AN BILLE AIRGEADAIS (Uimh. 2) 2008
FINANCE (No. 2) BILL 2008

Mar a tionscnaíodh
As initiated

EXPLANATORY MEMORANDUM

PART 1

Levies, 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

Levies

Section 2 inserts a new Part 18A into the Taxes Consolidation Act 1997 providing for the introduction of an income levy effective from 1 January 2009.

It is proposed to impose, on an individualised basis, a charge of 1 per cent on income up to and including €100,100, a charge of 2 per cent for income in excess of €100,100 but not greater than €250,120, and a charge of 3 per cent thereafter.

The levy will apply to all income in a similar manner to the Tax Acts, but will be applied before granting relief for pension contributions or deductions for capital allowances.

Social welfare payments and a number of similar type payments made by other Departments, as well as similar payments from other States will be excluded.

There will be an age related exemption for persons aged over 65 years who have a gross income of less than €20,000 with a provision for double that limit for a married couple.

An exemption threshold of €18,304 will apply so as to exclude those on low incomes.

Where the age related or low income thresholds are exceeded, the levy will be payable on all income.

The charge will apply with effect from 1 January 2009.

Section 3 provides for a parking levy, which is to apply where an employer provides car parking facilities for employees. The section provides that the areas to which the levy will apply and the date from which the levy will apply will be designated by order of the Minister for Finance.

The levy will apply where an employee has an entitlement to use a parking space and such space is provided directly or indirectly by his or her employer.

In general, the levy will apply to private cars. The levy will not apply to disabled drivers or to employees of the emergency services in the context of responding to an emergency situation. Occasional permission to park for not more than 10 days in a year is excluded as is occasional use of a space by a retired person.

The charge for a full year will be €200 where an employee has an ongoing entitlement to use a parking space. Where parking spaces are shared by employees, the levy is reduced to €100 where the ratio of the number of employees to the number of parking spaces is two to one or more. Reductions in the levy are also provided for to take account of job-sharing, maternity leave and certain shift work.

Employers are required to deduct the levy from employees' net wages or salary and to remit the levy to Revenue at the same time as they remit income tax deducted under the PAYE system.

Chapter 3

Income Tax

Section 4 sets out the standard rate bands, which are to apply for the year 2009 and subsequent years. The section provides for the increases in the bands as follows:

	Tax Year 2008	**Tax Year 2009 and Subsequent Years**
	€	€
Single Person	35,400	36,400
Widowed/single parent	39,400	40,400
Married couple		
One earner	44,400	45,400
Two earners	70,800	72,800

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. €45,400. The second spouse may avail of the balance of the €72,800 band, that is, € 27,400.

Section 5 amends the specified rate used 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. With effect from 1 January 2009 the rate to be applied to loans other than home loans is being increased from 13 per cent to 15 per cent.

Section 6 provides for a new CO_2 based system of calculation of benefit-in-kind (BIK) in respect of company cars provided for employees. The effective date of the provision will be determined by Ministerial Order.

The scheme is structured on the 7-bands adopted for Vehicle Registration Tax (VRT). Cars in the 3 lowest bands of CO_2 emissions remain at the current level of BIK charge, and higher charges apply for vehicles with higher emission levels. Existing vehicles retain the current method of calculation of benefit-in-kind.

References in the existing legislation are being changed from miles to kilometres and the special provisions introduced for the short year 2001 are now being deleted.

Section 7 amends Chapter 3 of Part 5 of the Taxes Consolidation Act, 1997 in sections 118 and 118B. It provides an exemption from the general benefits-in-kind charge in respect of the first €1,000 expended by employers in the provision of bicycles and any associated safety equipment to their employees or directors, provided the bicycles and bicycle safety equipment in question are used for travelling to and from work or between work places. The exemption can only be availed of once in any five-year period by an employee or director. Salary sacrifice arrangements can be operated in respect of the exemption also but must be completed over a period not exceeding 12 months.

The section applies to expenses incurred by an employer in the provision of bicycles and the associated safety equipment on or after 1 January 2009.

Section 8 amends Section 469 of the Taxes Consolidation Act, which provides income tax relief in respect of expenditure incurred in the provision of health care. With effect from 1 January 2009 the relief will be granted at the standard rate of tax with the exception of expenditure incurred in respect of nursing home expenses. These will continue to be allowed at the marginal rate of tax for 2009.

Section 9 amends Schedules 11 and 12 to the Taxes Consolidation Act 1997, which deal with approved profit sharing schemes and employee share ownership trusts, respectively. In line with the provisions already provided for in Schedules 12A and 12C concerning the other approved employee financial participation schemes, the Section will allow the Revenue Commissioners to withdraw approval for these schemes, where companies fail to make the required returns of information. The section takes effect from the passing of the Act.

Section 10 amends Section 128 of the Taxes Consolidation Act 1997, which deals with the tax treatment of directors and employees of companies who are granted rights to acquire shares or other assets. It is an anti-avoidance provision aimed at preventing abuse when rights are exchanged. The section has effect as on and from 20 November 2008.

Section 11 amends Schedule 29 to the Taxes Consolidation Act 1997 by adding section 128C (15) to the list of provisions in that Schedule. This will provide for penalties where employers fail to make returns of information in respect of the award of convertible securities and where they fraudulently or negligently make incorrect returns. The section has effect from the passing of the Act.

Section 12 amends Section 244 of the Taxes Consolidation Act 1997 by increasing the rate at which mortgage interest relief is

granted to first-time buyers on relievable interest for the first five years of their mortgage and retains the 20 per cent relief available for years 6 and 7. From 1 January 2009 the relief due to first-time buyers will be as follows—

- 25 per cent for years 1 and 2
- 22.5 per cent for years 3, 4 and 5, and
- 20 per cent for years 6 and 7.

The rate of mortgage interest relief for non-first-time buyers will be reduced from 20 per cent to 15 per cent.

Section 13 amends section 819 of the Taxes Consolidation Act 1997 to provide that, in determining the number of days spent in the State for tax residence purposes, an individual shall be present in the State for a day if he or she is present in the State at any time during that day.

Section 14 amends Part 30 of the Taxes Consolidation Act 1997, which deals with the taxation provisions of various pension arrangements.

The section amends the formula relating to the determination of the standard and personal fund thresholds contained in the definitions of those terms in section 787O(1) in order to provide the Minister for Finance with discretion as to whether those thresholds should be indexed in line with an earnings adjustment factor in future years. It also amends, for the same reason, the formula in section 790A (2) relating to the determination of the annual earnings limit for tax-relieved pension contributions. The amendments ensure that where no indexation is provided for, the thresholds and the annual earnings limit will remain at the previous year's amounts. Finally, the section confirms the Budget night Financial Resolution restricting the annual earnings limit for tax-relieved pension contributions to €150,000 for 2009.

