chapter are to come into operation from a date appointed by order of the Minister for Finance.

Chapter 2

Miscellaneous

Section 83 redefines the excisable products which are subject to the general excise law provisions of Part 2 of the Finance Act 2001, so as to include the alcohol products as defined for the purposes of *Chapter 1.* The revised definition will take effect when the relevant provisions of *Chapter 1* are commenced by Ministerial Order.

Section 84 requires tax warehousekeepers to provide appropriate equipment, appliances and other assistance as may be required for a Revenue officer to take account of excisable products in a tax warehouse. This is an extension of existing provisions for beer and spirits, in the context of the consolidation and modernisation in *Chapter 1* of the alcohols excise legislation.

Section 85 clarifies that alcohol products which have been completely denatured in accordance with the necessary procedures are still subject to the rules and procedures for intra-Community movement of excisable products. This is a restatement of an existing provision, in the context of the consolidation and modernisation in *Chapter 1*of the alcohols excise legislation.

Section 86 provides for a power for Revenue officers to break into any part of a premises being used for excise related purposes to search for concealed pipes or other equipment which may be used to evade alcohol products tax. This is a restatement of an existing provision, in the context of the consolidation and modernisation in *Chapter 1* of the alcohols excise legislation. A safeguard clause is introduced, however, to clarify that this provision may not be used as a defence against any claim for damages as a result of such breakage where no pipe etc. is found.

Section 87 confirms the Budget increase in the rates of excise duty on auto diesel which, when VAT is included, amounted to 3 cent per litre.

Section 88 confirms the Budget increase in the main rate of excise duty on spirits which, when VAT is included, amountes to 20 cent on a standard measure. The lower rate of duty which had applied to low strength spirit alcopop drinks is also abolished.

Section 89 provides for an offence of selling, delivering or keeping for sale any spirits on which excise duty has not been paid and for a presumption, in any proceedings for that offence involving counterfeit spirits, that excise duty has not been paid on those spirits.

Section 90 introduces an offence of keeping for sale as auto fuel any mineral oil on which excise duty has not been paid at the appropriate rate.

The section also clarifies the circumstances under which vehicles involved in certain mineral oil offences are liable to forfeiture.

Section 91 introduces a presumption, in proceedings for certain mineral oil tax offences, that diesel used as a propellant which exceeds the maximum sulphur content allowed for auto-diesel has not been taxed at the appropriate rate.

Section 92 confirms the Budget increase in the rate of duty on cigarettes which, when VAT is included, amounted to 50 cent on a typical packet of 20, with pro-rata increases in respect of other tobacco products. The new rates are set out in *Schedule 3*.

Section 93 provides for the charging of interest on the late payment of excise duty in line with the rules for other taxes. It also provides for the recovery of such interest by means of legal proceedings.

Section 94 provides for a basic right to repayment of overpaid excise duty, or interest on excise duty, which was not due, and limits the liability of the Revenue Commissioners to make repayments to circumstances provided for in this section or under other excise law provisions. It also provides for a four-year time limit for making a claim for a repayment but if the claim relates to an event before 1 May 2003 the 4 year limit will not apply until 1 January 2005.

Where repayments arise it also provides for the payment of interest by the Revenue Commissioners, at a rate of 0.011 per day or part of a day, on repayments of duty that arise:

- As a result of a mistaken assumption in the operation of excise law, or

- For any other reason and there are administrative delays in processing a valid claim.

The section provides that action by the Commissioners to initiate recovery of underpayments of excise duty is limited to a period of not more than 4 years after the act or event giving rise to the liability, except in the event of fraud or negligence.

There is also a provision for the Minister for Finance to bring these changes into operation by way of Ministerial Order.

Section 95 provides for the application of administrative penalties for contravening or failing to comply with conditions imposed on excise warehousekeepers. The new section sets the level of penalty at €1500 and also provides for recovery of any such penalty by means of legal proceedings.

