



---

**AN BILLE AIRGEADAIS 2010**  
**FINANCE BILL 2010**

---

*Mar a tionscnaíodh*  
*As initiated*

---

**EXPLANATORY MEMORANDUM**

---

**PART 1**

**INCOME LEVY, 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 Levy*

*Section 2* makes a number of technical amendments in relation to income levy. Firstly, the section rewrites Section 531B of the Taxes Consolidation Act, 1997 for the purposes of clarity.

*Secondly*, the section places certain tax agreements (under section 826(1)(a)(ii)(II) of the Taxes Consolidation Act, 1997) on the same footing as Double Taxation Treaties with respect to the income levy.

*Thirdly*, the cross-border worker relief in section 825A of the Taxes Consolidation Act, 1997 is extended to the income levy.

*Finally*, relief from income levy for 2010 and subsequent years is provided for certain capital expenditure incurred in meeting the requirements of the EU Nitrates Directive.

*Income Tax*

*Section 3* This amendment ensures that preferential loans, which no longer qualify for tax relief in accordance with section 244 of the Act, are charged to tax in accordance with the provisions of section 122 of the Act.

*Section 4* provides that relief due in accordance with Sections 236 and 470A of the Taxes Consolidation Act, 1997 will cease to apply with effect from 1 January 2010. Section 236 refers to benefit-in-kind relief relating to the loan of certain art objects and section 470A refers to income tax relief due for premiums under certain long-term care policies.

*Section 5* amends section 469 of the Taxes Consolidation Act, 1997 so as to make a number of changes in relation to the approval of qualifying health expenses for tax relief purposes. Essentially, hospitals will no longer need to be approved by the Minister for Finance. Instead, maintenance or treatment costs that are incurred will now qualify for relief where they are necessarily incurred in association with the services of a practitioner or diagnostic procedures carried out on the advice of a practitioner. Nursing home fees will qualify for relief provided the nursing home concerned provides qualified nursing care on-site on a 24 hour per day basis.

The section also deals with taxation issues arising from the introduction of the Fair Deal Scheme for nursing home care and clarifies that relief is available in respect of private contributions made towards the cost of the upkeep of an individual under that scheme.

The definition of health care is also amended so as to clarify the general exclusion of cosmetic surgery, unless such surgery is necessary to ameliorate a physical deformity arising from, or directly related to a congenital abnormality, a personal injury or a disfiguring disease.

*Finally*, the section is also amended to allow the Minister for Finance to prescribe particular treatments as not being eligible for tax relief, where such treatments are contrary to public policy.

*Section 6* amends section 244 of the Taxes Consolidation Act, 1997 to provide that tax relief on qualifying mortgage interest paid will continue to be available at current levels for the tax years 2010 to 2017 in respect of interest paid on qualifying home loans taken out on or after 1 January 2004 and on or before 31 December 2011.

The section also inserts into section 244 a transitional measure of relief that will be available in the tax years 2012 to 2017 inclusive in respect of interest paid in those tax years on qualifying home loans taken out during 2012. Firstly, the rate at which tax relief will be available in respect of interest paid on these qualifying home loans will be 15 per cent for first-time-buyers and 10 per cent for non first-time-buyers. Secondly, the ceiling of qualifying interest for all these qualifying loans will be €6,000 in respect of married or widowed persons and €3,000 for others (irrespective of whether the borrower is a first-time-buyer or non-first-time-buyer). Loans taken out on or after 1 January 2013 will not qualify for mortgage interest relief and mortgage interest relief will be abolished completely for the tax year 2018 and subsequent tax years.

*Section 7* amends section 997A to ensure that, in the case of a proprietary director, the credit for PAYE tax remitted cannot exceed the PAYE tax actually deducted from his or her directorship emoluments.

*Section 8* amends section 71 of the Taxes Consolidation Act, 1997 which concerns the taxation of income from foreign securities and possessions. The remittance basis of taxation under this section will only be available to individuals who are not domiciled in the State and will no longer be available to individuals who are non-ordinarily resident here.

*Section 9* amends section 825B of the Taxes Consolidation Act, 1997 which provides an incentive for foreign employees to undertake an assignment in Ireland. At present, the incentive is restricted to employees who are nationals of, and who are employees of companies in, countries that are not a party to the European Economic Area Agreement but with which Ireland has a double taxation agreement. Employees must also work here for a minimum of three years. The scheme is now being extended to include EU and EEA nationals (other than Irish domiciled individuals) who come to live and work here on or after 1 January 2010. In addition, the time period that a beneficiary must remain in Ireland is being reduced from three years to one year.

*Section 10* amends section 825A of the Taxes Consolidation Act, 1997 (which provides income tax relief for individuals who are resident in the State but who work outside the State) to bring the meaning of a day in line with the meaning of a day for tax residence purposes. Section 825A is being amended so that for the purposes of that section, an individual will be present in the State for a day if he or she is present here at any time during the day.

*Section 11* provides for the abolition of relief for service charges for the tax year 2011 and subsequent tax years. Relief will continue to be available for the tax year 2011 in respect of service charges due for 2010 and actually paid.

*Section 12* amends section 216A of the Taxes Consolidation Act, 1997, which relates to rent a room relief. The amendment, which counters a tax avoidance scheme, provides that the exemption does not apply in certain circumstances, including where the person in receipt of the income is an office holder, or employee, of the person making the payment.

*Section 13* amends the Table to section 667B of the Taxes Consolidation Act, 1997 which provides that an individual is entitled to enhanced stock relief of 100 per cent for a period of four years if he or she becomes a “qualifying farmer”, within the meaning of the section, during the period 1 January 2007 to 31 December 2010. Subject to the individuals circumstances, a “qualifying farmer” must hold a qualification (or the equivalent) set out in the Table to section 667B. The amendment adds a Bachelor of Agricultural Science — Agri-Environmental Science awarded by University College Dublin to the qualifications in paragraph 3 of the Table.

*Section 14* amends section 384 of the Taxes Consolidation Act, 1997 to clarify the order in which certain Case V losses and capital allowances are to be deducted in computing a person’s taxable income. The amendment expressly provides for Case V capital allowances arising in a year to be deducted in priority to Case V losses that are brought forward from a prior year.

*Section 15* makes a number of amendments to certain pension related tax provisions contained in Part 30 of the Taxes Consolidation Act, 1997 and introduces a requirement, in Schedule 23 of that Act, for the electronic delivery of certain information in respect of Small Self-Administered Pension Schemes (generally single member schemes).

*Firstly*, the formula contained in section 784A(1BA) for calculating the amount of the annual “notional distribution” from an Approved Retirement Fund is restated to clarify that the notional distribution is to be calculated, for the year of assessment 2010 and subsequent years of assessment, at the rate of 3 per cent of the assets in the Approved Retirement Fund as at 31 December each year.

*Secondly*, a number of amendments are made to Chapter 2C and associated Schedule 23B, which deal with the lifetime limit on tax relieved pension funds. The changes ensure that where an individual with a Personal Retirement Savings Account (PRSA) decides, at the point of taking pension benefits, to leave funds in a PRSA (rather than, for example, opting to transfer them to an Approved Retirement Fund) the act of leaving them in the PRSA will itself constitute a “benefit crystallisation event” for the purposes of the legislation.

*Finally*, Schedule 23, which deals with certain administrative aspects of occupational pension schemes, is amended to require the administrators of Small Self-Administered Pension Schemes who are already obliged to deliver annual scheme accounts to the Revenue Commissioners, to deliver those accounts by such electronic means as are required or approved by the Commissioners. This new obligation will apply in respect of schemes with account years ending on or after 1 January 2011.

*Section 16* amends section 128D of the Taxes Consolidation Act, 1997 which sets out the tax treatment of restricted shares acquired by directors and employees. The amendment specifies that the trust in which the shares are held, must be established in the State or in another EEA State and that the trustees must also be resident in the State or in another EEA State. Technical amendments to section 128D are also made to clarify that it is the amount of income chargeable to tax on the acquisition of the shares that is reduced and not the amount of income tax payable.

*Section 17* inserts a new section, 897B, into the Taxes Consolidation Act, 1997. This section makes it mandatory for employers to file returns of information to the Revenue Commissioners regarding shares and other securities awarded to directors and employees. Schedule 29 of the Taxes Consolidation Act, 1997 is also amended to provide for penalties where employers fail to make the required returns of information and where they fraudulently or negligently make incorrect returns.

*Section 18* amends Parts 2 and 3 of Schedule 11 to the Taxes Consolidation Act, 1997, to counter a tax avoidance scheme. The amendment to Part 2 specifies that with effect from 4 February 2010, the Revenue Commissioners will not approve a profit sharing scheme unless they are satisfied that there are no arrangements in place that provide for loans to be made to employees eligible to participate in the scheme. The amendment to Part 3 specifies that shares appropriated to employees on or after 4 February 2010 cannot be shares in certain service companies.

*Section 19* amends the Table to section 470B of the Taxes Consolidation Act, 1997 which provides for an age-related tax credit in

respect of health insurance premiums paid in respect of individuals aged 50 years and over. It increases the amount of age-related tax credit in the case of insured persons aged 60 years and over for relevant contracts renewed or entered into on or after 1 January 2010. For those aged between 60 and 69 the credit is increased from €500 to €525. For those aged between 70 and 79 it is increased from €950 to €975 and for those aged 80 and over it is increased from €1,175 to €1,250.

*Section 20* amends section 409C of the Taxes Consolidation Act, 1997 to abolish, with effect from tax year 2010, loss relief available under section 381 to owners of significant buildings and gardens who are passive investors. Transitional arrangements are included to provide that relief will continue to be available for 2010 and 2011 in respect of work which was underway on or before 4 February 2010 and in respect of work which begins after that date, where such work is carried out under a written contract which was entered into before that date.

*Section 21* amends Schedule 13 to the Taxes Consolidation Act, 1997 in order to update the list of accountable persons who are obliged to operate professional services withholding tax (PSWT). The amendments include the addition of the names of six bodies, the substitution of the names of three bodies and the deletion of the names of fourteen bodies.

In the case of deletions, the names of certain bodies are being removed because they have been amalgamated into other bodies listed on Schedule 13 or parent Government Departments handle their financial transactions. Also, certain bodies are covered by a more generic type listing on Schedule 13 e.g. individual Institutes of Technology are now covered by the generic entry on Schedule 13 relating to Institutes of Higher Education.

