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**An Bille Airgeadais, 2019**  
**Finance Bill 2019**

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*Mar a ritheadh ag Dáil Éireann*

*As passed by Dáil Éireann*

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CONTENTS

PART 1

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

CHAPTER 1

*Interpretation*

Section

1. Interpretation (Part 1)

CHAPTER 2

*Universal Social Charge*

2. Amendment of section 531AN of Principal Act (rate of charge)

CHAPTER 3

*Income Tax*

3. Amendment of section 466A of Principal Act (home carer tax credit)
4. Amendment of section 472AB of Principal Act (earned income tax credit)
5. Sea-going naval personnel credit
6. Benefit-in-kind: emissions-based calculations
7. Amendment of section 204B of Principal Act (exemption in respect of compensation for certain living donors)
8. Amendment of section 205A of Principal Act (Magdalen Laundry payments)
9. Amendment of section 825C of Principal Act (special assignee relief programme)
10. Amendment of section 823A of Principal Act (deduction for income earned in certain foreign states)
11. Amendment of section 128F of Principal Act (key employee engagement programme)
12. Amendment of section 1032 of Principal Act (restrictions on certain reliefs)
13. Exemption of certain payments made or authorised by Child and Family Agency
14. Exemption in respect of training allowance payments

15. Exemption in respect of certain education-related payments
16. Amendment of section 477C of Principal Act (help to buy)
17. Amendment of section 774 of Principal Act (certain approved schemes: exemptions and reliefs)

#### CHAPTER 4

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

18. Living City Initiative
19. Amendment of Part 11C of Principal Act (emissions-based limits on capital allowances and expenses for certain road vehicles)
20. Amendment of section 81 of Principal Act (general rule as to deductions)
21. Amendment of Schedule 4 to Principal Act (exemption of specified non-commercial state sponsored bodies from certain tax provisions)
22. Amendment of section 845C of Principal Act (treatment of Additional Tier 1 instruments)
23. Amendment of section 130 of Principal Act (matters to be treated as distributions)
24. Amendment of Part 6 of Principal Act (distributions and dividend withholding tax)
25. Amendment of Chapter 2 of Part 29 of Principal Act (scientific and certain other research)
26. Amendment of Part 16 of Principal Act (relief for investment in corporate trades)
27. Transfer Pricing

#### CHAPTER 5

##### *Corporation Tax*

28. Amendment of section 110 of Principal Act (securitisation)
29. Amendment of Part 25A of Principal Act (real estate investment trusts)
30. Irish real estate funds
31. Hybrid mismatches
32. Amendment of section 739J of Principal Act (investment limited partnerships)
33. Amendment of section 1035A of Principal Act (relieving provision to section 1035)
34. Amendment of Part 28 of Principal Act (purchase and sale of securities)

#### CHAPTER 6

##### *Capital Gains Tax*

35. Amendment of section 604B of Principal Act (relief for farm restructuring)
36. Amendment of section 616 of Principal Act (groups of companies: interpretation)
37. Amendment of section 621 of Principal Act (depreciatory transactions in group)
38. Amendment of provisions relating to exit tax

#### PART 2

##### EXCISE

39. Rates of tobacco products tax

40. Amendment of Chapter 1 of Part 2 of, and Schedules 2 and 2A to, Finance Act 1999 (mineral oil tax)
41. Amendment of Chapter 1 of Part 2 of Finance Act 1999 (mineral oil tax)
42. Amendment of section 99A of Finance Act 1999 (relief for qualifying road transport operators)
43. Amendment of section 78A of Finance Act 2003 (relief for small breweries)
44. Amendment of Schedule 2 to Finance Act 2008 (electricity tax)
45. Amendment of section 67 of Finance Act 2010 (natural gas carbon tax rate)
46. Amendment of section 78 of, and Schedule 1 to, Finance Act 2010 (solid fuel carbon tax)
47. Amendment of Chapter 1 of Part 2 of Finance Act 2002 (betting duty relief)
48. Amendment of section 96 of Finance Act 2001 (interpretation (Part 2))
49. Amendment of section 130 of Finance Act 1992 (interpretation)
50. Amendment of section 132 of Finance Act 1992 (charge of excise duty)
51. Amendment of section 135C of Finance Act 1992 (remission or repayment in respect of vehicle registration tax, etc.)

### PART 3

#### VALUE-ADDED TAX

52. Interpretation (Part 3)
53. Amendment of Chapter 1 of Part 8 of Principal Act (general provisions)
54. Amendment of section 108 of Principal Act (inspection and removal of records)
55. Amendment of Part 2 of Schedule 3 to Principal Act (goods and services chargeable at the reduced rate)

### PART 4

#### STAMP DUTIES

56. Interpretation (Part 4)
57. Amendment of stamp duty rate on non-residential property
58. Amendment of section 124B of Principal Act (certain premiums of life assurance)
59. Amendment of section 125 of Principal Act (certain premiums of insurance)
60. Amendment of section 126AA of Principal Act (further levy on certain financial institutions)
61. Cancellation schemes of arrangement

### PART 5

#### CAPITAL ACQUISITIONS TAX

62. Interpretation (Part 5)
63. Amendment of section 48 of Principal Act (affidavits and accounts)
64. Amendment of section 86 of Principal Act (exemption relating to certain dwellings)
65. Amendment of Schedule 2 to Principal Act (computation of tax)

## PART 6

### MISCELLANEOUS

66. Interpretation (Part 6)
67. Mandatory automatic exchange of information in relation to reportable cross-border arrangements
68. Amendment of Part 40A of Principal Act (appeals to Appeals Commissioners)
69. Mutual agreement procedures
70. Amendment of section 917K of Principal Act (hard copies)
71. Amendment of section 990 of Principal Act (assessment of tax due)
72. Amendment of section 1001 of Principal Act (liability to tax, etc. of holder of fixed charge on book debts of company)
73. Amendment of Schedule 24A to Principal Act (arrangements made by the Government with the government of any territory outside the State in relation to affording relief from double taxation and exchanging information in relation to tax)
74. Miscellaneous technical amendments in relation to tax
75. Care and management of taxes and duties
76. Short title, construction and commencement

### SCHEDULE

#### MISCELLANEOUS TECHNICAL AMENDMENTS IN RELATION TO TAX

ACTS REFERRED TO

Betting Act 1931 (No. 27)  
Capital Acquisitions Tax Consolidation Act 2003 (No. 1)  
Child Care Act 1991 (No. 17)  
Companies Act 2014 (No. 38)  
Courts (Supplemental Provisions) Act 1961 (No. 39)  
Courts of Justice Act 1924 (No. 10)  
Finance (No. 2) Act 2008 (No. 25)  
Finance Act 1992 (No. 9)  
Finance Act 1999 (No. 2)  
Finance Act 2001 (No. 7)  
Finance Act 2002 (No. 5)  
Finance Act 2003 (No. 3)  
Finance Act 2005 (No. 5)  
Finance Act 2008 (No. 3)  
Finance Act 2010 (No. 5)  
Finance Act 2017 (No. 41)  
Finance Act 2018 (No. 30)  
Investment Limited Partnerships Act 1994 (No. 24)  
Social Welfare Consolidation Act 2005 (No. 26)  
Stamp Duties Consolidation Act 1999 (No. 31)  
Stock Exchange Act 1995 (No. 9)  
Student Support Act 2011 (No. 4)  
Succession Act 1965 (No. 27)  
Taxes Consolidation Act 1997 (No. 39)  
Value-Added Tax Consolidation Act 2010 (No. 31)  
Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act  
2019 (No. 8)





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AN BILLE AIRGEADAIS, 2019  
FINANCE BILL 2019

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# Bill

*entitled*

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 further provision in connection with finance including the regulation of customs. 5

**Be it enacted by the Oireachtas as follows:**

## PART 1

UNIVERSAL SOCIAL CHARGE, INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX 10

### CHAPTER 1

*Interpretation*

#### **Interpretation (*Part 1*)**

1. In this Part “Principal Act” means the Taxes Consolidation Act 1997.

CHAPTER 2 15

*Universal Social Charge*

#### **Amendment of section 531AN of Principal Act (rate of charge)**

2. Section 531AN of the Principal Act is amended in subsection (4) by substituting “2021” for “2020”.

CHAPTER 3 20

*Income Tax*

#### **Amendment of section 466A of Principal Act (home carer tax credit)**

3. (1) Section 466A of the Principal Act is amended in subsection (2) by substituting “€1,600” for “€1,500”.  
(2) *Subsection (1)* shall apply for the year of assessment 2020 and each subsequent year of assessment. 25

**Amendment of section 472AB of Principal Act (earned income tax credit)**

4. (1) Section 472AB of the Principal Act is amended in subsection (2) by substituting “€1,500” for “€1,350” in each place where it occurs.
- (2) *Subsection (1)* shall apply for the year of assessment 2020 and each subsequent year of assessment.

5

**Sea-going naval personnel credit**

5. (1) The Principal Act is amended—
- (a) in section 458, by inserting, in Part 2 of the Table to that section, “Section 472BB” after “Section 472BA”, and
- (b) by inserting the following after section 472BA:

10

**“Sea-going naval personnel credit**

**472BB.** (1) In this section—

‘day at sea’ means a cumulative period of 8 hours within any 24-hour period on patrol at sea on board a naval vessel;

‘naval vessel’ means a naval patrol vessel owned by the Minister for Defence;

15

‘qualifying individual’ means a permanent member of the Irish Naval Service who has spent at least 80 days at sea in a relevant period performing the duties of his or her employment;

‘relevant period’, in relation to a year of assessment, means the immediately preceding year of assessment.

20

(2) Where for the year of assessment 2020 an individual is a qualifying individual—

(a) he or she shall be entitled to a tax credit (to be known as the ‘sea-going naval personnel credit’) of €1,270, and

25

(b) relief shall not be given under section 472B or 472BA in respect of that year.”.

(2) This section shall apply for the year of assessment 2020.

**Benefit-in-kind: emissions-based calculations**

6. (1) Section 121 of the Principal Act is amended—
- (a) in subsection (2)(b)(iv) by substituting “2022” for “2021”,
- (b) in subsection (2)(b)(vi) by substituting “2022” for “2021”,
- (c) in subsection (3) by inserting the following after paragraph (b):

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“(c) This subsection is subject to subsection (4A) for the year of assessment 2023 and subsequent years.”,

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(d) in subsection (4), by inserting the following after paragraph (c):

“(d) This subsection is subject to subsection (4A) for the year of assessment 2023 and subsequent years.”,

and

(e) by inserting the following after subsection (4):

“(4A) (a) For the year of assessment 2023 and subsequent years, the cash equivalent of the benefit of a car shall be an amount determined by the formula—

$$\text{Original market value} \times A$$

where—

A is a percentage, based on vehicle categories as set out in Table B to this subsection, determined in accordance with column (3), (4), (5), (6) or (7), as the case may be, of Table A to this subsection.

(b) In Table A to this subsection, any percentage shown in column (3), (4), (5), (6) or (7), as the case may be, shall be the percentage applicable to any business mileage for a year of assessment which—

(i) exceeds the lower limit (if any) shown in column (1), and

(ii) does not exceed the upper limit (if any) shown in column (2),

opposite the mention of that percentage in column (3), (4), (5), (6) or (7), as the case may be.

(c) Where a car in respect of which this section applies in relation to a person for a year of assessment is made available to the person for part only of that year, the cash equivalent of the benefit of that car as respects that person for that year shall be an amount which bears to the full amount of the cash equivalent of the car for that year (ascertained under paragraph (a)) the same proportion as that part of the year bears to that year.

(d) For the purposes of this section, the vehicle categories set out in column (1) of Table B to this subsection refer to a car whose CO<sub>2</sub> emissions, determined by virtue of section 130 of Finance Act 1992, are set out in the corresponding entry in column (2) of Table B to this subsection.

TABLE A

Business mileage		Vehicle Categories				
lower limit (1)	upper limit (2)	A (3)	B (4)	C (5)	D (6)	E (7)
kilometres	kilometres	per cent	per cent	per cent	per cent	per cent
--	26,000	22.5	26.25	30	33.75	37.5
26,001	39,000	18	21	24	27	30

39,001	52,000	13.5	15.75	18	20.25	22.5
52,001	--	9	10.5	12	13.5	15

TABLE B

Vehicle Category (1)	CO <sub>2</sub> Emissions (CO <sub>2</sub> g/km) (2)
A	0g/km up to and including 59g/km
B	More than 59g/km up to and including 99g/km
C	More than 99g/km up to and including 139g/km
D	More than 139g/km up to and including 179g/km
E	More than 179g/km

5

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”.

(2) Section 121A of the Principal Act is amended—

(a) in subsection (2)(b)(iv) by substituting “2022” for “2021”,

(b) in subsection (2)(b)(vi) by substituting “2022” for “2021”,

(c) by substituting the following for subsection (3):

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“(3) The cash equivalent of the benefit of a van—

(a) for a year of assessment, other than a year of assessment referred to in paragraph (b), shall be 5 per cent of the original market value of the van, and

(b) for the year of assessment 2023 and subsequent years of assessment, shall be 8 per cent of the original market value of the van.”,

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(d) in subsection (4) by deleting “paragraph (b) of subsection (3),” and

(e) by inserting the following after subsection (4):

“(5) Where a van in respect of which this section applies in relation to a person for a year of assessment is made available to the person for part only of that year, the cash equivalent of the benefit of that van as respects that person for that year shall be an amount which bears to the full amount of the cash equivalent of the van for that year (ascertained under subsection (3)) the same proportion as that part of the year bears to that year.”.

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(3) The Finance (No. 2) Act 2008 is amended in section 6(1) by deleting paragraphs (b) (ii), (c)(iii) and (e).

**Amendment of section 204B of Principal Act (exemption in respect of compensation for certain living donors)**

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7. (1) Section 204B of the Principal Act is amended by inserting “or lobe of liver” after “kidney”.

(2) *Subsection (1)* shall be deemed to have come into operation on 12 March 2019.

**Amendment of section 205A of Principal Act (Magdalen Laundry payments)**

8. (1) Section 205A of the Principal Act is amended in subsection (1) by substituting the following for the definition of “relevant individual”:

“ ‘relevant individual’ means an individual who has received a payment referred to in paragraph (a) of the definition of ‘relevant payment’ in this subsection;”.

(2) *Subsection (1)* shall be deemed to have come into operation on 1 August 2013.

**Amendment of section 825C of Principal Act (special assignee relief programme)**

9. (1) Section 825C of the Principal Act is amended— 10

(a) in subsection (2A), by substituting “2022” for “2020”,

(b) in subsection (2B)(b)(i)—

(i) in subclause (B), by substituting “the tax year 2019 and subsequent tax years” for “the tax years 2019 and 2020”, and

(ii) in subclause (C), by substituting “2020 and subsequent tax years” for “2020”, and 15

(c) in subsection (4)(b), by substituting “2022” for “2020”.

(2) *Subsection (1)* shall apply for the year of assessment 2020 and each subsequent year of assessment.

**Amendment of section 823A of Principal Act (deduction for income earned in certain foreign states)** 20

10. Section 823A of the Principal Act is amended—

(a) in subsection (1), in the definition of “relevant state”, by substituting “2022” for “2020” in each place where it occurs, and

(b) in subsection (6) by substituting “2022” for “2020”. 25

**Amendment of section 128F of Principal Act (key employee engagement programme)**

11. (1) Section 128F of the Principal Act is amended—

(a) in subsection (1)—

(i) by inserting the following definitions after the definition of “qualifying company”:

“ ‘qualifying group’ means, subject to subsection (2A), a group of companies that consists of the following (and no other companies):

(a) a qualifying holding company,

(b) its qualifying subsidiary or subsidiaries, and

- (c) as the case may be, its relevant subsidiary or subsidiaries;  
‘qualifying holding company’ means a company—
- (a) which is not controlled either directly or indirectly by another company,
- (b) which does not carry on a trade or trades, and 5
- (c) whose business consists wholly or mainly of the holding of shares only in the following (and no other companies), namely, its qualifying subsidiary or subsidiaries and where it has a relevant subsidiary or subsidiaries, in that subsidiary or in each of them;”,
- (ii) by substituting the following for the definition of “qualifying individual”: 10
- “ ‘qualifying individual’, in relation to a qualifying share option, means an individual who throughout the entirety of the relevant period is—
- (a) in the case of a qualifying group, an employee or director of a qualifying company within the group, and who is required to work at least 20 hours per week for such a qualifying company or to devote not less than 75 per cent of his or her working time to such a qualifying company, and 15
- (b) in the case of a qualifying company not being a member of a qualifying group, an employee or director of the qualifying company, and who is required to work at least 20 hours per week for the qualifying company or to devote not less than 75 per cent of his or her working time to the qualifying company;”, 20
- (iii) by substituting the following definition for the definition of “qualifying share option”: 25
- “ ‘qualifying share option’, means a right granted to an employee or director of a qualifying company to purchase a predetermined number of shares in the qualifying company or, in the case of a qualifying group, in the qualifying holding company of the qualifying group, at a predetermined price, by reason of the individual’s employment or office in the qualifying company, where— 30
- (a) the shares which may be acquired by the exercise of the share option are ordinary fully paid up shares in the qualifying company or, in the case of a qualifying group, in the qualifying holding company, 35
- (b) the option price at date of grant is not less than the market value of the same class of shares at that time,
- (c) there is a written contract or agreement in place specifying—
- (i) the number and description of the shares which may be acquired by the exercise of the share option, 40
- (ii) the option price, and

- (iii) the period during which the share options may be exercised,
- (d) the total market value of all shares, in respect of which qualifying share options have been granted in the qualifying company or, in the qualifying holding company, to an employee or director does not exceed— 5
  - (i) €100,000 in any year of assessment,
  - (ii) €300,000 in all years of assessment, or
  - (iii) the amount of annual emoluments of the qualifying individual in the year of assessment in which the qualifying share option is granted, 10
- (e) the share option is exercised by the qualifying individual in the relevant period,
- (f) the shares are in a qualifying company or, in the case of a qualifying group, in the qualifying holding company, and
- (g) the share option cannot be exercised more than 10 years from the date of grant of that option;” 15
- (iv) by inserting the following definition after the definition of “qualifying share option”:
- “ ‘qualifying subsidiary’, in relation to a qualifying holding company, means a company in respect of which more than 50 per cent of its ordinary share capital is owned directly by the qualifying holding company;” 20
- (v) by substituting “individual;” for “individual.” in the definition of “relevant period”; and
- (vi) by inserting the following definition after the definition of “relevant period”: 25
  - “ ‘relevant subsidiary’, in relation to the qualifying holding company, means a company in respect of which more than 50 per cent of its ordinary share capital is owned indirectly by the qualifying holding company, but for the purposes of this section a relevant subsidiary in relation to a qualifying holding company shall not be regarded as a qualifying company.” 30
- (b) in subsection (2)(b), by inserting “or, in the case of a qualifying group, of the qualifying holding company,” after “qualifying company”,
- (c) in subsection (2), by substituting the following for paragraph (c):
  - “(c) where a qualifying individual is permitted to exercise a qualifying share option despite having ceased to be an employee or director of a qualifying company, the individual shall be deemed to satisfy the requirements as set out in the definition of ‘qualifying individual’ in subsection (1) in respect of the period the individual is not employed by a qualifying company, where the individual exercises the option within 90 days of the individual ceasing to hold the 35 40

employment or office concerned with the qualifying company.”,

(d) by inserting the following after subsection (2)—

“(2A) For the purposes of this section, a group of companies shall be treated as a qualifying group only where—

(a) throughout the entirety of the relevant period—

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(i) there is at least one qualifying company in the group which is a qualifying subsidiary,

(ii) the activities of the qualifying group, excluding the qualifying holding company, consist wholly or mainly of the carrying on of a qualifying trade,

10

(iii) each company in the qualifying group is an unquoted company none of whose shares, stock or debentures are listed on the official list of a stock exchange, or quoted on an unlisted securities market of a stock exchange, other than on—

(I) the market known as the Enterprise Securities Market of the Irish Stock Exchange, or

15

(II) any similar or corresponding market of the stock exchange in—

(A) a territory, other than the State, with the government of which arrangements having the force of law by virtue of section 826(1) have been made, or

20

(B) an EEA state other than the State,

and

(iv) each company in the qualifying group is not regarded as a company in difficulty for the purposes of the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>1</sup>,

25

and

(b) at the date of grant of the qualifying share option—

(i) the qualifying group is a micro, small or medium sized enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003<sup>2</sup> concerning the definition of micro, small and medium sized enterprises, and

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(ii) the total market value of the issued, but unexercised, qualifying share options of the qualifying holding company does not exceed €3,000,000.”,

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(e) by deleting subsection (4),

(f) in subsection (5)—

1 OJ No. C249, 31.7.2014, p. 1

2 OJ No. L124, 20.5.2003, p. 36

- (i) in paragraph (a), by inserting “or, in the case of a qualifying group, of the qualifying holding company,” after “qualifying company”,
- (ii) in paragraph (b), by inserting “or, in the case of a qualifying group, in the qualifying holding company” after “company” in both places where it occurs,
- (iii) in paragraph (c)(ii), by deleting “paragraphs (a) and (b) of”, and 5
- (iv) in paragraph (c), by substituting the following subparagraph for subparagraph (iii):
  - “(iii) throughout the relevant period, the company is a qualifying company or, in the case of a qualifying group, the holding company is a qualifying holding company.”, 10
- (g) by substituting the following for subsection (7):
  - “(7) Where in any year of assessment a qualifying company grants a qualifying share option under this section, allots any shares or transfers any asset in pursuance of such a right, or gives any consideration for the assignment or release in whole or in part of such a right, or receives notice of the assignment of such a right, the qualifying company shall deliver particulars thereof to the Revenue Commissioners, in a format approved by them, not later than 31 March in the year of assessment following that year.”, 15
- (h) by inserting the following subsection after subsection (7): 20
  - “(7A) Where in any year of assessment a company within a qualifying group grants a qualifying share option under this section, allots any shares or transfers any asset in pursuance of such a right, or gives any consideration for the assignment or release in whole or in part of such a right, or receives notice of the assignment of such a right, a qualifying company designated by the qualifying group shall deliver particulars thereof on behalf of the qualifying group to the Revenue Commissioners, in a format approved by them, not later than 31 March in the year of assessment following that year.”, 25
- (i) in subsection (8)— 30
  - (i) by inserting “, or, as the case may be, qualifying groups” after “qualifying companies”, and
  - (ii) in paragraph (a) by inserting “or, in the case of a qualifying group, of each member of it and a subsequent reference in this subsection to a ‘company’ shall, as appropriate, be construed as including a reference to each such member” after “company”, 35
- (j) by substituting the following subsection for subsection (10):
  - “(10) A company or group shall not be regarded as a qualifying company or, as the case may be, a qualifying group for the purposes of this section where the company, or in the case of a qualifying group, the company designated for the purposes of subsection (7A), fails to comply with subsection (7) or (7A)”, 40

and

(k) in subsection (11), by substituting “a qualifying company” for “the qualifying company”.

(2) *Subsection (1)* shall come into operation on such day or days as the Minister for Finance may appoint by order or orders, either generally or with respect to different provisions or purposes. 5

### **Amendment of section 1032 of Principal Act (restrictions on certain reliefs)**

**12.** (1) Section 1032 of the Principal Act is amended—

(a) in subsection (2)(c), by inserting “, or of the United Kingdom,” after “European Communities”, and 10

(b) in subsection (3), by inserting “or of the United Kingdom” after “European Communities”.

(2) *Subsection (1)* shall apply from the day (at the time thereon appointed in that behalf under the Act next mentioned) that Part 6 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 comes into operation. 15

### **Exemption of certain payments made or authorised by Child and Family Agency**

**13.** (1) Chapter 1 of Part 7 of the Principal Act is amended—

(a) by deleting section 192B, and

(b) by inserting the following section:

**“Exemption of certain payments made or authorised by Child and Family Agency 20**

**192BA.** (1) In this section—

‘carer’, in relation to an individual, means a person who is or was a foster parent or relative of the individual or who takes care of the individual on behalf of the Child and Family Agency; 25

‘foster parent’ has the meaning assigned to it in the Child Care (Placement of Children in Foster Care) Regulations 1995 (S.I. No. 260 of 1995);

‘Minister’ means the Minister for Children and Youth Affairs;

‘qualifying payment’ means a payment which is— 30

(a) (i) described in column (1) of the Table to this section,

(ii) paid on a basis specified in column (2) of that Table, and

(iii) made or authorised by the Child and Family Agency on behalf of the Minister,

or 35

(b) made in accordance with the law of any other Member State and which corresponds to a payment referred to in paragraph (a);

‘qualifying person’ means a carer, foster parent, relative or any other individual to whom a qualifying payment is made;

‘relative’ has the meaning assigned to it in the Child Care (Placement of Children with Relatives) Regulations 1995 (S.I. No. 261 of 1995).

- (2) A qualifying payment which is made to a qualifying person on or after 1 January 2020 shall be exempt from income tax and shall not be reckoned in computing the total income of the qualifying person for the purposes of the Income Tax Acts. 5
- (3) A qualifying payment which is made to a qualifying person before 1 January 2020 shall be treated as if it were exempt from income tax in the year of assessment in which it is made and shall not be reckoned in computing the total income of the qualifying person for that year of assessment for the purposes of the Income Tax Acts. 10

TABLE

Description of payment (1)	Basis on which payment is made (2)	15
Fostering Allowance	Child Care (Placement of Children in Foster Care) Regulations 1995 Section 39, Child Care Act 1991 Child Care (Placement of Children with Relatives) Regulations 1995 Section 36, Child Care Act 1991 Section 41, Child Care Act 1991	20
Enhanced Fostering Allowance	Child Care (Placement of Children in Foster Care) Regulations 1995 Section 39, Child Care Act 1991 Child Care (Placement of Children with Relatives) Regulations 1995 Section 36, Child Care Act 1991 Section 41, Child Care Act 1991	25 30
Supported Lodgings for Children in Care Allowance	Section 36(1)(d), Child Care Act 1991	
Aftercare Allowance	Section 45, Child Care Act 1991	
Aftercare Additional Financial Support	Section 45, Child Care Act 1991	35
Adoption Maintenance Allowance	Sections 6 and 44, Child Care Act 1991	
Supported Lodgings for Children	Section 5, Child Care Act 1991	

”.

- (2) Section 192BA(1) of the Principal Act (as inserted by *subsection (1)(b)*) is amended in paragraph (b) of the definition of “qualifying payment” by substituting “Member State or of the United Kingdom” for “Member State”.
- (3) *Subsection (2)* shall come into operation on such day as the Minister for Finance may

appoint by order.

**Exemption in respect of training allowance payments**

14. Chapter 1 of Part 7 of the Principal Act is amended by inserting the following section after section 192F (inserted by this Act):

**“Exemption in respect of training allowance payments**

5

**192G.** (1) In this section—

‘Minister’ means the Minister for Education and Skills;

‘qualifying payment’, means a payment, generally referred to and commonly known as a further education training allowance, which is made by or on behalf of the Minister to a qualifying individual—

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(a) who is undertaking an approved further education and training course under a scheme or schemes (which or each of which is referred to in the definition of ‘qualifying individual’ in this subsection as ‘the relevant scheme’) administered by or on behalf of the Minister, and

15

(b) who, if he or she were not undertaking such a course, would be in receipt of or eligible for a payment from the Minister for Employment Affairs and Social Protection;

‘qualifying individual’ means an individual who satisfies the conditions of the relevant scheme as may be specified from time to time by the Minister and the Minister for Employment Affairs and Social Protection.

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(2) A qualifying payment made to a qualifying individual on or after 1 January 2020 shall be exempt from income tax and shall not be reckoned in computing the total income of the qualifying individual for the purposes of the Income Tax Acts.

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(3) A qualifying payment which is made to a qualifying individual before 1 January 2020 shall be treated as if it were exempt from income tax in the year of assessment to which it relates and shall not be reckoned in computing the total income of the qualifying individual for that year of assessment for the purposes of the Income Tax Acts.”

