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FINANCE ACT 2005

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FINANCE ACT 2005

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.

[25th March, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

Interpretation

1.—In this Part “Principal Act” means the Taxes Consolidation Act 1997. Interpretation (*Part 1*).

CHAPTER 2

Income Tax

2.—As respects the year of assessment 2005 and subsequent years of assessment, section 15 of the Principal Act is amended— Amendment of section 15 (rate of charge) of Principal Act.

(a) by substituting “€20,400” for “€19,000” (inserted by the Finance Act 2002) in subsection (3), and

(b) by substituting the following Table for the Table (as so inserted) to that section:

“TABLE

PART 1

Part of taxable income (1)	Rate of tax (2)	Description of rate (3)
The first €29,400	20 per cent	the standard rate
The remainder	42 per cent	the higher rate

PART 2

Part of taxable income (1)	Rate of tax (2)	Description of rate (3)
The first €33,400	20 per cent	the standard rate
The remainder	42 per cent	the higher rate

PART 3

Part of taxable income (1)	Rate of tax (2)	Description of rate (3)
The first €38,400	20 per cent	the standard rate
The remainder	42 per cent	the higher rate

”.

Personal tax credits.

3.—(1) Where an individual is entitled under a provision of the Principal Act mentioned in *column (1)* of the Table to this subsection to have the income tax to be charged on the individual, other than in accordance with the provisions of section 16(2) of the Principal Act, reduced for the year of assessment 2005 or any subsequent year of assessment and the amount of the reduction would, but for this section, be an amount which is the lesser of—

- (a) the amount specified in *column (2)* of that Table, and
- (b) the amount which reduces that liability to nil,

the amount of the reduction in accordance with *paragraph (a)* shall be the amount of the tax credit specified in *column (3)* of the Table.

TABLE

Statutory Provision (1)	Existing tax credit (full year) (2)	Tax credit for the year 2005 and subsequent years (3)
Section 461 (basic personal tax credit)		
(married person)	€3,040	€3,160
(widowed person bereaved in year of assessment)	€3,040	€3,160
(single person)	€1,520	€1,580
Section 461A (additional tax credit for certain widowed persons)	€300	€400
Section 462 (one-parent family tax credit)	€1,520	€1,580
Section 463 (widowed parent tax credit)		
(1st year)	€2,600	€2,800
(2nd year)	€2,100	€2,300
(3rd year)	€1,600	€1,800
(4th year)	€1,100	€1,300
(5th year)	€600	€800

Statutory Provision (1)	Existing tax credit (full year) (2)	Tax credit for the year 2005 and subsequent years (3)
Section 465 (incapacitated child tax credit)	€500	€1,000
Section 468 (blind person's tax credit) (blind person) (both spouses blind)	€800 €1,600	€1,000 €2,000
Section 472 (employee tax credit)	€1,040	€1,270

(2) Section 3 (as amended by the Finance Act 2004) of the Finance Act 2002 shall have effect subject to the provisions of this section.

(3) *Schedule (1)* shall apply for the purposes of supplementing *subsection (1)*.

4.—As respects the year of assessment 2005 and subsequent years of assessment, section 188 of the Principal Act is amended, in subsection (2), by substituting “€33,000” for “€31,000” (inserted by the Finance Act 2004) and “€16,500” for “€15,500” (as so inserted). Age exemption.

5.—Section 126 of the Principal Act is amended by substituting the following for paragraph (b) (inserted by the Finance Act 2003) of subsection (8): Amendment of section 126 (tax treatment of certain benefits payable under Social Welfare Acts) of Principal Act.

“(b) Notwithstanding subsection (3) and the Finance Act 1992 (Commencement of Section 15) (Unemployment Benefit and Pay-Related Benefit) Order 1994 (S.I. No. 19 of 1994), subsection (3)(b) shall not apply in relation to unemployment benefit paid or payable, in the period commencing on 6 April 1997 and ending on 31 December 2006, to a person employed in short-time employment.”.

6.—Section 473 of the Principal Act is amended as respects the year of assessment 2005 and subsequent years of assessment, by the substitution in subsection (1) of the following definition for the definition of “specified limit” (inserted by the Finance Act 2001): Amendment of section 473 (allowance for rent paid by certain tenants) of Principal Act.

“‘specified limit’, in relation to an individual for a year of assessment, means—

(a) in the case of—

(i) a married person assessed to tax in accordance with section 1017, or

(ii) a widowed person,

€3,000; but, if at any time during the year of assessment the individual was of the age of 55 years or over, ‘specified limit’ means €6,000, and

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- (b) in any other case, €1,500; but, if at any time during the year of assessment the individual was of the age of 55 years or over, ‘specified limit’ means €3,000;”.

Amendment of section 116 (interpretation (Chapter 3)) of Principal Act.

7.—Section 116 of the Principal Act is amended by inserting the following after the definition of “employment” in subsection (1):

“‘premises’ includes lands;”.

Amendment of section 118 (benefits in kind: general charging provision) of Principal Act.

8.—Section 118 of the Principal Act is amended by substituting the following for subsection (5A):

“(5A) (a) Subsection (1) shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee of a monthly or annual bus, railway or ferry travel pass issued by or on behalf of one or more approved transport providers.

(b) In this subsection—

‘approved transport provider’ means—

- (a) *Córas Iompair Éireann* or any of its subsidiaries,
- (b) a holder of a passenger licence granted under section 7 of the Road Transport Act 1932,
- (c) a person who provides a passenger transport service under an arrangement entered into with *Córas Iompair Éireann* in accordance with section 13(1) of the Transport Act 1950,
- (d) the Railway Procurement Agency or any of its subsidiaries,
- (e) a person who has entered into an arrangement with the Railway Procurement Agency, in accordance with section 43(6) of the Transport (Railway Infrastructure) Act 2001 to operate a railway, or
- (f) a person who provides a ferry service within the State, operating a vessel which holds a current valid—
 - (i) passenger ship safety certificate,
 - (ii) passenger boat licence, or
 - (iii) high-speed craft safety certificate,issued by the Minister for Communications, Marine and Natural Resources;

‘railway pass’ includes a pass issued by a railway designated as a light railway or as a metro in a railway order made under section 43 of the Transport (Railway Infrastructure) Act 2001.”.

9.—Section 122 of the Principal Act is amended—

Preferential loans.

(a) in subsection (1)—

(i) by substituting the following for the definition of “employee”:

“‘employee’, in relation to an employer, means an individual employed by the employer in an employment—

(a) to which Chapter 3 of this Part applies, or

(b) the profits or gains of which are chargeable to tax under Case III of Schedule D,

including, in a case where the employer is a body corporate, a director (within the meaning of that Chapter) of the body corporate;”,

and

(ii) in the definition of “preferential loan” by substituting “means, in relation to an individual, a loan, in respect of which no interest is payable or interest is payable at a preferential rate, made directly or indirectly to the individual” for “means a loan, in respect of which no interest is payable or interest is payable at a preferential rate, made directly or indirectly to an individual”,

and

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

“(2) Where, for the whole or part of a year of assessment, there is outstanding, in relation to an individual, a preferential loan, the individual shall, subject to subsection (4), be treated for the purposes of section 112 or a charge to tax under Case III of Schedule D, as having received in that year of assessment, as a perquisite of the office or employment with the employer who made the loan, a sum equal to—

(a) if no interest is payable on the preferential loan or loans, the amount of interest which would have been payable in that year, if interest had been payable on the loan or loans at the specified rate, or

(b) if interest is paid or payable at a preferential rate or rates, the difference between the aggregate amount of interest paid or payable in that year and the amount of interest which would have been payable in that year, if interest had been payable on the loan or loans at the specified rate,

and the individual or, in the case of an individual who is a wife whose husband is chargeable to tax for the year of assessment in accordance with the provisions of section 1017, the spouse of the individual, shall be charged to tax accordingly.”.

Costs and expenses
in respect of
personal security
assets and services.

10.—The Principal Act is amended by inserting the following after section 118:

“118A.—(1) In this section—

‘asset’ includes equipment or a structure, but not any mode of transport or a dwelling or grounds appurtenant to a dwelling;

‘service’ does not include a dwelling or grounds appurtenant to a dwelling.

(2) This section applies where there is a credible and serious threat to a director’s or an employee’s personal physical security, which arises wholly or mainly because of the director’s or employee’s office or employment.

(3) This section applies to expense incurred by the body corporate, or incurred by a director or employee and reimbursed to the director or employee by the body corporate—

(a) in—

(i) the provision or use of, or

(ii) expenses connected with,

an asset or service for the improvement of personal security which is provided for or used by the director or employee to meet the threat to his or her personal physical security, and

(b) with the sole object of meeting that threat.

(4) Subject to subsections (6) and (7), where this section applies, section 118(1) shall not apply to an expense to which this section applies.

(5) Where the body corporate intends the asset to be used solely to improve personal physical security, any use of the asset incidental to that purpose shall be ignored.

(6) Where the body corporate intends the asset to be used only partly to improve personal physical security, subsection (4) shall apply only to that part of the expense incurred in relation to the asset which is attributable to the intended use for that purpose.

(7) Subsection (4) shall only apply to an expense incurred in relation to a service referred to in subsection (3) where the benefit resulting to the director or employee consists wholly or mainly of an improvement of his or her personal physical security.

(8) In determining whether or not this section applies in relation to an asset or service, the fact that—

(a) the asset becomes fixed to land (whether the land constitutes a dwelling or otherwise), or

(b) the director or employee is, or becomes, entitled—

(i) to the property in the asset, or

(ii) if the asset is a fixture, to any estate or interest in the land concerned,

or

(c) the asset or the service improves the personal physical security of a member of the director's or employee's family or household, as well as that of the director or employee,

does not exclude the expense incurred by the body corporate from coming within subsection (4).”.

11.—The Principal Act is amended in Chapter 1 of Part 7 by inserting the following after section 192A (inserted by the Finance Act 2004): Foster care payments etc.

“192B.—(1) In this section—

‘carer’ means an individual who is or was a foster parent or relative or who takes care of an individual on behalf of the Health Service Executive;

‘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);

‘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) This section applies to payments made—

(a) to a carer by the Health Service Executive in accordance with—

(i) article 14 of the Child Care (Placement of Children in Foster Care) Regulations 1995, or

(ii) article 14 of the Child Care (Placement of Children with Relatives) Regulations 1995,

(b) at the discretion of the Health Service Executive to a carer in respect of an individual—

(i) who had been in the care of a carer until attaining the age of 18 years,

(ii) in respect of whom a payment referred to in paragraph (a) had been paid until the individual attained the age of 18 years,

(iii) who since attaining the age of 18 years continues to reside with a carer, and

(iv) who has not attained the age of 21 years or where the person has attained such age, suffers from a disability or is in receipt of full-time instruction at any university, college, school or other educational establishment and such disability or instruction commenced before the person attained the age of 21 years,

or

(c) in accordance with the law of any other Member State of the European Communities which corresponds to the payments referred to in paragraph (a) or (b).

(3) Payments to which this section applies are exempt from income tax and shall not be taken into account in computing total income for the purposes of the Income Tax Acts.”.

State employees:
foreign service
allowances.

12.—The Principal Act is amended in Chapter 1 of Part 7 by inserting the following section after section 196:

“196A.—(1) Where any allowance to, or emoluments of, an officer of the State are certified by the Minister for Finance, having consulted with the Minister for Foreign Affairs, or with such Minister of the Government as the Minister for Finance considers appropriate in the circumstances, to represent compensation for the extra cost of having to live outside the State in order to perform his or her duties, that allowance, or those emoluments, shall be disregarded as income for the purposes of the Income Tax Acts.

(2) In this section—

‘emoluments’ means emoluments to which section 985A applies;

‘officer of the State’ means—

- (a) a civil servant within the meaning of section 1(1) of the Civil Service Regulation Act 1956,
- (b) a member of the Garda Síochána, or
- (c) a member of the Permanent Defence Force.

(3) This section is deemed to have applied as on and from 1 January 2005.”.

Credit in respect of
tax deducted from
emoluments of
certain directors.

13.—Chapter 4 of Part 42 of the Principal Act is, as respects the year of assessment 2005 and subsequent years of assessment, amended by inserting the following after section 997:

“997A.—(1) (a) In this section—

‘control’ has the same meaning as in section 432;

‘ordinary share capital’, in relation to a company, means all the issued share capital (by whatever name called) of the company.

(b) For the purposes of this section—

- (i) a person shall have a material interest in a company if the person, either on the person’s own or with any one or more connected persons, or if any person connected with the person with or without any such other connected persons, is the beneficial owner of, or

is able, directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company, and

- (ii) the question of whether a person is connected with another person shall be determined in accordance with section 10.

(2) This section applies to a person to who, in relation to a company (hereafter in this section referred to as ‘the company’), has a material interest in the company.

(3) Notwithstanding any other provision of the Income Tax Acts or the regulations made under this Chapter, no credit for tax deducted from the emoluments paid by the company to a person to whom this section applies shall be given in any assessment raised on the person or in any statement of liability sent to the person under Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General in accordance with the provisions of those regulations.

(4) Where the company remits tax to the Collector-General which has been deducted from emoluments paid by the company, the tax remitted shall be treated as having been deducted from emoluments paid to persons other than persons to whom this section applies in priority to tax deducted from persons to whom this section applies.

(5) Where, in accordance with subsection (4), tax remitted to the Collector-General by the company is to be treated as having been deducted from emoluments paid by the company to persons to whom this section applies, the tax to be so treated shall, if there is more than one such person, be treated as having been deducted from the emoluments paid to each such person in the same proportion as the emoluments paid to the person bears to the aggregate amount of emoluments paid by the company to all such persons.”.

14.—As respects the year of assessment 2005 and subsequent years of assessment, section 950 of the Principal Act is amended, in the definition of “chargeable person” in subsection (1), by substituting the following for paragraph (a):

Amendment of section 950 (interpretation (Part 41)) of Principal Act.

- “(a) whose only source or sources of income for the chargeable period is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies, but for this purpose a person who, in addition to such source or sources of income, has another source or other sources of income shall be deemed for the chargeable period to be a person whose only source or sources of income for the chargeable period is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies if the income from that other source or those other sources is taken into account in determining the amount of his or her tax credits and

standard rate cut-off point for the chargeable period applicable to those emoluments, and, for the purposes of deciding whether such income should be so taken into account, the Revenue Commissioners may have regard to the amount for that, or any previous, chargeable period of the income of the person from that other source or those other sources before deductions, losses, allowances and other reliefs.”.

Amendment of Chapter 1 (payments in respect of professional services by certain persons) of Part 18 of, and Schedule 13 to, Principal Act.

15.—(1) Chapter 1 of Part 18 of the Principal Act is amended in section 520(1) in the definition of “relevant payment”—

(a) in paragraph (ii) by substituting “section,” for “section, and”;

(b) in paragraph (iii) by substituting “payment, and” for “payment;”, and

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

“(iv) a payment by one accountable person to—

(I) another accountable person being a person whose income is exempt from corporation tax or is disregarded for the purposes of the Tax Acts, or

(II) a body which has been granted an exemption from tax for the purposes of section 207;”.

(2) Schedule 13 to the Principal Act is amended—

(a) by substituting “13. Public Appointments Service.” for paragraph 13,

(b) by substituting “35. Dublin Airport Authority public limited company.” for paragraph 35,

(c) by deleting paragraph 87,

(d) by inserting the following after paragraph 143 (inserted by the Finance Act 2004):

“144. National Treatment Purchase Fund Board.

145. The Mental Health Commission.

146. Crisis Pregnancy Agency.

147. Commission on Electronic Voting.

148. Irish Medicines Board.

149. National Educational Welfare Board.

150. Oifig Choimisinéir na dTeangacha Oifigiúla.

151. The Health Service Executive.

152. Commission for Public Service Appointments.

153. Commission for Taxi Regulation.”.

(3) (a) *Subsection (1)* comes into operation with effect as on and from the passing of this Act.

(b) *Paragraph (a)* of *subsection (2)* shall be deemed to have come into force and shall take effect as on and from 19 October 2004.

(c) *Paragraph (b)* of *subsection (2)* shall be deemed to have come into force and shall take effect as on and from 1 October 2004.

(d) *Paragraph (c)* of *subsection (2)* shall be deemed to have come into force and shall take effect as on and from 1 January 2005.

(e) *Paragraph (d)* of *subsection (2)* comes into operation on 1 May 2005.

16.—(1) Section 128 of the Principal Act is amended in subsection (2) by inserting “and shall be so chargeable notwithstanding that he or she was not resident in the State on the date on which the right was obtained” after “in accordance with this section”.

Amendment of section 128 (tax treatment of directors of companies and employees granted rights to acquire shares or other assets) of Principal Act.

(2) (a) *Subsection (1)* applies as respects a right (within the meaning of section 128 of the Principal Act) obtained on or after the coming into operation of this section.

(b) This section comes into operation on such day as the Minister for Finance may appoint by order.

17.—Chapter 6 of Part 4 of the Principal Act is, with effect from 3 February 2005, amended by inserting the following section after section 81:

Restriction of deductions for employee benefit contributions.

“81A.—(1) (a) In this section—

‘accident benefit scheme’ means an employee benefit scheme under which benefits may be provided only by reason of a person’s disablement, or death, caused by an accident occurring during the person’s service as an employee of the employer;

‘chargeable period’ has the same meaning as in section 321;

‘employee benefit scheme’ means a trust, scheme or other arrangement for the benefit of persons who are employees of an employer;

‘qualifying expenses’, in relation to a third party and an employee benefit scheme, does not include expenses that, if incurred by the employer, would not be allowed as a deduction in calculating the profits or gains of the employer to be charged to tax under Case I or II of Schedule D but, subject to the foregoing, includes any expenses of the third party (apart from the provision of benefits to employees of the employer) incurred in the operation of the employee benefit scheme.

(b) For the purposes of this section—

- (i) an employer makes an employee benefit contribution if—
 - (I) the employer pays money or transfers an asset to another person (referred to in this section as the ‘third party’), and
 - (II) the third party is entitled or required, under the provisions of an employee benefit scheme, to retain or use the money or asset for or in connection with the provision of benefits to employees of the employer,
- (ii) qualifying benefits are provided where there is a payment of money or a transfer of assets, otherwise than by way of a loan, and the recipient or a person other than the recipient is or would, if resident, ordinarily resident and domiciled in the State, be chargeable to income tax in respect of the provision of such benefits, and
- (iii) a reference to a person’s employee includes a reference to the holder of an office under that person.

(2) (a) This section applies where—

- (i) a calculation is made of the amount of a person’s profits or gains to be charged to tax under Case I or II of Schedule D for a chargeable period beginning on or after 3 February 2005, and
- (ii) a deduction would, but for this section, be allowed by the Tax Acts for that period in respect of employee benefit contributions made, or to be made, by that person (referred to in this section as the ‘employer’).

(b) Notwithstanding paragraph (a), this section does not apply in respect of a deduction referred to in subsection (7).

- (3) (a) A deduction in respect of employee benefit contributions referred to in subsection (2)(a) shall be allowed only to the extent that, during the chargeable period in question or within 9 months from the end of it—
 - (i) qualifying benefits are provided out of the contributions, or
 - (ii) qualifying expenses are paid out of the contributions.

- (b) (i) For the purposes of paragraph (a), any qualifying benefits provided or qualifying expenses paid by the third party after the receipt by the third party of employee benefit contributions shall be regarded as being provided or paid out of those contributions, up to the total amount of the contributions as reduced by the amount of any benefits or expenses previously provided or paid as referred to in paragraph (a).
- (ii) In the application of this paragraph, no account shall be taken of any other amount received or paid by the third party.
- (4) (a) An amount which is disallowed under subsection (3) shall be allowed as a deduction for a subsequent chargeable period to the extent that qualifying benefits are provided out of the employee benefit contributions in question before the end of that subsequent chargeable period.
- (b) (i) For the purposes of paragraph (a), any qualifying benefits provided by the third party after the receipt by the third party of employee benefit contributions shall be regarded as being provided out of those contributions, up to the total amount of the contributions as reduced by the amount of any benefits or expenses previously provided or paid as referred to in subsection (3)(a) or paragraph (a) of this subsection.
- (ii) In the application of this paragraph, no account shall be taken of any other amount received or paid by the third party.
- (5) (a) This subsection applies where the provision of a qualifying benefit takes the form of the transfer of an asset.
- (b) The amount provided shall be taken for the purposes of this section to be the total of—
- (i) (I) the amount, if any, expended on the asset by the third party, or
- (II) where the asset consists of new shares in the third party, or rights in respect of such shares, issued by the third party, the market value of those shares or rights, as the case may be, at the time of the transfer,

and

- (ii) in a case in which the asset was transferred to the third party by the employer, the amount of the deduction that would be allowed as referred to in subsection (2) in respect of the transfer.
- (c) Where the amount calculated in accordance with paragraph (b) is greater than the amount (referred to in this paragraph as the ‘second-mentioned amount’) in respect of which an employee is chargeable to income tax in respect of the transfer, the deduction to be allowed in accordance with subsection (3) or (4) shall not exceed the second-mentioned amount.
- (6) In any case where the calculation referred to in subsection (2)(a) is made before the end of the 9 month period mentioned in subsection (3)—
- (a) for the purposes of making the calculation, subsection (3) shall be construed as if the reference to that 9 month period were a reference to the period ending at the time when the calculation is made, and
- (b) after the end of the 9 month period the calculation shall if necessary be adjusted to take account of any benefits provided, expenses paid or contributions made within that period but after the time of the calculation.
- (7) This section does not apply in relation to any deduction that is allowable—
- (a) in respect of anything given as consideration for goods or services provided in the course of a trade or profession,
- (b) in respect of contributions under an accident benefit scheme,
- (c) under Part 17, or
- (d) under Part 30.”.

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

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

- (a) by substituting “section 131;” for “section 131.” in subsection (2)(e),
- (b) by inserting the following after paragraph (e) of subsection (2):
- “(f) any qualifying amount (within the meaning of subsection (2C)) paid to an individual who at the time that amount is paid—
- (i) is a beneficiary under the terms of a trust deed of an employee share ownership

trust approved of by the Revenue Commissioners under Schedule 12 and for which approval has not been withdrawn and which trust deed contains provision for the transfer of securities to the trustees of a scheme approved of by the Revenue Commissioners under Schedule 11 and for which approval has not been withdrawn, and

- (ii) would be eligible to have securities appropriated to him or her, had such securities been available for appropriation, under the scheme referred to in subparagraph (i).”,

and

(c) by inserting the following after subsection (2B):

“(2C) Notwithstanding section 519(6) and paragraph 13(4) of Schedule 12, ‘qualifying amount’ means an amount paid solely out of income consisting of dividends received in a chargeable period (within the meaning of section 321) in respect of securities (within the meaning of Schedule 12) held by the trustees of the employee share ownership trust referred to in subsection (2)(f)(i), but only to the extent that such income exceeds the aggregate of—

- (a) any sum or sums spent to meet expenses of the trust,
- (b) any interest paid on sums borrowed by the trust,
- (c) any sum or sums paid to the personal representatives of a deceased person who was a beneficiary under the terms of the trust deed,
- (d) any amount spent on the repayment of sums borrowed including any amount capable of being so spent, having regard to the conditions referred to in paragraph 11(2B)(d) or 11A(5)(d) of Schedule 12, and
- (e) any amount spent on the acquisition of securities (within the meaning of Schedule 12) including any amount capable, at any particular time, of being so spent on such securities at their market value (within the meaning of section 548) at that time,

in the chargeable period.”.

(2) This section comes into operation on 3 February 2005.

19.—(1) The Principal Act is amended—

(a) in section 201—

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

Reliefs in respect of income tax charged on payments on retirement.

“(2A) Where a payment is not chargeable to tax under section 123 by virtue of subsection (2)(a), the person by whom the payment was made shall deliver to the inspector, not later than 46 days after the end of the year of assessment in which the payment was made, the following particulars—

- (a) the name and address of the person to whom the payment was made,
- (b) the personal public service number (within the meaning of section 223 of the Social Welfare (Consolidation) Act 1993) of the person who received the payment,
- (c) the amount of the payment, and
- (d) the basis on which the payment is not chargeable to tax under section 123, indicating, in the case of a payment made on account of injury or disability, the extent of the injury or disability, as the case may be.”,

and

- (ii) by substituting, in subsection (6), “4 years” for “6 years”,

and

- (b) in Schedule 3 by substituting, in the formula in paragraph 10, “3 years” for “5 years” in the construction of “T” and “3 years” for “5 years” in the construction of “I”.

(2) (a) *Paragraph (a) of subsection (1) shall apply as respects payments made on or after the passing of this Act.*

(b) *Paragraph (b) of subsection (1) shall apply as respects the year of assessment 2005 and subsequent years of assessment.*

Tax rate applicable to certain deposit interest received by individuals.

20.—(1) Part 8 of the Principal Act is amended by inserting the following Chapter after Chapter 6:

“CHAPTER 7

Certain interest from sources within the European Communities

Tax rate applicable to certain deposit interest received by individuals.

267M.—(1) In this section—

‘specified interest’ means interest arising in a Member State of the European Communities other than the State which would be interest payable in respect of a relevant deposit within the meaning of section 256(1) if—

(a) in the definition of ‘relevant deposit’ in section 256(1)—

- (i) the following were substituted for paragraphs (c) and (d):

‘(c) which, in the case of a relevant deposit taker which, by virtue of the law of a Member State of the European Communities other than the State, is resident for the purposes of tax in such a Member State, is held at a branch of the relevant deposit taker situated in a territory which is not a Member State,

(d) which, in the case of a relevant deposit taker not so resident in a Member State of the European Communities for the purposes of tax, is held otherwise than at a branch of the relevant deposit taker situated in a Member State,’

and

(ii) paragraph (g) were deleted,

and

(b) there were included in the definition of ‘relevant deposit taker’ in section 256(1) bodies established in accordance with the law of any Member State of the European Communities other than the State which corresponds to—

(i) the Credit Union Act 1997,

(ii) the Trustee Savings Banks Acts 1989 and 2001, or

(iii) the Post Office Savings Bank Acts 1861 to 1958;

‘tax’ in relation to a Member State other than the State means tax which corresponds to income tax or corporation tax in the State.

(2) (a) Notwithstanding any provision of the Income Tax Acts and subject to paragraph (b), the amount of taxable income on which a person who is an individual is charged to income tax at the standard rate for any year shall be increased by an amount equal to the amount of specified interest of

that person on which income tax for that year falls to be computed.

- (b) Paragraph (a) shall not apply where any liability of the individual for a year of assessment in respect of the specified interest has not been discharged on or before the specified return date for the chargeable period (within the meaning of section 950) for that year.”.

(2) This section applies for the year of assessment 2005 and subsequent years of assessment.

Retirement
benefits.

21.—(1) The Principal Act is amended—

(a) in Chapter 1 of Part 30—

(i) in section 770(1)—

- (I) by substituting the following for the definition of “administrator”:

“ ‘administrator’, in relation to a retirement benefits scheme, means the person or persons, established in a Member State of the European Communities, having the management of the scheme, and references to the administrator of a scheme shall be deemed to include the person mentioned in section 772(2)(c)(ii);”,

- (II) by inserting the following after the definition of “final remuneration”:

“ ‘overseas pension scheme’ means a retirement benefits scheme, other than a state social security scheme, which is—

(a) operated or managed by an Institution for Occupational Retirement Provision as defined by Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003¹, and

(b) established in a Member State of the European Communities, other than the State, which has given effect to that Directive in its national law;”,

- (III) by inserting the following after the definition of “relevant date”:

“ ‘retirement benefits scheme’ has the meaning assigned to it by section 771;”,

and

¹OJ No. L235, 23.9.2003, p.10

(IV) by inserting the following after the definition of “service”:

“ ‘state social security scheme’ means a system of mandatory protection put in place by the Government of a country or territory, other than the State, to provide a minimum level of retirement income or other benefits, the level of which is determined by that Government;”,

(ii) in section 771(2) by inserting “contract,” after “References in this Chapter to a scheme include references to a”,

(iii) in section 772(2) by substituting the following for paragraph (c):

“(c) that in relation to the discharge of all duties and obligations imposed on the administrator of a scheme by this Chapter—

(i) the administrator of an overseas pension scheme has entered into a contract with the Revenue Commissioners enforceable in a Member State of the European Communities in relation to the discharge of those duties and obligations and in entering into such a contract the parties to the contract have acknowledged and agreed in writing that—

(I) it is governed solely by the laws of the State, and

(II) that the courts of the State have exclusive jurisdiction in determining any dispute arising under it,

or

(ii) there is a person resident in the State, appointed by the administrator, who will be responsible for the discharge of all of those duties and obligations and the administrator shall notify the Revenue Commissioners of the appointment of that person and the identity of that person;”,

(iv) in section 774 by substituting the following for subsection (1):

“(1) This section shall apply as respects—

(a) any approved scheme shown to the satisfaction of the Revenue Commissioners to be established under irrevocable trusts,

(b) any approved scheme which is an overseas pension scheme, or

(c) any other approved scheme as respects which the Revenue Commissioners, having regard to any special circumstance, direct that this section shall apply,

and any scheme which is for the time being within paragraph (a), (b) or (c) is in this Chapter referred to as an ‘exempt approved scheme’.”,

and

(v) in section 779 by substituting the following for subsection (1):

“(1) Subject to subsection (2), pensions paid under any scheme, including an overseas pension scheme, which is approved or is being considered for approval under this Chapter shall, notwithstanding anything in section 18 or 19, be charged to tax under Schedule E, and Chapter 4 of Part 42 shall apply accordingly.”,

(b) in Chapter 2 of Part 30—

(i) in section 784—

(I) by substituting the following for subsection (2)(a)(i):

“(i) that it is made by the individual with a person lawfully carrying on the business of granting annuities on human life, and, where that person—

(I) is not resident in the State, or

(II) is not trading in the State through a fixed place of business,

that person is an insurance undertaking authorised to transact insurance business in the State under Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002¹,”,

(II) in subsection (2B)(a) by substituting “ shall, notwithstanding anything in section 18 or 19,” for “shall” where it first occurs, and

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

“(4A) At any time when the person referred to in subsection (2)(a)(i) or in section 785(1)—

(a) is not resident in the State, or

¹OJ No. L345, 19.12.2002, p.1

- (b) is not trading in the State through a fixed place of business,

the person shall, in relation to the discharge of all duties and obligations imposed by this section or, as the case may be, by section 785—

- (i) enter into a contract with the Revenue Commissioners enforceable in a Member State of the European Communities in relation to the discharge of those duties and obligations and in entering into such a contract the parties to the contract shall acknowledge and agree in writing that—

(I) it is governed solely by the laws of the State, and

(II) that the courts of the State shall have exclusive jurisdiction in determining any dispute arising under it,

or

- (ii) ensure that there is a person resident in the State (referred to in this paragraph as the ‘appointed person’), appointed by the person, to be responsible for the discharge of those duties and obligations and the person shall notify the Revenue Commissioners of the appointment of the appointed person and the identity of the appointed person.

(4B) The Revenue Commissioners may by notice in writing require the person to whom premiums are payable under any contract for the time being approved under this section or under section 785, or the appointed person referred to in subsection (4A)(ii), as the case may be, to provide, within 30 days of the date of such notice, such information and particulars as may be specified in the notice as they may reasonably require for the purposes of this Chapter, and, without prejudice to the generality of the foregoing, such information and particulars may include—

- (a) the name, address and PPS Number (within the meaning of section 787A(1)) of the individual with whom the contract has been made,
- (b) the name, address and PPS Number (within that meaning) of the individual or individuals to whom any payment of an annuity in respect of the contract has been made, and

(c) the amount of the annuity payments referred to in paragraph (b).”,

(ii) in section 784A—

(I) in subsection (3)(a) by substituting “shall, notwithstanding anything in section 18 or 19,” for “shall” where it first occurs,

(II) in subsection (7) by substituting the following for paragraph (a):

“(a) At any time when the qualifying fund manager—

(i) is not resident in the State, or

(ii) is not trading in the State through a fixed place of business,

the qualifying fund manager shall, in relation to the discharge of all duties and obligations relating to approved retirement funds which are imposed on the qualifying fund manager by virtue of this Chapter—

(I) enter into a contract with the Revenue Commissioners enforceable in a Member State of the European Communities in relation to the discharge of those duties and obligations and in entering into such a contract the parties to the contract shall acknowledge and agree in writing that—

(A) it shall be governed solely by the laws of the State, and

(B) that the courts of the State shall have exclusive jurisdiction in determining any dispute arising under it,

or

(II) ensure that there is a person resident in the State, appointed by the qualifying fund manager, who will be responsible for the discharge of all of those duties and obligations and shall notify the Revenue Commissioners of the appointment of that person and the identity of that person.”,

and

(III) by inserting the following subsection after subsection (8):

“(9) The Revenue Commissioners may by notice in writing require a qualifying fund manager or the person appointed under subsection (7)(a)(II), as the case may be, to provide within 30 days of the date of such notice, such information and particulars as may be specified in the notice as they may reasonably require for the purposes of this Chapter, and without prejudice to the generality of the foregoing, such information and particulars may include—

(a) the name, address and tax reference number of the individual in whose name the approved retirement fund is or was held,

(b) the name, address and tax reference number of any individual to whom any distribution has been made, and

(c) the amount of any distributions referred to in paragraph (b).”,

(iii) in section 784C(4)(a) by substituting “is in receipt of” for “is entitled to”, and

(iv) in section 785 by inserting the following after subsection (1):

“(1A) For the purposes of subsection (1), the reference in subsection (1) to a person lawfully carrying on in the State the business of granting annuities on human life shall include a reference to an insurance undertaking, authorised to transact insurance business in the State under Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002¹, that—

(a) is not resident in the State, or

(b) is not trading in the State through a fixed place of business.”,

(c) in Chapter 2A—

(i) in subsection (1) of section 787A by substituting “in accordance with section 787G(5)(ii)” for “in accordance with section 787G(5)”, in the definition of “PRSA administrator”,

(ii) in section 787G—

(I) in subsection (1)(a) by substituting “shall, notwithstanding anything in section 18 or 19,” for “shall”, where it first occurs,

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

¹OJ No. L345, 19.12.2002, p.1

“(5) At any time when a PRSA administrator—

- (a) is not resident in the State, or
- (b) is not trading in the State through a fixed place of business,

the PRSA administrator shall, in relation to the discharge of all duties and obligations relating to Personal Retirement Savings Accounts which are imposed on the PRSA administrator by virtue of this Chapter—

- (i) enter into a contract with the Revenue Commissioners enforceable in a Member State of the European Communities in relation to the discharge of those duties and obligations and in entering into such a contract the parties to the contract shall acknowledge and agree in writing that—
 - (I) it shall be governed solely by the laws of the State, and
 - (II) that the courts of the State shall have exclusive jurisdiction in determining any dispute arising under it,

or

- (ii) ensure that there is a person resident in the State, appointed by the PRSA administrator, who will be responsible for the discharge of all of those duties and obligations and shall notify the Revenue Commissioners of the appointment of that person and the identity of that person.”,

and

- (III) by inserting the following subsection after subsection (5):

“(5A) The Revenue Commissioners may by notice in writing require a PRSA administrator, a PRSA provider or the person appointed under subsection (5)(ii), as the case may be, to provide, within 30 days of the date of such notice, such information and particulars as may be specified in the notice as they may reasonably require for the purposes of this Chapter, and, without prejudice to the generality of the foregoing, such information and particulars may include—

- (a) the name, address and PPS Number of the PRSA contributor,

- (b) the name, address and PPS Number of any person to whom any payments have been made, or to whom any assets have been made available, by the PRSA administrator or the PRSA provider, and
- (c) the amount of any payments and the value of any assets referred to in paragraph (b).”,

(d) by inserting the following after Chapter 2A—

“CHAPTER 2B

Overseas Pension Plans: Migrant Member Relief

Inter-
pretation and
general
(Chapter
2B).

