AN BILLE AIRGEADAIS 2004
FINANCE BILL 2004

Mar a tionscnaíodh
As initiated

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 2004 and subsequent years, the income tax exemption limits for persons aged 65 years or over. The new limits will be €15,500 for single persons and €31,000 for married couples.

Section 3 increases, for the year 2004 and subsequent years, the value of the employee (PAYE) tax credit. The value of the tax credit is being increased from €800 to €1,040 per annum.

Section 4 increases, for the year 2004 and subsequent years, the standard-rated allowance in respect of trade union subscriptions. The allowance is being increased from €130 to €200 per annum with the effect that the resultant tax credit increases from €26 to €40.

Section 5 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 three bodies, the removal of one body and a change of name in relation to three other bodies.

Section 6 clarifies that, for the purposes of section 189 of the Taxes Consolidation Act 1997, payments made following the assessment by the Personal Injuries Assessment Board of claims for damages, will be treated in the same way as payments made following the initiation of Court proceedings. Section 189 provides an exemption from income tax for the income of permanently incapacitated individuals arising from the investment of compensation payments made by the Courts, or under out-of-court settlements, in respect of personal injury claims. The section applies where the income in question forms the sole or main income of the individual.

Section 7 provides for the exemption from income tax of compensation paid under employment law by employers to employees in respect of the infringement of employees' rights and entitlements under that law. The exemption will not apply, however, to payments which are in respect of earnings, changes in functions or procedures of an employment or the termination of an employment. The exemption applies to payments made on or after 4 February 2004.

Section 8 provides, with effect from 1 January 2004, for the exemption from income tax of certain benefits-in-kind provided by employers for employees. These are:

- mobile telephones, computer equipment and home high-speed internet connections where those benefits are provided for business use and private use is incidental;

- subscriptions to professional bodies where membership is relevant to the business of the employer;

- the private use of company vans which are essentially for the purposes of the employee's work, where there is an employer requirement to bring the van home, where other private use is prohibited and the employee spends most of his or her working time away from the employer's workplace to which he or she is attached (all these conditions must be satisfied).

The section also extends the existing BIK tax exemption for employer-provided travel passes to include LUAS services which are due to commence from June 2004. Currently the exemption just covers CIE (or any of its subsidiaries) and those operators who have a licence under the Road Transport Act 1932. The Bill also clarifies that the exemption will apply where a pass/ticket covers more than one operator, for example, an integrated ticket covering LUAS and Dublin Bus.

Section 9 provides for some changes in the arrangements relating to the application, with effect from 1 January 2004, of PAYE to benefits-in-kind from employment. The main changes are as follows:

- the exclusion from PAYE of shares given to employees, is confined to shares in the employer company or a company controlling the employer company (this provision applies from 4 February 2004);

- where an employer pays the BIK tax charge in respect of a benefit provided to an employee (because the employee has insufficient income from which the tax could be deducted) the tax paid is credited to the employee;

- employers may make arrangements with the Revenue Commissioners to account directly to the Revenue Commissioners, rather than through the normal PAYE system, for the tax payable in respect of benefits provided to employees which are minor and irregular. Where the employer so accounts for the tax, the benefits will not form part of the total income of the employees and they will not be entitled to credit for or repayment of the tax accounted for.

Section 10 reduces, for the year of assessment 2004 and subsequent years of assessment, the level of the specified interest rate used for determining the benefit-in-kind charge, under section 122 of the Taxes Consolidation Act 1997, on certain preferential mortgage loans made to employees by their employers. The new rate will be 3.5 per cent (reduced from 4.5 per cent).

The section also provides that, in addition to existing employees, former employees are also within the scope of section 122 of the Taxes Consolidation Act 1997.

Section 11 provides for tax relief (at the standard rate) in respect of dental insurance policies for non-routine dental treatment provided by those who provide dental insurance only. The legislation currently excludes such providers. The amendment will not affect the present arrangements which provide tax relief at the standard rate for medical insurance policies which may include non-routine dental treatment.

Section 12 provides an income tax exemption in respect of income received by persons in Gaeltacht areas under the Irish language student scheme known as Scéim na bhFoghlaimeoirí Gaeilge.

Section 13 inserts a new section 667A into Chapter 2 of Part 23 of the Taxes Consolidation Act 1997 which is concerned with the scheme of enhanced stock relief for qualifying farmers. This new section replaces the existing section 667 and provides for an updated list of educational qualifications and certain changes in relation to the standards of those qualifications which must be attained in order to qualify for the exemption. Section 667A also contains transitional arrangements which enable the educational qualifications held before the passing of the Finance Act 2004, for the purposes of section 667, to be treated as educational qualifications held for the purposes of the new section, as well as providing for individuals who are restricted in their learning capacity for various reasons.

The relief is given at the rate of 100% of the increase in stock values for the year in which the individual begins farming and for 3 successive years.

Section 14 amends section 664 of the Taxes Consolidation Act 1997 by increasing the annual exemption for income derived from certain leases of farmland from €5,078.95 to €7,500 for leases of five or six years taken out from 1 January 2004. Where such leases are for seven or more years, an annual exemption of €10,000 will apply, instead of the previous limit of €7,618.43. In addition, the minimum age for a qualifying lessor is being reduced from 55 years to 40 years.

Section 15 amends Schedule 12 to the Taxes Consolidation Act 1997 which is concerned with Employee Share Ownership Trusts (ESOTs). Two separate changes are made. The first makes a minor alteration to the rules governing who may be a beneficiary of an ESOT in the case of the ESOT established by the Irish National Petroleum Corporation Limited. The second ensures that the rules governing equal treatment of former employees will apply in all circumstances.

Section 16 amends section 772 of the Taxes Consolidation Act 1997 which deals with the approval, by the Revenue Commissioners, of retirement benefits schemes for tax purposes. Section 772 requires

Revenue to approve a scheme which satisfies certain prescribed conditions relating to the scheme itself and the benefits provided. The Revenue Commissioners do not currently approve schemes which include provision for borrowing in their rules. This amendment ensures that the presence of a rule which authorises borrowing by a scheme will not in itself be a sufficient reason for denying approval or for the withdrawal of approval. The change has effect from the date of passing of the Finance Act 2004.

Chapter 3

Income Tax, Corporation Tax and Capital Gains Tax

Section 17 amends four provisions of the Taxes Consolidation Act 1997 which, subject to certain conditions, exempt certain income from income tax. The four provisions are—

(*a*) section 189, which exempts from income tax the income derived from the investment of certain compensation payments received by individuals who are permanently and totally incapacitated by reason of mental or physical infirmity from maintaining themselves;

(*b*) section 189A, which exempts from income tax the income derived from investment of public subscriptions made to a trust established exclusively for the benefit of one or more individuals who are permanently and totally incapacitated by reason of mental or physical infirmity from being able to maintain themselves;

(*c*) section 191, which extends the exemption afforded by section 189 so that it applies to income derived from the investment of payments made to Hepatitis C and HIV victims (whether by the Hepatitis C and HIV Compensation Tribunal or arising from a civil action for damages).

(In each of the foregoing provisions there is a requirement that the income being exempted be the sole or main income of the individual concerned.)

(*d*) section 192, which exempts from income tax both compensation payments made to thalidomide children and income derived from the investment of such payments.

Each of these sections is being amended so that a tax exemption now applies to both the income and gains derived from the investment of the sums referred to. Where it was a requirement for the income tax exemption that the income concerned be the sole or main income of the individual, it will now be a requirement that the aggregate of the income and gains to be exempted must be in excess of 50% of the aggregate of the individual's total income and gains for the year concerned. The exemption of such income and gains does not remove the obligation to include the amounts exempted in a tax return. The section applies from the tax year 2004 on.