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**Exemption in respect of certain education-related payments**

15. (1) Chapter 1 of Part 7 of the Principal Act is amended by inserting the following section after section 192E:

**“Exemption in respect of certain education-related payments**

35

**192F.** (1) In this section—

‘the Act’ means the Student Support Act 2011;

‘awarding authority’ has the same meaning as it has in the Act;

‘grant’ has the same meaning as it has in the Act;

‘Minister’ means the Minister for Education and Skills;

‘student’ has the same meaning as it has in the Act.

- (2) This section applies to—
- (a) a payment made by an awarding authority to or in respect of a student in accordance with a scheme or schemes of grants— 5
    - (i) made by the Minister under the Act, or
    - (ii) confirmed under section 29 of the Act,or
  - (b) a payment made— 10
    - (i) in accordance with the law of a Member State (other than the State), and 10
    - (ii) which corresponds to a payment referred to in paragraph (a).
- (3) A payment to which this section applies, which is made on or after 1 January 2020, shall be exempt from income tax and shall not be reckoned in computing total income for the purposes of the Income Tax Acts. 15
- (4) A payment to which this section applies, which is made before 1 January 2020, shall be treated as if it was exempt from income tax in the year of assessment to which it relates and shall not be reckoned in computing total income for the purposes of the Income Tax Acts.”. 20
- (2) Section 192F of the Principal Act (as inserted by *subsection (1)*) is amended in subsection (2)(b)(i), by the insertion of “or in the United Kingdom” after “(other than the State)”.
- (3) *Subsection (2)* shall come into operation on such day as the Minister for Finance may appoint by order. 25

#### **Amendment of section 477C of Principal Act (help to buy)**

**16.** Section 477C of the Principal Act is amended—

- (a) in subsection (1), in the definition of “qualifying period”, by substituting “2021” for “2019”,
- (b) in subsection (8)(b), by substituting “2017 to 2021” for “2017, 2018 or 2019”, 30
- (c) in subsection (16)(a)—
  - (i) in subparagraph (ii), by substituting “2021” for “2019”, and
  - (ii) in subparagraph (iii), by substituting “2021” for “2019”,and
- (d) in subsection (25), by substituting “2021” for “2019”. 35

**Amendment of section 774 of Principal Act (certain approved schemes: exemptions and reliefs)**

17. Section 774(6) of the Principal Act is amended—

(a) by inserting the following paragraph after paragraph (a):

“(aa) For the purposes of this section—

5

‘relevant contributor’ means a company (‘the first-mentioned company’) which pays contributions under an exempt approved scheme for the benefit of scheme members who are not its employees, where—

(i) the contributions are paid under the terms of a legally binding agreement between the first-mentioned company and another company or companies,

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(ii) the agreement was entered into—

(I) between 2 or more companies (including the first-mentioned company) within a group,

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(II) under a scheme of reconstruction or amalgamation,

(III) under a merger,

(IV) under a division, or

(V) under a joint venture,

(iii) the scheme members are either current or former employees of one of the parties to that agreement, and

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(iv) the contributions would qualify for relief under paragraph (c) if the scheme members were employees of the first-mentioned company;

‘group’ means 2 or more companies which satisfy the conditions for group relief under section 411;

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‘scheme of reconstruction or amalgamation’ has the same meaning as in section 615;

‘merger’ and ‘division’ have the same meaning as in section 638A;

‘joint venture’ means an agreement between 2 or more companies, other than within a group.”,

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and

(b) in paragraph (b), by inserting “or relevant contributor” after “an employer”.

*Income Tax, Corporation Tax and Capital Gains Tax***Living City Initiative****18.** The Principal Act is amended—

- (a) in section 372AAA, in the definition of “qualifying period”, by substituting “on 31 December 2022;” for “5 years after that date;”, and 5
- (b) in section 372AAD, in the definition of “relevant qualifying period”, by substituting “31 December 2022;” for “4 May 2020;”.

**Amendment of Part 11C of Principal Act (emissions-based limits on capital allowances and expenses for certain road vehicles)** 10**19.** (1) The Principal Act is amended in Part 11C—

## (a) in section 380L—

- (i) in subsections (3)(a), (4)(a), (5)(a)(I) and (6)(a), by substituting “A or B” for “A, B or C” in each place,
- (ii) in subsections (3)(b), (4)(b), (5)(a)(II) and (6)(b), by substituting “C” for “D or E” in each place, and 15
- (iii) in subsections (3)(c), (4)(c), (5)(a)(III) and (6)(c), by substituting “D, E, F or G” for “F or G” in each place,

and

## (b) in section 380M— 20

- (i) in paragraph (a), by substituting “A or B” for “A, B or C”,
- (ii) in paragraph (b), by substituting “C” for “D or E”, and
- (iii) in paragraph (c), by substituting “D, E, F or G” for “F or G”.

(2) *Subsection (1)* shall apply to expenditure incurred on the provision or hiring of a vehicle on or after 1 January 2021, except where, prior to that date— 25

- (a) the contract for the hire of the vehicle was entered into, and
- (b) the first payment required under that contract was made.

**Amendment of section 81 of Principal Act (general rule as to deductions)****20.** (1) Section 81 of the Principal Act is amended—

## (a) in subsection (2)— 30

- (i) in paragraph (o), by substituting “relief;” for “relief.”, and
- (ii) by inserting the following paragraph after paragraph (o):

“(p) any taxes on income.”,

and

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

“(4) In this section, ‘doubtful debts to the extent that they are respectively estimated to be bad’ means, in respect of a company, impairment losses as calculated in accordance with generally accepted accounting practice.”. 5

(2) *Subsection (1)(b)* shall be deemed to have applied as respects accounting periods beginning on or after 1 January 2018.

**Amendment of Schedule 4 to Principal Act (exemption of specified non-commercial state sponsored bodies from certain tax provisions)** 10

**21.** (1) Schedule 4 to the Principal Act is amended—

(a) by inserting the following paragraph after paragraph 20A:

“20B. Children’s Health Ireland.”,

(b) by inserting the following paragraph after paragraph 35:

“35A. Enterprise Ireland.”, 15

and

(c) by inserting the following paragraph after paragraph 74A:

“74AA. The National Oil Reserves Agency Designated Activity Company.”.

(2) (a) *Paragraph (a) of subsection (1)* shall be deemed to have effect from 4 December 2018. 20

(b) *Paragraph (b) of subsection (1)* shall be deemed to have effect from 23 July 1998.

(c) *Paragraph (c) of subsection (1)* shall have effect from 1 January 2020.

**Amendment of section 845C of Principal Act (treatment of Additional Tier 1 instruments)**

**22.** Section 845C of the Principal Act is amended in subsection (1) by substituting the following for the definition of “Additional Tier 1 instrument”: 25

“ ‘Additional Tier 1 instrument’ means an instrument—

(a) which qualifies, or has qualified, as an Additional Tier 1 instrument under Article 52 of the Capital Requirements Regulation, or

(b) which is an instrument that has not been issued by an institution within the meaning of Article 4 of the Capital Requirements Regulation but which satisfies conditions that, with any necessary modification of them by virtue of the fact that the instrument has not been issued by a foregoing institution, are equivalent to the conditions specified in Article 52 of the Capital Requirements Regulation;” 30 35

**Amendment of section 130 of Principal Act (matters to be treated as distributions)**

23. (1) Section 130 of the Principal Act is amended—

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

“(2B) Subsection (2)(d)(iv) shall not apply as respects interest, other than interest to which section 452 or 845A applies, paid to a company which is a resident of—

(a) a Member State, other than the State, or

(b) the United Kingdom,

and, for the purposes of this subsection—

(i) a company is a resident of a Member State if the company is by virtue of the law of that Member State resident for the purposes of tax (being any tax imposed in the Member State which corresponds to corporation tax in the State) in such Member State, and

(ii) a company is a resident of the United Kingdom if the company is by virtue of the law of the United Kingdom resident for the purposes of tax (being any tax imposed in the United Kingdom which corresponds to corporation tax in the State) in the United Kingdom.”,

and

(b) in subsection (3)(d), in the definition of “relevant Member State”—

(i) in subparagraph (i), by deleting “or”,

(ii) in subparagraph (ii), by substituting “made, or” for “made.”, and

(iii) by inserting the following after subparagraph (ii):

“(iii) the United Kingdom.”.

(2) This section shall apply from the day (at the time thereon appointed in that behalf under the Act next mentioned) that Part 6 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 comes into operation.

**Amendment of Part 6 of Principal Act (distributions and dividend withholding tax)**

24. (1) The Principal Act is amended—

(a) in section 153(6)(a) by substituting “25 per cent” for “the standard rate”,

(b) in section 172A(1)(a)—

(i) in the definition of “dividend withholding tax”, by substituting “a rate of 25 per cent” for “the standard rate in force at the time the relevant distribution is made”,

(ii) by substituting the following definition for the definition of “tax reference number”:

“ ‘tax reference number’ means—

- (i) in the case of an individual who is or was resident in the State, the Personal Public Service Number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) issued to the individual,
- (ii) in the case of a person, not being a person to whom subparagraph (i) applies, or other body who or which is within the charge to income tax or corporation tax in the State, the reference number stated on any return of income form or notice of assessment issued to the person or other body by an officer of the Revenue Commissioners, and
- (iii) in the case of any other person or body, the reference number stated on any return of income form or notice of assessment issued, or any other reference number allocated, to the person or body for the purposes of income tax or corporation tax or any tax which corresponds to income tax or corporation tax, by the tax authority of the country in which that person or other body is resident for the purposes of income tax or corporation tax or any tax which corresponds to income tax or corporation tax;”,
- and
- (iii) by inserting the following definition after the definition of “tax reference number”:
- “ ‘ultimate payer’ means the company, authorised withholding agent, qualifying intermediary or other person from whom a relevant distribution, or an amount or other asset representing a relevant distribution, is receivable by the person beneficially entitled to the distribution as referred to in paragraph (a), (b), (c) or (d), as the case may be, of section 172BA(1).”,
- and
- (c) by inserting the following section after section 172B:
- “Obligation on certain persons to obtain tax reference numbers of persons beneficially entitled to relevant distributions**
- 172BA.** (1) As respects relevant distributions made on or after 1 January 2021—
- (a) where the relevant distribution is made by a company directly to the person beneficially entitled to the relevant distribution, the company making the relevant distribution,
- (b) where the relevant distribution is not made by a company directly to the person beneficially entitled to the relevant distribution but is made to that person through an authorised withholding agent, the authorised withholding agent from whom the relevant distribution, or an amount or other asset representing the relevant distribution, is receivable by the person beneficially entitled to the distribution,
- (c) where the relevant distribution is not made by a company directly to the person beneficially entitled to the relevant distribution but is

made to that person through one or more qualifying intermediaries, the qualifying intermediary from whom the relevant distribution, or an amount or other asset representing the relevant distribution, is receivable by the person beneficially entitled to the distribution, and

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(d) where the relevant distribution is not made by a company directly to the person beneficially entitled to the relevant distribution but is made to that person through one or more other persons who is not, or not all of, or none of whom are, a qualifying intermediary, the person from whom the relevant distribution, or an amount or other asset representing the relevant distribution, is receivable by the person beneficially entitled to the distribution,

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shall, in advance of the making of such a relevant distribution and in respect of each person who is beneficially entitled to such a relevant distribution, take all reasonable steps to obtain the tax reference number of that person and shall keep as a record that tax reference number, and section 886 shall apply in relation to that record as it applies in relation to records within the meaning of that section.

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(2) The ultimate payer shall ensure that Article 5 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) is complied with when the ultimate payer is fulfilling the requirements of subsection (1).”

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(2) *Subsection (1)* shall have effect from 1 January 2020.

**Amendment of Chapter 2 of Part 29 of Principal Act (scientific and certain other research)**

25. (1) Section 765(1) of the Principal Act is amended—

(a) by substituting the following paragraph for paragraph (a):

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“(a) incurs capital expenditure on scientific research—

(i) other than on a building or structure, or

(ii) on any building or structure to the extent only that the construction or development of such building or structure is scientific research,”

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and

(b) in paragraph (c), by deleting “to the inspector”.

(2) Section 766 of the Principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a)—

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- (I) in subparagraph (ii) of the definition of “expenditure on research and development”, by deleting “or this Chapter”, and
- (II) in subparagraph (ii) of the definition of “relevant period”, by substituting “submitted” for “given to the appropriate inspector”,
- (ii) in paragraph (b)— 5
  - (I) in subparagraph (v)—
    - (A) in clause (I), by inserting “or the European Union” after “Member State”,
    - (B) in clause (II), by substituting “Member State or an institution, office, agency or other body of the European Union, or” for “Member State;”, and 10
    - (C) by inserting the following clause after clause (II):
      - “(III) a state, other than the State or a Member State referred to in clause (I), and any board, authority, institution, office, agency or other body in such state;”, 15
    - (II) in subparagraph (vii), by substituting “15” for “5”, and
    - (III) in subparagraph (viii)(II), by inserting “, in advance of making the payment or on the date the payment is made,” after “notifies that person in writing”,
  - and 20
- (iii) by inserting the following paragraph after paragraph (b):
  - “(c) In this Chapter, a ‘relevant micro or small sized company’ means a company which is a micro or small sized enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003<sup>3</sup> concerning the definition of micro, small and medium-sized enterprises.”, 25
- (b) in subsection (1A)(a), by deleting “or this Chapter”,
- (c) in subsection (2)—
  - (i) by deleting “to the appropriate inspector”, and
  - (ii) by inserting “, or 30 per cent where that company is a relevant micro or small sized company,” after “25 per cent”, 30
- (d) in subsection (2A)(a), by deleting “to the appropriate inspector”,
- (e) in subsection (3)(a), by deleting “to the appropriate inspector”,
- (f) in subsection (4B)(b)(i), by substituting “959A” for “950(1)”, and
- (g) in subsection (7B)— 35
  - (i) by substituting the following paragraph for paragraph (b):
    - “(b) (i) Any claim in respect of a specified amount or pursuant to

<sup>3</sup> OJ No. L124, 20.5.2003, p. 36

section 766C(4) shall be deemed for the purposes of section 1077E to be a claim in connection with a credit and, for the purposes of determining an amount in accordance with section 1077E(11) or 1077E(12), a reference to an amount of tax that would have been payable for the relevant periods by the person concerned shall be read as if it were a reference to a specified amount or an amount pursuant to section 766C(4). 5

(ii) Any claim in respect of subsection (4B), section 766A(4B) or pursuant to section 766C(4), as the case may be, that remains unpaid, shall be deemed for the purposes of section 1077E to be a claim in connection with a credit and, for the purposes of determining an amount in accordance with section 1077E(11) or 1077E(12), a reference to an amount of tax that would have been payable for the relevant periods by the person concerned shall be read as if it were a reference to the amount so claimed.”, 10 15

(ii) in paragraph (c)—

(I) by substituting the following subparagraph for subparagraph (i):

“(i) Subject to subparagraph (ii), where a company makes a claim in respect of a specified amount or pursuant to section 766C(4) and it is subsequently found that the claim is not as authorised by this section or by section 766A or 766C, as the case may be, then the company may be charged to tax under Case IV of Schedule D for the accounting period in respect of which the payment was made or the amount surrendered, as the case may be, in an amount equal to 4 times so much of— 20 25

(I) the specified amount, or

(II) the amount pursuant to section 766C(4),

as is not so authorised.”,

and 30

(II) by inserting the following subparagraph after paragraph (ii):

“(iii) An amount chargeable to tax under this paragraph shall be treated—

(I) as income against which no loss, deficit, expense or allowance may be set off, and 35

(II) as not forming part of the income of the company for the purposes of calculating a surcharge under section 440,

and no claim may be made under subsection (2), (4) or (4A) to reduce the corporation tax arising on an amount chargeable to tax under this paragraph.”, 40

and

- (iii) in paragraph (d), by substituting “an assessment is made” for “an inspector makes an assessment”.
- (3) Section 766A(1) of the Principal Act is amended—
- (a) in paragraph (a), in the definition of “relevant expenditure”, by deleting “or this Part”, and 5
- (b) in paragraph (b)(i)—
- (i) in clause (I), by inserting “or the European Union” after “Member State”,
- (ii) in clause (II), by substituting “Member State or an institution, body, office, agency or other body of the European Union, or” for “Member State;”, and
- (iii) by inserting the following clause after clause (II): 10
- “(III) a state, other than the State or a Member State referred to in clause (I), and any board, authority, institution, office, agency or other body in such state;”.
- (4) Section 766B(3) of the Principal Act is amended—
- (a) in paragraph (b)(ii)(II), by substituting “ends, or” for “ends.”, and 15
- (b) by inserting the following paragraph after paragraph (b):
- “(c) the aggregate amount of twice the payroll liabilities for each income tax month, within the meaning of section 983, that forms part of the relevant accounting period of a relevant micro or small sized company in which the expenditure is incurred.”. 20
- (5) The Principal Act is amended by inserting the following section after section 766B:
- “Tax credit for research and development expenditure for smaller companies**
- 766C.** (1) In this section—
- ‘payroll liabilities’ has the same meaning as in section 766B(1); 25
- ‘relevant micro or small sized company’ and ‘expenditure on research and development’ have the same meaning as they have in section 766;
- ‘tax liability’ means—
- (a) in respect of income tax collected under Chapter 4 of Part 42, payroll liabilities, other than those referred to in paragraph (b) of the definition of ‘payroll liabilities’ in section 766B, due and payable in respect of each income tax month, as defined in section 983, and 30
- (b) in respect of tax, within the meaning of section 2 of the Value-Added Tax Consolidation Act 2010, the amount due and payable 35
- for each taxable period within the meaning of section 76 of that Act,
- where that income tax month or taxable period, as the case may be, forms part of the accounting period in which the expenditure on

research and development was incurred.

- (2) This section shall apply to a relevant micro or small sized company which exists for the purposes of carrying on a trade but has not yet commenced to carry on that trade.
- (3) (a) In applying this subsection, the definition in section 766(1)(a) of ‘expenditure on research and development’ shall apply as if references to amounts being allowable for tax purposes were references to amounts which would be allowable for tax purposes, if the company had commenced to trade. 5
- (b) Notwithstanding subsection (1)(b)(vi) of section 766, a company to which this section applies may make a claim under subsection (2) of that section in an accounting period prior to commencing to trade, but, subject to subsection (7) of this section, no claim under subsection (2A) or (4B) of the said section 766 may be made in respect of expenditure referred to in paragraph (a). 10 15
- (4) Where a company makes a claim under subsection (3), and as respects any accounting period of that company, the amount by which the company is entitled to reduce corporation tax of the accounting period exceeds the corporation tax of the company for the accounting period, the company may make a claim to have that excess offset against the company’s tax liability for that accounting period, and where this results in an overpayment of the tax liability for that accounting period then, subject to section 960H, a refund may issue. 20
- (5) Notwithstanding subsection (4), no amount shall be surrendered to a tax liability where the emoluments to which the payroll liabilities relate remain unpaid 3 months after the end of the relevant accounting period. 25
- (6) Any claim under this section shall be made within 12 months from the end of the accounting period in which the expenditure on research and development, giving rise to the claim, is incurred. 30
- (7) Where a company has made a claim under this section and subsequently begins to trade, the expenditure calculated for the purposes of section 766(1)(b)(vi)(I) shall be determined by the formula—
- (A - B) 35
- where—
- A is equal to the total expenditure calculated for the purposes of section 766(1)(b)(vi)(I), and
- B is equal to the amount of tax liabilities reduced under subsection (4) divided by 0.30.”. 40
- (6) (a) This section, subject to *paragraphs (b) and (c)*, applies as respects accounting periods beginning on or after the date of the passing of this Act.

- (b) *Subsections (2)(c)(ii), (4)(b) and (5)* shall come into operation on such day or days as the Minister for Finance may by order or orders appoint and different days may be appointed for different purposes or different provisions.
- (c) *Subsection (1) and subsections (2)(a)(i)(I) and (b) and (3)(a)* shall apply to expenditure incurred on or after 1 January 2020. 5

**Amendment of Part 16 of Principal Act (relief for investment in corporate trades)**

26. (1) Section 497 of the Principal Act is amended—

- (a) in subsection (3)—
  - (i) by substituting “B – A” for “A – B”, and
  - (ii) by substituting “is the greater of” for “is the lesser of”, 10
 and
- (b) in subsection (4)—
  - (i) by deleting “(in this section referred to as the “relevant issue””,
  - (ii) by substituting “B – A” for “A – B”,
  - (iii) by substituting “is the greater of” for “is the lesser of”, and 15
  - (iv) by deleting “before the relevant issue”.

(2) Section 502 of the Principal Act is amended—

- (a) in subsection (2), by substituting “In respect of shares issued on or before 8 October 2019, a qualifying investor who makes a qualifying investment in a qualifying company shall be entitled, subject to this section, to relief for—” for “A qualifying investor who makes a qualifying investment in a qualifying company shall be entitled, subject to this section, to relief for—”, 20
- (b) by inserting the following after subsection (2):
  - “(2A) In respect of shares issued after 8 October 2019, a qualifying investor who makes a qualifying investment in a qualifying company shall be entitled, subject to this section, to relief for the full amount subscribed, which shall be given, subject to section 508J(4), as a deduction from his or her total income for the year of assessment in which the shares are issued.”, 25
- (c) by substituting the following for subsection (3): 30
  - “(3) (a) The maximum qualifying investment in respect of which an investor may claim relief under this Part is—
  - (i) €150,000 in respect of the year of assessment 2019,
  - (ii) in respect of the year of assessment 2020 and each subsequent year of assessment— 35
    - (I) €500,000 in respect of an investment to which paragraph (b) applies, or

- (II) €250,000 in respect of all other investments.
- (b) This paragraph applies to an investment in eligible shares where the investor undertakes not to dispose of those shares for a period of 7 years, and for the purposes of applying sections 508M and 508P to this investment, the definition of relevant period in section 488(1), shall be read as if the reference to ‘4 years’ were a reference to ‘7 years’.
- (c) A qualifying investor shall, for a qualifying investment, provide to the Revenue Commissioners, through such electronic means as the Revenue Commissioners make available, such information as the Revenue Commissioners may require for the purposes of paragraph (a).”
- and
- (d) in subsection (4) by substituting “In respect of shares issued on or before 8 October 2019, an amount shall not be given as a deduction under subsection (2) (b) unless in relation to a qualifying company and its qualifying subsidiaries—” for “An amount shall not be given as a deduction under subsection (2)(b) unless in relation to a qualifying company and its qualifying subsidiaries—”.
- (3) Section 508F of the Principal Act is amended—
- (a) in paragraph (a) of subsection (1) by inserting “or 502(2A)” after “under 502(2)(a)”, and
- (b) in paragraph (b) of subsection (1) by substituting “second stage” for “follow-on”.
- (4) (a) Section 508J of the Principal Act is amended, with effect from 8 October 2019—
- (i) by substituting the following for subsection (2):
- “(2) The managers of a designated fund shall, within 30 days of receipt of a statement of qualification, deliver to the Revenue Commissioners, through such electronic means as the Revenue Commissioners make available, a return of the holdings of eligible shares shown on statements of qualification received by them.”,
- and
- (ii) in subsection (4)—
- (I) by inserting “and” in paragraph (a) after “by the managers of a designated fund,”,
- (II) by deleting “and” in paragraph (b), and
- (III) by deleting paragraph (c).
- (b) Section 508J of the Principal Act is amended, with effect from 1 January 2020 by substituting “then the individual shall be entitled to relief, under section 502(2)(a) or 502(2A), as a deduction from his or her total income for the year of assessment in which the amount was subscribed to the designated fund.” for “then the individual may elect by notice in writing to the Revenue Commissioners to have the relief due under section 502(2)(a) given as a deduction from his or her total

income for the year of assessment in which the amount was subscribed to the designated fund, instead of (as provided for in section 502(2)(a)) as a deduction from his or her total income for the year of assessment in which the shares are issued.”.

- (5) Section 508R of the Principal Act is amended— 5
- (a) in subsection (1)—
- (i) in paragraph (a), by substituting the following for subparagraphs (i) and (ii):
- “(i) shares that belong to that individual, or
- (ii) shares that belong to another individual whose relief on those shares has been reduced by virtue of section 508P(3),” 10
- and
- (ii) in paragraph (b), by substituting the following for subparagraphs (i) and (ii):
- “(i) shares that belong to that individual, or
- (ii) shares that belong to another individual whose relief on those shares has been reduced by virtue of section 508P(3),” 15
- and
- (b) in subsection (9)—
- (i) in paragraph (a), by substituting “qualifying investment” for “relevant investment”, and
- (ii) in paragraph (b), by substituting “qualifying investment” for “relevant investment”. 20
- (6) Section 508V of the Principal Act is amended in subsection (3)—
- (a) in paragraph (d) by substituting “be,” for “be, or”,
- (b) in paragraph (e) by substituting “relief was claimed, or” for “relief was claimed.”, 25
- and
- (c) by inserting the following after paragraph (e):
- “(f) in the case of relief withdrawn in accordance with subsection (1)(b)(v), the date of the event the happening of which causes the relief to be withdrawn.”.
- (7) Section 508X of the Principal Act is amended in subsection (1)(a)(ii) by substituting 30
- “second stage” for “follow-on”.
- (8) Section 508Y of the Principal Act is amended by inserting the following after subsection (2):
- “(2A) A person who does not comply with subsection (2) shall be liable to a penalty of €3,000. 35
- (2B) Where the person mentioned in subsection (2A) is a company—
- (a) the company shall be liable to a penalty of €4,000, and

- (b) the secretary of the company shall be liable to a separate penalty of €3,000.”.

## Transfer Pricing

27. (1) The Principal Act is amended by substituting the following for Part 35A:

“PART 35A 5

### Transfer Pricing

#### Interpretation

835A. (1) In this Part—

‘arrangement’ means—

- (a) any transaction, action, course of action, course of conduct, scheme or plan, 10
- (b) any agreement, arrangement of any kind, understanding, promise or undertaking, whether express or implied and whether or not it is, or is intended to be, legally enforceable, or
- (c) any series of or combination of the circumstances referred to in paragraphs (a) and (b); 15

‘chargeable asset’ in relation to a person, means an asset which, if it were disposed of by the person, the gain accruing to the person would be a chargeable gain;

‘chargeable period’ has the same meaning as in section 321(2); 20

‘Commission Recommendation’ means Commission Recommendation 2003/361/EC of 6 May 2003<sup>4</sup> concerning the definition of micro, small and medium-sized enterprises;

‘double taxation relief arrangements’ means arrangements having effect by virtue of section 826; 25

‘group’ (other than in the definition of ‘transfer pricing guidelines’ in section 835D(1)) 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 which comprise the activities in the course of which, or with respect to which, that arrangement is made and shall include activities involving the disposal and acquisition of an asset or assets; 30

‘relevant person’, in relation to an arrangement, means a person who is within the charge to tax 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; 35

‘Revenue officer’ means an officer of the Revenue Commissioners;

4 OJ No. L124, 20.5.2003, p. 36

‘tax’ means income tax, corporation tax or capital gains tax.

- (2) References in this Part to ‘control’, in relation to a company, shall be construed in accordance with section 11.
- (3) For the purposes of this Part, references to losses that are chargeable to tax are references to losses arising from relevant activities, which are relevant activities, a profit or gain arising from which would be chargeable to tax. 5

### **Meaning of associated**

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

- (a) 2 persons are associated at any time if at that time— 10
  - (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,
- and 15
- (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—
  - (i) a company, and
  - (ii) controlled by the first person. 20
- (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.
- (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. 25

### **Basic rules on transfer pricing**

**835C.** (1) Subject to this Part, this section applies to any arrangement—

- (a) involving the supply and acquisition of goods, services, money, assets (including intangible assets) or anything else of commercial value, 30
- (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 35
- (c) the profits or gains or losses arising from the relevant activities are within the charge to tax in the case of either the supplier or the acquirer or both.
- (2) (a) If the amount of the consideration payable (in this Part referred to as the ‘actual consideration payable’) for an acquisition under any 40

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 shall be computed as if the arm's length amount were payable instead of the actual consideration payable.