*Section 22* gives effect to the Budget announcement to increase, from 20 per cent to 30 per cent, the effective rate of income tax for high-income individuals who are fully subject to the restriction on the use of certain tax reliefs. The increase takes effect from the tax year 2010.

The 30 per cent effective income tax rate will apply at income levels of €400,000 and above with a graduated application of the restriction (with the effective income tax rate rising towards 30 per cent) between income levels of €125,000 and €400,000.

## CHAPTER 4

### *Income Tax, Corporation Tax and Capital Gains Tax*

*Section 23* amends a number of the provisions of the Taxes Consolidation Act, 1997 (TCA) relating to charities and inserts two new sections into the Act in that regard. The changes are required in order to bring Irish tax law into line with certain provisions of the EU Treaties.

*Firstly*, a new section 208A will allow a charity established in any EEA or EFTA State to apply to the Revenue Commissioners for a determination that the charity would qualify for the tax exemptions provided for by section 207 or 208 of the TCA, if it were to have income in the State of a kind referred to in those sections. Where the Revenue Commissioners are satisfied that either of these exemptions would apply in those circumstances, the Commissioners will issue a

notice of determination to that effect. This will, in turn, permit the charity, after a period of 2 years, to seek an authorisation under Part 3 of Schedule 26A of the TCA, for the purposes of accessing the donations relief scheme under section 848A. This 2 year period is also applied to domestic charities which have an exemption under section 207 and which seek access to the donations relief scheme.

*Secondly*, a new section 208B contains a number of provisions that will assist the Revenue Commissioners in administering the various tax exemptions provided for in sections 207 and 208 and the new notice of determination regime provided for in section 208A.

*Finally*, the section makes a number of largely consequential amendments to Schedule 26A to the TCA.

*Section 24* amends sections 644AB and 649B of the Taxes Consolidation Act, 1997 which concern the circumstances in which a special 80 per cent tax rate is to be applied to 'windfall' profits or gains from certain land disposals. These sections were inserted into the TCA by the National Asset Management Agency Act 2009.

Section 644AB contains the income tax and corporation tax provisions and section 649B contains the capital gains tax provisions. The amendment changes both sections in the same way.

The amendment provides for an exemption from the 80 per cent tax rate for disposals of small sites. For the purposes of the exemption, a small site is one that does not exceed 0.4047 hectares (one acre) in size and whose market value at the time of disposal does not exceed €250,000.

Sections 644AB and 649B, as introduced, only deal with decisions to rezone land from one type of permitted land use to another. In certain circumstances, planning authorities may decide to grant planning permission for developments that contravene, in a significant way, the Development Plan for a particular area. As with rezoning decisions, such decisions may have the effect of increasing the market value of land. The amendment therefore subjects any profits or gains that are attributable to a 'material contravention' decision by a planning authority to the 80 per cent tax rate.

The exemption for small sites will apply in respect of disposals taking place on or after 30 October 2009. A later date of 4 February 2010 (publication date of Finance Bill) will apply to land disposals taking place following a 'material contravention' decision that is made on or after that date.

*Section 25* amends section 843A of the Taxes Consolidation Act, 1997 in relation to the scheme of capital allowances in respect of expenditure incurred on the construction, conversion or refurbishment of buildings that are used for childcare purposes. The amendment provides for the termination of this scheme and for transitional measures for pipeline projects.

The scheme, which was previously open-ended, now has a termination date of 30 September 2010, unless certain qualifying conditions are met, in which case the termination date for qualifying expenditure on pipeline projects is extended. These qualifying conditions depend on the type of work to be carried out and whether or not the work requires planning permission.

Where the work to be carried out does not require planning permission, the termination date is 31 March 2011 so long as at least 30

per cent of the construction, conversion or refurbishment costs have been incurred on or before 30 September 2010.

Where planning permission is required in relation to the work to be carried out, the termination date for qualifying expenditure is 31 March 2012 so long as a valid application for full planning permission is submitted on or before that date, and is acknowledged by the relevant planning authority.

The amendment also ensures that the normal rule about capital expenditure being incurred when it is payable is disregarded and, instead, expenditure is treated as incurred when it is properly attributable to construction, conversion or refurbishment work that has actually been carried out.

*Section 26* amends sections 530 and 531 of the Taxes Consolidation Act, 1997 to allow for a reduced return/payment frequency on the part of principal contractors. At present, principals are required to file and pay on a monthly basis. The section also enables regulations to be made by the Revenue Commissioners (i) to require principals to submit additional information on the return form and (ii) to allow for the issuing of certificates of authorisation (C2's) to cover 2 tax years (currently, the legislation sets the standard validity period of a C2 at one year). The section extends the power of the Revenue Commissioners in relation to amending the limit on a relevant payments card (C47).

*Section 27* makes a number of amendments to Part 27 of the Principal Act. That part contains the rules for the tax treatment of collective investment undertakings, including offshore funds. Investment undertakings are not taxed annually on the profits of the undertaking. Instead, the funds are allowed to roll up tax-free and tax is levied on the returns to Irish-resident investors when realised. Where an investment undertaking is located in Ireland, it is obliged to account for tax on any payment to a unit holder — except in the case of a non-resident investor who makes a non-resident declaration. Foreign funds are not within the charge to tax in Ireland but Irish resident unit holders in such funds are taxed on their returns from the funds.

*Paragraph (a)* introduces a new definition of a 'qualifying management company' in section 739B. The existing definition focuses on a company that manages investments in the course of IFSC or Shannon financial services operations. The amendment removes the reference to the IFSC and Shannon and covers a company that, in the course of a trade of managing investments, manages the whole or any part of the investments and other activities of an undertaking.

*Paragraph (b)* inserts a new subsection into section 739D. That section *inter alia* provides exemption from exit tax for non-resident unit holders who make non-resident declarations to the investment undertaking. This declaration procedure imposes an administrative burden on undertakings that is disproportionate in the case of undertakings where all of the unit holders are non-resident. The new subsection is designed to reduce this burden in the case of such undertakings.

The section allows the exemption to apply where appropriate equivalent measures have been put in place by the investment undertaking to ensure that unit holders in the undertaking are not resident or ordinarily resident in the State and the undertaking has received approval from the Revenue Commissioners. Approval may be given as respects any unit holder or class of unit holders, and subject to such conditions as the Revenue Commissioners consider necessary

to satisfy themselves about the equivalent measures. The Revenue Commissioners can withdraw approval where the undertaking has failed to comply with the conditions.

*Paragraph (c)* inserts a new Chapter 5 into Part 27. This sets out the tax treatment of a relevant UCITS. It ensures that an investment undertaking formed under the law of a Member State other than Ireland will not be liable to tax in Ireland by reason only of having a management company that is authorised under Irish law.

A relevant UCITS is defined as an undertaking for collective investment in transferable securities that is subject to the EU UCITS Directive, formed under the laws of an EU Member State other than Ireland, whose management company is authorised as a management company under Irish regulations, and which would not be liable to tax in Ireland if its management company were not authorised under Irish regulations.

The section provides that a relevant UCITS is not chargeable to tax in Ireland in respect of its relevant profits. It also provides that unit holders in a relevant UCITS are to be treated in the same manner as unit holders in an offshore fund.

*Section 28* amends section 1035A of the Principal Act. Where a non-resident person earns profits or gains in the State from any agent, partnership, etc. that person is assessable and chargeable to income tax in the name of that agent, factor, etc. Section 1035A removes such liability in the case of a non-resident who avails of the services of an investment or asset manager who is resident in the State. This section ensures that the section 1035A exemption is wide enough to apply to a UCITS formed under the law of a Member State other than Ireland and that uses a management company authorised under Irish regulations. The issue arises at this stage because of changes made to the UCITS Directives that facilitate the management in one EU Member State of a UCITS formed under the law of another Member State.

*Section 29* removes the requirement for non-resident companies receiving dividends from Irish resident companies to provide a tax residence and/or auditor's certificate in order to obtain exemption from Dividend Withholding Tax (DWT) at source. Instead, a self-assessment system will apply under which a non-resident company will provide a declaration and certain information to the dividend paying company or intermediary to claim exemption from DWT. The declaration will extend for a period of up to 6 years after which a new declaration must be provided for a DWT exemption to apply. Sections 172D, 172F and Schedule 2A of the Taxes Consolidation Act, 1997 are amended to give effect to this change.

This section also amends section 172I to provide for the electronic transmission of dividend statements to all shareholders (currently transmission of electronic statements is allowed for payments to intermediaries only). A consequential amendment is also made to section 172J(4). The provision will enhance efficiency and align Irish market practice with other EU markets.

The new arrangements apply to relevant distributions and declarations referred to in section 172D(3)(b) made on or after the passing of the Act.

*Section 30* amends section 175 of the Taxes Consolidation Act, 1997, which deals with the tax treatment of share buy-backs by quoted companies. The amendment imposes a condition which must

be satisfied in order for a payment made by a quoted company on the redemption, repayment or purchase of its own shares not to be treated as a distribution. The condition is that a share buy-back must not be part of a scheme or arrangement the main purpose or one of the main purposes of which is to enable the owner of the shares to participate in the profits of the company or of any of its 51 per cent subsidiaries without receiving a dividend. A share buy-back which is not treated as a distribution is not subject to dividend withholding tax (DWT) payable by the company or to tax at the marginal rate of income tax (with a credit for DWT) payable by individual shareholders. Instead such payments are subject to capital gains tax payable by the shareholder on the share disposal.

*Section 30* also requires quoted companies to notify the Revenue Commissioners of any share buy-backs undertaken in an accounting period indicating whether the buy-back is to be treated as not being a distribution and to include such notification in the company's annual corporation tax return or such other form as may be prescribed by the Revenue Commissioners.

This amendment applies to payments referred to in section 175 made on or after 4 February 2010.

*Section 31* amends certain provisions of the Taxes Consolidation Act, 1997 relating to the tax treatment of Government Securities. The sections affected are:

- Section 42 is amended to extend the exemption from tax in respect of the accumulated interest payable in respect of Savings Certificates to similar products issued by Governments of other EU countries.
- Sections 43, 45, 48 and 49 are amended so that all non-resident individuals will qualify for the exemption from tax provided in those sections. Sections 43, 45 and 48 previously extended the tax exemption on the interest from the securities in question to non-ordinarily resident individuals, while the exemption on the interest from the securities covered by section 49 previously applied to non-ordinarily resident and non-domiciled individuals.