Chapter 4

Income Tax, Corporation Tax and Capital Gains Tax

Section 15 amends section 659 of the Taxes Consolidation Act 1997 in relation to the scheme of capital allowances for expenditure incurred on certain buildings and structures for the control of farm pollution. The section extends the scheme for a further two years to 31 December 2010.

Section 16 amends section 666 and section 667B of the Taxes Consolidation Act 1997. These sections are concerned, respectively, with the general scheme of 25 per cent stock relief for farmers and the special 100 per cent stock relief for certain young trained farmers. Both reliefs are to be extended for a further two years to 31 December 2010. These changes are subject to commencement by order of the Minister for Finance.

Section 17 amends section 279 of the Taxes Consolidation Act 1997 which contains rules regarding capital allowances for industrial buildings or structures where the building or structure is sold before it is used or within one year after it commences to be used. If the sale takes place beyond the one-year time limit, capital allowances are available on a more restrictive basis which makes the purchase of the building a less attractive option.

The one-year time limit specified in section 279 is being extended to two years and applies to sales taking place on or after 14 October 2008.

Section 18 amends section 26 of the Finance Act 2008 which introduced a new scheme of capital allowances for capital expenditure incurred on the construction and refurbishment of qualifying specialist palliative care units. Among the requirements for expenditure to qualify, a facility must have a minimum of 20 in-patient care beds. This number is being reduced from 20 to 8.

In addition, the date from which capital expenditure on qualifying specialist palliative care units can qualify for capital allowances is being changed from the date on which section 26 of the Finance Act 2008 comes into operation — which will happen by way of a commencement order when approval of the scheme from a State-aid perspective is obtained from the European Commission — to the date of the passing of the Finance Act 2008 (13 March 2008).

Section 19 inserts new Part 11D into the Taxes Consolidation Act 1997. The new Part introduces a scheme to facilitate the removal and relocation of certain facilities which may hinder the regeneration of urban docklands. The scheme arises from the EU Seveso II Directive (96/82/EC) which seeks to protect public safety near locations where potentially dangerous activities are undertaken.

The relief, given by way of accelerated capital allowances and ‘‘additional relocation allowances’’, covers the removal costs of the industrial facilities and the cost of building the relocated facilities, including land purchase costs.

Costs are limited to the net costs of the removal and relocation. Any productivity gains resulting from relocation and any costs relating to an increase in capacity are not allowable. The provisions will come into operation by way of commencement order to be made by the Minister for Finance following clearance by the European Commission from a State-aid perspective.

Section 20 amends section 268 of the Taxes Consolidation Act 1997 in relation to the requirement to obtain approval from the European Commission for capital allowances for certain large hotel projects. The amendment ensures that where approval is required, the relevant hotel projects do not lose capital allowances because of delays in receiving that approval. If, and when, approval is received, the capital allowances will apply from the date that a building was first used as a hotel following construction or refurbishment.

The European Commission may impose a ceiling on the amount of expenditure that can qualify for capital allowances. Where this happens, the amendment also provides that the adjusted expenditure approved by the European Commission will replace the expenditure that would otherwise have qualified for capital allowances.

Section 21 amends section 81 of the Taxes Consolidation Act 1997 in relation to the general rule as to deductions. The section is now extended and prohibits a deduction in computing the amount of profits or gains to be charged to tax of any amount paid or payable under a contract to a connected person as compensation for a transfer pricing adjustment in another jurisdiction. The appropriate (correlative) adjustments to Irish tax liabilities can only be obtained under the appropriate Double Taxation Agreement or EU Arbitration Convention mechanisms.

Section 22 amends section 81B of the Taxes Consolidation Act, 1997. Under Regulation 24 of the European Communities (Reinsurance) Regulations 2006, it became compulsory for reinsurance companies writing certain ‘‘credit insurance’’ to create and maintain an equalisation reserve. Section 81B was introduced in the 2008 Finance Act to enable a credit reinsurance company to take a tax deduction for transfers into this equalisation reserve when calculating its profits or losses for tax purposes.

This section amends Section 81B to provide for similar tax treatment for credit insurance companies that are required to maintain an equalisation reserve in accordance with Article 14(8) of the European Communities (Non-Life Insurance) Regulations, 1976, as amended.

The provision is to apply from 15 July 2006, which is the date from which the Reinsurance Regulations became operative.

Section 23 amends section 198 of the Taxes Consolidation Act, 1997. Section 198 exempts non-resident persons from the charge to income tax in respect of interest received from Irish resident persons where the company or person receiving the interest is a tax resident of another EU State or a tax resident of a country with which Ireland has entered into a double taxation treaty.

This section amends section 198 in order to extend the exemption:

- *Firstly* to interest payments on the wholesale debt instruments to which section 246A applies and
- *Secondly* to discounts on securities which were issued in the course of a trade or business by a company or investment undertaking where the company or person receiving the discount is a tax resident of another EU State or is a tax resident of a country with which Ireland has a double tax treaty.

Section 24 increases Deposit Interest Retention Tax by three percentage points with effect from 1 January 2009.

The section also provides for a number of consequential amendments to Part 8 of the Taxes Consolidation Act, 1997 to cater for the increase in rates.

Section 25 increases the rates of tax applying to life assurance policies and investment funds by three percentage points with effect from 1 January 2009.

The amendment applies to the rates of exit tax on domestic life assurance policies and investment undertakings under the gross roll-up regime introduced in the Finance Act 2000. It also increases the rates of tax that apply to profits and gains on life assurance policies and investment funds in other EU Member States, EEA States and OECD countries with which Ireland has double taxation agreements. A similar increase is being applied to the rate of tax applying to a personal portfolio life policy or to an investment held in a personal portfolio investment undertaking.

There is also a technical adjustment to ensure that any exit tax paid directly to Revenue by an investor on a deemed disposal of units in an investment undertaking can be offset against any exit tax liability arising on the subsequent actual disposal of those units.

Section 26 amends Section 503, which deals with claims for relief on investments made in companies qualifying for the Business

Expansion and Seed Capital Schemes. It extends, by three months, the time by which a claim may be made in certain limited circumstances.

Chapter 5

Corporation Tax

Section 27 provides a new relief from corporation tax for new companies commencing to trade in 2009. The exemption is granted in respect of the profits of a new trade and chargeable gains on the disposal of any assets used for the purposes of a new trade.

