AN BILLE AIRGEADAIS 2008
FINANCE BILL 2008

Mar a tionscnaíodh
As initiated

EXPLANATORY MEMORANDUM

PART 1

Income Tax, Corporation Tax and Capital Gains Tax

Chapter 1

Interpretation

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

Chapter 2

Income Tax

Section 2 sets out the standard rate bands, which are to apply for the year 2008 and subsequent years. The section provides for the increases in the bands as follows:

	Tax year 2007	Tax year 2008 and subsequent years
	€	€
Single person	34,000	35,400
Widowed/single parent	38,000	39,400
Married couple		
one earner	43,000	44,400
two earners	68,000	70,800

In the case of married couples with two incomes, the standard rate band is transferable between them up to the extent of the band applicable to a one income married couple i.e. €44,400. The second spouse may avail of the balance of the €70,800 band, that is, €26,400.

Section 3 and *Schedule 1* provide for increases in personal reliefs announced in the Budget for the year 2008 and subsequent years as follows: —

Relief	Tax credit for the year 2007	Tax credit for the year 2008 and subsequent years
	€	€
Basic personal tax credit		
married person	3,520	3,660
widowed person bereaved in year of assessment	3,520	3,660
single person	1,760	1,830
Additional tax credit for certain widowed persons	550	600
One parent family tax credit	1,760	1,830
Widowed parent tax credit		
1st year	3,750	4,000
2nd year	3,250	3,500
3rd year	2,750	3,000
4th year	2,250	2,500
5th year	1,750	2,000
Age tax credit		
married person	550	650
single person	275	325
Incapacitated child tax credit	3,000	3,660
Home carer tax credit	770	900
Blind person's tax credit		
blind person	1,760	1,830
both spouses blind	3,520	3,660
Employee tax credit	1,760	1,830

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 the income tax exemption limits for those aged 65 years and over. The new limits will be €20,000 for single people and €40,000 for married couples.

Section 5 provides for the cessation of the general exemption limits and the associated system of marginal relief with effect from 1 January 2008. The section also provides for the amendment of a number of other sections in the Taxes Consolidation Act 1997 consequent on the cessation of section 187.

Section 6 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 €4,000 (married person) and €2,000 (single person). The relief for persons aged 55 years and over will increase to €8,000 (married person) and €4,000 (single person). Widowed persons will continue to receive the same relief as married persons.

Section 7 amends section 244 of the Taxes Consolidation Act 1997 to provide for an increase in the ceiling on mortgage interest payments qualifying for tax relief in the case of first time buyers. The limit for single persons is being increased to €10,000 from €8,000 and the limit for married and widowed persons is being increased to €20,000 from €16,000.

Section 8 amends the specified rate used, with effect from 1 January 2008, 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 4.5 per cent rate for home loans is increased to 5.5 per cent and the other loans rate of 12 per cent to 13 per cent.

Section 9 amends section 467, which provides for a deduction from total income in respect of the cost of employing a person to care for the individual or a relative of the individual who is totally incapacitated due to mental or physical infirmity throughout the year of assessment. This amendment provides that relief may be granted in the first year in which the individual or the relative of the individual becomes totally incapacitated. This copperfastens in legislation Revenue's current administrative practice in this area.

Section 10 amends section 472C, which provides relief from income tax in respect of subscriptions paid in respect of membership of a Trade Union. The relief is allowable at the standard rate of tax for the year of assessment. This amendment provides for an increase in the tax allowance in respect of Trade Union subscriptions from €300 to €350 per annum.

Section 11 amends section 216A of the Taxes Consolidation Act 1997 which exempts from income tax, income received from the letting of rooms in a person's principal private residence provided the income is below a certain threshold. The purpose of the amendment is to increase the threshold of the income limit from €7,620 to €10,000, thereby exempting amounts received up to €10,000.

Section 12 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 nine new bodies, the change of names of four of the bodies on the current list and also the removal of six bodies from the aforementioned list.

Section 13 amends paragraph 25 of Schedule 12A to the Taxes Consolidation Act 1997. It increases the aggregate maximum amount of monthly contributions that an employee may make under a certified contractual savings scheme that is linked to an approved savings-related share option scheme. The amount is being increased from €320 to €500 per month in respect of contributions made under a certified contractual savings scheme entered into on or after 1 February 2008.

Section 14 amends Section 515(2A) of the Taxes Consolidation Act 1997. On the establishment of an Employee Share Ownership Trust (ESOT), it is common practice for the trustees to take out a loan to purchase shares for later distribution to employees through an associated Approved Profit Sharing Scheme (APSS). This section amends the requirement for ESOTs to have such loans for a period of at least 10 years before an employee can avail of an increased tax free limit (€38,100) on the value of shares that can be allocated in a tax year.

The amendment will permit the Revenue Commissioners to allow a loan period of less than 10 years, on a case-by-case basis, where, for example, an ESOT has sufficient income from dividends to pay off such loans earlier than expected.

Section 15 amends section 657 of the Taxes Consolidation Act 1997 which is concerned with averaging of farm incomes by ensuring that the commencement of a Milk Production Partnership will not give rise to a tax clawback in respect of an earlier trade of farming.

Section 16 inserts a new section 128C into the Taxes Consolidation Act 1997, which sets out specific rules for the tax treatment of convertible securities acquired by directors and employees by reason of their office or employment. Currently, the income tax charge on the acquisition of a convertible security is based on the market value of the security at the date of acquisition. This does not reflect the reality of the director or employee acquiring a security plus a right to convert that security subsequently into a more valuable security. The rules set out in the new section 128C rectify this by imposing an additional income tax charge on the occurrence of a number of events associated with such securities (including but not limited to conversion and disposal). The section applies to employment-related securities acquired on or after 31 January 2008.

Section 17 amends section 986 of the Taxes Consolidation Act, 1997 which contains the enabling provisions for the PAYE Regulations. The Income Tax (Employments) (Consolidated) Regulations 2001 prescribe the manner in which the PAYE system operates. This amendment to Section 986 empowers the Revenue Commissioners to amend the PAYE regulations, thereby ensuring that existing practice and procedures are supported by relevant enabling provisions and regulations e.g.

(1) The collection of tax due on non-PAYE income through the PAYE system;

(2) The collection of tax from the employee rather than the employer in certain circumstances, where the employer has failed to deduct tax;

(3) The requirement for employers to submit certain details in respect of each employee to the Revenue Commissioners in such manner and form as they may prescribe in accordance with PAYE Regulation 31;

(4) The authority to allow the Revenue Commissioners in certain circumstances to notify an employer that it is not necessary to comply with the PAYE regulations.

Section 18 ceases section 73 of the Taxes Consolidation Act 1997 with effect from 1 January 2008 in respect of income arising on or after that date, the effect of which is to extend the same basis of assessment to certain United Kingdom source income which applies to income secured from other EU/EEA States. It also makes a consequential amendment to section 823 of the Taxes Consolidation Act 1997.

Section 19 introduces an automatic annual return of information requirement from the trustees of Approved Profit Sharing Schemes, Employee Share Ownership Trusts, Approved Savings-Related Share Option Schemes and Approved Share Option Schemes. Submission of the information will be required by 31 March each year in respect of the previous calendar year. The information to which this automatic return applies is currently requested annually by the Revenue Commissioners and is used principally to enable them to determine the tax liability of participants in the schemes, as well as for the purposes of supervising the administration of the schemes.

The new measure will come into effect for returns of information in respect of the calendar year 2008.

Section 20 amends and restates section 657B of the Taxes Consolidation Act 1997 which is concerned with the spreading over 6 years of tax arising from the receipt of moneys under the scheme of aid for the restructuring of the sugar beet industry. Income received under the Diversification Aid element of this package will now also be treated in the same way.

Section 21 defines the term ''salary sacrifice'' and specifies where such arrangements may be applied. This copper-fastens the existing administrative salary sacrifice arrangements which have already been authorised by the Revenue Commissioners in relation to the operation of the ''Travel Pass'' Schemes approved under section 118(5A), and salary sacrifices which are associated with the approved profit-sharing schemes set up by employers under sections 509 to 519 (inclusive) of the Taxes Consolidation Act 1997.

Section 22 amends the provisions that limit the use of certain tax reliefs (including exemptions) by high-income individuals, in order to clarify the correct sequence of events where calculations in other provisions of the Tax Acts are also involved. The calculations in question are those that require total income, taxable income, tax payable or tax chargeable for a year to be taken into account. In general, the section provides that these calculations must be carried out before the high earners restriction is applied but the benefit of a credit or reduction in tax can be given against the tax chargeable following the application of the restriction.

Chapter 3

Income Tax, Corporation Tax and Capital Gains Tax

Section 23 makes a number of amendments to part 16 of the Taxes Consolidation Act 1997, which relates to the Business Expansion Scheme (BES) and the Seed Capital Scheme (SCS). The European Commission granted State aid approval for the schemes subject to certain amendments being made to them.

These amendments were made, on a temporary basis, by way of the European Communities (Income Tax Relief for Investment in Corporate Trades — Business Expansion Scheme and Seed Capital Scheme) Regulations 2007 (S.I. No. 613 of 2007). This section now makes the substantive amendments to section 19 of last year's Finance Act that are required to give effect to the European Commission's decision. These essentially repeat the temporary changes that were made to section 19 in the above mentioned Regulations.

The section also makes a further amendment to the BES and SCS to relax some of the qualification requirements for recycling companies. A recycling company will, with effect from 1 January 2008, be able to qualify under the BES and SCS where it has received approval for a grant or financial assistance from an industrial development agency or County Enterprise Board, or where it has obtained written confirmation from such an agency or board verifying that it has submitted a business proposal to it and that the activities carried on by the company are qualifying environmental services.

Finally, the section revokes the European Communities (Income Tax Relief for Investment in Corporate Trades — Business Expansion Scheme and Seed Capital Scheme) Regulations 2007.

Section 24 amends section 81A of the Taxes Consolidation Act 1997. This section aligns the timing of tax deductions that are granted to employers in respect of contributions to an employee benefit scheme with the time the benefit from those contributions becomes taxable in the hands of the employees. The amendment broadens the meaning of an employee benefit contribution such that any action which results in assets being held, or able to be used under the terms of an employee benefit scheme, or in an increase in the value of such assets, is within the meaning of an employee benefit contribution, and consequently covered by the provisions of section 81A. The amendment applies to employee benefit contributions made on or after 31 January 2008.

Section 25 amends Chapter 1 of Part 9 of the Taxes Consolidation Act 1997 in relation to buildings and structures which are comprised in, and are in use as part of, premises which are included in the register of caravan sites and camping sites.

The section extends to such buildings and structures the scheme of capital allowances at 4 per cent per annum that is currently available in relation to expenditure incurred on the construction and refurbishment of hotels, holiday camps, guesthouses and holiday hostels which are registered in the appropriate register maintained by Fáilte Ireland.

The section applies to expenditure incurred on or after 1 January 2008.

Section 26 amends section 843A of the Taxes Consolidation Act 1997 in relation to capital allowances for qualifying childcare facilities:

- by updating references in the section to reflect the coming into operation of new childcare regulations in 2007, and

- by extending the exclusion of property developers from the entitlement to capital allowances for such facilities to persons who are connected with property developers.

