AN BILLE AIRGEADAIS 2007
FINANCE BILL 2007

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

EXPLANATORY MEMORANDUM

PART 1

Income Tax, Corporation Tax and Capital Gains Tax

Chapter 1

Interpretation

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

Chapter 2

Income Tax

Section 2 sets out the standard rate bands which are to apply for the year 2007 and subsequent years. The section provides for increases in the bands as follows:

	Tax Year 2006	Tax year 2007 and subsequent years
	€	€
Single person	32,000	34,000
Widowed/single parent	36,000	38,000
Married couple		
one earner	41,000	43,000
two earners	64,000	68,000

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. €43,000. The second spouse may avail of the balance of the €68,000 band, that is, €25,000.

Section 3 and *Schedule 1* provide for increases in personal reliefs announced in the Budget for the year 2007 and subsequent years as follows:—

Relief	Tax credit for the year 2006	Tax credit for the year 2007 and subsequent years
	€	€
Basic personal tax credit		
married person	3,260	3,520
widowed person bereaved in year of assessment	3,260	3,520
single person	1,630	1,760
Additional tax credit for certain widowed persons	500	550
One parent family tax credit	1,630	1,760
Widowed parent tax credit		
1st year	3,100	3,750
2nd year	2,600	3,250
3rd year	2,100	2,750
4th year	1,600	2,250
5th year	1,100	1,750
Age tax credit		
married person	500	550
single person	250	275
Incapacitated child tax credit	1,500	3,000
Blind person's tax credit		
blind person	1,500	1,760
both spouses blind	3,000	3,520
Employee tax credit	1,490	1,760

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 2007 and subsequent years, the income tax exemption limits for those aged 65 years and over. The new limits will be €19,000 for single people and €38,000 for married couples.

Section 5 increases the relief for individuals 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 €3,600 (married person) and €1,800 (single person). The relief for persons aged 55 years and over will increase to €7,200 (married person) and €3,600 (single person). Widowed persons will continue to receive the same relief as married persons.

Section 6 amends section 244 of the Taxes Consolidation Act 1997 to provide for an increase in the ceilings on mortgage interest payments qualifying for tax relief. In the case of first-time buyers, the limits are being doubled from €4,000/€8,000 (single/married or widowed) to €8,000/€16,000 (single/married or widowed). The ceiling for non-first-time buyers is also being increased by this section from €2,540/€5,080 (single/married or widowed) to €3,000/€6,000 (single/married or widowed).

Section 7 amends the specified rate used, with effect from 1 January 2007, in calculating the taxable benefit from loans at preferential rates of interest provided by employers to employees.

Where an employee is in receipt of such a loan, at a rate which is below the specified rate, the employee is chargeable to tax on the benefit in kind reflected by the difference. The 3.5 per cent rate for home loans is increased to 4.5 per cent and the other loans rate of 11 per cent to 12 per cent.

Section 8 amends the Tax Acts to provide that the foreign service allowances of employees of certain agencies, working in the overseas offices of those agencies, are treated in an equivalent manner to the allowances paid to staff from the Civil Service, An Garda Síochána and the Defence Forces who are serving in foreign postings. The changes will take place with effect from 1 January 2007.

Section 9 confirms the Budget day announcement of measures aimed at assisting taxpayers to avail of the tax reliefs to which they are entitled. The procedure will involve Revenue getting, on a voluntary basis, information from third parties regarding expenditure by taxpayers that qualifies for tax relief. This information may be used by Revenue only for the purpose of granting tax relief and for no other purpose. Where on the basis of the information obtained, Revenue are satisfied as to the entitlement of a taxpayer to a relief then they may, if it is considered appropriate (e.g. where the taxpayer has not already claimed the relief), grant the relief to the taxpayer without the need for a formal claim. In addition, to simplify the granting of relief, the existing two tier *de minimis* limits of €125 and €250 for claims in respect of health expenses are being abolished so that the full amount of qualifying expenses defrayed will qualify for tax relief. In addition, the requirement that there be a defined relationship between the taxpayer and the subject of the tax relief claim is being abolished in relation to health expenses relief and tax relief for tuition fees. Finally, provision is being made to permit employers to share employees' PPSNs with trade unions in certain circumstances to enable the trade unions make returns to Revenue of their members who qualify for the Trade Union Subscription Tax Credit.

Section 10 extends indefinitely the special exemption from taxation that applies to unemployment benefit payable to systematic short-time workers. Subsection (8) has been deleted and a new subsection (3)(*c*) has been inserted giving effect to the Minister's announcement in Budget 2007.

Section 11 amends the provisions exempting from income tax income arising on the investment of certain compensation payments. At present the exemption extends to income chargeable under Case IV, Schedule D, by virtue of sections 59 and 745 of the Taxes Consolidation Act 1997. This amendment extends the exemption to certain income from offshore funds which is chargeable to tax under Case IV by virtue of section 747E of the Taxes Consolidation Act 1997.

Section 12 exempts from tax, travel and subsistence expenses paid to certain members of non-commercial bodies, in both the public and private sectors, in respect of the attendance at meetings of such bodies. The work of these members must generally be carried out at periodic meetings of the bodies. To qualify for the exemption the member must be a non-executive member of the body and not be in receipt of emoluments (excluding the expenses) from the body in excess of €24,000 per annum in the case of the Chairperson and €14,000 in the case of other members. The exemption covers expenses up to the civil service rates. Where the expenses paid exceed those rates the excess will continue to be taxable.

Section 13 relates to the current list of accountable persons to whom the withholding tax scheme applies, set out in Schedule 13 to the Taxes Consolidation Act, which is being amended to take account of the addition of seven new bodies, the change of names of two of the bodies on the current list and also the removal of two bodies from the up-dated list.

Section 14 amends section 216A of the Taxes Consolidation Act 1997 which exempts from income tax, income received from the letting of rooms in one‘s private residence provided the income does not exceed €7,620. The amendment provides that the exemption does not apply where a child pays the rent to a parent.

Section 15 amends section 216C of the Taxes Consolidation Act 1997 which provides a tax exemption of up to €10,000 per annum from childminding where an individual minds up to three children, who are not their own, in the minder‘s own home. From 2007 onward the limit of income in a tax year to which the exemption applies is raised from €10,000 to €15,000. Where the income exceeds this new limit, the entire amount is taxable under self-assessment in the normal way.

Section 16 amends section 664 of the Taxes Consolidation Act 1997 which is concerned with the scheme of tax exemption for income from long-term leasing of farmland. Currently, for leases of at least 5 years duration the annual exemption limit is €12,000. For leases of at least 7 years duration the annual exemption limit is €15,000. The section introduces an additional threshold of relief of €20,000 per annum for qualifying leases exceeding 10 years duration. These new arrangements will commence by order of the Minister for Finance following clearance by the European Commission.

Section 17 amends Part 30 of the Taxes Consolidation Act 1997, which deals with the tax treatment of various pension products and approved retirement funds (ARFs), in a number of respects.

Firstly, it inserts a new section 772A into Chapter 1 of Part 30, the purpose of which is to simplify, for reasons of administrative efficiency, Revenue’s approval process in relation to certain pension schemes in line with the current approval process for retirement annuity contracts and PRSAs. The new section allows Revenue, in certain circumstances and subject to conditions, to approve a “generic” retirement benefits product and provides for retirement benefit schemes established under such a product to be treated as approved schemes for tax purposes without the requirement, as at present, for each individual scheme to be approved by Revenue. The type of retirement benefits product envisaged is one under which single member retirement benefits schemes are marketed by Life Offices and established using standard documentation secured by way of an insurance contract. A condition of approval is that the combined employer and employee contributions to such schemes in any year may not exceed the maximum age-related tax-relievable contributions that may be made by an employee to a retirement benefits scheme at present.

Secondly, the section extends the period by which a qualifying fund manager must account for any tax due on a notional distribution from an ARF (introduced in Finance Act 2006). The notional distribution, which is calculated as a percentage of the value of the assets in the ARF as of 31 December each year, will now be regarded as a distribution made not later than February in the year following the year in which the ARF assets are valued. This means that any tax due must be remitted to Revenue not later than mid-March of that following year instead of mid-February.

Thirdly, the section clarifies in relation to Chapter 2C of Part 30 and the associated Schedule 23B (which deal with the limits on tax relieved pension funds) that, when calculating the amount crystallised by a benefit crystallisation event in relation to an individual under a pension scheme which is subject to a pension adjustment order (PAO), the benefit payable under the PAO is to be included in the calculation as if the PAO had not been made. In other words, any benefit arising under the PAO is deemed to be a benefit arising to the individual for the purposes of determining whether the individual's standard fund threshold or personal fund threshold has been exceeded. This applies regardless of whether the benefit under the PAO is paid as a designated benefit from the member spouse's scheme or in some other form following payment of a transfer amount in accordance with the Family Law Acts.

Finally, the section reduces with effect from 1 January 2007, the rate of tax applying to a chargeable excess (which arises when the capital value of pension benefits exceeds the standard fund threshold or personal fund threshold) from 42 per cent to 41 per cent in line with the reduction in the higher rate of income tax announced in the Budget.

Section 18 amends the provisions introduced in Finance Act 2006 to limit the use of certain tax reliefs, including certain exemptions, by some high-income individuals. The measure addressed the issue of a small number of individuals with high incomes who, mainly by means of the cumulative use of various tax incentive reliefs, reduced their income tax liability to very low levels or to zero. From 2007, under the measure introduced in 2006 as amended by this section, such individuals will have an effective rate of income tax for each year of not less than about 20 per cent on the income sheltered by such schemes.

A number of issues were left over from Finance Act 2006 that are addressed in this section. In addition, there are a number of other amendments to last year's legislation to facilitate the principal changes proposed in this section, to ensure the restriction operates as intended, to correct various references and to modify some of the terminology used in various provisions of the overall measure.

The principal changes to last year's provisions are:

- Adjustments to the provisions governing the taxation of married couples to ensure that the restriction applies only to an individual with sufficient income in his or her own right and to ensure that a spouse whose income is below the threshold is not inadvertently subject to the restriction because of the income aggregation rules that apply to certain married couples. The adaptations also ensure that married couples who opt for joint assessment will retain their entitlement to married tax bands and tax credits and, in the case of married couple who opt for separate assessment, the ability to transfer unused tax rate bands and reliefs to his or her spouse.

- To ensure that tax return and tax payments rules apply to everyone subject to the restriction, a full tax return will be required from such individuals for each tax year in which the restriction applies and, in addition, the tax payment rules applicable for self-assessment purposes, including the preliminary tax payment rules, will apply.

- In order to monitor and assess the impact of the restriction in terms of the numbers affected, the additional tax paid and the nature of the reliefs restricted, those affected by the restriction will be required to provide a statement to Revenue setting out the calculation of the restriction and identifying precisely the reliefs restricted. Revenue will be able to seek further information on the calculations and the reliefs used in any particular case. The ability to seek information will extend to seeking information from those with high incomes, claiming substantial tax reliefs, who might be expected to be subject to the restriction but who, for whatever reason, have not submitted the statement.