Section 18 makes a number of changes to the provisions that govern the Business Expansion Scheme (BES) and the Seed Capital Scheme (SCS).

As announced in Budget 2004, both schemes are being extended to 31 December 2006 and the company limit is being increased from €750,000 to €1 million. This extension of the schemes to 31

December 2006 and the increase in the company limit, along with some additional changes in relation to the operation of the schemes provided for in this section are subject to a Commencement Order being made in order to allow clarification of potential State aid issues raised by the European Commission. The additional changes being provided for in this section are:

- BES and SCS to apply to software development companies *approved* for employment grant aid, instead of, at present, when the grant is paid;

- The limit of €19,050 on the non-PAYE income for investors under the SCS is being increased to €25,000. Accordingly, in the tax year immediately before the year in which an individual invests, an individual's income may come from any source and in each of the previous three tax years, their non-PAYE income may not exceed the lower of €25,000 or their total PAYE type income;

- While the SCS is being extended for three years (to 31 December 2006), after 31 December 2004, trading activities in an exchange facility established in the Custom House Docks Area will cease to qualify as a qualifying trading operation for the purposes of the SCS;

- The existing practice, whereby loan capital converted within 12 months into share capital can qualify for SCS relief, is being put on a statutory basis.

An initial extension from 1 January 2004 to 4 February 2004 will be made separate from the Commencement Order. In the context of that extension, the following measures are being provided for—

- Where any amount raised by a designated fund between 1 January 2004 and 4 February 2004 is invested in qualifying companies on or before 31 December 2004, the individual investors who subscribed to the fund will have the option of claiming tax relief on their investment for either the tax year 2003 or 2004. Similarly, in the case of direct investment by investors in qualifying BES companies, where eligible shares are issued by 4 February 2004, the investor will have the option of claiming tax relief on their investment for either the tax year 2003 or 2004;

- The time limit for the carry forward of unused relief under the schemes is being extended to 31 December 2006.

Section 19 provides for transitional arrangements in relation to the limited extension of the BES as provided for in *section 18(1)(a)(ii)*.

The transitional arrangements are designed to provide for companies which, at the present cut-off date of 4 February 2004, had commenced arrangements to raise funds under the BES, in some instances entering into contractual commitments for the use of the funds to be raised.

Accordingly, these transitional arrangements apply where the conditions in either (*a*) or (*b*) below are satisfied—

(*a*) Where a specified designated fund is involved i.e. a designated fund which closed on or before 4 February 2004, the conditions which a company, in which the fund intends to invest, must satisfy in order to qualify for the transitional arrangements are—

- the shares must be issued on or before 31 December 2004, and

- the shares are issued following a subscription on behalf of an individual by a person or persons having the management of a specified designated fund, and

- satisfies the Revenue Commissioners in accordance with the terms set out in this section that on or before 4 February 2004, it had the intention of raising funds through a specified designated fund.

(*b*) A company may also qualify for the transitional arrangements where

- it issues shares on or before 31 December 2004, and

- satisfies the Revenue Commissioners in accordance with the terms set out in this section that, on or before 4 February 2004, it had an intention to raise money for the purposes of carrying on its qualifying trading operations.

Section 20 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. The section includes an enabling provision to allow the Revenue Commissioners, by way of regulations, to set up and maintain a register of principal contractors and to require all new principal contractors to formally register with them. This provision will have effect as and from the date of passing of the Finance Act 2004. Details of the registration requirements for new principal contractors will be set out in regulations to be made after that date.

The section also confirms that the Revenue Commissioners may renew a certificate of authorisation (C2) to a subcontractor without the need for that person to make a further application to them, subject to them being satisfied in relation to standard compliance requirements. This measure will apply as on and from 1 January 2004. The section also provides for a small technical amendment.

Section 21 amends section 659 of the Taxes Consolidation Act 1997 by extending the special scheme of capital allowances for expenditure incurred on the construction of facilities to control farm pollution for a further 3 years, up to 31 December 2006.

Section 22 gives legislative effect to the announcement made by the Minister for Finance in his press release of 19 March 2003 to close off a loophole relating to relief available to individuals in respect of interest paid on money borrowed for the purposes of acquiring an equity stake in, or lending to, a company.

The section inserts a new section 250A in the Taxes Consolidation Act 1997 which applies to payments of interest made by individuals on or after the date of the press release, 19 March, 2003. The new section will operate where the money borrowed by the individual is used after 1 January 2003 by the company involved, in whole or in part, directly or indirectly, to acquire a specified building (essentially an industrial or commercial building with a remaining tax life) from another company, to replace money used for such an acquisition or to pay off a loan used for that purpose. The section also covers situations where the individual uses borrowed money to pay off another loan or part of a loan where the money under that earlier loan was used after 1 January 2003 by the company involved for any of the above purposes.

Where the section applies, any claim for interest relief under section 248 of the Taxes Consolidation Act 1997, made by an individual for a tax year, in relation to the borrowed money, or any portion thereof, which was subsequently used by the company to finance the acquisition of a specified building, may not exceed the individual's return from the company in that year in respect of that contribution. An individual's return for a year of assessment is the amount, if any, of the distributions or of the interest received by the individual from the company in that year arising from the borrowed money being used by the individual to acquire share capital in, or to give a loan to, the company.

Section 23 amends section 268 of the Taxes Consolidation Act 1997 in relation to the scheme of capital allowances for qualifying residential units associated with registered nursing homes.

Firstly, the section provides that, in future, such units may be comprised in a larger building consisting of one or more storeys where a fire safety certificate in relation to the building is required under Part III of the Building Control Regulations 1997 (S.I. No. 496 of 1997) and, before construction works commence, such certificate is issued by a building control authority. Units which currently qualify as single houses are unaffected by this condition.

Secondly, the section reduces, from 20 to 10, the number of qualifying residential units, associated with a registered nursing home, which are required in order that the scheme of capital allowances may apply in relation to such units.

This amendment applies as respects capital expenditure incurred on or after 4 February 2004.

Section 24 makes amendments to section 268 of the Taxes Consolidation Act 1997 in relation to the entitlement to capital allowances for the construction or refurbishment of buildings used as private hospitals and private sports injuries clinics. The amendments provide that, where a member or members of a group of investors fall into any of the excluded categories listed in the section, relief will be denied to that person or those persons only. Previously the legislation denied relief to all investors where any of them fell into an excluded category. The amendments apply as respects capital expenditure incurred on or after 1 May 2004.

Section 25 provides for an extension of the transitional arrangements for the existing scheme of capital allowances for hotels, holiday camps and holiday cottages from 31 December 2004 to 31 July 2006, as announced on Budget day.

The section provides that the extension to 31 July 2006 will also apply where the work involved is exempted development for the purposes of the Planning and Development Act 2000, provided the following conditions are met by 31 December 2004: a detailed plan in relation to the development work is prepared, a binding contract in writing exists under which the expenditure is incurred, and work to the value of 5% of the development costs has been incurred.

The section also provides that capital expenditure incurred on the construction or refurbishment of hotels, holiday camps and holiday cottages will be treated as having been incurred on or before 31 July 2006 to the extent that such expenditure is attributable to work on the building or structure which is actually carried out on or before that date.

Section 26 amends Part 10 of the Taxes Consolidation Act 1997 to provide for an extension to 31 July 2006 in the expiry dates for a number of tax incentive schemes, as announced on Budget day.

In the case of the Urban Renewal Scheme and the Multi-Storey Car Parks Scheme, the extension will apply where the existing condition, that 15% of projects costs be incurred by 30 June 2003 and 30 September 2003 respectively, was satisfied.