787M.—(1) In this Chapter, unless the context otherwise requires—

‘administrator’, in relation to an overseas pension plan, means the person or persons having the management of the plan;

‘contributions’ include premia;

‘certificate of contributions’ means a certificate obtained by the relevant migrant member from the administrator and provided to the Revenue Commissioners, in a form to be furnished by the Revenue Commissioners for that purpose, containing for each calendar year the following particulars in respect of the relevant migrant member of the plan—

- (a) his or her name, address, PPS Number and policy reference number,
- (b) the contributions paid by him or her under the plan in that year, and
- (c) where relevant, the contributions, if any, paid under the plan in that year in respect of him or her by, or on behalf of, his or her employer;

‘overseas pension plan’ means a contract, an agreement, a series of agreements, a trust deed or other arrangements, other than a state social security scheme, which is established in, or entered into under the law of, a Member State of the European Communities, other than the State;

‘national of a Member State of the European Communities’ means any individual possessing the nationality or citizenship of a Member State of the European Communities;

‘policy reference number’ means the unique identifying number of a relevant migrant

member in relation to an overseas pension plan;

‘PPS Number’ means a personal public service number within the meaning of section 223 of the Social Welfare (Consolidation) Act 1993;

‘qualifying overseas pension plan’ means an overseas pension plan—

- (a) which is in good faith established for the sole purpose of providing benefits of a kind similar to those referred to in Chapters 1, 2, or 2A of this Part,
- (b) in respect of which tax relief is available under the law of the Member State of the European Communities in which the plan is established in respect of any contributions paid under the plan, and
- (c) in relation to which the relevant migrant member of the plan complies with the requirements of subsection (2);

‘relevant migrant member’ means an individual who is a resident of the State and who is a member of a qualifying overseas pension plan and who, in relation to any contributions paid under the plan—

- (a) was, at the time the individual first became a member of the pension plan, a resident of a Member State of the European Communities, other than the State, and entitled to tax relief in respect of contributions paid under the plan under the law of that Member State of the European Communities,
- (b) was a member of the pension plan at the beginning of the period in which the individual became a resident of the State,
- (c) was, immediately before the beginning of that period, resident outside of the State for a continuous period of 3 years, and
- (d) (i) is a national of a Member State of the European Communities, or
 - (ii) not being such an individual, was a resident of a Member

State of the European Communities, other than the State, immediately before becoming a resident of the State;

‘resident’ means—

- (a) in the case of a Member State of the European Communities with the Government of which arrangements having the force of law by virtue of section 826(1)(a) have been made, that the individual is regarded as being a resident of that State under those arrangements, and
- (b) in any other case, that the individual is by virtue of the law of that State a resident of that State for the purposes of tax;

‘state social security scheme’ means a system of mandatory protection put in place by the Government of a country or territory, other than the State, to provide a minimum level of retirement income or other benefits, the level of which is determined by that Government;

‘tax reference number’ means, in relation to an institution operating or managing an overseas pension plan, the unique identification number allocated to the institution by a Member State of the European Communities, other than the State, for the purposes of taxation, and where more than one such number has been allocated, the reference number appropriate to the business in the course of which the overseas pension plan was issued.

(2) The requirements referred to in paragraph (c) of the definition of ‘qualifying overseas pension plan’ in subsection (1) are that the relevant migrant member—

- (a) obtains from the administrator of the plan and provides to the Revenue Commissioners in such form and manner as they may specify—
 - (i) such evidence as they may reasonably require to verify the position in relation to paragraphs (a) and (b) of the definition of ‘qualifying overseas pension plan’ in subsection (1), and

- (ii) the following particulars in relation to the plan—
 - (I) the name, address and tax reference number of the institution operating or managing the plan,
 - (II) the policy reference number of the relevant migrant member of the plan,
 - (III) the date on which the relevant migrant member became a member of the plan,
 - (IV) the date on which contributions under the plan first became payable,
 - (V) the date on which benefits under the plan first become payable,

and

- (b) has irrevocably instructed the administrator of the plan to provide to the Revenue Commissioners such information as they may reasonably require in relation to any payments made under the plan.

Qualifying overseas pension plans: relief for contributions.

787N.—(1) Where in any year of assessment, contributions are paid to any qualifying overseas pension plan—

- (a) by a relevant migrant member of that plan, or
- (b) by, or on behalf of, an employer in respect of an employee (within the meaning of Chapter 1) who is a relevant migrant member of that plan,

then, where the relevant migrant member has provided a certificate of contributions, relief for that year of assessment under the provisions of section 774(6), 774(7) and 778(1) of Chapter 1 (which relates to occupational pension schemes), or, as the case may be, section 787 of Chapter 2 (which relates to retirement annuities), or sections 787C, 787E, 787F or 787J of Chapter 2A (which relates to personal retirement savings accounts), shall, with any necessary modifications, apply to those contributions as if—

- (i) the qualifying overseas pension plan was an exempt approved scheme under Chapter 1 or an annuity contract for the time being approved by the Revenue Commissioners under Chapter 2, or a PRSA product approved under Chapter 2A for the purposes of section 94(3) of the Pensions Act 1990, and
- (ii) the relevant migrant member of the qualifying overseas pension plan was—
 - (I) an employee within the meaning of Chapter 1,
 - (II) an individual referred to in section 784(1) of Chapter 2, or
 - (III) an individual referred to in Chapter 2A.

(2) An individual who would be a relevant migrant member of a qualifying overseas pension plan but for the fact that he or she fails to meet the requirement in paragraph (c) of the definition of ‘relevant migrant member’ in section 787M shall, notwithstanding that, be treated as a relevant migrant member if the Revenue Commissioners are of the opinion that in all the circumstances the failure of the individual to meet the condition ought to be disregarded for that purpose.

- (3) (a) The Revenue Commissioners may by notice in writing require the administrator of a qualifying overseas pension plan who has received an irrevocable instruction as provided for in section 787M(2)(b), to provide within 30 days of the date of such notice such information and particulars, in relation to payments under the plan, as the Revenue Commissioners may reasonably require for the purposes of this Chapter.
- (b) The notice referred to in paragraph (a) shall specify—
 - (i) the information and particulars required by the Revenue Commissioners, and
 - (ii) the form and manner in which such information and particulars are to be provided.”,

(e) in Chapter 4—

(i) by substituting the following for section 790A:

“Limit on earnings.

790A.—Notwithstanding anything in this Part, for the purposes of giving relief to an individual under—

- (a) Chapter 1 in respect of an employee’s contribution to a retirement benefits scheme,
- (b) Chapter 2 in respect of a qualifying premium under an annuity contract,
- (c) Chapter 2A in respect of a PRSA contribution, and
- (d) Chapter 2B in respect of a contribution to an overseas pension plan,

the aggregate of the individual’s remuneration, within the meaning of Chapter 1 and that Chapter as applied by Chapter 2B, and net relevant earnings, within the meaning of Chapters 2 and 2A and those Chapters as applied by Chapter 2B, shall not exceed €254,000.”,

and

(ii) by inserting the following after section 790A:

“Exemption of cross-border scheme.

790B.—(1) In this section—

‘competent authority’, in relation to the State, means the national authority designated to carry out the duties provided for in the Directive arising from the transposition of the Directive into the law of the State;

‘Directive’ means Directive 2003/41/EC of the European Council and of the Parliament of 3 June 2003¹ on the activities and supervision of institutions for occupational retirement provision;

‘European undertaking’, in relation to a scheme, means an undertaking located in a European State which makes or proposes to make contributions to a scheme in respect of European members;

‘European members’ means individuals who are or have been employed or self-employed in a European State and in respect of which employment or self

¹OJ No. L235, 23.9.2003, p.10

employment the trustees of the scheme have accepted or propose to accept contributions from the European undertaking;

‘European State’ means a Member State of the European Communities other than the State;

‘scheme’ means an occupational pension scheme established in the State under irrevocable trusts which provides, or is capable of providing, retirement benefits (within the meaning of Article 6(d) of the Directive) in relation to European members;

‘trustees’, in relation to a scheme, means the trustees of the scheme;

‘undertaking’ means any undertaking or other body, regardless of whether it includes or consists of one or more persons, which acts as an employer or as an association, or other representative body, of self employed persons.

(2) Subsections (3) and (4) shall apply to any scheme in respect of which, arising from the transposition of the Directive into the law of the State, the trustees have received from the competent authority—

(a) an authorisation, and

(b) an approval,

to accept contributions from a European undertaking in respect of European members, which authorisation has not been revoked.

(3) (a) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits of a scheme, if or to such extent as the Revenue Commissioners are satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(b) (i) In this subsection ‘financial futures’ and ‘traded options’ mean respectively financial futures and traded options for the time being dealt in or quoted on any futures exchange or any

stock exchange, whether or not that exchange is situated in the State.

(ii) For the purposes of paragraph (a), a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(c) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Revenue Commissioners are satisfied that, the underwriting commissions are applied for the purposes of the scheme, and in respect of which the trustees of the scheme would but for this subsection be chargeable to tax under Case IV of Schedule D.

(4) For the purposes of sections 172A(1), 256(1) and 739B(1), the reference to ‘an exempt approved scheme within the meaning of section 774’ in the definition of ‘pension scheme’ in those sections shall be deemed to include a reference to a scheme referred to in subsection (2).”,

(f) in Schedule 23—

(i) in paragraph 1 by inserting “in such form and manner as they may specify” after “Revenue Commissioners” where it first occurs,

(ii) in paragraph 2:

(I) by deleting “and” in subparagraph (b)(ii),

(II) in subparagraph (b)(iii) by substituting “employer, and,” for “employer;”, and

(III) by inserting the following after paragraph (b)(iii):

“(iv) payments by means of pension, gratuity or other like benefits;”,

(iii) by inserting the following after paragraph 2:

“2A Any such return, copy of accounts, information and particulars required to be provided under paragraph 2 shall be in such form and manner as may be specified in the notice under that paragraph.”,

and

(iv) in paragraph 4, subparagraph (2), by substituting “in section 772(2)(c)(ii).” for “in section 772(2)(c).”.

- (2) (a) *Paragraph (a) of subsection (1)* shall apply as respects any retirement benefits scheme (within the meaning of section 771 of the Principal Act) approved on or after 1 January 2005.
- (b) *Paragraph (b), other than subparagraph (iii), of subsection (1)* shall apply as respects any annuity contract for the time being approved by the Revenue Commissioners under section 784 of the Principal Act entered into on or after 1 January 2005.
- (c) *Subparagraph (iii) of paragraph (b) of subsection (1)* shall apply as respects any exercise of an option in accordance with subsection (2A) of section 784 of the Principal Act, on or after 3 February 2005.
- (d) *Paragraph (c) of subsection (1)* shall apply as respects any PRSA contract (within the meaning of section 787A of the Principal Act) entered into on or after 1 January 2005 in respect of a PRSA product (within the meaning of Part X of the Pensions Act 1990) approved by the Revenue Commissioners under section 787K of the Principal Act.
- (e) *Paragraph (d) of subsection (1)* shall apply as respects contributions to a qualifying overseas pension plan made on or after 1 January 2005.
- (f) *Subparagraph (i) of paragraph (e) of subsection (1)* shall apply as on and from 1 January 2005.
- (g) *Subparagraph (ii) of paragraph (e) of subsection (1)* shall come into operation on such day or days as the Minister for Finance may by order appoint and different days may be appointed for different purposes or different provisions.
- (h) *Paragraph (f) of subsection (1)* shall apply as on and from 1 January 2005.

CHAPTER 3

PAYE: Electronic and Telephone Communications

22.—With effect from the passing of this Act Chapter 6 (as amended by the Finance Act 2001) of Part 38 of the Principal Act is amended—

- (a) in section 917D by inserting the following after the definition of “digital signature”:

“‘electronic identifier’, in relation to a person, means—

- (a) the person’s digital signature, or

Amendment of Chapter 6 (electronic transmission of returns of income, profits, etc., and of other Revenue returns) of Part 38 of Principal Act.

(b) such other means of electronic identification as may be specified or authorised by the Revenue Commissioners for the purposes of this Chapter;”,

(b) in section 917F(1) by substituting the following for paragraph (c):

“(c) the transmission bears the electronic identifier of that person, and”;

(c) in section 917G(1) by substituting “electronic identifiers” for “digital signatures”,
and

(d) in section 917H—

(i) in paragraph (b) of subsection (2) and paragraph (c) of subsection (3) by substituting “electronic identifier” for “digital signature”, and

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

“(4) For the purposes of subsection (3), the Revenue Commissioners may determine different terms and conditions in relation to different returns or categories of a return, different categories of persons and different returns or categories of a return made by different categories of persons.”.

Electronic claims.

23.—With effect from the passing of this Act the Principal Act is amended in Part 37 by inserting the following after section 864:

“864A.—(1) (a) In this section—

‘approved electronic communications’ means such form of electronic communications as the Revenue Commissioners approve of for the purposes of this section;

‘electronic communications’ means communication by electrical, digital, magnetic, optical, electromagnetic, biometric or photonic technology, and related technology, by means of which data is transmitted, including telephone apparatus, and ‘electronic means’ shall be construed accordingly;

‘telephone apparatus’ means telegraphy apparatus designed or adapted for the purposes of transmitting and receiving, by way of a public telecommunications service, spoken messages or information or both of them.

(b) In paragraph (a)—

‘information’ has the meaning assigned to it by the Electronic Commerce Act 2000;

‘public telecommunications service’ has the meaning assigned to it by the European Communities (Telecommunications Infrastructure) Regulations 1997 (S.I. No. 338 of 1997).

(c) Except where the Revenue Commissioners otherwise direct, this section applies to a claim for an allowance, deduction or relief which falls to be taken into account—

(i) in the making of deductions or repayments of tax under Chapter 4 of Part 42 and the regulations made under that Chapter, or

(ii) except in the case of a chargeable person (within the meaning of section 950), in relation to a repayment of tax deducted under that Chapter and those regulations.

(d) References in this section to ‘a claim for an allowance, deduction or relief’ include references to—

(i) the making of an election,

(ii) the giving of a notification or notice,

(iii) the amendment of a claim, election, notification or notice, and

(iv) the withdrawal of any claim, election, notification or notice,

in relation to an allowance, deduction or relief, and also include references to an election, notice or application for the purposes of Chapter 1 of Part 44 or a claim under Regulation 26(5) of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001).

(e) Notwithstanding any other enactment, references in this section to a claim in writing do not include a reference to a claim made by representing or reproducing words in visible form using electronic means.

(2) Notwithstanding any other provision of the Income Tax Acts or instruments made thereunder requiring claims to which this section applies to be made in writing or by notice or in such form as may be prescribed by the Revenue Commissioners, such claims as may be specified by the Revenue Commissioners may be made by an individual by means of approved electronic communications, but subject to such terms and conditions as the Revenue Commissioners may from time to time consider appropriate and specify for the purposes of this section.

(3) The Revenue Commissioners shall make known, in such manner as they think fit, any terms and conditions for the time being specified by them for the purposes of this section.

(4) Where terms and conditions specified by the Revenue Commissioners under this section are for the time being in force with respect to the making of claims to which this section applies, such claims that are made by electronic communications are required to be made in accordance with those terms and conditions.

(5) (a) Terms and conditions specified by the Revenue Commissioners for the purposes of this section shall not be capable of modifying any requirement by or under any enactment as to the period within which any claim is to be made, or as to the contents of any claim.

(b) Such terms and conditions may include provision as to how any requirement as to the contents of a claim is to be fulfilled when the claim is not produced in writing.

(6) Where a claim is made by a person in accordance with this section, the claim shall—

(a) unless and until the contrary is proved, be deemed to have been made by the person purporting to have made the claim, and

(b) be treated as having been made when it is acknowledged, howsoever, by the Revenue Commissioners as having been received by them.

(7) The making of a claim by a person in accordance with this section shall not prevent an officer of the Revenue Commissioners from enquiring into the claim in accordance with section 886A (inserted by the *Finance Act 2005*).

(8) Where a claim made in accordance with this section results in the issue to the claimant of a notice, or an amended notice, of determination of tax credits and standard rate cut-off point, the inspector shall, as may be appropriate, be deemed to have determined the amount of the tax credits and standard rate cut-off point appropriate to the claimant in accordance with Regulation 10, or amended the amount in accordance with Regulation 13, of the Income Tax (Employments)(Consolidated) Regulations 2001.

(9) Section 917M (as amended by the Finance Act 2001) shall apply in respect of proceedings in relation to this section, in the same manner as it applies in respect of proceedings in relation to Chapter 6 of Part 38, subject to any necessary modifications including substituting in section 917M a reference to section 864A for a reference to section 917F(1) in each place where it occurs.

(10) Any act to be performed or function to be discharged by the Revenue Commissioners which is authorised by this section may be performed or discharged by any of their officers acting under their authority.”.

Amendment of provisions relating to claims by individuals.

24.—(1) The Principal Act is amended—

(a) in section 458—

(i) by inserting in subsection (1) “, subject to subsection (1B),” after “a claim in that behalf”, and

- (ii) by inserting the following after subsection (1A) (inserted by the Finance Act 2001):

“(1B) The requirement in subsection (1) to make a return in the prescribed form of the individual’s total income shall not apply, except where the Revenue Commissioners otherwise direct, where the claim falls to be taken into account—

(a) in the making of deductions or repayments of tax under Chapter 4 of Part 42 and the regulations made under that Chapter, or

(b) except in the case of a chargeable person (within the meaning of section 950), in relation to a repayment of tax deducted under that Chapter and those regulations.”,

- (b) in section 459 by inserting the following after subsection (4):

“(5) Subsections (3) and (4) shall not apply, except where the Revenue Commissioners otherwise direct, in relation to a claim which falls to be taken into account—

(a) in the making of deductions or repayments of tax under Chapter 4 of Part 42 and the regulations made under that Chapter, or

(b) except in the case of a chargeable person (within the meaning of section 950), in relation to a repayment of tax deducted under that Chapter and those regulations.”,

and

- (c) in section 865—

- (i) in subsection (1) by substituting the following for paragraph (b)(i):

“(i) where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where—

(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and

(II) the repayment treated as claimed, if due—

(A) would arise out of the assessment to tax, made by the inspector within the meaning of section 950 (in this clause referred to as the ‘inspector’) at the time the statement or return was furnished, on foot of the statement or return, or

(B) would have arisen out of the assessment to tax, that would have been made by the inspector at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made by the inspector at that time,”

and

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

“(3A)(a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of section 950), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person’s emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person’s liability for that year.

(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).”.

(2) (a) *Paragraph (c)(i) of subsection (1) applies to statements or returns made on or after 3 February 2005.*

(b) *Subsection (1) (other than paragraph (c)(i)) applies with effect from the passing of this Act.*

Retention and inspection of records in relation to claims by individuals.

25.—With effect from the passing of this Act the Principal Act is amended in Chapter 3 of Part 38 by inserting the following after section 886:

“886A.—(1) An individual who, in relation to a year of assessment, may wish to make a claim for an allowance, deduction or relief in relation to income tax shall keep and preserve all such

records as may be requisite for the purpose of enabling the individual to make a correct and complete claim.

(2) The records which an individual is required to keep and preserve in accordance with subsection (1) shall be retained by the individual for the longer of the following periods—

- (a) where enquiries into the claim or any amendment of the claim are made by an officer of the Revenue Commissioners, the period ending on the day on which those enquiries are treated as completed by the officer, and
- (b) a period of 6 years beginning at the end of the year of assessment to which the claim relates.

(3) Subject to subsection (4), an individual who fails to comply with subsection (1) in relation to any claim which is made for a year of assessment, shall be liable to a penalty of €1,520 and, for the purposes of recovery of a penalty under this subsection, section 1061 shall apply in the same manner as it applies for the purposes of the recovery of a penalty under any of the sections referred to in that section.

(4) Subsection (3) shall not apply where an officer of the Revenue Commissioners is satisfied that any facts which the officer reasonably requires to be proved, and which would have been proved by the records, are proved by other documentary evidence furnished to the officer.

(5) Subject to the provisions of section 956, an officer of the Revenue Commissioners may enquire into—

- (a) a claim made by an individual, or
- (b) any amendment made by an individual of a claim made by the individual,

if, within 4 years from the end of the year of assessment in which the claim, or (as the case may be) any amendment of the claim, is made, the officer gives notice of his or her intention to do so to that individual.

(6) Where an officer of the Revenue Commissioners gives notice under subsection (5) to any individual (in this subsection referred to as the ‘claimant’) of his or her intention to enquire into—

- (a) a claim made by the claimant, or
- (b) any amendment made by the claimant of such a claim,

then the officer may at the same or any subsequent time by notice in writing require the claimant, within such time (which shall not be less than 30 days) as may be specified in the notice—

- (i) to produce to the officer such documents as are in the claimant’s possession or power and as the officer may reasonably require for the purpose of determining whether and, if so, the extent to which the claim or amendment is correct, and
- (ii) to furnish the officer with such accounts or particulars as the officer may reasonably require for that purpose.

(7) In complying with a notice under subsection (6) an individual may furnish to the officer copies of documents instead of originals, but—

(a) the copies must be photographic or other facsimiles, and

(b) the officer may by notice require the original to be produced for inspection.

(8) The officer may take copies of, or make extracts from, any document produced to him or her under this section.”.

Amendment of section 997 (supplementary provisions (Chapter 4) of Principal Act.

26.—With effect from the passing of this Act section 997 of the Principal Act is amended by inserting the following after subsection (2):

“(3) Where the inspector, in accordance with the provisions of Regulation 37 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) sends a statement of liability to an employee, that statement shall, if the inspector so directs and gives notice accordingly in or with the statement sent to the employee, be treated in all respects as if it were an assessment raised on the employee, and all the provisions of the Income Tax Acts relating to appeals against assessments and the collection and recovery of tax charged in an assessment shall accordingly apply to the statement.”.

CHAPTER 4

Income Tax, Corporation Tax and Capital Gains Tax

Amendment of section 18 (amendment of Part 16 (income tax relief for investment in corporate trades — business expansion scheme and seed capital scheme) of Principal Act) of Finance Act 2004.

27.—Section 18 of the Finance Act 2004 is amended—

(a) in subsection (2)—

(i) by substituting the following for paragraph (b):

“(b) in section 491—

(i) in subsections (2)(a) and (3)(a), by substituting ‘€1,000,000’ for ‘€750,000’,

and

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

“(3A) Notwithstanding anything in subsections (2) and (3), relief shall not be given in respect of a relevant issue to the extent that—

(a) the amount raised by the relevant issue, or

(b) the aggregate of—

- (i) the amount to be raised through the relevant issue, and
- (ii) the amount or amounts, if any, raised through the issue of eligible shares other than the relevant issue, within the period of 6 months ending with the date of that relevant issue, by the company or by all of the companies (including the company making the relevant issue) which are associated within the meaning of this section, as the case may be,

exceeds €750,000.’ ”,

- (ii) by inserting the following after paragraph (c):

“(cc) in section 495—

- (i) by substituting the following for subsections (1) and (2):

‘(1) In this section—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

“EEA State” means a state which is a contracting party to the EEA Agreement;

“qualifying subsidiary”, in relation to a company, means a subsidiary of that company of a kind which a company may have by virtue of section 507.

(2) A company shall be a qualifying company if it is incorporated in the State or in an EEA State other than the State and complies with this section.’,

- (ii) in subsection (3)(a), by substituting ‘which is resident in the State, or is resident in an EEA State other than the State and carries on business in the State through a branch or agency,’ for ‘which is resident in the State and not resident elsewhere,’,

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

‘(3A) The company shall—

(a) as respects the period 5 February 2004 to 31 December 2004 be a small or medium-sized enterprise within the meaning of Annex 1 to Commission Regulation (EC) No. 70/2001 of 12 January 2001¹, and

(b) as respects the period commencing on 1 January 2005 be a micro, small or medium-sized enterprise within the meaning of Annex 1 to Commission Regulation (EC) No. 364/2004 of 25 February 2004².’,

and

(iv) by inserting the following after subsection (15):

‘(16) Notwithstanding the foregoing provisions of this section, a company shall not be a qualifying company while the company is regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty³.’’,

and

(iii) by substituting the following for paragraph (d):

“(d) in section 496—

(i) in subsection (2)(a)—

(I) in subparagraph (i)—

(A) in clause (I), by substituting ‘this Part,’ for ‘this Part, and’,

(B) in clause (II), by substituting ‘this Part, and’ for ‘this Part,’ and

(C) by inserting the following after clause (II):

¹OJ No. L10 of 13 January 2001, p.33

²OJ No. L63 of 28 February 2004, p. 22

³(a) OJ No. C288 of 9 October 1999, p.2 up to and including 9 October 2004, and

(b) OJ No. C244 of 1 October 2004, p.2 as on and from 10 October 2004

‘(III) as respects a subscription for eligible shares issued on or after 5 February 2004, trading operations consisting of software development services referred to in subparagraph (ii) of paragraph (a) of section 443(10) and which would be qualifying trading operations if the employment grants referred to in subparagraph (I) of that paragraph were made, shall, notwithstanding anything in subparagraph (ii), be regarded as qualifying trading operations if approval for the making of such grant is obtained.’

and

(II) in subparagraphs (iv) and (xv), by substituting ‘on or after 1 January 2003 and on or before 31 December 2004’ for ‘on or after 1 January 2003’,

and

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

‘(4A) Notwithstanding the provisions of this section, trading operations carried on in the coal industry or in the steel and shipbuilding sectors shall not be regarded as qualifying trading operations for the purposes of this Part.’

and

(b) in subsection (3)(b)—

(i) in subparagraph (i), by substituting “5 February 2004” for “4 February 2004”,

(ii) by substituting the following for subparagraph (ii):

“(ii) as respects paragraph (b)(i), in relation to eligible shares issued on or after 1 January 2004 and as respects paragraph (b)(ii), in relation to eligible shares issued on or after 5 February 2004”,

(iii) in subparagraph (iii), by substituting “5 February 2004,” for “4 February 2004, and”,

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

“(iiia) as respects paragraph (cc), as on and from 5 February 2004, and”,

and

- (v) in subparagraph (iv), by substituting “5 February 2004” for “4 February 2004.”.

Amendment of section 482 (relief for expenditure on significant buildings and gardens) of Principal Act.

28.—Section 482 of the Principal Act is amended—

(a) in subsection (5)(b)—

- (i) in subparagraph (ii)(II), by substituting “4 hours,” for “4 hours, and”,
- (ii) in subparagraph (iii), by substituting “access to the building, and” for “access to the building.”, and
- (iii) by inserting the following after subparagraph (iii):

“(iv) the Revenue Commissioners are satisfied that—

- (I) details relating to that access are publicised or drawn to the attention of the public by way of advertisement, leaflet, press notice or similar means annually,
- (II) a notice containing the details of the dates and times at which access is afforded to the public—
- (A) is displayed on the days on which such access is so afforded and in a conspicuous location at or near the place where the public can gain entrance to the building concerned, and
- (B) is so displayed so as to be easily visible and legible by the public,

and

- (III) conditions, if any, in regard to that access are such that they would not act as a disincentive to the public from seeking such access.”,

and

(b) in subsection (7), by substituting the following for paragraph (a):

“(a) Where a person makes a claim under subsection (2), an authorised person may at any reasonable time enter the building in respect of which the qualifying expenditure has been incurred for the purpose of—

- (i) inspecting, as the case may be, the building or an object or of examining any work in respect of which the expenditure to which the claim relates was incurred, or

- (ii) ensuring that the requirements in relation to reasonable access set out in subsection (5) are being complied with.”.

29.—Chapter 1 of Part 23 of the Principal Act is amended by inserting the following after section 657:

“Taxation of certain farm payments.

657A.—(1) In this section—

‘relevant individual’ means an individual who is in receipt of—

- (a) a relevant payment or relevant payments, and
- (b) a payment under the EU Single Payment Scheme operated by the Department of Agriculture and Food under Council Regulation No. 1782/2003 of 29 September 2003¹,

in respect of both of which the individual would be, apart from this section, chargeable to income tax on the profits or gains from farming for the year of assessment 2005, but does not include an individual who in the year of assessment 2005 is chargeable to income tax in respect of profits or gains from farming in accordance with subsection (5) of section 657;

‘relevant payment’ means a payment made at any time in the calendar year 2005 to an individual under any of the EU schemes specified in the Table to this section.

(2) A relevant individual may elect to have the aggregate of all relevant payments made to the individual treated in accordance with subsections (3) to (6), and each such election shall be made in such form and contain such information as the Revenue Commissioners may require.

(3) Notwithstanding any other provision of the Income Tax Acts apart from subsection (4), where an individual elects in accordance with subsection (2), the relevant payment or relevant payments shall be disregarded as respects the year of assessment 2005 and shall instead be treated for the purposes of the Income Tax Acts as arising in equal instalments in the year of assessment 2005 and in the 2 immediately succeeding years of assessment.

(4) Where a trade of farming is permanently discontinued, tax shall be charged under Case IV of Schedule D for the year of assessment in which such discontinuation takes place in respect of the amount of any relevant payment which would, but for such discontinuance, be treated by virtue of subsection (3) as arising in a year of assessment or years of assessment ending after such discontinuance.

Amendment of Chapter 1 (interpretation and general) of Part 23 (farming and market gardening) of Principal Act.

¹OJ No. L270 of 21.10.2003, p. 1

(5) An election under subsection (2) by a person to whom this section applies, shall be made by notice in writing on or before 31 October 2006 and shall be included in the annual statement required to be delivered on or before that date under the Income Tax Acts of the profits or gains from farming for the year of assessment 2005.

(6) Subject to subsection (4) an election made under subsection (2) cannot be altered or varied during the period to which it refers.

TABLE

1. Special Beef Premium Schemes.
2. Suckler Cow Premium Scheme.
3. Ewe Premium Schemes.
4. Extensification Payments Scheme.
5. Slaughter Premium Scheme.
6. Arable Aid Schemes.
7. National Envelope Top-Ups.”.

Amendment of section 659 (farming: allowances for capital expenditure on the construction of farm buildings, etc., for control of pollution) of Principal Act.

30.—Section 659 of the Principal Act is amended—

(a) in subsection (1)(c), by substituting “1 January 2009” for “1 January 2007” (inserted by the Finance Act 2004),

(b) in subsection (2)(b)—

(i) by substituting “6 April 2000,” for “6 April 2000, or” in subparagraph (i),

(ii) by substituting “6 April 2000 but before 1 January 2005, or” for “6 April 2000,” in subparagraph (ii), and

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

“(iii) 3 years beginning with the chargeable period related to the capital expenditure, where that expenditure is incurred on or after 1 January 2005.”,

(c) in subsection (3A) by substituting “on or after 6 April 2000 but before 1 January 2005 shall,” for “on or after 6 April 2000 shall,”,

(d) by inserting the following after subsection (3A):

“(3AA) The farm pollution control allowances to be made in accordance with subsection (2) during the writing-down period referred to in subsection (2)(b)(iii) in respect of capital expenditure incurred in a chargeable period, shall where that expenditure is incurred on or after 1 January 2005, and subject to subsection (3BA), be an amount equal to $33\frac{1}{3}$ per cent of that expenditure incurred for each of the 3 years of the writing-down period.”,

(e) in subsection (3B)(a)—

- (i) by substituting “In this subsection and subsection (3BA)” for “In this subsection”,
- (ii) by substituting “residual amount.” for “residual amount;” in the definition of “specified amount”, and
- (iii) by deleting “ ‘specified return date for the chargeable period’ has the same meaning as in section 950.”,

(f) by inserting the following after subsection (3B):

“(3BA) (a) Notwithstanding subsection (3AA), where farm pollution control allowances are to be made to a person in accordance with that subsection during the writing-down period referred to in subsection (2)(b)(iii), such person may elect to have those allowances made in accordance with this subsection and, where such person so elects, the allowances shall be made in accordance with this subsection only.

(b) Where paragraph (a) applies to a person, the farm pollution control allowance to be made to such person during the writing-down period referred to in subsection (2)(b)(iii) shall be an amount equal to—

- (i) $33\frac{1}{3}$ per cent of the specified amount for each of the 3 years of the writing-down period, and
- (ii) subject to paragraph (c), the whole or any part of the residual amount, as is specified by the person to whom the allowances are to be made, in any year of the writing-down period.

(c) The allowances to be made in accordance with paragraph (b) for any year of the writing-down period, shall not in the aggregate exceed the residual amount.”,

(g) by substituting the following for subsection (3C)(a):

“(3C) (a) An election by a person to whom this section applies in relation to the farm pollution control allowances claimed in subsection (3B) or (3BA), as the case may be, shall be made in writing on or before the specified return date for the chargeable period (within the meaning of section 950) in which the expenditure is incurred and shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains from farming as set out in subsection (5).”,

and

(h) in subsection (11) by substituting “Chapter 1 or Chapter 2” for “Chapter 1”.

Amendment of section 666 (deduction for increase in stock values) of Principal Act.

31.—(1) Section 666 of the Principal Act is amended by substituting the following for subsection (4) (inserted by the Finance Act 2003):

“(4) (a) A deduction shall not be allowed under this section in computing a company’s trading income for any accounting period which ends after 31 December 2006.

(b) Any deduction allowed by virtue of this section in computing the profits or gains of the trade of farming for an accounting period of a person other than a company shall not apply for any purpose of the Income Tax Acts for any year of assessment later than the year 2006.”.

(2) This section comes into operation on 3 February 2005.

Amendment of section 667A (further provisions for qualifying farmers) of Principal Act.

32.—(1) Section 667A (inserted by the Finance Act 2004) of the Principal Act is amended in paragraph (b) of subsection (6) by substituting “31 December 2006” for “31 December 2004”.

(2) This section shall come into operation on such day as the Minister for Finance may by order appoint.

Amendment of section 843 (capital allowances for buildings used for third level educational purposes) of Principal Act.

33.—Section 843 of the Principal Act is amended by substituting the following for subsection (7):

“(7) The Minister for Finance may not give a certificate under subsection (4) unless an application for certification was made before 1 January 2005.”.

Capital allowances for registered tourist accommodation.