The exemption is granted by reducing the total corporation tax (including the tax referable to capital gains) relating to the trade to nil. Full relief is granted where the total amount of corporation tax payable by a company for an accounting period does not exceed €40,000. Marginal relief is granted where the total amount of corporation tax payable by a new company for an accounting period amounts to between €40,000 and €60,000. No relief applies where corporation tax payable is €60,000 or more.

The exemption is available for a period of three years from the commencement of the new trade and separate exemptions are available for each new trade. However, the relief will cease if part of the trade is transferred to a connected person. A company that takes over an existing trade or part of a trade, which was carried on in the State by another person, will not qualify in respect of the income of the trade taken over. Service companies within section 441 TCA 1997 will not qualify and trades liable to corporation tax at the 25 per cent rate are excluded.

It is proposed that this relief should comply with the EU *de minimis* aid Regulation which imposes a ceiling for State-aid under which assistance to a single recipient is deemed to have a negligible impact on trade and competition and consequently does not require formal notification to the European Commission. The ceiling for aid under the *de minimis* rules is lower for the road transport sector than for other sectors and this is reflected in the legislation. While formal notification of this measure is not considered necessary, the section will not come into effect until discussions are held with the European Commission to ensure that the requirements of the *de minimis* Regulation are met.

Section 28 contains technical amendments to section 448 of the Taxes Consolidation Act 1997, which deals with the calculation of manufacturing relief. The existing provision could be interpreted as removing the ring fence for deductions relating to a manufacturing trade. This amendment puts the existence of this ring fence beyond doubt.

Section 29 amends sections 21B, 172, 198, 246, 452, 626B of the Taxes Consolidation Act 1997, along with Schedule 24(9F) of the TCA.

There are a number of provisions in the Taxes Acts that grant preferential treatment for payments to and from treaty countries. These typically deal with granting exemption from Irish tax on payments by Irish companies to non-resident recipients of dividends and interest and favourable tax treatment of such payments when received by Irish companies from foreign sources. There is also a

capital gains tax exemption for gains from disposals of foreign company shares. The requirement is that there be a tax treaty *in force* with the relevant foreign country. There can be a delay in bringing the treaties into force because of ratification procedures in either country. Given the possibility of delay, the treaty requirement is being relaxed to mere signing of the treaty, i.e., once a treaty has been signed with the country, companies dealing with that country can avail of these domestic provisions.

Section 30 amends section 766 of the Taxes Consolidation Act 1997, which provides for tax credits for certain research and development (R&D) activities. Under section 766 a qualified company can claim a credit on the excess of expenditure on research and development in the year of claim over such expenditure in the base year (2003 — for accounting periods commencing before 2014).

This section replaces the definition of ''threshold amount'' to provide for the base year to remain as 2003 for all future accounting periods. It also increases the rate of tax credit from 20 per cent to 25 per cent of qualifying R&D expenditure.

The section inserts two new subsections, (4A) and (4B), into section 766. Where a company has a corporation tax liability in the accounting period preceding the accounting period in which the R&D expenditure giving rise to the tax credit arises, subsection (4A) allows that company, where it has not fully utilised the amount of the credit, to use the excess to reduce the corporation tax of the preceding accounting period. Any remaining excess can continue under subsection (4) to be carried forward indefinitely for use against future corporation tax liabilities. Alternatively, where a credit has not been fully utilised against corporation tax in the first accounting period and due to insufficient or no corporation tax liability in the preceding accounting period an excess still remains, a company may claim under subsection (4B) to have any remaining excess paid to them by the Revenue Commissioners.

Section 766(4) allows a company which cannot fully utilise the tax credit in the accounting period in which it arises, to carry that unused amount forward indefinitely for use against future corporation tax liabilities. This option remains, but a company cannot carry forward any excess which has been used to reduce the corporation tax of the preceding accounting period by virtue of a claim under new subsection (4A) or any amount that has been paid to the company by virtue of new subsection (4B).

The payment of any excess tax credit claimed under new subsection (4B) will be dealt with as follows (subject to section 766B which imposes a limit on the amount that can be paid):

1. A first payment of 33 per cent of the excess shall be paid not earlier than the date on which the corporation tax return, in respect of the accounting period in which the R&D expenditure giving rise to the tax credit was incurred, is due.

2. Any remaining excess will then be used to reduce the corporation tax for the accounting period following the accounting period in which entitlement to the credit arises. If there is any further remaining excess, the Revenue Commissioners will pay a second instalment equal to 50 per cent of that remaining amount. The second payment will be paid not earlier than 12 months after the date referred to in 1, above.

3. Where any excess remains, it will be used to reduce the corporation tax for the second accounting period following the accounting period in which entitlement to the credit arises. If any excess still remains, the Revenue Commissioners will pay a third instalment equal to that remaining amount. The third payment will be made not earlier than 24 months after the date referred to in 1, above.

Section 766(5) is amended to impose a time limit on companies making a claim under section 766 TCA 1997. Such claims must be made within 12 months from the end of the accounting period in which the expenditure on R&D giving rise to the tax credit was incurred. This amendment will apply to claims made under section 766 on or after 1 January 2009.

The section further provides that any payment made by the Revenue Commissioners under new subsection (4B) will not be income of the company for any tax purpose.

Finally, the section provides that any payment made by the Revenue Commissioners will be subject to section 1006A of the Principal Act. This will ensure that where the company has not complied with its obligation to deliver any return or pay any liability, the payment will be withheld or offset as the case may be.

With the exception of the amendment to subsection (5) of section 766, this section applies to expenditure incurred in accounting periods commencing on or after 1 January 2009.

Section 31 amends section 766A of the Taxes Consolidation Act 1997 which provides for tax credits for expenditure on buildings or structures used for research and development (R&D). Under the existing section 766A, a qualified company can claim a credit of 20 per cent of relevant expenditure.

The section inserts 3 new definitions and amends the definition of "relevant expenditure".

The amendment to the definition of "relevant expenditure" removes the requirement that the expenditure must be incurred on a building or structure that is to be used wholly and exclusively for the carrying on of R&D activities by the company. The amendment provides that the relevant expenditure must be incurred on a "qualifying building". This will enable companies, who intend to build or refurbish such buildings or structures for both R&D and other activities, to claim a tax credit in respect of a portion of "relevant expenditure" (specified relevant expenditure), provided the building is a qualifying building. A "qualifying building" is defined as a building or structure, a minimum of 35 per cent of the use of which is attributable to the R&D activities carried on by the company for a defined 4 year period.

