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AN BILLE AIRGEADAIS 2010
FINANCE BILL 2010

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

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AN BILLE AIRGEADAIS 2010
FINANCE BILL 2010

BILL

entitled

5 AN ACT TO PROVIDE FOR THE IMPOSITION, REPEAL,
REMISSION, ALTERATION AND REGULATION OF
TAXATION, OF STAMP DUTIES AND OF DUTIES
RELATING TO EXCISE AND OTHERWISE TO MAKE
10 FURTHER PROVISION IN CONNECTION WITH FIN-
ANCE INCLUDING THE REGULATION OF CUSTOMS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

COST BENEFIT ANALYSIS OF TAX EXPENDITURES

15 **1.**—The Minister shall within one month from the passing of this
Act prepare and lay before Dáil Éireann a report on a cost-benefit
analysis of tax expenditures provided for by this Act, setting out
the costs of tax foregone, and the benefits in terms of job creation
or otherwise.

Cost benefit
analysis of tax
expenditures.

PART 2

20 INCOME LEVY, INCOME TAX, CORPORATION TAX AND CAPITAL GAINS
TAX

CHAPTER 1

Interpretation

25 **2.**—In this Part “Principal Act” means the Taxes Consolidation
Act 1997.

Interpretation (*Part*
2).

CHAPTER 2

Income Levy

3.—(1) The Principal Act is amended in Part 18A—

Income levy.

- (a) in section 531B by substituting the following for paragraph (a) of the Table to subsection (1):

“(a) The income described in this paragraph, to be known as ‘relevant emoluments’, is emoluments to which Chapter 4 of Part 42 applies or is applied— 5

(i) other than social welfare payments and similar type payments,

(ii) other than excluded emoluments,

(iii) disregarding expenses, in respect of which an employee may be entitled to relief from income tax, which fall within Regulation 10(3) of the PAYE Regulations, 10

(iv) having regard to any relief under section 201(5)(a) and paragraphs 6 and 8 of Schedule 3, and 15

(v) excluding emoluments of an individual who is resident in a territory with which arrangements have been made under subsection (1)(a)(i) or (1B)(a)(ii) of section 826 in relation to affording relief from double taxation, where those emoluments are the subject of a notification issued under section 984(1).”, 20

- (b) in section 531B in paragraph (b) of the Table to subsection (1) by inserting the following after subparagraph (iv): 25

“(iva) having regard to any reduction arising by virtue of section 825A, and”,

- (c) in section 531B in paragraph (b) of the Table to subsection (1) by inserting the following after subparagraph (iva) (inserted by *paragraph (b)*): 30

“(ivb) having regard to any allowances due under section 659 arising from the obligations under Council Directive 91/676/EEC of 12 December 1991¹ concerning the protection of waters against pollution caused by nitrates from agricultural sources.”, 35

and

- (d) in section 531B in paragraph (b) of the Table to subsection (1) by deleting subparagraphs (v), (vi) and (vii). 40

(2) The Principal Act is amended in paragraph 1(1) of Part 1 of Schedule 24 by substituting the following for the definition of “the Irish taxes”—

“ ‘the Irish taxes’ means income tax, income levy and corporation tax;”. 45

- (3) This section applies—

¹OJ No. L375, 31.12.1991, p.1

(a) as respects *paragraphs (a), (b) and (d) of subsection (1) and subsection (2)*, for the year of assessment 2009 and subsequent years, and

(b) as respects *paragraph (c) of subsection (1)*, for the year of assessment 2010 and subsequent years.

CHAPTER 3

Income Tax

4.—As respects the year of assessment 2010 and subsequent years of assessment, section 122 of the Principal Act is amended in subsection (1)(a)—

Amendment of section 122 (preferential loan arrangements) of Principal Act.

(a) by inserting the following after the definition of “preferential rate”:

“ ‘qualifying loan’ has the meaning assigned to it by section 244(1)(a);”,

and

(b) by substituting for paragraph (i) of the definition of “the specified rate” the following:

“(i) in a case where the preferential loan is a qualifying loan, the rate of 5 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations.”.

5.—The Principal Act is amended—

Cesser of certain reliefs.

(a) in section 236 by inserting the following after subsection (6):

“(7) This section ceases to have effect for the year of assessment 2010 and subsequent years of assessment.”,

and

(b) in section 470A by inserting the following after subsection (12):

“(13) This section ceases to have effect for the year of assessment 2010 and subsequent years of assessment.”.

6.—(1) Section 469 of the Principal Act is amended—

Amendment of section 469 (relief for health expenses) of Principal Act.

(a) in subsection (1) by substituting the following for the definition of “health care”:

“ ‘health care’ means prevention, diagnosis, alleviation or treatment of an ailment, injury, infirmity, defect or disability, and includes care received by a woman in respect of a pregnancy, but does not include—

(a) routine ophthalmic treatment,

- (b) routine dental treatment, or
- (c) cosmetic surgery or similar procedures, unless the surgery or procedure is necessary to ameliorate a physical deformity arising from, or directly related to, a congenital abnormality, a personal injury or a disfiguring disease;”, 5
- (b) in subsection (1) in the definition of “health expenses” by substituting the following for paragraph (c):
 - “(c) maintenance or treatment necessarily incurred in connection with the services or procedures referred to in paragraph (a) or (b),”, 10
- (c) in subsection (1) by deleting the definition of “hospital”,
- (d) in subsection (1) in paragraph (a) of the definition of “practitioner” by substituting “section 43 of the Medical Practitioners Act 2007” for “section 26 of the Medical Practitioners Act, 1978”, 15
- (e) by substituting the following for subsection (2)—
 - “(2) (a) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual, other than in accordance with section 16(2), for that year of assessment shall be reduced by the lesser of— 20
 - (i) the amount equal to the appropriate percentage of the specified amount, and
 - (ii) the amount which reduces that income tax to nil,
 - but, where an individual proves that he or she defrayed health expenses incurred for the provision of health care in the nature of maintenance or treatment in a nursing home, other than a nursing home which does not provide access to 24 hour nursing care on-site, the individual shall be entitled for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax, to have a deduction made from his or her total income of the amount proved to have been so defrayed. 30 35 40
 - (b) For the purposes of this section any contribution made by an individual in defraying expenses incurred in respect of nursing home fees where such an individual is entitled to or has received State support (within the meaning of section 3(1) of the Nursing Homes Support Scheme Act 2009) shall be treated as health expenses qualifying for relief under this section. 45
 - (c) Financial support (within the meaning of the Nursing Homes Support Scheme Act 2009) 50

shall not be treated as health expenses for the purposes of this section.”,

and

(f) by inserting the following after subsection (7)—

“(8) (a) Where the Minister for Finance determines that expenses, or a class of expenses, representing the cost of anything referred to in paragraphs (a) to (i) in the definition of ‘health expenses’ in subsection (1) has been or may be incurred in the provision of health care which in the opinion of the Minister for Finance is inappropriate having regard to public policy, then the Minister may by order prescribe those expenses, or class of expenses, as not being eligible for relief under this section.

(b) The Minister for Finance shall not make an order under paragraph (a) unless he or she has consulted with the Minister for Health and Children and such appropriately qualified persons, bodies or institutions (if any), which in the opinion of the Minister for Finance or the Minister for Health and Children should be consulted.

(c) Every order made by the Minister for Finance under paragraph (a) shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

(2) This section shall have effect for the year of assessment 2010 and subsequent years.

7.—As respects the year of assessment 2010 and subsequent years of assessment, section 244 of the Principal Act is amended—

Amendment of section 244 (relief for interest paid on certain home loans) of Principal Act.

(a) in subsection (1)(a) by inserting “taken out on or after 1 January 2004 and on or before 31 December 2011” after “qualifying loan” in the definition of “relievable interest”,

(b) by substituting the following for paragraph (b) of subsection (1A):

“(b) Notwithstanding paragraph (a), this section shall continue to apply—

(i) for the year of assessment 2010 and subsequent years of assessment up to and including the year of assessment 2017 in respect of qualifying interest paid in respect of a qualifying loan taken out on or after 1 January 2004 and on or before 31 December 2011, and

- (ii) for the year of assessment 2012 and subsequent years of assessment up to and including the year of assessment 2017 in respect of qualifying interest paid in respect of a qualifying loan taken out on or after 1 January 2012 and on or before 31 December 2012.”, 5

and

- (c) by substituting the following for subsection (2)(a):

“(2) (a) In this subsection ‘appropriate percentage’, in relation to a year of assessment, means— 10

- (i) as respects qualifying interest to which subsection (1A)(b)(i) applies—

- (I) where relievable interest is determined by reference to paragraph (i) or (ii) of the definition of ‘relievable interest’, 15 per cent for that year, and 15

- (II) where relievable interest is determined by reference to paragraph (iii) or (iv) of the definition of ‘relievable interest’: 20

- (A) 25 per cent for the first and second years of assessment for which there is an entitlement to relief under this section, 25

- (B) 22.5 per cent for the third, fourth and fifth years of assessment for which there is an entitlement to relief under this section, and 30

- (C) a percentage equal to the standard rate of tax for the sixth and seventh years of assessment for which there is an entitlement to relief under this section, 35

and

- (ii) as respects qualifying interest to which subsection (1A)(b)(ii) applies—

- (I) where relievable interest is determined by reference to paragraph (i) or (ii) of the definition of ‘relievable interest’, 10 per cent for that year, and 40

- (II) where relievable interest is determined by reference to the first 6 years of assessment or, where the period of entitlement to relief under this section is shorter, such shorter period, 15 per cent for that year.”. 45

8.—As respects the year of assessment 2010 and subsequent years of assessment, section 997A of the Principal Act is amended by inserting the following subsection after subsection (5)—

Amendment of section 997A (credit in respect of tax deducted from emoluments of certain directors) of Principal Act.

“(6) Where, in accordance with subsection (5), the tax to be treated as having been deducted from the emoluments paid to each person to whom this section applies exceeds the actual amount of tax deducted from the emoluments of each person, then the amount of credit to be given for tax deducted from those emoluments shall not exceed the actual amount of tax so deducted.”.

9.—As respects the year of assessment 2010 and subsequent years of assessment, section 71 of the Principal Act is amended—

Amendment of section 71 (foreign securities and possessions) of Principal Act.

(a) by substituting the following for subsection (2):

“(2) Subsection (1) shall not apply to any person who satisfies the Revenue Commissioners that he or she is not domiciled in the State.”,

(b) in subsection (3), by substituting “In the case mentioned in subsection (2)” for “In the cases mentioned in subsection (2)”, and

(c) in subsection (5), by substituting “as to domicile” for “as to domicile or ordinary residence”.

10.—As respects the year of assessment 2010 and subsequent years of assessment, section 825B of the Principal Act is amended—

Amendment of section 825B (repayment of tax where earnings not remitted) of Principal Act.

(a) by inserting the following after subsection (1):

“(1A) As regards individuals who are not domiciled in the State and who, on or after 1 January 2010—

(a) become resident in the State for tax purposes for the first time, and

(b) exercise the duties of their employment in the State for the first time,

then, this section shall apply as if in subsection (1)—

(i) the words ‘which is not a party to the EEA agreement, but’ were deleted from the definition of ‘associated company’;

(ii) the words ‘that is not a party to the EEA Agreement but’ were deleted from the definition of ‘relevant employee’; and

(iii) the words ‘that is not a party to the EEA Agreement but’ were deleted from the definition of ‘relevant employer’.”,

(b) in subsection (2)—

(i) in paragraph (c) by substituting “one year” for “3 years”, and

- (ii) by inserting “and not repaid” after “tax deducted”,
- (c) in subsection (5) by inserting “, computed by reference to paragraphs (i) and (ii) of subsection (2),” after “shall be liable to income tax on those emoluments”, and
- (d) in subsection (6) by substituting “one year” for “3 year”. 5

Amendment of section 825A (reduction in income tax for certain income earned outside the State) of Principal Act.

11.—Section 825A of the Principal Act is amended by substituting the following for subsection (7):

“(7) For the purposes of this section—

- (a) as respects the year of assessment 2009 and previous years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at the end of the day, and 10
- (b) as respects the year of assessment 2010 and subsequent years of assessment, an individual shall be deemed to be present in the State for a day if the individual is present in the State at any time during that day.”. 15

Amendment of section 477 (relief for service charges) of Principal Act.

12.—Section 477 of the Principal Act is amended by inserting the following after subsection (7):

“(8) This section ceases to have effect as respects service charges paid in the financial year 2011 for that financial year and subsequent financial years for those financial years.”. 20

Amendment of section 216A (rent-a-room relief) of Principal Act.

13.—Section 216A of the Principal Act is amended by inserting the following after subsection (3A):

“(3B) (a) Subsection (2) shall not apply for a year of assessment to relevant sums arising to— 25

(i) an individual, or

(ii) a person connected with the individual,

where the individual is an office holder, or employee, of— 30

(I) the person making the payment, or

(II) a person connected with the person making the payment.

(b) This subsection shall apply irrespective of whether the relevant sums are paid directly or indirectly by the person referred to in clauses (I) and (II) of paragraph (a) to the individual or to a person connected with the individual.”. 35

Amendment of section 667B (new arrangements for qualifying farmers) of Principal Act.

14.—The Table to section 667B of the Principal Act is amended in paragraph (3) by inserting the following after subparagraph (a): 40

“(aa) Bachelor of Agricultural Science — Agri-Environmental Science awarded by University College Dublin;”.

15.—Section 384 of the Principal Act is amended—

Amendment of section 384 (relief under Case V for losses) of Principal Act.

(a) in subsection (3) by substituting “Subject to subsection (4), any” for “Any”, and

(b) by inserting the following after subsection (3):

“(4) Any allowance to be made in charging income under Case V of Schedule D in accordance with section 305(1)(a) shall be made in priority to any relief to be given under this section.”.

16.—(1) The Principal Act is amended—

Retirement benefits.

(a) in section 784A(1BA) by deleting paragraph (a) and substituting the following for paragraph (c):

“(c) The specified amount for a year of assessment shall be an amount equivalent to the amount determined by the formula—

$$\frac{(A \times 3)}{100} - B$$

where the amount so determined is greater than zero and where—

A is the value of the assets in an approved retirement fund on 31 December in the year of assessment or, where there is more than one approved retirement fund the assets of which are owned by the same individual and managed by the same qualifying fund manager, the aggregate of the value of the assets in each approved retirement fund on that date (in this subsection referred to as the ‘relevant value’ whether there is one or more than one such approved retirement fund), and

B is the amount or value of the distribution or the aggregate of the amounts or values of the distribution or distributions (in this subsection referred to as the ‘relevant distribution’), if any, made during the year of assessment by the qualifying fund manager in respect of assets held in—

(i) the approved retirement fund or, as the case may be, approved retirement funds referred to in the meaning of ‘A’, and

(ii) an approved minimum retirement fund, if any, the assets of which are beneficially owned by the individual and managed by that qualifying fund manager,

(in this paragraph referred to as the ‘funds’) being funds the assets in which were first accepted into the funds by the qualifying fund manager on or after 6 April 2000.”,

- (b) in section 787O(1) by inserting the following after paragraph (b) of the definition of “date of the current event”: 5

“(ba) the annuity would otherwise become payable under a PRSA of a kind referred to in paragraph (c) of the definition of ‘relevant pension arrangement’ where an individual does not elect to exercise an option in accordance with section 787H(1) and instead retains the assets available in the PRSA at that date, in that PRSA or any other PRSA,” 10

- (c) in Schedule 23 by inserting the following after paragraph 2A: 15

“Information to be provided in electronic format

2B. In the case of an approved scheme in respect of which the administrator has to deliver annual scheme accounts to the Revenue Commissioners, the administrator shall deliver the accounts by such electronic means as are required or approved by the Commissioners.” 20

- (d) in Schedule 23B by inserting the following after subparagraph (b) of paragraph 2: 25

“(ba) the individual does not elect to exercise an option in accordance with section 787H(1) and instead retains the assets of the PRSA in that PRSA or any other PRSA,”

and 30

- (e) in Schedule 23B by inserting the following after subparagraph (d) of paragraph 3:

“(da) where the benefit crystallisation event is an event of a kind referred to in paragraph 2(ba), the aggregate of the amount of so much of the cash sums and the market value of such of the assets as are retained in the PRSA or in any other PRSA,” 35

- (2) (a) Paragraph (a) of subsection (1) has effect for the year of assessment 2010 and subsequent years of assessment. 40

- (b) Paragraphs (b), (d) and (e) of subsection (1) have effect as on and from 4 February 2010.

- (c) Paragraph (c) of subsection (1) has effect as respects approved schemes whose accounting year ends on or after 1 January 2011. 45

17.—(1) Section 128D of the Principal Act is amended—

- (a) in subsection (1) by inserting the following after the definition of “director” and “employee”—

“ ‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

5 ‘EEA state’ means a state, other than the State, which is a Contracting Party to the EEA Agreement;”,

(b) in subsection (1) in the definition of “specified period” by substituting “subsection (3)(a);” for “subsection (3)(a).” and by inserting the following after that definition:

10 “ ‘trust’ means a trust established in the State or in an EEA state and the trustees of which are resident in the State or in an EEA state.”,

(c) in subsection (4)—

15 (i) by substituting “amount chargeable to income tax” for “charge to income tax” in both places where it occurs, and

(ii) in the meaning assigned to “A” in the formula in paragraph (a) by substituting “the income chargeable to tax” for “the income tax charge”,

20 (d) in subsection (5)—

(i) by substituting “an amount chargeable to income tax” for “a charge to income tax”,

(ii) by substituting “the amount chargeable to income tax” for “the income tax charge”, and

25 (iii) by substituting “Income Tax Acts” for “Income Taxes Acts”,

and

(e) in subsection (6)—

30 (i) by substituting “an amount chargeable to income tax” for “a charge to income tax”, and

(ii) by substituting “the amount chargeable to income tax” for “the amount of the income tax charge”.

(2) (a) *Paragraphs (a) and (b) of subsection (1) apply to shares acquired on or after 4 February 2010.*

35 (b) *Paragraphs (c), (d) and (e) of subsection (1) apply to shares acquired on or after 20 November 2008.*

18.—(1) The Principal Act is amended—

(a) in Chapter 3 of Part 38 by inserting the following after section 897A:

Information in respect of awards of shares.

“Returns of information in respect of awards of shares to directors and employees.

897B.—(1) In this section—

‘director’, ‘employee’ and ‘employer’ have the meanings, respectively, given to them by section 770(1);

‘shares’ includes stock and securities within the meaning of section 135. 5

(2) (a) Where in any year of assessment an employer or other person awards shares to a director or employee and income tax under Schedule D or Schedule E may be chargeable on the director or employee in respect of the shares awarded, the employer or other person, as the case may be, shall deliver to the Revenue Commissioners on or before 31 March in the year of assessment following the year in which the award was made, particulars of all such awards. 10 15 20

(b) Paragraph (a) shall not apply where the employer or person, as the case may be, is obliged to provide such particulars under any other provision of the Income Tax Acts.”. 25

and

(b) in Schedule 29, column 3, by inserting “section 897B” before “section 904”. 30

(2) (a) *Paragraph (a) of subsection (1) applies as on and from 1 January 2010 in respect of shares awarded on or after 1 January 2009.*

(b) *Paragraph (b) of subsection (1) applies as on and from the passing of this Act.* 35

Amendment of Schedule 11 (profit sharing schemes) to Principal Act.

19.—(1) Schedule 11 to the Principal Act is amended—

(a) in Part 2, paragraph 4, by inserting the following after subparagraph (1B):

“(1C) (a) As respects a profit sharing scheme approved on or after 4 February 2010, the Revenue Commissioners shall be satisfied that there are no arrangements connected in any way, directly or indirectly, with the scheme, which make provision for a loan or loans to be made to some or all of the individuals eligible to participate in the scheme. 40 45

(b) For the purposes of this subparagraph—

‘arrangements’ include any scheme, agreement, undertaking, or understanding of any kind,

whether or not it is, or it is intended to be legally enforceable;

‘loan’ includes any form of credit.”,

and

(b) in Part 3, in paragraph 8 by substituting “Subject to paragraphs 8A and 8B,” for “Subject to paragraph 8A,” and by inserting the following after paragraph 8A:

“8B.(1) The shares shall not be shares—

(a) in a service company, or

(b) in a company that has control of a service company, where the company is under the control of a person or persons referred to in subparagraph (2)(a)(i) as it applies to a service company.

(2) For the purposes of this paragraph—

(a) a company is a service company if the business carried on by the company consists wholly or mainly of the provision of the services of persons employed by the company and the majority of those services are provided to—

(i) a person who has, or 2 or more persons who together have, control of the company,

(ii) a company associated with the company, or

(iii) a partnership associated with the company,

(b) a company is associated with another company where—

(i) both companies are under the control (within the meaning of section 432) of the same person or persons, or

(ii) it could reasonably be considered that—

(I) both companies act in pursuit of a common purpose,

(II) any person or any group of persons or groups of persons having a reasonable commonality of identity have or had the means or power, either directly or indirectly, to determine the trading operations carried on or to be carried on by both companies, or

(III) both companies are under the control of any person or group of persons or groups of persons having a reasonable commonality of identity,

(c) a partnership is associated with a company where the partnership and the company act in pursuit of a common purpose,

(d) a reference to a person includes a reference to a partnership, and 5

(e) where a partner, or a partner together with another person or persons, has control of a company, the partnership is to be treated as having control of that company.”.

(2) *Paragraph (b) of subsection (1) applies to an appropriation of 10 shares made by the trustees of an approved scheme (within the meaning of section 510(1)) on or after 4 February 2010.*

Amendment of section 470B (age-related relief for health insurance premiums) of Principal Act.

20.—Section 470B of the Principal Act is amended by substituting the following for subsection (4):

“(4) Subject to subsections (5) and (6), where for a relevant 15 year of assessment, an individual or, if the individual is a married person assessed to tax in accordance with section 1017, the individual’s spouse, makes a payment to an authorised insurer under a relevant contract and—

(a) the payment is in respect of a premium due under 20 the relevant contract and the relevant contract was renewed or entered into on or after 1 January 2009 but before 1 January 2012, and

(b) the payment or part of the payment, as the case may be, is attributable to an insured person, and only to 25 an insured person, who is aged 50 years or over on the date the relevant contract is renewed or entered into, as the case may be,

then the individual shall, for the relevant year of assessment, in respect of so much of the relievable amount of the payment or 30 part of the payment, as the case may be, as is attributable to an insured person referred to in paragraph (b), be entitled to a credit (referred to in this section as ‘age-related tax credit’) equal to the lower of—

(i) as respects a relevant contract renewed or entered 35 into on or after 1 January 2009 but before 1 January 2010, the amount specified in the second column of the Table to this subsection corresponding to the class of insured person mentioned in the first column of that Table or, where the payment made to the 40 authorised insurer is a monthly or other instalment towards the payment of the total annual premium due under the relevant contract, an amount equal to the amount so specified divided by the total number of instalments to be made to pay such total annual 45 premium;

(ii) as respects a relevant contract renewed or entered 50 into on or after 1 January 2010, the amount specified in the third column of the Table to this subsection corresponding to the class of insured person mentioned in the first column of that Table or, where the payment made to the authorised insurer is a monthly

or other instalment towards the payment of the total annual premium due under the relevant contract, an amount equal to the amount so specified divided by the total number of instalments to be made to pay such total annual premium, and

- (iii) an amount which reduces the income tax to be charged on the individual for the relevant year of assessment, other than in accordance with section 16(2), to nil.

TABLE

(1) Class of Insured Person	(2) Amount of age- related tax credit	(3) Amount of age-related tax credit
Aged 50 years and over but less than 60 years on the date the relevant contract is renewed or entered into, as the case may be.	€200.00	€200.00
Aged 60 years and over but less than 70 years on the date the relevant contract is renewed or entered into, as the case may be.	€500.00	€525.00
Aged 70 years and over but less than 80 years on the date the relevant contract is renewed or entered into, as the case may be.	€950.00	€975.00
Aged 80 years and over on the date the relevant contract is renewed or entered into, as the case may be.	€1,175.00	€1,250.00

”.

21.—Section 409C of the Principal Act is amended by inserting the following after subsection (4)—

Income tax:
restriction on use of
losses on approved
buildings.

“(4A) (a) Notwithstanding subsection (4), where this section applies for the year of assessment 2010 or a later year of assessment, the amount of the loss referred to in subsection (3)(a) which can be treated as reducing income for each such year of assessment under section 381(1) shall be nil.

(b) This subsection shall not apply for the years of assessment 2010 or 2011 in relation to—

- (i) work which was completed before 4 February 2010,

- (ii) work which was underway on 4 February 2010, or
- (iii) work carried out under a contractual commitment entered into before 4 February 2010 and evidenced in writing before that date where the work begins after that date.”.

5

Amendment of
Schedule 13
(accountable
persons for
purposes of Chapter
1 of Part 18) to
Principal Act.

22.—(1) Schedule 13 to the Principal Act is amended—

- (a) by deleting paragraphs 31, 45, 57, 66, 67, 71, 72, 75, 78, 104, 113, 123, 130 and 172,
- (b) by substituting the following for paragraph 73:

“73. Pobal.”, 10

- (c) by substituting the following for paragraph 102:

“102. Commission for Energy Regulation.”,

- (d) by substituting the following for paragraph 119:

“119. Digital Hub Development Agency.”,

and 15

- (e) by inserting the following after paragraph 174 (inserted by the National Asset Management Agency Act 2009):

“175. National Transport Authority.

176. The Medical Council.

177. Anglo Irish Bank Corporation Limited. 20

178. Central Bank and Financial Services Authority of Ireland.

179. Financial Services Ombudsman’s Bureau.

180. Broadcasting Authority of Ireland.”.

(2) *Subsection (1)(e)* of this section applies as and from 1 May 25
2010.

Limitation on
amount of certain
reliefs used by
certain high income
individuals.

23.—(1) Chapter 2A of Part 15 of the Principal Act is amended—

- (a) in section 485C(1) by inserting the following definitions after the definition of “excess relief”:

“ ‘income threshold amount’, in relation to a tax year and 30
an individual, means—

(a) €125,000, or

(b) in a case where the individual’s income for the tax year includes ring-fenced income and his or her adjusted income for the tax year is less than 35
€400,000, the amount determined by the formula—

$$€125,000 \times \frac{A}{B}$$

where—

A is the individual's adjusted income for the year, and

B is an amount determined by the formula—

$$T + S$$

where T and S have the same meanings respectively as they have in the definition of 'adjusted income';

'relief threshold amount', in relation to a tax year and an individual, means €80,000;”,

(b) in section 485C(1) by deleting the definition of “threshold amount”,

(c) in section 485D—

(i) in paragraph (a) by substituting “the income threshold amount” for “the threshold amount”,

(ii) in paragraph (b) by substituting “the relief threshold amount” for “the threshold amount”, and

(iii) by substituting “20 per cent of the individual's adjusted income” for “one-half of the individual's adjusted income”,

(d) in section 485E by substituting the following for the construction of “Y” in the formula in that section—

“Y is the greater of—

(i) the relief threshold amount, and

(ii) 20 per cent of the individual's adjusted income for the tax year.”,

and

(e) in section 485FB(6)(b) by substituting “the income threshold amount” for “the threshold amount”.

(2) *Subsection (1)* applies as respects the year of assessment 2010 and subsequent years of assessment.

CHAPTER 4

Income Tax, Corporation Tax and Capital Gains Tax

24.—The Principal Act is amended—

(a) by inserting the following after section 208:

“Overseas
charities.

208A.—(1) In this section and section
208B—

‘charity’ means any body of persons or trust
established for charitable purposes only;

Provisions relating
to charities and
donations to
approved bodies.

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

5

‘EEA state’ means a state, other than the State, which is a contracting party to the EEA Agreement;

‘EFTA state’ means a state, other than an EEA state, which is a Member State of the European Free Trade Association.

10

(2) A person or trust established in an EEA state or in an EFTA state may on a claim being made to the Revenue Commissioners seek a determination to the effect that, if the person or trust were to have income in the State of a kind referred to in section 207 or 208, it would qualify for the exemptions provided for by those sections.

15

(3) A claim referred to in subsection (2) shall be determined by the Revenue Commissioners or such officer of the Revenue Commissioners (including an inspector) as they may authorise in that behalf.

20

(4) Where a claim referred to in subsection (2) has been determined in accordance with subsection (3) and the determination is to the effect that if the person or trust were to have income in the State of a kind referred to in section 207 or 208 it would qualify for the exemptions provided for by those sections, the Revenue Commissioners, or such officer of the Revenue Commissioners as they may authorise in that behalf, shall issue the person or trust with a notice of that determination.

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30

35

(5) Every claim made under this section shall be verified by a document corresponding to an affidavit sworn in the State or by an equivalent sworn statement, and proof of the claim may be given by the treasurer, trustee or any duly authorised agent.

40

Charities —
miscellaneous.

208B.—(1) In this section—

‘charity trustee’ includes—

(a) in the case of a charity that is a company, the directors and other officers of the company, and

45

(b) in the case of a charity that is a body corporate (other than a company) or an unincorporated body of persons, any officer of the body or any person for the

50

time being performing the functions of an officer of the body;

‘qualified person’ means—

(a) a person who, in accordance with section 187 of the Companies Act 1990, is qualified for appointment as an auditor of a company, or

(b) in relation to a person or trust that—

(i) has made a claim for a determination under section 208A(2),

(ii) is established in an EEA state or in an EFTA state, and

(iii) does not have a principal place of business in the State,

a person who is qualified under the law of that EEA state or that EFTA state, as the case may be, to perform functions the same as or similar to those which may be performed in the State by a person referred to in paragraph (a).

(2) A claim by a person or trust for—

(a) a determination under section 864 in relation to a claim under section 207 or 208, or

(b) a determination under section 208A,

shall be supported by such information as the Revenue Commissioners may reasonably require for the purpose of determining the claim.

(3) A charity—

(a) who has been granted an exemption under section 207 or 208, or

(b) to whom a notice of determination has been issued in accordance with section 208A(4),

shall, on request, provide such information to the Revenue Commissioners as they may require in respect of the activities of that charity in any financial year following the granting of an exemption or, as the case

may be, the issuing of a notice of the determination.

(4) Any information to be provided to the Revenue Commissioners under subsection (2) or (3) shall be in an official language of the State. 5

(5) The Revenue Commissioners may appoint such qualified persons as they consider appropriate to verify any information provided to them under subsection (2) or (3). 10

(6) The expenses incurred by any person appointed by the Revenue Commissioners under subsection (5) shall be recoverable by the Revenue Commissioners as a simple contract debt in any court of competent jurisdiction— 15

(a) from the charity trustees (who shall be jointly and severally liable for those expenses), or 20

(b) from the charity concerned, where it is not practicable to recover them from the charity trustees.”,

(b) in Part 1 of Schedule 26A by deleting paragraph 19, 25

(c) in Part 3 of Schedule 26A by deleting “in the State” in—

(i) paragraph 1 in the definition of “eligible charity”, and

(ii) paragraph 2,

(d) in Part 3 of Schedule 26A by substituting the following for paragraph 3(c): 30

“(c) before the date of the making of the application concerned under paragraph 2—

(i) it has been granted exemption from tax for the purposes of section 207 for a period of not less than 2 years, or 35

(ii) it received a notice of determination from the Revenue Commissioners in accordance with section 208A at least 2 years before that date,”,

and 40

(e) in Part 3 of Schedule 26A by inserting the following after paragraph 7:

“8. Information to be furnished to the Revenue Commissioners or published as required by the Minister for Finance for the purposes of this Part shall be furnished or published in an official language of the State.”. 45

25.—(1) Part 22 of the Principal Act is amended—

Amendment of Part
22 (provisions
relating to dealing
in or developing
land and disposals
of development
land) of Principal
Act.

- (a) in the definition of “qualifying land” in section 644AB(1) by deleting “or” where it last occurs in paragraph (a), by substituting “section 616(1)(g), or” for “section 616(1)(g)” in paragraph (b) and by inserting the following after paragraph (b):

“(c) consisting of a site of 0.4047 hectares or less whose market value at the date of disposal does not exceed €250,000 (notwithstanding that a planning authority may have granted permission in respect of that site in accordance with section 34(1) of the Planning and Development Act 2000), other than where the disposal by the person making it, or by a person connected with that person, forms part of a larger transaction or series of transactions,”

- (b) in section 644AB(1) by deleting the definition of “rezoning” and by inserting the following after the definition of “qualifying land”:

“ ‘relevant planning decision’, in relation to land and in accordance with the Planning and Development Act 2000 (in this definition referred to as the ‘Act of 2000’), means—

- (a) a change in the zoning of land in a development plan or a local area plan made or varied under Part II of the Act of 2000 from non-development land-uses to development land-uses or from one development land-use to another development land-use including a mixture of such uses, or

- (b) a decision to grant permission, in accordance with section 34(6) or 37(2) of the Act of 2000, for a development that would materially contravene a development plan;”,

- (c) in section 644AB(2) by substituting “a relevant planning decision” for “the rezoning of that land”,

- (d) in section 644AB(5)(a) by substituting “a relevant planning decision” for “the rezoning of land”,

- (e) in section 649B(1) by deleting the definition of “rezoning” and by inserting the following after the definition of “non-development land use”:

“ ‘relevant planning decision’, in relation to land and in accordance with the Planning and Development Act 2000 (in this definition referred to as the ‘Act of 2000’), means—

- (a) a change in the zoning of land in a development plan or a local area plan made or varied under Part II of the Act of 2000 from non-development land-uses to development land-uses or from one development land-use to another

development land-use including a mixture of such uses, or

- (b) a decision to grant permission, in accordance with section 34(6) or 37(2) of the Act of 2000, for a development that would materially contravene a development plan;”, 5

- (f) in section 649B(1) in the definition of “windfall gain” by substituting “a relevant planning decision” for “rezoning”,

- (g) in section 649B(2)— 10

- (i) by deleting “, made on or after 30 October 2009,”, and

- (ii) by substituting “a relevant planning decision” for “rezoning” in paragraph (a) and by substituting “relevant planning decision” for “rezoning” where it occurs in paragraphs (b) and (c), 15

- (h) in section 649B(4) by deleting “or” where it last occurs in paragraph (a), by substituting “section 616(1)(g), or” for “section 616(1)(g),” in paragraph (b) and by inserting the following after paragraph (b):

- “(c) the disposal is the disposal of a site of 0.4047 20
hectares or less whose market value at the date
of disposal does not exceed €250,000
(notwithstanding that a planning authority may
have granted permission in respect of that site
in accordance with section 34(1) of the Plan- 25
ning and Development Act 2000), other than
where the disposal by the person making it, or
by a person connected with that person, forms
part of a larger transaction or series of
transactions,”. 30

and

- (i) in section 649B(5) by substituting “relevant planning decision” for “rezoning”.

- (2) (a) *Paragraphs (a) and (h) apply as respects disposals made on or after 30 October 2009.* 35

- (b) *Paragraphs (b), (c), (d), (e), (g)(ii) and (i) apply as respects changes or decisions made on or after 4 February 2010.*

- (c) *Paragraph (g)(i) applies as on and from 4 February 2010.*

Amendment of
section 843A
(capital allowances
for buildings used
for certain childcare
purposes) of
Principal Act.

- 26.—Section 843A of the Principal Act is amended—** 40

- (a) in subsection (1) by inserting the following after the definition of “qualifying expenditure”:

“ ‘qualifying period’ means the period commencing on 1 December 1999 and ending—

- (a) on 30 September 2010, or 45

(b) where subsection (6)(a) applies, on 31 March 2011, or

(c) where subsection (6)(b) applies, on 31 March 2012;”,

(b) in subsection (2) by substituting “Subject to subsections (2A) to (5)” for “Subject to subsections (3) to (5)”,

(c) by inserting the following after subsection (2):

“(2A) An allowance shall be given by virtue of subsection (2) in relation to any qualifying expenditure on a qualifying premises only in so far as that expenditure is incurred in the qualifying period.”,

(d) in subsection (3) by substituting “incurred in the qualifying period” for “incurred on or after 2 December 1998”, and

(e) by inserting the following after subsection (5):

“(6) (a) For the purposes of paragraph (b) of the definition of ‘qualifying period’, this paragraph applies where—

(i) capital expenditure is incurred on the construction, conversion or refurbishment of a qualifying premises,

(ii) the construction, conversion or refurbishment work on the qualifying premises represented by that expenditure is exempted development for the purposes of the Planning and Development Act 2000 by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) (in this subsection referred to as the ‘Regulations of 2001’), and

(iii) not less than 30 per cent of the total construction, conversion or refurbishment costs has been incurred on or before 30 September 2010.

(b) For the purposes of paragraph (c) of the definition of ‘qualifying period’, this paragraph applies where—

(i) capital expenditure is incurred on the construction, conversion or refurbishment of a qualifying premises,

(ii) a planning application (not being an application for outline permission within the meaning of section 36 of the Planning and Development Act 2000), in so far as planning permission is required, in respect of the construction, conversion or refurbishment work on the qualifying premises represented by that expenditure, is made in accordance with the Regulations of 2001,

(iii) an acknowledgement of the application, which confirms that the application was received on or before 30 September 2010, is issued by the planning authority in accordance with article 26(2) of the Regulations of 2001, and 5

(iv) the application is not an invalid application in respect of which a notice was issued by the planning authority in accordance with article 26(5) of the Regulations of 2001. 10

(7) For the purposes only of determining, in relation to a claim for an allowance by virtue of subsection (2), whether and to what extent capital expenditure incurred on the construction, conversion or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction, conversion or refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.”. 15 20

Mid-Shannon
corridor tourism
infrastructure
investment scheme.

27.—(1) Section 372AW of the Principal Act is amended—

(a) in subsection (1) in the definition of “qualifying period” by substituting “31 May 2015” for “31 May 2013”, and 25

(b) in subsection (2)(b) by substituting “4 years” for “2 years”.

(2) *Subsection (1)* comes into operation on the making of an order to that effect by the Minister for Finance.

Payment of tax by
means of donation
of heritage
property.

28.—(1) Section 1003A of the Principal Act is amended in subsection (1)— 30

(a) in the definition of “contents of the building” by substituting “the Minister is satisfied or, as appropriate, the Commissioners of Public Works in Ireland are satisfied” for “the Minister is satisfied”, and 35

(b) by substituting the following for the definition of “relevant gift”:

“ ‘relevant gift’ means a gift of heritage property to the Trust or, as appropriate, to the Commissioners of Public Works in Ireland in respect of which no consideration whatever (other than relief under this section) is received by the person making the gift, either directly or indirectly, from the Trust or from those Commissioners or otherwise;”.

(2) Section 1003A of the Principal Act is amended by substituting the following for subsection (2): 45

“(2) (a) In this section ‘heritage property’ means a building or a garden which, on application in writing to the Minister or, as appropriate, to the Commissioners of

Public Works in Ireland in that behalf by a person who owns the building or the garden is, subject to the provisions of this subsection, determined by the Minister or, as appropriate, by those Commissioners to be a building or a garden which is—

- (i) an outstanding example of the type of building or garden involved,
- (ii) pre-eminent in its class,
- (iii) intrinsically of significant scientific, historical, horticultural, national, architectural or aesthetic interest, and
- (iv) suitable for acquisition by the Trust or, as appropriate, by the Commissioners of Public Works in Ireland,

and, for the purposes of this section, a reference to ‘building’ includes—

- (I) any associated outbuilding, yard or land where the land is occupied or enjoyed with the building as part of its garden or designed landscape and contributes to the appreciation of the building in its setting, and
- (II) the contents of the building.

- (b) An application for a determination under this subsection shall be made to the Minister where it relates to a relevant gift to be made to the Trust or shall be made to the Commissioners of Public Works in Ireland where it relates to a relevant gift to be made to those Commissioners.
- (c) In considering an application for a determination under this subsection, the Minister or, as appropriate, the Commissioners of Public Works in Ireland shall consider such evidence as the person making the application submits.
- (d) On receipt of an application for a determination under this subsection, the Minister or, as appropriate, the Commissioners of Public Works in Ireland shall request the Revenue Commissioners in writing to value the property in accordance with subsection (3).
- (e) The Minister or, as appropriate, the Commissioners of Public Works in Ireland shall not, during any calendar year, make a determination under this subsection where the market value of the property, as determined by the Revenue Commissioners in accordance with subsection (3), at the valuation date exceeds an amount determined by the formula—

$$€6,000,000 - M$$

where—

M is an amount (which may be nil) equal to the market value at the valuation date of the heritage property (if any) or the aggregate of the market values at the respective valuation dates of all the heritage properties (if any), as the case may be, in respect of which a determination has been made or determinations have been made, as the case may be, under this subsection whether by the Minister or by the Commissioners of Public Works in Ireland in that calendar year and not revoked in that calendar year.

(f) The Commissioners of Public Works in Ireland shall not make a determination under this subsection without the consent in writing of the Minister for Finance and any such determination shall be subject to such conditions as may be specified by the Minister for Finance.

(g) The Minister and the Commissioners of Public Works in Ireland shall, as appropriate, consult with each other in connection with the general application of this section and in particular for the purposes of the application of paragraph (e).

(h) (i) A property shall cease to be a heritage property for the purposes of this section if—

(I) the property is sold or otherwise disposed of to a person other than the Trust or, as appropriate, the Commissioners of Public Works in Ireland,

(II) the owner of the property notifies the Trust or, as appropriate, the Commissioners of Public Works in Ireland in writing that it is not intended to make a gift of the property to the Trust or, as appropriate, those Commissioners, or

(III) the gift of the property is not made to the Trust or, as appropriate, to the Commissioners of Public Works in Ireland by the end of the calendar year following the calendar year in which the determination is made under this subsection.

(ii) Where the Minister becomes aware or, as appropriate, the Commissioners of Public Works in Ireland become aware, at any time within the calendar year in which a determination under this subsection is made in respect of a property, that clause (I) or (II) of subparagraph (i) applies to the property, the Minister or, as appropriate, those Commissioners may revoke the determination with effect from that time.”.

(3) Section 1003A of the Principal Act is amended by substituting the following for subsection (4):

“(4) Where a relevant gift is made to the Trust or, as appropriate, to the Commissioners of Public Works in Ireland—

(a) the Trust or, as appropriate, those Commissioners shall give a certificate to the person who made the relevant gift, in such form as the Revenue Commissioners may prescribe, certifying the receipt of that gift and the transfer of the ownership of the heritage property the subject of that gift to the Trust or, as appropriate, to the Commissioners of Public Works in Ireland, and

(b) the Trust or, as appropriate, the Commissioners of Public Works in Ireland shall transmit a duplicate of the certificate to the Revenue Commissioners.”.

29.—(1) Chapter 2 of Part 18 of the Principal Act is amended in section 530 by inserting the following after the definition of “relevant tax deduction card”:

Payments to subcontractors in certain industries.

“ ‘return period’, in relation to the principal concerned, means the period specified in a notice in writing given by the Revenue Commissioners to that principal, being a period of one or more income tax months, in respect of which the principal is required under section 531(3A) to make a return to the Collector-General;”.

(2) Chapter 2 of Part 18 of the Principal Act is amended in section 531—

(a) by substituting the following for paragraph (a) of subsection (3A):

“(a) Not later than 14 days after the end of a return period, a principal or any person who was previously a principal and who has been required to do so by notice in writing from the Revenue Commissioners, shall—

(i) make a return to the Collector-General, on the prescribed form, of the amount, if any, of tax which that person was liable under this section to deduct from payments made to uncertified subcontractors during that return period, and

(ii) remit to the Collector-General the amount of the tax, if any, which the person was so liable to deduct.”,

(b) by inserting the following after paragraph (b) of subsection (3A):

“(c) The Revenue Commissioners may make regulations with respect to the provision to them, by a principal or other person as is referred to in paragraph (a), of such information as may be specified in the regulations in relation to the constituent elements of the amount (if any) referred to in paragraph (a)(i).”.

(c) in subsection (3AA) by substituting “then subsection (3A) shall apply and have effect as if ‘23 days’ were substituted for ‘14 days’ ” for “then subsection (3A) shall apply and have effect as if ‘the 23rd day of an income tax month’

were substituted for ‘the 14th day of an income tax month’ ”,

(d) in subsection (3B)(b)—

(i) by substituting “return period or periods” for “income tax month or months” in both places where it occurs, and 5

(ii) by substituting “those return periods” for “those income tax months”,

(e) in subsection (6)(a)(i) by substituting “a period covering not more than 2 years of assessment” for “a year of assessment”, 10

(f) in subsection (10)(i) by substituting “return period or periods” for “income tax month or months” in both places where it occurs,

(g) in subsection (10)(ii)— 15

(i) by substituting “each return period” for “each income tax month”, and

(ii) by substituting “the return period” for “the income tax month”,

and 20

(h) by substituting the following for paragraph (f) of subsection (12):

“(f) Where a specified limit has been applied by them for a year of assessment in relation to a relevant payments card by virtue of paragraph (e), the Revenue Commissioners, either at the request of the subcontractor named on the card or otherwise, may, as they consider it appropriate, amend the limit by reducing, increasing or removing it.”. 25 30

Amendment of section 731 (chargeable gains accruing to unit trusts) of Principal Act.

30.—(1) Section 731 of the Principal Act is amended in subsection (5) by substituting the following for paragraph (a)—

“(a) (i) Where throughout a year of assessment all the issued units in a unit trust which neither is, nor is deemed to be, an authorised unit trust scheme (within the meaning of the Unit Trusts Act 1990) are assets such that if those units were disposed of by the unit holder any gain accruing would be wholly exempt from capital gains tax (otherwise than by reason of residence or by virtue of section 739(3)), then gains accruing to the unit trust in that year shall not be chargeable gains. 35 40

(ii) Where the trustees, or any persons duly authorised to act on their behalf, of a unit trust to which subparagraph (i) applies are satisfied that, throughout a year of assessment, all the issued units in the unit trust are assets referred to in 45

subparagraph (i), then they shall, in respect of that year of assessment, make a declaration to that effect.

(iii) The trustees, or any persons duly authorised to act on their behalf, of every unit trust to which subparagraph (i) applies shall in respect of each year of assessment, on or before 28 February in the year following the year of assessment, make a statement to the Revenue Commissioners in electronic format approved by them, which in respect of that year of assessment—

(I) states whether a declaration as referred to in subparagraph (ii) has, or has not, been made, and

(II) specifies in respect of each person who is a unit holder—

(A) the name and address of the person, and

(B) such other information as the Revenue Commissioners may require.

(iv) Where the trustees, or any persons duly authorised to act on their behalf, of a unit trust—

(I) make an incorrect or incomplete statement under subparagraph (iii), or

(II) fail, without reasonable excuse, to make such a statement,

then the trustees of that unit trust shall be liable to a penalty of €3,000. For the purposes of the recovery of a penalty under this subparagraph, section 1061 shall apply in the same manner as it applies for the purposes of the recovery of a penalty under any of the sections referred to in that section.”.

(2) This section shall apply for the year of assessment 2010 and subsequent years of assessment.

31.—(1) Part 27 of the Principal Act is amended—

(a) in section 739B by substituting the following for the definition of “qualifying management company”:

“ ‘qualifying management company’, in relation to an investment undertaking, means a company which, in the course of a trade of managing investments, manages the whole or any part of the investments and other activities of the business of the undertaking;”,

(b) in section 739D, by inserting the following subsection after subsection (7A):

“(7B) (a) A gain shall not be treated as arising to an investment undertaking on the happening of a chargeable event in respect of a unit holder

Amendment of Part 27 (unit trusts and offshore funds) of Principal Act.

where, immediately before the chargeable event, the investment undertaking is in possession of written notice of approval from the Revenue Commissioners to the effect that subsection (7) is deemed to have been complied with in respect of the unit holder, and that approval has not been withdrawn. 5

(b) The Revenue Commissioners may give to an investment undertaking the approval, referred to in paragraph (a), that subsection (7) is deemed to have been complied with— 10

(i) as respects any unit holder or class of unit holder, and

(ii) subject to such conditions as they consider necessary so as to satisfy themselves that, at the time the approval is granted, appropriate equivalent measures have been put in place by the investment undertaking to ensure that unit holders in that investment undertaking are not resident or ordinarily resident in the State. 15 20

(c) (i) The Revenue Commissioners may by notice in writing withdraw any approval given under paragraph (b) if an investment undertaking has failed to comply with any of the conditions subject to which the approval was given. 25

(ii) Where approval is withdrawn in accordance with subparagraph (i), paragraph (a) shall not apply from such date, and in respect of such unit holder or class of unit holder, as may be specified in the notice. 30

(d) The Revenue Commissioners may nominate in writing an inspector or other officer to perform any acts and discharge any functions authorised by this subsection to be performed or discharged by the Revenue Commissioners.”, 35

and

(c) by inserting the following after section 747F:

“CHAPTER 5 40

Relevant UCITS

Tax treatment
of relevant
UCITS.

747G.—(1) In this section—

‘management company’, in relation to a relevant UCITS, means a management company within the meaning of the relevant Directives; 45

‘relevant Directives’ means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009² on the

²OJ No. L302 of 17 November 2009, p.32

coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), and any Directive amending that Directive;

‘relevant profits’, in relation to a relevant UCITS, means the profits which would be relevant profits (within the meaning of section 739B) if the relevant UCITS were an investment undertaking (within the meaning of that section);

‘relevant UCITS’ means an undertaking for collective investment in transferable securities—

(i) to which the relevant Directives apply,

(ii) which is formed under the laws of any of the Member States of the European Union other than the State, and

(iii) (I) the management company of which is authorised under any laws of the State which implement the relevant Directives, and

(II) which, if the management company were not so authorised, would not be liable to tax in the State.

(2) Notwithstanding anything in the Tax Acts and the Capital Gains Tax Acts, a relevant UCITS shall not be chargeable to tax in respect of relevant profits.

(3) An interest in a relevant UCITS shall be treated for the purposes of this Part as an interest in a company, scheme or arrangement specified in section 743(1).”.

(2) This section comes into operation on the passing of this Act.

32.—(1) Section 1035A of the Principal Act is amended in subsection (1)—

Amendment of section 1035A (relieving provision to section 1035) of Principal Act.

(a) in the definition of “authorised agent” in paragraph (a)(ii) by substituting “revoked,” for “revoked, or”, in paragraph (b) by substituting “revoked, or” for “revoked,” and by inserting the following paragraph after paragraph (b):

“(c) a company—

(i) authorised under any laws of the State that implement the relevant Directives, and

- (ii) which carries on a trade which consists of or includes the management of unit trusts, common contractual funds or investment companies, or any combination thereof, each of which is a relevant UCITS,” 5

(b) in the definition of “investment business services” by substituting “1995;” for “1995.”, and

(c) after the definition of “investment business services” by inserting the following:

“ ‘relevant Directives’ means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009³ on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), and any Directive amending that Directive; 10 15

‘relevant UCITS’ means an undertaking for collective investment in transferable securities—

(i) to which the relevant Directives apply, and

(ii) which is formed under the laws of any of the Member States of the European Union other than the State.”. 20

(2) This section comes into operation on the passing of this Act.

Dividend
withholding tax.

33.—(1) The Principal Act is amended—

(a) in section 172D(3)(b) by substituting “where the declaration made is a current declaration (within the meaning of paragraph 2A of that Schedule)” for “in relation to which declaration each of the certificates referred to in clause (i), the certificate referred to in clause (ii) or, as the case may be, the certificate referred to in clause (iii), of subparagraph (f) of that paragraph is a current certificate (within the meaning of paragraph 2 of that Schedule)”, 25 30

(b) in section 172F(3)(a) by substituting the following for subparagraph (ii):

“(ii) a declaration made by that person in accordance with section 172D(3)— 35

(I) in relation to which the certificate referred to in paragraph 8(f) of Schedule 2A is a current certificate (within the meaning of paragraph 2 of that Schedule), or 40

(II) which is a current declaration (within the meaning of paragraph 2A of Schedule 2A),”,

(c) in section 172I—

45

³OJ No. L302 of 17 November 2009, p.32

- (i) in subsection (1) by inserting “, or by means of electronic communications,” after “in writing”,
- (ii) in subsection (1A)—
- (I) by inserting “or the recipient of a relevant distribution” after “to an intermediary”,
- (II) in paragraph (a) by inserting “delivered to an intermediary” after “the statement”, and
- (III) in paragraph (b) by inserting “or the recipient of the relevant distribution” after “the intermediary”,
- (d) in section 172J(4) by deleting “in writing”,
- (e) in paragraph 2 of Schedule 2A by deleting “or 9(f)”,
- (f) in Schedule 2A by inserting the following after paragraph 2:
- “Currency of certain declarations*
- 2A. A declaration referred to in paragraph 9 shall be treated as a current declaration for the period from the date of the making of the declaration to the 31st day of December in the fifth year following the year in which the declaration was made.”,
- (g) in paragraph 9 of Schedule 2A by substituting the following for subparagraph (e):
- “(e) contains—
- (i) the name and address of that company,
- (ii) the name of the territory in which the company is resident for the purposes of tax,
- (iii) in the case of a company within the meaning of section 172D(3)(b)(ii), the name of the relevant territory or names of the relevant territories, as the case may be, in which the person or persons who control (within the meaning of section 172D(4)(a)), whether directly or indirectly, the company is or are resident for the purposes of tax by virtue of the law of that territory or the laws of those territories, and
- (iv) in the case of a company within the meaning of section 172D(3)(b)(iii), the name and address of a recognised stock exchange on which the principal class of the shares of the company or
- (I) where the company is a 75 per cent subsidiary (within the meaning of section 172D(5)) of

another company, of that other company, or

- (II) where the company is wholly owned (within the meaning of section 172D(6)) by 2 or more companies, of each of those companies,

is substantially and regularly traded,”,

and

- (h) by deleting paragraph 9(f) of Schedule 2A.