34.—Chapter 1 of Part 9 of the Principal Act is amended—

(a) in section 268—

(i) by inserting the following after subsection (2B):

“(2C) For the purposes of this Part, a building or structure (other than a building or structure which is in use for the purposes of the trade of hotel-keeping) which is in use as—

(a) a guest house and is registered in the register of guest houses kept under the Tourist Traffic Acts 1939 to 2003, or

(b) a holiday hostel and is registered in the register of holiday hostels kept under the Tourist Traffic Acts 1939 to 2003,

shall, as respects capital expenditure incurred on or after 3 February 2005 on its construction (within the meaning of section 270), be deemed

to be a building or structure in use for the purposes of the trade of hotel-keeping.”,

- (ii) in subsection (3), by substituting “a holiday camp registered in the register of holiday camps kept under the Tourist Traffic Acts 1939 to 2003” for “a holiday camp”,
- (iii) in subsection (12)—

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

“(a) that it has received a declaration from that person as to whether or not that person is—

- (i) a small or medium-sized enterprise within the meaning of Annex I to Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the European Communities Treaty to State aid to small and medium-sized enterprises¹, or

- (ii) a micro, small or medium-sized enterprise within the meaning of the Annex to Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises²,”

(II) in paragraph (d)(i), by substituting “the Regulation or Recommendation” for “the Regulation”, and

(III) in paragraph (d)(ii), by inserting the following after “European Communities”:

“or, as the case may be, ‘Community guidelines on State aid for rescuing and restructuring firms in difficulty’³ prepared by that Commission”,

and

(iv) by inserting the following after subsection (13):

“(14) Subject to subsection (15), a building or structure in use for the purposes of the trade of hotel-keeping (but not including a building or structure deemed to be such a building or structure) shall not, as respects capital expenditure incurred on or after 3 February 2005 on its construction (within the meaning of section 270), be treated as an industrial building or structure unless the building or structure is registered in the register of hotels kept under the Tourist Traffic Acts 1939 to 2003.

¹OJ No. L10 of 13 January 2001, p.33

²OJ No. L124 of 20 May 2003, p.36

³OJ No. C244 of 1 October 2004, p.2

(15) Subsection (14) shall not apply as respects capital expenditure incurred on or before 31 July 2006 on the construction or refurbishment of a building or structure in use for the purposes of the trade of hotel-keeping if—

- (a) (i) a planning application (not being an application for outline permission within the meaning of section 36 of the Planning and Development Act 2000), in so far as planning permission was required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, was made in accordance with the Planning and Development Regulations 2001 to 2004,
- (ii) an acknowledgement of the application, which confirms that the application was received on or before 31 December 2004, was issued by the planning authority in accordance with article 26(2) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), and
- (iii) the application was not an invalid application in respect of which a notice was issued by the planning authority in accordance with article 26(5) of those regulations,
- (b) (i) a planning application, in so far as planning permission was required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, was made in accordance with the Local Government (Planning and Development) Regulations 1994 (S.I. No. 86 of 1994), not being an application for outline permission within the meaning of article 3 of those regulations,
- (ii) an acknowledgement of the application, which confirms that the application was received on or before 10 March 2002, was issued by the planning authority in accordance with article 29(2)(a) of the regulations referred to in subparagraph (i), and
- (iii) the application was not an invalid application in respect of which a notice was issued by the planning authority in accordance with article 29(2)(b)(i) of those regulations,

(c) where the construction or refurbishment work on the building or structure represented by that expenditure is exempted development for the purposes of the Planning and Development Act 2000 by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and—

- (i) a detailed plan in relation to the development work was prepared,
- (ii) a binding contract in writing, under which the expenditure on the development is incurred, was in existence, and
- (iii) work to the value of 5 per cent of the development costs was carried out,

not later than 31 December 2004, or

(d) (i) the construction or refurbishment of the building or structure is a development in respect of which an application for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 was made to the Authority (within the meaning of that Act),

(ii) an acknowledgement of the application, which confirms that the application was received on or before 31 December 2004, was issued by that Authority, and

(iii) the application was not an invalid application.”,

(b) in section 272—

(i) in subsection (3)—

(I) in paragraph (c), by substituting “paragraph (d) or (da)” for “paragraph (d)”, and

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

“(da) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of section 268(1)(d) by reason of its use as a guest house or a holiday hostel to which section 268(2C) applies, 4 per cent of the capital expenditure on the construction (within the meaning of section 270) of the building or structure which

is incurred on or after 3 February 2005,”,

and

(ii) in subsection (4)—

(I) in paragraph (c), by substituting “paragraph (d) or (da)” for “paragraph (d)”, and

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

“(da) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of section 268(1)(d) by reason of its use as a guest house or a holiday hostel to which section 268(2C) applies, 25 years beginning with the time when the building or structure was first used, in the case where the capital expenditure on the construction (within the meaning of section 270) of the building or structure is incurred on or after 3 February 2005,”,

and

(c) in section 274(1)—

(i) in paragraph (b)(iii), by substituting “subparagraph (iv) or (iva)” for “subparagraph (iv)”, and

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

“(iva) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of section 268(1)(d) by reason of its use as a guest house or a holiday hostel to which section 268(2C) applies, 25 years after the building or structure was first used, in the case where the capital expenditure on the construction (within the meaning of section 270) of the building or structure is incurred on or after 3 February 2005,”.

Amendment of section 372AJ (non-application of relief in certain cases and provision against double relief) of Principal Act.

35.—Section 372AJ(1) of the Principal Act is amended in paragraph (ab) by inserting the following after the existing text in that paragraph:

“or, as the case may be, by a micro, small or medium-sized enterprise within the meaning of the Annex to Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹”.

Amendment of section 481 (relief for investment in films) of Principal Act.

36.—Section 481 of the Principal Act is amended—

(a) in subsection (2)(b), by deleting subparagraph (I),

¹O.J. No. L124 of 20 May 2003, p.36

(b) in subsection (2A)(g)—

- (i) by deleting subparagraph (i),
- (ii) in subparagraph (iii) by substituting “the amount per cent (in subsection (2)(c) referred to as ‘the specified percentage’) specified in the certificate” for “the specified percentage, as referred to in that subsection”,

(iii) by substituting the following for subparagraph (iv):

“(iv) in relation to the minimum amount of money to be expended on the production of the qualifying film—

(I) directly by the qualifying company on the employment, by the company, of eligible individuals, in so far as those individuals exercise their employment in the State in the production of the qualifying film, and

(II) directly or indirectly by the qualifying company, on the provision of certain goods, services and facilities, as set out in regulations made under subsection (2E),”

and

(iv) by inserting the following after subparagraph (iv):

“(v) where financial arrangements have been approved by the Revenue Commissioners in accordance with subsection (2C)(ba), in relation to any matter pertaining to those arrangements.”,

(c) in subsection (2C)—

(i) in paragraph (b), by inserting “subject to paragraph (ba),” before “if”, and

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

“(ba) (i) Paragraph (b) shall not apply to financial arrangements in relation to a transaction or series of transactions, where such arrangements have been approved by the Revenue Commissioners.

(ii) The Revenue Commissioners shall not approve financial arrangements, to which paragraph (b) would, but for this paragraph, apply unless:

(I) the arrangements relate to either or both—

(A) an investment made in a qualifying film, and

- (B) the filming of part of a film in a territory other than a territory referred to in clause (I) or (II) of paragraph (b)(i),
 - (II) a request for approval is made by the qualifying company to the Revenue Commissioners before such arrangements are effected,
 - (III) the qualifying company demonstrates to the satisfaction of the Revenue Commissioners that it can provide, if requested, sufficient records to enable the Revenue Commissioners to verify—
 - (A) in the case of an investment, the amount of the investment made in the qualifying company and the person who made the investment, and
 - (B) in the case of filming in a territory, the amount of each item of expenditure on the production of the qualifying film expended in the territory, whether expended by the qualifying company or by any other person,
- and
- (IV) they are satisfied that it is appropriate to grant such approval.
- (iii) In considering whether to grant an approval under this paragraph in relation to financial arrangements, the Revenue Commissioners may seek any information they consider appropriate in relation to the arrangements or in relation to any person who is, directly or indirectly, a party to the arrangements.
 - (iv) Where the Revenue Commissioners have approved financial arrangements in accordance with this paragraph, no amount of money expended, either directly or indirectly, as part of the arrangements may be regarded, for the purposes of subsection (2A)(g)(iv), as an amount of money expended on either the employment of eligible individuals or on the provision of goods, services and facilities as referred to in that subsection.”,

(d) in subsection (2E)—

- (i) in paragraph (k), by deleting “and”, and

(ii) by inserting the following after paragraph (l):

“(m) governing the approval of financial arrangements in accordance with subsection (2C)(ba), and

(n) governing the employment of eligible individuals, as referred to in subsection (2A)(g)(iv), and the circumstances in which expenditure by a qualifying company would be regarded as expenditure on the employment of those individuals in the production of a qualifying film.”,

and

(e) in subsection (22), by substituting “1 January 2005” for “the day appointed by order made by the Minister for Finance for the coming into operation of this subsection” and “the day so appointed” respectively.

37.—Section 1013 of the Principal Act is amended—

Amendment of section 1013 (limited partnerships) of Principal Act.

(a) in subsection (1) in the definition of “limited partner”—

(i) in paragraph (c) by substituting “trade,” for “trade, or”,

(ii) in paragraph (d) by substituting “partner,” for “partner;”, and

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

“(e) a person who carries on the trade as a partner in a partnership registered under the law of any territory outside the State, otherwise than as an active partner, or

(f) a person who carries on the trade jointly with others under any agreement, arrangement, scheme or understanding which is governed by the law of any territory outside the State, otherwise than as a person who works for the greater part of his or her time on the day-to-day management or conduct of that trade;”,

and

(b) in subsection (2)(a)—

(i) in subparagraph (II) by substituting “trade,” for “trade, or”,

(ii) in subparagraph (III) by substituting “trade, or” for “trade;”, and

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

“(IV) where the individual is a limited partner in relation to a trade by virtue of paragraph (e) or (f) of the definition of ‘limited partner’ and the relevant year of assessment is the year of

assessment 2005 or any subsequent year of assessment, only against income consisting of profits or gains arising from the trade,”.

Amendment of Schedule 26A (donations to approved bodies, etc.) to Principal Act.

38.—Schedule 26A to the Principal Act is amended in Part 3 by substituting “2 years,” for “3 years,” in subparagraph (c) of paragraph 3.

Amendment of section 817 (schemes to avoid liability to tax under Schedule F) of Principal Act.

39.—(1) Section 817 of the Principal Act is amended in subsection (1) by inserting the following after paragraph (c)—

“(ca) For the purposes of this section, following a disposal of shares in a close company by a shareholder or the carrying out of a scheme or arrangement of which the disposal is a part, the interest of the shareholder in any trade or business which was carried on by the close company shall be deemed—

- (i) to include the interest, or interests as the case may be, in that trade or business of one or more persons connected with the shareholder, if increasing that interest of the shareholder by such interest, or interests as the case may be, would result in the interest of the shareholder in the trade or business not having been significantly reduced,
- (ii) notwithstanding paragraph (c), not to have been significantly reduced where—
 - (I) the business carried on by the close company, taking account of any trade carried on by that company, consisted wholly or mainly of the holding of shares in another company carrying on a trade or business or in more than one such other company, and
 - (II) the interest of the shareholder in any such trade or business last-mentioned in clause (I), whether or not that trade or business continues to be carried on by such other company after the disposal, is not significantly reduced,
- (iii) notwithstanding paragraph (c), not to have been significantly reduced where the gain realised by the shareholder on that disposal is wholly or mainly attributable to payments or other transfers of value from another company or companies, which is or are controlled by that shareholder or by that shareholder and persons connected with him or her, to the close company, and
- (iv) not to have been significantly reduced where—
 - (I) it would not have been so reduced if the shareholder were to be treated as beneficially entitled to any shares to which he or she could, at any time, become so

entitled by the exercise of a discretion by trustees,

- (II) the acquisition of those shares by the trustees was directly or indirectly related to a disposal, including a prior or subsequent disposal, of such shares by the shareholder, and
- (III) the shares were acquired by the trustees with the direct or indirect financial assistance of a company or companies, which is or are controlled by the shareholder or by the shareholder and persons connected with the shareholder.”.

(2) This section applies and has effect as respects any disposal of shares (within the meaning of section 817 of the Principal Act) on or after 1 March 2005.

40.—The Principal Act is amended—

Court funds.

(a) in section 739B(1)—

- (i) in the definition of “chargeable event” by inserting the following after paragraph (II):

“(IIa) any transaction in relation to, or in respect of, relevant units (within the meaning of subsection (2A)(a)) in an investment undertaking which transaction arises only by virtue of a change of court funds manager for that undertaking,”,

and

- (ii) by inserting the following after the definition of “collective investor”:

“‘court funds manager’ means a person appointed by the Service to set up and administer an investment undertaking with money under the control or subject to the order of any Court;”,

and

(b) in section 739D(1)—

- (i) by deleting “and” after “unit,” in paragraph (b), and
- (ii) by inserting the following after paragraph (b):

“(bb) references to an amount invested by a unit holder in an investment undertaking for the acquisition of a unit (in this paragraph referred to as the ‘original unit’), where the original unit has been exchanged for a unit or units in a transaction of the type referred to in paragraph (IIa) of the definition of ‘chargeable event’ in section 739B(1), are references to the amount invested by the

unit holder for the acquisition of the original unit, and”.

Assets of overseas life assurance companies.

41.—(1) Section 29(3) of the Principal Act is amended—

(a) in paragraph (c) by substituting “agency,” for “agency.”, and

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

“(d) assets situated outside the State of an overseas life assurance company (within the meaning of section 706(1)), being assets which were held in connection with the life business (within the meaning of section 706(1)) carried on by the company, which at or before the time the chargeable gains accrued were used or held by or for the purposes of that company’s branch or agency in the State.”.

(2) This section applies as respects accounting periods ending on or after 1 March 2005.

Amendment of Chapter 5 (policyholders — new basis) of Part 26 of Principal Act.

42.—(1) Chapter 5 of Part 26 of the Principal Act is amended—

(a) in section 730C(1)(a) by inserting the following after subparagraph (iii):

“(iv) the ending of a relevant period, where such ending is not otherwise a chargeable event within the meaning of this section, and for the purposes of this subparagraph ‘relevant period’ in relation to a life policy means a period of 7 years beginning with the inception of the policy and each subsequent period of 7 years beginning immediately after the preceding relevant period.”,

(b) in section 730D—

(i) in subsection (1)—

(I) by deleting “and” in paragraph (d), and

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

“(da) if the chargeable event is the ending of a relevant period in accordance with section 730C(1)(a)(iv), a gain in the amount determined under subsection (3)(da), and”,

(ii) in subsection (3)—

(I) by deleting “and” in paragraph (d), and

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

“(da) in subsection (1)(da) is the amount determined by the formula—

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and”,

(iii) in subsection (4) by inserting the following after paragraph (b):

“(ba) Where a chargeable event in relation to a life policy is the ending of a relevant period in accordance with section 730C(1)(a)(iv) then, for the purposes of determining a gain arising on the happening of a subsequent chargeable event, the allowable premiums immediately after the time of such ending shall be deemed to be the greater of—

- (i) an amount equal to the value of the policy immediately after the time of such ending, and
- (ii) the allowable premiums immediately before such ending.”,

and

(iv) by inserting the following after subsection (4)—

“(5) (a) Where at any time—

- (i) a chargeable event, being a chargeable event (in this subsection referred to as a ‘relevant event’) within the meaning of section 730C(1)(a)(iv), occurs in relation to a life policy which commenced before 1 May 2005,
- (ii) immediately before that time the assurance company that commenced the life policy does not have in its possession a declaration in relation to the policy of the kind referred to in subsection (2), and
- (iii) the permanent address of the policyholder, as stated in the policy, is not in the State and the assurance company does not have reasonable grounds to believe that the policyholder is resident in the State,

then the assurance company may elect to be treated in relation to that chargeable event for the purposes of subsection (2) as if, immediately before that time, the assurance company was in possession of a declaration in relation to the policy of the kind referred to in that subsection.

(b) Where at any time—

- (i) a relevant event occurred in relation to a life policy and a chargeable event, not being a relevant event, subsequently occurs in relation to the policy,

- (ii) this subsection applied to the relevant event in accordance with paragraph (a), and
- (iii) immediately before that time the assurance company that commenced the life policy does not have in its possession a declaration in relation to the policy of the kind referred to in subsection (2),

then paragraph (a) shall be deemed not to have applied to the relevant event and any appropriate tax payable by virtue of a gain arising under this section shall be due and payable as if paragraph (a) had not been enacted.”,

(c) in section 730E(2)(a) by adding “at or about the time of the inception of the life policy” after “policyholder”, and

(d) in section 730F(3)(a)(ii) by inserting the following after clause (I):

“(Ia) is the ending of a relevant period in accordance with section 730C(1)(a)(iv), or”.

(2) This section comes into operation on such day or days as the Minister for Finance may by order appoint either generally or with reference to any particular provision of this section or class of policy and different days may be so appointed for different provisions of this section or for different classes of policies.

Amendment of section 747E (disposal of an interest in offshore funds) of Principal Act.

43.—(1) Section 747E (inserted by the Finance Act 2001) of the Principal Act is amended in subsection (3) by substituting “for the purposes of the Tax Acts and the Capital Gains Tax Acts” for “accordingly for the purposes of this Chapter”.

(2) This section applies as respects the disposal of an interest in an offshore fund (within the meaning of section 747E of the Principal Act) on or after 3 February 2005.

Common contractual funds.

44.—The Principal Act is amended—

(a) in the definition of “collective investment undertaking” in section 172A(1)(a)—

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

(ii) by inserting “or” after “Finance Act, 2000),” in subparagraph (iii), and

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

“(iv) a common contractual fund within the meaning of section 739I (inserted by the *Finance Act 2005*),”.

(b) in the definition of “investment undertaking” in section 246(1)—

(i) by deleting “or” in paragraph (b),

(ii) by substituting “section 739B, or” for “section 739B;” in paragraph (c), and

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

“(d) a common contractual fund within the meaning given to it in section 739I (inserted by the *Finance Act 2005*);”

(c) in section 739C—

(i) in subsection (1) by deleting “, subject to subsection (1A),”, and

(ii) by deleting subsection (1A),

and

(d) by inserting the following after section 739H—

“Common contractual funds.

739I.—(1) (a) In this section ‘common contractual fund’ means—

(i) a collective investment undertaking being an unincorporated body established by a management company under which the participants by contractual arrangement participate and share in the property of the collective investment undertaking as co-owners, where it is expressly stated under its deed of constitution to be established pursuant to an Act of the Oireachtas and which holds an authorisation issued in accordance with such Act and which is not established pursuant to Council Directive No. 85/611/EEC of 20 December 1985¹, as amended by Council Directive No. 88/220/EEC of 22 March 1988² and Directive No. 95/26/EC of the Council and of the European Parliament of 29 June 1995³, or

(ii) an investment undertaking within the meaning of paragraph (b) of the definition of ‘investment undertaking’

¹OJ No. L375/3, 31.12.1985

²OJ No. L100/31, 19.4.1988

³OJ No. L168/7, 18.7.1995

which is constituted otherwise than under trust law or statute law.

(b) For the purposes of this section the definitions of ‘relevant gains’, ‘relevant income’, ‘relevant payment’, ‘relevant profits’, ‘unit’ and ‘unit holder’ shall apply, with any necessary modifications, to a collective investment undertaking within the meaning of paragraph (i) of the definition of ‘common contractual fund’ as they apply to an investment undertaking within the meaning of paragraph (b) of the definition of ‘investment undertaking’.

(2) (a) Notwithstanding anything in the Tax Acts and subject to subsections (3) and (4), a common contractual fund shall not be chargeable to tax in respect of relevant profits.

(b) For the purposes of the Tax Acts, relevant income and relevant gains in relation to a common contractual fund shall be treated as arising, or as the case may be, accruing, to each unit holder of the common contractual fund in proportion to the value of the units beneficially owned by the unit holder, as if the relevant income and relevant gains had arisen or, as the case may be, accrued, to the unit holders in the common contractual fund without passing through the hands of the common contractual fund.

(3) Subsection (2) shall only apply where each of the units of the common contractual fund—

(a) is an asset of a pension fund or beneficially owned by a person other than an individual, or

(b) is held by a custodian or trustee for the benefit of a person other than an individual.

(4) Every common contractual fund shall in respect of each year of assessment, on or before 28 February in the year following the year of assessment, make a statement (including where it is the case, a statement with a nil amount) to the Revenue Commissioners in electronic format approved by

them, which in respect of each year of assessment—

- (a) specifies the total amount of relevant profits arising to the common contractual fund in respect of units in that fund, and
- (b) specifies in respect of each person who is a unit holder—
 - (i) the name and address of the person,
 - (ii) the amount of the relevant profits to which the person is entitled, and
 - (iii) such other information as the Revenue Commissioners may require.

(5) Notwithstanding Chapter 4 of Part 8, that Chapter shall apply to a deposit (within the meaning of that Chapter) to which a common contractual fund is for the time being entitled as if such deposit were not a relevant deposit within the meaning of that Chapter.”.

45.—(1) The Principal Act is amended—

Treatment of leasing.

(a) in section 396A(1) by substituting the following for the definition of “relevant trading loss”:

“ ‘relevant trading loss’, in relation to an accounting period of a company, means a loss incurred in the accounting period in a trade carried on by the company, other than—

- (a) so much of the loss as is a loss incurred in an excepted trade within the meaning of section 21A, and
- (b) any amount which is or would, if subsection (8) of section 403 had not been enacted, be the relevant amount of the loss for the purposes of subsection (4) of that section.”,

(b) in section 396B(1), in the definition of “relevant trading loss”, by deleting the words after “section 396A”,

(c) in section 403(4)(a)(ii) by substituting “group relief except to the extent that it could be set off under section 420A against income of a trade of leasing carried on by the claimant company if paragraph (b) of the definition of relevant trading loss in section 420A were deleted” for “group relief”,

(d) in section 420A(1) by substituting the following for the definition of “relevant trading loss”:

“relevant trading loss’, in relation to an accounting period of a company, means a loss incurred in the accounting period in a trade carried on by the company, other than—

(a) so much of the loss as is a loss incurred in an excepted trade within the meaning of section 21A, and

(b) any amount which is or would, if subsection (8) of section 403 had not been enacted, be the relevant amount of the loss for the purposes of subsection (4) of that section.”,

and

(e) in section 420B, in the definition of “relevant trading loss”, by deleting the words after “section 396A”.

(2) (a) Paragraphs (a), (b) and (d) of subsection (1) apply as respects any claim made by a company on or after 3 February 2005 for relief for a loss.

(b) Paragraph (c) of subsection (1) applies as respects an accounting period ending on or after 3 February 2005.

Treatment of certain dividends.

46.—(1) The Principal Act is amended—

(a) in section 17 by inserting the following after subsection (2):

“(3) Subsection (1) shall not apply to a banker by virtue only of the clearing of a cheque, or the arranging for the clearing of a cheque, by the banker.”,

and

(b) in section 62—

(i) by renumbering the existing provision as subsection (1) of that section, and

(ii) by inserting the following after subsection (1):

“(2) This section does not apply to a banker by virtue only of the clearing of a cheque, or the arranging for the clearing of a cheque, by the banker.”.

(2) This section applies as respects any payment on or after the date of the passing of this Act.

Dividend withholding tax.

47.—(1) Chapter 8A (inserted by the Finance Act 1999) of Part 6 of the Principal Act is amended—

(a) in section 172A(1)(a) by inserting the following definitions after the definition of “pension scheme”:

“‘PRSA administrator’ has the same meaning as in section 787A;

‘PRSA assets’ has the same meaning as in section 787A;”,

and

(b) in section 172C—

(i) in subsection (2)—

(I) by inserting the following paragraph after paragraph (ba):

“(bb) a PRSA administrator who is receiving the relevant distribution as income arising in respect of PRSA assets, and has made a declaration to the relevant person in relation to the relevant distribution in accordance with paragraph 10 of Schedule 2A,”

and

(II) by inserting the following paragraph after paragraph (da):

“(db) a unit trust to which section 731(5)(a) applies and which has made a declaration to the relevant person in relation to the relevant distribution in accordance with paragraph 11 of Schedule 2A,”

and

(ii) in subsection (3) by inserting the following paragraphs after paragraph (c):

“(ca) a PRSA administrator who receives a relevant distribution as income arising in respect of PRSA assets,

(cb) a unit trust to which section 731(5)(a) applies which receives a relevant distribution in relation to units in that unit trust.”

(2) Schedule 2A (inserted by the Finance Act 1999) of the Principal Act is amended by inserting the following paragraphs after paragraph 9:

“Declaration to be made by a PRSA administrator

10. The declaration referred to in section 172C(2)(bb) shall be a declaration in writing to the relevant person which—

(a) is made by the person (in this paragraph referred to as the ‘declarer’) beneficially entitled to the relevant distribution in respect of which the declaration is made,

(b) is signed by the declarer,

(c) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(d) declares that, at the time when the declaration is made, the person beneficially entitled to the relevant distribution is a person referred to in section 172C(2)(bb),

- (e) contains the name and tax reference number of the person,
- (f) contains a statement that, at the time when the declaration is made, the relevant distribution in respect of which the declaration is made will be applied as income of a PRSA,
- (g) contains an undertaking by the declarer that, if the person mentioned in subparagraph (d) ceases to be an excluded person, the declarer will, by notice in writing, advise the relevant person in relation to the relevant distribution accordingly, and
- (h) contains such other information as the Revenue Commissioners may reasonably require for the purposes of Chapter 8A of Part 6.

Declaration to be made by exempt unit trust

11. The declaration referred to in section 172C(2)(db) shall be a declaration in writing to the relevant person which—

- (a) is made by the person (in this paragraph referred to as the ‘declarer’) beneficially entitled to the relevant distributions in respect of which the declaration is made,
- (b) is signed by the declarer,
- (c) is made in such form as may be prescribed or authorised by the Revenue Commissioners,
- (d) declares that, at the time when the declaration is made, the person beneficially entitled to the relevant distribution is a person referred to in section 172C(2)(db),
- (e) contains the name and tax reference number of the person,
- (f) contains a statement that, at the time when the declaration is made, the relevant distribution in respect of which the declaration is made will be applied as income of an exempt unit trust to which section 731(5)(a) applies,
- (g) contains an undertaking by the declarer that, if the person mentioned in subparagraph (d) ceases to be an excluded person, the declarer will, by notice in writing, advise the relevant person in relation to the relevant distribution accordingly, and
- (h) contains such other information as the Revenue Commissioners may reasonably require for the purposes of Chapter 8A of Part 6.”.

(3) This section shall apply as on and from 3 February 2005.

CHAPTER 5

Corporation Tax

48.—(1) The Principal Act is amended—

Generally accepted
accounting
standards.

(a) in section 4—

(i) in subsection (1)—

(I) by inserting the following after the definition of “franked investment income”:

“ ‘generally accepted accounting practice’ means—

(a) in relation to the affairs of a company or other entity that prepares accounts (in this section referred to as ‘IAS accounts’) in accordance with international accounting standards, generally accepted accounting practice with respect to such accounts;

(b) in any other case, Irish generally accepted accounting practice;”

and

(II) by inserting the following after the definition of “interest”:

“ ‘international accounting standards’ means the international accounting standards, within the meaning of Regulation (EC) No. 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards (in this section referred to as ‘the Regulation’);

‘Irish generally accepted accounting practice’ means generally accepted accounting practice with respect to accounts (other than IAS accounts) of companies incorporated or formed under the laws of the State, being accounts that are intended to give a true and fair view;”

and

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

“(7) For the purposes of this section, where the European Commission in accordance with the Regulation adopts an international accounting standard with modifications, then as regards matters covered by that standard—

(a) generally accepted accounting practice with respect to IAS accounts shall be regarded as permitting the use of the standard either with or without the modifications, and

- (b) accounts prepared on either basis shall be regarded as prepared in accordance with international accounting standards.”,

(b) in Chapter 5 of Part 4, by inserting the following after section 76:

“Computation of profits or gains of a company – accounting standards.

76A.—(1) For the purposes of Case I or II of Schedule D the profits or gains of a trade or profession carried on by a company shall be computed in accordance with generally accepted accounting practice subject to any adjustment required or authorised by law in computing such profits or gains for those purposes.

(2) Schedule 17A shall apply to a company where—

- (a) for an accounting period profits or gains of a trade or profession carried on by the company are computed in accordance with relevant accounting standards (within the meaning of that Schedule), and
- (b) for preceding accounting periods profits or gains of a trade or profession carried on by the company are computed in accordance with standards other than relevant accounting standards (within the meaning of that Schedule).

Treatment of unrealised gains and losses in certain cases.

76B.—(1) (a) In this section and paragraph 4 of Schedule 17A, ‘fair value’, ‘financial asset’ and ‘financial liability’ have the meanings assigned to them by international accounting standards.

- (b) For the purposes of this section, section 76A and paragraph 4 of Schedule 17A—
- (i) references to profits or gains include references to losses, and
- (ii) the amount of a loss incurred in a trade or profession in an accounting period shall be computed in like manner as profits or gains from the trade or profession in the accounting period would have been computed.

(2) A profit or gain from a financial asset or a financial liability of a company that, in accordance with relevant accounting standards (within the meaning of Schedule 17A) is—

- (a) calculated on the basis of fair values of the asset or the liability in an accounting period, and
- (b) included in the profit or loss of the company for the accounting period,

shall be taken into account on that basis in computing profits or gains of the company for that accounting period for the purposes of Case I or II of Schedule D.

Use of different accounting policies within a group of companies.

76C.—(1)(a) In this section ‘tax advantage’ means—

- (i) a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment, or
 - (ii) a refund of or a payment of an amount of tax, or an increase in an amount of tax refundable or otherwise payable to a person, including any potential or prospective amount so refundable or payable.
- (b) For the purposes of this section, a series of transactions is not prevented from being a series of transactions in relation to companies by reason only of the fact that one or more of the following is the case—
- (i) there is no transaction in the series to which both those companies are parties;
 - (ii) that parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those companies;
 - (iii) there are one or more transactions in the series to which neither of those companies is a party.

(2) Where—

- (a) a company within the charge to tax under Case I or II of Schedule D prepares accounts in accordance with international accounting standards,

- (b) another company within the charge to tax under Case I or II of Schedule D, being a company which is an associated company (within the meaning of section 432) of the company referred to in paragraph (a), prepares accounts in accordance with Irish generally accepted accounting practice,
- (c) there is a transaction between, or a series of transactions involving, those companies, and
- (d) a tax advantage would, apart from this section, accrue to the company which prepares its accounts in accordance with international accounting standards compared with its position if it had prepared its accounts in accordance with Irish generally accepted accounting practice in relation to the transaction or series of transactions,

then the Corporation Tax Acts shall apply for the purposes of computing profits or gains of that company from that transaction or series of transactions as if that company prepared its accounts in accordance with Irish generally accepted accounting practice.”,

(c) in section 81—

- (i) in subsection (2) by substituting “patent;” for “patent.” in paragraph (m) and by inserting the following after that paragraph:

“(n) without prejudice to the preceding paragraphs any consideration given for goods or services, or to an employee or director of a company, which consists, directly or indirectly, of shares in the company, or a connected company (within the meaning of section 10), or a right to receive such shares, except to the extent—

- (i) of expenditure incurred by the company on the acquisition of the shares at a price which does not exceed the price which would have been payable, if the shares were acquired by way of a bargain made at arm’s length, or
- (ii) where the shares are shares in a connected company, of any payment by the company to the connected company for the issue or transfer by that company of the shares, being a payment which does not exceed the amount which would have been

payable in a transaction between independent persons acting at arm's length.”,

and

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

“(3)(a) In respect of a company—

- (i) interest payable by the company, and
- (ii) expenditure on research and development incurred by the company,

shall not be prevented from being regarded for tax purposes as deductible in computing profits or gains of the company for the purposes of Case I or II of Schedule D by virtue only of the fact that for accounting purposes they are brought into account in determining the value of an asset.

(b) Any amount shall not be regarded by virtue of paragraph (a) as deductible in computing profits or gains of a company for the purposes of Case I or II of Schedule D for an accounting period to the extent that—

- (i) a deduction has been made in respect of that amount in computing such profits or gains for a previous accounting period, or
- (ii) the company has benefited from a tax relief under any provision in respect of that amount for a previous accounting period.”,

(d) in section 110, by adding the following after subsection (5):

“(6) (a) Subject to paragraph (b), section 76A shall have effect in relation to a qualifying company as it would if, in section 4, the following were substituted for the definition of generally accepted accounting practice:

“‘generally accepted accounting practice’ means Irish generally accepted accounting practice as it applied for a period of account ending on 31 December 2004.”.

(b) A qualifying company may, as respect any accounting period, by notice in writing given to the inspector by the specified return date (within the meaning of section 950) for the accounting period, elect that this subsection

shall not apply as respects that or any subsequent accounting period; and any election under this paragraph shall be irrevocable.

- (c) Schedule 17A shall apply with any necessary modifications to a company which makes an election under paragraph (b).”,

- (e) in section 321 by inserting the following after subsection (2):

“(2A) Subject to section 316, references to expenditure in relation to an asset—

- (a) include expenditure on labour costs including emoluments paid to employees of the company, and

- (b) do not include interest payable,

which for accounting purposes is taken into account by the company in determining the value of the asset.”,

- (f) in section 766(1)(a) in the definition of “expenditure on research and development”—

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

“(i) which—

- (I) is allowable for the purposes of tax in the State as a deduction in computing income from a trade (otherwise than by virtue of section 307), or would be so allowable but for the fact that for accounting purposes it is brought into account in determining the value of an intangible asset, or

- (II) is relieved under Part 8,”,

and

- (ii) by deleting “and” where it last occurs in clause (I) and by inserting the following after that clause:

“(IA) expenditure by a company on research and development shall not include any amount of interest notwithstanding that such interest is brought into account by the company in determining the value of an asset, and”,

and

- (g) by inserting the following after Schedule 17:

“Section 76A.

SCHEDULE 17A

ACCOUNTING STANDARDS

Interpretation

1. In this Schedule ‘relevant accounting standards’ means—

- (a) international accounting standards, or

- (b) as regards the matters covered by those published standards, Irish generally accepted accounting practice which is based on published standards—
- (i) which are stated so as to embody, in whole or in part, international accounting standards, and
 - (ii) the application of which would produce results which are substantially the same as results produced by the application of international accounting standards.

Transitional Measures (amounts receivable and deductible)

2. (1) In this paragraph—

‘deductible amount’, in relation to a company, means the aggregate of the amounts of—

- (a) so much of any amounts receivable by the company which falls to be taken into account as a trading receipt in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for an accounting period computed in accordance with relevant accounting standards as was also taken into account as a trading receipt in computing such profits or gains of the company for any accounting period ending before the first accounting period in respect of which such profits or gains of the company were so computed, and
- (b) so much of an expense incurred by the company, being an expense which would have been deductible in computing profits or gains for the purposes of Case I or II of Schedule D of the company if the expense had been incurred in an accounting period for which such profits or gains were computed in accordance with relevant accounting standards, as—
 - (i) was not deducted in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for an accounting period ending before the first accounting period in respect of which such

profits or gains of the company are computed in accordance with relevant accounting standards, and

- (ii) is not deductible in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for any accounting period for which such profits or gains of the company are so computed;

‘taxable amount’, in relation to a company, means the aggregate of the amounts of—

- (a) so much of an amount receivable by the company, being an amount receivable which would have been taken into account as a trading receipt in computing the profits or gains for the purposes of Case I or II of Schedule D of the company if the amount had accrued in an accounting period for which such profits or gains were computed in accordance with relevant accounting standards, as is not so taken into account—

- (i) for an accounting period for which such profits or gains of the company are computed in accordance with relevant accounting standards, or

- (ii) for an accounting period ending before the first accounting period in respect of which such profits or gains are so computed,

and

- (b) so much of an expense incurred by the company which is deductible in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for an accounting period for which such profits or gains of the company are computed in accordance with relevant accounting standards as was deducted in computing such profits or gains of the company for any accounting period ending before the first accounting period of the company in respect of which such profits or gains were so computed.