*Section 32* amends section 299 of the Taxes Consolidation Act, 1997 which enables a lessee who actually bears the burden of wear and tear on an asset to claim the capital allowances on that asset. The purpose of section 33 is to:

- eliminate any tax mismatch between the amount treated as income by the lessor and the amount deducted as an expense by the lessee and
- to ensure that only one party to a lease can claim the benefit of capital allowances.

The section provides that lessees can only claim capital allowances where the lessor has made a claim under section 80A and also aligns the tax treatment of such lessors with the lessees to whom they lease the assets.

*Section 33* amends the legislation governing the Deposit Interest Retention Tax (DIRT) regime in several respects:

- *firstly* it removes a deposit made by and beneficially owned by a PRSA provider from the scope of the DIRT regime
- *secondly* it requires a relevant deposit taker to obtain the tax reference number of a person making a specified deposit.

- *thirdly* it provides for the accelerated payments of DIRT tax collected by the financial institutions to the Exchequer, and
- *lastly* it requires a financial institution to issue a statement of the amount of DIRT tax deducted from an interest payment automatically rather than on request as at present.

The latter two amendments will come into effect only after an order to that effect has been signed by the Minister for Finance.

*Section 34* amends section 481 of the Taxes Consolidation Act, 1997, which is concerned with relief for investment in films. The relief is available to both allowable investor companies and qualifying individuals.

The amendments to subsections (3) and (8) provide for all investors to carry forward 100 per cent of the amount of any unused relevant deduction to the following accounting period or, year of assessment, as the case may be. This is consistent with the amount of the relevant deduction to be allowed being increased from 80 per cent to 100 per cent of the relevant investment.

### *Section 35*

#### *General*

The term Islamic finance describes any financing arrangement that is compliant with the principles of Shari'a law. Specifically, there are sets of strict rules that forbid the making or receiving of interest payments. *Section 35* is designed to extend the tax treatment applicable to conventional finance transactions to Shari'a products which are the same in substance as the conventional products. It does this by inserting a new Part 8A into the Taxes Consolidation Act, 1997. The new Part deals with the taxation of "Specified Finance Transactions" and essentially treats the return on any product defined as a "specified finance transaction" as interest for the purpose of the Tax Acts. The transactions covered by the legislation are:

#### *Credit Transactions*

These are essentially credit sales, loans or mortgages which are structured to comply with Shari'a principles. The customer either (1) retains the asset (this corresponds to a credit sale and is dealt with in paragraph (a) of the definition of credit transaction) or (2) raises funds by selling the asset immediately for cash (this corresponds to a conventional loan and is dealt with in paragraph (b) of the definition of credit transaction). The new legislation provides that the difference between the amount paid for the asset by the financial institution and the amount paid for the asset by the borrower (i.e. the financial institution's profit on the sale) which is referred to as a "credit return" will be treated in the same way as interest for the purposes of the Tax Acts.

The legislation also deals with the situation where an asset is acquired jointly by a financial institution and a customer on terms on which the customer promises to acquire the financial institution's share in the asset over an agreed period of time. The asset is generally rented to the customer for an amount equal to the economic return on investment and which is similar to the interest payable in a conventional transaction. The new legislation provides that the excess of the amounts paid to the financial institution (including any amount paid for the use of the asset) over the amount paid by the institution for the asset (i.e. the credit return) will be treated as interest for tax purposes.

### *Deposit Transaction*

This covers bank deposits that do not pay interest but provide for a return to the depositor in another way. So as to obviate the need to pay interest, the transactions are structured as quasi partnership arrangements whereby an investor provides money to a financial institution in return for a share in the profits (or losses) generated by the institution from the use of the money. The new provisions treat this profit share return (i.e. the deposit return) as if it were interest payable on a conventional bank deposit.

### *Investment transaction*

This refers to the purchase of securities and is similar to the Shari'a product known as "sukuk". A sukuk transaction is similar to a structured finance arrangement. Unlike a conventional structured finance transaction, an investor in a sukuk holds a share in the asset underlying the arrangement and which is managed by the sukuk issuer. There is no entitlement to interest on the sukuk, instead the investor shares in the profits and losses derived from the exploitation of the underlying assets by the sukuk issuer. This "investment return" can either take the form of a premium, a periodic payment or a combination of both. The new legislation treats this return as interest for tax purposes.

Section 36 amends sections 198 and 246 of the Taxes Consolidation Act, 1997.

Section 198(1)(c)(ii) grants exemption to a company resident in a relevant territory from income tax on interest payments made by an Irish company or investment undertaking in the ordinary course of its business. Section 246(3)(h) removes the obligation on the Irish company or investment undertaking making such payments to deduct income tax at the standard rate.

*Subparagraphs (1)(a), (b) and (c)* make minor drafting amendments to the definitions of "arrangements" and "relevant territory" in section 198(1)(a) so that they properly cover both arrangements that have the force of law and arrangements that will have the force of law on the completion of the procedures in section 826(1).

*Subparagraphs (1)(d), (e) and (f) and paragraph (2)* amend sections 198(1)(c)(ii) and 246(3)(h) to ensure that the relief from Irish tax will only apply where the interest payment is *liable to tax* in the relevant territory. This means that the exemption will not apply where under the general tax system in the relevant territory the payment would not be taxed in the hands of the recipient company. This could arise where the relevant territory does not tax resident companies generally or where it does not tax foreign source income of resident companies. In such cases, the rate of tax for interest payments agreed in the relevant tax treaty will apply.

New sub-clause (III)(B), inserted in section 198(1)(c)(ii), and new clause (II), inserted in section 246(3)(h)(ii), provide that exemption under the sections is to apply if the interest will be exempted from Irish income tax by arrangements that do not yet have the force of law but which, on completion of the procedures set out in section 826(1), will have the force of law. This will allow exemptions provided in such arrangements to apply before the arrangements have the force of law in Ireland.

Section 37 ensures that where an Irish taxpayer in receipt of foreign income receives a payment from the foreign state in relation to tax paid with regard to that income by another person, the payment

received is charged to Irish tax. Any tax credit due is also reduced by the amount of the payment.

*Section 38* inserts a new Part 35A into the Taxes Consolidation Act, 1997. Part 35A sets out transfer pricing rules that apply the arm's length principle to trading transactions between associated persons. "Arm's length" is to be construed as far as practicable in accordance with the OECD Transfer Pricing Guidelines. If an expense incurred by a trader in dealings with an associated person is greater than the "arm's length" amount, or a sale by a trader to an associated person is at less than the "arm's length" price, the trader's profits will be understated for Irish tax purposes. The transfer pricing rules will reverse this understatement of profits so that the full "arm's length" profits will be taxed.

Small and medium enterprises as defined in the EU Commission Recommendation of 6 May 2003 (broadly, less than 250 employees and either a turnover of less than €50m or assets of less than €43m on a group basis), are excluded from the scope of the legislation. The provisions apply to cross-border and domestic transactions. Persons involved in transactions which are within the scope of the transfer pricing legislation are required to have records available that demonstrate compliance with the legislation. The legislation commences in 2011 in respect of transactions, the terms of which are, agreed on or after 1 July 2010.

## CHAPTER 5

### *Corporation Tax*

*Section 39* makes a number of amendments to the intangible assets scheme introduced in Finance Act 2009 (under section 291A Taxes Consolidation Act, 1997). The scheme provides for capital allowances against trading income on capital expenditure incurred by companies on the provision of intangible assets for the purposes of a trade. To reflect the changes being introduced in relation to clawback of allowances and the treatment of computer software, consequential amendments are being made to section 288 (balancing allowances and balancing charges) and section 291 (allowances for capital expenditure on computer software).

Section 288 is being amended to reduce from 15 years to 10 years the period in which a specified intangible asset must be used in the trade to avoid a clawback of allowances.

An amended definition of computer software is being inserted into section 291 to provide for relief under this section for companies in relation to 'end-use' type software only. Computer software acquired for the purposes of its commercial exploitation by companies will be treated as expenditure on a specified intangible asset within the meaning of section 291A and relief for such expenditure will, accordingly, be available under this section. To accommodate companies with planned investments, the amendment provides for a transition period of 2 years during which a company may elect to claim relief under section 291 in respect of capital expenditure on computer software acquired for commercial exploitation.

This section provides for several other amendments to section 291A, as follows:

The list of specified intangible assets covered by the scheme is being augmented by the inclusion in section 291A of applications

for the grant or registration of patents, copyright etc. and a broader definition of know-how.

Section 291A is also being amended to ensure that relief will be available for capital expenditure incurred prior to the commencement of a trade on the provision of specified intangible assets for the purposes of the trade. (A similar amendment is being introduced for computer software in section 291).

A further amendment will ensure that where a specified intangible asset is revalued downwards in the company's accounts due to impairment of the asset, relief will be granted for any resultant impairment charge. Finally, a technical amendment is being made to clarify the activities, involving the use of specified intangible assets, that constitute a separate trade for the purposes of determining the trading income of the relevant (i.e. separate) trade against which capital allowances may be offset.

These amendments will apply to relevant expenditure incurred by companies after 4 February 2010.

Section 40 extends from seven to ten the categories of technology relating to 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 energy-efficient equipment bought for the purposes of the trade. The new categories included in this scheme are:

- Refrigeration and Cooling Systems,
- Electro-mechanical Systems,
- Catering and Hospitality Equipment.

Technical amendments have also been made to the descriptions of two of the existing categories of equipment (Motors and Drives and Information and Communications Technology (ICT)).

The three additional and the two amended 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 signed by the Minister for Finance.

Section 41 extends the relief from corporation tax available to start-up companies under section 486C Taxes Consolidation Act, 1997 to companies that commence to trade in 2010. The relief comes under the scope of EU Commission's *de minimis* aid Regulation (1998/2006). The section allows Revenue to provide information on the tax relief claimed by companies under the scheme to Government Departments and Agencies paying other *de minimis* aid and, if requested, to the EU Commission. The section also excludes from the scheme certain undertakings and activities which are outside the scope of the Commission Regulation (EC) No. 1998/2006 dealing with *de minimis* aid.