- (b) If the amount of the consideration receivable (in this Part referred to as the 'actual consideration receivable') for a supply 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 shall be computed as if the arm's length amount were receivable instead of the actual consideration receivable. 5 10
- (3) In this section the 'arm's length amount' of consideration for a supply and acquisition under an arrangement refers to the amount of consideration that independent parties dealing at arm's length would have agreed in relation to the supply and acquisition and subsections (4) and (5) shall apply for the purposes of determining the amount of that consideration. 15
- (4) The arm's length amount of consideration for a supply and acquisition under an arrangement shall be determined by—
- (a) identifying the actual commercial or financial relations between the supplier and the acquirer and the conditions and economically relevant circumstances attaching to those relations (the 'identified arrangement'), and 20
- (b) applying the transfer pricing method set out in the transfer pricing guidelines (as defined in section 835D) that is, in the circumstances, the most appropriate so as to determine the arm's length amount of consideration for the identified arrangement. 25
- (5) For the purposes of subsection (4)(a)—
- (a) the identified arrangement shall be based on the substance of the commercial or financial relations between the supplier and the acquirer where the form of the arrangement is inconsistent with the substance of those relations, 30
- (b) if the identified arrangement, viewed in its totality, differs from that which would have been adopted by independent parties behaving in a commercially rational manner in comparable circumstances then, pursuant to the principles set out in Chapter I, D.2 of the transfer pricing guidelines, the identified arrangement shall be— 35
- (i) disregarded (and, for the purposes of subsection (2)(a), the profits or gains or losses that are chargeable to tax of a relevant person who is an acquirer in relation to that disregarded arrangement, shall be computed as if, instead of the actual consideration payable under the arrangement, no consideration were payable), or 40
- (ii) replaced by an alternative arrangement that achieves a

commercially rational expected result (and such replacement alternative arrangement shall be regarded as the identified arrangement accordingly).

- (6) The reference to a supply or acquisition of an asset in subsection (1)(a) shall, in relation to a chargeable asset, include a disposal or acquisition, as the case may be, of the chargeable asset and, without prejudice to the generality of the foregoing, any reference in section 835HB to a disposal of a chargeable asset shall for the purposes of this Part be construed as being a reference to a supply of the asset. 5
- (7) Where the actual consideration payable under an arrangement exceeds the arm's length amount and any amount of that excess is treated as a distribution under any provision of the Tax Acts, then for the purposes of computing the amount of profits or gains or losses of the acquirer that are chargeable to tax under Schedule D, subsection (2)(a) shall apply as if the reference in that subsection to the actual consideration payable were a reference to an amount equal to the actual consideration payable less the amount treated as a distribution and the references to the actual consideration payable by the first-mentioned person in subsections (1)(a) and (3) of section 835H shall be construed accordingly. 10 15 20
- (8) This section shall not apply to an arrangement involving a sale or transfer of trading stock to which section 89(4) applies.

#### **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 2019*, were contained in Article 9(1) of the Model Tax Convention on Income and Capital published by the OECD; 25

'OECD' means the Organisation for Economic Cooperation and Development; 30

'transfer pricing guidelines' means the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 10 July 2017 supplemented by—

- (a) the Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles - BEPS Actions 8-10, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris - approved on 4 June 2018 by the group known as the Inclusive Framework on Base Erosion and Profit Shifting, 35
- (b) the Revised Guidance on the Application of the Transactional Profit Split Method: Inclusive Framework on BEPS: Actions 8-10, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris - approved on 4 June 2018 by the group known as the Inclusive Framework on Base Erosion and Profit Shifting, and 40
- (c) such additional guidance, published by the OECD on or after the

date of the passing of the *Finance Act 2019*, as may be designated by the Minister for Finance for the purposes of this Part by order made under subsection (3).

- (2) For the purpose of computing profits or gains or losses chargeable to tax, this Part shall be construed to ensure, as far as practicable, consistency between— 5
- (a) the effect which is to be given to section 835C, and
  - (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 to the computation of the profits or gains or losses, regardless of whether such double taxation relief arrangements actually apply, 10
- but this section shall not apply for the purposes of 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 or losses. 15
- (3) The Minister for Finance may, for the purposes of this Part, by order designate any additional guidance referred to in paragraph (c) of the definition of ‘transfer pricing guidelines’ in subsection (1) as being comprised in the transfer pricing guidelines. 20
- (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 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. 25

**Modification of basic rules on transfer pricing for arrangements between qualifying relevant persons**

- 835E.**(1) For the purposes of this Part, ‘qualifying relevant person’ means a relevant person— 30
- (a) who is chargeable to income tax or corporation tax under Schedule D in respect of the profits or gains or losses arising from the relevant activities or who would be chargeable to corporation tax in respect of the profits or gains arising from the relevant activities but for section 129, 35
  - (b) who, where that person is chargeable to income tax in respect of the profits or gains or losses arising from the relevant activities, is resident in the State for the purposes of tax for the chargeable period or periods in which a charge arises, and
  - (c) who is not a qualifying company within the meaning of section 110. 40
- (2) This section shall apply to an arrangement involving a supplier and an acquirer who are qualifying relevant persons.

- (3) Where, in relation to an arrangement referred to in subsection (2), a supplier or an acquirer, as the case may be, is chargeable to tax under Schedule D, other than under Case I or II of Schedule D, in respect of the profits or gains or losses arising from the relevant activities, section 835C shall not apply in computing the amount of the profits or gains or losses arising to the supplier or the acquirer, as the case may be, from the relevant activities. 5
- (4) Subsection (3) shall not apply in the case of an arrangement involving a supplier and an acquirer who are qualifying relevant persons (in this subsection referred to as the ‘first-mentioned arrangement’) which is made as part of, or in connection with any scheme involving the acquirer in relation to the first-mentioned arrangement, or a person associated with the acquirer, entering into an arrangement with a person or persons who are not qualifying relevant persons (in this subsection referred to as the ‘second-mentioned arrangement’) and the sole or main purpose of the first-mentioned arrangement is to directly or indirectly obtain a tax advantage in connection with the second-mentioned arrangement. 10 15
- (5) For the purpose of subsection (4), ‘tax advantage’ has the same meaning as in section 811C. 20
- (6) A relevant person shall maintain and have available such records as may reasonably be required for the purposes of determining whether the requirements of this section are met.

**Small or medium-sized enterprise**

- 835F.** (1) For the purposes of this section— 25
- ‘Annex’ means the Annex to the Commission Recommendation;
- ‘medium enterprise’ means an enterprise which—
- (a) falls within the category of micro, small and medium-sized enterprises as defined in the Annex, and
- (b) is not a small enterprise as defined in the Annex; 30
- ‘small enterprise’ means a small enterprise as defined in the Annex.
- (2) For the purposes of subsection (1), the Annex shall have effect as if—
- (a) in the case of an enterprise which is in liquidation or to which an examiner has been appointed under Part 10 of the Companies Act 2014, the rights of the liquidator or examiner (in that capacity) were left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Part whether— 35
- (i) that enterprise, or
- (ii) any other enterprise (including that of the liquidator or examiner), 40
- 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 5
  - (ii) the financial amounts,
- were the data relating to the chargeable period of the enterprise concerned (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— 10
- (i) the second sentence of paragraph 1 of that Article,
  - (ii) paragraph 2 of that Article, and
  - (iii) paragraph 3 of that Article.
- (3) Section 835G shall not apply to a relevant person in a chargeable period if that person is a small enterprise for that chargeable period. 15
- (4) Section 835G shall apply to a relevant person who is a medium enterprise in a chargeable period only in respect of a relevant arrangement.
- (5) For the purposes of subsection (4), a relevant arrangement is an arrangement involving a relevant person who is a medium enterprise and— 20
- (a) in a case where the profits or gains or losses arising to the medium enterprise from the relevant activities are within the charge to tax under Schedule D— 25
  - (i) the other party to the arrangement is not a qualifying relevant person, and
  - (ii) the aggregate consideration accruing to, or payable by, the medium enterprise under the arrangement in the chargeable period exceeds €1 million, 30
- or
- (b) in a case where the arrangement involves the supply or acquisition of an asset, which constitutes a disposal or acquisition, as the case may be, of a chargeable asset for the purposes of the Capital Gains Tax Acts or corporation tax on chargeable gains— 35
  - (i) the other party to the arrangement (referred to in this paragraph as the ‘other person’) is not resident for the purposes of tax in the State and—
  - (I) where an asset is supplied to the other person under the arrangement, the asset is not, immediately after its 40

- acquisition by that other person, a chargeable asset, or
- (II) where an asset is acquired from the other person under the arrangement, the asset was not, immediately prior to its acquisition by the medium enterprise, a chargeable asset in relation to that other person, 5
- and
- (ii) the market value of the asset disposed of or acquired, as the case may be, exceeds €25 million.
- (6) Where section 835G applies to a relevant person who is a medium enterprise, for the purposes of subsection (2) of that section, the medium enterprise shall be required to provide the following information— 10
- (a) a description of the business of the medium enterprise, including its organisational structure, business strategy and key competitors, and
- (b) in relation to each relevant arrangement— 15
- (i) a copy of all relevant agreements,
- (ii) a description of the transfer pricing method used and the reasons the method was selected, along with evidence to support the price selected as being the arm's length amount,
- (iii) the amount of consideration payable or receivable, as the case may be, under the arrangement, and 20
- (iv) a description of the functions performed, risk assumed and assets employed.

### **Documentation and enquiries**

- 835G.** (1) In this section— 25
- ‘constituent entity’, ‘fiscal year’ and ‘MNE group’ have the same meanings as in section 891H but, as respects the application of the definition of ‘MNE Group’ in Article 1 of the OECD model legislation (as defined in section 891H) for the purpose of this section, that definition shall apply as if the words “and (ii) is not an Excluded MNE Group” were deleted therefrom; 30
- ‘local file’ means a report containing the information specified in Annex II to Chapter V of the transfer pricing guidelines;
- ‘local file revenue threshold’ means €50 million;
- ‘master file’ means a report containing the information specified in Annex I to Chapter V of the transfer pricing guidelines; 35
- ‘master file revenue threshold’ means €250 million;
- ‘relevant period’ means, in relation to a relevant person who is a constituent entity of an MNE group, the fiscal year of the MNE group that corresponds to the chargeable period of the relevant person and, if 40

a fiscal year of the MNE group does not exactly correspond with the chargeable period of the relevant person, the fiscal year of the MNE group that substantially coincides with the chargeable period of a relevant person.

- (2) A relevant person in relation to an arrangement to which section 835C(1) applies, and who is chargeable to tax in respect of the profits or gains or losses arising from the relevant activities, shall have available and, upon a request made in writing by a Revenue officer, shall provide such records as may reasonably be required for the purposes of determining whether, in relation to the arrangement, the profits or gains or losses of the person that are chargeable to tax have been computed in accordance with this Part. 5 10
- (3) The records referred to in subsection (2) shall include—
- (a) a master file where the relevant person is a constituent entity of an MNE group and the total revenue of the MNE group in the relevant period is at, or above, the master file revenue threshold, 15
  - (b) a local file where the relevant person is a constituent entity of an MNE group and the total revenue of the MNE group in the relevant period is at, or above, the local file revenue threshold.
- (4) Subsection (2) shall not apply in the case of an arrangement all the terms of which were agreed before 1 July 2010, and which have not changed on or after that date, where, in relation to the arrangement, the supplier and the acquirer are qualifying relevant persons. 20
- (5) (a) The records referred to in subsections (2) and (3) shall be prepared no later than the date on which a return for the chargeable period concerned is required to be delivered. 25
- (b) Where a Revenue officer makes a request in writing under subsection (2), the relevant person shall provide the records referred to in subsections (2) and (3) to the Revenue Commissioners within 30 days from the date of the request. 30
- (6) (a) Where a relevant person fails to comply with a requirement to furnish information to a Revenue officer in accordance with subsection (5)(b), the person shall be liable to a penalty of €4,000, but this is subject to paragraph (b).
- (b) Where the relevant person is a person who falls within subsection (3)(b), the penalty specified in paragraph (a) shall be €25,000 and, if the failure referred to in that paragraph, on the part of that person, continues, that person shall be liable to a further penalty of €100 for each day on which the failure continues. 35
- (7) (a) In this subsection— 40
- ‘return’ and ‘specified return date for the chargeable period’ have the same meanings as in section 959A;
  - ‘transfer pricing adjustment’ means any increase in the profits or

gains included in a return delivered by a relevant person on or before the specified return date for the chargeable period because, by virtue of section 835C, the profits or gains or losses of a relevant person that are chargeable to tax are computed as if, instead of the actual consideration payable or receivable under an arrangement, the arm's length amount were payable or receivable, as the case may be. 5

(b) Where the conditions set out in paragraph (c) are met, a transfer pricing adjustment shall not be taken into account in determining whether a penalty referred to in section 1077E(5) applies to the relevant person for a chargeable period or in computing the amount of any such penalty. 10

(c) The conditions referred to in paragraph (b) are—

(i) the relevant person has, for the chargeable period, prepared the records referred to in subsection (2), and where applicable subsection (3), within the time specified in subsection (5)(a), 15

(ii) the relevant person provides the records referred to in subparagraph (i) to a Revenue officer within the time specified in subsection (5)(b), and

(iii) the records referred to in subparagraph (i) are complete and accurate and demonstrate that, notwithstanding the transfer pricing adjustment, the relevant person has made reasonable efforts to comply with this Part in determining the amount of the actual consideration payable or the actual consideration receivable, as the case may be, under the arrangement. 20 25

(8) Subsection (3) of section 886 shall apply to the records referred to in subsections (2) and (3) as it applies to records required by that section.

### **Elimination of double counting**

**835H.** (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 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 30 35

(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 40

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. 5
- (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 any 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. 10 15
- (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 subsection (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. 20 25
- (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 30
  - (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. 35
- (b) An election under paragraph (a)(iii) shall be made by notice in writing to the Revenue officer on or before the specified return date for the chargeable period (within the meaning of section 959A) 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. 40

- (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.

### **Interaction with capital allowances provisions**

**835HA.** (1) Section 835C shall not apply in computing the amount of—

- (a) any allowances to be made to the acquirer under the provisions of the Tax Acts in respect of capital expenditure incurred on an asset where the total amount of capital expenditure incurred on the asset does not exceed €25 million, 5
- (b) any allowances to be made to the acquirer in respect of capital expenditure incurred on a specified intangible asset to which section 291A applies in circumstances where, under section 288(3C), the amount of that expenditure is deemed, for the purposes of Chapters 2 and 4 of Part 9, to be the amount of expenditure still unallowed on the specified intangible asset, 10
- (c) any balancing allowance or balancing charge to be made to, or on, the supplier of an asset under the provisions of the Tax Acts where at the time of the event giving rise to the balancing allowance or balancing charge, as the case may be, the market value of the asset does not exceed €25 million, or 15
- (d) any allowances to be made to an acquirer in respect of capital expenditure incurred on an asset, or any balancing allowance or balancing charge to be made to, or on, the supplier in respect of the supply of that asset, in circumstances where— 20
- (i) the acquirer and supplier make a joint election under— 25
- (I) section 289(6), or
- (II) section 312(5)(a),
- (ii) the supply and acquisition of the asset occurs as part of the transfer of the whole or part of a trade to which— 30
- (I) section 308A(3),
- (II) section 310(3),
- (III) section 400(6),
- (IV) section 631(2), or
- (V) section 670(12),
- applies,
- (iii) the supply and acquisition of the asset occurs in the course of a merger to which section 633A applies, 35
- (iv) the supply and acquisition is of an interest in farm land to which section 658(9) applies,
- (v) the supply and acquisition of the asset occurs in the course of a conversion of a building society to a company, to which 40

paragraph 1 of Schedule 16 applies, or

- (vi) the supply and acquisition of the asset occurs in the course of a transfer, to which paragraph 2 of Schedule 17 applies, from a trustee savings bank to a successor company.

- (2) (a) In determining whether, for the purposes of subsection (1)(a), the capital expenditure incurred on an asset (referred to in this paragraph as the ‘first-mentioned asset’) exceeds €25 million (referred to in this paragraph and paragraph (b) as the ‘€25 million threshold’), there shall be added to the capital expenditure incurred on that asset any capital expenditure incurred on another asset where—
  - (i) that other asset had, at any time, formed part of the same asset as the first-mentioned asset, and
  - (ii) as part of a scheme to avoid reaching the €25 million threshold in relation to the first-mentioned asset and the other asset, was acquired by the acquirer under a separate arrangement.
- (b) In determining whether, for the purposes of subsection (1)(c), the market value of an asset (referred to in this paragraph as the ‘first-mentioned asset’) exceeds the €25 million threshold, there shall be added to the market value of that asset the market value of any other asset which—
  - (i) had at any time formed part of the same asset as the first-mentioned asset, and
  - (ii) as part of a scheme to avoid reaching the €25 million threshold in relation to the first-mentioned asset and the other asset, was supplied by the supplier under a separate arrangement.
- (3) Where section 835C applies in computing any deductions or additions to be made to the acquirer or supplier of an asset, as the case may be, in respect of allowances and charges relating to capital expenditure on an asset—
  - (a) subject to subsection (4), this Part shall apply notwithstanding any provision in Part 9, 10, 23, 24, 24A, 29 or 36 or Schedule 18B as to the computation of allowances or charges relating to capital expenditure, and
  - (b) the amount of any balancing charge to be made on the supplier of an asset shall not exceed the amount of capital expenditure incurred by the supplier on that asset.
- (4) Section 835C shall not apply instead of any other provision of Part 9, 10, 23, 24, 24A, 29 or 36 or Schedule 18B if its application would result in the amount of—
  - (a) any allowances to be made to an acquirer in respect of capital expenditure incurred on an asset being higher, or

- (b) any balancing allowance to be made to a supplier arising from the supply of an asset being higher, or
  - (c) any balancing charge to be made on a supplier arising from the supply of an asset being lower,
- than would be the case under the provision or provisions concerned of Part 9, 10, 23, 24, 24A, 29 or 36 or Schedule 18B. 5
- (5) Where, subject to this section, section 835C applies in computing the amount of any allowances to be made to an acquirer in respect of capital expenditure incurred on a specified intangible asset (within the meaning of section 291A), section 291A(3) shall, in each chargeable period, apply with any necessary modifications to give effect to section 835C(2)(a). 10

**Interaction with provisions dealing with chargeable gains**

- 835HB.** (1) Subject to this section, section 835C shall apply for the purposes of computing— 15
- (a) the amount of any chargeable gain or allowable loss arising to a supplier on the supply of an asset under an arrangement to which section 835C applies which, for the purposes of the Capital Gains Tax Acts or the Corporation Tax Acts in so far as they apply to chargeable gains, constitutes a disposal of a chargeable asset, and 20
  - (b) in the case of an acquirer of an asset under an arrangement to which section 835C applies, the amount of any consideration for the acquisition of the asset which is taken into account in determining the amount of any gain arising to the person on a subsequent supply of the asset, which for the purposes of the Capital Gains Tax Acts or the Corporation Tax Acts in so far as they apply to chargeable gains, constitutes a disposal of a chargeable asset. 25
- (2) Section 835C shall not apply in computing the amount of any chargeable gain or allowable loss arising to a supplier on the disposal of a chargeable asset under an arrangement where— 30
- (a) the market value of the asset does not exceed €25 million,
  - (b) the asset is disposed of in circumstances where it is treated for the purposes of corporation tax on chargeable gains or capital gains tax, under— 35
    - (i) section 615(2),
    - (ii) section 617(1),
    - (iii) section 632(1),
    - (iv) section 633,
    - (v) section 633A, 40
    - (vi) section 702(2), or

- (vii) paragraph 5(2) of Schedule 17,  
as having been acquired for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the person making the disposal,
- (c) the asset is transferred in the course of a conversion of a building society into a successor company to which paragraph 3(1) of Schedule 16 applies, 5
- (d) section 606(2) applies in relation to the disposal of the asset, or
- (e) the asset is disposed of by a person who is an individual to a company and, immediately after its acquisition by the company, the asset is a chargeable asset in relation to that company. 10
- (3) Section 835C shall not apply for the purpose of determining the amount of any consideration for the acquisition of a chargeable asset by an acquirer where—
- (a) the market value of the chargeable asset acquired does not exceed €25 million, or 15
- (b) for the purposes of corporation tax on chargeable gains or capital gains tax, under—
- (i) any of the provisions mentioned in subparagraphs (i) to (vi) of subsection (2)(b) or paragraph 5(3) of Schedule 17, or 20
- (ii) section 631(3),  
the acquirer is treated as if the acquisition of the asset by the person making the disposal had been the acquirer's acquisition of the asset.
- (4) In determining whether, for the purposes of subsection (2)(a) or (3)(a), the market value of an asset (referred to in this subsection as the 'first-mentioned asset') exceeds €25 million (referred to in this subsection as the '€25 million threshold'), there shall be added to the market value of that asset the market value of any other asset which— 25
- (a) had at any time formed part of the same asset as the first-mentioned asset, and 30
- (b) as part of a scheme to avoid reaching the €25 million threshold in relation to the first-mentioned asset and the other asset, was supplied or acquired by the supplier and acquirer, as the case may be, under a separate arrangement. 35
- (5) (a) Where—
- (i) the gain of a supplier chargeable to tax in relation to the disposal of a chargeable asset is, by virtue of section 835C, computed as if, instead of the actual consideration receivable for the disposal under an arrangement, the arm's length amount were receivable, and 40

- (ii) the asset is, in relation to the acquirer under the arrangement, a chargeable asset,
- then the acquirer shall be treated as having acquired the asset for a consideration equal to the arm's length amount.
- (b) Paragraph (a) shall not apply in relation to an arrangement unless and until any tax due and payable for the chargeable period by the supplier mentioned in paragraph (a)(i) in respect of the disposal, the gain on which was, by virtue of section 835C, computed as if, instead of the actual consideration receivable under the terms of the arrangement, the arm's length amount were receivable, has been paid. 5 10
- (6) (a) Where section 835C applies in computing the amount of any chargeable gain or allowable loss arising to the supplier on a disposal of a chargeable asset under an arrangement, or in treating the acquirer as having acquired an asset under an arrangement for a consideration equal to the arm's length amount then, subject to paragraph (b), this Part shall apply notwithstanding any other provision of Part 19, 20 or 22 or Schedule 14 as to the computation of chargeable gains and allowable losses. 15
- (b) Section 835C shall not apply instead of any other provision of Part 19, 20 or 22 or Schedule 14— 20
- (i) if its application would result—
- (I) in the amount of any chargeable gain arising to the supplier on a disposal of a chargeable asset under an arrangement being lower, or 25
- (II) the amount of any allowable loss arising to the supplier on a disposal referred to in clause (I) being higher,
- or
- (ii) if, by virtue of its application, the acquirer would be treated as having acquired an asset under an arrangement for a consideration that is higher, 30
- than would be the case under the provision or provisions concerned of Part 19, 20 or 22 or Schedule 14.”.
- (2) (a) *Subsection (1)* shall apply for chargeable periods commencing on or after 1 January 2020. 35
- (b) *Subsection (1)* shall not apply as respects an allowance (other than a balancing allowance) to be made to a person in a chargeable period commencing on or after 1 January 2020 in respect of capital expenditure incurred on an asset before 1 January 2020.
- (3) The substitution provided by *subsection (1)* (and as it has effect by virtue of *subsection (2)(a)*) shall be construed so that the manner in which that substitution operates, as it relates to the replacement of section 835E (the “existing relevant 40

section”) by section 835F (the “new relevant section”) set out in *subsection (1)*, is as specified in *subsection (4)*.

(4) The foregoing manner of operation is as follows:

(a) the existing relevant section shall remain in operation, and bear the numbering, section 835EA, until, and 5

(b) the new relevant section shall come into operation on,

such day, and as respects such chargeable periods, as the Minister for Finance appoints by order.

(5) (a) Section 42 of the Finance Act 2010 is amended in subsection (2) by deleting “other than any such arrangement the terms of which are agreed before 1 July 2010”. 10

(b) *Paragraph (a)* shall apply for chargeable periods commencing on or after 1 January 2020.

#### CHAPTER 5

#### *Corporation Tax*

15

#### **Amendment of section 110 of Principal Act (securitisation)**

**28.** Section 110 of the Principal Act is amended—

(a) in subsection (1)—

(i) in the definition of “specified person” in subsection (1)—

(I) in paragraph (a), by deleting— 20

“where ‘controls’ and ‘controlled’ have the same meanings as they would have by the application of section 11 to this paragraph,”

and

(II) in paragraph (b), by inserting after subparagraph (ii) the following:

“(iia) to whom loans or advances held by the qualifying company were made, or”, 25

and

(ii) by inserting the following definition:

“ ‘significant influence’ means a person with the ability to participate in the financial and operating decisions of a company;”, 30

(b) in subsection (2)—

(i) in paragraph (b), by substituting “bad,” for “bad, and”,

(ii) in paragraph (c), by substituting “time, and” for “time.”, and

(iii) by inserting after paragraph (c) the following:

“(d) in computing the profits or gains of a qualifying company, section 35

835C shall not apply to any amount deducted by a qualifying company for any interest or other distribution paid in respect of a security referred to in subsection (4).”,

(c) by substituting for subsection (5) the following:

“(5) Subsection (4) shall apply only in respect of any interest or other distribution as is paid by a qualifying company where it would be reasonable to consider that the payment is made, or the security to which the payment relates was entered into, for *bona fide* commercial purposes and does not form part of any arrangement or scheme of which the main purpose, or one of the main purposes, is the avoidance of tax.”

and

(d) by inserting after subsection (6) the following:

“(7) For the purposes of this section, a person has control of a company where that person has—

(a) the power to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or

(ii) by virtue of any powers conferred by the constitution, articles of association or other document regulating that or any other company,

that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person, or

(b) significant influence over the first-mentioned company and holds, directly or indirectly, more than—

(i) 20 per cent of the issued share capital of the company,

(ii) 20 per cent of the principal value of any securities referred to in subsection (4) issued by that company, or any such securities where those securities have no principal value, or

(iii) the right to 20 per cent of the interest or other distribution payable in respect of any securities referred to in subsection (4) issued by that company.”

#### **Amendment of Part 25A of Principal Act (real estate investment trusts)**

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

(a) by inserting the following section after section 705H:

##### **“Profit: calculating profits available for distribution**

**705HA.** (1) This section applies to any amount taken into account by a REIT or group REIT, in computing its aggregate profits, in respect of any disbursement or expense, not being money wholly and exclusively laid

out or expended for the purposes of the property rental business (referred to in this section as the ‘disallowed amount’).

- (2) The REIT or the principal company of the group REIT, as the case may be, shall be treated as receiving an amount of income equal to the disallowed amount. 5
- (3) The amount of income referred to in subsection (2) shall be chargeable to corporation tax under Case IV of Schedule D and shall be treated as income—
  - (a) arising in the accounting period in which the disallowed amount was taken into account, and 10
  - (b) against which no loss, deficit, expense or allowance may be set off.”,

(b) by inserting the following section after section 705I:

**“Disposals and reinvestments**

- 705IA.** (1) This section applies where a REIT or group REIT disposes of a property of its property rental business. 15
- (2) In this section—
    - (a) subject to paragraph (b), ‘net proceeds’, in relation to the disposal of the property of the property rental business, means the full proceeds from such disposal as reduced by any amount used to repay, in whole or in part, specified debt to the extent that the specified debt being repaid was employed in the acquisition, enhancement or development of the property being disposed of; 20
    - (b) where the reference to the expression ‘net proceeds’ (in relation to such disposal) occurs for the purposes of subsection (3)(ii), that reference shall be deemed to be a reference to an amount that is equal to the net proceeds (in relation to such disposal) as that expression is to be construed by virtue of paragraph (a). 25
  - (3) Where the net proceeds from the disposal of the property are not—
    - (a) invested in the acquisition of a new property for use in the REIT’s or group REIT’s property rental business, 30
    - (b) invested in the development or enhancement of a property held for use in the REIT’s or group REIT’s property rental business, or
    - (c) distributed to the shareholders of the REIT or the shareholders of the principal company of the group REIT, as the case may be, 35before—
    - (i) the expiry of the period referred to in section 705I(2) (in this subsection referred to as the ‘first mentioned period’) or, if earlier than that expiry, the date specified in a notice given under subsection (1) or (4) of section 705O (in this subsection referred to as the ‘specified date’), or 40

- (ii) for the purposes of satisfying the condition specified in paragraph (a) or (b), the expiry of the period of 12 months beginning prior to the date of disposal of the property,

then any amount not so invested or distributed shall, for the purposes of applying the condition specified in section 705B(1)(b)(vi) and for the purposes of section 705N(a), be treated as property income of the REIT or group REIT arising in the accounting period in which the first mentioned period expires or the specified date falls. 5

- (4) Subsections (2) and (3) of section 172D, and subsection (4) of section 153, shall not apply to any distribution of the proceeds of a disposal referred to in subsection (1).” 10

and

- (c) in section 705P(2) by substituting for “Where a notice is given under subsection (1) or (4) of section 705O, the assets of the REIT or group REIT” the following:

“Where— 15

- (a) a notice is given under subsection (1) or (4) of section 705O, and
- (b) at the time of the giving of that notice, not less than fifteen years have elapsed from the date the REIT or group REIT became such under section 705E(4),

the assets of the REIT or group REIT”. 20

(2) *Subsection (1)(a)* shall have effect from 1 January 2020.