- (2) (a) An amount equal to the excess of the taxable amount in relation to a company over the deductible

amount in relation to the company shall, subject to subparagraph (4), be treated as a trading receipt of the company for the first accounting period of the company in respect of which profits or gains for the purposes of Case I or II of Schedule D of the company are computed in accordance with relevant accounting standards.

- (b) Notwithstanding clause (a), an amount which is treated under clause (a) as a trading receipt for an accounting period shall not be taken into account in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for that accounting period but instead, subject to clause (c)—
- (i) one-fifth of the amount shall be so taken into account for that accounting period, and
 - (ii) a further one-fifth shall be so taken into account for each succeeding accounting period until the whole amount has been accounted for.
- (c) Where any accounting period referred to in subclause (i) or (ii) of clause (b) is the last accounting period in which a company carried on a trade or profession then such fraction, of the amount referred to in those subclauses, shall be taken into account for that accounting period as is required to ensure that the whole of that amount is accounted for.
- (3) (a) An amount equal to the excess of the deductible amount in relation to a company over the taxable amount in relation to the company shall, subject to subparagraph (4), be treated as a deductible trading expense of the trade carried on by the company for the first accounting period of the company in respect of which profits or gains for the purposes of Case I or II of Schedule D of the company are computed in accordance with relevant accounting standards.
- (b) Notwithstanding clause (a), an amount which is treated under clause (a) as a deductible trading expense for an accounting period

shall not be taken into account in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for that accounting period but instead, subject to clause (c)—

(i) one-fifth of the amount shall be so taken into account for that accounting period, and

(ii) a further one-fifth shall be so taken into account for each succeeding accounting period until the whole amount has been accounted for.

(c) Where any accounting period referred to in subclause (i) or (ii) of clause (b) is the last accounting period in which a company carried on a trade or profession then such fraction, of the amount referred to in those subclauses, shall be taken into account for that accounting period as is required to ensure that the whole of that amount is accounted for.

(4) This paragraph does not apply as respects any amount taken into account under paragraph 4.

Transitional Arrangements (bad debts)

3. (1) In this paragraph—

‘current bad debts provision’, in relation to a period of account of a company, means so much of the aggregate value of debts at the end of the period of account as represents the extent to which they are estimated to be impaired in accordance with relevant accounting standards;

‘first relevant period of account’, in relation to a company, means the first period of account in respect of which the company prepares its accounts in accordance with relevant accounting standards;

‘opening bad debts provision’, in relation to a company, means so much of the aggregate value of debts at the beginning of the first relevant period of account of the company as represents the extent to which they are estimated to be impaired in accordance with those standards;

‘specific bad debts provision’, in relation to a company, means the aggregate of the amounts of doubtful debts which were respectively estimated to be bad at the end of the period of

account immediately preceding the first relevant period of account of the company.

(2) This paragraph applies as respects a period of account in respect of which a company prepares its accounts in accordance with relevant accounting standards.

(3) Where, as respects any period of account for which a company prepares its accounts in accordance with relevant accounting standards, the amount of the opening bad debts provision exceeds the higher of—

- (a) the current bad debts provision, or
- (b) the specific bad debts provision,

the excess, reduced by any amount treated under this section as a trading expense for any earlier period of account or, if there is more than one such amount, by the aggregate of such amounts, shall be treated as a trading expense of the company's trade for the period of account.

Transitional Measures (gains and losses in financial instruments)

4. (1) In this paragraph—

‘changeover day’, in relation to a company, means the last day of the accounting period immediately preceding the first accounting period of the company in respect of which profits or gains for the purposes of Case I or II of Schedule D of the company are computed in accordance with relevant accounting standards which are, or include, relevant accounting standards in relation to profits or gains or losses on financial assets and financial liabilities;

‘deductible amount’, in relation to a company, means the aggregate of—

- (a) so much of any amount of loss accruing on or before the changeover day on a financial asset or financial liability of the company, being a loss which had not been realised on or before that day and which would have been taken into account in computing profits or gains for the purposes of Case I or II of Schedule D of the company if it had accrued in an accounting period commencing after the changeover day, as, apart from this paragraph, would not be so taken into account for any accounting period of the company, and

- (b) so much of any amount of profits or gains, accruing and not realised in a period or periods (in this clause referred to as the “first-mentioned period or periods”) ending on or before the changeover day on a financial asset or financial liability of the company, which falls to be taken into account in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for an accounting period or periods commencing before the changeover day as would, apart from this paragraph, be taken into account twice in computing profits or gains for the purposes of Case I or II of Schedule D of the company, by virtue of a profit, gain or loss, accruing in a period which includes the first-mentioned period or periods, being taken into account in computing profits or gains for the purposes of Case I or II of Schedule D of the company for an accounting period commencing after the changeover day;

‘taxable amount’, in relation to a company, means the aggregate of—

- (a) so much of any amount of profits or gains accruing on or before the changeover day on a financial asset or financial liability of the company, being profits or gains which had not been realised on or before that day and which would have been taken into account in computing the profits or gains for the purposes of Case I or II of Schedule D of the company if they had accrued in an accounting period commencing after the changeover day, as apart from this paragraph, would not be so taken into account for any accounting period of the company, and
- (b) so much of any amount of loss, accruing and not realised in a period or periods (in this clause referred to as the “first-mentioned period or periods”) ending on or before the changeover day on a financial asset or financial liability of the company, which falls to be taken into account in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for an accounting period or periods commencing before the changeover

day as would, apart from this paragraph, be taken into account twice in computing profits or gains for the purposes of Case I or II of Schedule D of the company, by virtue of a profit, gain or loss, accruing in a period which includes the first-mentioned period or periods, being taken into account in computing profits or gains for the purposes of Case I or II of Schedule D of the company for an accounting period commencing after the changeover day.

- (2) (a) An amount equal to the excess of the taxable amount in relation to a company over the deductible amount in relation to the company shall be treated as a trading receipt of the company for the first accounting period of the company commencing after the changeover day.
- (b) Notwithstanding clause (a), an amount which is treated under clause (a) as a trading receipt for an accounting period shall not be taken into account in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for that accounting period but instead, subject to clause (c)—
- (i) one-fifth of the amount shall be so taken into account for that accounting period, and
- (ii) a further one-fifth shall be so taken into account for each succeeding accounting period until the whole amount has been accounted for.
- (c) Where any accounting period referred to in subclause (i) or (ii) of clause (b) is the last accounting period in which a company carried on a trade or profession then such fraction, of the amount referred to in those subclauses, shall be taken into account for that accounting period as is required to ensure that the whole of that amount is accounted for.
- (3) (a) An amount equal to the excess of the deductible amount in relation to a company over the taxable amount in relation to the company shall be treated as a deductible

trading expense of the trade carried on by the company for the first accounting period of the company commencing after the changeover day.

(b) Notwithstanding clause (a), an amount which is treated under clause (a) as a deductible trading expense for an accounting period shall not be taken into account in computing the profits or gains for the purposes of Case I or II of Schedule D of the company for that accounting period but instead, subject to clause (c)—

(i) one-fifth of the amount shall be so taken into account for that accounting period, and

(ii) a further one-fifth shall be so taken into account in each succeeding accounting period until the whole amount has been accounted for.

(c) Where any accounting period referred to in subclause (i) or (ii) of clause (b) is the last accounting period in which a company carried on a trade or profession then such fraction, of the amount referred to in those subclauses, shall be taken into account for that accounting period as is required to ensure that the whole of that amount is accounted for.

(4) (a) Subparagraph (5) applies to a loss incurred by a company on the disposal at any relevant time of any financial asset or financial liability where, within a period beginning 4 weeks before and ending 4 weeks after that disposal, the company acquired a financial asset or financial liability of the same class providing substantially the same access to economic benefits and exposure to risk as would have been provided by the reacquisition of the asset or liability disposed of.

(b) In this paragraph 'relevant time' means a time after 1 January 2005 which is in a period of 6 months ending on the changeover day.

(5) A loss to which this subparagraph applies, which would otherwise be taken into account in computing profits or gains or losses of a company for the purposes of Case I or II

of Schedule D for an accounting period, shall not be so taken into account but instead—

- (a) one-fifth of the loss shall be so taken into account for that accounting period,
- (b) a further one-fifth shall be so taken into account for each succeeding accounting period until the whole amount has been accounted for, and
- (c) notwithstanding clauses (a) and (b), where any accounting period referred to in those clauses is the last accounting period in which a company carried on a trade or profession then such fraction, of the amount referred to in those clauses, shall be taken into account for that accounting period as is required to ensure that the whole of that amount is accounted for.

(6) As respects the first accounting period of a company in respect of which profits or gains for the purposes of Case I or II of Schedule D of the company are computed in accordance with relevant accounting standards, which are, or include, relevant accounting standards in relation to profits or gains or losses on financial assets or liabilities, section 958 shall have effect as if—

- (a) in subsection (4D)(b) the following were substituted for ‘no amount were included in the chargeable person’s profits for the chargeable period in respect of chargeable gains on the disposal by the person of assets in the part of the chargeable period which is after the date by which the first instalment for the chargeable period is payable in accordance with subsection (2A)’:

‘no amount were included in the chargeable person’s profits for the chargeable period in respect of—

- (i) chargeable gains on the disposal by the person of assets in the part of the chargeable period which is after the date by which, or
- (ii) profits or gains or losses accruing, and not realised, in the chargeable period on financial assets or financial liabilities as are attributable to changes in

value of those assets or liabilities in the part of the chargeable period which is after the end of the month immediately preceding the month in which,

the first instalment for the chargeable period is payable in accordance with subsection (2A)',

and

- (b) in subsection (4E)(b) the following were substituted for 'no amount were included in the chargeable person's profits for the chargeable period in respect of chargeable gains on the disposal by the person of assets in the part of the chargeable period which is after the date by which preliminary tax for the chargeable period is payable in accordance with subsection (2B)':

'no amount were included in the chargeable person's profits for the chargeable period in respect of—

- (i) chargeable gains on the disposal by the person of assets in the part of the chargeable period which is after the date by which, or
- (ii) profits or gains or losses accruing, and not realised, in the chargeable period on financial assets or financial liabilities as are attributable to changes in value of those assets or liabilities in the part of the chargeable period which is after the end of the month immediately preceding the month in which,

preliminary tax for the chargeable period is payable in accordance with subsection (2B)'. ”.

(2) This section applies as respects any period of account beginning on or after 1 January 2005.

Amendment of section 243 (allowance of charges on income) of Principal Act.

49.—(1) Section 243 of the Principal Act is amended—

- (a) in subsection (1A) by inserting “has the meaning assigned to it by section 845A and” after “ ‘bank’ ”,
- (b) in subsection (2) by inserting “in accordance with section 420” after “group relief”,
- (c) in subsection (4)(b)—

- (i) by substituting “interest payable on an advance” for “interest payable in the State on an advance”, and
- (ii) in subparagraphs (i) and (ii) by substituting “in a Member State of the European Communities” for “in the State” in each place where it occurs,

and

(d) in subsection (5)—

- (i) in paragraph (a) by substituting “as the case may be,” for “as the case may be, or”,
- (ii) in paragraph (b) by substituting “the State, or” for “the State.”, and
- (iii) by inserting the following after paragraph (b):

“(c) to which section 238 or 246(2) do not apply by virtue of section 267L.”.

(2) This section applies as respects accounting periods ending on or after 3 February 2005.

50.—(1) Chapter 6 of Part 8 of the Principal Act is amended by inserting the following section after section 267K:

“Application of this Chapter to certain payments made to companies in Switzerland.

267L.—(1) This section applies to a payment, being interest or royalties, made to or for the benefit of—

(a) where paragraph (b) does not apply, a company which—

(i) is the beneficial owner of the interest, or as the case may be the royalties,

(ii) is, by virtue of the law of Switzerland, resident for the purposes of tax in Switzerland, and

(iii) is not treated, by virtue of any arrangements made by the government of Switzerland with the government of any territory for the purposes of tax, as resident in any territory which is not—

(I) a Member State of the European Communities, or

(II) Switzerland,

or

(b) a permanent establishment situated in Switzerland through which a company carries on business in Switzerland, being a permanent establishment which would, in accordance with the Directive,

Amendment of Chapter 6 (Implementation of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States) of Part 8 of Principal Act.

be treated as the beneficial owner of the interest, or as the case may be the royalties.

(2) Sections 267G to 267I shall have effect in relation to a payment to which this section applies as if—

(a) a reference in those sections to a Member State of the European Communities included a reference to Switzerland,

(b) a reference in those sections to a company of a Member State included a company (being a company which takes one of the forms specified in Article 15 of the Agreement attached to the Council Decision (2004/911/EC) of 2 June 2004 on the signing and conclusion of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding¹) resident for the purposes of tax in Switzerland, and

(c) a reference in those sections to tax included any tax imposed in Switzerland which corresponds to income tax or corporation tax in the State.

(3) Section 267K applies in relation to this section as it applies in relation to sections 267G to 267I.”.

(2) This section applies as respects any payment made on or after 1 July 2005.

Amendment of Chapter 2 (Miscellaneous) of Part 35 of Principal Act.

51.—(1) Chapter 2 of Part 35 of the Principal Act is amended by inserting the following section after section 831:

“Treatment of distributions to certain parent companies.

831A.—(1) (a) In this section—

‘company’, in relation to a company that is resident for the purposes of tax in Switzerland, means a company which—

(i) takes one of the forms specified in Article 15 of the Agreement attached to the Council Decision (2004/911/EC) of 2 June 2004 on the signing and conclusion of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those

¹OJ No. L385, 29.12.2004, p. 28

laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding¹, and

- (ii) is subject to tax in Switzerland without being exempt;

‘parent company’ means a company which controls not less than 25 per cent of the voting power in another company;

‘tax’, in relation to Switzerland, means any tax imposed in Switzerland which corresponds to income tax or corporation tax in the State.

- (b) For the purposes of this section a company shall be a subsidiary of another company which holds voting rights in it where the other company’s holding of those rights is sufficient for that other company to be a parent company.

(2) Chapter 8A of Part 6, other than section 172K, shall not apply to a distribution made to a parent company which is, by virtue of the law of Switzerland, resident for the purposes of tax in Switzerland by its subsidiary which is a company resident in the State.”.

(2) This section applies as respects a distribution made on or after 1 July 2005.

52.—(1) Section 410 of the Principal Act is amended—

Amendment of section 410 (group payments) of Principal Act.

- (a) in subsection (4) by substituting “a relevant Member State” for “the State”, and

- (b) by substituting the following for subsection (5):

“(5) This section shall apply to any payments which—

- (a) for the purposes of corporation tax, are charges on income of the company making them or would be so if they were not deductible in computing profits or any description of profits or if section 243(7) did not apply to them, and

- (b) where the company receiving the payments is not resident in the State, are taken into account in computing income of that company chargeable to tax in a relevant Member State,

but shall not apply to payments received by a company on any investments if a profit on the sale of those investments would be treated as a trading receipt of that company.”.

(2) This section applies as respects accounting periods ending on or after 1 March 2005.

¹OJ No. L381, 28.12.2004, p.32

Amendment of section 448 (relief from corporation tax) of Principal Act.

53.—(1) Section 448 of the Principal Act is amended—

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

“(1)(a) For the purposes of this section, references to ‘charges on income paid for the purposes of the sale of goods’, where they are in the course of a trade in an accounting period, shall be taken to be such amount as would be the amount of the income from the sale of goods in that period if, notwithstanding subsection (4), the reference to ‘the company’s income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise’ for the purposes of subsection (3), were to the amount of so much of the charges on income paid wholly and exclusively for the purposes of the trade in that period as appears to the inspector or on appeal to the Appeal Commissioners to be referable to charges on income paid for the purpose of the sale of goods and merchandise.

(b) For the purposes of this section, references to a ‘loss from the sale of goods’, where they are in the course of a trade in an accounting period, shall be such amount as would be the amount of the income from the sale of goods in that period if, notwithstanding subsection (4), the reference to ‘the company’s income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise’ for the purposes of subsection (3), were to the amount of so much of the loss, computed as for the purposes of section 396(2), from the trade in the period as appears to the inspector or on appeal to the Appeal Commissioners to be referable to a loss incurred in the sale of goods and merchandise, but a loss such as is mentioned in section 407(4)(b) shall not be a loss from the sale of goods.

(c) For the purposes of this section references to an ‘excess of charges on income paid for the purpose of the sale of goods’, where they are in the course of the trade in an accounting period, shall be so much of an amount, being the amount by which the charges on income paid by a company for the purpose of the sale of goods in the course of the trade in that period exceed the income from the sale of goods in the course of the trade in that period, as does not exceed the excess referred to in section 420(6) as computed for the company for that period.

(d) (i) For the purposes of this section, ‘relevant corporation tax’ means the corporation tax which, apart from this section, sections 22A, 239, 241, 440, 441, 449, 644B and

827 and paragraphs 16 and 18 of Schedule 32, would be chargeable for the relevant accounting period exclusive of the corporation tax chargeable on the part of the company's profits attributable to chargeable gains for that period.

- (ii) For the purpose of subparagraph (i), the part of the company's profits attributable to chargeable gains for the relevant accounting period shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.”,

- (b) in subsection (3), by substituting the following for paragraph (b):

“(b) then, deducting from the relevant sum—

- (i) the amount of any charges on income paid for the purposes of the sale of goods in the relevant accounting period,
- (ii) the amount of any loss from the sale of goods incurred by the company in the relevant accounting period, and
- (iii) the amount of any excess of charges on income paid for the purpose of the sale of goods or the amount of any loss from the sale of goods, incurred by a surrendering company and allowed under section 420A,

allowed against income of the trade in the relevant accounting period.”,

- (c) in subsection (4)—

- (i) in paragraph (i) by deleting “or 454”,
 - (ii) in paragraph (ii) by deleting “or 455”, and
 - (iii) in paragraph (iii) by deleting “or 456”,
- and

- (d) in subsection (5A)(b) by deleting subparagraph (i).

(2) This section applies as respects accounting periods ending on or after 3 February 2005.

Pr.1

[No. 5.]

Finance Act 2005.

[2005.]

Amendment of section 626B (exemption from tax in the case of gains on certain disposals of shares) of Principal Act.

54.—(1) Section 626B of the Principal Act is amended—

- (a) in subsection (1)(a) by deleting the definition of “relevant time”,
- (b) in subsection (1)(b)(i) by substituting “5 per cent” for “10 per cent” in clauses (I), (II) and (III), and
- (c) in subsection (2) by substituting the following for paragraph (a):

“(a) the disposal by the investor company is at a time—

- (i) when the investor company is a parent company of the investee company, or
- (ii) within the 2 year period beginning on the most recent day on which the investor company was a parent company of the investee company.”.

(2) Subsection (1) applies as on and from 2 February 2004.

Cesser of section 686 (reduction of corporation tax) of Principal Act.

55.—Section 686 of the Principal Act shall cease to have effect as respects accounting periods ending on or after 3 February 2005.

CHAPTER 6

Capital Gains Tax

Amendment of section 980 (deduction from consideration on disposal of certain assets) of Principal Act.

56.—(1) Section 980 of the Principal Act is amended—

- (a) by inserting the following after subsection (3):

“(3A) This section shall not apply to a disposal by a body specified in Schedule 15.”,

- (b) in subsection (4)(c) in the definition of “house” by substituting “section 372AK” for “section 329”, and

- (c) in subsection (9) by inserting the following after paragraph (d):

“(e) Where a person acquiring an asset has paid to the Collector-General an amount of capital gains tax in accordance with paragraph (a)(II) and recovered a sum of that amount from the person disposing of the asset, then, on proof being given in that regard, appropriate relief shall be given to the person disposing of the asset, whether by discharge, repayment or otherwise.”.

(2) (a) Paragraphs (a) and (c) of subsection (1) shall apply as on and from the date of the passing of this Act.

(b) Paragraph (b) of subsection (1) is deemed to have applied as on and from 25 March 2002.

57.—(1) Schedule 15 to the Principal Act is amended in Part 1—
(a) by substituting “7. The Health Service Executive.” for “7. A health board.”, and

Amendment of Schedule 15 (list of bodies for purposes of section 610) to Principal Act.

(b) by substituting the following for paragraphs 12 to 17:

“12. Dublin Regional Tourism Authority Limited.

13. The South-East Regional Tourism Authority Limited.

14. South-West Regional Tourism Authority Limited.

15. The Western Regional Tourism Authority Limited.

16. The North-West Regional Tourism Authority Limited.

17. Midlands-East Regional Tourism Authority Limited.”.

(2) (a) *Paragraph (a) of subsection (1)* is deemed to have applied as on and from 1 January 2005.

(b) *Paragraph (b) of subsection (1)* applies as on and from the date of the passing of this Act.

58.—Section 608 of the Principal Act is amended by inserting the following after subsection (2):

Amendment of section 608 (superannuation funds) of Principal Act.

“(2A) A gain shall not be a chargeable gain if accruing to a person who is exempt from income tax under section 790B.”.

PART 2

EXCISE

CHAPTER 1

Alcohol Products Tax

59.—Section 134 of the Finance Act 2001 is amended in subsection (1) by substituting the following for paragraph (a):

Amendment of section 134 (power to stop vehicles) of Finance Act 2001.

“(a) that such officer, or any officer accompanying such officer, may exercise any power conferred on them by section 135 in relation to excisable products, any other products chargeable with a duty of excise, or any prohibited goods, where there are reasonable grounds to believe that such products or goods are being transported in or on such vehicle, or”.

60.—Section 139 of the Finance Act 2001 is amended by substituting the following for subsection (1):

Amendment of section 139 (power of arrest and detention of persons) of Finance Act 2001.

“(1) Where an officer or a member of the Garda Síochána has reasonable grounds to suspect that a person is committing or has committed an offence under—

- (a) section 119,
- (b) section 102(3) of the Finance Act 1999, or
- (c) section 79(5) (inserted by the *Finance Act 2005*) of the Finance Act 2003,

then such officer or member may arrest such person without warrant.”.

Amendment of section 73 (interpretation) of Finance Act 2003.

61.—Section 73 of the Finance Act 2003 is amended in subsection (1)—

- (a) by inserting the following definition after the definition of “Commissioners”:

“ ‘counterfeit goods’ has the same meaning that it has in Article 2 of Council Regulation (EC) No. 1383/2003 of 22 July 2003¹;”,

- (b) by inserting the following definition after the definition of “Directive”:

“ ‘illicit alcohol product’ means any alcohol product—

- (a) which has been produced or processed in the State otherwise than in a tax warehouse, except where section 77(f), or subsection (2) or (3) of section 109 of the Finance Act 2001 applies, or

- (b) which is counterfeit goods;”,

- (c) by substituting the following for the definition of “prohibited goods”:

“ ‘prohibited goods’ means any machinery, apparatus, equipment, vessel, materials, substance or other thing which is being used, or was used, or is intended to be used, either in the production or processing of any illicit alcohol product or in the removal from any alcohol product of any denaturant;”.

Amendment of section 79 (offences and penalties) of Finance Act 2003.

62.—The Finance Act 2003 is amended, in Chapter 1 of Part 2, by substituting the following for section 79:

“79.—(1) Except where subsection (2), (3) or (5) applies, it is an offence under this subsection for any person to contravene or fail to comply with any provision of this Chapter or any regulation made under section 81 or any condition imposed under this Chapter or under such regulation in relation to such provision.

(2) It is an offence under this subsection to invite an offer to treat for, offer for sale, keep for sale or delivery, sell or deliver, or to be in the process of delivering, any alcohol product on which the appropriate rate of alcohol products tax has not been paid.

(3) It is an offence under this subsection for any person to record in any account, return or other record relating to alcohol

¹OJ No. L196, 2.8.2003, p.7

products or materials which is required to be kept in accordance with any provision of this Chapter or any regulations made under section 81—

- (a) a quantity, strength, or gravity for any alcohol product or materials which is found by an officer taking account to be greater or less than the actual quantity, strength or gravity of such alcohol product or materials,
 - (b) any other particular relevant to the liability of any alcohol product to alcohol products tax which is not true and accurate.
- (4) Subsection (3) does not apply where any discrepancy—
- (a) is accounted for by a loss due to force majeure or by a loss inherent in the nature of the product, or
 - (b) is otherwise accounted for to the satisfaction of the Commissioners, and the alcohol products tax due on the product in question is paid.
- (5) It is an offence under this subsection—
- (a) to produce or process any illicit alcohol product or to attempt such production or processing, or to be concerned with any such production, processing, attempted production or attempted processing,
 - (b) without the consent in writing of the Commissioners, to remove or to attempt to remove, or to be knowingly concerned in removing or attempting to remove, any denaturant from any alcohol product,
 - (c) to knowingly deal in any illicit alcohol product or any alcohol product from which any denaturant has been removed,
 - (d) to keep prohibited goods in any premises or on any land, or
 - (e) to deliver, or be in the process of delivering, any illicit alcohol product or prohibited goods.
- (6) (a) Whenever a person, who is the owner or the occupier for the time being of premises or land in or on which prohibited goods are found, is charged in any legal proceedings with contravening subsection (5)(d), the prohibited goods shall, until the contrary is proved, be presumed to have been kept by such person in the said premises or on the said land (as the case may be), in contravention of that subsection.
- (b) In the case of an offence under subsection (2), where it is shown that any alcohol product is counterfeit goods, it shall be presumed, until the contrary is proved, that the appropriate rate of alcohol products tax has not been paid on such product.
- (7) Without prejudice to any other penalty to which a person may be liable, a person guilty of an offence under subsection (1), (2) or (3) is liable on summary conviction to a fine of €1,900.
- (8) Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under subsection (5) is liable—

(a) on summary conviction to a fine of €3,000 or, at the discretion of the Court, to imprisonment for a term not exceeding 12 months, or to both, or

(b) on a conviction on an indictment, to a fine of €12,695 or, at the discretion of the Court, to imprisonment for a term not exceeding 5 years, or to both.

(9) Where a person convicted of an offence under subsection (2) or (5) is either a licensee within the meaning of section 2 of the Intoxicating Liquor Act 2003, or the secretary of a club registered under the Registration of Clubs Acts 1904 to 2004, section 9 (which relates to the temporary closure of a licensed premises) of the first-mentioned Act shall, with the exception of subsection (4), apply in respect of a licensed premises or premises of such club, used in connection with such offence.

(10) Any alcohol products, materials or prohibited goods in respect of which an offence has been committed under this section are liable to forfeiture and, where any such products, materials or goods are found in, on, or in any manner attached to any vehicle, such vehicle is also liable to forfeiture.

(11) Where an offence under this section is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of an offence and may be proceeded against and punished as if guilty of the first-mentioned offence.”.

Amendment of Chapter 1 of Part 2 (alcohol products tax) of Finance Act 2003.

63.—Chapter 1 of Part 2 of the Finance Act 2003 is amended by inserting the following section after section 78:

“Relief for small breweries.

78A.—(1) A relief of half the amount of alcohol products tax paid on beer shall, subject to subsection (3) and to such conditions as the Commissioners may prescribe or otherwise impose, be granted on a quantity of beer, not exceeding 20,000 hectolitres in a calendar year, brewed in the European Community in a brewery—

(a) in which the quantity of beer brewed in the previous year has not exceeded 20,000 hectolitres,

(b) which is legally and economically independent of any other brewery,

(c) the premises of which are situated physically apart from those of any other brewery, and

(d) in which less than 50 per cent of the beer brewed in the previous calendar year has been brewed under a licence, franchise or contract arrangement for another brewery.

(2) The relief under subsection (1) shall be granted by the Commissioners by means of repayment.

(3) (a) Subject to paragraph (b), relief under subsection (1) does not apply to any beer brewed for another brewery under a licence, franchise or contract arrangement.

(b) Notwithstanding paragraph (a), where beer is brewed in a brewery under a licence, franchise, contract or other cooperation arrangement with one or more other breweries, and where—

(i) such brewery and each of the breweries with which it has such an arrangement satisfy the criteria set down in paragraphs (a), (b) and (c) of subsection (1), and

(ii) the combined total quantity of the beer brewed in the previous calendar year, in such brewery and the breweries with which it has such an arrangement, has not exceeded 40,000 hectolitres,

then subsection (1)(d) does not apply, and such beer qualifies for relief under subsection (1).

(4) For the purposes of subsection (1)(b) a brewery is not considered to be legally and economically independent of another brewery where such breweries are directly or indirectly owned or partly owned—

(a) by the same person, or

(b) by associated companies within the meaning of section 432 of the Taxes Consolidation Act 1997 or by legal entities corresponding to such associated companies.

(5) (a) Claims for repayment under subsection (2) shall be made in such form as the Commissioners may direct and shall be in respect of payments of alcohol products tax made within a period of 3 calendar months beginning on the first day of January, April, July or October.

(b) A repayment may not be made under this section unless the claim is made within 6 months following the end of each such period or within such longer period as the Commissioners may, in any particular case, allow.”

CHAPTER 2

Mineral Oil Tax

Rates of mineral oil tax.

64.—The Finance Act 1999 is amended—

- (a) with effect as on and from 1 April 2005, by substituting the following for Schedule 2 to that Act, as amended by section 48 of the Finance Act 2004:

“SCHEDULE 2

Rates of Mineral Oil Tax

(With effect as on and from 1 April 2005)

Description of Mineral Oil	Rate of Tax
<i>Light Oil:</i>	
Leaded petrol	€553.04 per 1,000 litres
Unleaded petrol	€442.68 per 1,000 litres
Super unleaded petrol	€547.79 per 1,000 litres
Aviation gasoline	€276.52 per 1,000 litres
<i>Heavy Oil:</i>	
Used as a propellant with a maximum sulphur content of 50 milligrammes per kilogramme	€368.05 per 1,000 litres
Other heavy oil used as a propellant	€420.44 per 1,000 litres
Kerosene used other than as a propellant	€31.74 per 1,000 litres
Fuel oil	€14.78 per 1,000 litres
Other heavy oil	€47.36 per 1,000 litres
<i>Liquefied Petroleum Gas:</i>	
Used as a propellant	€63.59 per 1,000 litres
Other liquefied petroleum gas	€20.86 per 1,000 litres
<i>Substitute Fuel:</i>	
Used as a propellant	€368.05 per 1,000 litres
Other substitute fuel	€47.36 per 1,000 litres

”

and

- (b) with effect as on and from such day as the Minister may appoint by order under *section 70*, by substituting the following for Schedule 2 (inserted by *subsection (a)*) to that Act:

“SCHEDULE 2

Rates of Mineral Oil Tax

Description of Mineral Oil	Rate of Tax
<i>Light Oil:</i>	
Leaded petrol	€553.04 per 1,000 litres
Unleaded petrol with a maximum sulphur content of 10 milligrammes per kilogramme	€442.68 per 1,000 litres
Other unleaded petrol	€484.00 per 1,000 litres
Super unleaded petrol	€547.79 per 1,000 litres
Aviation gasoline	€276.52 per 1,000 litres
<i>Heavy Oil:</i>	
Used as a propellant with a maximum sulphur content of 10 milligrammes per kilogramme	€368.05 per 1,000 litres
Other heavy oil used as a propellant	€420.44 per 1,000 litres
Kerosene used other than as a propellant	€31.74 per 1,000 litres
Fuel oil	€14.78 per 1,000 litres
Other heavy oil	€47.36 per 1,000 litres
<i>Liquefied Petroleum Gas:</i>	
Used as a propellant	€63.59 per 1,000 litres
Other liquefied petroleum gas	€20.86 per 1,000 litres
<i>Substitute Fuel:</i>	
Used as a propellant	€368.05 per 1,000 litres
Other substitute fuel	€47.36 per 1,000 litres
<i>Coal:</i>	
For business use	€4.18 per tonne
For other use	€8.36 per tonne

”.

65.—Section 94 of the Finance Act 1999 is amended—

Amendment of
section 94
(interpretation) of
Finance Act 1999.

(a) in subsection (1):

- (i) by substituting the following definition for the definition of “authorised warehousekeeper”:

“ ‘authorised warehousekeeper’ means a person authorised by the Commissioners under section 109 of the Finance Act 2001 to produce, process, hold, receive or dispatch mineral oil under a suspension arrangement;”

- (ii) by inserting the following definitions after the definition of “biomass”:

“ ‘business use’, subject to Article 11 of the Directive, means use by a business entity which independently carries out, in any place, the supply of goods and services;

‘charitable organisation’ means any body of persons or trust established for charitable purposes;

‘coal’ includes lignite and solid fuels manufactured from coal or lignite;”

- (iii) by substituting the following definition for the definition of “the Directive”:

“ ‘the Directive’ means Council Directive No. 2003/96/EC of 27 October 2003¹;”,

- (iv) by inserting the following definition after the definition of “the Directive”:

“ ‘dual use’ means use both as a heating fuel and for purposes other than as a motor fuel and heating fuel and includes use for chemical reduction and in electrolytic and metallurgical processes;”,

- (v) by inserting the following definition after the definition of “dumper”:

“ ‘energy intensive business’ means any business entity where either the purchases of energy products and electricity amount to at least 3 per cent of the production value, or the mineral oil tax payable amounts to at least 0.5 per cent of the added value;”,

- (vi) by inserting the following definition after the definition of “glasshouse”:

“ ‘greenhouse gas emissions permit’ has the meaning assigned to it by Article 2(1) of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004);”,

- (vii) by inserting the following definition after the definition of “horticultural producer”:

“ ‘household’ means a premises used as a dwelling;”,

- (viii) by substituting the following definition for the definition of “mineral oil”:

“ ‘mineral oil’ means hydrocarbon oil, liquefied petroleum gas, substitute fuel, coal and additives;”,

- (ix) by inserting the following definition after the definition of “mineral oil”:

“ ‘mineralogical process’ means a process classified in the NACE nomenclature under code DI 26 ‘manufacture of other non-metallic mineral products’ in Council Regulation (EEC) No. 3037/90 of 9 October 1990² on the statistical classification of economic activities in the European Community;”,

and

- (x) by substituting the following definition for the definition of “tax warehouse”:

“ ‘tax warehouse’ means a premises or place approved by the Commissioners under section 109 of the Finance Act 2001 where mineral oil is produced,

¹OJ No. L283 of 31 October 2003, p. 51

²OJ No. L293 of 24 October 1990, p. 1

processed, held, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business;”,

(b) by inserting the following subsections after subsection (2):

“(3) A word or expression that is used in this Chapter and which is also used in Part 2 of the Finance Act 2001 has, unless a meaning is assigned to it by subsection (1) or (2) or the contrary intention otherwise appears, the same meaning in this Chapter as it has in that Part.

(4) A word or expression that is used in this Chapter and which is also used in the Directive has, unless a meaning is assigned to it by subsection (1), (2) or (3) or the contrary intention otherwise appears, the same meaning in this Chapter as it has in the Directive.”.

66.—Section 95 of the Finance Act 1999 is amended—

Amendment of section 95 (charge of tax) of Finance Act 1999.

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

“(2) For the purposes of charging mineral oil tax on mineral oil other than coal the volume of mineral oil shall be ascertained at a temperature of 15° Celsius and in the manner specified by the Commissioners.”,

and

(b) by substituting the following for subsection (4):

“(4) Notwithstanding the generality of subsection (1), only mineral oil coming within the definition of “energy products” in Article 2.1 of the Directive, substitute fuel and additives shall be subject to mineral oil tax.”.