- Rules are introduced to govern the apportionment of relief carried forward from the tax year 2006 to the tax year 2007 where the relief carried forward consists of a mix of reliefs some of which could be regarded as attributable to restricted reliefs and some of which could be regarded as attributable to unrestricted reliefs. The apportionment will operate by applying to the amount of tax relief carried forward from 2006 to 2007 in respect of various categories of tax reliefs a fraction where, broadly, the numerator is the total of the individual's restricted reliefs of that category over the previous four years and the denominator is the individual's overall use of tax reliefs of that category over the same period. It will be open to the taxpayer to apply to Revenue for the apportionment to operate on such longer or shorter period that, in the opinion of the taxpayer, gives a fairer apportionment. If Revenue do not accept the period put forward by the taxpayer or if some other apportionment period cannot be agreed, the taxpayer will be entitled to appeal to the Appeal Commissioners for apportionment on the basis of the period set out in his or her application.

Chapter 3

Income Tax, Corporation Tax and Capital Gains Tax

Section 19 makes a number of changes to the provisions that govern the Business Expansion Scheme (BES) and the Seed Capital Scheme (SCS).

As announced in Budget 2007, both schemes are being extended for a further seven years, that is, until 31 December 2013. The company limit is being increased from €1 million to €2 million, subject to a maximum of €1.5 million to be raised in a twelve-month period. The investor limit is being increased from €31,750 to €150,000 in the case of the BES and to €100,000 in the case of the SCS. Where any amount raised by a designated fund between 1 January 2007 and 31 January 2007 is invested in qualifying companies on or before 31 December 2007, the individual investors who subscribed to the fund will have the option of claiming tax relief on their investment for either the tax year 2006 or 2007. Similarly, in the case of direct investment by investors in qualifying BES companies, where eligible shares are issued by 31 January 2007, the investor will have the option of claiming tax relief for either the tax year 2006 or 2007.

These changes to the schemes, along with some additional alterations in relation to the operation of the schemes provided for in this section, are subject to a Commencement Order being made following approval by the European Commission.

The additional changes being provided for in this section are:

- the time limit for the carry forward of unused relief under the schemes is being extended to 31 December 2013;

- recycling companies which have had a grant or financial assistance made available to them by an industrial development agency are being included in the schemes;

- BES and SCS will apply to internationally traded services companies *approved* for employment grant aid, instead of, as at present, only when the grant has actually been paid;

- SCS will apply in the case of companies which have the potential to become internationally traded services where an industrial development agency or a County Enterprise Board grants a certificate validating the companies' business proposal instead of, at present, only when the agency or Board pays a grant towards the carrying out of a feasibility study in relation to the proposal;

- to facilitate additional equity funding under the SCS, an individual may reduce his/her shareholding in the company below 15 per cent after one year instead of two years and not lose the relief;

- the aggregate threshold of the share and loan capital of a company in which an individual may hold more than 30 per cent of that capital and still qualify for the BES is being increased from €317,500 to €500,000;

- in the context of defining an ''unquoted company'' for the BES and SCS, redundant references to the Irish Stock Exchange's ''Developing Companies Market'' are replaced with references to the ''Irish Enterprise Exchange'';

- the Revenue Commissioners are being empowered to request information from qualifying companies and the managers of designated funds relating to the BES and SCS schemes and to make this information available as required in connection with European Commission reporting requirements in relation to the approval of State aids.

Section 20 proposes a number of changes to income tax appeal provisions so as to provide that where a determination of the Appeal Commissioners is to be reheard by a Circuit Court Judge, or a case is to be stated for the opinion of the High Court, the inspector will not be obliged to amend the assessment under appeal until the appeal process has been fully completed. Accordingly, in those circumstances, tax will neither be collected nor repaid by the Revenue Commissioners on the basis of the Appeal Commissioners' determination. This follows on a relevant Supreme Court decision during 2006 in this regard.

Section 21 amends section 373 of the Taxes Consolidation Act 1997 by increasing the value threshold for business cars from €23,000 to €24,000. The new threshold will apply to capital allowances and leasing charges for new and second-hand cars used in the course of a trade, profession or employment. For income tax, the new threshold will apply from the basis period for the tax year 2007 onwards and for corporation tax, for accounting periods ending on or after 1 January 2007.

Section 22 amends section 657A of the Taxes Consolidation Act 1997 which is concerned with the special income averaging scheme for farmers arising from the decoupling of old FEOGA payments on the introduction of the new Single Farm Payment Scheme. Certain farmers who were in receipt of both old and new payments in the calendar year 2005 but in respect of different years of assessment were unable to qualify under section 657A. This amendment means that this group can now qualify.

Section 23 introduces a scheme for the taxation of EU Restructuring Aid for sugar beet growers. It will allow those in receipt of the restructuring payments to average them over a period of six years for the purposes of calculating taxable income. The sugar beet grower makes an election for each year of assessment in which he/she would be chargeable in respect of one of these payments, however, they will be allowed treat the payments as if they were made in 6 equal instalments and they are taxed accordingly. This option will be available to all farmers, both full time and part time and whether they are on the present 3 year income averaging system or not.

Section 24 amends sections 666 and 667A of the Taxes Consolidation Act 1997 and introduces a new section 667B into that Act. These sections are concerned with the scheme of 25 per cent general stock relief for farmers as well as the enhanced 100 per cent relief for certain young trained farmers.

Firstly, both reliefs are to be extended for a further 2 years from 31 December 2006 to 31 December 2008. Secondly, the list of courses required to satisfy the educational conditions for the young trained farmers relief is being amended. However, provision is made to ensure that any person who before 31 March 2008 satisfies the education requirements in place prior to the changes provided for in this section, will continue to satisfy the young trained farmer education conditions. These changes will be commenced by order of the Minister for Finance pending clearance by the European Commission.

Section 25 makes a minor technical amendment to the interpretation section (669A) of Chapter 3 of Part 23 of the Taxes Consolidation Act 1997 which is concerned with the scheme of capital allowances for the purchase of milk quota. This change ensures that the relief currently provided for in respect of milk quota purchased under a Milk Quota Restructuring Scheme will continue to be available under the new Milk Quota Trading System.

Section 26 provides for the taxation from 1 August 2008 of profits and gains arising from stallion stud fees. The existing tax exemption for stallion stud fees is due to terminate on 31 July 2008 and prior to that date costs along with stallion stud fee income are not taken into consideration for taxation purposes. With effect from 1 August 2008 stallions are to be treated as stock in trade and income or gains arising from stallion stud fees or from the sale of stallions will be subject to taxation. The normal expenses for the upkeep of stallions will be allowed against tax and a deduction in respect of the purchase cost of a stallion will be provided over 4 years at 25 per cent per annum. Stallions purchased on the open market after 31 July 2008 are to be valued, for the purposes of the 4 year deduction, at their purchase price. In cases where stallions are standing at stud prior to the termination date of the exemption or where stallions transfer to stud from racing or training or are bred on farm or held as stock in trade, the cost of the stallion for the purposes of the 4 year deduction will be the prevailing market value of the stallion as of 1 August 2008 or the date the stallion first stands at stud, as appropriate. The section also provides that the Revenue Commissioners may consult with any person they see fit in determining the market value of a stallion. This taxation treatment will also apply to syndicated owners of stallions. However, in cases where the syndicate member is not wholly or mainly engaged in farming the costs and losses arising from the ownership of the stallion will be offset solely against profits and gains from horse-breeding.

Finally, any additional tax paid in respect of exempt stallion stud fee income under the provisions introduced by section 17 of the Finance Act 2006 may be carried forward as a credit against income tax for future years. In these circumstances, the entitlement to carry forward any relief denied resulting from the operation of section 17 as a deduction against future income will not be available.

This section will commence by way of order of the Minister for Finance following clearance by the European Commission of the provisions of the section under State Aid rules.

Section 27 amends Schedule 26A to the Taxes Consolidation Act 1997 which is concerned with tax relief for donations to approved bodies. A number of references to the requirement that various educational bodies must be established in the State are being removed as a result of representations by the EU Commission. In addition, a number of named bodies are removed from the Schedule either because they are defunct or are established charities. These charities will continue to qualify for the Donations Scheme as they have been established for more than two years.

Section 28 amends Part 9 of the Taxes Consolidation Act 1997 in so far as it relates to the scheme of capital allowances for the construction and refurbishment of qualifying residential units which are operated or managed by registered nursing homes.

The section extends the qualifying period for the scheme from 31 July 2008 to 30 April 2010 and it inserts new conditions and requirements in order to qualify for relief. The changes being made include the following:

- The selection of the residents of residential units must be made by the registered nursing home involved and such residents may not be connected with the lessor of the unit. Also, the spouse of an aged or infirm person may live in a qualifying unit in circumstances where that spouse would not be deemed aged or infirm from a medical point of view;

- The tax life and holding period of residential units for balancing allowance and balancing charge purposes is increased from 15 years to 20 years;

- The level at which capital expenditure may qualify is capped at 50 per cent for individuals and at 75 per cent for companies.

- The Health Service Executive (HSE) must certify, after first letting, that a residential unit meets the relevant conditions in the legislation. As part of the certification process, information in relation to the investment made in the unit has to be provided to the HSE.

- On an annual basis, the investors in residential units certified by the HSE will be required to submit a report to the HSE indicating occupancy levels in the residential units and confirming that the residential units continue to meet the relevant conditions and to be associated with a registered nursing home in accordance with the certification from the HSE. These annual reports are to be forwarded to the Department of Health and Children and copied to the Department of Finance.

These changes apply in relation to capital expenditure incurred under contracts or agreements which are entered into on or after 1 May 2007.

Section 29 introduces a new pilot tax based scheme for tourism facilities in the mid-Shannon area. The scheme is aimed at encouraging the development of new tourism infrastructure, or the refurbishment of existing tourism infrastructure, in that area. The list of qualifying areas is included in a new Schedule 8B to the Taxes Consolidation Act 1997. The qualifying period for the scheme will be 3 years from the date of its commencement which will be done by way of Ministerial order. Relief will be available by way of accelerated capital allowances over 7 years for qualifying construction and refurbishment expenditure incurred in the qualifying period. In the case of refurbishment the qualifying expenditure must exceed 20 per cent of the market value of the property before work commences. In areas which are not in the BMW region only 80 per cent of construction and refurbishment expenditure will qualify for relief. No relief is available in relation to expenditure incurred where any part of it has been met directly or indirectly by or through the State or any of its agencies e.g. no relief will apply where expenditure is met directly or indirectly by a grant or BES funding. Also, where relief is given in relation to capital expenditure under the scheme then relief cannot be given under any other provision of the Tax Acts.

The nature of the tourism infrastructure buildings and structures which may qualify under the scheme will be set out in guidelines to be issued by the Minister for Arts, Sport and Tourism in consultation with the Minister for Finance. While relief will be available over 7 years there will be a 15-year holding period in order to avoid a claw-back of allowances given. Existing restrictions on the sideways set-off of excess capital allowances against non-rental income for passive investors will apply as will the restriction on the use of specified reliefs by high-income individuals which is effective from 1 January 2007.

