



An Bille Airgeadais, 2016
Finance Bill 2016

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Explanatory Memorandum



AN BILLE AIRGEADAIS, 2016
FINANCE BILL 2016

Mar a tionscnaíodh
As initiated

EXPLANATORY MEMORANDUM

PART 1

**INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX,
UNIVERSAL SOCIAL CHARGE**

Chapter 1

Interpretation

Section 1 contains a definition of “Principal Act” (i.e. the Taxes Consolidation Act 1997) for the purposes of Part 1 of the Bill.

Chapter 2

Universal Social Charge

Section 2 amends section 531AN of the Taxes Consolidation Act 1997 to give effect to the Budget announcement by amending the bands and rates at which Universal Social Charge (USC) is applied. The three lower rates are being reduced by 0.5 Per cent to 0.5 Per cent, 2.5 Per cent and 5 Per cent respectively. The band that will be liable at 2.5 Per cent from 2016 is being increased from €6,656 to €6,760. The point at which income will now become liable to the 5 Per cent rate will be €18,772.

Section 2 also makes a technical amendment to deal with the payment of USC where there are more than 52 paydays in a year to ensure that the provision operates as intended.

Chapter 3

Income Tax

Section 3 amends the earned income tax credit to increase the value of the credit from €550 to €950.

Section 4 amends the Home Carer Tax Credit by increasing the value of the credit from €1,000 to €1,100.

Section 5 introduces a new fishers tax credit to the value of €1,270, which is available to qualifying fishers who spend at least 80 days per year at sea engaged in sea-fishing.

Section 6 amends section 480A which provides for Sportspersons tax relief. The amendment extends the provision that any relief given under section 480A is disregarded when calculating net relevant earnings for the purposes of Retirement Annuity Relief, to similar calculations with regard to Personal Retirement Savings Accounts.

Section 7 amends section 477B of the Taxes Consolidation Act 1997, to extend the Home Renovation Incentive for two further years, until the end of 2018.

Section 8 inserts a new Section 477C into the Taxes Consolidation Act 1997 to provide an income tax rebate, which will be available to first-time purchasers of newly built homes.

The rebate is calculated on the income tax (including DIRT) paid over the previous four tax years. The rebate will be at a maximum of 5 Per cent of (i) the purchase price of a home valued up to €400,000 or (ii) the valuation of a self-build up to the same value. The maximum rebate will also be available for new homes valued between €400,000 and €600,000. A mortgage of a minimum of 70 Per cent loan to value is required to be eligible for the rebate. Where more than one person is involved in a purchase, each person must be a first-time purchaser. The section provides for the registration with the Revenue Commissioners of contractors for participation in the incentive and for clawback provisions in certain circumstances. This provision applies in respect of qualifying properties from 19 July 2016 until 31 December 2019.

Section 9 amends section 825C of the Taxes Consolidation Act 1997, to extend the Special Assignee Relief Programme to the end of 2020.

Section 10 amends section 823A of the Taxes Consolidation Act 1997, which provides for the Foreign Earnings Deduction. The scheme is being extended until the end of 2020. In addition, Colombia and Pakistan are added as relevant states and the number of required days to be spent in a relevant state is reduced from 40 to 30.

Section 11 amends section 472AA of the Taxes Consolidation Act 1997, which provides limited and time bound relief from income tax for long term unemployed individuals who start a new business. The relief, known as Start Your Own Business Relief, is being extended for a further two years to 31 December 2018.

Section 12 amends section 216A of the Taxes Consolidation Act 1997 which provides for an exemption from income tax for income received from the letting of a room or rooms in a person's principal private residence. This ceiling is being increased from €12,000 to €14,000 for 2017 and subsequent years.

Section 13 makes a number of amendments to Part 30 of, and Schedule 23B to, the Taxes Consolidation Act 1997 for the purposes of preventing certain tax avoidance opportunities in relation to Personal Retirement Savings Accounts (PRSAs). The amendments ensure that, where benefits are not taken by the PRSA owner on or before his or her 75th birthday, they will be treated as being taken on that date and, therefore, the PRSA will be treated as "vesting" on that date.

