AN BILLE AIRGEADAIS 2005
FINANCE BILL 2005

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 the ''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 sets out the standard rate bands which are to apply for the year 2005 and subsequent years. The section provides for increases in the bands as follows:

	Tax Year 2004	Tax year 2005 and subsequent years
	€	€
Single person	28,000	29,400
Widowed / single parent	32,000	33,400
Married couple		
one earner	37,000	38,400
two earners	56,000	58,800

In the case of married couples with two incomes the standard rate band is transferable between them up to the extent of the band applicable to a one income married couple i.e. €38,400. The second spouse may avail of the balance of the €58,800 band, that is, €20,400.

Section 3 and *Schedule 1* provide for increases in personal reliefs announced in the Budget for the year 2005 and subsequent years as follows:—

Relief	Tax credit for the year 2004	Tax credit for the year 2005 and subsequent years
	€	€
Basic personal tax credit		
married person	3,040	3,160
widowed person bereaved in year of assessment	3,040	3,160
single person	1,520	1,580
Additional tax credit for certain widowed persons	300	400
One-parent family tax credit	1,520	1,580
Widowed parent tax credit		
1st year	2,600	2,800
2nd year	2,100	2,300
3rd year	1,600	1,800
4th year	1,100	1,300
5th year	600	800
Incapacitated child tax credit	500	1,000
Blind person's tax credit		
blind person	800	1,000
both spouses blind	1,600	2,000
Employee tax credit	1,040	1,270

The schedule includes specific legislation necessary to give effect to the changes in each of the relevant sections of the Taxes Consolidation Act 1997.

Section 4 increases, for the year 2005 and subsequent years, the income tax exemption limits for those aged 65 years and over. The new limits will be €16,500 for single people and €33,000 for married couples.

Section 5 continues until 31 December 2006 the special exemption from taxation of the unemployment benefit paid to systematic short-time workers.

Section 6 increases the relief for individuals, for 2005 and subsequent years, for rent paid for private rented accommodation which is their sole or main residence. The rent relief allowance for persons under 55 years will increase to €3,000 (married persons) and €1,500 (single person). The relief for persons aged 55 years and over will increase to €6,000 (married persons) and €3,000 (single person). Widowed persons will continue to receive the same relief as married persons.

Section 7 provides that, for the purpose of a charge to tax in respect of benefit-in-kind, the method used for calculating the taxable value of the use of lands will be the same as that for premises i.e. the rent it might reasonably be expected to obtain on a letting from year to year. Currently, its valuation would be determined by reference to 5% of its market value.

Section 8 extends the benefit-in-kind tax exemption for employer-provided travel passes to include passes for travel on commuter ferries which operate within the State.

Section 9 exempts from income tax, payments made by the Health Service Executive to foster parents in respect of the care of foster children. In addition, the section exempts certain discretionary payments by the Health Service Executive to carers relating to the care of former foster children (those aged 18 or over) who suffer from a disability or until such persons reach 21 or complete their full-time education course. Finally, corresponding payments relating to foster children made in accordance with the law of another EU member state are also being exempted under the section.

Section 10 provides for the Minister for Finance, in consultation with the Minister for Foreign Affairs or a relevant other Minister, to certify as exempt from taxation certain allowances which provide compensation to officers of the State for the extra costs arising in being obliged to live outside the State and perform their duties of employment. This is in line with international practice.

Section 11 provides that, in the case of controlling directors of a company (that is those who on their own or with others control more than 15% of the ordinary share capital of a company) a credit for tax deducted from emoluments paid to them by the company will not be given unless there is documentary evidence that the tax has been remitted to the Collector-General. Any tax remitted by a company will in the first instance be treated as deducted from other employees and any tax remitted in respect of the directors referred to here will be treated as deducted from each director in the same proportion as the emoluments paid to each director bears to the aggregate amount paid to all such directors.

Section 12 provides that an individual who is carrying on a trade or profession (whether in or outside the State), or who is in receipt of rental income from property (including property outside the State), will be a chargeable person for Self- Assessment purposes, notwithstanding that his or her income from such source may be covered in whole or in part by losses, deductions or reliefs.

Section 13 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 scheme is being amended to provide for a statutory exemption in relation to the operation of Professional Services Withholding Tax on relevant payments by accountable persons to accountable persons who are exempt from tax or who are exempt charities.

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 ten new bodies, the removal of one body and a change of name in relation to two other bodies.

Section 14 amends section 128 of the Taxes Consolidation Act 1997 which imposes an income tax charge on gains realised by directors or employees from the exercise of rights granted to them, by reason of their office or employment, to acquire shares or other assets in a company. The amendment extends the charge to cases where the recipient of the rights was not resident in the State when the rights were granted.

Share options are the rights that are mainly covered by section 128. The entitlement of countries to tax gains from share options of

internationally mobile employees and directors under double taxation agreements was the subject of a recent report approved by the Committee of Fiscal Affairs of the OECD. This amendment will allow Ireland to tax gains from share options in line with the taxation limits imposed under Ireland's double taxation agreements and in line with OECD principles.

The result of the amendment, coupled with the acceptance of the OECD recommendation of a common approach in applying double taxation treaties in relation to the taxation of gains from share options, will be the elimination of double taxation that could otherwise arise and means that the income tax charge that arises on the exercise of a share option will be in proportion to the period of employment giving rise to the option which was exercised in Ireland.

Section 15 inserts a new section, section 81A, into the Taxes Consolidation Act 1997. The new section seeks to align the timing of allowable deductions for employers in respect of contributions to employee benefit trusts with the time the benefit from those contributions becomes taxable in the hands of the employees. The provision does not apply to employers' contributions to approved employee share schemes, approved pension arrangements or certain accident benefit schemes.

Section 16 amends section 130 of the Taxes Consolidation Act 1997 which is concerned with the classification of certain payments as distributions. Certain payments made by Employee Share Ownership Trusts (ESOTs) to beneficiaries will now be treated as distributions, subject to the deduction of dividend withholding tax at source, where there is an associated Approved Profit Sharing Scheme.

Section 17 makes changes in the provisions dealing with the taxation of lump sum payments made in relation to the termination of the holding of an office or employment.

The number of previous tax years taken into account in determining the average tax rate which applies in the formula for calculation of Top Slicing Relief is being reduced from five to three years. A requirement is also being introduced to report to the Revenue Commissioners any payment made on death, or on account of injury or disability.

Section 18 inserts a new Chapter 7 into Part 8 of the Taxes Consolidation Act 1997. The new provision deals with the tax rate applicable to certain deposit interest received by individuals who are taxable in Ireland. It provides that deposit interest received by such individuals from lending institutions (banks, building societies, etc.) in other EU countries will be subject to tax at the same rate as deposit interest received by individuals from lending institutions in Ireland, provided that the tax on such interest is discharged by the return filing date for the year concerned.

This means that, where the liability on such interest is discharged by the return date, individuals who are taxable in Ireland and who receive interest income from other EU countries will, for the tax year 2005 and subsequent years, be taxed at the standard rate of income tax on the income instead of the marginal rate of income tax as heretofore.

Section 19 amends Part 30 of the Taxes Consolidation Act 1997, which deals with the tax treatment of Revenue approved occupational pension schemes, retirement annuity contracts and PRSAs,

by providing for tax relief for contributions to EU pension plans in certain circumstances.

The section allows for the approval by the Revenue Commissioners of occupational pension schemes provided to Irish employers/employees by pension providers based in other EU Member States (i.e. ''overseas pension scheme''), which are structured other than on an irrevocable trust basis, so long as the standard approval conditions are met. The overseas pension scheme must be operated or managed by an Institution for Occupational Retirement Provision, within the meaning of the EU Pensions Directive, and must be established in a Member State of the European Communities which has implemented the Directive in its national law.

The section also removes the requirement that annuity contract providers must be established in the State and specifies that, where a provider is not so established, it must be an insurance undertaking authorised to transact such business in the State under the EU Life Directive.

It makes optional the present requirement for the administrator of an occupational pension scheme, an annuity provider, a qualifying fund manager (in relation to an approved retirement fund) and a PRSA administrator, who are not established in the State, to appoint a person resident in the State to discharge all duties imposed under the legislation. However, where that option is not exercised, those persons must enter into a contract with the Revenue Commissioners in relation to the discharge of those duties. The duties include the application of PAYE to pension payments or other payments or distributions made by those persons to Irish residents.

It allows the Revenue Commissioners to seek from any annuity provider, qualifying fund manager or PRSA administrator such information and particulars as they may reasonably require in relation to an approved annuity contract, approved retirement fund or a personal retirement savings account, including information relating to payments or distributions from those products.

All of the above changes will have effect as on and from 1 January 2005.

The section also introduces a new Chapter 2B into the Taxes Consolidation Act 1997, which provides for a statutory scheme of relief for contributions paid by a migrant worker who comes to the State and who wishes to continue to contribute to a pre-existing ''overseas pension plan'' concluded with a pension provider in another EU Member State. To qualify for the relief, certain conditions and information requirements must be met as set out in the section.