(3) *Paragraphs (b) and (c) of subsection (1)* shall apply to disposals made after 8 October 2019.

### **Irish real estate funds**

**30.** (1) Chapter 1B of Part 27 of the Principal Act is amended— 25

- (a) in section 739K(1)—

- (i) by inserting the following definitions:

“ ‘balance sheet’ means the balance sheet, statement of financial position or equivalent prepared in respect of an investment undertaking or sub-fund, as the case may be, in accordance with international accounting standards or alternatively in accordance with the generally accepted accounting practice specified in the investment undertaking’s prospectus; 30

‘market value’ shall be construed in accordance with section 548;

‘value of an IREF taxable event’ in relation to an IREF taxable event within the meaning of— 35

- (a) paragraph (a) of the definition of ‘IREF taxable event’, means the value of the relevant payment,
- (b) paragraphs (b), (c), (d), (e) and (f) of the definition of ‘IREF

taxable event', means the market value of the unit less any amount subscribed for that unit, and

(c) paragraph (g) of the definition of 'IREF taxable event', means the amount of the accrued IREF profits sold or transferred;”,

(ii) in the definition of “IREF assets”, in paragraph (d), by inserting “(within the meaning of section 110(5A))” after “specified mortgages”, and 5

(iii) in the definition of “IREF excluded profits”, by substituting the following paragraph for paragraph (c):

“(c) in relation to shares, within the meaning of paragraph (b) of the definition of 'IREF assets', any profits or gains other than— 10

(i) property income dividends, or

(ii) distributions in respect of gains accruing on the disposal of assets of the property rental business of the REIT or group REIT concerned, as the case may be,

in relation to those shares;”, 15

(b) by inserting the following section after section 739K:

**“Associated enterprises**

**739KA.**(1) In this section and section 739LC—

'connected' has the same meaning as in section 10, subject to the modification that references in section 10 to 'control' shall be read as if they were references to control within the meaning of subsection (4) of this section; 20

'deposit' means a sum of money paid to an enterprise on terms under which it, or any part of it, may be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person to whom it is made, notwithstanding that the amount to be repaid may be to any extent linked to or determined by changes in a stock exchange index or any other financial index; 25

'enterprise' means an entity or an individual; 30

'entity' means—

(a) a person (other than an individual),

(b) an investment undertaking, subject to subsection (2),

(c) a pension scheme,

(d) an offshore fund (within the meaning of section 743(1)), or 35

(e) any other agreement, undertaking, scheme or arrangement, whether established or created under the law of the State or of a territory other than the State,

that would, for the purposes of the Tax Acts, be regarded as—

- (i) carrying on any of the activities referred to in paragraph (b), (c) or (d) of subsection (4), or
  - (ii) advancing amounts, making funds available or receiving interest as referred to in subsections (3) and (4) of section 739LC;
- ‘member’, in relation to a pension scheme, means— 5
- (a) an employer or employee, in respect of a scheme referred to in section 774,
  - (b) an individual referred to in section 784(1)(a), 784A(1)(b), 784C(2) or 785(1), or
  - (c) a contributor, within the meaning of section 787A, in respect of a PRSA; 10
- ‘significant influence in the management of’, in relation to an entity, means the ability to participate in the financial and operating decisions of that entity.
- (2) Where the entity referred to in paragraph (b) of the definition of ‘entity’ is an umbrella scheme, regard shall be had to each sub-fund of that umbrella scheme and the unit holders of that sub-fund, as if that sub-fund was an entity in its own right. 15
  - (3) For the purposes of this section and section 739LC, an enterprise shall be treated as an associate of another enterprise where— 20
    - (a) one of the 2 enterprises has control of the other enterprise, or both enterprises are under the control of the same enterprise or enterprises,
    - (b) one enterprise is connected with the other enterprise,
    - (c) those enterprises are associated within the meaning of section 739D(1)(a), where those enterprises are investment undertakings or similar entities established under the laws of a territory other than the State, 25
    - (d) one enterprise is a pension scheme and the other enterprise is a member of that scheme, or 30
    - (e) one enterprise is a scheme, similar to a pension scheme, that is established under the laws of a territory other than the State and the other enterprise is a member of that scheme.
  - (4) For the purposes of this section, an enterprise shall be taken to have control of an entity if one or more than one of the following conditions are satisfied: 35
    - (a) where the enterprise is an entity, and—
      - (i) both entities are included in the same consolidated financial statements prepared under—
        - (I) international accounting standards, or 40

- (II) Irish generally accepted accounting practice,
- or
- (ii) both entities—
  - (I) are not included in the same consolidated financial statements, or 5
  - (II) are included in consolidated financial statements prepared under an accounting practice referred to in paragraph (a)(i)(I),
    - (I),
    - but would, if consolidated financial statements were prepared under the accounting practice referred to in paragraph (a)(i)(I), 10 be included in the same consolidated financial statements;
- (b) where that enterprise exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the entity's affairs and, in particular, but without prejudice to the generality of the foregoing— 15
  - (i) if such enterprise possesses or is entitled to acquire (other than in the circumstances described in section 739LC(4))—
    - (I) not less than 25 per cent of the—
      - (A) issued share capital of a company, or
      - (B) units of an investment undertaking, 20
    - (II) not less than 25 per cent of the voting power in the entity, or
    - (III) such rights as would if the whole of the profits of the entity were distributed, entitle the enterprise, directly or indirectly, to receive 25 per cent or more of the profits so distributed,
    - or 25
  - (ii) by virtue of any powers conferred by the constitution, articles of association or other document regulating that or any other entity;
- (c) where the enterprise has significant influence in the management of the entity; 30
- (d) where the enterprise holds one or both of the following securities in the entity:
  - (i) securities convertible directly or indirectly into shares in a company, or units in the investment undertaking, or securities carrying any right to receive units or securities of the entity; 35
  - (ii) securities under which the consideration given by the entity for the use of the principal secured—
    - (I) is to any extent dependent on the results of the entity's business or any part of the entity's business, where the entity

is not an investment undertaking, or

(II) represents more than a reasonable commercial return for the use of that principal.

- (5) Where 2 or more connected enterprises together satisfy the condition set out in subsection (4)(b), they shall each be taken to have control of the entity. 5
- (6) For the purposes of subsection (4)(b), an enterprise shall be treated as entitled to acquire anything which such enterprise is entitled to acquire at a future date or will at a future date be entitled to acquire.
- (7) For the purposes of subsections (4)(b) and (5), there shall be attributed to an enterprise any rights or powers of a nominee for such enterprise, that is, any rights or powers which another enterprise possesses on such enterprise's behalf or may be required to exercise on such enterprise's direction or behalf. 10
- (8) For the purposes of subsections (4)(b) and (5), there may also be attributed to any enterprise (in this subsection referred to as the 'first-mentioned enterprise') all the rights and powers of— 15
- (a) any enterprise of which the first-mentioned enterprise has, or the first-mentioned enterprise and associates of the first-mentioned enterprise have, control, 20
- (b) any 2 or more enterprises of which the first-mentioned enterprise has, or the first-mentioned enterprise and associates of the first-mentioned enterprise have, control,
- (c) any associate of the first-mentioned enterprise, or
- (d) any 2 or more associates of the first-mentioned enterprise, 25
- including the rights and powers attributed to an enterprise or associate under subsection (7), but excluding those attributed to an associate under this subsection.”,

(c) in section 739L—

- (i) by substituting “ $A \times \frac{B}{C} - D + E$ ” 30
- for “ $A \times \frac{B}{C} - D$ ”,
- (ii) by substituting “A is the value of the IREF taxable event which is attributable to the retained profits of the IREF,” for “A is the portion of the IREF taxable event which is attributable to the retained profits of the IREF,” 35
- (iii) by substituting “IREF,” for “IREF, and”,
- (iv) by substituting “by the IREF, and” for “by the IREF.”,
- (v) by inserting the following:

- “E is an amount calculated as the difference between the value of the IREF taxable event and the value of the unit in accordance with the balance sheet of the IREF, where the IREF taxable event is one referred to in paragraph (b) of the definition of ‘value of an IREF taxable event’ in section 739K(1) and the value of the unit in accordance with the balance sheet of the IREF is less than the value of the IREF taxable event.”, 5
- (vi) by designating the section (as amended by *subparagraphs (i) to (v)*) as subsection (1), and
- (vii) by inserting the following subsection after subsection (1): 10
- “(2) For the purposes of subsection (1), ‘value of the unit in accordance with the balance sheet’ means the net asset value of the IREF, calculated in accordance with the balance sheet of the IREF at the date of the computation of the value of an IREF taxable event, which is attributable to each unit less any amount subscribed for that unit.”, 15
- (d) by inserting the following sections after section 739L:
- “Profit: financing cost ratio**
- 739LA.** (1) In this section—
- ‘adjusted property financing costs’ means the property financing costs less any amount of income referred to in subsection (2)(b); 20
- ‘property financing costs’ means costs, being costs of debt finance or finance leases, which are taken into account in arriving at the profits of an IREF, including amounts in respect of—
- (a) interest, discounts, premiums, or net swap or hedging costs, and
- (b) fees or other expenses associated with raising debt finance or arranging finance leases; 25
- ‘property financing costs ratio’ means the ratio of the sum of profits of an IREF and the adjusted property financing costs of an IREF to the adjusted property financing costs of the IREF;
- ‘relevant cost’ means the amount which would be allowable as a deduction for the purposes of the Capital Gains Tax Acts under section 552(1); 30
- ‘specified debt’ means any debt incurred by an IREF in respect of monies borrowed by, or advanced to, the IREF.
- (2) (a) This subsection applies where the aggregate of the specified debt exceeds an amount equal to 50 per cent of the relevant cost of the IREF assets (and that excess is referred to in this subsection as the ‘excess specified debt’). 35
- (b) Where this subsection applies, the IREF shall be treated for the purposes of the Income Tax Acts as receiving an amount of income determined by the formula— 40

$$\frac{A \times B}{C}$$

where—

A is the property financing costs,

B is the excess specified debt, and

C is the total specified debt.

(3) (a) This subsection applies where the property financing costs ratio of the IREF is less than 1.25:1 for an accounting period.

(b) Where this subsection applies, the IREF shall be treated for the purposes of the Income Tax Acts as receiving an amount of income equal to the amount by which the adjusted property financing costs would have to be reduced for the property financing costs ratio to equal 1.25:1 for that accounting period.

(4) The amount of income referred to in subsections (2) and (3) shall be charged to income tax under Case IV of Schedule D and shall be treated as income—

(a) arising in the year of assessment in which the accounting period in which the amount was taken into account ends, and

(b) against which no loss, deficit, expense or allowance may be set off.

**Profit: calculating profits available for distribution**

**739LB.** (1) This section applies to any amount taken into account by an IREF in computing the profits of the IREF, in respect of any disbursement or expense, not being money wholly and exclusively laid out or expended for the purposes of the IREF business (referred to in this section as the ‘disallowed amount’).

(2) The IREF shall be treated as receiving for the purposes of the Income Tax Acts an amount of income equal to the disallowed amount.

(3) The amount of income referred to in subsection (2) shall be charged to income tax under Case IV of Schedule D and shall be treated as income—

(a) arising in the year of assessment in which the accounting period in which the disallowed amount was taken into account ends, and

(b) against which no loss, deficit, expense or allowance may be set off.

**Exclusion for third-party debt**

**739LC.** (1) Where—

(a) an amount of income is treated as arising to an IREF under section 739LA or 739LAA, and

(b) some or all of that amount relates to a third-party debt,

the amount of income on which the IREF is charged to income tax shall be reduced by the amount of income that would have been

charged to tax had the specified debt consisted solely of third-party debt.

- (2) (a) Subject to subsection (4), for the purposes of this section, ‘third-party debt’ means—
- (i) a loan advanced to the IREF by an enterprise other than an associate of that IREF, 5
  - (ii) where the full amount advanced is employed, subject to paragraph (c), in the purchase, development, improvement or repair of a premises, and
  - (iii) the loan is not subject to any arrangements of a type referred to in subsection (3), 10
- and includes a loan which satisfies the conditions of subparagraphs (i) and (iii) where the amount advanced is used to repay a loan which satisfied the condition of subparagraph (ii).
- (b) References in this section to an amount being advanced to an IREF, or being payable by an IREF, shall be read as including an amount advanced to, or payable by, a partnership in which the IREF is a partner. 15
- (c) For the purposes of paragraph (a)(ii)—
- (i) monies borrowed at or about the time of the purchase of the premises shall be treated as having been employed in the purchase of those premises, and 20
  - (ii) amounts employed in purchasing a property from an associate of an IREF shall only be treated as third-party debt if immediately prior to the purchase that associate had carried out significant development work on the property, such that the development exceeds 30 per cent of the market value of the property at the date of the commencement of the development, and the property is being acquired by the IREF for the purposes of property rental. 25 30
- (3) For the purposes of subsection (2)(a)(iii), the arrangements are any of the following:
- (a) arrangements pursuant to which—
    - (i) interest is payable by an IREF to another enterprise such that this section does not apply by virtue only of the fact that the IREF and the enterprise concerned are not associated, and 35
    - (ii) interest is payable by some other enterprise not associated with the IREF to an enterprise associated with the IREF;
  - (b) arrangements pursuant to which—
    - (i) interest is payable by an IREF to another enterprise (in this paragraph referred to as the ‘first-mentioned enterprise’) where 40

- the IREF and the first-mentioned enterprise concerned are not associated, and
- (ii) the first-mentioned enterprise—
- (I) has been advanced an amount by another enterprise that is an associate of the IREF, or 5
- (II) has received a deposit from another enterprise that is an associate of the IREF,
- equal to some or all of the principal amount of the loan in respect of which the interest referred to in subparagraph (i) is payable; 10
- (c) arrangements entered into in relation to an IREF the effect of which is that any amount has been advanced, or funds have been made available, indirectly from an associate of an IREF to the IREF, or interest is payable by an IREF indirectly to an associate of that IREF, in circumstances other than those referred to in paragraph (a) or (b); 15
- (d) arrangements pursuant to which—
- (i) associates of an IREF (in this paragraph referred to as the ‘first-mentioned IREF’) advance amounts, or make funds available, directly or indirectly to an IREF with whom they are not associated (in this paragraph referred to as the ‘second-mentioned IREF’), and 20
- (ii) associates of the second-mentioned IREF advance amounts, or make funds available, directly or indirectly to the first-mentioned IREF, 25
- and those IREFs, or those associates, are acting in concert or under arrangements made by any enterprise.
- (4) Notwithstanding section 739KA, a loan which is a third-party debt shall not cease to be so treated where the lender becomes an associate of the IREF solely on account of the enforcement of any security granted as a *bona fide* condition of, or in connection with, the loan.” 30
- (e) by inserting the following section after section 739LA (inserted by *paragraph (d)*):
- “Profit: financing cost ratio from 1 January 2020**
- 739LAA.** (1) In this section— 35
- ‘adjusted property financing costs’ means the property financing costs less any amount of income referred to in subsection (2)(b);
- ‘annual IREF profits’ means the profits, gains or losses of an IREF business as shown in the income statement of the IREF excluding—
- (a) any realised profits, gains or losses in relation to the disposal of an asset, and 40

(b) any unrealised profits, gains or losses in relation to an asset, where the disposal of such asset would be a disposal of a chargeable asset for the purposes of capital gains tax or corporation tax on chargeable gains and would otherwise form part of relevant profits of the IREF which are not chargeable to tax under section 739C;	5
‘property financing costs’ means costs, being costs of debt finance or finance leases, which are taken into account in arriving at the profits of an IREF, including amounts in respect of—	
(a) interest, discounts, premiums, or net swap or hedging costs, and	
(b) fees or other expenses associated with raising debt finance or arranging finance leases;	10
‘property financing costs ratio’ means the ratio of the sum of the annual IREF profits and the adjusted property financing costs of an IREF to the adjusted property financing costs of the IREF;	
‘relevant cost’ means the amount which would be allowable as a deduction for the purposes of the Capital Gains Tax Acts under section 552 subject to the modification that references in subsection (3) of that section to ‘borrowed money’ shall be read as if they were references only to borrowed money that is third-party debt;	15
‘specified debt’ means—	20
(a) any debt incurred by an IREF in respect of monies borrowed by, or advanced to, the IREF, or	
(b) a portion of any debt incurred by a partnership in which the IREF is a partner, in respect of monies borrowed by, or advanced to, the partnership, calculated as the higher of—	25
(i) the portion of the capital of the partnership held by the IREF, or	
(ii) the portion of the profits of the partnership to which the IREF is entitled.	
(2) (a) This subsection applies where the aggregate of the specified debt exceeds an amount equal to 50 per cent of the relevant cost of the IREF assets (and that excess is referred to in this subsection as the ‘excess specified debt’).	30
(b) Where this subsection applies, the IREF shall be treated for the purposes of the Income Tax Acts as receiving an amount of income determined by the formula—	35
	$\frac{A \times B}{C}$
where—	
A is the property financing costs,	
B is the excess specified debt, and	40

C is the total specified debt.

- (3) (a) This subsection applies where—
- (i) the property financing costs ratio of the IREF is less than 1.25:1 for an accounting period and the sum of the annual IREF profits and the adjusted property financing costs of an IREF is greater than zero, or 5
  - (ii) the sum of the annual IREF profits and the adjusted property financing costs of an IREF is zero or lower.
- (b) Where this subsection applies—
- (i) by virtue of paragraph (a)(i), the IREF shall be treated for the purposes of the Income Tax Acts as receiving an amount of income equal to the amount by which the adjusted property financing costs would have to be reduced for the property financing costs ratio to equal 1.25:1 for that accounting period, and 10 15
  - (ii) by virtue of paragraph (a)(ii), the IREF shall be treated for the purposes of the Income Tax Acts as receiving an amount of income equal to the adjusted property financing costs.
- (4) The amount of income referred to in subsections (2) and (3) shall be charged to income tax under Case IV of Schedule D and shall be treated as income— 20
- (a) arising in the year of assessment in which the accounting period in which the amount was taken into account ends, and
  - (b) against which no loss, deficit, expense or allowance may be set off.
- (5) In respect of the charge to income tax imposed under this section and section 739LB— 25
- (a) section 76(6) shall not apply to an IREF which is a company, and
  - (b) the amount so charged shall, for the purposes of Part 35A, not be profits or gains arising from relevant activities.
- (6) (a) Section 739LA shall not apply to an accounting period to which this section applies. 30
- (b) This section shall apply to accounting periods commencing on or after 1 January 2020 and where an accounting period commences before 1 January 2020 and ends after that date, it shall be divided into two parts, one beginning on the date on which the accounting period begins and ending on 31 December 2019 and the other beginning on 1 January 2020 and ending on the date on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods of the IREF.”, 35
- (f) in section 739O(1), by substituting “person, or connected persons within the meaning of section 10,” for “person”, and 40

- (g) in section 739R—
- (i) in subsection (1), by substituting the following for “IREF withholding tax shall be accounted for and paid”:
    - “an IREF shall—
    - (a) file a return referred to in subsection (2), and 5
    - (b) account for and pay IREF withholding tax”,
  - (ii) in subsection (2), by deleting “of the IREF withholding tax”,
  - (iii) by inserting the following subsection after subsection (3):
    - “(3A) The return referred to in subsection (2) shall contain the following information: 10
    - (a) where the IREF is a sub-fund of an umbrella scheme, details of the umbrella scheme;
    - (b) details of the unit holdings held by each unit holder of the IREF;
    - (c) details of the IREF assets held by the IREF;
    - (d) details of the IREF business carried on by the IREF; 15
    - (e) details of any transactions with persons connected with the unit holder; and
    - (f) details of any IREF taxable events to which section 739T applies.”,

and

    - (iv) in subsection (4), by inserting “, where one or more than one IREF taxable 20 event occurs in the period to which the return relates,” after “shall”.
- (2) Schedule 29 to the Principal Act is amended in Column 1 by inserting “section 739R(2)” after “section 739F(2)”.
- (3) Section 19(1)(d) of the Finance Act 2017 is amended by deleting subparagraph (i).
- (4) *Paragraph (a)(i), paragraph (b), subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph (c) and paragraph (d) of subsection (1) shall apply to accounting periods commencing on or after 9 October 2019 and where an accounting period commences before 9 October 2019 and ends after that date, it shall be divided into two parts, one beginning on the date on which the accounting period begins and ending on 8 October 2019 and the other beginning on 9 October 2019 and ending on the date on which the 25 accounting period ends, and both parts shall be treated as if they were separate 30 accounting periods of the IREF.*

### Hybrid mismatches

31. The Principal Act is amended by inserting the following Part after Part 35B:

“PART 35C 35

Implementation of Council Directive (EU) 2016/1164 of 12 July 2016 as regards hybrid mismatches

Chapter 1

*Interpretation and general (Part 35C)*

<b>Interpretation (Part 35C)</b>	5
<b>835Z.</b> (1) In this Part—	
‘arrangement’, other than in the definition of ‘entity’ and ‘hybrid entity’, means—	
(a) any transaction, action, course of action, course of conduct, scheme, plan or proposal,	10
(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),	15
whether entered into or arranged by one or two or more enterprises—	
(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 arrangement or in conjunction with any other arrangement or arrangements,	20
but does not include an arrangement referred to in section 826;	
‘associated enterprise’ shall be construed in accordance with section 835AA;	25
‘chargeable period’ has the same meaning as it has in Part 41A;	
‘controlled foreign company charge’ has the same meaning as it has in Part 35B;	
‘deduction’ in respect of a payment, or part thereof, refers to an amount—	30
(a) which may be taken into account as an expenditure or expense,	
(b) in respect of which an allowance for capital expenditure may be made, or	
(c) which may otherwise be deducted, allowed or relieved,	
in computing the profits or gains on which tax falls finally to be borne for the purposes of domestic tax or foreign tax;	35
‘deemed payment’ means—	
(a) in relation to a transaction between the head office of an entity and a permanent establishment of that entity, the allocation of	

payments, profits or gains from the head office to the permanent establishment, and	
(b) in relation to a transaction between two or more permanent establishments of an entity, the allocation of payments, profits or gains from one permanent establishment to another;	5
‘Directive (EU) 2016/1164’ means Council Directive (EU) 2016/1164 of 12 July 2016 <sup>5</sup> laying down rules against tax avoidance practices that directly affect the functioning of the internal market, as amended by Directive (EU) 2017/952;	
‘Directive (EU) 2017/952’ means Council Directive (EU) 2017/952 of 29 May 2017 <sup>6</sup> amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries;	10
‘domestic tax’ means income tax, corporation tax (including a controlled foreign company charge) or capital gains tax;	
‘double deduction’ means a deduction in respect of the same payment for the purposes of domestic tax and foreign tax;	15
‘double deduction mismatch outcome’ shall be construed in accordance with section 835AD;	
‘dual inclusion income’, subject to section 835AB, means any amount which is included in both territories where the mismatch outcome has arisen;	20
‘enterprise’ means an entity or an individual;	
‘entity’ means—	
(a) a person (other than an individual),	
(b) an undertaking (other than an individual), or	25
(c) an agreement, trust or other arrangement,	
that has legal personality under the laws of the territory in which it is established;	
‘financial instrument deduction without inclusion mismatch outcome’ shall be construed in accordance with section 835AJ;	30
‘foreign company charge’ has the same meaning as it has in Part 35B;	
‘foreign tax’ means a tax chargeable on profits or gains, under the laws of a territory other than the State, that is similar to a domestic tax, but not including a withholding tax to the extent that such a tax is refundable where it has been levied;	35
‘hybrid entity’ means—	
(a) a person (other than an individual),	
(b) an undertaking (other than an individual), or	

5 OJ No. L193, 19.7.2016, p. 1

6 OJ No. L144, 7.6.2017, p. 1

(c) an agreement, trust or other arrangement,

some or all of the profits or gains of which are treated, or would be so treated but for an insufficiency of profits or gains, under the tax law of one territory as arising or accruing to the entity on its own account, but, for the purposes of tax charged under the tax law of another territory, some or all of the profits or gains of which are treated, or would be so treated but for an insufficiency of profits or gains, as arising or accruing to another enterprise (in this Part referred to as ‘the participator’);

‘included’ in respect of a payment, means an amount of profits or gains arising from the payment—

(a) that is treated as arising or accruing to the payee where the payee—

(i) is chargeable to domestic tax or foreign tax, as the case may be, but not including any amount which is only so chargeable when it is remitted into the payee territory, 15

(ii) is a pension fund, government body or other entity that, under the laws of the territory in which it is established, is exempt from tax which generally applies to profits or gains in that territory,

(iii) is established in a territory, or part of a territory, that does not impose a foreign tax, or 20

(iv) is established in a territory that does not impose a tax that generally applies to profits or gains derived from payments receivable in that territory by enterprises from sources outside that territory, 25

or

(b) that is subject to a controlled foreign company charge or a foreign company charge;

‘investor’ means an enterprise or the permanent establishment of an entity, against whose profits or gains a deduction is made in respect of a payment in the investor territory; 30

‘investor territory’, in relation to a payment, means a territory, other than the payer territory, where the payment is deductible;

‘mismatch outcome’ means any or all of the following, as the context requires: 35

(a) a double deduction mismatch outcome;

(b) a permanent establishment deduction without inclusion mismatch outcome;

(c) a financial instrument deduction without inclusion mismatch outcome; 40

(d) a payment to a hybrid entity deduction without inclusion mismatch

- outcome;
- (e) a payment by a hybrid entity deduction without inclusion mismatch outcome;
- ‘payee’, in respect of a payment, means an enterprise or permanent establishment of an entity— 5
- (a) which receives that payment or is treated as receiving that payment under the laws of any territory, other than where that payment is received or treated as being received, as the case may be, in a fiduciary or representative capacity,
- (b) which is a participator, 10
- (c) to the benefit of which the payment is treated as arising or accruing under the laws of any territory, or
- (d) on which a controlled foreign company charge or foreign company charge is made by reference to that payment;
- ‘payee territory’ means a territory in which a payee is established; 15
- ‘payer’ means—
- (a) an enterprise, or
- (b) the permanent establishment of an entity,
- against whose profits or gains a deduction is made in respect of a payment in a payer territory; 20
- ‘payer territory’ means—
- (a) in a case in which the payment concerned is made by a hybrid entity or a permanent establishment, the territory in which the hybrid entity or permanent establishment, as the case may be, is established, and 25
- (b) in all other cases, the territory where the payment in respect of which the deduction concerned is incurred, sourced or made;
- ‘payment’ means—
- (a) a transfer of money or money’s worth, or
- (b) a deemed payment; 30
- ‘payment by a hybrid entity deduction without inclusion mismatch outcome’ shall be construed in accordance with section 835AM;
- ‘payment to a hybrid entity deduction without inclusion mismatch outcome’ shall be construed in accordance with section 835AL;
- ‘permanent establishment deduction without inclusion mismatch outcome’ shall be construed in accordance with section 835AG; 35
- ‘structured arrangement’ means an arrangement involving a transaction, or series of transactions, under which a mismatch outcome arises,

- where—
- (a) the mismatch outcome is priced into the terms of the arrangement,  
or
  - (b) the arrangement was designed to give rise to a mismatch outcome;
- ‘tax period’ means— 5
- (a) in respect of a charge to domestic tax, a chargeable period,
  - (b) in respect of a charge to foreign tax, a period equivalent to a chargeable period, or
  - (c) where the entity concerned is not charged to tax, the period for which financial statements are prepared. 10
- (2) A reference to a provision of the law of a territory, other than the State, similar to this Part, or a provision of this Part, is a reference to a provision enacted to—
- (a) give effect to Directive (EU) 2016/1164,
  - (b) implement the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Co-operation and Development on 5 October 2015, 15
  - (c) implement the Final Report on Neutralising the Effects of Branch Mismatch Arrangements published by the Organisation for Economic Co-operation and Development on 27 July 2017, or 20
  - (d) otherwise neutralise a mismatch outcome,
- where that provision has a similar effect to this Part, or a provision of this Part, as the case may be.
- (3) A word or expression which is used in this Part and is also used in Directive (EU) 2016/1164 has, unless the context otherwise requires, the same meaning in this Part as it has in Directive (EU) 2016/1164. 25
- (4) A reference in this Part—
- (a) to the territory in which an entity is established, shall—
    - (i) in a case in which the entity is registered, incorporated or created under the laws of one territory, but has its place of effective management in another territory, be construed as a reference to the territory in which the entity has its place of effective management, and 30
    - (ii) in all other cases, be construed as a reference to the territory in which the entity is registered, incorporated or created, 35
- and
- (b) to the territory in which a permanent establishment is established, shall be construed as a reference to the territory in which the permanent establishment carries on a business.