(2) This section applies to—

- (a) relevant distributions, and
(b) declarations referred to in section 172D(3)(b),

made on or after the date of the passing of this Act.

Amendment of
section 175
(purchase of own
shares by quoted
company) of
Principal Act.

34.—(1) Section 175 of the Principal Act is amended—

- (a) in subsection (1) by inserting “where the redemption, repayment or purchase does not form 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” after “shares”,

(b) by inserting the following after subsection (1):

“(1A) (a) Where in any accounting period a quoted company makes a payment on the redemption, repayment or purchase of its own shares, the company shall, not later than 12 months from the end of the accounting period, give notice to the Collector-General, or such other officer of the Revenue Commissioners as may be authorised by them for the purposes of this subsection, of—

- (i) the payment, and
(ii) whether the payment is to be treated as not being a distribution by virtue of subsection (1).

(b) A notice under paragraph (a) shall be given by a company—

- (i) in the return required to be made under section 951 for the accounting period of the company in which the payment is made, or
(ii) in such manner and form as the Revenue Commissioners may prescribe.”,

and

- (c) in subsection (2) by substituting “subsections (1) and (1A)” for “subsection (1)”.

5 (2) This section applies to payments referred to in section 175 of the Principal Act which are made on or after 4 February 2010.

35.—(1) The Principal Act is amended—

- (a) by substituting the following for section 42:

“Exemption of
interest on
savings
certificates.

42.—(1) In this section—

10 ‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

15 ‘EEA State’ means a state which is a contracting party to the EEA Agreement;

‘relevant State’ means—

(i) a Member State of the European Union, or

20 (ii) not being such a Member State, an EEA State which is a territory with the government of which arrangements having the force of law by virtue of section 826(1) have been made.

25 (2) The accumulated interest payable in respect of any savings certificate issued by the Minister for Finance, or savings certificates or other similar securities issued by the Government of a relevant State pursuant to rules and conditions which correspond to the rules and conditions contained in regulations issued by the Minister for Finance, under which the purchaser, by virtue of an immediate payment of a specified sum, becomes entitled after a specified period to receive a larger sum consisting of the specified sum originally paid and accumulated interest on that specified sum, shall not be liable to tax so long as the amount of such certificates held by the person who is for the time being the holder of the certificate does not exceed the amount which that person is for the time being authorised to hold under regulations made by the Minister for Finance.”,

- (b) in subsection (1) of section 43 by substituting “resident” for “ordinarily resident”,

- (c) in subsection (4) of section 45 by substituting “resident” for “ordinarily resident”,

Amendment of Part
3 (provisions
relating to the
Schedule C charge
and government
and other public
securities) of
Principal Act.

- (d) in subsection (5) of section 48 by substituting “resident” for “ordinarily resident”, and
- (e) in section 49 by the substitution of the following for subsection (2):

“(2) Any stock or other security to which this section applies may be issued with a condition that neither the capital of nor the interest on the stock or other security shall be liable to tax so long as it is shown in the manner directed by the Minister for Finance that the stock or other security is in the beneficial ownership of persons who are not resident in the State, and accordingly as respects every such stock or other security issued, exemption from tax shall be granted.”.

(2) This section comes into force and takes effect as on and from 4 February 2010.

Amendment of
section 299
(allowances to
lessees) of Principal
Act.

36.—(1) Section 299 of the Principal Act is amended—

- (a) by substituting the following for subsection (1):

“(1) Subject to subsection (3), where machinery or plant is let by means of a finance lease (within the meaning of section 76D) to a person, by whom a trade is carried on, on the terms of that person being bound to maintain the machinery or plant and deliver it over in good condition at the end of the lease, and if the burden of the wear and tear of the machinery or plant in fact falls directly on that person, then, for the purposes of sections 283 and 284, the capital expenditure on the provision of the machinery or plant shall be deemed to have been incurred by that person and not by any other person and the machinery or plant shall be deemed to belong to that person and not to any other person.”.

and

- (b) by inserting the following after subsection (2):

“(3) (a) In this subsection ‘lease payments’, ‘lessee’ and ‘lessor’ have, respectively, the same meanings as in section 80A.

- (b) Subsection (1) shall only apply where—

- (i) the lessor and lessee jointly elect, or

- (ii) where the lessor is not a person within the charge to tax under Schedule D, the lessee elects,

that this section shall apply for the purposes of sections 283 and 284 by giving notice in writing to the inspector on or before the specified return date for the chargeable period (within the meaning of section 950) in a form approved by the Revenue Commissioners and containing such particulars relating to the lessor and lessee and in connection with the lease as may be specified in the approved form.

(c) Where this section applies—

(i) the amount to be deducted in computing the profits or gains to be charged to tax under Case 1 of Schedule D for any chargeable period of the lessee in relation to lease payments to be paid in respect of the finance lease, shall be the amount in respect of those lease payments which in accordance with generally accepted accounting practice would be deducted in a profit and loss account for that period, and accordingly, the aggregate amount (referred to in subparagraph (ii) as the ‘aggregate deductible amount’) to be deducted in computing the profits or gains to be charged to tax under Case 1 of Schedule D for any chargeable period of the lessee in relation to lease payments to be paid in respect of and over the term of the lease, shall be the amount in relation to those lease payments which in accordance with generally accepted accounting practice would be deducted in the profit and loss account over the term of the lease, and

(ii) where capital expenditure deemed to have been incurred by the lessee would otherwise exceed the amount by which the aggregate amount of lease payments to be paid in respect of the lease exceeds the aggregate deductible amount, then the amount of capital expenditure on the provision of plant and machinery for the purposes of subsection (1) shall be deemed to be the amount by which the aggregate amount of the lease payments made in respect of and over the term of the lease exceeds the aggregate deductible amount.”.

(2) This section applies to chargeable periods (within the meaning of Part 9 of the Principal Act) commencing on, or after, the passing of this Act.

37.—(1) Chapter 4 of Part 8 of the Principal Act is amended—

Amendment of
Chapter 4 (interest
payments by certain
deposit takers) of
Part 8 of Principal
Act.

(a) in section 256(1) by inserting the following definition after the definition of “pension scheme”:

“ ‘PRSA provider’ has the same meaning as in Part X of the Pensions Act 1990;”,

(b) in section 256(1) in paragraph (i) of the definition of “relevant deposit” by deleting “or”,

(c) in section 256(1) in paragraph (j) of the definition of “relevant deposit” by substituting “subsection (1B), or” for “subsection (1B);”,

(d) in section 256(1) in the definition of “relevant deposit” by inserting the following after paragraph (j):

“(k) which is made by, and the interest on which is beneficially owned by, a PRSA provider where the PRSA provider has provided the relevant deposit taker with the number assigned to that provider by the Revenue Commissioners;”,

(e) in section 256 by inserting the following after subsection (2):

“(3) As respects any specified deposits, the relevant deposit taker shall obtain the tax reference number (within the meaning of section 885) of the person making the deposit and the person making the deposit shall provide the tax reference number.”,

(f) in section 258(4) by substituting the following for paragraphs (a) and (b):

“(a) Notwithstanding subsection (3), a relevant deposit taker shall for each year of assessment pay an amount of appropriate tax to the Collector-General within 21 days of each of the following dates in that year of assessment—

(i) 31 March,

(ii) 30 June, and

(iii) 30 September.

(b) The amount to be paid—

(i) within 21 days of 31 March as referred to in paragraph (a)(i) shall not be less than the amount of appropriate tax which would be due and payable by the relevant deposit taker for the year of assessment concerned under subsection (3) if the total amount of the relevant interest which had accrued in the period commencing on 1 January and ending on 31 March,

(ii) within 21 days of 30 June as referred to in paragraph (a)(ii) shall not be less than the amount of appropriate tax which would be due and payable by the relevant deposit taker for the year of assessment concerned under subsection (3) if the total amount of the relevant interest which had accrued in the period commencing on 1 April and ending on 30 June, and

(iii) within 21 days of 30 September as referred to in paragraph (a)(iii) shall not be less than the amount of appropriate tax which would be due and payable by the relevant deposit taker for the year of assessment concerned under subsection (3) if the total amount of the relevant interest which had

accrued in the period commencing on 1
July and ending on 30 September,

in that year of assessment on all relevant
deposits held by the relevant deposit taker in
that period (and no more) had been paid by it
in that year of assessment.”,

(g) in section 259(4) by substituting the following for para-
graph (a):

“(a) (i) Subject to subparagraph (ii) and notwith-
standing section 258(3), a relevant deposit
taker shall for each year of assessment pay
to the Collector-General, within 21 days of
each of the dates referred to in subparagraphs
(i), (ii) and (iii) of section 258(4)(a)
(each of which dates, as the case may be,
is referred to in the Table to this subpara-
graph as the ‘relevant quarterly date’) in
that year of assessment, an amount on
account of appropriate tax which shall be
not less than the amount determined by
the formula set out in the Table to this
subparagraph, and any amount on account
of appropriate tax so paid by the relevant
deposit taker for a year of assessment shall
be treated as far as may be as a payment
on account of any appropriate tax due and
payable by it for that year of assessment
under section 258(3).

TABLE

$$\frac{A - (B - C)}{3}$$

where—

A is the amount of appropriate tax which
would be due and payable by the relevant
deposit taker for the year of assessment
(in this Table referred to as ‘the relevant
year’) in accordance with section 258(3) if
the total amount of the relevant interest
which had accrued in the period of 12
months ending on the relevant quarterly
date in the relevant year on all relevant
deposits held by the relevant deposit taker
in that period (and no more) had been
paid by it in the relevant year,

B is the amount of appropriate tax which was
due and payable by the relevant deposit
taker for the year of assessment preceding
the relevant year in accordance with
section 258(3), and

C is an amount equal to the lesser of the
amount at B and the amount treated, in
accordance with this subsection or section
258(4), as paid by the relevant deposit
taker on account of the appropriate tax

due and payable by it for the year of assessment preceding the relevant year.

- (ii) Notwithstanding section 258(3), the aggregate of the amounts on account of appropriate tax due in accordance with subparagraphs (i) and (iii) shall not, in any event, be less than the amount determined by the formula set out in the Table to this subparagraph. 5

TABLE 10

$$A - (B - C)$$

where—

A is the amount of appropriate tax which would be due and payable by the relevant deposit taker for the year of assessment (in this Table referred to as ‘the relevant year’) in accordance with section 258(3) if the total amount of the relevant interest which had accrued in the period of 12 months ending on 30 September in the relevant year on all relevant deposits held by the relevant deposit taker in that period (and no more) had been paid by it in the relevant year, 15 20

B is the amount of appropriate tax which was due and payable by the relevant deposit taker for the year of assessment preceding the relevant year in accordance with section 258(3), and 25

C is an amount equal to the lesser of the amount at B and the amount treated, in accordance with this subsection or section 258(4), as paid by the relevant deposit taker on account of the appropriate tax due and payable by it for the year of assessment preceding the relevant year. 30 35

- (iii) Where, for any year of assessment the amount computed in accordance with subparagraph (ii) exceeds the aggregate of the amounts computed in accordance with subparagraph (i), and without prejudice to the obligation to pay any amount computed in accordance with subparagraph (i), that excess shall be paid by the relevant deposit taker to the Collector-General within 21 days of 30 September in that year of assessment and shall be treated as far as may be as a payment on account of any appropriate tax due and payable by it for that year of assessment under section 258(3).”, 40 45 50

(h) in section 260(4) by substituting the following for paragraph (a):

5 “(a) in accordance with section 258(4) or 259(4), as
may be appropriate, a relevant deposit taker
makes a payment on account of appropriate
tax in respect of specified interest as if, in
relation to each specified deposit held by it,
the references—

10 (i) in section 258(4), to each of the periods
referred to in subparagraphs (i), (ii) and
(iii) of paragraph (b) of section 258(4) in
the year of assessment, were a reference
to the period beginning on the date on
which the specified deposit was made and
ending on each date referred to in subpar-
15 agraphs (i), (ii) and (iii) of section
258(4)(a), as the case may be, in the year
of assessment,

20 (ii) in section 259(4)(i), where it occurs in the
meaning assigned to ‘A’, to the period of
12 months ending on each of the dates
referred to in subparagraphs (i), (ii) and
(iii) of section 258(4)(a) in the relevant
year, were a reference to the period begin-
ning on the date on which the specified
deposit was made and ending on each date
referred to in subparagraphs (i), (ii) and
25 (iii) of section 258(4)(a), as the case may
be, in the year of assessment, and

30 (iii) in section 259(4)(ii), where it occurs in the
meaning assigned to ‘A’, to the period of
12 months ending on 30 September in the
relevant year, were a reference to the
period beginning on the date on which the
specified deposit was made and ending on
30 September in the year of assessment,

35 and”,

and

40 (i) in section 262 by substituting “shall furnish to every person
entitled to any relevant interest on a relevant deposit held
by the relevant deposit taker” for “shall, when requested
to do so by any person entitled to any relevant interest
on a relevant deposit held by the relevant deposit taker,
furnish to that person,”.

45 (2) (a) *Paragraphs (a) to (d) of subsection (1) apply as respects
any payment or crediting of relevant interest (within the
meaning of Chapter 4 of Part 8 of the Principal Act)
made on or after the date of the passing of this Act.*

(b) *Paragraph (e) of subsection (1) applies on and from the
passing of this Act.*

50 (c) *Paragraphs (f) to (i) of subsection (1) come into operation
on such day or days as the Minister for Finance may
appoint by order or orders appoint and different days
may be appointed for different purposes or different
provisions.*

Amendment of section 481 (relief for investment in films) of Principal Act.

38.—The Principal Act is amended in section 481—

- (a) in subsection (3) by deleting “an amount equal to 125 per cent of the amount” and substituting “the amount”, and
- (b) in subsection (8) by deleting “125 per cent of the relevant deduction” and substituting “the amount of the relevant deduction”. 5

Specified financial transactions.

39.—The Principal Act is amended by inserting the following after Part 8—

“PART 8A

SPECIFIED FINANCIAL TRANSACTIONS 10

CHAPTER 1

Interpretation

Interpretation. 267N.—(1) For the purpose of this Part—

‘asset’ has the same meaning as in section 532;

‘charges on income’ has the same meaning as in 15
section 243;

‘credit return’ means—

- (a) in the case of a credit transaction within the meaning of paragraph (a) or (b) of the definition of ‘credit transaction’, 20
the excess of the consideration accruing to the finance undertaking from the borrower in respect of the asset over the consideration paid or payable by the finance undertaking for that asset, 25
and

- (b) in the case of a credit transaction within the meaning of paragraph (c) of the definition of ‘credit transaction’, the 30
excess of the consideration (including any consideration paid or payable for the use of the asset during the period of the arrangement) accruing to the finance undertaking from the borrower 35
in respect of the interest of the finance undertaking in the asset over the consideration paid or payable by the finance undertaking for that asset;

‘credit transaction’ means—

- (a) an arrangement whereby a finance 40
undertaking acquires an asset for the purpose of disposing of the full interest in that asset to a borrower in circumstances where—

(i) the consideration paid or payable by the borrower exceeds the consideration paid or payable by the finance undertaking for the asset,

(ii) all or part of that consideration is not required to be paid until a date later than the date of the disposal, and

(iii) the excess of the consideration paid or payable to the finance undertaking by the borrower in respect of the asset over the consideration paid or payable by the finance undertaking for the asset is equivalent to the return on a loan of money at interest,

(b) an arrangement whereby a finance undertaking acquires an asset and—

(i) immediately disposes of its full interest in that asset to a borrower for a consideration which exceeds the consideration paid or payable by the finance undertaking for the asset,

(ii) the borrower acquires and immediately disposes of the full interest in that asset to another person for a consideration which is at least 95 per cent of the consideration paid or payable by the finance undertaking for the acquisition of that asset,

(iii) all or part of the consideration for the acquisition of the asset by the borrower is not required to be paid by the borrower until a date later than the date of the purchase of the asset, and

(iv) the excess of the consideration paid or payable to the finance undertaking by the borrower in respect of the asset over the consideration paid or payable by the finance undertaking for the asset is equivalent to the return on a loan of money at interest,

or

(c) an arrangement whereby—

(i) a finance undertaking and a borrower jointly acquire an asset, or

- (ii) a finance undertaking acquires an interest in an asset from a borrower, in circumstances where the borrower retains an interest in that asset, 5

on terms whereby—

- (I) the borrower—

- (A) in the circumstances referred to in subparagraph (i) has exclusive use of the asset 10 immediately and, in the circumstances referred to in subparagraph (ii), retains exclusive use of the asset 15 immediately, as the case may be,

- (B) is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including any increase 20 in the value of the asset), and

- (C) agrees to make payments to the finance undertaking amounting to the aggregate of the consideration paid or 25 payable by the finance undertaking for the acquisition of its interest in the asset and any consideration paid or 30 payable by the borrower for the use of the asset during the period of the arrangement,

- (II) the excess of the consideration (including any consideration paid or payable for the use of the asset 35 during the period of the arrangement) accruing to the finance undertaking from the borrower in respect of the interest of the finance undertaking in the 40 asset over the consideration paid or payable by the finance undertaking for the asset is equivalent to the return on a loan of money at interest, and 45

- (III) the finance undertaking's interest in the asset passes either immediately or by the end of a specified period of time, to the borrower for a consideration which exceeds the 50 consideration paid by the finance undertaking for the asset;

‘deposit transaction’ means a transaction whereby—

5 (a) a person deposits a sum of money with a relevant deposit taker on terms under which it or any part of it may be repaid, either on demand or at a time or in circumstances agreed by or on behalf of the person making the deposit and the relevant deposit taker,

10 (b) the relevant deposit taker makes or credits a payment or a series of payments (in this Part referred to as the 'deposit return') over a period of time to the person—

(i) out of any profit resulting from the use of that money, and

15 (ii) in proportion to the money deposited by the person;

'finance company' means a company whose income consists of either or both of the following—

20 (a) income from the leasing of plant and machinery, and

(b) income from the carrying on of specified financial transactions;

25 'financial institution' has the same meaning as in section 891B;

'finance undertaking' means a finance company or a financial institution;

'investment certificate' means a security which—

30 (a) is issued by a qualifying company to a person in order to establish the claim of that person over the rights and obligations represented by the certificate,

35 (b) entitles the owner to an amount equivalent to a share in the profits or losses derived from an asset held by the qualifying company which issued the certificate, in proportion to the number and value of the certificates owned,

40 (c) is issued to the public, and

45 (d) is wholly or partly treated in accordance with generally accepted accounting practice as a financial liability of the qualifying company which issued the certificate;

'investment return' means—

(a) the excess (if any) of the consideration paid by the qualifying company on

redemption of an investment certificate over the consideration paid in respect of that certificate by the beneficial owner to whom the certificate was first issued, and 5

- (b) any other payments (if any) made from time to time by the qualifying company to the beneficial owner from profits or gains derived by the qualifying company from the asset and in consideration of the holding of the investment certificate; 10

‘investment transaction’ means a transaction whereby a person acquires investment certificates and receives an investment return; 15

‘loan’ means any loan or advance or any other arrangement whatever by virtue of which an amount equivalent to interest is paid or payable;

‘owner’, in relation to any security, means at any time the person who would be entitled, if the securities were redeemed at that time by the issuer, to the proceeds of the redemption, and ‘owned’ shall be construed accordingly; 20

‘public’ means individuals generally, companies generally, or individuals and companies generally; 25

‘qualifying company’ means a company which—

- (a) is resident in the State,
- (b) issues investment certificates to investors, and
- (c) redeems the investment certificates after a specified period of time; 30

‘relevant deposit’, ‘relevant deposit taker’ and ‘relevant interest’ have, respectively, the meanings assigned to them by section 256;

‘specified financial transaction’ means— 35

- (a) a credit transaction,
- (b) a deposit transaction, or
- (c) an investment transaction,

but a transaction shall not be a specified financial transaction if the terms of the transaction are not such as would reasonably have been expected if the parties to the transaction were independent persons acting at arm’s length. 40

(2) Any reference in this Part to consideration— 45

(a) paid or payable by a borrower or a finance undertaking shall be construed as a reference to the aggregate of amounts paid or payable by the borrower or finance undertaking, as the case may be,

(b) shall not include any amount in respect of which a borrower or a finance undertaking may claim—

(i) a deduction under section 12 of the Value-Added Tax Act 1972, or

(ii) a refund of value-added tax under an order under section 20(3) of that Act,

and

(c) shall not include any amount chargeable by a finance undertaking in respect of fees, charges or similar payments.

CHAPTER 2

Credit Return

Treatment of
credit return.

267O.—(1) Subject to section 130, a credit return shall be treated for all the purposes of the Tax Acts as if it were interest paid or payable, as the case may be, on a loan made by the finance undertaking to the borrower, or a security issued by the borrower to the finance undertaking, as the case may be, and the return shall be chargeable to tax accordingly.

(2) The amount of the credit return shall not be regarded as expenditure on an asset for the purpose of an allowance under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9.

(3) The amount of the credit return shall not be regarded as expenditure on an asset for the purpose of section 552.

Treatment of
credit
transaction.

267P.—(1) A reference to a loan in section 122 or in Part 8 shall be deemed to include a reference to a credit transaction.

(2) Acquisitions and disposals of an asset by the finance undertaking for the purpose of a credit transaction, within the meaning of paragraph (a) or (b) of the definition of ‘credit transaction’ in section 267N shall, where the finance undertaking is carrying on a trade which consists of or includes specified financial transactions, be regarded as made in the course of that trade.

(3) The borrower shall not be treated as having incurred a loss, for any purpose of the Tax Acts,

on the disposal of the asset in the circumstances referred to in paragraph (b)(ii) of the definition of ‘credit transaction’ in section 267N.

(4) The finance undertaking shall not be entitled to any allowance under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9, in respect of expenditure incurred on assets acquired for the purpose of entering into a credit transaction.

(5) Where an asset is acquired by a borrower under a credit transaction, in the circumstances referred to in paragraph (c)(i) of the definition of ‘credit transaction’ in section 267N, the borrower shall be deemed to have acquired the full interest in that asset for the purpose of claiming any allowance under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9.

(6) The disposal of the borrower’s interest in the asset to the financial undertaking, in the circumstances referred to in paragraph (c)(ii) of the definition of ‘credit transaction’ in section 267N, shall not be construed as an event giving rise to an allowance or charge, as the case may be, within the meaning of section 274 or 288.

(7) The acquisition of an asset by the borrower, in the circumstances referred to in paragraph (c)(III) of the definition of ‘credit transaction’ in section 267N, shall not be construed as expenditure on an asset for the purpose of claiming any allowance under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9.

(8) Except in respect of a claim to any allowance referred to in subsection (5), no part of the consideration paid or payable by the borrower to the finance undertaking, other than an amount equal to the credit return, may be treated by the borrower as an amount which may be deducted in the computation of the profits or gains to be charged to tax under Schedule D.

CHAPTER 3

Deposit Return

Treatment of deposit return. 267Q.—Subject to section 130, a deposit return shall be treated for all the purposes of the Tax Acts as if it were relevant interest paid on a deposit of money and for this purpose—

(a) Chapter 4 of Part 8 shall apply to the deposit return as if it were relevant interest on a relevant deposit, and

- (b) the relevant deposit taker shall not be regarded as carrying on a trade in partnership with the beneficial owner of the deposit for the purposes of Part 43 merely by virtue of the deposit arrangement.

CHAPTER 4

Investment Certificates and Returns

Treatment of investment return. 267R.—Subject to section 130, the Tax Acts shall apply to an investment return as if that investment return were interest on a security and the return shall be chargeable to tax accordingly.

Treatment of certificate owner. 267S.—(1) For the purposes of the Tax Acts, the owner of the investment certificate shall not be regarded as having a legal or beneficial interest in the assets held by the qualifying company.

(2) Income, profits, gains or losses arising from or attributable to the assets held by the qualifying company (including any increase or decrease in the value of the asset) shall be income, profits, gains or losses, as the case may be, of the qualifying company and the qualifying company shall be chargeable to corporation tax accordingly.

(3) The owner of the investment certificate shall not be entitled to an allowance under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9 in respect of expenditure on the assets held by the qualifying company.

CHAPTER 5

Reporting

Reporting. 267T.—Part 38 in so far as it relates to the reporting of interest payments shall apply to a deposit return, a credit return or an investment return as if that return were an interest payment.

CHAPTER 6

Application

Application. 267U.—(1) This Part shall apply to a specified financial transaction between a finance undertaking or a qualifying company, as the case may be, and another person where the finance undertaking or the qualifying company, as the case may be, makes an election in writing to the inspector (within the meaning of section 950).

(2) An election under this section—

- (a) shall be made in a form approved by the Revenue Commissioners and containing such particulars relating to the finance undertaking or the qualifying

company, as the case may be, and the transaction as may be specified in that form, and

- (b) may be made either in respect of an individual transaction or in respect of a series of transactions of a similar nature.

(3) Where an election is made in accordance with this section—

- (a) this Part shall apply to that transaction or series of transactions, and

- (b) the finance undertaking or the qualifying company, as the case may be, shall notify any borrower or owner, as the case may be, who is a party to a specified financial transaction, that the transaction is a specified financial transaction.

Transactions to avoid tax.

267V.—This Part shall not apply to any transaction unless that transaction has been undertaken for *bona fide* commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to income tax, corporation tax, capital gains tax, value-added tax, stamp duty or capital acquisitions tax.”.

Interest payments to residents in relevant territories.

40.—(1) The Principal Act is amended in section 198—

- (a) in subsection (1)(a) by substituting the following for the definition of “arrangements”:

“ ‘arrangements’ means arrangements having the force of law by virtue of section 826(1) or arrangements made with the government of a territory which on completion of the procedures set out in section 826(1) will have the force of law;”,

- (b) in the definition of “relevant territory”—

- (i) in paragraph (i) by inserting “or” after “the State,”,

- (ii) in paragraph (ii) by deleting “made, or” and inserting “made;”, and

- (iii) by deleting paragraph (iii),

- (c) in subsection (1)(b)(i) by inserting “and have effect in accordance with the provisions of those arrangements” after “have been made”, and

- (d) by substituting the following for subsection (1)(c)(ii):

“(ii) a company shall not be chargeable to income tax in respect of interest paid by a relevant person (within the meaning of

section 246) in the ordinary course of a trade or business carried on by that person—

(I) if the company is not resident in the State but is regarded for the purposes of this subsection as being a resident of a relevant territory which imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory, or

(II) where the interest—

(A) is exempted from the charge to income tax under arrangements made with the government of a territory outside the State having the force of law under the procedures set out in section 826(1), or

(B) would be exempted from the charge to income tax if arrangements made, on or before the date of payment of the interest, with the government of a territory outside the State, that do not have the force of law under the procedures set out in section 826(1), had the force of law when the interest was paid.”.

(2) The Principal Act is amended in section 246(3) by substituting the following for paragraph (h)—

“(h) interest, other than interest referred to in paragraphs (a) to (g), paid by a relevant person in the ordinary course of a trade or business carried on by that person to a company—

(I) which, by virtue of the law of a relevant territory, is resident in the relevant territory for the purposes of tax and that relevant territory imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory, or

(II) where the interest—

(A) is exempted from the charge to income tax under arrangements made with the government of a territory outside the State having the force of law under the procedures set out in section 826(1), or

(B) would be exempted from the charge to income tax if arrangements made, on or before the date of payment of the interest, with the government of a territory outside the State, that do not

have the force of law under the procedures set out in section 826(1), had the force of law when the interest was paid,

except where such interest is paid to that company in connection with a trade or business which is carried on in the State by that company through a branch or agency.”. 5

(3) This section applies to interest paid on or after the date of passing of this Act, other than interest paid under an agreement entered into before that date. 10

Credit for foreign tax.

41.—(1) Section 71 of the Principal Act is amended by inserting the following after subsection (3):

“(3A) (a) In this subsection ‘foreign tax’ means a tax chargeable and payable under the law of a territory other than the State which corresponds to income tax or corporation tax. 15

(b) Where income arising outside the State is chargeable to tax under Case III of Schedule D and a payment is made under the law of a territory other than the State to the person in receipt of the income by reference to foreign tax paid by another person, then the amount of income so chargeable shall be increased by an amount equal to the amount of the payment.”. 20

(2) Schedule 24 to the Principal Act is amended in paragraph 9A— 25

(a) in subparagraph (3) by substituting “subparagraphs (3B) and (5)” for “subparagraph (5)”,

(b) by inserting the following after subparagraph (3A):

“(3B) Where a payment is made under the law of a territory other than the State to any person by reference to tax paid under the law of a territory other than the State in relation to a relevant dividend paid by a company, then the amount of the credit to be allowed under subparagraph (3) against corporation tax attributable to the profits represented by the dividend shall be reduced by an amount equal to the amount of the payment.”. 30 35

and

(c) in subparagraph (4) by substituting “subparagraphs (3) and (3B)” for “subparagraph (3)”. 40

(3) This section applies to income and dividends received on or after 4 February 2010.

Transfer pricing.

42.—(1) The Principal Act is amended by inserting the following after Part 35:

“PART 35A

TRANSFER PRICING

Interpretation. 835A.—(1) In this Part—

5 ‘arrangement’ means any agreement or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable);

‘authorised officer’ means an officer of the Revenue Commissioners authorised by them in writing for the purposes of this Part;

10 ‘chargeable period’ has the same meaning as in section 321(2);

15 ‘Commission Recommendation’ means Commission Recommendation 2003/361/EC of 6 May 2003⁴ concerning the definition of micro, small and medium-sized enterprises;

‘double taxation relief arrangements’ means arrangements having effect by virtue of section 826;

20 ‘group’ means a company which has one or more 75 per cent subsidiaries together with those subsidiaries;

‘relevant activities’, in relation to a person who is one of the persons between whom an arrangement is made, means that person’s activities—

25 (a) which comprise the activities in the course of which, or with respect to which, that arrangement is made, and

30 (b) which are not activities carried on either separately from the activities referred to in paragraph (a) or for the purpose of a different part of that person’s business;

35 ‘relevant person’, in relation to an arrangement, means a person who is within the charge to tax under Case I or II of Schedule D in respect of profits or gains or losses, the computation of which profits or gains or losses takes account of the results of the arrangement;

‘tax’ means income tax or corporation tax.

40 (2) References in this Part to ‘control’, in relation to a company, shall be construed in accordance with section 11.

Meaning of associated. 835B.—(1) For the purposes of this Part—

45 (a) 2 persons are associated at any time if at that time—

⁴OJ No. L124, 20.05.2003, p.36

- (i) one of the persons is participating in the management, control or capital of the other, or
- (ii) the same person is participating in the management, control or capital of each of the 2 persons, 5

and

- (b) a person (in this paragraph referred to as the 'first person') is participating in the management, control or capital of another person at any time only if that other person is at that time— 10

- (i) a company, and
- (ii) controlled by the first person.

- (2) (a) For the purposes of this section a company shall be treated as controlled by an individual if it is controlled by the individual and persons connected with the individual. 15

- (b) For the purposes of this subsection a person is connected with an individual if that person is a relative (within the meaning of section 433(3)(a)) of that individual. 20

Basic rules on transfer pricing. 835C.—(1) Subject to this Part, this section applies to any arrangement— 25

- (a) involving the supply and acquisition of goods, services, money or intangible assets,
- (b) where, at the time of the supply and acquisition, the person making the supply (in this Part referred to as the 'supplier') and the person making the acquisition (in this Part referred to as the 'acquirer') are associated, and 30 35
- (c) the profits or gains or losses arising from the relevant activities are within the charge to tax under Case I or II of Schedule D in the case of either the supplier or the acquirer or both. 40

- (2) (a) If the amount of the consideration payable (in this Part referred to as the 'actual consideration payable') under any arrangement to which this section applies exceeds the arm's length amount, then the profits or gains or losses of the acquirer that are chargeable to tax under Case I or II of Schedule D shall be computed as if the arm's length amount were payable instead of the actual consideration payable. 45 50

(b) If the amount of the consideration receivable (in this Part referred to as the ‘actual consideration receivable’) under any arrangement to which this section applies is less than the arm’s length amount, then the profits or gains or losses of the supplier that are chargeable to tax under Case I or II of Schedule D shall be computed as if the arm’s length amount were receivable instead of the actual consideration receivable.

(3) For the purposes of this section the ‘arm’s length amount’ in relation to an arrangement is the amount of the consideration that independent parties would have agreed in relation to the arrangement had those independent parties entered into that arrangement.

Principles for
construing
rules in
accordance
with OECD
Guidelines.

835D.—(1) In this section—

‘Article 9(1) of the OECD Model Tax Convention’ means the provisions which, at the date of the passing of the *Finance Act 2010*, were contained in Article 9(1) of the Model Tax Convention on Income and Capital published by the OECD;

‘OECD’ means the Organisation for Economic Cooperation and Development;

‘transfer pricing guidelines’ means the guidelines approved on 13 July 1995 by the Council of the OECD (in this definition referred to as the ‘OECD Council’) as its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations—

(a) supplemented by—

(i) the report on intangible property and services noted by the OECD Council on 11 April 1996,

(ii) the report on cost contribution arrangements noted by the OECD Council on 24 July 1997, and

(iii) such additional guidance, published by the OECD on or after the date of the passing of the *Finance Act 2010*, as may be designated by the Minister for Finance for the purposes of this Part by order made under subsection (3),

and

(b) modified by updates approved by the OECD Council on 16 July 2009.

(2) For the purpose of computing profits or gains or losses chargeable to tax under Case I or

II of Schedule D, this Part shall be construed to ensure, as far as practicable, consistency between—

(a) the effect which is to be given to section 835C, and 5

(b) the effect which, in accordance with the transfer pricing guidelines, would be given if double taxation relief arrangements incorporating Article 9(1) of the OECD Model Tax Convention applied 10 to the computation of the profits or gains or losses, regardless of whether such double taxation relief arrangements actually apply,

but this section shall not apply for the purposes of 15
construing this Part to the extent that such application of the section would be contrary to the provisions of double taxation relief arrangements that apply to the computation of those profits or gains 20
or losses.

(3) The Minister for Finance may, for the purposes of this Part, by order designate any additional guidance referred to in paragraph (a)(iii) of the definition of ‘transfer pricing guidelines’ in subsection (1) as being comprised in the 25
transfer pricing guidelines.

(4) Every order made by the Minister for Finance under subsection (3) shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil 30
Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously 35
done thereunder.

Small or
medium-sized
enterprise.

835E.—(1) This Part does not apply in computing for any chargeable period the profits or gains or losses of a person if that person is a small or medium-sized enterprise for that chargeable 40
period.

(2) For the purposes of this section ‘small or medium-sized enterprise’ means an enterprise which would fall within the category of micro, small and medium-sized enterprises as defined in the Annex to the Commission Recommendation 45
(in this section referred to as the ‘Annex’) if—

(a) in the case of an enterprise which is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) were left out 50
of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Part whether—

(i) that enterprise, or

(ii) any other enterprise (including that of the liquidator or administrator),

is a small or medium-sized enterprise,

(b) Article 3 of the Annex had effect with the omission of paragraph 5 of that Article,

(c) the first sentence of Article 4(1) of the Annex had effect as if the data to apply to—

(i) the headcount of staff, and

(ii) the financial amounts,

were the data relating to the chargeable period referred to in subsection (1) (instead of the period described in the said first sentence of Article 4(1) of the Annex) and calculated on an annual basis, and

(d) Article 4 of the Annex had effect with the omission of the following provisions—

(i) the second sentence of paragraph 1 of that Article,

(ii) paragraph 2 of that Article, and

(iii) paragraph 3 of that Article.

Document-
ation and
enquiries.

835F.—(1) A relevant person in relation to an arrangement to which section 835C(1) applies shall have available such records as may reasonably be required for the purposes of determining whether, in relation to the arrangement, the income of the person chargeable to tax under Case I or II of Schedule D has been computed in accordance with this Part.

(2) The records referred to in subsection (1) shall be prepared on a timely basis and subsection (3) of section 886 shall apply to such records as it applies to records required by that section.

(3) Sections 900 and 901 shall apply to records referred to in subsection (1) as if they were books, records or documents within the meaning of section 900 and as if the reference to an authorised officer in section 900 were a reference to an authorised officer within the meaning of section 835A(1).

(4) Notwithstanding any other provisions of the Tax Acts, enquiries relating to compliance with this Part may only be initiated by an authorised officer.

Elimination of
double
counting.

835G.—(1) Where—

- (a) the profits or gains or losses of a person (in this section referred to as the ‘first-mentioned person’), that are chargeable to tax under Case I or II of Schedule D, are, by virtue of section 835C, computed as if, instead of the actual consideration payable or receivable under the terms of an arrangement, the arm’s length amount in relation to that arrangement were payable or receivable as the case may be, and
- (b) the other party (in this section referred to as the ‘affected person’) to the arrangement is within the charge to tax under Schedule D in respect of the profits or gains or losses arising from the relevant activities,

then, subject to subsections (2) and (3), on the making of a claim by the affected person, the profits or gains or losses of the affected person arising from the relevant activities that are chargeable to tax under Schedule D shall be computed as if, instead of the actual consideration receivable or payable by the affected person under the terms of the arrangement, the arm’s length amount (determined in accordance with section 835C) in relation to that arrangement were receivable or payable as the case may be.

- (2) (a) Subsection (1) shall not affect the credits to be brought into account by the affected person in respect of closing trading stocks, for any chargeable period.
- (b) For the purposes of this subsection ‘trading stock’, in relation to a trade, has the same meaning as it has for the purposes of section 89.

(3) Subsection (1) shall not apply in relation to an arrangement unless and until the tax due and payable by the first-mentioned person for the chargeable period, in respect of which the profits or gains or losses are, by virtue of section 835C, computed as if, instead of the actual consideration payable or receivable under the terms of an arrangement, the arm’s length amount in relation to that arrangement were payable or receivable, as the case may be, has been paid.

(4) Where the profits or gains of an affected person are reduced by virtue of subsection (1) then the amount of foreign tax (if any) for which relief may be given under any double taxation relief arrangements or paragraph 9DA or 9FA of Schedule 24 shall be reduced by the amount of foreign tax which would not be or have become payable if, for the purposes of that tax, instead of the actual consideration payable or receivable

under the terms of any arrangement to which sub-section (1) applies, the arm's length amount (determined in accordance with section 835C) in relation to that arrangement were payable or receivable by the affected person as the case may be.

(5) (a) Where, in relation to an arrangement—

(i) the persons, who apart from this paragraph would be the affected person and the first-mentioned person, are members of the same group,

(ii) the arrangement is comprised of activities within the meaning of paragraph (a) of the definition of 'excepted operations' in section 21A, and

(iii) the persons referred to in subparagraph (i) jointly elect that this section shall apply,

then section 835C and this section shall not apply in relation to that arrangement.

(b) An election under paragraph (a) shall be made by notice in writing to the inspector on or before the specified return date for the chargeable period (within the meaning of section 950) for the chargeable period of the person who, apart from paragraph (a), would be the first-mentioned person, and the notice shall set out the facts necessary to show that the persons referred to in paragraph (a)(i) are entitled to make the election.

(6) Any adjustments required to be made by virtue of this section may be made by the making of, or the amendment of, an assessment.

Capital allowances.

835H.—Section 835C shall not apply in computing any deductions or additions to be made in taxing a trade under the provisions of the Tax Acts which relate to allowances and charges in respect of capital expenditure.”.

(2) This section applies for chargeable periods beginning on or after 1 January 2011 in relation to any arrangement (within the meaning of section 835A(1) (inserted by this section) of the Principal Act) other than any such arrangement the terms of which are agreed before 1 July 2010.

Corporation Tax

Intangible assets,
etc.

43.—(1) The Principal Act is amended—

(a) in section 288(3C) by substituting “10 years” for “15 years”, 5

(b) in section 291—

(i) in subsection (1) by substituting “Subject to subsection (3), where a person carrying on a trade has incurred” for “Where a person carrying on a trade incurs”, and 10

(ii) in subsection (2)—

(I) by substituting “Subject to subsection (3), in any case where” for “In any case where”,

(II) in paragraph (a) by substituting “has incurred” for “incurs”, and 15

(III) in paragraph (b) by substituting “having incurred” for “incurring”,

(c) in section 291 by inserting the following after subsection (2):

“(3) Subject to subsection (4), where the person is a 20
company, this section shall operate as if computer software
or a right to use or otherwise deal with computer software
were construed as being any such software or any such
right—

(a) which is provided for computer systems or pro- 25
cesses or computer operated machinery or
equipment for use in the operation of the trade
carried on by the company, and

(b) (i) the provision of which does not limit or 30
restrict the person from whom the com-
pany acquired the software or the right
in—

(I) the use of that software or exercise of
that right, or

(II) the provision of that software or grant- 35
ing of that right to other persons,

or

(ii) which is not provided for activities of man-
aging, developing or exploiting that
software or that right for the purposes of 40
receiving a royalty or other sum in respect
of the use of that software or the exercise
of that right by other persons.

5 (4) (a) Subject to paragraph (b), where a company elects in writing, subsection (3) shall not apply to expenditure, specified in the election, incurred by it after 4 February 2010 and before 4 February 2012 on computer software or on a right to use or otherwise deal with computer software.

10 (b) An election under paragraph (a) shall be made in the return required to be made under section 951 for the accounting period of the company in which the expenditure is incurred and shall not be made later than 12 months from the end of the accounting period in which the capital expenditure, giving rise to the claim, is incurred.”,

15 (d) in section 291A(1) in the definition of “specified intangible asset” by inserting the following after paragraph (c):

20 “(ca) computer software or a right to use or otherwise deal with computer software other than such software or such right construed in accordance with section 291(3),”

(e) in section 291A(1) in the definition of “specified intangible asset” by inserting the following after paragraph (f):

25 “(fa) any application for the grant or registration of anything within paragraphs (a) to (f),”

(f) in section 291A(1) in the definition of “specified intangible asset” by substituting the following for paragraph (g):

30 “(g) secret processes or formulae or other secret information concerning industrial, commercial or scientific experience, whether protected or not by patent, copyright or a related right, including know-how within the meaning of section 768,”

35 (g) in section 291A(1)(h) by inserting “, but this paragraph does not relate to a licence within the meaning of section 2 of the Intoxicating Liquor Act 2008” after “intended”,

(h) in section 291A(2) by substituting “has incurred” for “incurs”,

(i) in section 291A(3)—

40 (i) in paragraph (a) of the construction of “A” in the formula in that subsection by substituting “amortisation and any impairment” for “amortisation or depreciation”, and

45 (ii) in the construction of “B” in the formula in that subsection by substituting “amortisation and any impairment” for “amortisation or depreciation”,

and

- (j) in section 291A(5) by substituting the following for paragraph (a):

“(a) In relation to the activities of a company carried on as part of a trade— 5

(i) the whole of such activities, if any, that—

(I) comprise the sale of goods or services which are goods or services that derive the greater part of their value from, or 10

(II) consist of managing, developing or exploiting,

a specified intangible asset or specified intangible assets in respect of which allowances under this Chapter have been made 15 to the company, and

(ii) such parts of other such activities, if any, being parts that—

(I) consist of managing, developing or exploiting such assets, or 20

(II) contribute to the value of goods or services by using such assets,

are referred to in paragraph (b) as ‘relevant activities’ and shall be treated for the purposes of the Tax Acts, other than any provisions of 25 those Acts relating to the commencement or cessation of a trade, as a separate trade (in paragraph (b) and subsection (6) referred to as a ‘relevant trade’) which is distinct from any other trade or part of a trade carried on by the 30 company.”.

- (2) (a) *Paragraphs (a) to (f) and (h) to (j) of subsection (1) apply to expenditure incurred by a company after 4 February 2010.*

- (b) *Paragraph (g) of subsection (1) has effect as respects any 35 allowance to be made for an accounting period commencing on or after 1 January 2010.*

“SCHEDULE 4A

TABLE

	(Class of Technology)	(Description)	(Minimum Amount)
5	(1)	(2)	(3)
10	Motors and Drives	<i>Motor:</i> An electric motor with a power rating of 1.1kW or greater, either standalone or as part of other equipment, meeting a specified efficiency standard.	€1,000
15		<i>Variable speed drive:</i> A drive that is specifically designed to drive an electric motor in a manner that rotates the motor's drive shaft at a variable speed dictated by an external signal.	
20	Lighting	Lighting units, comprising fittings, lamps, and associated control gear, that meet specified efficiency criteria, or lighting control systems designed to improve the efficiency of lighting units. Includes occupancy sensors and high efficiency signs.	€3,000
25			
30	Building Energy Management Systems	Computer-based systems, designed primarily to monitor and control building energy use with the aim of optimising energy efficiency and meeting specified efficiency standards.	€5,000
35			
40	Information and Communications Technology (ICT)	<i>High Efficiency Enterprise ICT Hardware and Software:</i> ICT infrastructure hardware or software systems for business applications specifically designed to achieve very high levels of energy efficiency and that meet specified efficiency criteria.	€1,000
45			
50			
55			
60	Heating and Electricity Provision	<i>Advanced Heating and Electricity Generation:</i> Equipment for generating heat or electricity or both, with the resulting energy stream intended primarily for on-site use and that meet specified efficiency criteria.	€1,000
65			

(Class of Technology) (1)	(Description) (2)	(Minimum Amount) (3)	
	<i>Energy Saving Control Systems:</i> Systems specifically designed to maximise energy efficiency of new or existing efficient heating or electricity generation equipment or both and that meet specified efficiency criteria.		5
Process and Heating, Ventilation and Air-conditioning (HVAC) Control Systems	<i>Efficient Heat Conservation and Recovery:</i> Equipment or systems or both specially designed to control, conserve or recover any generated heating and cooling energy and that meet specified efficiency criteria. <i>Advanced Liquid and Gas Handling Equipment:</i> Equipment for energy-efficient on-site transfer of liquid or gas or both, meeting specified efficiency criteria. Includes very high efficiency pumps, fans, blowers and other liquid/gas handling equipment.	€1,000	10
			15
			20
			25
Electric and Alternative Fuel Vehicles	<i>Electric Vehicles and Associated Charging Equipment:</i> Electric and part electric vehicles with a motor size >1kW, and relevant required charging equipment, that meet specified efficiency criteria. <i>Alternative Energy Vehicle Conversions:</i> Equipment for the conversion to 100% bio-fuel for existing commercial diesel vehicles, that meet specified efficiency criteria.	€1,000	30
			35
			40
Refrigeration and Cooling Systems	<i>Efficient Industrial Refrigeration and Cooling:</i> Equipment specifically designed to achieve very high operational refrigeration or cooling efficiencies in industrial and commercial applications and that meet specified efficiency criteria. <i>Energy Saving Control Systems:</i> Systems specifically designed to maximise the energy efficiency of new or existing efficient refrigeration or cooling equipment and that meet specified efficiency criteria.	€1,000	45
			50
			55
			60
Electro-mechanical Systems	<i>Advanced Industrial Electro-mechanical equipment:</i> Direct electrically powered mechanical equipment designed to achieve very	€1,000	65

	(Class of Technology) (1)	(Description) (2)	(Minimum Amount) (3)
5		high operational efficiencies in industrial applications and that meet specified efficiency criteria.	
10		<i>Energy Saving Electrical Management Systems:</i> Systems specifically designed to maximise the energy efficiency of new or existing efficient electrically powered equipment and that meet specified efficiency criteria.	
15	Catering and Hospitality Equipment	<i>High Efficiency Catering Equipment:</i> Equipment for commercial catering applications specifically designed to achieve very high levels of energy efficiency and that meet specified efficiency criteria.	€1,000
20		<i>Energy Saving Laundry Solutions:</i> Commercial laundry equipment specifically designed to operate at very high efficiencies and that meet specified efficiency criteria.	
25			

”.

(2) This section comes into operation on such day as the Minister
for Finance may by order appoint.

45.—(1) Section 486C of the Principal Act is amended—

(a) in subsection (1)(a) by inserting the following definition before the definition of “EEA Agreement”:

Amendment of section 486C (relief from tax for certain start-up companies) of Principal Act.

“ ‘Commission Regulation (EC) No. 1998/2006’ means Commission Regulation (EC) No. 1998/2006 of 15 December 2006⁵ on the application of Articles 86 and 87 of the Treaty to *de minimis* aid;”,

(b) in subsection (2)(a)—

(i) by inserting “or 2010” after “2009”,

(ii) by deleting “or” at the end of subparagraph (iii), and

(iii) in subparagraph (iv) by substituting “section 441, or” for “section 441.”,

(c) in subsection (2)(a), by inserting the following after subparagraph (iv):

“(v) the activities of which form part of an undertaking to which subparagraphs (a) to (h) of Article 1 of Commission Regulation (EC) No. 1998/2006 apply.”,

⁵OJ No. L 379 of 28.12.2006, p.5

and

(d) by inserting the following after subsection (11):

“(12) Notwithstanding any obligation to maintain secrecy or any other restriction on the disclosure of information imposed by or under statute or otherwise, the Revenue Commissioners or any officer authorised by them for the purposes of this subsection may—

(a) disclose to any board established by statute, any public or local authority or any other agency of the State (in this paragraph referred to as a ‘relevant body’) information relating to the amount of relief granted to a company under this section, being information which is required by the relevant body concerned for the purpose of ensuring that the ceilings on aid set out in Commission Regulation (EC) No. 1998/2006 are not exceeded, and

(b) provide to the European Commission such information as may be requested by the European Commission in accordance with Article 3 of Commission Regulation (EC) No. 1998/2006.”.

(2) This section has effect in relation to accounting periods beginning on and from 1 January 2009.

Unilateral relief
(royalty income).

46.—(1) The Principal Act is amended in Schedule 24—

(a) in paragraph 4(5)(a) by substituting “paragraphs 9D and 9DB” for “paragraph 9D”,

(b) in paragraph 4(5)(b)—

(i) in subclause (iii) by deleting “and”, and

(ii) in subclause (iv) by inserting “, and” after “that paragraph”,

(c) in paragraph 4(5)(b) by inserting the following after subclause (iv):

“(v) the amount of income of a company treated for the purposes of paragraph 9DB as referable to an amount of relevant royalties (within the meaning of that paragraph),”.

and

(d) by inserting the following after paragraph 9DA:

“*Unilateral Relief (royalty income)*”

9DB. (1) (a) In this paragraph—

‘relevant foreign tax’, in relation to royalties receivable by a company, means tax—

(i) which under the laws of any foreign territory has been deducted from the amount of the royalty,

(ii) which corresponds to income tax or corporation tax,

(iii) which has not been repaid to the company,

(iv) for which credit is not allowable under arrangements, and

(v) which, apart from this paragraph, is not treated under this Schedule as reducing the amount of income;

‘relevant royalties’ means royalties receivable by a company—

(i) which fall to be taken into account in computing the trading income of a trade carried on by the company, and

(ii) from which relevant foreign tax is deducted;

‘royalties’ means payments of any kind as consideration for—

(i) the use of, or the right to use—

(I) any copyright of literary, artistic or scientific work, including cinematograph films and software,

(II) any patent, trade mark, design or model, plan, secret formula or process,

or

(ii) information concerning industrial, commercial or scientific experience.

