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FINANCE ACT, 1997

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Income Tax, Corporation Tax and Capital Gains Tax

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AN ACT TO CHARGE AND IMPOSE CERTAIN DUTIES OF CUSTOMS AND INLAND REVENUE (INCLUDING EXCISE), TO AMEND THE LAW RELATING TO CUSTOMS AND INLAND REVENUE (INCLUDING EXCISE) AND TO MAKE FURTHER PROVISIONS IN CONNECTION WITH FINANCE. [10th May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Income Tax, Corporation Tax and Capital Gains Tax

Chapter I

Income Tax

1.—As respects the year of assessment 1997-98 and subsequent years of assessment, the Finance Act, 1980, is hereby amended—

Amendment of provisions relating to exemption from income tax.

- (a) in section 1, by the substitution, in subsection (2) (inserted by the Finance Act, 1989), of “£8,000” and “£4,000”, respectively, for “£7,800” and “£3,900” (inserted by the Finance Act, 1996), and
- (b) in section 2, by the substitution, in subsection (6) (inserted by the Finance Act, 1989)—
- (i) of “£9,200” and “£10,400”, respectively, for “£9,000” and “£10,200” (inserted by the Finance Act, 1996), in paragraph (a), and
- (ii) of “£4,600” and “£5,200”, respectively, for “£4,500” and “£5,100” (inserted by the Finance Act, 1996), in paragraph (b),

and the said subsection (2) of the said section 1 and the said subsection (6) of the said section 2, as so amended, are set out in the Table to this section.

TABLE

(2) In this section “the specified amount” means, subject to subsection (3)—

(a) in a case where the individual would, apart from this section, be entitled to a deduction specified in section 138 (a) of the Income Tax Act, 1967, £8,000, and

(b) in any other case, £4,000.

(6) In this section “the specified amount” means, subject to subsection (3) of section 1—

(a) in a case where the individual would, apart from this section, be entitled to a deduction specified in section 138 (a) of the Income Tax Act, 1967, £9,200:

Provided that, if at any time during the year of assessment either the individual or his spouse was of the age of seventy-five years or upwards, “the specified amount” means £10,400, and

(b) in any other case, £4,600:

Provided that, if at any time during the year of assessment the individual was of the age of seventy-five years or upwards, “the specified amount” means £5,200.

Alteration of rates of income tax.

2.—Section 2 of the Finance Act, 1991, is hereby amended, as respects the year of assessment 1997-98 and subsequent years of assessment, by the substitution of the following Table for the Table to that section:

“TABLE

part i

Part of taxable income (1)	Rate of tax (2)	Description of rate (3)
The first £9,900	26 per cent.	the standard rate
The remainder	48 per cent.	the higher rate

part ii

Part of taxable income (1)	Rate of tax (2)	Description of rate (3)
The first £19,800	26 per cent.	the standard rate
The remainder	48 per cent.	the higher rate

”.

Personal reliefs.

3.—(1) Where a deduction falls to be made from the total income of an individual for the year of assessment 1997-98 or any subsequent year of assessment in respect of relief to which the individual is entitled under a provision mentioned in *column (1)* of the Table to this subsection and the amount of the deduction would, but for this section, be an amount specified in *column (2)* of the said Table, the amount of the deduction shall, in lieu of being the amount specified in the said *column (2)*, be the amount specified in *column (3)* of the said Table opposite the mention of the amount in the said *column (2)*.

TABLE

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Statutory provision (1)	Amount to be deducted from total income for the year 1996-97 (2)	Amount to be deducted from total income for the year 1997-98 and subsequent years (3)
	£	£
Income Tax Act, 1967:		
section 138		
(married person)... ..	5,300	5,800
(widowed person bereaved in the year of assessment)	5,300	5,800
(widowed person)	3,150	3,400
(single person)	2,650	2,900
section 138A		
(additional allowance for widowed persons and others in respect of children)		
(widowed person)	2,150	2,400
(other person)	2,650	2,900
Finance Act, 1974:		
section 8		
(age allowance)		
(single or widowed person)	200	400
(married person)	400	800

(2) Section 3 of the Finance Act, 1986, and section 3 of the Finance Act, 1996, shall have effect subject to the provisions of this section.

(3) The *First Schedule* shall have effect for the purpose of supplementing *subsection (1)*.

4.—(1) Section 15 of the Finance Act, 1992, is hereby amended, in subsection (2) (inserted by the Finance Act, 1995), by the insertion of the following additional proviso:

Amendment of provisions relating to the taxation of certain social welfare benefits.

“Provided also that the aggregate of the amounts of disability benefit, or of injury benefit, or of both disability benefit and injury benefit, payable to a person in respect of—

(a) for the year of assessment 1997-98, the first 18 days, and

(b) for the year of assessment 1998-99 and subsequent years of assessment, the first 36 days,

incapacity for work for which the person is entitled to payment of either disability benefit or injury benefit shall be disregarded for all the purposes of the Income Tax Acts.”.

(2) (a) Notwithstanding the provisions of section 15 (as amended by *subsection (1)*) of the Finance Act, 1992, and the Finance Act, 1992 (Commencement of Section 15) (Unemployment Benefit and Pay-Related Benefit) Order, 1994 (S.I. No. 19 of 1994), the said section 15 shall not apply, as respects the year of assessment 1997-98, in

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relation to unemployment benefit paid or payable to a person employed in short-time employment.