In the case of the Student Accommodation Scheme, the extension will apply where the existing condition, namely that an application for planning permission was received by a planning authority by 30 September 2003, was satisfied. In the case of the Living over the Shop, Rural Renewal, Park and Ride and Town Renewal Schemes, the extension will apply where an application for full planning permission is received by the planning authority by 31 December 2004. In relation to these schemes and the Student Accommodation Scheme, where the work involved is exempted development for the purposes of the Planning and Development Act 2000, certain other conditions must be satisfied by 31 December 2004 in order to qualify for the 31 July 2006 expiry date.

Section 27 inserts a termination date for the scheme of capital allowances for qualifying expenditure incurred on buildings used for third level educational purposes. The qualifying period for the scheme commenced on 1 July 1997 and this amendment provides that it will end on 31 July 2006. Capital allowances in relation to all qualifying expenditure incurred under the scheme is conditional on the issue by the Minister for Finance of certification in relation to certain matters and no such certificate may be issued after 31 December 2004.

The section also provides that capital expenditure incurred on the construction of a building will be treated as having been incurred in the qualifying period to the extent that such expenditure is attributable to work on the construction of the building actually carried out during the qualifying period.

Section 28 gives effect to the announcement of the Minister for Finance in Budget 2004 to extend the scheme of film relief under section 481 of the Taxes Consolidation Act 1997 from 31 December 2004 to 31 December 2008 and to increase the limit on section 481 funding for any one film to €15 million. It also amends the legislation to address certain abuses of the relief. The extension of the scheme to 31 December 2008 and the increase in the limit on section 481 funding will apply from a date to be specified in a Commencement Order to be made by the Minister for Finance following approval from the European Commission under State aid rules.

In addition, the section provides that the following amended procedures in regard to the administration of the scheme will apply:

- All applications for certification by a qualifying company, in relation to a film to be produced by it, will be made to the Revenue Commissioners in the first instance, who will then seek authorisation from the Minister for Arts, Sport and Tourism as to whether they may, following a full examination of the company's proposal, issue a certificate that the film may be treated as a qualifying film for the purpose of this section;

- The Minister for Arts, Sport and Tourism on receipt of such a request, will, in accordance with regulations made under the section, decide whether to give the authorisation having regard to the categories of films eligible for certification (as set out in the regulations) and any contribution which the film is expected to make to the development of the Irish film industry and/or the promotion and expression of Irish culture;

- The Minister for Arts, Sport and Tourism will specify certain conditions in any authorisation given including the percentage of the work on the production of the film which must be carried out in the State etc.;

- Where the Revenue Commissioners receive authorisation from the Minister for Arts, Sport and Tourism they will examine the company's proposal in full and where they issue a certificate, it will be subject to various conditions which the Revenue Commissioners consider proper, having regard to that examination and the conditions specified by the Minister in his authorisation;

- New anti-abuse provisions will allow the Revenue Commissioners to refuse to issue a certificate where they have reason to believe that any item of proposed expenditure in the budget is inflated, or where they are not satisfied that there is a commercial rationale for the corporate structure proposed or that such structure would hinder them in verifying compliance with any provision governing the relief.

The section also provides that a company will not be regarded as a qualifying company:

- Unless it notifies the Revenue Commissioners when principal photography etc. commences;

- If its financial arrangements are, directly or indirectly, with persons resident, registered or operating in territories other than EU Member States or countries with which Ireland has Double Taxation Agreements under section 826(1)(*a*) of the Taxes Consolidation Act 1997, or involve funds channelled to, or through, those territories;

- Unless it provides evidence to vouch each item of expenditure on a film, when requested to do so by the Revenue Commissioners for the purposes of verifying compliance with the provisions governing the relief or with any condition included in a certificate issued by them;

- Unless it notifies the Revenue Commissioners of the date of completion of the production of the qualifying film, provides a copy of the film and a compliance report to the Revenue Commissioners within the time period specified in the regulations;

Where a company fails to comply with any of these provisions or any other provision governing the relief, or fails to fulfil any condition on a certificate issued to it, relief under the section may be withdrawn and the certificate issued may be revoked by the Revenue Commissioners.

These changes to the administration of the scheme will apply from a date to be specified in a Commencement Order.

Section 29 amends Chapter 1A of Part 27 of the Taxes Consolidation Act 1997 which deals with the taxation of collective funds and their investors within the ''gross-roll-up'' regime (investment undertakings). The amendment deals with tax on the transfer of units in these funds. Under the current legislation, an investment undertaking may discharge its tax liability by cancelling units belonging to the unit holder. The amendment provides that the subsequent tax liability that arises on the cancelled units will now be taken into account.

Section 30 makes two amendments to Chapter 4 of Part 27 of the Taxes Consolidation Act 1997 which deals with the taxation regime for certain offshore funds. The first amendment is a minor technical amendment, to ensure that loss relief on a value basis cannot be used to shelter gains arising from disposals of these funds. The second amendment extends the same relief to offshore funds as currently applies to domestic funds in the course of a reconstruction or amalgamation. It provides that, where an offshore fund is reconstructed/amalgamated, the cancellation of the original units will not be taxable and the cost of the new units will be taken to be the cost of the old units.

Section 31 amends Schedule 24 to the Taxes Consolidation Act 1997 in a number of respects as it relates to unilateral credit relief. That Schedule is concerned with the calculation of double taxation relief.

The provisions are as follows:

- Paragraph (*a*) amends unilateral credit relief, which eliminates double taxation in the case of dividends received from certain foreign subsidiaries by a company that is subject to tax in the State. The shareholding threshold to qualify for relief is reduced from 25 per cent of the subsidiary to 5 per cent. In addition, credit may now be allowed for local income taxes where these are paid in addition to state taxes on income but are not covered by the relevant tax treaty.

- Paragraph (*b*) makes changes to a provision that gives credit against Irish tax on dividends received by an Irish company from its foreign subsidiaries for foreign tax paid by lower tiers of subsidiaries.

  — Subparagraph (i) clarifies that tax which may be credited includes foreign tax paid by such subsidiaries on their branch profits.

  — Subparagraph (ii) provides for a reduction in the shareholding threshold from 25 per cent to 5 per cent. The new requirement will be that a subsidiary must be owned to the extent of at least 5 per cent by the company immediately above it, and also to the extent of at least 5 per cent indirectly by the Irish parent company.

- Paragraph (*c*) provides a mechanism for ensuring full relief for double taxation in the case of certain dividends. Where a company receives a foreign dividend it can set foreign tax on the dividend against Irish tax on the dividend. The new provision will deal with the situation where the foreign tax exceeds the Irish tax and will allow any excess to be offset against Irish tax on other foreign dividends received in the accounting period concerned, and any balance unused to be carried forward and offset in subsequent accounting periods.

The section is subject to clearance by the European Commission from a State aid perspective and will come into effect following the making of a commencement order by the Minister for Finance.

Section 32 amends section 817C of the Taxes Consolidation Act 1997 which deals with the deductibility of interest payments. The provision was introduced in Finance Act 2003 to remove a timing mismatch in the tax treatment of interest paid and interest received in certain circumstances. However, the legislation has a wider application than intended. The amendment disapplies the provision where the recipient of the interest is both non-resident and not under the ultimate control of Irish residents. The amendment has effect from 6 February 2003, the date the original provision came into effect.

Chapter 4

Corporation Tax

Section 33 inserts two new sections into the Taxes Consolidation Act 1997 that provide for a 20% tax credit as a new incentive for companies that carry out research and development (R&D). The first section, section 766 that replaces the existing section 766, contains an incentive in relation to R&D expenditure other than expenditure on buildings. The second section, section 766A, contains rules for the treatment of expenditure on buildings.

The new incentive is subject to clearance by the European Commission from a State aid perspective, and will come into operation by way of a commencement order to be made by the Minister for Finance following such clearance.