## Associated enterprises

### 835AA. (1) In this section—

‘non-consolidating entity’ means an entity which is valued, or would be so valued if consolidated financial statements were prepared under international accounting standards, in consolidated financial statements— 5

(a) using fair value accounting (within the meaning of international accounting standards), or

(b) on the basis that it is an asset held for sale or held for distribution (within the meaning of international accounting standards); 10

‘significant influence in the management of’, in relation to an entity, means the ability to participate, on the board of directors or equivalent governing body of the entity, in the financial and operating policy decisions of that entity, including where that power does not extend to control or joint control of that entity. 15

(2) In this Part, two enterprises shall be ‘associated enterprises’ in respect of each other—

(a) if one enterprise, directly or indirectly, possesses or is beneficially entitled to—

(i) where the other enterprise is an entity having share capital, not less than 25 per cent of the issued share capital of the other enterprise, or 20

(ii) where the other enterprise is an entity not having share capital, an interest of not less than 25 per cent of the ownership rights in the other enterprise, 25

(b) if one enterprise, directly or indirectly, is entitled to exercise not less than 25 per cent of the voting power in the other enterprise, where that other enterprise is an entity,

(c) if one enterprise (in this paragraph referred to as the ‘first-mentioned enterprise’), directly or indirectly, holds such rights as would— 30

(i) where the other enterprise is a company, if the whole of the profits of that other enterprise were distributed, entitle the first-mentioned enterprise, directly or indirectly, to receive 25 per cent or more of the profits so distributed, or 35

(ii) where the other enterprise is an entity other than a company, if the share of the profits of that other enterprise to which the first-mentioned enterprise is entitled, directly or indirectly, is 25 per cent or more,

(d) where there is another enterprise in respect of which the two enterprises are, in accordance with paragraph (a), (b) or (c), an associated enterprise, 40

- (e) where both enterprises are entities that are—
    - (i) not non-consolidating entities, and
    - (ii) included in the same consolidated financial statements prepared under—
      - (I) international accounting standards, or 5
      - (II) Irish generally accepted accounting practice,
  - (f) where both enterprises—
    - (i) are entities that are—
      - (I) not included in consolidated financial statements, or
      - (II) included in consolidated financial statements prepared other than under an accounting practice referred to in paragraph (e)(ii), 10
    - (ii) are not non-consolidating entities, and
    - (iii) would, if consolidated financial statements were prepared under the accounting practice referred to in paragraph (e)(ii)(I), be included in the same consolidated financial statements, 15
  - or
  - (g) where one enterprise has significant influence in the management of the other enterprise.
- (3) Where an enterprise (in this subsection referred to as the ‘first-mentioned enterprise’) acts together with another enterprise (in this subsection referred to as the ‘second-mentioned enterprise’) with respect to voting rights, share ownership rights or similar ownership rights, the first-mentioned enterprise shall be treated, for the purposes of paragraphs (a), (b) and (c) of subsection (2), as possessing, holding or being entitled to, as the case may be, the rights of the second-mentioned enterprise. 20 25
- (4) For the purposes of paragraphs (a), (b) and (c) of subsection (2), there shall be attributed to an enterprise any rights or powers of a nominee for such enterprise, that is, any rights or powers which another enterprise possesses on such enterprise’s behalf or may be required to exercise on such enterprise’s direction or behalf. 30
- (5) For the purposes of—
- (a) Chapter 2,
  - (b) Chapter 3, 35
  - (c) Chapter 8, and
  - (d) the application of this Part to hybrid entities,
- a reference, in subsection (2), to ‘25 per cent’ shall be construed as a reference to ‘50 per cent’.

- (6) References in this Part to a transaction between associated enterprises shall include a reference to a transaction in respect of which the enterprises concerned are or were associated enterprises at the time—
  - (a) the transaction was entered into,
  - (b) the transaction was formed, or 5
  - (c) a payment arises under the transaction.

**Worldwide system of taxation**

**835AB.** (1) Subject to subsection (3), this section applies where an entity is taxable in an investor or payee territory (in this section referred to as the ‘first-mentioned territory’) such that payments (in this section referred to as ‘disregarded payments’) between— 10

- (a) the head office of the entity and a permanent establishment of that entity,
- (b) two or more permanent establishments of the entity,
- (c) where the entity is a participator in a hybrid entity, the entity and the hybrid entity, or 15
- (d) where the entity is a participator in two or more hybrid entities, two or more such hybrid entities,

are disregarded when computing the taxable profits of the entity in the first-mentioned territory under a provision of the law of that territory similar in effect to section 26(1). 20

(2) Where—

- (a) this section applies, and
- (b) a payment is deductible in a case in which—
  - (i) the amount deducted would be deducted against dual inclusion income, or 25
  - (ii) the deduction would not result in a deduction without inclusion mismatch outcome,

but for the fact that the amount against which the payment is deductible in the payer territory is a disregarded payment in the first-mentioned territory, 30

the disregarded payment shall be treated as included in the first-mentioned territory.

(3) This section shall not apply where—

- (a) the disregarded payments are between— 35
  - (i) where the entity referred to in subsection (1) is a participator in a hybrid entity, the entity and the hybrid entity, or
  - (ii) where the entity referred to in subsection (1) is a participator in two or more hybrid entities, two or more such hybrid entities,

and

- (b) there is, in substance, a hybrid mismatch (either within the meaning of Directive (EU) 2016/1164 or within the meaning of that term when construed in a manner consistent with its use in the reports referred to in section 835Z(2)). 5

## Chapter 2

### *Double deduction*

#### **Application of Chapter 2**

**835AC.** This Chapter shall apply—

- (a) to a company within the charge to corporation tax, and 10
- (b) to a transaction giving rise to a mismatch outcome between—
  - (i) entities that are associated enterprises,
  - (ii) the head office of an entity and a permanent establishment of that entity, or
  - (iii) two or more permanent establishments of an entity. 15

#### **Double deduction mismatch outcome**

**835AD.**(1) A double deduction mismatch outcome shall arise where it would be reasonable to consider that there is, or but for this section there would be, a double deduction arising in respect of a payment, to the extent the payment is not, or would not be, deductible against dual inclusion income. 20

(2) A double deduction mismatch outcome shall be neutralised as follows:

- (a) where the State is the investor territory, notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts, the investor shall be denied a deduction for the purposes of domestic tax for the amount of the payment which gives rise to the double deduction mismatch outcome; 25
- (b) where the State is the payer territory and a deduction has not been denied in the investor territory through the operation of a provision similar to paragraph (a), notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts, the payer shall be denied a deduction for the purposes of domestic tax for the amount of the payment which gives rise to the double deduction mismatch outcome. 30

## Chapter 3 35

### *Permanent establishments*

#### **Application of Chapter 3**

**835AE.** This Chapter shall apply—

- (a) to an entity which is within the charge to a foreign tax or to corporation tax, and 40

- (b) to a transaction that gives rise to a mismatch outcome between—
  - (i) entities that are associated enterprises,
  - (ii) the head office of an entity and a permanent establishment of that entity, or
  - (iii) two or more permanent establishments of an entity. 5

**Disregarded permanent establishment**

**835AF.** (1) In this Chapter, ‘disregarded permanent establishment’ means a presence in a territory (in this subsection referred to as the ‘first-mentioned territory’)—

- (a) which is treated for the purposes of the tax law of the territory in which an entity has its head office (in this subsection referred to as the ‘second-mentioned territory’) as a permanent establishment of that entity, 10
- (b) some or all of the profits or gains of which are not included for the purposes of domestic tax in the second-mentioned territory, and 15
- (c) in respect of the profits and gains of which—
  - (i) where the first-mentioned territory is the State, the entity is not charged to tax under section 25, and
  - (ii) where the first-mentioned territory is not the State, the entity is not charged to foreign tax. 20

(2) In this section:

‘domestic tax’ means a tax chargeable on profits or gains, under the laws of a territory in which the head office of an entity is established, that is similar to income tax, corporation tax (including a charge under Part 35B) or capital gains tax; 25

‘foreign tax’ means a tax chargeable on profits or gains, under the laws of a territory in which the permanent establishment of the entity is established, that is similar to income tax, corporation tax (including a charge under Part 35B) or capital gains tax.

**Permanent establishment deduction without inclusion mismatch outcome** 30

**835AG.**(1) A permanent establishment deduction without inclusion mismatch outcome shall arise in respect of a payment where it would be reasonable to consider that—

- (a) there is, or but for this section would be, a deduction in the payer territory, in a case in which a corresponding amount has not been included in the payee territory, and 35
- (b) the satisfaction of the condition described in paragraph (a) is attributable to—
  - (i) the payment being made to a disregarded permanent establishment, 40

- (ii) differences in the allocation of payments between the head office of an entity and a permanent establishment of that entity, or between two or more permanent establishments of an entity, or
  - (iii) where the payment is between the head office of an entity and a permanent establishment of that entity or between two or more permanent establishments of an entity, the payment being disregarded under the laws of the payee territory. 5
- (2) A permanent establishment deduction without inclusion mismatch outcome shall not arise by virtue of the circumstance described in subsection (1)(b)(iii) to the extent the payment is, or would be, deductible against dual inclusion income. 10
- (3) A permanent establishment deduction without inclusion mismatch outcome shall be neutralised as follows:
- (a) where the State is the payer territory, notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts, the payer shall be denied a deduction for the payment for the purposes of domestic tax, to the extent a corresponding amount has not been included for the purposes of foreign tax; 15
  - (b) where— 20
    - (i) the State is the payee territory,
    - (ii) the mismatch outcome arises by virtue of paragraph (b)(i) of subsection (1),
    - (iii) the disregarded permanent establishment is a permanent establishment within the meaning of Article 5 of the Model Tax Convention on Income and Capital, published by the Organisation for Economic Co-operation and Development, as it read on 21 November 2017, and 25
    - (iv) a deduction has not been denied in the payer territory through the operation of a provision similar to paragraph (a), 30
- notwithstanding section 25, the profits and gains referred to in section 835AF(1)(b) shall be charged to corporation tax on the entity concerned as if the business carried on in the State by the disregarded permanent establishment was carried on by a company resident in the State. 35

#### Chapter 4

#### *Financial instruments*

#### **Interpretation (Chapter 4)**

**835AH.**(1) In this Chapter—

‘financial instrument’ includes—

- (a) securities, within the meaning of section 135(8),

40

- (b) shares in a company and similar ownership rights (not being securities) in entities other than a company,
  - (c) futures, options, swaps, derivatives and similar instruments that give rise to a financing return,
  - (d) an arrangement where it is reasonable to consider that the arrangement is equivalent to an arrangement for the lending of money, or money's worth, at interest, and 5
  - (e) hybrid transfers;
    - 'hybrid transfer' means an arrangement to transfer a financial instrument where the underlying return on that instrument is treated, for tax purposes, as derived by more than one of the parties to the arrangement; 10
    - 'financial trader' means an enterprise that has entered into a financial instrument as part of a business which involves regularly buying and selling financial instruments on that enterprise's own account; 15
    - 'on-market hybrid transfer' means a hybrid transfer—
      - (a) that is entered into by a financial trader in the ordinary course of its trade, which includes the business of buying and selling financial instruments, and
      - (b) in respect of which the financial trader is required by the payer territory concerned to include, for the purposes of that territory's tax laws, as trading income all amounts received in connection with the transferred financial instrument concerned; 20
    - 'financing return', in relation to a financial instrument, includes—
      - (a) dividends and manufactured payments, 25
      - (b) interest, including any discounts or amounts which would be treated as interest under Part 8A, notwithstanding that no election is made under section 267U,
      - (c) the amount of payments that are equivalent to interest under an arrangement described at paragraph (d) of the definition of 'financial instrument', and 30
      - (d) the underlying return referred to in the definition of 'hybrid transfer';
    - 'manufactured payment' has the same meaning as it has in Chapter 3 of Part 28. 35
- (2) For the purposes of this Chapter—
- (a) a corresponding amount relating to a payment under a financial instrument shall not be treated as included under paragraph (a)(i) of the definition of 'included' in section 835Z(1) where, under the tax laws of the payee territory, the amount that is charged to foreign tax is subject to any reduction computed by reference to the way the 40

payment to which the corresponding amount relates is characterised under those laws, and

(b) a corresponding amount relating to a payment under a financial instrument shall not be treated as included under paragraph (a)(i) of the definition of 'included' in section 835Z(1) unless— 5

(i) the corresponding amount is included in a tax period which commences within twelve months of the end of the tax period in which the payment is deducted (in this paragraph referred to as the 'first-mentioned period'), or

(ii) it would be reasonable to consider that— 10

(I) the corresponding amount will be included in a tax period subsequent to the first-mentioned period, and

(II) the terms applicable to the payment are those that would apply to a transaction made at arm's length.

#### **Application of Chapter 4** 15

**835AI.** This Chapter shall apply—

(a) to a company which is within the charge to domestic tax, and

(b) to a transaction that gives rise to a mismatch outcome between—

(i) entities that are associated enterprises,

(ii) the head office of an entity and a permanent establishment of that entity, or 20

(iii) two or more permanent establishments of an entity,

other than where that transaction is an on-market hybrid transfer.

#### **Financial instrument deduction without inclusion mismatch outcome**

**835AJ.** (1) A financial instrument deduction without inclusion mismatch outcome shall arise where it would be reasonable to consider that— 25

(a) there is, or but for this section would be, a deduction in the payer territory, without a corresponding amount being included in the payee territory, and

(b) the satisfaction of the condition described in paragraph (a) is attributable to differences between domestic tax and foreign tax in the characterisation of— 30

(i) a financial instrument, or

(ii) payments made under a financial instrument.

(2) A financial instrument deduction without inclusion mismatch outcome shall be neutralised as follows: 35

(a) where the State is the payer territory, notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts, the payer shall be denied a deduction for the payment for the purposes of

domestic tax, to the extent a corresponding amount has not been included for the purposes of foreign tax;

(b) where—

(i) the State is the payee territory, and

(ii) a deduction has not been denied in the payer territory through the operation of a provision similar to paragraph (a),

then—

(I) in a case in which the non-inclusion arises because of any provision of the Tax Acts or the Capital Gains Tax Acts, in calculating the amount on which the payee is charged to tax, that provision shall be disapplied, insofar as it provides for the non-inclusion, and

(II) in any other case, the payee shall be charged to tax under Case IV of Schedule D, in respect of the amount of the deduction, in the first of the payee's tax periods to commence within twelve months of the end of the payer's tax period in which the deduction occurred.

## Chapter 5

### *Hybrid entities*

#### **Application of Chapter 5**

**835AK.**(1) This Chapter shall apply to a transaction that gives rise to a mismatch outcome between—

(a) entities that are associated enterprises,

(b) the head office of an entity and a permanent establishment of that entity, or

(c) two or more permanent establishments of an entity.

(2) Section 835AL applies to a company which is within the charge to corporation tax.

(3) Section 835AM applies to a company which is within the charge to foreign tax or corporation tax.

#### **Payment to hybrid entity deduction without inclusion mismatch outcome**

**835AL.**(1) A payment to a hybrid entity deduction without inclusion mismatch outcome shall arise in respect of a payment to a hybrid entity where—

(a) there is, or but for this section would be, a deduction in the payer territory without a corresponding amount being included in the payee territory, and

(b) the satisfaction of the condition described in paragraph (a) is attributable to differences in the allocation of payments to a hybrid entity between—

(i) the territory in which the hybrid entity is established, and

- (ii) the territory in which the participator concerned is established.
- (2) A payment to a hybrid entity deduction without inclusion mismatch outcome shall be neutralised, where the State is the payer territory, notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts, by denying the payer a deduction for the payment for the purposes of domestic tax, to the extent a corresponding amount has not been included for the purposes of foreign tax. 5

**Payment by hybrid entity deduction without inclusion mismatch outcome**

**835AM.**(1) Subject to subsection (2), a payment by a hybrid entity deduction without inclusion mismatch outcome shall arise in respect of a payment by a hybrid entity where— 10

- (a) there is, or but for this section would be, a deduction in respect of a payment in the payer territory without a corresponding amount being included in the payee territory, and
- (b) the satisfaction of the condition described in paragraph (a) is attributable to the payment being disregarded under the laws of the payee territory. 15

(2) A payment by a hybrid entity deduction without inclusion mismatch outcome shall not arise to the extent the payment referred to in subsection (1) is, or would be, deductible against dual inclusion income. 20

(3) A payment by a hybrid entity deduction without inclusion mismatch outcome shall be neutralised as follows:

- (a) where the State is the payer territory, notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts, the payer shall be denied a deduction for the payment for the purposes of domestic tax, to the extent a corresponding amount has not been included for the purposes of foreign tax; 25

(b) where—

- (i) the State is the payee territory, and 30
- (ii) a deduction has not been denied in the payer territory through the operation of a provision similar to subsection (a),

then—

- (I) in a case in which the non-inclusion arises because of any provision of the Tax Acts or the Capital Gains Tax Acts, in calculating the amount on which the payee is charged to tax, that provision shall be disapplied, insofar as it provides for the non-inclusion, and 35

- (II) in any other case, the payee shall be charged to tax under Case IV of Schedule D, in respect of the amount of the deduction, in the first of the payee's tax periods to commence within twelve months of the end of the payer's tax period in which the 40

deduction occurred.

## Chapter 6

### *Withholding tax*

#### **Application of Chapter 6**

**835AN.** This Chapter shall apply to an entity which is within the charge to corporation tax. 5

#### **Withholding tax mismatch outcome**

**835AO.**(1) A withholding tax mismatch outcome shall arise where—

- (a) an entity enters into a hybrid transfer (within the meaning of Chapter 4), and 10
  - (b) it is reasonable to consider that the purpose of the hybrid transfer is to secure relief for more than one party to the hybrid transfer in respect of an amount of tax withheld at source.
- (2) A withholding tax mismatch outcome shall, notwithstanding anything in Schedule 24 to the contrary, be neutralised by the relief available in respect of an amount of tax withheld at source being reduced by the following fraction— 15

A/B

where—

A is the profit of the entity from the hybrid transfer on which domestic tax finally falls to be borne, and 20

B is the gross income of the entity under the hybrid transfer.

## Chapter 7

### *Tax residency mismatch*

#### **Application of Chapter 7**

**835AP.** This Chapter applies to a company which is within the charge to— 25

- (a) corporation tax, because it is tax resident in the State under the laws of the State, and
- (b) foreign tax in a territory other than the State, because it is regarded as tax resident in that territory under the tax laws of that territory. 30

#### **Tax residency double deduction mismatch outcome**

**835AQ.**(1) A tax residency double deduction mismatch outcome shall arise where—

- (a) there is, or but for this section would be, a double deduction arising in respect of a payment, to the extent the amount of the deduction is not, or would not be, deductible against dual inclusion income, and 35
- (b) the satisfaction of the condition described in paragraph (a) is attributable to the company being within the charge to both corporation tax and foreign tax. 40

- (2) Subject to subsection (3), a tax residency double deduction mismatch outcome shall be neutralised—
- (a) where the other territory within which the company is subject to a charge to tax is a Member State, with the government of which arrangements having the force of law by virtue of section 826(1) have been made, and under those arrangements the company is tax resident in that Member State, 5
  - (b) where—
    - (i) the other territory within which the company is subject to a charge to tax is not a Member State, and 10
    - (ii) under arrangements, having the force of law by virtue of section 826(1), with the government of that other territory—
      - (I) the company is not tax resident in the State, or
      - (II) the company is tax resident in the State but a deduction has not been denied in the other territory through the operation of a provision similar to this Chapter, 15
- or
- (c) where the other territory within which the company is subject to a charge to tax is not a territory referred to in paragraph (a) or (b), notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts, by the company being denied a deduction for the purposes of domestic tax for so much of the payment as corresponds to the mismatch outcome which has not been neutralised in another territory. 20
- (3) Where the tax residence of a company must be determined by mutual agreement between the competent authorities of both territories which are party to an arrangement referred to in subsection (2)(a) or (b), then any adjustment to the return, filed pursuant to section 959I, required to give effect to subsection (2) shall be made without unreasonable delay upon that agreement, notwithstanding any time limits in Part 41A. 25 30

## Chapter 8

### *Imported mismatch outcomes*

#### **Application of Chapter 8**

**835AR.** This Chapter shall apply to—

- (a) a company which is within the charge to domestic tax, and 35
- (b) a mismatch outcome which arises through a transaction or series of transactions—
  - (i) that is or are, as the case may be, between—
    - (I) entities that are associated enterprises,
    - (II) the head office of an entity and a permanent establishment 40

- of that entity, or
- (III) two or more permanent establishments of an entity,
- and
- (ii) under which there is a payment by a company established in the State to a payee established in a state that is not a Member State. 5

**Imported mismatch outcome**

**835AS.**(1) An imported mismatch outcome shall arise where it would be reasonable to consider that—

- (a) a company referred to in section 835AR(a) enters into a transaction, or series of transactions, involving a mismatch outcome where a payment by that company directly or indirectly funds the mismatch outcome, and 10
- (b) the mismatch outcome has not been neutralised by the application of a provision similar to this Part in another territory.
- (2) An imported mismatch outcome shall, notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts, be neutralised by the company being denied a deduction for the purposes of domestic tax for so much of the payment as corresponds to the mismatch outcome which has not been neutralised in another territory. 15
- (3) In determining, for the purposes of subsection (1) whether a mismatch outcome has arisen from a transaction or series of transactions, this Part, other than this Chapter, shall be applied as if ‘domestic tax’ and ‘foreign tax’ were defined as follows: 20
- ‘domestic tax’ means a tax chargeable on profits or gains, under the laws of a territory in which an entity is established, that is similar to income tax, corporation tax (including a charge under Part 35B) or capital gains tax; 25
- ‘foreign tax’ means a tax chargeable on profits or gains, under the laws of a territory in which the entity is not established, that is similar to income tax, corporation tax (including a charge under Part 35B) and capital gains tax. 30

Chapter 9

*Structured arrangements*

**Application of Chapter 9**

- 835AT.** (1) This Chapter shall apply to a company which is within the charge to domestic tax. 35
- (2) Notwithstanding sections 835AC, 835AE, 835AI and 835AK, this Chapter shall apply where a mismatch outcome arises under a structured arrangement.

**Structured arrangements**

40

**835AU.** (1) A structured arrangement mismatch outcome shall arise where a

company, referred to in section 835AT(1), would reasonably be expected to be aware that—

- (a) it entered into a structured arrangement,
  - (b) it shared in the value of the tax benefit resulting from the mismatch outcome, and 5
  - (c) the mismatch outcome has not been neutralised through the application of a provision similar to this Part in another territory.
- (2) A structured arrangement mismatch outcome shall, notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts, be neutralised by the taxpayer being denied a deduction for the purposes of domestic tax for so much of the payment as corresponds to the mismatch outcome which has not been neutralised in another territory. 10
- (3) In determining, for the purposes of subsection (1) whether a mismatch outcome has arisen from a transaction or series of transactions, this Part, other than this Chapter, shall be applied as if ‘domestic tax’ and ‘foreign tax’ were defined as follows: 15

‘domestic tax’ means a tax chargeable on profits or gains, under the laws of a territory in which an entity is established, that is similar to income tax, corporation tax (including a charge under Part 35B) or capital gains tax; 20

‘foreign tax’ means a tax chargeable on profits or gains, under the laws of a territory in which the entity is not established, that is similar to income tax, corporation tax (including a charge under Part 35B) and capital gains tax.

Chapter 10 25

*Carry forward*

### **Carry forward**

**835AV.** To the extent a deduction has been denied under this Part (the ‘denied amount’) in respect of a tax period of an entity, the entity may make a claim requiring that the denied amount be set off for the purposes of domestic tax against any dual inclusion income in succeeding tax periods of the entity and amounts so carried forward shall be relieved first against profits or gains of an earlier tax period in advance of profits or gains of a later tax period. 30

Chapter 11 35

*Application of this Part*

### **Scope of application**

**835AW.** This Part shall apply to payments made or arising on or after 1 January 2020.

### **Order of application** 40

**835AX.**(1) This Part shall apply after all provisions of the Tax Acts and the Capital Gains Tax Acts, other than section 811C.

- (2) A mismatch outcome shall not be neutralised under more than one Chapter of this Part.”.

**Amendment of section 739J of Principal Act (investment limited partnerships)**

32. (1) Section 739J of the Principal Act is amended—

(a) by substituting the following for subsection (1): 5

“(1) (a) In this section—

‘investment limited partnership’ means an investment limited partnership within the meaning of the Investment Limited Partnerships Act 1994;

‘relevant losses’ means, in relation to an investment limited partnership— 10

(i) any losses sustained by the investment limited partnership, being losses which would constitute an allowable loss in the hands of a person resident in the State including losses which would so constitute allowable losses if all assets concerned were chargeable assets and no exemption from capital gains tax applied, to the extent that such losses exceed any relevant gains, and 15

(ii) any losses or deficiencies sustained by the investment limited partnership, being losses or deficiencies which if they arose to an individual resident in the State would in the hands of the individual constitute losses for the purposes of income tax, to the extent that such losses or deficiencies exceed any relevant income, 20

as appropriate. 25

(b) For the purpose of this section the definitions of ‘relevant gains’, ‘relevant income’ and ‘relevant payment’ in section 739B(1) shall apply to an investment limited partnership as they apply to an investment undertaking—

(i) as if references to ‘unit’ and ‘unit holder’ were references to ‘partnership interest’ and ‘partner’, respectively, in each place where they occur, and 30

(ii) with any other necessary modifications.”,

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

“(2) (a) Notwithstanding anything in the Acts and subject to subsection (3), an investment limited partnership shall not— 35

(i) be chargeable to tax in respect of relevant gains, relevant income or a relevant payment, or

(ii) be entitled to accrue relevant losses.

(b) For the purposes of the Acts, relevant income, relevant gains and 40

relevant losses, as the case may be, in relation to an investment limited partnership shall be treated as arising, or, as the case may be, accruing, to each partner of the investment limited partnership in accordance with the apportionment of such relevant income, relevant gains or relevant losses under the terms of the partnership agreement, as if the relevant income, relevant gains or relevant losses had arisen or, as the case may be, accrued, to the partner in the investment limited partnership without passing through the hands of the investment limited partnership. 5

- (c) Where for any period the aggregate of the respective amounts (in this paragraph referred to as the ‘aggregate’) of the relevant income and relevant gains which under paragraph (b) are taken as arising or accruing to each partner in the investment limited partnership is less than the full amount of the relevant income and relevant gains arising or accruing to the investment limited partnership for that period, then the amount of the difference (in this paragraph referred to as the ‘balance’) between that full amount and the aggregate shall be treated as arising or accruing to the general partner, and where there is more than one general partner then the balance shall be apportioned between the general partners in equal shares.”, 10 15 20

and

- (c) in subsection (3)—

- (i) in paragraph (a)—

(I) by substituting “relevant income, relevant gains and relevant losses” for “relevant profits”, and 25

(II) by deleting “in respect of units in the investment limited partnership”,

- (ii) in paragraph (b) by substituting “partner” for “unit holder”, and

- (iii) in paragraph (b)(ii) by substituting “relevant income, relevant gains and relevant losses” for “relevant profits”.

