An Bille Airgeadais, 2019
Finance Bill 2019

Meabhrán Mínitheach
Explanatory Memorandum

AN BILLE AIRGEADAIS, 2019

FINANCE BILL 2019

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 provides that the reduced rate of Universal Social Charge for full medical card holders whose individual annual income does not exceed €60,000 will be extended for a further year until the end of the 2020 tax year.

Chapter 3

Income Tax

Section 3 gives effect to the budget announcement to increase the value of the home carer credit from €1,500 to €1,600.

Section 4 gives effect to the budget announcement to increase the earned income credit from €1,350 to €1,500.

Section 5 gives effect to the budget announcement in relation to Benefit-in-kind on employer provided vehicles. The exemption for electric cars and vans with a market value of less than €50,000 is extended to 31 December 2022. From 1 January 2023, a new charging regime for employer provided cars will take effect that will be based on kilometres travelled and the CO_2 emission levels of the car. Also, the rate of Benefit-in-Kind on employer provided vans will increase from 5% to 8% of the original market value of the van from 1 January 2023.

Section 6 amends section 204B of the Taxes Consolidation Act 1997 which provides an exemption from tax for payments made to compensate individuals for expenses incurred in the donation of a kidney. The scheme is now extended to also include those who donate a lobe of a liver.

Section 7 amends section 205A of the Taxes Consolidation Act 1997 which provides an exemption from income tax for payments made under the Magdalen Restorative Justice Ex-Gratia scheme and subsequent payments made by the Minister for Employment Affairs and Social Protection. This is a technical amendment to clarify the definition of "relevant individual" and to ensure that the exemption from tax for payments made by the Minister for Employment Affairs and Social Protection only applies to women who have received payments under the ex-gratia scheme.

Section 8 amends section 825C of the Taxes Consolidation Act 1997 which provides relief from income tax on 30% of salary between €75,000 and €1 million to qualifying employees under the Special Assignee Relief Programme. The effect of this amendment is to extend the Special Assignee Relief Programme to 31 December 2022.

Section 9 amends section 823A of the Taxes Consolidation Act 1997, which provides for relief from income tax on up to €35,000 of salary for employees who travel out of State to certain qualifying countries on behalf of their employer, under the Foreign Earnings Deduction. The effect of the amendment is to extend the Foreign Earnings Deduction to 31 December 2022.

Section 10 amends section 128F of the Taxes Consolidation Act 1997 (TCA) which provides for an exemption from income tax, USC and PRSI on any gain realised on the exercise of a qualifying share option under the Key Employee Engagement Programme (KEEP).

The amendment extends the relief to companies which operate through certain group structures to qualify for KEEP. Furthermore, conditions relating to qualifying employees are amended to allow for part-time/flexible working arrangements together with movement between qualifying companies within the group. Finally, relief is extended to existing shares as well as those newly issued.

Section 11 amends section 1032 TCA 1997 to maintain the status quo for qualifying UK residents by allowing them retain entitlement to certain personal allowances, deductions and reliefs for the purposes of calculating their Irish income tax liability, in the event that the UK are no longer a Member State of the European Union.

Section 12 deletes section 192B and inserts a new section 192BA into the Taxes Consolidation Act 1997 (TCA). This section reflects the establishment of TUSLA (The Child and Family Agency) which took over certain functions from the Health Service Executive (HSE), such as the making of foster care payments and the introduction of additional foster care payment categories made on behalf of TUSLA. The amendment provides that certain payments made on behalf of the Child and Family Agency to carers, foster parents, relatives and young person's transitioning from care are exempt from income tax.

Section 13 inserts a new section 192G into the Taxes Consolidation Act 1997, which exempts from income tax training allowance payments made in accordance with a relevant scheme approved by the Minister for Education and Skills.

Section 14 inserts a new section 192F into the Taxes Consolidation Act 1997 to provide an exemption from income tax for certain payments made

on behalf of the Minister for Education and Skills in respect of student grants in accordance with the Student Support Act 2011.

Subsections (2) and (3) provide for the extension of the exemption to UK student support payments in addition to EU member state payments in certain circumstances.

Section 15 amends section 477C of the Taxes Consolidation Act 1997. That section provides income tax relief to assist first-time buyers with obtaining the deposit required to purchase or build their first home. The relief takes the form of a refund of income tax, including DIRT, paid over the four tax years prior to making an application for the refund. The scheme is set to expire on 31 December 2019. The amendment provides for an extension of the scheme, known as Help to Buy, in its current format by 2 years to 31 December 2021.

Section 16 amends section 774(6) of the Taxes Consolidation Act 1997 to provide tax relief for pension contributions made by a company to occupational pensions schemes set up for employees of another company in certain defined circumstances. In order to qualify:

- the contributions must be made on foot of a legally binding agreement between two or more companies, under a scheme of reconstruction, under a merger, under a division or under a joint venture;
- the scheme members are current or former employees of the parties to the agreement, or parties which are subject to the agreement; and
- the contributions would be deductible under section 774(6) TCA if the person making the contribution was the employer of the scheme members in respect of whom the contributions are paid.