The new section 766 provides an incentive for incremental expenditure on R&D. A credit of 20% of the incremental spend can be offset against a company's corporation tax liability for the current year. Any unused credit can be carried forward indefinitely against the corporation tax liability for subsequent accounting periods of the company until it is used up.

The scheme is an incremental one whereby expenditure over a defined base will qualify for the credit. For 2004, 2005 and 2006 the base will be R&D expenditure incurred in 2003. Thereafter, there will be a rolling one year base i.e. for 2007 the base will be expenditure incurred in 2004 and for 2008 the base will be expenditure incurred in 2005 and so on. The base will be calculated and apportioned on a group basis and a group can elect how to share the credit among group members. An amount equal to 20% of the incremental spend apportioned to a company is then available to reduce the corporation tax of that company.

Expenditure on R&D is defined as expenditure incurred on R&D activities carried on by the company in the European Economic Area (EEA) in a relevant period. The expenditure must qualify for tax relief in the State and in the case of an Irish resident company must not qualify for tax relief outside of the State. The tax credit will not be available for royalty payments that are exempt royalty income in the hands of the recipient.

The legislation contains a core definition of R&D activities. The Minister for Enterprise, Trade and Employment, in consultation with the Minister for Finance, will make regulations for the purposes of providing detailed guidance on what activities constitute R&D activities for the purposes of the tax credit.

There is a de minimis rule that provides that the relief does not apply if the group R&D expenditure in a relevant period is less than €50,000.

Where a company that incurs expenditure on carrying out R&D activities also pays a sum to a university or institute of higher academic education in the EEA for that university or institute to carry out R&D for the company, the sum so paid, up to an amount that does not exceed 5 percent of the expenditure incurred on R&D activities carried out by the company, will qualify for credit.

The new section 766A provides that where a company incurs relevant expenditure on the construction or refurbishment of a building or structure which is to be used for the carrying on by it of R&D, the company will be entitled to a tax credit of 20% of the cost of construction or refurbishment but this will be allowed over a period of four years as a credit against corporation tax. Relevant expenditure on a building or structure is expenditure on the construction of a building or structure which qualifies for capital allowances in the State but does not qualify for the relief in any other territory.

Section 34 implements EU Council Directive 2003/123/EC which amends an earlier Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and their subsidiaries of different Member States (known as the ''Parent/Subsidiaries Directive''). The Parent/Subsidiaries Directive which was concerned with eliminating double taxation on dividends across borders within the EU from subsidiaries to their parents, was implemented by section 831 of the Taxes Consolidation Act 1997. This section makes a number of changes to section 831 to give effect to the new Directive as follows:

- The shareholding threshold for a company to be considered as a parent company is reduced from 25 per cent to 5 per cent;

- Irish branches of companies of other Member States will be entitled to the same reliefs as Irish resident companies where they received dividends from their subsidiaries;

- References to Irish unlimited companies are deleted from section 831. Unlimited companies were not covered by the earlier Parent/Subsidiaries Directive but are now covered following its amendment by the new Directive. Consequently, a specific reference to them in section 831 is no longer necessary.

- Tax paid by lower tiers of subsidiaries may be taken into account for the purpose of giving credit relief to an Irish company that receives dividends from its subsidiaries in EU Member States subject to a shareholding of 5 per cent at each tier.

- Relief from double taxation under the Directive is specifically provided for in the unusual scenario where a subsidiary is regarded as a company in its home Member State but is considered to be transparent for tax purposes in the Member State of its parent company.

- Finally, redundant provisions relating to transitional arrangements under the earlier Parent/Subsidiaries Directive are deleted.

Section 35 provides an alternative taxing mechanism for lessors of short-life assets. Under existing rules, income of the lessor is calculated by treating gross lease payments as income and allowing capital allowances on the asset. Where the lease payments are received over, say, 3 years but capital allowances are given over 8 years a timing mismatch occurs.

The section allows lessors of such assets to account for them for tax purposes in accordance with accounting rules. This will result in the ‘‘interest element’’ of lease payments being taxed but no capital allowances being available. It will not change the amount of tax paid but will involve a more even spread of the tax over the lease period.

Section 36 amends section 434 of the Taxes Consolidation Act 1997 so that a dividend or other distribution by a company in respect of shares in that company will not be regarded as ‘‘investment income’’ for the purposes of the close company surcharge if the close company to which it is paid would be exempt from capital gains tax on any gain on the disposal of those shares under section 626B of the Principal Act at the time that the dividend or distribution is made.

Undistributed estate and investment income of a close company is normally subject to a surcharge of 20 per cent.

Section 37 amends section 396B of the Taxes Consolidation Act 1997. Section 396B provides relief, on a value basis, for trading losses which cannot be otherwise relieved, against the taxation liability on profits from other activities. The relief is granted for such losses by reducing the corporation tax otherwise payable for an accounting period on such other profits by an amount arrived at by applying the corporation tax which applies to the activity in which the loss is incurred to the amount of the unrelieved loss.

This section excludes from eligibility for loss relief on a value basis the corporation tax attributable to a life assurance business where that corporation tax is referable to profits of the policyholders. This amendment will apply as respects any claim for relief made on or after the date of publication of the Finance Bill.

Section 38 amends section 420B of the Taxes Consolidation Act 1997. Section 420B provides group relief, on a value basis, for trading losses and certain charges which cannot be otherwise relieved. Relief is granted by reducing the corporation tax of a claimant company, for an accounting period which corresponds to the accounting period of the company surrendering the losses, by an amount arrived at by applying the corporation tax rate applicable to the activity in which the losses are incurred to the amount of the unrelieved losses being surrendered.

This section excludes from eligibility for group loss relief on a value basis the corporation tax attributable to a life assurance business where that corporation tax is referable to profits of the policyholders. This amendment will apply as respects any claim for relief made on or after the date of publication of the Finance Bill.

Section 39 amends section 486B of the Taxes Consolidation Act 1997 in order to provide for an extension of the qualifying period for tax relief for corporate investment in certain renewable energy projects. The qualifying period is being extended from 31 December 2004 to 31 December 2006. The extension is subject to clearance by the European Commission from a State aid perspective, and will come into operation by way of a commencement order to be made by the Minister for Finance following such clearance.

Section 40 adds the Personal Injuries Assessment Board (PIAB) 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.

Section 41 and *Schedule 1* insert a new Schedule into the Taxes Consolidation Act 1997. The Schedule re-enacts the provisions of S.I. No. 721 of 2003 which gave effect to Council Directive 2003/49/EC on a common system of taxation and royalty payments made between associated companies of different EU Member States. The purpose of the Directive is to eliminate withholding taxes on cross-border interest and royalty payments between associated companies. Two companies are associated if one owns at least 25% of the other or at least 25% of each company is owned by a third company. The section revokes S.I. No. 721 of 2003 with effect from the enactment of the Finance Act 2004.

Section 42 inserts two new sections and a Schedule into the Taxes Consolidation Act 1997. The new provisions provide for exemption from capital gains tax for certain disposals by an investor company of shares held by it in an investee company. Both gains and losses on such disposals will be ignored for tax purposes.

The main exemption which is in the new section 626B applies where:

- at the time of the disposal the investee company is resident for tax purposes in the EU or in a country with which Ireland has a tax treaty;

- the investor company has held for a period of at least 12 months ending in the previous 24 months—

  — at least 10 per cent of the investee company and that holding had a value of €15 million, or

  — at least 5 per cent of the investee company and that holding had a value of €50 million;

and

- at the time of the disposal either

  — the investee company must carry on a trade, or

— the business of the investor company, its 10 per cent investee companies, the investee company and the investee's 10 per cent investee companies taken as a whole consists wholly or mainly of trading.