Projects wishing to avail of relief must get approval in advance (for which an application must be made within 1 year of the commencement of the scheme) and also must get formal certification after completion. This approval and certification will be given by a special board established for the purposes of the scheme and will be carried out in accordance with the guidelines to be issued by the Minister for Arts, Sport and Tourism, in consultation with the Minister for Finance. Certain buildings such as those that facilitate gaming or gambling are specifically excluded from the scheme, as are licensed premises (but not restaurants). Accommodation facilities that are provided as part of a qualifying project may qualify for relief to the extent that expenditure on such facilities does not exceed 50 per cent of the overall expenditure on the project or such lower percentage as may be specified in the guidelines for the type of project involved. This is subject to the over-riding condition that qualifying expenditure on accommodation facilities may not exceed qualifying expenditure on non-accommodation facilities. The scheme will be notified to the EU Commission under the new regional aid block exemption guidelines.

Section 30 amends section 1008 of the Taxes Consolidation Act 1997 in order to clarify the operation of that section and to address attempts to use its provisions for avoidance purposes.

This section clarifies that the tax-adjusted profits of a partnership must, for tax purposes, be apportioned fully between the partners each year with the profits so apportioned being taxable at the partners' marginal income tax rates. The avoidance which is being addressed involves situations where the full tax adjusted profits are not apportioned between the partners for tax purposes with a view to any amounts which were not so apportioned to the partners being charged at the standard 20 per cent rate on the precedent acting partner.

Section 31 amends the law relating to Relevant Contracts Tax (RCT) which applies to payments made by principal contractors to subcontractors under relevant contracts in the construction, meat processing and forestry industries. The changes are as follows.

The definition of construction operations is extended to include the installation in or on any building of systems of telecommunications. This brings within the RCT provisions the installation of telecommunications networks and local wireless networks.

The list of principal contractors who are obliged to operate RCT is extended to include a person carrying on a business involving the development of land and a board or body established under royal charter that is funded wholly or mainly out of moneys provided by the Oireachtas. The latter change places such boards on a par with boards set up under statute who are already obliged to operate RCT.

The above changes have effect in respect of relevant contracts entered into on or after 1 May 2007.

A number of amendments are being made to meet commitments contained in *Towards 2016* (the Ten-Year Framework Social Partnership Agreement 2006-2015) in relation to the strengthening of the RCT system. Specifically,

- an enabling provision has been included to allow the Revenue Commissioners (by way of regulations to be made once the Finance Bill is passed) to make provision for increased monitoring of RCT1 declarations by requiring such declarations to be delivered to them in certain circumstances. The RCT1 is the declaration required to be made by both a principal and a subcontractor prior to entering into a relevant contract to the effect that they have satisfied themselves, having regard to Guidelines published by the Revenue Commissioners as to the distinction between contracts of employment and relevant contracts, that the contract is <u>not</u> a contract of employment, and

- the existing fixed penalties applying for failing to comply with regulations requiring the making of an RCT1 declaration are extended to include a failure to comply with regulations requiring the delivery of an RCT1 declaration to the Revenue Commissioners.

Section 32 amends the provisions of the Taxes Consolidation Act 1997 which provided for the Special Savings Incentive Account (SSIA) scheme. The scheme will come to an end during 2007 and this section empowers the Revenue Commissioners to seek various information returns from SSIA managers which will assist in reconciling the money flows during the life time of the scheme.

Section 33 amends the provisions introduced by the Finance Act 2006 to encourage those on lower incomes to invest some or all of their Special Savings Incentive Account (SSIA) funds into a pension product when their SSIA matures. The incentive is intended to encourage long-term savings for pensions but the SSIA funds and associated tax credits should be retained in the pension product for at least a year after the incentive had been availed of. This section provides for a claw-back of tax credits where a person availing of the credits invests SSIA funds in a pension product and withdraws any funds from the pension product within one year. Where the withdrawal takes place before 10 April 2007, the pension investor will be assessed to income tax by the Revenue Commissioners in such amount as ensures that the appropriate amount of tax credits are recovered. Where the withdrawal takes place on or after 10 April 2007, the pension administrator is required to deduct the claw back amount from any payment being made. The amount of the claw back will be in the same proportion to the amount withdrawn as the total tax credits bear to the aggregate of the total tax credits and the amount of SSIA funds invested in the pension product. For example, if a person seeks to withdraw an amount equivalent to the value of the SSIA funds invested and the associated tax credits from the pension product, the total amount of tax credits previously granted will be clawed back.

Section 34 makes a number of amendments to the Taxes Consolidation Act 1997 in relation to interest payments by relevant deposit takers.

- A new subsection (1A) is inserted into section 256 of that Act and provides that deposit interest can be paid by the deposit taker without deduction of deposit interest retention tax (DIRT) where, at any time in a year of assessment, the individual beneficially entitled to the interest or his or her spouse is 65 years of age or over and their total income does not exceed the relevant income tax exemption limit. The individual concerned is required to make a declaration to that effect to the relevant deposit taker. Up to now, such interest was subjected to DIRT and the individuals affected were entitled to reclaim the tax from the Revenue Commissioners.

- A new subsection (1B) is inserted into section 256 of that Act and provides that deposit interest can now be paid by a deposit taker gross of DIRT to certain other persons provided the deposit taker obtains a notification to that effect from the Revenue Commissioners. This applies where the individual beneficially entitled to the interest or his or her spouse is permanently incapacitated or where the persons entitled to the interest are trustees of a special trust for permanently incapacitated individuals who are exempt from tax under section 189A(2).

- A further change is being made to allow an intermediary, appointed by the National Treasury Management Agency for the purposes of taking specified deposits, to operate DIRT on the payment of interest on those deposits.

This section applies on or after the date of the passing of the Act.

Section 35 changes the procedures that apply to give the force of Irish law to double taxation treaties, and treaties concerned with exchange of information between tax authorities, entered into by the Government. Up to now, such a treaty had the force of law once the Government made an Order that it had entered into the treaty and that Order had been approved by the Dáil. An additional step is being introduced so that in future such a treaty will have the force of law only after the Government has made an Order that has been approved by the Dáil and law has been enacted by the Oireachtas that inserts a reference to the Order into a new Schedule that is being inserted into the Taxes Consolidation Act 1997. This section also secures the position of existing Double Taxation Agreements in Irish Law by listing them in the new Schedule 24A.

Section 36 makes a number of amendments to the provisions on double taxation relief.

Foreign branch profits

It provides unilateral credit relief for foreign tax suffered by the company that has a branch or agency in a country with which Ireland does not have a tax treaty. This allows such a company to reduce its Irish corporation tax liability by the foreign tax suffered on the profits of the branch or agency. In the absence of such relief, the company would only be entitled to a deduction for the foreign tax in computing its taxable income.

The section also allows *pooling* in the case of foreign branch profits. Where the foreign tax on branch profits in one country exceeds the Irish tax on those profits, the credit is limited under existing law to the amount of the Irish tax on those profits and no credit can be given for the balance of the foreign tax. *Pooling* allows such surplus foreign tax to be credited against tax on branch profits in other countries in the year concerned.

Capital Gains Tax

The section provides unilateral credit relief for tax suffered on capital gains in certain countries. The countries concerned are: Belgium, Cyprus, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Pakistan and Zambia. In these cases Ireland has a tax treaty that pre-dates the introduction of capital gains tax in the State. The section provides that, where a person, whether an individual or company, who is chargeable to tax in the State in respect of a capital gain, suffers tax on the gain in the other country concerned, the foreign tax will be credited against Irish capital gains tax on the gain. The purpose of the provision is to grant relief from Irish tax in these specific situations, thereby relieving double taxation.

Section 37 removes an anomaly in relation to the tax deductibility of share-based consideration given by a company to employees. The Finance Act 2005 provided that a deduction would not be given in computing taxable trading income of a company for consideration that consists of shares in the company or a connected company or a right to receive such shares. However, this is subject to a number of exceptions. A deduction would be given for expenditure incurred by the company on the arm's length acquisition of the shares or a payment to the connected company for the issue or transfer of the shares. The disallowance of a deduction covers both shares <u>and</u> the right to receive shares but the exceptional treatment only applies to shares. This is being rectified so as to permit a deduction for certain payments in respect of the right to receive shares.

Section 38 makes 3 amendments to the scheme of dividend withholding tax (DWT) as set out in Chapter 8A of Part 6 of, and Schedule 2A to, the Taxes Consolidation Act 1997. DWT was introduced in the Finance Act 1999 and, subject to a number of exceptions, it applies to dividends paid by Irish resident companies to their shareholders. Tax at the standard rate of income tax is withheld from the dividend and paid over to Revenue. The shareholder is entitled to offset the tax withheld against his or her liability for the year concerned. If there is no liability, the tax withheld can be repaid by Revenue to the taxpayer.

- The first amendment provides for the introduction of electronic dividend vouchers. The use of electronic vouchers instead of paper vouchers requires a change to the legislation to provide for codes instead of names and addresses. Such electronic vouchers will now be accepted for DWT purposes.

- The second amendment clarifies the legislation to ensure that the general 4-year time limit that applies to other tax repayments also applies to refunds of DWT.

- The third amendment extends the exemption from DWT that is available to non-resident subsidiaries whose parent company is quoted on certain recognised stock exchanges outside Ireland to cases where the parent company trades only on the Irish Stock Exchange.

Section 39 amends the taxation rules in relation to offshore funds that are created under the law of EU and EEA Member States and certain OECD countries. These funds are covered by the ''gross roll up'' taxation regime introduced in the Finance Act 2001. This regime was brought in to match a similar regime for collective funds in the State that was put in place in 2000. Under gross-roll-up, funds may accumulate without the imposition of tax. However, an exit tax applies when payments are received from the fund or when there is the disposal of an interest in the fund. For individuals who include the details in their tax return, tax rates of 20 per cent and 23 per cent apply to payments, and 23 per cent to disposals.

This section modifies the definition of offshore fund in EU and EEA Member States and certain OECD countries, in order to achieve a more coherent and logical match between such funds and domestic funds which also operate under a ''gross roll up'' regime. The changes are twofold.

- Firstly, the type of offshore fund that will qualify for inclusion in the ''gross roll up'' regime is being clearly spelt out. Under the new rules, only offshore funds that are similar in all material respects to domestic ''gross roll up'' funds will benefit from the favourable tax regime. In practice, this means that 4 categories of offshore fund will come within the scope of ''gross roll up'' in future: These are UCITS, unit trust schemes, investment companies and investment limited partnerships, but only where the funds in question are comparable to funds operating in Ireland.

- Secondly, offshore funds in the EU, the European Economic Area or in certain OECD countries that fall outside the scope of the gross roll up regime by virtue of the new rules will not qualify for offshore fund treatment of any sort. Instead, income and gains will be taxed under general taxation principles. This is similar to the treatment of income and gains in the case of Irish entities that do not come within the scope of the domestic ''gross roll up'' regime.

