



**An Bille Airgeadais (Covid-19 agus Forálacha
Ilghnéitheacha), 2021**
**Finance (Covid-19 and Miscellaneous Provisions) Bill
2021**

Meabhrán Míniúcháin
Explanatory Memorandum



**AN BILLE AIRGEADAIS (COVID-19 AGUS FORÁLACHA
ILGHNÉITHEACHA), 2021
FINANCE (COVID-19 AND MISCELLANEOUS PROVISIONS)
BILL 2021**

*Mar a tionscnaíodh
As initiated*

EXPLANATORY MEMORANDUM

Section 1 is a definition section.

Section 2 amends section 28B (inserted by the Financial Provisions (Covid-19) (No.2) Act 2020) of the Emergency Measures in the Public Interest (Covid-19) Act 2020 to provide for the extension of the Employment Wage Subsidy Scheme (EWSS) to 31 December 2021 and the retention of the current enhanced subsidy rates until 30 September 2021. It also provides for the retention of the 30 per cent reduction in turnover or orders threshold and a modification to widen the reference period to assess eligibility for the scheme with effect from 1 July 2021.

Section 3 amends section 484 Taxes Consolidation Act 1997, which was introduced in Finance Act 2020 and sets out the objectives of the Covid Restrictions Support Scheme (CRSS), the purposes for which the provisions were enacted and also provides for duties of the Minister for Finance in respect of those provisions. The amendment provides for the extension of the specified period in section 485 to 30 September 2021. (The power of the Minister for Finance to, extend the scheme further to 31 December 2021, by order, is not changed.)

Section 4 amends section 485 Taxes Consolidation Act 1997 to extend the CRSS to 30 September 2021 and also to provide for enhanced restart week payments under the scheme for businesses reopening after a period of restrictions. Under the amended provisions, the level of “restart week” payment a business may claim will depend on the date on which the business reopens (or the “restart week” occurs):

- where the “restart week” occurs between 29 April 2021 to 1 June 2021, the restart payment will be an amount equal to two weeks at double the normal rate of CRSS (subject to a maximum weekly amount of €5,000);
- where the “restart week” occurs between 2 June 2021 to 31 December 2021, the restart payment will be an amount equal to three weeks at double the normal rate of CRSS (subject to a maximum weekly amount of €10,000); and

- in all other cases, the standard restart week payment will apply, which is one week at the standard rates of CRSS (subject to a maximum weekly amount of €5,000).

A business may qualify once for either the double restart week payment or triple restart week payment.

Section 5 inserts a new section 485A in Chapter 2 of Part 15 of the Taxes Consolidation Act 1997. The new section provides for the Business Resumption Support Scheme (“BRSS”), which is a support for businesses that were significantly impacted throughout the Covid-19 pandemic.

The new section 485A makes provision for BRSS and its key features are as follows—

- The scheme is available to affected self-employed individuals and companies who carry on a trade or trading activities, the profits from which are chargeable to tax under Case I of Schedule D. It is also available to persons who carry on a trade in partnership, and any trading activity carried on by charities and sporting bodies.
- To qualify under the scheme, a business must be able to demonstrate that the turnover derived by the business during the defined specified period of 1 September 2020 to 31 August 2021 will be no more than 25 per cent of the derived turnover when compared to a defined comparative reference period (which is dependent on the date that the business commenced its relevant business activity).
- Qualifying taxpayers will be able to make a claim for an amount equal to three times the amount as derived by 10 per cent of their average weekly turnover during the reference period up to €20,000 and 5 per cent thereafter, subject to a maximum payment amount of €15,000. Payments made under the scheme will be treated as an advance credit for trading expenses.
- For businesses established before 26 December 2019 the claim will be based on their actual average weekly turnover in the period commencing on 1 January 2019 or, if later, the date on which the person commenced its relevant business activity and ending on 31 December 2019.
- For businesses established on or after 26 December 2019, but before 10 March 2020, the claim will be based on their actual average weekly turnover in the period from the date that the relevant business activity commenced and ending on 15 March 2020.
- For businesses established on or after 10 March 2020, but before 26 August 2020, the claim will be based on their actual average weekly turnover derived during the period from the date that the relevant business activity commenced and ending on 31 August 2020.
- To make a claim under the scheme, a number of other conditions must be satisfied including that the person has an up to date tax clearance certificate, has complied with their Value-Added Tax obligations, is not entitled to make a claim for the CRSS scheme in respect of any week that includes 1 September 2021 and that the business is actively carrying on its trade and has an intention to continue to do so. The person must register to claim on the ‘Revenue Online Service’ and make a declaration that they satisfy the conditions to make a claim under this section.
- Provision is made for the publication of the name of claimants of BRSS on Revenue’s website.