Chapter 4

Income Tax, Corporation Tax and Capital Gains Tax

Section 17 provides for the extension of the property incentive scheme known as the Living City Initiative until 31 December 2022. Qualifying expenditure incurred on refurbishment or conversion work carried out up to this new termination date may qualify for tax relief under the scheme.

Section 18 provides for an amendment to the existing regime of tax relief for expenditure incurred on business cars. The CO_2 emissions thresholds which determine the amount of expenditure on business cars that can qualify for tax relief are being adjusted downwards. This provision will apply to expenditure incurred from 1 January 2021 except in cases where a contract for hire of a car is entered into, and the first payment under that contract is made, prior to that date.

Section 19 inserts a new paragraph into section 81(2) of the Taxes Consolidation Act 1997 to specify that taxes on income are not deductible in computing the amount of profits or gains chargeable to tax under Case I or II of Schedule D. This amendment is intended to clarify in legislation Revenue’s long-held view with regard to such taxes.

It also inserts a new subsection 4 to define the term “doubtful debts to the extent that they are respectively estimated to be bad” for corporation tax purposes. This amendment is required to take account of developments in accounting practice, resulting in the agreement of International Financial Reporting Standard (IFRS 9) for the calculation of impairment losses. This amendment is deemed to have applied as respects accounting periods beginning on or after 1 January 2018, the date from which users of IFRS were obliged to apply this standard.

Section 20 amends Schedule 4 to include Children's Health Ireland, Enterprise Ireland and the National Oil Reserves Agency Designated Activity Company in the list of specified non-commercial State-sponsored bodies that qualify for exemption from certain tax provisions under section 227 of the Taxes Consolidation Act 1997. This section exempts from income tax and corporation tax certain income arising to the specified bodies which would otherwise be chargeable to tax under Cases III, IV and V of Schedule D.

These State-sponsored bodies are non-profit making and/or are being made exempt from taxation in order to avoid circular payments in and out of the Exchequer.

The exemptions are to take effect from the dates of establishment in the case of Children's Health Ireland and Enterprise Ireland and from 1 January 2020 in the case of the National Oil Reserves Agency Designated Activity Company.

Section 21 amends section 845C to extend the treatment afforded to Additional Tier 1 instruments to comparable instruments, with equivalent characteristics to Additional Tier 1 instruments, issued by companies other than regulated financial institutions. Where a condition prescribed in respect of Additional Tier 1 instruments derives from the fact that Additional Tier 1 instruments are issued by financial institutions, the corresponding criterion in respect of an instrument issued by a non-financial institution will need to be modified accordingly to ensure that it is equivalent.

Section 22 amends subsections (2B) and (3)(d) of section 130 of the Taxes Consolidation Act 1997. The purpose of these amendments is to ensure that the status quo is maintained in relation to certain corporation tax measures or reliefs in the event of a disorderly exit of the UK from the EU.

Section 130(2)(d)(iv) is an anti-avoidance provision which acts to re-characterise interest as a distribution in certain circumstances. Section 130(2B) provides an exception from this treatment where the payment is to a company which is a resident of another EU Member State. The amendment to subsection (2B) will maintain this treatment for companies that are resident in the United Kingdom, in the event of a disorderly exit of the UK from the EU.

Section 130(3) provides that, where a company transfers assets or liabilities to its members or vice versa, the amount by which the market value of the amount or benefit received by the member exceeds the amount or value of any new consideration given by the member, is treated as a distribution. However, such transfers between Irish resident companies are not treated as distributions where one company is a subsidiary of the other or both are subsidiaries of another company which is resident in a "relevant Member State." The amendment to subsection (3)(d) will ensure that the current treatment continues to apply to Irish subsidiaries of UK-resident companies, in the event of a disorderly exit of the UK from the EU.

This section will come into operation from the day that Part 6 (the Taxation section) of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 comes into operation.

Section 23 amends section 172A to increase the rate of dividend withholding tax from the standard rate of income tax (20%) to a rate of 25% and increases the rate specified in section 153 in a similar manner.

Section 24 amends Chapter 2 Part 29 of the Taxes Consolidation Act 1997 (TCA) to include additional supports for micro and small companies who undertake Research and Development (R&D) activities. These measures,

which are subject to a commencement order by the Minister for Finance pending State aid approval from the European Commission, include:

- An increase in the R&D tax credit rate from 25% to 30%.
- The addition of an enhanced method to calculate the payable element of the R&D tax credit, based on twice the current year payroll liabilities.
- The introduction of a new provision to allow pre-trading R&D expenditure to qualify for an R&D tax credit, which is limited to offsets or repayments calculated by reference to payroll tax (PAYE and USC) and VAT liabilities for the same period.

The section also makes several changes to the operation of the credit more generally, including:

- Increasing, from 5% to 15%, the allowable limit on R&D expenditure outsourced to universities or institutes of higher education.
- It provides that grants funded by any State and/or the European Union must be deducted from qualifying R&D expenditure.
- A company which outsources to third parties must now notify in advance of, or on the day of, payment, if that company intends to make a claim for the R&D tax credit.
- It aligns the penalty application in respect of an R&D tax credit over claim to the penalty procedures for other credit over claims.
- It clarifies that where a payable amount or amount surrendered to a key employee is later withdrawn, then it is not permissible to use any offset of losses or credits to shelter the clawback of such an amount.