Section 96 provides for the delegation of authority by the Revenue Commissioners to particular authorised officers in respect of the approval of excise traders and for delegation to officers of the Commissioners generally in respect of other excise matters.

Section 97 amends the definitions of ''category B'' vehicle and ''crew cab'' and inserts a definition for ''pick-up'' in section 130 of the Finance Act, 1992, in order to revise the criteria used to classify certain vehicles into the various categories that determine the rate of vehicle registration tax to be paid.

The changes will mean that—

- pick-ups i.e. single cab vehicles with an uncovered goods area to the rear, with a goods area floor length that is not less than 45 per cent of the wheelbase, will be classified as category C,

- double-cab vehicles, which have a goods area floor length that is not less than 45 per cent of the wheelbase, may be classified as crew cabs. Such vehicles, with a gross vehicle weight of less than 3,500 kilograms, will be classified as category B and vehicles with a gross vehicle weight of 3,500 kilograms or more will be classified as category C.

The section will have effect from a date to be specified by Ministerial Order.

Section 98 provides for the issue of a single vehicle registration certificate, to be issued by the Department of the Environment and Local Government, incorporating both the Vehicle Registration Certificate issued by the Revenue Commissioners and the Vehicle Licensing Certificate issued by the Department of the Environment and Local Government.

The section will have effect from a date to be specified by Ministerial Order.

Section 99 confirms the Budget change that vehicle registration tax of 30 per cent will apply to vehicles with an engine capacity exceeding 1,900 cubic centimetres in place of vehicles with an engine capacity exceeding 2,000 cubic centimetres. This section applies from 1 January 2003.

Section 100 provides for the discontinuation of the demonstration model repayment scheme. This is consequential to the new changes being introduced in section 116 dealing with a revised VAT treatment of pre-registered motor vehicles.

The section will have effect from a date to be specified by Ministerial Order.

Section 101 confirms the Budget announcement of an extension to 31 December 2004 of the repayment scheme under which the Revenue Commissioners repay or remit 50 per cent of vehicle registration tax in respect of series production hybrid electric vehicles. The scheme was introduced on 1 January 2001 to encourage the purchase of new technology vehicles that have the capacity to significantly reduce harmful emissions and was due to expire on 31 December 2002.

Section 102 empowers the Revenue Commissioners to make regulations specifying, in accordance with section 97 with respect to crew cabs and pick-ups, the manner in which:

- the goods area is permanently separated from the cab,

- the goods area floor length is measured.

Section 103 provides for a reduction in the number of types of gaming premises licences from 4 to 2 and also for an increase in the rate of excise duty chargeable on a 3 monthly gaming premises licence.

The section will have effect from a date to be specified by Ministerial Order.

Section 104 makes a minor change in the definition of gaming machine to ensure that certain credit machines which award successful players non-monetary prizes and/or free games are not classified as gaming machines. The section also provides for a reduction in the number of types of gaming machine licences from 8 to 2 and also for an increase in the rate of excise duty chargeable on a 3 monthly gaming machine licence.

The section will have effect from a date to be specified by Ministerial Order.

Section 105 makes a minor change in the definition of amusement machine to ensure that certain credit machines which award successful players non-monetary prizes and/or free games are within the scope of the definition.

The section will have effect from a date to be specified by Ministerial Order.

Section 106 provides for a reduction in the number of types of amusement machine licences from 3 to 2.

The section will have effect from a date to be specified by Ministerial Order.

Section 107 provides for time limits within which the Revenue Commissioners may raise estimates and/or assessments in respect of Betting Duty.

PART 3

Value-Added Tax

Section 108 is a definitions section.

Section 109 amends section 1 by adding a new definition for ''electronically supplied services''. This is part of a package of measures transposing EU Council Directive 2002/38/EC concerning VAT on e-commerce into national law. The definition is taken from the indicative list of such services provided for in Annex L of the 6^{th} EU VAT Directive.

Section 110 amends section 4 of the VAT Act 1972 which deals with special provisions in relation to the supply of immovable goods, i.e. developed land and buildings. The amendment clarifies that all costs associated with the acquisition and development of a property including professional fees are included in the ''economic value'' test. Economic value means the cost of acquisition and development of the property.