The new rules apply with effect from 20 February 2007. However, where a person had a material interest in an offshore fund on 20 February, which is now excluded from the gross roll up regime, the existing rules will continue in relation to that material interest unless the fund is in the nature of a ‘‘personal portfolio investment undertaking’’. Any new shares, etc. acquired after 20 February 2007 will be subject to the new rules.

Section 40 is an anti-avoidance provision. It makes a number of changes to the Taxes Consolidation Act 1997 to provide special rules for the taxation of personal portfolio investment undertakings in relation to payments made to unit holders.

At present, income or gains are allowed to be rolled-up within a fund without suffering tax. When payments are made to a unit holder out of the fund, the payment is generally subject to an exit tax of 23 per cent. No further charge to tax applies on the payment. It has come to attention that some investors are putting personal asset investments into investment undertakings so as to ultimately have a final tax liability of 23 per cent instead of the investor’s marginal tax rate. The approach in the section is similar to that introduced for personal portfolio life policies in the Finance Act 2002.

A personal portfolio investment undertaking is defined in a new section 739BA. It relates to a situation where the selection of the property of the undertaking or offshore fund in an EU Member State, an EEA country or a member of the OECD with which Ireland has a double taxation agreement, was or can be influenced by the unit holder or certain connected persons.

Under the proposed rules, where a chargeable event happens in relation to an investment undertaking which is a personal portfolio investment undertaking on or after 20 February 2007, the gain will be taxed at the standard rate plus 23 per cent.

Section 747D is also amended so that, where a payment is made in respect of an offshore fund in an EU Member State, an EEA country or a member of the OECD with which Ireland has a double taxation agreement which is a personal portfolio investment undertaking, the payment will be taxed at the standard rate plus 23 per cent where the income was correctly included in the individual’s tax return. Where, however, the payment was not correctly included in the individual’s tax return, the payment will be taxed at the individual’s marginal rate plus 23 per cent.

Section 41 amends section 739D of the Taxes Consolidation Act 1997 which sets out the unit holders that may receive payments from investment undertakings without the imposition of an exit tax under the ‘‘gross roll-up’’ regime introduced in the Finance Act 2000.

The amendment allows the National Pensions Reserve Fund and securitisation companies to obtain such payments gross of the exit tax provided the necessary conditions, such as the completion of a declaration procedure, are adhered to.

Section 42 amends section 730H of the Taxes Consolidation Act 1997, which deals with the interpretation and application of the taxation rules in respect of life assurance policies written by assurance companies in the European Economic Area (which includes all EU Member States) or in OECD countries with which Ireland has a double tax treaty. The purpose of the amendment is to adjust the definition of ‘‘relevant period’’ similar to the adjustment being made in the domestic life policy regime (see section 43 below).

This means that there will be a deemed disposal of the foreign life policy (and liability to pay exit tax) every 8 years.

Section 43 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 gross roll up regime introduced in the Finance Act 2000. Under gross roll up, no tax is charged on investment proceeds during the term of the investment, but an exit tax applies on the net investment proceeds paid to a policyholder when the policy matures or when rights under the policy are surrendered or assigned. Changes were introduced in Finance Act 2006 to provide for a new chargeable event (on which tax would be payable) that would arise at the ending of each ‘‘relevant period’’ (as defined) following the inception of the policy. The purpose of this was to ensure that exit tax could not be deferred indefinitely by the continual rolling over of a life assurance policy without it becoming chargeable to tax.

This section makes certain adjustments to the 2006 legislation, following consultations with the life assurance industry. The main change is that the definition of relevant period is being amended — this was defined as an 8-year period beginning with the inception of the policy, and each subsequent 8-year period beginning when the previous one ended. However, the definition was qualified to provide that, if the policy was a regular premium policy and the amount paid annually was €3,000 or less, then the 8 year period would be increased to 12 years. This concession is now being removed (in agreement with the life industry) and the period of 8 years will apply to all policies, irrespective of size or frequency of premiums.

The other amendments involve technical adjustments to ensure that the legislation operates as intended in relation to the calculation and payment of the exit tax.

Section 44 amends Chapter 1 of Part 33 of the Taxes Consolidation Act 1997, which deals with anti-avoidance provisions in relation to the transfer of assets abroad. The legislation was first introduced in 1974 to counteract tax avoidance schemes involving the transfer of assets (and thereby income) by resident individuals to non-resident companies, trustees, etc. in a way which left the resident individual in a position to benefit directly or indirectly from the income or capital in a tax free way.

This section makes a number of changes to the law. The main change relates to an exemption from the charge that is available if the individual concerned can satisfy the Revenue Commissioners that the purpose of the assets transfer was not to avoid tax or that the transactions concerned were *bona fide* commercial transactions and were not designed for tax avoidance reasons. The rules used to ascertain whether or not the purpose of the transfer of assets was to avoid tax are being strengthened. The changes will ensure that all relevant factors, relating both to the subjective intentions of the individual and the authenticity of the transaction itself, are to be taken into account in determining whether or not a transaction has an avoidance purpose. The amendment also closes a possible loophole by confirming that all operations associated with the initial transfer of assets are taken into account in determining whether or not liability arises under the provisions. Transitional arrangements are also included to ensure that assets transfers related to the existing rules and/or to the new rules are treated appropriately.

Chapter 4

Corporation Tax

Section 45 makes a number of amendments to section 234 of the Taxes Consolidation Act 1997. Section 234 provides that certain income derived from patent royalties is exempt from tax.

Firstly, the definition of ''qualifying patent'' is being broadened so as to provide that the work leading to the invention which is the subject of the patent can now be carried out within a state of the European Economic Area rather than just in the State. This follows a formal notice of infringement received from the EU Commission to the effect that requiring such work to be carried out only in Ireland was contrary to EU law. This change applies as respects income from a patent in relation to which such work leading to the invention which is the subject of the patent is carried out on or after 1 January 2008.

Secondly, an annual limit of €5 million on the aggregate amount of patent income to be exempt for tax purposes is also being imposed. This annual limit will relate to income arising in a period of 12 months commencing on 1 January 2008 and each subsequent 12 month period (i.e. the relevant period).

Thirdly, this annual limit is being applied to the aggregate amounts of patent income arising to a company and any person or persons who are connected with that company. Where the aggregate amount of patent income exceeds the limit, the company and the connected persons can specify how the €5 million is to be apportioned between the company and those connected persons.

Section 46 makes a number of amendments to section 766 of the Taxes Consolidation Act 1997 on foot of changes to the tax credit scheme for Research and Development (R&D) announced in Budget 2007.

Paragraph (*a*) amends the definition of ''threshold amount'' so that expenditure on R&D in the base year 2003, which was to apply up to and including the year 2006 for the purposes of calculating the incremental expenditure on which the 20 per cent tax credit is calculated, will now be applicable up to and including the year 2009.

Paragraph (*b*) provides that expenditure by companies on sub-contracting research and development work to unconnected parties will qualify under the tax credit scheme up to a limit of 10 per cent of qualifying research and development expenditure incurred by the company in any one year. This will apply where the sub-contractor carrying out the research and development does not claim a tax credit in respect of such expenditure. This measure is in addition to the existing provision in the scheme in respect of research and development work carried out for companies by universities.

The amendment in paragraph (*a*) applies for accounting periods commencing on or after 1 January 2007 while the amendment in paragraph (*b*) applies for accounting periods ending on or after 1 January 2007 in respect of expenditure incurred on or after 1 January 2007.

Section 47 makes 3 changes to section 958 of the Taxes Consolidation Act 1997 in order to ease the preliminary tax compliance burden for companies. The broad rule is that preliminary tax (a minimum of 90 per cent of a company's final tax liability) is paid one month before the end of the accounting period, with the balance of tax to be paid 9 months after the end of the accounting period. With some exceptions, if the preliminary tax payment falls below 90 per cent of a company's final tax liability, the balance of tax payable will carry interest back to the original due date. Small companies (as defined in terms of tax liability) have the option of paying preliminary tax on the basis of 100 per cent of their previous year's liability instead of 90 per cent of the current year's liability.

Two of the three changes give effect to measures announced in the Budget Statement—

- *firstly,* the small company liability threshold is raised from €50,000 to €150,000, which means that companies with a tax liability of up to €150,000 in their previous year will be able to avail of the small company option above.

- *secondly,* start-up companies with a tax liability of up to €150,000 in their first year are relieved of the obligation to pay preliminary tax in that first year.

The third change is aimed at minimising in certain cases the interest charges that would otherwise arise for large companies (i.e. companies with a tax liability above €150,000) if their preliminary tax payments fall short of 90 per cent. The measure provides for the notional allocation of preliminary tax payments between members of the same group of companies for the purpose of assessing the adequacy of preliminary tax payments made by the group for interest charge purposes.

Section 48 amends Chapter 5 of Part 12 of the Taxes Consolidation Act 1997, which deals with group relief for companies. This chapter allows trading losses, etc. incurred by one member of a group (the surrendering company) to be offset against the profits of another member of the group (the claimant company) in certain circumstances. The provisions in relation to group relief are being amended in the main to comply with a ruling of the European Court of Justice (ECJ) on foreign losses. The ruling was that the UK model of group relief (which the Irish model broadly matched) contravened EU law where a parent company resident in the UK was precluded from getting relief for the losses of a subsidiary company resident elsewhere in the EU, in circumstances where the subsidiary's losses could not otherwise be relieved.

This section gives relief to Irish companies in respect of trading losses incurred by their non-Irish subsidiary companies that are resident in EU Member States and EEA states with which Ireland has a double tax treaty. The losses will be available for relief "vertically upwards" from the non-resident subsidiary to the Irish-resident parent but will only be available when certain conditions — for example, in relation to the way the loss is computed and the type of loss involved — are met. Losses that are available for offset against profits in another territory, or that can be used at any time by setting them against any company's profits in the country where the loss is incurred, are not covered by the new rule.

Where the new rule is applicable, it will allow an Irish-resident parent company to offset against its taxable income the losses of an EU/EEA resident subsidiary. The legislation includes an anti-avoidance provision to disallow losses where arrangements are entered into primarily to secure an amount that would qualify for the new group relief.

Section 49 amends section 79B of the Taxes Consolidation Act 1997 to ensure that the original provision as amended by Section 62 of Finance Act 2006 operates as intended. Companies are allowed to elect to match for tax purposes a trading asset denominated in a foreign currency with redeemable share capital denominated in that currency. Where the option is exercised, any foreign exchange gain or loss on the share capital is to be taken into account in calculating taxable income of the company so to match a corresponding exchange loss or gain on the asset. In exercising this option a company achieves tax neutrality in relation to such exchange movements. The two amendments are:

- The *first amendment* ensures that unrealised foreign currency movements on the share capital can be taken into account for tax purposes over the period of the loan on a "mark to market" basis. This achieves a better timing of the matching allowed under the section so as to achieve full neutrality.

- The *second amendment* provides that the tax neutrality provided for under section 79B, which currently assumes a euro functional currency, is also available to a company whose functional currency is other than the euro. This could arise, for example, where a company whose functional currency is the US$ gives loans denominated in sterling.