Section 6 amends section 46 of the Value-Added Tax Consolidation Act 2010 which deals with rates of tax. Finance Act 2020 provided that the 9 per cent rate of value-added tax applies from 1 November 2020 to 31 December 2021 to the supply of restaurant and catering services, guest and holiday accommodation and entertainment services such as admissions to cinemas, theatres, museums, fairgrounds, amusement park and sporting facilities, and also to hairdressing and the sale of certain printed matter such as brochures, maps and programmes. This amendment extends the application of the 9 per cent VAT rate to these supplies to 31 August 2022.

Section 7 inserts a new section 28D into the Emergency Measures in the Public Interest (Covid-19) Act 2020 to provide for warehousing of Employment Wage Subsidy Scheme (EWSS) overpayments received by employers which must be refunded to Revenue. Amounts to be refunded to Revenue are referred to as ‘relevant tax’.

The scheme will have three phases / periods:

- Period 1 (the “Covid-19 restricted trading phase”) will run from 1 July 2020 (the beginning of the “qualifying period” for EWSS) until 31 December 2021;
- Period 2 (“the zero interest phase”) will run from 1 January 2022 until 31 December 2022 during which no interest will be charged on warehoused relevant tax from Period 1; and
- Period 3 (the reduced interest phase) will run from 1 January 2023 until the relevant tax is repaid to Revenue. During Period 3, interest will be charged at c. 3 per cent per annum on warehoused relevant tax from Period 1.

Warehousing will only apply to employers who, as a consequence of Covid-19, are unable to pay their relevant tax and who have filed all relevant PAYE and EWSS returns.

All “small and medium enterprises” (SMEs) whose tax affairs are dealt with in Revenue’s Business Division or Personal Division will qualify automatically. Other employers must notify Revenue that they have formed the opinion that they are unable to repay their relevant tax.

Employers will be required to continue to file returns and comply with their other tax obligations (such as paying liabilities in a timely fashion) to avail of a reduced interest rate of 3 per cent per annum on repayment of relevant tax in Period 3.

If an employer fails to meet the conditions for debt warehousing, the benefit of the 0 per cent (during Period 2) and 3 per cent per annum (during Period 3) interest rates will no longer apply and interest at a rate of c. 8 per cent per annum will be re-imposed.

Revenue will not issue demands for warehoused debt while the employer complies with the provisions of the section and employers who have “warehoused” debt will obtain tax clearance, provided their other tax obligations have been met.

Sections 8, 9, 10, 11 and 12 give effect to the announcement by the Government of the extension of the debt warehousing scheme as part of the Economic Recovery Plan.

Section 8 amends the warehousing provisions for refunds of Temporary Wage Subsidy Scheme payments in section 28C Emergency Measures in the Public Interest (Covid-19) Act 2020.

Section 9 amends the PAYE warehousing provisions in section 991B Taxes Consolidation Act 1997 (TCA).

Section 10 amends the income tax warehousing provisions in section 1080B Taxes Consolidation Act 1997 (TCA).

Section 11 amends the VAT warehousing provisions in section 114B Value-Added Tax Consolidation Act 2010 (VATCA).

Section 12 amends the PRSI warehousing provisions in section 17C Social Welfare Consolidation Act 2005 (SWCA);

The five sections are broadly similar, providing for a fixed end date of 31 December 2021 for “Period 1”, the “Covid-19 restricted trading phase” – liabilities falling due in this period can be warehoused. “Period 2” (the “zero-interest phase” of the scheme, during which interest is charged at 0 per cent on warehoused liabilities) is amended to run from 1 January to 31 December 2022. “Period 3” (the “reduced interest phase”, during which interest is charged at c. 3 per cent per annum on warehoused liabilities) is amended to run from 1 January 2023 until warehoused liabilities have been repaid in full.

The provision of a fixed end date will give clarity and certainty to businesses in relation to their tax liabilities for the remainder of 2021.

These sections also make a number of consequential amendments which:

- ensure that annual “simplified filers” for PAYE purposes can warehouse liabilities relating to all income tax months from January 2020 to December 2021,
- delete definitions that are no longer required,
- remove the provision to extend Period 2 by Ministerial Order, and
- ensure that income tax liabilities for 2020 or 2021, as appropriate, may be warehoused where an individual estimates her/his total income for the relevant year (2020 or 2021) will be less than 75 per cent of total income for 2019.