The section provides that, where an Institution for Occupational Retirement Provision (IORP) established in the State is authorised and approved by the ''competent authority'' in the State (under the EU Pensions Directive) to accept contributions from an undertaking located in another EU Member State in respect of a retirement benefits scheme established under irrevocable trusts, then certain tax exemptions will apply in relation to the scheme. The term ''undertaking'' is defined broadly in the Directive and in the section, and includes any undertaking or other body, which acts as an employer, or as an association of, or representative body for, members of a particular trade or profession. Since the Pensions Directive has yet to be transposed into Irish law, these provisions will apply from a date to be specified in a Commencement Order.

Finally, the section makes it clear that an individual who exercises an option to have the value of an annuity paid to him or herself or into an approved retirement fund, must actually be in receipt of ''specified income'' of €12,700, as opposed to having a future entitlement to that income, if the requirement for part of the value of the annuity to be transferred to an approved minimum retirement fund or applied in the purchase of an annuity is to be avoided. The change takes effect in regard to the exercise of such an option on or after 3 February 2005.

Chapter 3

PAYE: Electronic and Telephone Communications

Chapter 3 contains enabling legislation to facilitate the extension to PAYE taxpayers of the Revenue On-Line Service (ROS) which will enable them to file returns electronically and to avail of a range of electronic self-service options in relation to their tax affairs. In addition, in the context of an enhanced telephony service, a limited number of the self-service options is also being made available to PAYE taxpayers through an automated telephone system.

PAYE taxpayers using the extended ROS system will have the following self-service options made available to them:

- amending personal details e.g. change of address;
- amending tax credit details;
- claiming additional tax credits;
- re-allocating tax credits between employments;
- re-allocating tax credits between spouses;
- claiming repayments and making payments;
- requesting balancing statements;
- requesting forms and leaflets.

An automated telephonic self-service facility will enable PAYE taxpayers to order forms and leaflets and claim low risk tax credits.

Both the new electronic and telephone self-service will be available to PAYE taxpayers on a secure basis, 24 hours a day, 7 days a week.

The legislation also provides that the Revenue Commissioners may make automatic repayments of tax to PAYE taxpayers where they are satisfied on the basis of the information available to them that tax has been overpaid.

Section 20 amends Chapter 6 of Part 38 of the Taxes Consolidation Act which provides for the electronic transmission of statutory returns. The amendments are designed to allow of the possibility of PAYE taxpayers using an identification system other than a digital signature.

Section 21 provides the facility, including an automated facility, for PAYE taxpayers to make claims for reliefs, which are to be used in the operation of the PAYE system or which relates to the repayment

of tax deducted under PAYE, by electronic means including telephone. In the case of telephone claims these can be by way of direct contact, touch tone, voice recognition or mobile phone (including text messaging). The treatment of claims will be subject to terms and conditions laid down by the Revenue Commissioners.

Section 22 amends various existing provisions of the Taxes Consolidation Act 1997 touching on claims for relief etc. so as to facilitate the introduction of the proposed new services for PAYE taxpayers. The normal requirement that claims for personal reliefs should be accompanied by a return of income, will, in general, not apply where the claim is in relation to a relief to be used in the operation of PAYE or is in relation to a repayment of tax deducted under PAYE.

The requirement that a claim to repayment of tax must be the subject of a valid claim is being eased in relation to tax deducted under PAYE. In future, the Revenue Commissioners will be able to make automatic repayments of tax deducted under PAYE where they are satisfied on the basis of the information in their possession that tax has been overpaid.

A technical amendment to the definition of ''valid claim'' for the purposes of a repayment of tax is also being made. The change is designed to confirm and put beyond doubt that where a return is treated as a valid claim, any repayment due must arise from an assessment made, or that would have been made, at the time the return was received.

Section 23 inserts a new section 886A in to the Taxes Consolidation Act 1997 to impose, in the same vein as applies to taxpayers in relation to business records, a statutory obligation on taxpayers wishing to make claims to tax reliefs to keep and preserve, for a minimum of 6 years, any supporting documentation. The obligation to keep and preserve documents can be satisfied by retention of the information in them. The Revenue Commissioners will be able to subject any claim to detailed examination within a 4 year period and may call for any necessary documentation (either the originals or photocopies), of which copies or extracts may be made.

Section 24 provides that where a tax inspector, under Regulation 37 of the PAYE Regulations, decides to issue a statement of liability to an employee rather than raising an assessment, the statement is, where the inspector so directs and notifies the employee at the time, to be treated as if it were an assessment. The provisions of the Income Tax Acts relating to appeals against assessments and collection of tax charged in an assessment will also apply to the statement.

Chapter 4

Income Tax, Corporation Tax and Capital Gains Tax

Section 25 makes a number of amendments to section 18 of the Finance Act 2004 which related to the Business Expansion Scheme (BES) and the Seed Capital Scheme (SCS). The provisions in section 18 — principally the extension of these schemes to 31 December 2006, the company limit of €1m together with some other initiatives relating to the operation of the schemes — were made subject to a Commencement Order being signed by the Minister for Finance so as to allow clarification of State aid issues raised by the European Commission.

The Commission subsequently granted State aid approval for the schemes subject to certain amendments being made to them. These amendments were made, on a temporary basis, by way of the European Commission (Income Tax Relief for Investment in Corporate Trades — Business Expansion Scheme and Seed Capital Scheme) Regulations 2004 (S.I. No. 757 of 2004) which were made in late-November 2004. This section now makes the substantive amendments to section 18 of the Finance Act 2004 that are necessary to give effect to the European Commission's decision and these, essentially, repeat the changes that were made in the Regulations.

Section 26 makes a number of changes to section 482 of the Taxes Consolidation Act 1997 which provides tax relief for certain expenditure on significant buildings and gardens. The changes are intended to improve the operation of the relief. In future, it is made clear that the owner or occupants of approved buildings and gardens must advertise the dates and opening hours applicable to the satisfaction of the Revenue. Additionally, authorised officers of the Revenue Commissioners are being given the power to make unannounced visits to the approved buildings and gardens to ensure that the requirement of reasonable access to the property for the public — which is a key condition of the relief — is being met.

Section 27 inserts a new section 657A into Chapter 1 of Part 23 of the Taxes Consolidation Act 1997. The new section applies to individuals who are engaged in the trade of farming in the year of assessment 2005 and who are in receipt of payments under the new EU Single Payment Scheme for farmers and certain terminated FEOGA Scheme payments in 2005. The new provisions do not apply to farmers who are already availing of farm income averaging under section 657.

The new section 657A provides that where these conditions are met and where the individual so opts, any payments received in 2005 under the terminated FEOGA schemes will be disregarded for tax purposes in 2005 and instead be deemed to arise in 3 equal instalments in 2005 and the 2 succeeding years of assessment and taxed accordingly. Should an individual permanently cease farming during that 3 year period, any of these instalment payments which have yet to be taxed will be brought into charge under Case IV of Schedule D for the year of cessation. Other than in a case of cessation, once an individual opts for this instalment arrangement, it cannot be altered during the three year period.

Section 28 amends section 659 of the Taxes Consolidation Act 1997 which is concerned with the scheme of capital allowances for expenditure incurred on the construction of certain farm buildings and structures for the control of pollution. The current writing-down period of 7 years for qualifying expenditure is shortened to 3 years in respect of expenditure incurred after 1 January 2005 and the scheme is extended for a further 2 years until 31 December 2008. The option currently available to front-load capital allowances during the 7 year period is also provided for during the 3 year period.

Section 29 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 2 years from 1 January 2005 until 31 December 2006.

Section 30 amends section 667A 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 2 years from 1 January 2005 until 31 December 2006.The section provides that the extension

to this relief will be commenced by an Order of the Minister for Finance.

Section 31 amends section 843 of the Taxes Consolidation Act 1997 which is concerned with capital allowances for buildings used for third level educational purposes. A necessary condition of availing of the relief provided for in section 843 is that the Minister for Finance must certify that the financing of the project conforms to the conditions set out in paragraphs (*a*) and (*b*) of subsection (4). Currently the Minister for Finance is precluded under subsection (7) from issuing any such certificate after 31 December 2004. This section amends that rule by allowing the Minister to issue a certificate where an application has been received on or before 31 December 2004.

Section 32 amends Chapter 1 of Part 9 of the Taxes Consolidation Act 1997 in relation to the entitlement to capital allowances for buildings and structures which are in use, or are deemed to be in use, for the purposes of the trade of hotel-keeping.

Firstly, the section provides that a building or structure in use for the purposes of the trade of hotel-keeping will not be regarded as an industrial building or structure for capital allowances purposes as respects capital expenditure incurred on or after 3 February 2005, unless it is registered in the register of hotels kept under the Tourist Traffic Acts. This provision is subject to transitional arrangements (involving certain planning conditions being met by 31 December 2004) which maintain the current rules up to 31 July 2006.

Secondly, the section provides that a holiday camp must be registered in the register of holiday camps kept under the Tourist Traffic Acts in order for it to be deemed to be a building or structure in use for the purposes of the trade of hotel-keeping.