Section 42 extends unilateral credit relief, in respect of royalty flows from persons resident in non-treaty countries, to all trading companies. This relief is currently available to companies entitled to manufacturing relief (10 per cent CT rate). Manufacturing relief expires at the end of 2010.

*Section 43* permits unused credits in respect of foreign tax on branch profits to be carried forward and credited against corporation tax in succeeding accounting periods.

*Section 44* permits a company to carry forward excess losses of a foreign branch that were disregarded under section 847 of the Taxes Consolidation Act, 1997. These losses may be set against profits of the branch arising after 1 January 2011; the date the exemption provided by section 847 ceases to have effect. In this way the foreign branch profits that become subject to Irish tax will match the profits subject to tax in the foreign jurisdiction.

*Section 45* provides for a new section 129A Taxes Consolidation Act, 1997 to deny exemption to dividends received by an Irish company from its Irish resident subsidiary where the profits out of which the dividend is paid were earned while the subsidiary was resident outside the State. Such a dividend is now treated in the same manner as a dividend received from a foreign company. This is an anti-avoidance provision and applies where the paying company became resident in the State in the 10 year period before the payment of the dividend.

*Section 46* extends the scope of the 12½ per cent rate in the case of foreign dividends to include dividends paid out of underlying trading profits of a company resident in a non-treaty country in cases where the company is owned directly or indirectly by a publicly quoted company.

The section also simplifies the rules for identifying the underlying profits out of which dividends are paid for the purposes of determining the rate of tax to be applied to those dividends. Finally, the section exempts from corporation tax foreign dividends received by portfolio investor companies (companies with a holding or voting rights of less than 5 per cent) where the dividends form part of the trading income of the company.

*Section 47* amends the capital allowances legislation with the insertion of a new section 308A to the Taxes Consolidation Act, 1997 to provide that the transfer of trade assets in the course of a merger will not give rise to a balancing charge. The company acquiring the trade will be entitled to the same capital allowances as the company from which the trade was transferred. In this way any potential balancing charge is deferred. This provision ensures that Irish tax legislation accords with the provisions of the EU Mergers Directive (Council Directive 2009/133/EC of 19 October 2009).

*Section 48* amends section 80A of the Taxes Consolidation Act, 1997 so as to enable a lessor company, engaged in the leasing of short-life assets by way of operating lease, to elect to be taxed on the accounting profit from those leases. Where a lessor company elects for this treatment, the new provisions will apply to operating leases of short life assets which are in excess of a threshold amount. Where the lessor company is a member of a group, this threshold amount is calculated on a group basis and represents the total value of all short life assets let on an operating lease which are owned by the group at the end of the accounting period preceding the accounting period for which the election will apply.

In essence, this means that the new treatment will apply only to increases in the portfolio of assets held by the group. The existing tax treatment will continue to apply to amounts below the threshold.

*Section 49* extends the provisions of section 402 of the Taxes Consolidation Act, 1997 to companies whose activities include the leasing of plant and machinery but are not carrying on sufficient activities to be regarded as carrying on a trade. The provision enables such companies to compute their capital allowances and losses in their functional currency thereby eliminating potential uncertainties arising from any foreign exchange gains/losses resulting from the conversion of accounting profits into Euro.

*Section 50* amends section 766 of the Taxes Consolidation Act, 1997, which provides for a 25 per cent tax credit for incremental expenditure on certain research and development (R&D) activities over such expenditure in a base year (2003) defined as the “threshold amount”. Where expenditure on R&D commenced after 2003, the “threshold amount” is nil.

The section amends the definitions of “qualified company” and “threshold amount” and inserts a new definition of “research and development centre” so that:

- a company, which is a member of a group that carries on R&D activities in different research and development centres in separate geographical locations, is required to keep separate records of expenditure incurred in respect of activities carried on at each location, and
- where a group of companies carrying out R&D activities in different research and development centres in separate geographical locations (not less than 20 kms apart) and subsequently ceases to use one of those centres for the purposes of a trade, the expenditure on R&D activities in respect of that centre may be excluded in the calculation of the “threshold amount” used as the base to calculate the tax credit due on incremental R&D expenditure.

The section provides for a claw-back relating to the expenditure excluded from the “threshold amount” in specified circumstances. Where the research and development centre that has been closed down is subsequently used for the purposes of a trade by a company which is a member of the group, the aggregate amount by which the “threshold amount” was reduced for each accounting period, in respect of that research and development centre, will be charged to tax under Case IV of Schedule D. This claw-back will also apply where the R&D activities, which were carried on in that centre in the 4 years before the centre ceased to be used for the purposes of a trade, are subsequently carried on by any group company. In addition, a similar claw-back will apply if, within a period of 10 years commencing on the date that centre ceased to be so used, no company which is a member of the group remains within the charge to corporation tax.

The section also clarifies how expenditure incurred on R&D activities before a company commenced to trade is treated for the purpose of the tax credit. A claim in respect of such expenditure under section 766 must be made within 12 months from the end of the accounting period beginning at the date the company first carried on a trade. The amount of the credit due is the amount, which the company would have been entitled to claim, if it had been trading when the expenditure was incurred.

*Finally*, the section includes two technical amendments to subsections (4B)(b)(ii)(II) and (7B).

This section applies to relevant periods commencing on or after 1 January 2010.

*Section 51* provides that, subject to certain conditions, royalty payments can be paid free of withholding tax where they are made to residents of relevant territories or to permanent establishments in relevant territories. A relevant territory is an EU Member State other than Ireland or a country with which Ireland has a tax treaty. The payments will also be exempt from Irish tax in the hands of the recipient.

The royalty payment must be tax deductible and made for bona fide reasons and not as part of any tax avoidance arrangement. The recipient must be liable to tax in respect of the royalty in its country of residence or the country in which the permanent establishment is situated.

## CHAPTER 6

### *Capital Gains Tax*

*Section 52* makes two amendments to section 542 Taxes Consolidation Act, 1997, which concerns the date of disposal and acquisition of an asset.

The first amendment concerns when a disposal is deemed to take place when land is subject to a compulsory purchase order (CPO). Currently, where land other than farm land is acquired under a CPO, the disposal is treated as arising on the date the compensation was agreed or, if earlier, the date on which the authority with compulsory purchase powers entered on the land. Changes in recent years to the payment date for Capital Gains Tax (CGT) meant that a person disposing of land under a CPO could have been due to pay the liability before receiving compensation for the land. The amendment provides that where land is acquired under a CPO, the person disposing of the land is treated as making the disposal when s/he receives the consideration.

The second amendment ensures that the proceeds from a CPO are liable to CGT where the individual making the disposal dies before receiving the consideration.

These amendments apply to disposals made on or after 4 February 2010.

*Section 53* amends section 590 Taxes Consolidation Act, 1997, an anti-avoidance section which attributes chargeable gains made by an offshore company to the Irish-resident participators in that company. Section 590 does not apply to chargeable gains made by trading companies and the amendment extends this non-application to cases where the gain is made by a non-trading company which is in a group with a trading company and to gains made on certain intangible assets as defined in section 291A Taxes Consolidation Act, 1997. This amendment applies to disposals made on or after 4 February 2010.

*Section 54* amends section 598 of the Taxes Consolidation Act, 1997, which grants relief from capital gains tax in the case of an individual aged 55 or over on the disposal of all or part of the chargeable business assets of his/her business or farm or shares in his/her family/holding company, where the consideration is less than €750,000. Where the consideration exceeds €750,000, the capital gains tax chargeable cannot exceed 50 per cent of the excess over the €750,000 threshold. This amendment ensures that the receipt by

an individual of a payment made by a company on the redemption, repayment or purchase of its own shares, which is not treated as a distribution for the purposes of Chapter 2 of Part 6 of the Act, will be treated as coming within the scope of the relief and will, therefore, be taken into account for the purpose of the €750,000 threshold. It applies to disposals made on or after 4 February 2010.

*Sections 55 and 56* are anti-avoidance measures to target aggressive capital gains tax avoidance schemes where no real economic loss has occurred. *Section 55* inserts a new section 546A into the Taxes Consolidation Act, 1997 to disallow capital losses if they arise from arrangements whose main purpose or one of whose main purposes is to secure a tax advantage. *Section 56* amends section 607 Taxes Consolidation Act, 1997 which exempts gains on Government securities and gains on futures contracts on such securities from capital gains tax. The amendment provides that profits and losses on gilt futures contracts are calculated by reference to the market price of the underlying gilt. This is intended to prevent the generation of artificial losses on such futures contracts.

These amendments apply to disposals made on or after 4 February 2010.

*Section 57* amends section 611 of the Taxes Consolidation Act, 1997, which provides that disposals to the State, public bodies and certain charities are exempt from CGT. The amendment specifies that the public bodies in question are the national cultural institutions which are funded by way of grant or grant-in-aid, or funded directly by the Department of Arts, Sport and Tourism, namely:

- The Chester Beatty Library
- The Crawford Art Gallery,
- The Irish Museum of Modern Art,
- The National Archives,
- The National Concert Hall,
- The National Gallery of Ireland,
- The National Library of Ireland, and
- The National Museum of Ireland.

This amendment applies to disposals made on or after 4 February 2010.

*Section 58* is a technical amendment to section 958 of the Taxes Consolidation Act, 1997. It arises as a result of the changes made to the capital gains tax payment dates in the Finance (No. 2) Act 2008 and aligns the dates referred to in section 958(3)(c)(ii) with the changes made to section 958 in that Act. It applies to disposals made on or after 4 February 2010.

*Section 59* amends Schedule 15 of the Taxes Consolidation Act, 1997, which contains a list of bodies that are exempt from capital gains tax. The amendment updates the reference to local authorities to those defined under section 2(1) of the Local Government Act 2001. It applies to disposals made on or after 4 February 2010.

## PART 2

### CUSTOMS AND EXCISE

#### CHAPTER 1

##### *Mineral Oil Tax Carbon Charge*

This Chapter amends Chapter 1 of Part 2 of the Finance Act, 1999 for the purposes of introducing carbon taxation of mineral oils. In addition, it provides for the repeal of a number of provisions of that Chapter.

*Paragraph (a)* of section 60(1) amends section 94 of the Finance Act 1999 by inserting definitions of “carbon dioxide” and “emissions”.