The section amends subsection (2) of section 766A to provide that the corporation tax of the company for the accounting period in which the relevant expenditure was incurred may be reduced by 25 per cent of the specified relevant expenditure. This replaces the current provisions, whereby the credit is used to reduce the corporation tax of a company over a 4 year period.

The section also amends the claw-back provisions in subsection (3) of section 766A. The claw-back will now apply if within a period of 10 years commencing at the beginning of the accounting period in

which the relevant expenditure was incurred, the building or structure is sold or ceases to be used by the company for the purpose of R&D or for the purpose of the same trade that was carried on by the company at the beginning of the period of 4 years (as defined in the definition of ‘‘specified relevant period’’). The amount to be charged to tax under Case IV of Schedule D in respect of the claw-back in relation to that expenditure, is 4 times the aggregate amount by which the corporation tax of the company or another company (under grouping provisions) was reduced, together with the amount of any payments made by the Revenue Commissioners. The payments referred to are now provided for in the new subsection (4B).

The section inserts two new subsections, (4A) and (4B), into section 766A. These subsections operate in the same manner as subsections 4A and 4B in section 766.

Section 766A(5) is amended to impose a time limit on companies making a claim under section 766A. Such claims should be made within 12 months from the end of the accounting period in which the relevant expenditure giving rise to the tax credit was incurred. This amendment will apply to claims made under section 766A on or after 1 January 2009.

A new subsection (6) of section 766A requires that any apportionment used to calculate ‘‘specified relevant expenditure’’ or to determine if a building is a qualifying building, must satisfy an Inspector of Taxes (or on appeal to the Appeal Commissioner) as being just and reasonable. In addition, it provides that if at any time such apportionment is no longer considered to be just and reasonable, any necessary adjustments will be made, which may result in an assessment or repayment.

New subsections (7) and (8) ensure that any excess tax credit paid by Revenue under section 766A(4B) will not be income of the company for any tax purposes and any such payments will be subject to section 1006A of the Principal Act. This will ensure that where the company has not complied with its obligation to deliver any return or pay any liability, the payment will be withheld or offset as the case may be.

Apart from the provision relating to the time limit imposed on claims, these provisions will come into operation by way of commencement order to be made by the Minister for Finance following clearance by the European Commission of certain aspects of the amendments from a State-aid perspective.

Section 32 inserts a new section 766B in part 29 of the Taxes Consolidation Act. The section places a limit on the amounts that can be paid to a company under sections 766(4B) and 766A(4B). The limit imposed is the greater of (i) the corporation tax payable by the company for accounting periods ending in the 10 years prior to the period for which the company can make a claim under sections 766(4A) and 766A(4A), and, (ii) the payroll liabilities for the period in which the expenditure giving rise to the claim under sections 766(4B) and 766A(4B), is incurred.

Where an amount payable by the Revenue Commissioners under section 766(4B) or section 766A(4B) is restricted by virtue of section 766B, any amount unused, by virtue of the restriction, can be carried forward indefinitely and used to reduce the corporation tax arising in future accounting periods.

Section 33 extends from three to seven the categories of energy-efficient equipment included in the tax incentive scheme in section 285A of the Taxes Consolidation Act 1997 (inserted by section 46 of the Finance Act 2008). The scheme provides for 100 per cent capital allowances in the year of purchase on expenditure incurred by companies on qualifying equipment bought for the purposes of the trade. The new categories included in this scheme are:

— Information and Communications Technology,

— Heating and Electricity Provision,

— Process and Heating, Ventilation and Air-conditioning (HVAC) Control Systems,

— Electric and Alternative Fuel Vehicles.

These four additional categories are included in an amended Schedule 4A to the Taxes Consolidation Act 1997 and the amendments will come into effect from a date to be specified in a commencement order to be made by the Minister for Finance.

The section provides that where accelerated capital allowances are provided under the scheme for Electric and Alternative Fuel Vehicles, the value of the vehicle will be based on the lower of actual cost of the vehicle or the €24,000 limit applying to low emission vehicles under Part 11C of the Taxes Consolidation Act. It also provides that accelerated allowances under the scheme for energy-efficient equipment in section 285A will not apply where an allowance is claimed using the emissions-based limits provided for in section 380L of Part 11C.

Section 34 amends section 958 of the Taxes Consolidation Act 1997 to provide for revised arrangements for the payment of preliminary tax by large companies with a tax liability of more than €200,000 (in their previous accounting period) and revised dates for payment of capital gains tax on asset disposals by individuals, thereby giving effect to the two measures announced in the Budget Statement.

The section provides for payment of preliminary tax by large companies in two instalments. The first instalment will be payable in the 6th month of the accounting period (i.e. 21 June for a company with calendar year accounts) and the amount payable will be 50 per cent of the corporation tax liability for the preceding accounting period or 45 per cent of the corporation tax liability for the current accounting period. The second instalment will be payable (as before) in the 11th month of the accounting period (i.e. 21 November for a company with calendar year accounts) and the amount payable will bring the total preliminary tax paid to 90 per cent of the corporation tax liability for the current accounting period. The revised arrangements apply generally where the accounting period is more than 7 months in length (for shorter accounting periods, preliminary tax of 90 per cent of tax liability is payable in one instalment as before).

The section makes a number of consequential amendments to the preliminary tax provisions including (i) the facility which enables companies to make a top-up payment of preliminary tax where capital gains or certain gains on financial instruments arise after payment of preliminary tax and (ii) the facility which enables a group company to surrender excess preliminary tax paid to another group company in certain circumstances. The section also ensures that income tax deducted on relevant payments made by companies (e.g. certain interest payments, royalties and employer paid medical insurance premiums) is paid in accordance with corporation tax rules, bringing this into line with Revenue practice.

The revised preliminary tax rules take effect for accounting periods commencing on or after 14 October 2008.

In relation to capital gains tax, the payment date for disposals made in the period 1 January to 30 November of a year of assessment will be 15 December, while the payment date for disposals made in December will be the following 31 January. The revised payment dates apply to disposals made in 2009 and subsequent years.

Section 35 amends section 239 of the Taxes Consolidation Act 1997 to ensure that income tax due on certain payments made by resident companies (e.g. certain interest and royalty payments and employer paid medical insurance premiums) is paid in accordance with corporation tax rules. Section 239(4) is amended to provide that the due date for making a return of income tax on relevant payments is not later than the 21st day of the 9th month after the end of an accounting period — the same date as applies for corporation tax returns. Section 239(5) is amended to bring the due dates for payment of income tax on relevant payments into line with those applying to corporation tax. The amendment brings the legislation into line with Revenue practice.