The exemption does not apply—

— where the disposal is already treated under the Taxes Consolidation Act 1997 as being for a consideration such that no gain or no loss arises, or it is otherwise exempt under the Act,

— to disposals of shares which are part of a life assurance company's life business fund, or

— to disposals of shares deriving the greater part of their value from land in the State or from minerals, or rights or interests in relation to mining or minerals or the searching for minerals.

The new section 626C provides for a secondary exemption. This applies to options to acquire shares and to certain convertible securities related to shares in similar circumstances to those in which a gain is exempt under section 626B.

In determining whether the exemption applies, the investor company will be treated as holding all shares that its fellow "51 per cent" group companies hold.

A new Schedule 25A inserted into the Taxes Consolidation Act 1997 supplements section 626B and deals with the interaction between the new sections and certain existing reliefs.

— Paragraph 1 provides that in order to determine whether the company disposing of shares has held them for the required holding period, the period of ownership of shares by a company can be extended where the shares were acquired in a transaction that is treated as giving rise to neither a gain nor a loss. This could arise where assets are transferred within a group of companies. No gain or loss is treated as arising but the new owner takes over the assets for capital gains tax purposes at their original base cost. In these circumstances, where the assets consist of shares the new owner is allowed to extend the period of ownership by the time for which the shares were held by the previous owner;

— Paragraph 2 provides that if a company is deemed under the Act to dispose of and immediately reacquire shares which it holds (thus crystallising a gain), the holding of the shares in the period prior to the deemed disposal is not taken into account for the purposes of the holding period requirement;

— Paragraph 3 deals with repurchase agreements where a company transfers shares to another company subject to an agreement that the original owner will buy them back. Shares transferred under such a repurchase agreement are regarded as remaining with the original holder for the purposes of determining whether the shareholding requirement for the purposes of the exemption has been met;

— Paragraph 4 contains a similar provision in relation to stock lending arrangements;

— Paragraph 5 deals with a situation where in the case of a reconstruction a company which held shares in one company exchanges them for shares in a second company in circumstances that there is no charge to capital gains tax but the cost of the old shares carries through as the cost of the new shares. In these circumstances the period of ownership of the new shares can include the period of ownership of the old shares for the purposes of the holding period requirement;

— Paragraph 6 provides that a company may not claim relief for a loss in value of shares which have negligible value if a gain on a disposal of the shares would be exempt under the new section 626B;

— Paragraph 7 deals with a situation where a company that is a member of a group had acquired an asset on a tax neutral basis. If that company ceases to be a member of the group there is a deemed disposal and reacquisition of the asset at the time of its acquisition from the other member of the group, thus crystallising a gain. In effect, paragraph 7 allows the exemption under section 626B to apply if the conditions for exemption are satisfied at the time the company ceases to be a member of the group.

— Finally, paragraph 8 deals with the situation where shares are appropriated by a company as trading stock. It ensures that where the gain on the shares is exempt as a consequence of section 626B, the company is treated as acquiring the shares at market value for the purposes of computing the profits of the trade to which they are appropriated.

The section is subject to clearance by the European Commission from a State aid perspective and will come into effect following the making of a commencement order by the Minister for Finance.

PART 2

Excise

Section 43 provides for some technical amendments to the Alcohol Products Tax Chapter of the 2003 Finance Act (Chapter 1 of Part 2). This Chapter, which has yet to be commenced, consolidates and modernises the excise law relating to alcohol products.

- The definition of "spirits" is amended to clarify that spirits are liable to alcohol products tax even when contained in products other than alcoholic beverages.

- The provision whereby alcohol products tax may be charged on the basis of the raw materials used in the distillation process is amended to clarify that this option applies in all cases and is not confined to exceptional circumstances.

- The provision for relief from alcohol products tax is amended so that the relief which applies at present to alcohol products used for medical and industrial purposes and in the production of oral hygiene products, will continue to apply when the new law is commenced.

Section 44 amends the definition of ''spirits'' as it applies for the purposes of offences in relation to counterfeit spirits so that it is linked with the definition of ''spirits'' within the Alcohol Products Tax Chapter of the 2003 Act (Chapter 1 of Part 2). This section is to be commenced simultaneously with section 73 of the Chapter.

Section 45 confirms the Budget increase in the rate of duty on cigarettes which, when VAT is included, amounted to 25 cent on a packet of 20, with pro-rata increases in respect of other tobacco products. The new rates are set out in *Schedule 2*.

Section 46 provides that, where any country acceding to the EU has been allowed, for a transitional period, to apply a rate of duty to cigarettes or other tobacco products which is lower than the minimum stipulated in EU law, the Minister may make an order to impose quantitative restrictions on personal importations of such products by travellers from those countries.

Section 47 extends the provision for administrative penalties for breaches of warehousing requirements so that it applies to all breaches of such requirements under excise law.

Section 48 confirms the Budget increases in the rates of excise duty on mineral oils which, when VAT is included, amounted to five cent per litre on each of petrol, auto-diesel and auto-substitute fuel, and two-and-a-half cent per litre on aviation gasoline.

Section 49 amends the definition of ''biofuel'' and inserts a definition of ''biomass'' in the Mineral Oil Tax Chapter of the Finance Act 1999 (Chapter 1 of Part 2, Finance Act 1999).

Section 50 inserts a new section 98A into the Mineral Oil Tax Chapter of the Finance Act 1999 (Chapter 1 of Part 2, Finance Act 1999) which provides for the Revenue Commissioners to allow qualified and conditional relief from mineral oil tax on biofuel used in approved pilot projects for either the production of biofuel, or the testing of the technical viability of biofuel for use as a motor fuel.

The section has effect from a date to be specified by a Commencement Order.

Section 51 amends section 100(1) of the Mineral Oil Tax Chapter of the Finance Act 1999 (Chapter 1 of Part 2, Finance Act 1999) by inserting a paragraph (*m*) to provide for relief from mineral oil tax for heavy oil used in the testing and maintenance of aircraft engines. This relief was inadvertently omitted from mineral oil tax law when general excise law (Chapter 1 of Part 2, Finance Act 2001) was consolidated in the Finance Act 2001.

Section 52 amends section 6 of the Roads Act 1920 (as amended by section 131 of the Finance Act 1992) by deleting the requirement to present, at the time of first licensing of a vehicle, a vehicle registration certificate or other evidence as the Ministers for Finance or Environment, Heritage and Local Government require, as proof that a vehicle has been registered by the Revenue Commissioners. This amendment arises because of the impending introduction of a combined registration/licensing certificate whereafter an electronic transfer of registration data from Revenue to the licensing authority will be evidence that a vehicle has been registered.

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

Section 53 provides for the

1) removal of the authority of the Revenue Commissioners to prescribe the form and contents of vehicle registration certificates. The registration certificate will be replaced by a combined registration/licensing certificate which is prescribed by EC Directive and will be issued by the Department of the Environment, Heritage and Local Government. This amendment will have effect from a date to be specified by Commencement Order.

2) deletion of references to the vehicle registration tax repayment scheme for demonstration vehicles which are no longer required. The scheme was repealed by section 104 of the Finance Act 2003 (No. 3 of 2003).

PART 3

Value-Added Tax

Section 54 is a definitions section.

Section 55 amends section 1 of the VAT Act 1972 which deals with interpretation. This section amends the definition of 'taxable dealer' in relation to the supplies of natural gas and electricity by providing that taxable dealer has the meaning assigned to it in section 3 of the VAT Act. The amendment is part of a package of measures transposing into national law EU Council Directive 2003/92/EC of 7 October, 2003, amending Directive 77/388/EEC as regards the rules on the place of supply of gas and electricity. The Directive provides for a new framework for the taxation of cross-frontier supplies of gas and electricity.

This section has effect from 1 January 2005.

Section 56 makes two amendments to section 3 of the VAT Act, 1972 which deals with the supply of goods. The amendments include the main part of transposing EU Council Directive 2003/92/EC (the gas and electricity Directive) into national law.