A property developer may not claim capital allowances in circumstances where the property developer or a connected person incurred the construction expenditure on the building involved. In future, the restriction on claiming allowances will also apply to persons connected with the property developer.

The section also makes similar amendments to the schemes of capital allowances for qualifying hospitals, mental health centres and the mid-Shannon Corridor tourism scheme by excluding persons connected with property developers from claiming capital allowances.

Section 27 amends section 288 of the Taxes Consolidation Act 1997 which is concerned with balancing charges on disposal of plant and machinery. Under the latest European Communities initiative concerning compensation for decommissioning of fishing vessels, if a balancing charge arises as a result of this compensation the charge will be spread over 5 years, commencing in the year in which the compensation is paid.

Section 28 sets out the changes to the capital allowances and leasing expenses regime for business cars announced in the Budget by introducing a new Part 11C into the Taxes Consolidation Act 1997. The revised scheme, which links the availability of capital allowances and leasing expenses to the carbon emission levels of cars, will come

into effect in respect of cars purchased or leased on or after 1 July 2008.

The new provisions cater for 3 broad categories of business car: those whose carbon dioxide emissions are up to 155g/km, those between 156 and190g/km and those above 190g/km. Any balancing allowances or balancing charges which may arise on a subsequent disposal of business cars will be computed on a proportional basis to ensure the appropriate amount of relief is given.

The degree to which car leasing expenses will be deductible under the revised scheme also depends on the carbon dioxide emissions of the vehicle.

The details at the impacts are set out in the Summary of the 2008 Budget Measures (page B.9).

The new Part 11C comprises 6 sections and is, in many respects, a restatement of the existing Part 11, modified to take account of the new conditions.

Section 380K sets out the definitions used in Part 11C, including the emissions limits for each of the taxation categories.

Section 380L provides for the modified levels of capital allowances which will apply to cars in different emissions categories. The section also provides for a proportionate balancing allowance or charge in the event that the vehicle is subsequently disposed of.

Section 380M provides for the deductibility of expenditure incurred on the leasing of such vehicles. The rate at which these leasing charges are allowed closely mirrors the capital allowances regime set out in section 380L.

Section 380N addresses the situation where a hire purchase agreement ends without the potential purchaser becoming owner of the vehicle. A re-categorisation of payments previously made into leasing payments, suitably apportioned, is then made.

Section 380O provides for circumstances where the lessee or hirer of a vehicle becomes the owner. An aggregation of all payments is made before being apportioned into capital and leasing payments modified to account for the new rules.

Section 380P excludes the provisions of this Part for vehicles acquired for short term hire (taxis etc.) and also for vehicles acquired for testing.

Section 29 amends section 481 of the Taxes Consolidation Act 1997 which is concerned with film relief. The relief is extended for another 4 years until 31 December 2012 and the overall ceiling on qualifying expenditure for any one film is increased from €35,000,000 to €50,000,000. These provisions are subject to a commencement order of the Minister for Finance after clearance with the European Commission.

Section 30 amends section 668 of the Taxes Consolidation Act 1997 which is concerned with stock relief for farm animals disposed of under compulsory disposal orders under various disease eradication measures. The legislation currently allows this relief where part of a livestock herd is disposed of for the purposes of a brucellosis eradication scheme. This provision extends the relief where part of a livestock herd is disposed of under any disease eradication scheme.

Section 31 removes the Irish Heritage Trust from Schedule 26A to the Taxes Consolidation Act 1997 with immediate effect. This body now qualifies as an eligible charity for the purposes of the donations relief provided for in section 848A of the Act and thus no longer needs to be listed in the Schedule.

Section 32 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.

Firstly, the ''connected persons'' rule contained in section 531(1)(*c*) of the Taxes Consolidation Act 1997 is amended. This rule provides that a person connected with a company engaged in a construction, land development, meat processing or forestry processing business must operate RCT on payments made by that person to a subcontractor in the performance of a relevant contract. The amendment is primarily aimed at companies obliged to operate RCT because they are connected with a company engaged in the business of land development or construction. In future, those companies will not have to operate RCT where they engage a subcontractor solely to carry out work on their own business premises provided they are not themselves engaged in the land development or construction business. The amendment also ensures that a person, not engaged in the business of land development or construction, who is connected with a company in the meat or forestry processing areas, does not have to operate RCT where that person engages a subcontractor solely to carry out construction operations in relation to a private dwelling or their own business premises.

Secondly, the enabling provision, which allows regulations to be made governing various aspects of RCT, has been amended to allow Revenue to exclude a principal and subcontractor from the requirement to make an RCT1 declaration, where one of them comes within a class or classes of persons to be specified in the regulations. The RCT1 is the declaration that a principal and a subcontractor must make before entering into a relevant contract to the effect that they have satisfied themselves that the contract is <u>not</u> a contract of employment.

Section 33 amends section 110 of the Taxes Consolidation Act 1997 which provides that the securitisation by qualifying companies of financial assets is tax neutral. This amendment extends the definition of a ''financial asset'' to also include:

— greenhouse gas emissions allowance, and

— contracts for insurance and contracts for reinsurance.

It also amends the definition of ''qualifying asset'' in section 110 so that the holding by a securitisation company of an interest in a financial asset through a partnership will now be treated as a qualifying company within the meaning of that section.

Section 34 introduces a new section 81B into the Taxes Consolidation Act 1997 so as to allow certain credit insurance companies to take account of a statutory reserve when calculating profits or losses for tax purposes. The section provides for a tax deduction for the transfer of any amounts into this equalisation reserve and it also provides that transfers out of this reserve will be treated as income for tax purposes.

Under Regulation 24 of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006) it became compulsory for certain credit insurance companies to create and maintain an equalisation reserve.

The amendment is deemed to have effect as and from 15 July 2006, being the date on which the obligations under the above Regulations came into operation.

Section 35 amends section 730D(2A) of the Taxes Consolidation Act 1997 which provides that a gain shall not arise on the happening of a chargeable event under the gross roll-up regime in relation to a life policy where the assurance company has established a branch in an EU or EEA Member State and has received written approval from the Revenue Commissioners that exit tax will not apply.

This section extends this exemption to situations where the life assurance company carries on business on a freedom of services basis (as provided for in Regulation 50 of the EC (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994)), or under an equivalent arrangement in an EEA state and the policy holder resides in an EU or EEA Member State other than Ireland. Written approval from the Revenue Commissioners will also be required.

Section 36 amends Chapter 1A of Part 27 of the Taxes Consolidation Act 1997, which deals with the taxation of investment undertakings covered by the gross roll up regime introduced in the Finance Act 2000. Under gross roll up, funds may accumulate without the imposition of tax. However, an exit tax applies when a ''chargeable event'' occurs, such as the receipt of payments from, or the disposal of units in, the investment fund. Changes were introduced in section 50 of the 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'' (defined as an 8-year period) following the acquisition of the units. The purpose of this deemed disposal was to ensure that exit tax could not be deferred indefinitely.

This section makes certain adjustments to the 2006 legislation. The main changes are as follows:

Firstly, the investment undertaking can make an irrevocable election, in relation to a deemed disposal only, to value the units at the 30 June or 31 December prior to the date of the chargeable event rather than at the date of the chargeable event itself.

Secondly, where the percentage of the value of chargeable units in an investment undertaking does not exceed 15% of the value of the total units and the investment undertaking so elects, the amount of any excess tax arising, on a deemed disposal only, will be repaid directly to the unit holder by the Revenue Commissioners, rather than by the investment undertaking, on receipt of a claim by the unit holder.

Thirdly, a De Minimis limit is being introduced whereby the investment undertaking will not, in respect of a deemed disposal only, have to deduct the exit tax from the unit holder and account for it to the Revenue Commissioners where the value of the number of chargeable units in the investment undertaking (or in the sub-fund within an umbrella scheme) is less than 10% of the value of the total units and the investment undertaking (or sub-fund as the case may be) has made an election to report annually to the Revenue Commissioners certain details for each unit holder. Instead, the unit

holder will be required to return the gain directly to the Revenue Commissioners and to account for the appropriate tax.

Finally, the exemption from exit tax on the cancellation of units where it is part of a scheme of reconstruction or amalgamation of investment undertakings is being extended to also include exchanges of units in a sub-fund, or sub-funds, of one umbrella fund for those in another umbrella fund. This exemption is given on condition that the exchange is effected for bona-fide commercial reasons and not primarily for the purpose of avoiding liability to taxation.

There are also a number of technical adjustments being made to ensure that the legislation operates as intended in relation to the calculation and payment of the exit tax where this is required.

Section 37 amends section 768 of the Taxes Consolidation Act 1997, which deals with tax relief for certain expenditure on ''know-how'' that is bought by a person for use in a trade carried on by the person. ''Know-how'' is defined as information and techniques likely to assist in the manufacture or processing of goods or in carrying out agricultural, forestry, fishing, mining or other extractive operations. The expenditure is allowed as a deduction against profits in the year in which it is incurred. Relief under the section is not available where the ''know-how'' is bought as part of a trade that is being acquired, or where the buyer and the seller are connected.

This section makes 3 changes to section 768.

— *Firstly*, it ensures that the prohibition on a deduction where ''know-how'' is bought as part of a trade that is being acquired will operate in the manner originally intended, by providing that relief will not be permitted under the section in cases where one company buys the ''know-how'' and a connected company buys the ''non-know-how'' assets of the trade.

— *Secondly*, a new subsection is added to provide that tax relief for expenditure on ''know-how'' will only be available where it is bought for *bona fide* commercial reasons, and not as part of a tax-avoidance scheme.

— *Thirdly*, it allows the Revenue Commissioners to consult with experts to assist them in the evaluation of claims in respect of expenditure on ''know-how''.

Section 38 is a response to the OECD recommendation to prohibit a deduction for tax purposes of illegal payments made to a foreign official. While illegal payments have never been tax deductible this section explicitly denies a tax deduction in computing the amount of any income chargeable to tax under Schedule D for any payment the making of which constitutes a criminal offence or, in the case of a payment made outside the State, where the payment, if made in the State, would constitute a criminal offence.

Chapter 4

Corporation Tax

Section 39 makes a number of changes to the taxation of foreign dividends received by companies within the charge to Irish tax from companies that are resident for tax purposes in EU Member States or in countries with which Ireland has a tax treaty. Such dividends

that are paid out of trading profits will in future be chargeable to tax here at the 12.5% rate of corporation tax instead of at the 25% rate. Where dividends do not qualify to be charged at the 12.5% rate, they will continue to be charged at the 25% rate. Where a dividend is paid partly out of trading profits and partly out of other profits, the part of the dividend that is paid out of trading profits of the dividend-paying company will be taxable at the 12.5% rate.

Trading profits of such foreign companies will be allowed to pass up through tiers of companies by way of dividend payments so that, when ultimately paid to a company within the charge to corporation tax in the State, that company will be taxed on the dividends received by it at the 12.5% rate.

The full amount of a foreign dividend received by a company will be chargeable at the 12.5% rate where certain conditions are met, notwithstanding that a part of the dividend may not be paid out of trading profits. The conditions are:

- That 75% or more of the dividend-paying company's profits must be trading profits, either trading profits of that company or dividends received by it out of trading profits of lower tier companies that are resident in EU Member States or in countries with which Ireland has a double tax treaty.