67.—Section 100 of the Finance Act 1999 is amended—

Amendment of section 100 (reliefs from mineral oil tax for certain mineral oils) of Finance Act 1999.

(a) in subsection (1) by substituting the following for paragraph (m) (inserted by the Finance Act 2004):

“(m) heavy oil which is intended for use or which has been used in aircraft engines during testing and maintenance of such engines;

(n) mineral oil present, at the time of importation into the State from another Member State, in the standard tank of a mechanically propelled vehicle, including a private pleasure craft, where such oil has not been released for use as a propellant but where such oil is permitted, under the laws in force in such Member State, to be used in such vehicle.”,

and

(b) by substituting, from such day as the Minister may appoint by order under *section 70*, the following for subsections (2) and (3):

“(2) Without prejudice to subsection (1), and subject to such conditions as the Commissioners may prescribe or otherwise impose, a relief from mineral oil tax shall be granted in respect of coal which is shown to the satisfaction of the Commissioners to be intended for use or to have been used—

- (a) for the generation of electricity,
- (b) for combined heat and power generation,
- (c) for agricultural, horticultural or piscicultural works, and in forestry,
- (d) for dual use,
- (e) for mineralogical processes,
- (f) for household use,
- (g) by a charitable organisation,
- (h) as fuel for trains,
- (i) by an energy intensive business which holds a greenhouse gas emissions permit.

(3) Without prejudice to subsections (1) and (2), and subject to such conditions as the Commissioners may prescribe or otherwise impose, a relief from mineral oil tax amounting to one-half of the chargeable rate shall be granted in respect of coal which is shown to the satisfaction of the Commissioners to be intended for use or to have been used by a business which is not an energy intensive business and which holds a greenhouse gas emissions permit.

(4) Where mineral oil is eligible for relief from tax under the provisions of subsection (1), (2) or (3) the relief may be granted by the Commissioners by means of remission or repayment of mineral oil tax.

(5)(a) Claims for remission or repayment under subsection (4) shall be made in such form as the Commissioners may direct and shall be in respect of coal delivered or other mineral oil used within a period of not less than one and not more than 6 calendar months.

(b) A repayment under subsection (4) may not be made unless the claim is made within 4 months following the end of each such period or within such longer period as the Commissioners may, in any particular case, allow.”.

Amendment of section 103 (presumptions in certain proceedings) of Finance Act 1999.

68.—Section 103 of the Finance Act 1999 is amended in subsection (4) (inserted by section 95 of the Finance Act 2003) by substituting “50 milligrammes” for “350 milligrammes”.

[2005.]

Finance Act 2005.

[No. 5.]

PT.2

69.—Chapter 1 of Part 2 of the Finance Act 1999 is amended—

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

(a) by inserting the following after section 95:

“Liability to mineral oil tax on coal.

95A.—Liability to mineral oil tax on coal shall arise at the time such coal is the subject of final delivery, and shall be paid by the person to whom it is delivered.”,

and

(b) by inserting the following after section 101:

“Regis-
tration.

101A.—Every person who makes final delivery of coal, otherwise than to households or to charitable organisations, and every person who is liable to pay mineral oil tax on coal shall register for that purpose with the Commissioners in accordance with such procedures as the Commissioners may prescribe or otherwise impose.”.

70.—With the exception of *sections 64(a), 67(a) and 68* this Chapter comes into operation on such day as the Minister for Finance may appoint by order, and different days may be so appointed for different provisions or for different purposes.

Commencement.

CHAPTER 3

Tobacco Products Tax

71.—(1) In this Chapter and in *Schedule 2*, except where the context otherwise requires—

Interpretation
(Chapter 3).

“authorised warehousekeeper” means a person authorised by the Commissioners to produce, process, hold, receive or dispatch in the course of business, excisable products under a suspension arrangement;

“cigarettes” means—

- (a) rolls of tobacco capable of being smoked as they are and which are not cigars,
- (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette paper tubes or wrapped in cigarette paper,
- (c) products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in *paragraph (a) or (b)*,

and to which Council Directive No. 95/59/EC of 27 November 1995¹ relates;

“cigars” means—

- (a) rolls of tobacco made entirely of natural tobacco,

¹OJ No. L291 of 6.12.1995, p.40

(b) rolls of tobacco with an outer wrapper of natural tobacco,

(c) rolls of tobacco with—

(i) a threshed blend filler, and

(ii) an outer wrapper of the normal colour of a cigar covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip and a binder, both being of reconstituted tobacco,

where the unit weight, excluding the filter or mouth-piece, is not less than 1.2 grammes and where the wrapper is fitted in spiral form with an acute angle of at least 30 degrees to the longitudinal axis of the cigar,

(d) rolls of tobacco with—

(i) a threshed blend filler, and

(ii) an outer wrapper of the normal colour of a cigar of reconstituted tobacco, covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip,

where the unit weight, excluding the filter or mouth-piece, is not less than 2.3 grammes and the circumference over at least one-third of the length is not less than 34 millimetres,

(e) products consisting in part of substances other than tobacco but otherwise conforming to the criteria set out in *paragraph (a), (b), (c) or (d)* provided they have:

(i) a wrapper of natural tobacco;

(ii) a wrapper and binder both of reconstituted tobacco;
or

(iii) a wrapper of reconstituted tobacco,

and to which Council Directive No. 95/59/EC of 27 November 1995 relates;

“Commissioners” means the Revenue Commissioners;

“Community” has the meaning assigned to it by section 96 of the Finance Act 2001;

“fine-cut tobacco for the rolling of cigarettes” means smoking tobacco in which more than 25 per cent by weight of the tobacco particles have a cut width of less than 1 millimetre and to which Council Directive No. 95/59/EC of 27 November 1995 relates;

“materials” means tobacco in any form and any other substance to be used for incorporation in tobacco products;

“Member State” means a Member State of the Community;

“Minister” means the Minister for Finance;

“officer” means an officer of the Commissioners;

“prescribed” means specified in or determined in regulations made by the Commissioners under *section 83*;

“reconstituted tobacco” means tobacco (whether or not on a backing) that is made by agglomerating tobacco dust or finely divided tobacco derived from tobacco leaves or tobacco refuse and is generally put up in the form of rectangular sheets or strip;

“records” means any books, accounts, documents or other recorded information including information in a computer or in other non-legible form;

“release for consumption” means—

- (a) any departure, including irregular departure, from a suspension arrangement,
- (b) any manufacture, including irregular manufacture, of tobacco products outside a suspension arrangement, or
- (c) any importation of tobacco products, including irregular importation, where such tobacco products have not been placed under a suspension arrangement;

“smoking tobacco” means—

- (a) tobacco which has been cut or otherwise split, twisted or pressed into blocks and which is capable of being smoked without further industrial processing,
- (b) tobacco refuse which is put up for retail sale and can be smoked and is not a cigar or cigarette,
- (c) products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in *paragraph (a) or (b)*,

and to which Council Directive No. 95/59/EC of 27 November 1995 relates;

“specified tobacco products” means cigarettes and fine-cut tobacco for the rolling of cigarettes and any other tobacco products in respect of which an order under *section 73* of this Chapter relates;

“suspension arrangement” means an arrangement under which excisable products are produced, processed, held or moved, excise duty being suspended;

“tax” means tobacco products tax imposed by *section 72*;

“tax representative” means a person, established in the State, who is authorised by the Commissioners to act in the State as an agent on behalf of persons delivering excisable products from another Member State;

“tax stamp” means a label issued by the Commissioners under *section 73* of this Chapter for the purpose of collecting tobacco products tax;

“tax warehouse” means a premises or place approved by the Commissioners, where excisable products are produced, processed, held, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business;

“tobacco products” means cigarettes, cigars, fine-cut tobacco for the rolling of cigarettes or other smoking tobacco except where such products contain no tobacco and are either—

- (a) used exclusively for medical purposes, or
- (b) products commonly known as herbal cigarettes or herbal smoking mixtures.

(2) A product shall be deemed, for the purposes of this Chapter to be manufactured when, in the opinion of the Commissioners, it has taken on the essential character of a tobacco product.

(3) Any cigarette which is greater than 9 centimetres in length excluding any filter or mouthpiece shall, for the purposes of tobacco products tax, be treated as if each 9 centimetres or part thereof, of its length were a separate cigarette.

(4) A product shall not be deemed to be a tobacco product unless it is a cigar or cigarette or smoking tobacco.

(5) A word or expression that is used in this Chapter and which is also used in Part 2 of the Finance Act 2001 has, unless a meaning is provided by *subsection (1)* or the contrary intention otherwise appears, the same meaning in this Chapter as it has in that Part.

Charging and rates.

72.—In addition to any other duty that may be chargeable, and subject to the provisions of this Chapter and any regulations made under it, a duty of excise, to be known as tobacco products tax, shall be charged, levied and paid at the rates specified in *Schedule 2* on all tobacco products—

- (a) produced in the State, or
- (b) imported into the State.

Liability and payment.

73.—(1) Liability for tobacco products tax arises at the time tobacco products are released for consumption.

(2) Payment of tobacco products tax in respect of specified tobacco products shall be by means of the purchase of tax stamps issued by the Commissioners except where the Commissioners, in exceptional circumstances, permit payment to be subject to the provisions governing other tobacco products.

(3) Subject to *section 74*, the Commissioners shall only issue tax stamps on payment of an amount equivalent to the amount of tobacco products tax represented by such tax stamps.

(4) The Minister may, by order, extend the provisions of this Chapter which relate to tax stamps and specified tobacco products to other tobacco products to which this Chapter relates.

Deferment of payment.

74.—The Commissioners may, subject to compliance with such conditions for securing payment of tobacco products tax as they may think fit to impose—

- (a) in respect of specified tobacco products where the issue of tax stamps arises in a period beginning on and including the fourth last day of a month up to and including the

fifth last day of the subsequent month permit, subject to *paragraph (b)*, payment of the amount referred to in *section 73(3)* or tobacco products tax to be deferred to a day not later than the last day of the second month following that subsequent month,

- (b) in respect of specified tobacco products where such issue arises during the period beginning on and including 28 October in any year and ending on and including 27 December in that year, permit payment of such amount or tobacco products tax arising up to and including 30 November in that year and half the total of such amount and such tobacco products tax arising in the said period thereafter, as determined by the Commissioners, to be paid not later than 31 December in that year, and
- (c) in respect of other tobacco products:
 - (i) other than on the last day in the month of December, where tobacco products tax liability arises on a day in that month but such day is not a Saturday or a Sunday, permit payment of tobacco products tax to be deferred, as to one half, as determined by the Commissioners, of the tax to a day not later than the last day of that month and, as to the remainder of the tax, to a day not later than the last day of the next following month of January, and
 - (ii) in any other case, permit payment of the tobacco products tax to be deferred to a day not later than the last day of the month immediately following that in which liability arises.

75.—(1) Subject to *subsection (2)*, where a rate of tobacco products tax is related to the price at which a tobacco product is sold by retail, that price shall be taken for the purposes of this Chapter to be the price at which the product and any packaging and any article or token, accompanying the product, are sold by retail.

Ascertainment of retail prices of tobacco products.

(2) A manufacturer or importer of cigarettes shall make a declaration in writing to the Commissioners of the price at which such manufacturer or importer will recommend that such cigarettes are to be sold by retail in respect of each category of quantity that the cigarettes are packaged for retail sale, and the price so declared shall, for the purposes of this Chapter, be taken to be the price at which such cigarettes are sold by retail.

(3) In the case of cigarettes to which *subsection (2)* relates but in relation to which a price does not stand declared for the time being in the manner specified in that subsection or a price so stands that is, in the opinion of the Commissioners, lower by an unreasonably large amount than the price at which cigarettes of a similar type and character are being sold at the time the tax is being charged on the cigarettes, the Commissioners may determine a price for the purposes of this Chapter and the price at which they are sold by retail shall be taken, for the purposes of this Chapter to be such price as stands so determined for the time being.

(4) (a) A manufacturer or importer of tobacco products shall not recommend, expressly or by implication, that cigarettes the price of which stands declared, but not determined

for the time being under *subsection (3)* be sold by retail at a price higher than that so standing.

- (b) A manufacturer or importer of tobacco products shall not recommend, expressly or by implication, that cigarettes the price of which stands determined for the time being under *subsection (3)* be sold by retail at a price higher than that so standing.

Affixing of tax stamps.

76.—(1) With the exception of—

- (a) specified tobacco products to which section 104(2) of the Finance Act 2001 applies,
- (b) specified tobacco products being held or delivered under a suspension arrangement,
- (c) specified tobacco products where the payment of tax is permitted under *section 73(2)* to be subject to the provisions governing tobacco products other than specified tobacco products,
- (d) tobacco products which are not specified tobacco products,

specified tobacco products intended for sale, delivery or consumption in the State shall have affixed by the manufacturer to each pack in which the tobacco products are intended to be put up for retail sale, a tax stamp in respect of which the tax appropriate to the pack of such tobacco products has been paid.

- (2) (a) Tax stamps affixed in the State to packs of specified tobacco products shall be affixed in a tax warehouse and in such manner as the Commissioners may prescribe in regulations made under *section 83*.
- (b) Where packs of specified tobacco products are brought into the State with tax stamps affixed they shall be affixed in such manner as the Commissioners may prescribe in regulations made under *section 83*.

Repayment or remission.

77.—(1) The Commissioners may, subject to compliance with such conditions (if any) as they consider appropriate to impose, repay or remit tobacco products tax or an amount paid or due on the issue of tax stamps in respect of—

- (a) tobacco products destroyed under administrative supervision,
- (b) denatured tobacco products used for industrial or horticultural purposes,
- (c) tobacco products remanufactured by the manufacturer,
- (d) tobacco products which have been shown to their satisfaction to have been intended solely for scientific tests or for tests connected with product quality,

- (e) tax stamps which have been shown to their satisfaction to either have been destroyed or to be damaged or otherwise unsuitable for the use for which they were issued, and
 - (f) tax stamps which have been shown to their satisfaction to have been affixed to specified tobacco products which have been the subject of an irregularity, within the meaning of Article 20 of Council Directive No. 92/12/EEC of 25 February 1992¹, in another Member State and where excise duty on such products has been paid in another Member State.
- (2) The amount of any repayment under *subsection (1)(c)* on tobacco products returned to a tax warehouse shall not exceed the amount of tobacco products tax which would be chargeable on such tobacco products at the time they are returned to the warehouse.
- (3) (a) Claims for repayment under this section shall be in such form as the Commissioners may direct and shall be in respect of qualifying events concerning tobacco products or tax stamps occurring within a period of 3 calendar months.
- (b) A repayment may not be made unless the claim is made within 6 months following the end of each such period of 3 calendar months or within such longer period as the Commissioners may, in any particular case, allow.

78.—(1) Except where *subsection (4)* or *(5)* applies, it is an offence under this subsection for any person to contravene or fail to comply with any provision of this Chapter or any regulation made under *section 83* or any condition imposed under this Chapter or under such regulation in relation to such provision. Offences in relation to tax stamps.

(2) Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under *subsection (1)* is liable on summary conviction to a fine of €1,900.

(3) With the exception of cases where payment of tobacco products tax is permitted under *section 73(2)* to be subject to the provisions governing other tobacco products it is an offence under this subsection to invite an offer to treat for, offer for sale, keep for sale or delivery, or be in the process of delivering specified tobacco products otherwise than in a pack or packs to which a tax stamp, by means of which tobacco products tax at the appropriate rate has been levied or paid in respect of such tobacco products, is affixed to each such pack in the prescribed manner unless such invitation, offer, sale or delivery takes place under a suspension arrangement.

(4) It is an offence under this subsection to counterfeit, alter or otherwise make fraudulent use of, or to be knowingly concerned in holding, selling or dealing in a counterfeited or altered tax stamp.

(5) Without prejudice to any other penalty to which a person may be liable, a person convicted under *subsection (3)* or *(4)* is liable—

- (a) on summary conviction, to a fine of €1,900 or, at the discretion of the Court, to imprisonment for a term not exceeding 12 months or to both, or

¹OJ No. L76 of 23.3.1992, p.1

- (b) on conviction on indictment, to a fine not exceeding €12,695 or, at the discretion of the Court, to imprisonment for a term not exceeding 5 years or to both.

(6) In a prosecution for an offence under *subsection (3)*, it shall be presumed until the contrary is shown—

- (a) that tobacco products tax had not been paid in respect of any pack or packs which do not have a tax stamp affixed thereto,
- (b) that in respect of any pack or packs which do not have a tax stamp affixed thereto—
- (i) section 104(2), of the Finance Act 2001 does not apply,
- (ii) the pack or packs are not being held under a suspension arrangement, and
- (iii) the Commissioners have not permitted, under *section 73(2)*, payment of the tax to be subject to the provisions governing tobacco products other than specified tobacco products,
- (c) in the case of a prosecution for keeping for sale or delivery, that the tobacco products concerned were so kept and were not kept for private use,
- (d) that a thing is a cigarette or other tobacco product where, in the opinion of an officer of the Commissioners, it is contained in any form of packaging which, by virtue of any wording thereon, its shape and other characteristics, is indicative of the contents consisting of one or more than one cigarette or of another tobacco product and the officer so states that opinion.

(7) Any tobacco products or stamps in respect of which an offence has been committed under this section, any goods packed with or used to conceal such tobacco products and any vehicle or conveyance in which such tobacco products are found in, on or in any manner attached to, are liable to forfeiture.

(8) Where an offence under this section is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of an offence and may be proceeded against and punished as if guilty of the first-mentioned offence.

Retail price
(offence and
penalty).

79.—(1) A person shall not invite an offer to treat, offer for sale or sell by retail any packet of cigarettes at a price which is higher than—

- (a) in the case of cigarettes sold or to be sold by means of a coin-operated vending machine, the nearest multiple of 5 cent to the price, or
- (b) in all other cases, the price,

being the price on the basis of which that part of tobacco products tax which is chargeable by reference to the price at which the cigarettes are sold by retail has been charged on the cigarettes in question.

(2) Any person who so invites, offers or sells is guilty of an offence and is liable on summary conviction to a fine of €60 in respect of each such offence.

80.—(1) Subject to *subsection (2)* the Commissioners may require a manufacturer of tobacco products to account to them to their satisfaction for all the materials received by such manufacturer and, in the case of materials not so accounted for, they may require such manufacturer to pay at the appropriate rate or rates tobacco products tax on such quantities of such tobacco products as, in their opinion, might reasonably be expected to be manufactured from those materials. Account of materials.

(2) The Commissioners may, subject to compliance with such conditions as they may think fit to impose, waive, in relation to materials shown to their satisfaction to have been destroyed or otherwise disposed of in a manner approved of by them, tobacco products tax which, would be otherwise payable under this section.

81.—(1) The enactments set out in *Parts 1* and *2* of *Schedule 3* (in this Chapter referred to as the “repealed enactments”) are repealed in the case of those set out in *Part 1*, and revoked in the case of those set out in *Part 2*, to the extent mentioned in the third column of those *Parts* opposite the reference to the enactment concerned. Repeals, revocations and savings.

(2) If and in so far as a provision of this Chapter operates, as from the day appointed under *section 86*, in substitution for a provision of the repealed enactments, any order or regulation made or having effect as if made, and any thing done or having effect as if done, under the substituted provision before that day shall be treated as from that day as if it were an order or regulation made or a thing done under such provision of this Chapter.

82.—(1) (a) Subject to *paragraph (b)* and to *subsection (2)*, the provisions of the Customs Acts and of any instrument relating to duties of customs made under statute and not otherwise applied by this Chapter apply, with any necessary modifications, in relation to tobacco products tax imposed by *section 72* on tobacco products imported into the State as they apply in relation to duties of customs. General provisions and structure.

(b) Where there is a provision in this Chapter corresponding to a provision of the Customs Acts or of any instrument relating to duties of customs made under statute, the provision of the Customs Acts or of any such instrument does not apply in relation to tobacco products tax.

(2) (a) Subject to *paragraph (b)*, the provisions of the statutes which relate to the duties of excise and the management of those duties and of any instrument relating to the duties of excise made under statute and not otherwise applied by this Chapter apply, with any necessary modifications, in relation to tobacco

products tax imposed by *section 72* on tobacco products produced in the State or exported to or imported from another Member State, as they apply to duties of excise.

- (b) Where there is a provision in this Chapter corresponding to a provision of the statutes which relate to the duties of excise or of any other instrument relating to the duties of excise made under statute, the provision of those statutes or of any such instrument does not apply in relation to tobacco products tax.

(3) This Chapter shall be construed—

- (a) so far as it relates to tobacco products tax on such products made in the State or exported to or imported from a Member State, together with the statutes which relate to the duties of excise and the management of those duties and any instruments relating to the duties of excise and the management of those duties made under statute,
- (b) so far as it relates to tobacco products tax on imported products, together with the Customs Acts and any instrument relating to duties of customs made under statute.

Regulations.

83.—(1) The Commissioners may make regulations for the purpose of giving full effect to the provisions of this Chapter.

(2) In particular, but without prejudice to the generality of *subsection (1)*, regulations under this section may—

- (a) govern the importation, production, treatment, storage and removal from storage of materials and tobacco products,
- (b) prescribe the method of charging, securing and collecting tobacco products tax,
- (c) require a manufacturer of tobacco products and a person who imports materials or tobacco products to keep in a specified manner, and to preserve for a specified period, such accounts and records relating to the purchase, receipt, sale, disposal or manufacture of materials and tobacco products as may be specified and to keep for a specified period any other books or documents relating to any of the matters aforesaid and to allow an officer to inspect and take copies of such accounts and records and of any other books or documents kept by the manufacturer relating to any of the matters aforesaid,
- (d) provide for the approval by the Commissioners of premises to be used for the receipt, storage, manufacture or delivery of materials or tobacco products and for compliance, as respects the premises, by the occupier with such conditions as may be specified in writing by an officer,
- (e) require a manufacturer of tobacco products to furnish at such times and in such form as may be specified returns in relation to such matters as may be specified,

- (f) where a rate of tobacco products tax is related to the price at which a tobacco product is sold by retail, require manufacturers and importers of tobacco products to supply such information relating to that price, and changes and proposed changes in that price,
 - (g) prescribe the form of tax stamps to be used to collect tobacco products tax on specified tobacco products,
 - (h) govern the printing, transportation, storage, sale, release and supply of tax stamps,
 - (i) prescribe the manner in which tax stamps are to be affixed,
 - (j) specify the records to be kept by tobacco manufacturers, importers, authorised warehousekeepers and tax representatives in relation to tax stamps which are either or both obtained and held by each one of them.
- (3) Regulations made under this section may make different provisions for—
- (a) different tobacco products and for different types of each product, and
 - (b) persons, premises or products of different classes or descriptions, for different circumstances and for different cases.

84.—(1) The provisions of this Chapter shall apply subject to so much of any Act which contains provisions relating to or affecting excise duties as—

Continuity.

- (a) is not repealed by this Chapter, and
 - (b) would have operated in relation to these duties if this Chapter had not been substituted for the repealed enactments.
- (2) The Commissioners shall have all the jurisdictions, powers and duties in relation to tobacco products tax which they had in relation to the corresponding excise duty.
- (3) The continuity of the operation of the law relating to excise duty on tobacco products shall not be affected by the substitution of this Chapter for the repealed enactments.
- (4) Any reference, whether express or implied, in any enactment (including this Chapter) or document—
- (a) to any provision of this Chapter, or
 - (b) to things done or to be done under or for the purpose of any provision of this Chapter,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments applied or had applied, a reference to, or, as the case may be, to things done or to be done under or for the purposes of, that corresponding provision.

(5) Any reference, whether express or implied, in any enactment or document (including the repealed enactments and enactments passed and documents made)—

(a) to any provision of the repealed enactments, or

(b) to things done or to be done under or for the purposes of any provision of the repealed enactments,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Chapter applies, a reference to, or as the case may be, to things done or deemed to be done or to be done under or, for the purposes of, that corresponding provision.

(6) Every officer who immediately before the commencement of this provision, stood authorised or nominated for the purposes of any provision of the repealed enactments is, upon such commencement, deemed to be authorised or nominated, as the case may be, for the purposes of the corresponding provision of this Chapter.

(7) Every instrument, document, authorisation and letter or notice of appointment made or issued under the repealed enactments and in force immediately before the commencement of this provision continues, upon such commencement, in force as if made or issued under this Chapter.

Care and management.

85.—Tobacco products tax imposed by *section 72* is placed under the care and management of the Commissioners.

Commencement.

86.—This Chapter comes into operation on such day as the Minister may appoint by order, and different days may be so appointed for different provisions or for different purposes.

CHAPTER 4

Miscellaneous Excise and Customs

Amendment of Finance (Excise Duty on Tobacco Products) Act 1977.

87.—(1) The Finance (Excise Duty on Tobacco Products) Act 1977 is amended—

(a) in section 2A—

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

“(2) Liability for duty imposed by section 2 arises at the time the tobacco products are released for consumption.”,

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

“(3) Subject to section 3(3) of this Act, the Revenue Commissioners shall issue tax stamps only on payment of an amount equivalent to the amount of duty represented by such stamps.”,

and

(iii) by deleting subsection (4),

and

(b) in section 3—

(i) in subsection (1) by inserting “an amount paid or due in relation to the issue of tax stamps in respect of, or” after “repay or remit”,

(ii) by substituting the following for subsection (1A):

“(1A) The Revenue Commissioners may, subject to compliance with such conditions (if any) as they consider appropriate to impose, repay or remit duty or an amount paid or due on the issue of tax stamps—

(a) where it is shown to their satisfaction that the tax stamps have been destroyed or are damaged or otherwise unsuitable for the use for which they were issued, or

(b) where it is shown to their satisfaction that the stamps have been affixed to tobacco products which have been the subject of an irregularity, within the meaning of Article 20 of Council Directive No. 92/12/EEC of 25 February 1992¹, in another Member State and where excise duty on such products has been paid in another Member State.”,

and

(iii) by substituting the following for subsection (3)(a):

“(a) in respect of cigarettes and such other types of tobacco products as may be specified by order made under section 2A(5) where the issue of tax stamps arises in a period beginning on and including the fourth last day of a month up to and including the fifth last day of the subsequent month permit, subject to paragraph (aa), payment of the amount referred to in section 2A(3), or duty, to be deferred to a day not later than the last day of the second month following the subsequent month,

(aa) in respect of cigarettes and such other types of tobacco products as may be specified by order made under section 2A(5) where the issue of stamps arises during the period beginning on and including 28 October in any year and ending on and including 27 December in that year permit payment of an amount referred to in section 2A(3), or duty, arising up to and including 30 November in that year and half the total of such amount and such duty arising in the said period thereafter, as determined by

¹OJ No. L76 of 23.3.1992, p.1

the Commissioners, to be paid not later than 31 December in that year, and”.

(2) This section comes into operation on such day as the Minister for Finance may appoint by order.

Amendment of section 96 (interpretation) of Finance Act 2001.

88.—Section 96 of the Finance Act 2001 is amended in subsection (1)—

(a) by substituting the following for the definition of “mineral oil”:

“ ‘mineral oil’ has the same meaning as it has in paragraph (c) of section 97(1);”,

(b) by inserting the following definition after the definition of “prescribed”:

“ ‘prohibited goods’ has the same meaning as it has in either—

(a) section 94 of the Finance Act 1999, or

(b) section 73 (as amended by the *Finance Act 2005*) of the Finance Act 2003;”,

(c) by substituting the following definition for the definition of “vehicle”:

“ ‘vehicle’ means a mechanically propelled vehicle or any other conveyance, and includes any container, trailer, tank or any other thing, which—

(a) is or may be used for the storage of goods in the course of carriage, and

(b) is designed or constructed to be placed on, in or attached to any such vehicle or other conveyance;”,

(d) by substituting the following for the definition of “wine”:

“ ‘wine’ has the same meaning as it has in section 73 of the Finance Act 2003.”,

and

(e) from such time as the Minister for Finance may appoint by order under *section 86* for the coming into operation of *section 71*, by substituting the following for the definition of “tobacco products”:

“ ‘tobacco products’ has the same meaning as it has in paragraph (b) of section 97(1);”.

Amendment of section 97 (excisable products (Part 2)) of Finance Act 2001.

89.—Section 97 of the Finance Act 2001 is amended in subsection (1)—

(a) by substituting the following for paragraphs (a) and (b):

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“(a) alcohol products chargeable with alcohol products tax under section 75 of the Finance Act 2003;”,

and

(b) from such time as the Minister for Finance may appoint by order under *section 86* for the coming into operation of *section 71*, by substituting the following for paragraphs (c) and (d):

“(c) tobacco products chargeable with tobacco products tax under *section 72* of the *Finance Act 2005*;

(d) mineral oil chargeable with mineral oil tax under section 95 of the Finance Act 1999.”.

90.—Section 103 of the Finance Act 2001 is amended—

Amendment of section 103 (payment) of Finance Act 2001.

(a) by inserting the following subsection after subsection (1):

“(1A) Every sum due in respect of excise duty, every fine, penalty or forfeiture incurred in connection with excise duty and every amount of interest payable under this section is deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and shall be payable to the Commissioners and may (without prejudice to any other mode of recovery of such sum, fine, penalty, forfeiture or amount) be sued for and recovered by action, or other appropriate proceedings, at the suit of the Attorney General in any court of competent jurisdiction.”,

and

(b) by deleting subsection (2)(b) (inserted by the Finance Act 2003).

91.—Section 109 of the Finance Act 2001, is amended by inserting the following after subsection (7):

Amendment of section 109 (warehousing) of Finance Act 2001.

“(8) Excisable goods shall not be considered as having departed from a suspension arrangement until they have been removed from the warehouse where they are held under such an arrangement.

(9) This section does not apply to coal within the meaning of section 94 of the Finance Act 1999.”.

92.—Section 110 of the Finance Act 2001 is amended by substituting the following for subsection (1):

Amendment of section 110 (scope (Chapter 2)) of Finance Act 2001.

“(1) This Chapter shall apply to all excisable products except that, in the case of mineral oil, it shall apply only to products specified in paragraph (1) of Article 20 of Council Directive No. 2003/96/EC of 27 October 2003¹ or which have been the subject, under paragraph (2) of that article, of a decision to make such

¹OJ No. L283 of 31.10.2003, p. 51

products subject to the control and movement provisions of the Directive.”.

Amendment of Part 2 (general excise law) of Finance Act 2001.

93.—Part 2 of the Finance Act 2001 is amended from such time as the Minister for Finance may appoint by order under *section 86* for the coming into operation of *section 78*—

(a) by substituting “*section 78* of the *Finance Act 2005*” for “*section 10A* (inserted by the Finance Act, 1994) of the Finance (Excise Duty on Tobacco Products) Act, 1977,” in sections 138 and 141(2),

(b) by substituting “*section 78* of the *Finance Act 2005*,” for “*section 10A* (inserted by the Finance Act, 1994) of the Finance (Excise Duty on Tobacco Products) Act, 1977,” in each place where it occurs in sections 139(2)(a), 139(2)(b)(i) and 140(2), and

(c) in section 139(2)(b)(ii) by substituting “*section 78*” for “*section 10A*”.

Amendment of section 144 (power to deal with seizures, before and after condemnation) of Finance Act 2001.

94.—Section 144 of the Finance Act 2001, is amended in subsection (3)(b) by inserting “or hazardous” after “perishable”.

Miscellaneous excise repeals.

95.—The enactments set out in *Schedule 4* are repealed to the extent mentioned in the third column of that Schedule opposite the reference to the enactment concerned.

Amendment of section 2 of Customs and Excise (Miscellaneous Provisions) Act 1988.

96.—Section 2 of the Customs and Excise (Miscellaneous Provisions) Act 1988 is amended by inserting the following after subsection (8):

“(9) In this section ‘vehicle’ means a mechanically propelled vehicle or any other conveyance, and includes any container, trailer, tank or any other thing, which—

(a) is or may be used for the storage of goods in the course of carriage, and

(b) is designed or constructed to be placed on, in or attached to any such vehicle or other conveyance.”.

Amendment of section 135C (remission or repayment in respect of vehicle registration tax on certain hybrid electric vehicles) of Finance Act 1992.

97.—(1) Section 135C (inserted by section 168 of the Finance Act 2001) of the Finance Act 1992 is amended in subsection (1) by substituting “31 December 2006” for “31 December 2004” (inserted by section 105 of the Finance Act 2003).

(2) This section applies as and from 1 January 2005.

PART 3

VALUE-ADDED TAX

Interpretation (*Part 3*).

98.—In this Part—

“Act of 2004” means the Finance Act 2004;

“Principal Act” means the Value-Added Tax Act 1972.

99.—Section 3 of the Principal Act is amended in subsection (5)(b) by substituting the following for subparagraph (iii)—

Amendment of section 3 (supply of goods) of Principal Act.

“(iii) being the transfer to a taxable person of a totality of assets, or part thereof, of a business even if that business or part thereof had ceased trading, where those transferred assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis.”.

100.—(1) Section 4 of the Principal Act is amended—

Amendment of section 4 (special provisions in relation to the supply of immovable goods) of Principal Act.

(a) in subsection (3)(a), by substituting “Subject to paragraphs (aa) and (b)” for “Subject to paragraph (b)”,

(b) by inserting the following after paragraph (a) of subsection (3):

“(aa) Where a person having an interest in immovable goods to which this section applies surrenders possession of those goods or of any part thereof in such circumstances that the surrender does not constitute a supply of the goods for the purposes of subsection (2), the provisions of paragraph (a) shall not apply when this paragraph and paragraph (ab) take effect pursuant to section 100(2) of the Finance Act 2005.

(ab) Subject to paragraph (b), where a person having an interest in immovable goods to which this section applies surrenders possession of those goods or any part thereof in such circumstances that the surrender does not constitute a supply of the goods for the purposes of subsection (2), that person shall be liable for an amount, in this paragraph referred to as a deductibility adjustment, which shall be payable as if it were tax due by that person in accordance with section 19 for the taxable period in which the surrender occurred, and that deductibility adjustment shall be calculated in accordance with the following formula:

$$\frac{T \times (Y-N)}{Y}$$

where—

T is the amount of tax which the person who surrenders possession of the goods was entitled to deduct in accordance with section 12 in respect of that person’s acquisition of the interest in and development of the goods the possession of which is being surrendered,

Y is 20 or, if the interest when it was acquired by the person who surrenders possession of the goods was for a period of less than 20 years, the number of full years in that interest, and

N is the number of full years since that person acquired the interest in the immovable goods being surrendered or, if the goods were developed since that interest was acquired, the number of full years since the most recent development:

but if that N is greater than that Y, such deductibility adjustment shall be deemed to be nil.”,

(c) by substituting the following for subsection (6) inserted by the Act of 2004:

“(6) (a) Tax shall not be charged on the supply of immovable goods—

(i) which were used in such circumstances so that the person making the supply had no right to deduction under section 12 in relation to tax borne or paid on the acquisition or development of those goods, or

(ii) which have been occupied before the specified day and had not been developed between that date and the date of the supply.