Section 36 inserts the Institute of Public Health in Ireland Limited and the Private Residential Tenancies Board 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 October 2002 for the Institute of Public Health in Ireland Limited and 1 September 2004 for the Private Residential Tenancies Board.

Chapter 6

Capital Gains Tax

Section 37 amends section 29(4) of the Taxes Consolidation Act 1997. That subsection provides that any gain arising from the disposal of assets situated outside the State and the United Kingdom to a person who is resident or ordinarily resident, but not domiciled, in the State will be based on the actual amount received in the State. The amendment deletes references to the United Kingdom from section 29(4) of the Act. The effect of the amendment will be that the remittance basis of taxation will apply to gains arising to all non-Irish domiciled persons in respect of non-Irish situated assets. This amendment applies to disposals made on or after 20 November 2008.

Section 38 amends section 549 of the Taxes Consolidation Act 1997. That section contains measures to prevent the avoidance of capital gains tax by the use of arrangements entered into by ‘‘connected persons’’ within the meaning of section 10 of the Taxes Consolidation Act 1997. The amendment counters an avoidance scheme which purports to generate artificial capital losses for offset against actual chargeable gains. This amendment applies to disposals made on or after 20 November 2008.

Section 39 amends sections 28 and 649A of the Taxes Consolidation Act 1997, the rate of tax on capital gains is increased from 20 per cent to 22 per cent. This amendment applies to disposals made on or after 15 October 2008.

Section 40 inserts section 611A into the Taxes Consolidation Act 1997, to ensure that any assets acquired by the new Pharmaceutical Society of Ireland from the old Society under the Pharmacy Act 2007 will be charged to capital gains tax on a disposal of such assets by the new Society as if they had been owned by that body from the date they were acquired by the old Society. This amendment applies to disposals made on or after 20 November 2008.

PART 2

Excise

Section 41 amends the Finance Act 2001 to provide that certain persons are liable, in specific situations, for payment of the excise duty on excisable products, and that an estimated assessment may be made on those persons where that liability remains unpaid.

Paragraph (a) specifies the persons who are liable at the key moments when the liability arises; release from duty suspension, importation, and illicit production. It also provides for liability where untaxed excisable products are sold, or held or delivered for sale, and where a condition of a lower tax rate, or of a relief from tax, is not adhered to. There is provision for joint and several liability where more than one person is liable in a particular case. This paragraph also provides for the raising of estimated assessments on liable persons, and for the procedures relating to such assessments.

Paragraphs (b) and (*c*) provide for matters in relation to the right of appeal to the Appeal Commissioners against an assessment.

Section 42 confirms the Budget increases in the rates of Mineral Oil Tax which, when VAT is included, amount to 8 cent on a litre of petrol and aviation gasoline.

Section 43 reduces the rate of repayment for aviation gasoline used otherwise than for private pleasure flying, from €276.52 per 1,000 litres to €232.27 per 1,000 litres. This is to correct an error in the statement of that rate in the Finance Act 2008, and to take account of the increase in the aviation gasoline rate in the 2008 Budget.

The section also provides for the deletion of certain terms that are now obsolete.

Section 44 amends the Electricity Tax Chapter of the Finance Act 2008 to provide for a payment on account procedure where the exact liability cannot be determined at the end of an accounting period.

The section also provides clarification about the data from the Commission for Energy Regulation to be used for the calculation of certain reliefs, and that certain repayments are to be made to the consumer of the electricity.

Section 45 confirms the Budget increases in the rates of Alcohol Products Tax which, when VAT is included, amount to €0.50 on a standard bottle of wine, with pro-rata increases for other wine and for certain other fermented and intermediate beverages.

The section also provides for reduced rates of Alcohol Products Tax for lower strength beer and cider. The reduced rates are set at half the standard rates, and will apply to beer and cider of an alcoholic strength of 2.8 per cent volume or less.

Section 46 provides that the relief, by way of repayment, of half the Alcohol Products Tax paid on beer brewed by eligible microbreweries applies only to beer on which the standard rate of Alcohol Products Tax has been paid.

Section 47 confirms the Budget increases in the rates of Tobacco Products Tax which, when VAT is included, amount to €0.50 on a packet of 20 cigarettes with pro-rata increases on other tobacco products.

Section 48 provides for an increase in the rate of betting duty from 1 per cent to 2 per cent. The increase comes into effect on 1 May 2009.

Section 49 provides that betting duty paid by a bookmaker on bets made on or after 1 January 2009 may be allowed as a deduction in computing the amount of profits or losses of the bookmaking business for Income Tax or Corporation Tax purposes.

Section 50 provides for the introduction of an excise duty on air travel, to be known as air travel tax.

Subsection (1) defines the terms used in the section.

Subsection (2)(a) provides for the imposition of air travel tax on the departure of a passenger on an aircraft from an airport in the State on or after 30 March 2009.

Paragraph (b) sets the rates at which air travel tax is to be charged, i.e. (i) €2 per passenger in the case of a flight from an airport in the State to another airport located not more than 300 kilometres from Dublin Airport and (ii) €10 per passenger in all other cases.

Paragraph (c) provides that air travel tax becomes due at the time a passenger departs on an aircraft from an airport in the State.

Paragraph (d) makes airline operators liable to pay air travel tax and gives the Revenue Commissioners power to require airlines to provide security for the payment of the tax.

Paragraph (e) provides that where an airline operator fails to provide security when required to do so, the airline's groundhandling supplier shall on notification by the Revenue Commissioners be liable and accountable for air travel tax in respect of departures on aircraft operated by that airline from a specified date.

Subsection (3) requires airlines operating flights from an airport in the State to register with the Revenue Commissioners.

Subsection (4) provides that airlines must make monthly returns to the Revenue Commissioners and pay the air travel tax due. Returns must be made within 20 days, or such other period as the Commissioners may determine, from the end of the previous month, and the air travel tax due must be paid at the same time.

Subsection (5) empowers the Revenue Commissioners to make Regulations for the purposes of the air travel tax.

Subsection (6) imposes penalties for offences relating to air travel tax.

Subsection (7) places air travel tax under the care and management of the Revenue Commissioners.

Section 51 amends the Betting Act 1931 to remove the requirement to affix a photograph of the applicant to a bookmaker's licence.