(b) For the purposes of this paragraph—

(i) the amount of corporation tax which apart from this paragraph would be payable by a company for an accounting period and which is attributable to an amount of relevant royalties shall be an amount equal to 12.5 per cent of the amount by which the amount of the income of the company referable to the amount of the relevant royalties exceeds the relevant foreign tax, and

(ii) the amount of any income of a company referable to an amount of relevant royalties in an accounting period shall, subject to paragraph 4(5), be taken to be such sum as bears to the total amount of the trading income of the company for the accounting period before deducting any relevant foreign tax the same proportion as the amount of relevant royalties in the accounting period bears to the total amount receivable by the company in the course of the trade in the accounting period.

(2) Where, as respects an accounting period of a company, the trading income of a trade carried on by the company includes an amount of relevant royalties, the amount of corporation tax which, apart from this paragraph, would be payable by the company for the accounting period shall be reduced by so much of 87.5 per cent of any relevant foreign tax borne by the company in respect of relevant royalties in that period as does not exceed the corporation tax which would be so payable and which is attributable to the amount of the relevant royalties.

(3) (a) This paragraph shall not apply as respects any accounting period of a company which is a relevant accounting period within the meaning of section 442.

(b) Subsection (2) of section 442 shall apply for the purposes of this paragraph as it applies for the purposes of Part 14.”.

(2) This section applies in respect of royalties received on or after 1 January 2010.

Carry forward of
unrelieved foreign
tax.

47.—(1) Schedule 24 to the Principal Act is amended in paragraph 9FA—

(a) in subparagraph (2)(b) by substituting “subparagraphs (3) and (4)” for “subparagraph (3)”, and

(b) by inserting the following after subparagraph (3):

“(4) Where the unrelieved foreign tax of an accounting period of a company exceeds the aggregate amount of corporation tax payable by the company for the accounting period in respect of foreign branch income of the company for that accounting period, the excess shall be carried forward and treated as unrelieved foreign tax of the next succeeding accounting period, and so on for succeeding accounting periods.”.

(2) This section applies as respects accounting periods ending on or after 1 January 2010.

48.—Section 847 of the Principal Act is amended—

Amendment of
section 847 (tax
relief for certain
branch profits) of
Principal Act.

(a) in subsection (6) by substituting “any provision of the Corporation Tax Acts other than this section” for “any other provision of the Corporation Tax Acts”,

(b) in subsection (9)(b) by substituting “For the purposes of this subsection and subsection (10), where” for “Where”, and

(c) by inserting the following after subsection (9):

“(10) (a) Notwithstanding subsection (9)(a), where, in any accounting period, a qualified company incurred a loss (in this subsection referred to as a ‘relevant loss’) on qualified foreign trading activities and that loss formed, or formed part of, the profits or gains or losses of the company which were disregarded for the purposes of the Corporation Tax Acts by virtue of subsection (6), then the company may claim relief under section 396(1) in accordance with this subsection in respect of that loss for accounting periods beginning on or after 1 January 2011.

(b) For the purposes of a claim under paragraph (a) in respect of a relevant loss, the qualified foreign trading activities carried on by a qualified company through a branch or agency outside the State shall for all accounting periods be treated as a trade separate from all other activities carried on by the company and the company shall be treated as continuing to carry on that separate trade for so long as it continues to carry on those activities through that branch or agency and to permanently discontinue to carry on that trade when it ceases to carry on those activities through that branch or agency.

(c) Where a qualified company makes a claim under paragraph (a) in respect of a relevant loss then, subject to paragraph (b), the company shall be entitled to such relief under section 396(1) for accounting periods beginning on or after 1 January 2011 as it would have been entitled to had the profits or gains or losses from qualified foreign trading activities carried on through the branch or agency not been disregarded for the purposes of the Corporation Tax Acts by virtue of subsection (6) and had relief been granted in respect of the relevant loss under section 396(1), but not any other provision of the Corporation Tax Acts, for accounting periods ending before that date.”.

49.—(1) The Principal Act is amended by inserting the following after section 129:

“129A.—(1) (a) In this section ‘profits’, in relation to a company for a period of account, means the amount of the profits after taxation as shown in the profit and loss account or income statement for that period as laid before the annual general meeting of the company. 5

(b) For the purposes of this section—

(i) any question whether a company is connected with another company shall be determined in accordance with section 10 (as it applies for the purposes of the Tax Acts) and subparagraph (ii), 10

(ii) where a company is party to a scheme or arrangement, the main purpose, or one of the main purposes, of which is the avoidance of the whole or part of a distribution being treated as a taxable distribution, then the company shall be treated as connected with any other company which is a party to that scheme or arrangement. 15 20

(c) For the purposes of subsection (5) ‘control’ shall be construed in accordance with subsections (2) to (6) of section 432 as if in subsection (6) of that section for ‘5 or fewer participators’ there were substituted ‘persons resident in the State’. 25

(2) Where—

(a) a company receives a distribution from another company (in this section referred to as the ‘paying company’) resident in the State with which it is connected, and 30

(b) the paying company became resident in the State in the period—

(i) beginning on the date—

(I) 10 years before the date the distribution was made, or 35

(II) of passing of the *Finance Act 2010*,

whichever is the later, and

(ii) ending on the date the distribution is made,

then, subject to subsection (5), section 129 shall not apply to such amount of the distribution as is paid out of profits arising before the paying company became resident in the State and that amount shall be treated as income chargeable to tax under Case IV of Schedule D. 40

(3) (a) For the purposes of this section, where the amount of a distribution made by the paying company on or after the date (or the last such date if there was more than one date) it became resident in the State 45

exceeds the distributable profits of the company for the period (in this subsection referred to as the 'specified period')—

(i) beginning on the date (or the last such date if there was more than one date) the company became resident in the State, and

(ii) ending on the last day of the accounting period of the company immediately preceding the accounting period in which the distribution is made,

then the excess shall be treated as paid out of profits arising before the company became resident in the State.

(b) For the purposes of this subsection—

(i) the distributable profits of the paying company for a specified period shall, subject to subparagraph (ii), be taken to be the aggregate of the profits of the periods of account (in this subsection referred to as 'corresponding periods') which fall wholly or partly within the specified period, as reduced by the aggregate of so much of the amounts of any distributions made in the specified period as were amounts to which section 129 applied,

(ii) where a corresponding period falls partly within a specified period, the amount to be included in the distributable profits for the specified period in respect of the profits of that corresponding period shall be the profits of that corresponding period reduced by applying the fraction—

$$\frac{A}{B}$$

where—

A is the length of the period common to the specified period and the corresponding period, and

B is the length of the corresponding period.

(4) Where, by virtue of subsection (2), section 129 does not apply to the whole or part of a distribution (such whole or part, as the case may be, in this section referred to as the 'taxable distribution') received by a company (in this subsection referred to as the 'first-mentioned company') from another company resident in the State then the first-mentioned company shall be entitled to reduce the corporation tax attributable to the taxable distribution by the amount of the credit for foreign tax that would have been applied, under the provisions of Schedule 24, in reducing the corporation tax chargeable in respect of a dividend of an amount equal to the taxable distribution received by the first-mentioned company from the other company on the day before the day (or the last such day where there was more than one) the other company became resident in the State.

(5) Subsection (2) shall not apply where the paying company was at all times before the date it became resident in the State (or the last such date where there was more than one date) not controlled by persons resident in the State.”.

(2) This section shall apply to distributions made on or after the passing of this Act. 5

Foreign dividends. 50.—(1) The Principal Act is amended in section 21B—

(a) in subsection (1)(b) by substituting the following for subparagraph (i):

“(i) references to a company by which a dividend is paid apply only to a company, where throughout the period out of the profits of which the dividend was paid— 10

(I) the company was, by virtue of the law of a relevant territory, resident for the purposes of tax in such a relevant territory, and for this purpose ‘tax’, in relation to a relevant territory, means any tax imposed in the relevant territory which corresponds to corporation tax in the State, or 15 20

(II) the principal class of shares of the company or, where the company was a 75 per cent subsidiary of another company, the principal class of shares of that other company, was substantially and regularly traded on a stock exchange in the State, on one or more than one recognised stock exchanges in a relevant territory or territories or on such other stock exchange as may be approved of by the Minister for Finance for the purposes of Chapter 8A of Part 6,” 25 30

(b) in subsection (1) by inserting the following after paragraph (b): 35

“(c) For the purposes of paragraph (b)(i)(II), sections 412 to 418 shall apply as those sections would apply for the purposes of Chapter 5 of Part 12 if section 411(1)(c) were deleted.”. 40

(c) in subsection (2) by substituting the following for paragraph (a):

“(a) subject to paragraph (b), the amount of a dividend to be treated as paid out of trading profits of a company shall be— 45

(i) where the dividend is paid out of specified profits, so much of the dividend, as bears to the amount of that dividend the same

proportion as the amount of trading profits of the company contained in the specified profits bears to the amount of those specified profits of the company, and

- 5 (ii) where the dividend is not paid out of specified profits so much of the dividend, as bears to the amount of that dividend the same proportion as the amount of trading profits of the company for the period out of which the dividend is paid bears to the total profits of the company for that period, and”,

and

(d) by substituting the following for subsection (4):

15 “(4) (a) This subsection applies to a dividend paid to a company (in this subsection referred to as the ‘first-mentioned company’) by another company and the first-mentioned company—

- 20 (i) does not own, directly or indirectly, either alone or together with a person who is connected (within the meaning of section 10) with the first-mentioned company, more than 5 per cent of the share capital of the other company, and

- 25 (ii) does not hold more than 5 per cent of the voting rights in the other company.

30 (b) Where the income of a company which is chargeable to tax under Case III of Schedule D includes a dividend, being a dividend to which this subsection applies, paid to the company by another company then the dividend shall be treated for the purposes of subsection (3) as a dividend paid by the other company out of trading profits of the other company.

35 (c) Where the income of a company which is income chargeable to tax under Case I of Schedule D would, but for this paragraph, include a dividend to which this subsection applies, then, except where otherwise expressly provided by the Corporation Tax Acts, corporation tax shall not be chargeable on the dividend, nor shall the dividend be taken into account in computing income for corporation tax.”.

45 (2) This section shall apply to dividends received on or after 1 January 2010.

51.—(1) The Principal Act is amended by inserting the following after section 308:

Assets transferred in course of scheme of reconstruction or amalgamation.

50 “308A.—(1) In this section ‘scheme of reconstruction or amalgamation’ means a scheme for the reconstruction of any

company or companies or the amalgamation of any 2 or more companies.

(2) Where—

- (a) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of the trade of a company (in this section referred to as the ‘transferring company’) to another company (in this section referred to as the ‘acquiring company’), 5
 - (b) (i) the acquiring company is resident in the State at the time of the transfer, or the acquiring company uses the assets of the transferred trade for the purposes of a trade carried on by it in the State through a branch or agency immediately after that time, and 10
 - (ii) the transferring company is resident in the State at the time of the transfer, or the trade was carried on by it in the State through a branch or agency immediately before that time, 15
- and
- (c) the transferring company receives no part of the consideration for the transfer (otherwise than by the acquiring company taking over the whole or part of the liabilities of the trade), 20

then, subject to subsection (4), subsection (3) shall apply in relation to the assets of the trade transferred by the transferring company. 25

(3) Where this subsection applies—

- (a) the transfer shall not be treated as giving rise to any allowance or charge provided for by section 307 or 308, and 30
- (b) there shall be made to or on the acquiring company in accordance with sections 307 and 308 all such allowances and charges as would, if the transferring company had continued to carry on the trade and had continued to use the transferred assets for the purposes of the trade, have been made to or on the transferring company in respect of any assets transferred in the course of the transfer, and the amount of any such allowance or charge shall be computed as if the acquiring company had been carrying on the trade since the transferring company began to do so and as if everything done to or by the transferring company had been done to or by the acquiring company. 35 40

(4) Subsection (3) shall not apply as respects assets transferred in the course of a transfer if in consequence of the transfer, or a transaction of which the transfer is a part, the Corporation Tax Acts are to apply subject to subsections (6) to (9) of section 400.”. 45

(2) This section shall have effect in relation to assets transferred on or after 1 January 2010. 50

52.—(1) Section 80A of the Principal Act is amended—

Amendment of
section 80A
(taxation of certain
short-term leases of
plant and
machinery) of
Principal Act.

(a) by inserting the following definition after the definition of “fair value”:

“ ‘group limit’ means an amount determined by the formula—

$$A + (B \times (C - D)/C)$$

where—

A is the threshold amount,

B is an aggregate amount computed in accordance with generally accepted accounting practice charged to the profit and loss account for all companies who are members of the group for the period of account which is the same as the specified period in respect of the amortisation or impairment of the cost of specified assets,

C is the cost of specified assets owned by all companies who are members of the group at the end of the specified period, and

D is the lesser of the cost of specified assets owned by all companies who are members of the group at the end of the threshold period or C;”,

(b) by inserting the following definition after the definition of “predictable useful life”:

“ ‘profit and loss account’, in relation to an accounting period of a company, has the meaning assigned to it by generally accepted accounting practice and includes an income and expenditure account where a company prepares accounts in accordance with international accounting standards;”,

(c) in the definition of “relevant short-term lease” by substituting “8 years;” for “8 years.”,

(d) by inserting the following definitions after the definition of “relevant short-term lease”:

“ ‘specified assets’ means relevant short-term assets owned by a company which—

(a) in respect of those assets, is entitled to any allowance under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9, and

(b) leases those assets, other than by means of a relevant short-term lease, for a period which does not exceed 8 years;

‘specified period’ means—

(a) in the case of companies which are members of a group the respective ends of the accounting periods of which coincide, the period of 12 months throughout which one or more members of the group carries on a trade of leasing specified assets and ending at the end of the first accounting period which commences on or after 1 January 2010, and 5

(b) in the case of companies which are members of a group the respective ends of the accounting periods of which do not coincide, the period specified in a notice in writing made jointly by companies which are members of the group and given to the inspector on or before the specified return date for the chargeable period (within the meaning of section 950) which is the same as the period so specified, being a period of 12 months throughout which one or more members of the group carries on a trade of leasing specified assets and ending at the end of the first accounting period of a company which is a member of the group which accounting period commences on or after 1 January 2010, 10 15 20

and each subsequent period of 12 months commencing immediately after the end of the relevant preceding specified period; 25

‘threshold amount’ in relation to a group of companies means the aggregate of allowances granted to all companies which are members of that group in respect of expenditure incurred on specified assets under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9 for the threshold period; 30

‘threshold period’ in relation to a group of companies means an accounting period of one year ending on a date immediately preceding the date on which the first specified period commencing on or after 1 January 2010 begins.”. 35

(e) in subsection (2) by substituting “under this subsection—” for “under this section—”, and 40

(f) by inserting the following after subsection (2):

“(2A) Where a company makes a claim under this subsection in respect of specified assets—

(a) subject to paragraph (c), subsection (2) of section 284 shall be construed as if a reference in that section to an amount of wear and tear allowance to be made was a reference to an amount, computed in accordance with generally accepted accounting practice, charged to the profit and loss account of the company for the period of account which is the same as the specified period in respect of the amortisation or impairment of the cost of specified assets, 45 50

(b) the income from specified assets will be treated for the purposes of section 403 as if it were not income from a trade of leasing,

(c) the amount of the wear and tear allowance to be made to the company in accordance with paragraph (a) for any accounting period shall not exceed an amount to be determined by the formula—

$$E \times F/G$$

where—

E is the group limit,

F is the cost of specified assets owned by the company at the end of the accounting period, and

G is the cost of specified assets owned by all companies who are members of the group, at the end of the accounting period,

(d) where the amount of wear and tear allowance, computed in accordance with generally accepted accounting practice, charged to the profit and loss account of the company for the period of account which is the same as the specified period in respect of the amortisation or impairment of the cost of specified assets, exceeds the amount of wear and tear to be made in accordance with paragraph (c), the amount of the excess shall be added to the amount of wear and tear due, in accordance with paragraph (a), for the following specified period, and deemed to be part of the amount so computed,

(e) the amount of the wear and tear allowance to be made to the company in accordance with paragraph (a), attributable to each specified asset for any accounting period shall be such portion of the amount of the allowance to be made in accordance with paragraph (a) as bears to that amount the same proportion as the cost of the asset bears to the cost of all specified assets which belong to the company and are in use for the purposes of the trade at the end of that accounting period,

(f) where in respect of a company, which is a member of a group of companies no accounting period coincides with the threshold period, there shall be made in relation to allowances granted to that company, in the calculation of the threshold amount, such apportionment as is just and reasonable, and

(g) where, in respect of a group of companies, no specified period commences before 1 January 2011, the threshold amount shall be nil.

(2B) For the purposes of a claim under subsection
(2A)—

- (a) 2 companies shall be deemed to be members of a group if one company is a 51 per cent subsidiary of the other company or both companies are 51 per cent subsidiaries of a third company: but in determining whether one company is a 51 per cent subsidiary of another company, the other company shall be treated as not being the owner of—
 - (i) any share capital which it owns directly in a company if a profit on a sale of the shares would be treated as a trading receipt of its trade, or
 - (ii) any share capital which it owns indirectly and which is owned directly by a company for which a profit on a sale of the shares would be a trading receipt;
- (b) sections 412 to 418 shall apply for the purposes of this subsection as they would apply for the purposes of Chapter 5 of Part 12 if—
 - (i) ‘51 per cent subsidiary’ were substituted for ‘75 per cent subsidiary’ in each place where it occurs in that Chapter, and
 - (ii) paragraph (c) of section 411(1) were deleted;
- (c) a company and all its 51 per cent subsidiaries shall form a group and, where that company is a member of a group as being itself a 51 per cent subsidiary, that group shall comprise all its 51 per cent subsidiaries and the first-mentioned group shall be deemed not to be a group: but a company which is not a member of a group shall be treated as if it were a member of a group which consists of that company;
- (d) in determining whether a company is a member of a group of companies (in this paragraph referred to as the ‘threshold group’) for the purposes of determining the threshold amount in relation to a specified period of a group of companies (in this paragraph referred to as the ‘relevant group’), the threshold group shall be treated as the same group as the relevant group notwithstanding that one or more of the companies in the threshold group is not in the relevant group, or vice versa, where any person or group of persons which controlled the threshold group is the same as, or has a reasonable commonality of identity with, the person or group of persons which controls the relevant group.”.

(2) This section applies as respects accounting periods commencing on or after 1 January 2010.

53.—Section 402 of the Principal Act is amended—

Amendment of
section 402 (foreign
currency: tax
treatment of capital
allowances and
trading losses of a
company) of
Principal Act.

- (a) in subsection (2), by the insertion of the following after paragraph (b):

“*(c)* For the purposes of this subsection, references to an amount of any allowance or charge to be made in taxing a trade shall include a reference to an amount of any allowance or charge to be made by means of discharge or repayment of tax in taxing the leasing activities of a company, where those activities are charged to tax under Case IV of Schedule D and references to a trading expense or receipt shall be construed accordingly.”,

- (b) by the insertion of the following after subsection (3):

“(4) (a) Subject to paragraph (b), where a company incurs a loss in an accounting period arising from a leasing activity in respect of which the company is within the charge to corporation tax under Case IV of Schedule D and makes a claim under section 399(1) to set that loss off against the amount of any income arising from such activities in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period, the amount (which may be nil) of any set-off due to the company against that income in an accounting period shall—

(i) be computed in terms of the company’s functional currency by reference to amounts expressed in that currency, and

(ii) then be expressed in terms of the currency of the State by reference to the rate of exchange which—

(I) is used to express in terms of the currency of the State the amount of the income assessed to corporation tax under Case IV for the accounting period in which the loss is to be set off, or

(II) would be so used if there were such income.

(b) For the purposes of the computation of any set-off due to a company in accordance with paragraph (a) against income of an accounting period, in respect of a loss arising from a leasing activity in such period, where that loss or any set-off referable to that loss was computed in terms of a currency other than the functional currency of the company for the first-mentioned period, then that loss or set-off, as the case may be, shall be expressed in terms of that functional currency by reference to a rate of

exchange of that functional currency for the other currency, being an average of representative rates of exchange of that functional currency for the other currency during the accounting period in which the loss was incurred.”. 5

Amendment of section 766 (tax credit for research and development expenditure) of Principal Act.

54.—(1) Section 766 of the Principal Act is amended—

- (a) in subsection (1)(a) in the definition of “qualified company” by substituting the following for subparagraphs (ii) and (iii): 10

“(ii) carries out research and development activities in the relevant period,

(iii) maintains a record of expenditure incurred by it in the carrying out by it of those activities, and 15

(iv) in the case of a company which is a member of a group of companies that carries on research and development activities in separate geographical locations, maintains separate records of expenditure incurred in respect of the activities carried on at each location;”, 20

- (b) in subsection (1)(a) by inserting the following definition after the definition of “research and development activities”: 25

“ ‘research and development centre’ means a fixed base or bases, established in buildings or structures, which are used for the purpose of the carrying on by a company of research and development activities;”, 30

- (c) in subsection (1)(a) in the definition of “threshold amount” by deleting “but expenditure incurred by a company which is a member of the group for a part of the threshold period shall only be included in the threshold amount if the expenditure is incurred at a time when the company is a member of the group” and substituting the following: 35

“but—

(i) expenditure incurred by a company which is a member of the group for a part of the threshold period shall only be included in the threshold amount if the expenditure is incurred at a time when the company is a member of the group, and 40

(ii) subject to subsection (7C)(a)— 45

(I) where at any time during the threshold period, a group of companies carried on research and development activities in more than one research and development centre and each centre 50

is in a separate geographical location, and

(II) at a time (referred to in this section as the 'cessation time') after the end of the threshold period, a research and development centre ceases to be used for the purposes of a trade by a company which is a member of the group of companies and is not so used by any other company which is a member of the group,

then expenditure incurred in relation to that research and development centre shall not be taken into account in calculating the threshold amount in relation to any relevant period which commences after the cessation time",

(d) in subsection (1)(b)(vi)(I) by substituting "research and development," for "research and development, and",

(e) in subsection (1)(b)(vi) by substituting the following for clause (II):

"(II) begins to carry on a trade after that time, and",

(f) in subsection (1)(b)(vi) by inserting the following after clause (II):

"(III) makes a claim in respect of expenditure incurred at a time referred to in clause (I),",

(g) in subsection (1)(b)(vi) by deleting "the expenditure shall be treated as it would if the company had commenced to carry on the trade at the time the expenditure was incurred;" and substituting the following:

"the expenditure shall be treated—

(A) for the purpose only of subsection (5), as incurred at the time the company begins to carry on the trade, and

(B) for the purposes of subsection (2), as it would if the company had commenced to carry on a trade at the time the expenditure was incurred, and the amount of any credit computed thereon shall be carried forward in accordance with subsection (4) and treated as an amount by which the corporation tax of the first accounting period which commenced on or after the time the company begins to trade is reduced;"

- (h) in subsection (1)(b)(viii) by substituting “research and development activities;” for “research and development activities.”,
- (i) in subsection (1)(b) by inserting the following after subparagraph (viii): 5
- “(ix) A research and development centre used by a company which is a member of a group of companies will be treated as being in a separate geographical location to another research and development centre used by the company or another company which is a member of the group if it is not less than a distance of 20 kilometres from that other research and development centre.”,
- (j) in subsection (4B)(b)(ii)(II) by substituting “of the excess remaining as reduced” for “by which the excess remaining is reduced”, 15
- (k) in subsection (7B) by deleting “section 1006A(2)” and substituting “section 960H(2)”, and
- (l) by inserting the following after subsection (7B): 20
- “(7C) (a) Subparagraph (ii) of the definition of ‘threshold amount’ shall not apply in relation to a relevant period (in this paragraph referred to as the ‘first-mentioned relevant period’) or any relevant period subsequent to that relevant period, where, at a time during that first-mentioned relevant period or any later relevant period, being a time subsequent to the cessation time— 25
- (i) the research and development centre referred to in clause (II) of subparagraph (ii) of the definition of ‘threshold amount’ is used for the purposes of a trade by a company which is a member of the group, or 30 35
- (ii) activities substantially the same as the research and development activities which were carried on in that research and development centre at any time in the 48 months immediately preceding the cessation time are carried on by a company which is a member of the group of companies. 40
- (b) Where—
- (i) by virtue of subparagraph (ii) of the definition of ‘threshold amount’, expenditure incurred in the threshold period is not taken into account in calculating the threshold amount in relation to a relevant period, and 45 50
- (ii) by virtue of paragraph (a) of this subsection, subparagraph (ii) of that definition

does not apply in relation to a subsequent relevant period,

then, in respect of the accounting period commencing at the same time as that subsequent relevant period or where no accounting period commences at that time, the first accounting period commencing after that time, the company referred to in subparagraph (i) or (ii) of paragraph (a), as the case may be, shall be charged to tax under Case IV of Schedule D on an amount equal to the aggregate of the amounts by which the qualifying group expenditure on research and development has been increased, as a result of a reduction in the threshold amount by virtue of subparagraph (ii) of the definition of threshold amount, for relevant periods, taking account of each relevant period in respect of which the qualifying group expenditure on research and development was so increased.

(c) Where—

(i) by virtue of subparagraph (ii) of the definition of ‘threshold amount’, expenditure incurred in the threshold period by a company which is a member of a group of companies is not taken into account in calculating the threshold amount in relation to a relevant period, and

(ii) at any time during the period of 10 years commencing on the date on which the research and development centre ceased to be used, no company which is a member of the group is carrying on a trade which is within the charge to corporation tax,

then, in respect of the final accounting period for which a company which is a member of the group is chargeable to corporation tax in respect of its trade, that company shall be charged to tax under Case IV of Schedule D on an amount equal to the aggregate of the amounts by which the qualifying group expenditure on research and development has been increased, as a result of a reduction in the threshold amount by virtue of subparagraph (ii) of the definition of threshold amount, for relevant periods, taking account of each relevant period in respect of which the qualifying group expenditure on research and development was so increased, as reduced by any amount charged to tax in accordance with paragraph (b).”.

(2) (a) *Paragraph (g) of subsection (1) applies to accounting periods commencing on or after 1 January 2010.*

(b) *Paragraphs (j) and (k) of subsection (1) apply and have effect from 1 January 2010.*

- (c) Except where otherwise provided by *paragraphs (a) and (b)*, *subsection (1)* applies to relevant periods (within the meaning of section 766 of the Principal Act) commencing on or after 1 January 2010.

Tax treatment of
certain royalties.

55.—(1) Part 8 of the Principal Act is amended— 5

- (a) by inserting the following section after section 242:

“242A.—(1) In this section ‘relevant territory’ has the meaning assigned to it in section 172A.

- (2) This section applies to a payment of royalties—

- (a) made by a company in the course of a trade or 10
business carried on by the company,

- (b) to a company (in this subsection referred to as
the ‘receiving company’) which—

- (i) is not resident in the State, and

- (ii) is, by virtue of the law of a relevant terri- 15
tory, resident for the purposes of tax in a
relevant territory which imposes a tax that
generally applies to royalties receivable in
that territory by companies from sources 20
outside that territory,

and

- (c) which is made for *bona fide* commercial reasons
and does not form part of any arrangement or
scheme of which the main purpose or one of 25
the main purposes is avoidance of liability to
income tax, corporation tax or capital gains
tax,

except where the royalties are paid to the receiving com-
pany in connection with a trade or business carried on in
the State by the company through a branch or agency. 30

- (3) Where, apart from this section, section 238 would
apply to a payment of royalties to which this section
applies, that section shall not apply to that payment.

- (4) A company shall not be chargeable to corporation
tax or income tax in respect of a royalty payment to which 35
this section applies where—

- (a) the company—

- (i) is not resident in the State, and

- (ii) is, by virtue of the law of a relevant terri- 40
tory, resident for the purposes of tax in a
relevant territory which imposes a tax that
generally applies to royalties receivable in
that territory by companies from sources
outside that territory,

and

45

- (b) the payment is made for *bona fide* commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to income tax, corporation tax or capital gains tax,

except where the royalty payment is made to the company in connection with a trade or business which is carried on in the State by the company through a branch or agency.”,

and

- (b) in section 243(5)(c) by substituting “section 242A or 267I” for “section 267I”.

(2) This section applies to a payment made on or after 4 February 2010.

CHAPTER 6

Capital Gains Tax

56.—(1) Section 542 of the Principal Act is amended in subsection (1) by substituting the following for paragraph (d):

Amendment of section 542 (time of disposal and acquisition) of Principal Act.

“(d) Notwithstanding paragraph (c), for the purposes of the Capital Gains Tax Acts, where a person makes a disposal of land to an authority possessing compulsory purchase powers, and the disposal would not have been made but for the exercise of those powers or the giving by the authority of formal notice of its intention to exercise those powers, then the chargeable gain (if any) on the disposal shall be deemed to accrue—

- (i) on the day on which the payment of the compensation amount is received by the person making the disposal, or
- (ii) at a time immediately before the person’s death if the consideration has not been received at the date of his or her death.”.

(2) This section applies to disposals made on or after 4 February 2010.

57.—(1) Section 590 of the Principal Act is amended by substituting the following for subsection (7)(a):

Amendment of section 590 (attribution to participators of chargeable gains accruing to non-resident company) of Principal Act.

“(a) a chargeable gain accruing on the disposal of assets, being—

- (i) tangible property, whether movable or immovable, or a lease of such property, or
- (ii) specified intangible assets within the meaning of section 291A(1),

where the assets were used, and used only, for the purposes of a trade carried on by a company, or by

another company which is a member of the same group (within the meaning of subsection (16)) as the first-mentioned company, wholly outside the State.”.

(2) This section applies to disposals made on or after 4 February 2010.

5

Amendment of section 598 (disposals of business or farm on “retirement”) of Principal Act.

58.—(1) Section 598 of the Principal Act is amended by inserting the following after subsection (7):

“(7A) (a) In this subsection ‘relevant payment’ means a payment made by a company on the redemption, repayment or purchase of its own shares which, by virtue of section 176, is not treated as a distribution for the purposes of Chapter 2 of Part 6. 10

(b) Subsection (2) shall apply where an individual disposes of shares in his or her family company and receives a relevant payment in exchange for that disposal.”. 15

(2) This section applies to disposals made on or after 4 February 2010.

Restrictions on allowable losses.

59.—(1) The Principal Act is amended by inserting the following after section 546: 20

“546A.—(1) In this section—

‘arrangements’ includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

‘tax advantage’ means— 25

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax or an assessment to tax, or

(d) the avoidance of a possible assessment to tax; 30

‘tax’ means capital gains tax or corporation tax on chargeable gains.

(2) For the purposes of the Capital Gains Tax Acts, a loss shall not be an allowable loss if—

(a) it accrues to the person directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and 35

(b) the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage.

(3) For the purposes of subsection (2), it shall not be relevant— 40

(a) whether or not the loss accrues at a time when there are no chargeable gains from which it could otherwise have been deducted, or

(b) whether or not the tax advantage is secured for the person to whom the loss accrues or for any other person.”.

(2) This section applies to disposals made on or after 4 February 2010.

60.—(1) Section 607 of the Principal Act is amended in subsection (2)—

Amendment of section 607 (Government and certain other securities) of Principal Act.

(a) by substituting the following for paragraph (a):

“(a) All futures contracts which—

(i) are unconditional contracts for the acquisition or disposal of any of the instruments referred to in subsection (1) or any other instruments to which this section applies by virtue of any other enactment (whenever enacted),

(ii) require delivery of the instruments in respect of which the contracts are made, and

(iii) meet the requirements of paragraph (c) of this subsection,

shall not be chargeable assets.”,

and

(b) by inserting the following after paragraph (b):

“(c) Where a profit or loss on a futures contract is calculated, either directly or indirectly, by reference to the acquisition cost or disposal proceeds of an instrument to which subparagraph (i) of subsection (2)(a) applies, then—

(i) that acquisition cost shall be the market value of the instrument at the date of acquisition, and

(ii) those disposal proceeds shall be the market value of the instrument at the date of disposal.”.

(2) This section applies to disposals made on or after 4 February 2010.

Amendment of
section 611
(disposals to State,
public bodies and
charities) of
Principal Act.

61.—(1) Section 611 of the Principal Act is amended—

(a) in subsection (1) by substituting the following for paragraph (a)(iii):

“(iii) to the Chester Beatty Library, the
Crawford Art Gallery Cork, the Irish
Museum of Modern Art, the National
Archives, the National Concert Hall, the
National Gallery of Ireland, the National
Library of Ireland, the National Museum
of Ireland, the Friends of the National
Collections of Ireland, a local authority or
a joint body within the meaning of section
2(1) of the Local Government Act 2001
and any university in the State,”

and 15

(b) by substituting “referred to in paragraph (a)(iii) of subsection (1),” for “within section 28(3) of the Finance Act, 1931,” in each place where it occurs in subsection (2).

(2) This section applies to disposals made on or after 4 February 2010. 20

Amendment of
section 958 (date
for payment of tax)
of Principal Act.

62.—(1) Section 958 of the Principal Act is amended in subsection (3) by substituting the following for clause (I) of paragraph (c)(ii):

“(I) on or before—

(A) 31 October, as respects tax payable in
the initial period, where that period
falls in the years of assessment 2003 to
2008 inclusive, 25

(B) 15 December, as respects tax payable in
the initial period, where that period
falls in the year of assessment 2009 or
any subsequent year of assessment, 30

and”.

(2) This section applies to disposals made on or after 4 February 2010.

Amendment of
Schedule 15 (list of
bodies for purposes
of section 610) to
Principal Act.

63.—(1) Part 1 of Schedule 15 to the Principal Act is amended by substituting the following for paragraph 4: 35

“4. A local authority or a joint body within the meaning
of section 2(1) of the Local Government Act 2001.”.

(2) This section applies to disposals made on or after 4 February 2010. 40

PART 3

CUSTOMS AND EXCISE

CHAPTER 1

Mineral Oil Tax Carbon Charge

5 **64.**—(1) Chapter 1 of Part 2 of the Finance Act 1999 is Mineral oil tax
amended— carbon charge.

(a) in subsection (1) of section 94—

(i) by inserting the following definition after the defini-
tion of “biomass”:

10 “ ‘CO₂’ means carbon dioxide;”,

(ii) by inserting the following definition after the defini-
tion of “dumper”:

 “ ‘emissions’ means the release, on combustion of
mineral oil, of CO₂;”,

15 (b) with effect as on and from 10 December 2009 by substitut-
ing the following for Schedule 2 to that Act (as amended
by section 15(a) of the Finance Act 2009):

“SCHEDULE 2

RATES OF MINERAL OIL TAX

20	Description of Mineral Oil	Rate of Tax
	<i>Light Oil:</i>	
	Petrol	€543.17 per 1,000 litres
	Aviation gasoline	€543.17 per 1,000 litres
	<i>Heavy Oil:</i>	
25	Used as a propellant	€449.18 per 1,000 litres
	Used for air navigation	€449.18 per 1,000 litres
	Used for private pleasure navigation	€449.18 per 1,000 litres
30	Kerosene used other than as a propellant	€00.00
	Fuel oil	€14.78 per 1,000 litres
	Other heavy oil	€47.36 per 1,000 litres
	<i>Liquefied Petroleum Gas:</i>	
35	Used as a propellant	€63.59 per 1,000 litres
	Other liquefied petroleum gas	€00.00
	<i>Coal:</i>	
	For business use	€4.18 per tonne
	For other use	€8.36 per tonne

”,

40 (c) with effect as on and from 10 December 2009 by inserting
the following after Schedule 2:

“SCHEDULE 2A

CARBON CHARGE

Description of Mineral Oil	Rate	
<i>Light Oil:</i>		
Petrol	€34.38 per 1,000 litres	5
Aviation gasoline	€34.38 per 1,000 litres	
<i>Heavy Oil:</i>		
Used as a propellant	€39.98 per 1,000 litres	
Used for air navigation	€39.98 per 1,000 litres	10
Used for private pleasure navigation	€39.98 per 1,000 litres	

”,

- (d) with effect as on and from 1 May 2010 by substituting the following for Schedule 2 (as amended by *paragraph (b)*):

“SCHEDULE 2

15

RATES OF MINERAL OIL TAX

Description of Mineral Oil	Rate of Tax	
<i>Light Oil:</i>		
Petrol	€543.17 per 1,000 litres	20
Aviation gasoline	€543.17 per 1,000 litres	
<i>Heavy Oil:</i>		
Used as a propellant	€449.18 per 1,000 litres	
Used for air navigation	€449.18 per 1,000 litres	
Used for private pleasure navigation	€449.18 per 1,000 litres	25
Kerosene used other than as a propellant	€38.02 per 1,000 litres	
Fuel oil	€60.73 per 1,000 litres	
Other heavy oil	€88.66 per 1,000 litres	30
<i>Liquefied Petroleum Gas:</i>		
Used as a propellant	€88.23 per 1,000 litres	
Other liquefied petroleum gas	€24.64 per 1,000 litres	
<i>Coal:</i>		35
For business use	€4.18 per tonne	
For other use	€8.36 per tonne	

”,

- (e) with effect as on and from 1 May 2010 by substituting the following for Schedule 2A (inserted by *paragraph (c)*): 40

“SCHEDULE 2A

CARBON CHARGE

Description of Mineral Oil	Rate	
<i>Light Oil:</i>		
Petrol	€34.38 per 1,000 litres	45
Aviation gasoline	€34.38 per 1,000 litres	
<i>Heavy Oil:</i>		
Used as a propellant	€39.98 per 1,000 litres	
Used for air navigation	€39.98 per 1,000 litres	
Used for private pleasure navigation	€39.98 per 1,000 litres	50
Kerosene used other than as a propellant	€38.02 per 1,000 litres	
Fuel oil	€45.95 per 1,000 litres	
Other heavy oil	€41.30 per 1,000 litres	55
<i>Liquefied Petroleum Gas:</i>		
Used as a propellant	€24.64 per 1,000 litres	
Other liquefied petroleum gas	€24.64 per 1,000 litres	

”,

(f) in section 96 by inserting the following after subsection (1):

“(1A) Where a rate is specified in Schedule 2A for any description of mineral oil, that rate, referred to in this Chapter as the ‘carbon charge’, is included in the rate of tax specified in Schedule 2 for that description of mineral oil.

(1B) The rate per 1,000 litres specified for each description of mineral oil in Schedule 2A is in proportion to the emissions for the description of mineral oil concerned, and is determined by the formula—

$$\text{NCV} \times \text{EF} \times \text{A}$$

where—

NCV is the net calorific value of the description of mineral oil concerned expressed in terajoules per 1,000 litres,

EF is the carbon emission factor of the description of mineral oil concerned expressed in tonnes of CO₂ per terajoule,

A is the amount, €15, to be charged per tonne of CO₂ emitted.”,

(g) in section 96 by inserting the following after subsection (4):

“(5) The Commissioners may, subject to such conditions for securing mineral oil tax as they may prescribe or otherwise impose, permit payment of the carbon charge to be deferred to a day not later than the 15th day of the month succeeding the month in which the mineral oil tax is payable.”,

(h) in subsection (1) of section 98 by substituting “at a rate, for heavy oil of €43.60 per 1,000 litres, and for liquefied petroleum gas of €30.22 per 1,000 litres” for “at the rate of €5.58 per 1,000 litres on such gas or oil”,

(i) in section 100 by inserting the following after subsection (1):

“(1A) (a) Without prejudice to any other relief that may apply and subject to paragraphs (b) and (c), a relief from the carbon charge shall apply to biofuel.

(b) From 10 December 2009 until 30 June 2010, where biofuel has been mixed or blended with any other mineral oil, the relief under paragraph (a) shall only apply where the biofuel content of the mixture or blend exceeds 10 per cent of the total volume of the mixture or blend.

(c) From 1 July 2010, where biofuel has been mixed or blended with any other mineral oil, the relief under paragraph (a) shall apply to the biofuel content of any such mixture or blend.

(1B) Without prejudice to any other relief that may apply, a relief from the carbon charge shall apply to any mineral oil which is intended for use or which has been used in an installation that is covered by a greenhouse gas emissions permit.”.

5

(2) (a) Subject to *paragraph (b)*, and to *paragraphs (b) and (c)* of *subsection (1)*, this section has effect from 1 May 2010.

(b) Subsections (1A) (inserted by *subsection (1)(f)*) and (5) (inserted by *subsection (1)(g)*) of section 96 of the Finance Act 1999, and subsection (1A) (inserted by *subsection (1)(i)*) of section 100 of that Act have effect from 10 December 2009.

10

Cesser of application of mineral oil tax to coal.

65.—(1) Chapter 1 of Part 2 of the Finance Act 1999 is amended—

(a) in subsection (1) of section 94— 15

(i) by deleting the interpretations given to “business use”, “charitable organisation”, “coal”, “dual use”, “energy intensive business”, “household”, and “mineralogical processes”, and

(ii) by substituting the following for the definition of mineral oil: 20

“ ‘mineral oil’ means hydrocarbon oil, liquefied petroleum gas, substitute fuel and additives;”,

(b) in subsection (2) of section 95 by deleting “other than coal”, 25

(c) by deleting section 95A,

(d) in section 100—

(i) by deleting subsections (2) and (3),

(ii) in paragraph (a) of subsection (5) by deleting “coal delivered or other”, 30

(e) by deleting section 101A.

(2) Schedule 2 to the Finance Act 1999 (as amended by *paragraph (d)* of *subsection (1)* of *section 64*) is amended by deleting the references to, and rates specified for, coal.

(3) This section has effect from such date as the Minister for Finance appoints by order for the coming into operation of *Chapter 3*. 35

CHAPTER 2

Natural Gas Carbon Tax

Definitions (Chapter 2).

66.—(1) In this Chapter—

“accounting period” means a period of 2 calendar months or such other period as the Commissioners may prescribe for the purposes of returns and payment under *section 70*; 40

“CN Code” means a Community subdivision to the combined nomenclature of the European Communities referred to in Article 1 of Council Regulation (EEC) No. 2658/87 of 23 July 1987⁶ as amended by Commission Regulation (EEC) No. 2031/2001 of 6 August 2001⁷;

“CO₂” means carbon dioxide;

“Commissioners” means the Revenue Commissioners;

“consumer” means a person who receives a supply of natural gas for combustion;

10 “Directive” means Council Directive No. 2003/96/EC of 27 October 2003⁸;

“emissions” means the release, on combustion of natural gas, of CO₂;

15 “greenhouse gas emissions permit” has the meaning assigned to it by Article 2(1) of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004);

“natural gas” means natural gas falling within CN codes 2711 11 00 and 2711 21 00;

“officer” means an officer of the Commissioners;

20 “prescribed” means prescribed by regulations made by the Commissioners under *section 74*;

“supplier” means an entity which supplies natural gas to a consumer;

“supply” means a quantity of natural gas supplied to a consumer;

“tax” means natural gas carbon tax within the meaning of *subsection (1) of section 67*.

25 **67.—**(1) Subject to the provisions of this Chapter and any regulations made under it, a duty of excise, to be known as natural gas carbon tax, shall be charged, levied and paid at the rate of €3.07 per megawatt hour on all natural gas supplied in the State by a supplier.

Charging and rates
of natural gas
carbon tax.

30 (2) *Subsection (1)* shall apply to all natural gas supplied by a supplier for combustion by such supplier.

(3) The rate per megawatt hour specified in *subsection (1)* is in proportion to the emissions of CO₂ from the combustion of natural gas and is determined by the formula—

$$EF \times A \times C$$

35 where—

EF is the carbon emission factor of natural gas expressed in kilograms of CO₂ per terajoule,

A is the amount, €0.015, to be charged per kilogram of CO₂ emitted,

⁶OJ No. L256 of 7 September, 1987, p. 1

⁷OJ No. L279 of 23 October, 2001, p. 1

⁸OJ No. L260 of 11 October, 2003, p. 8

C is 0.0036, the number of terajoules per megawatt hour.

Liability to pay
natural gas carbon
tax.

68.—(1) Tax shall be charged at the time the natural gas is supplied by a supplier to a consumer and, without prejudice to *subsection (2)*, a supplier shall be accountable for and liable to pay the tax charged on the natural gas supplied by such supplier.

5

(2) Any supplier that is not established in the State shall establish a company in the State, and that company shall be liable to pay the tax due on the natural gas supplied by such supplier, and shall assume all the functions and responsibilities of the supplier under this Chapter and any regulations under *section 74*.

10

Registration of
natural gas
suppliers.

69.—Every supplier shall register with the Commissioners in accordance with such procedures as the Commissioners may prescribe or otherwise impose.

Returns and
payment by natural
gas suppliers.

70.—(1) For the purposes of *section 68*, a supplier shall within one month of the end of an accounting period, in respect of the natural gas supplied in that accounting period, furnish to an officer a return in such form as the Commissioners may require showing—

15

(a) the quantity of natural gas supplied, and

(b) in respect of each of the reliefs under *section 71*, the quantity that qualified for such relief.

20

(2) The supplier shall, in accordance with the return under *subsection (1)* and by the time that return is due, pay the amount of tax due in respect of the accounting period concerned.

Reliefs from natural
gas carbon tax.

71.—(1) Without prejudice to any other relief from tax which may apply, and subject to such conditions as may be prescribed or otherwise imposed, a full relief from tax shall be granted on any natural gas which is shown to the satisfaction of the Commissioners to have been supplied for use—

25

(a) for the generation of electricity, or

(b) for chemical reduction or in electrolytic or metallurgical processes.

30

(2) (a) Without prejudice to any other relief from tax which may apply, and subject to such conditions as the Commissioners may prescribe or otherwise impose, a partial relief from tax shall be granted on any natural gas which is shown to the satisfaction of the Commissioners to have been delivered for use in an installation that is covered by a greenhouse gas emissions permit.

35

(b) The relief under *paragraph (a)* shall be calculated as the amount of tax chargeable on the natural gas supplied, less an amount of €0.54 per megawatt hour.

40

Repayments of
natural gas carbon
tax.

72.—(1) Where a supply on which the tax has been paid qualifies for relief under *section 71*, a repayment of that tax shall be made to the consumer of that supply.

- (2) (a) Claims for repayment under *subsection (1)* shall be in such form as the Commissioners may direct and shall be in respect of natural gas supplied within a period of not less than one and not more than 6 calendar months.
- 5 (b) Except where the Commissioners may in any particular case otherwise allow, a repayment may not be made unless the claim is made within 6 calendar months following the end of the period in respect of which the claim for repayment is made.
- 10 **73.—**(1) It is an offence under this subsection for any person to contravene or fail to comply with any provision of this Chapter, or any regulation made under *section 74*, or any condition imposed under this Chapter, or under such regulation in relation to such provision. Offence and penalty (Chapter 2).
- 15 (2) Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under *subsection (1)* is liable on summary conviction to a fine of €5,000.
- (3) Where an offence under *subsection (1)* is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of an offence and may be proceeded against and punished as if guilty of the first-mentioned offence.
- 20
- 25
- 74.—**The Commissioners may, for the purposes of managing, securing and collecting the tax, or for the protection of the revenue derived from it, make regulations. Regulations (Chapter 2).
- 75.—**The tax imposed by this Chapter is placed under the care and management of the Commissioners. Care and management (Chapter 2).
- 30
- 76.—**This Chapter comes into operation on 1 May 2010. Commencement (Chapter 2).

CHAPTER 3

Solid Fuel Carbon Tax

- 77.—**In this Chapter and in *Schedule 1*— Interpretation (Chapter 3).
- 35 “accounting period” means a period of 2 calendar months or such other period as the Commissioners may prescribe for the purposes of payment and returns under *section 81*;
- “briquettes” means milled peat which has been mechanically compressed into blocks;
- 40 “CN Code” means a Community subdivision to the combined nomenclature of the European Communities referred to in Article 1 of Council Regulation (EEC) No. 2658/87 of 23 July 1987⁹ as amended by Commission Regulation (EEC) No. 2031/2001 of 6 August 2001¹⁰;

⁹OJ No. L256 of 7 September, 1987, p.1

¹⁰OJ No. L279 of 23 October, 2001, p.1

“CO₂” means carbon dioxide;

“coal” includes coal and lignite, solid fuel manufactured from coal and lignite, and any other energy product within the meaning of Article 2.1 of the Directive in solid form;

“Commissioners” means the Revenue Commissioners; 5

“consumer” means a person who receives a supply of solid fuel for combustion;

“Directive” means Council Directive No. 2003/96/EC of 27 October 2003¹¹;

“emissions” means the release, on combustion of a solid fuel, of CO₂; 10

“greenhouse gas emissions permit” has the meaning assigned to it by Article 2(1) of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004);

“milled peat” means granulated peat that is supplied for use as a fuel;

“officer” means an officer of the Commissioners; 15

“other peat” means peat other than milled peat and briquettes that is supplied for use as a fuel;

“peat” means peat falling within CN code 2703 and includes any solid fuel manufactured from peat;

“prescribed” means prescribed by regulations made by the Commissioners under *section 85*; 20

“solid fuel” means coal or peat;

“supplier” means an accountable person for the purposes of section 8 of the Value-Added Tax Act 1972 who supplies solid fuel;

“supply” means the supply of a quantity of solid fuel; 25

“tax” means solid fuel carbon tax within the meaning of *subsection (1)* of *section 78*.

Charging and rates
of solid fuel carbon
tax.

78.—(1) Subject to the provisions of this Chapter and any regulations made under it, a duty of excise, to be known as solid fuel carbon tax, shall be charged, levied and paid at the rates specified in *Schedule 1* on all solid fuel supplied in the State by a supplier. 30

(2) *Subsection (1)* shall apply to all solid fuel supplied by a supplier, for combustion by such supplier.

(3) The rate per tonne for each solid fuel specified in *Schedule 1* is in proportion to the emissions of CO₂ from the combustion of the solid fuel concerned and is determined by the formula— 35

$$\text{NCV} \times \text{EF} \times \text{A}$$

where—

NCV is the net calorific value of the solid fuel concerned expressed in terajoules per tonne, 40

¹¹OJ No. L260 of 11 October, 2003, p.8

EF is the carbon emission factor of the solid fuel concerned expressed in tonnes of CO₂ per terajoule,

A is the amount, €15, to be charged per tonne of CO₂ emitted.

5 **79.**—Tax shall be charged at the time the solid fuel is first supplied in the State by a supplier, and that supplier shall be accountable for and liable to pay the tax charged. Liability to pay solid fuel carbon tax.

80.—Every supplier shall register with the Commissioners in accordance with such procedures as the Commissioners may prescribe or otherwise impose. Registration of solid fuel suppliers.

10 **81.**—(1) For the purposes of *section 79*, a supplier shall within one month of the end of an accounting period, in respect of the solid fuel supplied in that accounting period, furnish to an officer a return in such form as the Commissioners may require showing— Returns and payment by solid fuel suppliers.

(a) the quantity and description of that solid fuel, and

15 (b) in respect of the each of the reliefs under *section 82*, the quantity of that solid fuel that qualified for such relief.

(2) The supplier shall, in accordance with the return under *subsection (1)* and by the time that return is due, pay the amount of tax due in respect of the accounting period concerned.

20 **82.**—(1) Without prejudice to any other relief from tax which may apply, and subject to such conditions as may be prescribed or otherwise imposed, a full relief from tax shall be granted on any solid fuel which is shown to the satisfaction of the Commissioners to have been delivered for use— Reliefs from solid fuel carbon tax.

25 (a) for the generation of electricity, or

(b) for chemical reduction or in electrolytic or metallurgical processes.

30 (2) (a) Without prejudice to any other relief from tax which may apply, and subject to *paragraph (b)* and to such conditions as may be prescribed or otherwise imposed, a relief from tax shall be granted on any solid fuel which is shown to the satisfaction of the Commissioners to have been delivered for use in an installation that is covered by a greenhouse gas emissions permit.

35 (b) The relief under *paragraph (a)* is—

(i) in the case of peat, a full relief, and

40 (ii) in the case of coal, a partial relief, to be calculated as the amount of tax chargeable on the quantity of coal delivered, less an amount calculated at the rate of €4.18 per tonne.

Repayments of
solid fuel carbon
tax.

83.—(1) Where a supply on which tax has been paid qualifies for relief under *section 82* a repayment of that tax shall be made to the consumer of that supply.

(2) (a) Claims for repayment under *subsection (1)* shall be in such form as the Commissioners may direct and shall be in respect of solid fuel delivered within a period of not less than one and not more than 6 calendar months. 5

(b) Except where the Commissioners may in any particular case otherwise allow, a repayment may not be made unless the claim is made within 6 calendar months following the end of the period in respect of which the claim for repayment is made. 10

Offence and penalty
(*Chapter 3*).