- (2) *Subsection (1)* shall apply in respect of an investment limited partnership that has been granted an authorisation under section 8 of the Investment Limited Partnerships Act 1994 on or after 1 January 2020. 30

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

33. Section 1035A(1) of the Principal Act is amended in the definition of “authorised agent”— 35

- (a) in paragraph (a)(i), by substituting “Regulation 8 of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017)” for “section 18 of the Stock Exchange Act 1995”, and

- (b) in paragraph (a)(ii)—

- (i) by substituting “a relevant Member State (within the meaning of section 835I(1))” for “another Member State”, 40

- (ii) by substituting “Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014<sup>7</sup>” for “Council Directive 93/22/EEC of 10 May 1993”, and
- (iii) by inserting “and which provides one, or more, investment service through a branch or agency in the State pursuant to the European Union (Markets in Financial Instruments) Regulations 2017,” after “revoked,”. 5

**Amendment of Part 28 of Principal Act (purchase and sale of securities)**

34. Part 28 of the Principal Act is amended by inserting the following Chapter after Chapter 2:

“Chapter 3 10

*Stock borrowing and repurchase agreements*

**Interpretation (Chapter 3)**

**753A.** In this Chapter—

‘Act of 1999’ means the Stamp Duty Consolidation Act 1999;

‘building society’ has the same meaning as it has in Chapter 4 of Part 8; 15

‘equivalent stock’—

(a) in relation to a stock borrowing, has the same meaning as it has in section 87 of the Act of 1999, and

(b) in relation to a repurchase agreement, has the same meaning as it has in section 87A of the Act of 1999; 20

‘financial transaction’ means a transaction comprising—

(a) a stock borrowing or a stock transfer in respect of which—

(i) the stock seller or stock buyer is a qualifying institution, and

(ii) the other party is not an individual or a partnership, 25

and

(b) the corresponding stock return for that stock borrowing or stock transfer,

where it is reasonable to consider that the transaction, and all associated agreements, arrangements or transactions, are equivalent to a transaction or agreement for the lending of money, or money’s worth, at interest; 30

‘investment undertaking’ has the same meaning as it has in Chapter 1A of Part 27;

‘lender’ has the same meaning as it has in section 87 of the Act of 1999; 35

‘manufactured payment’ means a payment by a stock buyer to a stock

7 OJ No. L173, 12.6.2014, p. 349

seller, whether made directly or indirectly, to reimburse that stock seller for any distribution or interest arising or accruing to the stock buyer as a consequence of the transfer of the qualifying securities as part of a financial transaction;

‘pension scheme’ has the same meaning as it has in Chapter 4 of Part 8; 5

‘qualifying institution’ means—

- (a) a company within the charge to corporation tax,
  - (b) an investment undertaking,
  - (c) a pension scheme, 10
  - (d) a scheme, the income of which, in whole or in part, is exempt from income tax under section 790B,
  - (e) a person whose income, in whole or in part, is exempt—
    - (i) from income tax, pursuant to section 207(1)(b), or
    - (ii) corporation tax, by virtue of section 207(1)(b) as it applies for 15 the purposes of corporation tax under section 76(6),
- or
- (f) a building society;

‘qualifying securities’ means—

- (a) securities that are interest bearing, discounted or premium-bearing, 20 or
- (b) stocks or shares that are quoted on a recognised stock exchange;

‘repo seller’ has the same meaning as it has in section 87A of the Act of 1999;

‘repo buyer’ has the same meaning as it has in section 87A of the Act of 1999; 25

‘repurchase agreement’ means a repurchase agreement (within the meaning of section 87A of the Act of 1999) in respect of qualifying securities;

‘security’ has the same meaning as it has in Chapter 2 of Part 6; 30

‘stock borrower’ has the same meaning as it has in section 87 of the Act of 1999;

‘stock borrowing’ means a stock borrowing (within the meaning of section 87 of the Act of 1999) in respect of qualifying securities;

‘stock buyer’ means— 35

- (a) in relation to a stock borrowing, a stock borrower, and
- (b) in relation to a repurchase agreement, a repo buyer;

‘stock return’—

(a) in relation to a stock borrowing, has the same meaning as it has in section 87 of the Act of 1999, and

(b) in relation to a repurchase agreement, has the same meaning as it has in section 87A of the Act of 1999, 5

in each case subject to the modification that a reference in the definition of that term in the section concerned to ‘stock’ shall be construed as a reference to qualifying securities;

‘stock transfer’, in respect of a repurchase agreement, means a stock transfer (within the meaning of section 87A of the Act of 1999); 10

‘stock seller’ means—

(a) in relation to a stock borrowing, a lender, and

(b) in relation to a repurchase agreement, a repo seller.

### **Application**

**753B.**(1) This Chapter shall apply to a financial transaction, entered into on or after 1 January 2020, other than— 15

(a) a financial transaction—

(i) pursuant to which a stock buyer holds qualifying securities or equivalent stock, and

(ii) as a consequence of which a distribution arises or accrues to that stock buyer from those qualifying securities or that equivalent stock, 20

except where—

(I) the stock seller would be entitled—

(A) to a repayment of any tax withheld from the interest, or 25

(B) to receive the distribution without the deduction of tax,

under any provision of the Tax Acts or under arrangements made with another territory having the force of law by virtue of section 826(1), had that stock seller not entered into the financial transaction and received that distribution directly, and 30

(II) the distribution is in the form of cash,

(b) a financial transaction—

(i) pursuant to which a stock buyer holds qualifying securities, and

(ii) as a consequence of which interest arises or accrues to that stock buyer from those securities, 35

except where—

(I) the stock seller would be entitled—

- (A) to a repayment of any tax withheld from the distribution, or
  - (B) to receive the interest without deduction of tax,
    - under any provision of the Tax Acts or under arrangements made with another territory having the force of law by virtue of section 826(1), had that stock seller not entered into the financial transaction and received that interest directly, or 5
  - (II) neither the stock seller nor the stock buyer would be entitled to receive a payment of interest without deduction of tax under section 246 and, where such tax is deducted, neither the stock seller nor the stock buyer would be entitled to a repayment of any such tax withheld or any part thereof. 10
- (2) Where this Chapter applies, in applying the Tax Acts and the Capital Gains Tax Acts to a financial transaction, regard shall be had to the substance of the financial transaction, rather than to its legal form, such that— 15
- (a) the disposal and subsequent reacquisition of qualifying securities, or equivalent stock thereof, pursuant to the financial transaction shall not be treated as a disposal or an acquisition for the purposes of the Capital Gains Tax Acts,
  - (b) any income, profits or gains, including fees, margins, profits or other financial gain arising or accruing to a stock seller or a stock buyer, either directly or indirectly, pursuant to— 20
    - (i) the financial transaction, and
    - (ii) in a case in which the financial transaction comprises a stock transfer, the corresponding repurchase agreement, 25
      - shall be treated as if that income, those profits or those gains, as the case may be, arose from the lending of money, or money's worth, at interest, and
  - (c) any manufactured payment shall be—
    - (i) deductible in accordance with section 753C(2) and (3), and 30
    - (ii) charged to tax in accordance with section 753C(5) and (6).

**Payment and receipt of dividends or interest and manufactured payments under a stock borrowing or repurchase agreement**

- 753C.(1)** In this section, 'specified amount' refers to an amount of interest or distribution arising or accruing to a stock buyer in respect of qualifying securities, or equivalent stock, held by the stock buyer pursuant to a financial transaction. 35
- (2) Subject to subsection (3), in charging a specified amount to tax—
    - (a) a deduction shall be available for any corresponding manufactured payment paid, and 40
    - (b) such deduction shall not exceed the specified amount received

following the application of Schedule 24, but prior to the application of Schedule 2.

- (3) A manufactured payment shall not be deductible—
  - (a) where the stock buyer is exempt from tax in respect of the corresponding specified amount, 5
  - (b) where no amount of tax payable, within the meaning of section 959A, would arise in respect of the corresponding specified amount following the application of Schedule 24, or
  - (c) against any amounts other than the corresponding specified amount. 10
- (4) Where the specified amount is in excess of the amount of any corresponding manufactured payment paid, then, notwithstanding Part 2, section 129, section 129A or section 138, that excess amount shall be charged to tax pursuant to section 753B(2)(b).
- (5) Subject to subsection (6), a stock seller shall be charged to tax in respect of a manufactured payment arising or accruing as if the corresponding specified amount had been received directly by that stock seller. 15
- (6) Where the amount of the manufactured payment made by the stock buyer is in excess of the amount of the corresponding specified amount received by the stock buyer, net of any foreign withholding tax but prior to the application of Schedule 2, then the stock seller shall be chargeable to tax under Case IV of Schedule D in respect of that excess amount. 20

**Refund of dividend withholding tax** 25

**753D.**(1) This section shall apply to a financial transaction where—

- (a) a distribution is paid to a stock buyer pursuant to a stock borrowing or the repurchase agreement in respect of a stock transfer,
- (b) the corresponding stock return for that stock borrowing or stock transfer has taken place, 30
- (c) the distribution received by the stock buyer pursuant to the stock borrowing or repurchase agreement was subject to dividend withholding tax,
- (d) the stock seller would have been entitled—
  - (i) to a repayment of the dividend withholding tax referred to in paragraph (c), or 35
  - (ii) to receive the distribution without deduction of that dividend withholding tax,had that stock seller not entered into the financial transaction and received that distribution directly, 40
- (e) the stock seller has not been compensated by the stock buyer, or a

party connected to that stock buyer, for the dividend withholding tax referred to in paragraph (c), or any part of that dividend withholding tax, and

(f) the stock buyer is not entitled under—

(i) section 831,

5

(ii) an arrangement having the force of law by virtue of section 826(1),

(iii) Schedule 24, or

(iv) any other provision (including under the law of a territory other than the State),

10

to a repayment, credit, deduction or other relief for the dividend withholding tax referred to in paragraph (c) or any part of that dividend withholding tax.

(2) Where this section applies, the stock seller may make a claim for a repayment of the dividend withholding tax referred to in subsection (1)(c), subject to providing—

15

(a) confirmation that the stock buyer received a distribution under a stock borrowing or repurchase agreement, and that dividend withholding tax was withheld from the amount of that distribution,

(b) a signed declaration from the stock buyer that the stock seller is not entitled to any repayment, credit, deduction or similar in respect of that dividend withholding tax,

20

(c) confirmation that the stock seller—

(i) was the owner of the qualifying securities (including any equivalent stock)—

25

(I) immediately prior to the financial transaction, and

(II) immediately following the financial transaction,

(ii) would have received the distribution directly had the stock borrowing or repurchase agreement not been entered into, and

(iii) would have been entitled to—

30

(I) a repayment of that dividend withholding tax, or

(II) to receive the distribution without the deduction of that dividend withholding tax,

had the distribution been received directly by that stock seller,

(d) a statement referred to in section 172I(1) or (1A),

35

(e) the appropriate declaration made under Schedule 2A, and

(f) any other information or documentation the Revenue Commissioners may consider appropriate to validate the claim.

## Anti-avoidance

### 753E.(1) In this section—

‘the Acts’ means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts, 5
- (c) the Act of 1999, and the enactments amending or extending that Act, and
- (d) the Value-Added Tax Consolidation Act 2010, and the enactments amending or extending that Act,

and any instrument made thereunder and any instrument that is made 10  
under any other enactment and which relates to those Acts;

‘tax advantage’ has the same meaning as it has in section 811C;

‘transaction period’ means the period after—

- (a) qualifying securities have been obtained from a lender under a 15  
stock borrowing, or
- (b) a stock transfer has taken place under a repurchase agreement,  
but before the corresponding stock return has taken place.

(2) This Chapter shall not apply to a financial transaction, unless it would  
be reasonable to consider that the financial transaction—

- (a) has been undertaken for *bona fide* commercial reasons, and 20
- (b) does not form part of any arrangement or scheme of which the  
main purpose, or one of the main purposes, is the avoidance of tax.

(3) Notwithstanding subsection 753B(2)(a), when determining the capital,  
voting rights or entitlement to assets, whether on a winding up or in 25  
any other circumstances, held by a party to a financial transaction for  
the purposes of any provision of the Acts during a transaction period,  
regard shall be had to the—

- (a) capital,
- (b) voting rights, and
- (c) entitlement to assets, whether on a winding up or in any other 30  
circumstances,

of each party to the financial transaction concerned, as the case may  
be—

- (i) immediately prior to the time at which—
  - (I) qualifying securities have been obtained from the lender under 35  
the stock borrowing concerned, or
  - (II) the stock transfer has taken place under the repurchase  
agreement concerned,

as the case may be, and

(ii) during the transaction period,

such that the capital, voting rights or entitlement to assets, whether on a winding up or in any other circumstances, held by that party for that transaction period shall be the amount that does not give rise to a tax advantage for that party to the financial transaction or a person connected to that party. 5

## Records

**753F.(1)** Subject to subsection (2), a qualifying institution shall maintain a separate record of each financial transaction, for a period of 6 years from the date of the stock return concerned, which shall include, at a minimum— 10

(a) the name and address of both parties to the financial transaction,

(b) the agreement underlying the financial transaction and any documentation in respect of any associated agreements, arrangements or transactions, 15

(c) the type, nominal value, description and amount of the qualifying securities, including any equivalent stock, transferred under the financial transaction,

(d) the date on which— 20

(i) qualifying securities have been obtained from the lender under the stock borrowing concerned, or

(ii) the stock transfer has taken place under the repurchase agreement concerned,

as the case may be, 25

(e) the date of the stock return,

(f) details of any manufactured payments arising pursuant to the financial transaction,

(g) details of any interest rate or rate of return applicable to the financial transaction, and 30

(h) details of the fees, profits, margins or other financial gain accruing, charged or expected to arise pursuant to the financial transaction.

(2) Where a qualifying institution is—

(a) an investment undertaking,

(b) a pension scheme, or 35

(c) a scheme referred to in paragraph (d) of the definition of 'qualifying institution' in section 753A,

the record referred to in subsection (1) shall be maintained by a person who is authorised to act on behalf of, or for the purposes of, the

qualifying institution and habitually so acts in that capacity.”.

CHAPTER 6

*Capital Gains Tax*

**Amendment of section 604B of Principal Act (relief for farm restructuring)**

35. (1) Section 604B(1)(a) of the Principal Act is amended in the definition of “relevant period” by substituting “31 December 2022” for “31 December 2019”. 5
- (2) *Subsection (1)* shall come into operation on such day as the Minister for Finance may by order appoint.

**Amendment of section 616 of Principal Act (groups of companies: interpretation)**

36. (1) Section 616 of the Principal Act is amended in subsection (1) by substituting the following for paragraph (a): 10
- “*(a)* subject to sections 617(5), 621(1) and 623(7), a reference to a company or companies shall apply only to a company or companies, as limited by subsection (2), being a company or, as the case may be, companies which, by virtue of the law of a relevant Member State, is or are resident for the purposes of tax in such a relevant Member State, and for this purpose— 15
- ‘relevant Member State’, in addition to the meaning assigned to that expression by subsection (7), shall be deemed to include the United Kingdom; 20
- ‘tax’, in relation to a relevant Member State other than the State, means any tax imposed in the relevant Member State which corresponds to corporation tax in the State;
- and references to a member or members of a group of companies shall be construed accordingly;” 25
- (2) This section shall apply from the day (at the time thereon appointed in that behalf under the Act next mentioned) that Part 6 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 comes into operation.

**Amendment of section 621 of Principal Act (depreciatory transactions in group)**

37. Section 621(8) of the Principal Act is amended— 30
- (a) by substituting for paragraph (a) the following:
- “*(a)* Where, under subsection (6), a reduction is made in a loss, any chargeable gain accruing on a disposal of the shares in or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 10 years after the depreciatory transaction, shall, for the purposes of the making of a self-assessment, be reduced to such an extent that the gain does not reflect any increase 35

in the value of the company’s assets attributable to the depreciatory transaction on the value of those shares or securities at the time of their disposal.”,

and

(b) by inserting after paragraph (a) the following: 5

“(aa) The inspector, in making an assessment, or the Appeal Commissioners, on an appeal against an assessment, shall reduce any chargeable gain to such an extent as appears to the inspector or the Appeal Commissioners, as the case may be, to be just and reasonable on the basis that the gain ought not to reflect any increase in the value of the company’s assets attributable to a depreciatory transaction.”. 10

**Amendment of provisions relating to exit tax**

**38.** (1) The Principal Act is amended—

(a) in section 627— 15

(i) in subsection (2)—

(I) by inserting “or, in the case of paragraph (c), at the time specified in subsection (2A)” after “event concerned”, and

(II) by deleting “, being a company that is resident in a Member State (other than the State),” in paragraphs (a) and (b), 20

and

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

“(2A) Notwithstanding anything in subsection (2), as respects the event referred to in paragraph (c) of that subsection, the time immediately before the company referred to in that paragraph ceases to be resident in the State is to be taken as the time at which the company shall be deemed to have disposed of all its assets (other than assets excepted from that paragraph by subsection (6)) and to have immediately reacquired them at their market value.”. 25

and 30

(b) in section 629B, by substituting “section 32” for “section 30” in subsection (1).

(2) (a) *Subsection (1)(a)* shall apply in respect of disposals made on or after 9 October 2019 to which section 627(2) of the Principal Act applies.

(b) *Subsection (1)(b)* shall be deemed to have applied on and from 10 October 2018.

PART 2

EXCISE

**Rates of tobacco products tax**

39. The Finance Act 2005 is amended with effect as on and from 9 October 2019 by substituting the following for Schedule 2 (as amended by section 34 of the Finance Act 2018): 5

“SCHEDULE 2

RATES OF TOBACCO PRODUCTS TAX

(With effect as on and from 9 October 2019)

Description of Product	Rate of Tax	
Cigarettes .... ..	Rate of tax at—	10
	(a) except where paragraph (b) applies, €346.04 per thousand together with an amount equal to 8.91 per cent of the price at which the cigarettes are sold by retail, or	15
	(b) €395.05 per thousand in respect of cigarettes sold by retail where the rate of tax would be less than that rate had the rate been calculated in accordance with paragraph (a).	20
Cigars ... ..	Rate of tax at €394.811 per kilogram.	25
Fine-cut tobacco for the rolling of cigarettes ... ..	Rate of tax at €379.831 per kilogram.	
Other smoking tobacco ... ..	Rate of tax at €273.903 per kilogram.	30

”.

**Amendment of Chapter 1 of Part 2 of, and Schedules 2 and 2A to, Finance Act 1999 (mineral oil tax)**

40. (1) The Finance Act 1999 is amended with effect as on and from 9 October 2019—
- (a) in section 96(1B), by substituting “A is the amount to be charged per tonne of CO<sub>2</sub> emitted, being €26 in the case of petrol, aviation gasoline, and heavy oil used as a propellant or for air navigation or for private pleasure navigation, and €20 in the case of each other description of mineral oil in Schedule 2A” for “A is the amount, €20, to be charged per tonne of CO<sub>2</sub> emitted”, 35
- (b) by substituting the following schedule for Schedule 2: 40

“SCHEDULE 2

RATES OF MINERAL OIL TAX

(With effect as on and from 9 October 2019)

Description of Mineral Oil	Rate of Tax
<i>Light Oil:</i>	
Petrol	€601.69 per 1,000 litres
Aviation gasoline	€601.69 per 1,000 litres
<i>Heavy Oil:</i>	
Used as a propellant	€494.90 per 1,000 litres
Used for air navigation	€494.90 per 1,000 litres
Used for private pleasure navigation	€494.90 per 1,000 litres
Kerosene used other than as a propellant	€50.73 per 1,000 litres
Fuel oil	€76.53 per 1,000 litres
Other heavy oil	€102.28 per 1,000 litres
<i>Liquefied Petroleum Gas:</i>	
Used as a propellant	€96.45 per 1,000 litres
Other liquefied petroleum gas	€32.86 per 1,000 litres
<i>Vehicle gas:</i>	€9.36 per megawatt hour

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10

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”

and

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(c) by substituting the following schedule for Schedule 2A:

“SCHEDULE 2A

CARBON CHARGE

(With effect as on and from 9 October 2019)

Description of Mineral Oil	Rate
<i>Light Oil:</i>	
Petrol	€59.85 per 1,000 litres
Aviation gasoline	€59.85 per 1,000 litres
<i>Heavy Oil:</i>	
Used as a propellant	€69.18 per 1,000 litres
Used for air navigation	€69.18 per 1,000 litres
Used for private pleasure navigation	€69.18 per 1,000 litres
Kerosene used other than as a propellant	€50.73 per 1,000 litres
Fuel oil	€61.75 per 1,000 litres

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Other heavy oil	€54.92 per 1,000 litres	
<i>Liquefied Petroleum Gas:</i>		
Used as a propellant	€32.86 per 1,000 litres	
Other liquefied petroleum gas	€32.86 per 1,000 litres	
<i>Vehicle gas:</i>	€4.10 per megawatt hour	5

(2) The Finance Act 1999 is further amended with effect as on and from 1 May 2020—

- (a) in section 96(1B) (as amended by *subsection (1)(a)*), by substituting “A is the amount, €26, to be charged per tonne of CO<sub>2</sub> emitted” for “A is the amount to be charged per tonne of CO<sub>2</sub> emitted, being €26 in the case of petrol, aviation gasoline, and heavy oil used as a propellant or for air navigation or for private pleasure navigation, and €20 in the case of each other description of mineral oil in Schedule 2A”, 10
- (b) in section 96(1C), by substituting “€0.026” for “€0.02”,
- (c) in section 98(1), by substituting— 15
- (i) “€71.32” for “€56.31”, and
- (ii) “€48.06” for “€38.44”,
- (d) by substituting the following schedule for Schedule 2 (as amended by *subsection (1)(b)*):

“SCHEDULE 2 20

RATES OF MINERAL OIL TAX

(With effect as on and from 1 May 2020)

Description of Mineral Oil	Rate of Tax	
<i>Light Oil:</i>		
Petrol	€601.69 per 1,000 litres	25
Aviation gasoline	€601.69 per 1,000 litres	
<i>Heavy Oil:</i>		
Used as a propellant	€494.90 per 1,000 litres	
Used for air navigation	€494.90 per 1,000 litres	
Used for private pleasure navigation	€494.90 per 1,000 litres	30
Kerosene used other than as a propellant	€65.74 per 1,000 litres	
Fuel oil	€95.05 per 1,000 litres	
Other heavy oil	€117.78 per 1,000 litres	
<i>Liquefied Petroleum Gas:</i>		
Used as a propellant	€106.07 per 1,000 litres	35

Other liquefied petroleum gas	€42.48 per 1,000 litres
<i>Vehicle gas:</i>	€9.36 per megawatt hour

”

and

- (e) by substituting the following schedule for Schedule 2A (as amended by subsection (1)(c)): 5

“SCHEDULE 2A

CARBON CHARGE

(With effect as on and from 1 May 2020)

Description of Mineral Oil	Rate	
<i>Light Oil:</i>		10
Petrol	€59.85 per 1,000 litres	
Aviation gasoline	€59.85 per 1,000 litres	
<i>Heavy Oil:</i>		
Used as a propellant	€69.18 per 1,000 litres	15
Used for air navigation	€69.18 per 1,000 litres	
Used for private pleasure navigation	€69.18 per 1,000 litres	
Kerosene used other than as a propellant	€65.74 per 1,000 litres	
Fuel oil	€80.27 per 1,000 litres	
Other heavy oil	€70.42 per 1,000 litres	20
<i>Liquefied Petroleum Gas:</i>		
Used as a propellant	€42.48 per 1,000 litres	
Other liquefied petroleum gas	€42.48 per 1,000 litres	
<i>Vehicle gas:</i>	€5.22 per megawatt hour	

”

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**Amendment of Chapter 1 of Part 2 of Finance Act 1999 (mineral oil tax)**

41. Chapter 1 of Part 2 of the Finance Act 1999 is amended with effect as on and from 1 January 2020—

- (a) in section 94—

- (i) in subsection (1)—

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- (I) by substituting the following definition for the definition of “combustion in the engine of a motor vehicle”:

“ ‘combustion in the engine’ shall be construed as including internal combustion in such engine and external combustion as fuel for such

engine;”,

and

(II) in the definition of “propellant”, by substituting the following for paragraph (a):

“(a) in relation to mineral oil in the State, mineral oil used for combustion in the engine of a motor vehicle or a craft used for private pleasure navigation, or” 5

and

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

“(2) (a) In this Chapter ‘fuel tank’ means— 10

(i) any tank or other vessel in or on a motor vehicle, which is used, or is capable of being used, to supply fuel for combustion in the engine of—

(I) the motor vehicle for the purposes of propulsion of that vehicle, or 15

(II) another motor vehicle which can provide traction for those purposes,

or

(ii) any tank or other vessel in or on a craft used for private pleasure navigation, which is used, or is capable of being used, to supply fuel for combustion in the engine of the craft for the purposes of propulsion of that craft. 20

(b) For the purposes of subparagraph (i) of paragraph (a), it shall be presumed, until the contrary is shown, that a tank or other vessel referred to in that subparagraph is capable of being used to supply fuel for the purposes of propulsion if there is any outlet from the tank or vessel other than— 25

(i) an outlet which is permanently and solely for the supply of fuel for refrigeration, oxygenation, thermal insulation or other specialised systems in or on the motor vehicle, or 30

(ii) in the case of an oil or gas road tanker, an outlet which is solely for discharging fuel from the tanker.

(c) For the purposes of subparagraph (ii) of paragraph (a), it shall be presumed, until the contrary is shown, that a tank or other vessel referred to in that subparagraph is capable of being used to supply fuel for the purposes of propulsion if there is any outlet from the tank or vessel other than an outlet which is permanently and solely for the supply of fuel for purposes other than as a propellant in or on the craft.” 35

(b) in section 96(2A)(a), by substituting “vehicle” for “motor vehicle”, 40

(c) in section 97A(1), by inserting “up to and including 31 December 2019” after “private pleasure navigation”,

(d) in section 100(4), by substituting the following paragraph for paragraph (c):

“(c) present in the fuel tank of a craft used for private pleasure navigation at the time that craft is brought into the State from another Member State by a private individual, where the mineral oil has, in that Member State, been released for consumption as a propellant, except any such mineral oil that has been marked in accordance with the requirements of that other Member State.”,

(e) in section 102(6)(a)— 10

(i) in subparagraph (i), by substituting “vehicle” for “motor vehicle”, and

(ii) in subparagraph (ii), by substituting “vehicle” for “motor vehicle”,

and

(f) in section 104(2)—

(i) in paragraph (m), by substituting “as a propellant” for “combustion in the engine of a motor vehicle”, and 15

(ii) in paragraph (q), by substituting “fuel tank in or on a motor vehicle or a craft used for private pleasure navigation” for “fuel tank in or on a motor vehicle”.

**Amendment of section 99A of Finance Act 1999 (relief for qualifying road transport operators)** 20

42. Section 99A of the Finance Act 1999 is amended by substituting the following for subsection (3):

“(3) Subject to a maximum repayment rate of €75.00 per 1,000 litres, the amount to be repaid per 1,000 litres of gas oil under subsection (2) is determined— 25

(a) where gas oil has been purchased before 1 January 2020, by the formula—

$$A = (P - 1,000) \times 0.3,$$

or

(b) where gas oil has been purchased on or after 1 January 2020— 30

(i) when P is less than or equal to €1,070, by the formula—

$$A = (P - 1,000) \times 0.3,$$

or

(ii) when P is greater than €1,070, by the formula—

$$A = 21 + [(P - 1,070) \times 0.6],$$
 35

where—

A is the amount to be repaid per 1,000 litres, and

P is an estimate of the average price (exclusive of value-added tax) in euro per 1,000 litres of gas oil purchased by qualifying road transport operators during the repayment period, as determined in accordance with subsection (4).”.