- (b) In this subsection, “short-time employment” has the same meaning as it has for the purposes of the Social Welfare Acts but also includes such an employment as is referred to in section 79 (2) (b) of the Social Welfare (Consolidation) Act, 1993.

Amendment of section 4 (separated spouses: adaptation of special provisions as to married persons) of Finance Act, 1983.

5.—As respects the year of assessment 1997-98 and subsequent years of assessment—

- (a) section 4 of the Finance Act, 1983, is hereby amended by the insertion of the following subsection after subsection (2):

“(3) Notwithstanding the provisions of subsection (1), where a payment to which section 3 applies is made in a year of assessment by a spouse who is a party to marriage, that has been dissolved, for the benefit of the other spouse and—

- (a) the dissolution was under either—

(i) section 5 of the Family Law (Divorce) Act, 1996, or

(ii) the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State,

- (b) both spouses are resident in the State for tax purposes for that year of assessment, and

- (c) neither spouse has entered into another marriage,

then, the other provisions of this section shall, with any necessary modifications, have effect in relation to the spouses for that year of assessment as if their marriage had not been dissolved.”,

and

- (b) section 49 of the Family Law Act, 1995, and section 32 of the Family Law (Divorce) Act, 1996, are hereby repealed.

Amendment of section 127 (regulations) of Income Tax Act, 1967.

6.—(1) Section 127 of the Income Tax Act, 1967, is hereby amended by the insertion of the following after subsection (5):

“(5A)(a) Notwithstanding the provisions of subsection (5), regulations made in accordance with the provisions of paragraphs (f) and (g) of subsection (1) shall not apply to an employer (being an individual) who pays emoluments to an employee engaged by that employer in a domestic employment where—

- (i) the emoluments from that employment are less than £30 per week, and

- (ii) the employer has only one such employee.

(b) In this subsection—

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‘domestic employee’ means an employee who is employed solely on domestic duties (including the mind-
ing of children) in the employer’s private dwelling house;

‘domestic employment’ means employment by reference to which an employee is a domestic employee.”.

(2) This section shall apply and have effect as on and from the 6th day of June, 1997.

7.—Section 15 of the Finance Act, 1996, is hereby amended—

Amendment of section 15 (relief for fees paid for part-time third level education) of Finance Act, 1996.

(a) in subsection (1)—

(i) by the substitution of the following for the definition of “approved college”:

“ ‘approved college’, in relation to a year of assessment, means a college or institution in the State, or a college or institution in another Member State of the European Union providing distance education in the State, which—

(a) provides courses to which a scheme approved by the Minister under the Local Authority (Higher Education) Grants Acts, 1968 to 1992, applies, or

(b) operates in accordance with a code of standards, which from time to time, may with the consent of the Minister for Finance, be laid down by the Minister,

and which the Minister approves of for the purposes of this section;”.

(ii) by the substitution of the following for the definition of “qualifying individual”:

“ ‘qualifying individual’ means—

(a) an individual other than an individual who has been conferred with a certificate, diploma or degree in respect of the completion by him or her of an undergraduate course of study of not less than 2 academic years duration, or

(b) an individual who has been conferred with a certificate or diploma as referred to in paragraph (a) and who is pursuing an approved course in respect of which the approved college certifies that the certificate or diploma, as the case may be, with which he or she has been conferred, has qualified him or her for exemption for one or more years of study from the normal duration of the approved course but is not otherwise an individual who is not a qualifying individual for the purposes of paragraph (a).”.

and

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(b) by the insertion of the following subsection after subsection (2):

“(2A) Notwithstanding the provisions of subsection (2), where, for any year of assessment—

(a) the spouse of a qualifying individual is assessed to tax in accordance with the provisions of section 194 (inserted by the Finance Act, 1980) of the Income Tax Act, 1967, and

(b) qualifying fees are paid by the qualifying individual, or paid by that spouse on behalf of the qualifying individual, in respect of an approved course for the academic year in relation to that course commencing in that year of assessment,

then, relief under this section shall, except where the provisions of section 197 (as so inserted) of the Income Tax Act, 1967, apply, be granted to the spouse of the qualifying individual in respect of the qualifying fees so paid as if he or she were a qualifying individual and the qualifying fees had been paid by him or her on his or her own behalf.”.

Relief for fees paid for training courses.