As this Section clarifies the original intention of the legislation as amended by Section 62 of Finance Act 2006, it is proposed that it takes effect from 1 January 2006 — the original commencement date.

Section 50 provides that in certain circumstances interest paid by a company to a non-resident 75 per cent parent or associated company will not be treated as a distribution of its profits and will therefore be a deductible trading expense. In certain cases double taxation can arise where the interest is disallowed as a trading expense under the distribution rule and is also taxed in the hands of the recipient as interest. Subject to the conditions of the section being met, a company paying yearly interest to a non-resident 75 per cent parent or associated company may treat such interest as a deductible trading expense.

Section 51 amends section 486B of the Taxes Consolidation Act 1997 in order to provide for an extension of the qualifying period for tax relief for corporate investment in certain renewable energy projects. The qualifying period is being extended from 31 December 2006 to 31 December 2011. The extension is subject to clearance by the European Commission from a State Aid perspective, and will come into operation by way of a commencement order to be made by the Minister for Finance following such clearance.

Chapter 5

Capital Gains Tax

Section 52 amends sections 598 and 599 in Chapter 6 of Part 19 of the Taxes Consolidation Act 1997. Those sections provide relief to an individual aged 55 or over who is disposing of a business or farm. Section 598 applies to a disposal where the consideration does not exceed €500,000. Section 599 applies to a disposal to a child (including certain nephews and nieces and foster children), in which case no limit applies. *Firstly*, it extends the relief, in certain circumstances, to disposals of land that has been let prior to its disposal. The land in question must have been let for a period of not longer than 15 years ending with the date of the disposal, it must have been owned and used for farming by the individual making the disposal for a period of not less than 10 years prior to the initial letting of the land and it must be disposed of to a child within the meaning of section 599 of the Taxes Consolidation Act 1997. *Secondly*, it gives effect to the Budget proposal to increase the threshold in section 598 from €500,000 to €750,000. *Thirdly*, it ensures that a child of a deceased child will qualify as a child for the purposes of relief under section 599. *Fourthly*, it ensures that where a parent is disposing of land used for the purposes of farming to his or her child and the consideration for its disposal consists of other land, the parent acquiring this other land will be treated as having acquired the land at the date and for the consideration that the child originally acquired it and he or she will be deemed to have farmed that land for the same period that the child farmed it. The amendment will apply to disposals made on or after the date of the passing of the Act, except in relation to the increase in the threshold from €500,000 to €750,000, which amendment will apply to disposals made on or after 1 January 2007.

Section 53 amends section 603A of the Taxes Consolidation Act 1997, which provides an exemption from capital gains tax in respect of any gain on disposal of a site by a parent to a child (including certain foster children) for the purpose of constructing a house on the site, where the consideration does not exceed €254,000. The amendment ensures that the area of the site must not exceed 0.4047 hectare, i.e. 1 acre (exclusive of the area on which the house is to be built). The amendment will apply to disposals made on or after 1 February 2007.

Section 54 amends Schedule 15 to the Taxes Consolidation Act 1997, which specifies a number of bodies that are exempt from capital gains tax by virtue of section 610 of the Act. Bodies specified include local authorities, trade unions, tourism promotion authorities, sports bodies, etc. The amendment ensures that, in order for exemption from capital gains tax to apply to the bodies specified in paragraphs 3, 37 and 38 of Part 1 of Schedule 15, the consideration for the disposal for the purposes of the Capital Gains Tax Acts must be applied for the purposes of the bodies concerned if it is greater than the proceeds giving rise to the disposal. The amendment will apply to disposals made on or after 1 February 2007.

Section 55 amends section 746 of the Taxes Consolidation Act 1997, which applies, with suitable adaptations, certain provisions of the capital gains tax code for the purposes of charging gains on disposals of interests in offshore funds where the disposals are made outside the State for the benefit of persons resident in the State. The amendment ensures that a liability to capital gains tax will arise in respect of an individual who is *resident* in the State as well as in respect an individual who is ordinarily resident in the State. The amendment will apply on or after 1 February 2007.

Section 56 amends section 980 of the Taxes Consolidation Act 1997, which provides for a deduction of an amount equal to 15 per cent of the consideration paid by a purchaser to a vendor for an asset, where a clearance certificate has not been provided by the vendor and where the value of the asset being disposed of exceeds €500,000. The amendment provides that the purchaser must deliver an account of the consideration paid by him or her to the vendor, and the amount deducted from the consideration, within 30 days after the date of the payment of the consideration and remit the amount deducted by him or her to the Collector-General. If the purchaser does not do this, the Revenue Commissioners can assess him or her for the amount due, including any interest due because of late payment. The amount deducted from the consideration will, in due course, be allowed as credit in computing the capital gains tax liability of the vendor. The amendment will apply to disposals made on or after the passing of the Act.

PART 2

Excise

Section 57 amends section 144(3)(*b*) of the Finance Act 2001 to include tobacco products among the types of seized goods that can be disposed of immediately by the Commissioners. This proposed power is intended to address the storage and associated difficulties arising from the large number of seizures of mainly small-scale consignments of cigarettes and other tobacco products.

Section 58 provides for the repeal of obsolete excise law provisions.

Section 59 confirms the Budget reduction of the non-auto rates of Mineral Oil Tax on kerosene and LPG, from €16.00 and €10.00 respectively per 1,000 litres, to Nil for both.

Paragraph (b) of the section also provides for the reinstatement of uncommenced provisions which provided for a differentiated rate for unleaded petrol with a sulphur content of more than 10 parts per million (ppm) as well as a reduction in the sulphur content from 50 parts to 10 parts per million (ppm) for the lower diesel rate. The alternative schedule of Mineral Oil Tax rates provided in paragraph (*b*) will not come into operation unless commenced by an Order of the Minister.

Section 60 amends section 96 of the Finance Act 1999 to ensure that, as required by the EU Energy Tax Directive, substitute fuels, including biofuel, which can be substituted for hydrocarbon motor or heating fuel, are taxed at the rate that applies to the hydrocarbon motor or heating fuel they substitute for. This means, for example, that bioethanol, which is a substitute for unleaded petrol, is taxed at the unleaded petrol rate, and biodiesel, which is a substitute for diesel, is taxed at the standard rate for auto-diesel.

The definition of ‘‘substitute fuel’’ in section 94 of that Act is also amended for consistency.

Section 61 amends the provisions for Mineral Oil Tax offences and penalties in Chapter 1 of Part 2 of the Finance Act 1999.

Subsection (1), paragraph (b) introduces a new section — section 102A — to provide that, where a person licensed to trade in mineral oils is convicted of a serious Mineral Oil Tax offence, the Court shall, in addition to the existing penalties for these offences, impose an order prohibiting trade in mineral oil at the licensed premises concerned. There is also the option for the Court to extend the prohibition of trade order to any other premises for which the offender is the licensee.

In that new section:

- Subsection (1) provides for the temporary prohibition of trade order and the period of prohibition — 1 to 7 days for a first offence, and 7 to 30 days for a second or subsequent offence.

- Subsection (2) provides that the Court may seek a report from a Revenue officer who investigated the relevant offence.

- Subsection (3) provides that only one order may be made where several offences have been committed on the same occasion.

- Subsection (4) specifies the days on which an order takes effect and ceases to have effect.

- Subsection (5) provides that an order ceases to have effect when a conviction for the relevant offence is overturned on appeal, and that the Court may, on appeal, vary the period specified in an order.

- Subsection (6) provides that the licence of the offending mineral oil trader is ineffective for the period of the order.

- Subsection (7) requires that a notice, explaining the temporary prohibition of trade, is to be displayed at the premises affected.

- Subsection (8) provides for the permanent revocation of the mineral oil trader's licence for a third or subsequent offence, or for failure to comply with an order.

Subsection (1), paragraph (a) amends section 102 of the Finance Act 1999 to facilitate reference in the new section to offences for which a temporary prohibition of trade order applies. That section is further amended to add the offence of ''keeping for use as a propellant'' to the various offences of illegal keeping, selling and using of mineral oil that are provided for under that section.

Subsection (1), paragraph (c) amends section 103 of the Finance Act 1999, which provides for presumptions in proceedings for Mineral Oil Tax offences, to provide for consistency of reference to the amended offence provisions in section 102.

Subsection (2) provides that the new penalties only apply to offences committed on a date or dates subsequent to the passing of the Finance Act 2007.

Section 62 confirms the Budget increases in the rates of Tobacco Products Tax which, when V.A.T. is included, amount to €0.50 on a packet of 20 cigarettes with pro-rata increases in respect of other tobacco products.

Section 63 amends the definition of ''mechanically propelled vehicle'' contained in section 130 of the Finance Act 1992 (as amended) to exclude vehicles that do not meet EU type approval standards for entry into service on the State's roads. Under EU Directives, vehicles are required to meet technical standards with regard to parts, safety and emissions.

The Revenue Commissioners will no longer be required to register vehicles for vehicle registration purposes that do not meet such standards such as vehicles manufactured exclusively for off-road use only.

Section 64 extends the temporary exemption provided for in section 135 of the Finance Act 1992 (as amended) to category A (passenger) vehicles, i.e. company cars, in certain circumstances.

Section 135 of the Finance Act 1992 provides for temporary exemption from the registration requirement for certain vehicles, registered in another Member State that are used in the State by State residents on behalf of businesses established outside the State. To date this provision has only applied to commercial-type vehicles such as vans and trucks, but this section now extends it to company cars.

As a consequence of recent European Court of Justice Judgements, a State resident, who is employed by an employer established in another Member State may now be approved by the Revenue Commissioners to use a category A vehicle, registered in another Member State either owned or leased by the employer, for private and/or business use in the State. However, the vehicle must be used principally in another Member State. This provision also applies to a self-employed State resident who establishes a legally accountable undertaking in the jurisdiction of another Member State and whose business is carried on solely or principally within that jurisdiction.

Section 65 amends section 135C of the Finance Act 1992 (as amended) to provide, as announced in the Budget, for a relief scheme under which the Revenue Commissioners may remit or repay 50 per cent of the vehicle registration tax payable or paid on the registration of series production electric vehicles. The scheme is intended to encourage the purchase of electric vehicles that can achieve vehicle propulsion exclusively from an electric motor. This scheme is to operate for a one-year period commencing on 1 January 2007 and ending on 31 December 2007.

This is an extension to section 135C of the Finance Act 1992 that currently provides for the remission or repayment of 50 per cent of the vehicle registration tax payable or paid on the registration of series production hybrid electric vehicles and series production flexible fuel vehicles up to 31 December 2007.

Section 66 permits the late opening of betting shops on days on which an evening race-meeting is taking place in Ireland, regardless of the time of year. Currently, late opening is allowable when daylight hours facilitate evening race-meetings (April through to August). This change is in response to the advent of floodlit night time horse racing in Ireland from the latter half of this year.

Section 67 adjusts the rates of excise duty to be paid by firearms dealers to become registered in the register of firearms dealers, or to renew registration. Up until now registrations were renewable annually. Registrations will now be valid for 3 years. The excise duty rates on the registration of firearms dealers have been adjusted to reflect (i) consumer price index increases since the current rates were set in 1992 and (ii) the fact that registration now lasts for 3 years.