- That an asset condition must be satisfied on a consolidated basis by the company that receives the dividend and all of its subsidiaries. The aggregate value of the trading assets of those companies must not be less than 75% of the aggregate value of all of their assets.

Companies that are portfolio investors and that receive a dividend from a company resident in an EU Member State or a country with which Ireland has a double tax treaty will be taxed on the dividends at the 12.5% rate. A portfolio investor in a company is an investor with a holding of not more than 5% in the company.

Finally, the section amends the rules for pooling of foreign tax relief. In certain cases where a company receives a foreign dividend, the Irish tax on the dividend may be reduced by the foreign tax suffered in relation to that dividend. If there is an excess amount of foreign tax that cannot be set off in this way, the surplus may be pooled and offset against liability on other foreign dividends received by the company. These pooling arrangements are being amended so that in future they will apply separately to dividends that are taxable at the 25% rate and to dividends that are taxable at the 12.5% rate. Any surplus of foreign tax arising on dividends taxable at the 12.5% rate will not be available for offset against tax on dividends taxable at the 25% rate. However, there will not be a similar restriction in the case of dividends taxable at the 25% rate.

The new rules apply to dividends received by a company on or after 31 January 2008.

Section 40 amends the close company surcharge rules in section 434 of the Principal Act to allow a company making a distribution and the company receiving it to jointly elect that the distribution will not be treated as a distribution for the purposes of section 440. Section 440 imposes a surcharge on certain undistributed income of close companies. Close companies are companies that are under the control of five or fewer persons or of person who are directors. The surcharge is calculated by comparing distributable estate and investment income of the company with distributions made by it. To the

extent that the distributable income exceeds distribution made, a surcharge is imposed.

Under current law, in calculating the distributable estate and investment income of a holding company that is a close company, dividends received from a non-resident company are not taken into account while dividends received from an Irish-resident company (being franked investment income) are.

This section allows an Irish-resident holding company and an Irish-resident company that pays a dividend to the holding company to elect that the dividend be afforded the same treatment as dividends received from a non-resident subsidiary. If such an election is made, the dividend will be treated as not being a distribution received by the holding company and as not being a distribution made by the subsidiary.

Section 41 introduces a new Chapter, Chapter 3, into Part 24 of the Taxes Consolidation Act 1997. The new Chapter gives effect to the Government decision of 30 July 2007 that a Profit Resource Rent Tax will apply in the case of any petroleum lease entered into following on from an exploration licence awarded by the Minister for Communications, Energy and Natural Resources after 1 January 2007. The new tax, which will apply when profits exceed certain defined levels, is in addition to the corporation tax rate of 25% that currently applies to profits from petroleum activities.

A key feature of the new tax is that it is based on the profit ratio of a petroleum field, which is defined as the rate of profits (net of 25% corporation tax) for the field, divided by the accumulated level of capital investment in the field. Different rates of Profit Resource Rent Tax will apply, depending on the ratio, as follows:

Profit ratio	Profit Resource Rent Tax rate
4.5 or more	15%
3 or more and less than 4.5	10%
1.5 or more and less than 3	5%
less than 1.5	Nil

The new Chapter has the following sections:

Section 696B, which is the interpretation and application section, contains the following key definitions:

— Taxable field, which is an area covered by a petroleum lease awarded on foot of an exploration licence awarded after 1 January 2007,

— Cumulative field profits, which is the numerator in the profit ratio equation. For any accounting period of a company, this figure will be the sum of net profits (as defined) of the company in relation to a taxable field from 1 January 2007 up to the end of that accounting period, and

— Cumulative field expenditure, which is the denominator in the profit ratio equation. For any accounting period of a

company, this figure will be the sum of the capital expenditure (as defined) incurred by a company in relation to a taxable field from 1 January 2007 up to the end of that accounting period.

Section 696B also provides for the ''ring-fencing'' of petroleum activities in respect of each taxable field, to ensure, for example, that a company cannot offset losses from any other activities against profits of a taxable field.

Section 696C contains the core rules about what the tax is and what it is being charged on. This section provides that the Profit Resource Rent Tax is an additional duty of corporation tax which applies when the profit ratio, calculated for an accounting period of a company in respect of a taxable field, is greater than or equal to 1.5. The rates of tax are graduated, as set out above.

Section 696D contains provisions in relation to groups of companies and provides, inter alia, for a situation where capital expenditure incurred by one company can be deemed to have been incurred by another company for the purposes of determining the cumulative expenditure, where one company is a subsidiary of the other or both are subsidiaries of a third company.

Section 696E provides for the submission of returns by companies in respect of the new licences granted on or after 1 January 2007. The returns will be submitted with the annual corporation tax return.

Section 696F contains the collection and general provisions in respect of the new tax. The normal corporation tax provisions for assessment, appeals, collection and recovery also apply to the Profit Resource Rent Tax. Interest charges will also apply in the case of late payment of the tax.

Section 42 introduces a new section into the Taxes Consolidation Act 1997 to provide for accelerated capital allowances in respect of expenditure by companies on certain energy-efficient equipment bought for the purposes of the trade. The scheme, which will run for a trial period of 3 years, will apply to new equipment in designated classes of technology. Equipment eligible under the scheme will be published in a list established by the Minister for Communications, Energy and Natural Resources (with the approval of the Minister for Finance) and maintained by the Sustainable Energy Authority of Ireland.

The main features of the new scheme are as follows:

— Capital allowances of 100% will be available in the first year in which the expenditure is incurred on the equipment covered by the scheme.

— To qualify, the equipment that is purchased must meet certain energy-efficiency criteria (laid down by the Minister for Communications, Energy and Natural Resources) and be specified on a list of approved products.

— Energy-efficient equipment on the list will fall into one of three classes of technology and expenditure must be above a certain minimum amount to qualify for the increased allowance. The technology classes (and minimum expenditure amounts) are: motors and drives (€1,000), lighting (€3,000) and building energy management systems (€5,000).

— The list will be established, and may be amended, by order of the Minister for Communications, Energy and Natural Resources. Sustainable Energy Ireland (SEI) will be responsible for maintaining the list.

— The scheme will be confined to new energy-efficient equipment purchased by companies, and it will not apply to equipment that is leased, let or hired. It will run up to 31 December 2010.

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

Section 43 amends the rules in relation to preliminary tax payments by companies, to give effect to three measures announced in the Budget Statement.

— *First,* the corporation tax liability threshold for treatment as a small company is increased from €150,000 to €200,000. Small companies with a tax liability below this threshold in the previous year will have the option of paying preliminary tax on the basis of 100% of their previous year's liability instead of 90 per cent of the current year's liability.

— *Second,* new companies with a corporation tax liability of up to €200,000 (previously €150,000) in their first year are relieved of the obligation to pay preliminary tax in that first year, under measures introduced in last year's Finance Act.

— *Third,* the transitional rule, which related to preliminary tax for the first three accounting periods in respect of which a company applied International Financial Reporting Standards (IFRS) or equivalent Irish Generally Accepted Accounting Practice (GAAP) to gains and losses from financial instruments, is being made permanent. This rule provides that the amount of preliminary tax to be paid one month before the end of the accounting period does not have to take account of unrealised gains or losses on financial instruments that arise from movements in the fair value of those instruments in the last two months of the accounting period; the company makes a top-up payment one month after the end of the accounting period, to bring the amount of preliminary tax up to 90% of the final tax liability for that accounting period.

The first two measures are implemented by amending the definition of ''relevant limit'' in section 958 of the Taxes Consolidation Act 1997 and are effective from preliminary tax payment dates arising after 5 December 2007. The third measure is implemented by inserting new definitions in section 958 and by moving provisions from Schedule 17A of the Act (which contained the transitional arrangements) to section 958.

Section 44 makes a technical amendment to Chapter 9 of Part 6 of the Taxes Consolidation Act 1997, which deals with taxation issues relating to the acquisition by a company of its own shares (i.e. ''share buy-backs''). The amendment provides that costs incurred by a company in buying back its own shares are not allowed as a deduction for tax purposes.

Section 45 makes two amendments to Schedule 24 to the Taxes Consolidation Act 1997, which deals with relief against Irish tax for foreign tax paid.

The first amendment is technical. It clarifies that a formula introduced in Finance Act 2006, which calculates the amount of doubly taxed trading income that arises from a payment from which foreign tax is deducted, does not apply to foreign branch profits. This means that the actual profits of a foreign branch continue to be taken as a measure of the doubly taxed income, as was the case prior to 2006.

The second amendment introduces a new paragraph to the Schedule, to extend the circumstances under which a double tax relief credit is made available to Irish companies in receipt of dividends from foreign companies. The legislation currently provides that, where a foreign company pays a dividend to another foreign company which then pays a dividend on to an Irish company, the Irish company will be entitled to a credit against Irish tax on the dividend for the foreign tax paid by the first company on the profits out of which the dividend is paid.

Under the amendment, credit relief will also be available when the profits of the first company become profits of the second foreign company other than by way of a dividend, such as, for example, where there is a merger of companies. In future credit relief will be given on a dividend paid by a company following a merger, in respect of the underlying tax paid by its predecessor companies. The relief will be limited, where appropriate, to the amount that would have been due had the profits been transferred instead by way of a dividend, and will not apply where the profits transfer is a result of a tax avoidance scheme.

Section 46 amends section 766 of the Principal Act to give effect to the Budget announcement concerning the research and development tax credit scheme. It also makes a change in relation to the rolling base year. Section 766 provides a tax credit for certain expenditure on research and development. The credit is 20% of the excess of expenditure on research and development in the year of claim over such expenditure in the base year. The base year is currently set as follows:

- as respects accounting periods commencing before 2010, the base year is 2003,

- as respects later accounting periods, the base year is a corresponding year ending 3 years before the end of the year of claim (for example, for accounting periods commencing in 2010 the base year would be 2007).

This section changes the base year rules so that for the future the position will be as follows:

- as respects accounting periods commencing before 2014**,** the base year is 2003,

- as respects later accounting periods, the base year is a corresponding year ending 10 years before the end of the year of claim (e.g. for 2014 the base year will be 2004).

Section 47 inserts the Commission for Communications Regulation into the list of non-commercial State sponsored bodies in Schedule 4 to the Taxes Consolidation Act 1997. Schedule 4 lists the non-commercial State sponsored bodies having exemption from tax in

respect of non-trading income which would otherwise be chargeable to income tax or corporation tax. The exemption is granted with effect from 1 December 2002 which was the establishment day for the Commission.

Chapter 5

Capital Gains Tax

Section 48 makes three amendments to Chapter 6 of Part 19 of the Taxes Consolidation Act 1997, which relates to transfers of business assets.

The first amendment gives effect to the proposal in the Budget statement to the effect that the taxation code would be amended to assist the take-up of the scheme for the decommissioning of fishing vessels. This is being done by granting relief under section 598 of the Taxes Consolidation Act 1997 (i.e. ''retirement relief'') in respect of compensation payments made under the scheme for the decommissioning of fishing vessels implemented by the Minister for Agriculture, Fisheries and Food in accordance with Council Regulation (EC) No. 1198/2006 of 27 July 2006. In order for the relief to apply, the person who received the compensation payment must have owned and used the fishing vessel for the period of 6 years prior to the receipt of that payment and must have been at least 45 years of age at that time.