Section 52 provides for the repeal, with effect from a date to be specified by Ministerial order, of provisions relating to the excise duties on auctioneers' licences, auction permits and house agents' licences. It is envisaged that these repeals will take effect on enactment of the proposed Property Services (Regulatory) Bill.

Section 53 provides that a reduced rate of duty for certain wholesale dealers' liquor licences will no longer be available.

Section 54 provides for an increase in the rates of excise duties on certain liquor licences other than publicans' licences.

Section 55 amends the definition of 'CO_2 emissions' for Vehicle Registration Tax (VRT) purposes in Section 130 of the Finance Act 1992. The purpose of this amendment is to clarify that, for the purposes of the calculation of liability for VRT, the figure to be used is the combined CO_2 emissions level stated on the Certificate of Conformity for the vehicle, in accordance with EU Directive 1999/94/EC.

This section also amends the definition of 'mechanically propelled vehicle' to incorporate an amended definition of 'motor-cycle'.

Section 56 amends Section 131 of the Finance Act 1992 to allow the Revenue Commissioners to require pre-examination of vehicles as a condition of registration. The purpose of the examination is to confirm that the vehicle is a ''mechanically propelled vehicle'' (so that VRT can be charged) and to establish the relevant particulars required for Revenue to register the vehicle. The pre-registration examination will apply to certain vehicles, including used vehicles brought into the State.

The amendment also allows the Revenue Commissioners to appoint a competent person(*s*) to carry out pre-registration examinations of vehicles on their behalf prior to the registration of vehicles by the Revenue Commissioners.

Section 57 amends Section 132 of the Finance Act 1992 in order to assign liability for the payment of VRT to specified persons. It also allows the Revenue Commissioners to raise an estimated assessment for VRT purposes in situations where VRT has not been paid within the prescribed period, in accordance with the new assessment provisions under general excise law being introduced by *Section 41*.

Section 58 amends the definition of short-term self-drive contracts, contained in section 134 of the Finance Act 1992 in order to provide that, for the purposes of qualification for VRT relief, the requirement of a maximum allowable rental to an individual of 5 weeks in any 12 month period is eased to a maximum of 5 weeks in any 6 month period.

It also provides for the phasing out of the short-term car hire relief scheme, by reducing the amount of the repayment during the period 1 October 2009 to 30 September 2010; and further reducing this amount during the period 1 October 2010 to 30 September 2011. The repayment provisions will be repealed with effect from 1 October 2011.

Section 59 provides for the temporary registration, without the payment of VRT, of vehicles temporarily brought into the State for a period greater than 42 days.

Section 60 provides that where a repayment of VRT is due, a repayment claim may be made by a motor dealer/trader on the condition that the repaid amount is passed on to the person who was the registered owner of the vehicle at the time of registration. The motor dealer may charge an administrative fee of not more than 10 per cent of the repaid amount.

Section 61 empowers the Revenue Commissioners to make regulations governing the pre-registration examination and temporary registration.

PART 3

Value-Added Tax

Section 62 is a definitions section.

Section 63 amends section 3 of the VAT Act which deals with the supply of immovable goods. It deletes paragraph (*b*) from subsection (1C) to ensure that the subsection applies only to supplies of immovable goods.

Section 64 amends section 7A of the VAT Act which deals with the option to tax lettings of immovable goods. The first amendment provides that the option to tax is terminated where the landlord himself or herself occupies the property. The second amendment provides that a landlord may not opt to tax a letting where that landlord or a person connected to that landlord occupies the property.

Section 65 amends section 7B of the VAT Act which deals with transitional measures for the short term letting of immovable goods where a waiver of exemption applies. The amendment ensures that the landlord cannot avoid the liability imposed in subsection (3) simply by being part of a VAT group with the tenant.

Section 66 inserts a new section 10C into the VAT Act to provide for a travel agent's margin scheme which comes into effect on 1 January 2010. The new section transposes into Irish law the travel agent's margin scheme as provided for in Articles 306 to 310 of Council Directive 2006/112/EC. The travel agent's margin scheme applies to tour operators and travel agents, acting as principals, whose supplies consist of services such as transport, accommodation etc. which they have bought-in from third parties for onward supply to travellers. The supply of such services as a travel package is treated as a single supply. The amount on which tax is payable is the profit margin realised by the travel agent on the supply of the travel package. Travel agents will have no entitlement to deduct input VAT incurred on those bought-in services but will be entitled to deduct VAT incurred on their overheads, subject to the normal rules.

Subsection (1) contains definitions of the key elements of the scheme. These definitions cover ''bought-in services'', ''margin scheme services'', ''travel agent'', ''travel agent's margin'' and ''travel agent's margin scheme''.

Subsection (2) provides that margin scheme services supplied by a travel agent to a traveller are treated for VAT purposes as a single supply.

Subsection (3) provides the rule for determining the place of supply of margin scheme services.

Subsection (4) provides that the travel agent's margin scheme applies to services supplied in the State by a travel agent.

Subsection (5) provides that the profit margin exclusive of tax is the amount on which tax is chargeable.

Subsection (6) provides that a travel agent may not deduct input VAT in respect of bought-in services.

Subsection (7) provides for the apportionment of the consideration payable for a supply which covers both margin scheme services and other goods or services.

Subsection (8) provides that the travel agent's services are treated as intermediary services (for the purpose of zero-rating them) if the bought-in services (e.g. hotel services) are availed of by the traveller outside the Community.

Subsection (9) deals with the apportionment of the travel agent's margin for a travel package that includes travel both inside and outside the Community.

Subsection (10) provides that the travel agent must account for VAT due on margin scheme services in the normal VAT return.

Subsection (11) provides for Revenue Commissioners' regulations which will cover, in particular, provisions for simplified accounting arrangements.

Section 67 amends section 11 of the VAT Act which deals with rates of tax. The amendment confirms the Budget change which provided for an increase in the standard rate of VAT from 21 per cent to 21.5 per cent with effect from 1 December 2008.

Section 68 makes two amendments to subsection (5) of section 20 of the VAT Act which deals with unjust enrichment. In principle unjust enrichment can occur in circumstances where a trader who originally overpaid tax to Revenue because of an error in law gets a windfall gain if that tax is repaid. Such a windfall gain could be considered to be unjust where the cost of the overpaid tax was not actually borne by the trader but was passed on to customers in the price the trader charged for goods and services.

Paragraph (a) provides that Revenue must make a refund of an overpaid amount unless they determine that the refund would result in the unjust enrichment of the claimant.