Section 13 gives statutory effect to a Financial Resolution that was passed on 19 May 2021. It inserts a new section 31E into the Stamp Duties Consolidation Act (SDCA) 1999. This section imposes a 10 per cent rate of stamp duty on the acquisition, on or after 20 May 2021, of certain types of residential units where an aggregate of 10 or more such units is acquired during a rolling 12-month period. The usual stamp duty rate that applies to the acquisition of residential property is 1 per cent of the value of property up to €1 million and 2 per cent of the value that exceeds €1 million. The 10 per cent rate applies in respect of the acquisition of residential units such as houses and duplexes but not apartments. The measure is intended to disincentivise the purchase of multiple residential units by a single corporate entity or individual.

Paragraph (a) inserts the new section 31E into the SDCA 1999.

Subsection (1) of section 31E contains the definitions used for the purposes of this section.

Subsection (2) sets out the various means by which a residential unit is treated as being acquired for stamp duty purposes and the date on which the unit is treated as being acquired. This date is typically the date of execution of the particular instrument (written document) that is used to effect the acquisition. For example, as set out in paragraphs (a) and (b), a residential unit that is acquired by way of a conveyance or transfer on sale or a long lease (>35 years), respectively, is acquired when the conveyance or transfer or lease is executed. However, Chapter 2 of Part 5 of the SDCA contains several anti-avoidance provisions that charge stamp duty on the ‘indirect’ acquisition of property such as gifts, exchanges and the acquisition of land

combined with a related building agreement. These are brought into section 31E and are provided for in paragraphs (c) to (g) of subsection (2).

Subsection (3) is related to *subsection (2)* and provides that, where more than one of the different types of instrument referred to in *subsection (2)* is used to effect the acquisition of a residential unit, it is the earliest instrument executed that is to be used to determine the date of acquisition.

Subsection (4) clarifies the meaning of acquisition for the purposes of section 31E in terms of the various means by which a residential unit can be acquired in accordance with *subsection (2)* such as purchases, transfers, leases, contracts and agreements.

Subsection (5) contains the rules about how a person is to be treated as acquiring the required number of residential units to come within section 31E and be subject to the 10 per cent rate of stamp duty. Where a residential unit is acquired on or after 20 May 2021 (date immediately after date on which Financial Resolution passed), regard must be had to any other residential units acquired on the same date and at any time in the immediately preceding 12 months. Where the aggregate of the residential units acquired during that period is at least 10, then each of those units become ‘relevant residential units’ for the purposes of the application of the 10 per cent rate of stamp duty. This provision is extended to take account of residential units acquired by connected persons as defined.

Subsection (6) relaxes the conditions imposed by *subsection (5)* in relation to connected persons who are individuals rather than corporate entities. Connected individuals must be acting in concert or cooperating in some way or engaged in tax avoidance when they acquire residential units for their aggregated acquisitions to be taken into account for the purposes of *subsection (5)*.

Subsection (7) excludes from section 31E a residential unit that is an apartment in an apartment block (as defined).

Subsection (8) is being inserted by a separate section of this Bill – *section 14* below.

Subsection (9) refers to shares in companies, units in an Irish Real Estate Fund (IREF) and interests in partnerships that derive value, whether directly or indirectly, from a residential unit(s). This subsection is then referred to in *subsections (10), (11), (12)* and *(14)* for the purposes of treating certain acquisitions of such shares, units or interests as the (indirect) acquisition of the underlying residential unit(s).

Subsection (10) contains an anti-avoidance provision, for the purposes of *subsection (9)* that takes account of shares/units/interests that derive value, in turn, from other shares/units/interests that derive value from an underlying residential unit.

Subsection (11) contains anti-avoidance provisions intended to prevent arrangements that might ‘artificially’ reduce the value that shares/units/interests derive from an underlying residential unit(s); for example, by transferring assets from connected persons.

Subsection (12) is the stamp duty charging provision. It changes the usual Head of Charge (in Schedule 1 to the SDCA) that would apply to the transfer of shares to the extent that they derive value from ‘relevant residential units’. The usual Head of Charge is the ‘CONVEYANCE or TRANSFER on sale of any stocks or marketable securities’. This is changed to the Head of Charge ‘CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance’. The ‘stocks or marketable securities’ Head of

Charge applies stamp duty at the rate of 1 per cent whereas the ‘property’ Head of Charge applies stamp duty at the rate of 1 per cent on the value of residential property up to €1 million and at the rate of 2 per cent on the value in excess of €1 million. However, stamp duty at the new higher rate of 10 per cent will be applied in respect of the acquisition of property that is a ‘relevant residential unit’ (i.e. aggregate of 10 or more units acquired).