84.—(1) It is an offence under this subsection for any person to contravene or fail to comply with any provision of this Chapter, or any regulation made under *section 85*, or any condition imposed under this Chapter, or under such regulation in relation to such provision. 15

(2) Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under *subsection (1)* is liable on summary conviction to a fine of €5,000. 20

(3) Where an offence under *subsection (1)* is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of an offence and may be proceeded against and punished as if guilty of the first-mentioned offence. 25

Regulations
(*Chapter 3*).

85.—The Commissioners may, for the purposes of managing, securing and collecting the tax, or for the protection of the revenue derived from it, make regulations. 30

Care and
management
(*Chapter 3*).

86.—The tax imposed by this Chapter is placed under the care and management of the Commissioners.

Commencement
(*Chapter 3*).

87.—This Chapter comes into operation on such date as the Minister for Finance may appoint by order. 35

CHAPTER 4

Miscellaneous

Rates of alcohol
products tax.

88.—The Finance Act 2003 is amended with effect as on and from 10 December 2009 by substituting the following for Schedule 2 to that Act: 40

“SCHEDULE 2

RATES OF ALCOHOL PRODUCTS TAX

(With effect as on and from 10 December 2009)

	Description of Product	Rate of Tax
5	<i>Spirits:</i>	€31.13 per litre of alcohol in the spirits
	<i>Beer:</i>	
	Exceeding 0.5% vol but not exceeding 1.2% vol	€0.00
10	Exceeding 1.2% vol but not exceeding 2.8% vol	€7.85 per hectolitre per cent of alcohol in the beer
15	Exceeding 2.8% vol	€15.71 per hectolitre per cent of alcohol in the beer
	<i>Wine:</i>	
	Still and sparkling, not exceeding 5.5% vol	€87.39 per hectolitre
20	Still, exceeding 5.5% vol but not exceeding 15% vol	€262.24 per hectolitre
	Still, exceeding 15% vol	€380.52 per hectolitre
	Sparkling, exceeding 5.5% vol	€524.48 per hectolitre
	<i>Other Fermented Beverages:</i>	
	(1) <i>Cider and Perry:</i>	
25	Still and sparkling, not exceeding 2.8% vol	€32.93 per hectolitre
	Still and sparkling, exceeding 2.8% vol but not exceeding 6.0% vol	€65.86 per hectolitre
30	Still and sparkling, exceeding 6.0% vol but not exceeding 8.5% vol	€152.28 per hectolitre
	Still, exceeding 8.5% vol... ..	€216.00 per hectolitre
	Sparkling, exceeding 8.5% vol	€432.01 per hectolitre
35	(2) <i>Other than Cider and Perry:</i>	
	Still and sparkling, not exceeding 5.5% vol	€87.39 per hectolitre
	Still, exceeding 5.5% vol... ..	€262.24 per hectolitre
	Sparkling, exceeding 5.5% vol	€524.48 per hectolitre
40	<i>Intermediate Beverages:</i>	
	Still, not exceeding 15% vol	€262.24 per hectolitre
	Still, exceeding 15% vol	€380.52 per hectolitre
	Sparkling	€524.48 per hectolitre

”.

89.—Section 98A of the Finance Act 1999 is amended—

Amendment of section 98A (relief for biofuel) of Finance Act 1999.

45 (a) in subsection (1) by substituting “a relief from mineral oil tax shall, subject to such conditions as may be imposed by the Minister or by the Commissioners, apply to such biofuel” for “a relief from mineral oil tax shall, subject to such conditions as the Commissioners may impose, apply to such biofuel”,

50 (b) by inserting the following after subsection (1):

55 “(1A) The power of the Minister under subsection (1) to impose conditions includes the power to impose such conditions as the Minister considers necessary or appropriate for the purpose of ensuring that an approved project is conducted in accordance with the terms of its approval.”,

(c) by inserting the following after subsection (3):

“(3A) Where the total quantity of biofuel specified under subsection (3)(a) in the approval for any particular project exceeds 50 million litres, relief under subsection (1) shall not be granted in respect of any quantity of biofuel, produced or supplied (as the case may be) during the period from 1 July 2010 to 31 December 2010, that exceeds 20 per cent of that total quantity.”.

Amendment of Chapter 1 (mineral oil tax) of Part 2 of Finance Act 1999.

90.—(1) Chapter 1 of Part 2 of the Finance Act 1999 is amended—

(a) in subsection (1) of section 94 by inserting the following definition after the definition of “recycle”:

“ ‘release for consumption’ has the same meaning as it has in Part 2 of the Finance Act 2001;”,

(b) in section 95 by substituting the following for subsection (1)—

“(1) In addition to any other duty that may be chargeable, and subject to the provisions of this Chapter and any regulations made under it, a duty of excise, to be known as mineral oil tax, shall, subject to subsection (4), be charged, levied and paid on all mineral oil—

(a) released for consumption in the State, or

(b) released for consumption in another Member State, and brought into the State.”.

(2) This section has effect on and from 1 April 2010.

Amendment of Chapter 3 (tobacco products tax) of Part 2 of Finance Act 2005.

91.—(1) Chapter 3 of Part 2 of the Finance Act 2005 is amended in subsection (1) of section 71—

(a) by inserting the following definition after the definition of “fine cut tobacco for the rolling of cigarettes”:

“ ‘importer’ means a person who, for commercial purposes, brings tobacco products into the State, and includes a person who brings tobacco products from another Member State;”,

and

(b) by substituting the following for the definition of “release for consumption”:

“ ‘release for consumption’ has the same meaning as it has in Part 2 of the Finance Act 2001;”.

(2) Chapter 3 of Part 2 of the Finance Act 2005 is amended by substituting the following for section 72:

“Charging and rates.

72.—In addition to any other duty that may be chargeable, and subject to the provisions of this Chapter and any regulations made under it, a duty of excise, to be known as tobacco products tax,

shall be charged, levied and paid at the rates specified in Schedule 2 on all tobacco products—

(a) released for consumption in the State,
or

5 (b) released for consumption in another
Member State and brought into the
State.”.

(3) Chapter 3 of Part 2 of the Finance Act 2005 is amended in section 73 by substituting the following for subsection (1):

10 “(1) Liability for tobacco products tax shall arise at the time
tobacco products are, either—

(a) released for consumption in the State, or

(b) following release for consumption in another Member
State, brought into the State.”.

15 (4) This section has effect on and from 1 April 2010.

92.—(1) Chapter 1 of Part 2 of the Finance Act 2003 is amended—

Amendment of
Chapter 1 (alcohol
products tax) of
Part 2 of Finance
Act 2003.

(a) in subsection (1) of section 73 by inserting the following
definition after the definition of “prohibited goods”:

20 “ ‘release for consumption’ has the same meaning as it has
in Part 2 of the Finance Act 2001;”,

(b) in section 75 by substituting the following for subsection
(1)—

25 “(1) In addition to any other duty that may be charge-
able, and subject to the provisions of this Chapter and any
regulations made under it, a duty of excise, to be known
as alcohol products tax, shall be charged, levied and paid
at the rates specified in Schedule 2 on all alcohol
products—

30 (a) released for consumption in the State, or

(b) released for consumption in another Member
State and brought into the State.”,

(c) in section 76 by substituting the following for subsection
(1):

35 “(1) Liability for alcohol products tax shall arise at the
time alcohol products are, either—

(a) released for consumption in the State, or

(b) following release for consumption in another
Member State, brought into the State.”.

40 (2) This section has effect on and from 1 April 2010.

93.—(1) Part 2 of the Finance Act 2001 is amended—

(a) by substituting the following for section 96:

“Interpretation
(Part 2).

96.—(1) In this Part—

‘accompanying administrative document’
means the document provided for by Com- 5
mission Regulation (EEC) No. 2719/92¹² of
11 September 1992;

‘Appeal Commissioners’ has the meaning
assigned to it by section 850 of the Taxes
Consolidation Act, 1997; 10

‘authorised warehousekeeper’ means, as
the case requires, either—

(a) a person in the State authorised
by the Commissioners, in
accordance with section 109, to 15
produce, process, or hold excis-
able products in a tax ware-
house, or to dispatch and
receive consignments of excis- 20
able products to and from a tax
warehouse, in the course of
business, under a suspension
arrangement, or

(b) a person in another Member
State, authorised by the com- 25
petent authorities of that
Member State to dispatch and
receive consignments of excis-
able products to and from a tax
warehouse, in the course of 30
business, under a suspension
arrangement;

‘Commissioners’ means the Revenue Com-
missioners;

‘Directive’ means Council Directive No. 35
2008/118/EC¹³ of 16 December 2008;

‘European Union’ means the territory of
the Union as defined by the Treaty on the
Functioning of the European Union and, in
particular, Article 355 of that Treaty except 40
for the following national territories:

(a) in the case of Germany, the
Island of Heligoland and the
territory of Büsingen,

(b) in the case of Italy, Livigno, 45
Campione d’Italia and the
Italian waters of Lake Lugano,

¹²OJ No. L276 of 19 September 1992, p.1

¹³OJ No. L9 of 14 January 2009, p.12

(c) in the case of the United Kingdom, the Channel Islands,

(d) in the case of Greece, Mount Athos,

(e) in the case of Spain, the Canary Islands, Ceuta and Melilla,

(f) in the case of France, the overseas Departments of the Republic, and

(g) in the case of Finland, the Åland Islands;

‘excise law’ means the statutes that relate to the duties of excise and the instruments relating to those duties made under statute;

‘exempt consignee’ means, as the case may be, either—

(a) a consignee in the State who, in respect of a consignment, qualifies for relief under section 104(1), and who has been granted a certificate to that effect by the Commissioners, or

(b) a consignee in another Member State who, in respect of a consignment, qualifies for relief in accordance with paragraph 1 of Article 12 of the Directive, and who has been granted a certificate to that effect by the competent authority of that Member State;

‘free warehouse’ has the same meaning as it has in Article 166 of Council Regulation (EEC) No. 2913/92 of 12 October 1992¹⁴;

‘free zone’ has the same meaning as it has in Article 166 of Council Regulation (EEC) No. 2913/92 of 12 October 1992;

‘information’ includes any representation of fact, whether in legible form or otherwise;

‘Member State’ means a Member State of the European Union;

‘mineral oil’ has the same meaning as it has in paragraph (d) of section 97(1);

‘non-State vendor’ means a person in another Member State who sells excisable products, released for consumption in that

¹⁴OJ No. L302 of 19 October 1992, p.1

Member State, to a private individual resident in the State, for the personal use of that private individual, and who dispatches or transports such products, directly or indirectly, to such private individual; 5

‘officer’, except in Chapter 4, means an officer of the Commissioners;

‘prescribed’ means prescribed by regulations made by the Commissioners under section 153; 10

‘prohibited goods’ has the same meaning as it has in either—

(a) section 94 of the Finance Act 1999, or

(b) section 73 (as amended by the 15 Finance Act 2005) of the Finance Act 2003;

‘records’ means any books, accounts, documents or other recorded information including information in a computer or in 20 other non-legible form;

‘registered consignee’ means, as the case requires, either—

(a) a person, other than an authorised warehousekeeper or an 25 exempt consignee, authorised by the Commissioners, in accordance with section 109J(3), to receive, in the course of business, consignments of 30 excisable products from another Member State under a suspension arrangement, or

(b) a person in another Member State, other than an authorised 35 warehousekeeper or an exempt consignee, authorised by the competent authority of that Member State, to receive, in the course of business, consign- 40 ments of excisable products from another Member State under a suspension arrangement;

‘registered consignor’ means, as the case 45 requires, either—

(a) a person, other than an authorised warehousekeeper, who is authorised by the Commissioners in accordance with 50 section 109A to consign, in the course of business, excisable

products to another Member State under a suspension arrangement, upon their release for free circulation in accordance with Article 79 of Council Regulation (EEC) No. 2913/92, or

(b) a person, other than an authorised warehousekeeper, who is authorised by the competent authorities of another Member State, to consign, in the course of business, excisable products from that other Member State under a suspension arrangement, upon their release for free circulation in accordance with Article 79 of Council Regulation (EEC) No. 2913/92;

‘simplified accompanying document’ means the simplified accompanying document provided for in Commission Regulation (EEC) No. 3649/92 of 17 December 1992¹⁵;

‘spirits’ has the same meaning as it has in paragraph (a) of section 97(1);

‘State vendor’ means a person established in the State who sells excisable products, released for consumption in the State, to a private individual in another Member State for the personal use of that private individual, and who dispatches or transports such products, directly or indirectly, to such private individual;

‘suspension arrangement’ means an arrangement under which excisable products are produced, processed, held or moved, excise duty being suspended;

‘tax representative’ means a person, established in the State, who is authorised by the Commissioners to act as an agent on behalf of persons delivering excisable products from another Member State;

‘tax warehouse’ means, as the case requires, either—

(a) a premises or place approved by the Commissioners under section 109, where excisable products may be produced, processed, held, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business, or

¹⁵OJ No. L369 of 18 December 1992, p.17

- (b) a premises or place approved by the competent authority of another Member State, where excisable products may be produced, processed, held, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business; 5

‘tobacco products’ has the same meaning as it has in paragraph (c) of section 97(1); 10

‘vehicle’ means a mechanically propelled vehicle or any other conveyance, and includes any container, trailer, tank or any other thing, which— 15

- (a) is or may be used for the storage of goods in the course of carriage, and

- (b) is designed or constructed to be placed on, in or attached to any such vehicle or other conveyance; 20

‘wine’ has the same meaning as it has in section 73 of the Finance Act 2003.

(2) A word or expression that is used in this Part and which is also used in the Directive has, unless a meaning is provided by subsection (1) or section 109B or the contrary intention otherwise appears, the same meaning in this Part as it has in the Directive.”, 25 30

- (b) by substituting the following for section 98:

“Importation from outside territory of European Union.

98.—The Commissioners may require that, on the importation of excisable products from outside the territory of the European Union, the person who declares such products for free circulation in accordance with Article 79 of Council Regulation (EEC) No. 2913/92 shall provide such information as they require for the correct accounting for, and payment of, any excise duty that is payable on such products.”, 35 40

- (c) by inserting the following after section 98:

“Release for consumption.

98A.—(1) In this Part ‘release for consumption’ means— 45

- (a) any release, including irregular release, of excisable products from a suspension arrangement,

- (b) any production, including irregular production, of excisable 50

products outside a suspension arrangement, or

- (c) any importation, including irregular importation, of excisable products, except where, in the case of a regular importation, the excisable products are, immediately upon importation, placed under a suspension arrangement.

(2) Where a consignment is to be delivered to a registered consignee or exempt consignee under section 109J(1), that consignment is released for consumption when it is so received by that consignee, or when it is delivered in accordance with section 109J(2).

(3) Any excisable products that are held otherwise than under a suspension arrangement have been released for consumption under subsection (1).

(4) Without prejudice to subsection (1), excisable products shall be deemed not to have been released for consumption where they are shown to the satisfaction of the Commissioners to have been lost—

- (a) during production, processing or holding in the State, or

- (b) in the course of movement to, from or within the State,

under a suspension arrangement, and where such loss is shown to their satisfaction to have been—

- (i) due to unforeseen circumstances or *force majeure*, or

- (ii) a loss inherent in the nature of the excisable products, or

- (iii) the result of destruction in accordance with such procedures as the Commissioners may require.

(5) For the purposes of subsection (4) excisable products are destroyed where they are rendered unusable as excisable products.

(6) Except where subsection (4) applies, a shortage or loss of excisable products under a suspension arrangement is a release for consumption, and such products are, accordingly, liable to excise duty at the rate applicable—

(a) at the time such losses or shortages occurred, where such time can be established to the satisfaction of an officer, or

(b) where such time cannot be so established, at the time such losses or shortages came to the notice of an officer. 5

(7) For the purposes of subsection (1)(a), an irregular release of excisable products from a consignment under a suspension arrangement is a release for consumption in the State only where that irregular release has occurred in the State or is, in accordance with prescribed criteria, deemed to have so occurred.”, 10 15

(d) by substituting the following for section 99:

“Liability of persons.

99.—(1) An authorised warehousekeeper is liable for payment of the excise duty on excisable products released from a tax warehouse by such authorised warehousekeeper— 20

(a) for consumption, or

(b) for delivery under a suspension arrangement.

(2) The liability under subsection (1)(b) is fully or partly discharged where, and to the extent that, the excisable products have been (as the case may be)— 25

(a) received into another tax warehouse in the State, 30

(b) received in another Member State by a consignee referred to in section 109E(2),

(c) exported from the European Union, 35

and evidence to that effect is received within the prescribed time and in the prescribed manner.

(3) A registered consignor is liable for payment of the excise duty on any consignment made by such registered consignor under section 109E(1)(b), and that liability is fully or partly discharged where, and to the extent that, evidence that the consignment has ended is received within the prescribed time and in the prescribed manner. 40 45

(4) A registered consignee is liable for payment of excise duty on excisable products delivered to such consignee under a suspension arrangement. 50

5 (5) Without prejudice to the liability of any person under subsection (1), (3), or (4), where the irregular release of excisable products from a suspension arrangement gives rise to a liability to excise duty, any person who knowingly participated in that irregular release is liable for payment of that excise duty.

10 (6) A tax representative, acting on behalf of a non-State vendor in accordance with section 109U, is liable for the payment of the excise duty on excisable products delivered to the State by or on behalf of such non-State vendor.

15 (7) Where excisable products are imported into the State from outside the European Union, and the products are not then placed under a suspension arrangement, the person liable for payment of the excise duty is—

20 (a) the person who declares such products for free circulation, in accordance with Article 79 of Council Regulation (EEC) No. 2913/92, or

(b) where the excisable products are not declared for free circulation—

30 (i) any person who imports the products, and

35 (ii) any person who arranged for the importation of the products, or on whose behalf such importation was arranged.

(8) Where excisable products are produced, otherwise than under a suspension arrangement in a tax warehouse, the person liable for payment of the excise duty is—

40 (a) the producer of the excisable products, and

(b) any person who arranged for the production, or on whose behalf the production was carried out.

45 (9) Where any person, otherwise than under a suspension arrangement, has—

(a) sold or delivered, or

(b) kept for sale or delivery,

50 excisable products on which the appropriate excise duty has not been paid, then—

- (i) such person,
- (ii) any other person on whose behalf such excisable products have been so sold, kept, or delivered, and 5
- (iii) any person to whom such products have been delivered,

is liable for payment of the excise duty on such excisable products.

(10) Where any person has received 10 excisable products on which excise duty has been relieved, rebated, repaid, or charged at a rate lower than the appropriate standard rate subject to a requirement that such excisable products are used for a specific 15 purpose or in a specific manner, and where—

- (a) such requirement has not been satisfied, or
- (b) any requirement of excise law in 20 relation to the holding or delivery of such excisable products has not been complied with, and it is not shown, to the satisfaction of the Commissioners, 25 that the excisable products have been used, or are held for use, for such purpose or in such manner,

then the person who has received such 30 excisable products, or who holds them for sale or delivery, is liable for payment of the excise duty on such products at the rate appropriate to them, without the benefit of any such relief, rebate, repayment or 35 lower rate.

(11) Where under subsections (1) to (10) more than one person is, in a particular case, liable for payment of an excise duty liability, such persons are jointly and sever- 40 ally liable.

(12) Subsections (1) to (11) are without prejudice to the liability of excisable products to excise duty, or their liability to forfeiture, under excise law.”, 45

(e) by substituting the following for section 100:

“Duties to apply to excisable products released for consumption in another Member State. 100.—(1) Subject to section 104(2), the duties of excise imposed by the provisions referred to in section 97 shall apply in relation to excisable products released for 50 consumption in another Member State and brought into the State.

5 (2) Subsection (1) shall not apply to any excisable products that have been released for consumption in another Member State and which are held on board a boat or aircraft making a sea crossing between another Member State and the State, where such excisable products are not available for sale or supply while such boat or aircraft is within the territory of the State.

10 (3) Subsection (1) shall not apply to excisable products that are brought into the State under cover of the simplified accompanying document, while such products remain under such cover.”,

15 (f) by deleting section 102,

 (g) in section 104 by substituting the following for subsection (1):

20 “(1) Without prejudice to any other relief from excise duty that may apply, and subject to such conditions as the Commissioners may prescribe or otherwise impose, a full relief from excise duty shall be granted on any excisable products that are shown to the satisfaction of the Commissioners to be delivered—

 (a) under diplomatic arrangements in the State,

25 (b) to international organisations recognised as such by the State, and the members of such organisations based in the State, within the limits and under the conditions laid down by international conventions establishing such organisations or by other agreements,

 (c) for consumption under any agreement entered into between the State and a country other than a Member State where such agreement also provides for exemption from value-added tax,

 (d) for export or re-export from the State to a place outside the European Union, or shipped for use as stores on board a ship or aircraft on a voyage or a flight, as the case may be, from a place in the State to a place outside the State, and

 (e) to a tax-free shop at an airport for supply to passengers travelling to a destination outside of the European Union.”,

45 (h) in section 105 by deleting paragraphs (d) and (e) of subsection (1),

 (i) in section 105C (inserted by section 98 of the Finance Act 2003) by deleting subsection (1),

50 (j) in section 105D by deleting the definition of “excise law” in subsection (1),

(k) by deleting section 106,

(l) in section 108A (inserted by section 69 of the Finance Act 2008) by substituting the following for paragraph (b) of subsection (1):

“(b) the holding of excisable products under a suspension arrangement, or on which the appropriate rate of excise duty has not been paid.”, 5

(m) in section 109 by substituting the following for paragraphs (b) and (c) of subsection (7):

“(b) Without prejudice to paragraph (a) a tenant shall, at a level specified in the authorisation document, provide security for any excisable products to be received by such tenant as a consignee under a suspension arrangement, 10

(c) Any authorised warehousekeeper who dispatches excisable products from a tax warehouse under a suspension arrangement shall, before any such dispatch, provide security, valid throughout the European Union, at a level specified in the authorisation document, 15
20
for the excise duty on such products.”,

(n) by inserting the following after section 109:

“Authorisation of registered consignors. 109A.—(1) In this section—
‘applicant’ means a person who has applied in writing for authorisation under subsection (2); 25

‘authorised’ means authorised as a registered consignor under this section;

‘conditions of authorisation’ means the conditions referred to in subsection (2). 30

(2) The Commissioners may, under this section, authorise a person who has applied to them in writing as a registered consignor—

(a) for consignments of specific types of excisable products, and 35

(b) for such period, and subject to such conditions as they may think fit to impose in any particular case. 40

(3) (a) An applicant shall only be authorised where it is shown to the satisfaction of the Commissioners that such applicant or, where the applicant is a company, any director or person having control of such company, within the meaning of section 11 of the Taxes Consolidation Act 45

1997, can satisfy the conditions of authorisation.

(b) No applicant shall be authorised who does not hold a current tax clearance certificate issued under section 1094 of the Taxes Consolidation Act 1997.

(c) No applicant shall be authorised where such applicant or, where the applicant is a company, any director or person having control of the company within the meaning of section 11 of the Taxes Consolidation Act 1997, has in the 10 years prior to the application been convicted of any indictable offence under the Acts referred to in section 1078(1) of that Act, or any corresponding offence under the law of another Member State.

(4) Before any excisable products are consigned by a registered consignor, that registered consignor shall provide security, valid throughout the European Union, at a level specified in the authorisation document, for the excise duty on such consignment.

(5) A registered consignor shall inform an officer of any changes or proposed changes that are relevant to the conditions of authorisation.

(6) The Commissioners may at any time, following such notice as is reasonable in the circumstances, vary the conditions of authorisation.

(7) Where a registered consignor is a company, the authorisation shall expire immediately upon a change of control of such company, within the meaning of section 11 of the Taxes Consolidation Act 1997.

(8) Authorisation under this section is at all times subject to the conditions of authorisation, and the Commissioners may revoke an authorisation where the registered consignor—

(a) contravenes or fails to comply with such conditions,

(b) contravenes or fails to comply with any provision of excise law relating to the excisable products in respect of which the

authorisation has been granted,
or

- (c) no longer satisfies the requirements for authorisation.

(9) Where the Commissioners propose to revoke an authorisation, they shall notify the registered consignor concerned in writing of their intention, and afford such registered consignor a period of at least 15 working days from the date of that notification, to make representations to them in relation to the matter.”,

- (o) by substituting the following for Chapter 2:

“CHAPTER 2A

Intra-European Union Movement under a Suspension Arrangement

Interpretation
(Chapter 2A).

109B.—In this Chapter—

‘administrative reference code’ means the unique administrative reference to be assigned to the draft electronic administrative document, in accordance with Article 21(3) of the Directive;

‘Commission Regulation’ means Commission Regulation (EC) No. 684/2009 of 24 July 2009¹⁶;

‘completely denatured alcohol products’ means alcohol products that are exempt from excise duty under Article 27(1)(a) of Council Directive No. 92/83/EEC;

‘computerised system’ means the system referred to in Article 1 of Decision No. 1152/2003/EC of the European Parliament and of the Council of 16 June 2003¹⁷;

‘consignment’ means the single movement of a specific quantity of excisable products under a suspension arrangement;

‘consignor’ means, as the case requires, either—

- (a) an authorised warehousekeeper or registered consignor in the State who dispatches a consignment under section 109E(1), or
- (b) an authorised warehousekeeper or registered consignor in another Member State who dispatches a consignment;

¹⁶OJ No. L197 of 29 July 2009, p.24

¹⁷OJ No. L162 of 1 July 2003, p.1

5 'customs electronic data' in respect of a
consignment, means the export data that,
under Chapter 3 of Title IV of Commission
Regulation (EEC) No. 2454/93 of 2 July
1993¹⁸, are to be exchanged between cus-
toms authorities using information tech-
nology and computer networks;

10 'customs office of exit' means the customs
office of exit referred to in Article 793(2)
of Commission Regulation (EEC) No.
2454/93;

15 'customs office of export' means the cus-
toms office of export where an export dec-
laration is lodged in accordance with
Article 161(5) of Council Regulation
(EEC) No. 2913/92;

20 'customs suspensive arrangement' means
any one of the special procedures provided
for under Council Regulation (EEC) No.
2913/92 relating to the customs supervision
to which non-European Union goods are
subjected upon their entry into the Euro-
pean Union customs territory, temporary
storage, free zones or free warehouses, as
25 well as any of the arrangements referred to
in Article 84(1)(a) of that Regulation;

30 'designated consignee' means the author-
ised warehousekeeper, registered con-
signee, or exempt consignee, identified as
the consignee in the electronic administra-
tive document, or any other document
under cover of which a consignment is
dispatched;

35 'destination Member State', in respect of a
consignment, means the Member State
where, as the case may be, the designated
consignee, or place of exportation for that
consignment, is located;

40 'electronic administrative document' means
the electronic administrative document
referred to in Article 21(2) of the Directive;

45 'exemption certificate' means, as the case
requires, the certificate referred to in para-
graph (a) or (b) of the definition of 'exempt
consignee' in section 96;

'Member State of dispatch' means the
Member State from which a consignment
is dispatched;

50 'paper confirmation of export' has the
meaning given by section 109N(4);

'paper confirmation of receipt' has the
meaning given by section 109N(1);

¹⁸OJ No. L253 of 11 October 1993, p.1

‘place of exportation’ means a place where, in accordance with customs procedures, excisable products leave the territory of the European Union;

‘place of importation’ means a place where excisable products are released for free circulation in accordance with Article 79 of Council Regulation (EEC) No. 2913/92; 5

‘place of direct delivery’ has the same meaning as it has in Article 17(2) of the Directive; 10

‘report of export’ means a report by means of the computerised system, in accordance with Article 25(1) of the Directive, certifying that a consignment has been exported from the territory of the European Union; 15

‘report of receipt’ means a report by means of the computerised system, in accordance with Article 24(1) of the Directive, certifying that a consignment has been received by a designated consignee; 20

‘small wine producer’ means a person in another Member State who produces on average less than 1,000 hectolitres of wine per year, and who is, under Article 40 of the Directive, exempted by the competent authorities of that Member State from the requirements of Chapters III and IV of the Directive; 25

‘temporary registered consignee’ means a registered consignee who receives consignments only occasionally, and whose registration is limited accordingly under section 109J(3). 30

Product scope (Chapter 2A). 109C.—(1) Subject to subsections (2) and (3), this Chapter applies to all excisable products. 35

(2) This Chapter applies only to—

(a) those mineral oils specified in paragraph (1) of Article 20 of Council Directive No. 2003/96/EC of 27 October 2003¹⁹, or which have, by a decision under paragraph (2) of that Article, been made subject to Chapters III, IV, and V of Council Directive No. 2008/118/EC, 40 45

(b) consignments from small wine producers to the extent provided for in section 109O(2), 50

¹⁹OJ No. L283 of 31 October 2003, p.51

- (c) consignments of completely denatured alcohol products to the extent provided for in section 109O(1).

(3) This Chapter does not apply to any excisable products that are under a customs suspensive arrangement.

Member State territories, exceptional arrangements (Chapter 2A).

109D.—Without prejudice to the definition of ‘European Union’ in section 96, a consignment under a suspension arrangement to or from—

- (a) the Principality of Monaco shall be treated as a movement to or from France,
- (b) San Marino shall be treated as a movement to or from Italy,
- (c) the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall be treated as a movement to or from Cyprus,
- (d) the Isle of Man shall be treated as a movement to or from the United Kingdom,
- (e) Jungholz and Mittelberg (Kleines Walsertal) shall be treated as a consignment to or from Germany.

Consignments to another Member State under a suspension arrangement.

109E.—(1) A consignment under a suspension arrangement from a place in the State to another Member State begins when that consignment is dispatched from—

- (a) a tax warehouse, where the consignor is an authorised warehousekeeper, or
- (b) a place of importation, where the consignor is a registered consignor.

(2) Subject to the relevant provisions of this Chapter, a consignor may dispatch a consignment to—

- (a) a tax warehouse, where the designated consignee is an authorised warehousekeeper,
- (b) a registered consignee,
- (c) a place of exportation, or
- (d) an exempt consignee,

in another Member State.

(3) Except where—

(a) in accordance with section 109I(1)(b), a consignment is under cover of a paper document, or 5

(b) in accordance with section 109P, a consignment is dispatched under cover of an accompanying administrative document, 10

a consignment from a place in the State to another Member State shall be dispatched under the computerised system, and under cover of an electronic administrative document. 15

(4) The consignor shall ensure that a consignment under cover of the electronic administrative document is accompanied at all times by—

(a) a printed copy of that document, 20
or a commercial document with the same information, and

(b) in the case of a consignment to an exempt consignee, an exemption certificate, 25

and that such document, and where applicable such certificate, is made available on request to an officer.

Consignment to consignee in another Member State under computerised system. 109F.—(1) For a consignment to a designated consignee in another Member State, 30
a consignor shall submit a draft electronic administrative document, completed in accordance with Article 3 of the Commission Regulation, to the Commissioners.

(2) The Commissioners shall carry out 35
an electronic verification of the data in the draft electronic administrative document by reference to the requirements of the Commission Regulation.

(3) Where the data in the draft electronic administrative document are verified in accordance with subsection (2), the Commissioners shall assign an administrative reference code to it, and forward it without delay to the consignor and to the competent authority of the destination Member State. 40
45

(4) Where the data in the draft electronic administrative document cannot be verified in accordance with subsection (2), 50
the Commissioners shall, without delay,

advise the consignor accordingly by means of the computerised system.

(5) Where in respect of an electronic administrative document that has, under subsection (3), been forwarded to the competent authority of the destination Member State, the Commissioners receive a report of receipt from that authority, they shall forward that report to the consignor.

Consignment to place of exportation in another Member State under computerised system.

109G.—(1) For a consignment to a place of exportation in another Member State, a consignor shall submit a draft electronic administrative document, completed in accordance with Article 3 of the Commission Regulation, to the Commissioners.

(2) The Commissioners shall carry out an electronic verification of the data in the draft electronic administrative document by reference to the requirements of the Commission Regulation.

(3) (a) Where the data in the draft electronic administrative document are verified in accordance with subsection (2), the Commissioners shall assign an administrative reference code to it, and forward it without delay to the consignor.

(b) Where the data in the draft electronic administrative document cannot be verified in accordance with subsection (2), the Commissioners shall, without delay, advise the consignor accordingly by means of the computerised system.

(4) Where an administrative reference code has been assigned in accordance with subsection (3)(a), and where the export declaration for the consignment is lodged at a customs office of export in another Member State, the Commissioners shall without delay forward the electronic administrative document to the competent authority of that Member State.

(5) Where in respect of a consignment for which an administrative reference code has been assigned in accordance with subsection (3)(a), the Commissioners find that the data in the electronic administrative document do not accord with the customs electronic data for that consignment—

(a) the Commissioners shall advise the consignor accordingly, and

(b) the consignor shall, where required by the Commissioners, ensure that the consignment is halted until such time as the discrepancy is resolved. 5

(6) Where in respect of an electronic administrative document that has, under subsection (4), been forwarded to the competent authority of another Member State the Commissioners receive a report of 10 export from that authority, they shall forward that report to the consignor.

(7) This section does not apply to any consignment for which customs electronic data are not available. 15

Cancellation
or amendment
of electronic
administrative
document.

109H.—(1) A consignor may only cancel an electronic administrative document where the consignment has not yet been dispatched from (as the case may be) the tax warehouse or place of importation. 20

(2) Where a consignment has been dispatched, the consignor may by means of the computerised system, in accordance with Article 4 of the Commission Regulation, and subject to verification under (as the 25 case may be) section 109F(2) or 109G(2), amend the destination of the consignment as recorded in the electronic administrative document to any other destination that is allowable under section 109E(2). 30

(3) Subsection (2) does not apply to any consignment to an exempt consignee.

(4) (a) In the case of a consignment of mineral oil by sea, the Commissioners may, subject to such 35 conditions as they may prescribe or otherwise require, permit the consignor to omit the data concerning the designated consignee from the draft elec- 40 tronic administrative document, where those data have not been determined at the time that document is submitted.

(b) Where paragraph (a) applies, the 45 consignor shall, by means of the computerised system, submit the relevant data to the Commissioners as soon as they are determined, and at the latest 50 when the consignment ends.

Consignment
to another
Member State
where
computerised
system is
unavailable.

109I.—(1) Where the computerised system is unavailable to a consignor, that consignor may, in accordance with subsections (1) and (2) of section 109E, dispatch a consignment where—

(a) the consignor informs the Commissioners in advance, in accordance with such procedures as they may prescribe or otherwise require, of the intention to dispatch and the reason for the unavailability,

(b) the consignment is accompanied by a paper document (referred to as such in this section) containing all the data required for an electronic administrative document.

(2) The Commissioners may prescribe—

(a) the circumstances and situations in which, for the purposes of subsection (1), the computerised system may be considered to be unavailable to a consignor,

(b) the form of the paper document.

(3) The Commissioners may, in any particular case, require that—

(a) a copy of the paper document is sent to them,

(b) the unavailability of the computerised system, and the validity of the paper document, are established to their satisfaction before the consignment is dispatched.

(4) (a) A consignor who has consigned in accordance with subsection (1) shall, as soon as the computerised system is available to that consignor, submit a draft electronic administrative document for the consignment concerned.

(b) From such time as an administrative reference code is assigned to the draft electronic administrative document submitted in accordance with paragraph (a), the consignment is under cover of that document, and subject to the provisions of this Chapter

that relate to the computerised system.

(5) Where a consignment is under cover of a paper document, the consignor may, in accordance with such procedures as the Commissioners may prescribe, change the destination for that consignment, as recorded in that paper document, to any other destination that is allowable under section 109E(2).

Consignments to the State under suspension arrangement.

109J.—(1) A consignment from another Member State may be delivered to—

- (a) a tax warehouse, where the designated consignee is an authorised warehousekeeper,
- (b) a registered consignee, subject to subsection (3),
- (c) an exempt consignee, or
- (d) a place of exportation,

in the State.

(2) Without prejudice to subsection (1), the Commissioners may, subject to such conditions as they may prescribe or otherwise require, in the case of any consignment for—

- (a) a tax warehouse, or
- (b) a registered consignee other than a temporary registered consignee,

allow that consignment to be delivered to a place of direct delivery.

(3) For the purposes of subsection (1)(b) a registered consignee shall—

- (a) be registered as such by the Commissioners for such periods and subject to such conditions as the Commissioners may prescribe, and in any case where consignments are to be delivered only occasionally, such authorisation may be limited to—

- (i) a specified quantity of excisable products,
- (ii) a single consignment,
- (iii) a single consignor, or

(iv) a specified period,

(b) provide security for the excise duty on every consignment to be received, before such consignment is dispatched,

(c) keep such records as the Commissioners may require.

(4) (a) The Commissioners may at any time for reasonable cause revoke any registration under subsection (3), or vary its terms.

(b) Where the Commissioners propose to revoke a registration under paragraph (a), they shall notify the registered consignee accordingly in writing of their intention, and afford such registered consignee a period of at least 15 working days from the date of that notification, to make representations to them in relation to the matter.

(5) Where, in respect of any consignment under the computerised system to an authorised warehousekeeper or registered consignee, the Commissioners receive an electronic administrative document from the competent authority of the Member State of dispatch, they shall forward that electronic administrative document to that authorised warehousekeeper or registered consignee.

(6) The consignments referred to in subsection (1), and any other consignment from another Member State that enters the territory of the State, shall at all times be under cover of—

(a) an electronic administrative document,

(b) in any case where the computerised system was unavailable at the time of consignment, and Article 26(3) of the Directive applied for the time being, a paper document containing all the data required for an electronic administrative document, or

(c) in any case where section 109P(1) applies, an accompanying administrative document.

(7) In the case of a consignment to an exempt consignee under section 109J(1)(c), that consignee shall take all reasonable steps to ensure that, in addition to the document required for that consignment under subsection (6), the consignment is accompanied by a copy of the exemption certificate of the exempt consignee. 5

Completion of
consignment.

109K.—(1) A consignment shall end—

(a) in the case of a consignment to a designated consignee, when that designated consignee has taken delivery of the consignment, and 10

(b) in the case of a consignment to a place of exportation, when that consignment has left the territory of the European Union. 15

(2) (a) A report of receipt, report of export, paper confirmation of receipt or paper confirmation of export shall, unless and until there is evidence to the contrary, be evidence that a consignment has ended. 20 25

(b) Without prejudice to paragraph (a), the Commissioners may, in any case where evidence under that paragraph is unavailable, accept alternative evidence that a consignment has ended. 30

Report of
receipt.

109L.—(1) (a) Except where section 109N applies, and subject to paragraph (b), where a consignment has been delivered to a designated consignee in accordance with section 109J(1), that designated consignee shall, without delay and no later than 5 working days after the consignment has been received, submit a report of receipt to the Commissioners. 35 40

(b) Where a consignment has been delivered to an exempt consignee in accordance with section 109J(1)(c), the Commissioners shall, in accordance with such procedure as they may prescribe or otherwise require, prepare a report of receipt. 45 50

(2) The Commissioners shall, by reference to the requirements of the Commission Regulation, carry out a verification

of the data in each report of receipt submitted to them.

(3) (a) Where the data in the report of receipt are verified in accordance with subsection (2), the Commissioners shall, by means of the computerised system confirm the registration of that report to the designated consignee, and forward it to the competent authority of the Member State of dispatch.

(b) Where the data in the report of receipt cannot be verified in accordance with subsection (2), the Commissioners shall advise the designated consignee accordingly without delay.

Report of export.

109M.—(1) Where, in the case of a consignment to a place of exportation, the export declaration is lodged at a customs office of export in the State, and where an electronic administrative document has been forwarded to the Commissioners from—

(a) a consignor in the State, in accordance with section 109G and verified in accordance with subsection (2) of that section, or

(b) the competent authority of a Member State of dispatch, in accordance with Article 21.5 of the Directive,

the Commissioners shall, on receipt of an electronic confirmation from the customs office of exit that the consignment has left the territory of the European Union, carry out an electronic verification of the data in that confirmation and, subject to such verification, complete a report of export.

(2) The Commissioners shall forward the report of export—

(a) where paragraph (a) of subsection (1) applies, to the consignor,

(b) where paragraph (b) of subsection (1) applies, to the competent authority of the Member State of dispatch.

Confirmation of receipt and export by alternative means.

109N.—(1) Where a report of receipt cannot be submitted in accordance with section 109L(1), either because—

(a) the computerised system is unavailable to the designated consignee, or

(b) the consignment remains, for the time being under cover of the paper document in accordance with section 109J(6)(b), 5

the designated consignee shall, between the 15th and 30th day after the consignment has ended, submit to the Commissioners a paper confirmation of receipt containing all the data required for a report of receipt, stating that the consignment has been received. 10

(2) Where a paper confirmation of receipt has been submitted in accordance with subsection (1), and as soon as paragraph (a) or (b) (as the case may be) of subsection (1) no longer applies, the designated consignee shall submit a report of receipt for the consignment by means of the computerised system in accordance with section 109L(1). 15 20

(3) Where—

(a) a paper confirmation of receipt has been submitted to the Commissioners, and 25

(b) within 30 days of the ending of the consignment, the consignee cannot submit a report of receipt by means of the computerised system, 30

then the Commissioners shall forward a copy of the paper confirmation of receipt to the competent authorities of the Member State of dispatch. 35

(4) Where because—

(a) the computerised system is unavailable, or

(b) the consignment remains, for the time being under cover of the paper document in accordance with section 109J(6)(b), 40

a report of export cannot be forwarded in accordance with section 109M, the Commissioners shall, between the 15th day and 30th day after the consignment has ended, complete a paper confirmation of export containing all the data required for a report of export and forward it, as appropriate to the circumstances of section 109M(2), to 45 50

the consignor in the State or the competent authority of the Member State of dispatch.

(5) Where, in respect of any consignment to another Member State, the Commissioners receive, otherwise than by means of a report of receipt or a report of export, confirmation from the competent authority of another Member State that a consignment has ended, they shall forward that confirmation to the consignor.

Exceptional
procedures.

109O.—(1) Without prejudice to the generality of this Chapter, the provisions of this Chapter that relate to the computerised system shall not apply to consignments under a suspension arrangement of completely denatured alcohol, and such consignments shall, in accordance with Article 5 of Commission Regulation (EEC) No. 3649/92, be under cover of the simplified accompanying document.

(2) Without prejudice to the generality of this Chapter, the provisions of this Chapter that relate to the computerised system shall not apply to consignments of wine produced and dispatched by a small wine producer, and any such consignment shall be in accordance with Commission Regulation (EC) No. 884/2001 of 24 April 2001²⁰, and such procedures as the Commissioners may prescribe.

(3) For any consignment of wine referred to in subsection (2), the designated consignee shall—

(a) in advance of the dispatch of the consignment, inform an officer in writing of the intention to receive it,

(b) provide such evidence as the officer may require that the consignment is from a small wine producer, and

(c) on receipt of the consignment, advise the Commissioners in accordance with such procedures as they may specify.

Transitional
arrangements.

109P.—(1) From 1 April 2010 until 31 December 2010, or until such other day as the Minister for Finance may appoint by order—

(a) a consignment to another Member State in accordance with section 109E,

²⁰OJ No. L128 of 10 May 2001, p.32

- (b) a consignment to the State in accordance with section 109J, or
 - (c) any other consignment from another Member State that enters the territory of the State, 5
- may be under cover of the accompanying administrative document.

(2) The Commissioners may prescribe—

- (a) the circumstances in which a consignment may be dispatched 10 under paragraph (a) of subsection (1),
- (b) the procedure for the dispatch of a consignment under the accompanying administrative 15 document,
- (c) the procedure for receiving a consignment under the accompanying administrative 20 document.

(3) A consignor shall only dispatch a consignment under cover of the accompanying administrative document to a temporary registered consignee in another Member State, where that temporary registered consignee, in advance of the dispatch, provides such consignor with a document certifying that such temporary registered consignee— 25

- (a) has declared to the competent 30 authority of the destination Member State the intention to receive such consignment, and
- (b) has paid or secured the excise duty on such consignment in 35 that Member State.

CHAPTER 2B

Intra-European Union Movement of Duty-Paid Excisable Products

Interpretation (Chapter 2B). 109Q.—In this Chapter ‘consignment’ 40 means the single movement to a Member State of a specific quantity of excisable products that have been released for consumption in another Member State.

Product scope (Chapter 2B). 109R.—(1) Subject to subsection (2), 45 this Chapter applies to all excisable products.

(2) This Chapter applies only to those mineral oils specified in paragraph (1) of

Article 20 of Council Directive No. 2003/96/EC of 27 October 2003 or which have, by a decision under paragraph (2) of that Article, been made subject to Chapters III, IV, and V of Council Directive No. 2008/118/EC.

Member State territories, exceptional arrangements (Chapter 2B).

109S.—Without prejudice to the definition of ‘European Union’ in section 96, a consignment to or from—

- (a) the Principality of Monaco shall be treated as a consignment to or from France,
- (b) San Marino shall be treated as a consignment to or from Italy,
- (c) the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall be treated as a consignment to or from Cyprus,
- (d) the Isle of Man shall be treated as a consignment to or from the United Kingdom,
- (e) Jungholz and Mittelberg (Kleines Walsertal) shall be treated as a consignment to or from Germany.

Consignment to the State of excisable products released for consumption in another Member State.

109T.—(1) Subject to subsection (2), a consignment may be brought into the State only where the person who brings it, or any other person who arranges for it to be so brought—

- (a) in advance of the dispatch of the consignment, declares to an officer the intention to bring the consignment, and secures the excise duty,
- (b) pays the excise duty on the excisable products consigned,
- (c) complies with such conditions as may be prescribed.

(2) Any consignment under subsection (1) shall be accompanied by a simplified accompanying document, and be delivered to the person designated as the recipient in that document.

(3) This section does not apply to any excisable products that are—

- (a) relieved from excise duty under section 104(2), or

- (b) acquired from a non-State vendor in accordance with section 109U.

Distance
selling from
another
Member State.

109U.—(1) Before the dispatch of a consignment to a private individual in the State, a non-State vendor shall appoint a person established in the State as a tax representative who, under section 99(6), is liable for the excise duty on that consignment.

(2) (a) A tax representative shall be approved as such by the Commissioners for such periods and subject to such conditions, including the level of security to be provided, as the Commissioners may think fit to impose in any particular case.

(b) The Commissioners may at any time for reasonable cause revoke any approval granted under paragraph (a), or vary its terms.

(c) Where the Commissioners propose to revoke an approval under paragraph (b), they shall notify the tax representative concerned in writing of their intention, and afford such tax representative a period of at least 15 working days from the date of that notification, to make representations to them in relation to the matter.

(3) A tax representative shall ensure that—

(a) prior to the dispatch of a consignment, a declaration, in such form as the Commissioners may prescribe, is made to an officer, describing the consignment and designating a premises or place to which it is to be delivered,

(b) prior to the dispatch of a consignment, security is provided for the excise duty on it,

(c) as soon as the consignment is delivered, any excise duty outstanding is paid,

(d) such other requirements, including the keeping of records, as the Commissioners may prescribe, are complied with.

5 Consignment of excisable products, duty-paid in the State, to another Member State. 109V.—Any person other than a State vendor who dispatches a consignment from the State to another Member State shall—

(a) before the consignment is dispatched—

(i) make a declaration to the Commissioners in such form as they may prescribe or otherwise require, and

10 (ii) ensure that the consignment is under cover of the simplified accompanying document,

15 (b) comply with such other requirements, including the keeping of records, as the Commissioners may prescribe.

20 Distance selling to another Member State. 109W.—A State vendor shall, for any excisable products sold by such State vendor and dispatched to a private individual in another Member State—

(a) before the dispatch—

25 (i) have registered his or her identity with the office designated by the competent authority of that other Member State for that purpose, and

30 (ii) guarantee payment of the excise duty due in that other Member State on the consignment,

35 (b) pay any excise duty outstanding in respect of any such consignment, in that other Member State as soon as the consignment is delivered,

40 (c) keep records, and provide such information as the Commissioners may require to determine that any such consignment has been in accordance with paragraphs (a) and (b), and to establish an entitlement to a repayment under section 105(1)(b).

50 Additional requirements. 109X.—(1) In addition to any other requirement of this Chapter or Chapter 2A for use of the simplifying accompanying document, any consignment, other than a consignment from a State vendor or a non-State vendor shall, at all times while within

the territory of the State, be under cover of that document.

(2) The Commissioners may prescribe requirements for consignments—

(a) between 2 places in another Member State, by way of the territory of the State,

(b) between 2 places in the State, by way of another Member State.”,

(p) in section 121 by substituting the following for subparagraph (i) of paragraph (a):

“(i) any provision of section 108A, 109, or 109A, or any provision of Chapter 2A, or 2B, or,”

(q) in section 131 by substituting the following for paragraphs (b), (c) and (d) of subsection (3):

“(b) without prejudice to section 104(2), where excisable products which have been released for consumption in another Member State are found in the State and a requirement specified in subsection (1) of section 109T has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with that subsection,

(c) where excisable products to which subsection (3) of section 109U applies are found in the State, and a requirement specified in that subsection has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with that subsection,

(d) where excisable products to which section 109J applies are found in the State and a requirement or condition specified in that section or in regulations made under section 153 has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with (as the case may be) the requirement or condition concerned.”,

(r) in section 144A by substituting the following for subsection (2):

“(2) Any power, function or duty conferred or imposed on the Commissioners by any provision of section 108A, 109, or 109A, or of Chapter 2A or Chapter 2B, may be

exercised or performed on their behalf, and subject to their direction and control, by an officer authorised by them in writing for the purposes of the provision concerned.”,

(s) in subsection (3) of section 145 by substituting the following for paragraphs (b) and (c):

“(b) a refusal to approve a person as a tax representative under section 109U(2), or a revocation under that section of any such approval that has been granted,

(c) a refusal to register a person as a registered consignee under section 109J(3) or a revocation under that section of any such authorisation that has been granted,”

and

(t) in subsection (3) of section 145 by inserting the following after paragraph (f):

“(g) a refusal to approve a person as a registered consignor under section 109A, or a revocation under that section of any such approval that has been granted,”.

(2) This section comes into operation on 1 April 2010.

94.—Section 34 of the Finance Act 1963 is amended in subsection (6) by deleting paragraph (c) (inserted by section 80 of the Finance Act 2003).

Amendment of section 34 (amendments relative to penalties) of Finance Act 1963.

95.—(1) A person who commits an offence to which section 186 of the Customs Consolidation Act 1876 relates is liable—

Section 186 (illegally importing) of Customs Consolidation Act 1876 and penalties for offences.

(a) on summary conviction, to a fine of €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment,

(b) on conviction on indictment, to a fine not exceeding—

(i) €126,970, or

(ii) where the value of the goods concerned, including the duty and tax payable thereon, is greater than €250,000, three times the value of those goods,

or at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

(2) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under section 186 of the Customs Consolidation Act 1876 as if, in place of the penalties specified in subsection (3) of section 13 of the Criminal Procedure Act 1967, there were specified in that subsection the penalties provided for by *subsection (1)(a)* and the reference in subsection (2)(a) of section 13 of the

Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

(3) Section 89 of the Finance Act 1997 is repealed.

Amendment of
section 3 (penalty
for illegally
exporting goods) of
Customs Act 1956.

96.—Section 3 of the Customs Act 1956 is amended—

(a) in subsection (1) by deleting “and shall for each such offence forfeit either treble the value of the goods or €125, whichever is the greater, and such person may either be detained or proceeded against by summons” and substituting the following:

“and shall for each such offence be liable—

(i) on summary conviction, to a fine of €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment,

(ii) on conviction on indictment, to a fine not exceeding—

(I) €126,970, or

(II) where the value of the goods concerned, including the duty and tax payable thereon, is greater than €250,000, three times the value of those goods,

or at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment”,

and

(b) by inserting the following after subsection (3):

“(4) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of section 13 of the Criminal Procedure Act 1967, there were specified in that subsection the penalties provided for by subsection (1)(i) of this section and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.”.

Provision of
information relating
to persons,
conveyances and
goods.

97.—(1) In this section “transport operator” means a person or class of persons—

(a) concerned with any aspect of the movement of persons, conveyances or goods out of the State, or

(b) any person directly concerned with the movement of persons, conveyances or goods into the State,

to whom regulations made by the Revenue Commissioners under this section relate.