Section 111 makes three amendments to section 5 of the VAT Act 1972 which deals with the supply of services. The amendments are all part of the e-commerce package.

Paragraph (*a*) amends section 5(6)(dd) so as to apply Article 9(3)(*b*) of the 6^{th} EU VAT Directive to radio and broadcasting. This means that, where such services are supplied on a commercial basis from outside the Community to a private consumer in the State, the place of taxation is the State.

Paragraph (*b*) is a minor technical amendment.

Paragraph (*c*) caters for the new business to consumer (''B2C'') rule for electronically supplied services other than radio and broadcasting. This means that, where e-services are supplied by non-EU businesses to private consumers in the State, then the place of taxation is the State. Such businesses supplying such services are obliged to register in a member State of the European Union.

Section 112 inserts a new section 5A into the VAT Act 1972 to provide for the optional new scheme for non-EU businesses that supply electronic services to private consumers in the EU. In the normal course of events, a non-EU supplier would have to register in each country where he or she makes such supplies. However, this section provides for a special scheme instead to simplify procedures for the trader. The trader can register in one country, make electronic supplies to each Member State at the rate applicable in each Member State and remit the VAT to the country of registration. The latter then remits the VAT to the country of consumption.

Subsection (1) is a definitions section.

Subsection (2) is the enabling provision which allows traders to use the scheme.

Subsection (3) allows Revenue to set up an identification register of non-EU suppliers who opt to register in this country under the scheme.

Subsection (4) sets out the procedures the non-EU suppliers must follow to get on the register.

Subsection (5) provides for the allocation of an identification number to the applicants.

Subsection (6) provides that the suppliers on the Revenue register must submit special VAT returns and pay the VAT due in respect of supplies in all Member States each calendar quarter. This is the key feature of the special scheme. The relevant VAT is transferred by the individual administration to the relevant Member States.

Subsection (7) sets down the details that must be included on the special VAT return.

Subsection (8) covers the rule in the Directive regarding exchange rate conversions.

Subsection (9) provides that a person from outside the EU who makes supplies in Ireland under the scheme is not entitled to deduct input VAT but is entitled to refunds under the 13^{th} VAT Directive. This Directive provides for refunds of input VAT incurred in the EU in respect of businesses not established in the EU.

Subsection (10) provides that a non-established third country person who makes electronic supplies in Ireland will have discharged his or her tax liabilities in relation to sections 9, 16 and 19 of the VAT Act (which deal with registration, record keeping and payment dates respectively) if the relevant Irish VAT is paid and remitted to Ireland by another Member State under the special B2C scheme for non-established traders. This is necessary to ensure that a double set of VAT obligations on the supplier is not created.

Subsection (11) is intended to allow the normal compliance rules, the interest provisions and other common provisions of the VAT Act to apply to suppliers into Ireland under the special scheme.

Subsection (12) covers obligations in relation to record keeping under the scheme.

Subsection (13) provides that a scheme participant will notify Revenue if his or her taxable activity ceased and he or she no longer qualifies for the special scheme.

Subsection (14) provides that Revenue will remove a participant from the register of special scheme traders in certain circumstances.

Subsection (15) allows Revenue to make regulations if necessary.

The section has effect from 1 July 2003.

Section 113 amends section 7 of the VAT Act which deals with waiver of exemption. A waiver of exemption occurs when an individual decides to change the exempt status of short term letting of property and make it subject to VAT (in normal circumstances such short term leases are exempt from VAT). Currently, while a property can be developed and VAT deductibility claimed on the basis that the property in question would be subject to a long-term lease, the owner may subsequently switch to a short term lease and waive his exemption in order to retain the deductibility claimed. If the waiver of exemption is later cancelled and any outstanding VAT liabilities need to be calculated, then this section provides that deductibility taken both before and after the waiver of the exemption will be included in the calculation of the adjustment amount (at present deductibility taken before the waiver may not be included).