Thirdly, as respects capital expenditure incurred on or after 3 February 2005, a guest house or holiday hostel registered in the appropriate register kept under the Tourist Traffic Acts is deemed to be a building or structure in use for the purposes of the trade of hotel-keeping and will qualify for capital allowances at a rate of 4% per annum. This provision does not affect any guest house or holiday hostel which may have already proved an entitlement to capital allowances under current rules.

Finally, for the purposes of EU State Aid rules, the section updates references to the EU Commission's ''Community guidelines on State aid for rescuing and restructuring firms in difficulty'' and its new definition of micro, small and medium-sized enterprises and, in relation to the latter, provides that applicants for Fáilte Ireland certification are now required to operate a self-assessment procedure in this regard.

Section 33 amends section 372AJ of the Taxes Consolidation Act 1997 which deals with the non-application of relief under the Town Renewal Scheme in relation to capital allowances for commercial and industrial buildings in certain circumstances. For the purposes of EU State Aid rules, a reference to the European Commission's new definition of micro, small and medium-sized enterprises is inserted in section 372AJ in addition to the existing reference to the Commission's definition of small and medium-sized enterprises.

Section 34 amends the film relief provisions in section 481 of the Taxes Consolidation Act 1997.

Firstly, in line with the State aid approval by the European Commission for this relief, the section deletes the requirement that 75 per cent of the work on the production of a qualifying film must be carried on in the State.

Secondly, the section amends the Finance Act 2004 condition relating to film activities in certain non-EU territories and provides for the approval by the Revenue Commissioners in limited circumstances of certain financial arrangements involving territories outside the EU with which Ireland does not have a double taxation treaty.

Finally, the section makes a number of technical changes in order to re-insert correct referencing to ''specified percentage'', to clarify that the employment of eligible individuals must be in the State and to provide that subsection (22) of the section, which relates to a change-over in administrative practices, applies from 1 January 2005.

Section 35 amends section 1013 of the Taxes Consolidation Act 1997, which contains restrictions on the use of tax relief for interest, capital allowances and losses by limited partners. The section amends the definition of limited partner in section 1013 to clarify that individuals in partnerships or similar arrangements which are registered under, or governed by, the laws of any territory outside the State are within the definition where these individuals are not involved in the day-to-day management or conduct of the trade involved. The amendment applies in respect of claims for relief made for the income tax year 2005 and subsequent years.

Section 36 amends section 817 of the Taxes Consolidation Act 1997 which deals with recategorising certain capital payments as distributions and so charges them to income tax instead of capital gains tax.

The section refines the provisions relating to the description of arrangements to which section 817 applies.

Firstly, for the purposes of determining whether a person's interest in a business has significantly reduced following a disposal of shares, the interest of connected persons, such as family members, may also be taken into account.

Secondly, the disposal of a holding company by a person, without a significant reduction in their interest in the entire business, will now come within the ambit of section 817.

Thirdly, a person's interest in a company is deemed not to have been significantly reduced following a disposal of shares in that company where any gain realised is wholly or mainly attributable to a prior transfer of value to that company from another company which is controlled by the same person, either directly or in association with persons connected to him or her.

Transactions entered into for bona fide commercial reasons continue to be outside the ambit of section 817.

Section 37 is a technical amendment dealing with certain funds administered by the Courts Service on behalf of Minors and Wards of Court. This amendment will ensure that the beneficiaries of the funds, who are Minors and Wards of Court, will only be subject to the exit tax in respect of any payments made to them out of the funds, but will not inadvertently become subject to exit tax on such funds in situations where no proceeds flow directly to them such as on a change of investment managers on the funds.

Section 38 amends Chapter 5 of Part 26 of the Taxes Consolidation Act 1997, which deals with the taxation of policyholders of life assurance companies in respect of ''new basis business'', which is the regime introduced in the Finance Act 2000. The new system is a gross roll up regime where no tax is charged on investment proceeds during the period of the investment but an exit tax applies at a rate of 23% on the net investment proceeds paid to a policyholder at the end of the investment period. This regime provides for when a chargeable event occurs, provides a method for calculating and taxing gains which may arise from the chargeable event and provides for the return and collection of tax due.

The amendment adds two new chargeable events in section 730C of the Taxes Consolidation Act 1997 and provides for the calculation of the gain and the collection of the tax in respect of these. The events are the ending of an investment period (as defined) or, if there is no such investment period, any transfer of investment monies from one fund to another that happens 5 years or more after the start of the policy, where the transfer is at the discretion of the policyholder. An 'investment period' is a period in which an 'early encashment charge' applies.

Section 39 amends section 747E of the Taxes Consolidation Act 1997, which deals with the disposal of an interest in an offshore fund within the ''gross-roll-up'' regime. Offshore funds within the gross-roll-up regime comprise funds in the European Economic Area (which includes all EU Member States) and in OECD countries with which Ireland has a tax treaty. Under the gross roll up regime, funds may accumulate without the imposition of tax. However, when the funds are taken out, an exit tax is applied (in general, at 20% or 23%) on the amount of the gain. The amendment provides that losses, which arise on the disposal of units in such funds, cannot be offset for tax purposes against any gains of the investor.

Section 40 provides for the tax treatment of an investment vehicle called a Common Contractual Fund (CCF). A CCF is a form of investment fund structure based on a contractual relationship between the participating investors. A limited type of CCF, formed under the EU UCITS regulations, is currently available in Ireland. Legislation to provide for a general CCF, not confined by the UCITS regulations, is expected to be brought forward by the Minister for Enterprise, Trade and Employment later this year. This amendment sets out the taxation regime that will apply to all types of CCFs. Essentially, it provides that all CCFs will be tax transparent, as long as the unit holders are institutional investors and that certain reporting requirements are met.

Paragraph (a) of the section removes the provisions dealing with the existing CCFs, as they are being incorporated into the new section.

Paragraph (b) provides for a new treatment covering both the existing and proposed CCFs, as follows:

- Subsection (1) defines a CCF and covers both the proposed CCF vehicle and the existing UCITS CCF vehicle.

- Subsection (2) provides that a CCF is not chargeable to tax and makes the entities tax transparent. This means that the profits (income and gains) arising or accruing to it are treated as arising or accruing to the unit holders in proportion to the

value of the units they hold, as if such profits did not pass through the hands of the CCF.

- Subsection (3) confines the new provisions to institutional investors — this covers pension funds, life assurance companies and such like.

- Subsection (4) deals with reporting arrangements, and provides that the CCF must make annual electronic returns to the Revenue Commissioners in respect of profits made and benefits accruing to each unit holder.

- Subsection (5) provides that the CCFs will have an exemption from deposit interest retention tax (DIRT), as is the case with other collective investment undertakings.

Section 41 makes a number of changes to the tax regime relating to leasing of machinery and plant. Under that regime, the leasing of machinery or plant is regarded as a separate trade and losses of that trade which arise from surplus capital allowances may not be offset against other income. The changes being made are—

- section 396A of the Taxes Consolidation Act 1997, which provides for the offset of trading losses against trading income, is amended to ensure that that provision cannot be used to avoid the restrictions on the offset of leasing losses.

- the restriction on the offset of leasing losses is being relaxed so that losses incurred in a leasing trade by a company which is a member of a group may be offset against income of a leasing trade carried on by another company which is a member of the same group.

Section 42 amends the rules in relation to encashment tax which applies where certain foreign interest and dividends payments are collected by banks or other paying and collecting agents on behalf of a person. This section provides that a banker will not have a withholding obligation where acting only in the clearing of a cheque and does not act as a collecting agent for the person concerned. The person concerned's liability to tax on the dividend received will not be affected by this change.

Section 43 makes a number of amendments to Chapter 8A of Part 6 of the Taxes Consolidation Act 1997 which deals with dividend withholding tax. The section exempts Personal Retirement Savings Accounts (PRSAs) and exempt unit trusts from dividend withholding tax (DWT). Subject to certain exemptions, DWT is deducted from dividends paid, and other distributions made, by Irish resident companies. The new exemption will align the treatment of PRSAs with that which applies to similar bodies such as pension funds and qualifying managers of approved retirement funds. Exempt unit trusts are Revenue approved charities and pension schemes. Where all the units in the trust are held by capital gains tax exempt persons throughout a year of assessment the gains accruing in that year are not chargeable to capital gains tax. Furthermore, these trusts are not liable to income tax in that year. This section provides that distributions made to such trusts are now to be exempt from DWT. This will avoid such entities having to claim repayment from the Revenue Commissioners of DWT withheld from dividends received from Irish companies.

Corporation Tax

Section 44 provides for the tax implications of the move by companies to the new International Financial Reporting Standards.

All EU companies listed on a stock exchange will, for any period of account commencing on or after 1 January 2005, be required to prepare their consolidated financial statements for the group in accordance with a common set of accounting standards entitled — *International Financial Reporting Standards (IFRS)* instead of the Irish generally accepted accounting principles (GAAP). Individual accounts of companies may be prepared in accordance with IFRS. However, once a company moves to IFRS, it will be required to use IFRS for the future except in exceptional circumstances.