Paragraph (b) provides that a claim for refund of an overpaid amount must set out full details of the case and the claimant must furnish any relevant documentation requested by Revenue. It also specifies what factors Revenue will have regard to in its determination as to whether or not unjust enrichment arises, including any factors that the claimant brings to their attention. Revenue may request all reasonable information and shall refund so much of the overpaid amount as would not unjustly enrich the claimant.

Section 69 makes an amendment to section 32 of the VAT Act which deals with regulations. It provides that the Revenue Commissioners may make regulations relating to the operation of the travel agent's margin scheme.

Section 70 amends the First Schedule to the VAT Act which deals with exempted activities by removing the exemption for agency services in the arrangement of passenger transport or accommodation with effect from 1 January 2010. This coincides with the introduction of the travel agent's margin scheme.

Section 71 amends the Second Schedule to the VAT Act which lists zero-rated goods and services.

Paragraph (a) inserts a new paragraph which provides with effect from 1 January 2010 that the zero rate applies to margin scheme services, in circumstances where the bought-in services are availed of by persons travelling outside the Community.

Paragraph (b)(i) clarifies that the supply of tea and coffee in non drinkable form e.g. tea leaves, tea bags, ground coffee etc. is zero-rated.

Paragraph (b)(ii) clarifies that the supply of tea and coffee in drinkable form is not zero-rated.

PART 4

Stamp Duties

Section 72 is an interpretation section.

Section 73 amends several sections of the Stamp Duties Consolidation Act 1999 to allow for the introduction of the 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 instrument in up to 90 per cent of cases. The section makes technical, definitional and other necessary changes to the stamp duty code in advance of the implementation of the e-stamping system. Finally, the section will be the subject of a Commencement Order.

Section 74 amends section 14 of the Stamp Duties Consolidation Act 1999 to facilitate the introduction of e-stamping by providing for an incentive to encourage the presentation to Revenue of instruments executed before the enactment of the Bill in respect of which the stamp duty chargeable has not been paid within the prescribed period of 30 days. Provided such instruments are presented to Revenue for stamping before the expiration of the period of 56 days commencing on the enactment of the Bill, together with the stamp duty chargeable on such instruments and appropriate interest, a penalty will not be applied to such instruments. This measure is intended, in anticipation of the introduction of e-stamping, to facilitate a smooth transition to e-stamping.

Section 75 repeals section 110 of the Finance Act 2007 from the enactment of the Bill and reinstates it again with the same charging provisions, but subject to certain exemptions being made to those charging provisions. The exemptions relate to certain transactions

involving public private partnership arrangements and certain incentive schemes for capital allowances purposes. The section is subject to a Commencement Order being made.

Section 76 amends section 34 of the Stamp Duties Consolidation Act 1999. The amendment confirms that schemes involving exchanges of property come within the ambit of the section. The change applies to conveyances or transfers executed on or after the date of publication of the Bill.

Section 77 amends section 81AA of the Stamp Duties Consolidation Act 1999 which exempts transfers of land to young trained farmers from stamp duty. The amendment gives effect to the Budget announcement which extended the exemption for another four years until 31 December 2012.

Section 78 amends section 81C of the Stamp Duties Consolidation Act 1999 which allows a farmer to claim relief from stamp duty where the farmer sells farm land and purchases farm land, in order to consolidate that farmer's holding, where both the sale and purchase occur within 18 months of each other. The amendment gives effect to the Budget announcement which extended the relief for another two years until 30 June 2011.

Section 79 amends Part 9 of the Stamp Duties Consolidation Act 1999 to confirm the new reduced charges, already announced in the Budget, for ATM, Debit and Combined ATM/Debit cards which are detailed below:

Description	Old	New
ATM cards	€5	€2.50
Debit cards	€5	€2.50
Combined ATM/Debit cards	€10	€5

The reduced charges for ATM/Debit/Combined take effect for the year ending 31 December 2008. In addition, the section also provides that the preliminary duty in respect of ATM, Debit and Combined Cards due on 15 December 2008 in respect of the year 2008 will be based on 40 per cent of the liability for such cards for the year 2007. The preliminary duty for the year 2009 and subsequent years will remain at 80 per cent of the liability for the previous year.

Section 80 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 €0.30 to €0.50 for Bills drawn on or after 15 October 2008. In the case of cheques, the increase applies to cheques supplied by financial institutions to customers on or after 15 October 2008.
- to provide for an exemption from the 1 per cent stamp duty on share transfer forms where the duty involved is €10 or less. The change applies to such transfers executed on or after the enactment of the Bill.
- to confirm the reduction in the top rate of stamp duty for non-residential property from 9 per cent to 6 per cent. The change set out below applies to instruments executed on or after 15 October 2008.

Aggregate Consideration	Rate of Duty
Up to €10,000	Exempt
€10,001 to €20,000	1 per cent
€20,001 to €30,000	2 per cent
€30,001 to €40,000	3 per cent
€40,001 to €70,000	4 per cent
€70,001 to €80,000	5 per cent
Over €80,000	6 per cent

PART 5

Capital Acquisitions Tax

Section 81 is an interpretation section. It provides that the Principal Act means the Capital Acquisitions Tax Consolidation Act 2003.

Section 82 amends section 89 of the Capital Acquisitions Tax Consolidation Act 2003. That section grants relief, at 90 per cent, in respect of the market value of agricultural property comprised in a gift or an inheritance taken by a ‘‘farmer’’ (i.e. an individual in respect of whom at least 80 per cent of his or her assets, after taking account of the gift or the inheritance, consists of agricultural property). For the purposes of the relief, agricultural property means agricultural land situated in the State. The amendment ensures that the relief will apply to agricultural land situated in a Member State of the European Union. It applies to gifts and inheritances taken on or after 20 November 2008.

Section 83 increases the rate of tax on gifts and inheritances from 20 per cent to 22 per cent. It applies to gifts and inheritances taken on or after 20 November 2008.

PART 6

Miscellaneous

Section 84 contains a definition of ‘‘Principal Act’’ i.e. the Taxes Consolidation Act 1997, for the purposes of Part 6 of the Bill.

Section 85 makes a number of amendments to certain sections of the Taxes Consolidation Act 1997 which deal with various aspects of Revenue Powers.

- Sections 891B(1), 906A(1), 908A(1) and 908B(1) are amended to align the definition of ‘‘financial institution’’ in these sections to include financial institutions authorised in another Member State operating in Ireland under a passport arrangement.
- Sections 900(4), 901(3), 902(9), 902A(6) and 905(2)(*c*) are amended by replacing the existing provision in these sections in relation to professional advices with a new section which concisely sets out parameters for disclosure of information and professional advices.
- Section 1002(1) is amended by replacing the existing definition of ‘‘financial institution’’ in order to align it with the same definition as it appears in other areas of the Principal Act.
- Section 1078(3B) is amended by inserting a time limit within

which court orders issued under subsection (3A) of the same section have to be complied with.