In the first amendment, paragraph (*a*) inserts new paragraphs (*e*) and (*f*) into subsection (6). Paragraph (*e*) provides that the supply of natural gas or electricity to a taxable dealer will be taxed where the taxable dealer has his or her business. Paragraph (*f*) provides that in the case of the supply of natural gas or electricity to a customer other than a taxable dealer, the place of taxation will be the place where the customer uses and consumes it. Effectively, this will be the place where the meter is located. If the natural gas or electricity is not fully consumed by the customer, he or she is nevertheless deemed, for VAT purposes, to have consumed it.

As regards the second amendment, paragraph (*b*) inserts a new subsection (6A) into section 3 of the VAT Act. The amendment defines a ''taxable dealer'' as a person whose principal activity in respect of purchases of natural gas and electricity is reselling them.

This section has effect from 1 January 2005.

Section 57 amends section 4 of the VAT Act which deals with special provisions in relation to the supply of immovable goods. The amendment confirms the Budget Financial Resolution No. 2 of 3 December 2003 which clarified existing law so as to deal with an unacceptable interpretation of the VAT legislation. Developers were excluding the site value from the vatable amount on the sale of a new house or apartment. This section has effect from 4 December 2003.

Section 58 makes two amendments to section 8 of the VAT Act which deals with taxable persons.

Paragraph (*a*) is a technical amendment.

Paragraph (*b*) provides that certain recipients of supplies of natural gas or electricity are deemed to be taxable persons and liable to account for the VAT on receipt of those supplies when they are supplied to them by a person not established in the State.

This section has effect from 1 January 2005.

Section 59 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 4.3 per cent to 4.4 per cent on the supply of livestock, live greyhounds and the hire of horses.

The section has effect from 1 January 2004.

Section 60 amends section 12 of the VAT Act which deals with deduction of tax borne or paid. It inserts two new subparagraphs, (*va*) and (*vb*), into Section 12(1).

Subparagraph (*va*) provides for VAT deductibility in circumstances where the provisions of subsection 8(1A)(*f*) of the VAT Act 1972 apply. Subsection 8(1A)(*f*) imposes a reverse charge on certain recipients of goods installed or assembled in the State by suppliers not established in the State.

Subparagraph (*vb*) provides that recipients of natural gas or electricity supplies referred to in section 8(1A)(*g*) are entitled to obtain VAT deductibility when they supply these products onwards in the course or furtherance of business. This is part of the package of measures implementing EU Council Directive 2003/92/EC.

Subparagraph (*vb*) has effect from 1 January 2005.

Section 61 amends section 12A of the VAT Act which deals with special provisions for tax invoiced by flat-rate farmers. It confirms the Budget adjustment in the farmers' flat-rate addition from 4.3 per cent to 4.4 per cent.

The section has effect from 1 January 2004.

Section 62 makes several amendments to section 15B of the VAT Act which deals with goods in transit and provides for the application of transitional VAT measures between each of the accession countries and Ireland from 1 May 2004.

Paragraphs (*a*) and (*b*) provide that VAT at the point of entry applies after 1 May 2004 to goods from the new accession countries which are placed under a temporary importation arrangement and not removed before 1 May 2004.

Paragraph (*c*) is a technical amendment.

Paragraph (*d*) inserts a new subsection (5A) into section 15B of the VAT Act to provide that VAT at the point of entry does not apply to means of transport whose first use was before 1 May 1996 and are entering the State from the accession countries on or after 1 May 2004.

Paragraph (*e*) defines ‘‘new Member State’’ and ‘‘date of accession’’.

Section 63 amends section 17 of the VAT Act which deals with invoices. It provides that where a supplier in the State supplies goods or services to a customer in another Member State in a situation where the customer is liable for the VAT under the Sixth Directive, then that supplier must issue a VAT invoice.

Section 64 amends the First Schedule to the VAT Act which deals with exempted activities.

Paragraph (*a*)(i) extends the meaning of management of an undertaking to include the functions of collective portfolio management where those functions are supplied by the person with responsibility for the provision of that function.

Paragraph (*a*)(ii) is a technical amendment.

Paragraph (*a*)(iii) exempts the management of an undertaking which is a qualifying company for the purposes of section 110 of the Taxes Consolidation Act 1997.

Paragraph (*b*) is a technical amendment.

Paragraph (*c*) inserts a new paragraph (xxvi). It exempts the importation of natural gas or electricity in order to prevent double taxation because of the changes arising as a result of the gas and electricity Directive.

Paragraphs (*b*) and (*c*) have effect from 1 January 2005.

Section 65 amends the Fourth Schedule to the VAT Act which deals with services that are taxed where received.

Paragraph (*a*) expands the list of services to include the provision of services consisting of access to and transmission or transport through gas and electricity distribution networks and other directly linked services. These are now taxable in the State when received in the State.

Paragraph (*b*) extends the Fourth Schedule place of supply rules in relation to fund management functions.

Paragraph (*a*) has effect from 1 January 2005.

PART 4

Stamp Duties

Section 66 is an interpretation section

Section 67 amends section 73 of the Stamp Duties Consolidation Act 1999 to provide that an operator-instruction in the Crest electronic system for transfer of securities, which instruction effects the transfer of rights to securities in a quoted company by way of a renunciation of those rights under a letter of allotment, is exempt from stamp duty. This section applies to instruments executed on or after 1 March 2003.

Section 68 amends section 81 of the Stamp Duties Consolidation Act 1999 which exempts transfers of land to young trained farmers from stamp duty. This section limits the application of section 81 to instruments executed before the date of passing of the Finance Act 2004 (see *Section 69* below).

Section 69 inserts a new section 81A and Schedule 2A into the Stamp Duties Consolidation Act 1999 to exempt transfers of land to young trained farmers from stamp duty. This new section replaces the existing section 81 and provides for an updated list of educational qualifications and certain changes in relation to the standards of those qualifications which must be attained in order to qualify for the exemption. Section 81A also contains transitional arrangements which enable the educational qualifications held before the passing of the Finance Act 2004, for the purposes of section 81, to be treated as educational qualifications held for the purposes of the new section, as well as providing for individuals who are restricted in their learning capacity for various reasons. Section 81A applies to instruments executed on or after the date of passing of the Finance Act 2004 and on or before 31 December 2005.

Section 70 amends section 91 of the Stamp Duties Consolidation Act 1999 which provides for an exemption from stamp duty for an owner occupier of a new house or apartment in respect of which a valid floor area certificate has been issued by the Minister for the Environment, Heritage and Local Government. This section limits the application of section 91 to instruments executed before 1 April 2004 (see *Section 71* below).

Section 71 inserts a new section 91A into the Stamp Duties Consolidation Act 1999 which provides for an exemption from stamp duty for an owner occupier of a new house or apartment which is within the total floor area prescribed in the section. In order for the exemption to apply, there must be a statement inserted in the instrument of transfer certifying, inter alia, that at the date of execution of the instrument, there is in existence a valid floor area compliance certificate issued by the Minister for the Environment, Heritage and Local Government. This certificate must certify that the total floor area of the house or apartment is not greater than 125 square metres and not less than 38 square metres and that the house or apartment complies with certain conditions in relation to standards of construction of houses and apartments and the provision of water, sewerage and other services in such houses and apartments. The Minister for the Environment, Heritage and Local Government will make regulations in relation to how such houses and apartments are to be measured and also in relation to the conditions in respect of the standards referred to above.

A person who applies for a floor area compliance certificate from that Minister must be registered for VAT and must be the holder of a current C2 certificate or a current tax clearance certificate. In most other respects section 91A mirrors the existing section 91 of the Stamp Duties Consolidation Act 1999. Section 91A also contains transitional arrangements which enable valid floor area certificates held before 1 April 2004, by reference to section 91 of the Stamp Duties Consolidation Act 1999, to be treated as valid floor area compliance certificates under the new section. Section 91A applies to instruments executed on or after 1 April 2004.