The starting point for calculating taxable trading income of a company is the profit of the company according to its accounts. Where a company opts to prepare its individual company accounts on the basis of IFRS, the section provides that such IFRS accounts will be used as the starting point for the calculation of taxable trading profits.

Subsection (1)(*a*) provides relevant interpretation rules in relation to accounting standards. Subsection (1)(*b*) provides that taxable trading income is to be computed in accordance with generally accepted accounting standards. It also provides for transitional rules which are set out in a new Schedule, 17A, to the Taxes Consolidation Act 1997.

The section also provides for specific treatment for certain items for tax purposes. The principal measures are—

- Subsection (1)(*b*) provides (in a new section 76B) that, where unrealised gains on financial assets and liabilities based on movement in their fair value are taken into account in calculating profits and losses of a company, they will also be taken into account in calculating taxable trading income.

- Subsection (1)(*b*) also provides (in a new section 76C) that, in the unusual event of one company within a group using IFRS while another within the group uses GAAP, any transactions between those companies will have to be accounted for, for tax purposes, by both of the companies concerned on the basis of GAAP if a tax advantage would otherwise arise.

- Subsection (1)(*c*) makes a number of changes to section 81 of the Taxes Consolidation Act 1997 which contains rules concerning tax deductibility of expenses:

  — Share-based consideration given by a company will continue to be an disallowable deduction for tax purposes.

  — interest payable by a company, and expenditure by a company on research and development, will continue to be deductible for tax purposes even though under the new accounting rules the interest or expenditure may be included for accounts purposes in the value of an asset.

- Subsection (1)(*d*) provides that labour costs which are included in the cost of an asset that qualifies for capital allowances will be included in the cost of the assets for capital allowances purposes and will be allowed accordingly.

- Subsection (1)(*e*) provides that expenditure on research and development will continue to qualify for the tax credit for research and development that was introduced in the Finance Act 2004 even though under the new accounting rules it may be included in the cost of an asset for accounting purposes. It also provides that interest will continue not to be taken into account in calculating expenditure on research and development for the purposes of the credit for research and development.

- Subsection (1)(*f*) inserts a new Schedule, 17A, into the Taxes Consolidation Act 1997. The new Schedule contains transitional measures to ensure against double counting, for tax purposes, of income or expenses on the move to IFRS or such income or expenses falling out of the tax system. Similar transitional rules apply in the case of the move to IFRS in the case of taxation of unrealised gains on financial instruments. The profits, losses and expenses that would otherwise fall out of the reckoning will be taxed or allowed as appropriate over a five year period. A transitional measure in the case of bad debts provisions will ensure that there will be no loss of deductibility for tax purposes of any bad debts incurred by a company in future by reason of the accounting changes on the move to IFRS.

Paragraph 1 of the new Schedule contains a definition of ''relevant accounting standards''. This means IFRS or Irish GAAP which is based on published standards that are equivalent to IFRS. This is necessary because of the recent publication of new Financial Reporting Standards within Irish GAAP as part of a process of convergence between Irish GAAP and IFRS.

Paragraph 2 deals with amounts receivable and deductible. It increases taxable income by amounts receivable that, as a result of the change in accounting rules, would otherwise not be taken into account for tax purposes either before or after the move by a company to IFRS. It reduces taxable income by amounts that would, as a result of the move to IFRS, be included in taxable income twice; once before the move to IFRS and once after that move. Similar adjustments are made in the case of expenses. The resulting adjustment is then to be taxed or deducted over a period of 5 years.

Paragraph 3 provides for an adjustment in respect of bad debts provisions. The interaction between existing law and accounting practice at present means that provisions for doubtful debts are divided into specific provisions (which relate to estimations on specific debts) and general provisions. Any adjustment to such provisions is not taken into account for tax purposes to the extent that they relate to general provisions. Under IFRS the manner of calculating a provision for doubtful debts is more specific and adjustments in such provisions which are properly calculated in accordance with the new standards will, in future, be deductible for tax purposes. No adjustment to taxable profits is being made in respect of the restatement of the doubtful debts provision at the point of transition to IFRS. However, in the event that at any time the level of the provision for doubtful debts falls below its level at the point of moving to IFRS, an adjustment to taxable profits will be made at that time to ensure that there is no loss of deductibility for actual bad debts incurred.

Paragraph 4 provides for an adjustment to be made at the point of transition to IFRS in the case of financial instruments. This can arise where a company which was taxable before the move to IFRS on the basis of realised gains on financial instruments will be taxable after the move to IFRS on increases and decreases in the fair value of such instruments in accordance with IFRS. Once a company moves to IFRS, movements in the fair value of such instruments from the value at the point of moving to IFRS will be taken into account for tax purposes. In the absence of any adjustment, the difference between the cost of an instrument acquired before the move to IFRS and its value at the point of moving to IFRS would fall out of account for tax purposes. This paragraph (in subparagraph (1)) ensures that such difference will be taken into account for tax purposes but (under subparagraph (3)) will be spread over a 5 year period. It also provides (in subparagraph (2)) that a loss on the disposal of such an instrument, where within a short period there is a purchase and sale of an instrument of the same class, in the 6 months before the move to IFRS will be spread over 5 years. Finally, it provides (in subparagraph (4)) that, where a financial instrument was taxed prior to a move to IFRS on the basis of movements in value but under IFRS falls to be taxed on a realisation basis, the cost of the instrument, for the purposes of computing taxable profits under IFRS, is to be taken to be its value at the point of change to IFRS.

Section 45 makes three amendments to section 243 of the Taxes Consolidation Act 1997, which provides for relief from corporation tax in respect of certain payments such as annuities, patent royalties, rents, and (to a limited extent) interest, paid by a company. These payments are known as charges on income, and are set against the total profits (i.e. income from all sources and chargeable gains) of the company and not against the particular source of income with which the payment is connected.

The first amendment deals with interest payments which may qualify as a charge. Under the current rules, such payments only qualify if they are payable to lending institutions carrying on a bona fide business *in the State*. The amendment provides that interest payable to a bank, building society, stockbroker or discount house carrying on business in other Member States of the EU will also come within the scope of the section. This will mean that companies who obtain loans from such institutions will not be excluded from the provisions of the section merely because the lender is not in the State. All other conditions in relation to eligibility of the interest as a charge will remain.

The second amendment corrects an anomaly in the wording in section 243(2), which arose following the introduction of additional methods for relieving group losses in recent years. The amendment clarifies that the reference to profits before any deduction for group relief applies only to relief under section 420 of the Taxes Consolidation Act 1997.

The third amendment concerns an inconsistency between section 243 of the Taxes Consolidation Act 1997 and the EU Interest and Royalties Directive. The Interest and Royalties Directive abolishes withholding taxes on certain interest and royalty payments made by a company resident in the State to an associated company resident in another Member State. However, section 243 denies a deduction for certain payments as a charge unless withholding tax is applied to the payments. The unintended result of this is that the payments, which are exempted from withholding tax under the Directive, will not be deductible as a charge. The amendment ensures that deductibility will not be denied by virtue of the Directive.

Section 46 provides for the extension to Swiss companies of provisions equivalent to those in the EU Interest & Royalties Directive. The extension of the benefits of that Directive was agreed as part of an agreement between the EU and Switzerland that provided for measures in Switzerland equivalent to the EU Directive on the Taxation of Savings.

Section 47 provides for the extension to Swiss companies of provisions equivalent to the 1990 EU Parent/Subsidiary Directive. The extension of the benefits of that Directive was agreed as part of an agreement between the EU and Switzerland that provided for measures in Switzerland equivalent to the EU Savings Directive.

Section 48 amends section 448 of the Taxes Consolidation Act 1997, which deals with the calculation of manufacturing relief. The purpose of the amendment is to ensure that the correct amount of relief is given to companies in all cases.

Section 49 amends section 626B of the Taxes Consolidation Act 1997. That section, which was inserted by section 42 of the Finance Act 2004, contained provisions that facilitate the establishment of Headquarters and Holding Companies in Ireland. The 2004 legislation contained certain valuation thresholds to be applied to shareholdings before the provision could be applied to companies. Following agreement with the European Commission, these thresholds are now being removed and are replaced with a flat 5% shareholding requirement.

Section 50 deletes section 686 of the Taxes Consolidation Act 1997, which was introduced to provide an effective reduction in corporation tax to 25% in respect of certain petroleum income. That provision was introduced in 1992 when the standard rate of corporation tax rate was higher than 25%. Since 1 January 2000 a flat rate of corporation tax of 25% applies to all income from petroleum activities and section 686 has become redundant.

Chapter 6

Capital Gains Tax

Section 51 amends section 980 of the Taxes Consolidation Act 1997, which requires a purchaser of certain assets to deduct and remit to the Revenue Commissioners 15% of the consideration payable for such assets as an advance on a possible capital gains tax liability on the part of the vendor, unless the vendor produces a clearance certificate or the purchase price is equal to or less than €500,000.