Section 68 adjusts the rates of excise duty on firearm certificates. The Criminal Justice Act 2006 introduced changes to the regulation of firearm certificates. Firearm certificates are now valid for 3 years instead of a maximum of 1 year as was the case up to now. The rates of duty which were last adjusted in 1992 have been updated to take account of increases in the consumer price index since that time and the 3 year period of validity of firearm certificates.

Section 69 adjusts the rates of excise duty on firearms certificates issued to non-residents (tourists etc.). The period of validity of certificates for non-residents is not to be changed in line with certificates issued to State residents. The non-resident certificates expire annually on 31 July. The rates of duty to be imposed reflect the shorter period of validity.

Section 70 imposes an excise duty on authorisations issued to rifle and pistol clubs and shooting ranges. The requirement that such bodies be authorised was provided for in the Criminal Justice Act 2006. Authorisations are valid for 5 years.

Section 71 imposes an excise duty on firearms training certificates. The firearms training certificate was introduced by the Criminal Justice Act 2006. It permits a person over 14 years of age to use a firearm for training purposes under the supervision of an adult who is the holder of a firearm certificate.

Section 72 imposes an excise duty on licences issued to persons authorised to reload ammunition, i.e. to make ammunition from spent ammunition. Licences to reload ammunition were provided for in the Criminal Justice Act 2006. A licence is valid for 3 years.

Section 73 imposes an excise duty on authorisations permitting persons to deal in firearms deemed ''restricted'' by the Minister for Justice, Equality and Law Reform. The period of validity of such authorisations is 3 years.

Section 74 inserts a new section 139A into the Finance Act 2001 which provides for goods detained or seized under the law relating to Excise to be stored in a place designated for that purpose by the Revenue Commissioners under the control of a person contracted to them for that purpose. The section is designed to cater for a situation in which responsibility for the physical custody of such goods is contracted out to private operators under Revenue supervision. A similar provision is made in *Section 127* to cater for goods detained or seized under the Customs Acts.

PART 3

Value-Added Tax

Section 75 is a definitions section.

Section 76 makes three amendments to section 3 of the VAT Act, which deals with the supply of goods. The amendments together with the amendments in *Sections 81, 82, paragraphs (a)* and *(b)(ii)* of *Section 83, Sections 85, 86* and *90* of the Bill are part of a package of measures to deal with the revised treatment of finance houses who engage in hire purchase type transactions. These finance houses will now qualify for bad debt relief as taxable persons. In this context, the sale by them of repossessed goods will become taxable supplies.

Paragraph (a) amends subsection (1)(*a*) confirming that the transfer of ownership of goods to a finance house is a supply of goods.

Paragraph (b)(i) amends subsection (5)(*a*) clarifying that the transfer of ownership from the finance house to the purchaser at the end of the hire purchase agreement is not a supply of goods.

Paragraph (b)(ii) amends subsection (5)(*c*) and provides that the supply of repossessed goods by the finance house is now a taxable supply.

The amendments are effective from 1 May 2007.

Section 77 makes three amendments to section 5 of the VAT Act which deals with the supply of services.

Paragraph (a) of *subsection (1)* deletes subsection (6)(*e*)(iv) which deals with the place of supply rule in the case of Fourth Schedule services received from abroad by a department of State, a local authority or a body established by statute in the State. The amendment ensures that such entities will not be liable for Irish VAT in respect of the receipt of foreign services such as consultancy services, legal services, etc, except where they act as taxable persons. The services should be taxed in the country from where they are supplied.

Paragraph (b)(i) of *subsection (1)* amends paragraphs (*f*) and (*g*) of subsection (6) and involves substituting the word ''intermediary'' for the word ''agent''. The amendment is linked to the amendment in *paragraph (b)(ii)*.

Paragraph (b)(ii) of *subsection (1)* provides for the insertion of a new paragraph (*gg*) in subsection (6). This transposes Article 44 of Council Directive No. 2006/112/EC in relation to the supply of services of certain intermediaries and provides that the intermediary's services concerned are taxed in the place where the underlying transaction is taxed.

The amendments in *paragraph (b)* have effect from 1 January 2008.

Subsection 2 provides that the amendment in *paragraph (a)* is subject to a Commencement Order to be made by the Minister for Finance.

Section 78 amends section 7 of the VAT Act which deals with waiver of exemption. The amendment inserts a new subsection (1A) which removes the right to waive exemption from VAT in respect of the short term letting of newly acquired or developed residential property.

Paragraph (a) describes the type of lettings now excluded from the waiver of exemption rules and includes the letting of all or part of a house, apartment or other similar establishment for residential purposes. It applies to properties acquired or developed after the passing of the Finance Act 2007 and does not affect lettings in existence prior to that date. No new waivers will be allowed, and any existing waivers will not be extended, insofar as the letting is for residential purposes in newly acquired or developed properties.

Paragraph (b) describes the criteria for determining when a property is considered to be acquired or developed for the purpose of applying *paragraph (a)*. Effectively, a letting in a property will not be affected by the new rule if the landlord has a waiver in place and had entered into a binding contract in writing for the acquisition of the property or an interest in the property prior to the passing of the Finance Act 2007 or if an application for specific planning permission for its development had been received by a planning authority before that date.

Section 79 amends section 8 of the VAT Act which deals with taxable persons.

Paragraph (a) increases the VAT registration thresholds for small businesses with effect from 1 March 2007 in line with the Budget announcement of 6 December 2006. The revised thresholds are €35,000 in the case of services and €70,000 in the case of goods.

Paragraph (b) amends subsection 8 which deals with the VAT grouping rules. The amendment is a clarification of the rules and provides for a VAT group to be considered as a ‘‘single taxable person’’, which aligns the text more closely with Council Directive 2006/112/EC. It does not impose any new obligations on the taxpayer.

Section 80 amends section 10 of the VAT Act which deals with the amount on which tax is chargeable. This provides that an officer of the Revenue may determine that the value on which tax is charged in relation to certain transactions between connected persons is the open market value. This is an anti-avoidance measure. It is a transposition of Article 80 of Council Directive No. 2006/112/EC.

Section 81 makes one amendment to section 10A which deals with margin scheme goods. The amendment is a minor technical one consequential to the amendment in *Section 76* of the Bill and is effective from 1 May 2007.

Section 82 makes one amendment to section 10B which deals with the special scheme for auctioneers. The amendment is a minor technical one consequential to the amendment in *Section 76* of the Bill and is effective from 1 May 2007.

Section 83 makes four amendments to section 12 of the VAT Act which deals with deductibility of VAT.

Paragraph (a) deletes subparagraph (*ia*) of subsection (1)(*a*). The amendment is consequential to the amendment in *Section 76* of the Bill.

Paragraph (b) makes two amendments to subsection (3)(*a*).

The amendment in *paragraph (b)(i)* allows a taxable person to claim VAT on qualifying accommodation in connection with attendance by that person, or his or her representative at a qualifying conference.

The amendment in *paragraph (b)(ii)* allows a finance house to claim VAT on purchases of motor vehicles where such vehicles are subject to onward supply by the finance house as part of a hire purchase type agreement. It is part of the package of measures in this Bill to deal with the revised treatment of finance houses.

The amendment in *paragraph (b)(iii)* inserts a new paragraph (*ca*) in subsection (3) and defines ‘‘delegate’’, ‘‘qualifying accommodation’’ and ‘‘qualifying conference’’ for the purposes of the amendment in *paragraph (b)(i)* of this *Section* of the Bill.

The amendments in *paragraphs (b)(i)* and *(b)(iii)* have effect from 1 July 2007.

The amendments in *paragraphs (a)* and *(b)(ii)* have effect from 1 May 2007.

Section 84 amends section 12A of the VAT Act to confirm the Budget adjustment in the farmers’ flat-rate addition from 4.8 per cent to 5.2 per cent.

This amendment has effect from 1 January 2007.

Section 85 amends section 12B of the VAT Act which deals with the special scheme for means of transport supplied by taxable dealers. The amendment is a minor technical one consequential to the amendment to *Section 76* of the Bill and is effective from 1 May 2007.

Section 86 amends section 12C of the VAT Act which deals with the special scheme for agricultural machinery. The amendment is a minor technical one consequential to the amendment to *Section 76* of the Bill and is effective from 1 May 2007.

Section 87 amends section 14 of the VAT Act which deals with the cash basis of accounting for VAT. Section 14(1)(*b*) of the VAT Act allows a taxable person to use the cash basis of accounting for VAT where his or her turnover remains below a set threshold for a period of twelve months. This amendment increases the threshold to €1 million.

The amendment has effect from 1 March 2007.

Section 88 amends section 15B of the VAT Act which deals with goods in transit (additional provisions). The amendments cater for the accession to the EU of the Republic of Bulgaria and Romania following the enactment of Council Directive 2006/98/EC (OJ No. L 363 of 20 December 2006).

Paragraph (a) amends subsection (5A) and provides that VAT at point of entry does not apply to means of transport whose first use was before 1 January 1999 and which enter the State from Bulgaria and Romania on or after 1 January 2007.

Paragraph (b) includes these two new accession countries in the definition of ''date of accession'' in subsection (7)(*a*).

The amendment has effect from 1 January 2007.

Section 89 makes two amendments to section 16 of the VAT Act which deals with the duty to keep records. The amendment inserts a new subsection (2A). It provides that a taxable person who claims a deduction of VAT in respect of qualifying accommodation must retain full and true records in relation to the attendance by that person, or his or her representative at the qualifying conference and the organiser of a qualifying conference must keep full and true records of each such conference.

Section 90 makes three amendments to section 17 of the VAT Act which deals with invoices. These amendments are consequential to the amendment in *Section 76* of the Bill.

Paragraph (a) deletes the proviso to subsection (1) as it no longer applies.

Paragraph (b) deletes subsections (1AA), (3AB), (5A) and (7A).

Paragraph (c) deletes the reference to subsection (1AA) in subsection (1AB).

The amendments are effective from 1 May 2007.

Section 91 amends section 25 of the VAT Act which deals with appeals.

Paragraph (a) allows a right of appeal to a person aggrieved by a determination made by Revenue under section 10(3A) in respect of the open market value of a supply.

Paragraph (b) is an amendment to the VAT Act consequential to the amendment to the Taxes Consolidation Act in relation to the payment of tax in accordance with the determination of the Appeal Commissioners.

Section 92 amends section 32 of the VAT Act which deals with regulations. It provides for regulations in relation to the making of a determination regarding the open market value of supplies in accordance with Section 10(3A).

Section 93 amends the First Schedule to the Act which lists goods and services that are exempt from VAT. This amendment extends the VAT exemptions to cover homecare services when provided by natural or legal persons duly recognised by the Health Service Executive under section 61A of the Health Act 1970.

Section 94 makes three amendments to the Second Schedule to the Act which deals with goods and services taxable at the zero rate.

Paragraph (a) provides for the zero-rating of supplies of goods or services to international bodies recognised as such by the public authorities of the host Member State. The amendment transposes Article 151(1)(*b*) of Directive 2006/112/EC.