Section 72 amends section 92 of the Stamp Duties Consolidation Act 1999 which provides relief from stamp duty for the owner occupier of a new house or apartment which does not have a floor area certificate. The change being made to section 92 requires that, in order for the relief to apply, there must be a statement inserted in the instrument of transfer certifying, inter alia, that at the date of execution of the instrument, there is in existence a certificate signed by a person or class of persons (to be set out in regulations to be made by the Minister for the Environment, Heritage and Local Government) stating that the total floor area of the house or apartment exceeds 125 square metres. The furnishing of an incorrect statement in an instrument will be regarded as a Revenue offence.

This section applies to instruments executed on or after 1 July 2004, other than such instruments executed solely in pursuance of binding contracts entered into before 1 April 2004.

Section 73 replaces the current section 101 of the Stamp Duties Consolidation Act 1999 which provided for a stamp duty exemption for certain international trademarks. The new section provides for an exemption from stamp duty on the sale, transfer or other disposition of intellectual property as defined. Intellectual property includes any patent, trademark, copyright, registered design, design right, invention, domain name, supplementary protection certificate or plant breeders' rights. The new section is subject to a Commencement Order to be made by the Minister for Finance following clearance with the European Commission from a State aid perspective.

PART 5

Capital Acquisitions Tax

Section 74 is an interpretation section.

Section 75 amends section 2(5) of the Capital Acquisitions Tax Consolidation Act 2003 which deals with the relationship of adopted children to other persons. The words ‘‘in lawful wedlock’’ are deleted in the phrase ‘‘if such child had been born to the adoptor or adoptors in lawful wedlock’’. Those words are redundant in view of the provisions of section 3 of the Status of Children Act 1987, which provides that the relationship of any person to his or her father or mother (or either of them) shall be determined irrespective of whether his or her father or mother are or have been married to each other.

Section 76 amends section 93(4) of the Capital Acquisitions Tax Consolidation Act 2003 by providing that a gift or inheritance of shares in a company whose business consists wholly or mainly of holding shares in one or more trading companies controlled by the donee or successor within the meaning of section 27 of the Capital Acquisitions Tax Consolidation Act 2003 can qualify for business relief. Up to now, only shares in a ‘‘holding company’’ within the meaning of section 155 of the Companies Act 1963 whose business consists wholly or mainly of holding shares in one or more trading companies could qualify for business relief.

Section 77 amends section 106 of the Capital Acquisitions Tax Consolidation Act 2003, which enables the Government to make arrangements for double taxation relief in respect of gift tax or inheritance tax, or taxes of a similar character, imposed in another country. This amendment provides that the force of law be given to any arrangements entered into by the Government to exchange information with another country for the prevention and detection of evasion of gift tax or inheritance tax, or taxes of a similar character, imposed in that other country.

PART 6

Miscellaneous

Section 78 contains a definition of "Principal Act", i.e. the Taxes Consolidation Act 1997, for the purposes of Part 6 of the Bill which contains miscellaneous provisions.

Section 79 amends the provisions of section 28 of the Finance Act 1931, section 55 of the Capital Acquisitions Tax Act 1976 and section 77 of the Capital Acquisitions Tax Consolidation Act 2003. Sections 28 and 55 exempted certain objects of national, scientific, historic and artistic interest from death duties and capital acquisitions tax, respectively. Section 77, which incorporates section 55, grants an exemption from gift tax and inheritance tax in respect of such objects.

The death duties exemption is clawed back in the event of a subsequent sale of such objects unless the sale is to one of the qualifying bodies referred to in section 28. A withdrawal of the exemption from gift tax or inheritance tax applies if the objects are subsequently sold within 6 years of the valuation date of the gift or inheritance. The exemption is not withdrawn if the objects are sold within the relevant period to one of the qualifying bodies referred to in sections 55 and 77. *Section 79* includes the Commissioners of Public Works in Ireland as one of the qualifying bodies specified in those sections. It applies to sales on or after 1 August 1994.

Section 80 amends section 912A of the Taxes Consolidation Act 1997, which enables Revenue to use its powers to obtain information where it is required for the purposes of a tax liability in a territory with which Ireland has a Double Tax Treaty or a Tax Information Exchange Agreement. At present, the section is limited to income tax, corporation tax and capital gains tax. This section extends the use of such powers to include gift tax and inheritance tax, or taxes of a similar character, imposed in other such territories.

Section 81 amends section 644A and section 648 of the Taxes Consolidation Act 1997 to take account of the repeal of the Local Government (Planning and Development) Act, 1963 by the Planning and Development Act 2000. This amendment provides that any previous references to the Local Government (Planning and Development) Act, 1963 now refer, where an update is necessary, to either—

(*a*) the Planning and Development Act 2000, or

(*b*) the Local Government (Planning and Development) Acts 1963 to 1999 or the Planning and Development Act 2000 (if it is necessary to ensure continuity of activity commenced under an Act which has now been repealed e.g. planning permission granted which has not ceased to exist).

The provisions in this section are deemed to have come into effect on either 21 January 2002 or 11 March 2002, being the dates on which the relevant sections of the Planning and Development Act 2000 came into operation.

Section 82 amends section 962 of the Taxes Consolidation Act 1997, which is concerned with the recovery of outstanding tax liabilities by a sheriff or county registrar in cases of default in the payment of income tax. Under section 962, the Collector-General may issue a certificate to the sheriff or county registrar certifying the amount in default and the person from whom that amount is due. This section provides that such certification may in future be issued in an electronic format.

Section 83 amends section 1003 of the Taxes Consolidation Act 1997 which provides for tax relief — a tax credit for full value — in respect of donations of heritage items to ''approved'' State institutions. To qualify for relief, an item (or collection of items) has, on application by a potential donor, to be determined by a selection committee to be a cultural item or collection suitable for acquisition by an approved body. The selection committee is composed of representatives of the main approved bodies. The committee may not make a determination in respect of an item (or collection of items) where the market value is less than €100,000 or where the value or aggregate value of determinations in a calendar year exceeds €6m.

The changes now being made to the section are:

(*a*) the minimum value of an item/collection subject to determination is being increased from €100,000 to €150,000, with the added requirement that, in the case of a collection, at least one item in the collection must have a minimum value of €50,000.

(*b*) the composition of the selection committee is being changed to provide for an officer nominated by the Minister for Arts, Sport and Tourism to act as Chairperson of the Committee and for changes in the titles of the members representing the Heritage Council and the Irish Museum of Modern Art.

(*c*) in future, the member of the selection committee representing an approved body to which it is intended that an item should be donated may not participate in the making of the actual decision on the application. The member may, however, participate in any discussion of the application by the committee in advance of the decision being made.

(*d*) in considering an application from a potential donor, the selection committee will be required to seek the opinion in writing of

(i) the approved body concerned and

(ii) the Heritage Council, the Arts Council or such other person or body as it deems appropriate.

It does not, however, have to accept the opinions — the requirement is to seek them.

(*e*) In future, where an application is in respect of a collection of items, the selection committee may not make a determination in respect of the collection unless it is satisfied that it could also, if required, make a determination in respect of at least one individual item in the collection. It will not be necessary, however, for the committee to make a formal determination in respect of that individual item.

The changes apply in respect of determinations made by the selection committee on or after the date of passing of the Finance Act 2004.

Section 84 inserts a new section into Chapter 4 (revenue powers) of Part 38 of the Taxes Consolidation Act 1997. This new section, section 908B, empowers the Revenue Commissioners to make an application to the High Court to seek an order requiring a financial institution to supply documents and information held by a non-resident entity over which it has control.