Firstly, the legislation is brought into line with Revenue administrative practice by providing a statutory entitlement to a credit for a vendor (equal to the amount remitted to the Revenue Commissioners by the purchaser) against his or her possible capital gains tax liability when an asset purchased from him or her is paid for in non-monetary form (e.g. by way of an asset swap or a purchase with shares). *Secondly*, the bodies specified in Schedule 15 to the Taxes Consolidation Act 1997 (e.g. Local Authorities, Tourism Ireland) are being exempted from the provisions of section 980 as these bodies are already exempt from capital gains tax by virtue of section 610 of the Taxes Consolidation Act 1997. Finally, an incorrect reference in the definition of ''house'' is being rectified.

Section 52 amends Schedule 15 to the Taxes Consolidation Act 1997, which specifies a number of public bodies that are exempt from

capital gains tax. The amendments are name changes to a number of the bodies to reflect their current titles. Firstly, the reference to the health boards is changed to the Health Service Executive because of the new health administration structure. Secondly, the reference to the various regional tourism organisations is changed as they have become regional tourism authorities.

Section 53 amends section 608 of the Taxes Consolidation Act 1997 by providing for an exemption from capital gains tax on gains arising from the disposal of investments held as part of the assets of an occupational pension scheme referred to in section 790B (inserted by section 19 of the Finance Bill 2005), where the trustees are exempt from income tax under that section.

PART 2

Excise

Chapter 1

Alcohol Products Tax

Section 54 gives a Revenue officer the power to stop any vehicle which is suspected to be carrying anything which is for use in the illegal production or processing of alcohol products.

Section 55 provides for the power of arrest, for Revenue officers and the Gardai, of persons involved in the more serious Alcohol Products Tax offences.

Section 56 provides for definitions of terms used in the Alcohol Products Tax offence and penalty provisions of *Section 57*.

Section 57 consolidates and modernises the excise law in relation to illicit production and processing of alcohol products, and dealing in untaxed alcohol products.

The section provides for indictable offences for the illegal production and processing of alcohol products, knowingly dealing in such illegally produced products, and keeping or transporting equipment for illegal production and processing. These offences are already included under various existing excise provisions, with varying penalties applying. These will all now be subject to the standard penalties for the more serious excise offences.

The section also provides for temporary closure of any licensed premises or registered club involved in serious Alcohol Products Tax offences. This will replace an existing forfeiture of licence provision, which has proved ineffective.

To address a deficiency, provision is also made for forfeiture of all vehicles used in connection with an Alcohol Products Tax offence.

Section 58 provides for a relief, by way of repayment, of half the Alcohol Products Tax paid on beer brewed by breweries which produce 20,000 hectolitres or less per annum. As required under EU law, the relief is confined to independent breweries with their own premises, and it does not apply to beer brewed under licence for another brewery. The relief will however apply to beer brewed under

a licensing or other cooperation arrangement between small breweries, provided that the combined total annual production of those breweries does not exceed 40,000 hectolitres.

Chapter 2

Mineral Oil Tax

Section 59 amends the rates of Mineral Oil Tax—

- by increasing the rates for auto-LPG, non-auto LPG and Fuel Oil by €10.58, €2.71 and €1.33 respectively, per 1,000 litres. These increases come into effect on 1 April 2005;

- by introducing rates for coal at €4.18 per tonne for business use and €8.36 per tonne for other use. This new tax on coal comes into effect by Commencement Order;

The introduction of mineral oil tax on coal, and increased rates for auto-LPG, non-auto LPG and Fuel Oil are required under the EU Energy Tax Directive.

This section also introduces a differentiated rate for petrol with a sulphur content of more than 10 parts per million (ppm) which, when VAT is included, amounts to 5 cent per litre. In addition, the sulphur content for differentiating the rates on diesel is reduced from 50ppm to 10ppm. This provision comes into operation by Commencement Order.

Section 60 amends certain definitions in Mineral Oil Tax law to bring them in line with current EU and national general excise law. It also amends and introduces a number of definitions in Mineral Oil Tax law in support of the application of the tax to coal and provides for general interpretation rules in respect of terms not defined specifically in Mineral Oil Tax law.

This section comes into effect by Commencement Order.

Section 61 amends Mineral Oil Tax law to exclude coal from the method by which the volume of liquid mineral oil is measured for tax purposes and updates a reference to EU Law.

This section comes into effect by Commencement Order.

Section 62 amends Mineral Oil Tax law to provide for relief from the tax—

- on reduced rate oil present in the fuel tank of certain special purpose vehicles or private pleasure craft, at the time of entry into the State, where use of such fuel is permitted by another Member State. This provision comes into effect on enactment;

- in respect of coal used for the generation of electricity, for dual use, in mineralogical processes, in combined heat and power generation, in trains, in agricultural, piscicultural or horticultural works, and in forestry, by households, by charities, and by businesses with greenhouse gas emissions permits. This provision comes into effect by Commencement Order.

Section 63 amends Mineral Oil Tax law by reducing the level from 350 parts per million (ppm) to 50ppm on which presumptions, based

on the sulphur content, can be made by the Courts in offence proceedings, that Mineral Oil Tax at the appropriate standard rate of tax has not been paid on auto-diesel.

Section 64 amends Mineral Oil Tax law to specify that liability to Mineral Oil Tax on coal arises when the coal is the subject of final delivery and that the tax is payable by the person who receives it, and to require every person who delivers coal, other than to households or charities, and every person who is liable to pay Mineral Oil Tax on coal, to register with the Revenue Commissioners, in accordance with procedures prescribed or imposed by them.

This section comes into effect by Commencement Order.

Section 65 provides that the provisions of the Chapter concerning the taxation of coal and rate differentiation on petrol and auto diesel based on sulphur content, shall come into operation from a date or dates to be specified by order of the Minister for Finance.

Chapter 3

Tobacco Products Tax

The purpose of this Chapter is to consolidate and modernise tobacco products excise legislation. This is a further stage in a project of consolidation and modernisation of excise legislation. The existing law in this area is contained mainly in a 1977 Act with a small body of different provisions in other legislation.

This Chapter does not introduce any new duties on tobacco products or any other significant changes in the operation of tobacco product taxes. The opportunity is taken, however, to update and word the replacement provisions in such a way as to make their meaning and application clear in a modern excise context. The opportunity is also taken to adopt a structure of law which is more in accordance with the structure of the EU Law governing tobacco products.

Section 66 is an interpretation section.

Section 67 provides, together with Schedule 2, for the charging of different rates of tobacco products tax on the various tobacco products produced in the State or imported into it.

Section 68 establishes the time of liability to tobacco products tax. It provides for the payment of the tax on cigarettes and roll-your-own tobacco by means of the purchase of tax stamps except in exceptional circumstances. It also allows the Minister for Finance to extend the tax stamp regime to other tobacco products by way of Commencement Order.

Section 69 allows for deferred payment in respect of cigarettes and roll-your-own tobacco normally to a day not later than the last day of the second month following the issue of the tax stamps. It also allows for the deferment of the tax on other tobacco products to a day not later than the last day of the month following the month in which the products were released. Special catch-up deferment arrangements are provided for in respect of tobacco products stamped or released towards the end of a calendar year.

Section 70 indicates how the retail price of tobacco products should be established for the purposes of charging the tax, and requires manufacturers and importers to declare a recommended retail price

for each category and quantity of cigarettes, to the Revenue Commissioners. It also allows (in certain circumstances) the Revenue Commissioners to determine the price for tobacco products tax purposes.

Section 71 requires manufacturers and importers of cigarettes or roll-your-own tobacco, to affix a tax stamp to each packet intended for sale, delivery or consumption in the State. It also empowers the Revenue Commissioners, by way of regulations, to state where and how tax stamps should be affixed.

Section 72 provides for remission or repayment of tobacco products tax where tobacco products are destroyed, denatured, remanufactured or used solely for scientific or product test purposes. It also provides for repayment or remission where an amount has been paid or is due in relation to tax stamps that are subsequently unsuitable for use or are affixed to tobacco products that become the subject of an irregularity in another Member State resulting in payment of duty in that state. It also fixes repayment claim periods and places time limits on claims.

Section 73 provides for offences for non-compliance with the provisions of this Chapter in relation to the sale or handling of unstamped cigarettes or roll-your-own tobacco, and in relation to the counterfeiting or the fraudulent use of tax stamps. It provides for specific penalties in relation to such offences. The section also provides for certain presumptions in offence proceeding.

Section 74 provides for an offence of selling cigarettes at a price higher than the price on which the tax is based.

Section 75 provides that manufacturers must account for all materials used in relation to the production of tobacco products.

Section 76 provides, together with *Schedule 3*, for the repeal and revocation of certain existing provisions where they are obsolete or replaced by the provisions of this Chapter.

Section 77 applies existing customs law and excise law to tobacco products except where there is a corresponding provision in this Chapter.

Section 78 empowers the Revenue Commissioners to make regulations required to implement and administer the provisions of the Chapter.