Paragraph (b) is a minor technical amendment which aligns the wording of the VAT Act with Article 148 of Council Directive 2006/112/EC dealing with the zero-rating of chartering of vessels and aircraft.

Paragraph (c) clarifies that the supply of drinkable products made from fruit or vegetables is taxable at the standard rate of VAT.

Section 95 amends the Fourth Schedule to the VAT Act which lists the services that are taxed where they are received. This is a minor amendment consequential to the amendment in *paragraph (b)(i)* of *Section 77* of the Bill.

This *Section* has effect from 1 January 2008.

Section 96 makes two amendments to the Sixth Schedule to the VAT Act which lists goods and services chargeable at the VAT rate of 13.5 per cent.

Paragraph (a) is consequential to the amendment in *Section 79* of the Bill dealing with the thresholds for small businesses and has effect from 1 March 2007.

Paragraph (b) inserts a new subparagraph (*xva*) which reduces the rate of VAT on child car seats to 13.5 per cent and has effect from 1 July 2007.

Section 97 and *Schedule 3* cater for miscellaneous amendments to the VAT Act arising from the repeal of the Sixth Council Directive (77/388/EEC) and its replacement by Council Directive 2006/112/EC and has effect from 1 January 2007.

Section 98 revokes the European Communities (Value-Added Tax) Regulations 2006 (S.I. No. 663 of 2006) as the provisions of those Regulations have been incorporated in this Bill. This section has effect from 1 January 2007.

PART 4

Stamp Duties

Section 99 is an interpretation section.

Section 100 provides that the charge to stamp duty under the "Mortgage etc." Head of Charge in Schedule 1 to the Stamp Duties Consolidation Act 1999 is being abolished for instruments executed on or after 7 December 2006. Further advances made on or after 7 December 2006 in relation to mortgages executed prior to that date and transfers of mortgages in securitisation arrangements are among a range of instruments which are covered by the abolition of this charge. In addition, provision has been made in the section to ensure that instruments falling under the "Mortgage etc." Head of Charge will not become chargeable under any other Head of Charge in the stamp duty code.

Section 101 amends the Stamp Duties Consolidation Act 1999 in order to simplify the stamp duty code. The changes being made are as follows:

- the Head of Charge "Bill of Exchange or Promissory Note" is being amended to limit the €0.15 duty on bills of exchanges and promissory notes to "cheques, drafts and orders drawn on an account in the State",

- the "Particulars Delivered" provisions in section 12 of the Act are being amended to provide that duplicate/counterpart instruments, whether chargeable to stamp duty (generally a fixed duty of €12.50) or not, will <u>not</u> be required to be "PD stamped",

- the following Heads of Charge are also being amended (in the case of (*a*) the Head is being deleted) to abolish the fixed duty of €12.50 and the requirement for a certificate to be included in the instrument in the absence of the fixed duty being paid:

  (*a*) "Conveyance or Transfer of any kind not already described in the First Schedule",

  (*b*) "Exchange — instruments effecting",

  (*c*) "Release or Renunciation of any property, or of any right or interest in any property", and

  (*d*) "Surrender of any property, or of any right or interest in any property".

Finally, the changes are effective for instruments executed, or bills of exchange/promissory notes drawn/made on or after the date of the passing of the Finance Act 2007.

Section 102 amends section 81A of the Stamp Duties Consolidation Act 1999 which exempts transfers of land to young trained farmers from stamp duty. This section limits the application of section 81A to instruments executed before the date of the passing of the Finance Act 2007 (see *section 103* below).

Section 103 inserts a new section 81AA and Schedule 2B into the Stamp Duties Consolidation Act 1999 to exempt transfers of land to young trained farmers from stamp duty. This new section replaces the existing section 81A and includes new education criteria and a simplified refunds procedure. Firstly, the FETAC Level 6 Advanced Certificate in Agriculture will become the new minimum education requirement from 31 March 2008. Secondly, the qualifying third-level course titles are being updated. Thirdly, the refunds procedure is being simplified with the following changes being made:

- the time limit within which young trained farmers can complete their education, following the transfer of the land, is being extended from 3 to 4 years,

- the current requirement for specific minimum education attainments at the date of transfer of the land is being abolished,

- the requirement that the claim for repayment of duty be made to Revenue within 6 months of attaining the educational qualification is also being abolished (but see *section 111* below),

- the 5 year period during which a young trained farmer is required to retain and farm the land will commence from the date the claim for repayment of duty is made to Revenue.

Finally, section 81AA contains transitional arrangements which enable the educational qualifications held before the passing of the Finance Act 2007, for the purpose of the "old" sections 81 and 81A, to be treated as educational qualifications held for the purpose of the new section. Section 81AA applies to instruments executed on or after the date of the passing of the Finance Act 2007.

Section 104 inserts a new section 81C into the Stamp Duties Consolidation Act 1999. The new section will allow a farmer to claim relief from stamp duty where the farmer sells farm land and purchases farm land, in order to consolidate that farmer's holding, where both the sale and purchase of farm land occur within 18 months of each other.

The way that the relief will operate is that where there is a purchase and sale of farm land within 18 months of each other that satisfy the "conditions of consolidation", then stamp duty will only be paid on the purchase to the extent that the value of the farm land that is purchased exceeds the value of the farm land that is sold. If the sale takes place before the purchase, then relief will be given at the time of purchase. However, if the purchase takes place first, then stamp duty will have to be paid but on the subsequent sale a claim for repayment can be made to the Revenue Commissioners.

Whether a claim for relief from stamp duty arises on a purchase of farm land where a sale of farm land has already taken place or where relief is claimed in relation to a purchase where the sale of farm land occurs after the purchase, the following main conditions must be satisfied before relief will be granted by the Revenue Commissioners under the section:

- There must be a valid consolidation certificate issued by Teagasc in relation to the purchase and sale of land, occurring within 18 months of each other. This certificate must be submitted to the Revenue Commissioners in support of an application for relief together with the instrument giving effect to the purchase of the land and a certified copy of the instrument giving effect to the sale of the land.

- The farmer, or each of them if there is more than one, involved in the purchase of the land must each sign a declaration, for submission to the Revenue Commissioners, to the effect that the farmer 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 purchased for at least 5 years from the date on which the first claim for relief in respect of the purchase of land is made to the Revenue Commissioners,

- All the joint owners of the land purchased, 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 the first claim for relief in respect of the purchase of land is made to the Revenue Commissioners.

- The instrument giving effect to the purchase of the land must be submitted to the Revenue Commissioners for adjudication.

The section provides that The Minister for Agriculture and Food, with the consent of the Minister for Finance, will make the necessary guidelines detailing how applications for consolidation certificates are to be made to Teagasc under the new section and also setting out, inter alia, the conditions of consolidation.

Finally, the section also provides for a clawback of the relief where the land or part of the land purchased is disposed of or partly disposed of before the end of the 5 year holding period. Such a clawback will not occur where the land purchased is compulsorily acquired. 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 relief applies to instruments executed on or after 1 July 2007 and on or before 30 June 2009. However, the commencement of the section is the subject of a Ministerial Order and is dependent on State Aid approval from the European Commission.

Section 105 inserts a new section 82B into the Stamp Duties Consolidation Act 1999 to provide for an exemption from stamp duty for acquisitions of land by a sporting body approved under section 235 of the Taxes Consolidation Act 1997 where that land will be used for the sole purpose of promoting athletic or amateur games or sports. The exemption will apply to instruments executed on or after 7 December 2006.

Section 106 amends section 83A of the Stamp Duties Consolidation Act 1999 which provides that the transfer of a site from a parent to a child is exempt from stamp duty if the purpose of the transfer is for the construction of the child‘s principal private residence and the market value of the site does not exceed €254,000. The change being made limits the size of the site to 0.4047 hectare (i.e. one acre) exclusive of the area of land on which the child's principal private residence is to be constructed. The change applies to instruments executed on or after 1 February 2007.

Section 107 inserts a new section 83B into the Stamp Duties Consolidation Act 1999 to provide for an exemption from stamp duty on certain transfers of farmland from a child to a parent in the context of family arrangements. The exemption will apply to instruments executed on or after the date of the passing of the Finance Act 2007 (see also *section 52* above).

Section 108 amends section 92B of the Stamp Duties Consolidation Act 1999 which provides, *inter alia*, that a person whose marriage is the subject of a decree of divorce, judicial separation, nullity or a deed of separation may be treated as a first-time purchaser once and only once where the person buys another house to live in. The conditions for this are that the person no longer retains an interest in the former marital home and that at the time of the new purchase, the spouse (or former spouse) of that person continues to occupy the former marital home, which was occupied by both of them prior to the decree or prior to the deed of separation being made.

This latter condition is being relaxed to provide that the spouse (or former spouse), must occupy the former marital home, as his or her only or main residence, following the granting of the decree or the making of the deed of separation, but does not necessarily have to still be occupying it at a time when the person, who originally left the marital home, purchases a new home. However, first-time purchaser relief will be denied to that person, where at the date of the decree or at the date the deed of separation is made, the person has an interest in another house/apartment apart from the former marital home.

Finally, in a case where the person, leaving the former marital home, would be denied first-time purchaser relief on the purchase of a new home, for the sole reason, that he or she goes ahead and purchases a new home in anticipation of, but prior to, the actual grant of the decree or the making of the deed of separation, that person can apply to the Revenue Commissioners for a repayment of the stamp duty paid on the purchase of the new home, where, subject to complying with certain conditions, the purchase is made in connection with, and within 6 months of, the granting of the decree or the making of the deed of separation. All changes made apply to instruments executed on or after 1 February 2007.

Section 109 amends Part 6 of the Stamp Duties Consolidation Act 1999 which contains the provisions relating to the transfer of uncertificated securities through the Crest electronic settlement system. The purpose of the change is to replace the existing "market maker relief", "broker dealer relief" and "closings relief" with a new intermediary relief. An intermediary is a person who carries on a bona fide business of dealing in securities, including the entering into derivative agreements referenced, directly or indirectly, to securities. A transfer of title to securities to an intermediary will be exempt from stamp duty if—

- the intermediary is a member of an exchange or market,
- the intermediary is approved by the Commissioners as a recognised intermediary in accordance with arrangements made by Revenue with the exchange or market,
- the transfer of the securities is effected on the exchange or market, on the Irish Stock Exchange Limited, the London Stock Exchange plc or any other exchange or market designated by Revenue, and
- the transfer is not effected in connection with an excluded business which is defined in the new provisions.

In addition, a new relief for transfers to and from a central counterparty (CCP), in specified circumstances, is also contained in the section. A CCP is an entity which introduces post-trade anonymity on exchanges/markets where member firms submit orders for shares. These member firms will be unaware of the identity of the counterparty on the other side of the trade as all trades will be settled against the CCP. The section is subject to a commencement order by the Minister for Finance to facilitate the introduction of the reliefs in a suitable timeframe for the industry.