5 (2) For the purposes of the prevention, detection and investigation of offences under the Customs Acts and the statutes relating to the duties of excise, the Revenue Commissioners may make regulations requiring a transport operator or class of transport operator to provide to the Revenue Commissioners, in relation to persons, conveyances or goods, entering or leaving the State, or about to enter or leave the State, by air or by sea, the following to the extent known to the transport operator concerned:

- 10 (a) a list specifying the name and nationality of each person carried or to be carried on board the conveyance and in such form, and containing such other information relating to the person, as may be prescribed in the regulations;
- (b) details of the members of the crew of the conveyance;
- 15 (c) such information in respect of the conveyance or goods as may be prescribed in the regulations;
- (d) copies of such documents, including travel documents relating to any person or goods carried or to be carried on board the conveyance, as may be prescribed in the regulations;
- 20 (e) such other information as may be prescribed in the regulations.

(3) Without prejudice to the generality of *subsection (2)*, regulations under this section may, in particular, include provision for—

- 25 (a) notifying a transport operator that he or she is a person to whom the regulations relate,
- (b) determining the timing, frequency, manner and format by which information to be supplied under the regulations shall be made to the Revenue Commissioners,
- 30 (c) delegating to an officer, or a particular class of officers, of the Revenue Commissioners the authority to perform any acts and discharge any function authorised by the regulations or this section (other than the power to make regulations) to be performed or discharged by the Revenue Commissioners,
- 35 (d) prescribing the offices of the Revenue Commissioners to which the information should be delivered, and
- (e) such supplemental and incidental matters as appear to the Revenue Commissioners to be necessary—
 - 40 (i) to enable a transport operator to comply with the regulations, or
 - (ii) for the general administration and implementation of this section and the regulations.

45 (4) Regulations made under this section shall be laid before Dáil Éireann as soon as may be after they are made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done under them.

(5) Information provided to the Revenue Commissioners in accordance with this section shall be kept only for the period necessary to achieve the purpose for which it was provided in accordance with the section. The need for the retention of any information kept for a period greater than 12 months shall be reviewed at least annually by the Revenue Commissioners. 5

(6) Without prejudice to any other penalty to which a transport operator may be liable, any transport operator who, without reasonable cause, fails to provide the information which he or she is required to provide by regulation under this section, or who provides information which he or she knows to be incorrect or misleading, shall be liable to a penalty of €1,500. 10

(7) Section 1077A of the Taxes Consolidation Act 1997 (as inserted by section 98 and Schedule 5 of the Finance (No. 2) Act 2008) is amended in the definition of “the Acts” by inserting “(h) the Customs Acts,” after “(g) the statutes relating to the duties of excise and to the management of those duties,”. 15

Amendment of
section 102
(penalties for
certain mineral oil
tax offences) of
Finance Act 1999.

98.—Section 102 of the Finance Act 1999 is amended—

(a) in subsection (4)(b) by substituting “not exceeding €126,970” for “of €12,695” (inserted by the Finance Act 2001), and 20

(b) by substituting the following for subsection (8):

“(8) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (4)(a) of this section, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.”. 25 30

Amendment of
section 119
(penalties for
certain excise
offences) of Finance
Act 2001.

99.—Section 119 of the Finance Act 2001 is amended—

(a) in subsection (3) by substituting the following for paragraph (b):

“(b) on conviction on indictment, to a fine not exceeding— 35

(i) €126,970, or

(ii) where the value of the excisable products concerned, including any duty or tax chargeable thereon, is greater than €250,000, three times the value of those products, 40

or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.”, 45

and

(b) by inserting the following after subsection (3):

“⁽⁴⁾ Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (3)(a) of this section, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.”.

10 **100.**—Section 79 of the Finance Act 2003 (as amended by section 62 of the Finance Act 2005) is amended—

Amendment of section 79 (penalties for certain alcohol products tax offences) of Finance Act 2003.

(a) in subsection (7) by substituting “subsection (1) or (3)” for “subsection (1), (2) or (3)”,

15 (b) in subsection (8) by substituting “subsection (2) or (5)” for “subsection (5)”,

(c) in subsection (8)(b) by substituting “a fine not exceeding €126,970” for “a fine of €12,695”, and

(d) by inserting the following after subsection (8):

20 “(8A) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (8)(a) of this section, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.”.

101.—Section 78 of the Finance Act 2005 is amended—

Amendment of section 78 (penalties for certain tobacco products tax offences) of Finance Act 2005.

30 (a) in subsection (5)(b) by substituting “a fine not exceeding €126,970” for “a fine not exceeding €12,695”, and

(b) by inserting the following after subsection (5):

35 “(5A) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (5)(a) of this section, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.”.

102.—(1) Section 130 of the Finance Act 1992 is amended—

Amendment of section 130 (interpretation) of Finance Act 1992.

(a) by substituting the following for the definition of “ambulance”:

45 “ ‘ambulance’ has the same meaning as in paragraph 5.3 of Annex II of Directive 2007/46/EC;”,

(b) by substituting the following for the definition of “bus”:

“ ‘bus’ means a category M2 vehicle or a category M3 vehicle;”,

- (c) by substituting the following for the definition of “category A vehicle”:

“ ‘category A vehicle’ means a category M1 vehicle;”, 5

- (d) by substituting the following for the definition of “category B vehicle”:

“ ‘category B vehicle’ means a category N1 vehicle or a motor caravan;”,

- (e) by substituting the following for the definition of “category C vehicle”: 10

“ ‘category C vehicle’ means a category M2 vehicle, a category M3 vehicle, a category N2 vehicle, a category N3 vehicle, a category T1 vehicle, a category T2 vehicle, a category T3 vehicle, a category T4 vehicle or a category T5 vehicle;”, 15

- (f) by inserting the following definitions after the definition of “category D vehicle”:

“ ‘category M1 vehicle’, ‘category M2 vehicle’, ‘category M3 vehicle’, ‘category N1 vehicle’, ‘category N2 vehicle’ 20 and ‘category N3 vehicle’ have the same meanings as in Annex II of Directive 2007/46/EC;

‘category L1e vehicle’, ‘category L2e vehicle’, ‘category L3e vehicle’, ‘category L4e vehicle’, ‘category L5e vehicle’, ‘category L6e vehicle’ and ‘category L7e vehicle’ have the 25 same meanings as in Directive 2002/24/EC;

‘category T1 vehicle’, ‘category T2 vehicle’, ‘category T3 vehicle’, ‘category T4 vehicle’ and ‘category T5 vehicle’ have the same meanings as in Annex II of Directive 2003/37/EC;”, 30

- (g) by inserting the following definition after the definition of “the Commissioners”:

“ ‘competent person’ means one or more than one individual or body appointed by the Commissioners under section 131;”, 35

- (h) by substituting the following for the definition of “conversion”:

“ ‘conversion’, in relation to a vehicle, means the modification of the vehicle in such manner that it no longer retains all of the characteristics of the vehicle category 40 under which it is certified for type-approval purposes;”,

- (i) by inserting the following definitions after the definition of “deal”:

“ ‘Directive 2007/46/EC’ means Directive 2007/46/EC²¹ of the European Parliament and of the Council of 5 45 September 2007 (as amended) establishing a framework for the approval of motor vehicles and their trailers, and

²¹OJ No. L263, 9.19.2007, p.1

of systems, components and separate technical units intended for such vehicles;

‘Directive 2002/24/EC’ means Directive 2002/24/EC²² of the European Parliament and of the Council of 18 March 2002 (as amended) relating to the type-approval of two or three-wheel motor vehicles and repealing Council Directive 92/61/EEC;

‘Directive 2003/37/EC’ means Directive 2003/37/EC²³ of the European Parliament and of the Council of 26 May 2003 (as amended) on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units and repealing Directive 74/150/EEC;”,

(j) by substituting the following for the definition of “motor cycle”:

“ ‘motor cycle’ means a category L1e vehicle, a category L2e vehicle, a category L3e vehicle, a category L4e vehicle, a category L5e vehicle, a category L6e vehicle or a category L7e vehicle;”,

(k) by substituting the following for the definition of “motor caravan”:

“ ‘motor caravan’ has the same meaning as in paragraph 5.1 of Annex II of Directive 2007/46/EC;”,

(l) by inserting the following definition after the definition of “special purpose vehicle”:

“ ‘type-approval’ means the process of certification whereby a type of vehicle satisfies the relevant administrative provisions and technical requirements imposed by, or pursuant to, Directive 2007/46/EC, Directive 2002/24/EC and Directive 2003/37/EC, and references to ‘type-approved’ shall be construed accordingly;”,

(m) in the definition of “vehicle” by substituting “vehicle;” for “vehicle.”, and

(n) by inserting the following definition after the definition of “vehicle”:

“ ‘vehicle details’ means any data or information in relation to the registration of vehicles and their ownership which may be specified by the Commissioners for the purposes of this Chapter.”.

(2) *Subsection (1)* (other than *paragraphs (g), (m) and (n)*) comes into operation on 1 January 2011.

103.—Section 130B of the Finance Act 1992 is amended by substituting the following for subsection (1):

“(1) For the purposes of this Chapter, and subject to the direction and control of the Commissioners, any power, function

Amendment of section 130B (delegation of certain powers of the Revenue Commissioners) of Finance Act 1992.

²²OJ No. L124, 9.05.2002, p.1

²³OJ No. L171, 9.07.2003, p.1

or duty conferred or imposed on them may, subject to subsection (2), be exercised or performed on their behalf by an officer of the Commissioners or by a competent person.”.

Amendment of
section 131
(registration of
vehicles by
Revenue
Commissioners) of
Finance Act 1992.

104.—Section 131(1) of the Finance Act 1992 is amended by substituting the following for paragraph (ba):

“(ba) In respect of a vehicle which is within any particular category of vehicle that is specified by the Commissioners for the purposes of this paragraph or is within any other class of vehicle that is specified by the Commissioners, the Commissioners may, as a condition of registration, require confirmation that such vehicle—

- (i) is a mechanically propelled vehicle, and
- (ii) complies with any matters specified by the Commissioners as they consider necessary for—
 - (I) the registration of the vehicle concerned,
 - (II) the proper operation of vehicle registration tax, and
 - (III) the collection of the appropriate amount of vehicle registration tax.

(bb) Where in respect of a vehicle the Commissioners require confirmation for the purposes of paragraph (ba), they shall register the vehicle only on receipt by them of a declaration made by a competent person in such form as may be specified by the Commissioners that the vehicle—

- (i) is a mechanically propelled vehicle, and
- (ii) complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii).

(bc) The Commissioners may appoint in writing a competent person for all or any of the following purposes:

- (i) for the purposes of paragraph (bb), to carry out a pre-registration examination of a vehicle to determine if the vehicle is a mechanically propelled vehicle and to confirm whether or not such vehicle complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii);
- (ii) in respect of each vehicle examined by a competent person for the purposes of this subsection, to—
 - (I) declare to the Commissioners in such form as may be specified by the Commissioners the vehicle details and the details of the person to whom it will be registered, and

(II) subject to section 136A(4), to pay the vehicle registration tax that is chargeable, leviable and payable in respect of the registration of the vehicle;

(iii) to carry out any other functions specified by the Commissioners as they consider necessary for—

(I) the registration of the vehicle concerned, and

(II) the proper operation of vehicle registration tax.

(bd) A competent person appointed under paragraph (bc) shall comply with any instructions and directions given by the Commissioners to such person for the purposes of paragraphs (ba), (bb), (bc), (be) and (bf).

(be) The Commissioners may, at any time for reasonable cause (which shall be stated to the competent person) and following such notice as is reasonable in the circumstances, revoke an appointment made under paragraph (bc).

(bf) The fee to be charged by the competent person for the carrying out of functions referred to in paragraph (bc) shall be agreed with the Commissioners. Different fees may be so agreed in respect of different categories or other classes of vehicles. The fees so agreed shall be deducted from the vehicle registration tax to be paid under section 136A to the Commissioners by the competent person, but no other fees, charges or costs incurred by the person presenting the vehicle for registration shall be so deducted.”.

105.—(1) Section 132(3) of the Finance Act 1992 is amended—

Amendment of section 132 (charge of excise duty) of Finance Act 1992.

(a) in paragraph (f)(iii) by substituting “output,” for “output.”, and

(b) by inserting the following after paragraph (f):

“(g) in case it is a vehicle whose category cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, or any other documentation specified by the Commissioners for the purposes of confirming the categorisation of vehicles for the purposes of this Chapter which is produced in support of the declaration for registration, the vehicle shall be deemed to be a category M1 vehicle for vehicle registration tax purposes.”.

(2) *Subsection (1)* comes into operation on 1 January 2011.

Amendment of section 135 (temporary exemption from registration) of Finance Act 1992.

106.—Section 135 of the Finance Act 1992 is amended by substituting the following for subsection (3):

“(3) In respect of a vehicle to which subsection (2) relates, a declaration made by a competent person under section 131(1) shall be produced to the Commissioners in order that the vehicle may be registered.”. 5

Repayment of amounts of vehicle registration tax in respect of the registration of certain new vehicles.

107.—The Finance Act 1992 is amended by inserting the following after section 135B:

“135BA.—(1) In this section—

‘new vehicle’ means a category A vehicle that has not been registered or recorded under— 10

(a) section 131 of this Act or section 6 of the Roads Act 1920, or

(b) a system for maintaining a record of vehicles and their ownership established by or on behalf of the government of another state; 15

‘scrapped vehicle’ means a category A vehicle in respect of which a certificate of destruction has been issued in accordance with the Waste Management (End-of-Life Vehicles) Regulations 2006 (S.I. No. 282 of 2006) and references to ‘scrapped’ and ‘certificate of destruction’, in relation to such a vehicle, shall be construed accordingly. 20

(2) The Commissioners may repay to a person an amount of the vehicle registration tax paid in respect of a new vehicle equal to the lesser of the amount of the tax which, apart from this section, would be payable in respect of that vehicle or €1,500, where— 25

(a) the new vehicle has a level of CO₂ emissions of not more than 140g/km,

(b) the new vehicle is first registered during the period 1 January 2010 to 31 December 2010, 30

(c) the person becomes registered as the owner of the new vehicle at the time when it is first registered,

(d) a scrapped vehicle has been registered in the name of the registered owner of the new vehicle for a period of not less than 18 months immediately prior to the date of registration of the new vehicle, 35

(e) the scrapped vehicle is scrapped on or after 10 December 2009, and is scrapped within 60 days prior to, or 60 days after, the date of the first registration of the new vehicle, but in any case is scrapped no later than 31 December 2010, 40

(f) the scrapped vehicle was first registered or recorded under—

(i) section 131 of this Act or section 6 of the Roads Act 1920, or 45

- (ii) a system for maintaining a record of vehicles and their ownership established by or on behalf of the government of another state,

not less than 10 years prior to the date of issue of a certificate of destruction in respect of the vehicle,

- (g) in accordance with the Road Traffic (National Car Test) Regulations 2003 (S.I. No. 405 of 2003)—

- (i) a valid test certificate (within the meaning of those Regulations), or a test certificate that expired not more than 90 days prior to the date of issue of the certificate of destruction, issued in respect of the scrapped vehicle, or

- (ii) a test certificate was refused in respect of the scrapped vehicle during the period of 6 months immediately prior to the date of issue of the certificate of destruction,

and

- (h) an approved policy of insurance referred to in section 56(1)(a) of the Road Traffic Act 1961 was issued to the person in respect of the scrapped vehicle and was in force during a total period of at least 12 months in the period of 18 months immediately prior to the date of issue of the certificate of destruction in respect of the scrapped vehicle, or the person was an exempted person within the meaning of section 60 (inserted by section 54 of the Road Traffic Act 1968) of that Act.

(3) A claim for repayment of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the Commissioners for that purpose.

(4) Where a claim for repayment of vehicle registration tax is made under this section in relation to a new vehicle, the following documents shall be retained by the claimant for a period of not less than 4 years from the date on which the new vehicle is first registered—

- (a) the certificate of destruction in relation to the scrapped vehicle,
- (b) the test certificate or evidence of refusal of a test certificate in relation to the scrapped vehicle, as referred to in subsection (2)(g),
- (c) the certificate or certificates of insurance in relation to the scrapped vehicle, as referred to in subsection (2)(h), and
- (d) a copy of the completed application form for the repayment of vehicle registration tax as submitted to the Commissioners for that purpose.

(5) For the purposes of subsection (2)(c) and (h), any reference to ‘person’ may, in the application of those provisions, be construed by the Commissioners as a reference to the person concerned or to that person’s spouse.”.

Remission or repayment in respect of vehicle registration tax on certain plug-in hybrid electric vehicles, certain electric vehicles and certain electric motorcycles.

108.—(1) Chapter IV of Part II of the Finance Act 1992 is amended by substituting the following for section 135C:

“135C.—(1) In this section—

‘electric vehicle’ means a vehicle that derives its motive power exclusively from an electric motor; 5

‘electric motorcycle’ means a motorcycle that derives its motive power exclusively from an electric motor;

‘plug-in hybrid electric vehicle’ means a series production vehicle that derives its motive power from a combination of an electric motor and an internal combustion engine, where the electric motor derives its power from a battery that may be charged from the internal combustion engine and an alternating current (AC) electric mains supply and is capable of being driven on electric propulsion alone for a material part of its normal driving cycle. 10 15

(2) (a) Where a person first registers a category A vehicle or a category B vehicle during the period from 1 January 2011 to 31 December 2012 and the Commissioners are satisfied that the vehicle is a plug-in hybrid electric vehicle, then the Commissioners shall remit or repay to that person an amount equal to the lesser of— 20

(i) the vehicle registration tax which, apart from this subsection, would be payable in respect of the vehicle in accordance with paragraph (a) or (c) of section 132(3), or 25

(ii) the amount specified in the Table to this subsection which is referable to the vehicle having regard to its age.

(b) In this subsection ‘age’, in relation to a vehicle, means the time that has elapsed since the date on which the vehicle first entered into service. 30

TABLE

Age of vehicle	Maximum amount which may be remitted or repaid	
New vehicle, first registration	€2,500	35
Not a new vehicle but less than 2 years	€2,250	
2 years or over but less than 3 years	€2,000	40
3 years or over but less than 4 years	€1,750	
4 years or over but less than 5 years	€1,500	
5 years or over but less than 6 years	€1,250	
6 years or over but less than 7 years	€1,000	45
7 years or over but less than 8 years	€750	
8 years or over but less than 9 years	€500	
9 years or over but less than 10 years	€250	
10 years or over	Nil	

(3) A category A electric vehicle or a category B electric vehicle first registered during the period 1 January 2011 to 31 December 2012 is exempt from vehicle registration tax where 50

the Commissioners are satisfied that such vehicle is a series production electric vehicle.

(4) An electric motorcycle first registered during the period 1 January 2011 to 31 December 2012 is exempt from vehicle registration tax where the Commissioners are satisfied that such vehicle is a series production electric motorcycle.”.

(2) This section comes into effect on 1 January 2011.

109.—The Finance Act 1992 is amended by inserting the following after section 136:

Authorisation of competent persons.

“136A.—(1) The Commissioners may authorise in writing one or more than one competent person to carry out, on their behalf, a specified function or functions relating to the proper operation of vehicle registration tax, subject to such conditions as the Commissioners think fit to impose.

(2) The Commissioners may, at any time for reasonable cause (which shall be stated to the competent person) and following such notice as is reasonable in the circumstances, revoke an authorisation made under subsection (1).

(3) Vehicle registration tax payable at the time of registration of vehicles examined by the competent person for the purposes of section 131(1) shall be paid to the Commissioners by the competent person not later than the 15th day of the month following that in which the vehicle was registered.

(4) The amount of vehicle registration tax which, apart from this section, would be payable by the competent person in accordance with section 131, in respect of all vehicles examined by that person in any month which are registered in that month (in this section referred to as “the gross amount”), shall be reduced by an amount calculated in accordance with the following formula—

$$A - B$$

where—

A is the total fees payable by the Commissioners to a competent person in respect of the examination of those vehicles, and

B is the gross amount multiplied by a percentage equal to the European Inter Bank Offered Rate (EURIBOR) one month rate published on the last working day of the month in which the vehicles were registered minus 0.2.

Where B is greater than A, the amount of vehicle registration tax payable to the Commissioners by the competent person in respect of the vehicles in question shall be increased by the amount by which B exceeds A.”.

110.—Section 141(2) of the Finance Act 1992 is amended by substituting the following for paragraph (w):

Amendment of section 141 (regulations) of Finance Act 1992.

“(w) make provision for the purposes of paragraphs (ba) to (bf) of section 131(1) and sections 135 and 136A, in respect of the carrying out of specified functions by competent persons relating to the registration of vehicles.”.

5

Return of motor
insurance
particulars.

111.—(1) The Finance Act 1992 is amended by inserting the following after section 142:

“142A.—(1) In this section—

‘policy of insurance’ means an approved policy of insurance referred to in section 56(1)(a) of the Road Traffic Act 1961; 10

‘unregistered vehicle’ means a vehicle that has not been registered in the State under section 131 of this Act or section 6 of the Roads Act 1920;

‘vehicle insurer’ has the same meaning as in section 58 of the Road Traffic Act 1961. 15

(2) A vehicle insurer who issues a policy of insurance to a person for a period in excess of 42 days in relation to an unregistered vehicle shall, within one month of the date of issue of the policy of insurance, make a return to the Commissioners of the following particulars— 20

(a) the name and address of the person to whom the policy of insurance issued,

(b) the policy number,

(c) the commencement and cessation dates of the policy of insurance, 25

(d) the registration or identification marks assigned to the unregistered vehicle under a system for maintaining a record of vehicles and their ownership duly established by or on behalf of the government or other authority of the state (other than the State) or territory concerned, or where no such registration or identification mark has been assigned, the vehicle identification number, 30

(e) the country code for the state or territory concerned referred to in paragraph (d) as set out in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision) of the International Organisation for Standardisation, and 35

(f) the make, model, type and colour (if known) of the vehicle. 40

(3) Where a return is required under subsection (2), then such return shall be made in such form as the Commissioners may require, including by electronic means, as appropriate.”.

(2) *Subsection (1)* applies to policies of insurance (within the meaning of section 142A (inserted by *subsection (1)*) of the Finance Act 1992) issued on or after the date of the passing of this Act. 45

PART 4

VALUE-ADDED TAX

112.—In this Part “Principal Act” means the Value-Added Tax Act 1972. Interpretation (*Part 4*).

- 5 **113.**—Section 1 of the Principal Act is amended—
- (a) by inserting with effect from 1 January 2010 the following definition after the definition of “assignment”:
- “ ‘auction scheme’ has the meaning assigned to it by section 10B;”,
- 10 (b) by substituting the following definition for the definition of “local authority”:
- “ ‘local authority’ has the meaning assigned to it by the Local Government Act 2001;”,
- 15 (c) by inserting with effect from 1 July 2010 the following definition after the definition of “principal supply”:
- “ ‘public body’ means—
- (i) a Department of State,
- (ii) a local authority,
- (iii) a body established by any enactment;”,
- 20 (d) in paragraph (b) of the definition of “taxable dealer” by substituting with effect from 1 January 2010 “including a means of transport and agricultural machinery” for “other than a means of transport”, and
- 25 (e) by inserting with effect from 1 July 2010 the following definition after the definition of “telecommunications services”:
- “ ‘telephone card’ means a card, or a means other than money—
- 30 (a) that confers a right to access a telecommunications service and, in cases where the supplier of the telecommunications service so agrees with another supplier (referred to as a ‘contracted third party supplier’), a right to receive other services or goods from that contracted third party supplier, and
- 35 (b) that, when the card or other means is supplied to a person other than for the purpose of resale, entitles the supplier to a consideration for the supply under circumstances that preclude the user of the card or means from being liable for any further charge for access to the telecommunications service or for the receipt of services or goods from a contracted third party supplier;”.
- 40

114.—Section 4B of the Principal Act is amended—

(a) by substituting the following for subsection (5):

“(5) Subject to subsection (8), where a taxable person who carries on a business in the State supplies immovable goods to another taxable person who carries on a business in the State in circumstances where that supply would otherwise be exempted because of subsection (2) of this section, or section 4C(2) or (6)(b), then, despite those provisions, tax is chargeable on that supply, but only if the supplier and the taxable person to whom the supply is made have, no later than the 15th day of the month after the month during which the supply occurred, entered into an agreement in writing to opt to have tax chargeable on that supply (in this Act referred to as a ‘joint option for taxation’).”,

and

(b) by inserting the following after subsection (6):

“(6A) (a) In this subsection—

‘owner’ means the accountable person referred to in section 3(7);

‘purchaser’ means the person to whom the immovable goods that are referred to in paragraph (b) are supplied;

‘vendor’ means the person referred to in section 3(7), not being the accountable person referred to in that section, who disposes of the immovable goods that are referred to in paragraph (b).

(b) Where a supply of immovable goods is a supply to which section 3(7) applies and such supply would otherwise be exempted because of subsection (2) of this section, or subsection (2) or (6)(b) of section 4C, then, despite those provisions, tax is chargeable on that supply, where—

(i) the purchaser is a taxable person, and

(ii) the vendor and the purchaser have, no later than the 15th day of the month after the month during which the supply occurred, entered into an agreement in writing to opt to have tax chargeable on that supply.

(c) Where paragraph (b) applies—

(i) the purchaser shall, in relation to that supply, be an accountable person and shall be liable to pay the tax chargeable on that supply as if that purchaser supplied those goods,

(ii) neither the vendor nor the owner shall be accountable for or liable to pay that tax, and

(iii) sections 9(2A) and 19(3)(b) shall not apply.

(d) Paragraph (b) shall not apply where the purchaser is a person connected (within the meaning of section 7A(3)) with either the vendor or the owner.

(e) Where a supply of immovable goods is a supply to which section 3(7) applies and that supply would otherwise be exempted because of subsection (2) then, despite that provision, tax is chargeable on that supply, where—

(i) the immovable goods are buildings designed as or capable of being used as a dwelling,

(ii) the owner is a person who developed those immovable goods in the course of a business of developing immovable goods or is a person connected with that person within the meaning of section 7A(3), and

(iii) the owner was entitled to a deduction under section 12 for tax chargeable to that person in respect of that owner's acquisition or development of those immovable goods.”.

115.—Section 4C of the Principal Act is amended by substituting the following for subsection (10)—

Amendment of section 4C (transitional measures for supplies of immovable goods) of Principal Act.

“(10) In the application of section 12E to immovable goods and interests in immovable goods to which this section applies, subsections (4), (5) and (6) of that section shall be disregarded in respect of the person who, on 1 July 2008, owns those immovable goods or holds an interest in those immovable goods, but—

(a) if that person develops those immovable goods and that development is a refurbishment, within the meaning of section 12E, that is completed on or after 1 July 2008, subsections (4), (5) and (6) of that section shall not be disregarded in respect of that refurbishment;

(b) if, on or after 23 February 2010, that person—

(i) first uses those immovable goods (in this subsection referred to as the ‘first use’), or

(ii) changes the use of those immovable goods (in this subsection referred to as the ‘changed use’),

and the first use, or the changed use, as the case may be, is a use of those immovable goods for a purpose other than the provision of a letting of the type referred to in paragraph 11(1) of Schedule 1, then subsection (6)(a) of section 12E shall not be disregarded for the remainder of the adjustment period applicable to those immovable goods.”.

Amendment of
section 5 (supply of
services) of
Principal Act.

116.—Section 5 of the Principal Act is amended with effect from 1 July 2010 by deleting subsection (10).

Amendment of
section 8
(accountable
persons) of
Principal Act.

117.—(1) Section 8 of the Principal Act is amended—

- (a) in subsection (1A)(aa)(i) by substituting “a taxable person who carries on a business in the State, or a person to whom a registration number has been assigned” for “a taxable person, or a person other than a taxable person to whom a registration number has been assigned”, 5

- (b) by substituting the following for subsection (2A):

“(2A) Notwithstanding section 2, the State or any public body shall not be treated as a taxable person acting in that capacity in respect of any activity or transaction that is carried out by it in, or is closely linked to, the exercise by the State or such public body of particular rights or powers conferred on it by any enactment, except where— 10 15

- (a) that activity is listed in Annex I (which is set out in Schedule 7) of Council Directive 2006/112/EC of 28 November 2006²⁴ on the common system of value added tax, and is carried out by the State or that public body on a more than negligible scale, or 20

- (b) not treating the State or that public body as a taxable person in respect of that activity or transaction creates or would likely create a significant distortion of competition.”, 25

and

- (c) in subsection (3E)(a) with effect from 8 March 2010—

- (i) in subparagraph (i) by deleting “, or”,
(ii) by deleting subparagraph (ii),
(iii) in subclause (A) by deleting “, the State or such local authority”, and 30
(iv) in subclause (B) by deleting “, the State or such local authority”.

- (2) (a) Subject to *paragraph (b)*, *paragraph (b)* of *subsection (1)* comes into operation on 1 July 2010. 35

- (b) *Paragraph (b)* of *subsection (1)*, in so far as it applies to the supply of community facilities, comes into operation on such day or days as the Minister may by order appoint and different days may be so appointed for different purposes or different community facilities. 40

- (c) For the purposes of *paragraph (b)*, “community facilities” means—

- (i) facilities for taking part in sporting or physical education activities and services closely related to the provision of such facilities, other than facilities for 45

²⁴OJ No. L 347, 11.12.2006, p.1

taking part in golf and for this purpose facilities for taking part in golf do not include facilities for taking part in pitch and putt, and

- (ii) the hiring of halls, meeting rooms, grounds and other facilities of a similar nature to non-profit making sporting, cultural, social and community organisations.

- (d) *Paragraph (c) of subsection (1) shall not affect the validity of any determination made under subsection (3E) of section 8 of the Principal Act before 8 March 2010 by an authorised officer within the meaning of the said subsection (3E), and any such determination shall continue in force as if paragraph (c) of subsection (1) had not been enacted.*

118.—Section 10 of the Principal Act is amended with effect from 1 July 2010—

Amendment of section 10 (amount on which tax is chargeable) of Principal Act.

- (a) by substituting the following for subsection (6):

“(6) Subject to subsection (6A), where a right to receive goods or services for the redeemable value of any coupon, stamp, telephone card, token or voucher is granted for a consideration, the consideration shall be disregarded for the purposes of this Act except to the extent (if any) that it exceeds that redeemable value.”,

- (b) by substituting the following for subsection (6A):

“(6A) Notwithstanding subsection (6), where—

- (a) a supplier—

- (i) supplies a coupon, stamp, telephone card, token or voucher, which has a redeemable value, to a person who acquires it in the course or furtherance of business with a view to resale, and

- (ii) promises to subsequently accept that coupon, stamp, telephone card, token or voucher at its redeemable value in full or part payment of the price of goods or services,

and

- (b) a person who acquires that coupon, stamp, telephone card, token or voucher whether from the supplier referred to in paragraph (a) or from any other person in the course or furtherance of business, supplies it for consideration in the course or furtherance of business,

then in the case of each such supply the consideration received shall not be disregarded for the purposes of this Act and when such coupon, stamp, telephone card, token or voucher is used in payment or part payment of the price of goods or services, its redeemable value shall, for the purposes of section 10(2), be disregarded.”,

- (c) in subsection (7) by deleting paragraph (a),
- (d) in subsection (7) by substituting the following for paragraphs (b) and (c):

“(b) supplies of coupons, stamps, tokens or vouchers when supplied as things in action (not being coupons, stamps, tokens or vouchers specified in subsection (6)), 5

(c) subject to subsection (6A) or (7A), supplies of goods or services wholly or partly in exchange for coupons, stamps, telephone cards, tokens or vouchers of a kind specified in subsection (6) or paragraph (b),” 10

and

- (e) in subsection (10) by inserting the following definition after the definition of “open market value”: 15

“ ‘redeemable value’ means the amount stated on a coupon, stamp, telephone card, token or voucher or, where an amount is not so stated, the value expressed in terms of money for which a coupon, stamp, telephone card, token or voucher can be used as consideration (or part consideration) for a supply of goods or services;” 20

Amendment of section 10A (margin scheme goods) of Principal Act. **119.**—Section 10A of the Principal Act is amended with effect from 1 January 2010—

- (a) in subsection (1) in the definition of “second-hand goods” by substituting “including means of transport (within the meaning of section 12B) and agricultural machinery (within the meaning of section 12C), purchased or acquired on or after 1 January 2010, but not including” for “other than means of transport, agricultural machinery (within the meaning of section 12C),”, 25 30

- (b) in subsection (1) by substituting the following for the definition of “taxable dealer”:

“ ‘taxable dealer’—

(a) means an accountable person who in the course or furtherance of business, whether acting on that person’s own behalf, or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale, purchases or acquires or applies for the purpose of his or her business margin scheme goods or the goods referred to in paragraphs (b) and (c) of subsection (4), with a view to resale, or imports the goods referred to in paragraph (a) of subsection (4), with a view to resale, and 35 40 45

(b) includes a person supplying financial services of the kind specified in paragraph 6(1)(e) of Schedule 1 who acquires or purchases margin scheme goods for the purpose of the supply

thereof as part of an agreement of the kind referred to in section 3(1)(b),

and, for the purposes of this interpretation, a person in another Member State shall be deemed to be a taxable dealer where, in similar circumstances, that person would be a taxable dealer in the State under this section.”,

(c) by substituting the following for subsection (13):

“(13) Notwithstanding paragraph 12 of Schedule 1 where an accountable person acquires goods to which the margin scheme has been applied and that person subsequently supplies those goods, that paragraph shall not apply to that supply, unless the goods consist of—

(a) motor vehicles within the meaning of section 12(3)(b) which that person acquired other than as stock-in-trade or for the purposes of a business which consists in whole or in part of the hiring of motor vehicles or for use, in a driving school business, for giving driving instruction, or

(b) goods used by that person solely in the course of an exempted activity.”,

and

(d) by inserting the following after subsection (13):

“(14) With effect from the date of the passing of the *Finance Act 2010*—

(a) where a means of transport which is a motor vehicle within the meaning of section 12(3)(b) is declared for registration to the Revenue Commissioners in accordance with section 131 of the *Finance Act 1992* by a taxable dealer on that dealer’s own behalf and on which deductibility in accordance with section 12 has been claimed by that dealer, then that means of transport shall be treated for the purposes of this Act as if it were removed from stock-in-trade and such removal is deemed to be a supply of that means of transport by that taxable dealer for the purposes of section 3(1)(e) and, for the avoidance of doubt, the amount of tax chargeable in respect of that supply is the amount referred to in paragraph (b)(ii) and accordingly is not included in any amount which the taxable person is entitled to deduct in accordance with section 12(1)(a)(iii),

(b) at the time when a taxable dealer supplies to another person a means of transport which is deemed to have been previously supplied in accordance with paragraph (a) or section 12B(11)(a), then that means of transport is deemed to have been re-acquired by that dealer as margin scheme goods immediately before the supply to that person and, for the purpose of the calculation of the profit margin

in relation to that supply the purchase price of the means of transport is deemed to be the sum of—

- (i) the amount on which tax was chargeable on the supply of that means of transport to the dealer, 5
- (ii) the tax which was chargeable on the supply referred to at subparagraph (i), and
- (iii) the vehicle registration tax accounted for by that dealer in respect of the registration of that means of transport.”. 10

Amendment of section 10B (special scheme for auctioneers) of Principal Act.

120.—Section 10B of the Principal Act is amended with effect from 1 January 2010 by substituting the following for subsection (10):

“(10) Notwithstanding paragraph 12 of Schedule 1, where an accountable person acquires goods to which the auction scheme has been applied and that person subsequently supplies those goods, that paragraph shall not apply to that supply, unless the goods consist of— 15

- (a) motor vehicles within the meaning of section 12(3)(b) which that person acquired other than as stock-in-trade or for the purposes of a business which consists in whole or in part of the hiring of motor vehicles or for use, in a driving school business, for giving driving instruction, or 20
- (b) goods used by that person solely in the course of an exempted activity.”. 25

Amendment of section 11 (rates of tax) of Principal Act.

121.—Section 11 of the Principal Act is amended with effect from 1 January 2010 in subsection (1)(a) by substituting “21 per cent” for “21.5 per cent”.

Amendment of section 12B (special scheme for means of transport supplied by taxable dealers) of Principal Act.

122.—Section 12B of the Principal Act is amended with effect from 1 January 2010— 30

- (a) in subsection (4)—
 - (i) in paragraph (b) by substituting “the taxable dealer.” for “the taxable dealer.”, and
 - (ii) by deleting the proviso to subsection (4), 35
- (b) in subsection (11) by inserting the following after paragraph (c):
 - “(d) This subsection, other than paragraph (e), does not apply on or after the date of the passing of the *Finance Act 2010*. 40
 - (e) Where on the date of the passing of the *Finance Act 2010* a taxable dealer has a means of transport in respect of which prior to that date the taxable dealer had not claimed deductibility in the circumstances referred to in paragraph (c), 45

then, when that taxable dealer supplies that means of transport to another person, that supply shall be treated as a supply of margin scheme goods for the purposes of section 10A and section 10A(14)(b) shall apply for the purpose of the calculation of the profit margin (within the meaning of section 10A) in relation to that supply.”,

and

(c) by inserting the following after subsection (11):

“(12) (a) Subject to paragraph (b), where a taxable dealer purchases or acquires a means of transport referred to in subsection (2) in the period from 1 January 2010 to 30 June 2010 (in this subsection referred to as the ‘transitional period’) the amount of residual tax referred to in subsection (4) which that taxable dealer is entitled to deduct shall be restricted to—

(i) 40 per cent of the residual tax in the case of a means of transport purchased or acquired in the taxable period beginning on 1 January 2010,

(ii) 30 per cent of the residual tax in the case of a means of transport purchased or acquired in the taxable period beginning on 1 March 2010, and

(iii) 20 per cent of the residual tax in the case of a means of transport purchased or acquired in the taxable period beginning on 1 May 2010.

(b) The entitlement to restricted residual tax as provided for in paragraph (a) applies only on the occasion of the first purchase or acquisition by a taxable dealer of a means of transport referred to in subsection (2) which occurs on or after 1 January 2010, and does not apply to any subsequent purchase or acquisition of that means of transport by that or any other taxable dealer.

(c) Where a taxable dealer purchased or acquired a means of transport referred to in subsection (2) prior to 1 January 2010 and during the transitional period supplies that means of transport to another taxable dealer, the supplier shall indicate on the invoice in respect of that supply that the special scheme as provided for by this section has been applied and that restricted residual tax only is applicable.

(d) Where a taxable dealer purchased or acquired a means of transport referred to in subsection (2) prior to 1 January 2010 and during the transitional period supplies that means of transport to a taxable person other than another taxable dealer, the supplier shall indicate on the

invoice in respect of that supply that the special scheme as provided for by this section has been applied and that the invoice does not give the right to deduct the tax chargeable on that supply.

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- (e) Where a taxable dealer opts to apply the margin scheme or applies the auction scheme to the supply of a means of transport referred to in subsection (2) which that dealer purchased or acquired on or after 1 January 2010, the supplier shall indicate on the invoice in respect of that supply that the margin scheme or the auction scheme, as appropriate, has been applied and no residual tax is applicable. 10
- (f) Where during the transitional period a taxable dealer purchases or acquires a means of transport referred to in subsection (2) from a person other than another taxable dealer— 15
- (i) the taxable dealer shall take all reasonable steps to establish whether or not the means of transport was acquired during the transitional period by that person from another taxable dealer (in this paragraph referred to as a ‘motor trader’), and 20
- (ii) if that person acquired the means of transport from a motor trader during the transitional period, the taxable dealer shall take all reasonable steps to establish whether or not restricted residual tax as provided for in paragraph (a) was deductible by that motor trader or any other taxable dealer in relation to the means of transport. 25 30

(13) This section does not apply to a means of transport purchased or acquired on or after 1 July 2010.”.

Amendment of
section 12C (special
scheme for
agricultural
machinery) of
Principal Act.

123.—Section 12C of the Principal Act is amended with effect from 1 January 2010— 35

(a) by deleting subsection (4), and

(b) by inserting the following after subsection (5):

“(6) (a) Subject to paragraph (b), where a taxable dealer purchases or acquires from a flat-rate farmer or a person referred to in subsection (1A) agricultural machinery in the period from 1 January 2010 to 31 August 2010 (in this subsection referred to as the ‘transitional period’) the amount of residual tax referred to in subsection (3) which that taxable dealer is entitled to deduct shall be restricted to— 40 45

- (i) 40 per cent of the residual tax in the case of agricultural machinery purchased or acquired in a taxable period beginning on 1 January 2010, 1 March 2010 or 1 May 2010, as the case may be, and 50

- (ii) 30 per cent of the residual tax in the case of agricultural machinery purchased or acquired in the taxable period beginning on 1 July 2010.

(b) The entitlement to restricted residual tax as provided for in paragraph (a) applies only on the occasion of the first purchase or acquisition by a taxable dealer of agricultural machinery which occurs on or after 1 January 2010, and does not apply to any subsequent purchase or acquisition of that agricultural machinery by that or any other taxable dealer.

(c) Where during the transitional period a taxable dealer purchases or acquires agricultural machinery from a flat-rate farmer or a person referred to in subsection (1A)—

(i) the taxable dealer shall take all reasonable steps to establish whether or not the agricultural machinery was acquired in the transitional period by that flat-rate farmer or that person from another taxable dealer (in this paragraph referred to as an ‘agricultural machinery trader’), and

(ii) if that flat-rate farmer or that person acquired the means of transport from an agricultural machinery trader during the transitional period, the taxable dealer shall take all reasonable steps to establish whether or not restricted residual tax as provided for in paragraph (a) was deductible by that agricultural machinery trader or any other taxable dealer in relation to the agricultural machinery.

(7) This section does not apply to agricultural machinery purchased or acquired on or after 1 September 2010.”.

124.—Section 13 of the Principal Act is amended—

(a) in subsection (1A) by substituting the following for subparagraphs (i) and (ii):

“(i) has at the time of the supply of the goods taken all reasonable steps to confirm that the purchaser is a traveller as defined in this section,

(ii) has proof that the goods were exported by or on behalf of the traveller by the last day of the third month following the month in which the supply takes place,”

(b) in subsection (1A) by inserting the following after subparagraph (ii):

“(iia) has proof that, where an amount of tax has been charged to the traveller in respect of

Amendment of section 13 (remission of tax on goods exported, etc.) of Principal Act.

a supply of goods covered by subparagraph (ii), that the amount to be repaid to the traveller has been repaid to that traveller no later than the twenty-fifth working day following receipt by the supplier of the traveller's claim to repayment," 5

and

(c) by inserting the following after subsection (1C)—

"(1D) Where, in relation to a supply of goods, any of the conditions of subparagraphs (i) to (v) of subsection (1A) are not complied with or are not complied with within the time limits specified in those subparagraphs, where applicable, then— 10

(a) that supply is not a supply of traveller's qualifying goods, and 15

(b) zero-rating is not applicable to the supply of services by a VAT refunding agent, if any, in respect of those goods."

Amendment of section 15 (charge of tax on imported goods) of Principal Act.

125.—Section 15 of the Principal Act is amended with effect from 1 January 2011 by inserting the following after subsection (7): 20

"(8) In the case where the importation of goods is followed by a supply or transfer of those goods to a person registered for value-added tax in another Member State paragraph 2(1) of Schedule 2 applies only if the person who imports those goods (referred to in this subsection as the 'importer')— 25

(a) at the time of importation declares the following information:

(i) the importer's registration number,

(ii) the identification number (referred to in the definition in section 1 of 'a person registered for value-added tax') of the person to whom the goods are supplied or transferred, 30

and

(b) provides evidence, if so requested by the Revenue Commissioners, that the imported goods are to be transported or dispatched from the State to another Member State." 35

Amendment of section 16 (duty to keep records) of Principal Act.

126.—Section 16 of the Principal Act is amended with effect from 1 January 2010 by inserting the following after subsection (5):

"(6) Every taxable dealer to whom section 12B or 12C applies shall, in addition to records required to be kept in accordance with any other provision of this section and regulations, keep a record of the following information, namely— 40

(a) the name and address of each person from whom such taxable dealer purchased or acquired a means of 45

5 transport or, as the case may be, agricultural machinery in the period from 1 January 2010 to 30 June 2010 in relation to which such taxable dealer deducted residual tax in accordance with section 12B or 12C, as the case may be,

(b) the date on which such means of transport or agricultural machinery was so purchased or acquired,

10 (c) the amount of such residual tax so deducted in relation to each such means of transport or agricultural machinery, and

15 (d) the vehicle registration number of each such means of transport or, as the case may be, details of the make, model and, where appropriate, the year of manufacture, the engine number and registration number of each such agricultural machine.

20 (7) A taxable dealer to whom section 12B or 12C applies shall, on receipt of a notice in writing to that effect from an officer of the Revenue Commissioners, furnish to that officer within the time specified in the notice (which shall not be less than 21 days from the date of the notice), or to such other officer of the Revenue Commissioners as may be specified in the notice, a copy of the information required to be kept by the taxable dealer under subsection (6).”.

25 **127.**—Section 17 of the Principal Act is amended by inserting the following after subsection (1C)—
Amendment of section 17 (invoices) of Principal Act.

“(1D) (a) In this subsection—

‘travel agent’ and ‘margin scheme services’ have the meanings assigned to them by section 10C(1);

30 ‘qualifying accommodation’ and ‘qualifying conference’ have the meanings assigned to them by section 12(3)(ca).

35 (b) Where a travel agent supplies margin scheme services that include qualifying accommodation in connection with attendance by a traveller at a qualifying conference the travel agent shall issue a document to the traveller containing particulars of the amount of tax chargeable by the accommodation provider in respect of the supply of the qualifying accommodation to that traveller.”.

40 **128.**—Section 26 of the Principal Act is amended with effect from 1 January 2010 by inserting the following subsection after subsection (3B):
Amendment of section 26 (penalties generally) of Principal Act.

“(3C) A person who fails to comply with a notice issued under section 16(7) shall be liable to a penalty of €4,000.”.

45 **129.**—The Principal Act is amended by inserting the following Schedule after the Ninth Schedule which is renamed “Schedule 6” by virtue of *section 131*:
Addition of Schedule 7 to Principal Act.

“SCHEDULE 7

ACTIVITIES LISTED IN ANNEX 1 OF COUNCIL DIRECTIVE 2006/112/EC OF 28 NOVEMBER 2006

- (1) Telecommunication services;
- (2) supply of water, gas, electricity and thermal energy; 5
- (3) transport of goods;
- (4) port and airport services;
- (5) passenger transport;
- (6) supply of new goods manufactured for sale;
- (7) transactions in respect of agricultural products, 10
carried out by agricultural intervention agencies pur-
suant to Regulations on the common organisation of
the market in those products;
- (8) organisation of trade fairs and exhibitions;
- (9) warehousing; 15
- (10) activities of commercial publicity bodies;
- (11) activities of travel agents;
- (12) running of staff shops, cooperatives and industrial
canteens and similar institutions;
- (13) activities carried out by radio and television bodies 20
in so far as these are not exempt pursuant to Article
132(1)(g) of Council Directive 2006/112/EC.”.

Substitution of First
and Second
Schedules to
Principal Act.

130.—The Principal Act is amended by substituting the following
Schedules for the First and Second Schedules:

“SCHEDULE 1 25

EXEMPT ACTIVITIES

PART 1

ACTIVITIES IN THE PUBLIC INTEREST

This Part sets out the exemptions for certain activities in the
public interest in accordance with Chapter 2 of Title IX of 30
Council Directive No. 2006/112/EC of 28 November 2006.

- Postal services 1. Public postal services; including the supply of
goods and services incidental to their provision, by
An Post (including postmasters) or by designated
persons in accordance with the European Com- 35
munities (Postal Services) Regulations 2002 (S.I.
No. 616 of 2002) but only if that supply is not on
terms that have been individually negotiated.

Medical and related services	2. (1) Hospital and medical care or treatment provided by a hospital, nursing home, clinic or similar establishment.
5	(2) Services closely related to medical care covered by section 61 or 61A of the Health Act 1970 which are undertaken by or on behalf of the Health Service Executive or by home care providers duly recognised by that Executive under section 61A of that Act.
10	(3) Professional medical care services recognised as such by the Department of Health and Children (other than dental or optical services), but only if those services are not supplied in the course of carrying on a business that wholly or partly consists of selling goods.
15	(4) The supply by dental technicians of services of a dental nature and of dentures or other dental prostheses.
	(5) Professional dental or optical services.
20	(6) The collection, storage, supply, intra-Community acquisition or importation of human organs, human blood and human milk.
25	(7) Other professional medical care services that, on 1 January 2010, were recognised by the Revenue Commissioners as exempt activities.
30	3. (1) The supply of services by an independent group of persons (being a group that is an independent entity established for the purpose of administrative convenience by persons whose activities are exempt from, or are not subject to, tax) for the purpose of rendering to its members the services directly necessary to enable them to carry out their activities, but only if the group recovers from its members the exact amount of each member's share of the joint expenses.
35	(2) The supply of goods and services closely related to welfare and social security by non-profit making organisations.
40	(3) The supply of services and the supply of goods closely related to those services for the benefit of their members by non-profit making organisations whose aims are primarily of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature where such supply is made without payment other than the payment of any membership subscription.
45	(4) The provision by non-profit making organisations of facilities for participation in sporting or physical educational activities, or of services closely related to the provision of those facilities (but excluding the provision of facilities to which paragraph 12(2) or (3) of Schedule 3 relates).
50	

	(5) The supply of cultural services, and the supply of goods closely linked to those services, by any cultural body (whether established by or under an enactment or not) that is recognised as such a body by the Revenue Commissioners for the purposes of this paragraph (but excluding the supply of services to which paragraph 5(2) relates).	5
Children and education	<p>4. (1) The supply of services for the protection or care of children and young persons, and the supply of goods closely related to that supply, otherwise than for profit.</p> <p>(2) The supply of services for the protection or care of children and young persons, and the supply of goods closely related to that supply, by persons whose activities may be regulated by regulations made under Part VII or Part VIII of the Child Care Act 1991.</p> <p>(3) The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind, but excluding instruction in the driving of mechanically propelled road vehicles other than—</p> <p>(a) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or</p> <p>(b) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).</p>	10 15 20 25 30
Other activities	<p>5. (1) Catering services supplied—</p> <p>(a) to patients of a hospital or nursing home in the hospital or nursing home, or</p> <p>(b) to school students at their school.</p> <p>(2) The promotion of, and admission to, live theatrical or musical performances, including circuses, but excluding—</p> <p>(a) dances, and</p> <p>(b) performances in conjunction with which facilities are available for the consumption of food or drink during all or part of the performance by persons attending the performance.</p> <p>(3) The promotion of sporting events (other than in the course of the provision of facilities for taking part in sporting activities of the kind specified in paragraph 12(1) of Schedule 3).</p>	35 40 45 50

(4) The provision of the national broadcasting and television services, excluding advertising.

PART 2

OTHER EXEMPTED ACTIVITIES

- | | | |
|----|--------------------|--|
| 5 | Financial services | 6. (1) Financial services that consist of any of the following: |
| 10 | | (a) issuing, transferring or otherwise dealing in stocks, shares, debentures and other securities (other than new stocks, new shares, new debentures or new securities for raising capital and documents establishing title to goods); |
| 15 | | (b) arranging for, or underwriting, an issue of stocks, shares, debentures and other securities (other than documents establishing title to goods); |
| 20 | | (c) operating a current, deposit or savings account, and negotiating or dealing in payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collecting and factoring; |
| 25 | | (d) issuing, transferring, receiving or otherwise dealing in currency, bank notes and metal coins, in use as legal tender in any country, but excluding any such bank notes and coins that are supplied as investment goods or as collectors' objects; |
| 30 | | (e) giving and negotiating credit, and managing credit by the giver of the credit; |
| 35 | | (f) giving, or dealing in, credit guarantees or any other securities for money, and managing credit guarantees by the giver of the credit; |
| 40 | | (g) managing an undertaking of a kind specified in subparagraph (2); |
| 45 | | (h) supplying services to a person under an arrangement that provides for the person to be reimbursed for the supply by the person of goods or services in accordance with a credit card, charge card or similar card scheme; |
| | | (i) entering into specified financial transactions within the meaning of Part 8A of the Taxes Consolidation Act 1997 where those transactions correspond to financial services listed elsewhere in this paragraph. |

(2) The following undertakings are specified for the purpose of subparagraph (1)(g):

- (a) a collective investment undertaking as defined in section 172A of the Taxes Consolidation Act 1997; 5
- (b) a special investment scheme within the meaning of section 737 of the Taxes Consolidation Act 1997;
- (c) an undertaking that is administered by the holder of an authorisation granted under the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984), or by a person who is deemed, by Article 6 of those Regulations, to be such a holder, the criteria in relation to which are the criteria specified in relation to an arrangement to which section 9(2) of the Unit Trusts Act 1990 applies; 10 15
- (d) a unit trust scheme established solely for the purpose of superannuation fund schemes or charities; 20
- (e) an undertaking that is a qualifying company for the purposes of section 110 of the Taxes Consolidation Act 1997; 25
- (f) any other undertaking that is determined by the Minister for Finance to be a collective investment undertaking to which subparagraph (1)(g) applies.