Section 79 provides for the general continuity of the operation of excise law in relation to the Chapter.

Section 80 provides that tobacco products tax is placed under the care and management of the Revenue Commissioners.

Section 81 provides that the provisions of this Chapter are to come into operation when appointed by order of the Minister for Finance.

Chapter 4

Miscellaneous Excise and Customs

Section 82 amends tobacco excise legislation so as to (1) redefine when excise duty liability arises as the time when the tobacco products are released for consumption and (2) provide for repayment of

Irish duty where an irregularity occurs in another Member State giving rise to a payment of duty in that state. This will align domestic law more closely with EU law. This section comes into effect by Commencement Order.

Section 83 updates definitions in general excise law. It inserts a new definition of prohibited goods to support the power to stop vehicles in relation to goods used for illicit alcohol production or in oil laundering. It amends the definition of a vehicle to ensure that unaccompanied transport containers can be searched.

Section 84 updates definitions of various excisable products.

Section 85 makes specific provision in excise law so that all amounts due under that law are payable to the Minister for Finance for the benefit of the Central Fund and that they may be subject to recovery proceedings by the Attorney General. This rectifies an omission in an earlier consolidation package.

Section 86 closes a potential loophole by providing that goods must be removed from a tax warehouse in order to have departed a suspension arrangement. It also provides that coal is excluded from the excise warehousing regime.

Section 87 updates the reference to EU Law in relation to mineral oil. It also ensures that the intra-community excise movement provisions do not apply to coal.

Section 88 updates various references as a result of the consolidation and modernisation measures in relation to tobacco in Chapter 3.

Section 89 provides for the early disposal of hazardous goods seized by the Revenue Commissioners with provision for compensation if it is subsequently determined that forfeiture was not justified.

Section 90 provides, together with Schedule 4, for the repeal of obsolete excise law provisions.

Section 91 amends Section 2 of the Customs & Excise (Miscellaneous Provisions) Act 1988 to insert a definition of a vehicle to ensure that unaccompanied transport containers can be searched.

Section 92 confirms the Budget announcement of an extension to 31 December 2006 of the scheme under which the Revenue Commissioners remit or repay 50 per cent of vehicle registration tax payable or paid 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 2004.

PART 3

Value-Added Tax

Section 93 is a definitions section.

Section 94 amends section 3 of the VAT Act 1972 which deals with the supply of goods. The amendment to subsection 5(*b*)(iii) clarifies

the circumstances under which all or part of the assets of a business can be transferred to a taxable person VAT-free.

Section 95 makes two amendments to section 4 of the VAT Act which deals with special provisions in relation to the supply of property.

The first amendment to subsection (6) clarifies that a supply of property is exempt from VAT when the person making the supply has no right to deductibility. The subsection does not apply to a supply which is covered by subsection (5), i.e. a disposal of property in connection with an agreement to carry out development.

The second amendment substitutes new text for subsections (8) and (9).

The new subsection (8) clarifies the application of the reverse charge mechanism in relation to certain assignments and surrenders of leases in property. The recipient of the assignment or surrender is accountable for the VAT arising on the supply instead of the supplier. Departments of State or local authorities remain within the ambit of this subsection.

The new subsection (9)(*a*) provides that the supply of reversionary interests in property will be exempt from VAT even where development has taken place after the creation of the lease. Only development which is by, on behalf of, or to the benefit of the landlord will trigger a VAT charge on the supply by that landlord.

The new subsection (9)(*b*) enables the Revenue Commissioners to make regulations setting out the circumstances or conditions under which development work on property is not treated as being on behalf of, or to the benefit of the landlord.

Section 96 makes three amendments to section 5 of the VAT Act 1972, which deals with the supply of services.

In the first amendment, paragraph (*a*)(i) inserts a new paragraph (*eea*) into subsection (6). This amendment ensures that the place of supply of intermediary services associated with money transfer services is the State, when these services are supplied to a non-EU principal and are used and enjoyed in the State.

As regards the second amendment, paragraph (*a*)(ii) provides that the place of supply of electronically supplied services is the State, when these services are supplied to a private consumer in the State by a taxable person from an establishment outside the EU, even if that taxable person also has an establishment in the EU.

The third amendment, paragraph (*b*), is consequential to the amendment to Section 94.

Section 97 amends section 10 of the VAT Act 1972 which deals with the amount on which tax is chargeable. It inserts two new subparagraphs, (*c*) and (*d*), into section 10(9).

Subparagraph (*c*) provides a legislative basis for the Revenue Commissioners to obtain independent valuations of property for VAT purposes. It provides for the Revenue Commissioners to authorise persons to inspect properties and it requires occupiers to allow right of entry to authorised persons at all reasonable times.

Subparagraph (*d*) provides that the Revenue Commissioners shall defray the costs of such valuations.

Section 98 amends section 11 of the VAT Act 1972 which deals with rates of tax. The amendment confirms the Budget change which provided for an increase in the rate of VAT from 4.4 per cent to 4.8 per cent on the supply of livestock, live greyhounds and the hire of horses.

The section has effect from 1 January 2005.

Section 99 makes two amendments to section 12 of the VAT 1972 Act which deals with deductibility of VAT. These amendments are consequential to the amendments to section 4(8).

Section 100 amends section 12A of the VAT Act 1972 which deals with special provisions for tax invoiced by flat-rate farmers. It confirms the Budget adjustment to the farmers' flat-rate addition from 4.4 per cent to 4.8 per cent.

The section has effect from 1 January 2005.

Section 101 makes three amendments to section 19 of the VAT Act 1972 which deals with tax due and payable.

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

Paragraph (*a*)(ii) inserts a new subparagraph into section 19(1) which deals with VAT due in the case of continuous supplies of utilities (i.e. gas, electricity and telecommunications). Where these are supplied to non VAT-registered persons, the amendment provides that VAT is due at the time the statement of account issues to the customer. This applies in all cases where the supplier issues a statement of account at least once every three months. This clarifies the appropriate VAT rate to be used for continuous supplies in the event of a change in the rate of VAT.

Paragraph (*b*) is a consequential amendment to ensure that the special rules concerning advance payments in Section 19(2) of the VAT Act 1972 do not apply to suppliers of continuous supplies who are covered by the rule in paragraph (*a*).

Section 102 amends section 19A of the VAT Act 1972 which deals with a statement of intra-Community supplies. This is a technical amendment which deletes an obsolete cross-reference.

Section 103 makes three amendments to section 24 of the VAT Act 1972 which deals with recovery of tax.

Subsection (1)(*a*) provides a new wording of the existing recovery provisions which permits any enactment in connection with the recovery of income tax to apply to the recovery of VAT.

Subsection (1)(*b*) deletes paragraph (1)(*c*) of section 24 of the VAT Act 1972 thereby removing the requirement to itemise in regulations the specific modifications required in order for section 24 to apply.

Subsection (2) provides that any regulations that were made under the existing Section 24(1)(*c*) of the VAT Act 1972 will continue in force and may be amended or revoked.

Section 104 amends section 26 of the VAT Act 1972 which deals with penalties. The amendment inserts a new subsection (3AA) into section 26 of the VAT Act 1972 to provide for a penalty of €1,265 for obstructing a person authorised by Revenue to value a property, or for failing to allow a valuation to take place.

Section 105 amends section 27 of the VAT Act 1972 which deals with fraudulent returns. Subsections (*a*), (*b*) and (*c*) apply the tax-geared penalty of 100% to cases of VAT fraud instead of the existing 200% penalty.

Section 106 makes three amendments to section 32 of the VAT Act 1972 which allows the Revenue Commissioners to make VAT regulations.

Paragraph (*a*) inserts a new paragraph (ta) to enable the Revenue Commissioners to make regulations in connection with development work on property. This amendment is consequential to the amendment to section 4(9).

Paragraph (*b*) inserts a new paragraph (www) providing for the making of regulations concerning the definition of short-term accommodation in the Sixth Schedule.

Paragraph (*c*) amends subsection 2A to include any regulations made in relation to short-term accommodation in the list of regulations which require the consent of the Minister.

Section 107 makes three amendments to the First Schedule to the VAT Act 1972 which deals with exempted activities.

Subsection (*a*) is a technical amendment to paragraph (xv) of the First Schedule to correct out of date cross-references.

Subsection (*b*) is a technical amendment deleting paragraph (xva).

Subsection (*c*) amends paragraph (xxiv) and provides that this paragraph does not apply to supplies of property. Exempt supplies of property are covered by section 4(6).

Section 108 amends the Sixth Schedule to the VAT Act 1972 concerning goods and services chargeable at the VAT rate of 13.5 per cent. The effect of the amendment is to clarify that lettings in the short-term guest or holiday sector are taxable at 13.5 per cent while lettings of accommodation in the residential sector, including student accommodation, remain exempt from VAT.

The section will come into effect on 1 July 2005.

PART 4

Stamp Duties

Section 109 is an interpretation section.