This section also amends section 765 TCA 1997 to allow capital expenditure on buildings or structures, which are scientific research, qualify for an allowance and where a company may qualify for a scientific capital allowance and the R&D tax credit, then both reliefs cannot be claimed in respect of the same expenditure.

The section also provides for a number of technical amendments involving the correction (through deletion, amendment or insertion of text) of incorrect or obsolete references.

Section 25 makes a number of amendments to Part 16 of the Principal Act, in respect of the Employment Investment Incentive (“EII”).

Three of the main changes are to section 502, where, from 8 October 2019, full tax relief will be available in the year in respect of which the investment is made. In addition, from 1 January 2020, the overall maximum investment relief amount allowed is increased from the current maximum of €150,000 to €250,000 and €500,000 depending on the length of the investment (4 years and 10 years respectively). There are associated technical amendments to ensure that, firstly, the conditions in relation to investments made prior to 8 October 2019 continue to apply and, secondly, that the anti-avoidance clawback provisions also apply to investments to be held for ten years. Finally, under section 502, a qualifying investor is obliged to provide information that Revenue may require in order to verify details of the investment, through electronic means that Revenue makes available.

The *section* also amends section 508J by obliging managers of a designated fund to return details of holdings of eligible shares, through the electronic means that Revenue make available, within 30 days of receiving the statement of qualification from a qualifying company. With effect from

1 January 2020, the choice as to the year of assessment that the deduction can be claimed, that has been available to designated funds, is removed by limiting the availability of the deduction to the year the amount was subscribed to the designated fund.

The *section* also clarifies the position that if a company buys back, redeems or repays any shareholder for shares in the company using EII investments within the compliance period, then there will be a reduction in the relief granted to all EII investors as a result; includes an additional circumstance as to the date on which interest under section 1080 can be applied; and applies a penalty for any failure to inform Revenue of an event occurring where relief would be withdrawn.

Chapter 5

Corporation Tax

Section 26 substitutes a new Part 35A of the Taxes Consolidation Act 1997 for the existing Part 35A (Transfer Pricing). The existing Part 35A sets out transfer pricing rules that apply the arm's length principle to trading transactions between associated persons. The new Part 35A updates existing transfer pricing rules and extends their scope and application.

The new Part 35A makes the following changes—

- It extends, subject to certain exceptions, the application of the arm's length principle to the computation of non-trading income, capital allowances and chargeable gains relating to transactions between associated persons. There is an exclusion from the application of transfer pricing rules to the computation of non-trading income where it relates to a transaction between certain associated persons who are chargeable to tax in the State on the profits or gains or losses arising from the transaction. In relation to the computation of capital allowances and chargeable gains, transfer pricing rules will only apply in respect of transactions relating to assets that have a market value of over €25 million.
- It updates the rules to require that "arm's length" be construed as far as practicable in accordance with the 2017 version of the OECD Transfer Pricing Guidelines. The rules previously referred to the 2010 version of the OECD Transfer Pricing Guidelines.
- It enhances transfer pricing documentation requirements, including requiring companies that are members of larger groups to prepare, and to provide to the Revenue Commissioners upon request, a local file and a master file in line with Annex I and II of Chapter V of the 2017 OECD Transfer Pricing Guidelines.
- It provides for a higher rate of penalty for larger taxpayers who fail to comply with a request to provide transfer pricing documentation to the Revenue Commissioners.
- To encourage full and timely compliance with transfer pricing documentation requirements, it provides for protection from tax-geared penalties, in the careless behaviour category, where a taxpayer prepares transfer pricing documentation and provides it to the Revenue Commissioners on a timely basis and the documentation demonstrates reasonable efforts to comply with transfer pricing legislation.

The updated transfer pricing rules apply for chargeable periods commencing on or after 1 January 2020 and, in respect of claims for capital

allowances, where the related capital expenditure is incurred on or after 1 January 2020.

The section removes, with effect for chargeable periods commencing on or after 1 January 2020, the existing exclusion from transfer pricing rules that applies for arrangements that were entered into before 1 July 2010. The section also provides for the removal of the exclusion from transfer pricing rules that currently applies for small and medium enterprises but sets out that these enterprises will either be fully exempt from transfer pricing documentation requirements or will have significantly reduced transfer pricing documentation requirements. Small and medium enterprises are to come within the scope of transfer pricing rules in the future on the making of an order by the Minister.

Section 27 amends section 110 of the Taxes Consolidation Act 1997 which deals with the taxation of securitisation companies. Revised transfer pricing rules are being introduced in Finance Bill 2019, however the profit participating note in section 110 companies cannot be made subject to the new transfer pricing rules without introducing a direct conflict in legislation. They are therefore being carved out from transfer pricing rules, but additional anti-avoidance provisions are being introduced in the Bill in tandem with this provision in order to strengthen the existing protections against abuse of the regime. These amendments broaden the definition of a specified person to increase the number structures that will be subject to section 110 anti-avoidance provisions. The amendments also place the tax avoidance main purpose test on an objective basis.