**Amendment of section 78A of Finance Act 2003 (relief for small breweries)** 5

43. (1) Section 78A of the Finance Act 2003 is amended—
- (a) in subsection (1)(a), by substituting “50,000 hectolitres” for “40,000 hectolitres”,
  - (b) in subsection (3)(b)(ii), by substituting “100,000 hectolitres” for “80,000 hectolitres”, and
  - (c) in subsection (4)(b), by substituting “50,000 hectolitres” for “40,000 hectolitres”. 10
- (2) *Subsection (1)* shall come into operation on 1 January 2020.

**Amendment of Schedule 2 to Finance Act 2008 (electricity tax)**

44. The Finance Act 2008 is amended by substituting the following schedule for Schedule 2:

“SCHEDULE 2

RATES OF ELECTRICITY TAX

15

(With effect as on and from 1 January 2020)

Description of use	Rate of Tax
Business use	€1.00 per megawatt hour
Non-business use	€1.00 per megawatt hour

”.

**Amendment of section 67 of Finance Act 2010 (natural gas carbon tax rate)**

45. Section 67 of the Finance Act 2010 is amended with effect as on and from 1 May 2020—
- (a) in subsection (1), by substituting “€5.22” for “€4.10”, and
  - (b) in subsection (3), by substituting “€0.026” for “€0.020”.

**Amendment of section 78 of, and Schedule 1 to, Finance Act 2010 (solid fuel carbon tax)** 25

46. The Finance Act 2010 is amended with effect as on and from 1 May 2020—

- (a) in section 78(3), by substituting “€26” for “€20”, and
- (b) by substituting the following for Schedule 1:

“SCHEDULE 1

RATES OF SOLID FUEL CARBON TAX

30

(With effect as on and from 1 May 2020)

Description of Solid Fuel	Rate of Tax
---------------------------	-------------

Coal	€68.48 per tonne
<i>Peat:</i>	
Peat briquettes	€47.67 per tonne
Milled peat	€23.62 per tonne
Other peat	€35.43 per tonne

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”.

**Amendment of Chapter 1 of Part 2 of Finance Act 2002 (betting duty relief)**

47. (1) Chapter 1 of Part 2 of the Finance Act 2002 is amended—

(a) in section 64 by inserting the following definitions:

“ ‘accounting period’ means a period of 3 months beginning on the first day of January, April, July or October; 10

‘aid’ means aid granted in accordance with Commission Regulation (EU) No. 1407/2013;

‘Commission Regulation (EU) No. 1407/2013’ means Commission Regulation (EU) No. 1407/2013 of 18 December 2013<sup>8</sup> on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid;” 15

(b) by inserting the following section after section 68:

“68A. (1) Subject to such conditions as the Revenue Commissioners may prescribe or otherwise impose, a person liable to betting duty under section 67 or betting intermediary duty under section 67B, or both, 20 may be relieved of such duty provided—

(a) that person is licensed in accordance with section 7, 7B or 7C of the Betting Act 1931, and

(b) he or she holds a current tax clearance certificate issued under section 1094 of the Taxes Consolidation Act 1997, 25

and provided further that—

(i) without prejudice to paragraph (ii), the amount of such duty that he or she may be relieved of shall not exceed €50,000 in any calendar year, and

(ii) in a case where more than one person forms a single undertaking, as that expression is to be construed by virtue of subsection (2), the total amount of such duty that that single undertaking may be relieved of shall not exceed €50,000 in any calendar year, 30

and a reference in paragraph (i) or (ii) to duty, where the case is one of liability to both betting duty and betting intermediary duty, is a reference to both those duties, taken together. 35

(2) For the purposes of subsection (1)(ii) a single undertaking shall have

8 OJ L352, 24.12.2013, p. 1

the same meaning as in Article 2 of Commission Regulation (EU) No. 1407/2013.

- (3) The amount of the relief provided for in subsection (1) shall be applied proportionally where—
- (a) the period of operation of the relief is less than a full calendar year, 5  
or
  - (b) the period of trading by the person is less than a calendar year.
- (4) In computing relief due in respect of any accounting period, that relief shall not be carried into the following calendar year.
- (5) Subject to such conditions as the Revenue Commissioners may see fit 10  
to impose, relief under subsection (1) may be granted by way of remission.
- (6) The relief under subsection (1) shall not be applicable where a person—
- (a) does not fulfil the conditions laid down in Commission Regulation 15  
(EU) No. 1407/2013, or
  - (b) is in receipt of aid which exceeds the ceiling laid down in that Commission Regulation.
- (7) (a) Where a person claims relief under subsection (1) in respect of any 20  
accounting period, he or she shall—
- (i) specify the amount of relief due on his or her return that is required under section 70 for that accounting period,
  - (ii) keep records of all reliefs claimed under this section and any other aid of which he or she is in receipt,
  - (iii) provide such information as required by the Revenue 25  
Commissioners in the manner prescribed by them to which Commission Regulation (EU) No. 1407/2013 applies, and
  - (iv) keep a record of any other information the Revenue  
Commissioners may deem to be necessary to ensure compliance 30  
by the person with Commission Regulation (EU) No. 1407/2013.
- (b) A person shall not claim relief under subsection (1) in any calendar year where such a claim would exceed the ceiling laid down in Commission Regulation (EU) No. 1407/2013.
- (8) Notwithstanding any obligation to maintain secrecy or any other 35  
restriction on the disclosure of information imposed by or under statute or otherwise, the Revenue Commissioners, or any other officer authorised by them for the purposes of this section, may—
- (a) disclose to any board established by statute, any other public or 40  
local authority or any other agency of the State, information relating to the amount of relief claimed by a person under this

section, being information, which is required by the relevant board, authority or agency concerned for the purpose of ensuring that the ceiling of aid in Commission Regulation (EU) No. 1407/2013 is not exceeded, and

(b) provide to the European Commission such information as may be requested by the European Commission in accordance with Article 6 of Commission Regulation (EU) No. 1407/2013. 5

(9) Any person, or persons that constitute a single undertaking as referred to in subsection (1)(ii), who claims or claim relief under subsection (1) in excess of €50,000 in a calendar year, or in respect of whom the ceiling laid down in Commission Regulation (EU) No. 1407/2013 is exceeded, is or are liable, or in the case of a single undertaking, are jointly and severally liable, for the payment of the duty in excess of the relief permitted.”, 10

and 15

(c) in section 77(1)—

(i) in paragraph (b) by deleting “and” where it secondly occurs,

(ii) in paragraph (c) by substituting “them, and” for “them”, and

(iii) by inserting after paragraph (c) the following:

“(d) providing for the methods of charging, securing, collecting, remitting and repaying of duty.”. 20

(2) *Subsection (1)* shall come into operation on such day or days as the Minister for Finance may appoint by order or orders, either generally or with respect to different provisions or purposes.

**Amendment of section 96 of Finance Act 2001 (interpretation (Part 2))** 25

48. (1) Section 96(1) of the Finance Act 2001 is amended, in the definition of “European Union”, by substituting for paragraph (b) the following:

“(b) in the case of Italy, the territory of Livigno,”.

(2) *Subsection (1)* shall come into operation on 1 January 2020.

**Amendment of section 130 of Finance Act 1992 (interpretation)** 30

49. Section 130 of the Finance Act 1992 is amended by inserting the following definitions:

“ ‘certificate of conformity’, notwithstanding any enactment which provides for the continued recognition of certificates issued—

(a) in respect of motor vehicles—

(i) up to 31 August 2020, has the same meaning as in paragraph 36 of Article 3 of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007<sup>9</sup>, and 35

9 OJ No. L263, 9.10.2007, p. 1

(ii) on and after 1 September 2020, has the same meaning as in paragraph (5) of Article 3 of Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018<sup>10</sup>,

(b) in respect of agricultural and forestry vehicles, has the same meaning as in Article 3 of Regulation (EU) 167/2013, and 5

(c) in respect of two- or three-wheeled vehicles and quadricycles, has the same meaning as in Article 3 of Regulation (EU) 168/2013;

‘registration certificate’ has the same meaning as in paragraph (c) of Article 2 of Council Directive 1999/37/EC of 29 April 1999<sup>11</sup>;

‘NO<sub>x</sub>’ has the same meaning as in paragraph (6) of Article 3 of Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016<sup>12</sup>;” 10

**Amendment of section 132 of Finance Act 1992 (charge of excise duty)**

**50.** (1) Section 132 of the Finance Act 1992 is amended, in subsection (3)—

(a) by substituting the following paragraph for paragraph (a): 15

“(a) in case the vehicle the subject of the registration or declaration concerned is a category A vehicle—

(i) in respect of the CO<sub>2</sub> emissions of the vehicle—

(I) by reference to Table 1 to this subsection, or

(II) where— 20

(A) the level of CO<sub>2</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate, EC certificate of conformity or vehicle registration certificate issued in another Member State, and

(B) the Commissioners are not satisfied of the level of CO<sub>2</sub> emissions by reference to any other document produced in support of the declaration for registration, 25

at the rate of an amount equal to the highest percentage specified in Table 1 to this subsection of the value of the vehicle or €720, whichever is the greater, 30

and

(ii) in respect of the NO<sub>x</sub> emissions of the vehicle—

(I) by reference to—

(A) Table 2 to this subsection, and

(B) the unit of measurement used in the relevant EC type-approval certificate, EC certificate of conformity, 35

10 OJ No. L151, 14.6.2018, p. 1  
11 OJ No. L138, 1.6.1999, p. 57  
12 OJ No. L344, 17.12.2016, p. 1

vehicle registration certificate issued in another Member State or other document produced in support of the declaration for registration, as the case may be,

subject to a maximum of €4,850 in respect of vehicles designed to use heavy oil as a propellant and €600 in respect of all other vehicles, or

(II) where—

(A) the level of NO<sub>x</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate, EC certificate of conformity or vehicle registration certificate issued in another Member State, and

(B) the Commissioners are not satisfied of the level of NO<sub>x</sub> emissions by reference to any other document produced in support of the declaration for registration,

at the rate €4,850 in respect of vehicles designed to use heavy oil as a propellant and €600 in respect of all other vehicles.”,

(b) by deleting paragraph (aa),

(c) by deleting Table 1 to that subsection,

(d) by designating Table 2 to that subsection as Table 1 to that subsection, and

(e) by inserting the following Table after Table 1 (as that table has been designated under *paragraph (d)*):

“Table 2

NO <sub>x</sub> emissions (NO <sub>x</sub> mg/km or mg/kWh)	Amount payable per mg/km or mg/kWh	
The first 0-60 mg/km or mg/kWh, as the case may be	€5	25
The next 20 mg/km or mg/kWh or part thereof, as the case may be, up to 80 mg/km or mg/kWh, as the case may be	€15	30
The remainder above 80 mg/km or mg/kWh, as the case may be	€25	

”.

(2) *Subsection (1)* shall come into operation on 1 January 2020.

**Amendment of section 135C of Finance Act 1992 (remission or repayment in respect of vehicle registration tax, etc.)**

**51.** (1) Section 135C of the Finance Act 1992 is amended—

(a) in subsection (1)—

(i) in paragraph (a)—

- (I) by substituting “Subject to paragraph (aa), where a person” for “Where a person”,
- (II) by substituting “31 December 2020” for “31 December 2019”, and
- (III) in subparagraph (i), by substituting “paragraph (a)” for “paragraph (aa)”,  
and 5
- (ii) by inserting the following paragraph after paragraph (a):
  - “(aa) Paragraph (a) shall not apply to a category A vehicle or a category B vehicle—
  - (i) where the level of CO<sub>2</sub> emissions of the vehicle is greater than or equal to 81g/km, or 10
  - (ii) where—
    - (I) the level of CO<sub>2</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate, EC certificate of conformity or vehicle registration certificate issued in another Member State, and 15
    - (II) the Commissioners are not satisfied of the level of CO<sub>2</sub> emissions by reference to any other document produced in support of the declaration for registration.”,
- (b) in subsection (2)—
  - (i) in paragraph (a)— 20
    - (I) by substituting “Subject to paragraph (aa), where a person” for “Where a person”,
    - (II) by substituting “31 December 2020” for “31 December 2019”, and
    - (III) in subparagraph (i), by substituting “paragraph (a)” for “paragraph (aa)”,  
and 25
  - (ii) by inserting the following paragraph after paragraph (a):
    - “(aa) Paragraph (a) shall not apply to a category A vehicle or a category B vehicle—
    - (i) where the level of CO<sub>2</sub> emissions of the vehicle is greater than or equal to 66g/km, or 30
    - (ii) where—
      - (I) the level of CO<sub>2</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate, EC certificate of conformity or vehicle registration certificate issued in another Member State, and 35
      - (II) the Commissioners are not satisfied of the level of CO<sub>2</sub> emissions by reference to any other document produced in support of the declaration for registration.”,

and

(c) in subsection (3)(b), by substituting “paragraph (a)” for “paragraph (aa)”.

(2) *Subsection (1)* shall come into operation on 1 January 2020.

### PART 3

#### VALUE-ADDED TAX

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#### **Interpretation (*Part 3*)**

**52.** In this Part “Principal Act” means the Value-Added Tax Consolidation Act 2010.

#### **Amendment of Chapter 1 of Part 8 of Principal Act (general provisions)**

**53.** The Principal Act is amended—

(a) in section 59—

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(i) in subsection (1), by substituting for the definition of “qualifying vehicle” the following:

“ ‘qualifying vehicle’ means a motor vehicle which, for the purposes of vehicle registration tax, is first registered, in accordance with section 131 of the Finance Act 1992—

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(a) in the period on or after 1 January 2009 and up to 31 December 2020, and has, for the purposes of that registration, a level of CO<sub>2</sub> emissions of less than 156g/km, or

(b) on or after 1 January 2021, and has, for the purposes of that registration, a level of CO<sub>2</sub> emissions of less than 140g/km.”,

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and

(ii) by deleting subsection (2A),

and

(b) in section 62A(1)(a), by deleting “or (2A)”.

#### **Amendment of section 108 of Principal Act (inspection and removal of records)**

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**54.** Section 108 of the Principal Act is amended by inserting the following subsections after subsection (6)—

“(7) The cases in which there is exercisable the powers conferred on an authorised officer by this section shall include the case specified in subsection (7) and this section shall be construed and have effect accordingly.

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(8) The case referred to in subsection (7) is a case in which an authorised officer is required by Council Regulation 904/2010/EU of 7 October

2010<sup>13</sup> on administrative cooperation and combating fraud in the field of value added tax to provide to a requesting authority (as defined in Article 2 of that Council Regulation) in another Member State, on request by that authority, any books, records, accounts or other documents, whether—

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- (a) related to a business being carried on, or
- (b) that are connected with that business by means of trading relations, either current or otherwise, that such a business has had with other businesses,

and where such a request is made, the books, records, accounts or other documents that may be the subject of the exercise of the powers referred to in subsection (7) shall extend to such books, records, accounts or other documents as are deemed to be relevant by the authorised officer.”.

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#### **Amendment of Part 2 of Schedule 3 to Principal Act (goods and services chargeable at the reduced rate)**

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55. Part 2 of Schedule 3 to the Principal Act is amended with effect from 1 January 2020 by inserting the following paragraph after paragraph 3:

*“Food supplements*

- 3A. The supply of food supplements of a kind used for human oral consumption.”.

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### PART 4

#### STAMP DUTIES

#### **Interpretation (Part 4)**

56. In this Part “Principal Act” means the Stamp Duties Consolidation Act 1999.

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#### **Amendment of stamp duty rate on non-residential property**

57. (1) The Principal Act is amended—

- (a) in section 83D—

- (i) in subsections (2)(a) and (6)(a), by substituting “7.5 per cent” for “6 per cent”, and

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- (ii) in subsection (6)(a), by substituting “11/15” for “2/3”,

and

- (b) in Schedule 1—

- (i) in the Heading “CONVEYANCE or TRANSFER on sale of any property other

13 OJ No. L268, 12.11.2010, p.1

than stocks or marketable securities or a policy of insurance or a policy of life insurance”, in paragraph (4), by substituting “7.5 per cent” for “6 per cent”, and

(ii) in the Heading “LEASE”, in paragraph (3)(b), by substituting “7.5 per cent” for “6 per cent”.

5

(2) *Subsection (1)(a)* shall not have effect as respects instruments executed on or after 9 October 2019 where *paragraph (b)* of *subsection (3)* applies to the instrument referred to in paragraph (a) of *subsection 83D(2)* of the Principal Act.

(3) *Subsection (1)(b)*—

(a) shall have effect as respects instruments executed on or after 9 October 2019, and 10

(b) shall not have effect as respects any instrument executed before 1 January 2020, where—

(i) the effect of the application of *subsection (1)(b)* 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 9 October 2019. 15

(4) The furnishing of an incorrect certificate for the purposes of *subsection (3)* shall be deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act 1997. 20

#### **Amendment of section 124B of Principal Act (certain premiums of life assurance)**

**58.** (1) Section 124B(1) (as amended by section 64 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019) of the Principal Act is amended in the definition of “insurer”—

(a) in paragraph (c), by substituting “State,” for “State, or”, 25

(b) in paragraph (d), by substituting “supervising such persons, or” for “supervising such persons;”, and

(c) by inserting the following paragraph after paragraph (d):

“(e) a person who is the holder of an authorisation to undertake insurance granted by the authority in Gibraltar charged by law with the duty of supervising such persons;”. 30

(2) *Subsection (1)* shall come into operation on such day as the Minister for Finance may appoint by order.

#### **Amendment of section 125 of Principal Act (certain premiums of insurance)**

**59.** (1) Section 125(1) (as amended by section 65 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019) of the Principal Act is amended, in the definition of “insurer”, by inserting the following after “such persons”:

“, or who is the holder of an authorisation to carry on the business of insurance granted by the authority in Gibraltar charged by law with the duty of supervising such persons”.

- (2) *Subsection (1)* shall come into operation on such day as the Minister for Finance may appoint by order. 5

**Amendment of section 126AA of Principal Act (further levy on certain financial institutions)**

60. (1) Section 126AA(6) of the Principal Act is amended by substituting “170 per cent” for “59 per cent”.

- (2) *Subsection (1)* shall apply in relation to a statement to be delivered in accordance with section 126AA(2) of the Principal Act for the year 2019 and each subsequent year. 10

**Cancellation schemes of arrangement**

61. The Principal Act is amended by the insertion of the following section after section 31C:

**“Cancellation schemes of arrangement**

**31D.** (1) In this section— 15

‘Act of 2014’ means the Companies Act 2014;

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

‘company’ means a company formed and registered under the Act of 2014 or an existing company within the meaning of that Act; 20

‘registrar’ has the same meaning as it has in the Act of 2014;

‘scheme order’ has the same meaning as it has in Chapter 1 of Part 9 of the Act of 2014.

(2) Where—

(a) there is an agreement to effect the acquisition of a company (in this section referred to as the ‘target company’), 25

(b) the target company enters into an arrangement—

(i) that has become binding in accordance with section 453 of the Act of 2014, and

(ii) in accordance with which there is a cancellation of shares in the target company pursuant to Chapter 4 of Part 3 of that Act, 30

and

(c) the shareholders of the target company receive consideration for the cancellation of those shares held by them,

the agreement referred to in paragraph (a) shall be— 35

(I) chargeable with the same stamp duty as if it were a conveyance or transfer on sale of those shares, and

- (II) deemed to be executed on the date on which a copy of the scheme order relating to the arrangement is delivered to the registrar in accordance with section 454 of the Act of 2014.
- (3) Where subsection (2) applies, the consideration for the purpose of charging stamp duty shall be the consideration received by the shareholders of the target company for the cancellation of shares held by them. 5
- (4) For the purposes of this Act, the accountable person shall be the person paying the consideration for the cancellation of the shares by the shareholders of the target company. 10
- (5) This section shall have effect in relation to a scheme order made on or after 9 October 2019.”.

## PART 5

### CAPITAL ACQUISITIONS TAX

#### **Interpretation (*Part 5*)** 15

**62.** In this Part “Principal Act” means the Capital Acquisitions Tax Consolidation Act 2003.

#### **Amendment of section 48 of Principal Act (affidavits and accounts)**

- 63.** (1) The Principal Act is amended—
- (a) in section 48, by deleting subsections (1), (2) and (4) to (9), and
  - (b) by inserting the following section after section 48: 20

#### **“Information about a deceased person’s property**

**48A.** (1) In this section—

‘electronic means’ has the meaning given to it by section 917EA of the Taxes Consolidation Act 1997;

‘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; 25

‘probate’ includes letters of administration.

- (2) A person who intends to apply for probate in relation to the estate of a deceased person, where the deceased person was on the date of his or her death— 30
  - (a) resident and domiciled, or ordinarily resident and domiciled, in the State,
  - (b) resident and not domiciled, or ordinarily resident and not domiciled, in the State and who had been resident in the State for the 5 consecutive years of assessment immediately preceding the 35

- year of assessment in which the date of death falls, or
- (c) where neither paragraph (a) nor (b) applied, an individual who had an interest in property situate in the State,

shall submit information to the Commissioners which information shall be specified in regulations made by the Commissioners under subsection (3). 5

- (3) The Commissioners shall make regulations to give effect to subsection (2), and those regulations may, in particular and without prejudice to the generality of that subsection, include provision for the information to be specified by the Commissioners which information may include— 10

- (a) details of all property in respect of which probate is being sought and in respect of which the beneficial ownership is affected on the death of the deceased person by—

(i) that person's will, 15

(ii) the rules for distribution on intestacy, or

(iii) Part IX, or section 56, of the Succession Act 1965 or under the analogous law of another territory,

and such details may include—

(I) the nature of the property, 20

(II) the nature of the deceased person's interest in the property,

(III) the situation of the property,

(IV) the valuation of the property, and

(V) any debts or charges attaching to the property,

- (b) in relation to the deceased person, his or her— 25

(i) name and address,

(ii) PPS number,

(iii) territory of residence, ordinary residence and domicile at the date of death,

(iv) debtors and the amount owed to them, and 30

(v) creditors and the amount owned by them,

- (c) details of any property that was the subject matter of—

(i) a gift made by the deceased person where the date of the gift was within 2 years of that person's death, or

(ii) a *donatio mortis causa* by the deceased person, 35

- (d) details of any discretionary trust created by the deceased person whether created before his or her death or under his or her will,

- (e) details of the inheritances arising under—
    - (i) the deceased person’s will,
    - (ii) the rules for distribution on intestacy, or
    - (iii) Part IX, or section 56, of the Succession Act 1965 or under the analogous law of another territory, 5
  - (f) in relation to each person who takes an inheritance on the death of the deceased person, the person’s—
    - (i) name and address,
    - (ii) PPS number,
    - (iii) territory of residence, ordinary residence and domicile at the date of the death, and 10
    - (iv) relationship to the deceased person,

and
  - (g) in relation to the person who intends to apply for probate—
    - (i) that person’s name and address, 15
    - (ii) that person’s relationship to the deceased person,
    - (iii) the capacity in which the person intends to apply for probate, and
    - (iv) the form of the declaration to be made by that person in respect of the information submitted to the Commissioners under the regulations. 20
  - (4) Regulations made under subsection (3) may also provide for—
    - (a) the supporting documentation to be provided including a copy of the will, and codicil, if any,
    - (b) the submission of information by electronic means, 25
    - (c) the information to be exchanged between the Commissioners and the Probate Office, and
    - (d) such incidental, supplemental or consequential provisions as appear to the Commissioners to be necessary or expedient to give effect to subsection (2). 30
  - (5) 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 thereunder.” 35
- (2) (a) *Subsection (1)(a)* shall have effect from the date on which the regulations referred to in subsection (3) of section 48A (inserted by *subsection (1)(b)*) come

into operation.

- (b) *Subsection (1)(b)* shall come into operation on such day as the Minister for Finance may appoint by order.

**Amendment of section 86 of Principal Act (exemption relating to certain dwellings)**

**64.** Section 86 of the Principal Act is amended— 5

(a) in subsection (2)—

(i) in paragraph (a), by substituting “his or her death, and” for “his or her death,”

(ii) in paragraph (b), by substituting “the date of the inheritance.” for “the date of the inheritance, and”, and

(iii) by deleting paragraph (c), 10

(b) in subsection (4), by substituting “subsections (4A), (4B), (5) and (6)” for “subsections (5) and (6)”, and

(c) by inserting after subsection (4) the following:

“(4A) For the purposes of subsection (4), and in relation to a disponent and a successor— 15

(a) a dwelling house shall not be regarded as a relevant dwelling house where the successor is beneficially entitled to, or has a beneficial interest in, any other dwelling house—

(i) at the date of the inheritance of the first-mentioned dwelling house in this paragraph (a), or 20

(ii) at the valuation date of the first-mentioned dwelling house in this paragraph (a), if this date is later than that date of inheritance and such entitlement to, or interest in, that dwelling house is taken from the disponent,

and 25

(b) where—

(i) a dwelling house to which the successor is beneficially entitled, or in which the successor has a beneficial interest, is regarded as a relevant dwelling house, and

(ii) that successor acquires a subsequent beneficial entitlement to or a beneficial interest in any other dwelling house by way of an inheritance taken from the disponent, 30

the first-mentioned dwelling house in this paragraph (b) shall cease to be regarded as a relevant dwelling house on the date on which that subsequent entitlement or interest is acquired. 35

(4B) Where paragraph (b) of subsection (4A) applies—

(a) subparagraphs (i) and (ii) of subsection (6) shall apply as if the dwelling house had not been a relevant dwelling house at the date

of the inheritance, and

- (b) the relevant date (within the meaning of section 46(5)) from which interest is to be charged in accordance with section 51(2) shall be the earliest valuation date for any other dwelling house to which the successor takes a beneficial entitlement or in which the successor takes a beneficial interest from the disponent if that date is later than the date which, apart from this subsection, would be the relevant date.”. 5

**Amendment of Schedule 2 to Principal Act (computation of tax)**

65. (1) Paragraph 1 of Part 1 of Schedule 2 to the Principal Act is amended, in paragraph (a) of the definition of “group threshold”, by substituting “€335,000” for “€320,000”. 10
- (2) This section shall apply to gifts and inheritances taken on or after 9 October 2019.