Section 110 amends section 8 of the Stamp Duties Consolidation Act 1999 which provides that a person must bring to the attention of the Revenue Commissioners all the facts and circumstances affecting the liability of an instrument to stamp duty. Penalties become payable in the absence of such information being provided. In the case of negligence, the penalty is €1,265 plus the amount of duty underpaid while in the case of fraud the penalty is €1,265 plus twice the

amount of duty underpaid. The amendment provides that the amount of duty underpaid, and not twice that amount, will be payable as a penalty in cases of fraud. The change applies to instruments executed on or after the date of the passing of the Finance Act 2005.

Section 111 inserts a new section 45A into the Stamp Duties Consolidation Act 1999. The purpose of this new section is to counteract avoidance whereby a house or an apartment is purchased by more than one purchaser and each purchaser takes a separate conveyance or transfer of an interest in the house or apartment in order to avail of lower stamp duty rates. This section, which extends to gifts made in a similar manner, applies to instruments executed on or after 3 February 2005.

Section 112 amends section 76 of the Stamp Duties Consolidation Act 1999 which provides that a Crest system-member must retain evidence, for a period of 6 years, of instructions entered into the Crest system where exemptions to stamp duty are being claimed. Crest is an electronic share dealing system which operates for electronic share transactions on both the Irish and London Stock Exchanges. Where an incorrect instruction is entered into the Crest system, in the case of negligence, the penalty is €1,265 plus the amount of duty underpaid while in the case of fraud the penalty is €1,265 plus twice the amount of duty underpaid. The amendment provides that the amount of duty underpaid, and not twice that amount, will be payable as a penalty in cases of fraud. The change applies to instructions entered into the Crest system on or after the date of passing of the Finance Act 2005.

Section 113 amends section 81 of the Stamp Duties Consolidation Act 1999 which exempts transfers of land to young trained farmers from stamp duty. There are clawback provisions contained in section 81 and the amendment provides that where there is a disposal or part disposal of land to which relief applied, within 5 years from the date of execution of the instrument, a clawback of the relief, by way of the imposition of a penalty, will apply where any proceeds from the disposal are not re-invested in other land within one year of such disposal. The extent of the penalty will relate to the amount of the proceeds not re-invested and is calculated in accordance with the formula contained in the section. The change applies to disposals of land effected on or after 3 February 2005.

Section 114 amends section 81A of the Stamp Duties Consolidation Act 1999 which exempts transfers of land to young trained farmers where the instrument is executed on or after 25 March 2004. The amendment changes the clawback provisions contained in section 81A in a similar manner to *section 113* in the case of disposals of land effected on or after 3 February 2005.

Section 115 inserts a new section 81B into the Stamp Duties Consolidation Act 1999 which gives effect to the Budget announcement to introduce a stamp duty relief for an exchange of farm land between two farmers for the purposes of consolidating each farmer's holding. The section provides that stamp duty will not be charged on an exchange of land where the lands exchanged are of equal value. In a case where the lands exchanged are not of equal value, stamp duty will be charged on the amount of the difference in the values of the land concerned. Where consideration is paid for the difference, it must be payable in cash.

The following main conditions must be satisfied before the relief will be granted by the Revenue Commissioners under the section:

- There must be a valid consolidation certificate issued by Teagasc in existence at the date of the exchange of lands which must be submitted to the Revenue Commissioners in support of an application for relief.

- The farmers involved in the exchange of land must each sign a declaration, for submission to the Revenue Commissioners, to the effect that each of them will remain a farmer (i.e. will spend not less than 50 % of that person's normal working time farming) and will farm the land exchanged for a period of at least 5 years from the date of the exchange.

- All the joint owners of the land exchanged including the farmers must make a declaration, for submission to the Revenue Commissioners, to the effect that it is the intention of each of them to retain ownership of their interest in the land and to use the land for the purpose of farming, for at least 5 years from the date of the exchange.

- The instruments effecting the exchange of land must be submitted at the same time to the Revenue Commissioners for adjudication.

The section provides that the Minister for Agriculture and Food with the consent of the Minister for Finance may make the necessary guidelines in relation to how applications for consolidation certificates are to be made to Teagasc and setting out, inter alia, the conditions of such consolidation.

Finally, the section also provides for a clawback of the relief where the land or part of the land included in the exchange is disposed of or partly disposed of before the end of the 5 year holding period. A clawback of the relief will not occur where such land is compulsorily acquired or is the subject of another exchange of farmland to which section 81B applies. In addition, the section provides for penalties to apply where a false declaration is made or where an invalid consolidation certificate is used to obtain the relief. The section will apply to instruments executed on or after 1 July 2005 and on or before 30 June 2007.

Section 116 amends section 87 of the Stamp Duties Consolidation Act 1999 which exempts certain stock borrowing transactions from stamp duty. The purpose of this amendment is to extend from 6 months to 12 months the time period within which stock borrowing transactions must be completed in order to avail of the exemption. This section applies to stock borrowing transactions entered into on or after the date of passing of the Finance Act 2005.

Section 117 amends section 87A of the Stamp Duties Consolidation Act 1999 so as to extend from 6 months to 12 months the time period within which stock repo transactions must be completed in order to avail of the stamp duty exemption. This section applies to stock transfers executed on or after the date of passing of the Finance Act 2005.

Section 118 confirms the changes to section 92B of the Stamp Duties Consolidation Act 1999 announced in the Budget, reducing the stamp duty rates for first time purchasers who are owner occupiers of second hand residential property. These changes apply in relation to instruments executed on or after 2 December 2004. The new stamp duty rate structure for such first time purchasers is as shown below:

Aggregate Consideration	First Time Purchaser Rate
Up to €127,000	Exempt
€127,001 – €190,500	Exempt
€190,501 – €254,000	Exempt
€254,001 – €317,500	Exempt
€317,501 – €381,000	3%
€381,001 – €635,000	6%
Over €635,000	9%

Section 119 amends section 117 of the Stamp Duties Consolidation Act 1999 to give effect to the Budget announcement regarding the reduction in the companies capital duty charge from 1% to 0.5% for transactions effected on or after 2 December 2004. A technical amendment is also being made, reinstating a €1 minimum charge for certain transactions effected on or after 3 February 2005.

Section 120 amends Part 9 of the Stamp Duties Consolidation Act 1999 to confirm changes announced in the Budget which provide for an exemption from a second or subsequent charge to stamp duty for financial cards such as credit cards, charge cards, ATM cards, Laser cards and combined cards arising from the switching of accounts within a financial institution, or from one financial institution to another, in the same year of charge. The change in relation to credit cards and charge cards will take effect from 2 April 2005, while the change in relation to ATM cards, Laser cards and combined cards will take effect from 1 January 2006.

Section 121 amends section 159C of the Stamp Duties Consolidation Act 1999 which restricts the period within which the Revenue Commissioners may make enquiries or raise assessments in relation to underpayments of stamp duty to a period of 4 years from, inter alia, the date the instrument was stamped by the Revenue Commissioners. This restriction does not apply where the underpayment arises from fraud or neglect on the part of the taxpayer. The purpose of this section is to correct a drafting error in relation to the definition of ''neglect''. The change is effective from 3 February 2005.

PART 5

Capital Acquisitions Tax

Section 122 is an interpretation section.

Section 123 amends section 48 of the Capital Acquisitions Tax Consolidation Act 2003, which sets out the information required to be included in an Inland Revenue affidavit in respect of an estate of a deceased person. The amendment reflects the changes made to the capital acquisitions tax territoriality rules in the Finance Act 2000 and ensures that details of the assets of a deceased person must be included in the Inland Revenue affidavit in the case of a deceased person who, on the date of his or her death, was resident or ordinarily resident in the State and who was either domiciled in the State or, where non Irish-domiciled, had been resident in the State for the 5 consecutive years of assessment immediately preceding the year of assessment in which the date of death falls. This change applies to Inland Revenue affidavits in respect of estates of deceased persons where those persons died on or after 1 December 2004.

Section 124 amends section 58 of the Capital Acquisitions Tax Consolidation Act 2003, which imposes penalties where a person fraudulently or negligently delivers an incorrect return or additional return or makes or furnishes an incorrect statement, declaration, evidence or valuation. The penalty is the difference, or in the case of fraud twice the difference, between the tax payable in respect of the taxable gift or the taxable inheritance to which the return, etc. relates and the amount which would have been payable if the return, etc. had been correct. This amendment reduces the penalty in the case of fraud to that for negligence.

Section 125 amends section 72 of the Capital Acquisitions Tax Consolidation Act 2003, which grants exemption in respect of the proceeds of certain qualifying insurance policies, which would otherwise be liable to inheritance tax, where they are used to pay inheritance tax. As a result of the amendment, a policy of insurance taken out for the purpose of paying tax which a qualifying insurance manager is obliged to deduct in accordance with the provisions of section 784A(4)(*c*) of the Taxes Consolidation Act 1997 will qualify for exemption in so far as the proceeds of the policy are used to pay that tax, i.e. tax arising in respect of a child aged 21 or over on the death of the beneficial owner of an approved retirement fund. (An approved retirement fund is an alternative to an annuity and takes the form of a capital sum on retirement that can be retained in a tax-free vehicle until distributions from the fund are made.) This change applies in relation to such policies taken out on or after 3 February 2005.