8.—(1) In this section—

“An Foras” means An Foras Áiseanna Saothair;

“approved course provider” means a person providing approved courses who—

(a) operates in accordance with a code of standards which from time to time may, with the consent of the Minister for Finance, be agreed between An Foras and the Minister, and

(b) is approved of by An Foras for the purposes of this section;

“approved course” means a course of study or training, other than a post graduate course, provided by an approved course provider which—

(a) is confined to—

(i) such aspects of information technology, or

(ii) such foreign languages,

as are approved of by the Minister, with the consent of the Minister for Finance, for the purposes of this section,

(b) is of less than two years duration,

(c) results in the awarding of a certificate of competence, and

(d) having regard to a code of standards which, from time to time, may, with the consent of the Minister for Finance, be agreed between An Foras and the Minister in relation to—

- (i) the quality and standard of training to be provided on Pt.I S.8 the approved course, and
- (ii) the methods and facilities to be used by the course provider in delivering the course and in assessing competence,

is approved of by An Foras for the purposes of this section;

“certificate of competence”, in relation to an approved course, means a certificate awarded in accordance with the standards set out in the code of standards referred to in *paragraph (d)* of the definition of “approved course” and certifying that a minimum level of competence has been achieved by the individual to whom the certificate is awarded;

“foreign language” means a language other than an official language of the State;

“the Minister” means the Minister for Enterprise and Employment;

“qualifying fees”, in relation to an approved course, means the amount of fees chargeable in respect of tuition to be provided in relation to such course where the net amount of such fees are not less than £250 and to the extent that they do not exceed £1,000.

- (2) (a) Subject to the provisions of this section, where an individual makes a claim in that behalf and proves that—
 - (i) he or she has on his or her own behalf made a payment in respect of qualifying fees in respect of an approved course, and
 - (ii) has been awarded a certificate of competence in respect of that course,

the income tax to be charged on the individual, other than in accordance with section 5(3) of the Finance Act, 1974, for the year of assessment in which that certificate of competence is awarded, shall be reduced by an amount which is the lesser of—

- (I) the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and
- (II) the amount which reduces that income tax to nil.

- (b) In this subsection “appropriate percentage”, in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year.

(3) Where, for a year of assessment in which an individual is awarded a certificate of competence—

- (a) the spouse of the individual is assessed to tax in accordance with the provisions of section 194 (inserted by the Finance Act, 1980) of the Income Tax Act, 1967, and

- (b) qualifying fees are paid by the individual, or paid by that spouse on behalf of the individual, in respect of the approved course,

then, relief under this section shall, except where the provisions of section 197 (as so inserted) of the Income Tax Act, 1967, apply, be granted to the spouse of the individual in respect of the qualifying fees so paid as if the qualifying fees had been paid by him or her on his or her own behalf.

(4) Relief under this section shall not be given in respect of an individual for a year of assessment in respect of more than one approved course.

(5) For the purposes of this section a payment in respect of qualifying fees shall be regarded as not having been made in so far as any sum, in respect of or by reference to such fees, has been or is to be received either directly or indirectly by an individual from any source whatsoever by way of grant, scholarship or otherwise.

(6) An Foras, where it is satisfied that an approved course provider, or an approved course provided by an approved course provider, no longer meets the appropriate code of standards laid down, may by notice in writing given to the approved course provider withdraw the approval of that course provider or approved course, as the case may be, from such date as it considers appropriate and this section shall cease to apply to that course provider or that course, as the case may be, with effect from that date.

(7) (a) As soon as may be practicable after it has—

- (i) approved a course provider or a course for the purposes of this section, or
- (ii) withdrawn such approval,

An Foras shall notify the Revenue Commissioners in writing of such approval or withdrawal of approval.

(b) If any question arises as to whether—

- (i) a course provider is an approved course provider, or
- (ii) a training course is an approved course,

for the purposes of this section, the Revenue Commissioners may consult with An Foras.

(8) Part II of the Table to section 137 (inserted by the Finance Act, 1996) of the Income Tax Act, 1967, is hereby amended by the addition of “*Section 8 of the Finance Act, 1997*”.

(9) Section 198 (inserted by the Finance Act, 1980) of the Income Tax Act, 1967, is hereby amended, in subsection (1)(a), by the insertion of the following additional subparagraph:

- “(xix) so far as it flows from relief under *section 8 of the Finance Act, 1997*, in the proportions in which they incurred the expenditure giving rise to the relief.”

[1997.]

Finance Act, 1997.

[No. 22.]

(10) Any relief under this section shall be in substitution for and not in addition to any relief to which the individual might be entitled to in respect of the same payment under any other provision of the Income Tax Acts.

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(11) This section shall come into operation on such date as may be fixed by order of the Minister for Finance.

9.—Chapter III of Part I of the Finance Act, 1984, is hereby amended—

Amendment of
Chapter III
(Income Tax: Relief
for Investment in
Corporate Trades)
of Part I of Finance
Act, 1984.

(a) in subsection (1) of section 11, by the substitution, as on and from the 6th day of April, 1997, of the following definition for the definition of “unquoted company”:

“ ‘unquoted company’ means a company none of whose shares, stocks or debentures—

(i) are listed in the official list of a stock exchange, or

(ii) are quoted on an unlisted securities market of a stock exchange other than on the market known as the Developing Companies Market of the Irish Stock Exchange.”,

(b) in section 14A (inserted by the Finance Act, 1995), by the substitution, as respects a subscription for eligible shares made on or after the 2nd day of June, 1995, of the following subsection for subsection (3):

“(3) The individual shall, throughout the relevant period, possess at least 15 per cent. of the issued ordinary share capital of the company in which that individual makes a relevant investment.”,

(c) in section 16, by the substitution, as respects a relevant investment made on or after the passing of this Act, of the following subparagraph for subparagraph (iic) of paragraph (a) of subsection (2):