This means that, although the PRSA assets cannot be accessed after the date of the owner's 75th birthday, they will, nonetheless, -

- be subject, from that date, to the imputed distribution regime that applies to vested PRSAs (and Approved Retirement Funds (ARFs)) under section 790D,

- be treated as a benefit crystallisation event occurring on that date for the purposes of the Standard Fund Threshold regime (which effectively places a lifetime benefit limit of €2 million on an individual's tax relieved pension fund), and
- be treated on the death of the PRSA owner under the provisions relating to ARFs and not by way of a transfer of the PRSA assets to the deceased owner's estate.

In the case of individuals who have a PRSA which has remained unvested beyond their 75th birthday, the PRSA will be deemed to vest on the date of passing of Finance Bill 2016 and transitional arrangements will apply.

These amendments come into operation on the date of passing of the Bill.

Chapter 4

Income Tax, Corporation Tax and Capital Gains Tax

Section 14 makes a number of amendments to the Living City Initiative. Firstly, the residential element is extended to lessors and the requirement for a building to be originally constructed for use as a dwelling is removed. Secondly, the floor area restrictions for the residential element of the scheme are removed and the requirements in respect of certification will also apply to lessors. Thirdly, eligible expenditure must exceed €5,000 to qualify for relief. Fourthly, those in receipt of State grants are no longer excluded from the commercial element of the scheme. However, the amount of eligible expenditure qualifying for relief, on either the residential element, as it applies to lessors, or the commercial element of the scheme, will be reduced by a multiple of three times the amount of any grant received or receivable. Finally, undertakings in difficulty will be explicitly excluded from the Initiative in line with State Aid rules.

Section 15 gives effect to the Budget announcement that full interest deductibility in respect of rented residential property in section 97(2J) of the Taxes Consolidation Act 1997 will be restored over a 5 year period by way of 5 Per cent annual increments, with the first increment from 75 Per cent to 80 Per cent applying to interest accruing on or after 1 January 2017.

Section 16 provides for the extension to non-incorporated businesses of the scheme under which accelerated capital allowances are available for expenditure incurred on the provision of certain energy-efficient equipment.

Section 17 amends the income averaging regime for farmers under section 657 of the Taxes Consolidation Act 1997. It introduces an option for farmers to elect out of the averaging regime for a single year and revert to the normal basis of assessment for that year. The resulting deferred tax due on the average profit will be payable in instalments over a subsequent 4 year period. The election is available for the tax year 2016 and subsequent years of assessment.

Section 18 amends section 288 of the Taxes Consolidation Act 1997 in relation to balancing charges arising on compensation payments made under fishing vessel decommissioning schemes. The amendment updates the provisions to include the latest EU vessel decommissioning scheme. If a balancing charge arises as a result of compensation paid under the scheme, the charge will be spread over 5 years, commencing in the year in which the compensation is paid. This provision is subject to a Commencement Order by the Minister for Finance, with the consent of the Minister for Agriculture, Food and the Marine.

Section 19 amends the tax code as it relates to the Employment and Investment Incentive to ensure that the Revenue Commissioners can continue to publish information relating to the companies who raise investments under the Incentive, to remove it from the scope of the high earners' restriction and to make a number of technical corrections.

Section 20 amends Part 8 of the Taxes Consolidation Act 1997 which deals with Deposit Interest Retention Tax (DIRT). It provides for a decrease of 2 percentage points each year over the next four years to bring the rate of DIRT from 41 Per cent to 33 Per cent over that period.

The section also amends section 267M which governs the tax treatment of deposit interest received from both EU and non-EU financial institutions. Such deposit interest will be taxed at the reduced DIRT rate. However, the income will be subject to a higher rate of 40 Per cent tax if not returned on time. The 40 Per cent rate will continue to apply where the recipient is a higher rate taxpayer in receipt of non-EU deposit interest.

Section 21 amends section 110 of the Taxes Consolidation Act 1997.

The legislation provides that defined Collateral Loan Obligation transactions, defined Commercial Mortgage Backed Securities/Residential Mortgage Backed Securities transactions and defined loan origination businesses are excluded from the amendment.