Section 110 makes a number of amendments to the Stamp Duties Consolidation Act 1999. It inserts three new sections, sections 31A, 31B and 50A and makes consequential amendments. The new section 31A provides that a charge to stamp duty will arise in respect of a contract or agreement for the sale of an estate or interest in land in the State where 25 per cent or more of the consideration has been paid under that contract or agreement. The charge will arise where a conveyance of the lands has not been presented for stamping within 30 days after the relevant amount of consideration has been paid. This new section also provides that where stamp duty has been paid in respect of a contract or agreement, in accordance with the new section, a conveyance or transfer made in conformity with that contract or agreement will not be liable to stamp duty and the Revenue Commissioners will, on application made to them, either denote the payment of the duty on the conveyance or transfer or will transfer the duty to the conveyance or transfer on production to them of a stamped contract or agreement.

The new section 31B provides that a charge to stamp duty will arise where the holder of an estate or interest in land in the State enters into an agreement with another person under which that other person is allowed to carry out development on that land and 25 per cent or more of the market value of the land is paid to the holder of the landowner, other than as consideration for the sale of all or part of the land. The charge will arise within 30 days after the relevant amount of the consideration has been paid.

The new section 50A provides that an agreement for a lease for more than 35 years will be liable to the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement where 25 per cent or more of that consideration has been paid. The duty will be payable by the person who has paid the consideration.

Consequential amendments are made to delete section 36 of the Stamp Duties Consolidation Act 1999 (which provides that certain contracts for the sale of leasehold interests are charged to stamp duty as conveyances on sale) and to ensure that a lease executed in conformity with an agreement for a lease for more than 35 years will be liable to a duty of €12.50 only.

Section 111 amends section 159A of the Stamp Duties Consolidation Act 1999 which restricts the repayment of stamp duty to claims for repayment made within 4 years of, inter alia, the date the relevant instrument is stamped by Revenue. The change being made to section 159A arises because of the simplification of the refunds procedure for young trained farmers under the new section 81AA (see *section 103* above). The change means that young trained farmers will now have 4 years from the date they attain their educational qualifications to make a claim to Revenue for a refund of the duty paid at the time of the land transfer.

PART 5

Capital Acquisitions Tax

Section 112 is an interpretation section.

Section 113 amends section 18 of the Capital Acquisitions Tax Consolidation Act 2003, which provides that where all the assets comprised in each class of discretionary trust are appointed absolutely to one or more of the beneficiaries of those trusts within 5 years after the date when the charge arose, the tax charged in respect of each of the trusts will be reduced from 6 per cent to 3 per cent. The amendment, which arises as a result of a decision of the High Court last year, ensures that the reduced rate of tax will apply where all the assets are appointed absolutely to one or more of the beneficiaries of a discretionary trust created under a deceased person's will within the period of 5 years after the date when the assets were transferred by the executors to the trustees of the discretionary trust, where none of the principal objects (i.e. the disponer's spouse, his or her children and certain grandchildren) of the trust was under the age of 21 years on the relevant date. The amendment will apply to inheritances deemed to be taken on or after 1 February 2007.

Section 114 amends section 21 of the Capital Acquisitions Tax Consolidation Act 2003, which applies certain provisions of the Act to the 1 per cent levy imposed on certain discretionary trusts. The amendment deletes provisions that are redundant as a result of a decision of the High Court last year in relation to when the 1 per cent levy arises in respect of a discretionary trust created under a deceased person's will. The amendment will apply to inheritances deemed to be taken on or after 1 February 2007.

Section 115 amends section 51 of the Capital Acquisitions Tax Consolidation Act 2003, which deals with the payment of tax and interest due in respect of outstanding tax. The amendment ensures that where a clawback arises in respect of the development value of development land (including shares deriving their value in whole or in part from such land), in respect of which agricultural relief or business relief was granted, interest will be charged from the date the land is disposed of rather than from the valuation date of the gift or inheritance, where the land is disposed of in the period commencing 6 years after the date of the gift or inheritance and ending 10 years after that date. The amendment will apply where the event that gives rise to the clawback occurs on or after 1 February 2007.

Section 116 amends section 86 of the Capital Acquisitions Tax Consolidation Act 2003, which grants exemption (subject to certain conditions) in respect of a house comprised in a gift or an inheritance. One of the conditions for obtaining the exemption is that the beneficiary must have resided in the house for a period of at least 3 years prior to the date of the gift or inheritance. Where that house has replaced other property, the beneficiary must have resided in that house and the other property for periods which together comprised at least 3 years in the 4-year period immediately preceding the date of the gift or inheritance. The amendment ensures that any period during which a child of a disponer, in relation to a gift, occupied a house that was during that period the disponer's only or main residence will not be treated as a period of occupation in the 3-year period prior to the date of the gift. It also ensures that the reference to "other property" means, in the case of a house comprised in a gift, other property owned by the disponer. The amendment will apply to gifts taken on or after 1 February 2007.

Section 117 amends section 89 of the Capital Acquisitions Tax Consolidation Act 2003, which grants relief at 90 per cent in respect of the market value of agricultural property comprised in a gift or inheritance taken by a ‘‘farmer’’. A ‘‘farmer’’ means an individual in respect of whom not less than 80 per cent of his or her assets, after taking a gift or inheritance, consist of agricultural property on the valuation date of a gift or inheritance. For the purposes of the 80 per cent test, no deduction is allowed from the market value of property for borrowings in respect of that property. The amendment gives effect to the Budget proposal to allow borrowings to be deducted against the value of off-farm principal private residences for the purposes of the 80 per cent ‘‘farmer’’ test. The amendment will apply to gifts and inheritances taken on or after 1 February 2007.

PART 6

Residential Property Tax

Section 118 amends section 110A of the Finance Act 1983 to abolish the Clearance Certificate Scheme for sales of residential property completed on or after 1 February 2007. A Clearance Certificate will no longer be required for contracts dated on or after 1 February 2007 or for contracts dated before 1 February 2007 where the sale is to be completed on or after 1 February 2007.

PART 7

Miscellaneous

Section 119 contains a definition of ‘‘Principal Act’’ i.e. the Taxes Consolidation Act 1997 for the purposes of Part 7 of the Bill.

Section 120 amends section 1001 of the Taxes Consolidation Act 1997, which provides that, in certain circumstances, a person who holds a fixed charge on the book debts of a company may become liable to discharge the company’s liability to P.A.Y.E. and P.R.S.I. The extent of such liability can be determined by the person providing to Revenue a copy of all the papers lodged with the Companies Registration Office in relation to the fixed charge. This amendment dispenses with this requirement and replaces it with a simple straightforward section stating the exact details required by Revenue in relation to the fixed charge.

Section 121 provides for a reduction from 6 months or 183 days to 93 days in the period which must elapse, after the receipt of a valid claim, before Revenue is required to pay interest on overpayments. The shorter period applies for repayments arising after the passing of the Act.

Section 122 amends section 1003A of the Taxes Consolidation Act 1997 which provides for the payment of tax by way of the donation of heritage property to the Irish Heritage Trust. The scope of the section is being widened to include the donation to the Trust of a particular collection of paintings and furniture which had been displayed previously in Fota House in County Cork and which is to be housed there again when Fota House is donated to the Trust. By having the collection in question treated as part of the contents of Fota House, the donor of the collection will be entitled to avail of section 1003A even though that donor is not the donor of Fota House.

As the trust were unable to avail of the relief in 2006 the annual limit on the value of heritage property that may be donated under section 1003A is being increased from €6 million to €10 million for the 2007 tax year only.

Section 123 amends Part 38 of the Taxes Consolidation Act 1997 in several ways.

Firstly, section 888(2)(*e*) is amended so that certain public bodies that make payments in the nature or rent or rent subsidy, when making a return in that regard to the Revenue Commissioners, will now also be required to include the tax reference number of the landlord concerned.

Secondly, section 898A is amended so that certain returns required to be made and information required to be given, to the Revenue Commissioners under the Chapter 3 of Part 38 can be required to be made in an electronic format specified by the Revenue Commissioners.

Thirdly, section 910 is amended so that information which can be requested by the Revenue Commissioners from Government Departments can be required to be supplied in an electronic format specified by the Revenue Commissioners.

Finally, section 914 is amended so that the returns required to be made to the Revenue Commissioners under that section (by issuing houses, stockbrokers, auctioneers, etc.) can be required to be made in an electronic format specified by the Revenue Commissioners.

Section 124 amends Chapter 4 of Part 38 of the Taxes Consolidation Act 1997 that sets out various investigation powers that are available to the Revenue Commissioners. The purpose of this amendment is to help to make a person, under investigation by the Revenue Commissioners, aware as to whether that investigation is for the purposes of establishing a tax liability or with a view to criminal proceedings. The section introduces a power that enables Revenue, when investigating with a view to initiating criminal proceedings, to apply to a judge of the District Court for a search warrant. As a consequence of the introduction of this power specifically targeted at criminal investigations, consequential amendments are being made to the existing power to apply for a search warrant under section 905(2A).

In addition, in order to avoid the necessity to apply for a search warrant in inappropriate circumstances (e.g. when seeking information from an unconnected third party) the section introduces a power to apply to a judge of the District Court for an order requiring the person named therein to supply specified information to the Revenue Commissioners, when they are carrying out an investigation with a view to initiating criminal proceedings.

Section 125 amends Section 1003 of the Taxes Consolidation Act 1997 by including the Crawford Art Gallery Cork Ltd. in the list of approved bodies for the purposes of the Section and by adding the Director of the Gallery to the selection committee provided for in the Section.

Section 126 amends section 1078 of the Taxes Consolidation Act 1997 in order to create a new criminal offence, being the offence of impersonating an officer of the Revenue Commissioners with the intention to deceive.

Section 127 provides for goods detained or seized under the Customs Acts to be stored in a place designated for that purpose by the Revenue Commissioners under the control of a person contracted to them for that purpose. The section is designed to cater for a situation in which responsibility for the physical custody of such goods is contracted out to private operators under Revenue supervision. A similar provision is made in *Section 74* to cater for goods detained or seized under the law relating to Excise.

Section 128 and *Schedule 4* provide for technical amendments to the—

- Taxes Consolidation Act 1997 (*paragraph 1*),

- Capital Acquisitions Tax Consolidation Act 2003 (*paragraph 2*),

- Value-Added Tax Act 1972 (*paragraph 3*), and

- Excise legislation in the Finance Acts of 1999 and 2001 (*paragraphs 4* and *5*).

The amendments for the most part involve the correction (through deletion, amendment or insertion of text) of incorrect references and minor drafting errors.

The majority of amendments occur as a consequence of the updating of references from the Social Welfare (Consolidation) Act 1993 to the Social Welfare Consolidation Act 2005. Other amendments include the renaming of the Irish Taxation Institute, the deletion of superfluous references in the tonnage tax regime and correcting omissions and making minor changes to the life assurance regime.

Paragraph 6 contains the commencement provisions relating to paragraphs 1 to 5 above.

Section 129 deals with the ‘‘care and management’’ of taxes and duties.

Section 130 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais
Márta, 2007.

Wt.—. 984. 3/07. Cahills. (X50878). Gr. 30-15.