(3) A determination referred to in subparagraph (2)(f) takes effect on the date when it is notified to the undertaking concerned or on such later date as is specified in the determination. 30

(4) In relation to an undertaking specified in subparagraph (2), management of the undertaking can consist of any one or more of the three functions listed in Annex II to Directive No. 2001/107/EC of the European Parliament and Council (being the functions included in the activity of collective portfolio management) where the relevant function is carried out by the person who has responsibility for carrying out that function in respect of the undertaking. 35 40

Agency services

7. The supply of agency services relating to the financial services specified in paragraph 6, excluding management and safekeeping services in regard to the services specified in subparagraph (1)(a) of that paragraph (but not being services specified in subparagraph (1)(g) of that paragraph). 45 50

Insurance and reinsurance services

8. (1) Supplying insurance and reinsurance services, and supplying related services by insurance brokers and insurance agents.

(2) For the purposes of this paragraph ‘related services’, in relation to insurance services, includes—

(a) collecting insurance premiums and selling insurance, and

(b) handling claims and providing claims settlement services where the supplier of the insurance services delegates authority to an agent and is bound by the agent’s decision in relation to claims.

Supply of investment gold

9. (1) The supply, intra-Community acquisition and importation of investment gold, other than supplies of investment gold to the Central Bank and Financial Services Authority of Ireland.

(2) In relation to investment gold, the supply of services of an intermediary acting in that capacity.

(3) In this paragraph, the expressions ‘intermediary’ and ‘investment gold’ have the same meanings as they have in section 6A.

Gambling and lotteries

10. (1) The acceptance of bets that are subject to excise duty imposed by section 67 of the Finance Act 2002 and bets that are exempted from excise duty by section 68 of that Act.

(2) The issuing of tickets or coupons for the purpose of a lottery.

Letting of immovable goods

11. (1) The letting of immovable goods, but not including any of the following:

(a) letting machinery or a business installation when let separately from any other immovable goods of which the machinery or installation forms part;

(b) letting hotel or holiday accommodation of the kind to which paragraph 11 of Schedule 3 relates;

(c) providing facilities for taking part in sporting activities of the kind to which paragraph 12(1) of Schedule 3 relates;

(d) providing parking accommodation for vehicles by the operators of car parks;

(e) hiring safes.

(2) Allowing a person to use a toll road or a toll bridge is not a letting of immovable goods for the purposes of this Act.

Other supplies of goods

12. The supply of goods (other than immovable goods or goods of a kind specified in section 3(1)(g)) by a person, being goods—

- (a) that were used for the purposes of a business carried on by the person, and
- (b) in relation to the acquisition or application of which the person had borne tax, and
- (c) that are of such a kind, or were used in such circumstances, that no part of the tax was deductible under section 12.

5

Gas and electricity services

13. (1) The importation of gas through the natural gas distribution system.

10

(2) The importation of electricity.

Exemptions by derogation in accordance with Article 371 of Council Directive No. 2006/112/EC of 28 November 2006

14. (1) The provision of services by a funeral undertaking.

(2) The supply of water by local authorities.

(3) Transporting passengers and their accompanying baggage.

15

(4) The admission of spectators to sporting events.

SCHEDULE 2

ZERO-RATED GOODS AND SERVICES

20

PART I

INTERNATIONAL SUPPLIES

This Part sets out the exemptions with deductibility in accordance with Chapters 4 to 10 of Title IX of Council Directive No. 2006/112/EC of 28 November 2006.

25

Intra-Community transactions

1. (1) The supply of goods dispatched or transported from the State to a person registered for value-added tax in another Member State.

(2) The supply of new means of transport dispatched or transported directly by or on behalf of the supplier to a person in the territory of another Member State.

30

(3) The supply of excisable products dispatched or transported from within the State to a person in another Member State when the movement of the products is subject to Chapter II of Part 2 of the Finance Act 2001 (which implement the arrangements specified in paragraphs 4 and 5 of Article 7, or Article 16, of Council Directive No. 92/12/EEC of 25 February 1992).

35

40

(4) The supply of intra-Community transport services involving the carriage of goods to and from the Azores or Madeira.

Imports	2. (1) Subject to the regulations (if any), the importation of goods that are, at the time of importation, consigned to another Member State.
5	(2) The supply of transport services relating to the importation of goods where the value of the services is included in the taxable amount in accordance with section 15(3).
10	Exports 3. (1) A supply of goods that are to be transported directly by or on behalf of the person making the supply outside the Community. This subparagraph does not apply to a supply of goods to a traveller that the traveller exports on behalf of the supplier. Any such supply is to be treated as a supply of traveller's qualifying goods.
15	(2) The carriage of goods in the State by or on behalf of a person in performing a contract to transfer the goods to a place outside the Community.
20	(3) A supply of goods that are to be dispatched or transported directly outside the Community by or on behalf of the purchaser of the goods where that purchaser is established outside the State.
25	(4) A supply of services that consists of work on movable goods acquired or imported for the purpose of undergoing that work within the Community and dispatched or transported out of the Community by or on behalf of the person providing the services.
30	(5) In this paragraph, 'traveller' and 'traveller's qualifying goods' have the meaning given by section 13(3B).
Services relating to vessels and aircraft	4. (1) The provision of docking, landing, loading or unloading facilities (including customs clearance), directly in connection with—
35	(a) the disembarkation or embarkation of passengers, or
	(b) the importation or exportation of goods.
	(2) The supply, modification, repair, maintenance, chartering and hiring of—
40	(a) sea-going vessels of a gross tonnage of more than 15 tons being vessels used or to be used—
	(i) for the carriage of passengers for reward, or
45	(ii) for the purposes of a sea fishing business, or
	(iii) for other commercial or industrial purposes, or

(iv) for rescue or assistance at sea,

or

(b) aircraft used or to be used by a transport undertaking operating for reward chiefly on international routes. 5

(3) Subject to the regulations (if any), the supply, hiring, repair and maintenance of equipment incorporated or for use in sea-going vessels to which subparagraph (2)(a) relates.

(4) The supply, repair, maintenance and hiring of equipment incorporated or used in aircraft to which subparagraph (2)(b) relates. 10

(5) The supply of goods for the fuelling and provisioning of sea-going vessels and aircraft of the kind specified in subparagraph (2), but excluding goods for supply on board the vessels or aircraft to passengers with a view to those goods being taken off the vessels or aircraft by those passengers. 15

(6) The supply of navigation services by the Irish Aviation Authority to meet the needs of aircraft to which subparagraph (2)(b) relates. 20

Certain transactions treated as exports

5. (1) The supply of goods or services to international bodies recognised as such by the public authorities of the host Member State, and to members of those bodies, within the limits and under the conditions prescribed by the international conventions establishing the bodies or by the agreements between the headquarters of those bodies and the host Member State of the headquarters. 25 30

(2) The supply of gold to the Central Bank and Financial Services Authority of Ireland.

Services by intermediaries

6. (1) Services supplied by an intermediary acting in the name or on behalf of another person in obtaining— 35

(a) the export of goods, or

(b) services specified in subparagraph (2),
or

(c) the supply of goods or services outside the Community. 40

(2) The following services are specified for the purposes of subparagraph (1)(b):

(a) services of the kind referred to in paragraph 1(4) (Carriage of goods to or from the Azores or Madeira); 45

- (b) services of the kind referred to in paragraph 3(2) (Carriage of goods in transit to a place outside the Community);
- 5 (c) services of the kind referred to in paragraph 4(1) (Provision of docking, landing, loading or unloading facilities);
- 10 (d) services of the kind referred to in paragraph 4(2) (Supply, hire, repair, maintenance, etc. of equipment incorporated or for use in sea-going vessels);
- (e) services of the kind referred to in paragraph 5(2) (Supply of gold to the Central Bank and Financial Services Authority of Ireland).
- 15 (3) Services that are treated as intermediary services under the travel agent's margin scheme in accordance with section 10C(8).
- International
trade, etc.
- 20 7. (1) The supply of goods by a registered person within a free port to another registered person within a free port.
- (2) The supply of goods by a registered person within the customs-free airport to another registered person within the customs-free airport or a free port.
- 25 (3) The supply of goods that are to be transported directly or on behalf of the person making the supply to a registered person within the customs-free airport.
- 30 (4) The supply of goods that are a traveller's qualifying goods, but only if section 13(1A) is complied with.
- 35 (5) The supply of services in obtaining a repayment of tax due on the supply of a traveller's qualifying goods or as a result of the application of subparagraph (4) to that supply of goods, but only if section 13(1A) is complied with.
- (6) Subject to such conditions and in such amounts as may be specified in regulations (if any)—
- 40 (a) the supply of goods, in a tax-free shop approved by the Revenue Commissioners, to travellers departing the State for a place outside the Community, or
- 45 (b) the supply, other than by means of a vending machine, of food, drink and tobacco products on board a vessel or aircraft to passengers departing the State for another Member State, for consumption on board that vessel or aircraft.
- 50

(7) Subject to section 13A, the supply of qualifying goods and qualifying services to, or the intra-Community acquisition or importation of qualifying goods by, an authorised person in accordance with that section (excluding a supply of goods within the meaning of section 3(1)(e) or (f)). 5

(8) In this paragraph, “traveller’s qualifying goods” has the meaning given by section 13(3B).

PART 2

SUPPLIES WITHIN THE STATE 10

This Part sets out special provisions as provided by Article 109 of Council Directive No. 2006/112/EC of 28 November 2006.

Food and
drink

8. (1) A supply of food and drink of a kind used for human consumption, other than a supply to which paragraph 3(3) of Schedule 3 relates and a supply of the kind specified in subparagraph (2). 15

(2) The following supplies are specified for the purpose of subparagraph (1):

(a) beverages chargeable with excise duty specifically charged on spirits, beer, wine, cider, perry or Irish wine, and preparations derived from any of them; 20

(b) tea and preparations derived from tea when supplied in drinkable form; 25

(c) cocoa, coffee and chicory and other roasted coffee substitutes, and preparations and extracts derived from them, when supplied in drinkable form; 30

(d) ice cream, ice lollipops, water ices, frozen desserts, frozen yoghurts and similar frozen products, and prepared mixes and powders for making any of those products; 35

(e) savoury products made from cereal or grain, or from flour or starch derived from cereal or grain, pork scratchings, and similar products when supplied for human consumption without further preparation; 40

(f) any of the following when supplied for human consumption without further preparation:

(i) potato crisps, potato sticks, potato puffs and similar products made from potato, or from potato flour or from potato starch; 45

(ii) popcorn;

(iii) salted or roasted nuts, whether or not in their shells;

(g) except as provided by subparagraph (3)—

(i) drinking water, juice extracted from, and other drinkable products derived from, fruit or vegetables, and syrups, concentrates, essences, powders, crystals or other products for the preparation of beverages;

(ii) beverages, other than those specified in subparagraph (2)(a), (b) or (c);

(h) all kinds of chocolates, sweets and similar confectionery (including glacé or crystallised fruits), biscuits, crackers and wafers, and all other kinds of confectionery and bakery products (whether cooked or uncooked), excluding bread.

(3) The following products are excepted from subparagraph (2)(g):

(a) tea and preparations derived from tea when supplied in a non-drinkable form;

(b) cocoa, coffee and chicory and other roasted coffee substitutes, and preparations and extracts derived from any of them, when supplied in a non-drinkable form;

(c) milk and preparations and extracts derived from milk;

(d) preparations and extracts derived from meat, yeast or eggs.

(4) For the purpose of subparagraph (2)(h), 'bread' means food for human consumption manufactured by baking dough composed exclusively of a mixture of cereal flour and any one or more of the ingredients included in the first column of the following table that do not exceed the quantities (if any) set out for each ingredient in the second column of that table, but does not include food packaged for sale as a unit (not being a unit designated as containing only food specifically for babies) containing 2 or more slices, segments, sections or other similar pieces, and having a crust over substantially the whole of their outside surfaces, being a crust formed in the course of baking, frying or toasting.

Table

<i>Column 1</i>	<i>Column 2</i>	
Ingredient	Weight limit for the ingredient, as % of weight of flour included in the dough	5
Yeast or other leavening or aerating agent, salt, malt extract, milk, water, gluten	No limit	
Fat	Not exceeding 2%	
Sugar	Not exceeding 2%	10
Bread improver	Not exceeding 2%	
Dried fruit	Not exceeding 10%	

(5) In this paragraph, a reference to supplying food and drink includes—

(a) a reference to supplying food without drink, and 15

(b) a reference to supplying drink without food.

Certain printed matter 9. The supply of printed books and booklets including atlases, but excluding the following: 20

(a) newspapers, periodicals, brochures, catalogues, directories and programmes;

(b) books of stationery, cheque books and similar products; 25

(c) diaries, organisers, yearbooks, planners and similar products the total area of whose pages consist of 25 per cent or more of blank spaces for the recording of information; 30

(d) albums and similar products;

(e) books of stamps, tickets or coupons.

Children's clothing and footwear 10. (1) The supply of articles of children's personal clothing of sizes that do not exceed the sizes of those articles appropriate to children of average build of 10 years of age, but excluding the following: 35

(a) articles of clothing made wholly or partly of fur skin other than garments merely trimmed with fur skin, unless the trimming has an area greater than one-fifth of the area of the outside material; 40

(b) articles of clothing that are not described, labelled, marked or marketed on the basis of age or size. 45

5		(2) The supply of articles of children's personal footwear of sizes that do not exceed the size appropriate to children of average foot size of 10 years of age, but excluding footwear that is not described, labelled, marked or marketed on the basis of age or size.
		(3) In this paragraph, a child whose age is 10 years or 10 years and a fraction of a year is taken to be a child of 10 years of age.
10	Medicine, medical equipment and appliances	11. (1) The supply of medicine of a kind used for human oral consumption.
15		(2) The supply of medicine of a kind used for animal oral consumption, excluding medicine which is packaged, sold or otherwise designated for the use of dogs, cats, cage birds or domestic pets.
		(3) The supply of medical equipment and appliances, being—
20		(a) invalid carriages and other vehicles (excluding mechanically propelled road vehicles) of a kind designed for use by invalids or infirm persons;
25		(b) orthopaedic appliances, surgical belts, trusses and similar products, deaf aids, and artificial limbs and other artificial parts of the body excluding artificial teeth, corrective spectacles and contact lenses;
30		(c) walking frames and crutches;
		(d) parts or accessories suitable for use solely or principally with any of the goods specified in sub-subparagraphs (a), (b) and (c).
35	Fertilisers, feeding stuffs, certain seeds, etc.	12. (1) Fertiliser that is supplied in units of not less than 10 kilograms and the sale or manufacture of which is not prohibited under section 4 or 6 of the Fertilisers, Feeding Stuffs and Mineral Mixtures Act 1955.
40		(2) Animal feeding stuff, excluding feeding stuff which is packaged, sold or otherwise designated for the use of dogs, cats, cage birds or domestic pets.
45		(3) Seeds, plants, trees, spores, bulbs, tubers, tuberous roots, corms, crowns and rhizomes, of a kind used for sowing in order to produce food.
		(4) For the purpose of this paragraph, 'fertiliser' has the meaning given by the Fertilisers, Feeding Stuffs and Mineral Mixtures Act 1955.

Other zero-rated goods and services

13. (1) Services provided by the Commissioners of Irish Lights in connection with the operation of lightships, lighthouses or other navigational aids.

(2) Life saving services provided by the Royal National Lifeboat Institution including the organisation and maintenance of the lifeboat service. 5

(3) The supply of sanitary towels and sanitary tampons.

(4) The supply of wax candles and night-lights that are white and cylindrical, excluding candles and night-lights that are decorated, spiralled, tapered or perfumed. 10

SCHEDULE 3

GOODS AND SERVICES CHARGEABLE AT THE REDUCED RATE 15

PART 1

INTERPRETATION

Definitions:
Schedule 3

1. (1) In this Schedule—

“bread” has the same meaning as in paragraph 8(4) of Schedule 2; 20

“food and drink list” means the following items of food and drink:

(1) beverages chargeable with excise duty specifically charged on spirits, beer, wine, cider, perry or Irish wine, and preparations derived from any of them; 25

(2) tea and preparations derived from tea when supplied in drinkable form;

(3) cocoa, coffee and chicory and other roasted coffee substitutes, and preparations and extracts derived from them, when supplied in drinkable form; 30

(4) ice cream, ice lollipops, water ices, frozen desserts, frozen yoghurts and similar frozen products, and prepared mixes and powders for making any of those products; 35

(5) savoury products made from cereal or grain, or from flour or starch derived from cereal or grain, pork scratchings, and similar products when supplied for human consumption without further preparation; 40 45

(6) any of the following when supplied for human consumption without further preparation:

(i) potato crisps, potato sticks, potato puffs and similar products made from potato, or from potato flour or from potato starch;

(ii) popcorn;

(iii) salted or roasted nuts, whether or not in their shells;

(7) except as provided by subparagraph (2)—

(i) drinking water, juice extracted from, and other drinkable products derived from, fruit or vegetables, and syrups, concentrates, essences, powders, crystals or other products for the preparation of beverages;

(ii) beverages, other than those specified in items (1), (2) and (3);

(8) all kinds of chocolates, sweets and similar confectionery (including glacé or crystallised fruits), biscuits, crackers and wafers, and all other kinds of confectionery and bakery products (whether cooked or uncooked), excluding bread;

“in the course of catering” means—

(a) in the course of operating a hotel, restaurant, café, refreshment house, canteen, establishment licensed for the sale for consumption on the premises of intoxicating liquor, catering business or similar business, or

(b) in the course of operating any other business in connection with the carrying on of which facilities are provided for the consumption of the food or drink supplied;

“margin scheme supply” means a supply—

(a) by a taxable dealer in accordance with the provisions of section 10A(3) or section 10A(8), or

(b) by an auctioneer within the meaning of section 10B and in accordance with subsection (3) of that section.

(2) The following are excepted from item (7) of the food and drinks list:

(a) tea and preparations derived from tea when supplied in a non-drinkable form; 5

(b) cocoa, coffee and chicory and other roasted coffee substitutes, and preparations and extracts derived from any of them, when supplied in a non-drinkable form; 10

(c) milk and preparations and extracts derived from milk;

(d) preparations and extracts derived from meat, yeast or eggs.

Other interpretative provisions 2. (1) In this Schedule, a reference to supplying food and drink includes— 15

(a) a reference to supplying food without drink, and

(b) a reference to supplying drink without food. 20

(2) For the purposes of paragraph 12, the expression ‘golf’ does not include pitch and putt.

PART 2

ANNEX III SUPPLIES

This Part sets out supplies of goods and services as provided by Article 98 of and Annex III to Council Directive No. 2006/112/EC of 28 November 2006. 25

Food and drink for human consumption 3. (1) The provision of food and drink in a form suitable for human consumption without further preparation— 30

(a) by means of a vending machine, or

(b) in the course of catering,

being food and drink that are items (2) or (3) in the food and drink list or that, apart from this subparagraph, would be chargeable to tax at the rate specified in section 11(1)(b). 35

(2) The supply in the course of catering of—

(a) items (4), (5), (6) or (8) of the food and drink list, or

(b) fruit juices other than fruit juices chargeable with a duty of excise, 40

when those items or juices are supplied in the course of a meal.

(3) The supply of food and drink that consists of or includes food and drink—

(a) that—

(i) has been heated, enabling it to be consumed at a temperature above the ambient air temperature, or

(ii) has been retained heated after cooking, enabling it to be consumed at a temperature above the ambient air temperature, or

(iii) is supplied while still warm after cooking, enabling it to be consumed at a temperature above the ambient air temperature,

and

(b) that is above the ambient air temperature at the time when it is provided to a customer,

being items (2) or (3) in the food and drink list, or food and drink that would, apart from this subparagraph, be chargeable to tax at the rate specified in section 11(1)(b).

(4) Subparagraph (3) does not apply to bread.

(5) Food of a kind used for human consumption (other than that chargeable to tax at the rate specified in section 11(1)(b)), being flour or egg based bakery products (including cakes, crackers, wafers and biscuits), but excluding the following:

(a) wafers and biscuits wholly or partly covered or decorated with chocolate or some other product similar in taste and appearance;

(b) items (4) and (5) of the food and drink list;

(c) chocolates, sweets and similar confectionery.

Live animals,
animal feeding
stuffs

4. (1) Greyhound feeding stuff that is packaged, advertised or held out for sale solely as greyhound feeding stuff, and that is supplied in units of not less than 10 kilograms.

(2) Live poultry and live ostriches.

Pharmaceutical
products
Certain safety
equipment

5. Non-oral contraceptive products.

6. Children's car safety seats.

7. Printed matter consisting of—

Books,
newspapers
and other
printed matter

(a) newspapers and periodicals, or

- (b) brochures, leaflets and programmes, or
- (c) catalogues, including directories, and similar printed matter, or
- (d) maps, hydrographic and similar charts, or 5
- (e) printed music other than in book or booklet form,

but excluding—

- (f) other printed matter wholly or substantially devoted to advertising, and 10
- (g) the items specified in subparagraphs (b) to (e) of paragraph 9 of Schedule 2, and
- (h) any other printed matter.

Shows,
exhibitions,
cultural
facilities, etc.

8. (1) Promotion of, and admission to, show- 15
ings of cinematographic films.

(2) Promotion of, and admission to, live theatrical or musical performances, but excluding—

- (a) dances, and
- (b) performances of the kinds specified in 20
paragraph 5(2) of Schedule 1.

(3) Amusement services of the kind normally supplied in fairgrounds or amusement parks, but excluding—

- (a) services consisting of dances, 25
- (b) services consisting of circuses,
- (c) services consisting of gaming, as defined in section 2 of the Gaming and Lotteries Act 1956 (including services provided by means of a gaming machine 30
of the kind referred to in section 43 of the Finance Act 1975), or
- (d) services provided by means of an amusement machine of the kind referred to in section 120 of the Fin- 35
ance Act 1992.

(4) Admission to exhibitions, of the kind normally held in museums and art galleries, of objects of historical, cultural, artistic or scientific interest, not being services of the kind specified in para- 40
graph 3(5) of Schedule 1.

Private
dwellings

9. (1) Services consisting of the development of immovable goods, being private dwellings, and work on such immovable goods including the installation of fixtures, where the value of movable 45

goods (if any) provided in pursuance of an agreement in relation to such services does not exceed two-thirds of the total amount on which tax is chargeable in respect of the agreement.

(2) Services consisting of the routine cleaning of private dwellings.

Agricultural
goods and
services

10. (1) Agricultural services consisting of any of the following:

(a) field work, including reaping, mowing, threshing, baling, harvesting, sowing and planting;

(b) stock-minding, stock-rearing, farm relief services and farm advisory services (other than farm accountancy or farm management services);

(c) disinfecting and ensilage of agricultural products;

(d) destroying weeds and pests, and dusting and spraying crops and land;

(e) lopping, tree felling and similar forestry services.

(2) Animal insemination services.

(3) The supply of livestock semen.

Hotel, holiday
accommodation

11. Subject to the regulations (if any)—

(a) letting immovable goods (other than in the course of the provision of facilities of the kind specified in paragraph 12(1)), where those goods consist of—

(i) a room or rooms in a hotel or guesthouse, or

(ii) all or part of a house, apartment or other similar establishment that is let on a short-term basis for guest accommodation, or

(iii) a part of a caravan park, camping site or other similar establishment,

or

(b) the provision of holiday accommodation.

Sporting
facilities

12. (1) The provision of facilities for taking part in sporting activities by a person other than a non-profit making organisation.

(2) The provision by a member-owned golf club of facilities for taking part in golf to any person (other than a natural person whose membership

subscription to the club at the time when the person uses the facilities confers an entitlement to use them without further charge on at least 200 days (including the day on which the person uses the facilities) in a continuous period of 12 months), 5
where the total consideration received by the club for providing those facilities exceeds, or is likely to exceed, the services threshold during any continuous period of 12 months.

(3) The provision by a non-profit making 10
organisation (other than a member-owned golf club) of facilities for taking part in golf to any person, where the total consideration received by the organisation for providing the facilities exceeds or is likely to exceed the services threshold in any 15
continuous period of 12 months.

Other services 13. (1) Services consisting of the acceptance for disposal of waste material.

(2) Carrying out minor repairs or modifications to bicycles, shoes or leather goods, clothing or 20
household linen.

(3) Hairdressing services.

PART 3

CERTAIN SUPPLIES WITH REDUCED RATE AT 1 JANUARY 1991:
SPECIAL PROVISIONS IN ACCORDANCE WITH ARTICLE 115 OF 25
COUNCIL DIRECTIVE NO. 2006/112/EC OF 28 NOVEMBER 2006

Housing 14. The supply of immovable goods used or to be used for residential purposes.

PART 4

CERTAIN SUPPLIES WITH REDUCED RATE AT 1 JANUARY 1991: 30
SPECIAL PROVISIONS IN ACCORDANCE WITH ARTICLE 118 OF
COUNCIL DIRECTIVE NO. 2006/112/EC OF 28 NOVEMBER 2006

Non-
residential
immovable
goods 15. (1) The supply of immovable goods, other than immovable goods used or to be used for residential purposes. 35

(2) Services consisting of the development of immovable goods (not being goods referred to in paragraph 9(1)) and work on those goods (including the installation of fixtures), where the value of any movable goods supplied under an 40
agreement relating to the services does not exceed two-thirds of the total amount on which tax is chargeable in respect of the agreement.

(3) Services consisting of the routine cleaning of immovable goods (not being immovable goods 45
referred to in paragraph 9(2)).

	Concrete works	16. (1) The supply of concrete that is ready to pour, but excluding the margin scheme supply of the concrete.
5		(2) The supply of blocks of concrete of a kind that comply with the specification contained in the Standard Specification (Concrete Building Blocks, Part 1, Normal Density Blocks) Declaration 1987 (Irish Standard 20: Part 1: 1987), but excluding the margin scheme supply of those blocks.
10	Energy products and supplies	17. (1) The supply of coal, peat and other solid substances offered for sale solely as fuel.
15		(2) The supply of electricity, but not the distribution of electricity if the distribution is wholly or mainly in connection with the transmission of communication signals.
		(3) The supply of gas of a kind used for domestic or industrial heating or lighting, whether in gaseous or liquid form, but not including—
20		(a) motor vehicle gas within the meaning of section 42(1) of the Finance Act 1976, or
		(b) gas of a kind normally used for welding or cutting metal, or
		(c) gas sold as lighter fuel.
25		(4) The supply of hydrocarbon oil of a kind used for domestic or industrial heating, excluding gas oil (within the meaning of the Mineral Oil Tax Regulations 2001 (S.I. No. 442 of 2001)), other than gas oil which has been duly marked in accordance with Regulation 6(2) of those Regulations.
30		
	Photographic and related supplies	18. (1) The supply to a person of photographic prints (other than goods produced by means of a photocopying process), slides or negatives, that have been produced from goods provided by that person.
35		(2) The supply of goods being—
		(a) photographic prints (other than goods produced by means of a photocopying process) mounted or unmounted, but unframed,
40		(b) slides and negatives, and
		(c) cinematographic and video film,
		that record particular persons, objects or events, supplied under an agreement to photograph those persons, objects or events.
45		(3) The supply by a photographer of—

(a) negatives that have been produced from film exposed for the purpose of the photographer's business, and

(b) film that has been exposed for the purposes of the photographer's business. 5

(4) The supply of photographic prints produced by means of a vending machine which incorporates a camera and developing and printing equipment.

(5) Services consisting of— 10

(a) editing photographic, cinematographic and video film, or

(b) microfilming.

(6) Agency services relating to a supply specified in subparagraph (1). 15

Hiring for short periods

19. Hiring—

(a) a vehicle designed and constructed, or adapted, for the conveyance of persons by road, or

(b) a vessel designed and constructed for the conveyance of passengers and not exceeding 15 tonnes gross, or 20

(c) any kind of sports or pleasure boat, or

(d) a caravan, mobile home, tent or trailer tent, 25

to a person under an agreement (other than an agreement of the kind referred to in section 3(1)(b)) for any term or part of a term that, when added to the term of a previous hiring (whether of the same goods or of other goods of the same kind) to the same person during the 12 months ending on the date of the beginning of the existing hiring, does not exceed 5 weeks. 30

Certain repair and related services

20. (1) Services, other than those specified in paragraph 13(2), consisting of— 35

(a) repairing or maintaining movable goods, or

(b) modifying used movable goods (other than contract work or services of a kind specified in subparagraph (2)), but excluding the supply in the course of any such repair, maintenance or modification of— 40

(i) accessories, attachments or batteries, or 45

- (ii) tyres, tyre cases, interchangeable tyre treads, inner tubes and tyre flaps, for wheels of all kinds.

(2) The following services are specified for the purposes of subparagraph (1):

- (a) services specified in paragraph 3(4) of Schedule 2 (Work on movable goods for export);
- (b) services specified in paragraph 4(2) of Schedule 2 (Repair, etc. of sea-going vessels or aircraft);
- (c) services specified in paragraph 4(4) of Schedule 2 (Repair, etc. of equipment used in international aircraft).

Miscellaneous services

21. (1) Services consisting of the care of the human body, including services supplied in the course of a health studio business or similar business, but not including exempted activities referred to in Part 1 of Schedule 1 or hairdressing services referred to in paragraph 13(3).

(2) Services supplied in the course of their profession by jockeys.

(3) Services supplied in the course of their profession by veterinary surgeons.

(4) Services supplied in the course of their profession by tour guides.

(5) Instruction in the driving of mechanically propelled road vehicles, but excluding education, training or retraining of the kind specified in paragraph 4(3) of Schedule 1.

PART 5

SUPPLIES OF CERTAIN LIVE PLANTS AND SIMILAR GOODS

This Part sets out special provisions in accordance with Article 122 and Annex III (paragraph (11)) of Council Directive No. 2006/112/EC of 28 November 2006.

Plants and bulbs, etc.

22. (1) The supply of nursery or garden centre stock consisting of live plants, live trees, live shrubs, bulbs, roots and the like, not being of a type specified in paragraph 12(3) of Schedule 2, and cut flowers and ornamental foliage not being artificial or dried flowers or foliage.

(2) The supply of miscanthus rhizomes, seeds, bulbs, roots and similar goods used for the agricultural production of bio-fuel.

PART 6

SUPPLIES OF CERTAIN WORKS OF ART, ANTIQUES AND LITERARY MANUSCRIPTS

This Part deals with special arrangements made in accordance
with Article 311 and Annex IX of Council Directive No. 5
2006/112/EC of 28 November 2006.

- Works of art 23. The supply of a work of art that is—
- (a) a painting, drawing or pastel, or any
combination of them, that is produced
entirely by hand, not being— 10
 - (i) a hand-decorated article, or
 - (ii) a plan or drawing for the purpose
of depicting topographical fea-
tures, or
 - (iii) a plan or drawing produced for an 15
architectural, engineering, indus-
trial, commercial or similar
purpose,
 - or
 - (b) an original lithograph, engraving, or 20
print, or any combination of them, pro-
duced directly from lithographic
stones, plates or other engraved sur-
faces, that are produced entirely by
hand, or 25
 - (c) an original sculpture or statue (not
being a mass-produced reproduction
or work of craftsmanship of a commer-
cial nature),
- but excluding the margin scheme supply of such 30
a work.
- Antiques 24. The supply of an antique that is an article of
furniture, silver, glass or porcelain (whether hand-
decorated or not) of a kind specified in the regu-
lations, that is shown to the satisfaction of the 35
Revenue Commissioners to be more than 100
years old, but excluding—
- (a) a work of art of a kind specified in para-
graph 23, and
 - (b) the margin scheme supply of an antique. 40
- Literary
manuscripts 25. The supply of a literary manuscript certified
by the Director of the National Library as being
of major national importance and of either cul-
tural or artistic importance.”.

132.—The Principal Act is amended to the extent and manner specified in paragraphs 1 to 20 of *Schedule 3*. Pre-consolidation amendments and repeals (*Part 4*).

133.—(1) The Principal Act is amended—

Supply of greenhouse gas emission allowances.

(a) in section 8 by inserting the following after subsection (1C):

“(1D) (a) Where a taxable person who carries on a business in the State (in this subsection referred to as a ‘recipient’) receives greenhouse gas emission allowances from another taxable person who carries on a business in the State then the recipient shall, in relation to that supply, be an accountable person or be deemed to be an accountable person and shall be liable to pay the tax chargeable as if that recipient made that supply in the course or furtherance of business and the person who supplied the greenhouse gas emission allowances shall not be accountable for or liable to pay the said tax in respect of such supply.

(b) In this subsection—

‘allowance’ has the meaning assigned to it by Article 3 of the Directive;

‘Directive’ means Directive 2003/87/EC²⁵ of the European Parliament and of the Council of 13 October 2003 (as amended) establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC;

‘greenhouse gas’ has the meaning assigned to it by Article 3 of the Directive;

‘greenhouse gas emission allowances’ means allowances to emit greenhouse gases transferable in accordance with the Directive and other units that may be used by operators for compliance with the Directive;

‘operator’ has the meaning assigned to it by Article 3 of the Directive.”,

(b) in section 12(1)(a) by inserting the following after subparagraph (vc):

“(vd) the tax chargeable during the period, being tax for which the recipient (within the meaning of section 8(1D)) is liable by virtue of section 8(1D) in respect of greenhouse gas emission allowances (within the said meaning) received by that recipient: but this subparagraph shall apply only where the recipient would be entitled to a deduction of that tax elsewhere under this subsection if that tax had been charged

²⁵OJ No. L275, 25.10.2003, p.32

to such recipient by an accountable person,”,

and

- (c) in section 17 by inserting the following after subsection (1D) (inserted by *section 127*): 5

“(1E) Where a taxable person who carries on a business in the State supplies greenhouse gas emission allowances (within the meaning of section 8(1D)) to a recipient (within the said meaning), that person shall issue a document to the recipient indicating— 10

(a) that the recipient is liable to account for the tax chargeable on that supply, and

(b) such other particulars as would be required to be included in that document if that document was an invoice required to be issued in accordance with subsection (1) but excluding the amount of tax payable.”. 15

(2) *Subsection (1)* comes into operation on such day as the Minister for Finance may appoint by order.

PART 5 20

STAMP DUTIES

Interpretation (*Part 5*). **134.**—In this Part “Principal Act” means the Stamp Duties Consolidation Act 1999.

Information exchange with Property Registration Authority. **135.**—The Principal Act is amended by inserting the following 25

“137A.—(1) In this section ‘Authority’ means An tÚdarás Clárúcháin Maoine or, in the English language, the Property Registration Authority.

(2) The Authority shall, at such intervals as are specified by the Revenue Commissioners, supply to the Revenue Commissioners such information in the Authority’s possession as may be required for the performance of the functions of the Revenue Commissioners under this Act. 30

(3) Notwithstanding any obligation to maintain secrecy or any other restriction on the disclosure or production of information obtained by or furnished to the Commissioners, the Commissioners shall, at such intervals as are specified by the Authority, supply to the Authority such information in the Commissioners’ possession which may be required by the Authority when considering stamp duty in relation to documents presented 40 for registration.”.

Conveyance in consideration of debt. **136.**—(1) Section 41 of the Principal Act is amended by substituting the following for section 41:

“41.—(1) Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to such person, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt, money or stock shall be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is charged with ad valorem duty.

(2) Where, in connection with or as part of any arrangement involving any conveyance referred to in subsection (1) of stock of a company, the transferee procures, either directly or indirectly, the discharge of any indebtedness of the company (in this subsection referred to as the ‘first-mentioned company’) or of any other company which is connected with the first-mentioned company within the meaning of section 10 of the Taxes Consolidation Act 1997, and the main or one of the main purposes of the arrangement is to secure a tax advantage, then the conveyance shall, in addition to any other payment of money or transfer of stock to which it is subject (if any), be deemed to be subject to the payment of an amount equal to the amount of such indebtedness.

(3) In subsection (2)—

‘arrangement’ includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

‘tax advantage’ means the avoidance or reduction of a charge to stamp duty.”.

(2) This section applies as respects instruments executed on or after 4 February 2010.

137.—The Principal Act is amended by inserting the following after section 85:

Certain investment certificates.

“85A.—Stamp duty shall not be chargeable on the issue, transfer or redemption of an investment certificate within the meaning of section 267N (inserted by the *Finance Act 2010*) of the Taxes Consolidation Act 1997.”.

138.—The Principal Act is amended—

Funds:
reorganisation.

(a) by substituting the following for subsection (2) of section 88B:

“(2) Stamp Duty shall not be chargeable on any instrument made for the purposes of or in connection with any arrangement between a foreign fund and a domestic fund, being an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation under which the foreign fund transfers assets to the domestic fund and the domestic fund—

(a) issues units to persons who hold units in the foreign fund in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of units in the foreign fund, or

(b) issues units directly to the foreign fund.”,

and

(b) by inserting the following after section 88D:

“Transfer of
assets within
unit trusts.

88E.—(1) In this section—

‘investment undertaking’ means— 5

(a) an investment undertaking to
which paragraph (a) of the
definition of ‘investment under-
taking’ in section 739B(1) of the
Taxes Consolidation Act 1997 10
relates, and

(b) an investment undertaking that is
a ‘unit trust’;

‘relevant Regulations’ has the same mean-
ing as in section 739B(1) of the Taxes Con- 15
solidation Act 1997;

‘unit trust’ has the same meaning as in rel-
evant Regulations.

(2) Stamp Duty shall not be chargeable
on any instrument made for the purposes 20
of the transfer of assets within an invest-
ment undertaking.”.

Levy on certain life
insurance
premiums.

139.—(1) Section 124B of the Principal Act is amended in subsec-
tion (1):

(a) by substituting the following for the definition of “assess- 25
able amount”:

“ ‘assessable amount’, in relation to a quarter, means the
gross amount received by an insurer by means of pre-
miums in that quarter for policies of life insurance referred
to in classes I, II, III, IV, V and VI of Annex I to the 30
Directive to the extent that the risks to which those poli-
cies of life insurance relate are located in the State (being
risks deemed to be located in the State by virtue of section
61) but excluding amounts received in respect of pension
business which shall be construed in accordance with sub- 35
sections (2) and (3) of section 706 of the Taxes Consoli-
dation Act 1997 and excluding amounts received in the
course of or by means of reinsurance;”,

(b) by substituting the following for the definition of “due 40
date”:

“ ‘due date’ means, in respect of the quarter ending on—

(a) 31 March in any year, 25 April in the same year,

(b) 30 June in any year, 25 July in the same year,

(c) 30 September in any year, 25 October in the
same year, and 45

(d) 31 December in any year, 25 January in the following year;”,

and

(c) by substituting the following for paragraph (c) in the definition of “insurer”:

“(c) the holder of an official authorisation to undertake insurance in Iceland, Liechtenstein or Norway, pursuant to the EEA Agreement, within the meaning of the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent agreements to that Agreement, who is carrying on business of life assurance in the State;”,

(2) (a) Paragraphs (a) and (c) of subsection (1) have effect from 1 January 2010, and

(b) Paragraph (b) of subsection (1) has effect in respect of all statements to be delivered to the Commissioners after 31 December 2009.

140.—Section 125A (inserted by the Health Insurance Levy on authorised (Miscellaneous Provisions) Act 2009) of the Principal Act is insurers. amended by substituting the following for subsection (3):

“(3) There shall be charged on every statement delivered by an authorised insurer pursuant to subsection (2) a stamp duty at the rate of—

(a) where the relevant contract was renewed or entered into before 1 January 2010:

(i) €53 in respect of each insured person aged less than 18 years, and

(ii) €160 in respect of each insured person aged 18 years or over,

and

(b) where the relevant contract was renewed or entered into on or after 1 January 2010:

(i) €55 in respect of each insured person aged less than 18 years, and

(ii) €185 in respect of each insured person aged 18 years or over,

included in the statement.”.

141.—Schedule 2B to the Principal Act is amended in paragraph 3 by inserting the following after subparagraph (a):

“(aa) Bachelor of Agricultural Science — Agri-Environmental Science awarded by University College Dublin;”.

Amendment of Schedule 2B (qualifications for applying for relief from stamp duty in respect of transfers to young trained farmers) to Principal Act.

CAPITAL ACQUISITIONS TAX

Interpretation (*Part 6*).

142.—In this Part “Principal Act” means the Capital Acquisitions Tax Consolidation Act 2003.

Amendment of
section 57
(overpayment of
tax) of Principal
Act.

143.—(1) Section 57(1) of the Principal Act is amended in the definition of “tax” by inserting “probate tax and” after “includes”.

(2) This section applies to claims for repayment of tax made on or after the date of the passing of this Act.

Exemption of certain investment entities.

144.—(1) The Principal Act is amended by substituting the following for section 75: 10

“75.—(1) In this section—

‘collective investment scheme’ means a *bona fide* scheme for the purpose, or having the effect, solely or mainly, of providing facilities for the participation by the public or other investors in profits or income arising from the acquisition, holding, management or disposal of securities or any other property; 15

'common contractual fund' has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997:

'investment undertaking' has the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997; 20

‘unit’, in relation to a collective investment scheme, includes shares, members’ interests, limited partnership interests and any other instruments granting an entitlement to the income or investments from the scheme:

‘unit’, in relation to a common contractual fund, has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997: 25

‘unit’, in relation to an investment undertaking, has the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997.

(2) Where any unit of a collective investment scheme which is incorporated or otherwise formed under the law of a territory outside the State, a common contractual fund or an investment undertaking is comprised in a gift or an inheritance, then, such unit—

(a) is exempt from tax, and

(b) is not taken into account in computing tax on any gift or inheritance taken by the donee or successor,

if it is shown to the satisfaction of the Commissioners that—

(i) the unit is comprised in the gift or inheritance— 40

(I) at the date of the gift or the date of the inheritance, and

(II) at the valuation date,

(ii) at the date of the disposition, the disponent is neither domiciled nor ordinarily resident in the State, and

(iii) at the date of the gift or at the date of the inheritance, the donee or successor is neither domiciled nor ordinarily resident in the State.

(3) Where—

(a) any unit of an investment undertaking which is comprised in a gift or an inheritance came into the beneficial ownership of the disponent or became subject to the disposition prior to 15 February 2001, and

(b) the conditions of subparagraphs (i) and (iii) of subsection (2) are complied with,

then, that subsection shall apply to that unit of an investment undertaking comprised in a gift or an inheritance, if at the date of the disposition, the proper law of the disposition was not the law of the State.”.

(2) This section applies to gifts and inheritances taken on or after 4 February 2010.

145.—(1) Section 82(1) of the Principal Act is amended by inserting the following after paragraph (c):

Amendment of section 82 (exemption of certain receipts) of Principal Act.

“(ca) the receipt by a person of an award from the competition ‘Your Country, Your Call’ which was launched by the President on 17 February 2010,”.

(2) This section applies to gifts taken on or after 17 February 2010.

146.—(1) Section 89 of the Principal Act is amended by inserting the following after subsection (4):

Amendment of section 89 (provisions relating to agricultural property) of Principal Act.

“(4A) Where the proceeds referred to in subparagraph (ii) of subsection (4)(a) are expended in acquiring agricultural property which has been transferred by the donee or successor to his or her spouse, such property shall not be treated as other agricultural property for the purposes of that subparagraph.”.

(2) This section applies to transfers executed on or after 4 February 2010.

147.—(1) The Principal Act is amended—

Modernisation of capital acquisitions tax administration.

(a) in sections 16(d) and 21(d) by deleting “, and this Act shall apply, in its application to that charge for tax, as if that object of the discretionary trust were a person referred to in section 45(2)”,

(b) by substituting the following for section 45:

“Accountable persons.

45.—(1) The person accountable for the payment of tax is—

(a) the donee or successor, and

(b) in the case referred to in section 32(2), the transferee referred to in that subsection, to the extent referred to in that subsection. 5

(2) The tax shall be recoverable from the person referred to in subsection (1) and the personal representative of such person, where that person has died, on whom the Commissioners have served notice in writing of the assessment of tax in accordance with section 49(4). 10

(3) The person referred to in subsection (1) and the personal representative of such person shall, for the purposes of paying the tax, or raising the amount of the tax when already paid, have power, whether the property is or is not vested in that person, to raise the amount of such tax and any expenses properly paid or incurred by that person in respect of raising the amount of such tax, by the sale or mortgage of, or a terminable charge on, that property or any part of that property. 15 20

(4) Every public officer having in such person's custody— 25

(a) any rolls, books, records, papers, documents or proceedings, or

(b) any other data maintained in electronic, photographic or other process, 30

the inspection of which may tend to secure the tax, or to prove or lead to the discovery of any fraud or omission in relation to the tax, shall at all reasonable times permit any person authorised by the Commissioners to inspect those rolls, books, records, papers, documents or proceedings or that other data so maintained, and to copy by any means, take notes and extracts as that person may deem necessary.”, 35 40

(c) by substituting the following for paragraph (a) of subsection (4) of section 45A:

“(a) where the requirements of section 46(2), requiring the delivery of a return on or before the dates mentioned in section 46(2A), are met, for the period of 6 years commencing on the valuation date of the gift or inheritance, or”, 45

(d) by inserting the following after section 45A:

“Liability of certain persons in respect of non-resident beneficiaries. 45AA.—(1) Where— 50
202

(a) property passing under a deceased person's will or intestacy or under Part IX or section 56 of the Succession Act 1965, or otherwise as a result of the death of that person, is taken by a person or persons who is or are not resident in the State,

(b) the personal representative or one or more of the personal representatives, where there is more than one personal representative, of the deceased person's estate is or are resident in the State, and

(c) the person or persons referred to in paragraph (a) do not deliver a return and make a payment of tax in accordance with section 46(2),

then, the personal representative or one or more of the personal representatives, as the case may be, and the solicitor referred to in section 48(10), shall be assessable and chargeable for the tax payable by the person or persons referred to in paragraph (a) to the same extent that those persons are chargeable to tax under section 11.

(2) Subsection (1) shall not apply where a liability to inheritance tax arises by virtue of the fact that a person referred to in paragraph (a) of that subsection has not disclosed that he or she has received a taxable gift or a taxable inheritance prior to the taxable inheritance or taxable inheritances, as the case may be, consisting of property referred to in subsection (1)(a) and the personal representative or solicitor referred to in section 48(10), as the case may be, has made reasonable enquiries regarding such gifts or inheritances and has acted in good faith.

(3) The personal representative or one or more of the personal representatives and the solicitor referred to in section 48(10) shall be liable only to the extent that that person or those persons, as the case may be, have control of the property referred to in subsection (1)(a) or which that person or those persons would, but for that person's or those persons' own neglect or default, have control of such property.

(4) The persons referred to in subsection (3)—

(a) shall be entitled to retain so much of the property referred

to in subsection (1)(a) as may be required to pay the tax in respect of the person or persons referred to in paragraph (b) of that subsection, and 5

(b) shall have power, whether the property is or is not vested in that person, to raise the amount of such tax and any expenses properly paid or incurred by that person in respect of raising the amount of such tax, by the sale or mortgage of, or a terminable charge on, that property or any part of that property.”, 10 15

(e) in section 46(2)—

(i) by substituting “, or who is accountable by virtue of section 45(1),” for “, or section 45(1),”,

(ii) by deleting “, shall within 4 months after the relevant date referred to in subsection (5)”, and 20

(iii) by deleting “primarily” in paragraph (a)(i),

(f) in section 46 by inserting the following after subsection (2):

“(2A) For the purposes of subsection (2) (other than in the case of an inheritance to which section 15 or 20 applies), where the relevant date occurs— 25

(a) in the period from 1 January to 31 August in any year, tax shall be paid and a return shall be delivered on or before 31 October in that year, and

(b) in the period from 1 September to 31 December 30 in any year, tax shall be paid and a return shall be delivered on or before 31 October in the following year.

(2B) Subsection (2A) shall only apply as respects tax to be paid and returns to be delivered as respects valuation 35 dates arising on or after such day as may be appointed by order of the Commissioners.”,

(g) in section 46 by substituting the following for subsection (3):

“(3) Subsection (2)(c) (other than in respect of tax arising by reason of section 20) shall be complied with, where the tax due and payable is inheritance tax which is being paid wholly or partly by the transfer of securities to the Minister for Finance under section 56, by— 40

(a) making an application to the Commissioners to 45 pay all or part of the tax by such transfer,

(b) completing the transfer of the securities to the Minister for Finance within such time, not

being less than 30 days, as may be specified by the Commissioners by notice in writing, and

- (c) duly paying the excess, if any, of the amount of tax referred to in subsection (2)(b) over the nominal face value of the securities tendered in payment of the tax in accordance with paragraph (a).

(3A) A return to be delivered in accordance with subsection (2A) shall only be delivered in accordance with the provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 except where a relief or an exemption (other than the exemption referred to in section 69) is not being claimed by a person under this Act and the interest taken by a person in property is an absolute interest which is not subject to any conditions or restrictions.”,

- (h) by deleting section 46(6),

- (i) in section 46(13) by substituting “the Commissioners may by notice in writing require a disponer to deliver to them within such time, not being less than 30 days, as may be specified in the notice,” for “any accountable person who is a disponer shall within 4 months of the valuation date deliver to the Commissioners”,

- (j) by deleting section 47(4)(a)(ii),

- (k) in section 48 by substituting the following for subsection (1):

“(1) In this section—

‘Inland Revenue Affidavit’ means the document, completed by or on behalf of the intended applicant or intended applicants for probate or letters of administration and sworn by them before a commissioner for oaths, a practicing solicitor or a court clerk, as the case may be;

‘Probate Office’ includes a district probate registry.”,

- (l) in section 48 by inserting the following after subsection (4):

“(5) Except where submitted in accordance with regulations made under subsection (8), the Inland Revenue Affidavit and the statements, accounts and additional affidavits referred to in subsections (2) to (4) shall be submitted to the Probate Office in duplicate.

(6) As soon as practicable after probate or letters of administration has or have been issued, the Probate Office shall transmit to the Commissioners such information as is held in electronic form by the Probate Office and which is relevant for the purposes of this Act.

(7) Except where submitted in accordance with regulations made under subsection (8), the Probate Office shall send one copy of the Inland Revenue Affidavit referred to in subsection (5) together with a copy of the will (if any) to the Commissioners as soon as practicable after probate or letters of administration has or have been issued.

(8) (a) Subject to paragraph (b), the Commissioners shall make regulations permitting the submission to the Probate Office of the Inland Revenue Affidavit, and the other documents referred to in subsections (2) to (4), by simultaneous transmission of these documents in electronic form to that Office and to the Commissioners. 5

(b) Regulations under this subsection shall only be made by the Commissioners where they are satisfied that both the Probate Office and the Commissioners have the technical competence and ability to continue to perform their respective functions concerned if the regulations are made. 10 15

(c) Regulations under this subsection may contain such incidental and supplementary matters as appears necessary or appropriate to the Commissioners for the purpose of giving effect to this subsection. 20

(9) The Commissioners and the Probate Office shall both have access to the affidavits and documents that have been transmitted electronically under subsection (8).

(10) Where—

(a) property passing under the deceased person's will or intestacy or Part IX or section 56 of the Succession Act 1965, or otherwise as a result of the death of that person, is taken by a person or persons who is or are not resident in the State, 25 30

(b) the market value of the property referred to in paragraph (a) taken by any person referred to in that paragraph exceeds €20,000,

(c) the intended applicant or all the intended applicants, where there is more than one intended applicant, for probate or letters of administration is or are resident outside the State, and 35

(d) a return would be required to be delivered to the Commissioners in respect of such property in accordance with section 46(2) if the valuation date in respect of that property were the date of death of that person, 40

then, the intended applicant or the intended applicants, as the case may be, for probate or letters of administration shall appoint a solicitor who is lawfully practicing in the State to act in connection with the administration of the deceased person's estate. 45

(11) The Probate Office shall not issue probate or letters of administration in respect of a deceased person's estate in any case to which subsection (10) applies unless a solicitor lawfully practicing in the State has been 50

appointed by the intended applicant or the intended applicants to act in connection with the administration of the deceased person's estate.”,

(m) by inserting the following after section 49(1):

“(1A) The Commissioners may issue an assessment to a person referred to in section 45(1) where a return has not been delivered to them under section 46(2).”,

(n) in section 51 by substituting the following for subsection (2)(a):

“(a) Simple interest is payable, without deduction of income tax, on the tax where the relevant date (within the meaning of section 46(5)) occurs—

(i) in the period from 1 January to 31 August in any year, from 1 November in that year to the date of payment of that tax, and

(ii) in the period 1 September to 31 December in any year, from 1 November in the following year to the date of payment of that tax,

and the amount of that interest shall be determined in accordance with paragraph (c).”,

(o) in section 51 by substituting the following for subsection (4):

“(4) Where tax and interest, if any, on that tax is paid within 30 days of an assessment of tax made by the Commissioners in accordance with section 49, interest shall not run on that tax for the period of 30 days from the date of that assessment or for any part of that period.”,

(p) by inserting the following after section 53:

“Surcharge for late returns. 53A.—(1) In this section ‘specified return date’ means—

(a) in relation to a valuation date occurring in the period 1 January to 31 August in any year, 31 October in that year, and

(b) in relation to a valuation date occurring in the period 1 September to 31 December in any year, 31 October in the following year.