*Paragraph (b)* confirms the Budget increases in the rates of Mineral Oil Tax on petrol and auto-diesel which, when VAT is included, amount to just over 4 cent on a litre of petrol and just over 4.5 cent on a litre of diesel. These increases arose from the application of a carbon charge, at a rate equivalent to €15 per tonne of CO<sub>2</sub> emitted, to those fuels. The carbon charge was applied also to the rate for aviation gasoline, which is aligned to the petrol rate, and the rates for heavy oil used for recreational flying and boating, which are aligned to the auto-diesel rate.

*Paragraph (c)* confirms the carbon charges that were added to the rates of Mineral Oil Tax for the fuels concerned in the Budget.

*Paragraph (d)* provides for the application of a carbon charge, also derived from the rate of €15 per tonne of CO<sub>2</sub> emitted, to all other mineral oils with effect from 1 May 2010.

*Paragraph (e)* specifies the rate of carbon charge that applies to each mineral oil from that date.

*Paragraph (f)* provides, as in the Budget Financial Resolution on Mineral Oil Tax, that the carbon charge is an integral part of the rate of Mineral Oil Tax for each mineral oil. In addition, it sets out the formula by which the rate of carbon charge is determined.

*Paragraph (g)* confirms that the Revenue Commissioners may permit payment of the carbon charge to be deferred until not later than the 15<sup>th</sup> day of the month succeeding the month in which the Mineral Oil Tax is payable.

*Paragraph (h)* amends section 98 of the Finance Act 1999 to apply the carbon charge to heavy oil and liquid petroleum gas that is used for horticultural production in a glasshouse, or for the cultivation of mushrooms.

*Paragraph (i)* provides for a relief from the carbon charge for biofuel, and for biofuel that is mixed or blended with hydrocarbon oil where the biofuel accounts for more than 10 per cent of that mixture or blend.

A relief is also granted from the carbon charge to any mineral oil used or intended for use in an installation that is covered by a greenhouse gas emissions permit.

*Subsection (2)* provides that the parts of the section that represent confirmations of the Budget Financial Resolution on Mineral Oil Tax have effect from 10 December 2009, and that the remainder of the section has effect from 1 May 2010.

*Section 61* provides for the cesser of application of Mineral Oil Tax to coal, by removing all references to coal from Chapter 1 of Part 2 of the Finance Act 1999. Those amendments of that Chapter will take effect from the day to be appointed by the Minister for Finance for the coming into operation of *Chapter 3*, introducing Solid Fuel Carbon Tax.

## CHAPTER 2

### *Natural Gas Carbon Tax*

This Chapter provides for the application of carbon taxation to natural gas, through an excise duty called natural gas carbon tax. Apart from the reliefs provided for in *section 67*, this tax will apply to all supplies of natural gas made on or after 1 May 2010.

The tax corresponds to a charge of €15 per tonne of CO<sub>2</sub> emitted, and will be charged to natural gas suppliers.

*Section 62* is an interpretation provision.

*Section 63(1)* charges the tax on the supply of gas to a consumer by a supplier, at the rate of €3.07 per megawatt hour, and *subsection (3)* specifies the formula by which this rate is determined. *Subsection (2)* covers “self-supply” by a supplier.

*Section 64* provides that the tax is charged at the time when the natural gas is supplied, and that the supplier must pay and account for it. In the case of a supply by a supplier that is not established in 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 65* requires natural gas suppliers to register with the Revenue Commissioners.

*Section 66* requires payment of the tax by the supplier, on the basis of a return made at the end of each accounting period. An accounting period will be a period of two calendar months, unless the Revenue Commissioners prescribe a different period by regulations under *section 70*.

*Section 67* provides for full relief from the tax for gas which is shown to the satisfaction of the Revenue Commissioners to have been supplied for use in the generation of electricity, and for a partial relief from the tax for any gas delivered for use in an installation that is covered by a greenhouse gas emissions permit. The effect of the latter relief is that the gas concerned will be taxed at the minimum rate specified in the EU Energy Tax Directive.

*Section 68* specifies arrangements for repayment of tax, arising from the reliefs granted by *section 67*.

*Section 69* 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 70* empowers the Revenue Commissioners to make regulations for the purposes of implementing and administering the provisions of the Chapter.

*Section 71* places natural gas carbon tax under the care and management of the Revenue Commissioners.

*Section 72* provides that this Chapter comes into operation on 1 May 2010.

### CHAPTER 3

#### *Solid Fuel Carbon Tax*

This Chapter provides for the application of carbon taxation to coal and peat, by means of an excise duty called solid fuel carbon tax. Apart from the reliefs provided for in *section 78*, this tax will apply to supplies of coal or peat made on or after such date as may be appointed by order by the Minister for Finance.

The tax will be at the rates set out in *Schedule 1* of the Bill, which correspond to a charge of €15 per tonne of CO<sub>2</sub> emitted, and will be charged to solid fuel suppliers.

*Section 73* is an interpretation provision.

*Section 74* (1) charges the tax on solid fuel supplied in the State by a supplier, at the rates in *Schedule 1*, and subsection (3) specifies the formula by which those rates are determined. Subsection (2) covers “self-supply” of solid fuel by a supplier.

*Section 75* provides that the tax is charged at the time when the solid fuel is first supplied in the State by a supplier (that is, a taxable person within the meaning of section 8 of the Value-Added Tax Act 1972), and that the supplier must pay and account for it.

*Section 76* requires solid fuel suppliers to register with the Revenue Commissioners.

*Section 77* requires payment of the tax by the supplier, on the basis of a return made at the end of each accounting period. An accounting period will be a period of two calendar months, unless the Revenue Commissioners prescribe a different period by regulations under section 81.

*Section 78* provides for full relief from the tax for solid fuel which is shown to the satisfaction of the Revenue Commissioners to have been delivered for use in the generation of electricity. A full relief is granted also for peat delivered for use in an installation that is covered by a greenhouse gas emissions permit, and a partial relief for coal delivered for use in such an installation. The effect of this partial relief is that the coal concerned will be taxed at the minimum rate specified in the EU Energy Tax Directive.

*Section 79* specifies arrangements for repayment of tax, arising from the reliefs granted by *section 78*.

*Section 80* 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 81* empowers the Revenue Commissioners to make regulations for the purposes of implementing and administering the provisions of the Chapter.

Section 82 places solid fuel carbon tax under the care and management of the Revenue Commissioners.

Section 83 provides that this Chapter comes into operation on a date appointed by order by the Minister for Finance.

## CHAPTER 4

### *Miscellaneous*

Section 84 confirms the Budget reductions in the rates of alcohol products tax which, when VAT is included, amount to 12 cent on a pint of beer or cider, 14 cent on a measure of spirits and 60 cent on a bottle of wine, with pro-rata reductions for other products.

Sections 85, 86 and 87 amend the provisions for the charging of Mineral Oil Tax, Tobacco Products Tax, and Alcohol Products Tax respectively, to provide that the tax is in each case charged, levied and paid on all products that are either released for consumption in the State, or released for consumption in another Member State and brought into the State. These amendments form part of the implementation of the new Council Directive 118/2008 referred to below.

Section 88 makes a number of amendments to Part 2 of the Finance Act 2001, which provides for the general arrangements for all excisable products. These include the general principles for the charging of excise duty, the keeping of excisable products in a tax warehouse, and the movement of excisable products between Member States of the European Union.

Most of the proposed amendments are to implement Council Directive 2008/118/EC which, as the EU law for general arrangements for excisable products, replaces Council Directive 92/12/EEC with effect from 1<sup>st</sup> April 2010. The primary purpose of the new Directive is to provide the legal basis for the new Excise Movement Control System (EMCS), a computerised system for the control of consignments between Member States of excisable products under duty suspension. The Directive also sets out the general principles for the charging of excise duty, the liability of persons to excise duty and the procedures for the holding and movement of those products within the European Union.

Chapter 1 of Part 2, which provides for the interpretation of terms used in the Part, liability and payment, and the warehousing of excisable products, is amended as follows by *subsection (1)*:

*Paragraph (a)* amends section 96 of the 2001 Act, revising the interpretation of terms used in order to take account of new terminology used in the new Directive.

*Paragraph (b)* replaces section 98 (on the application of customs law and other excise law to excise duties, to the provisions of Part 2 of the Act), which is now obsolete. It is replaced by a requirement for excise information to be provided as required where excisable products are imported from outside the EU.

*Paragraph (c)* inserts a new section 98A to provide for a revised interpretation of “release for consumption” (the chargeable event for excisable products) in accordance with the new Directive.

*Paragraph (d)* amends section 99, setting out the liability of relevant persons for excise duty in specific circumstances. The

section includes provisions in relation to registered consignees and ‘registered consignors’ — a new excise trader category. The amendment also provides that any person who knowingly participates in an irregular release of excisable products from a duty-suspension arrangement is liable for the excise duty on the excisable products concerned; and that any person who receives excisable products that are subject to a relief, or to a lower rate, subject to certain conditions, will be liable where those conditions are not met.

*Paragraph (e)* amends section 100, which provides that excisable products that have been released for consumption in another Member State, and brought into the State, are liable for excise duty in the State. Provision is made for exemptions for ‘duty-free’ products and those being transported under the correct procedure for the movement of duty-paid excisable products.

*Paragraph (f)* deletes section 102, as it is superseded by section 108A as amended.

*Paragraph (g)* amends section 104 by adding a clarification that excisable products may be supplied duty-free to a tax-free shop at an airport; and allowing for relief from excise duty for products that are exported, or supplied as stores on a ship or aircraft. (This was previously included in section 105).

*Paragraph (h)* deletes both section 105(1)(d) of, the 2001 Act, which is obsolete, and paragraph (e) of that subsection, which will now be covered in section 105.

*Paragraphs (i) and (j)* delete a definition of “excise law” from sections 105C and 105D that is now applied to the whole Part under section 96.

*Paragraph (k)* deletes section 106, as it is superseded by section 108A as amended.

*Paragraph (l)* provides a clarification of the requirement of section 108A for the holding of excisable products under duty suspension in a tax warehouse.

*Paragraph (m)* amends the requirements for the provision of security by authorised warehousekeepers who are tenants. These will now be required to provide security for any excisable products to be received by them under a suspension arrangement. In addition, any authorised warehousekeeper who consigns excisable products under a suspension arrangement will be required to provide adequate security for the applicable excise duty.