The amendment provides that where specified mortgages are held by qualifying companies the coupon on profit participating notes will not be deductible in calculating the profits of the specified property business unless the profit participating note is paid to:

- An individual within the charge to income tax or a company within the charge to corporation tax;
- An Irish or EEA pension fund, or
- An EEA citizen or company who will pay tax on receipt of the interest, without any deduction for profit participating interest, provided that the payment of the coupon to the EEA citizen or company is not for tax avoidance purposes.

The section also reduces the timescale within which a company must inform the Revenue Commissioners in writing of its intention to be a section 110 company to within 8 weeks of acquiring qualifying assets of €10 million, or where the information requested is not available at that time without undue delay.

The amendment will apply to accounting periods ending on or after 6 September 2016.

Section 22 inserts a new Chapter 1B to Part 27 of the Taxes Consolidation Act 1997. The legislation provides for a tax regime for Irish Real Estate Funds ("IREFs"). IREFs are investment undertakings (excluding UCITS) where 25 Per cent of the value of that undertaking is made up of Irish real estate assets.

IREFs must deduct a 20 Per cent withholding tax on certain property distributions. Broadly speaking, property distributions are payments made to unit holders who are not within the charge to Irish tax, out of profits arising from its Irish land. The withholding tax will not apply to certain categories of investors such as pension funds, life assurance companies and other collective investment undertakings.

The amendment will apply to accounting periods beginning on or after 1 January 2017.

Chapter 5

Corporation Tax

Section 23 amends section 891H of the Taxes Consolidation Act 1997 which gave effect to the OECD Base Erosion and Profit Shifting (BEPS) project recommendations for Country-by-Country (CbC) Reporting. Section 891H requires an Irish resident parent company of a large Multinational (MNE) group to provide a CbC report annually to the Revenue Commissioners. The report must contain a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the MNE group does business. CbC Reporting applies to an MNE group where its annual consolidated revenue in the preceding fiscal year is €750 million or more.

This section amends section 891H in order to transpose Council Directive (EU) 2016/881 of 25 May 2016, which amends Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (known as “DAC 4”). DAC 4 aims to bring the OECD BEPS recommendations for CbC Reporting into EU legislation. While the requirements of DAC 4 in relation to CbC reporting are very similar to the OECD standards on CbC Reporting, as contained in the BEPS Action 13 Final Report, there are differences and this section amends section 891H to take account of these differences. In particular, the section is amended to give the Revenue Commissioners the power to make regulations in relation to the appointment of an EU designated entity that can file a CbC Report on behalf of all EU constituent entities of a non-EU parent MNE group. The section also gives the Revenue Commissioners the power to make regulations in respect of notification requirements of such an EU designated entity that is tax resident in Ireland.

This section also makes a number of minor amendments to section 891H. The changes clarify that a fiscal year for which a CbC report must be filed can be a period of less than 12 months if the ultimate parent entity of an MNE group prepares its financial statements for such a shorter period. The changes also require that the CbC report includes the tax identification numbers of all entities within the MNE group.

The amendments apply as respects accounting periods ending on or after the date of the passing of this Act.

Section 24 inserts a new section 891GA into Part 38 the Taxes Consolidation Act 1997. This section allows the Revenue Commissioners to supplement the information which is required to be automatically exchanged under Council Directive 2011/16/EU, as amended by Council Directive (EU) 2015/2376 of 8 December 2015 as regards mandatory automatic exchange of information in the field of taxation. The 2015 amendment to the Directive provides for the automatic exchange of information relating to advance cross-border rulings and advance pricing arrangements between Member States and to the European Commission.

This section is subject to a commencement order.

Chapter 6

Capital Gains Tax

Section 25 amends section 597AA of the Taxes Consolidation Act 1997. That section provides that a reduced Capital Gains Tax rate of 20 Per cent applies in respect of a chargeable gain or chargeable gains in the case of a disposal or disposals of chargeable business assets made by an individual on or after 1 January 2016 up to a lifetime limit of €1 million. The amendment

provides that the 20 Per cent rate of Capital Gains Tax is being reduced to 10 Per cent in the case of disposals made on or after 1 January 2017.