Section 28 makes a number of amendments to the Real Estate Investment Trust (REIT) regime, introduced by Finance Act 2013. This section:

1. Inserts a requirement that any expense deducted when calculating the REIT profits available for distribution must be incurred wholly and exclusively for the purposes of the REIT business and any excessive amounts are charged to tax in the hands of the REIT;
2. Provides that distributions comprising the proceeds of property disposals are subject to dividend withholding tax;
3. Provides that the REIT must either reinvest the proceeds of a property disposal in the REIT property business or distribute the proceeds within a 24 month period. Amounts not so reinvested or distributed will fall to be treated as part of the REIT's property income, 85% of which must be distributed annually; and
4. Provides that on the cessation of being a REIT or group REIT a deemed disposal and re-acquisition of REIT assets will occur only where the REIT or group REIT has been in existence for at least 15 years.

Measures 2) to 4) above took effect from Budget night by Financial Resolution.

Section 29 makes a number of amendments to the taxation of Irish Real Estate Funds (IREFs), introduced by Finance Act 2016.

The section -

- Amends the calculation of the amount on which IREF tax is levied to ensure that any gains which are reflected in the market value of the unit, but which are not reflected in the accounts of the IREF, are subject to IREF tax;
- Introduces two restrictions on deductions that can be made by an IREF in arriving at the surplus available for distribution: an interest restriction and a general restriction;

- The interest restriction has two aspects. The first places a debt cap on the IREF, with any interest on debt in excess of that cap giving rise to an adjustment. The second places a financing cost ratio on the IREF, with any interest costs in excess of that amount giving rise to an adjustment. In both cases, the adjustment is that the excess amount is charged to tax in the hands of the IREF;
- The general restriction requires that any other amount expensed in the accounts of the IREF is incurred wholly and exclusively for the purposes of the IREF business and any excessive amounts are charged to tax in the hands of the IREF;
- Introduces a charge to tax at the fund level in certain holder of excessive right situations; and
- Places the IREF return filing requirement on an annual footing.
- There are also a small number of technical amendments to ensure the section operates as intended.

The amendments in relation to restrictions on interest and market value took effect from Budget night via financial resolution.

The section also makes an amendment to Schedule 29 to provide for a penalty for non-compliance with the IREF return requirements.

Section 30 introduces anti-hybrid rules as required by Council Directive (EU) 2016/1164 of 12 July 2016 (the Anti-Tax Avoidance Directive or ATAD) and Council Directive (EU) 2017/952 of 29 May 2017 (the Anti-Tax Avoidance Directive 2 or ATAD2). The ATAD directives were agreed to ensure that EU Member States implemented certain OECD BEPS rules in a coordinated way.

The purpose of anti-hybrid rules is to prevent arrangements that exploit differences in the tax treatment of a financial instrument or an entity under the tax laws of two or more jurisdictions to generate a tax advantage; referred to as a mismatch outcome.

ATAD anti-hybrid rules apply to all corporate taxpayers, there is no de-minimis threshold. They apply to arrangements between associated enterprises. For this purpose, an entity is associated with another entity if it holds a certain percentage of the shares, voting rights or rights to profits in that other entity. Anti-hybrid rules may also apply to a "structured arrangement" that is not between associated entities, where a mismatch outcome is priced into the terms of an arrangement or an arrangement is designed to produce a mismatch outcome.

ATAD sets out a number of specific situations that give rise to a hybrid mismatch outcome and each of these situations is provided for separately in the legislation.

A double deduction mismatch outcome arises where two countries give a tax deduction for the same payment but only one country taxes the associated receipt. A deduction without inclusion mismatch outcome arises where one country gives a tax deduction for a payment but no country taxes the associated receipt. Finally, a withholding tax mismatch outcome arises where the transfer of a financial instrument is designed to produce relief for withholding tax to more than one of the parties involved in the transaction.

ATAD requires that Member States implement a "primary rule" to neutralise the hybrid mismatch in the country where the benefit from the mismatch arises. Where the mismatch is not neutralised by a primary rule, ATAD sets out occasions where a secondary or "defensive" rule may be implemented in the country where the other party to the mismatch is

situated. For each of the mismatch situations provided for in the legislation the primary rule operates by denying the entity a tax deduction in the State in respect of the relevant payment. The defensive rule only applies in certain circumstances and, where it does apply, it operates by either denying a deduction or including the relevant payment as taxable income of the entity, to be charged to tax in the State at the relevant rate.

The legislation applies to payments made or arising on or after 1 January 2020.

Section 31 amends section 739J of the Taxes Consolidation Act 1997, which provides that income and gains of an Investment Limited Partnership (ILP) are treated as arising or accruing to the individual partners in proportion to their share in the partnership rather than arising or accruing to the partnership. An ILP is a regulated common law partnership structure that does not have a separate legal personality.

The amendments correct the terminology in the section to replace references to a "unit" and a "unit holder" with references to a "partnership interest" and a "partner", which are the correct terms in the context of ILPs. The amendments also clarify how losses arising or accruing to an ILP are treated. These amendments apply to ILPs that are granted authorisation under section 8 of the Investment Limited Partnership Act 1994 on or after 1 January 2020.