Section 85 amends section 908A, which section allows the Revenue Commissioners to seek an order of the District Court authorising the inspection of, and the taking of extracts from, records of a financial institution for the purposes of investigating a revenue offence. While an amendment made to section 908A in Finance Act 2000 also permitted the Revenue Commissioners to inspect and take copies of any documentation associated with these records, this provision was inadvertently removed when a further amendment was made to the section in Finance Act 2002. This provision is now being restored.

Section 86 and *Schedule 3* provides for amendments to the Taxes Consolidation Act 1997, the Capital Acquisitions Tax Consolidation Act 2003, the Stamp Duties Consolidation Act 1999 and Finance Act 2003. The amendments for the most part involve the correction (through the deletion, amendment or insertion of text) of incorrect references and minor drafting errors.

- *Paragraph 1* contains amendments to the Taxes Consolidation Act 1997. The main purpose of the amendments in paragraph 1 is to confirm that the various provisions in the Taxes Consolidation Act, 1997 apply in relation to jurisdictions with which Ireland has a double taxation treaty.

- In addition, *paragraph 1(z)* inserts a termination date of 31 December 2010 into section 847 of the Taxes Consolidation Act 1997. That section provides exemption in respect of certain foreign branch income and gains.

- *Paragraph 2* contains amendments to the Capital Acquisitions Tax Consolidation Act 2003.

- *Paragraph 3* contains amendments to the Stamp Duties Consolidation Act 1999.

- *Paragraph 4* contains amendments to the Finance Act 2003.

- *Paragraph 5* contains the commencement provisions relating to paragraphs 1 to 4 inclusive.

Section 87 and *Schedule 4* confirm the transposition into Irish law of the EU Savings Directive (Council Directive 2003/48/EC of 3 June 2003) on the taxation of savings income in the form of interest payments. The European Communities (Taxation of Savings Income in the Form of Interest Payments) Regulations 2003 (S.I. No. 717 of 2003) which originally transposed the Directive into Irish law are, as a consequence of the confirmation of the transposition by this section and Schedule 4, revoked.

The Savings Directive and the implementing legislation only apply to individuals and certain structures (known as ‘‘residual entities’’) used by individuals to secure savings income. It does not apply to savings income arising to companies. The aim of the Directive is to ensure that savings income in the form of interest payments made in one EU Member State to an individual resident for tax purposes in another Member State are taxed in accordance with the laws of the latter Member State.

Section 87 gives effect to the Directive by substituting a new Chapter 3A of Part 38 of the Taxes Consolidation Act 1997, the text of which is set out in *Schedule 4*. This Chapter places an obligation on paying agents (broadly, any person who either makes or secures an interest payment for the immediate benefit of a beneficial owner — see sections 898C and 898D) to—

- establish the identity (consisting of name, address and tax identification number or, if there is no tax identification number, the date and place of birth) of all individuals to whom it makes, or for whom it secures, interest payments (sections 898F and 898G);

- establish the residence (consisting of the country of residence of such individuals based on where the individual has his or her permanent address) of all such individuals (section 898F and 898G); and

- report to the Revenue Commissioners the identity and residence of all such individuals who are residents of other EU Member States in respect of interest payments made on or after 1 January 2005 (the return is to be made by the end of March in each tax year beginning with the tax year 2006) together with details of the interest payments made to each such individual (section 898H).

Where a paying agent makes or secures an interest payment for a ''residual entity'' (defined in section 898D), the paying agent will be obliged to report to the Revenue Commissioners details of the interest payments it makes or secures for the residual entity for the tax year beginning with the tax year 2005 (section 898I).

For the purposes of the Directive, an interest payment is defined on a very broad basis and includes items of income which would not generally be regarded as interest. Interest payments are defined in section 898E and include:

- interest paid on interest bearing accounts;

- interest on government and corporate bonds, debentures and similar securities;

- prizes paid in respect of any security;

- accrued and capitalised interest realised on the sale, refund or redemption of a security;

- premiums and discounts on securities;

- distributions deriving from interest payments made by an Undertaking for Collective Investment in Transferable Securities (UCITS) and certain other undertakings for collective investment which invest directly or indirectly in products which give rise to the interest payments described above;

- income realised on the sale, refund or redemption of shares or units in a UCITS and certain other vehicles for collective investment where more than 40% of the assets or UCITS or other vehicle are invested directly or indirectly in interest producing securities.

In the latter two cases, a Member State may opt not to regard the distributions or income as an interest payment in the case of such undertakings established in the Member State where the undertakings concerned invest less than 15% of their assets in securities which generate interest payments (it is proposed to exercise these options — see section 898E(5)).

Under the Directive, Member States are obliged to exchange information on interest payments made by paying agents established in one State to beneficial owners resident in another Member State. However, some Member States are entitled to apply a withholding tax to interest payments to individuals resident in another Member State instead of exchanging information. This withholding tax will apply for a transitional period before the Member States concerned move to a full exchange of information regime. The countries concerned are Austria, Belgium and Luxembourg. While tax is so withheld from an interest payment which is beneficially owned by an Irish resident, that individual will get a credit for the tax withheld against his or her Irish tax liability. If the individual is exempt from tax or has a liability less than the amount deducted, he or she will be refunded the tax withheld or the excess tax withheld (section 898M).

The Directive will not be applied unless Member States are satisfied that the necessary agreements or arrangements are in place to allow the same measures to be applied in the dependent and associated territories of the U.K. and the Netherlands. These measures may be either the withholding tax or the automatic exchange of information. At this stage it is not fully clear which option these territories will introduce but in either event Ireland will, as a reciprocal measure under these arrangements, provide these territories with information in respect of interest payments made by paying agents established in Ireland to residents of these territories. Accordingly, section 898P provides for the application of the legislation implementing the Savings Directive to these agreements as they are made with the territories concerned.

Sections 898N and 898O provide for the audit by the Revenue Commissioners of the procedures put in place by paying agents to comply with their obligations and of the returns made to the Revenue Commissioners and for penalties for non-compliance. The provisions for penalties will only apply to an act or omission committed on or after the date of the passing of the Finance Act 2004 (section 898R(2)).

Finally, the Chapter comes into effect from 1 January 2004 as respects the obligations of paying agents to establish the identity and residence of beneficial owners (section 898R(1)).

The obligation on paying agents to report details of interest payments to the Revenue Commissioners and for the Revenue Commissioners to exchange this information with other Member States and other territories will only come into force following a commencement order to be made by the Minister for Finance. The actual exchange of information cannot come into operation earlier than 1 January 2005 (this reflects the date set out in the Directive).

Section 88 gives legal effect to the carry over from one year to another of any unspent Exchequer capital allocations, up to a maximum of 10 per cent of the capital allocation by Vote under the rolling 5-year multi-annual envelopes for capital expenditure announced in the 2004 Budget.

Currently, under the Exchequer and Audit Departments Act 1866, any unspent moneys at the end of the year must be surrendered to the Central Fund. This section suspends the requirement to surrender unspent capital at the end of the year to allow for the unspent capital, up to a limit of 10% of voted capital, to be spent for capital purposes in the following year. It enables the Minister for Finance, subject to Dáil approval, to determine the amounts of carryover involved and to provide for their expenditure in the following year. It also provides that any carryover amounts provided for under these arrangements, which are not spent in the following year, will be surrendered to the Central Fund.

Section 89 relates to the Capital Services Redemption Account. The section provides for the payment of a new annuity for 30 years into the Capital Services Redemption Account in respect of estimated borrowing in 2004 for Voted Capital Services. It reduces to zero the annuity provided for in the Finance Act 2003 because no borrowing was in fact required in respect of Voted Capital Services in 2003.

Section 90 deals with the "care and management" of taxes and duties.

Section 91 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais
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