Section 114 makes two amendments to section 8 of the VAT Act which deals with taxable persons.

Paragraph (*a*) provides that where a non-established trader supplies and installs or assembles goods in the State on behalf of private individuals then that trader is obliged to register for and account for VAT on such supplies.

Paragraph (*b*) provides that where a non-established trader supplies and installs or assembles goods in the State to or on behalf of a VAT-registered person, the latter will be the person liable to account for the VAT.

Section 115 amends section 11 of the VAT Act which deals with rates of tax. The amendment confirms the Budgetary change which provided for an increase in the rate of VAT from 12.5 per cent to 13.5 per cent.

The section has effect from 1 January 2003.

Section 116 amends section 12B of the VAT Act which deals with the special scheme for means of transport supplied by taxable dealers. It provides that vehicles, which are registered by dealers in their own name, are included in the special scheme for second hand vehicles. It is intended that all vehicles will be treated initially as stock in trade and such vehicles are entitled to VAT input credit. New stock in trade vehicles are not subject to VRT. When the vehicle is registered it is treated as taken out of stock in trade and VAT is paid on the vehicle as a self supply. The effect of this is to ensure that only the same amount of VAT is paid if a car dealer pre-registers a vehicle and subsequently sells it to a customer as would be paid if a vehicle was sold directly a customer without pre-registration.

Paragraph (*a*) contains a number of amendments, the main one is the introduction of a new subsection 10(*c*) to the VAT Act. The new scheme is a limited one and it is to be used for vehicles which are intended for onward supply to final customers from a dealer's stock in trade. Subsection 10(*c*) is being introduced to ensure that correct VAT is paid on the sale of self supplied vehicles.

Paragraph (*b*) inserts a new subsection (11) into section 12B of the VAT Act.

Subsection 11(*a*) provides that when a dealer registers a vehicle on his or her own behalf on which he or she has already taken VAT input credit, it is deemed to be self supply for VAT purposes. Normally all of a dealer's vehicles are stock in trade on which VAT input credit has been claimed. If the dealer in these circumstances self-supplies a vehicle he or she is required to charge VAT on that self supply at cost price to him.

Subsection 11(*b*) provides that when the vehicle which was part of the new scheme is sold to a customer, the dealer is entitled to residual VAT input credit.

Subsection 11(*c*) provides for an entitlement to input credit for a dealer where he or she registers the vehicle for his or her own use and does not take deductibility on the original acquisition of the vehicle. When the vehicle is sold to a final customer, this section entitles him or her to residual VAT credit on the VRT inclusive price (i.e. distributor price plus VAT plus VRT).

The section has effect from 1 May 2003.

Section 117 amends section 16 of the VAT Act which deals with records. Under current legislation records are retained for a period of 6 years from the date of the last transaction. This can result in information gaps relating to a property because once the six year period has passed, there is no continuing obligation to retain records. This amendment obliges taxable persons involved in property transactions to retain records for the VAT life of the property from beginning to end, plus a further period of six years. It also requires a person who opts to waive his or her right to exemption from tax on short-term lettings of immovable goods to retain records for the duration of the waiver, plus a further period of six years.

Section 118 amends section 17 of the VAT Act which deals with invoices. These amendments are part of a package of measures implementing EU Directive 2001/115/EC on invoicing and provide for the outsourcing of invoicing operations to third parties for self billing by the customer and for rules governing the storage of invoices when stored outside the State. Part of this Directive relating to electronic invoicing was implemented by S.I. 504 of 2002. There are still some outstanding measures necessary to fully implement the Directive and these will be done in Regulations. These consist of minor changes to the particulars contained on an invoice.

Subsection (1) provides that taxable persons who supply goods or services to Government Departments or Local Authorities or to other bodies established by statute or to a person who carries on an exempted activity must issue a VAT invoice for such supplies.

Subsections 10 (*a*) and (*b*) are technical amendments.