These amendments are being introduced in conjunction with the introduction of ATAD Anti-Hybrid Rules to ensure that the existing treatment of ILPs is clear in legislation.

Section 32 amends section 1035A of the Taxes Consolidation Act 1997. This section provides for the removal of a potential liability to Irish tax that might arise to a non-resident who avails of the services of an independent authorised agent who is a regulated investment or asset manager resident in the State. The amendment updates the definition of an authorised agent to reflect updates to the appropriate regulatory provisions.

Section 33 inserts Chapter 3 into Part 28 of the Act. The chapter relates to the tax treatment of stock borrowing and repurchase (repo) arrangements.

In substance, both stock borrowing and repo agreements are a form of short-term lending and are reflected in the accounts of the participants as such. However, the form of the transaction involves the temporary transfer of the legal title of stock (e.g. shares) from one party to another, with a simultaneous commitment to reverse the transaction in the future.

This legislation operates to ensure the tax treatment follows the substance of such transactions where they are concluded within 12 months or less (being a short-term loan) where specified criteria are met.

These amendments are being introduced in conjunction with the introduction of ATAD Anti-Hybrid Rules to ensure that the existing treatment of stock borrowing and repurchase (repo) arrangements is clear in legislation.

Chapter 6

Capital Gains Tax

Section 34 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 2019. 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 2022. The amendment will come into effect by way of a Commencement Order made by the Minister for Finance.

Section 35 amends section 616(1) of the Taxes Consolidation Act 1997 which provides interpretations for the purposes of Chapter 1 of Part 20 of the Act. The purpose of these amendments is to ensure that the status quo is maintained in relation to certain corporation tax measures or reliefs in the event of a disorderly exit of the UK from the EU.

Section 616 provides that any reference to a company in that section and the following sections in Chapter 1 of Part 20, which relate to groups of companies and chargeable gains, is a reference to a company which is resident in an EU Member State or an EEA state with which this country has a double taxation treaty (with the exception of sections 617, 621 and 623 which have their own specific meaning for "group of companies").

The amendment will ensure that companies which are resident in the UK will continue to be regarded as being in a group of companies in the event of a disorderly Brexit, so that the reliefs in **sections 586** (company amalgamations by exchange of shares), **587** (company reconstructions and amalgamations), **618** (transfers of trading stock within a group) and **620** (replacement of business assets by members of a group) of the Act will continue to apply in the case of such companies. In addition, it will ensure that an immediate tax charge under section **625** of the Act will not arise solely as a result of the UK ceasing to be an EU Member State.

The amendment will apply from the day that Part 6 (the taxation section) of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 comes into operation.

Section 36 amends section 621 to correct an inconsistency in the treatment of an allowable loss in comparison with a chargeable gain in relation to certain share disposals involving a corporate group. In amending subsection (8) in relation to a chargeable gain, the amendment mirrors a previous amendment made in relation to the treatment of an allowable loss in subsections (6) and (7).

The amendment provides that the calculation of a gain on a share disposal is now put on a self-assessment basis instead of being determined by the inspector, in the first instance, or by the Appeal Commissioners on an appeal.

The amendment also clarifies that the reference to an appeal is to an appeal against an assessment rather than a separate appeal. In addition, an outdated reference to an appeal to a Judge of the Circuit Court is now deleted following the reform of the tax appeals process in 2015.

Section 37 amends section 627(2) of the Taxes Consolidation Act 1997 and introduces a new subsection (subsection (2A)) in that section. That legislation, which was introduced in Finance Act 2018, imposes a charge to exit tax, at the rate of 12.5%, on unrealised gains arising where a company migrates its residence or transfers assets offshore, such that they leave the charge to Irish tax. The legislation was introduced in line with Ireland's commitments to the Anti-Tax Avoidance Directive (ATAD). A minor technical amendment is also made to section 629B (1) of the Taxes Consolidation Act 1997.

This amendment addresses three issues. Firstly, it prevents the situation where the exit tax charge could unintentionally be circumvented. Secondly, it corrects a transposition error in the legislation introduced in Finance Act 2018 and brings the provision fully into line with Article 5 of the ATAD. Finally, it corrects an incorrect reference to a provision of the Finance Act 2018 in the legislation.

The amendment (apart from the correction of the incorrect reference which applies from 10 October 2018) was introduced by Financial Resolution and applies to disposals deemed to have been made on or after 9 October 2019.

PART 2

EXCISE

Chapter 1

Section 38 confirms the Budget increases in the rates of Tobacco Products Tax. These increases amount to 50 cent on a pack of 20 cigarettes in the most popular price category, on a VAT inclusive basis, with pro-rata increases on other tobacco products.

Section 39 confirms the Budget increase in the carbon component of Mineral Oil Tax on mineral oils used as auto fuels from 9 October 2019, and provides for an increase, from 1 May 2020, in the carbon component of Mineral Oil Tax on non-auto fuels and vehicle gas. The carbon charge is increased from €20 to €26 per tonne of CO_2 emitted. The horticultural relief provision is also amended to apply the increase in the carbon component to heavy oil and liquid petroleum gas that is used for horticultural production.