The second amendment ensures that relief under section 598 will not apply where the sole or main purpose of the disposal of qualifying assets is the avoidance of tax and not for genuine commercial reasons.

The third amendment gives effect to the proposal in the Budget statement to grant relief to farming partnerships on the dissolution of such partnerships. The asset being disposed of must have been owned and used by the farming partnership for 10 years prior to the dissolution of the partnership. Where one of the partners has acquired a share of the partnership by way of inheritance, the period of ownership and use of the farm will run from the date that the donor originally entered the partnership. The relief provides that a gain will not be treated as accruing in respect of a relevant partnership asset and that asset will be treated as having been acquired at the same time and for the same consideration as it was originally acquired by the partner who disposed of that asset.

The first amendment is subject to a Ministerial commencement order. The second amendment will apply to disposals made on or after 31 January 2008. The third amendment will apply to disposals made on or after the date of the passing of the Act and will cease on 31 December 2013.

Section 49 amends section 603A of the Taxes Consolidation Act 1997, which provides an exemption from capital gains tax in respect of any gain on the disposal of a site by a parent to his or her child (including certain foster children). It gives effect to the proposal in the Budget statement to increase the exemption threshold from €254,000 to €500,000. It also clarifies that the threshold will apply where both parents make a simultaneous disposal of a site to their child. The Budget proposal applies to disposals made on or after 5 December 2007. The second amendment applies to disposals made on or after 6 December 2000.

Section 50 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. The amendment adds the Commission for Communications Regulation (Comreg) and the Digital Hub Development Agency to the list of bodies specified in Schedule 15. The exemption for Comreg applies to disposals made on or after 1 December 2002 and the exemption for the Digital Hub Development Agency applies to disposals made on or after 1 January 2008.

PART 2

Excise

Chapter 1

Electricity Tax

This Chapter provides for an excise duty on electricity, called electricity tax, as required under the EU Energy Tax Directive (No. 2003/96/EC). In accordance with these requirements the tax is charged to the operator, referred to as the supplier, who supplies the electricity to the consumer. The rates of tax are the minimum rates specified in the Directive; €1 per megawatt hour for non-business use, and 50 cent per megawatt hour for business use.

Household use of electricity is exempt from the new tax. Certain industrial uses of electricity are also exempted, as is electricity from renewable sources and from environmentally friendly heat and power cogeneration.

The tax will apply to supplies of electricity made on or after 1 October 2008.

Section 51 is an interpretation section.

Section 52 charges the tax on the final supply of the electricity i.e. the supply to the consumer. *Schedule 2* provides for separate rates for business and non-business use. *Subsection (2)* covers ''self supply'' by a supplier.

Section 53 provides that the tax is charged at the time when the electricity is supplied, and that the supplier must pay and account for it. The supplier is not, however, liable for any underpayment resulting from undertaxation of a supply, provided that the appropriate procedures for taxation have been adhered to. The consumer is liable for any underpayment resulting from false or misleading information furnished to a supplier by such consumer.

In the case of a supply from outside the State, the supplier must establish a company in the State to assume all responsibilities in relation to the tax, including liability for payment.

Section 54 requires payment by the supplier, on the basis of a return made at the end of each accounting period (which is a calendar year unless the Revenue Commissioners specify otherwise in regulations). The Revenue Commissioners may, by means of regulations, require interim payments where the liability in a year exceeds €100,000.

Section 55 provides for the situation where a single supply of electricity is taxable at different rates, or where part of that supply qualifies for exemption. The tax will, as appropriate, be charged on the

quantity of electricity supplied for each use. However, for administrative ease it may be assumed that, in each month, up to one megawatt of the supply is taxable at the lower rate or is exempted, as the case may be.

Section 56 requires suppliers to register with the Revenue Commissioners.

Section 57 provides for relief from electricity tax for electricity for household use, and for use in certain industrial processes. Electricity generated from renewable sources and from heat and power cogeneration is also relieved.

Section 58 provides that effect may be given to certain reliefs by way of repayment, and specifies the repayment period and the time limit for claims.

Section 59 makes it an offence, with a penalty on summary conviction of €5,000, to fail to comply with the provisions of the Chapter, or of any Regulations made under it.

Section 60 empowers the Revenue Commissioners to make regulations required to implement and administer the provisions of the Chapter.

Section 61 places electricity tax under the care and management of the Revenue Commissioners.

Section 62 provides that this chapter will come into operation on 1 October 2008.

Chapter 2

Miscellaneous

Section 63 amends the provisions of the Finance Act 2001 for the authorisation of warehousekeepers, and the approval of premises as tax warehouses. The respective responsibilities of authorised warehousekeepers who are proprietors of a tax warehouse, and those who are tenants in that warehouse, are clarified. Provision is made for the refusal of authorisations, and for their revocation, in specified circumstances.

Section 64 makes several technical amendments to general excise law, to update references to the new warehousing provisions made by *section 63*, and to ensure that certain provisions of that general law apply to the electricity tax introduced by *Chapter 1*.

Section 65 amends the Schedule to the Finance Act 1999 that sets down the rates of mineral oil tax. The rate for aviation gasoline is increased to €442.68 per 1,000 litres, and a rate of €368.05 per 1,000 litres is introduced for heavy oil used for private pleasure navigation and for private pleasure flying. These changes are required following the ending of the derogation under EU law that permitted a tax relief for fuel used for these purposes.

Specific rates for leaded petrol, superunleaded petrol and auto diesel with a higher sulphur content, are omitted from the new Schedule as they no longer serve a purpose. A provision to allow the Minister for Finance, by Order, to apply an alternative schedule of rates is also omitted.

Section 66 together with the changes to mineral oil tax rates under *section 65,* makes additional changes to mineral oil tax law as required by the ending of a number of derogations from the requirements of EU excise law. These derogations, inter alia, permitted relief from mineral oil tax for fuel used for certain bus and coach services, private pleasure flying, private pleasure navigation, and for recycled waste oil. The reliefs mentioned will be abolished on 1 November 2008 and the appropriate mineral oil tax will apply in each case. For private pleasure navigation and private pleasure flying, measures are put in place to facilitate taxation at the appropriate rates.

The section also introduces a relief for mineral oil used for chemical reduction or in electrolytic or metallurgical processes.

Section 67 amends section 78A(4) of the Finance Act 2003 in relation to Alcohol Products Tax relief for microbreweries. The owner of a number of microbreweries will become eligible for this relief, but subject to the same annual production limit, and other conditions, as a person who owns one such brewery.

Section 68 confirms the Budget increases in the rates of Tobacco Products Tax which, when VAT is included, amount to €0.30 on a packet of 20 cigarettes with pro-rata increases in respect of other tobacco products.

Section 69 provides for an increase, from €250 to €300, in the duty payable in respect of an off-licence for the retail sale of alcohol. The revised rate of duty applies to any such licence granted on or after 1 October 2008.

Section 70 and Schedule 3 provide for the repeal of the provisions of the Finance Acts relating to excise duties on authorisations granted under firearms legislation. These repeals will come into operation on a day or days to be appointed by order by the Minister for Finance.

Section 71 amends various provisions of excise law so as to increase to €5,000 the fine to which a person is liable on conviction for a summary offence.

Section 72 introduces a definition for 'CO_2' emissions for vehicle registration tax (VRT) purposes in Section 130 of the Finance Act 1992. This new definition is required in order to charge VRT on the basis of CO_2 emissions and open market selling price (OMSP) on the registration of category A vehicles on or after 1 July 2008.

Section 73 amends the charging provision contained in Section 132 of the Finance Act 1992 for category A vehicles registered on or after 1 July 2008. The table in this section sets out the various CO_2 emissions categories for the registration of vehicles and the corresponding percentage rates of VRT which are chargeable on the OMSP of the vehicle in the State.

Section 74 amends the definition of short-term self-drive contracts, contained in section 134 of the Finance Act 1992. The purpose of this amendment is to harmonise Revenue's definition of short-term car hire for VAT and VRT purposes and to ensure that long-term leased vehicles do not come within the scope of a relief which was introduced for short-term car hire vehicles.

Section 75 deals with the relief from VRT for certain types of vehicle which is provided for in section 135C of the Finance Act

1992. This section extends the scheme in its existing format for the remission or repayment of 50 per cent of the VRT payable or paid on the registration of category A or B series production hybrid electric vehicles and series production flexible fuel vehicles for the period 1 January 2008 to 30 June 2008.

Provision is also made in this section for the remission or repayment of a maximum of €2,500 (subject to a sliding scale, based on the age of the vehicle) of the VRT payable or paid on the registration of such series production hybrid electric vehicles and series production flexible fuel vehicles during the period 1 July 2008 to 31 December 2010.

This section also provides for an exemption from liability for VRT on the registration of series production category A or B electric vehicles and series production electric motorcycles for the period 1 January 2008 to 31 December 2010.

PART 3

Value-Added Tax

General note about the VAT on immovable property provisions contained in the Bill

Introduction

Annex E to the Summary of 2008 Budget Measures provided an overview of the new VAT on Property rules that are being introduced in the Bill. The new system makes changes in how VAT is applied to the sale and letting of commercial property. The supply of residential property is unchanged.

The purpose of the new system is to rationalise and simplify the VAT treatment of property; which has become extremely complicated. The new system will simplify the VAT treatment for commercial property transactions. There is also a strong anti-avoidance dimension to the new rules to deal with increasingly aggressive avoidance schemes in relation to VAT on Property.

New System

The main changes include ceasing to charge VAT on the capitalised value of leases in excess of ten years, removing old properties from the VAT net by confining the period during which VAT will apply to the supply of new properties to a maximum of five years and making some changes to the treatment of leases. In addition, a Capital Goods Scheme (CGS) is being introduced for property transactions; this will ensure that the amount of VAT deductible will be proportionate to the business use of a property over a twenty-year period.

The main provisions include:

- The supply of houses and apartments — whether by the sale of the freehold or via a very long lease (a ''freehold equivalent'') — for residential purposes will continue to be taxable at 13.5%. The first sale of houses and apartments by property developers/builders will continue to be taxable.

- The supply of commercial buildings — whether by the sale of the freehold or the freehold equivalent — will be taxable only while the building is considered ''new''. For this purpose, a building will be regarded as ''new'' for a period of up to five years following completion. The first supply of a building

within five years after completion will always be taxable. Subsequent supplies within five years after completion will also be taxable except where the building has been occupied for two years or more at the time of supply. An existing building that is substantially refurbished or is adapted for materially altered purposes will be considered ''new'' following such work and sales of those buildings will be subject to the rules for sales of new buildings.

- The supply of ''old'' buildings will be exempt from VAT, but there will be an option to tax such supplies. Where the option to tax is exercised, VAT will be charged on the actual consideration, subject to any specific anti-avoidance rules that deal with artificially reduced considerations. The option will be exercised jointly by the vendor and purchaser. VAT will be accounted for by the purchaser, under the reverse charge mechanism.

- The supply of ''building land'' will be taxed in the same way as it is taxed currently. The VAT treatment of undeveloped land (e.g. farm land) will not be affected. Land that is sold in connection with a contract to develop it will continue to be taxable.

- Most leases will be exempt from VAT but leases that represent effective ownership will be treated in the same way as supplies of the freehold.