Subsection 14 paragraph (*a*) provides for the issuing of invoices by a customer of a taxable person subject to certain conditions.

Paragraph (*b*) provides that an invoice is deemed to be issued when it is accepted as genuine by the supplier.

Paragraph (*c*) provides for outsourcing of an invoice to a third party subject to certain conditions.

Paragraph (*d*) provides that a credit note or a debit note which amends an invoice is regarded as an invoice for the purposes of outsourcing and self billing.

Paragraph (*e*) provides for the making of regulations by the Revenue Commissioners.

Subsection 15 paragraph (*a*) allows for the outsourcing of the storage of invoices, and the retention of records for the period specified in section 16, VAT Act, 1972.

Paragraph (*b*) provides that records that are not stored electronically should be stored within the State; however, subject to certain conditions set by the Revenue Commissioners, they may be stored outside the State.

The section has effect from 1 January 2004.

Section 119 amends section 19 of the VAT Act which deals with tax due and payable. It facilitates the making of a VAT return on a quarterly basis as provided for in the new special scheme for electronic services catered for under section 5A VAT Act.

The section has effect from 1 July 2003.

Section 120 amends section 20 of the VAT Act which deals with refunds of tax.

Subsection 4 provides for a four year time limit for making a claim for a refund of tax. If the claim relates to a taxable period before 1 May 2003, the existing six year limit for making a claim for refund of tax may apply up to 31 December 2004.

Subsection 5 extends the unjust enrichment provisions (which already apply to repayments) to interest payments made under the new section 21A of the VAT Act. Unjust enrichment occurs when a trader would get a windfall gain if refunded tax which was paid in error.

The section has effect from a date to be decided under an Order or Orders of the Minister for Finance.

Section 121 inserts a new section 21A into the VAT Act which deals with interest on refunds of tax. This is part of a general package of direct and indirect tax proposals with regard to the payment of interest on tax.

The section obliges the Revenue Commissioners to pay interest on a refundable amount in various circumstances, and if there is a delay of more than six months from the date of receipt of a valid claim for refund of tax. The rate at which interest will be paid is 0.011 per cent per day or part of a day. It also ensures that if a taxpayer is awarded interest in respect of a refund of VAT under any other enactment (e.g. under section 941 of the Taxes Consolidation Act 1997), interest will not also be payable under section 21A of the VAT Act. Finally, it allows Revenue to make Regulations as necessary.

The section has effect from a date to be decided under an Order or Orders of the Minister for Finance.

Section 122 amends section 22 of the VAT Act which deals with estimation of tax due for a taxable period. It provides that a second estimate can be issued under section 22 for any taxable period where the original estimate is either too low or too high.

Section 123 amends section 27 of the VAT Act which deals with fraudulent returns etc. It extends tax-geared penalties to apply to failure to submit a return and brings VAT in line with income tax and corporation tax. Tax geared penalties are penalties that vary in proportion to the tax underpaid.

Section 124 amends section 29 of the VAT Act to allow that civil penalties may be pursued in any court of competent jurisdiction rather than solely in the High Court.

Section 125 amends section 30 of the VAT Act which deals with time limits. It provides for a four-year time limit for Revenue making estimates/assessments for underpayments of tax in cases other than fraud or neglect, but if the assessment relates to a taxable period before 1 May 2003 the six-year time limit may apply up to 31 December 2004. This amendment is part of the new interest package.

The section has effect from a date to be decided under an Order or Orders of the Minister for Finance.

Section 126 amends section 32 of the VAT Act which deals with the making of regulations. It is consequential to the amendments to section 5A in section 120, and section 21A in section 123 and provides for the making of regulations in relation to both the special scheme for B2C electronic commerce by non-established traders and interest on refunds of tax.

Section 127 amends the Fourth Schedule to the VAT Act and expands the list of services to include radio and television broadcasting services and electronically supplied services. This means that where radio and television broadcasting or electronically supplied services are received for business purposes in this State from abroad, the place of supply is deemed to be in the State and the recipient is liable for payment of Irish VAT. If such services are supplied from the State to business customers abroad, no Irish VAT arises.