(b) Paragraph (a) does not apply to a supply of immovable goods, being goods—

(i) to which subsection 5 applies, or

(ii) which were acquired by the person making the supply as a result of a transfer in accordance with section 3(5)(b)(iii) and if tax had been chargeable on such transfer the person making the supply would have had a right to deduction under section 12 in relation to such tax.”,

(d) by substituting the following for subsection (8) (inserted by the Finance Act 1997), and subsection (9) (inserted by the Finance Act 1998):

“(8) (a) Where tax is chargeable in relation to a supply of immovable goods which is a surrender of an interest in immovable goods or an assignment of an interest in immovable goods to—

(i) a taxable person,

(ii) a Department of State or a local authority, or

(iii) a person who supplies immovable goods of a kind referred to in paragraph (a) of the definition of ‘exempted activity’ in section 1 or services of a kind referred to in paragraphs (i), (iv), (ix), (xi), (xia), (xiii)

and (xiv) of the First Schedule, in the course or furtherance of business,

then, the person to whom those goods are supplied shall be accountable for and liable to pay the tax chargeable on that supply and the said tax shall be payable as if it were tax due by that person in accordance with section 19 for the taxable period within which the supply to the person took place and for these purposes the person to whom the goods are supplied shall be a taxable person and the person who made the surrender or assignment shall not be accountable for or liable to pay the said tax.

- (b) Notwithstanding subsection (2A)(a) of section 8, if the supply referred to in paragraph (a) is to a Department of State or a local authority, that Department of State or local authority shall be accountable for and liable to pay the tax referred to in that paragraph.
- (c) (i) A surrender or assignment of immovable goods referred to in paragraph (a) shall be treated as a supply of goods made by the person to whom the goods are supplied.
- (ii) Upon the surrender or assignment of immovable goods referred to in subparagraph (i), the person who makes the surrender or assignment shall issue a document to the person to whom the surrender or assignment is made indicating the value of the interest being surrendered or assigned and the amount of tax chargeable on that surrender or assignment.
- (iii) For the purposes of section 12, that section shall apply as if this paragraph had not been enacted.
- (9) (a) Where an interest in immovable goods is created in such circumstances that a reversion on that interest (hereafter referred to in this subsection as a 'reversionary interest') is created and retained, then any subsequent disposal to another person of that reversionary interest or of an interest derived entirely therefrom shall be deemed to be a supply of immovable goods to which subsection (6) applies, provided that, since the date the first-mentioned interest was created, those goods have not been developed by, on behalf of, or to the benefit of, the person making such subsequent disposal: but

the provisions of this subsection shall not be construed as applying to a disposal of an interest which includes an interval.

- (b) The Revenue Commissioners may make regulations specifying the circumstances or conditions under which development work on immovable goods is not treated, for the purposes of this subsection, as being on behalf of or to the benefit of a person.”.

(2) Paragraphs (a) and (b) of subsection (1) shall take effect as on and from such day as the Minister for Finance may, by order, appoint.

Amendment of section 5 (supply of services) of Principal Act.

101.—Section 5 of the Principal Act is amended—

(a) in subsection (6)—

(i) by inserting the following after paragraph (ee):

“(*eea*) Where money transfer services are provided to a person in the State and are effectively used and enjoyed in the State, the place of supply of intermediary services provided in respect of or in relation to such money transfer services to a principal established outside the Community, shall be deemed, for the purposes of this Act, to be the State.”,

and

(ii) in paragraph (*eee*) (inserted by the Finance Act 2003) by deleting “and has not also an establishment in the Community” after “an establishment outside the Community”,

and

(b) in subsection (8)(a) by inserting “or in connection with a transfer of ownership of goods in accordance with section 3(5)(b)(iii)” after “had ceased trading.”.

Amendment of section 10 (amount on which tax is chargeable) of Principal Act.

102.—Section 10 of the Principal Act is amended in subsection (9) by inserting the following subparagraphs after the proviso to subparagraph (b):

“(c) Where the Revenue Commissioners wish to ascertain the open market price of an interest in immovable goods, they may authorise a person to inspect the immovable goods and to report to them the open market price of such interest in those goods for the purposes of this Act, and a person having custody or possession of those goods shall permit the person so authorised to inspect the goods at such reasonable times as the Revenue Commissioners consider necessary.

- (d) Where the Revenue Commissioners require a valuation to be made by a person named by them, the costs of such valuation shall be defrayed by the Commissioners.”.

103.—With effect from 1 January 2005, section 11 of the Principal Act is amended in subsection (1)(f) (inserted by the Finance Act 1992) by substituting “4.8 per cent” for “4.4 per cent” (inserted by the Act of 2004).

Amendment of section 11 (rates of tax) of Principal Act.

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

Amendment of section 12 (deduction for tax borne or paid) of Principal Act.

(a) in subsection (1)(a)—

- (i) by substituting the following for subparagraph (iiic) (including the proviso to that subparagraph):

“(iiic) the tax chargeable during the period, being tax for which the taxable person is liable by virtue of section 4(8), in respect of a supply to that person of immovable goods,”,

and

- (ii) by deleting subparagraph (iiid),

and

(b) by inserting the following after subsection (4)—

“(5) At the time when a person disposes of an interest in immovable goods the possession of which that person had previously surrendered in circumstances where the person had paid a deductibility adjustment in accordance with section 4(3)(ab), that person is entitled to increase the amount of tax deductible for the taxable period within which the disposal is made, by an amount calculated in accordance with the following formula:

$$\frac{T \times (Y-N)}{Y}$$

where—

T is the amount of tax which the person who previously surrendered possession of the goods was entitled to deduct in accordance with this section, prior to that surrender of possession, in respect of that person’s acquisition of the interest in and the development of those goods,

Y is 20 or, if the interest when it was acquired by the person who surrendered possession of the goods was for a period of less than 20 years, the number of full years in that interest when it was so acquired, and

N is the number of full years since that person acquired the interest in the immovable goods being disposed of or, if the goods were developed since that interest was acquired, but before the deductibility adjustment in

accordance with section 4(3)(ab) was payable, the number of full years since that development:

but if that N is greater than that Y, such amount shall be deemed to be nil.”.

(2) Paragraph (b) of subsection (1) shall take effect as on and from such a day as the Minister for Finance may, by order, appoint.

Amendment of section 12A (special provisions for tax invoiced by flat-rate farmers) of Principal Act.

105.—With effect from 1 January 2005, section 12A (inserted by the Value-Added Tax (Amendment) Act 1978) of the Principal Act is amended in subsection (1) by substituting “4.8 per cent” for “4.4 per cent” (inserted by the Act of 2004).

Amendment of section 19 (tax due and payable) of Principal Act.

106.—Section 19 of the Principal Act is amended—

(a) in subsection (1)—

(i) by deleting “and” at the end of paragraph (b), and

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

“(bb) in the case of continuous supplies being supplies of telecommunications services, electricity, or gas which has the meaning assigned to it in paragraph (i)(c) of the Sixth Schedule, for which a statement of account issues periodically, supplied to a person other than a person to whom an invoice is required under section 17 to be issued, at the time of issue of the statement of account in respect of those supplies, and in this paragraph ‘statement of account’ means a balancing statement, or a demand for payment which issues at least once every 3 months, and”.

and

(b) in subsection (2) by substituting “paragraph (a), (b) or (bb)” for “paragraph (a) or (b)”.

Amendment of section 19A (statement of intra-Community supplies) of Principal Act.

107.—Section 19A (inserted by the Finance Act 1992) of the Principal Act is amended by substituting the following for subsection (6):

“(6) In this section ‘intra-Community supplies’ means supplies of goods to a person registered for value-added tax in another Member State.”.

Amendment of section 24 (recovery of tax) of Principal Act.

108.—(1) Section 24 of the Principal Act is amended in subsection (1)—

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

“(a) Without prejudice to any other mode of recovery, the provisions of any enactment relating

to the recovery of income tax and the provisions of any rule of court so relating shall, subject to any necessary modifications, apply to the recovery of any tax payable in accordance with this Act and the regulations thereunder as they apply in relation to the recovery of income tax.”,

and

(b) by deleting paragraph (c).

(2) Notwithstanding *subsection (1)(b)* regulations made under the Principal Act and to which section 24(1)(c) of that Act related shall continue in force and may be amended or revoked accordingly.

109.—Section 26 of the Principal Act is amended by inserting the following subsection after subsection (3A):

Amendment of section 26 (penalties generally) of Principal Act.

“(3AA) Where a person is authorised in accordance with section 10(9)(c) to inspect any immovable goods for the purpose of reporting to the Revenue Commissioners the open market price of an interest in those goods and the person having custody or possession of those goods prevents such inspection or obstructs the person so authorised in the performance of his or her functions in relation to the inspection, the person so having custody or possession shall be liable to a penalty of €1,265.”.

110.—Section 27 of the Principal Act is amended—

Amendment of section 27 (fraudulent returns, etc.) of Principal Act.

(a) in subsection (1)(b) (inserted by the Finance Act 1992) by deleting “, or in the case of fraud, twice the amount”,

(b) in subsection (1A)(b) (inserted by the Finance Act 2003) by deleting “, or in the case of fraud twice the amount”,

(c) in subsection (5)(ii) (inserted by the Finance Act 1973) by deleting “, or, in the case of fraud, twice the amount”.

111.—Section 32 of the Principal Act is amended in subsection (1)—

Amendment of section 32 (regulations) of Principal Act.

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

“(ta) specifying the circumstances or conditions under which development work on immovable goods is not treated as being on behalf of, or to the benefit of, a person;”,

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

“(www) the circumstances, terms and conditions under which a letting of immovable goods constitutes a letting in the short-term guest sector or holiday sector, or under which accommodation is or is not holiday accommodation (within the meaning of paragraph (xiii) of the Sixth Schedule);”,

and

- (c) in subsection (2A) by substituting “paragraph (w), (ww) or (www) of subsection (1)” for “subsection (1)(w) or (1)(ww)”.

Amendment of
First Schedule to
Principal Act.

112.—The First Schedule (inserted by the Value-Added Tax (Amendment) Act 1978) to the Principal Act is amended—

- (a) by substituting the following for paragraph (xv) (as inserted by the Finance Act 1980):

“(xv) the acceptance of bets subject to excise duty imposed by section 67 of the Finance Act 2002 and of bets exempted from excise duty by section 68 of the Finance Act 2002;”

- (b) by deleting paragraph (xva), and

- (c) by inserting in paragraph (xxiv) “a supply of immovable goods to which section 3(1)(c) or 4 relates, or” after “supply of goods other than”.

Amendment of
Sixth Schedule to
Principal Act.

113.—The Sixth Schedule (inserted by the Finance Act 1992) to the Principal Act is amended—

- (a) in paragraph (iv)—

(i) by inserting “(other than bread as defined in subparagraph (d), of paragraph (xii) of the Second Schedule)” after “the supply of food”,

(ii) by substituting in subparagraph (a) “heated, enabling” for “heated for the purpose of enabling”,

(iii) by substituting in subparagraph (b) “heated after cooking, enabling” for “heated after cooking for the purpose of enabling”,

(iv) by deleting in subparagraph (c) “for the purpose of”, and

(v) by substituting “at the time it is provided to the customer” for “at the time of supply”,

and

- (b) with effect from 1 July 2005, by substituting the following for paragraph (xiii):

“(xiii) subject to and in accordance with regulations, if any—

(a) the letting of immovable goods (other than in the course of the provision of facilities of the kind specified in paragraph (viiia))—

(I) in the hotel or guesthouse sector,
or

(II) being a letting of all or part of a house, apartment or other similar establishment when that letting is provided in the short-term guest sector or holiday sector, or

(III) in a caravan park, camping site or other similar establishment,

or

(b) the provision of holiday accommodation;”.

PART 4

STAMP DUTIES

114.—In this Part “Principal Act” means the Stamp Duties Consolidation Act 1999. Interpretation (*Part 4*).

115.—(1) Section 8 of the Principal Act is amended in paragraph (ii) of subsection (3) by deleting “, or in the case of fraud, twice the amount;”.

Amendment of section 8 (facts and circumstances affecting duty to be set forth in instruments, etc.) of Principal Act.

(2) This section has effect in relation to instruments executed or statements delivered to the Commissioners on or after the date of the passing of this Act.

116.—(1) Section 40 of the Principal Act is amended by substituting the following for subsection (2):

Amendment of section 40 (calculation of ad valorem duty on stock and securities) of Principal Act.

“(2) Where the consideration, or any part of the consideration, for a conveyance on sale of any property, consists of any security not being a marketable security, the conveyance shall be charged with ad valorem duty as a conveyance on sale of that property for a consideration equal to the value of that property on the date of execution of the conveyance.

(3) For the purposes of subsection (2) ‘property’ includes any estate or interest in property.”.

(2) This section applies as respects instruments executed on or after 2 March 2005.

117.—(1) The Principal Act is amended by inserting the following after section 45: Aggregation of transactions.

“45A.—(1) In this section ‘dwellinghouse’ includes apartment.

(2) Where an existing interest or, as the case may be, existing interests, in a dwellinghouse are conveyed or transferred by more than one instrument, executed within a period of 12 months, subsection (3) shall apply to each of those instruments which operate as a conveyance or transfer, whether on sale or as a voluntary disposition inter vivos.

(3) An instrument to which this subsection applies shall be deemed for the purposes of the Heading ‘CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance’ in Schedule 1 to form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to residential property, or which would be so attributable if the contents of residential property were considered to be residential property, is equal to the value of the dwellinghouse and contents therein.

(4) Where a conveyance or transfer (referred to in this section as the ‘first transfer’) of an interest in a dwellinghouse is effected by one instrument and—

(a) before 1 March 2005 without regard to subsection (3), and

(b) on or after 1 March 2005 with or without regard to subsection (3),

the duty chargeable (if any) in respect of the instrument has been accounted for to the Commissioners, and one or more conveyances or transfers (referred to in this section as ‘subsequent transfers’) of other interests in the same dwellinghouse are effected within the subsequent 12 month period, the transferee or where there is more than one transferee, each such transferee, being a party to the first transfer, jointly and severally, shall become liable to pay to the Commissioners a penalty in an amount equal to the amount of the difference between—

(i) the amount of duty chargeable if the first transfer was one to which subsection (3) applied, and

(ii) any duty paid on that first transfer together with the amount of any penalty previously paid in respect of that first transfer under this subsection,

together with interest charged on that amount at a rate of 0.0322 per cent for each day or part of a day from the date when the instrument was executed to the date when the penalty is remitted.

(5) For the purpose of subsection (4)(i), the amount of duty chargeable shall be determined without regard to relief under section 92B unless the transferee or, where there is more than one, each such transferee, being a party to either the first transfer or any subsequent transfers, are each a first time purchaser within the meaning of that section.

(6) Where subsection (3) applies to an instrument conveying or transferring an interest in a dwellinghouse, relief under section 92B shall not apply to the instrument unless the transferee or, where there is more than one, each such transferee, being a party to either that conveyance or transfer or any previous conveyances or transfers of other interests in the same dwellinghouse executed in the previous 12 month period, are each a first time purchaser within the meaning of that section.”.

(2) *Subsection (1)* applies as respects instruments executed on or after 3 February 2005.

(3) As respects interest to be charged for any day or part of a day on or after 1 April 2005 in respect of any amount due whether before, on or after that date under section 45A of the Principal Act (as inserted by *subsection (1)*), that section is amended in subsection (4) by substituting “that amount, calculated in accordance with section 159D,” for “that amount at a rate of 0.0322 per cent for each day or part of a day”.

118.—(1) Section 76 of the Principal Act is amended in subsection (3) by deleting “, or twice the amount in the case of fraud,”.

Amendment of section 76 (obligations of system-members) of Principal Act.

(2) This section has effect in relation to instructions entered or caused to be entered in a relevant system (for the purpose of Part 6 of the Principal Act) by a system-member (for that purpose) on or after the date of the passing of this Act.

119.—(1) Section 81 of the Principal Act is amended in subsection (7) by substituting the following for paragraph (a):

Amendment of section 81 (young trained farmers) of Principal Act.

“(a) Where any person to whom land was conveyed or transferred by any instrument in respect of which relief from stamp duty under subsection (2) applied—

- (i) disposes of such land, or part of such land (in this subsection referred to as a ‘part disposal’), within a period of 5 years from the date of execution of that instrument, and
- (ii) does not fully expend the proceeds from such disposal, or as the case may be, such part disposal, in acquiring other land within a period of one year from the date of such disposal,

then, such person or, where there is more than one such person, each such person, jointly and severally, shall become liable to pay to the Commissioners a penalty equal to an amount determined by the formula—

$$S \times \frac{N}{V}$$

where—

S is the amount of stamp duty which would have been charged on that instrument had relief under subsection (2) not applied,

V is the market value of all the land that was conveyed or transferred by the instrument immediately before the disposal, or as the case may be, the part disposal of the land, and

N is the amount of proceeds from the disposal, or as the case may be, the part disposal of the land that was not expended in acquiring other land.

(aa) Interest shall be payable on a penalty incurred under paragraph (a) at a rate of 0.0322 per cent for each day or part of a day from the date of disposal, or as

the case may be, part disposal of the land to the date the penalty is remitted.

(ab) For the purposes of paragraph (a)—

- (i) where a disposal of land is effected in whole or in part by way of a voluntary disposition *inter vivos*, an amount equal to the market value of the lands disposed of, at the date of the disposal, shall be deemed to be the proceeds from such disposal,
- (ii) where any property is received by way of exchange, in whole or in part for a disposal, an amount equal to the market value of such property, at the date of the disposal, shall be deemed to be proceeds from such disposal, and
- (iii) where subparagraph (ii) applies and property received by way of exchange is land or includes land, an amount equal to the market value of such land at the date of the disposal shall be deemed to have been expended in acquiring other land.

(ac) A person shall not be liable to a penalty under paragraph (a), if and to the extent that any penalty or, as the case may be, the aggregate of any penalties, paid by that person under paragraph (a), exceeds the stamp duty which would have been charged on the instrument had relief under subsection (2) not applied.”.

(2) This section shall apply as respects disposals or part disposals of land effected on or after 3 February 2005.

Amendment of section 81A (further relief from stamp duty in respect of transfers to young trained farmers) of Principal Act.

120.—(1) Section 81A (inserted by the Finance Act 2004) of the Principal Act is amended in subsection (11) by substituting the following for paragraph (a):

- “(a) Where any person to whom land was conveyed or transferred by any instrument in respect of which relief from stamp duty under subsection (6) applied—
- (i) disposes of such land, or part of such land (in this subsection referred to as a ‘part disposal’), within a period of 5 years from the date of execution of that instrument, and
 - (ii) does not fully expend the proceeds from such disposal, or as the case may be, such part disposal, in acquiring other land within a period of one year from the date of such disposal,

then, such person or, where there is more than one such person, each such person, jointly and severally, shall become liable to pay to the Commissioners a

penalty equal to an amount determined by the formula—

$$S \times \frac{N}{V}$$

where—

S is the amount of stamp duty which would have been charged on that instrument had relief under subsection (6) not applied,

V is the market value of all the land that was conveyed or transferred by the instrument immediately before the disposal, or as the case may be, the part disposal of the land, and

N is the amount of proceeds from the disposal, or as the case may be, the part disposal of the land that was not expended in acquiring other land.

(aa) Interest shall be payable on a penalty incurred under paragraph (a) at a rate of 0.0322 per cent for each day or part of a day from the date of disposal, or as the case may be, part disposal of the land to the date the penalty is remitted.

(ab) For the purposes of paragraph (a)—

(i) where a disposal of land is effected in whole or in part by way of a voluntary disposition *inter vivos*, an amount equal to the market value of the lands disposed of, at the date of the disposal, shall be deemed to be the proceeds from such disposal,

(ii) where any property is received by way of exchange, in whole or in part for a disposal, an amount equal to the market value of such property, at the date of the disposal, shall be deemed to be proceeds from such disposal, and

(iii) where subparagraph (ii) applies and property received by way of exchange is land or includes land, an amount equal to the market value of such land at the date of the disposal shall be deemed to have been expended in acquiring other land.

(ac) A person shall not be liable to a penalty under paragraph (a), if and to the extent that any penalty or, as the case may be, the aggregate of any penalties, paid by that person under paragraph (a), exceeds the stamp duty which would have been charged on the instrument had relief under subsection (6) not applied.”.

(2) This section shall apply as respects disposals or part disposals of land effected on or after 3 February 2005.

Farm consolidation relief.

121.—The Principal Act is amended by inserting the following after section 81A:

“81B.—(1)(a) In this section—

‘consolidation certificate’, in relation to an exchange of relevant land, means a certificate, issued for the purposes of this section by Teagasc to each farmer concerned in the exchange of relevant land, which identifies the lands concerned and the owners of such lands, and certifies that Teagasc is satisfied, on the basis of information available to Teagasc at the time of so certifying, that the exchange of relevant land complies, or will comply, with the conditions of consolidation set down in guidelines;

‘exchange of relevant land’ means an exchange under which an interest in relevant land is conveyed or transferred by a farmer to another farmer in exchange for receiving, by way of conveyance or transfer, an interest in relevant land from that other farmer; and includes an exchange where the relevant land is conveyed or transferred by or to joint owners where not all the joint owners are farmers;

‘farmer’ means a person who spends not less than 50 per cent of that person’s normal working time farming;

‘farming’ includes the occupation of woodlands on a commercial basis;

‘guidelines’ and ‘conditions of consolidation’ have, respectively, the meaning assigned to them by paragraph (b)(i);

‘interest in relevant land’ means an interest which is not subject to any power (whether or not contained in the instrument or, as the case may be, instruments) on the exercise of which the relevant land, or any part of or any interest in the relevant land, may be vested in the person from whom it was conveyed or transferred or in any person on behalf of such person;

‘PPS number’ means a personal public service number within the meaning of section 223 (as amended by section 12(1)(a) of the Social Welfare (Miscellaneous Provisions) Act 2002 (No. 8 of 2002)) of the Social Welfare (Consolidation) Act 1993;

‘relevant land’ means agricultural land, including lands suitable for occupation as woodlands on a commercial basis, in the State and such farm buildings together with the lands occupied with such farm buildings as are of a character appropriate to the relevant land but not including farm houses or mansion houses or the lands occupied with such farm houses and mansion houses unless such farm houses or mansion

houses are derelict and unfit for human habitation;

‘valid consolidation certificate’, on any day, means a consolidation certificate which, as at that day, has not been withdrawn and which was issued within the period of one year ending on that day.

(b) For the purposes of this section—

(i) the Minister for Agriculture and Food with the consent of the Minister for Finance may make and publish guidelines, from time to time, setting out—

(I) how an application for a consolidation certificate, in relation to an exchange of relevant land, is to be made,

(II) the documentation required to accompany such an application,

(III) the conditions of consolidation, and

(IV) such other information as may be required in relation to such application,

(ii) where an application is made in that regard, Teagasc shall issue a consolidation certificate in respect of an exchange of relevant land where they are satisfied, on the basis of information available to Teagasc at that time, that an exchange of relevant land complies, or will comply, with the conditions of consolidation, and

(iii) Teagasc may, by notice in writing, withdraw any consolidation certificate already issued.

(2) This section applies to any instrument effecting an exchange of relevant land where—

(a) the instrument contains a certificate that this section applies,

(b) a consolidation certificate, in relation to the exchange of relevant land, which is a valid consolidation certificate on the date of execution of the instrument, is furnished to the Commissioners when the instrument is presented for stamping,

(c) a declaration of a kind referred to in subsection (3), is furnished to the Commissioners by each farmer who is a party to the instrument, when the instrument is presented for stamping,

(d) a declaration made in writing by each person, who is a party to the instrument, is furnished to the Commissioners, in such form as the Commissioners may

specify, when the instrument is presented for stamping, declaring that it is the intention of each such person—

(i) to retain ownership of his or her interest in the relevant land conveyed or transferred to that person by such instrument, and

(ii) that the relevant land will be used for farming,

for a period of not less than 5 years from the date of execution of the instrument, and

(e) the PPS number of each person who is a party to the instrument is furnished to the Commissioners when the instrument is presented for stamping.

(3) The declaration referred to in subsection (2)(c) is a declaration made in writing by a farmer, in such form as the Commissioners may specify, which—

(a) is signed by the farmer, and

(b) declares that—

(i) the farmer will remain a farmer, and

(ii) the farmer will farm the relevant land, conveyed or transferred to the farmer by the instrument,

for a period of not less than 5 years from the date of execution of the instrument.

(4) Notwithstanding section 37—

(a) stamp duty shall not be chargeable on an instrument giving effect to an exchange of relevant land, to which this section applies, where the relevant lands exchanged are of equal value, and

(b) where the relevant lands exchanged are not of equal value, subject to subsection (5), stamp duty shall only be chargeable on the principal or only instrument giving effect to the exchange of relevant land as if it were a conveyance or transfer on sale of the relevant land which is of the greater value which was made—

(i) in consideration of a sum equal to the difference between the value of the relevant lands exchanged,

(ii) to the person or persons to whom the relevant land which is of the greater value is conveyed or transferred.

(5) Where relevant lands exchanged are not of equal value, the consideration paid or agreed to be paid for equality shall consist only of a payment in cash.

(6) Where subsection (4)(b) applies and there are several instruments for completing a title to relevant land the subject of an exchange of relevant land to which this section applies, the principal instrument is to be ascertained and the other instruments shall not be chargeable to stamp duty.

(7) Subsection (4) shall not apply to an instrument unless it has, in accordance with section 20, been stamped with a particular stamp denoting that it is duly stamped or, as the case may be, that it is not chargeable with any duty.

(8) For the purposes of subsection (7), where there are several instruments for completing a title to relevant land, the subject of an exchange of relevant land to which this section applies, all instruments shall, for the purposes of section 20, be presented to the Commissioners, at the same time.

(9) (a) Subject to paragraph (b), where any person to whom relevant land was conveyed or transferred by any instrument in respect of which relief from duty under this section was allowed, disposes of such relevant land, or part of such relevant land, within a period of 5 years from the date of execution of the instrument, then such person or, where there is more than one such person, each such person, jointly and severally, shall become liable to pay to the Commissioners a penalty of an amount equal to the amount of the difference between—

- (i) the duty that would have been charged by virtue of section 37 on the value of such relevant land (being all the relevant land, the subject of the exchange of relevant land, conveyed or transferred to that person), if such relevant land had been conveyed or transferred to that person or, where there is more than one such person, each such person, by an instrument to which this section had not applied, and
- (ii) the duty, if any, which was charged by virtue of this section on the conveyance or transfer of such relevant land,

together with interest charged on that amount, calculated in accordance with section 159D, from the date of disposal of the relevant land or, as the case may be, a part thereof, to the date the penalty is remitted.

(b) Paragraph (a) shall not apply to a disposal of relevant land—

- (i) which is being compulsorily acquired, or
- (ii) which is a disposal of relevant land under an exchange of relevant land effected by an instrument to which subsection (2) applies.

(c) Where any claim for relief from duty under this section has been allowed and it is subsequently found that a declaration referred to in paragraph (c) or (d) of subsection (2)—

- (i) was untrue in any material particular which would have resulted in the relief afforded by this section not being granted, and
- (ii) was made knowing same to be untrue or in reckless disregard as to whether it was true or not,

then the person or persons who made such a declaration, jointly and severally, shall become liable to

pay to the Commissioners a penalty of an amount equal to the amount of the difference between—

(I) 125 per cent of the duty which would have been charged on the instrument or, as the case may be, the instruments, effecting the exchange of relevant land by virtue of section 37 on the value of such relevant land conveyed or transferred to such person or persons, had all the facts been truthfully declared, and

(II) the amount of duty which was charged, if any,

together with interest charged on that amount, calculated in accordance with section 159D, from the date when the instrument was executed to the date the penalty is remitted.

(d) Where a consolidation certificate, purporting to be valid on the date of execution of an instrument effecting an exchange of relevant land, is furnished to the Commissioners when the instrument is presented for stamping and subsection (2) applied to the instrument and it subsequently transpires that the consolidation certificate was not a valid consolidation certificate on that date, the parties to the instrument, jointly and severally, shall become liable to pay to the Commissioners a penalty of an amount equal to the amount of the difference between—

(i) 125 per cent of the duty which would have been charged on the instrument or, as the case may be, the instruments, effecting the exchange of relevant land by virtue of section 37 on the value of such relevant land conveyed or transferred to such person or persons, had subsection (2) not applied to the instrument, and

(ii) the amount of duty which was charged, if any,

together with interest charged on that amount, calculated in accordance with section 159D, from the date when the instrument was executed to the date the penalty is remitted.

(10) Notwithstanding subsection (9)—

(a) where relief under this section was allowed in respect of any instrument, a disposal by a farmer or other joint owner of part of the relevant land to a spouse for the purpose of creating a joint tenancy in the relevant land, or where the instrument conveyed or transferred the relevant land to joint owners, a disposal by one joint owner, to another joint owner (being a farmer) of any part of the relevant land, shall not be regarded as a disposal to which subsection (9) applies, but on such disposal, such part of the relevant land shall be treated for the purposes of subsection (9) as if it had been conveyed or transferred immediately to the spouse or other joint owner by the instrument in respect of which relief from duty under this section was allowed,

- (b) a person shall not be liable, in respect of the same matter, to more than one penalty under paragraph (a), (c) or (d) of subsection (9),
- (c) a person shall not be liable, in respect of the same matter, to a penalty under paragraph (a) of subsection (9), if and to the extent that such person has paid a penalty under paragraph (c) or (d) of subsection (9),
- (d) a person shall not be liable, in respect of the same matter, to a penalty under paragraph (c) of subsection (9), if and to the extent that such person has paid a penalty under paragraph (a) or (d) of subsection (9), and
- (e) a person shall not be liable, in respect of the same matter, to a penalty under paragraph (d) of subsection (9), if and to the extent that such person has paid a penalty under paragraph (a) or (c) of subsection (9).

(11) This section shall not apply to any instrument effecting an exchange of relevant land where the party or, as the case may be, any of the parties to such instrument, is a company.

(12) This section shall apply as respects instruments executed on or after 1 July 2005 and on or before 30 June 2007.”.

122.—(1) Section 87 of the Principal Act is amended—

Amendment of section 87 (stock borrowing) of Principal Act.

- (a) in subsection (1) in paragraph (b) of the definition of “stock borrowing” by substituting “12 months” for “6 months”, and
- (b) in subsection (3) by substituting “12 months” for “6 months” in both places where it occurs.

(2) This section applies to stock borrowing (for the purpose of section 87 of the Principal Act) transactions entered into on or after the date of the passing of this Act.

123.—(1) Section 87A of the Principal Act is amended—

Amendment of section 87A (stock repo) of Principal Act.

- (a) in subsection (1)—
 - (i) in the definition of “repurchase agreement” by substituting “12 months” for “6 months”, and
 - (ii) in the definition of “stock return” by substituting “12 month time limit” for “6 month time limit”,
- (b) in subsection (3) by substituting “12 months” for “6 months”, and
- (c) in subsection (4)(a) by substituting “12 months” for “6 months”.

(2) This section applies to stock transfers (for the purposes of section 87A of the Principal Act) executed on or after the date of the passing of this Act.

Amendment of section 88 (certain stocks and marketable securities) of Principal Act.

124.—(1) Section 88 of the Principal Act is amended—

(a) in subsection (1)(b) by substituting the following for subparagraph (i):

“(i) units in an investment undertaking within the meaning of section 739B of the Taxes Consolidation Act 1997 or units in a common contractual fund within the meaning of section 739I (inserted by the *Finance Act 2005*) of that Act,”

and

(b) in subsection (2)(b) by substituting “an investment undertaking within the meaning of section 739B of the Taxes Consolidation Act 1997” for “a collective investment undertaking within the meaning of section 734 of the Taxes Consolidation Act, 1997”.

(2) This section applies as respects conveyances or transfers effected on or after the date of the passing of this Act.

Amendment of section 90 (certain financial services instruments) of Principal Act.

125.—(1) Section 90 of the Principal Act is amended in subsection (3)(b) by substituting “an investment undertaking within the meaning of section 739B of the Taxes Consolidation Act 1997” for “a collective investment undertaking within the meaning of section 734 of the Taxes Consolidation Act, 1997”.

(2) This section applies as respects instruments executed on or after the date of the passing of this Act.

Amendment of section 92B (residential property first time purchaser relief) of Principal Act.

126.—(1) Section 92B of the Principal Act is amended—

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

“(2) The amount of stamp duty chargeable under or by reference to paragraphs (2) to (6) of the Heading ‘CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance’ or clauses (ii) to (vi) of paragraph (3)(a) of the Heading ‘LEASE’, as the case may be, in Schedule 1 on any instrument to which this section applies shall be reduced, where paragraphs (2) to (4) of the first-mentioned Heading or clauses (ii) to (iv) of the said paragraph (3)(a) apply, to nil, and where—

(a) paragraph (5) of the first-mentioned Heading or clause (v) of the said paragraph (3)(a) applies, to an amount equal to one half,

(b) paragraph (6) of the first-mentioned Heading or clause (vi) of the said paragraph (3)(a) applies, to an amount equal to twelve-fifteenths,

of the amount which would otherwise have been chargeable but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.”

- (b) in subsection (3)(b) by substituting “any instrument, to which neither section 92 nor subsection (3A) applies, which contains a statement, in such form as the Commissioners may specify, certifying that subsection (3A) does not apply,” for “any instrument, other than one to which section 92 applies, which contains a statement, in such form as the Commissioners may specify, certifying”, and
- (c) by inserting the following subsection after subsection (3):
- “(3A) This subsection applies to an instrument—
- (a) which gives effect to the purchase of a dwellinghouse or apartment on the erection of the dwellinghouse or apartment, or
- (b) to which section 29 or 53 applies,
- where the total floor area of that dwellinghouse or apartment—
- (i) does not, or will not, exceed 125 square metres, and
- (ii) is not, or will not, be less than 38 square metres,
- as measured in the manner specified in regulations made by the Minister for the Environment, Heritage and Local Government for the purposes of section 91A.”.
- (2) (a) *Paragraph (a) of subsection (1) applies as respects instruments executed on or after 2 December 2004.*
- (b) *Paragraphs (b) and (c) of subsection (1) apply as respects instruments executed on or after 1 March 2005.*

127.—(1) Section 117 of the Principal Act is amended—

- (a) in subsection (1)—
- (i) by substituting “0.5 per cent” for “1 per cent”, and
- (ii) by substituting “the amount so calculated shall, if less than €1, be rounded up to €1 and, if more than €1, be rounded down to the nearest €” for “the amount so calculated shall be rounded down to the nearest €”,
- and
- (b) in subsection (2) by deleting paragraph (a).
- (2) (a) *Paragraph (a)(i) of subsection (1) applies as respects transactions effected on or after 2 December 2004, and*
- (b) *Paragraphs (a)(ii) and (b) of subsection (1) apply as respects transactions effected on or after 3 February 2005.*

Amendment of section 117 (statement to be charged with stamp duty) of Principal Act.

Amendment of Part
9 (levies) of
Principal Act.