Section 40 makes a number of amendments to Finance Act 1999 to bring national law concerning fuel used for private pleasure navigation in line with Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, and Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene. The requirement to amend the relevant legislation has arisen from a ruling made by the Court of Justice of the European Union in October 2018.

The impact of these amendments will be the prohibition of the use of marked gas oil for private pleasure navigation from 1 January 2020. In addition, the scope of certain offences and penalties, provided for in General Excise law (Finance Act 2001) and in Mineral Oil Tax law (Finance Act 1999), will be extended to cover fuel used for private pleasure navigation. The offences and penalties regime for the misuse of reduced rate marked gas oil in private pleasure craft will be aligned with the regime applying to road vehicles.

Section 41 amends section 99A of the Finance Act 1999. The amendment provides for an enhanced relief under the Diesel Rebate Scheme where the average price (exclusive of VAT) of gas oil purchased by a qualifying road transport operator is greater than €1,070 per 1,000 litres (€1.07 per litre). The maximum repayment under the scheme of €75 per 1,000 litres (€0.075 per litre) is unchanged.

This measure will apply to purchases of gas oil made by a qualifying road transport operator on or after 1 January 2020.

Section 42 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 50,000 hectolitres per annum, relief is granted up to 30,000 hectolitres per annum.

Section 43 provides for the equalisation of the rates of Electricity Tax for business and non-business use from 1 January 2020. The rate for business use will change from €0.50 to €1.00 per megawatt hour.

Section 44 provides for an increase to the Natural Gas Carbon Tax rate arising from the carbon charge increase to €26 effective from 1 May 2020. The rate of Natural Gas Carbon Tax is increased to €5.22 per megawatt hour.

Section 45 provides for an increase to Solid Fuel Carbon Tax rates arising from the carbon charge increase to €26 effective from 1 May 2020.

Section 46 amends section 64 and section 77 of Chapter 1 of Part 2 of the Finance Act 2002 and inserts a new section 68A to that Act to provide a relief from betting duty and betting intermediary duty.

The relief will allow persons liable to betting duty and betting intermediary duty to reduce their liability by claiming a relief from such duty subject to a limit of €50,000 in a calendar year. The relief is subject to "de minimis" rules for State aid provided for under Commission Regulation 1407/2013. In the case where more than one person forms a single undertaking the total relief claimed by the single undertaking cannot exceed €50,000 in any calendar year. This amendment is subject to a commencement order.

Section 47 amends the definition of "European Union" in Section 96 of the Finance Act 2001, in respect of Italy, to exclude the territory of Livigno from, and include the territories of Campione d'Italia and the Italian waters of Lake Lugano, within the scope of Excise Law. This amendment transposes a legal measure that has been approved at EU level and will have effect from 1 January 2020.

Section 48 amends Section 130 of the Finance Act 1992 which provides interpretation (definitions) of various terms required for vehicle registration tax purposes in the State. Three new definitions are being added to cover certificates of conformity, foreign registration certificates and Nitrogen Oxide (NOx) emissions.

Section 49 amends Section 132 of the Finance Act 1992 by introducing a NOx charge which will become a component of the VRT chargeable on Category A vehicles (passenger cars and SUVs). The NOx charge will be calculated by reference to a vehicle's NOx emissions as recorded on the certificate of conformity or the previous registration certificate. A new table has been added to section 132 outlining the rates applicable and with the charge applying cumulatively.

The NOx charge will be capped at a maximum of €4,850 for diesel vehicles and €600 for other vehicles.

Section 50 amends Section 135C of the Finance Act 1992 by extending the VRT relief for hybrid electric vehicles and plug-in hybrid electric vehicles (PHEVs) until 31 December 2020. It *also* stipulates that hybrid electrics with CO_2 emissions in excess of 80 g/km and PHEVs with CO_2 emissions in excess of 65 g/km do not qualify for the VRT relief.

PART 3

VALUE-ADDED TAX

Section 51 is a definition section.

Section 52 amends Chapter 1 of Part 8 of the Value-Added Tax Consolidation Act 2010 -

a) In section 59, it amends the definition of 'qualifying vehicle' in subsection (1) to reflect the fact that the existing definition will no longer apply to motor vehicles that are first registered on or after 1 January 2021. Motor vehicles that are first registered on or after 1 January 2021 will be subject to a lower CO_2 emissions threshold

of less than 140g/km for the purposes of possible deduction in accordance with subsection (2)(d), and

It deletes subsection (2A) and removes the possibility of deducting VAT on services, under that subsection, used to effect a transfer of ownership of goods within the scope of transfer of business relief. The entitlement to deduction in respect of any such services is already provided for in section 59(2) of the VAT Act, and

b) In section 62A, subsection (1)(a), by removing the reference to subsection (2A) of section 59.

Section 53 amends section 108 of the Value-Added Tax Consolidation Act 2010 to ensure that the powers contained in section 108 can be used in respect of mutual assistance requests received by the Revenue Commissioners from other Member States under the provisions of Council Regulation 904/2010/EC on administrative cooperation and combating fraud in the field of Value-Added Tax.

Section 54 amends Part 2 of Schedule 3 to the Value-Added Tax Consolidation Act 2010 by inserting a new paragraph 3A to provide that food supplements will be subject to Value-Added Tax at a rate of 13.5 per cent. This measure takes effect from 1 January 2020.