PART 4

Stamp Duties

Section 128 is an interpretation section.

Section 129 amends the definition of ‘‘residential property’’ in section 1 of the Stamp Duties Consolidation Act 1999. The definition is currently linked to the rating system and the Valuation Acts. This amendment reflects changes being made to the operation of the rating system arising from the Valuation Act 2001, which came into operation on 2 May 2002.

Section 130 amends section 36 of the Stamp Duties Consolidation Act 1999 to ensure that where a charge arises under that section, on or after 1 March 2003, in respect of a contract or agreement for sale of a leasehold interest executed before 4 December 2002, the rate of stamp duty payable on that contract or agreement for sale will be charged at the rates of duty applicable on the date that the charge arises.

Section 131 amends section 79 of the Stamp Duties Consolidation Act 1999 which exempts from stamp duty the transfer of shares, property and policies of life insurance between associated bodies corporate, subject to compliance with certain conditions. The 90% share capital test is being changed to exclude fixed rate preference shares. The relief will also be granted to foreign bodies corporate which do not have a capital structure based on share capital, provided that they have a capital structure which is equivalent to a share capital structure and comply with all the other conditions of the relief. This section applies to instruments executed on or after 6 February 2003.

Section 132 confirms the extension of the stamp duty relief on transfers of land to young trained farmers for a further 3 years from January 2003 until 31 December 2005.

Section 133 amends section 89 of the Stamp Duties Consolidation Act 1999 which exempts from stamp duty transfers of stocks or other securities of foreign national governments. This section extends this exemption to similar transfers of stocks and securities of foreign local governments and foreign local authorities and applies to instruments executed on or after 6 February 2003.

Section 134 inserts a new section 108A into the Stamp Duties Consolidation Act 1999. The purpose of this section is, *firstly*, to exempt from stamp duty all instruments executed by or on behalf of the National Development Finance Agency in respect of any property being acquired by the Agency and, *secondly*, to exempt from stamp duty any acquisitions of land by a company set up by the Agency under section 5 of the National Development Finance Agency Act 2002, from the Agency, from another company set up under section 5 of that Act or from a State authority referred to in Schedule 1 of that Act.

The exemption will not apply to a company formed under section 5 of that Act unless the company is 100% beneficially owned, either directly or indirectly by the State, and in addition, the Minister has received confirmation in writing from the Agency, on or before the date of execution of the instrument, that such company will remain indefinitely 100% owned by the State. The section also provides that relief granted to a section 5 company will be subject to a clawback in the event of a breach of the terms of the exemption. This section applies to instruments executed on or after 1 January 2003, the date the Agency was established.

Section 135 amends Part 9 of the Stamp Duties Consolidation Act 1999 to confirms, inter alia, changes announced in the Budget:

- The charge on Cash cards (ATM cards) and Combined cards (Cash cards which also have a Laser function) has been increased from €6.25 per card per year to €10 for Cash Cards and to €20 for Combined cards. The increase applies to Cash cards and Combined cards valid after 4 December 2002 and which fall to be included in a bank's or building society's statement delivered to the Revenue Commissioners after that date.

- For Debit cards (e.g. Laser cards) there is a new charge of €10 per card per year. This new charge applies to cards which are valid on or after 5 December 2002 and which fall to be included in a bank's or building society's statement on or after that date.

- The charge for Credit cards has been increased from €19 to €40 per account per year and for Charge cards from €19 to €40 per card per year. These increased charges apply in relation to any statement which falls to be delivered by a bank or a promoter on or after 5 December 2002. Certain anti-avoidance provisions will also apply.

