



DÁIL ÉIREANN

**AN BILLE AIRGEADAIS. 2017
FINANCE BILL 2017**

**MOLADH A RINNE AN SEANAD
RECOMMENDATION MADE BY THE SEANAD**

DÁIL ÉIREANN

AN BILLE AIRGEADAIS, 2017
[BILLE DÁIL ARNA LEASÚ AG AN SEANAD]

FINANCE BILL 2017
[DÁIL BILL AMENDED BY THE SEANAD]

Moladh a rinne an Seanad
Recommendation made by the Seanad

*[The page and line references in this list of recommendations
are to the text of the Bill as passed by Dáil Éireann]*

SECTION 62

1. In page 69, between lines 27 and 28, to insert the following:

“Shares deriving value from immovable property situated in State

62. (1) The Principal Act is amended—

(a) by inserting the following section after section 31B:

“Shares deriving value from immovable property situated in State

31C. (1) (a) In this section—

‘Act of 1997’ means the Taxes Consolidation Act 1997;

‘arrangement’ includes any agreement, understanding, scheme, transaction or series of transactions;

‘company’ has the same meaning as in section 4 of the Act of 1997;

‘connected person’ has the same meaning as in section 10 of the Act of 1997 and a person who is connected shall be construed accordingly;

‘development’, in relation to immovable property, means—

(a) the construction, demolition, extension, reconstruction of, or the material alteration or refurbishment of, any building, or

(b) the carrying out of any engineering or other operation to adapt the immovable property for materially altered use, and developed and developing shall be construed accordingly;

‘immovable property’ means immovable property situated in the State that is not residential property;

‘interest’, in relation to a partnership, means a partner’s share or interest in a partnership;

‘IREF’, subject to paragraph (b), has the same meaning as in

section 739K(1) of the Act of 1997;

‘units’ has the same meaning as in section 88(1)(a) of the Act of 1997.

- (b) For the purposes of the definition of ‘IREF’ in paragraph (a), the definition of ‘IREF’ in section 739K(1) of the Act of 1997 shall be read as if there were inserted after the words ‘investment undertaking’ in the first four places where they occur the words ‘or collective investment scheme to which section 88(1)(b)(ii) applies’.
 - (c) For the purposes of this section, where a company, IREF, partnership or a connected person secures the development of any immovable property, the company, IREF or partnership shall be regarded as developing that immovable property.
 - (d) For the purposes of this section, if, by any one or more transactions or by any arrangement or scheme, whether concerning the immovable property or stocks, marketable securities, units or interests deriving value from that immovable property, there is a disposal of the immovable property or a transfer of control over that immovable property, that disposal or transfer, as the case may be, shall be a disposal for the purposes of this section.
- (2) (a) This section applies in relation to—
- (i) stocks or marketable securities in a company, other than an investment undertaking within the meaning of section 739B of the Act of 1997 that is not an IREF,
 - (ii) units in an IREF, or
 - (iii) interests in a partnership,
that derive their value, or the greater part of their value, directly or indirectly, from immovable property.
- (b) For the purposes of paragraph (a), a reference to deriving value indirectly from immovable property shall include value that is derived from stocks, marketable securities, units or interests in relation to which this section applies.
 - (c) Where the company, IREF or partnership referred to in paragraph (a) (referred to in this subsection as ‘the first-mentioned company, IREF or partnership’) derives its value from stocks, marketable securities, units or interests in a company, IREF or partnership (referred to in this subsection as ‘the second-mentioned company, IREF or partnership’), the circumstances in subsection (6) shall be deemed to apply to the first-mentioned company, IREF or partnership where they apply to the second-mentioned company, IREF or partnership.
- (3) Where stocks, marketable securities, units or interests in relation to

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which this section applies were owned at one time by one person, or by persons who are acting in concert or who are connected persons, and are conveyed or transferred by that person or those persons in parts—

- (a) to another person, or
- (b) to other persons who are acting in concert or who are connected persons,

whether or not on the same or different occasions, the several conveyances or transfers shall, for the purposes of this section, be treated as a single conveyance or transfer.

- (4) Notwithstanding section 88 or the charge to stamp duty applied under the Heading ‘CONVEYANCE or TRANSFER on sale of any stocks or marketable securities’ in Schedule 1, where the circumstances in—

- (a) subsection (5), and
- (b) subsection (6),

apply, the conveyance or transfer on sale concerned shall be chargeable to stamp duty under paragraph (4) of the Heading ‘CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance.’ in Schedule 1.

- (5) The circumstances referred to in subsection (4)(a) are that—

- (a) there exists a conveyance or transfer on sale of stocks or marketable securities, units or interests in relation to which this section applies, and
- (b) such conveyance or transfer on sale results in a change in the person or persons having direct or indirect control over the immovable property concerned.

- (6) The circumstances referred to in subsection (4)(b) are that it would be reasonable to consider that the immovable property concerned—

- (a) was acquired by the company, IREF or partnership, as the case may be, with the sole or main object of realising a gain from its disposal,
- (b) was or is being developed by the company, IREF or partnership, as the case may be, with the sole or main object of realising a gain from its disposal when developed, or
- (c) was held as trading stock (within the meaning of section 89 of the Act of 1997) by the company, IREF or partnership, as the case may be.

- (7) Where—

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- (a) there is a change in the ownership of a company, IREF or partnership in relation to which this section applies that results in a change in the person or persons having direct or indirect control over immovable property,
- (b) the circumstances set out in subsection (6) apply to the company, IREF or partnership concerned, and
- (c) any contract or agreement relating to stocks, marketable securities, units or interests, giving direct or indirect effect to such change is not otherwise chargeable to stamp duty,

then the contract or agreement shall be treated as a conveyance or transfer on sale for the purposes of subsection (5).

- (8) In calculating the part of the value of the stocks, marketable securities, units or interests that is derived, directly or indirectly, from immovable property situated in the State—

- (a) account shall not be taken of any arrangement that—

- (i) involves a transfer of money or other assets, apart from immovable property, from a person who is connected with the company, IREF or partnership, as the case may be, in which those stocks, marketable securities, units or interests are held,

- (ii) is made before a conveyance or transfer on sale of stocks, marketable securities, units or interests in relation to which this section applies, and

- (iii) the main purpose or one of the main purposes of which is the avoidance of liability to any tax or duty,

and

- (b) regard shall be had to the gross value of the immovable property from which that value is derived.

- (9) Stocks, marketable securities, units or interests in relation to which this section applies shall be deemed to be land for the purposes of subsection (1)(b) of section 83D (inserted by *section 61* of the *Finance Act 2017*) where, following the conveyance or transfer on sale, the immovable property concerned satisfies the conditions for a repayment under that section.”,

and

- (b) in section 88(1)(b) by substituting “Subject to subsection (2) and section 31C (inserted by *section 62* of the *Finance Act 2017*)” for “Subject to subsection (2)”.

- (2) (a) Subject to *paragraph (b)*, *subsection (1)* shall have effect as respects any instrument executed on or after 6 December 2017.

- (b) *Subsection (1)* shall not have effect as respects any instrument executed before 1

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March 2018, where—

- (i) the effect of the application of *subsection (1)* would be to increase the duty otherwise chargeable on the instrument, and
- (ii) the instrument contains a statement, in such form as the Revenue Commissioners may specify, certifying that the instrument was executed solely in pursuance of a binding contract entered into before 6 December 2017.”.