128.—(1) Part 9 of the Principal Act is amended—

(a) in section 123—

(i) in subsection (1)—

(I) by substituting the following for the definition of “accounting period”:

“ ‘accounting period’ has the same meaning as it has for the purposes of section 27 of the Taxes Consolidation Act 1997, but where such accounting period commences after 31 December 2004 and ends after 31 December 2005, it shall be deemed, for the purposes of this section, to be an accounting period ending on 31 December 2005;”,

(II) by substituting the following for the definition of “bank”:

“ ‘bank’ includes—

(a) a person who holds a licence granted under section 9 of the Central Bank Act 1971, and

(b) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) and a financial institution within that meaning;”,

and

(III) by substituting the following for the definition of “due date”:

“ ‘due date’, in relation to an accounting period, means—

(a) in the case of any year prior to the year 2005, the date of the end of the accounting period ending in that year, and

(b) in the case of the year 2005, the date of the end of the accounting period or each of them, if there is more than one, ending in that year;”,

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

“(2) A promoter shall, in each year, within one month of the due date, in relation to each accounting period, deliver to the Commissioners a statement in writing showing the number of cash cards and combined cards issued at any time by the promoter and which are valid at any time during the accounting period.”,

(iii) by substituting the following for subsection (4):

“(4) Subject to subsection (4A), there shall be charged on every statement delivered in pursuance of subsection (2)—

- (a) a stamp duty at the rate of €10 or, where the statement is in respect of an accounting period deemed under this section to end on 31 December 2005, a rate calculated by multiplying one-twelfth of €10 by the number of months in the accounting period, in respect of each cash card, and
- (b) a stamp duty at the rate of €20 or, where the statement is in respect of an accounting period deemed under this section to end on 31 December 2005, a rate calculated by multiplying one-twelfth of €20 by the number of months in the accounting period, in respect of each combined card,

included in the number of cash cards and combined cards shown in the statement.

(4A) Notwithstanding subsection (4)—

- (a) in a case to which subsection (4)(a) applies, the rate calculated by multiplying one-twelfth of €10 by the number of months in an accounting period shall be—
 - (i) €2.50, where there are 3 months in the accounting period, and
 - (ii) €7.50, where there are 9 months in the accounting period,

and

- (b) in a case to which subsection (4)(b) applies, the rate calculated by multiplying one-twelfth of €20 by the number of months in an accounting period shall be—
 - (i) €5, where there are 3 months in the accounting period, and
 - (ii) €15, where there are 9 months in the accounting period.”,

and

(iv) by inserting the following subsection after subsection (11):

“(12) This section does not apply to any statement that falls to be delivered by a promoter in respect of a due date falling after 31 December 2005.”.

(b) in section 123A—

(i) in subsection (1)—

(I) by substituting the following for the definition of “accounting period”:

“ ‘accounting period’ has the same meaning as it has for the purposes of section 27 of the Taxes Consolidation Act 1997, but where such accounting period commences after 31 December 2004 and ends after 31 December 2005, it shall be deemed, for the purposes of this section, to be an accounting period ending on 31 December 2005;”

(II) by substituting the following for the definition of “bank”:

“ ‘bank’ includes—

(a) a person who holds a licence granted under section 9 of the Central Bank Act 1971, and

(b) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) and a financial institution within that meaning;”

and

(III) by substituting the following for the definition of “due date”:

“ ‘due date’, in relation to an accounting period, means—

(a) in the case of the year 2002, the date of the end of the accounting period ending in that year, where that date is on or after 5 December 2002,

(b) in the case of the year 2003 and 2004, the date of the end of the accounting period ending in that year, and

(c) in the case of the year 2005, the date of the end of the accounting period, or each of them if there is more than one, ending in that year;”

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

“(2) A promoter shall, within 2 months of the due date, in relation to each accounting period falling in the year 2002 and, within one month of the due date falling in each of the years 2003, 2004 and 2005, deliver to the Commissioners a statement in writing showing the number of debit cards issued at any time by the promoter and which are valid—

- (a) in the case of the year 2002, at any time during the period from 5 December 2002 to the due date,
- (b) in the case of the year 2003, at any time during the accounting period ending in that year but not before 5 December 2002 where that date falls within the accounting period, and
- (c) in the case of the year 2004 and 2005, at any time during the accounting period.”,

(iii) by substituting the following for subsection (4):

“(4) Subject to subsection (4A), there shall be charged on every statement delivered in pursuance of subsection (2) a stamp duty at the rate of €10 or, where the statement is in respect of an accounting period deemed under this section to end on 31 December 2005, a rate calculated by multiplying one-twelfth of €10 by the number of months in the accounting period, in respect of each debit card included in the number of cards shown in the statement.

(4A) Notwithstanding subsection (4), the rate calculated by multiplying one-twelfth of €10 by the number of months in an accounting period shall be—

- (a) €2.50, where there are 3 months in the accounting period, and
- (b) €7.50, where there are 9 months in the accounting period.”,

and

(iv) by inserting the following subsection after subsection (11):

“(12) This section does not apply to any statement that falls to be delivered by a promoter in respect of a due date falling after 31 December 2005.”.

(c) by inserting the following section after section 123A:

“Cash,
combined
and debit
cards.

123B.—(1) In this section—
‘bank’ includes—

- (a) a person who holds a licence granted under section 9 of the Central Bank Act 1971, and
- (b) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) and a financial institution within that meaning;

‘building society’ means a building society which stands incorporated, or deemed by section 124(2) of the Building Societies Act 1989, to be incorporated, under that Act and includes a company registered under section 106 of that Act;

‘card account’ means an account maintained by a promoter to which—

- (a) amounts of cash obtained by a person by means of a cash card are charged,
- (b) amounts in respect of goods, services or cash obtained by a person by means of a combined card are charged, or
- (c) amounts in respect of goods, services or cash obtained by a person by means of a debit card are charged;

‘cash card’ means a card, not being a combined card, issued by a promoter to a person having an address in the State, by means of which cash may be obtained by the person from an automated teller machine;

‘combined card’ means a cash card which also contains the functions of a debit card;

‘debit card’ means a card, not being a combined card, issued by a promoter to a person having an address in the State, by means of which goods, services or cash may be obtained by the person and amounts in respect of the goods, services or cash may be charged to the card account;

‘promoter’ means a bank or a building society.

(2) A promoter shall, within one month of the end of each year, commencing with the year 2006, deliver to the Commissioners a statement in writing showing the number of cash cards, combined cards and debit cards issued at any time by the promoter and which are valid on 31 December in that year.

(3) Notwithstanding subsection (2)—

- (a) if the cash card, combined card or debit card is not used at any time during a year, or
- (b) if the cash card, combined card or debit card is issued in respect of a card account—

(i) which is a deposit account,
and

(ii) the average of the daily
positive balances in the
account does not exceed
€12.70 during that year,

then it shall not be included in the statement relating to that year.

(4) There shall be charged on every statement delivered in pursuance of subsection (2) a stamp duty—

(a) at the rate of €10 in respect of each cash card and each debit card, and

(b) at the rate of €20 in respect of each combined card,

included in the number of cards shown in the statement.

(5) The duty charged by subsection (4) on a statement delivered by a promoter pursuant to subsection (2) shall be paid by the promoter on delivery of the statement.

(6) There shall be furnished to the Commissioners by a promoter such particulars as the Commissioners may deem necessary in relation to any statement required by this section to be delivered by the promoter.

(7) In the case of failure by a promoter to pay any duty required to be paid in accordance with this section, the promoter shall be liable to pay, by means of a penalty, in addition to the duty, interest on that duty, calculated in accordance with section 159D, for the period commencing on the date the duty was so required to be paid and ending on the date the duty was paid and also, by means of a further penalty, a sum of €380 for each day in that period and each penalty shall be recoverable in the same manner as if the penalty were part of the duty.

(8) The delivery of any statement required by subsection (2) may be enforced by the Commissioners under section 47 of the Succession Duty Act 1853 in all respects as if such statement were such account as is mentioned in that section and the failure to deliver such statement were such default as is mentioned in that section.

(9) A promoter shall be entitled to charge to the card account the amount of stamp duty payable in respect of a cash card, combined card or debit card by virtue of this section and may apply the terms and conditions governing that account to interest on that amount.

(10) An account, charge card, company charge card or supplementary card within the meaning, in each case, assigned to it by section 124 and which attracts the payment of the stamp duty payable by virtue of that section shall not attract the payment of the stamp duty payable by virtue of this section.”,

and

(d) in section 124—

(i) in subsection (1)—

(I) in paragraph (a)—

(A) by inserting the following definitions after the definition of “account”:

“‘account holder’ means the person in whose name an account is maintained by a bank;

‘bank’ includes—

(i) a person who holds a licence granted under section 9 of the Central Bank Act 1971, and

(ii) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) and a financial institution within that meaning;”,

(B) in the definition of “credit card” by substituting “to the account;” for “to the account.”, and

(C) by inserting the following definitions after the definition of “credit card”:

“‘letter of closure’, in relation to an account, means a letter, in such form as the Commissioners may specify, issued during a relevant period by a bank to an account holder in respect of an account which has been closed during the relevant period confirming that the account holder has, during the relevant period, accounted for the amount of stamp duty—

- (i) which the bank is required to pay in respect of the account for the relevant period, or
- (ii) which another bank (not being a branch of the same bank) is required to pay for the relevant period in respect of another account which has been closed during the relevant period;

‘relevant period’ means a 12 month period ending on 1 April in any year commencing with the 12 month period ending on 1 April 2006;

‘replacement account’ means an account that is opened and maintained by a bank in the name of an account holder during a relevant period—

- (i) where an account in the name of the account holder was, during the relevant period, previously closed by the bank, or
- (ii) where the account holder has furnished to the bank during the relevant period a letter of closure issued by another bank (not being a branch of the same bank) in relation to an account in the name of the account holder which was closed during the relevant period.”,

(II) by substituting the following for paragraph (b):

“(b) A bank shall, within 3 months of the end of each relevant period, deliver to the Commissioners a statement in writing showing in respect of accounts maintained by the bank at any time during the relevant period—

- (i) the number of accounts that are replacement accounts, and
- (ii) the number of accounts that are not replacement accounts.”,

and

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

“(d) Notwithstanding paragraph (c), where a bank maintains a replacement account at any time during a relevant period, the bank shall be exempt from stamp duty on that replacement account.

- (e) A bank shall not issue a letter of closure during a relevant period in respect of an account that has been

closed during the relevant period where—

(i) the account holder has not accounted for the amount of stamp duty which the bank is required to pay in respect of the account for the relevant period, or

(ii) the bank is not in possession of a letter of closure, in respect of another account closed during the relevant period, received from the account holder during the relevant period.

(f) Where a bank treats an account as a replacement account by virtue of the account holder furnishing a letter of closure, the bank shall not, by virtue of that letter, treat any other account as a replacement account.

(g) A bank shall not issue more than one original letter of closure in respect of an account and may only issue a duplicate letter of closure to an account holder to whom an original letter of closure issued where the bank is satisfied that the original letter of closure has been lost or destroyed and where such letter states that it is a duplicate of an original letter of closure.”,

(ii) in subsection (2)—

(I) in paragraph (a)—

(A) by inserting the following definition after the definition of “account”:

“‘account holder’ means the person in whose name an account is maintained by a promoter;”,

(B) by inserting the following definition after the definition of “charge card”:

“‘charge card’, in relation to an account, means a charge card used to obtain goods, services or cash, amounts in respect of which are charged to the account;”,

and

(C) by inserting the following definitions after the definition of “company charge card”:

“‘letter of closure’, in relation to an account, means a letter, in such form as the Commissioners may specify, issued during

a relevant period by a promoter to an account holder in respect of an account which has been closed during the relevant period—

- (i) confirming that the account holder has, during the relevant period, accounted for the amount of stamp duty which the promoter is required to pay in respect of charge cards, in relation to the account, for the relevant period and stating the number of cards in respect of which the promoter is so liable to pay, and
- (ii) confirming, where it is the case, that the account holder has, during the relevant period, accounted for the amount of stamp duty which another promoter (not being a branch of the same promoter) is required to pay for the relevant period in respect of charge cards in relation to another account which has been closed during the relevant period and stating the number of cards in respect of which that other promoter is so liable to pay;

‘relevant period’ means a 12 month period ending on 1 April in any year commencing with the 12 month period ending on 1 April 2006;

‘replacement account’ means an account that is opened and maintained by a promoter in the name of an account holder during a relevant period—

- (i) where an account (in this section referred to as an ‘original account’) in the name of the account holder was, in the relevant period, previously closed by the promoter, or
- (ii) where the account holder has furnished, during the relevant period, a letter of closure issued by another promoter (not being a branch of the same promoter) in relation to an account in the name of the account holder which was closed during the relevant period;

‘replacement card’ means a charge card in relation to a replacement account.”,

(II) by substituting the following for paragraph (b):

“(b) A promoter shall, within 3 months of the end of each relevant period, deliver to the Commissioners a statement in writing showing in respect of the charge cards issued or renewed by the promoter and expressed to be valid at any time during the relevant period—

- (i) the number of cards that are replacement cards, and
- (ii) the number of cards that are not replacement cards.”,

and

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

“(d) Notwithstanding paragraph (c), stamp duty shall only be chargeable on replacement cards in relation to a replacement account maintained by a promoter at any time during a relevant period—

- (i) where the replacement account replaces an account maintained by the same promoter, to the extent that the number of such charge cards, in relation to the account, exceeds the number of charge cards in relation to the original account, or
- (ii) where the replacement account replaces an account maintained by another promoter, to the extent that the number of such charge cards, in relation to the account, exceeds the aggregate number of charge cards stated in the letter of closure in relation to that other account.

(e) A promoter shall not issue a letter of closure during a relevant period in respect of an account that has been closed during the relevant period where the account holder has not accounted for the amount of stamp duty which the promoter is required to pay in respect of the charge cards to which the account relates, for the relevant period.

(f) Where a promoter treats an account as a replacement account by virtue of the account holder furnishing a letter of closure, the promoter shall not, by virtue of that letter, treat any

other account as a replacement account.

(g) A promoter shall not issue more than one original letter of closure in respect of an account and may only issue a duplicate letter of closure to an account holder to whom the original letter of closure issued where the promoter is satisfied that the original letter of closure has been lost or destroyed and where such duplicate letter states that it is a duplicate of an original letter of closure.”,

(iii) in subsection (5), in subparagraphs (i) and (ii) of paragraph (a) by substituting “1 April” for “the 1st day of April”, and

(iv) by inserting the following subsections after subsection (5):

“(5A) A bank or a promoter is required to retain any original letter of closure or any duplicate of such letter received from an account holder for a period of 4 years from the date of receipt of such letter.

(5B) A letter of closure, in relation to an account, shall only be issued to one person in whose name the account is maintained notwithstanding that there is more than one such person.”.

(2) Paragraph (d) of subsection (1) has effect as respects accounts maintained by a bank or, as the case may be, a promoter after 1 April 2005.

129.—(1) Section 159C of the Principal Act is amended in subsection (1)—

Amendment of section 159C (time limits for making enquiries, etc. and assessments by the Commissioners) of Principal Act.

(a) by substituting the following for the definition of “neglect”:

“ ‘neglect’, in connection with or in relation to a relevant instrument, means—

(a) subject to paragraph (b), in the case of an instrument or a specified statement, a failure to disclose in the instrument, or as the case may be, in the specified statement, all the facts and circumstances affecting the liability to duty of such instrument or specified statement,

(b) in the case of an instrument to which section 8(2) applies, as between both the instrument and the statement referred to in that section, a failure to disclose all the facts and circumstances affecting the liability to duty of such instrument, or

(c) in the case of an instruction of the type referred to in section 76, a failure to enter a correct

instruction in a relevant system within the meaning of section 68;”

- (b) in paragraph (a) of the definition of “relevant instrument” by substituting “specified statement delivered to the Commissioners” for “statement delivered to the Commissioners under any provision of this Act”,
- (c) in the definition of “relevant period” by substituting “was made;” for “was made.”, and
- (d) by inserting the following after the definition of “relevant period”:

“ ‘specified statement’ means—

- (a) an account delivered to the Commissioners under section 5,
- (b) a statement that is required to be delivered to the registrar under section 117(1)(b), or
- (c) a statement that is required to be delivered to the Commissioners under Part 9.”.

(2) This section is effective from 3 February 2005.

PART 5

CAPITAL ACQUISITIONS TAX

Interpretation
(Part 5).

130.—In this Part “Principal Act” means the Capital Acquisitions Tax Consolidation Act 2003.

Amendment of
section 48
(affidavits and
accounts) of
Principal Act.

131.—(1) Section 48 of the Principal Act is amended, in subsection (2), by substituting the following for paragraph (a):

“(a) details of all property in respect of which the grant of probate or administration is required and, in the case of a deceased person who on the date of his or her death was—

- (i) resident or ordinarily resident and domiciled in the State, or
- (ii) resident 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 year of assessment in which the date of death falls,

details of all property, wherever situate, the beneficial ownership of which, on that person’s death, is affected—

(I) by that person’s will,

(II) by the rules for distribution on intestacy, or

(III) by Part IX or section 56 of the Succession Act 1965, or under the analogous law of another territory;”.

(2) This section has effect in relation to Inland Revenue affidavits in respect of estates of deceased persons where those persons died on or after 1 December 2004.

132.—(1) Section 58 of the Principal Act is amended—

Amendment of section 58 (penalties) of Principal Act.

(a) in subsection (1A)(b) by deleting “, or in the case of fraud twice the amount,” and

(b) in subsection (3)(ii) by deleting “, or in the case of fraud, twice the amount.”.

(2) This section applies to returns, additional returns, statements, declarations, evidence or valuations delivered, made or, as the case may be, furnished on or after the passing of this Act.

133.—(1) Section 72 of the Principal Act is amended—

Amendment of section 72 (relief in respect of certain policies of insurance) of Principal Act.

(a) in subsection (1)—

(i) before the definition of “insured”, by inserting the following definition:

“‘approved retirement fund tax’ means tax which a qualifying fund manager is obliged to deduct in accordance with the provisions of section 784A(4)(c) of the Taxes Consolidation Act 1997;”.

and

(ii) in the definition of “relevant tax”, by substituting “means approved retirement fund tax and inheritance tax” for “means inheritance tax”,

and

(b) in subsection (2), by inserting the following after paragraph (b):

“(c) For the purposes of this section, an amount of the proceeds of a qualifying insurance policy equal to the amount of approved retirement fund tax shall be treated as applied in paying relevant tax of that amount.”.

(2) This section has effect in relation to relevant tax payable in respect of inheritances taken on or after 3 February 2005.

134.—(1) Section 75 of the Principal Act is amended—

Amendment of section 75 (exemption of specified collective investment undertakings) of Principal Act.

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

“(1) In this section—

‘common contractual fund’ has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997;

‘investment undertaking’ has the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997;

‘unit’, in relation to a common contractual fund, has the meaning assigned to it by section 739I of the Taxes Consolidation Act 1997;

‘unit’, in relation to an investment undertaking, has the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997.”,

(b) in subsection (2), by substituting “common contractual fund” for “specified collective investment undertaking”, and

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

“(3) Where—

(a) any unit of an investment undertaking which is comprised in a gift or inheritance came into the beneficial ownership of the donor or became subject to the disposition prior to 15 February 2001, and

(b) the conditions at subparagraphs (i) and (iii) of subsection (2) are complied with,

then that subsection shall apply to that unit of an investment undertaking comprised in a gift or inheritance, if at the date of the disposition, the proper law of the disposition was not the law of the State.”.

(2) This section has effect in relation to gifts or inheritances taken on or after the passing of this Act.

Amendment of section 89 (provisions relating to agricultural property) of Principal Act.

135.—(1) Section 89 of the Principal Act is amended, in subsection (4)—

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

“(a) Where—

(i) all or any part of the agricultural property (other than crops, trees or underwood) comprised in a gift or inheritance is disposed of or compulsorily acquired within the period of 6 years after the date of the gift or inheritance, and

(ii) the proceeds from such disposal or compulsory acquisition are not fully expended in acquiring other agricultural property within a year of the disposal or within 6 years of the compulsory acquisition,

then, except where the donee or successor dies before the property is disposed of or compulsorily acquired, all or, as the case may be, part of the agricultural property shall, for the purposes of subsection (2) and in accordance with paragraph (aa), be

treated as property comprised in the gift or inheritance which is not agricultural property, and the taxable value of the gift or inheritance shall be determined accordingly (without regard to whether the donee or successor has ceased to be a farmer by virtue of the disposal or compulsory acquisition) and tax shall be payable accordingly.

(aa) For the purposes of paragraph (a)—

- (i) the market value of agricultural property which is treated under paragraph (a) as not being agricultural property is determined by the following formula—

$$V1 \times \frac{N}{V2}$$

where—

V1 is the market value of all of the agricultural property on the valuation date without regard to paragraph (a),

V2 is the market value of that agricultural property immediately before the disposal or compulsory acquisition of all or, as the case may be, a part thereof, and

N is the amount of proceeds from the disposal or compulsory acquisition of all the agricultural property or, as the case may be, a part thereof, that was not expended in acquiring other agricultural property,

and

- (ii) the proceeds from a disposal include an amount equal to the market value of the consideration (not being cash) received for the disposal.”,

and

(b) in paragraph (b), by substituting “disposal” for “sale”.

(2) This section has effect in relation to disposals or compulsory acquisitions of agricultural property occurring on or after 3 February 2005.

136.—(1) Section 101 of the Principal Act is amended by inserting the following after subsection (2):

Amendment of section 101 (withdrawal of relief) of Principal Act.

“(3) Notwithstanding subsection (2), where relevant business property (in this section referred to as ‘original property’) comprised in a gift or inheritance has been replaced directly or indirectly by other property and the market value of the original property is greater than the market value of that other property, then the reduction which would fall to be made under section 92 in respect of the original property shall be reduced in the same proportion as the market value of the other property bears to the market value of the original property.”.

(2) This section has effect in relation to relevant business property which has been replaced by other property on or after 3 February 2005.

Amendment of section 107 (other relief from double taxation) of Principal Act.

137.—(1) Section 107 of the Principal Act is amended by substituting the following for subsection (2):

“(2) Where the Commissioners are satisfied that a taxable gift or taxable inheritance, taken under a disposition by a donee or successor on the happening of any event, is reduced by the payment of foreign tax which is chargeable in connection with the same event under the same disposition in respect of property which is situate in any territory outside the State, they shall allow a credit in respect of that foreign tax against the gift tax or inheritance tax payable by that donee or successor on that taxable gift or taxable inheritance; but such credit shall not exceed—

(a) the amount of the gift tax or inheritance tax payable in respect of the same property by reason of such property being comprised in any taxable gift or taxable inheritance taken under that disposition on the happening of that event, or

(b) in so far as it has been paid, the amount of that foreign tax,

whichever is the lesser.”.

(2) This section has effect in relation to gifts or inheritances taken on or after 1 December 2004.

PART 6

MISCELLANEOUS

Amendment of section 903 (power of inspection: PAYE) of Taxes Consolidation Act 1997.

138.—Section 903 of the Taxes Consolidation Act 1997 is amended by inserting the following subsection after subsection (2):

“(2A) (a) An authorised officer shall not, without the consent of the occupier, enter any premises, or that portion of any premises, which is occupied wholly and exclusively as a private residence, except on production by such officer of a warrant issued by a Judge of the District Court expressly authorising the authorised officer to so enter.

(b) A Judge of the District Court may issue a warrant under paragraph (a) if satisfied by information on oath that it is proper to do so for the purposes of this section.”.

Amendment of section 904 (power of inspection: tax deduction from payments to certain subcontractors) of Taxes Consolidation Act 1997.

139.—Section 904 of the Taxes Consolidation Act 1997 is amended by inserting the following subsection after subsection (2):

“(2A) (a) An authorised officer shall not, without the consent of the occupier, enter any premises, or that portion of any premises, which is occupied wholly and exclusively as a private residence, except on production by such officer of a warrant issued by a

Judge of the District Court expressly authorising the authorised officer to so enter.

- (b) A Judge of the District Court may issue a warrant under paragraph (a) if satisfied by information on oath that it is proper to do so for the purposes of this section.”.

140.—Chapter 4 of Part 38 of the Taxes Consolidation Act 1997 is amended by inserting the following section after section 902A:

Amendment of Chapter 4 (revenue powers) of Part 38 of Taxes Consolidation Act 1997.

“Powers of inspection: life policies.

902B.—(1) In this section—

‘assurance company’ has the same meaning as in section 3 of the Insurance Act 1936;

‘authorised officer’ means an officer of the Revenue Commissioners who is authorised by them in writing to exercise the powers conferred by this section;

‘policy’ and ‘premium’ have the same meanings, respectively, as in section 3 of the Insurance Act 1936;

‘relevant records’, in relation to a policy, means any document or any other written or printed material in any form, and includes any information stored, maintained or preserved by means of any mechanical, photographic or electronic device whether or not stored, maintained or preserved in a legible form, but does not include so much of any record that is of a medical nature.

(2) A Revenue Commissioner may, subject to subsection (3) and for the purposes of subsection (7), direct an authorised officer to investigate a class or classes of policies issued by an assurance company and the policyholders to whom they were issued.

(3) Directions may be given by a Revenue Commissioner under subsection (2) where he or she forms the opinion that there are circumstances suggesting that a class of policy or classes of policies issued by an assurance company may have been issued to policyholders, some of whom have paid one or more than one premium in respect of any policy concerned out of income or gains which were required to be, but were not, included in a return made by those policyholders under the Tax Acts or the Capital Gains Tax Acts; and for the purposes of this subsection the Revenue Commissioner may take into consideration information in relation to policies issued by other assurance companies and the policyholders of such policies.

(4) An authorised officer, when investigating a class or classes of policies and the policyholders to whom they were issued, may at all reasonable times, enter any premises or place of business of an assurance company to inspect the relevant records held by the assurance company in respect of a sample of

policies of that class or those classes and the policy-holders of those policies.

(5) Where an authorised officer has entered any premises or place of business of an assurance company for the purposes of this section, he or she may require the assurance company, or any employee of the assurance company, to produce the relevant records in a form which is legible and to furnish such information and explanations as the authorised officer requires in relation to the relevant records.

(6) Where in accordance with this section an authorised officer inspects relevant records he or she may copy or make extracts from those records.

(7) Information obtained by an authorised officer from inspecting relevant records may only be used for the purposes of enabling an authorised officer, within the meaning of section 902A, to make an application under that section to a judge of the High Court.”.

Amendment of Chapter 1 (income tax and corporation tax penalties) of Part 47 of Taxes Consolidation Act 1997.

141.—(1) Chapter 1 of Part 47 of the Taxes Consolidation Act 1997 is amended—

(a) in section 1053—

(i) in subsection (1)(ii) by deleting “the amount or, in the case of fraud, twice”, and

(ii) in subsection (1A)(b) by deleting “the amount or, in the case of fraud, twice”,

and

(b) in section 1054, in subsection (3)(a)(i)(II) by deleting “the amount or, in the case of fraud, twice”.

(2) This section applies to returns, statements, declarations, or accounts delivered, made or, as the case may be, submitted on or after the passing of this Act.

Amendment of section 1078 (revenue offences) of Taxes Consolidation Act 1997.

142.—The Taxes Consolidation Act 1997 is amended in section 1078—

(a) by inserting after subsection (1) the following subsection:

“(1A) (a) In this subsection—

‘facilitating’ means aiding, abetting, assisting, inciting or inducing;

‘fraudulent evasion of tax by a person’ means the person—

(a) evading or attempting to evade any payment or deduction of tax required under the Acts to be paid by the person or, as the case may be, required under the Acts to be deducted from amounts due to the person, or

- (b) claiming or obtaining, or attempting to claim or obtain, relief or exemption from, or payment or repayment of, any tax, being relief, exemption, payment or repayment, to which the person is not entitled under the Acts,

where, for those purposes, the person deceives, omits, conceals or uses any other dishonest means including—

- (i) providing false, incomplete or misleading information, or
- (ii) failing to furnish information,

to the Revenue Commissioners or to any other person.

- (b) For the purposes of this subsection and subsection (5) a person (in this paragraph referred to as the 'first-mentioned person') is reckless as to whether or not he or she is concerned in facilitating—

- (i) the fraudulent evasion of tax by a person, being another person, or
- (ii) the commission of an offence under subsection (2) by a person, being another person,

if the first-mentioned person disregards a substantial risk that he or she is so concerned, and for those purposes 'substantial risk' means a risk of such a nature and degree that, having regard to all the circumstances and the extent of the information available to the first-mentioned person, its disregard by that person involves culpability of a high degree.

- (c) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person—

- (i) is knowingly concerned in the fraudulent evasion of tax by the person or any other person,
- (ii) is knowingly concerned in, or is reckless as to whether or not the person is concerned in, facilitating—

- (I) the fraudulent evasion of tax, or

- (II) the commission of an offence under subsection (2) (other than an offence under paragraph (b) of that subsection),

by any other person, or

- (iii) is knowingly concerned in the fraudulent evasion or attempted fraudulent evasion of any prohibition or restriction on importation for the time being in force, or the removal of any goods from the State, in contravention of any provision of the Acts.”,

(b) in subsection (2)—

- (i) by substituting for paragraph (f) the following paragraph:

“(f) fails to pay to the Collector-General appropriate tax (within the meaning of section 739E) within the time specified in that behalf in section 739F,”,

- (ii) in paragraph (i) by substituting “by the Acts,” for “by the Acts, or”, and

- (iii) by inserting after paragraph (i) the following paragraph:

“(ii) (i) fails to deduct tax required to be deducted by the person under section 531(1), or

- (ii) fails, having made that deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in section 531(3A),

or”,

and

- (c) in subsection (5) by substituting “to have been committed with the consent or connivance of or to be attributable to any recklessness (as provided for by subsection (1A)(b)) on the part of” for “to have been committed with the consent or connivance of”.

Amendment of section 1086 (publication of names of tax defaulters) of Taxes Consolidation Act 1997.

143.—(1) Section 1086 of the Taxes Consolidation Act 1997 is amended—

- (a) in subsection (4)(c) by substituting “€30,000” for “€12,700”, and

- (b) by inserting the following subsection after subsection (4):

“(4A) (a) In this subsection—

‘the consumer price index number’ means the All Items Consumer Price Index Number compiled by the Central Statistics Office;

‘the consumer price index number relevant to a year’ means the consumer price index

number at the mid-December before the commencement of that year expressed on the basis that the consumer price index at mid-December 2001 was 100;

‘the Minister’ means the Minister for Finance.

- (b) The Minister shall, in the year 2010 and in every fifth year thereafter, by order provide, in accordance with paragraph (c), an amount in lieu of the amount referred to in subsection (4)(c), or where such an order has been made previously, in lieu of the amount specified in the last order so made.
- (c) For the purposes of paragraph (b) the amount referred to in subsection (4)(c) or in the last previous order made under the said paragraph (b), as the case may be, shall be adjusted by—
- (i) multiplying that amount by the consumer price index number relevant to the year in which the adjustment is made and dividing the product by the consumer price index number relevant to the year in which the amount was previously provided for, and
 - (ii) rounding the resulting amount up to the next €1,000.
- (d) An order made under this subsection shall specify that the amount provided for by the order—
- (i) takes effect from a specified date, being 1 January in the year in which the order is made, and
 - (ii) does not apply to any case in which the specified liability referred to in paragraphs (c) and (d) of subsection (2) includes tax, the liability in respect of which arose before, or which relates to periods which commenced before, that specified date.”.

(2) *Subsection (1)(a)* shall not apply where the specified liability referred to in paragraphs (c) and (d) of subsection (2) of section 1086 of the Taxes Consolidation Act 1997 includes tax, the liability in respect of which arose before, or which relates to periods which commenced before, 1 January 2005.

Amendment of
Chapter 3A
(Implementation of
Council Directive
2003/48/EC of 3
June 2003 on
Taxation of Savings
Income in the Form
of Interest
Payments and
Related Matters) of
Part 38 of Taxes
Consolidation Act
1997.

144.—(1) Chapter 3A (Implementation of Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments and Related Matters) of Part 38 of the Taxes Consolidation Act 1997 is amended—

(a) in section 898B(1) by substituting the following definition for the definition of “the Directive”:

“‘the Directive’ means Council Directive 2003/48/EC of 3 June 2003¹ as amended;”,

(b) in sections 898F(5)(c) and 898G(6)(c) by substituting “1 July 2005” for “1 January 2005”,

(c) in section 898G(3)(a)(iii) by substituting “territory” for “relevant territory”,

(d) in section 898H—

(i) by substituting the following for the matter immediately preceding paragraph (a) in subsection (1):

“Every paying agent shall, as respects an interest payment made for the immediate benefit of a beneficial owner on or after 1 July 2005 who is resident in a relevant territory, make and deliver to the Revenue Commissioners within 3 months of the end of a tax year (being the tax year 2005 and subsequent years) a return of all interest payments, as respects the tax year 2005, so made during the period 1 July 2005 to 31 December 2005 by that paying agent and, as respects any other tax year, so made by that paying agent during that year consisting of—”,

and

(ii) by substituting the following for paragraph (b) of subsection (4):

“(b) (i) (I) the total amount of interest payments which are within the meaning of paragraphs (a), (b), (c), (d), (e) and (g) of subsection (1) of section 898E, and

(II) the total amount of interest payments which are within the meaning of paragraphs (f) and (h) of that subsection,

or

(ii) in a case where the paying agent is a residual entity—

(I) the total amount of deemed interest payments which are within the meaning of paragraphs (a), (b), (c), (d), (e) and (g) of subsection (1) of section 898E, and

¹OJ No. L157, 26.6.2003, p.38

(II) the total amount of deemed interest payments which are within the meaning of paragraphs (f) and (h) of that subsection.”,

(e) in section 898I by substituting the following for paragraph (c):

“(c) the total amount of the interest payments so made or so secured by it in the tax year (and for this purpose the tax year 2005 shall be deemed to begin on 1 July 2005 and end on 31 December 2005).”,

(f) by substituting the following for subsections (1) to (3) of section 898M—

“(1) Subject to subsections (3) and (4), where tax has been deducted from an interest payment in a relevant territory under provisions applicable in such territory in accordance with the Directive or the arrangements and—

- (a) the interest payment is, or but for an exemption or relief from tax would be, taken into account in computing the total income of an individual for the tax year in which the tax was deducted for the purposes of income tax, and
- (b) the individual is resident in the State for that tax year,

then—

- (i) the individual may claim a credit for the tax deducted from the payment against any income tax chargeable on that individual for that year and, in determining the amount of tax payable on the individual’s total income for that year, credit shall be given for the tax deducted from the interest payment and the amount of the credit shall be the amount of tax deducted from the interest payment, and
- (ii) where—
 - (I) the tax deducted from the interest payment exceeds any such income tax chargeable, the excess shall be repaid, or
 - (II) no such income tax is chargeable, an amount equal to the tax deducted from the interest payment shall be repaid to the individual.

(2) Subject to subsections (3) and (4), where tax has been deducted from an interest payment in a relevant territory under provisions applicable in such

territory in accordance with the Directive or the arrangements and—

- (a) the interest payment is, or but for an exemption or relief from tax would be, taken into account in computing the chargeable gains of an individual for the tax year in which the tax was deducted for the purposes of the Capital Gains Tax Acts, and
- (b) the individual is resident in the State for that tax year,

then—

- (i) the individual may claim a credit for the tax deducted from the payment against the capital gains tax chargeable on that individual for that year and, in determining the amount of tax payable on the chargeable gains of that individual for that year, credit shall be given for the tax deducted from the interest payment and the amount of the credit shall be the amount of tax deducted from the interest payment, and
- (ii) where—
 - (I) the tax deducted exceeds any such capital gains tax, the excess shall be repaid to the individual, or
 - (II) no such capital gains tax is chargeable, an amount equal to the tax deducted shall be repaid to the individual.