Section 126 amends section 89 of the Capital Acquisitions Tax Consolidation Act 2003 which grants a reduction of 90 per cent of the market value of agricultural property acquired by gift or inheritance where that property is taken by a farmer, i.e. an individual in respect of whom not less than 80 per cent of his or her assets (after taking the gift or inheritance) consist of agricultural property on the valuation date. Section 89 also provides for a clawback of the relief where the agricultural property is sold or compulsorily acquired and is not replaced by other agricultural property. This amendment clarifies that a clawback of agricultural relief will apply where the proceeds from a disposal or compulsory acquisition of all or part of the agricultural property in respect of which relief was granted are not fully expended in acquiring other agricultural property within the time limits set out in the existing legislation. The extent of the clawback will relate to the amount of the proceeds not being reinvested. This change applies to disposals or compulsory acquisitions occurring on or after 3 February 2005.

Section 127 amends section 101 of the Capital Acquisitions Tax Consolidation Act 2003. Section 92 of that Act grants a reduction of 90 per cent of the taxable value of relevant business property acquired by gift or inheritance. Section 101 provides for a clawback of business relief where the property in respect of which business relief was granted ceases to qualify as relevant business property or where that property is sold, redeemed or compulsorily acquired within the time limits set out in the existing legislation. This amendment clarifies that the relief granted will be reduced where the property in respect of which relief was granted is replaced by other property whose value is less than that of the original property. The relief will be reduced in the same proportion as the market value of the replacement property bears to the market value of the original property. This change applies to property which has been replaced by other property on or after 3 February 2005.

Section 128 amends section 107 of the Capital Acquisitions Tax Consolidation Act 2003 which grants a credit for foreign tax similar to estate duty, gift or inheritance tax, against Irish gift or inheritance tax, where a double taxation agreement does not exist between the State and the foreign territory imposing the tax. Under the existing legislation, a credit can only be given for foreign tax on property against gift or inheritance tax payable in the State where the property is situated in the territory in which the foreign tax is chargeable. However, this credit does not apply where the tax is levied in that country in respect of assets located in a third country. This amendment ensures that a credit can now be granted for foreign tax paid in any territory, irrespective of where the property is situated. This change applies to gifts or inheritances taken on or after 1 December 2004.

PART 6

Miscellaneous

Section 129 amends section 903 of the Taxes Consolidation Act 1997. Section 903 empowers an officer of the Revenue Commissioners, authorised for the purpose, to enter an employer's premises for the purposes of inspecting the employer's PAYE records. This amendment to section 903 will prevent the officer entering such premises or part of such premises that are occupied as a private residence, unless the consent of the occupier is given or the officer has obtained a warrant from a judge of the District Court for that purpose.

Section 130 amends section 904 of the Taxes Consolidation Act 1997. Section 904 empowers an officer of the Revenue Commissioners, authorised for the purpose, to enter premises for the purposes of inspecting records relating to payments to subcontractors. This amendment to section 904 will prevent the officer entering such premises or part of such premises that are occupied as a private residence, unless the consent of the occupier is given or the officer has obtained a warrant from a judge of the District Court for that purpose.

Section 131 inserts a new section into Chapter 4 of Part 38 of the Taxes Consolidation Act 1997. The new section empowers an authorised officer of the Revenue Commissioners to sample the information (other than medical records) held by a life assurance company in respect of a class or classes of policies and their policyholders. The use of this power is subject to a Revenue Commissioner being satisfied that there are circumstances suggesting that such class or classes of policies have been used as an investment vehicle for untaxed funds. The information obtained by use of this sampling power can only be used to assist in making an application (under section 902A of that Act) to a judge of the High Court for an order to have wider access to the information held by the life assurance company in relation to that class or those classes of policies and their policyholders.

Section 132 amends sections 1053 and 1054 of the Taxes Consolidation Act 1997. Each of these sections imposes a penalty where an individual, or body of persons, respectively, has furnished to the Revenue Commissioners an incorrect return or certain other document. The penalty is, in the case of negligence, the amount of the resulting tax undercharge and in the case of fraud, twice that amount. This amendment provides that where there is negligence or fraud, the penalty is the amount of the tax undercharge.

Section 133 amends section 1078 of the Taxes Consolidation Act 1997. Section 1078 sets out what constitutes a revenue offence and the sanctions that can be imposed by a Court on a person found guilty of such an offence. This amendment inserts a new subsection into 1078 to create a new offence of facilitating tax and duty evasion. It also amends subsection (2) of section 1078 that sets out a number of specific actions or failures that constitute an offence. This subsection is amended to update the reference to tax required to be deducted by collective funds and to include a failure to deduct or remit relevant contracts tax. Finally subsection (5) of section 1078 is amended so that where a body corporate has committed a revenue offence, and the offence is shown to be attributable to any neglect on the part of certain officers of the body corporate, those officers will be deemed to be guilty of that offence and may be proceeded against accordingly.

Section 134 amends section 1086 of the Taxes Consolidation Act 1997. That section requires the Revenue Commissioners to publish details of certain settlements made with tax defaulters. Where the amount of tax, interest and penalties included in such a settlement does not exceed €12,700, then details of the settlement will not be published. This limit is being increased to €30,000 and provision is made to increase this amount by Ministerial order every five years by reference to the Consumer Price Index.

Section 135 amends the provisions introduced in section 90 and schedule 4 of the Finance Act 2004 to implement the EU Savings Directive. The legislation is amended in three broad respects:

Firstly, it is adapted to take account of the decision by ECOFIN (Council of Finance Ministers) to change the application date for the Directive from 1 January 2005 to 1 July 2005.

Secondly, to provide a statutory basis for those matters which need to be implemented in the State in recognition of the agreements between the EU and Andorra, Liechtenstein, Monaco, San Marino and the Swiss Confederation, respectively, under which those countries will introduce measures equivalent to the Savings Directive.

Thirdly, to correct certain drafting errors and to transpose part of Council Directive 2004/66 dealing with taxation of savings and the accession of the 10 new Member States.

Section 136 and *Schedule* 5 provide for a number of amendments to the legislation governing the payment of interest on certain overdue tax. The principal measure reduces the rate of interest applying to overdue assessed taxes (that is, income tax, capital gains tax, corporation tax, gift tax and inheritance tax) and stamp duties as respects periods of delay after 1 April 2005. The reduction will also apply as respects certain abolished taxes. The reduction will be from a rate of 0.0322 per cent for each day or part of a day of delay (about 11.75 per cent per year) to a rate of 0.0273 per cent for each day or part of a day of delay (just under 10 per cent per year). The measures will not apply to taxes such as PAYE, relevant contracts tax, professional fees withholding tax, DIRT and other withholding and exit taxes which are collected by employers and others on a fiduciary basis. Likewise, it will not apply to indirect taxes such as excise duties and VAT.

In addition to the reduction in rates, this section rationalises and simplifies the various provisions applying in this area so as to make them clearer and more user-friendly.

This section provides that, in the cases of income tax, corporation tax, capital gains tax, gift tax and inheritance tax, which remains unpaid on or after 1 April 2005, the basis for the calculation of interest will be by reference to a daily rate for all periods of delay whether before or after 1 April 2005 instead of a monthly basis for periods up to September 2002 and a daily basis thereafter. In the case of stamp duties, due to the variation in the rates which applied for various purposes in the past, the new rate will only apply for periods of delay arising on or after 1 April 2005. However, the 24 provisions imposing a charge to interest have been changed so that in future only one provision will need to be amended in the event of a future change in interest rate.

The section also provides that the 2 per cent per month or part of a month interest rate set out in section 1082 of the Taxes Consolidation Act 1997 in cases of fraud or neglect will cease as respects the year of assessment 2005 and subsequent years and accounting periods beginning on or after 1 January 2005. This provision will continue to apply as respects earlier years and periods.

Section 137 and *Schedule* 6 provide for amendments to the Taxes Consolidation Act 1997, the Capital Acquisitions Tax Consolidation Act 2003 and the Finance Act 2003. 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 technical amendments to the Taxes Consolidation Act 1997.

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

- *Paragraph 3* contains amendments to the Finance Act 2003.

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

Section 138 relates to the Capital Services Redemption Account. The section provides for the payment each year of an annuity for 30 years into the Capital Services Redemption Account in respect of estimated borrowing in 2005 for Voted Capital Services. It reduces to zero the annuity provided for in the Finance Act 2004 because no borrowing was in fact required in respect of Voted Capital Services in 2004.

Section 139 and *Schedule 6* provide for amendments to the Taxes Consolidation Act 1997, the Capital Acquisitions Tax Consolidation Act 2003 and the Finance Act 2003. 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 technical amendments to the Taxes Consolidation Act 1997.

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

- *Paragraph 3* contains amendments to the Finance Act 2003.

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

Section 140 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais
Feabhra, 2005

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