Section 86 inserts a new section 896A into the Taxes Consolidation Act 1997 which provides for delivery of information by a third party where that party is concerned with the making of a trust and the settlor is resident in the State but the trustees are not resident in the State. In addition, the section provides that an authorised officer of the Revenue Commissioners may, by notice in writing, request a party to a settlement to provide details of the settlement.

Section 87 amends sections 1003 and section 1003A of the Taxes Consolidation Act 1997, which provide for tax relief in respect of donations of heritage items and heritage property to approved State institutions and the Irish Heritage Trust. The section reduces the relief available from 100 per cent of the market value of the heritage items or heritage property donated to 80 per cent of that market value.

The restriction will apply on and from 1 January 2009 as regards determinations made by the Selection Committee set up under section 1003 in respect of heritage items and determinations made by the Minister for the Environment, Heritage and Local Government under section 1003A in respect of heritage property.

Section 88 amends section 811A of the Taxes Consolidation Act 1997, the primary purpose of which is to encourage taxpayers and their advisers to be open with Revenue in relation to their tax planning transactions. As it stands, there is no delegation provision in section 811A to enable the Revenue Commissioners to nominate an authorised officer to carry out the Commissioners' functions under the section (as is the case in section 811, the general anti-avoidance section, to which section 811A is a companion section). This technical shortcoming is now being corrected by the amendment.

Section 89 and *Schedule 3* give effect to the Budget day announcement of an extension to return filing and payment deadlines where returns and payments are made electronically via the Revenue Online Service (ROS). A number of amendments are being made to the Taxes Consolidation Act 1997 and to the Value-Added Tax Act 1972 to extend and align the existing deadlines for Corporation Tax, Relevant Contracts Tax and Value-Added Tax. With effect from 1 January 2009, where returns and payments are made electronically, the return filing and payment deadlines for these taxes will be the 23rd of a month. This has the effect of extending the existing filing and payment deadlines by two days for Corporation Tax, four days for Value-Added Tax and nine days for Relevant Contracts Tax. A similar extension to the 23rd of a month is also being made in relation to PAYE and PRSI by way of an amendment to the PAYE Regulations.

Section 90 and *Schedule 4* streamline and simplify the provisions in various Acts relating to the collection and recovery of taxes and duties (except customs) and replaces them with an integrated collection and recovery regime across the various tax heads. Currently, the collection and recovery provisions relating to income tax are applied for the purposes of the legislation relating to, for example, value-added tax, stamp duty and gift tax and inheritance tax.

The new provisions make certain changes to the existing provisions in that they will extend recovery of tax by sheriff/county registrar to excise duties and will enable the Collector-General to institute bankruptcy proceedings to recover stamp duties and excise duties.

In addition, the offset provisions are being amended by the inclusion of an anti-avoidance provision in the case of an assignment of a right to a repayment between "connected persons". Certain redundant or little-used provisions are repealed.

Section 91 and *Schedule 5* relate to tax and duty civil penalties and propose to introduce a number of new provisions and to make a number of miscellaneous amendments to the tax and duty codes as follows:

Firstly, it is proposed to legislate to implement the conclusion in the Law Reform Commission's Report *A Fiscal Prosecutor and a Revenue Court* that, having regard to the provisions of the European Convention on Human Rights, a person should be given an opportunity to have an independent tribunal examine whether that person is liable to a civil penalty for contravention of tax or duty legislation. A new Section 1077B is to be inserted into the Taxes Consolidation Act 1997 to give effect to this conclusion. The new provision will apply to penalties arising under all taxes and duties (except customs) administered by the Revenue Commissioners. The provision will also apply to both tax-geared penalties (that is, where the penalty is a percentage of the tax evaded) and fixed penalties (that is, where the penalty is set out in, or fixed by, the provision imposing it). The new section provides that, in future, where Revenue and a taxpayer are unable to agree settlement terms, a civil penalty will not be sought by Revenue against the wishes of a person unless a court has determined that the person concerned has actually contravened the provision in question and that a penalty is, in fact, due under that provision.

Secondly, a new section 1077C is to be inserted into the Taxes Consolidation Act 1997 to provide that where a person is found by a court to be liable to pay a penalty, that penalty may be collected and recovered in the same way as tax is collected and recovered.

Thirdly, a new section 1077D is to be inserted into the Taxes Consolidation Act 1997 to place on a statutory footing the practice of the Revenue Commissioners as respects the recovery of penalties from the estate of a person after death. Penalties will only be recovered from an estate where the person either agreed in writing to pay the penalties or a court has determined, before the person's death, that the person was liable to the penalties.

Fourthly, the various tax codes are amended so as to place on a statutory basis the current practice of the Revenue Commissioners as respects the level of tax-geared penalties sought in settlements arising out of Revenue audits and investigations.

Finally, a range of fixed penalties are to be brought up to date and standardised and the amounts of such penalties (which have not been increased in many years) are to be increased. A number of consequential amendments are also proposed to various provisions of the tax and duty codes as a consequence of these proposals.

Section 92 and *Schedule 6* provide for technical amendments to the—

- Taxes Consolidation Act 1997 (*paragraph 1*),
- Stamp Duties Consolidation Act 1999 (*paragraph 2*),
- Capital Acquisitions Tax Consolidation Act 2003 (*paragraph 3*),
- Value-Added Tax Act 1972 (*paragraph 4*),

- Excise legislation in the Finance Act 2001 (*paragraph 5*), and
- Finance Act 2008 (*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 reform of the legislation regarding the value-added tax treatment of property transactions. Other amendments include the addition of the most recent EU Farm Retirement Scheme to the existing Schemes referred to in section 598 of the Taxes Consolidation Act 1997 (i.e. retirement relief), the inclusion of Macedonia and Vietnam in the list of countries with which Ireland has a double taxation agreement in Schedule 24A to the Taxes Consolidation Act 1997 and the inclusion of a Tax Information Exchange Agreement with the Isle of Man in that same Schedule.

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

Section 93 fixes a new annuity for 30 years in respect of the estimated borrowing in 2009 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 94 deals with the ''care and management'' of taxes and duties.

Section 95 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais
Samhain, 2008

Wt.—. 2,631. 11/08. Cahill. (X53236). Gr.30-15.