Section 136 provides for a specific contribution to the Exchequer from the financial sector for the 3 year period 2003 to 2005. The contribution is fixed at €100m per annum. The required amount for each of the years is fixed by reference to the amount of tax payable by each relevant institution or group in the calendar year 2001 (excluding any arrears for earlier years) on deposit interest. The contribution will be a stamp duty at a rate of 50 per cent of the amount of the tax on deposit interest referred to. However, there is an upper limit on the amount payable by each relevant institution or group. This will be equal to 0.0015% of the institution's/group's average deposits of Irish residents in 2001 (excluding Government deposits and inter-financial institution deposits). The same arrangements will apply for 2004 and 2005.

Section 137 inserts a new Chapter into the Stamp Duties Consolidation Act 1999, containing three new sections:

- Section 160A restricts the repayment of stamp duty to valid claims made within 4 years of, inter alia, the date an instrument was stamped by Revenue. A valid claim is one where Revenue has been provided with all the information to enable them to establish the extent of the overpayment. This measure is being introduced with transitional arrangements.

- Section 160B provides that interest on a repayment will be only be paid where the repayment has not been made by Revenue within six months of receiving a valid claim for repayment. An exception to this general rule is that interest will be paid from the date of the event giving rise to the repayment, where Revenue has made an error in the operation of stamp duty. This section also provides that the new rate of interest on such repayments will be at the rate of 0.011 per cent per day or part of a day.

- Section 160C restricts the period within which Revenue may make enquiries or raise assessments in relation to underpayments of stamp duty to a period of four years from, inter alia, the date an instrument was stamped by Revenue. This restriction will not apply where the underpayment arises from fraud or neglect.

The 3 sections will come into operation by way of Ministerial Order.

Section 138 amends Schedule 1 to the Stamp Duties Consolidation Act 1999 in the following manner:

- *Firstly*, as announced in the Budget, the charge for bills of exchange (including cheques) and promissory notes is increased from 8 cent to 15 cent per bill of exchange and promissory note. This increase is effective for bills of exchange (other than cheques) and promissory notes drawn on or after 1 January 2003 and for cheques drawn on or after 5 December 2002.

- *Secondly*, the section confirms changes, already announced in the Budget, to the rates of duty and threshold bands for non-residential property, which are set out in *Schedule 5* to the Bill and also detailed below. The new structure applies to transfers of non-residential property executed on or after 4 December 2002. Transitional arrangements are also in place to enable purchasers with binding contracts in place before 4 December 2002, to avail of the previous rates applying provided the transfers in respect of those contracts are executed before 1 March 2003. In regard to these transitional arrangements, the furnishing of an incorrect certificate claiming that the contract was entered into prior to 4 December 2002 will be regarded as a revenue offence.

Non-Residential Property

Aggregate Consideration (other than rent)	**Rate**
€	%
Up to 10,000	0
10,001 — 20,000	1
20,001 — 30,000	2
30,001 — 40,000	3
40,001 — 70,000	4
70,001 — 80,000	5
80,001 — 100,000	6
100,001 — 120,000	7
120,001 — 150,000	8
Over 150,000	9

- *Thirdly*, where a computation of the 1% duty on the transfer of shares falls under €1, a minimum duty of €1 will now be payable in respect of instruments executed on or after 6 February 2003.

PART 5

Residential Property Tax

Section 139 increases the threshold below which a residential property tax clearance certificate is not required from €382,000 to €1,000,000, as indexed. The revised threshold will apply to sales occurring on or after 5 April 2003.

Section 140 applies the changes in relation to repayments of stamp duty, contained in *section 139* of the Bill, with any necessary modifications, to repayments of residential property tax. Repayments of residential property tax will only be made by Revenue where a valid claim to repayment has been made within 4 years of the date of the event giving rise to the repayment. In addition, interest will only be paid on such repayments where a repayment has not been made by Revenue within six months of receiving the valid claim, unless the repayment arises by virtue of an error on the part of Revenue in the operation of the tax. The rate of interest payable on such repayments will be at the rate of 0.011 per cent per day or part of a day. The section will come into operation by way of Ministerial Order.

PART 6

Miscellaneous

Section 141 is an interpretation section.