“(iic) the rendering of such services as are referred to in subparagraph (ii) in respect of which an industrial development agency or a County Enterprise Board (being a board referred to in the Schedule to the Industrial Development Act, 1995) has provided financial support of not less than £2,000 towards the undertaking of a feasibility study by a person approved of by the agency or the County Enterprise Board into the potential commercial viability of the services to be rendered.”,

and

(d) in section 16A (inserted by the Finance Act, 1995), as respects a relevant investment made

on or after the passing of this Act, by the addition of the following after subsection (6):

“(7)(a) For the purposes of this Chapter, a certificate under subsection (2) may, instead of being given by an authority, be given by a County Enterprise Board (being a board referred to in the Schedule to the Industrial Development Act, 1995) to a company carrying on or intending to carry on one or more such qualifying trading operations as are mentioned in—

(i) subparagraph (i) (as amended by the Finance Act, 1993),

(ii) subparagraph (ii) (inserted by the Finance Act, 1990), and

(iii) subparagraph (iic) (inserted by the *Finance Act, 1997*),

of paragraph (a) of subsection (2) of section 16 and the provisions of subsections (2) and (6) of this section shall, subject to the modification specified in paragraph (b) and any other necessary modification, apply accordingly.

(b) The modification referred to in paragraph (a) is that, for the purposes of this subsection, the guidelines of the kind mentioned in subsection (2)(b) shall be agreed between the Minister for Finance and the Minister for Arts, Culture and the Gaeltacht or the Minister for Enterprise and Employment, as may be appropriate in the circumstances.”.

Amendment of section 14 (relief to individuals on loans applied in acquiring interest in companies) of Finance Act, 1992.

10.—As on and from the 6th day of April, 1997, section 14 of the Finance Act, 1992, is hereby amended by the substitution of the following definition for the definition of “quoted company”:

“‘quoted company’ means a company whose shares, or any class of whose shares—

(a) are listed in the official list of the Irish Stock Exchange or any other stock exchange, or

(b) are quoted on an unlisted securities market of any stock exchange;”.

[1997.]

Finance Act, 1997.

[No. 22.]

11.—(1) Section 353 of the Income Tax Act, 1967, is hereby amended by the substitution of the following for subsections (2) and (3):

Pt.I
Income from
scholarships.

“(2) Nothing in subsection (1) shall be construed as conferring on any person other than the person holding the scholarship in question any exemption from a charge to tax.

(3) Notwithstanding the provisions of subsection (2), a payment of income arising from a relevant scholarship which is—

- (a) provided from a trust fund or under a scheme, and
- (b) held by a person receiving full-time instruction at a university, college, school or other educational establishment,

shall be exempt from tax if, in the year of assessment in which the payment is made, not more than 25 per cent. of the total amount of the payments made from that fund, or under that scheme, in respect of scholarships held as mentioned in paragraph (b) is attributable to relevant scholarships.

(4) (a) In this section—

‘relevant body’ means a body corporate, unincorporated body, partnership, individual or other body;

‘relevant scholarship’ means a scholarship provision for which is made, either directly or indirectly, by a relevant body or a person connected with that relevant body and where payments are made, either directly or indirectly, in respect of such a scholarship to—

- (i) an employee or, where the relevant body is a body corporate, a director of the relevant body, or
- (ii) the spouse, family, dependants or servants of such employee or director;

‘scholarship’ includes an exhibition, bursary or other similar educational endowment.

(b) A person shall be regarded as connected with a relevant body for the purposes of this subsection, if that person is—

- (i) a trustee of a settlement, within the meaning of section 131 of the Finance Act, 1996, made by the relevant body, or
- (ii) a relevant body,

and that person would be regarded as connected with the relevant body for the purposes of the said section 131.

(5) If any question arises whether any income is income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational

Pt.I S.11

establishment, the Revenue Commissioners may consult the Minister for Education.”.

(2) This section shall apply and have effect in relation to a payment made on or after the 26th day of March, 1997, other than a payment made before the 6th day of April, 1998, in respect of a scholarship awarded before the said 26th day of March, 1997.

(3) For the purpose of ascertaining, in accordance with the provisions of subsection (3) (as inserted by this section) of section 353 of the Income Tax Act, 1967, the percentage of the total amount of the payments made in the year of assessment 1996-97 in respect of scholarships from any fund or under any scheme which, apart from the said subsection (3), would be chargeable to tax, this section shall be deemed to have applied and had effect in relation to all such payments made in that year.

(4) Section 178 of the Income Tax Act, 1967, is hereby amended, in subsection (1), by the insertion of the following after paragraph (aaa) (inserted by the Finance Act, 1982):

“(aaaa) particulars of any relevant scholarships (within the meaning of section 353 (as amended by the *Finance Act, 1997*) of the Income Tax Act, 1967) in relation to those persons;”.

Amendment of section 115 (exemptions and reliefs in respect of tax under section 114) of Income Tax Act, 1967.