PART 4

STAMP DUTIES

Section 55 is an interpretation section. It provides that in Part 4 of this Act the "Principal Act" means the Stamp Duties Consolidation Act 1999.

Section 56 amends Schedule 1 to the Stamp Duties Consolidation Act 1999 to give effect to the Budget increase in the rate of stamp duty applying to conveyances or transfers and lease premiums of non-residential property from 6% to 7 ½%. It amends section 83D (the residential development refund scheme) to take account of the new rate of 7½%. The formula used to calculate the refund due will be 11/15 (previously 2/3 of 6%) of the stamp paid.

The 6% rate will continue to apply for purchasers or lessees with binding contracts in place before 9 October 2019 (the executed instrument must contain a statement to this effect) and where the sale or lease is executed before 1 January 2020. The furnishing of an incorrect statement is to be regarded as a penalty offence for the purposes of section 1078 of the Taxes Consolidation Act 1997.

Section 57 (which is subject to a commencement order) amends section 124B of the Stamp Duties Consolidation Act 1999. It provides that Gibraltar-regulated assurers will continue to be liable to the current 1% levy on life assurance policies on their Irish business in the event of the UK leaving the EU.

*Section 58 (*which is subject to a commencement order) amends section 125 of the Stamp Duties Consolidation Act 1999. It provides that Gibraltar-regulated assurers will continue to be liable to the current 3% levy on non-life insurance policies on their business in the event of the UK leaving the EU.

Section 59 amends section 126AA of the Stamp Duties Consolidation Act 1999 in relation to a fixed annual levy of €150 million imposed on certain financial institutions. The levy is charged on the Deposit Interest Retention Tax (DIRT) paid by the relevant financial institutions in a series of base years. The levy is being increased from its current rate of 59% to

170% of the DIRT paid in the 2017 base year for payments due in the years 2019 and 2020. This measure came into effect on Budget night.

Section 60 inserts a new section 31D into the Stamp Duties Consolidation Act 1999. This imposes a stamp duty charge where there is an agreement to acquire a (target) company and the target company enters into a Court-approved scheme of arrangement involving the cancellation of its shares in accordance with the Companies Act 2014. Stamp duty is payable at the rate of 1% of the consideration paid to the shareholders for the cancellation of their shares as if the shares were being directly purchased. The stamp duty is payable by the acquirer. This measure came into effect on Budget night.

PART 5

CAPITAL ACQUISITIONS TAX

Section 61 is an interpretation section. It provides that, in Part 5, the Principal Act means the Capital Acquisitions Tax Consolidation Act 2003.

Section 62 amends section 48 Capital Acquisitions Tax Consolidation Act 2003 which sets out the information to be provided to the Revenue Commissioners and the Probate Office in respect of the estate of a deceased person. The amendment is being made in the context of the introduction of an electronic process for applying for probate or letters of administration. While some existing provisions relating to the probate process remain in section 48, a new section 48A now contains those provisions relating to the provision of information to Revenue. However, the detail about the information to be submitted, together with provision for the electronic submission of that information and related matters, will be contained in regulations to be made by Revenue under section 48A. Section 48A will be commenced by Ministerial order in tandem with the commencement of the required regulations.

Section 63 amends section 86 of the Capital Acquisitions Tax Consolidation Act 2003 which provides for an exemption from inheritance tax for beneficiaries inheriting certain dwelling houses. The amendment ensures that a dwelling house will not qualify for the exemption where a beneficiary-

- already has an interest in another dwelling house on the date of the inheritance (this is generally the date of death), or
- acquires an interest in another dwelling house from the same deceased person in the period after the date of inheritance and up to the time when the estate, or its residue, is available for distribution to beneficiaries.

In a situation where a beneficiary inherits a dwelling house that, at that time, qualifies for the exemption and subsequently acquires an interest in another dwelling house from the same deceased person, the due date from which interest on late payment is calculated is adjusted to allow additional time for the payment of inheritance tax on the cessation of the exemption.

Section 64 amends Schedule 2 to the Capital Acquisitions Tax Consolidation Act 2003. This Schedule deals with the computation of gift tax and inheritance tax. The amendment gives effect to the Budget announcement to increase the Group A tax-free threshold from €320,000 to €335,000. This is the Group threshold that applies primarily to gifts and inheritances from parents to their children. The increased threshold applies to gifts and inheritances taken on or after 9 October 2019.

PART 6

MISCELLANEOUS

Section 65 contains a definition of "Principal Act" (i.e. the Taxes Consolidation Act 1997) for the purposes of Part 6 of the Bill.

Chapter 3A

Section 66 inserts a new Chapter 3A after Chapter 3 of Part 33 of the Taxes Consolidation Act 1997. This new Chapter is being introduced to give effect to certain provisions of Directive 2011/16/EU, which was amended by Council Directive (EU) 2018/822 to introduce a mandatory disclosure regime for certain cross-border transactions that could potentially be used for aggressive tax planning. The new provisions introduce a requirement for persons referred to as "intermediaries", and taxpayers in some circumstances, to make a return to the Revenue Commissioners of information regarding cross-border arrangements with characteristics referred to as "hallmarks". The provisions set out the information that is to be reported to the Revenue Commissioners, the time limits for reporting, in what circumstances an exemption from reporting will be available and the penalties that will apply for failure to make a return. In accordance with the requirements of the Directive, the information received from intermediaries and taxpayers will be shared with other EU Member States. The Chapter comes into operation on 1 July 2020.