Subsection (13) sets out the circumstances that could bring the transfer of shares/units/interests into the alternative Head of Charge under *subsection (12)*. This is where sufficient shares/units/interests are transferred to change the ownership of the company, IREF or partnership and the person(s) that have direct or indirect control over a ‘relevant residential unit(s)’.

Subsection (14) contains anti-avoidance provisions intended to pre-empt certain arrangements that might prevent a residential unit becoming a ‘relevant residential unit’ under *subsection (5)*. Certain transfers of shares/units/interests by connected persons or in tranches can be treated as a single transfer.

Subsection (15), for the purposes of *subsection (5)*, provides for a date of acquisition of a residential unit that is indirectly acquired where shares/units/interests are acquired.

Subsection (16) provides for any unpaid stamp duty, interest and penalties to be a charge on the residential unit to which they relate until such time as they are paid.

Subsection (17), in paragraph (a), contains transitional provisions that exclude from the new 10 per cent stamp duty rate residential units in respect of which binding contracts for their acquisition were entered into before 20 May 2021. However, such acquisitions must be concluded before 20 August 2021. *Paragraph (b)* provides for a ‘relevant residential unit’ that was acquired in the 12-month period preceding 20 May 2021 not to be subject to the 10 per cent rate. The 10 per cent rate is disapplied by referencing *subsection (17)* in the relevant Heads of Charge in Schedule 1 to the SDCA.

Subsection (18) makes the provision of an incorrect statement (required under *subsection (17)* to qualify for the transitional provisions) a penalty offence for the purposes of section 1078 of the Taxes Consolidation Act 1997.

Subsection (19) disapplies some existing exemptions so that ‘relevant residential units’ can be chargeable at the 10 per cent stamp duty rate. These are sections 82(1), 82C(2) and 88(1)(b) which apply to shares and units in certain charitable entities, pension schemes and investment undertakings.

Subsections (20) and *(21)* provide for the payment of the additional stamp duty where a residential unit was not a ‘relevant residential unit’ when it was acquired but becomes such a unit when a person later acquires sufficient units to breach the threshold of 10 units in aggregate. In this situation, the additional stamp duty is payable (difference between 1 per cent/2 per cent and 10 per cent) when the stamp duty on the later acquisition is payable.

Subsection (22) provides that where section 31E applies to a transaction involving the acquisition of residential units that might also be chargeable under anti-avoidance provisions in sections 31C (shares deriving value from Irish land) and 31D (company cancellation schemes of arrangement), section 31E takes priority, but only in respect of the value attributable to ‘relevant residential units’.

Paragraph (b) amends Schedule 1 to the SDCA in the relevant Heads of Charge.

Subparagraph (i) amends the charge that applies for acquisitions of residential properties by providing for a rate of 10 per cent where section 31E applies; i.e. for a ‘relevant residential unit’, unless the transitional provisions in *subsection (17)* apply.

Subparagraph (ii) similarly provides for a 10 per cent rate for lease premiums paid in respect of a ‘relevant residential unit’ where section 31E applies.

Section 14 introduces a provision that was not included in the Financial Resolution of 19 May 2021 and further amends the new section 31E that was introduced into the SDCA 1999.

Subsection (1) amends section 31E to provide for an exemption from the new 10 per cent rate of stamp duty where residential units are leased to local authorities for certain social housing purposes. These are leases under the ‘Mortgage to Rent’ scheme, whereby properties that are surrendered to the financial institution holding the mortgage are sold to a private company in tandem with an agreement to then lease the property to a local authority, who in turn leases it to the existing occupants so that they can continue to live in the property.

Additional definitions to be used in a new *subsection (8)* in section 31E are inserted into *subsection (1)* of that section. *Subsection (8)* provides for the exemption from the 10 per cent rate of stamp duty in a situation where a residential unit is acquired and immediately leased to a housing authority for use in the provision of social housing support.

Subsection (2) commences *subsection (1) (new subsection (8))* in section 31E) on the date of passing of this Act.

Section 15 contains a provision relating to the short title of the Bill.

*An Roinn Airgeadais,
Meitheamh, 2021.*