Section 26 amends sections 579 and 579A of the Taxes Consolidation Act 1997 which deal with gains made by non-resident trusts. These amendments deal with concerns that have been raised as to whether those sections are compatible with EU law. They provide that sections 579 and 579A will not apply to a gain accruing on the disposal of assets where it is shown to the satisfaction of the Revenue Commissioners that the trusts were established for *bona fide* commercial reasons and did not form part of an arrangement of which the main purpose or one of the main purposes was the avoidance of liability to Capital Gains Tax.

Section 27 amends section 598(3A) of the Taxes Consolidation Act 1997 which grants relief from Capital Gains Tax in respect of compensation which has been received by a person under the scheme of compensation in respect of the decommissioning of fishing vessels implemented by the Minister for Agriculture, Fisheries and Food in accordance with Council Regulation (EC) No. 1198/2006 of 27 July 2006. A new Regulation was made by the European Parliament and Council on 15 May 2014. The amendment updates section 598(3A) by referring to the new Regulation and also by updating the outdated reference to the Minister for Agriculture, Fisheries and Food. The amendment will come into effect by way of a Commencement Order made by the Minister for Finance with the consent of the Minister for Agriculture, Food and the Marine.

Section 28 amends section 604B of the Taxes Consolidation Act 1997. That section provides for a Capital Gains Tax relief for farm restructuring where the first transaction in the restructuring (e.g. sale, purchase or exchange of land) is carried out on or before 31 December 2016. Each transaction in the restructuring must be completed within 24 months. The amendment extends the deadline for the completion of the first restructuring transaction to 31 December 2019. The amendment will come into effect by way of a Commencement Order made by the Minister for Finance.

Section 29 amends section 613(7) of the Taxes Consolidation Act 1997. That subsection grants an exemption from Capital Gains Tax in respect of compensation paid under the Cessation of Turf Cutting Compensation Scheme administered by the Minister for Arts, Heritage and the Gaeltacht relating to the cessation of turf cutting on raised bog Special Areas of Conservation or Natural Heritage Areas, as required under the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) or the Wildlife (Amendment) Act 2000. The amendment extends the exemption to payments made by the Minister for Arts, Heritage, Rural and Gaeltacht Affairs under the Protected Raised Bog Restoration Incentive Scheme. It applies to payments made under either Scheme on or after 1 October 2016.

PART 2

EXCISE

Section 30 amends Chapter 1 of Part 2 of the Finance Act 2001 to clarify the requirements for authorisation of registered consignors to operate as such. The amendment provides that, to apply for or hold an authorisation, the applicant or holder must be in compliance with excise law.

The section also strengthens the power of the Revenue Commissioners to refuse or revoke authorisation where certain requirements are not met.

Section 31 amends Chapter 2A of Part 2 of the Finance Act 2001 to clarify the requirements for authorisation of registered consignees to operate as

such. The amendment provides that, to apply for or hold an authorisation, the applicant or holder must be in compliance with excise law.

The section also strengthens the power of the Revenue Commissioners to refuse or revoke authorisation where certain requirements are not met.

Section 32 makes an associated amendment to section 122 of the Finance Act 2001 in respect of registered consignees.

Section 33 makes associated amendments to Chapter 5 of Part 2 of the Finance Act 2001 in respect of registered consignees.

Section 34 amends section 136 of Finance Act 2001 to clarify the powers of a Revenue officer to take samples while searching a premises or place under a search warrant.

Section 35 confirms the Budget increases in the rates of Tobacco Products Tax which, when Value-Added Tax is included, amount to 50 cent on a pack of 20 cigarettes in the most popular price category with pro-rata increases on other tobacco products.

Section 36 amends section 78A of Chapter 1 of Part 2 of the Finance Act 2003 to provide for an increase to the production threshold for eligibility to claim 50 Per cent relief from Alcohol Products Tax for beer brewed in small breweries. The production threshold is raised to 40,000 hectolitres per annum, relief is granted up to 30,000 hectolitres per annum.