- A new section 12E of the VAT Act introduces a Capital Goods Scheme. Deductibility for input VAT relating to a property will be initially allowed by reference to the use of the property for the first twelve months of full use. The CGS will require an annual review by the taxpayer of the use to which a property is put over the following 19 years (in terms of taxable or exempt use). Where there is a change in use, an adjustment of deductibility will be required. The adjustment will reflect the difference between the use in the initial twelve months of use and the use in the year in question. Ultimately, the proportion of VAT deducted will reflect the actual use of the property over the twenty-year period.

- There will be an option to tax rents on commercial buildings where the landlord and tenant are not connected persons. The option may be exercised by the landlord and VAT at 21% will be chargeable on the rents. Where the option is cancelled while the building is still subject to the CGS, a CGS adjustment will apply.

Transitional Measures

Essentially the transitional rules allow properties that were acquired or developed before 1 July 2008 to continue to be taxed under the old rules with some modifications. The transitional rules provide for the minimum of disruption for business and represent a significant reduction in the compliance burden. The aim of the transitional rules is to facilitate a smooth shift to the new system. The transitional measures also provide important safeguards against avoidance. The main features of the transitional rules are:

- A new section 4C of the VAT Act which provides that the disposal of a freehold or leasehold interest of ten years or more is exempt from VAT if the supplier was not entitled to

deduct VAT on the acquisition or development of the property. In the case of the supply of a freehold the supplier may opt to tax the supply by agreement with the purchaser.

- Section 4C also provides that the sale of a 'new' building (under the new rules) that was acquired or developed before 1 July 2008 will be taxable under the new rules. However, a sale of the freehold of a building that is not new will be exempt from VAT with an option to tax.

- Section 4C also provides for the VAT treatment of the assignment or surrender of a taxable lease. If the assignment or surrender of a taxable lease is taxable under the old rules then it will be taxable under the transitional rules but the amount of tax will be based on an amount calculated under the Capital Goods Scheme.

- The Capital Goods Scheme will not apply to change of use of the transitional properties except where the property is sold or let.

- The current waiver of exemption rules in regard to short-term letting and the cancellation rules in respect of the waiver will continue to apply to any lettings in place before and on 1 July 2008 except where it is a letting between connected parties. The new section 7B provides that a waiver will not apply to connected lettings with effect from 1 July 2008 unless the VAT on the annual rent exceeds a minimum threshold. This is an important anti-avoidance provision which prevents the continuation of unacceptable VAT drip-feed' schemes by exempt, partially exempt or non-taxable entities.

Date of Effect

The new system comes into effect on 1 July 2008.

General note about provisions in the Bill to facilitate the enactment of a recast VAT Act

EU Directive 2006/112/EC is a recast of the main instruments of EU VAT legislation. The recast Directive rationalises the structure and wording of earlier Directives and, in line with the principle of better regulation, it is intended to modernise and update the VAT Act also. As a first step in the preparation of a new VAT Act, amendments to the VAT Act are proposed in this Bill which will facilitate alignment with the recast Directive. The majority of the amendments focus on the concept of ''taxable person''. The Directive describes a taxable person as any person who carries out an ''economic activity'', which covers all who are engaged in business activities, whether they are required to register for VAT or not. The VAT Act, on the other hand, provides that a taxable person is a person who supplies taxable goods or services ''in the course or furtherance of business'' and, as such, is required to register for VAT. It is now proposed to adopt the language of the Directive by broadening the definition of taxable person in the VAT Act, and to distinguish those who need to register for VAT by referring to them as ''accountable persons''. These changes do not impose additional obligations on persons engaged only in exempt activities or on flat rate farmers, although they will be included in the new definition of taxable person in the VAT Act as they are in the Directive.

Section 76 is a definitions section.

Section 77 amends section 1 of the VAT Act which contains definitions for the purposes of that Act.

The section inserts a number of new definitions into section 1 of the Act. These definitions come into effect from 1 July 2008 and cover amendments being made throughout the VAT Act to the way property transactions are treated for VAT purposes as well as amendments being made to the Act to prepare the way for the enactment of a new VAT Act in a format that is aligned with the recent Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT.

Section 78 amends subsection 1 of section 2 of the VAT Act so as to align the wording used with the new VAT Directive. It confirms that tax shall be charged and levied on the supply of goods and services within the State for consideration by a taxable person ''acting as such'', except where the transaction is exempt.

Section 79 amends section 3 of the VAT Act which deals with the supply of goods.

Paragraph (a) confines the rule in section 3(1)(*e*) to movable goods, thereby ensuring that where immovable goods are diverted from a taxable use to an exempt use, the transaction is not a supply of goods, but the Capital Goods Scheme will apply.

Paragraph (b) inserts a new subsection (1C) to confirm the supply of goods for VAT purposes includes certain transfers in substance of rights in respect of those immovable goods, including where 50 per cent or more of the open market value of the immovable goods is transferred and paid for over a period of up to 5 years. These supplies are defined in section 1 of the VAT Act as transfers of the freehold equivalent interest.

Paragraph (c) is a change to facilitate alignment of the VAT Act with the recast Directive.

Section 80 amends section 4 of the VAT Act which deals with supplies of immovable goods. The amendment confines the operation of the section to supplies which occur prior to 1 July 2008, apart from subsection (9) which provides for the reverse charge mechanism that will continue to apply under the new provisions, and subsection (10) which deals with post-letting expenses in respect of properties which have previously been supplied.

Section 81 repeals section 4A of the VAT Act with effect from 1 July 2008 as it will no longer be needed when the new VAT on property legislation comes into force.

Section 82 inserts 2 new sections into the VAT Act, sections 4B and 4C. These are part of the package of new rules dealing with the VAT treatment of property transactions.

The new section 4B provides for the exemption of certain supplies of immovable goods and a joint option for taxation of those exempt supplies.

Subsection (1) contains definitions for ''completed'' and ''occupied''. These concepts are significant as taxation or exemption of a supply of property will, in certain circumstances, depend on the time the supply occurs by reference to the time the property was completed and the length of time it has been occupied.

Subsection (2) contains the two main rules for exempting the supply of a property from VAT.

Paragraph (a) provides that the supply is exempt if the land or property is undeveloped.

Paragraph (b) exempts a supply of property where the most recent development of it has been completed more than five years beforehand.

Paragraph (c) exempts a supply of a completed property which has been occupied for at least 24 months since its most recent development, if a previous taxable supply of the property between unconnected parties had taken place since that development.

Paragraph (d) exempts a supply of a property which was completed more than five years before the supply, but further ''minor'' development on that property is carried out since then.

Subparagraph (i) provides that the supply will be exempt if that further development does not adapt the property for materially altered use. Subparagraph (ii) provides that the supply will be exempt if the cost of the development does not exceed 25 per cent of the sale price.

Paragraph (e) has a similar provision to deal with a supply of property that is redeveloped during the two-year occupation period.

Subsection (3) brings forward the anti-avoidance rule in section 4(5) of the VAT Act into the new property regime. It prevents the application of an exemption to the supply of a site that is to be developed, where the sale of the site and the development on the site both form part of the development agreement.

Subsection (4) provides that the registration thresholds do not apply to property transactions and this is modelled on the section 4(7) of the VAT Act.

Subsection (5) provides for an option to tax a supply that is exempt in accordance with subsection (2) where both parties to the transaction agree. Exercising the option to tax the sale has implications for the supplier under the capital goods scheme.

Subsection (6) provides that where the option to tax the supply is exercised in accordance with subsection (5), the tax is accounted for by the purchaser on a reverse charge basis.

Paragraph (*a*) provides that the purchaser shall be the ''accountable person''.

Paragraph (*b*) provides that the seller shall not be the ''accountable person''.

Subsection (7) provides that the first supply of residential property by a person in the business of developing property, or a connected party, is not an exempt transaction.

Paragraph (*a*) describes the conditions under which the supply of residential properties by developers/builders is taxable, regardless of the time when the supply takes place.

Paragraph (*b*) ensures that where these properties are let prior to the first supply, the adjustment under the capital goods scheme is the annual adjustment as the letting is treated as a temporary arrangement that does not take the subsequent first sale of the property out of the VAT net.

The new section 4C deals with the transitional measures that apply to transitional properties that have been subject to tax under the ''old rules'' and disposed of, or let, under the ''new rules''. This is part of the package of measures dealing with immovable property.

Paragraph (*a*) of subsection (1) provides that this section applies to immovable goods acquired or developed by a taxable person prior to 1 July 2008 until they are disposed of by that person.

Paragraph (*b*) of subsection (1) provides that this section also applies to an interest in immovable goods within the meaning of section 4 other than a freehold interest or a freehold equivalent interest created by the taxable person prior to 1 July 2008 and held by that person on 1 July 2008.

Subsection (2) provides that where a person was not entitled to deduct the tax chargeable on the acquisition or the development of the transitional properties, and where those goods were not subsequently developed on or after 1 July 2008, other than minor development, the supply is not chargeable to VAT but a joint option for taxation may be exercised and tax is then be payable by the purchaser.

Subsection (3) provides that where a person acquired, developed transitional property or has an interest in a transitional property and was entitled to deduct tax charged on the acquisition or development of that property and creates an exempt letting then that person shall calculate an amount in accordance with the formula in section 4(3)(*ab*) of the VAT Act and that amount shall be payable as if it were tax due in the taxable period in which that letting takes place.

Subsection (4) provides that where an assignment or surrender of an interest to which subsection (1)(*b*) applies occurs within 20 years of the creation of the last assignment or surrender it is deemed to be a supply of immovable goods.

Subsection (5) provides that where a person supplies transitional property on which tax is chargeable but that person was not entitled to deduct the full amount of tax on the acquisition or development of the property, he or she shall be entitled to make the appropriate adjustment under *section 91* of this *Bill* as if the capital goods scheme applied to that transaction.

Subsection (6) provides that where a person was entitled to deduct tax on acquisition or development of transitional property, a charge to tax shall arise in the case of an assignment or surrender but tax shall not arise on an assignment or a surrender where no right to deductibility arose and in such case an option for taxation cannot be exercised.

Paragraph (*a*) of subsection (7) specifies how VAT is calculated when it arises on an assignment or a surrender.

Paragraph (*b*) of subsection (7) contains the formula to be used for the calculation of tax on assignments or surrenders where *subsection (6)(a)* applies and confirms that the tax is subject to the reverse charge mechanism.

Paragraph (*a*) of subsection (8) provides that where an interest in transitional property is assigned or surrendered then the person who makes the assignment or surrender must issue a document to the person showing the amount of tax due and payable and the number of intervals remaining in the adjustment period.

Paragraph (*b*) of subsection (8) provides that where paragraph (*a*) applies, the person to whom the immovable goods are assigned or surrendered shall be regarded as a capital goods owner and the provisions of the capital goods scheme shall apply.

Paragraph (*a*) of subsection (9) provides that where a person who has elected to register in respect of a holiday home and wishes to cancel that election, the current rules continue to apply, provided the holiday home was owned by that person on 1 July 2008 and was not further developed after that date.

Paragraph (*b*) of subsection (9) provides that an election of the kind referred to in paragraph (*a*) does not apply to immovable goods acquired or developed after 1July 2008.