*Paragraph (n)* inserts a new section, 109A, which provides for the authorisation of and the terms and conditions attaching to ‘registered consignors’, a new category of excise trader that may consign excisable products under duty-suspension to another Member State from a place of importation.

*Paragraph (o)* replaces Chapter 2 of the 2001 Act (covering the arrangements for all movements of excisable products between Member States) with two new Chapters: Chapter 2A provides for consignments under duty-suspension, and Chapter 2B provides for consignments of products released for consumption (and so made subject to excise duty) in one Member State, which are then moved to another.

Chapter 2A provides for the (largely unchanged) basic principles for duty-suspended movements and sets down procedures for use of the new computerised system.

Section 109B defines terms used in the Chapter.

Section 109C, together with section 109O, sets out the products to which the provisions of the Chapter apply.

Section 109D provides that certain specified territories are to be treated as part of a specified Member State for the purposes of the Chapter.

Section 109E sets down the principal requirements for consignments of excisable products from the State under duty suspension. The consignment must be dispatched, under the required documentation, by an authorised warehousekeeper or registered consignor, to an approved consignee or place of exportation in the destination Member State.

Section 109F sets down the procedures for consignment to a consignee in another Member State under the new computerised system. The consignment is under cover of an electronic administrative document prepared by the consignor, which is verified by Revenue and forwarded to the excise authority of the Member State of destination.

Section 109G sets down for the procedures for consignment under the computerised system to a place, in another Member State, from where the excisable products are exported from the European Union.

Section 109H allows for the cancellation of an electronic administrative document before a consignment has been dispatched, and in certain circumstances, for the alteration of data concerning the consignee after a consignment is dispatched.

Section 109I provides that a consignment may, where the computerised system is unavailable, be made under an alternative paper-based procedure.

Section 109J sets down the principal requirements for consignment of excisable products to the State under duty suspension.

Section 109K provides that a consignment under duty suspension ends when it is, as the case may be, delivered to a consignee or exported.

Sections 109L and 109M set out requirements for the completion and sending of certain electronic reports where excisable goods are imported or exported.

Section 109O complements section 109C.

Section 109P provides for the continued use of the existing paper-based system during the transitional period between 1 April 2010 and 1 January 2011.

Chapter 2B provides a more coherent statement of the existing procedures in relation to excisable products that have been made subject to excise duty in one Member State, and are then moved to another (“duty paid”).

Section 109Q defines a consignment for the purposes of the Chapter.

Section 109R excludes some mineral oils from the scope of the Chapter.

Section 109S provides that certain specified territories are to be treated as part of a specified Member State for the purposes of the Chapter.

Section 109T sets down the principal requirements for consignment of duty-paid excisable products to the State. A declaration must be made to Revenue, and the excise duty secured, before the consignment is dispatched under cover of the appropriate documentation, and the excise duty must be paid on delivery.

Section 109U provides for distance sales of duty-paid excisable products to private individuals in the State, requiring the appointment of a Revenue-approved tax representative, to make the necessary arrangements for advance declaration, and securing and paying the excise duty.

Section 109V requires any person who dispatches duty-paid excisable products to another Member State to make a declaration to Revenue and comply with other Revenue requirements.

Section 109W sets out the requirements applying to persons in the State who engage in distance selling of excisable products to another Member State.

Section 109X clarifies that all consignments of excisable products, other than consignments under distance selling arrangements, must be under cover of the appropriate document. It also provides that the Commissioners may, by way of regulations, set down simplified arrangements for consignments of duty paid products between two places in the State by way of Northern Ireland, and between two places in Northern Ireland by way of the State.

*Paragraphs (q)(r)(s) and (t)* are technical provisions to ensure that references in other Chapters of the Part to provisions of Chapters (1) and (2) are references to those provisions as amended by this section.

*Subsection (2)* commences this section on 1 April 2010, the date the computerised Excise Movement Control System (EMCS) becomes operative.

*Section 89* amends section 34 of the Finance Act 1963 in consequence of the changes to the law on penalties for customs and excise offences made by sections 90, 91 and 93 to 96.

*Sections 90 and 91* provide, respectively, for amendments to the penalties applicable to conviction on indictment of evasion or attempted evasion of Customs duty or illegal exportation of goods, under section 186 of the Customs Consolidation Act 1876 and section 3 of the Customs Act 1956, respectively.

On conviction on indictment for offences under section 186 of the 1876 Act, the current fine is €12,695, or three times the value of the goods, whichever is the greater. There is also the option for a custodial sentence of up to 5 years. On conviction on indictment for offences under section 3 of the 1956 Act, the current fine is €125, or three times the value of the goods, whichever is the greater, with no option for a custodial sentence. The amendments made by sections

90 and 91 provide that in future, upon conviction on indictment under either Customs provision, a Court will be empowered to impose a fine not exceeding €126,970 where the value of the goods involved is €250,000 or less, and a maximum fine of up to three times the value of the goods if the value of the goods is greater than €250,000. Under either provision, a Court may also impose a term of imprisonment not exceeding 5 years in addition to, or in lieu of, the monetary fine.

*Section 90* also updates the monetary penalty applicable to summary conviction in relation to offences under section 186 of the 1876 Act to €5,000. *Section 91* introduces the option of summary prosecution of offences under section 3 of the 1956 Act, setting the penalty at a fine of €5,000 or a term of imprisonment not exceeding 12 months, or both the fine and the imprisonment, in line with the revised section 186 of the 1876 Act.

Both sections further provide that, where Customs offences under the 1876 Act or the 1956 Act are dealt with under section 13 of the Criminal Procedure Act, 1967, the penalties for summary conviction under the relevant Customs legislation will apply, rather than the penalties under the 1967 Act.

*Section 90* also replaces section 89 of the Finance Act, 1997, which is repealed.

*Section 92* concerns the provision to Revenue of certain information by transport operators in advance of arrival or departure, in order to help prevent the smuggling of goods liable to Customs or excise duty. In practice this information is already being provided under other provisions and the purpose of the section is simply to confirm the legal position.

*Subsection (1)* defines a “transport operator” to whom the section applies.

*Subsection (2)* provides that regulations made by the Revenue Commissioners under this section require a transport operator to provide advance information to the Commissioners in relation to persons, conveyances or goods entering or leaving the State, by air or by sea. The provision only applies in relation to information already known to the transport operator.

*Sections 93, 94 and 95* provide, respectively, for increases in the fines that may be imposed, on conviction on indictment, for offences under the law relating to Mineral Oil Tax, Alcohol Products Tax and Tobacco Products Tax. While the highest fine that may be imposed for such offences is €12,695 at present, a Court will be empowered by these amendments to impose a fine not exceeding €126,970. The applicable maximum prison sentence of a term not exceeding 5 years remains unchanged.

The sections further provide that, where cases in relation to excise offences are dealt with under section 13 of the Criminal Procedure Act 1967, the penalties for summary conviction under the relevant excise provisions, rather than the penalties under the 1967 Act, will apply.

As in *sections 93 to 95*, the section provides also for the penalties for summary conviction under the relevant excise provisions to apply where prosecutions are dealt with under section 13 of the Criminal Procedure Act 1967.

*Section 94* provides also that the offence of selling or delivering, or keeping for sale or delivery, alcohol products on which the appropriate rate of duty has not been paid, which may only be prosecuted summarily at present, will be prosecutable summarily or on indictment.

*Section 96* provides for an increase in the fine applicable on conviction on indictment for evasion or attempted evasion of excise duty. Where the value of the excisable products involved is €250,000 or less, a fine of up to €126,970 may be imposed. If the value of the products is greater than €250,000, a fine of up to three times their value may be imposed.

*Section 97* amends section 130 of the Finance Act 1992 to provide for the introduction, from 1 January 2011, of a revised classification system for the assessment of vehicle registration tax (VRT) which reflects the categories used for classification of vehicles at European level under various EC Directives. It also brings the definitions of individual vehicles into line with EU definitions and introduces new definitions for certain terms used for vehicle registration tax purposes.

*Section 98* amends section 130B of the Finance Act 1992 to allow the Commissioners to delegate certain powers to an appointed ‘competent person’.

*Section 99* amends section 131 of the Finance Act 1992 to provide for the broadening of the remit of an appointed ‘competent person’s’ role in respect of the operation of VRT in the State. This section will permit the ‘competent person’ to:

- declare vehicle details to Revenue, and
- collect tax assessed by Revenue, based on the details declared by it to Revenue, following the ‘competent person’s’ examination of each vehicle.

*Section 100* amends section 132 of the Finance Act 1992 to make provision that where the documentary evidence presented with a vehicle at registration is not sufficient to determine conclusively its category for the purposes of assessing its liability for VRT, the Revenue Commissioners may determine that the vehicle is a passenger car and charge VRT as appropriate to that determination.

*Section 101* amends section 135 of the Finance Act 1992 to provide that an appointed ‘competent person’ will make a declaration to Revenue in respect of a vehicle which is temporarily brought into the State prior to vehicle registration, rather than issue a statement to Revenue as previously provided for.

*Section 102* introduces a new section 135BA into the Finance Act 1992. This will make provision for and give effect to the introduction of a repayment of vehicle registration tax on the registration of certain new vehicles with a level of CO<sub>2</sub> emissions not exceeding 140g/km, where a qualifying 10-year-old vehicle is scrapped under certain conditions (a scrappage scheme).

*Section 103* amends section 135C of the Finance Act 1992 to extend the existing provision for exemption from the payment of VRT on the registration of series production category A and category B electric vehicles to 31 December 2012.

This section also provides for the remission or repayment of specified amounts of VRT on the registration of category A and category B series production 'plug-in hybrid electric vehicles' during the period 1 January 2011 to 31 December 2012.

*Section 104* introduces a new section 136A into the Finance Act 1992, providing for the authorisation by Revenue of a 'competent person' to carry out specific functions in relation to the registration of vehicles, including collection and payment of the tax to the Revenue Commissioners. Provision is also made for retention by the 'competent person', when paying over the tax to the Revenue Commissioners, of a fee in relation to the carrying out of these functions. The formula for calculating this fee is set out in the provision.

*Section 105* amends section 141 of the Finance Act 1992 to permit the Revenue Commissioners to make regulations in respect of the additional functions of the 'competent person' appointed under Section 131 of the Finance Act 1992 (as amended).