Section 37 amends the Mineral Oil Tax provisions of Chapter 1 of Part 2 of the Finance Act 1999 to apply mineral oil tax to natural gas and biogas used as vehicle fuel ("vehicle gas"). The legislation provides for:

- the liable person and the time liability arises,
- the rate,
- the procedures for making returns and payment,
- a relief from the carbon charge component for vehicle gas that is or contains biogas,
- consequential amendments to exclude vehicle gas from certain provisions of mineral oil tax legislation such as licencing and return of oil movements provisions.

This section also amends section 96 of Finance Act 1999 to provide for the deferred payment of mineral oil tax other than vehicle gas.

Additionally this section repeals sections 55 and 56 of Finance Act 2014.

The section is subject to a Commencement Order to be made by the Minister for Finance.

Section 38 provides that vehicle gas is not an excisable product under section 97 of the Finance Act 2001.

Section 39 amends section 67 of Finance Act 2010 to ensure that the same supply of natural gas is not liable to both mineral oil tax (which includes a carbon charge component) and natural gas carbon tax.

Section 40 amends section 71 of Finance Act 2010 to extend the relief from the carbon tax for natural gas used in high efficiency heat and power co-generation from a partial relief to a full relief. It also amends that section to ensure that the relief is confined to the natural gas actually used to generate high efficiency electricity as certified by the competent authority.

Additionally, this section amends section 72 of Finance Act 2010 where it relates to repayment periods and the deadline for claiming the relief to align them with the competent authority's certification process.

The section is subject to a Commencement Order to be made by the Minister for Finance.

Section 41 amends section 82 of Finance Act 2010 to extend the relief from the carbon tax for coal used in high efficiency heat and power co-generation from a partial relief to a full relief. It also amends that section to ensure that the relief is confined to the solid fuel actually used to generate high efficiency electricity as certified by the competent authority.

This section also amends section 83 of Finance Act 2010 where it relates to repayment periods and the deadline for claiming the relief to align them with the competent authority's certification process.

The section is subject to a Commencement Order to be made by the Minister for Finance.

Section 42 amends section 100 of Finance Act 1999 to ensure that the relief from the carbon charge for mineral oil used in high efficiency heat and power co-generation is confined to the mineral oil actually used to generate high efficiency electricity as certified by the competent authority.

It also amends that section where it relates to repayment periods and the deadline for claiming the relief to facilitate closer alignment with the competent authority's certification process.

The section is subject to a Commencement Order to be made by the Minister for Finance.

Section 43 amends Section 135C of the Finance Act 1992 to extend the VRT relief for Hybrid Electric vehicles until 31 December 2018 and for Electric vehicles until 31 December 2021.

PART 3

VALUE-ADDED TAX

Section 44 is a definitions section.

Section 45 amends section 61 of the VAT Consolidation Act 2010 to align the provisions in relation to apportionment of deductibility of dual-use inputs more closely with the EU VAT Directive. The amendments provide that the turnover method is the primary method of apportionment but where that method does not reflect the taxable use of dual-use inputs, an alternative method of apportionment should be used.

Section 46 amends section 86 of the VAT Consolidation Act 2010 which deals with special provisions for tax invoiced by flat-rate farmers. The amendment confirms the Budget increase in the farmers' flat-rate addition from 5.2 Per cent to 5.4 Per cent.

It also inserts a new section, 86A, into the VAT Consolidation Act 2010 which deals with the flat-rate scheme for farmers. This amendment gives the Minister the power to make an order to provide that the flat-rate addition payment is not applicable in respect of specified agricultural activities in certain circumstances. Consequential amendments are made to sections 68, 86 and 115.

This section has effect from 1 January 2017.

PART 4

STAMP DUTIES

Section 47 is an interpretation section. It provides that in Part 4 the "Principal Act" means the Stamp Duties Consolidation Act 1999.

Section 48 inserts a new section 106D into the Stamp Duties Consolidation Act 1999 which provides for a stamp duty exemption on any land acquired by the National Concert Hall in connection with its functions under the National Cultural Institutions (National Concert Hall) Act 2015.