Subsection (10) provides that certain subsections of the capital goods scheme do not apply to transitional properties.

Subsection (11) applies as appropriate the various capital goods scheme definitions for the purposes of the transitional measures.

Section 83 amends section 5 of the VAT Act, which deals with the supply of services.

Paragraph (a) excludes immovable goods from the provisions of section 5(3)(a) of the VAT Act, which treats the private use of business assets as a supply of services.

Paragraph (b) inserts a new subsection (3B) into section 5 of the VAT Act. Subsection 3(B) provides that if VAT deductibility is claimed by a business on the acquisition or development of property, then the private or non-business use of that property is a taxable supply of services during a period of 20 years. The amount on which tax is chargeable in respect of this service is provided for in the amendments to section 10 of the VAT Act.

Section 84 amends section 7 of the VAT Act which deals with waiver of exemption.

Paragraph (a) provides that the cancellation of a waiver can occur in accordance with the new rules in section 7B(3).

Paragraph (b) inserts a new subsection (5) which ensures that no new waivers or extensions to existing waivers can occur on or after 1 July 2008.

Section 85 inserts 2 new sections in the VAT Act, sections 7A and 7B.

The new section 7A provides an option to landlords to tax lettings of commercial properties.

In subsection (1), *paragraph (a)* provides that tax is chargeable on rents where the landlord opts to tax the letting. Where the option is exercised the landlord is an accountable person in respect of the letting and is liable to account for the VAT on the rents.

Paragraph (b) provides that a person who is entitled to deduct the VAT incurred on the acquisition or development of a property, on the basis that the letting of that property will be taxed, and will be treated as having exercised the landlord's option to tax and that option will remain in place until none of the conditions in paragraph (*c*) apply.

Paragraph (*c*) provides that a landlord's option to tax is exercised by including a provision for the taxation of the rents in the letting agreement or by the landlord notifying the tenant that the rent is taxable.

Paragraph (*d*) provides that a landlord's option to tax is terminated by making an exempt letting of the property, by making an agreement in writing with the tenant that the letting is no longer taxable or by giving the tenant a notification to that effect. It is also terminated if the landlord and tenant become connected persons, if a person connected to the landlord occupies the property or if the property is used for residential purposes.

Subsection (2) provides that a landlord may not opt to tax a letting to a connected person or a letting where a person connected to the landlord occupies the property. However, if the connected tenant uses the property for an activity for which he or she is entitled to at least 90 percent deductibility, then the landlord may opt to tax the letting.

Subsection (3) defines connected persons for the purposes of this section.

Subsection (4) continues the provision enacted in the Finance Act 2007 whereby a landlord may not opt to tax a residential letting.

The new section 7B deals with the transitional measures for the short term letting of immovable goods where a waiver of exemption applied.

Subsection (1) provides that the section covers landlords who have a waiver in place before and on 1 July 2008.

Subsection (2) provides that the Capital Goods Scheme does not apply to a property covered by a waiver.

Subsection (3) provides that a waiver ceases to apply to any letting between connected persons in respect of which a landlord's option to tax would not be allowed, and an amount calculated on the basis of the waiver cancellation amount in section 7(3) in respect of that property is payable. If that waiver covers other lettings also, the amount paid under this subsection is disregarded for the purposes of calculating the cancellation amount when that waiver comes to be cancelled.

Subsection (4) provides that if the tax accounted for on a letting between connected persons is not less than the amount calculated in accordance with the formula in subsection (5), then, the waiver can continue to apply to that letting.

Subsection (5) provides for the minimum amount of tax payable on a letting between connected persons for the purposes of allowing a waiver to continue to apply.

Section 86 and *Schedule 4* make a number of amendments to section 8 of the VAT Act which deals with accountable persons.

Paragraph (a) substitutes subsection (1) of section 8 with effect from 1 July 2008 and provides for the new definition of ''accountable person''. Basically an accountable person is defined as a taxable person (as defined in section 1) who is accountable for and liable to pay VAT on his/her supplies in the circumstances provided for in section

8. This is part of the preparatory changes to facilitate the enactment of a new VAT Act.

Paragraph (b) amends subsection (1A)(f) of section 8 with effect from 1 July 2008. *Subparagraph (i)* deletes subparagraph (iv) as the entities referred to are engaged in exempt activities and such entities are now included in the definition of taxable person. *Subparagraph (ii)* substitutes ''accountable person'' for ''taxable person''.

Paragraph (c) amends subsection (1A)(g) of section 8 with effect from 1 July 2008. *Subparagraph (i)* changes the term ''taxable person'' to ''person'' because the person being referred to here is a person who is not established in the State and our new definition of taxable person covers a person who independently carries out business in the State. *Subparagraph (ii)* deletes subparagraph (iv) as the entities referred to are engaged in exempt activities and such entities are now included in the definition of taxable person. *Subparagraph (iii)* substitutes ''accountable person'' for ''taxable person''.

Paragraph (d) inserts a new subsection (1B) after subsection (1A). This provides that, with effect from 1 September 2008, VAT on construction services provided by a subcontractor to a principal contractor will be accounted for by the principal contractor on a reverse charge basis. At present the subcontractor is accountable for this tax. The provision uses the relevant contract tax provisions of the Taxes Consolidation Act 1997 for purposes of specifying the persons to whom this rule applies.

Paragraph (e) substitutes new thresholds in subsections (3), (3A) and (9) of section 8 which increase the VAT registration thresholds for small businesses in line with the Budget announcement of 5 December 2007. This amendment takes effect from 1 May 2008.

Paragraph (f) amends the grouping rule in subsection 8 and is consequential to the amended definition of taxable person.

Section 87 amends section 10 of the VAT Act by the insertion of a new subsection (4D) after subsection (4C).

Paragraph (*a*) specifies the amount on which tax is chargeable for a taxable period when business assets consisting of immovable goods are used for private or non-business purposes. Effectively the amount is derived by dividing the acquisition or development costs incurred by the business by 20 and for any private or non-business use of the property during a taxable period, the appropriate proportion of one sixth of that amount is taxable.

Paragraph (*b*) provides that the Revenue Commissioners may make regulations specifying the methods which may be used to identify the extent to which the goods are used for private or non-business purposes.

Section 88 makes three amendments to section 12 of the VAT Act.

Paragraph (a) inserts a new subparagraph (v*c*) into subsection (1)(*a*). It is consequential to the changes provided for in section 8 (1B). It allows the principal contractor to deduct the VAT on the services supplied by the subcontractor for which the principal contractor is liable on the reverse charge basis.

Paragraph (b)(i) amends section 12(4)(*a*) of the VAT Act by excluding immovable goods from the scope of the definition of dual-use inputs with effect from 1 July 2008.

Paragraph (b)(ii) amends section 12(4)(*f*) by substituting ''accounting year'' for ''accounting period''.

Paragraph (c) deletes subsection 12(5) of the VAT Act with effect from 1 July 2008 as a consequence of the introduction of the new rules on property.

Section 89 amends section 12B of the VAT Act which deals with the special scheme for means of transport.

Subsection (1) replaces the definition of 'taxable dealer' in the context of the special scheme. The effect of the amendment is to include finance companies involved in hire purchase transactions of second hand means of transport in the scheme.

Subsection (2) is a consequential to the preparatory changes being made throughout the Act to facilitate a new VAT Act.

Section 90 amends section 12C of the VAT Act which deals with the special scheme for agricultural machinery. The effect of the amendment is to include finance companies involved in hire purchase transactions of agricultural machinery in the scheme.

Section 91 inserts a new section 12E into the VAT Act 1972 to provide for the introduction of a Capital Goods Scheme. The Capital Goods Scheme provides for the adjustment of the VAT deductible on the acquisition or development of a property over the '20 year life' of the property. It ensures that a person's deductibility in relation to a property is proportionate to the property's taxable use.

Subsection (1) provides that the scheme applies to properties on which VAT is charged to a taxable person (a person in business).

Subsection (2) is a definitions subsection.

Subsection (3) contains a number of provisions including the definition for the adjustment period, the total tax incurred and the rules for dealing with deductibility in certain cases.

Paragraph (*a*) provides for the ''life'' of a property (adjustment period) during which adjustments must be made under this scheme. In most cases the life is either ten or twenty years depending on whether the property is newly constructed or refurbished. In certain other cases involving lettings it can be a lesser period.

Paragraph (*b*) defines ''total tax incurred'' which is a term that will be used throughout the section. Included in this definition is tax that would have been chargeable but for the application of section 3(5)(*b*)(iii) and section 13A of the VAT Act. (These sections allow for a transfer or supply to occur without VAT in certain circumstances. Including these amounts in the ''total tax incurred'' ensures that the rules cannot be used to avoid adjustments under this section.)

Paragraph (*c*) provides that where a property is acquired in accordance with section 13A (in such cases no VAT is actually charged) that the owner is deemed to have deducted the VAT that would have been chargeable but for the application of that section.

Paragraph (*d*) provides that where a property is supplied or transferred that the adjustment period for that property for the owner ends on the date of supply or transfer.

Subsection (4) contains the rules for the calculation and adjustment required at the end of the initial interval (first twelve months of ownership). This amount is the benchmark figure for comparison purposes under the scheme for the remainder of the life of the property.

Paragraph (a) compares the amount of tax deducted on the acquisition or development of a property with the usage of the property during the initial interval.

Paragraph (*b*) uses the amount calculated in paragraph (*a*) and, depending on the circumstances will make this amount either payable as VAT by the owner or deductible by the owner. This will depend on whether the taxable use has increased or decreased for the initial interval when compared with the amount originally deducted.

Paragraph (*c*) provides that if the property is not used during the initial interval the figure for the proportion of deductible use is the proportion of the total tax incurred which the owner deducts.

Subsection 5 contains the rules for changes of use from taxable to exempt, or vice versa, during all intervals other than the initial interval.

Paragraph (*a*)(i), provides that at the end of each interval the proportion of taxable use for the property is compared against the proportion of use for the initial interval. Where there is a difference between these two figures, the owner must carry out an adjustment.

Paragraph (*a*)(ii) uses the amount calculated in paragraph (*a*)(i) and, depending on the circumstances will make this amount either payable as VAT by the owner or deductible by the owner. This will depend on whether or not the taxable use during the interval is greater than or less than the taxable use for the initial interval.

Paragraph (*b*) provides that where a property is not used during any interval that the proportion of deductible use for that interval is the proportion of deductible use for the previous interval.

Subsection (6) contains special rules for when there is a change of taxable use of more than 50%. It also contains special rules to deal with the letting of property. The letting of property is exempt from VAT. However, an option to tax is allowed in certain circumstances. The movement from taxable to exempt letting under this option has implications within this section and is dealt with under paragraphs (*c*) and (*d*).

Paragraph (*a*)(i) provides that where the proportion of deductible use differs by more than 50% points from the initial interval proportion of deductible use that the owner is obliged to calculate an amount in accordance with the formula in this paragraph.

Paragraph (*a*)(ii) uses the amount calculated in paragraph (*a*)(i) and, depending on the circumstances will make this amount either payable as VAT by the owner or deductible by the owner. This will depend on whether or not the taxable use has increased or decreased by reference to the initial interval use.

Paragraph (*a*)(iii) provides that the provisions of subparagraph (i) do not apply to capital goods that are subject to the provisions of paragraphs (*c*) or (*d*). This ensures that properties subject to the letting rules are not subject to an adjustment twice during one year.