*Section 106* inserts a new section 142A into the Finance Act 1992 and provides for the introduction of a requirement for a return of information, in a specified format, to be made to the Revenue Commissioners by a vehicle insurer who issues a policy in relation to a foreign registered vehicle for a period in excess of 42 days.

### PART 3

#### VALUE-ADDED TAX

*Section 107* is a definitions section.

*Section 108* amends section 1 of the VAT Act which contains the definitions for the purposes of that Act. The amendments relate to the margin scheme for second-hand means of transport and agricultural machinery; and the VAT treatment of public bodies and telephone cards.

*Section 109* amends section 4B of the VAT Act which deals with supplies of property. The amendments provide for a joint option for the taxation of the sale of a property where there is a 'forced sale'. The change will apply in the case of forced sales by examiners, receivers, liquidators and other bodies such as finance companies.

*Section 110* amends section 5 of the VAT Act which deals with the supply of services. The amendment deletes with effect from 1 July 2010 the definition of 'telephone card' from this section as it is being inserted into section 1.

*Section 111* amends section 8 of the VAT Act which deals with accountable persons. The amendment in *paragraph (a)* relates to the reverse charge rule for the receipt of certain services and clarifies that the rule applies when the service is received by a taxable person carrying on a business in the State or by a person who has an Irish VAT registration number. The amendment in *paragraph (b)* relates to bringing the State or public bodies within the scope of VAT with effect from 1 July 2010. From that date the State or public bodies will be taxable if they provide services outside their regulatory function or if they engage in an activity listed in Schedule 7 to the VAT Act (inserted by *section 123*) or where there is likely to be a distortion of competition. These amendments transpose Article 13 and Annex I of Council Directive 2006/112/EC of 28 November 2006 on

the common system of value-added-tax. The amendments in *paragraph (c)* are consequential to the amendment in *paragraph (b)*.

*Section 112* amends section 10 of the VAT Act which deals with the amount on which tax is chargeable. The amendments relate to changing the time of taxation of the supply of ‘telephone cards’ from the time of the purchase of the card to the time the card is used to make telephone calls, send texts or pay for goods or services (time of redemption).

*Paragraph (a)* substitutes a new subsection for subsection (6) by treating telephone cards the same for VAT purposes as any other voucher which can be redeemed for a specific value. This means that when a coupon, stamp, telephone card, token or voucher is sold for consideration, this consideration is disregarded for VAT purposes unless any part of this consideration exceeds the value of that coupon, stamp, etc. (referred to as the ‘redeemable value’). VAT is accountable later, on the supply of services or goods sold in exchange for the voucher.

*Paragraph (b)* substitutes a new subsection for subsection (6A) and provides that a coupon, stamp, telephone card, etc. sold to another person or a series of persons in the course of business are liable to VAT on the sale of the coupon, etc. and not when the coupon, etc. is exchanged for goods or services.

*Paragraph (c)* deletes paragraph (a) of subsection (7) and relates to *section 111* which brings public bodies within the scope of VAT.

*Paragraph (d)* substitutes new text for paragraphs (b) and (c) in subsection (7). The amendment provides that the taxable amount for telephone cards may be provided for in regulations as in the case of coupons, stamps, tokens and vouchers.

*Paragraph (e)* provides a definition of ‘redeemable value’ referred to in subsection (6) as inserted by *paragraph (a)* above. It means the amount stated on a coupon, stamp, token, voucher or telephone card or the value expressed in money for which a coupon, etc. can be used to pay for goods or services.

*Section 113* amends section 10A of the VAT Act which deals with margin scheme goods. The amendments are part of a package of measures adopted by Financial Resolution on Budget night in December 2009 to change the rules for the taxation of second-hand means of transport and agricultural machinery from the special schemes under sections 12B and 12C to the margin scheme under section 10A.

*Paragraph (a)* amends the definition of ‘second-hand goods’ to include means of transport and agricultural machinery.

*Paragraph (b)* amends the definition of ‘taxable dealer’ to include an accountable person who applies goods for the purposes of the person’s business and also to include a finance company who purchases or acquires margin scheme goods for onward supply as part of a hire purchase agreement financed by the company.

*Paragraph (c)* substitutes a new subsection for subsection (13) and provides that the subsequent supply of goods that were acquired as margin scheme goods is taxable unless the goods are motor vehicles for which no deductibility was allowed or are goods used solely in the course of an exempted activity.

*Paragraph (d)* inserts a new subsection (14) to deal with a motor vehicle used by taxable dealers for business purposes e.g. as demonstration models. Paragraph (a) of subsection (14) provides that when the taxable dealer registers the vehicle in the dealer's name a self-supply takes place and the dealer accounts for the appropriate VAT on that self-supply. Paragraph (b) of subsection (14) provides that when the vehicle is subsequently sold by the dealer the margin scheme may apply and sets out how the profit margin can be calculated.

*Section 114* amends section 10B of the VAT Act which deals with the special scheme for auctioneers. The amendment substitutes a new subsection for subsection (10) and provides that the subsequent supply of goods that were acquired through an auction is taxable unless the goods are motor vehicles for which no deductibility was allowed or are goods used solely in the course of an exempted activity.

*Section 115* amends section 11 of the VAT Act which deals with rates of tax. The amendment confirms the Budget change which provided for a decrease in the standard rate of VAT from 21.5 per cent to 21 per cent with effect from 1 January 2010.

*Section 116* amends section 12B of the VAT Act which deals with the special scheme for means of transport supplied by taxable dealers. The amendments are part of the package of measures to change the rules for the taxation of second-hand means of transport from the special scheme under this section to the margin scheme under section 10A. The amendments include transitional measures that apply in the period from 1 January 2010 to 30 June 2010 and also provide that the special scheme does not apply to means of transport purchased or acquired on or after 1 July 2010.

*Section 117* amends section 12C of the VAT Act which deals with the special scheme for agricultural machinery. The amendments are part of a package of measures to change the rules for the taxation of second-hand agricultural machinery from the special scheme under this section to the margin scheme under section 10A. The amendments include transitional measures that apply in the period from 1 January 2010 to 30 June 2010 and also provide that the special scheme does not apply to agricultural machinery purchased or acquired on or after 1 July 2010.

*Section 118* amends section 13 of the VAT Act which deals with the remission of VAT on goods exported by non-EU tourists (the 'retail export scheme').

*Paragraphs (a) and (b)* strengthen the conditions that the supplier of the goods or services must comply with in order to apply the zero-rating to the supply of traveller's qualifying goods or the supply of services of a VAT refunding agent.

*Paragraph (c)* inserts a new subsection (1D). This subsection provides that if the conditions for zero-rating a supply of goods are not complied with then that supply of goods is no longer eligible for zero-rating. It also provides that the supply of services of a VAT refunding agent relating to the supply of those goods is no longer eligible for zero-rating.

*Section 119* amends section 15 of the VAT Act which deals with the charge of tax on imported goods. This amendment inserts a new subsection (8) into section 15 and is to come into effect from 1 January 2011. The new subsection provides that where a supply or transfer of goods to a taxable person in another Member State follows the importation of those goods the importer must provide certain information before zero-rating of the importation is allowed. This amendment transposes Council Directive 2009/69/EC (amending Directive 2006/112/EC) as regards tax evasion linked to imports.

*Section 120* amends section 16 of the VAT Act which deals with the keeping of records. Two new subsections (6) and (7) have been inserted to cater for the keeping of records by a taxable dealer in relation to the transitional measures for second-hand means of transport and agricultural machinery as outlined in *sections 116* and *117*.

*Section 121* amends section 17 of the VAT Act which deals with invoices. This amendment inserts a new subsection (1D) which ensures that an accountable person's entitlement to deduct VAT incurred on accommodation in connection with attendance at qualifying conferences is not restricted by the operation of the travel agent's margin scheme.

*Section 122* amends section 26 of the VAT Act which deals with penalties generally. The amendment inserts a new subsection (3C) and provides for a penalty of €4,000 for failure to comply with the notice issued under section 16(7) of the VAT Act i.e. a notice to furnish records relating to transactions in the transitional period under the special schemes for second-hand means of transport and agricultural machinery.

*Section 123* inserts a new Schedule 7 to the VAT Act. This Schedule lists the activities that are within the scope of VAT when undertaken by the State or public bodies. This amendment transposes Annex I of Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax.

*Section 124* provides for the amendment of the Schedules to the VAT Act. This *section* together with *section 125* replaces the First, Second and Sixth Schedules to the VAT Act and renames the other Schedules to the VAT Act. The amendments involve renumbering, reordering and some simplification of the wording, in preparation for the consolidation of the VAT Act. There are also a small number of substantive changes. These include a clarification of the VAT exemption for professional medical care (which brings the Irish legislation more in line with the VAT Directive), an amendment in relation to the exemption for public postal services (to provide that individually negotiated contracts are not exempt, which is in line with a 2009 Judgement in the European Court of Justice) and a new provision providing VAT exemption for certain Islamic financial products that are comparable to non-Islamic financial products that qualify for an exemption from VAT — provisions in relation to Islamic finance are also contained in *Part I* of the Bill.

*Section 125* provides for the inclusion of a Schedule to the Bill relating to the updating of the cross-references to the Schedules to the VAT Act throughout that Act and repealing some Schedules to that Act consequential to the amendments in *section 124*.

*Section 126* provides for the inclusion of a schedule of miscellaneous amendments to the VAT Act in preparation for the consolidation of that Act.

## PART 4

### STAMP DUTIES

*Section 127* is an interpretation section.

*Section 128* inserts a new section 137A into the Stamp Duties Consolidation Act 1999 which provides for the exchange of information between the Revenue Commissioners and the Property Registration Authority.

*Section 129* amends section 41 of the Stamp Duties Consolidation Act 1999.

The amendment is an anti-avoidance provision to counteract the avoidance of stamp duty through the contrived creation and use of debt (which in reality represents a shareholder's funds) and which ultimately benefits the shareholder directly or indirectly.

The amendment provides that such debt, where paid by a person other than the transferee, is to be included for stamp duty purposes as consideration for the conveyance of property, in particular circumstances.