(3) (a) The credit referred to in subsection (1) or (2), as the case may be, shall apply only after the application of any other credit to which the individual may be entitled under any arrangement made under section 826 in respect of any tax deducted from the payment under provisions other than those referred to in subsection (1) or (2).

(b) Subsection (1) or (2) shall not apply where—

- (i) the individual referred to in the subsection concerned has obtained relief under the law of a territory outside the State in respect of tax that has been deducted from an interest payment in a relevant territory under provisions applicable in such territory in accordance with the Directive or the arrangements, and

- (ii) the individual was resident in that territory or was treated as being resident in that territory under arrangements made under section 826 for the year of assessment in which the tax was deducted.”,

(g) in section 898O by substituting the following for subsection (1):

“(1) Where any person required to make a return under this Chapter—

- (a) fails, without reasonable excuse, to comply with any of the requirements of section 898F or 898G,
- (b) makes an incorrect or incomplete return under this Chapter, or
- (c) fails, without reasonable excuse, to make such a return,

that person shall be liable to a penalty of €19,045 and, in the case of paragraphs (a) and (c), if the failure continues that person shall be liable to a further penalty of €2,535 for each day on which the failure continues.”,

(h) by substituting the following for section 898P:

“Arrangements with third countries and dependent and associated territories of Member States.

898P.—(1) This Chapter shall apply for the purposes of implementing any arrangements made with a territory being a dependent or associated territory of a Member State (in this Chapter referred to as the ‘arrangements’) in relation to the automatic exchange of information and the application of a withholding tax referred to in paragraph 2(ii) of Article 17 of the Directive.

(2) (a) In this subsection—

‘Council Decision on signing of agreement with Andorra’ means Council Decision (2004/828/EC) of 2 November 2004 concerning the signature of the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the approval and signature of the accompanying Memorandum of Understanding¹;

‘Council Decision on signing of agreement with Liechtenstein’ means Council Decision (2004/897/EC) of 29 November 2004 on the signing of the

¹OJ No. L359, 4.12.2004, p.32

Agreement between the European Community and the Principality of Liechtenstein providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the approval and signing of the accompanying Memorandum of Understanding²;

‘Council Decision on signing of agreement with Monaco’ means Council Decision (2005/35/EC) of 7 December 2004 on the signing of the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the approval and signing of the accompanying Memorandum of Understanding³;

‘Council Decision on signing of agreement with San Marino’ means Council Decision (2004/903/EC) of 29 November 2004 on the signing of the Agreement between the European Community and Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the approval and signing of the accompanying Memorandum of Understanding⁴;

‘Council Decision on signing and conclusion of agreement with the Swiss Confederation’ means Council Decision (2004/911/EC) of 2 June 2004 on the signing and conclusion of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding⁵.

- (b) (i) Article 12 (Exchange of information on request) of the agreement attached to the Council Decision on signing of agreement with Andorra,

²OJ No. L379, 24.12.2004, p.83

³OJ No. L19, 21.1.2005, p.53

⁴OJ No. L381, 28.12.2004, p.32

⁵OJ No. L385, 29.12.2004, p.28

- (ii) Article 10 (Exchange of information) of the agreement attached to the Council Decision on signing of agreement with Liechtenstein,
- (iii) Article 12 (Transmission of information on request) of the agreement attached to the Council Decision on signing of agreement with Monaco,
- (iv) Article 13 (Exchange of information on request) of the agreement attached to the Council Decision on signing of agreement with San Marino, and
- (v) Article 10 (Exchange of information) of the agreement attached to the Council Decision on signing and conclusion of agreement with the Swiss Confederation,

shall, notwithstanding any other enactment, have the force of law.

- (c) Section 898M shall apply for the purposes of implementing—
 - (i) Article 10 (Elimination of double taxation) of the agreement attached to the Council Decision on signing of agreement with Andorra,
 - (ii) Article 9 (Elimination of double taxation) of the agreement attached to the Council Decision on signing of agreement with Liechtenstein,
 - (iii) Article 10 (Elimination of double taxation and/or repayment of withholding tax) of the agreement attached to the Council Decision on signing of agreement with Monaco,
 - (iv) Article 10 (Elimination of double taxation) of the agreement attached to the Council Decision on signing of agreement with San Marino, and
 - (v) Article 9 (Elimination of double taxation) of the agreement attached to the Council Decision on signing and conclusion of agreement with the Swiss Confederation,

in the same way as it applies for the purposes of the Directive or the arrangements, and references in that section to tax

deducted from an interest payment in a relevant territory under provisions applicable in such territory in accordance with the Directive or the arrangements shall be construed as references to—

(I) in the case of Liechtenstein or the Swiss Confederation, as the case may be, a retention from an interest payment under provisions applicable in that country in accordance with the agreement, and

(II) in the case of Andorra, Monaco or San Marino, as the case may be, tax withheld from an interest payment under provisions applicable in that country in accordance with the agreement,

and references to tax deducted and cognate expressions shall be construed accordingly.

(d) (i) The Revenue Commissioners may make regulations generally for the purposes of implementing the provisions of any arrangements the Government may make with the Government of any of the countries referred to in article 17(2)(i) of the Directive for the purposes of supplementing paragraph (b).

(ii) For the purposes of subparagraph (i), arrangements made with the head of a State shall be regarded as made with the Government of that State.

(e) Section 898L shall apply for the purposes of Article 9 (Voluntary disclosure) of the agreement attached to the Council Decision on signing of agreement with Andorra in the same way as it applies for the purposes of the Directive.”,

and

(i) in section 898R by substituting—

(i) “898O” for “898P” in subsection (1),

(ii) the following for subsection (2):

“(2) Section 898O shall apply as respects an act or omission which takes place or begins on or after the date of the passing of the *Finance Act 2005*.”,

and

(iii) “1 July 2005” for “1 January 2005” in subsection (3).

(2) Section 912A(1) of the Taxes Consolidation Act 1997 is amended by substituting the following for the definition of “foreign tax”:

“ ‘foreign tax’ means a tax chargeable under the laws of a territory in relation to which arrangements (in this section referred to as ‘the arrangements’) having the force of law by virtue of section 826, 898P(2) or section 106 of the Capital Acquisitions Tax Consolidation Act 2003 apply;”.

(3) This section applies as on and from the date of the passing of this Act.

145.—(1) Chapter 5 of Part 47 of the Taxes Consolidation Act 1997 is amended by substituting the following for sections 1080 and 1081: Interest on certain overdue tax.

“Interest on overdue income tax, corporation tax and capital gains tax. 1080.—(1) In this section—

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

‘chargeable person’ has the same meaning as in section 950(1);

‘period of delay’, in relation to any tax due and payable, means the period during which that tax remains unpaid;

‘Table’ means the Table to subsection (2);

‘tax’ means income tax, corporation tax or capital gains tax, as appropriate;

‘relevant period’, in relation to a period of delay which falls into more than one of the periods specified in column (1) of the Table, means any part of the period of delay which falls into, or is the same as, a period specified in that column.

(2) (a) Subject to this section and section 1081—

- (i) as respects tax due and payable for a chargeable period beginning before 1 January 2005, any tax charged by any assessment to tax shall carry interest from the date when the tax becomes due and payable until payment, and
- (ii) as respects tax due and payable for a chargeable period beginning on or after 1 January 2005, any tax due and payable by a chargeable person for a chargeable period shall carry interest from the date when the tax becomes due and payable until payment,

and the amount of that interest shall be determined in accordance with paragraph (c).

- (b) Subject to this section and section 1081, any tax charged by any assessment to income tax shall, notwithstanding any appeal against such assessment, carry interest from the date when, if there were no appeal against the assessment, the tax would become due and payable under section 960 until payment, and the amount of that interest shall be determined in accordance with paragraph (c).
- (c) The interest to be carried by the tax referred to in paragraph (a) or (b), as the case may be, shall be—
- (i) where one of the periods specified in column (1) of the Table includes or is the same as the period of delay, the amount determined by the formula—

$$T \times D \times P$$

where—

T is the tax due and payable which remains unpaid,

D is the number of days (including part of a day) forming the period of delay, and

P is the appropriate percentage in column (2) of the Table opposite the period specified in column (1) of the Table within which the period of delay falls or which is the same as the period of delay,

and

- (ii) where a continuous period formed by 2 or more of the periods specified in column (1) of the Table, but not (as in subparagraph (i)) only one such period, includes or is the same as the period of delay, the aggregate of the amounts due in respect of each relevant period which forms part of the period of delay, and the amount due in respect of each such relevant period shall be determined by the formula—

$$T \times D \times P$$

where—

T is the tax due and payable which remains unpaid,

D is the number of days (including part of a day) forming the relevant period, and

P is the appropriate percentage in column (2) of the Table opposite the period specified in column (1) of the Table into which the relevant period falls or which is the same as the relevant period.

TABLE

(Period) (1)	(Percentage) (2)
From 6 April 1963 to 31 July 1971	0.0164%
From 1 August 1971 to 30 April 1975	0.0246%
From 1 May 1975 to 31 July 1978	0.0492%
From 1 August 1978 to 31 March 1998	0.041%
From 1 April 1998 to 31 March 2005	0.0322%
From 1 April 2005 to the date of payment	0.0273%

(3) The interest payable under this section—

- (a) shall be payable without deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any of the purposes of the Tax Acts, and
- (b) shall be deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and shall be payable to the Revenue Commissioners.

(4) Subject to subsection (5)—

- (a) every enactment relating to the recovery of tax,
- (b) every rule of court so relating,
- (c) section 81 of the Bankruptcy Act 1988, and
- (d) sections 98 and 285 of the Companies Act 1963,

shall apply to the recovery of any amount of interest payable on that tax as if that amount of interest were a part of that tax.

(5) In proceedings instituted by virtue of subsection (4)—

- (a) a certificate signed by an officer of the Revenue Commissioners certifying that a stated amount of interest is due and

payable by the person against whom the proceedings were instituted shall be evidence until the contrary is proven that that amount is so due and payable, and

- (b) a certificate so certifying and purporting to be signed as specified in this subsection may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by an officer of the Revenue Commissioners.

Effect on interest of reliefs given by discharge or repayment.

1081.—(1) Subject to subsection (2)—

- (a) where for any year of assessment or accounting period, as the case may be, relief from any tax referred to in section 1080(2) is given to any person by a discharge of any of that tax, such adjustment shall be made of the amount of interest payable under that section in relation to that tax, and such repayment shall be made of any amounts of interest previously paid under that section in relation to that tax, as are necessary to secure that the total sum, if any, paid or payable under that section in relation to that tax is the same as it would have been if the tax discharged had never been due and payable, and

- (b) where relief from tax paid for any year of assessment or accounting period, as the case may be, is given to any person by repayment, that person shall be entitled to require that the amount repaid shall be treated for the purposes of this subsection to the extent possible as if it were a discharge of the tax charged on that person (whether alone or together with other persons) by any assessment for the same year or period; but the relief shall not be applied to any assessment made after the relief was given and shall not be applied to more than one assessment so as to reduce without extinguishing the amount of tax charged thereby.

(2) No relief, whether by discharge or repayment, shall be treated as affecting any tax charged by an assessment to—

- (a) income tax or any income tax due and payable unless it is a relief from income tax,
- (b) corporation tax or any corporation tax due and payable unless it is a relief from corporation tax, or

(c) capital gains tax or capital gains tax due and payable unless it is a relief from capital gains tax.”.

(2) Section 1082 of the Taxes Consolidation Act 1997 is amended by inserting the following after subsection (5):

“(6) This section shall not apply as respects any tax due and payable for a year of assessment or an accounting period beginning on or after 1 January 2005.”.

(3) Part 11 of the Stamp Duties Consolidation Act 1999 is amended by inserting the following after Chapter 7:

“CHAPTER 8

Calculation of interest on unpaid duty and other amounts

Calculation of interest on unpaid duty and other amounts.

159D.—(1) In this section—

‘period of delay’, in relation to any unpaid duty or other amount referred to in a specified provision, means the period referred to in the specified provision in respect of which period interest is chargeable, charged, payable or recoverable, as the case may be, in accordance with that provision;

‘specified provision’ means any section of this Act other than section 126(7) which provides for interest to be charged, chargeable, payable or recoverable, as the case may be, in respect of any unpaid duty or other amount due and payable under that section.

(2) The amount of interest charged, chargeable, payable or recoverable in respect of any unpaid duty or other amount due and payable or recoverable under a specified provision shall be the amount determined by the formula—

$$A \times D \times P$$

where—

A is the duty or other amount due and payable under the specified provision which remains unpaid,

D is the number of days (including part of a day) forming the period of delay, and

P is 0.0273 per cent.”.

(4) (a) Section 51 of the Capital Acquisitions Tax Consolidation Act 2003 is amended by substituting the following for subsection (2):

“(2)(a) Simple interest is payable, without the deduction of income tax, on the tax from the valuation date to the date of payment, and the amount of that interest shall be determined in accordance with paragraph (c).

(b) Interest payable in accordance with paragraph (a) is chargeable and recoverable in the same manner as if it were part of the tax.

(c) (i) In this paragraph—

‘period of delay’, in relation to any tax due and payable, means the period during which that tax remains unpaid;

‘relevant period’, in relation to a period of delay which falls into more than one of the periods specified in column (1) of Part 1 of the Table, means any part of the period of delay which falls into, or is the same as, a period specified in that column;

‘Table’ means the Table to this subsection.

(ii) The interest payable in accordance with paragraph (a), shall be—

(I) where one of the periods specified in column (1) of Part 1 of the Table includes or is the same as the period of delay, the amount determined by the formula—

$$T \times D \times P$$

where—

T is the tax due and payable which remains unpaid,

D is the number of days (including part of a day) forming the period of delay, and

P is the appropriate percentage in column (2) of the Table opposite the period specified in column (1) of Part 1 of the Table within which the period of delay falls or which is the same as the period of delay,

and

(II) where a continuous period formed by 2 or more of the periods specified in column (1) of Part 1 of the Table, but not (as in clause (I)) only one such period, includes or is the same as the period of delay, the aggregate of the amounts due in respect of each relevant period which forms part of the period of delay, and the amount due in respect of each such relevant period shall be determined by the formula—

$$T \times D \times P$$

where—

T is the tax due and payable which remains unpaid,

D is the number of days (including part of a day) forming the relevant period, and

P is the appropriate percentage in column (2) of Part 1 of the Table opposite the period specified in column (1) of Part 1 of the Table into which the relevant period falls or which is the same as the relevant period.

TABLE

Part 1

(Period) (1)	(Percentage) (2)
From 31 March 1976 to 31 July 1978	0.0492%
From 1 August 1978 to 31 March 1998	0.0410%
From 1 April 1998 to 31 March 2005	0.0322%
From 1 April 2005 to the date of payment	0.0273%

Part 2

(Period) (1)	(Percentage) (2)
From 8 February 1995 to 31 March 1998	0.0307%
From 1 April 1998 to 31 March 2005	0.0241%
From 1 April 2005 until the date of payment	0.0204%

(2A) For the purposes of calculating interest on the whole or the part of the tax to which section 55 applies, subsection (2) shall apply as if references in that subsection to Part 1 of the Table were references to Part 2 of the Table.”.

(b) Section 55 of the Capital Acquisitions Tax Consolidation Act 2003 is amended by substituting the following for paragraph (b) of subsection (2):

“(b) notwithstanding subsection (2) of section 51, the interest payable on that whole or part of the tax shall be determined—

(i) in accordance with that subsection as modified by subsection (2A) of that section, or

- (ii) in such other manner as may be prescribed by the Minister for Finance by regulations,

instead of in accordance with subsection (2) of that section, and that section shall apply as regards that whole or part of the tax as if the interest so payable were determined under that section, but the interest payable on any overdue instalment of that whole or part of that tax, or on such part of the tax as would represent any such overdue instalment if that whole or part of the tax were being paid by instalments, shall continue to be determined in accordance with subsection (2) of section 51.”.

- (5) (a) This subsection applies to interest payable under—

- (i) section 18(2) of the Wealth Tax Act 1975,
- (ii) section 105(1) of the Finance Act 1983, and
- (iii) section 117 of the Finance Act 1993.

- (b) Where any interest to which this subsection applies is chargeable on or after 1 April 2005 in respect of tax due to be paid whether before, on or after that date, then such interest shall, notwithstanding the provisions of any other enactment, be chargeable at the rate of 0.0273 per cent per day or part of a day instead of at the rate specified in that other enactment and the sections referred to in paragraph (a) shall have effect as if for interest so chargeable that rate were substituted for the rate specified in each of those sections.

- (6) (a) The provisions set out in *paragraph (b)* are, in so far as they are not already repealed, repealed with effect from 1 April 2005 to the extent that they apply to interest chargeable or payable on income tax, corporation tax, capital gains tax, gift tax and inheritance tax that has not been paid before that date regardless of when that tax became due and payable.

- (b) The provisions referred to in *paragraph (a)* are—

- (i) section 14 of the Finance Act 1962;
- (ii) sections 550, 551 and 552 of the Income Tax Act 1967;
- (iii) section 17 of the Finance Act 1971;
- (iv) section 28 of the Finance Act 1975;
- (v) section 41 of the Capital Acquisitions Tax Act 1976;
- (vi) sections 43 and 46 of the Finance Act 1978;
- (vii) the provisions of section 1083 of the Taxes Consolidation Act 1997 except in so far as they apply section 1082 of that Act to capital gains tax;
- (viii) section 133 of the Finance Act 1998; and

(ix) section 129 of the Finance Act 2002.

- (7) (a) In each provision of the Taxes Consolidation Act 1997 set out in *column (1)* of *Part 1* of *Schedule 5* for the words in that provision which are set out in *column (2)* of that Part there shall be substituted the words set out opposite the entry in *column (3)* of that Part.
- (b) In each provision of the Stamp Duties Consolidation Act 1999 set out in *column (1)* of *Part 2* of *Schedule 5* for the words in that provision which are set out in *column (2)* of that Part there shall be substituted the words set out opposite the entry in *column (3)* of that Part.
- (8) (a) *Subsections (1)* and *(7)(a)* apply to any unpaid income tax, corporation tax or capital gains tax, as the case may be, that has not been paid before 1 April 2005 regardless of when that tax becomes due and payable and notwithstanding anything to the contrary in any other enactment other than section 1082 of the Taxes Consolidation Act 1997, but *subsection (1)* shall not apply to the part, if any, before 1 January 1963 of any period of delay (within the meaning of section 1080 of that Act as substituted by this section).
- (b) *Subsection (2)* applies and shall be deemed to have always applied from 1 January 2005.
- (c) *Subsections (3)* and *(7)(b)* apply as respects interest to be charged, chargeable, payable or recoverable, as the case may be, for any day or part of a day on or after 1 April 2005 in respect of any unpaid stamp duty or other amount due under the Stamp Duties Consolidation Act 1999 which is due to be paid whether before, on or after 1 April 2005.
- (d) *Subsection (4)* applies to any unpaid gift tax or inheritance tax, as the case may be, that has not been paid before 1 April 2005 regardless of when that tax becomes due and payable and notwithstanding anything to the contrary in any other enactment.

146.—Section 964 of the Taxes Consolidation Act 1997 is amended by substituting the following for subsection (1):

- “(1) (a) Notwithstanding subsection (2) of section 966, where the Collector-General duly appointed to collect any income tax has instituted proceedings under section 963 or 966, or continues under this section any proceedings brought under those sections, for the recovery of such tax and, while such proceedings are pending, such Collector-General ceases for any reason to be the Collector-General so appointed to collect such tax, the proceedings may be continued in the name of that Collector-General by any person (in this subsection referred to as the ‘successor’) duly appointed to collect such tax in succession to that Collector-General or any subsequent Collector-General.

- (b) In any case where paragraph (a) applies, the successor shall inform by notice the person or persons

Amendment of section 964 (continuance of pending proceedings) of Taxes Consolidation Act 1997.

against whom the proceedings concerned are pending that those proceedings are being so continued and on service of such notice, notwithstanding any rule of court, it shall not be necessary for the successor to obtain an order of court substituting him or her for the Collector-General who has instituted or continued the proceedings.

- (c) Any affidavit or oath to be made by a Collector-General for the purposes of the Judgment Mortgage (Ireland) Act 1850 or the Judgment Mortgage (Ireland) Act 1858 may be made by a successor.”.

Miscellaneous technical amendments in relation to tax.

147.—The enactments specified in *Schedule 6* are amended to the extent and in the manner specified in that Schedule.

Capital Services Redemption Account.

148.—(1) In this section—

“capital services” has the same meaning it has in the principal section;

“fifty-third additional annuity” means the sum charged on the Central Fund under *subsection (3)*;

“principal section” means section 22 of the Finance Act 1950.

(2) In relation to the twenty-nine successive financial years commencing with the financial year ending on 31 December 2005, subsection (3) of section 92 of the Finance Act 2004 shall have effect with the substitution of “€0.00” for “€80,533,677”.

(3) A sum of €43,454,359 to redeem borrowings, and interest on such sum, in respect of capital services shall be charged annually on the Central Fund or the growing produce of that Fund in the thirty successive financial years commencing with the financial year ending on 31 December 2005.

(4) The fifty-third additional annuity shall be paid into the Capital Services Redemption Account in such manner and at such times in the relevant financial year as the Minister for Finance may determine.

(5) Any amount of the fifty-third additional annuity, not exceeding €33,400,000 in any financial year, may be applied towards defraying the interest on the public debt.

(6) The balance of the fifty-third additional annuity shall be applied in any one or more of the ways specified in subsection (6) of the principal section.

Care and management of taxes and duties.

149.—All taxes and duties imposed by this Act are placed under the care and management of the Revenue Commissioners.

Short title, construction and commencement.

150.—(1) This Act may be cited as the Finance Act 2005.

(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 corporation tax, the Corporation Tax Acts, and
- (c) in so far as it relates to capital gains tax, the Capital Gains Tax Acts.
- (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 1972 to 2004 and may be cited together with those Acts as the Value-Added Tax Acts 1972 to 2005.
- (5) *Part 4* shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act.
- (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) corporation tax, shall be construed together with the Corporation Tax Acts,
 - (c) capital gains tax, shall be construed together with the Capital Gains Tax Acts,
 - (d) customs, shall be construed with the Custom Acts,
 - (e) duties of excise, shall be construed together with the statutes which relate to duties of excise and the management of those duties,
 - (f) value-added tax, shall be construed together with the Value-Added Tax Acts 1972 to 2005,
 - (g) stamp duty, shall be construed together with the Stamp Duties Consolidation Act 1999, and the enactments amending or extending that Act,
 - (h) residential property tax, shall be construed together with Part VI of the Finance Act 1983, and the enactments amending or extending that Part,
 - (i) 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 in *Part 1*, that Part is deemed to have come into force and takes effect as on and from 1 January 2005.
- (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.

(10) Any reference in this Act to any other enactment shall, except in so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment including this Act.

(11) In this Act, a reference to a Part, section or Schedule is to a Part or section of, or Schedule to, this Act, unless it is indicated that reference to some other enactment is intended.

(12) In this Act, a reference to a subsection, paragraph, subparagraph, clause or subclause is to the subsection, paragraph, subparagraph, clause or subclause of the provision (including a Schedule) in which the reference occurs, unless it is indicated that reference to some other provision is intended.

[2005.]

Finance Act 2005.

[No. 5.]

SCHEDULE 1

*Section 3.*AMENDMENTS CONSEQUENTIAL ON CHANGES IN PERSONAL TAX
CREDITS

As respects the year of assessment 2005 and subsequent years of assessment, the Taxes Consolidation Act 1997 is amended as follows—

- (a) in section 461, by substituting “€3,160” for “€3,040”, in both places where it occurs, and “€1,580” for “€1,520”,
- (b) in section 461A, by substituting “€400” for “€300”,
- (c) in section 462, by substituting “€1,580” for “€1,520” in subsection (2),
- (d) in section 463, by substituting “€2,800”, “€2,300”, “€1,800”, “€1,300” and “€800” respectively for “€2,600”, “€2,100”, “€1,600”, “€1,100” and “€600” in subsection (2),
- (e) in section 465, by substituting “€1,000” for “€500” in subsection (1),
- (f) in section 468, by substituting “€1,000” and “€2,000”, respectively for “€800” and “€1,600” in subsection (2), and
- (g) in section 472, by substituting “€1,270” for “€1,040”, in both places where it occurs, in subsection (4).

SCHEDULE 2

Section 72.

RATES OF TOBACCO PRODUCTS TAX

Description of Product	Rate of Tax
Cigarettes	€133.39 per thousand together with an amount equal to 18.32 per cent of the price at which the cigarettes are sold by retail.
Cigars	€196.409 per kilogram
Fine-cut tobacco for the rolling of cigarettes	€165.740 per kilogram
Other smoking tobacco ...	€136.261 per kilogram

[No. 5.] *Finance Act 2005.* [2005.]

Section 81.

SCHEDULE 3

REPEALS AND REVOCATIONS RELATING TO EXCISE DUTY ON TOBACCO PRODUCTS

PART 1

Repeals

Number and Year (1)	Short title (2)	Extent of repeal (3)
No. 32 of 1977.	Finance (Excise Duty on Tobacco Products) Act 1977.	The whole Act, in so far as it is unrepealed.
No. 9 of 1984.	Finance Act 1984.	Section 70.
No. 8 of 2004.	Finance Act 2004.	Section 45.

PART 2

Revocations

Number and Year (1)	Subject matter or citation (2)	Extent of revocation (3)
S.I. No. 389 of 1977.	Tobacco Products Regulations 1977.	The whole Regulations.
S.I. No. 233 of 1995.	Tobacco Products (Tax Stamp) Regulations 1995.	The whole Regulations.

Section 95.

SCHEDULE 4

REPEALS RELATING TO EXCISE LAW

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of repeal (3)
2 Will. 4, c.16.	Excise Permits Act 1832.	The whole Act.
4 & 5 Vict., c.20.	Excise Management Act 1841.	Section 30.
61 & 62 Vict., c.20.	Finance Act 1898.	Section 4.
61 & 62 Vict., c.46.	Revenue Act 1898.	Sections 14 and 15.
No. 27 of 1924.	Finance Act 1924.	Section 38, in so far as it relates to excise duties.
No. 3 of 2003.	Finance Act 2003.	Section 93.

SCHEDULE 5

Section 145.

AMENDMENT OF PROVISIONS CONSEQUENTIAL ON SECTION 145

PART 1

Amendments of the Taxes Consolidation Act 1997 consequential to the provisions of section 145(1)

Provision amended (1)	Words to be replaced (2)	Words to be inserted (3)
section 128B(9)(c)	“Subsections (3) and (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 128B(9)(d)	“subsection (1)(b)”	“subsection (2)(b)”
section 172K(6)(c)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 172K(6)(d)	“subsection (1)(b)”	“subsection (2)(b)”
section 240(3)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 240(4)	“subsection (1)(b)”	“subsection (2)(b)”
section 258(9)(c)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 258(9)(d)	“subsection (1)(b)”	“subsection (2)(b)”
section 503(8)	“income tax charged by an assessment”	“income tax”
section 591(11)(c)	“R is the rate per cent specified in section 1080(1)”	“R is 0.083”
section 730G(7)(c)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 730G(7)(d)	“subsection (1)(b)”	“subsection (2)(b)”
section 739F(7)(c)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 739F(7)(d)	“subsection (1)(b)”	“subsection (2)(b)”
section 784E(6)(c)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 784E(6)(d)	“subsection (1)(b)”	“subsection (2)(b)”
section 848M(6)(c)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 848M(6)(d)	“subsection (1)(b)”	“subsection (2)(b)”
section 1082(3)	“section 1080(1)”	“section 1080(2)”
section 1082(4)	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
section 1082(5)	“section 1080(1)”	“section 1080(2)”
paragraph 1(7)(c) of Schedule 18	“Subsections (2) to (4) of section 1080”	“Subsections (3) to (5) of section 1080”
paragraph 1(7)(d) of Schedule 18	“subsection (1)(b)”	“subsection (2)(b)”

PART 2

Amendments of the Stamp Duties Consolidation Act 1999 consequential on the provisions of section 145(3)

Provision amended (1)	Words to be replaced (2)	Words to be inserted (3)
section 5(4)	“interest on the duty (which shall be recoverable in the same manner as if it were part of the duty) at the rate of 0.0322 per cent for each day or part of a day”	“interest on the duty (which shall be recoverable in the same manner as if it were part of the duty), calculated in accordance with section 159D,”
section 14(1)	“interest on such duty, at the rate of 0.0322 per cent for each day or part of a day”	“interest on such duty, calculated in accordance with section 159D,”
sections 75(3), 87(3) and 87A(4)(a)	“interest on that sum at the rate of 0.0322 per cent for each day or part of a day”	“interest on that sum, calculated in accordance with section 159D,”
sections 79(7) and 80(8)	“interest on the duty, by means of penalty, at the rate of 0.0322 per cent for each day or part of a day”	“interest on the duty, by means of penalty, calculated in accordance with section 159D,”
sections 81(7)(aa) and 81A(11)(aa)	“interest shall be payable on a penalty incurred under paragraph (a) at a rate of 0.0322 per cent for each day or part of a day”	“interest shall be payable on a penalty incurred under paragraph (a), calculated in accordance with section 159D,”
sections 81(7)(b) and 81A(11)(b)	“interest on that amount as may so become payable charged at a rate of 0.0322 per cent for each day or part of a day”	“interest charged on that amount as may so become payable, calculated in accordance with section 159D,”
sections 91(2)(c)(i), 91A(6)(a), 92(2)(a), 92A(3)(a) and 92B(4)(a)	“interest on that amount charged at a rate of 0.0322 per cent for each day or part of a day”	“interest charged on that amount, calculated in accordance with section 159D,”
section 108A(4)	“interest on the penalty at a rate of 0.0322 per cent per day or part of a day”	“interest on the penalty, calculated in accordance with section 159D,”
section 117(3)	“interest shall be payable at the rate of 0.0322 per cent for each day or part of a day for which duty so remains unpaid”	“interest shall be payable, calculated in accordance with section 159D, until the day on which the duty is paid”
section 117(4)	“interest on the additional duty payable under subsection (2)(b)(i) shall be charged at the rate of 0.0322 per cent for each day or part of a day”	“interest shall be chargeable on the additional duty payable under subsection (2)(b)(i) and shall be calculated in accordance with section 159D,”
sections 123(7), 123A(7), 124(5)(b) and 125(6)	“interest on the duty at the rate of 0.0322 per cent for each day or part of a day”	“interest on the duty, calculated in accordance with section 159D,”
section 126A(10)	“interest on the stamp duty at the rate of 0.0322 per cent per day or part of a day”	“interest on the stamp duty, calculated in accordance with section 159D”

SCHEDULE 6

Section 147.

MISCELLANEOUS TECHNICAL AMENDMENTS IN RELATION TO TAX

1. The Taxes Consolidation Act 1997 is amended in accordance with the following provisions:

- (a) in section 4(1), in paragraph (a) of the definition of “company” by substituting “the Health Service Executive” for “a health board”,
- (b) in section 127(2)(i)(I) by substituting “Schedule E” for “the Schedule E”,
- (c) in section 214(2)(b) by substituting “the Health Service Executive” for “a health board”,
- (d) in section 267J by substituting the following for subsection (2):

“(2) Where by virtue of subsection (1) a company is to be allowed credit for tax payable under the laws of a Member State other than the State, Schedule 24 shall apply for the purposes of that subsection as if that subsection were arrangements providing that the tax so payable shall be allowed as a credit against tax payable in the State.”,

(e) in section 268—

(i) in subsection (1), in paragraph (i) of the definition of “industrial building or structure” by substituting “the Health Service Executive” for “the health board in whose functional area the convalescent home is situated”,

(ii) in subsection (2A)—

(I) by deleting the definition of “health board”, and

(II) in the definition of “qualifying hospital”—

(A) in paragraph (g) by substituting “the Health Service Executive” for “the health board in whose functional area it is situated”,

(B) in paragraph (g)(i) by substituting “the Health Service Executive” for “the health board” in each place where it occurs, and

(C) in paragraph (h) by substituting “the Health Service Executive” for “that health board”,

(iii) in subsection (2B)—

(I) in paragraph (e)—

(A) by substituting “the Health Service Executive” for “the health board in whose functional area it is situated”, and

(B) in subparagraph (i) by substituting “the Health Service Executive” for “the health board” in both places where it occurs,

and

(II) in paragraph (f) by substituting “the Health Service Executive” for “that health board”,

and

(iv) in subsection (3A)(c)(iv)—

(I) by substituting “the Health Service Executive” for “the health board in whose functional area the units are situated”, and

(II) by substituting “the Health Service Executive” for “that health board” in both places where it occurs,

(f) in section 397(3) by substituting “section 243 or 243A” for “section 243”,

(g) in section 404(4)(c)(ii)—

(i) in the construction of M by substituting “days” for “months”, and

(ii) in the construction of R by substituting “is 0.0273.” for “is the rate per cent specified in section 1080(1).”,

(h) in section 469(1)—

(i) in the definition of “hospital”

(I) by substituting “the Health Service Executive” for “a health board” in both places where it occurs, and

(II) by substituting “Health Acts 1947 to 2004” for “Health Acts, 1947 to 1996” in both places where it occurs,

and

(ii) in paragraph (c) of the definition of “practitioner” by substituting “practice” for “practise”,

(i) in section 556(6)(a) by substituting “in each subsequent year” for “in in each subsequent year”,

(j) in section 616(7) in paragraph (b) of the definition of “relevant Member State” by substituting “section 826(1)(a)” for “section 826”,

(k) in section 730K(5)(a) by substituting “section 104 of the Capital Acquisitions Tax Consolidation Act 2003” for “section 63 of the Finance Act, 1985”,

- (l) in section 787A in paragraph (a) of the definition of “employee”—
- (i) by substituting “the Health Service Executive” for “health board”, and
 - (ii) by deleting “board or committee” and substituting “the Executive or the committee”,
- (m) in section 825A(3)(b) by substituting “section 826(1)(a)” for “section 826”,
- (n) in section 888(2)(e) by substituting “who, or the Health Service Executive or any local authority” for “who, or any health board, local authority”,
- (o) in section 942 by deleting subsections (7) and (10), and
- (p) in Schedule 29—
- (i) in column 2—
 - (I) by deleting “section 893(2)”, and
 - (II) by inserting “section 896” after “section 894(3)”, and
 - (ii) in column 3 by substituting “section 896” for “section 893(3)”.
2. The Capital Acquisitions Tax Consolidation Act 2003 is amended in section 45(2)(b)(i) by deleting “on or”.
3. Schedule 2 to the Finance Act 2003 is amended by substituting “Exceeding 1.2% vol” for “Exceeding 1.2%”.
4. (a) As respects *paragraph 1*—
- (i) *subparagraphs (a) to (c), (e), (h) to (j) and (l) to (p)* have effect as on and from the passing of this Act,
 - (ii) *subparagraph (f)* applies as respects accounting periods ending on or after 3 February 2005,
 - (iii) *subparagraph (g)* applies and comes into effect as on and from 3 February 2005,
 - (iv) *subparagraph (k)* is deemed to have come into force as on and from 21 February 2003, and
 - (v) *subparagraph (d)* is deemed to have come into force as on and from 1 January 2004.
- (b) *Paragraph 2* is deemed to have come into force and have taken effect as on and from 21 February 2003.
- (c) *Paragraph 3* has effect as on and from the passing of this Act.