12.—Section 115 of the Income Tax Act, 1967, is hereby amended in subsection (1A) (inserted by the Finance Act, 1993)—

(a) by the insertion in paragraph (a) of the following after subparagraph (iii):

“(iv) a benefit paid in pursuance of any statutory scheme (within the meaning of Chapter II of Part I of the Finance Act, 1972), other than a payment representing normal retirement benefits, which is made in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment in circumstances—

(I) of redundancy or abolition of office, or

(II) for the purposes of facilitating improvements in the organisation of the employing company, organisation, Department or other body by which greater efficiency or economy can be effected,

and for the purposes of this subparagraph, ‘normal retirement benefits’ means recognised superannuation benefits customarily payable to an individual on retirement at normal retirement date under the relevant statutory scheme, notwithstanding that, in relation to the termination of an office or employment in the circumstances described in this subparagraph, such benefits may be paid earlier than the designated retirement date or may be calculated by reference to a period greater than the individual’s actual period of service in the office or employment, and includes benefits described as short service gratuities which are calculated on a basis approved by the Minister for Finance.”.

and

[1997.]

Finance Act, 1997.

[No. 22.]

(b) by the insertion, in paragraph (b), of the following after sub-paragraph (ii): Pt.I S.12

“(iii) Subparagraph (iv) of paragraph (a) shall apply and have effect in relation to any statutory scheme established or amended after the passing of the *Finance Act, 1997*.”.

13.—(1) Section 17 of the Finance Act, 1970, is hereby amended—

Tax deductions from payments made to sub-contractors.

(a) by the substitution in subsection (1), with effect from the 6th day of October, 1997, of the following for paragraph (a) of the definition of “forestry operations” (inserted by the Finance Act, 1992):

“(a) the planting, thinning, lopping or felling of trees in woods, forests or other plantations;

(aa) the maintenance of woods, forests and plantations and the preparation of land, including woods or forests which have been harvested, for planting;”.

(b) by the substitution of the following for clause (C) of subsection (4)(c)(ii):

“(C) in respect of—

(I) employment contributions and self-employment contributions under the Social Welfare Acts,

(II) health contributions under the Health Contributions Act, 1979, and

(III) Employment and Training Levy under the Youth Employment Agency Act, 1981, as amended by the Labour Services Act, 1987.”.

and

(c) by the insertion, as respects offences committed or penalties incurred on or after the passing of this Act, of the following after subsection (10):

“(10A) Notwithstanding the provisions of any other enactment, summary proceedings in respect of offences under this section may be instituted within 10 years of the commission of the offence.

(10B) The provisions of sections 128(4), 500(4), 501(3), 502(3), 506 and 507 of the Income Tax Act, 1967, shall, with any necessary modifications, apply for the purposes of this section and any regulations made thereunder as they apply for the purposes of those provisions.”.

(2) Schedule 15 to the Income Tax Act, 1967, is hereby amended, as respects acts or omissions occurring on or after the passing of this Act, by—

(a) the deletion in column 2 of “Regulations under section 17 of the Finance Act, 1970”.

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(b) the insertion in columns 1 and 3 of “Finance Act, 1970, section 17 and Regulations made thereunder”, and

(c) the insertion in column 3 of “Finance Act, 1970, section 17A”.

Tax relief for
agreed pay
restructuring.

14.—(1) (a) In this section—

“basic pay”, in relation to a participating employee of a qualifying company, means the employee’s emoluments (other than non-pecuniary emoluments) from the company in respect of an employment held with the company;

“collective agreement” means an agreement entered into by a company with, or on behalf of, one or more than one body representative of employees of the company where each such body is either the holder of a negotiation licence under the Trade Union Act, 1941 or is an excepted body within the meaning of section 6 of that Act as amended by the Trade Union Act, 1942;

“control”, in relation to a qualifying company, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that qualifying company or any other qualifying company, or by virtue of any power conferred by the articles of association or any other document regulating that or any other qualifying company, that the affairs of the first-mentioned qualifying company are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership;

“emoluments” has the meaning assigned to it by section 138B (inserted by the Finance Act, 1980) of the Income Tax Act, 1967;

“employment” means an office or employment of profit such that any emoluments thereof fall to be charged to tax under Schedule E;

“the Minister” means the Minister for Enterprise and Employment;

“participating employee”, in relation to a qualifying company, means a qualifying employee who is a participant in a relevant agreement with the company;

“qualifying company” means a company to which the Minister has issued a certificate under *subsection (2)* which certificate has not been withdrawn under that subsection;

“qualifying employee”, in relation to a qualifying company, means an employee of the company in receipt of emoluments from the company;

“reduced basic pay”, in relation to a participating employee, means the basic pay of the employee as reduced by the substantial reduction provided for in the relevant agreement concerned; Pt.I S.14

“relevant agreement”, in relation to a qualifying company, means a collective agreement covering all, or substantially all, of the qualifying employees of the company—

(a) which provides, amongst other things, for—

- (i) a substantial reduction in the basic pay of the participating employees,
- (ii) the payment of the reduced basic pay to the participating employees for the duration of the relevant period, and
- (iii) the payment to the participating employees of a lump sum to compensate for that reduction,

and

(b) which is registered with the Labour Relations Commission;

“relevant date”, in relation to a relevant agreement, means the date the relevant agreement was registered with the Labour Relations Commission;

“relevant period”, in relation to a relevant agreement, means the period of 5 years commencing with the relevant date in relation to that agreement;

“specified amount”, in relation to a participating employee, means £6,000 together with £200 for each complete year of service (subject to a maximum of 20 years), up to the relevant date, of the employee in the service of the qualifying company.