PART 6

MISCELLANEOUS

**Interpretation (Part 6)**

15

66. In this Part “Principal Act” means the Taxes Consolidation Act 1997.

**Mandatory automatic exchange of information in relation to reportable cross-border arrangements**

67. (1) Part 33 of the Principal Act is amended by inserting the following Chapter after Chapter 3: 20

“Chapter 3A

*Implementation of Council Directive (EU) 2018/822 of 25 May 2018<sup>14</sup> amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements*

25

**Interpretation (Chapter 3A)**

**817RA.** (1) In this Chapter—

‘arrangement’ means—

- (a) any transaction, action, course of action, course of conduct, scheme, plan or proposal, 30
- (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), 35

14 OJ No. L139, 5.6.2018, 9. 1-13

whether entered into or arranged by one or 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 arrangement or in conjunction with any other arrangement or arrangements, 5

but does not include an arrangement referred to in section 826;

‘associated enterprise’ has the same meaning as it has in Article 3(23) of the Directive; 10

‘competent authority’ means the authority designated as such by a Member State for the purposes of the Directive and, in relation to the State, means the Revenue Commissioners;

‘cross-border arrangement’ means an arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met: 15

- (a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
- (b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction; 20
- (c) one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment; 25
- (d) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;
- (e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership; 30

‘Directive’ means Council Directive 2011/16/EU of 15 February 2011<sup>15</sup> on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended by Council Directive 2014/107/EU of 9 December 2014<sup>16</sup>, Council Directive (EU) 2015/2376 of 8 December 2015<sup>17</sup>, Council Directive (EU) 2016/881 of 25 May 2016<sup>18</sup>, Council Directive (EU) 2016/2258 of 6 December 2016<sup>19</sup> and Council Directive (EU) 2018/822 of 25 May 2018<sup>20</sup>; 35

15 OJ No. L64, 11.3.2011, p. 1  
16 OJ No. L359, 16.12.2014, p. 1  
17 OJ No. L332, 18.12.2015, p. 1  
18 OJ No. L146, 3.6.2016, p. 8  
19 OJ No. L342, 16.12.2016, p. 1  
20 OJ No. L139, 5.6.2018, p. 1

‘electronic means’ has the same meaning as it has in section 917EA(1);

‘hallmark’, ‘marketable arrangement’ and ‘person’ have the same meanings respectively as they have in Article 3 of the Directive;

‘intermediary’ means any person— 5

(a) that—

(i) designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement, or

(ii) having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that such person has undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement, 10 15

and

(b) that meets at least one of the following conditions:

(i) the person is resident for tax purposes in a Member State; 20

(ii) the person has a permanent establishment in a Member State through which the services with respect to the arrangement are provided;

(iii) the person is incorporated in, or governed by the laws of, a Member State; 25

(iv) the person is registered with a professional association related to legal, taxation or consultancy services in a Member State;

‘reference number’ means the number assigned to a reportable cross-border arrangement by the Revenue Commissioners or by the competent authority of another Member State; 30

‘Regulations of 2012’ means the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012 (S.I. No. 549 of 2012);

‘relevant taxpayer’ means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement; 35

‘reportable cross-border arrangement’ means any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV of the Directive; 40

‘return’ has the same meaning as it has in section 917D(1);

‘specified information’ means, in respect of a reportable cross-border arrangement, the information set out in subsection (3);

‘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, 5
- (b) a refund or repayment of, or a payment of, an amount of tax, or an increase in 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 10
- (c) the avoidance of any obligation to deduct or account for tax, arising out of or by reason of an arrangement, including an arrangement where another arrangement 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 arrangement; 15

‘taxpayer identification number’ means the tax identification number (TIN) allocated to a person by the tax administration of the jurisdiction of residence of the person and, in relation to the State, means a tax reference number within the meaning of section 885. 20

- (2) For the purposes of this Chapter, a person referred to in paragraph (a)(ii) of the definition of ‘intermediary’ in subsection (1) shall have the right to provide evidence that such person did not know and could not reasonably be expected to know that that person was involved in a reportable cross-border arrangement and, for this purpose, that person may refer to all relevant facts and circumstances as well as available information and that person’s relevant expertise and understanding. 25
- (3) The following is the information referred to in the definition of ‘specified information’ in subsection (1): 30
  - (a) information in relation to the identity of each intermediary and relevant taxpayer, including—
    - (i) the name of each such intermediary and relevant taxpayer,
    - (ii) whether each such intermediary and relevant taxpayer is an individual or entity, 35
    - (iii) the date and place of birth (in the case of an individual) of each such intermediary and relevant taxpayer,
    - (iv) the residence for tax purposes of each such intermediary and relevant taxpayer,
    - (v) the taxpayer identification number of each such intermediary and relevant taxpayer, 40

- (vi) the country of issuance of the taxpayer identification number of each such intermediary and relevant taxpayer,
  - (vii) if the information referred to in either or both subparagraph (v) or (vi) is not known to the person who is required to make a return under this Chapter of the specified information, the address of each such intermediary and relevant taxpayer, and
  - (viii) where appropriate, the persons that are associated enterprises to each such relevant taxpayer;
- (b) details of each hallmark that makes the cross-border arrangement reportable;
  - (c) a summary of the content of the reportable cross-border arrangement, including the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;
  - (d) the reference number assigned to the reportable cross-border arrangement, if any;
  - (e) details of the national provisions that form the basis of the reportable cross-border arrangement;
  - (f) the value of the reportable cross-border arrangement;
  - (g) the date on which the first step was taken or will be taken in implementing the reportable cross-border arrangement;
  - (h) the identification of the Member State of each such relevant taxpayer and any other Member States which are likely to be concerned by the reportable cross-border arrangement; and
  - (i) the identification of any other person in a Member State likely to be affected by the reportable cross-border arrangement, indicating to which Member States such person is linked.
- (4) A word or expression which is used in this Chapter and which is also used in the Directive has, unless the context otherwise requires, the same meaning in this Chapter as it has in the Directive.

### **Application of Chapter 3A**

- 817RB.**(1) Subject to subsection (2), this Chapter applies to all taxes of any kind levied by, or on behalf of, a Member State or its territorial or administrative subdivisions, including local authorities.
- (2) This Chapter shall not apply to—
- (a) (i) value-added tax, customs duties, or excise duties covered by other legislation of the European Union on administrative cooperation between Member States, or

- (ii) compulsory social security contributions payable to a Member State or a subdivision of a Member State or to social security institutions established under public law,
- (b) fees for documents issued by public authorities, and
- (c) consideration due under a contract. 5

**Duties of intermediary**

- 817RC.** (1) An intermediary within the meaning of paragraph (a)(i) of the definition of ‘intermediary’ in section 817RA(1) shall make a return to the Revenue Commissioners of the specified information within 30 days beginning— 10
- (a) on the day after the reportable cross-border arrangement is made available for implementation,
  - (b) on the day after the reportable cross-border arrangement is ready for implementation, or
  - (c) when the first step in the implementation of the reportable cross-border arrangement was taken, 15
- whichever occurs first.
- (2) An intermediary within the meaning of paragraph (a)(ii) of the definition of ‘intermediary’ in section 817RA(1) shall make a return to the Revenue Commissioners of the specified information within 30 days beginning on the day after such intermediary provided, directly or by means of other persons, aid, assistance or advice referred to in the said paragraph (a)(ii). 20
- (3) In the case of a marketable arrangement, an intermediary shall—
- (a) when making a return under subsection (1) or (2), as the case may be (in this subsection referred to as ‘the return’), state in the return that it is a marketable arrangement, and 25
  - (b) not later than 3 months after the date of the return and every 3 months thereafter, notify the Revenue Commissioners, by amending the return, of any new information that has become 30
- available in respect of the specified information referred to in paragraphs (a), (g), (h) and (i) of section 817RA(3).
- (4) A return (including an amended return under subsection (3)) required under this section shall be made by electronic means and the relevant provisions of Chapter 6 of Part 38 shall apply. 35
- (5) An intermediary shall provide, in writing, to any other intermediary and each relevant taxpayer involved in the arrangement, the reference number assigned to the arrangement by the Revenue Commissioners within 5 working days of the later of—
- (a) the date on which the intermediary is notified by the Revenue Commissioners of the reference number, or 40

- (b) the date on which such other intermediary or a relevant taxpayer becomes involved in the arrangement.
- (6) An intermediary shall be exempt from making a return to the Revenue Commissioners under this section if the intermediary has received, in writing, from any other intermediary involved in the same reportable cross-border arrangement— 5
  - (a) confirmation that such other intermediary has provided the specified information to the Revenue Commissioners in a return made under this section, and
  - (b) the reference number assigned to the arrangement by the Revenue Commissioners. 10
- (7) Subject to subsection (8), where an intermediary is required to provide the specified information on a reportable cross-border arrangement to the competent authority of more than one Member State, such information shall be provided only to the competent authority of the Member State referred to in whichever of the following paragraphs first applies: 15
  - (a) the competent authority of the Member State where the intermediary is resident for tax purposes;
  - (b) the competent authority of the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided; 20
  - (c) the competent authority of the Member State which the intermediary is incorporated in or governed by the laws of;
  - (d) the competent authority of the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services. 25
- (8) Where subsection (7) applies, an intermediary shall be exempt from making a return under this section if the intermediary has—
  - (a) a copy of the specified information provided to the competent authority of another Member State, and 30
  - (b) confirmation, in writing, provided to the intermediary by the competent authority of another Member State that a reference number has been assigned to the arrangement by that competent authority. 35
- (9) Nothing in this section shall be construed as requiring an intermediary to disclose to the Revenue Commissioners—
  - (a) information that is not within the knowledge, possession or control of the intermediary, or
  - (b) information with respect to which a claim to legal professional privilege could be maintained by the intermediary in legal proceedings. 40

- (10) Where subsection (9)(b) applies, the intermediary concerned shall, without delay, notify any other intermediary or, if there is no other intermediary, the relevant taxpayer, of the obligations imposed on such other intermediary or that relevant taxpayer, as the case may be, under this Chapter. 5

**Duties of relevant taxpayer**

- 817RD.**(1) Where there is no intermediary, or the relevant taxpayer has been notified by an intermediary under section 817RC(10), the relevant taxpayer shall make a return to the Revenue Commissioners of the specified information within 30 days beginning— 10
- (a) on the day after the reportable cross-border arrangement is made available for implementation to the relevant taxpayer,
  - (b) on the day after the reportable cross-border arrangement is ready for implementation by the relevant taxpayer, or
  - (c) when the first step in the implementation of a reportable cross-border arrangement was taken in relation to the relevant taxpayer, 15  
whichever occurs first.
- (2) A return required under this section shall be made by electronic means and the relevant provisions of Chapter 6 of Part 38 shall apply.
- (3) Where a relevant taxpayer is required to make a return under this section and there is more than one relevant taxpayer involved in the same reportable cross-border arrangement, the return shall be made by the relevant taxpayer referred to in whichever of the following paragraphs first applies: 20
- (a) the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary; 25
  - (b) the relevant taxpayer that manages the implementation of the arrangement.
- (4) Where a relevant taxpayer is required to make a return under this section ('the first relevant taxpayer') and there is more than one relevant taxpayer involved in the same reportable cross-border arrangement, the first relevant taxpayer shall provide, in writing, to each such other relevant taxpayer, the reference number assigned to the arrangement by the Revenue Commissioners within 5 working days of the later of— 30 35
- (a) the date on which the first relevant taxpayer is notified by the Revenue Commissioners of the reference number, or
  - (b) the date on which such other relevant taxpayer becomes involved in the arrangement.
- (5) A relevant taxpayer shall be exempt from making a return to the Revenue Commissioners under this section if the relevant taxpayer has received, in writing, from any other relevant taxpayer involved in the 40

same reportable cross-border arrangement—

- (a) confirmation that such other relevant taxpayer has provided the specified information to the Revenue Commissioners in a return made under this section, and
  - (b) the reference number assigned to the arrangement by the Revenue Commissioners. 5
- (6) Subject to subsection (7), where a relevant taxpayer is required to provide the specified information on a reportable cross-border arrangement to the competent authority of more than one Member State, such information shall be provided only to the competent authority of the Member State referred to in whichever of the following paragraphs first applies: 10
- (a) the competent authority of the Member State where the relevant taxpayer is resident for tax purposes;
  - (b) the competent authority of the Member State where the relevant taxpayer has a permanent establishment benefitting from the arrangement; 15
  - (c) the competent authority of the Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State; 20
  - (d) the competent authority of the Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State. 25
- (7) Where subsection (6) applies, a relevant taxpayer shall be exempt from making a return under this section if the relevant taxpayer has—
- (a) a copy of the specified information provided to the competent authority of another Member State, and
  - (b) confirmation, in writing, provided to the relevant taxpayer by the competent authority of another Member State that a reference number has been assigned to the arrangement by that competent authority. 30
- (8) Any person who obtains or seeks to obtain a tax advantage from a reportable cross-border arrangement shall be a chargeable person for the purposes of Part 41A. 35
- (9) A relevant taxpayer shall include the reference number assigned to a reportable cross-border arrangement in the return, within the meaning of Part 41A, for any chargeable period, within the meaning of Part 41A, in which the relevant taxpayer— 40
- (a) entered into any transaction which is or forms part of a reportable cross-border arrangement, or

(b) obtains, or seeks to obtain, a tax advantage from a reportable cross-border arrangement.

(10) Nothing in this section shall be construed as requiring a relevant taxpayer to disclose to the Revenue Commissioners information that is not within the knowledge, possession or control of the relevant taxpayer. 5

#### **Duties of Revenue Commissioners**

**817RE.** (1) Where a return is made to the Revenue Commissioners under this Chapter, the Revenue Commissioners shall assign a reference number to the reportable cross-border arrangement if no such number has already been assigned to it by the Revenue Commissioners or by the competent authority of another Member State. 10

(2) The fact that the Revenue Commissioners do not react to a reportable cross-border arrangement shall not imply any acceptance of the validity or tax treatment of the arrangement. 15

(3) The Revenue Commissioners may authorise any of their officers to perform any acts and discharge any functions authorised by this Chapter.

#### **Arrangements implemented before 1 July 2020**

**817RF.**(1) (a) Subject to paragraph (b), section 817RC shall apply to reportable cross-border arrangements the first step of which was implemented during the period beginning on 25 June 2018 and ending on 30 June 2020. 20

(b) Where paragraph (a) applies, a return of the specified information shall be made to the Revenue Commissioners under section 817RC not later than 31 August 2020 and the time limit specified in section 817RC(1) or (2), as the case may be, shall not apply. 25

(2) (a) Subject to paragraph (b), section 817RD shall apply to reportable cross-border arrangements the first step of which was implemented during the period beginning on 25 June 2018 and ending on 30 June 2020. 30

(b) Where paragraph (a) applies, a return to the Revenue Commissioners of the specified information shall be made under section 817RD not later than 31 August 2020 and the time limit specified in section 817RD(1) shall not apply. 35

#### **Exchange of information**

**817RG.** The Revenue Commissioners, when communicating the information specified in Article 8ab(14) of the Directive to the competent authorities of all other Member States in accordance with the Regulations of 2012, may disclose the following information connected with or supplementary to the information so specified: 40

(a) the reference number assigned to the reportable cross-border arrangement concerned;

- (b) in relation to each intermediary and relevant taxpayer concerned—
  - (i) the country of issuance of the taxpayer identification number of each such intermediary and relevant taxpayer,
  - (ii) whether each such intermediary or relevant taxpayer is an individual or entity, and
  - (iii) the address of each such intermediary or relevant taxpayer.

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**Penalties**

**817RH.**(1) A person who fails to comply with any of the obligations imposed on such person by this Chapter shall—

- (a) where the failure relates to the obligation imposed on a person under subsection (3) or (10) of section 817RC, or section 817RD(4) or 817RF, be liable to—
  - (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 €100 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph,
- (b) where the failure relates to the obligation imposed on a person under subsection (1), (2) or (5) of section 817RC or section 817RD(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,
- (c) where the failure relates to the obligation imposed on a person by section 817RD(9), be liable to a penalty not exceeding €5,000.

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(2) For the purposes of subsection (1)(b)—

‘the initial period’ means the period—

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- (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 end of the period specified in subsection (1), (2) or (5) of section 817RC or section 817RD(1), as the case may be, during which the obligation imposed on a person by the said subsection (1), (2) or (5) of section 817RC or section 817RD(1), as the case may be, shall be discharged.

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(3) (a) Notwithstanding section 1077B, the Revenue Commissioners shall, in relation to a failure referred to in subsection (1), make an

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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 provision referred to in subsection (1)(a), (b) or (c), 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 Courts of Justice Act 1924 and the Courts (Supplemental Provisions) Act 1961. 5
- (4) A copy of an application under subsection (3) shall be given to the person to whom the application relates. 10
- (5) The relevant court shall determine whether the person named in the application made under subsection (3) is liable to the penalty provided for in paragraph (a), (b) or (c), as the case may be, of 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), as the case may be, of subsection (6). 15
- (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 an intermediary, to the amount of any fees received, or likely to have been received, by the person in connection with the reportable cross-border arrangement, and 20
  - (b) in any other case, to the amount of any tax advantage gained, or sought to be gained, by the person from the reportable cross-border arrangement.
- (7) Section 1077C shall apply for the purposes of a penalty under subsection (1).” 25

(2) *Subsection (1)* shall come into operation on 1 July 2020.

**Amendment of Part 40A of Principal Act (appeals to Appeals Commissioners)**

**68.** Part 40A of the Principal Act is amended—

- (a) in section 949T, by inserting the following subsection after subsection (1): 30
  - “(1A) A direction given under subsection (1) shall specify—
    - (a) the date on which and time at which the case management conference shall commence, and
    - (b) the location at which the case management conference shall be held.”, 35
- (b) in section 949W, by inserting the following subsections after subsection (2):
  - “(3) The Appeal Commissioners shall, at any stage, stay proceedings in an appeal for the purpose of allowing a Mutual Agreement Procedure, relating to the matters to which the appeal relates, to proceed and conclude, where both parties have applied for a direction to that effect 40

under section 949E.

- (4) Notwithstanding subsection (2) and subject to subsection (5), the Appeal Commissioners, in giving a direction to stay proceedings following an application in that behalf under subsection (3), shall not be required to specify a date by which the proceedings are to be resumed, but shall stay proceedings in the appeal concerned until the Mutual Agreement Procedure concerned has concluded. 5
- (5) Where a party applies under section 949E for a direction that proceedings stayed under subsection (3) be resumed before the Mutual Agreement Procedure concerned has concluded, the Appeal Commissioners shall give a direction that the stayed proceedings be resumed. 10
- (6) The Appeal Commissioners may from time to time give a direction to the parties that one or both of them notify the Appeal Commissioners in relation to the progress of the Mutual Agreement Procedure. 15
- (7) In this section ‘Mutual Agreement Procedure’ means a procedure in accordance with which a mutual agreement may be reached, for the resolution of a dispute, between the competent authority of the State and a competent authority of another jurisdiction under—
  - (a) an arrangement having the force of law by virtue of section 826(1), or 20
  - (b) the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. No. 306 of 2019).”,

and

- (c) in section 949AV— 25
  - (i) by substituting the following subsection for subsection (1):
    - “(1) Subject to subsections (4) and (5), the Appeal Commissioners may dismiss an appeal where a party has failed to comply, to the Appeal Commissioners’ satisfaction, with a direction given by them under—
      - (a) subsection (1) of section 949E, in relation to the matter referred to in paragraph (2)(a) of that section, or 30
      - (b) section 949T(1).”,
  - (ii) in subsection (2), by substituting “Subject to subsections (3), (4) and (5)” for “Subject to subsection (3)”,
  - (iii) in subsection (3), by substituting “Subject to subsections (4) and (5), the Appeal Commissioners shall” for “The Appeal Commissioners shall”, and 35
  - (iv) by inserting the following subsections after subsection (3):
    - “(4) Where a party has failed to comply with a direction under section 949T, the Appeal Commissioners shall not dismiss an appeal under subsection (1) in a case in which an application has been made to the Appeal Commissioners by the party after the time appointed for the 40

case management conference concerned and the Appeal Commissioners are satisfied that—

- (a) owing to absence, illness or other reasonable cause, the party was prevented from attending the case management conference, and
  - (b) the application was made without unreasonable delay after the date specified in the direction. 5
- (5) Where, following an application in that behalf under subsection (4), the Appeal Commissioners are not satisfied as to the matters specified in paragraphs (a) and (b) of that subsection, they shall dismiss the appeal and their decision shall be final and conclusive.”. 10

### **Mutual agreement procedures**

69. Part 41A of the Principal Act is amended—

- (a) in section 959AF(3), by substituting “Subject to section 959AW, in default of an appeal” for “In default of an appeal”, and
- (b) by inserting the following Chapter after Chapter 7: 15

“Chapter 8

*Miscellaneous provisions*

### **Mutual agreement procedures**

**959AW.** Notwithstanding section 959AF(3), an assessment or amended assessment, as the case may be, made on a person shall not be final and conclusive where, within 30 days after the date of the notice of assessment, the person— 20

- (a) requests a mutual agreement under an arrangement having the force of law by virtue of section 826(1) between the competent authority of the State and a competent authority of another jurisdiction, or 25
- (b) submits a complaint on a question in dispute to the Revenue Commissioners under the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. No. 306 of 2019).”.

### **Amendment of section 917K of Principal Act (hard copies)**

70. Section 917K of the Principal Act is amended by substituting the following subsection for subsection (1): 30

“(1) A hard copy shall be made in accordance with this subsection only if—

- (a) the hard copy is made under processes and procedures which are designed to ensure that the information contained in the hard copy shall only be the information transmitted or to be transmitted in accordance with section 917F(1), and 35
- (b) the hard copy is authenticated in accordance with subsection (2).”.

**Amendment of section 990 of Principal Act (assessment of tax due)**

71. Section 990(2) of the Principal Act is amended—

- (a) by substituting “is less than or greater than” for “is less than”, and
- (b) by substituting “by increasing or reducing it, as appropriate,” for “by increasing it”.

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**Amendment of section 1001 of Principal Act (liability to tax, etc. of holder of fixed charge on book debts of company)**

72. Section 1001 of the Principal Act is amended in subsection (3)(c)—

- (a) by inserting “or, where the fixed charge has been transferred (whether before or after the coming into operation of *section 72* of the *Finance Act 2019*), on or before 31 January 2020 or within 21 days of the date of transfer of the fixed charge (whichever is the later),” after “the creation of the fixed charge”, and
- (b) in subparagraph (iv), by inserting “or transferred, as the case may be” after “created”.

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**Amendment of Schedule 24A to Principal Act (arrangements made by the Government with the government of any territory outside the State in relation to affording relief from double taxation and exchanging information in relation to tax)**

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73. Schedule 24A to the Principal Act is amended in Part 1—

- (a) by substituting the following for paragraph 28:

“28. The Double Taxation Relief (Taxes on Income and Capital) (Kingdom of the Netherlands) Order 1970 (S.I. No. 22 of 1970) and the Double Taxation Relief (Taxes on Income and Capital Gains) (Kingdom of the Netherlands) Order 2019 (S.I. No. 459 of 2019).”

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and

- (b) by substituting the following for paragraph 41:

“41. The Double Taxation Relief (Taxes on Income and Capital) (Swiss Confederation) Order 1967 (S.I. No. 240 of 1967), the Double Taxation Relief (Taxes on Income and Capital) (Swiss Confederation) Order 1984 (S.I. No. 76 of 1984), the Double Taxation Relief (Taxes on Income and on Capital) (Swiss Confederation) Order 2013 (S.I. No. 30 of 2013) and the Double Taxation Relief (Taxes on Income and on Capital) (Swiss Confederation) Order 2019 (S.I. No. 460 of 2019).”

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**Miscellaneous technical amendments in relation to tax**

74. The enactments specified in the *Schedule*—

- (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*.

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## Care and management of taxes and duties

75. All taxes and duties imposed by this Act are placed under the care and management of the Revenue Commissioners.

## Short title, construction and commencement

76. (1) This Act may be cited as the Finance Act 2019. 5
- (2) *Part 1* shall be construed together with—
- (a) in so far as it relates to income tax, the Income Tax Acts,
  - (b) in so far as it relates to universal social charge, Part 18D of the Principal Act,
  - (c) in so far as it relates to corporation tax, the Corporation Tax Acts, and
  - (d) in so far as it relates to capital gains tax, the Capital Gains Tax Acts. 10
- (3) *Part 2*, in so far as it relates to duties of excise, shall be construed together with the statutes which relate to those duties and to the management of those duties.
- (4) *Part 3* shall be construed together with the Value-Added Tax Acts.
- (5) *Part 4* shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act. 15
- (6) *Part 5* shall be construed together with the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act.
- (7) *Part 6* in so far as it relates to—
- (a) income tax, shall be construed together with the Income Tax Acts,
  - (b) universal social charge, shall be construed together with Part 18D of the Principal Act, 20
  - (c) corporation tax, shall be construed together with the Corporation Tax Acts,
  - (d) capital gains tax, shall be construed together with the Capital Gains Tax Acts,
  - (e) customs, shall be construed together with the Customs Acts,
  - (f) duties of excise, shall be construed together with the statutes which relate to 25
  - duties of excise and the management of those duties,
  - (g) value-added tax, shall be construed together with the Value-Added Tax Acts,
  - (h) stamp duty, shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act,
  - (i) domicile levy, shall be construed together with Part 18C of the Principal Act, and 30
  - (j) 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 for in *Part 1*, that Part shall come into operation on 1 January 2020. 35
- (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.

## SCHEDULE

### Section 74

#### MISCELLANEOUS TECHNICAL AMENDMENTS IN RELATION TO TAX

1. The Taxes Consolidation Act 1997 is amended—
  - (a) in section 2(1), in paragraph (c) of the definition of “appropriate inspector”, by inserting “or branch” after “Revenue district”, 5
  - (b) in section 56(3)(c), by inserting “or branch” after “assessment district”,
  - (c) in section 267H(2)(c), by substituting “arm’s” for “arms’ ”,
  - (d) in section 481—
    - (i) in subsection (1)— 10
      - (I) in the definition of “specified relevant person”, by substituting “subsection (2C)(d);” for “subsection (2C)(d).”, and
      - (II) in the definition of “total cost of production”, by substituting “qualifying film” for “qualifying company”,
    - (ii) in subsection (2)(b)(IV), by substituting “(2013/C 332/01)<sup>21</sup> —” for “(2013/C 332/01)<sup>21</sup>”, 15
    - (iii) in subsection (2C)—
      - (I) in paragraph (ca), by substituting “paragraph (d)(ii),” for “paragraph (d)(ii).”,
      - (II) in paragraph (d)(ii), by substituting “regulations,” for “regulations.”, 20
      - (III) in paragraph (da)—
        - (A) by substituting “unless the company makes a claim” for “makes a claim”, and
        - (B) by substituting “as is specified in the regulations made under subsection (2E)” for “specified in those regulations”, 25
  - and
  - (IV) in paragraph (f), by substituting “paragraph (d), and” for “paragraph (d), and,”,
  - and
  - (iv) in subsection (2E)— 30
    - (I) in paragraph (h), by substituting “subsection (2C)(da)” for “subsection (2C)(d)(iii)”, and
    - (II) in paragraph (l), by substituting “producer company,” for “producer company.”,
  - (e) in section 485C(1), in the definition of “ring-fenced income”— 35
    - (i) in paragraph (a), by substituting “concerned, and” for “concerned.”,

21 OJ No. C332, 15.11.2013, p. 1

- (ii) in paragraph (b), by substituting “267M;” for “267M,” and
- (iii) by deleting paragraphs (c) and (d),
- (f) in section 878—
  - (i) in subsection (1), by inserting “or branch” after “any district”, and
  - (ii) in subsection (2), by substituting the following for paragraph (b): 5

“(b) notice in writing may be given by any such persons to the inspector for each district or branch in which they are called on for a statement stating in which district, districts, branch or branches they are respectively chargeable on their own account, and in which of those districts or branches they desire to be charged on behalf of the person for whom they act, and they shall, if any one such person is liable to be charged on such person’s own account in that district or branch, be charged in that district or branch accordingly by one assessment.”,
  - (g) in section 959B(1), by substituting “31 December” for “5 April”, and 15
  - (h) in Schedule 27, by substituting “within my district or branch” for “within my district”.
- 2. The Value-Added Tax Consolidation Act 2010 is amended—
  - (a) in section 2(1), in paragraph (a) of the definition of “exempted activity”, by substituting “sections 93(2)(a)(i), 94(2) and 95(3) and (7)(b)” for “sections 94(2) and 95(3) and (7)(b)”, and 20
  - (b) in Schedule 1, in paragraph 4(2), by substituting “Part VIIA or VIII of the Child Care Act 1991” for “Part VII or VIII of the Child Care Act 1991”.
- 3. The Capital Acquisitions Tax Consolidation Act 2003 is amended, in section 58(1A), by substituting “subsection (2) or (8)” for “subsection (2), (6) or (8)”. 25
- 4. The Finance Act 1992 is amended, in section 130—
  - (a) by inserting the following definition:
 

“ ‘Regulation 2018/858’ means Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018<sup>22</sup> on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC;”,

and 30
  - (b) in the definition of “type-approval”, by substituting “, Regulation 168/2013 and Regulation 2018/858” for “and Regulation 168/2013”. 35
- 5. The Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) are amended in Regulation 35(2), by substituting “district or branch” for

“district” in each place where it occurs.

6. (a) Subject to *subparagraph (b)*, this Schedule shall have effect on and from the date of the passing of this Act.

(b) *Subparagraph (e)* of *paragraph 1* applies for the year of assessment 2020 and each subsequent year of assessment.

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An Bille Airgeadais, 2019

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# BILLE

*(mar a ritheadh ag Dáil Éireann)*

*dá ngairtear*

Acht do dhéanamh socrú maidir le forchur, aisghairm, loghadh, athrú agus rialáil cánachais, dleachtanna stampa agus dleachtanna a bhaineann le mál agus do dhéanamh socrú breise thairis sin i dtaobh airgeadais lena n-áirítear rialáil custam.

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*Ritheadh ag Dáil Éireann,*

*20 Samhain, 2019*

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Finance Bill 2019

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# BILL

*(as passed by Dáil Éireann)*

*entitled*

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 further provision in connection with finance including the regulation of customs.

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*Passed by Dáil Éireann,*

*20th November, 2019*

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BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
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