Section 142 concerns the collection and recovery of PAYE income tax from employers and, in particular, estimates of tax due that are raised in the absence of a return. This section enables an additional estimate to be raised where a previously estimated amount has been paid and a return showing the correct liability has not been made, or in a case where the Revenue Commissioners subsequently have information indicating that the original estimate was too low.

Section 143 amends section 899 that allows officers of the Revenue Commissioners to make enquiries in relation to certain third party returns (e.g. a return of fees, commissions) to include (*a*) returns made by financial institutions in relation to those to whom they pay interest gross; and (*b*) returns made by intermediaries in relation to those they assist in setting up foreign bank accounts or in purchasing certain foreign investment products.

Section 144 introduces a provision to allow Revenue to carry out an on-site audit of accountable persons in relation to Professional Services Withholding Tax.

Section 145 amends section 1078 of the Taxes Consolidation Act 1997 so that the maximum fine that can be imposed on a person on summary conviction of a revenue offence is increased from €1,900 to €3,000.

Section 146 adds 3 new sections to the Taxes Consolidation Act 1997. The first new section, section 1078A, creates a criminal offence of falsifying, concealing, destroying or otherwise disposing of material by a person where the person knows, or suspects, is or would be, relevant to the investigation of a revenue offence. The second section, section 1078B, provides for rebuttable presumptions in the proof of certain documents, such as a taxpayer's records. Finally, section 1078C permits a judge to give certain documentary information (charts, transcripts, summaries) to juries where a revenue offence is being tried on indictment, in order to assist them in their deliberations.

Section 147 amends section 1061 of the Taxes Consolidation Act 1997 so that a civil penalty imposed under the Tax Acts and the Capital Gains Tax Acts can be pursued in the District Court, the Circuit Court or the High Court depending on the level of penalty being pursued. Previously such penalties could only be pursued in the High Court.

Section 148 and *Schedule 6* provide for technical amendments to the Taxes Consolidation Act 1997 and the Value-Added Tax Act 1972. The amendments for the most part involve the correction (through deletion, amendment or insertion of text) of incorrect references and minor drafting errors.

Paragraph 1 contains amendments to the Taxes Consolidation Act 1997.

Paragraph 2 contains an amendment to the Value-Added Tax Act 1972.

Paragraph 3 contains the commencement provisions relating to *paragraphs 1* and *2*.

Section 149 is an enabling provision which allows the Revenue Commissioners to make regulations to oblige those taxpayers specified in the regulations to file their tax returns and pay their tax liabilities electronically. The regulations may also provide for the repayment of tax to be made by Revenue electronically. In making these regulations the Revenue Commissioners have to provide for the exclusion of persons who cannot reasonably be expected to have the capacity to meet their obligations. Any decision of the Revenue Commissioners not to exclude such a person will be appealable to the Appeal Commissioners. The section will only come into operation following an Order by the Minister for Finance.

Section 150 provides for the revocation of certain small annual payments from the Central Fund. These payments relate to Marsh's Library, King's Inns and the Lord Mayor and citizens of Dublin.

Section 151 amends Section 136 subsection (2) of the Finance Act 2002 which provides that the principal amount owing from SFADCo amounting to the sum of €11,409,916.13 shall be written-off when the Minister for Finance is satisfied that the Company has transferred to Clare County Council its interests in property in respect of which repayable advances were made from the Central Fund.

This provision is now being amended to enable an appropriate lesser amount to be written-off.

Section 152 provides that the Exchequer may be reimbursed from the Small Savings Reserve Fund for amounts transferred to the Dormant Accounts Fund which represent accrued interest on the national savings schemes (savings bonds, savings certificates and instalment savings schemes).

Section 153 relates to the Capital Services Redemption Account. The section fixes a new annuity for 30 years in respect of the estimated borrowing in 2003 for Voted Capital Services.

Section 154 deals with the ''care and management'' of taxes and duties.

Section 155 contains the provisions relating to the short title, construction and commencement.

An Roinn Airgeadais
Feabhra 2003

Wt. 511. 2,172. 2/03. Cahill. (X43995). G.30-15.