(b) For the purposes of this section—

- (i) a reduction in the basic pay of a participating employee shall not be regarded as substantial unless it amounts to at least 10 per cent. of the average for one year of the employee’s basic pay ascertained by reference to such pay for the two year period ending with the relevant date, and
- (ii) employments in respect of which payments to which this section applies are made shall be treated as held with associated qualifying companies if, on the date of any of those payments, one of those companies is under the control of the other or of a third person who controls or is under the control of the other on that or any other such date.

- (2) (a) The Minister, on the making of an application in that behalf by a company, may, in accordance with guidelines laid down for the purpose by the Minister with the agreement of the Minister for Finance, give a certificate to a company stating that, for the purposes of this section, it may be treated as a qualifying company.
- (b) The Minister may not grant a certificate to a company under this subsection unless the Minister is satisfied, on advice from the Labour Relations Commission, that—
- (i) the company is faced with an actual or imminent substantial adverse change to its competitive environment which will determine its survival, and
 - (ii) to meet that change and achieve its survival, it is necessary for it to enter into a relevant agreement with its qualifying employees, and
 - (iii) the relevant agreement into which it is proposed to enter is designed for the sole purpose of addressing, and can be reasonably expected to address, that change.
- (c) An application under *paragraph (a)* shall be in such form as the Minister may direct and shall contain such information in relation to the company, its trade or business and the terms of the relevant agreement into which it proposes to enter with its qualifying employees as may be specified in the guidelines referred to in that paragraph.
- (d) A certificate issued by the Minister under *paragraph (a)* shall contain such conditions as the Minister considers appropriate and specifies therein.
- (e) Any cost incurred by the Labour Relations Commission in providing advice to the Minister in accordance with *paragraph (b)* shall be reimbursed by the company concerned to the Commission.
- (f) Where, during the relevant period, a qualifying company fails to comply with any of the conditions to which a certificate given to it under *paragraph (a)* is subject, the Minister may, by notice in writing to the company, revoke the certificate.
- (g) The Minister may not give a certificate under *paragraph (a)* at any time on or after the 6th day of April, 2000.
- (3) (a) An agreement shall not be a relevant agreement for the purposes of this section unless and until it has been registered with the Labour Relations Commission.
- (b) A qualifying company shall, within the period of one month from the date of each of the first 5 anniversaries of the relevant date or such longer period as the Labour Relations Commission may in writing allow, confirm to the Commission, in such form as the Commission shall direct, that all the terms of the relevant agreement, to the extent that they are still relevant, continue to be in force.

(4) Nothing in this section shall be construed as preventing a participating employee from receiving, during the relevant period, an increase in basic pay— Pt.I S.14

(a) which is—

(i) provided for under the terms of the agreement known as Partnership 2000 for Inclusion, Employment and Competitiveness entered into by the Government and the Social Partners in December, 1996, or any similar increase under an agreement, whether negotiated on a national basis or otherwise, which succeeds that agreement or which succeeds an agreement which succeeds the first-mentioned agreement, or

(ii) part of an incremental scale under the terms of the employee's contract of employment and which was in place 12 months prior to the relevant date,

and

(b) which is determined by reference to the employee's reduced basic pay or that pay as subsequently increased as aforesaid.

(5) (a) This section applies to a payment made to a participating employee by a qualifying company under a relevant agreement.

(b) A payment to which this section applies shall, to the extent that the payment does not exceed the specified amount, be exempt from any charge to tax.

(c) Where two or more payments to which this section applies are made to or in respect of the same person in respect of the same employment or in respect of different employments held with the same qualifying company or an associated qualifying company, this subsection shall apply as if those payments were a single payment of an amount equal to the aggregate of those payments; and the amount of any payment chargeable to tax shall be ascertained as follows, that is to say—

(i) where the payments are treated as income of different years of assessment, the specified amount shall be deducted from a payment treated as income of an earlier year before any payment treated as income of a later year, and

(ii) subject to *subparagraph (i)*, the specified amount shall be deducted from a payment made earlier in a year of assessment before any payment made later in that year.

(6) If, during the relevant period—

(a) the Minister revokes, in accordance with the provisions of *paragraph (f) of subsection (2)*, a certificate given to a company under *paragraph (a) of that subsection*, or

(b) a qualifying company fails to meet the requirements of *paragraph (b) of subsection (3)*, or

Pt.I S.14

(c) a participating employee receives an increase in reduced basic pay, other than as provided for in *subsection (4)*,

then, any relief granted under this section, where *paragraph (a)* or *(b)* applies, to all the participating employees of the company or, where *paragraph (c)* applies, to the participating employee concerned, shall be withdrawn by the making of an assessment to tax under Case IV of Schedule D for the year of assessment for which the relief was granted.

(7) Where, during the relevant period, a participating employee receives a payment from a qualifying company, other than a payment to which this section applies, which is chargeable to tax by virtue of section 114 of the Income Tax Act, 1967, any relief from tax in respect of that payment under the provisions of section 115(3) of, or Schedule 3 to, that Act, shall be reduced by the amount of any relief given under this section in respect of a payment, made in that period, to which this section applies.