*Section 130* inserts a new section 85A into the Stamp Duties Consolidation Act 1999 which provides that stamp duty shall not be chargeable on the issue, transfer or redemption of an investment certificate within the meaning of section 267O of the Taxes Consolidation Act 1997.

#### *Section 131*

- (i) amends section 88B of the Stamp Duties Consolidation Act 1999 which provides for a stamp duty exemption for funds in cases of reconstruction or amalgamation, by substituting a new subsection (2) in section 88B to provide that exemption from a stamp duty charge applies where a 'domestic fund' issues units directly to a 'foreign fund' as those terms are defined in the section, and
- (ii) inserts a new section 88E into the Stamp Duties Consolidation Act 1999 which provides that transfers of assets within certain unit trusts are not subject to stamp duty.

*Section 132* amends section 124B of the Stamp Duties Consolidation Act 1999 which imposes a levy on certain life assurance premiums. The first amendment excludes pensions and reinsurance business from the levy. The second amendment brings forward, slightly, the due date for payment of the levy by an insurer. The third amendment is a technical change to update the meaning of the EEA Agreement.

*Section 133* amends section 125A of the Stamp Duties Consolidation Act 1999 to provide for an increased levy on health insurers. The increased levy applies to all renewals and new contracts entered into from 1 January 2010, at the rate of €55 in respect of each insured person aged less than 18 years and €185 in respect of each insured person aged 18 years or over.

*Section 134* amends Schedule 2B of the Stamp Duties Consolidation Act 1999 which deals with the training requirements for young trained farmers to qualify for stamp duty relief on land transferred to them. It revises the current list of agricultural training courses in

## PART 5

### CAPITAL ACQUISITIONS TAX

*Section 135* is an interpretation section. It provides that the Principal Act means the Capital Acquisitions Tax Consolidation Act 2003.

*Section 136* amends section 57 of the Capital Acquisitions Tax Consolidation Act 2003. That section provides for a 4-year time limit in relation to overpayments of gift tax and inheritance tax. This amendment extends the 4-year time limit to overpayments of probate tax. The amendment applies to repayments made on or after the date of the passing of the Finance Act.

*Section 137* amends section 75 of the Capital Acquisitions Tax Consolidation Act 2003. That section exempts units in common contractual funds and investment undertakings from gift tax and inheritance tax where they are acquired by way of gift or inheritance. The exemption applies where the disponent and the donee or successor are neither domiciled nor ordinarily resident in the State. This amendment extends the exemption to units in collective investment schemes. A collective investment scheme is a *bona fide* scheme, the sole or main purpose of which is to provide facilities for the participation by the public or other investors in profits or income from the acquisition, holding, management or disposal of securities or other property.

*Section 138* amends section 89 of the Capital Acquisitions Tax Consolidation Act 2003. That section provides for a reduction of 90 per cent in respect of the market value of agricultural property taken by a “farmer”. The relief is withdrawn if the property is disposed of or compulsorily acquired within 6 years after the date of the gift or inheritance and the proceeds are not reinvested in other agricultural property within one year of the sale or compulsory acquisition. This amendment ensures that where the proceeds from the sale or compulsory acquisition are used to acquire agricultural property which has been transferred by the donee or successor to his or her spouse, that property will not qualify as “other agricultural property” for the purpose of the reinvestment provision in section 89(4). The amendment applies to transfers from a spouse to his or her spouse, where such transfers were executed on or after 4 February 2010.

*Section 139* contains provisions relating to the modernisation of the administration of capital acquisitions tax. The main changes made are as follows:

- It removes the requirement for Revenue to certify the Inland Revenue affidavit before probate or letters of administration is/are issued by the Probate Office.
- It provides for the future deployment of a platform that will allow the electronic filing of an Inland Revenue affidavit simultaneously to Revenue and the Probate Office.
- It removes secondary accountability (i.e. where certain persons such as personal representatives of a deceased person were liable to pay CAT if a beneficiary of a gift or an inheritance did not pay the tax) and CAT being a charge on property for 12 years after the date of the gift or inheritance.

- It provides for the appointment of an Irish-resident agent who will be responsible for paying inheritance tax where the personal representatives and one or more of the beneficiaries are non-resident. The person so appointed will be entitled to deduct a sufficient amount from the property comprised in the deceased person's estate in order to discharge the beneficiary's inheritance tax liability.
- It provides that the payment of CAT and the filing of a return are brought into line with other self-assessment taxes. The due date for paying CAT and filing a return, where the valuation date arises in the period from 1 January to 31 August, will be on or before 31 October in that year. Where the valuation date arises in the period from 1 September to 31 December, the pay and file date will be on or before the 31 October in the following year. Interest will run on outstanding tax from 1 November in the relevant year.
- It introduces a surcharge similar to the one that already applies to other self-assessed taxes.
- It provides for the electronic filing of a return in the case where reliefs or exemptions (other than the exemption for small gifts) are being claimed by a beneficiary of a gift or an inheritance.
- It provides for an increase in the threshold requirement for Revenue to issue a clearance certificate in the case of deposit accounts held jointly in the name of the deceased person and another or others from €31,750 to €50,000.

The abolition of secondary accountability and 12-year CAT charge applies retrospectively. The changes in relation to the Inland Revenue affidavit, the payment of CAT and the filing of a return and interest on outstanding tax will come into effect on a date that will be specified in an Order made by the Revenue Commissioners. The other changes will apply from the date of the passing of the Finance Act.

## PART 6

### MISCELLANEOUS

*Section 140* contains a definition of "Principal Act" i.e. the Taxes Consolidation Act, 1997, for the purposes of Part 6 of the Bill.

*Section 141* inserts a new Part (Part 18C) into the Taxes Consolidation Act, 1997. This new Part deals with the levy announced by the Minister in his Budget speech. The levy is charged on an individual who is Irish-domiciled and an Irish citizen:

- whose world-wide income exceeds €1m,
- whose Irish-located property is greater than €5m, and
- whose liability to Irish income tax was less than €200,000.

The amount of the levy is €200,000. Irish income tax paid by an individual will be allowed as a credit against domicile levy.

The tax is payable on a self-assessment basis on or before 31 October in the year following the valuation date, i.e. 31 December each year.

The new Part 18C contains provisions dealing with appeals relating to the value of land or buildings, the making and amending of assessments by Revenue and the right of Revenue to make enquiries and make assessments. In addition, it applies the provisions of Chapter 1 of Part 40, Chapter 1 of Part 47 and section 1080 of the Taxes Consolidation Act, 1997, which relate to appeals, penalties and interest on overdue tax respectively to the domicile levy.

*Section 141* applies for the tax year 2010 and subsequent years.

*Section 142* amends section 825 of the Taxes Consolidation Act, 1997 so that that section — which modifies the criteria for determining residence for tax purposes in the case of an individual who donates a gift of property to the State — ceases to have effect as regards gifts donated to the State on or after 4 February 2010.

*Section 143* inserts a new section 896B into the Taxes Consolidation Act, 1997 which provides for the supply of information held by the Commission for Taxi Regulation to the Revenue Commissioners.

*Section 144* inserts a new section 907A into the Taxes Consolidation Act, 1997 which will allow the Revenue Commissioners to apply to the Appeal Commissioners for consent to issue a notice to obtain information from “third parties” in relation to a “class of persons” on the same basis as the Revenue Commissioners currently have for financial institutions. Such applications would only be made with the approval of a Revenue Commissioner.

*Section 145* requires NAMA to provide the Revenue Commissioners with certain information in relation to transactions in property in order to ensure that such transactions have been correctly dealt with by the parties concerned for tax and duty purposes.

*Section 146* amends section 1078 of the Taxes Consolidation Act, 1997 which is concerned with Revenue offences. This amendment will permit a Revenue officer to serve documents relating to proceedings or relating to any appeal against a judgement pursuant to such proceedings under section 1078.

*Section 147* amends sections 1094 and 1095 of the Taxes Consolidation Act, 1997, which govern the issue of Tax Clearance Certificates, in order to extend the definition of “tax acts” to incorporate Customs and Excise obligations.

*Section 148* amends section 826 of the Taxes Consolidation Act, 1997 to enable (a) the inclusion of provisions regarding the recovery of taxes in double taxation treaties and (b) the ratification of the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters. The Convention provides for mutual assistance between Parties to the Convention in relation to the exchange of information, recovery of taxes and service of documents.

*Section 149* amends Parts 1 and 3 of Schedule 24A to the Taxes Consolidation Act, 1997. This Schedule lists all international tax agreements entered into by Ireland. Part 1 lists all the existing Double Taxation Agreements. Part 3 lists all the Tax Information Exchange Agreements.

Part 1 is amended by adding 6 countries to the list of countries with which the State has entered into a Double Taxation Agreement. These countries are Bahrain, Belarus, Bosnia & Herzegovina, Georgia, Moldova, and Serbia.

Part 3 is amended by adding 8 countries/territories to the list of countries/territories in Part 3 with which the State has entered into a Tax Information Exchange Agreement. These countries/territories are Anguilla, Bermuda, the Cayman Islands, Gibraltar, Guernsey, Jersey, Liechtenstein, and the Turks and Caicos Islands.

The addition of these 14 countries/territories to Schedule 24A is the final step in the legislative and ratification procedure which will ensure that these Agreements will have the force of law. This section will have effect from the date of the passing of the Act.

*Section 150* and *Schedule 4* 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*), and
- Finance Act 2009 (*paragraph 5*).

The amendments for the most part involve the correction (through deletion, amendment or insertion of text) of incorrect references and minor drafting errors. *Paragraph 6* contains the commencement provisions relating to *paragraphs 1* to *5* above.

*Section 151* amends the definition of “tax” in section 1 of the Provisional Collection of Taxes Act 1927, which contains the definitions for that Act. The main change is to add to the definition of the word “tax”, the phrase “any other levy or charge for the benefit of the Exchequer”.

*Section 152* gives effect to a voluntary gift scheme for members of the judiciary and military judges.

*Section 153* fixes a new annuity for 30 years in respect of the estimated borrowing in 2010 for Voted Capital Services in relation to the Capital Services Redemption Account. It also amends the 2009 annuity in the light of the actual amount of capital borrowing in 2009. 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 154* deals with the “care and management” of taxes and duties.

*Section 155* contains the provisions relating to short title, construction and commencement.

*An Roinn Airgeadais*  
*4 Feabhra, 2010.*