Section 67 makes several amendments in relation to the tax appeal procedures contained in Part 40A of the Taxes Consolidation Act (TCA) 1997 to facilitate improvements to the tax appeals process.

Paragraph (a) amends section 949T TCA 1997 to require the Appeal Commissioners to notify parties directed to attend a case management conference of the time and place for it, in line with the existing requirements for attendance at hearings.

Paragraph (b) amends section 949W TCA 1997 to require the Appeal Commissioners to stay proceedings, on the application of both parties to the appeal, to allow a Mutual Agreement Procedure (MAP) in relation to a dispute about double taxation to proceed. This amendment provides that proceedings are to be stayed until the conclusion of the MAP process. However, appeal proceedings can be continued prior to the conclusion of the MAP where either party to the appeal applies to the Appeal Commissioners for such a direction.

Paragraph (c) amends section 949AV TCA 1997 to allow the Appeal Commissioners to dismiss an appeal for failure to comply with a direction to attend a case management conference where they are not satisfied with a party's reasons for non-attendance.

Section 68 inserts a new chapter and section (Chapter 8, section 959AW) into Part 41A of the Taxes Consolidation Act 1997.

Section 959AW provides that an assessment or amended assessment will not be final and conclusive where, within 30 days of the date of a notice of assessment, the person on whom the assessment has been made pursues redress by way of a request for a mutual agreement procedure ("MAP"). This will enable the collection of disputed tax to be suspended in cases subject to a MAP.

The insertion of section 959AW will align the treatment of MAPs and domestic appeals, advancing Ireland's commitments to improving international tax dispute resolution mechanisms.

The section also amends section 959AF TCA (“Appeals in relation to assessments”) to insert a cross-reference to the new section 959AW.

Section 69 amends section 917K of the Taxes Consolidation Act 1997, which sets out the requirements for making and authenticating a hard copy of an electronic tax return as submitted to Revenue. The amendment deletes the requirement that the form of the hard copy should be approved by Revenue. Electronic filing of returns is now well-established and this requirement is no longer necessary.

Section 70 amends section 990 in the Taxes Consolidation Act 1997 (TCA) to allow the Revenue Commissioners to reduce a PAYE assessment downwards, without the taxpayer having to formally appeal the assessment. Section 989 TCA was deleted in Finance Act 2017 when PAYE modernisation was introduced with the result that the facility to reduce an assessment was inadvertently removed, necessitating a formal appeal by the taxpayer. This amendment reinstates the facility to reduce an assessment and avoids unnecessary appeals to the Tax Appeals Commission.

Section 71 amends section 1001 of the Taxes Consolidation Act (TCA) 1997. That section provides that, where a person holds a fixed charge on the book debts of a company and that company fails to pay its PAYE/PRSI/USC, VAT or Local Property Tax liability, the fixed charge holder is, on notification in writing from the Revenue Commissioners, liable for that tax, up to the amount paid by the company to the charge holder in discharge of its debt. Where the fixed charge holder notifies Revenue of the existence of the fixed charge within 21 days of its creation, the fixed charge holder’s liability is confined to amounts incurred by the company after the charge holder has been notified by Revenue of any potential liability under this section. The section does not currently provide for a notification procedure where a fixed charge has been transferred to another charge holder. This provision amends section 1001(3)(c) to allow charge holders, to whom a charge has been transferred to make the necessary notification to Revenue within 21 days of the transfer, allowing them to limit their liability under the section. Cases where fixed charges have already been transferred will have until 31 January 2020 to advise Revenue of the transfer in order to limit their liabilities under section 1001(3).

Section 72 amends Part 1 of Schedule 24A to the Taxes Consolidation Act 1997.

This Schedule lists all international tax agreements entered into by Ireland. Part 1 of the Schedule lists all the existing Double Taxation Agreements and is amended to add a new Double Taxation Agreement with the Kingdom of the Netherlands, which replaces an older agreement. Also added to the list is a Protocol to update the provisions of the existing Double Taxation Agreement with the Swiss Confederation.

These amendments to Schedule 24A will have effect from the passing of the Act and are the final step in the legislative and ratification procedure which will ensure that these agreements will have the force of law.

Section 73 and Schedule 2 provide for technical amendments to the—

- Taxes Consolidation Act 1997 (paragraph 1),
- Value-Added Tax Consolidation Act 2010 (paragraph 2),
- Capital Acquisitions Tax Consolidation Act 2003 (paragraph 3),
- Finance Act 1992 (paragraph 4), and
- Income Tax (Employments) (Consolidated) Regulations 2001 (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 74 deals with the "care and management" of taxes and duties.

Section 75 contains provisions relating to the short title, construction and commencement of the Bill.

An Roinn Airgeadais,
Deireadh Fómhair, 2019

Wt. —. 311. 10/19. Essentra. (80591). Gr. 30-15.