(8) The provisions of section 115 of, and Schedule 3 to, the Income Tax Act, 1967, and section 3 of the Finance Act, 1968, shall not apply or have effect in relation to a payment to which this section applies.

Amendment of section 4 (charge of tax on sums applied outside the State in repaying certain loans) of Finance Act, 1971.

15.—Section 4 of the Finance Act, 1971, is hereby amended by the addition after subsection (5) of the following subsection:

“(6) In relation to income applied in or towards satisfaction of a debt for money lent on or after the 20th day of February, 1997, or a debt incurred for satisfying in whole or in part any such debt, this section shall apply and have effect as if the references to ordinarily resident in the State in subsection (1) and subsection (2) were references to resident or ordinarily resident in the State.”.

Chapter II

Income Tax, Corporation Tax and Capital Gains Tax

Relief for gifts made to third level institutions.

16.—(1) In this section—

“approved institution” means an institution in the State in receipt of public funding which provides courses to which a scheme approved by the Minister under the Local Authorities (Higher Education Grants) Acts, 1968 to 1992, applies or any body established in the State for the sole purpose of raising funds for such an institution;

“approved project” means a project in respect of which the Minister has given a certificate under *subsection (2)* which certificate has not been revoked under that subsection;

“project” means one or more of the following—

(a) the undertaking of research;

(b) the acquisition of equipment;

(c) infrastructural development in institutions specified in the guidelines referred to in *subsection (2) (a) (i)*;

- (d) the provision of facilities designed to increase student numbers in areas of skills needs; Pt.I S.16

“Minister” means the Minister for Education;

“relevant gift” means a gift of money which—

- (a) on or after the 6th day of April, 1997, is made to an approved institution for the sole purpose of funding an approved project,
- (b) is or will be applied by the approved institution for the said purpose, and
- (c) is not, apart from this section, deductible in computing for the purposes of tax the profits or gains of a trade or profession, or is not income to which the provisions of section 439 of the Income Tax Act, 1967, apply, or is not a gift of money to which the provisions of section 32 of the Finance Act, 1984, apply;

“tax” means income tax or corporation tax, as the case may be.

- (2) (a) (i) The Minister, on the making of an application by an approved institution, may, in accordance with guidelines laid down by the Minister with the consent of the Minister for Finance, give a certificate to that institution stating that a project may be treated as an approved project for the purposes of this section.
- (ii) An application under this subsection shall be in such form as the Minister may direct and shall contain such information as may be specified in the guidelines referred to in *subparagraph (i)*.
- (iii) The Minister shall consult the Higher Education Authority in relation to an application under this subsection.
- (b) (i) A certificate given by the Minister under *paragraph (a)* shall be subject to such conditions as the Minister may consider proper and specifies therein (including a condition as to the amount, or the percentage amount, of the total cost of the approved project which shall be met by relevant gifts).
- (ii) The Minister may amend or revoke any condition specified in a certificate under *paragraph (a)*, or add to such conditions, by giving notice in writing to the approved institution of the amendment, revocation or addition and the provisions of this section shall apply as if—
- (I) a condition so amended or added by the notice was specified in the certificate, and
- (II) a condition as so revoked was not specified in the notice.
- (c) Where an approved institution fails to comply with any of the conditions to which a certificate given to it under *paragraph (a)* is subject by virtue of *paragraph (b)*, the Minister may, by notice in writing given to the institution,

revoke the certificate and the project shall cease to be an approved project as respects any gifts made to the institution after the date of the Minister's notice.

(3) Where it is proved to the satisfaction of the Revenue Commissioners that a person has made a relevant gift and the person claims relief from tax by reference thereto, the provisions of *subsection (6)* or, as the case may be, *subsection (7)* shall apply.

(4) Where a relevant gift is made by a chargeable person within the meaning of Chapter II of Part I of the Finance Act, 1988, a claim under this section shall be made with the return required to be delivered by that person under section 10 of that Act, for the chargeable period in which the gift is made.

(5) In determining the net amount of the gift for the purposes of *subsection (6)* or *(7)*, the amount or value of any consideration received by the person concerned as a result of making the gift, whether received directly or indirectly from the approved institution to which the gift was made or otherwise, shall be deducted from the amount of the gift.

(6) For the purposes of income tax for the year of assessment in which a person makes a gift to which this section applies, the net amount thereof shall be deducted from or set off against any income of the person chargeable to income tax for that year and tax shall, where necessary, be discharged or repaid accordingly and the total income of the person or, where the person's spouse is assessed to income tax in accordance with the provisions of section 194 (inserted by the Finance Act, 1980) of the Income Tax Act, 1967, the total income of the spouse shall be calculated accordingly.

(7) Where a relevant gift is made by a company, the net amount thereof shall, for the purposes of corporation tax, be deemed to be a loss incurred by the company in a separate trade in the accounting period of the company in which the gift is made.

(8) Relief under this section shall not be given to a person for a year of assessment or an accounting period, as the case may be, if the net amount of the gift (or the aggregate of the net amounts of gifts) made by such person in that year or that accounting period, as the case may be, is less than £1,000.