(2) For the purposes of this section—

(a) where a person fraudulently or negligently delivers an incorrect return on or before the specified return date, that person shall be deemed to have failed to have delivered the return on

or before that date unless the error in the return is remedied on or before that date,

(b) where a person delivers an incorrect return on or before the specified return date, but does so neither fraudulently nor negligently and it comes to that person's notice (or, if he or she has died, to the notice of his or her personal representative) that it is incorrect, the person shall be deemed to have failed to have delivered the return on or before the specified return date unless the error in the return is remedied without unreasonable delay, and

(c) where a person delivers a return on or before the specified return date, but the Commissioners, by reason of being dissatisfied with any information contained in the return, require that person, by notice in writing served on him or her under section 46(7), to deliver such statement or evidence as may be required by them, the person shall be deemed not to have delivered the return on or before the specified return date unless the person delivers the statement or evidence within the time specified in the notice.

(3) Where a person fails to deliver a return on or before the specified return date, any amount of tax which would have been payable if such a return had been delivered shall be increased by an amount (in this section referred to as 'the surcharge') equal to—

(a) 5 per cent of the amount of tax, subject to a maximum increased amount of €12,695, where the return is delivered before the expiry of 2 months from the specified return date, and

(b) 10 per cent of the amount of tax, subject to a maximum increased amount of €63,485, where the return is not delivered before the expiry of 2 months from the specified return date.

(4) If the assessment to tax made on a return is not the amount of tax as increased in accordance with subsection (3), then, the

provisions of this Act and Part 42 of the Taxes Consolidation Act 1997 shall apply as if the tax contained in the assessment were the amount of tax as so increased.”,

5 (q) in section 54(1) by substituting “monthly instalments over
a period not exceeding 5 years in such manner as may be
determined by the Commissioners, the first of which is
10 due on 31 October immediately following the valuation
date” for “5 equal yearly instalments, the first of which is
due at the expiration of 12 months from the date on
which the tax became due and payable”,

(r) by deleting sections 60, 61, 63(4) and 108, and

(s) in section 109(2) by substituting “€50,000” for “€31,750”.

(2) The Taxes Consolidation Act 1997 is amended—

15 (a) by inserting the following after section 951(1):

“(1A) The prescribed form referred to in subsection (1)
may include such matters in relation to gift tax and inher-
itance tax as may be required by that form.”,

20 (b) in section 980 by inserting the following after subsection
(15):

“(16) In the case of a disposal to which this section
applies, the person making the disposal shall provide
details (if applicable) on application, if the form on which
the application is made so requires, for a certificate
25 referred to in subsection (8) relating to—

(a) whether or not the asset being disposed of was
acquired by way of gift or inheritance,

(b) the market value of the asset on the date it was
acquired, and

30 (c) whether or not gift tax or inheritance tax was
paid in respect of the asset.”.

(3) The provisions of sections 45, 60 and 63(4) of the Principal
Act as they applied any time before the passing of this Act, or any
corresponding provision in a previous enactment, shall not apply to
35 gifts and inheritances taken before the date of the passing of this Act
except where the Revenue Commissioners have instituted pro-
ceedings to recover gift tax or inheritance tax before that date.

(4) (a) This section (other than *paragraphs (e)(ii), (k), (l), (n) and*
(o) of subsection (1)) applies on and from the date of the
40 passing of this Act.

(b) *Paragraphs (e)(ii), (k), (l), (n) and (o) of subsection (1)*
apply on and from the date the Revenue Commissioners
make the order referred to in section 46(2B) of the Prin-
cipal Act.

PART 7

MISCELLANEOUS

Interpretation (*Part* **148.**—In this Part “Principal Act” means the Taxes Consolidation
7). Act 1997.

Amendment of Part **149.**—(1) Part 33 of the Principal Act is amended by inserting the 5
33 (anti-avoidance) following after Chapter 2:
of Principal Act.

“CHAPTER 3

Mandatory Disclosure of Certain Transactions

Interpretation 817D.—(1) In this Chapter, unless the context
and general otherwise requires— 10
(Chapter 3).

‘the Acts’ means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts,
- (c) Part 18A,
- (d) the Value-Added Tax Act 1972, and the 15
enactments amending or extending
that Act,
- (e) the Capital Acquisitions Tax Consoli-
dation Act 2003, and the enactments 20
amending or extending that Act,
- (f) the Stamp Duties Consolidation Act
1999, and the enactments amending or
extending that Act,
- (g) the statutes relating to the duties of
excise and to the management of 25
those duties,

and any instruments made thereunder and any
instruments made under any other enactment
relating to tax;

‘disclosable transaction’ means— 30

- (a) any transaction, or
- (b) any proposal for any transaction,

which—

- (i) falls within any specified description,
- (ii) enables, or might be expected to enable, 35
any person to obtain a tax advantage,
and
- (iii) is such that the main benefit, or one of
the main benefits, that might be

expected to arise from the transaction or the proposal is the obtaining of that tax advantage,

whether the transaction or the proposal for the transaction relates to a particular person or to any person who may seek to take advantage of it;

‘marketer’, in relation to any disclosable transaction, means any person who is not a promoter but who has made a marketing contact in relation to the disclosable transaction;

‘marketing contact’, in relation to a disclosable transaction, means the communication by a person of the general nature of the disclosable transaction to another person with a view to that person or any other person considering whether—

(a) to ask for further details of the disclosable transaction, or

(b) to seek to have the disclosable transaction made available for implementation,

and ‘makes a marketing contact’ shall be construed accordingly;

‘PPS Number’, in relation to an individual, means the individual’s personal public service number, within the meaning of section 262 of the Social Welfare Consolidation Act 2005;

‘promoter’, in relation to a disclosable transaction, means a person who in the course of a relevant business—

(a) is to any extent responsible for the design of the disclosable transaction,

(b) has specified information relating to the disclosable transaction and makes a marketing contact in relation to the disclosable transaction,

(c) makes the disclosable transaction available for implementation by other persons, or

(d) is to any extent responsible for the organisation or management of the disclosable transaction;

‘relevant business’ means any trade, profession, vocation or business which—

(a) includes the provision to other persons of services relating to taxation, or

(b) is carried on by a bank (within the meaning of section 124(1)(a) of the Stamp Duties Consolidation Act 1999),

and for the purposes of this definition—

- (i) anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business referred to in paragraph (b) carried on by another company, where both companies are members of the same group, and 5
- (ii) ‘group’ has the meaning that would be given by section 616 if in that section references to residence in a relevant Member State were omitted and for references to ‘75 per cent subsidiaries’ there were substituted references to ‘51 per cent subsidiaries’, and references to a company being a member of a group shall be construed accordingly; 10 15

‘relevant date’, in relation to a disclosable transaction, means the earliest of the following dates—

- (a) the date on which the promoter has specified information relating to the disclosable transaction and first makes a marketing contact in relation to the disclosable transaction, 20
- (b) the date on which the promoter makes the disclosable transaction available for implementation by any other person, or 25
- (c) the date on which the promoter first becomes aware of any transaction forming part of the disclosable transaction having been implemented; 30

‘specified description’ has the meaning assigned to it by subsection (2);

‘specified information’ means any information specified in regulations made under section 817Q; 35

‘specified period’ means the period of time, or time, specified in regulations made under section 817Q;

‘tax’ means any tax, duty, levy or charge which, in accordance with the Acts, is placed under the care and management of the Revenue Commissioners; 40

‘tax advantage’ means—

- (a) relief or increased relief from, or a reduction, avoidance or deferral of, any assessment, charge or liability to tax, including any potential or prospective assessment, charge or liability, 45
- (b) a refund or repayment of, or a payment of, an amount of tax, or an increase in 50

an amount of tax refundable, repayable or otherwise payable to a person, including any potential or prospective amount so refundable, repayable or payable, or an advancement of any refund or repayment of, or payment of, an amount of tax to a person, or

- (c) the avoidance of any obligation to deduct or account for tax,

arising out of or by reason of a transaction, including a transaction where another transaction would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the transaction;

‘tax reference number’, in relation to a person, means—

- (a) in the case of a person who is an individual, the individual’s PPS Number, and

- (b) in any other case—

(i) the reference number stated in any return of income form or notice of assessment issued to the person by the Revenue Commissioners, or

(ii) the registration number of the person for the purposes of value-added tax;

‘transaction’ means—

- (a) any transaction, action, course of action, course of conduct, scheme or plan,

(b) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and

- (c) any series of or combination of the circumstances referred to in paragraphs (a) and (b),

whether entered into or arranged by one person or by two or more persons—

- (i) whether acting in concert or not,

(ii) whether or not entered into or arranged wholly or partly outside the State, or

(iii) whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions,

and any proposal for any transaction shall be construed accordingly.

(2) (a) For the purposes of this Chapter, unless the context otherwise requires, a reference to a specified description shall be construed as a reference to a class or classes of transaction which are specified in regulations made under section 817Q. 5

(b) A class of transaction referred to in paragraph (a) and which is specified in regulations made under section 817Q shall fall within at least one of the categories of transaction referred to in paragraph (c). 10 15

(c) The categories of transaction referred to in paragraph (b) are as follows:

(i) a transaction where, but for the provisions of this Chapter, a promoter or person would, or might reasonably be expected to, wish to keep the transaction or any element of the transaction (including the way in which the transaction is structured) which gives rise to the tax advantage expected to be obtained, confidential from— 20 25

(I) the Revenue Commissioners, or 30

(II) any other class of person prescribed under section 817Q for the purposes of this subparagraph,

for any purpose prescribed by regulations made under section 817Q; 35

(ii) a transaction in relation to which a promoter, whether directly or indirectly, obtains from or charges to, or might reasonably be expected to obtain from or charge to, a person implementing, or considering implementing, such transaction, fees that are to a significant extent attributable to, or to any extent contingent upon, the obtaining of a tax advantage; 40 45

(iii) a transaction which involves standardised or mainly standardised documentation, the form of which is largely determined by the promoter and which require the person implementing the transaction to enter into a specific 50

transaction, or series of transactions, that are standardised, or substantially standardised, in form;

- (iv) a transaction, or any element of such transaction (including the way in which the transaction is structured), which gives rise to a tax advantage of a class or classes prescribed in regulations made under section 817Q for the purposes of this subparagraph.

Duties of promoter. 817E.—Subject to this Chapter, a promoter shall, within the specified period after the relevant date, provide the Revenue Commissioners with specified information relating to any disclosable transaction.

Duty of person where promoter is outside the State. 817F.—Any person who enters into any transaction forming part of any disclosable transaction in relation to which—

(a) a promoter is outside the State, and

(b) no promoter is in the State,

shall, within the specified period after so doing, provide the Revenue Commissioners with specified information relating to the disclosable transaction.

Duty of person where there is no promoter. 817G.—Any person who enters into any transaction forming part of a disclosable transaction as respects which neither that person nor any other person in the State has an obligation to comply with section 817E or 817F shall within the specified period after so doing provide the Revenue Commissioners with specified information relating to the disclosable transaction.

Duty of person where legal professional privilege claimed. 817H.—(1) Any person who enters into a transaction forming part of a disclosable transaction as respects which the promoter, by virtue of section 817J, does not comply with section 817E, shall within the specified period concerned after entering such transaction, provide the Revenue Commissioners with specified information relating to the disclosable transaction.

(2) A promoter who by virtue of section 817J does not comply with section 817E shall inform each person to whom the promoter has made the disclosable transaction available for implementation of the obligations placed on that person by virtue of subsection (1).

(3) A promoter who by virtue of section 817J does not comply with section 817E shall inform the Revenue Commissioners accordingly within the specified period.

Pre-disclosure enquiry.	817I.—(1) Where the Revenue Commissioners have reasonable grounds for believing that—	
	(a) a person is the promoter of a transaction that may be a disclosable transaction, or	5
	(b) a person has entered into a transaction that may form part of a disclosable transaction, which if it were such a transaction would require the person to comply with section 817G,	10
	the Commissioners may by written notice (in this Chapter referred to as a ‘pre-disclosure enquiry’) require the person to state—	
	(i) whether, in that person’s opinion, the transaction is a disclosable transaction, and	15
	(ii) if in that person’s opinion the transaction is not considered to be a disclosable transaction, the reasons for that opinion.	20
	(2) A notice under subsection (1) shall specify the transaction to which it relates.	
	(3) The reasons referred to in subsection (1)(ii) (in this Chapter referred to as a ‘statement of reasons’) shall demonstrate, by reference to this Chapter and regulations made under it, why the person holds the opinion that the transaction is not a disclosable transaction and, in particular, if the person asserts that the transaction does not fall within any specified description, the reasons shall provide sufficient information to enable the Revenue Commissioners to affirm the assertion.	25 30
	(4) For the purposes of this section, it is not sufficient for the person to state that they have received an opinion given by a barrister or solicitor or a person referred to in subparagraph (i) or (ii) of section 817P(5)(a) to the effect that the transaction is not a disclosable transaction.	35
	(5) A person to whom the Revenue Commissioners have issued a notice under subsection (1) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice, or such longer period as the Commissioners may agree.	40
Legal professional privilege.	817J.—Nothing in this Chapter shall be construed as requiring a promoter to disclose to the Revenue Commissioners information with respect to which a claim to legal professional privilege could be maintained by that promoter in legal proceedings.	45 50

Supplemental
information.

817K.—(1) Where a person has provided the Revenue Commissioners with information in purported compliance with section 817E, 817F, 817G or 817H(1) and the Commissioners have reasonable grounds for believing that the person has not provided all of the specified information, the Commissioners may by notice in writing require the person to provide the information, specified in the notice, that the Commissioners have reasonable grounds for believing form part of the specified information.

(2) Where a person has provided the Revenue Commissioners with specified information in compliance with section 817E, 817F, 817G or 817H(1) the Commissioners may by notice in writing require the person to provide such other information about, or documents relating to, the disclosable transaction, as the Commissioners may reasonably require in support of or in explanation of the specified information.

(3) A person to whom the Revenue Commissioners have issued a notice under subsection (1) or (2) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice, or such longer period as the Commissioners may agree.

Duty of
marketer to
disclose.

817L.—(1) Where the Revenue Commissioners have reason to believe that a person is a marketer in relation to a transaction that may be a disclosable transaction, the Commissioners may by written notice require the person to provide the Commissioners with the name, address and, where known to the person, the tax reference number of each person who has provided that person with any information in relation to the transaction.

(2) A notice under subsection (1) shall specify the transaction to which it relates.

(3) A person to whom the Revenue Commissioners have issued a notice under subsection (1) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice or such longer period as the Commissioners may agree.

Duty of
promoter to
provide client
list.

817M.—A person who is a promoter shall, in relation to each disclosable transaction in respect of which specified information has been provided by that promoter under section 817E, provide to the Revenue Commissioners—

- (a) within the period of time set out in regulations made under section 817Q, and
- (b) at such times falling after the end of that period as may be set out in those regulations,

the name, address and, where known to the person, the tax reference number of each person to whom that person has made the disclosable transaction available for implementation (in this Chapter referred to as the 'client list').

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Supplemental
matters.

817N.—(1) Where a promoter provides the Revenue Commissioners with specified information relating to a disclosable transaction and the client list in respect of that disclosable transaction, the provision of that information shall, as respects any person included on the client list who implements the transaction, be wholly without prejudice as to whether any opinion that the disclosable transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

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(2) Where a person, other than a promoter, provides the Revenue Commissioners with specified information relating to a disclosable transaction the person shall be treated as making that information available wholly without prejudice as to whether any opinion that the disclosable transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

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(3) Where a person provides the Revenue Commissioners with specified information relating to a disclosable transaction, the provision of that information shall not be regarded as being, or being equivalent to, the delivery of a protective notification by that person in relation to the transaction for the purposes of section 811A.

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(4) Nothing in this Chapter shall be construed as preventing the Revenue Commissioners from—

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(a) making any enquiry, or

(b) taking any action,

at any time in connection with section 811 or 811A.

Penalties.

817O.—(1) A person who fails to comply with any of the obligations imposed on that person by this Chapter and any regulations made under it shall—

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(a) where the failure relates to the obligation imposed on a person under section 817H(2), 817H(3), 817I, 817K(1), 817K(2), 817L or 817M, be liable to—

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(i) a penalty not exceeding €4,000, and

(ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of

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€100 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph,

and

(b) where the failure relates to the obligation imposed on a person under section 817E, 817F, 817G or 817H(1), be liable to—

(i) a penalty not exceeding €500 for each day during the initial period, and

(ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of €500 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph.

(2) In subsection (1)(b)—

‘the initial period’ means the period—

(a) beginning on the relevant day, and

(b) ending on the day on which an application referred to in subsection (3) is made;

‘relevant day’ means the first day after the specified period.

(3) (a) Notwithstanding section 1077B, the Revenue Commissioners shall, in relation to a failure referred to in subsection (1), make an application to the relevant court for that court to determine whether the person named in the application has failed to comply with the obligation imposed on that person by a section referred to in subsection (1)(a) or (b), as the case may be.

(b) In paragraph (a) ‘relevant court’ means the District Court, the Circuit Court or the High Court, as appropriate, by reference to the jurisdictional limits for civil matters laid down in the Courts of Justice Act 1924, as amended, and the Courts (Supplemental Provisions) Act 1961, as amended.

(4) A copy of any application under subsection (3) shall be issued to the person to whom the application relates.

(5) The relevant court shall determine whether the person named in the application referred to in

subsection (3) is liable to the penalty provided for in subsection (1) and the amount of that penalty, and in determining the amount of the penalty the court shall have regard to paragraph (a) or (b) of subsection (6), as the case may be. 5

(6) In determining the amount of a penalty under subsection (5) the court shall have regard—

- (a) in the case of a person who is a promoter, to the amount of any fees received, or likely to have been received, by the person in connection with the disclosable transaction, and 10
- (b) in any other case, to the amount of any tax advantage gained, or sought to be gained, by the person from the disclosable transaction. 15

(7) Section 1077C shall apply for the purposes of a penalty under subsection (1).

(8) Section 1077D shall not apply for the purposes of a penalty under subsection (1). 20

Appeal
Commissioners. 817P.—(1) The Revenue Commissioners may, by notice in writing, make an application to the Appeal Commissioners for a determination in relation to any of the following matters—

- (a) requiring information or documents to be made available by a person in support of a statement of reasons (to the effect that a transaction is not a disclosable transaction) given by that person to the Revenue Commissioners in compliance with a notice under section 817I, 25 30
- (b) requiring information, that the Revenue Commissioners have reasonable grounds for believing forms part of the specified information relating to a disclosable transaction, to be made available by a person to the Revenue Commissioners, following the failure of the person to comply with a notice under section 817K(1), 35 40
- (c) requiring information about, or documents relating to, a disclosable transaction to be made available by a person to the Revenue Commissioners, following the failure of the person to comply with a notice under section 817K(2), 45
- (d) that a transaction is to be treated as a disclosable transaction, or 50
- (e) that a transaction is a disclosable transaction.

(2) On the hearing of an application made—

(a) on the grounds referred to in subsection (1)(a), the Appeal Commissioners shall determine the application by ordering if they—

(i) consider that the information or documents should be so made available, that the information or documents should be so made available,

(ii) consider that the information or documents should not be so made available, that the information or documents should not be so made available,

(b) on the grounds referred to in subsection (1)(b), the Appeal Commissioners shall determine the application by ordering if they—

(i) consider that the Revenue Commissioners have reasonable grounds for so believing, that the information be so made available to the Revenue Commissioners,

(ii) consider that the Revenue Commissioners do not have reasonable grounds for so believing, that the information not be made available to the Revenue Commissioners,

(c) on the grounds referred to in subsection (1)(c), the Appeal Commissioners shall determine the application by ordering if they—

(i) consider that the information or documents (or, as the case may be, a part of that information or some of those documents) should be so made available, that the information or documents (or, as the case may be, a part of that information or some of those documents) should be so made available,

(ii) consider that the information or documents should not be so made available, that the information or documents should not be so made available,

(d) on the grounds referred to in subsection (1)(d), the Appeal Commissioners shall determine the application by ordering if they—

(i) are satisfied that the Revenue Commissioners have taken all reasonable steps to establish whether the transaction is a disclosable transaction and have reasonable grounds for believing that the transaction may be disclosable, that the transaction is to be treated as a disclosable transaction, 5 10

(ii) are not satisfied that the Revenue Commissioners have taken all reasonable steps to establish whether the transaction is a disclosable transaction or have reasonable grounds for believing that the transaction may be disclosable, that the transaction is not to be treated as a disclosable transaction, 15 20

(e) on the grounds referred to in subsection (1)(e), the Appeal Commissioners shall determine the application by ordering if they—

(i) are satisfied that the transaction is a disclosable transaction, that it is a disclosable transaction, 25

(ii) are satisfied that the transaction is not a disclosable transaction, that it is not a disclosable transaction. 30

(3) For the purposes of the hearing of an application made on the grounds referred to in subsection (1)(d)—

(a) reasonable steps may (but need not) include the making of a pre-disclosure enquiry or the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a), and 35

(b) reasonable grounds for believing may include— 40

(i) the fact that the transaction falls within a specified description,

(ii) an attempt by the promoter to avoid or delay providing information or documents about the transaction on foot of a pre-disclosure enquiry or on foot of a determination of the Appeal Commissioners following the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a), 45 50

(iii) the failure of the promoter to comply with a pre-disclosure enquiry or a determination of the Appeal Commissioners following the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a), in relation to another transaction.

(4) An application under subsection (1) shall, with any necessary modifications, be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax.

(5) (a) On any application, the Appeal Commissioners shall permit any barrister or solicitor to plead before them on behalf of the Revenue Commissioners or the other party either orally or in writing and shall hear—

(i) any accountant, being any person who has been admitted a member of an incorporated society of accountants, or

(ii) any person who has been admitted a member of the Irish Taxation Institute.

(b) Notwithstanding paragraph (a), the Appeal Commissioners may permit any other person representing the Revenue Commissioners or the other party to plead before them where they are satisfied that such permission should be given.

Regulations (Chapter 3). 817Q.—(1) The Revenue Commissioners may, with the consent of the Minister for Finance, make regulations—

(a) specifying a class or classes of transaction which are to be transactions of a specified description for the purposes of this Chapter,

(b) prescribing a class of persons referred to in section 817D(2)(c)(i),

(c) prescribing a purpose referred to in section 817D(2)(c)(i),

(d) prescribing a class or classes of tax advantage for the purposes of section 817D(2)(c)(iv),

(e) specifying the information to be provided to the Revenue Commissioners by a person in relation to a disclosable transaction (in this Chapter referred to as the ‘specified information’),

(f) specifying the period of time within which, or time by which, as the case may be, the information referred to in paragraph (e) shall be provided to the Revenue Commissioners (in this Chapter referred to as the ‘specified period’), 5

(g) specifying the period of time within which, or time by which, as the case may be, any other information required to be provided to the Revenue Commissioners under this Chapter, is to be provided, 10

(h) specifying the circumstances in which a person is not to be treated as a promoter in relation to a disclosable transaction, and 15

(i) specifying the procedure to be adopted in giving effect to this Chapter, in so far as such procedure is not otherwise provided for, and providing generally as to the administration of this Chapter including— 20

(i) the form and manner of delivery of information to be provided under the regulations, and 25

(ii) such supplemental and incidental matters as appear to the Revenue Commissioners to be necessary.

(2) (a) In relation to regulations made pursuant to subsection (1)(a), the regulations may specify the circumstances in which the regulations— 30

(i) shall apply, or

(ii) shall not apply, 35

to a particular class of transaction.

(b) The circumstances referred to in paragraph (a) shall be specified by reference to the categories of transaction referred to in section 817D(2)(c). 40

(3) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation. 45

Nomination of
Revenue
Officers.

817R.—The Revenue Commissioners may nominate any of their officers to perform any acts and 50

discharge any functions authorised by this Chapter and regulations made under it to be performed or discharged by the Revenue Commissioners, and references in this Chapter to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so appointed.”.

(2) (a) In this subsection, “disclosable transaction”, “promoter” and “relevant date” have the same meaning as in Chapter 3 of Part 33 of the Principal Act, as inserted by subsection (1).

(b) Subsection (1) shall apply—

(i) to a promoter in the case of—

(I) any disclosable transaction in respect of which the relevant date falls on or after the date of the passing of this Act, and

(II) any disclosable transaction in respect of which the relevant date falls on or after the date of the passing of this Act (where that relevant date is determined on the basis of whichever of the dates referred to in the definition of “relevant date” in section 817D(1) of the Principal Act, is the earliest of such dates falling on or after the date of the passing of this Act),

and

(ii) to a person referred to in sections 817F, 817G and 817H(1) of the Principal Act who enters into any transaction forming part of a disclosable transaction where the whole of the disclosable transaction is undertaken on or after the date of the passing of this Act.

150.—(1) The Principal Act is amended by inserting the following Domicile levy.
Part after Part 18B:

“PART 18C

DOMICILE LEVY

Interpretation
(Part 18C).

531AA.—(1) In this Part—

‘close company’ has the meaning assigned to it by section 430;

‘discretionary trust’ means any disposition whereby, or by virtue or in consequence of which, property is held on trust to apply, or with a power to apply, the income or capital or part of the income or capital of the property for the benefit of any person or persons or of any one or more of a number or of a class of persons whether at the discretion of trustees or any other person and notwithstanding that there may be a power to accumulate all or any part of the income and for

the purposes of this definition ‘disposition’ includes any disposition whether by deed or otherwise and any covenant, agreement or arrangement whether effected with or without writing;

‘domicile levy’ has the meaning assigned to it by section 531AB; 5

‘final decision’ means a decision against which no appeal lies or against which an appeal lies within a period which has expired without an appeal having been brought; 10

‘foundation’ means any legal entity, wherever established, to which an individual disposes of, or transfers, property, irrespective of—

(a) how that entity is described in the place of establishment, and 15

(b) the name by which that entity is called in the place of establishment;

‘holding company’ and ‘subsidiary’ have the same meanings as in section 155 of the Companies Act 1963; 20

‘Irish property’, in relation to an individual and a valuation date, means all property, situate in the State, to which the individual is beneficially entitled in possession on the valuation date, but does not include— 25

(a) shares in a company which exists wholly or mainly for the purpose of carrying on a trade or trades,

(b) shares in a holding company which derive the greater part of their value from subsidiaries which wholly or mainly carry on a trade or trades; 30

‘liability to income tax’, in relation to an individual and a tax year, means the amount of income tax due and payable by the individual for the tax year in accordance with the Tax Acts and in respect of which a final decision has been made; 35

‘market value’, in relation to property, means the price which such property would fetch if sold on the open market on the valuation date in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property; 40

‘minor child’ means a child who has not attained the age of 18 years and is not and has not been married; 45

‘property’ includes rights and interests of every description;

‘relevant individual’, in relation to a tax year,
means an individual—

- (a) who is domiciled in, and is a citizen of,
the State in the tax year,
- (b) whose world-wide income for the tax
year is more than €1,000,000,
- (c) whose liability to income tax in the
State for the tax year is less than
€200,000, and
- (d) the market value of whose Irish prop-
erty on the valuation date in the tax
year is in excess of €5,000,000;

‘return’ means such a return as is referred to in
section 531AF;

‘tax year’ means a year of assessment for income
tax purposes;

‘world-wide income’, in relation to an individual,
means the individual’s income, without regard to
any amount deductible from or deductible in com-
puting total income, from all sources as estimated
in accordance with the Tax Acts and as if any pro-
vision of those Acts providing for any income, pro-
fits or gains to be exempt from income tax or to
be disregarded or not reckoned for the purposes
of income tax or of those Acts were never
enacted, and—

- (a) without regard to any deduction—
 - (i) in respect of double rent allowance
under section 324(2), 333(2),
345(3) or 354(3),
 - (ii) under section 372AP, in computing
the amount of a surplus or
deficiency in respect of rent from
any premises,
 - (iii) under section 372AU, in computing
the amount of a surplus or
deficiency in respect of rent from
any premises,
 - (iv) under section 847A, in respect of a
relevant donation (within the
meaning of that section),
 - (v) under section 848A, in respect of a
relevant donation (within the
meaning of that section),

and

- (b) having regard to a deduction for—

(i) any payment to which section 1025 applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage, unless section 1026 applies in respect of such payment, or 5

(ii) a payment of a similar nature to a payment referred to in subparagraph (i) pursuant to a maintenance arrangement (within the meaning of section 1025) relating to the marriage for the benefit of the other party to the marriage which attracts substantially the same tax treatment as such a payment, 10 15

determined on the basis that the individual, if not otherwise resident in the State for the year, was resident in the State for the tax year; 20

‘valuation date’, in relation to a tax year, means 25
31 December in that year. 25

(2) Subject to subsection (3), for the purposes of the definition of ‘Irish property’ in subsection (1), an individual shall be deemed to be beneficially entitled in possession on the valuation date to— 30

(a) all property situate in the State which the individual has transferred to his or her spouse or minor children, for less than market value, on or after 18 February 2010, 35

(b) all property situate in the State which the individual has disposed of, or transferred, to a discretionary trust, for less than market value, on or after 18 February 2010, and 40

(c) all property situate in the State which the individual has disposed of, or transferred, to a foundation, for less than market value, on or after 18 February 2010. 45

(3) (a) Subsection (2)(a) shall not apply to a maintenance arrangement (within the meaning of section 1025).

(b) Subsection (2)(b) and (c) shall not apply to a discretionary trust or a foundation, as the case may be, which is shown, to the satisfaction of the Revenue Commissioners, to have been created exclusively— 50

(i) for purposes which, in accordance with the law of the State, are charitable, or

(ii) for the benefit of one or more named individuals and for the reason that such individual, or all such individuals, is or are, because of age or improvidence, or of physical, mental or legal incapacity, incapable of managing that individual's or those individuals' affairs.

(4) For the purposes of this Part, where the whole or the greater part of the market value of any share in a company incorporated outside the State that would be a close company if it were incorporated in the State is attributable, directly or indirectly, to property situate in the State, that share shall be deemed to be property situate in the State.

(5) In estimating the market value of any property for the purposes of this Part, no deduction shall be made from the market value for any debts or encumbrances.

(6) References in this Part to the Revenue Commissioners shall be construed as including references to any of their officers.

Charge to
domicile levy.

531AB.—Subject to this Part, with effect from 1 January 2010 a levy, to be known as 'domicile levy', shall be charged, levied and paid annually by every relevant individual and the amount of such levy shall be €200,000.

Credit for
income tax
paid.

531AC.—A relevant individual's liability to income tax for a tax year shall be allowable as a credit in arriving at the amount of domicile levy chargeable for that year, but only to the extent that such income tax has been paid at the same time as, or before, domicile levy for that year is paid.

Valuation
procedures.

531AD.—(1) If the Revenue Commissioners are not satisfied with the market value of property estimated in a return, or if they consider it necessary to do so, they may estimate the value of that property and, where the market value as so estimated by the Revenue Commissioners exceeds the market value estimated in the return, any charge to tax shall be made by reference to the market value estimated by the Revenue Commissioners and not by reference to the market value estimated in the return.

(2) The market value of any property for the purposes of subsection (1) shall be ascertained by the Revenue Commissioners in such manner and by such means as they think fit and they may authorise a person suitably qualified for that purpose

to inspect any property and report to them the value of such property for the purposes of this Part and the person having custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Revenue Commissioners consider necessary. 5

(3) Where the Revenue Commissioners require a valuation to be made by a person authorised by them for the purposes of subsection (2) the costs of such valuation shall be defrayed by the Revenue Commissioners. 10

Appeals regarding value of real property. 531AE.—If a relevant individual is aggrieved by a decision of the Revenue Commissioners as to the market value of any real property, the individual may appeal against the decision in the manner prescribed by section 33 of the Finance (1909-10) Act 1910, and the provisions as to appeals under that section shall apply accordingly with any necessary modifications. 15

Delivery of returns. 531AF.—(1) A relevant individual shall, as respects a tax year, on or before 31 October in the year after the valuation date, prepare and deliver to the Revenue Commissioners a full and true return, together with the payment of domicile levy, of all such matters and particulars in relation to the determination of liability to domicile levy as the Revenue Commissioners may require. 20 25

(2) A return under this section shall—

(a) be in such form as the Revenue Commissioners may require, 30

(b) be signed by the relevant individual, and

(c) include a declaration by the individual who signed the return that the return is, to the best of that individual's knowledge, information and belief, correct and complete. 35

Opinion of Revenue Commissioners. 531AG.—(1) On an application to the Revenue Commissioners by an individual who is considering the making of a significant investment in the State, they may give an opinion to the individual as to whether or not, in the tax year in which the application is made, the individual would be likely to be regarded as an individual to whom paragraph (a) of the definition of 'relevant individual' in section 531AA(1) applies. 40 45

(2) An application for an opinion under subsection (1) shall be in such form and contain such information and particulars as the Revenue Commissioners may require in relation to such an application. 50

(3) Nothing in this section shall be construed as obliging the Revenue Commissioners to give the opinion referred to in subsection (1).

Making and amending of assessments by Revenue Commissioners.	531AH.—(1) Where—
5	(a) a return under section 531AF(1) is not delivered to the Revenue Commissioners by an individual on or before 31 October in the year following the valuation date, or
	(b) the Revenue Commissioners are dissatisfied with a return delivered to them under section 531AF(1),
10	the Revenue Commissioners may make an assessment or an amending assessment upon an individual who they have reason to believe is chargeable to domicile levy on the basis that the individual is a relevant individual.
15	(2) The Revenue Commissioners may withdraw an assessment made under subsection (1) and make an assessment of the amount of domicile levy payable on the basis of a return which, in their opinion, represents reasonable compliance with their requirements and which is delivered to them within 30 days after the date of the assessment made by them pursuant to subsection (1).
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25	531AI.—(1) Section 956 shall apply, with any necessary modifications, for the purposes of this Part as it applies for the purposes of income tax.
Right of Revenue Commissioners to make enquiries and amend assessments.	(2) For the purposes of making an enquiry or taking such actions, as referred to in section 956 or for the purposes of making, amending or further amending an assessment on an individual in relation to domicile levy, the Revenue Commissioners shall have all such powers as an inspector would have under that section in relation to making enquiries or taking such actions as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of any statement or particular contained in a return delivered for the purposes of income tax.
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40	531AJ.—(1) The provisions of Chapter 1 of Part 40, in relation to appeals, shall apply to domicile levy as they apply to income tax.
Application of provisions relating to income tax.	(2) Chapter 1 of Part 47 shall apply to domicile levy as it applies to income tax.
	(3) Section 1080 shall apply to domicile levy as it applies to income tax.
45	531AK.—Domicile levy is under the care and management of the Revenue Commissioners and Part 37 applies to domicile levy as it applies to income tax.”.
Care and management.	(2) (a) Section 960A of the Principal Act is amended by substituting the following for paragraph (g) of the definition of “Acts”:
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“(g) Parts 18A, 18B and 18C,”.

- (b) Section 1002(1)(a) of the Principal Act is amended by substituting the following for subparagraph (iiia) of the definition of “the Acts”:

“(iiia) Parts 18A and 18C,”. 5

- (c) Section 1077A(1) of the Principal Act is amended by substituting the following for paragraph (c) of the definition of “the Acts”:

“(c) Parts 18A, 18B and 18C,”.

- (d) Section 1078(1) of the Principal Act is amended by substituting the following for paragraph (ca) of the definition of “the Acts”: 10

“(ca) Parts 18A and 18C,”.

- (3) This section shall apply for the year of assessment 2010 and subsequent years. 15

Cesser of section 825 (residence treatment of donors of gifts to the State) of Principal Act.

151.—Section 825 of the Principal Act is amended by inserting the following after subsection (2):

“(3) This section ceases to have effect as respects a gift to the State made on or after 4 February 2010.”.

Provision of information by Commission for Taxi Regulation.

152.—The Principal Act is amended by inserting the following 20 after section 896A—

“896B.—(1) In this section—

‘the Acts’ has the meaning assigned to it by section 1078(1);

‘Commission’ means the Commission for Taxi Regulation or, in the Irish language, An Coimisiún um Rialáil Tacsaithe. 25

(2) The Commission shall, at such intervals as are specified by the Revenue Commissioners, supply to the Revenue Commissioners such information held by the Commission for the purposes of the Taxi Regulation Act 2003 as may be required for the performance of the functions of the Revenue Commissioners 30 under the Acts.”.

Revenue powers.

153.—The Principal Act is amended—

(a) in section 906A(1)—

(i) by substituting “sections 907, 907A and 908” for “sections 907 and 908”, and 35

(ii) in the definition of “authorised officer” by substituting “section 907, 907A or 908” for “section 907 or 908”,

and

(b) by inserting the following after section 907: 40

“Application
to Appeal
Commissioners:
information
from third
party.

907A.—(1) In this section—

‘taxpayer’ means a person whose identity is not known to the authorised officer, and a group or class of persons whose individual identities are not so known;

‘third party’ means a person whose identity has been furnished to an authorised officer by a financial institution in compliance with a notice issued under section 907 or an order made under section 908.

(2) An authorised officer may, subject to this section, make application to the Appeal Commissioners for consent, to serve a notice on a third party, requiring the third party—

(a) to make available for inspection by the authorised officer, such books, records or other documents as are in the third party’s power, possession or procurement as contain, or may (in the authorised officer’s reasonable opinion) contain information relevant to a liability in relation to a taxpayer, or

(b) to furnish to the authorised officer such information, explanations and particulars as the authorised officer may reasonably require as being relevant to any such liability,

as may be specified in the application.

(3) An authorised officer shall not make application under subsection (2) without the consent in writing of a Revenue Commissioner, and without being satisfied—

(a) that there are reasonable grounds for suspecting that the taxpayer, or as the case may be, all or any of the taxpayers, may have failed or may fail to comply with any provision of the Acts,

(b) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax, and

(c) that the information—

(i) which is likely to be contained in the books, records or other documents, or

- (ii) which is likely to arise from the information, explanations and particulars,

to which the application relates, is relevant to the proper assessment or collection of tax. 5

(4) Without prejudice to the generality of subsection (2), the authorised officer may make application to the Appeal Commissioners, for consent to serve a notice on a third party, in relation to books, records or other documents and information, explanations and particulars relating to a person who is connected with the taxpayer. 10

(5) Where the Appeal Commissioners determine that in all the circumstances there are reasonable grounds for making the application, they may give their consent to the authorised officer serving a notice on the third party, requiring the third party— 15 20

- (a) to make available for inspection by the authorised officer, such books, records or other documents, and

- (b) to furnish to the authorised officer such information, explanations and particulars, 25

as may, with the Appeal Commissioners' consent, be specified in the notice.

(6) The persons who may be treated as a taxpayer for the purposes of this section include a company which has been dissolved and an individual who has died. 30

(7) Nothing in this section shall be construed as requiring any person to disclose to an authorised officer— 35

- (a) information with respect to which a claim to legal professional privilege could be maintained in legal proceedings, 40

- (b) information of a confidential medical nature, or

- (c) professional advice of a confidential nature given to a client (other than advice given as part of a dishonest, fraudulent or criminal purpose). 45

(8) Where the Appeal Commissioners have given their consent in accordance with this section, the authorised officer shall, as soon as practicable, but not later than 14 50

days from the time that such consent was made, serve a notice on the third party concerned and stating that—

(a) such consent has been given, and

(b) the third party should, within a period of 30 days, comply with the requirements as specified in the notice.

(9) (a) Subject to paragraph (b) an application by an authorised officer under subsection (2) shall with any necessary modifications be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax.

(b) Notwithstanding section 933(4), a determination by the Appeal Commissioners under this section shall be final and conclusive.

(10) A third party which fails to comply with a notice served on the third party by an authorised officer in accordance with this section shall be liable to a penalty of €19,045 and, if the failure continues after the expiry of the period specified in subsection (8)(b), a further penalty of €2,535 for each day on which the failure so continues.”.

154.—Section 204 of the National Asset Management Agency Act 2009 is amended by substituting the following for subsection (2)—

Provision of information by National Asset Management Agency.

“(2) Notwithstanding any provision of this Act or any other enactment—

(a) NAMA shall make available to the Revenue Commissioners details of each eligible bank asset,

(b) where the Revenue Commissioners require any information or documents, relating to any eligible bank asset or such other matters as may be necessary for the purposes of the performance of their duties, then they may require NAMA to provide such information as is in the possession or control of NAMA or of which it has knowledge, and such documents as are in the possession or control of NAMA or to make such documents available for inspection,

(c) the Revenue Commissioners may, for the purposes of the performance of their functions under Part 42 of the Taxes Consolidation Act 1997 and any regulations made under that Part, seek from NAMA information in relation to a named relevant person, and

- (d) where NAMA is in possession of, or has knowledge of, information or has possession or control of documents referred to in paragraph (b) or (c), NAMA shall provide such information and documents to, or make such documents available for inspection by, the Revenue Commissioners.”. 5

Amendment of
section 1078
(revenue offences)
of Principal Act.

155.—The Principal Act is amended in section 1078 by inserting the following after subsection (9)—

“(10) Any summons, notice, order or other document relating to proceedings under this section, or relating to any appeal against a judgement pursuant to such proceedings, may be served by an officer of the Revenue Commissioners.”. 10

Tax clearance
certificates.

156.—The Principal Act is amended—

- (a) in section 1094(1) by substituting the following for the definition of “the Acts”: 15

“ ‘the Acts’ means—

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties,
- (c) the Tax Acts, 20
- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Acts,

and any instruments made thereunder;”,

and

- (b) in section 1095(1) by substituting the following for the definition of “the Acts”: 25

“ ‘the Acts’ means—

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties, 30
- (c) the Tax Acts,
- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Acts,

and any instruments made thereunder;”.

Amendment of
section 826
(agreements for
relief from double
taxation) of
Principal Act.

157.—For the purposes of assisting the prevention and detection of tax evasion, section 826 of the Principal Act is amended— 35

(a) in subsection (1)(a)(ii) by deleting “or” in clause (I) and inserting “or” after “for the purposes of tax,” in clause (II),

5 (b) in subsection (1)(a)(ii) by inserting the following after clause (II):

“(III) collecting and recovering tax
(including interest, penalties and costs
in connection with such tax) for the
10 purposes of the prevention of tax
evasion,”,

(c) by inserting the following after subsection (1B):

“(1C) Where—

15 (a) the Government by order declares that it has become a signatory to the Convention on Mutual Administrative Assistance in Tax Matters which was done at Strasbourg on the 25th day of January 1988, or any Protocol to the Convention, for the purposes of the prevention and detection of tax evasion in the case of taxes of any kind or description imposed by the laws of the State or the laws of the territories of the signatories other than the State to the Convention and that it is expedient that the Convention, or any Protocol to the Convention, should have the force of law, and

25 (b) the order so made is referred to in Part 4 of Schedule 24A,

30 then, subject to this section, the Convention or any Protocol to the Convention shall, notwithstanding any enactment, have the force of law as if the order were an Act of the Oireachtas on and from the date of the insertion of a reference to the order into Part 4 of Schedule 24A.”,

and

(d) by substituting the following for the subsection (7):

35 “(7) Where any arrangements have, or the Convention has, the force of law by virtue of this section, the obligation as to secrecy imposed by any enactment shall not prevent the Revenue Commissioners or any authorised officer of the Revenue Commissioners from disclosing to any authorised officer of the government with which arrangements have been made, or of a party to the Convention, as the case may be, such information as is required to be disclosed for the purposes of the arrangements or the Convention.”.

158.—(1) Schedule 24A to the Principal Act is amended—

(a) in Part 1—

(i) by inserting the following after paragraph 2:

“2A. The Double Taxation Relief (Taxes on
Income and Capital Gains) (Kingdom of
Bahrain) Order 2010 (S.I. No. 24 of 2010). 5

2B. The Double Taxation Relief (Taxes on
Income and on Capital) (Republic of
Belarus) Order 2010 (S.I. No. 25 of
2010).”, 10

(ii) by inserting the following after paragraph 3:

“3A. The Double Taxation Relief (Taxes on
Income and Capital Gains) (Bosnia and
Herzegovina) Order 2010 (S.I. No. 17 of
2010).”, 15

(iii) by inserting the following after paragraph 13:

“13A. The Double Taxation Relief (Taxes on
Income) (Georgia) Order 2010 (S.I. No.
18 of 2010).”,

(iv) by inserting the following after paragraph 27: 20

“27A. The Double Taxation Relief (Taxes on
Income) (Republic of Moldova) Order
2010 (S.I. No. 19 of 2010).”,

and

(v) by inserting the following after paragraph 35: 25

“35A. The Double Taxation Relief (Taxes on
Income) (Republic of Serbia) Order 2010
(S.I. No. 20 of 2010).”,

and

(b) in Part 3— 30

(i) by renumbering paragraph 1 as paragraph 6,

(ii) by inserting the following before paragraph 6 (as
renumbered by *subparagraph (i)*):

“1. The Exchange of Information Relating to
Taxes (Anguilla) Order 2010 (S.I. No. 21 35
of 2010).

2. The Exchange of Information Relating to
Taxes (Bermuda) Order 2010 (S.I. No. 22
of 2010).

3. The Agreement Concerning Information 40
on Tax Matters (Cayman Islands) Order
2010 (S.I. No. 23 of 2010).

4. The Exchange of Information Relating to Taxes (Gibraltar) Order 2010 (S.I. No. 26 of 2010).

5. The Exchange of Information Relating to Tax Matters and Double Taxation Relief (Taxes on Income) (Guernsey) Order 2010 (S.I. No. 27 of 2010).”,

and

(iii) by inserting the following after paragraph 6 (as renumbered by *subparagraph (i)*):

“7. The Exchange of Information Relating to Tax Matters and Double Taxation Relief (Taxes on Income) (Jersey) Order 2010 (S.I. No. 28 of 2010).

8. The Exchange of Information Relating to Taxes (Liechtenstein) Order 2010 (S.I. No. 29 of 2010).

9. The Exchange of Information Relating to Taxes (Turks and Caicos Islands) Order 2010 (S.I. No. 30 of 2010).”.

(2) This section applies as on and from the date of the passing of this Act.

159.—The enactments specified in *Schedule 4*—

(a) are amended to the extent and in the manner specified in *paragraphs 1 to 5* of that Schedule, and

(b) apply and come into operation in accordance with *paragraph 6* of that Schedule.

Miscellaneous technical amendments in relation to tax.

160.—Section 1 of the Provisional Collection of Taxes Act 1927 is amended by substituting the following for the interpretation given to the word “tax”:

“the word ‘tax’ means any customs duty, excise duty, income tax, value-added tax, capital gains tax, corporation tax, gift tax, inheritance tax, residential property tax, stamp duty, parking levy or any other levy or charge for the purposes of this Act, for the benefit of the Exchequer.”.

Amendment of section 1 (definitions) of Provisional Collection of Taxes Act 1927.

161.—(1) (a) In this section—

“authorised officer” means an officer of the Revenue Commissioners, not below the rank or grade of Principal Officer, authorised by them in writing for the purposes of this section;

“donor” means—

(i) a member of the judiciary within the meaning of section 196 of the Taxes Consolidation Act 1997, or

Gifts to the State by certain donors.

- (ii) a military judge appointed under Chapter IVC of Part V of the Defence Act 1954 (as amended by the Defence (Amendment) Act 2007),

and references in this section to a member of the judiciary and a military judge shall be construed accordingly; 5

“gift”, in relation to a donor and a year of assessment, means a gift of money made for the year of assessment by the donor to, and accepted by, the authorised officer and calculated in accordance with subsection (2), where the gift is for use for any purpose for or towards which public moneys are provided; 10

“public moneys” means moneys charged on or issued out of the Central Fund or provided by the Oireachtas;

“tax relief”, in relation to a donor and a year of assessment, means any allowance, deduction, abatement or relief as may be applicable in arriving at the income tax liability of the donor for the year of assessment for which a gift is made. 15

- (b) Words and expressions used in this section have, except where otherwise provided or where the context otherwise requires, the same meaning as in the Income Tax Acts. 20

(2) Subject to *subsection (3)* the amount of a gift made by a donor for any year of assessment shall be the amount determined by the formula—

$$A - B \quad 25$$

where—

A is the amount determined by applying the rates set out in Table D to section 2 of the Financial Emergency Measures in the Public Interest Act 2009 (as amended by section 13 of the Social Welfare and Pensions Act 2009) to the emoluments arising from the donor’s office for the year of assessment; and 30

B is the aggregate amount of income tax and health contributions (payable under the Health Contributions Act 1979) that would be due and payable on the amount as determined in accordance with A for the year of assessment determined on the basis that the donor has no other income apart from the emoluments from that office and has no entitlement to any tax relief. 40

(3) For the year of assessment 2010, the amount of a gift made by a donor shall be the amount determined by the formula in *subsection (2)* less any amount paid by the donor between 1 January 2010 and 4 February 2010 under any voluntary arrangements with the Revenue Commissioners corresponding to this section. 45

(4) Where a gift is made under this section, no relief or deduction under any provision of the Income Tax Acts shall be given or allowed in respect of the gift or part of the gift, as the case may be.

(5) Gifts made under this section shall be remitted to the authorised officer on such dates and in such manner as the donor may 50

consider appropriate including standing orders and electronic fund transfers.

5 (6) The Revenue Commissioners shall transmit at regular intervals all monies received as gifts under this section to the Minister for Finance for the benefit of the Exchequer.

(7) Where a donor ceases to be a member of the judiciary or a military judge, this section shall cease to have effect in respect of any gift made on or after that date.

10 (8) The Revenue Commissioners shall publish for each year of assessment only details of the number of donors who avail of this scheme in the year, and the aggregate amounts gifted for the year.

15 (9) If and so long as the authorised officer is unable through illness, absence or other cause to fulfil his or her duties, a person nominated in writing in that behalf by the Revenue Commissioners from among their officers shall act as the authorised officer, and any reference in this section to the authorised officer shall be construed as including, where appropriate, a reference to a person nominated under this subsection.

20 (10) This section applies for the year of assessment 2010 and subsequent years of assessment.

162.—(1) In this section—

“capital services” has the same meaning as it has in the principal section;

Capital Services
Redemption
Account.

25 “Capital Services Redemption Account” has the same meaning as it has in the principal section;

“fifty-seventh additional annuity” means the sum charged on the Central Fund under *subsection (3)*;

“principal section” means section 22 of the Finance Act 1950.

30 (2) In relation to the 29 successive financial years commencing with the financial year ending on 31 December 2010, subsection (2) of section 100 of the Finance (No. 2) Act 2008 shall have effect with the substitution of “€350,635,638” for “€403,709,206”.

35 (3) A sum of €275,622,930 to redeem borrowings in respect of capital services and interest on such borrowings shall be charged annually on the Central Fund or the growing produce of that Fund in the 30 successive financial years commencing with the financial year ending on 31 December 2010.

40 (4) The fifty-seventh additional annuity shall be paid into the Capital Services Redemption Account in such manner and at such times in the relevant financial year as the Minister for Finance may determine.

(5) Any amount of the fifty-seventh additional annuity, not exceeding €211,850,000 in any financial year, may be applied toward defraying the interest on the public debt.

45 (6) The balance of the fifty-seventh additional annuity shall be applied in any one or more of the ways specified in subsection (6) of the principal section.

163.—(1) The Bretton Woods Agreements Act 1957 is amended by inserting the following after section 3:

“Borrowing
agreement
between the
State and the
Fund.