Paragraph (*a*)(iv) provides that some of the definition amounts must be recalculated as a result of the application of an adjustment made in subparagraph (i). These recalculated amounts will be used for the remainder of the adjustment period.

Paragraph (*b*) provides that where an adjustment has been made because of a change of more than 50% points as provided for in paragraph (*a*) that there is no obligation to carry out the ''normal'' adjustment in accordance with subsection (5). This ensures that two adjustments do not arise in the one year.

Paragraph (*c*) deals with a situation where an owner of a property is a landlord in respect of all or part of that property and where the owner has exercised his or her ''option to tax'' that letting and subsequently cancels that option. The rule is that the owner must pay back the VAT deduction taken (reduced by the number of years since acquisition) when the option to tax the letting in the property is cancelled and he or she ceases to charge VAT on that letting.

Paragraph (*d*) provides that where a landlord opts to tax a letting that was previously exempt the landlord is entitled to an adjustment of the VAT deductible.

Subsection (7) contains provisions that deal with sales of capital goods.

Paragraph (*a*) provides for situations where the sale of a property is subject to VAT. In such cases where the owner was not entitled to deduct all of the VAT incurred on the acquisition or development of a property, then the owner is entitled to a VAT credit for the amount of the non-deductible VAT, reduced by the number of years that have elapsed since the acquisition. The paragraph describes the formula to be used for calculating the amount of deductible tax.

Paragraph (*b*) provides for situations where the sale of a property is not subject to VAT (exempt). In such circumstances there is a claw-back of the amount of VAT deducted in relation to the acquisition or development of the property, reduced by the number of years that have elapsed since the acquisition. The paragraph describes the formula to be used for calculating the amount of tax which shall be payable.

Paragraph (*c*) deals with situations where part of a property is sold. It provides that the various amounts used for purposes of the scheme shall be adjusted accordingly.

Paragraph (*d*) provides for a situation where a person acquires a property under the transfer of business rules. In such cases, that person is liable to pay VAT based on their overall VAT deductibility entitlement.

Subsection (8) deals with capital goods that have been created in a situation whereby a tenant who has a lease in a property creates a separate capital good by carrying out a development of that property (e.g. the installation of fixtures, etc.).

Paragraph (*a*) states that where a tenant has created a capital good and where that tenant subsequently assigns or surrenders their lease that they must calculate an amount in accordance with the formula in subsection (7)(*b*). This ensures that any deductibility taken must be paid back by the tenant if the lease is assigned or surrendered before the end of ten years (adjustment period for refurbishments).

Paragraph (*b*) provides that the claw-back in paragraph (*a*) does not apply if the tenant passes on his or her capital goods scheme adjustment amount to the person to whom the lease is being assigned or surrendered.

Paragraph (*c*) provides that the person to whom the lease is assigned or surrendered must use the information on this record for the purposes of operating this section in respect of the capital good that has been ''passed on'' to them.

Paragraph (*d*) provides that where a capital good created by a tenant is destroyed then the provisions of paragraphs (*a*) and (*b*) will not apply and no adjustment is required.

Subsection (9) is an anti-avoidance provision that applies to sales of capital goods between connected persons. Essentially the provision works by comparing the VAT deducted on the acquisition of a property with the VAT being charged on its sale. Where the VAT being charged is less than the VAT that was deducted there is a claw-back of the difference between the two amounts. This ensures that the VAT deducted is protected and that connected persons cannot use the provisions of the section to gain an unjustified advantage.

Subsection (10) deals with supply of a property as part of a transfer of a business where the supply of that property would be exempt if it was not part of a transfer of business. Where such a transfer occurs, the transferee becomes the successor to the transferor and ''takes over'' the liabilities of the property under the scheme.

Paragraph (*a*) provides that the transferor is obliged to issue a copy of the capital good record to the transferee.

Paragraph (*b*) provides that the transferee shall be the successor to the transferor and shall be responsible for all the obligations under the scheme.

Paragraph (*c*) provides that the transferee shall use the information on the capital good record for the purposes of operating this section in respect of the property that has been ''passed on'' to them.

Subsection (11) provides that if a capital good is destroyed there are no further obligations under the scheme in respect of that capital good.

Subsection (12) provides that an owner must create and maintain a ''capital good record'' in respect of each capital good.

Subsection (13) provides that the Revenue Commissioners may make regulations for this section.

Section 92 amends section 14 of the VAT Act which deals with the cash receipts basis of accounting. It inserts a new subsection (2A) into section 14. The new subsection provides that the cash receipts basis does not apply to a transaction where a supplier on the cash receipts basis grants a discount to a customer after issuing a VAT invoice, but subsequently fails to issue a credit note in respect of the discount.

Section 93 amends section 17 of the VAT Act dealing with invoices.

Subsection (1) makes four amendments.

Paragraph (a) inserts a new subsection (1C) into section 17 to provide for documentation in respect of the reverse charge of the tax on supplies of construction services. It requires the subcontractor who is supplying the services to the principal contractor to issue a document indicating that the principal is liable to account for the VAT on the supply and to give the particulars normally required on a VAT invoice. However, the principal contractor may issue the invoice instead of the subcontractor where both parties so agree.

Paragraph (b) deletes subsection (1AAA) of section 17, which deals with the special provisions for the intra-Community acquisitions of goods financed by way of hire purchase. The effect of the amendment is that the normal hire purchase rules will apply to such transactions.

Paragraph (c) is a consequential amendment.

Paragraph (d) inserts a new subsection (3B) into section 17. Subsection (3B) is part of a package of measures dealing with the situation where a deposit is paid in advance for a supply of goods or services but the transaction is subsequently cancelled by the customer. The subsection provides that, if a VAT invoice has issued in respect of the amount of the deposit, the consideration on the invoice is reduced to nil and a document to be treated as a credit note is to be issued. The normal VAT rules concerning credit notes apply to this document as if the supplier were on the cash basis of accounting.

Subsection (2) further amends the new section 17(3B) to change ''a taxable person'' to ''an accountable person'', with effect from 1 July 2008.

Section 94 amends section 19 of the VAT Act which deals with tax due and payable. It provides that, where a customer pays a deposit but subsequently cancels the transaction and the supplier does not refund the deposit, the supplier may reduce his or her tax liability for the taxable period when the cancellation occurs by the amount already accounted for on the deposit.

Section 95 amends section 27 of the VAT Act which deals with fraudulent returns. *Paragraph (a)(i)* and *(ii)* and *paragraphs (b), (c)* and *(d)* are technical amendments to cater for a renumbering of the subparagraphs in subsection (9A).

Paragraph (a)(iii) provides for the forfeiture of new means of transport where VAT is not paid on their intra-Community acquisition in certain circumstances.

Section 96 amends section 32 of the VAT Act which deals with Regulations. It provides that the Revenue Commissioners may make Regulations for the purposes of the capital goods scheme and the rules concerning the taxable amount where there is private or non-business use of business assets.

Section 97 amends the First Schedule to the VAT Act which deals with exempted activities. It is consequential to the amendment to the introduction of the new VAT on property rules.

Section 98 amends the Sixth Schedule to the VAT Act which deals with supplies of goods and services at the 13.5% rate.

Paragraph (a) is a consequential amendment to the increases in the VAT registration threshold for services announced in the Budget of 5 December 2007. The amendment is effective from 1 May 2008.

Paragraph (b) adds to the Schedule certain goods used for the agricultural production of bio-fuel. This amendment is effective from 1 March 2008.

Paragraph (c) adds to the Schedule non-oral contraceptive products.

Section 99 provides for an increase to €5,000 in the penalties for certain VAT summary offences.

Section 100 provides for the inclusion of a schedule of miscellaneous amendments to the VAT Act to cater for the changes from ''taxable person'' to ''accountable person''.

PART 4

Stamp Duties

Section 101 is an interpretation section.

Section 102 amends several sections of the Stamp Duties Consolidation Act 1999 to allow for the introduction of e-stamping of instruments for stamp duty purposes. In recent years Revenue has developed the Revenue-on-line system (ROS) to facilitate the submission of returns and payment of taxes on-line. Revenue is currently engaged in a major strategic development that will see the introduction of a self-service e-stamping system. That system will allow a full 24/7 self-service on-line process where the user can file, pay and receive an instant stamp without Revenue requiring to see the deed in up to 90% of cases. It is hoped to introduce the service in the second quarter of 2009.

There is also provision in the section for Revenue to make Regulations concerning the implementation and operation of the e-stamping system.

Finally, the section also provides for the making of an order(s) for the entry into force of the e-stamping system on a date(s) to be determined by the Minister for Finance.

Section 103 amends section 5 of the Stamp Duties Consolidation Act 1999 which allows the Revenue Commissioners to enter into composition agreements enabling stamp duty to be paid at intervals by way of delivery of an account to them. A technical amendment is being made to this section to allow the Revenue Commissioners to make assessments in relation to this duty.

Section 104 amends section 45A of the Stamp Duties Consolidation Act 1999 to make a technical amendment resulting from the changes announced in the Budget in relation to the residential property rates of stamp duty. This change applies to instruments executed on or after 5 November 2007.

Section 105 amends section 75 of the Stamp Duties Consolidation Act 1999 which contains an exemption from stamp duty on the transfer of shares to recognised market intermediaries. The purpose of the change is to provide that transfers of shares which are required to be reported to a competent authority (e.g. IFSRA), in accordance with the EU Markets in Financial Instruments Directive (MiFID), will be deemed to satisfy the ''effected on exchange or market'' condition of the exemption, subject to all other conditions of the exemption being satisfied. This change applies to transfers of shares executed on or after 1 November 2007.

Section 106 amends section 79 of the Stamp Duties Consolidation Act 1999 to prevent group relief being claimed on a transfer of shares to a connected company by a recognised market intermediary whose own purchase of the shares was exempted from duty under section 75 of the same Act, which contains an exemption for transfers of shares to such intermediary. The change applies to transfers of shares executed on or after 31 January 2008.

Section 107 amends section 80 of the Stamp Duties Consolidation Act 1999 which contains an exemption from stamp duty in respect of transfers of property made in connection with reconstructions or amalgamations of companies. The purpose of the change is to allow societies registered under the Industrial and Provident Societies Act 1893 to benefit from the exemption. The change applies to instruments executed on or after 1 June 2005.

Section 108 amends section 83A of the Stamp Duties Consolidation Act 1999 which provides for an exemption from stamp duty on the transfer of a site from a parent to a child, for the purpose of constructing the child's principal private residence where the value of the site does not exceed €254,000. The purpose of the change is to raise the €254,000 limit to €500,000. The change applies to instruments executed on or after 5 December 2007.

Section 109 amends section 85 of the Stamp Duties Consolidation Act 1999, which grants an exemption from stamp duty in respect of the transfer of loan capital of a company or other body corporate which

- is not convertible to Irish-registered shares,
- is not convertible to other loan capital having a right to conversion to Irish-registered shares,
- is redeemable within 30 years of issue,
- is issued a price which is not less than 90 per cent of its nominal value, and
- is not linked to stock exchange or inflation indices.