Section 49 amends section 126AA of the Stamp Duties Consolidation Act 1999 in relation to an annual levy imposed on certain financial institutions that was due to expire at the end of 2016. The levy currently amounts to 35 Per cent of the Deposit Interest Retention Tax (DIRT) paid by the relevant financial institutions in the 2011 base year. The levy is being extended for a period of five years from 2017 to 2021 and will be charged at a higher rate of 59 Per cent on the DIRT paid in a series of new base years. The base year for the years 2017 and 2018 will be 2015. The base year for the years 2019 and 2020 will be 2017, and for the year 2021 it will be 2019.

PART 5

CAPITAL ACQUISITIONS TAX

Section 50 is an interpretation section. It provides that, in Part 5, the Principal Act means the Capital Acquisitions Tax Consolidation Act 2003.

Section 51 amends Schedule 2 to the Capital Acquisitions Tax Consolidation Act 2003. That Schedule deals with the computation of CAT. The amendment gives effect to the Budget announcement to increase the Group tax-free thresholds as follows:

Threshold	Existing Level	New Level
A	€280,000	€310,000
B	€30,150	€32,500
C	€15,075	€16,250

The amendment applies to gifts and inheritances taken on or after 12 October 2016.

PART 6

MISCELLANEOUS

Section 52 contains a definition of “Principal Act” (i.e. the Taxes Consolidation Act 1997) for the purposes of Part 6 of the Bill.

Section 53 amends the tax treatment of jointly assessed taxpayers to allow either spouse/civil partner to submit an electronic return of taxes on behalf of the couple.

Section 54 makes a number of changes to the Taxes Consolidation Act 1997, the Value-Added Tax Consolidation Act 2010 and the Stamp Duties Consolidation Act 1999.

The amendments withdraw, from 1 May 2017, the penalty mitigation arrangements, currently available to tax defaulters who make a qualifying disclosure to Revenue, in two situations:

- firstly, where the disclosure relates directly or indirectly to “offshore matters” (as defined) – which essentially means to offshore tax defaults, and
- secondly, where the disclosure relates to any other tax default in circumstances where the person has, before the date of the disclosure, certain “offshore matters” that are known or become known to

Revenue and which are matters occasioning a liability to tax that gives rise to a penalty.

The definition of “offshore matters” is linked both to the OECD standard for automatic exchange of financial account information in tax matters and to the EU Directives relating to administrative cooperation and mandatory exchange of information in the field of taxation, but essentially covers any income, gains, accounts or assets, accruing, arising, situated or located outside of the State.

In the second situation described above, if the penalty to which the “offshore matters” give rise does not exceed the lower level of penalty that applies where the default was careless in nature rather than deliberate, did not have significant tax consequence (i.e. the underpayment did not exceed 15 Per cent of the total tax due) and the person co-operated fully with any Revenue investigation, the disclosure will not be affected.

The amendments are being inserted into section 1077E of the Taxes Consolidation Act 1997, section 116 of the Value-Added Tax Consolidation Act 2010 and section 134A of the Stamp Duties Consolidation Act 1999 which all relate to penalties for deliberately or carelessly making incorrect returns and to the disclosure arrangements.

These amendments take effect from 1 May 2017.

Section 55 makes a number of changes to section 1086 which relates to the publication of names of tax defaulters.

In some settlements of tax, interest and penalties entered into by Revenue with a tax defaulter the settlement amount may comprise an amount relating to a qualifying disclosure made by the taxpayer and an amount relating to matters not subject to a qualifying disclosure. The section clarifies the amount to be published in these cases. The change puts beyond doubt that the portion of the settlement sum in respect of which a qualifying disclosure is made will be excluded from publication, and only that portion relating to the other matters will be publishable, provided the publication criteria, as regards the amount of the settlement sum and the level of penalties relating to the other matters, are met.

The section also provides that, in the case of defaulters who are to be published in the list and who have failed to pay the settlement sum, the fact of non-payment may be included in the published particulars.

Finally, the section amends the mandatory requirement that the Minister for Finance make an order increasing the publication limit (currently €33,000) every 5 years to a discretionary requirement to increase the limit “from time to time”, and also deletes an obsolete reference.

Section 56 deals with the “care and management” of taxes and duties.

Section 57 contains provisions relating to the short title, construction and commencement of the Bill.

An Roinn Airgeadais
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