3A.—(1) In this section—

‘the Agreement’ means the Borrowing Agreement between Ireland and the International Monetary Fund the text of which was laid before Dáil Éireann on 23 February 2010; 5

‘Central Bank’ means the Central Bank and Financial Services Authority of Ireland;

‘Minister’ means Minister for Finance. 10

(2) The Minister may guarantee, in such form and manner and on such terms and conditions as he or she thinks fit, either or both the payment to the Central Bank of the principal of and any interest on, any money advanced by the Central Bank, as agent of the Minister, under the terms of the Agreement. 15

(3) The amount of the guarantee under this section shall not exceed the total amount due to the Central Bank by the International Monetary Fund under the Agreement. 20

(4) All moneys from time to time required by the Minister to meet sums which may become payable by him or her under this guarantee shall be advanced out of the Central Fund or the growing produce of the Central Fund. 25

(5) Money paid by the Minister under the guarantee under this section shall be repaid to him or her as and when such moneys are recovered by the Central Bank. 30

(6) Notwithstanding the provisions of subsection (4), the Central Bank shall have a continuing obligation to use all reasonable means under the Agreement, to recover any sums lent by the Central Bank under the Agreement. 35

(7) Moneys paid by the Central Bank to the Minister under subsection (5) shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister thinks fit.

(8) The Minister shall, as soon as may be after the expiration of every financial year, lay before each House of the Oireachtas a statement setting out with respect to the guarantee under this section— 40

(a) particulars of the guarantee, 45

(b) in case any payment has been made by him or her under the guarantee before the end of that year, the amount of the

payment and the amount (if any) repaid to him or her on foot of the payment,

(c) the amount of money covered by the guarantee which was outstanding at the end of that year, and

(d) an account of any means employed by the Central Bank under the Agreement, in order to recover any sums lent by the Central Bank under the Agreement.”.

(2) *Subsection (1)* comes into operation on such day as the Minister for Finance may by order appoint.

164.—All taxes and duties imposed by this Act are placed under the care and management of the Revenue Commissioners.

Care and management of taxes and duties.

165.—(1) This Act may be cited as the Finance Act 2010.

Short title, construction and commencement.

(2) *Part 2* shall be construed together with—

(a) in so far as it relates to income tax and income levy, the Income Tax Acts,

(b) in so far as it relates to corporation tax, the Corporation Tax Acts, and

(c) in so far as it relates to capital gains tax, the Capital Gains Tax Acts.

(3) *Part 3* shall be construed together with—

(a) in so far as it relates to duties of excise, the statutes which relate to those duties and to the management of those duties, and

(b) in so far as it relates to customs, the Customs Acts.

(4) *Part 4* shall be construed together with the Value-Added Tax Acts and may be cited together with those Acts as the Value-Added Tax Acts.

(5) *Part 5* shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act.

(6) *Part 6* shall be construed together with the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act.

(7) *Part 7* in so far as it relates to—

(a) income tax, shall be construed together with the Income Tax Acts,

(b) corporation tax, shall be construed together with the Corporation Tax Acts,

- (c) capital gains tax, shall be construed together with the Capital Gains Tax Acts,
 - (d) customs, shall be construed together with the Customs Acts,
 - (e) duties of excise, shall be construed together with the statutes which relate to duties of excise and the management of those duties, 5
 - (f) value-added tax, shall be construed together with the Value-Added Tax Acts,
 - (g) stamp duty, shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act, 10
 - (h) residential property tax, shall be construed together with Part VI of the Finance Act 1983 and the enactments amending or extending that Part, and 15
 - (i) gift tax or inheritance tax shall be construed together with the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act.
- (8) Except where otherwise expressly provided in *Part 2*, that Part is deemed to have come into force and takes effect as on and from 1 January 2010. 20
- (9) Except where otherwise expressly provided for, where a provision of this Act is to come into operation on the making of an order by the Minister for Finance, that provision shall come into operation on such day or days as the Minister for Finance shall appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 25

SCHEDULE 1

Section 78.

RATES OF SOLID FUEL CARBON TAX

Description of Solid Fuel	Rate of Tax
Coal	€39.51 per tonne
<i>Peat:</i>	
Peat briquettes	€27.50 per tonne
Milled peat	€13.50 per tonne
Other peat	€20.44 per tonne

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SCHEDULE 2

CONSEQUENTIAL AMENDMENT OF VALUE-ADDED TAX ACT 1972

Item	Provision affected	Amendment	
1.	Section 1 (Interpretation), definition of “exempted activity” in subsection (1)	Substitute “Schedule 1” for “the First Schedule”.	5
2.	Section 1 (Interpretation), definition of “new means of transport” in subsection (1)	Substitute “paragraph 4(2) of Schedule 2” for “paragraph (v) of the Second Schedule”.	10
3.	Section 3 (Supply of goods)	<p>(a) In subsection (1)(g)(ii), substitute “paragraphs 1(1) to (3), 3(1) and (3), and 7(1) to (4) of Schedule 2 and the transfer of the goods referred to in paragraphs 4(2), (4) and (5) and 5(2) to that Schedule” for “paragraph (i) of the Second Schedule and the transfer of the goods referred to in paragraphs (v), (va), (vb) and (x) of the Second Schedule”;</p> <p>(b) In subsection (5)(a) and (c)(i), substitute “paragraph 6(1)(e) of Schedule 1” for “subparagraph (i)(e) of the First Schedule”;</p> <p>(c) In subsection (5)(c), substitute “paragraph 12 of Schedule 1” for “paragraph (xxiv) of the First Schedule”.</p>	15 20 25
4.	Section 3B (Alcohol products)	In subsection (2), substitute “in paragraph 1(1) or (3), 3(1) or 7(6) of Schedule 2” for “in subparagraph (a)(I), (b) or (cc) of paragraph (i) or in paragraph (ia) of the Second Schedule”.	30 35
5.	Section 4 (Special provisions in relation to the supply of immovable goods)	<p>(a) In subsection (3A)(a)(ii), substitute “paragraph 11 of Schedule 1” for “paragraph (iv) of the First Schedule”;</p> <p>(b) In subsection (8)(a)(iii), substitute “paragraphs 1, 5(4), 6, 7, 8, 11 and 14(3) of Schedule 1” for “paragraphs (i), (iv), (ix), (xi), (xia), (xiii) and (xiv) of the First Schedule”.</p>	40 45
6.	Section 4C (Transitional provisions for supplies of immovable goods)	In subsection (3), substitute “paragraph 11 of Schedule 1” for “paragraph (iv) of the First Schedule”.	
7.	Section 5 (Supply of services)	In subsection (2), substitute “paragraph 8 of Schedule 2” for “paragraph (xii) of the Second Schedule”.	50
8.	Section 7 (Waiver of exemption)	<p>(a) In subsection (1)(a)—</p> <p>(i) substitute “paragraph 11 of Schedule 1” for “paragraph (iv) of the First Schedule”, and</p> <p>(ii) substitute “that paragraph” for “the said paragraph (iv)”;</p> <p>(b) In subsection (1)(b), substitute</p>	55 60

Item	Provision affected	Amendment
5		“paragraph 11 of Schedule 1” for “paragraph (iv) of the First Schedule”;
10		(c) In subsection (1A)(a), substitute “paragraph 11 of Schedule 1” for “paragraph (iv) of the First Schedule”;
		(d) In subsection (3), substitute “paragraph 7(7) of Schedule 2” for “paragraph (via) of the Second Schedule”;
		(e) In subsection (4), substitute “Schedule 1” for “the First Schedule”.
15	9. Section 7A (Option to tax lettings of immovable goods)	In subsection (1)(a), substitute “paragraph 11 of Schedule 1” for “paragraph (iv) of the First Schedule”.
20	10. Section 8 (Taxable persons)	(a) In subsection (1A)(e)(iii), substitute “Schedule 1” for “the First Schedule”;
25		(b) In subsection (3)(a)(ii), substitute “paragraph 22(1) of Schedule 3” for “paragraph (xia) of the Sixth Schedule”;
30		(c) In subsection (3E)(a)(i), substitute “paragraph 3(4) of Schedule 1” for “paragraph (xxiii) of the First Schedule”;
35		(d) In subsection (5), substitute “paragraph 11 of Schedule 3” for “paragraph (xiii) of the Sixth Schedule”;
		(e) In subsection (5A)(a) and (b), substitute “paragraph 11 of Schedule 3” for “paragraph (xiii) of the Sixth Schedule”.
40	11. Section 10 (Amount on which tax is chargeable)	(a) In subsection (4C), substitute “paragraph 6(1)(e) of Schedule 1” for “subparagraph (i)(e) of the First Schedule”;
45		(b) In subsection (8)(a), substitute “paragraph 8 of Schedule 2” for “paragraph (xii) of the Second Schedule”.
50	12. Section 10A (Margin scheme goods)	(a) In subsection (1), substitute the following definitions for the definitions of “antiques”, “collectors’ items” and “works of art”:
55		“ ‘antiques’ means any of the goods specified in paragraph 24 of Schedule 3 or in paragraph (iii) of Schedule 5;
		‘collectors’ items’ means any of the goods specified in paragraph (ii) of Schedule 5;
60		‘works of art’ means any of the goods specified in paragraph 18(2) or 23 of Schedule 3 or in paragraph (i) of Schedule 5.”;

Item	Provision affected	Amendment
		<p>(b) In subsection (10)—</p> <p>(i) substitute “paragraph 1(1) of Schedule 2” for “paragraph (i)(b) of the Second Schedule”, and 5</p> <p>(ii) substitute “that Schedule” for “the Second Schedule”, where secondly occurring;</p> <p>(c) In subsection (13), substitute “paragraph 12 of Schedule 1” for “paragraph (xxiv) of the First Schedule”. 10</p>
13.	Section 10B (Special scheme for auctioneers)	<p>(a) In subsection (7)—</p> <p>(i) substitute “paragraph 1(1) of Schedule 2” for “paragraph (i)(b) of the Second Schedule”, and 15</p> <p>(ii) substitute “that Schedule” for “the Second Schedule”, where secondly occurring; 20</p> <p>(b) In subsection (10), substitute “paragraph 12 of Schedule 1” for “paragraph (xxiv) of the First Schedule”. 25</p>
14.	Section 11 (Rates of tax)	<p>(a) In subsection (1), substitute the following paragraph for paragraph (b):</p> <p>“(b) zero per cent of the amount on which tax is chargeable in relation to goods in the circumstances specified in paragraphs 1(1) to (3), 3(1) and (3), 7(1) to (4) and (6) of Schedule 2 or of goods or services of a kind specified in the other paragraphs of that Schedule;” 30</p> <p>(b) In subsection (1)(d), substitute “Schedule 3” for “the Sixth Schedule”; 40</p> <p>(c) In subsection (1AA), substitute “Schedule 5” for “the Eighth Schedule”, wherever occurring;</p> <p>(d) In subsection (4A)(a), substitute “paragraph 8 of Schedule 2” for “paragraph (xii) of the Second Schedule”; 45</p> <p>(e) In subsection (8), substitute “Schedule 2 or 3” for “the Second, Third or Sixth Schedule”. 50</p>
15.	Section 12 (Deduction for tax borne or paid)	<p>(a) In subsection (1)(a)(ix), substitute “paragraph 12(c) of Schedule 1” for “paragraph (xxiv)(c) of the First Schedule”; 55</p> <p>(b) In subsection (1)(b)(ii), substitute “paragraph 6, 7 or 8 of Schedule 1” for “paragraph (i), (ix)(d) or (xi), of the First Schedule”; 60</p> <p>(c) In subsection (3)(a)(iii), substitute “paragraph 6(1)(e) of Schedule 1” for “subparagraph (i)(e) of</p>

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Item	Provision affected	Amendment
		the First Schedule”;
		(d) In the definition of “qualifying accommodation” in subsection (3)(ca), substitute “paragraph 11 of Schedule 3” for paragraph (xiii) of the Sixth Schedule”;
		(e) In subsection (4)(e)(ii), substitute “paragraph 6 of Schedule 1” for “paragraph (i) of the First Schedule”.
16.	Section 12B (Special scheme for means of transport supplied by taxable dealers)	<p>(a) In paragraph (b) of the definition of “taxable dealer” in subsection (3), substitute “paragraph 6(1)(e) of Schedule 1” for “subparagraph (i)(e) of the First Schedule”;</p> <p>(b) In the definition of “means of transport” in subsection (3), substitute “paragraph 4(2) of Schedule 2” for “paragraph (v) of the Second Schedule”;</p> <p>(c) In subsection (10), substitute “paragraph 12 of Schedule 1” for “paragraph (xxiv) of the First Schedule”.</p>
17.	Section 12C (Special scheme for agricultural machinery)	In subsection (5), substitute “paragraph 6(1)(e) of Schedule 1” for “subparagraph (i)(e) of the First Schedule”.
18.	Section 12F (Special scheme for intra-Community refunds of tax)	In section 12F, substitute “Schedule 6” for “the Ninth Schedule”.
19.	Section 13 (Remission of tax on goods exported, etc.)	In subsection (2)(b), substitute “paragraph 4(2) of Schedule 2” for “paragraph (v) of the Second Schedule”.
20.	Section 13A (Supplies to, and intra-Community acquisitions and imports by, certain taxable persons)	<p>(a) In subsection (1), substitute “paragraph 7(7) of Schedule 2” for “paragraph (via) of the Second Schedule”;</p> <p>(b) In subsection (1), substitute the following definition for the definition of “qualifying person”:</p> <p>“ ‘qualifying person’ means an accountable person whose turnover from—</p> <p>(a) supplies of goods made in accordance with paragraph 1(1) or 3(1) or (3) of Schedule 2, and</p> <p>(b) supplies of contract work where the place of supply is deemed to be the State, and</p> <p>(c) supplies of contract work made in accordance with paragraph 3(4) of Schedule 2,</p> <p>amounts to, or is likely to amount to, 75 per cent of the person’s total turnover from supplying goods and services, except that, if, in the case of goods that are supplied to an</p>

Item	Provision affected	Amendment	
		accountable person, the goods are subsequently leased back from that person, the turnover from that supply is to be disregarded for the purpose of determining whether the accountable person is a qualifying person;”;	5
		(c) In subsections (5), (6), (7) and (8), substitute “paragraph 7(7) of Schedule 2” for “paragraph (via) of the Second Schedule”, wherever occurring.	10
21.	Section 17 (Invoices)	In subsection (8), substitute “paragraph 1(1) or (2) of Schedule 2” for “subparagraph (b) or (c) of paragraph (i) of the Second Schedule”.	15
22.	Section 19 (Tax due and payable)	(a) In subsection (1)(bb), substitute “paragraph 17(3) of Schedule 3” for “paragraph (i)(c) of the Sixth Schedule”;	20
		(b) In subsection (2), substitute “paragraph 1(1) or (2) of Schedule 2” for “subparagraph (b) or (c) of paragraph (i) of the Second Schedule”.	25
23.	Section 25 (Appeals)	Substitute “Schedule 6” for “the Ninth Schedule”, wherever occurring.	
24.	Section 27A (Penalty for deliberately or carelessly making incorrect returns, etc.)	In subsection (21)(a)(i), substitute “paragraph 1(1), (2), 3(1) or 7(3) of Schedule 2” for “subparagraph (a), (b) or (c) of paragraph (i) of the Second Schedule”.	30
25.	Section 32 (Regulations)	(a) In subsection (1)(ag), substitute “paragraph 3(1) or 7(3) of Schedule 2” for “paragraph (ia) of the Second Schedule”;	35
		(b) In subsection (1)(ah), substitute “paragraph 2(1) of Schedule 2” for “paragraph (iiib) of the Second Schedule”;	40
		(c) In subsection (1)(de), substitute “paragraph 24 of Schedule 3 or paragraph (iii) of Schedule 5” for “paragraph (xvia) of the Sixth Schedule or paragraph (iii) of the Eighth Schedule”;	45
		(d) In subsection (1)(w), substitute “paragraph 10(1) of Schedule 2” for “paragraph (xvii) of the Second Schedule”;	50
		(e) In subsection (1)(ww), substitute “paragraph 10(2) of Schedule 2” for “paragraph (xix) of the Second Schedule”;	55
		(f) In subsection (1)(www), substitute “paragraph 11 of Schedule 3” for “paragraph (xiii) of the Sixth Schedule”;	
		(g) In subsection (2A), substitute “paragraph 17(1) of Schedule 3” for “paragraph (ia) of the Sixth Schedule”.	60

Item	Provision affected	Amendment
26.	The Third Schedule (Goods and services chargeable at the rate specified in section 11(1)(c))	Repeal the Schedule.
27.	Fifth Schedule (Agricultural production activities and services)	In the Schedule heading, substitute “SCHEDULE 4” for “FIFTH SCHEDULE”.
28.	Sixth Schedule (Goods and services chargeable at the rate specified in section 11(d))	Repeal the Schedule.
29.	Eighth Schedule (Works of art, collectors’ items and antiques chargeable at the rate specified in section 11(1)(d) in the circumstances specified in section 11(1AA))	<p>(a) In the Schedule heading, substitute “SCHEDULE 5” for “EIGHTH SCHEDULE”;</p> <p>(b) In paragraph (i)(a), substitute “paragraph 23 of Schedule 3” for “paragraph (xvi) of the Sixth Schedule”;</p> <p>(c) In paragraph (i)(f), substitute “paragraph 18(2)(a) of Schedule 3” for “paragraph (xxii)(a) of the Sixth Schedule”;</p> <p>(d) In paragraph (iii), substitute “paragraph 18(2)(a), 23 or 24 of Schedule 3” for “paragraph (xvi), (xvia) or (xxii)(a) of the Sixth Schedule”.</p>
30.	Ninth schedule (Special scheme for intra-Community refunds of tax)	In the Schedule heading, substitute “SCHEDULE 6” for “NINTH SCHEDULE”.

SCHEDULE 3

PRE-CONSOLIDATION AMENDMENTS AND REPEALS (*Part 4*)

Amendment of Value-Added Tax Act 1972

- Amendment of section 1 of Principal Act (interpretation).
1. Section 1 of the Principal Act is amended as follows: 5
- (a) by inserting in subsection (1) the following definition after the definition of “electronically supplied services”:
- “ ‘enactment’ means an Act or statutory instrument or any part of an Act or statutory instrument;” 10
- (b) in the definition of “excisable products” in subsection (1), by substituting “section 97 of the Finance Act 2001” for “section 104 of the Finance Act, 1992”; 15
- (c) in subsection (1), by inserting the following definition after the definition of “goods”:
- “ ‘goods threshold’ means €75,000;”
- (d) in subsection (1), by inserting the following definition after the definition of “secretary”: 20
- “ ‘services threshold’ means €37,500;”
- (e) in subsection (1), by inserting the following definition after the definition of “the specified day”: 25
- “ ‘stock-in-trade’, in relation to a person, means goods—
- (a) that are movable goods of a kind that the person has supplied in the ordinary course of the person’s business and that— 30
- (i) are held for supply (otherwise than because of section 3(1)(e)), or 35
- (ii) would be so held if they were mature or if their manufacture, preparation or construction had been completed, 40
- or
- (b) materials incorporated in immovable goods of a kind that—

(i) are supplied by the person in the ordinary course of the person's business, and

(ii) have not been supplied by the person since the goods were developed, but are held for supply, or would be so held if their development had been completed,

or

(c) consumable materials that the person has incorporated into immovable goods in the course of a business that consists of the supply of a service involving constructing, repairing, painting or decorating immovable goods where that service has yet to be completed, or

(d) materials that have not been incorporated in goods and—

(i) are used by the person in the manufacture or construction of goods of a kind that the person supplies in the ordinary course of the person's business, or

(ii) if the person's ordinary business consists of repairing, painting or decorating immovable goods, are used by the person as consumable materials in the course of that business;";

(f) by inserting the following subsections after subsection (1):

“(1A) Materials of the kind that are referred to in paragraph (b) of the definition of ‘stock-in-trade’ are taken to have been supplied to the same extent as the immovable goods into which they have been incorporated are taken to have been supplied.

(1B) Materials of the kind referred to in paragraph (c) of the definition of ‘stock-in-trade’ are taken to have been supplied to the extent that the service in relation to which they have been used has been supplied.”;

(g) by repealing subsections (3) and (4).

Amendment of section 3 of the Principal Act (supply of goods). 2. Section 3 of the Principal Act is amended in subsection (7)(ii) by substituting “any assignment or surrender that is deemed to be a supply of immovable goods as provided by section 4C(4)” for “any disposal which is deemed to be a supply of immovable goods under section 4(2)”. 5

Amendment of section 7 of the Principal Act (waiver of exemption). 3. Section 7 of the Principal Act is amended in subsection (1A)(a)—
 (a) by substituting “2 April 2007” for “the date of passing of the Finance Act 2007”, where firstly occurring, and 10
 (b) by substituting “that date” for “the date of passing of the Finance Act 2007”, where secondly occurring.”.

Amendment of section 7B of the Principal Act (transitional measures: waiver of exemption). 4. Section 7B of the Principal Act is amended 15 as follows:

- (a) in subsection (6)—
 - (i) by substituting “24 December 2008” for “the date of passing of the Finance (No. 2) Act 2008”, 20 where firstly occurring, and
 - (ii) by substituting “on or after the last mentioned date” for “the date of passing of the Finance (No. 2) Act 2008”, where secondly occurring, 25 and
 - (iii) by substituting “the taxable period beginning on 1 November 2008” for “the taxable period in which that Act is passed”; 30

- (b) in subsection (7)—
 - (i) in paragraph (a), by substituting “2 June 2009” for “the relevant date” wherever occurring;
 - (ii) in paragraph (b)(i), by substituting 35 “3 June 2009” for “the date of the passing of the Finance Act 2009”;
- (c) in subsection (8)(a)(i), by substituting “2 June 2009” for “the relevant date”;
- (d) in subsection (8)(b), by substituting “3 40 June 2009” for “the date of the passing of the Finance Act 2009”;
- (e) in subsection (9)(a)(i), by substituting “3 June 2009” for “the date of the passing of the Finance Act 2009”; 45

- (f) in subsection (10)—

(i) by substituting “exemption.” for “exemption;”, and

(ii) by deleting the definition of “relevant date”.

5 Amendment of section 8 of the Principal Act (accountable persons). 5. Section 8 of the Principal Act is amended as follows:

(a) by substituting “the goods threshold” for “€75,000”, wherever occurring;

10 (b) by substituting “the services threshold” for “€37,500”, wherever occurring;

(c) in subsection (1A)(e), by substituting the following subparagraphs for subparagraphs (i) to (iii):

15 “(i) a Department of State or a local authority, or

(ii) a body established by an enactment,”;

(d) in subsection (1B), by deleting paragraph (c);

20 (e) in subsection (3)(c)(i), by deleting “subject to subparagraph (ii),”.

Amendment of section 10 of the Principal Act (amount on which tax is chargeable). 6. Section 10 of the Principal Act is amended in subsection (3)(c) by substituting “section 4C” for “section 4”.

25 Amendment of section 10B of the Principal Act (special scheme for auctioneers). 7. Section 10B of the Principal Act is amended in subsection (1) by substituting the following paragraph for paragraph (aaa) of the definition of “auction scheme goods”:

30 “(aaa) an insurer to whom paragraph (d) of section 3(5) applies—

(i) who took possession of those goods in connection with the settlement of a claim under a policy of insurance, and

35 (ii) whose disposal of the goods is deemed not to be a supply of the goods as provided by that paragraph,”.

40 Amendment of section 11 of the Principal Act (rates of tax). 8. Section 11 of the Principal Act is amended in subsection (1) by deleting paragraph (c).

Amendment of section 12 of the Principal Act (deduction for tax borne or paid).

9. Section 12 of the Principal Act is amended by repealing subsection (1)(a)(iii**b**), subsection (1)(a)(v) and subsection (1A)(c).

Amendment of section 12E of the Principal Act (capital goods scheme).

10. Section 12E (inserted by the Finance Act 2008) of the Principal Act is amended as follows: 5

(a) in subsection (8), by substituting the following paragraph for paragraph (a):

“(a) If a tenant who has an interest in immovable goods (other than a freehold equivalent interest) and who is the capital goods owner in respect of a refurbishment of those goods assigns or surrenders the interest during the adjustment period applicable to the refurbishment, the tenant— 10 15

(i) shall, in accordance with the formula set out in subsection (7)(b), calculate an amount in respect of the refurbishment, and 20

(ii) shall pay the amount as if it were tax due (as provided by section 19) for the taxable period in which the assignment or surrender occurs.”; 25

(b) by substituting the following subsections for subsection (10):

“(10) If a capital goods owner makes a transfer of a capital good to which this subsection applies— 30

(a) the transferor shall issue a copy of the capital good record to the transferee, and

(b) the transferee becomes the successor to the capital goods owner who transferred the capital good and is responsible for all obligations of that owner under this section from the date of the transfer of that good, as if— 35 40

(i) the total tax incurred and the amount deducted by the transferor in relation to the good were the total tax incurred and the 45

amount deducted by the transferee, and

- (ii) any adjustments required to be made under this section by the transferor had been made,

and

- (c) the transferee as successor shall use the information in the copy of the capital good record issued by the transferor in accordance with paragraph (a) for the purpose of calculating the tax chargeable or deductible by the successor in accordance with this section for the remainder of the adjustment period applicable to that good as from the date of its transfer.

(10A) Subsection (10) applies to a transfer of a capital good if—

- (a) the transfer is of a kind referred to in section 3(5)(b)(iii), and

- (b) but for the application of section 3(5)(b), that transfer would be a supply—

- (i) that is exempt in accordance with section 4B(2) or section 4C(2) or (6)(b), or

- (ii) in respect of which tax is chargeable in accordance with section 4C(6)(a).”.

Amendment of section 15 of the Principal Act (charge of tax on imported goods).

11. Section 15 of the Principal Act is amended by repealing subsections (1) and (6A).

Amendment of section 15A of the Principal Act (goods in transit).

12. Section 15A of the Principal Act is repealed.

Amendment of section 16 of the Principal Act (duty to keep records).

13. Section 16 of the Principal Act (as amended by the Finance Act 2008) is amended by substituting the following subsection for subsection (5):

“(5) The requirement to keep records in accordance with this section applies to the following:

- (a) a record relating to exercising and terminating a landlord’s option to tax; 5
- (b) a capital good record referred to in section 12E;
- (c) a record relating to a joint option for taxation; 10
- (d) the document relating to an assignment or surrender referred to in section 4C(8)(a).”.

Amendment of section 19 of the Principal Act (tax due and payable). 14. Section 19 of the Principal Act is amended by repealing subsection (2A). 15

Amendment of section 20 of the Principal Act (refund of tax). 15. Section 20 of the Principal Act is amended in subsection (4) by substituting the following subsection:
“(4) A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates.”. 20

Amendment of section 25 of the Principal Act (appeals). 16. Section 25 of the Principal Act is amended by inserting the following subsections after subsection (2): 25
“(3) If an appeal is brought against an assessment or an amended assessment made on a taxable person for a taxable period, the person shall specify in the notice of appeal—

- (a) each amount or matter in the assessment or amended assessment with respect to which the person is aggrieved, and 30
- (b) the grounds in detail of the person’s appeal in relation to each such amount or matter. 35

(4) The taxable person is not entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are, or in the case of a rehearing of the appeal, the judge of the Circuit Court is, satisfied that the ground could not reasonably have been stated in that notice.”. 40

Amendment of section 30 of the Principal Act (time limits). 17. Section 30 of the Principal Act is amended as follows: 45
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- 5
- (a) in subsection (1), by substituting “Subject to section 27A(10)” for “Subject to subsection (3) and sections 26(4) and 27(6)”;
- (b) in subsection (4), by substituting the following paragraph for paragraph (a):
- “(a) An estimation or assessment of tax under section 22 or 23 may be made at any time not later than 4 years—
- 10
- (i) after the end of the taxable period to which the estimate or assessment relates, or
- (ii) if the period for which the estimate or assessment is made consists of 2 or more taxable periods, after the end of the earlier or earliest taxable period within that period.”.
- 15
- 20

Amendment of section 32 of the Principal Act (regulations).

18. Section 32 of the Principal Act is amended as follows:

- 25
- (a) in subsection (1), by inserting the following paragraph after paragraph (ag):
- “(aga) the conditions under which paragraph 1(1) of Schedule 2 is applicable to a supply of goods;”;
- (b) in subsection (1), by repealing paragraphs (r), (v) and (y); and
- 30
- (c) in subsection (1)(xxxx), by substituting “section 10(3A).” for “section 10(3A);”.

Repeal of section 34 of the Principal Act (relief for stock-in-trade held on the specified day).

19. Section 34 of the Principal Act is repealed.

- 35
- Amendment of section 35 of the Principal Act (special provisions for adjustment and recovery of consideration).
20. Section 35 of the Principal Act is amended as follows:
- (a) by repealing subsection (1);
- (b) by substituting the following subsection for subsection (3):

40

“(3) If, in relation to a supply of agricultural produce or an agricultural service by a flat-rate farmer, the farmer issues an invoice in which the flat-rate addition is stated separately, that addition is recoverable by the farmer as

part of the consideration for the transaction.”.

MISCELLANEOUS TECHNICAL AMENDMENTS IN RELATION TO TAX

1. The Taxes Consolidation Act 1997 is amended—

5 (a) in section 81(2)(o) by substituting “a territory in respect of which there are not for the time being in force any arrangements providing for such relief.” for “any other territory.”,

(b) in section 261(c)(i)(II) by deleting “of the Principal Act”,

10 (c) in section 433 by substituting the following for subsection (4):

“(4) For the purposes of this Part ‘director’ includes—

(a) any person occupying the position of director by whatever name called,

15 (b) any person in accordance with whose directions or instructions the directors are accustomed to act, and

(c) any person—

20 (i) who is a manager of the company or otherwise concerned in the management of the company’s trade or business, and

25 (ii) who is, either on his or her own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, 20 per cent or more of the ordinary share capital of the company.”,

(d) in the Table to section 458—

30 (i) in Part 1 by inserting “Section 848A(7)” after “Section 489”, and

(ii) in Part 2 by deleting “Section 848A(7)”,

(e) in section 508 by inserting the following after subsection (8):

35 “(9) The Revenue Commissioners may nominate in writing an inspector or other officer to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.”,

40 (f) in section 630 by substituting the following for the definition of “the Directive”:

“ ‘the Directive’ means Council Directive 2009/133/EC of 19 October 2009²⁶ on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States;”, 5

(g) in section 644C—

(i) in subsection (18) by substituting “subsection (13) or (14)” for “subsection (2)”, and

(ii) in subsection (25) by substituting “restricted loss” for “unrelieved loss”, 10

(h) in section 766A—

(i) in subsection (4B)(b)(ii)(II) by substituting “of the excess remaining as reduced” for “by which the excess remaining is reduced”, and 15

(ii) in subsection (8) by substituting “section 960H(2)” for “section 1006A(2)”,

(i) in section 960A by deleting the reference to subsection (1) at the beginning of that section,

(j) in section 960N— 20

(i) in subsection (3) by substituting “Land and Conveyancing Law Reform Act 2009” for “Judgement Mortgage (Ireland) Act 1850 or the Judgement Mortgage (Ireland) Act 1858”, and

(ii) in subsection (7) by substituting “section” for “sections”, 25

(k) in section 980(8B) by substituting “subsection” for “section”, and

(l) in section 1078(9) by substituting “sections 26(3D) and 27A(16) of the Value-Added Tax Act 1972” for “section 27A(16) of the Value-Added Tax Act 1972”. 30

2. The Stamp Duties Consolidation Act 1999 is amended—

(a) in section 8(6) by substituting “subsection (3), subsection (4A)” for “subsection (3)”,

(b) in section 12(5) by substituting “has been stamped, or is not required under Regulations made pursuant to section 17A to be stamped,” for “has been stamped”, and 35

(c) in section 80(10)(a) by substituting “Member State of the European Union or in an EEA State within the meaning of section 80A” for “Member State of the European Union”. 40

3. The Capital Acquisitions Tax Consolidation Act 2003 is amended—

²⁶OJ No. L310, 25 November 2009, p.34

- (a) in section 2(1) in the definition of “the Tax Acts” by substituting “section 1(2)” for “section 2”,
- (b) in section 45A(5) by substituting “€3,000” for “€1,520”, and
- (c) in section 109(4) by substituting “€4,000” for “€1,265”.

4. The Value-Added Tax Act 1972 is amended—

- (a) in section 1(1) by substituting the following definition for the definition of “intra-Community acquisition of goods”:

“ ‘intra-Community acquisition’, in relation to goods, has the meaning assigned to it by section 3A;”,

- (b) in section 3A(1) by substituting “In this Act, ‘intra-Community acquisition’, in relation to goods, means the acquisition” for “In this Act ‘intra-Community acquisition of goods’ means the acquisition”,

- (c) in section 8(2)(d)(ii) by substituting “subsection (2)(aa)” for “section (2)(aa)”,

- (d) in section 17(7) by substituting “An invoice, credit note or document required to be issued in accordance with this section” for “An invoice or credit note”,

- (e) in section 19(3A) by substituting “a return and remittance of the amount payable (if any)” for “a return and remittance”,

- (f) in section 26 by inserting the following after subsection (3C) (inserted by the *Finance Act 2010*):

“(3D) In proceedings for recovery of a penalty under this Act—

- (a) a certificate signed by an officer of the Revenue Commissioners which certifies that the officer has inspected the relevant records of the Revenue Commissioners and that it appears from them that, during a stated period, stated particulars or stated returns were not furnished by the defendant shall be evidence until the contrary is proved that the defendant did not, during that period, furnish the particulars or return,

- (b) a certificate signed by an officer of the Revenue Commissioners which certifies that the officer has inspected the relevant records of the Revenue Commissioners and that it appears from them that a stated document was duly sent to the defendant on a stated day shall be evidence until the contrary is proved that that person received that document in the ordinary course,

- (c) a certificate signed by an officer of the Revenue Commissioners which certifies that the officer has inspected the relevant records of the Revenue Commissioners and that it appears

from them that a stated notice was not issued by them to the defendant shall be evidence until the contrary is proved that the defendant did not receive the notice in question,

- (d) a certificate signed by an officer of the Revenue Commissioners which certifies that the officer has inspected the relevant records of the Revenue Commissioners and that it appears from them that, during a stated period, the defendant was an accountable person or was not an accountable person shall be evidence until the contrary is proved that, during that period, the defendant was an accountable person or was not an accountable person, as the case may be,

- (e) a certificate certifying as provided for in paragraph (a), (b), (c) or (d) and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed, until the contrary is proved, to have been signed by an officer of the Revenue Commissioners.”,

and

- (g) in section 27A(21)(c) by substituting “from the date on which the goods were detained under that paragraph, whichever is the earlier, those goods shall be seized” for “from the date on which the said goods were detained under the said subsection, whichever is the earlier, the said goods shall be seized”.

5. The Finance Act 2009 is amended in section 30(4) by substituting the following for paragraph (a):

“(a) in section 6(1)(c) by inserting the following after subparagraph (ii):

‘(iia) in paragraph (c)(ii)—

(I) by substituting “Table to this subsection” for “Table to this section”, and

(II) by substituting “24,000” for “15,000”,

and’.”.

6. (a) As respects *paragraph 1*—

(i) *subparagraphs (a) to (c) and (e) to (l)* have effect as on and from the passing of this Act, and

(ii) *subparagraph (d)* is deemed to have come into force and have taken effect as on and from 6 April 2001.

(b) As respects *paragraph 2*—

(i) *subparagraph (a)* applies as respects penalties incurred on or after 24 December 2008,

(ii) *subparagraph (b)* applies as on and from 30 December 2009, and

(iii) *subparagraph (c)* has effect as on and from the passing of this Act.

5 (c) *Paragraph 3* has effect as on and from the passing of this Act.

(d) As respects *paragraph 4*—

(i) *subparagraphs (a)* and *(b)* have effect as on and from 1 January 2010, and

10 (ii) *subparagraphs (c)* to *(g)* have effect as on and from the passing of this Act.

(e) Subsection (2) of section 6 of the Finance (No. 2) Act 2008 applies to subsection (1) of that section as amended by section 30(4)(a) of the Finance Act 2009 and *paragraph 5* of this Schedule.

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AN BILLE AIRGEADAIS 2010
FINANCE BILL 2010

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

EXPLANATORY MEMORANDUM

PART 1

COST BENEFIT ANALYSIS OF TAX EXPENDITURES

Section 1 requires that a report be prepared for Dáil Éireann on the tax foregone and the benefits in terms of job creation or otherwise arising from tax expenditures included in this Act.

PART 2

**INCOME LEVY, INCOME TAX, CORPORATION TAX AND
CAPITAL GAINS TAX**

CHAPTER 1

Interpretation

Section 2 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 3 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(1B)(a)(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.

CHAPTER 3

Income Tax

Section 4 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 5 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 6 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 7 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 8 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 9 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 10 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 11 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 12 provides for the abolition of relief for service charges for the tax year 2012 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 13 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 14 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 individual’s 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 15 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 16 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 17 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 18 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 19 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 20 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 21 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 22 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 23 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 24 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. A 2 year period already applies 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 25 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 26 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 30 September 2010, 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 27 amends section 372AW of the Taxes Consolidation Act 1997 which relates to the Mid-Shannon Corridor Tourism Infrastructure Investment Scheme to extend the period during which applications can be made from two years to four years, so that the latest date for the submission of applications is now 31 May 2012.

To cater for any projects that may avail of the new date for the submission of applications for approval in principle, the period within which expenditure must be incurred for capital allowances purposes is also being extended by two years and will now end on 31 May 2015.

These new dates will come into operation by way of a commencement order to be made by the Minister for Finance following clearance from the EU Commission from a State-aid perspective.

Section 28 amends section 1003A of the Taxes Consolidation Act 1997 which provides for the payment of tax by means of donation of heritage property to the Irish Heritage Trust. The amendment extends the tax relief to donations of heritage property (houses and gardens) to the Office of Public Works (OPW). Such properties must meet stringent criteria in relation to heritage value, as under the existing scheme. The relief available is restricted to 80% of the market value of the properties donated. In addition, the €6 million overall annual limit on the value of such properties that can be donated under the existing scheme is retained. The explicit approval of the Minister for Finance will be required before any individual property can be accepted by the OPW under the scheme. The acceptance of a donation will be subject to whatever conditions the Minister may decide to apply in each case.

Section 29 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 (RCT 47).

Section 30 amends section 731(5)(a) of the Taxes Consolidation Act 1997 which provides that any gains accruing in a tax year to an unauthorised unit trust would not be chargeable gains where all of its unit holders would be capital gains tax-exempt in that year. The amendment introduces an annual declaration and reporting arrangement as follows: (i) Where the trustees, or any persons acting on behalf of the trustees, of each unit trust are satisfied as to the capital gains tax-exempt status of all its unit holders, they are required to make an annual declaration to that effect. (ii) An annual electronic statement must be made to the Revenue Commissioners specifying certain details in respect of each unit holder and stating whether the above declaration has, or has not, been made for that year. If that statement is not made, or is incorrect or incomplete, the trustees of the unit trust shall be liable to a penalty of €3,000.

The amendment is to apply for the year of assessment 2010 and subsequent years.

Section 31 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 32 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 33 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 34 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 34 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 35 amends certain provisions of the Taxes Consolidation Act 1997 relating to the tax treatment of Government Securities. 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 and non-EU countries within the EEA with which Ireland has a double taxation agreement. 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 36 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 36 is to ensure that the lessee may not claim a deduction in excess of the actual amount that they have laid out and only one party to a lease can claim capital allowances.

The section will now only apply where the lease is a finance lease.

Section 37 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 38 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 39

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. This section 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 Financial Transactions" and essentially treats the return on any product defined as a "specified financial transaction" as interest for the purpose of the Tax Acts. The provisions are subject to an election procedure. 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 40 amends sections 198 and 246 of the Taxes Consolidation Act 1997, which grant exemptions from income tax in relation to payments of interest made to companies resident in a foreign territory ("relevant territory") which is an EU member state or a territory with which Ireland has a tax treaty ("arrangements"). 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 tax treaties that have the force of law and tax treaties that will have the force of law on the completion of their ratification procedures in Ireland. Subparagraphs (1)(d) and paragraph (2) amend sections 198(1)(c)(ii) and 246(3)(h) to ensure that exemption from income tax will only apply where—

- the interest payment is made to a recipient company that is resident for tax purposes in a relevant territory which imposes a tax that generally applies to interest receivable in that territory by companies from sources outside it, or
- the interest payment is exempt from income tax under the provisions of a tax treaty that was in force when the interest was paid or would have been exempt had a treaty that was signed at the date when the interest was paid been in force at that date.

Paragraph (3) restricts the application of the changes made by this section to payments of interest made after the date of passing of the Act, but it excludes interest paid under an agreement entered into before that date.

Section 41 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 42 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 any transaction other than a transaction the terms of which are agreed before 1 July 2010.

CHAPTER 5

Corporation Tax

Section 43 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. An amendment to paragraph (h) of section 291A(1) makes it clear that the scheme does not apply to liquor licences within the meaning of section 2 of the Intoxicating Liquor Act 2008.

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, apart from the exclusion of liquor licences which will have effect for any allowance to be made for an accounting period commencing on or after 1 January 2010.

Section 44 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 45 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 46 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 47 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 48 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 49 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 much 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 period beginning on the date 10 years before the payment of the dividend or the date of passing of this Act whichever is the later. Also, the section does not apply to dividends paid by a company where the company was not controlled by Irish residents before becoming resident in the State.

Section 50 extends the scope of the $12\frac{1}{2}$ 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 51 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 52 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 53 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 54 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 is 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). These technical amendments apply and have effect from 1 January 2010.

The provisions relating to expenditure incurred on R&D activities before a company commenced to trade apply to accounting periods commencing on or after 1 January 2010.

All other amendments contained within this section apply to relevant periods commencing on or after 1 January 2010.

Section 55 inserts a new Section 242A into the Taxes Consolidation Act 1997. The new section applies to royalty payments made for

bona fide commercial reasons by a company in the ordinary course of its business to a company resident in a foreign territory (“relevant territory”), which is an EU member state or a territory with which Ireland has a tax treaty (“arrangements”) except where the payment is made in connection with a branch or agency in the State of the recipient company. The relevant territory must impose a tax that generally applies to royalties receivable in that territory by companies from sources outside it. If these conditions are met, section 238 will not apply to such payments and the recipient company will not be chargeable to income tax or corporation tax in respect of such payments. Section 243(5)(c) is amended to permit such payments to be treated as a charge on income. This section applies only to payments made on or after 4 February 2010.

CHAPTER 6

Capital Gains Tax

Section 56 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 57 amends section 590 of the 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 of the Taxes Consolidation Act 1997. This amendment applies to disposals made on or after 4 February 2010.

Section 58 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 59 and 60 are anti-avoidance measures to target aggressive capital gains tax avoidance schemes where no real economic loss has occurred. *Section 59* 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 60* 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 61 amends section 611 of the Taxes Consolidation Act 1997, which provides that disposals to the State, public bodies and charities will not generally give rise to a capital gains tax liability. 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. Also included are the Friends of the National Collections of Ireland, any university in the State, local authorities and joint bodies within the meaning of section 2(1) of the Local Government Act 2001.

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

Section 62 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 63 amends Schedule 15 of the Taxes Consolidation Act, 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 and includes joint bodies within the meaning of that Act in the list of exempt bodies. It applies to disposals made on or after 4 February 2010.

PART 3

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 64(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 CO₂ 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 CO₂ 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 15th 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. However, in the case of biofuel that is mixed or blended with hydrocarbon oil, the relief, prior to 1 July 2010, is conditional on biofuel accounting for more than 10 percent of the blended product. From 1 July 2010 onwards the relief for biofuel applies whether blended or not, and the 10 per cent requirement will no longer apply.

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 65 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 71*, 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 CO₂ emitted, and will be charged to natural gas suppliers.

Section 66 is an interpretation provision.

Section 67(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 68 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 69 requires natural gas suppliers to register with the Revenue Commissioners.

Section 70 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 74*.

Section 71 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 72 specifies arrangements for repayment of tax, arising from the reliefs granted by *section 71*.

Section 73 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 74 empowers the Revenue Commissioners to make regulations for the purposes of implementing and administering the provisions of the Chapter.

Section 75 places natural gas carbon tax under the care and management of the Revenue Commissioners.

Section 76 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 82*, 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 CO₂ emitted, and will be charged to solid fuel suppliers.

Section 77 is an interpretation provision.

Section 78(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 79 provides that the tax is charged at the time when the solid fuel is first supplied in the State by a supplier (that is, an accountable person for the purposes of section 8 of the Value-Added Tax Act 1972), and that the supplier must pay and account for it.

Section 80 requires solid fuel suppliers to register with the Revenue Commissioners.

Section 81 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 85*.

Section 82 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 83 specifies arrangements for repayment of tax, arising from the reliefs granted by *section 82*.

Section 84 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 85 empowers the Revenue Commissioners to make regulations for the purposes of implementing and administering the provisions of the Chapter.

Section 86 places solid fuel carbon tax under the care and management of the Revenue Commissioners.

Section 87 provides that this Chapter comes into operation on a date appointed by order by the Minister for Finance.

CHAPTER 4

Miscellaneous

Section 88 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.

Section 89 provides that any relief from mineral oil tax under Section 98A of the Finance Act 1999, for the biofuel concerned in certain projects approved by the Minister for Finance, is subject to conditions that may be imposed by the Minister, and in particular to conditions for ensuring that an approved biofuel project is conducted in accordance with the terms of its approval.

In respect of the larger projects, the amendment also restricts the relief that may be granted during the last six months of the operation of the scheme (which terminates at the end of 2010) to 20% of the total quantity approved for the project concerned.

Sections 90, 91 and 92 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 2008/118/EC referred to below.

Section 93 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 1st 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.

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 (p), (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 94 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 95, 96 and 98 to 101*.

Sections 95 and 96 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 95 and 96* 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 95 also updates the monetary penalty applicable to summary conviction in relation to offences under section 186 of the 1876 Act to €5,000. *Section 96* 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 95 also replaces section 89 of the Finance Act 1997, which is repealed.

Section 97 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 98, 100 and 101 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.

Section 100 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 99 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.

As in *sections 98, 100 and 101*, the section provides also for the penalties for summary conviction under the relevant excise provision to apply where prosecutions are dealt with under section 13 of the Criminal Procedure Act 1967.

Section 102 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 103 amends Section 130B of the Finance Act 1992 to allow the Commissioners to delegate certain powers to an appointed ‘competent person’.

Section 104 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 persons” examination of each vehicle.

Section 105 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 106 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 107 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 CO₂ emissions not exceeding 140g/km, where a qualifying 10 year-old vehicle is scrapped under certain conditions (a scrapping scheme).

Section 108 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 109 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 110 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 111 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 4

VALUE-ADDED TAX

Section 112 is a definitions section.

Section 113 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 114 amends section 4B of the VAT Act which deals with supplies of property. The amendments clarify the ‘joint option for taxation’ provision and provide for a joint option for the taxation of the sale of a property where there is a “forced sale”. This latter change will apply in the case of forced sales by examiners, receivers, liquidators and other bodies such as finance companies.

Section 115 amends section 4C of the VAT Act which deals with transitional measures for supplies of immovable goods. The amendment provides that the capital goods scheme will apply to transitional properties in certain circumstances. Transitional properties are properties that were subject to tax under the rules that applied prior to 1 July 2008 and are disposed of, or are let, on or after that date under the new rules.

Section 116 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 117 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 and public bodies within the scope of VAT. From 1 July 2010 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 the Schedule 7 to the VAT Act (inserted by *section 129*) or where there is likely to be a distortion of competition. However, the provisions in relation to the supply of sports and community-type facilities by public bodies will be commenced by Ministerial order. 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 *paragraphs (c)* and *(d)* are consequential to the amendment in *paragraph (b)*. *Paragraph (c)* repeals the provision that allows Revenue to determine that particular supplies of the State and local authorities are taxable in cases of distortion of competition. *Paragraph (d)* provides that any determination already made by Revenue is not affected by the amendment in *paragraph (c)*.

Section 118 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 117* 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 119 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 120 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 121 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 122 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 123 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 31 August 2010 and also provide that the special scheme does not apply to agricultural machinery purchased or acquired on or after 1 September 2010.

Section 124 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 125 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, at the time of the importation, 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 126 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 122 and 123*.

Section 127 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 128 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 129 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 130 provides for the amendment of the Schedules to the VAT Act. This *section* together with *section 131* 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 2* of the Bill.

Section 131 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 130*.

Section 132 provides for the inclusion of a schedule of miscellaneous amendments to the VAT Act in preparation for the consolidation of that Act.

Section 133 amends sections 8, 12 and 17 of the VAT Act and provides for the reverse charge mechanism to apply where a taxable person who carries on a business in the State receives greenhouse gas emission allowances from another taxable person who carries on a business in the State. This section will be commenced by Ministerial order.

PART 5

STAMP DUTIES

Section 134 is an interpretation section.

Section 135 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 136 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 137 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 267N of the Taxes Consolidation Act 1997.

Section 138

- (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 139 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 140 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 141 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 order to include the Degree in Agri-Environmental Sciences awarded by University College Dublin.

PART 6

CAPITAL ACQUISITIONS TAX

Section 142 is an interpretation section. It provides that the Principal Act means the Capital Acquisitions Tax Consolidation Act 2003.

Section 143 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 144 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 145 amends section 82 of the Capital Acquisitions Tax Consolidation Act 2003. That section exempts certain receipts from gift tax and inheritance tax. This amendment exempts awards from

the competition “Your Country, Your Call”, which is under the patronage of the President Mrs. Mary McAleese, from gift tax. It applies to gifts taken on or after 17 February 2010.

Section 146 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 6 years of the 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 147 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, on a mandatory basis, 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 the passing of the Finance Act.

PART 7

MISCELLANEOUS

Section 148 contains a definition of “Principal Act” i.e. the Taxes Consolidation Act 1997, for the purposes of Part 7 of the Bill.

Section 149 amends Part 33 of the Taxes Consolidation Act 1997, which deals with certain anti-avoidance provisions. The amendment inserts a new Chapter 3 into that Part which places new mandatory disclosure obligations on promoters of certain tax related transactions to give details of those transactions to the Revenue Commissioners shortly after they are first marketed or made available for use. In certain limited circumstances, the users of such transactions are required to provide the information i.e. where the promoter is offshore, where the promoter claims legal professional privilege or where they have entered into a transaction not involving a promoter.

The new mandatory disclosure rules apply to transactions that have as a main benefit the obtaining of a tax advantage and that match certain features set out in the legislation.

Provision of the required information on transactions by promoters or users under the mandatory disclosure rules will be on a non-prejudicial basis. There will be no presumption or inference that a transaction disclosed under the rules is a tax avoidance transaction. Equally, the fact that a transaction may not come within the disclosure requirements cannot be regarded as an indicator that the transaction is not a tax avoidance transaction. The information on transactions will have to be provided within tight timescales and penalties will apply where a person fails to meet their obligations in that regard. Under the legislation the courts are given significant flexibility as to the level of penalty to apply.

The time periods within which a disclosure has to be made, the information to be provided and the manner in which it is to be provided, along with further details of the classes of transaction that are intended to fall within the disclosure regime will be set out in regulations.

While the new mandatory disclosure rules apply as on and from the date of passing of the Finance Act, actual compliance with the rules can commence only after the various regulations are made.

Section 150 inserts a new Part (Part 18C) into the Taxes Consolidation Act 1997. This new Part deals with the Domicile 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, Irish-located property is greater than €5m, and liability to Irish income tax was less than €200,000.

Anti-avoidance provisions are included to prevent transfers of Irish-situate property for less than market value on or after 18 February 2010 to spouses, minor children, discretionary trusts and other entities.

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

Section 150 applies for the tax year 2010 and subsequent years.

Section 151 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 152 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 153 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 154 requires NAMA to provide the Revenue Commissioners with certain information in relation to assets transferring to NAMA and provides that Revenue may require NAMA to provide further information in relation to such transactions.

Section 155 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 156 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 157 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 158 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 and 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 159 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 160 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 161 gives effect to a voluntary gift scheme for members of the judiciary and military judges.

Section 162 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 163 amends the Bretton Woods Agreements Act, 1957 to provide that the Minister for Finance may guarantee the provision of a bilateral loan facility by the Central Bank, acting as agent of the Minister, to the International Monetary Fund (IMF) under the terms of a Borrowing Agreement between the Government and the IMF

which was laid before Dáil Eireann on 23 February 2010. The amendment comes into force on signature of an Order by the Minister.

Section 164 deals with the “care and management” of taxes and duties.

Section 165 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais,
Márta, 2010.