This amendment removes the condition that the transfer of the loan capital is redeemable within 30 years of issue and provides that the exemption will not apply if the transfer is linked wholly or partly and directly or indirectly to an equity index. The section applies to transfers of loan capital made on or after the date of the passing of the Act.

Section 110 inserts a new section 88D into the Stamp Duties Consolidation Act 1999 which provides for an exemption from stamp duty on an instrument made for the purposes of or in connection with the reconstruction or amalgamation of certain investment undertakings to which section 739H of the Taxes Consolidation Act 1997 applies. The exemption applies to instruments executed on or after the date of the passing of the Act.

Section 111 inserts a new section 90A into the Stamp Duties Consolidation Act 1999 which provides for an exemption from stamp duty on the sale, transfer or other disposition of a ''greenhouse gas emissions allowance'' as defined in the new section. The exemption applies to instruments executed on or after 5 December 2007.

Section 112 inserts a new section (section 106B) after section 106A of the Stamp Duties Consolidation Act 1999. It provides for an exemption from stamp duty in respect of a conveyance, transfer or lease of a house, building or land by or to a housing authority in connection with any of its functions under the Housing Acts 1966 to 2004 or by or to the Affordable Homes Partnership in connection with the services specified in article 4(2) of the Affordable Homes Partnership (Establishment) Order 2005, as amended. The amendment also repeals section 8 of the Housing (Miscellaneous Provisions) Act 1992, which is now incorporated in the new section. The amendment applies to instruments executed on or after the date of the passing of the Act.

Section 113 amends Chapter 2 of Part 7 of the Stamp Duties Consolidation Act 1999 in the following manner:

- *Firstly,* to cater for a change announced in the Budget in relation to owner-occupier reliefs including first time purchaser relief. Under these reliefs prior to the Budget, the stamp duty forgone was clawed back where the purchaser rented out the dwellinghouse or apartment, other than under the rent-a-room arrangements, within 5 years of the date of transfer giving effect to the purchase. For instruments executed before 5 December 2007, to the extent that a dwellinghouse or apartment is rented out on or after 5 December 2007, it will not involve a claw back of the relief where this occurs in the third, fourth or fifth year of ownership. For instruments executed on or after 5 December 2007, the claw back period is reduced from 5 to 2 years.

- *Secondly*, to insert an anti-avoidance provision to prevent abuse of the First Time Purchaser Relief in section 92B of the Stamp Duties Consolidation Act 1999. The measure will ensure for certain categories of purchases, that the benefit of the relief cannot be availed of indirectly by an individual who is not a first time purchaser. The change will ensure that the First Time Purchaser Relief is restricted to ''genuine first time purchasers'' and will apply to instruments executed on or after 31 January 2008.

Section 114 amends Part 9 of the Stamp Duties Consolidation Act 1999 to confirm the new reduced charges, already announced in the Budget, for financial cards which are detailed below:

Description	Old	New
ATM cards	€10	€5
Debit cards	€10	€5
Combined ATM/Debit cards	€20	€10
Charge cards and credit card accounts	€40	€30

The reduced charges for ATM/Debit/Combined take effect for the year ending 31 December 2007 and for charge cards and credit card accounts for the year ending 1 April 2008.

In addition, the section also inserts two new sections which provide for the preliminary payment of the stamp duty on financial cards, already announced in the Budget, to be made by financial institutions on 15 December of each year, commencing on 15 December 2008.

This preliminary payment of duty is based on 80% of the financial institution's stamp duty liability in relation to financial cards for the previous year.

Section 115 amends Part 9 of the Stamp Duties Consolidation Act 1999 in relation to levies (e.g. financial cards and the 2% levy on insurance policies). A technical amendment is being made to allow the Revenue Commissioners to make assessments in relation to this duty.

Section 116 amends Schedule 1 to the Stamp Duties Consolidation Act 1999 in the following manner:

- the duty on Bills of Exchange, as announced in the Budget, is increased from €0.15 to €0.30 for Bills drawn on or after 6 December 2007. In the case of cheques, the increase applies to cheques supplied by financial institutions to customers on or after 6 December 2007,

- the rent threshold below which the annual rent on a lease of a dwellinghouse is not chargeable to duty is increased from €19,050 to €30,000 for instruments executed on or after the date of the passing of the Act,

- to confirm the new stamp duty rate structure, already announced in the Budget, for residential property, which is set out in *Schedule 5* to the Bill and detailed below:

Residential Property

Where Consideration (or Aggregate Consideration) exceeds €127,000	Rate of Duty
First €125,000	Nil
Next €875,000	7%
Excess over €1,000,000	9%

In addition, to fully preserve the exemption that applied before the Budget changes were announced, transactions, where the consideration (or aggregate consideration) does not exceed €127,000, continue to be exempt from stamp duty. The changes made apply to instruments executed on or after 5 November 2007.

PART 5

Capital Acquisitions Tax

Section 117 is an interpretation section.

Section 118 amends section 57 of the Capital Acquisitions Tax Consolidation Act 2003, which provides for the time limit applying to overpayments of gift tax or inheritance tax. The amendment ensures that the 4-year time limit for claiming repayments of tax overpaid will run from the date of payment of the tax, where that tax has been paid within the period of 4 months after the valuation date. Where the tax has not been paid within the 4-month period, the 4-year time limit will run from the valuation date of the gift or inheritance. The amendment applies to claims for repayment of gift tax or inheritance tax made on or after 31 January 2008.

Section 119 amends section 62 of the Capital Acquisitions Tax Consolidation Act 2003, which provides that title to property cannot be registered unless a Revenue certificate is produced by the person who makes an application to have the property registered to the effect that a charge to gift tax or inheritance tax does not arise in respect of that property. The amendment updates references in section 62 which arise as a result of the passing of the Registration of Deeds and Title Act 2006. The amendment applies to applications to register property made on or after 4 November 2006.

Section 120 amends section 106 of the Capital Acquisitions Tax Consolidation Act 2003, which provides for the making of arrangements for relief from double taxation and the exchange of information for the purpose of preventing and detecting tax evasion. The amendment ensures that a Treaty entered into under section 106 of the Act will have the force of law only after the Government has made an Order that has been approved by the Dáil and legislation has been enacted by the Oireachtas inserting a reference to the Order into the Table which is being inserted into section 106 by this amendment. The amendment also secures the position of the existing Irish/UK Double Taxation Treaty that came into effect in 1978. Up to now, 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. This amendment will apply from 31 January 2008.

PART 6

Miscellaneous

Section 121 contains a definition of ''Principal Act'' i.e. the Taxes Consolidation Act 1997, for the purposes of Part 6 of the Bill.

Section 122 concerns the donation of heritage items under Section 1003 of the Taxes Consolidation Act 1997. It removes the minimum value limit of €50,000 in respect of any one item for collections consisting wholly of manuscript or archival material. In order to qualify, such collections are required to have been in existence for at least 30 years and each item must have been part of the collection for that period also.

Section 123 provides for the extension, until the end of 2008, of the special provision made in relation to the acquisition by the Irish Heritage Trust of a particular collection of paintings and furniture, which is to be displayed in Fota House in County Cork. To facilitate the completion of the acquisition of this collection, the annual limit on the value of heritage property that may be donated under Section 1003A will be increased from €6 million to €8 million for the 2008 tax year only.

Section 124 introduces a new section into Chapter 4 of Part 38 of the Taxes Consolidation Act 1997 (TCA 1997) which sets out various investigative powers that are available to the Revenue Commissioners. The new section provides for an authorised officer of the Revenue Commissioners to question suspects in Garda custody, who have been arrested and detained by the Gardaí in respect of certain Revenue offences. The offences concerned are serious indictable offences under Revenue law which are ''arrestable offences'' within the meaning of section (2) of the Criminal Law Act 1997 i.e. offences which may be punished by imprisonment for a term of five years, or by a more severe penalty. The section limits the application of the

new power to such offences under the Customs Act, under the statutes relating to excise and to serious extraction type frauds relating to Relevant Contracts Tax and VAT under certain provisions of sections 1078 and 1078A of the TCA 1997.

Section 125 amends section 818 of the Taxes Consolidation Act 1997 which is concerned with the determination of the residence of individuals. Prior to this the determination had to be made by an officer of the Revenue Commissioners authorised by them in writing. This provision allows any officer of the Revenue Commissioners to make this determination.

Section 126 amends section 888 of the Taxes Consolidation Act 1997 which is concerned, inter alia, with the obligation on persons in receipt of rental income as an agent for other persons to report the details of this income on request by the Revenue Commissioners. Currently the income concerned is from property situated in the State. This provision extends it to income from all property wherever situated.

Section 127 and *Schedule 6* make a number of miscellaneous technical amendments to the Taxes Consolidation Act 1997 and the Capital Acquisitions Tax Consolidation Act 2003. The amendments address some anomalies that arise between the general time limits for claims for repayment in section 865 of the Taxes Consolidation Act 1997 and section 57 of the Capital Acquisitions Tax Consolidation Act 2003 and other provisions of these Acts. They clarify, in those provisions that provide for a claim for relief or adjustment of an assessment and a repayment of tax on foot of such claims or adjustments in respect of a period that may fall outside the general time limits for claims for repayment that a repayment of tax may be made notwithstanding those general time limits.

Section 128 amends a number of provisions of the Taxes Consolidation Act 1997 so as to increase the fines for conviction on summary offences from €1,265 and €3,000 to €5,000. The increased fines will apply to offences committed on any day after the passing of the Bill.

Section 129 and *Schedule 7* concern certain elements of the existing Customs secondary legislation where they adapt primary Customs legislation. The section ensures that the Regulations referred to in the Schedule have the force of law as if they were Acts of the Oireachtas. The Regulations concerned are in respect of some of the Customs rules applying to arrival and departure of aircraft, to the Customs-Free Airport and to the Land Frontier.

Section 130 and *Schedule 8* provide for technical amendments to the—

- Taxes Consolidation Act 1997 (*paragraph 1*),
- Stamp Duties Consolidation Act 1999 (*paragraph 2*),
- Value-Added Tax Act 1972 (*paragraph 3*),
- Excise legislation in the Finance Act 2003 (*paragraph 4*),
- Finance Act 2007 (*paragraph 5*), and
- Taxes (Offset of Repayments) Regulations 2002 (S.I. No. 471 of 2002) (*paragraph 6*).

The amendments for the most part involve the correction (through

deletion, amendment or insertion of text) of incorrect references and minor drafting errors.

Most of the amendments occur as a consequence of the updating of references from Aer Rianta to the Dublin Airport Authority and the change of title of the Minister for the Marine and Natural Resources to the Minister for Communications, Energy and Natural Resources. Other amendments include minor updating and clarification changes to the alcohol products tax regime and the addition of Chile to the list of countries with which Ireland has a double taxation agreement.

Paragraph 7 contains the commencement provisions relating to *paragraphs 1* to *6* above.

Section 131 fixes a new annuity for 30 years in respect of the estimated borrowing in 2008 for Voted Capital Services in relation to the Capital Services Redemption Account. The CSRA is a sinking fund set up in the 1950s to provide for the repayment of interest and capital on loans to the Government. This is a standard annual provision.

Section 132 deals with the ''care and management'' of taxes and duties.

Section 133 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais
Eanair, 2008

Wt.—. 3,072. 1/08. Cahill. (X51962). Gr.30-15.