(9) Every approved institution, when required to do so by notice from the Minister, shall, within the time limited by the notice, prepare and deliver to the Minister a return containing particulars of the aggregate amount of relevant gifts received by the institution in respect of each approved project.

(10) If any question arises as to whether—

- (a) an institution is an approved institution, or
- (b) a project is an approved project, or
- (c) a gift is a relevant gift,

for the purposes of this section, the Revenue Commissioners may consult with the Minister.

(11) For the purposes of a claim to relief under this section, an approved institution shall, on acceptance of a relevant gift, give to the person making the relevant gift a receipt which shall—

[1997.]

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[No. 22.]

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(a) contain a statement that—

- (i) it is a receipt for purposes of this section,
- (ii) the institution is an approved institution for purposes of this section,
- (iii) the gift in respect of which the receipt is given is a relevant gift for purposes of this section, and
- (iv) the project in respect of which the relevant gift has been made is an approved project,

and

(b) show—

- (i) the name and address of the person making the relevant gift,
- (ii) the amount of the relevant gift in both figures and words,
- (iii) the date of the relevant gift,
- (iv) the full name of the approved institution,
- (v) the date on which the receipt was issued, and
- (vi) particulars of the approved project in respect of which the relevant gift has been made,

and

(c) be signed by a duly authorised official of the approved institution.

17.—(1) Section 19 (as amended by the Finance Act, 1995) of the Finance Act, 1982, is hereby amended—

Amendment of provisions relating to relief for expenditure on significant buildings, etc.

(a) in subsection (1)—

(i) by the insertion of the following definition after the definition of “approved building”:

“ ‘approved object’, in relation to an approved building, has the meaning assigned to it by subsection (4A);”,

(ii) by the substitution of the following definition for the definition of “authorised person”:

“ ‘authorised person’ means—

(a) an inspector or other officer of the Revenue Commissioners authorised by them in writing for the purposes of this section, or

(b) a person authorised by the Minister in writing for the purposes of this section;”,

- (iii) by the insertion of the following definition after the definition of “chargeable period”:

“ ‘the Minister’ means the Minister for Arts, Culture and the Gaeltacht;”,

- (iv) by the insertion of the following definition after the definition of “the Minister” (inserted by *subparagraph (iii)*):

“ ‘public place’, in relation to an approved building in use as a tourist accommodation facility, means a part of the building to which all patrons of the facility have access;”,

- (v) by the substitution of the following definition for the definition of “qualifying expenditure”:

“ ‘qualifying expenditure’, in relation to an approved building, means expenditure incurred, by the person who owns or occupies the approved building, on one or more of the following—

(a) the repair, maintenance or restoration of the approved building or the maintenance or restoration of any land occupied or enjoyed with the approved building as part of its garden or grounds of an ornamental nature, and

(b) to the extent that the aggregate expenditure in a chargeable period does not exceed £5,000—

(i) the repair, maintenance or restoration of an approved object in the approved building,

(ii) the installation, maintenance or replacement of a security alarm system in the approved building, and

(iii) public liability insurance for the approved building;”,

- (vi) by the insertion of the following definition after the definition of “qualifying expenditure”:

“ ‘security alarm system’ means an electrical apparatus installed as a fixture in the approved building which, when activated, is designed to give notice to the effect that there is an intruder present or attempting to enter the approved building in which it is installed;”,

and

- (vii) by the insertion of the following paragraph after paragraph (b):

“(c) For the purposes of this section, references to an approved building, unless the contrary intention is expressed, shall be construed as including a reference to any land occupied or enjoyed with an approved building as part of its garden or grounds of an ornamental nature.”,

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(b) in subsection (2), by the substitution, in paragraph (a), of Pt.I S.17 the following subparagraph for subparagraph (i):

“(i) that he has incurred in a chargeable period qualifying expenditure in relation to an approved building,”

(c) by the insertion of the following subsection after subsection (2):

“(2A) (a) Where—

- (i) by virtue of subsection (2), qualifying expenditure in a chargeable period is treated as if it were a loss sustained in the chargeable period in a trade carried on by the person separate from any trade actually carried on by that person, and
- (ii) owing to an insufficiency of income, relief under the Tax Acts cannot be given for any part of the qualifying expenditure so treated (in this subsection referred to as ‘the unrelieved amount’),

then, all the provisions of the Tax Acts shall apply as if the unrelieved amount were a loss sustained in the next following chargeable period in a trade carried on by the person separate from any trade actually carried on by that person.

- (b) Where owing to an insufficiency of income, relief under the Tax Acts cannot be given by virtue of paragraph (a) for any part of the unrelieved amount, then all the provisions of the Tax Acts shall apply as if that part of the unrelieved amount were a loss sustained in the chargeable period next following the period referred to in paragraph (a) in a trade carried on by the person separate from any trade actually carried on by that person.
- (c) Where, in any chargeable period, relief under the Tax Acts is due by virtue of two or more of the following provisions, that is to say, subsection (2) and paragraphs (a) and (b) of this subsection, then the following provisions shall apply—
 - (i) any relief due under those Acts by virtue of paragraph (b) shall be given in priority to any relief due under those Acts by virtue of subsection (2) or paragraph (a), and
 - (ii) where relief has been given in accordance with subparagraph (i) or where no such relief is due, any relief due under those Acts by virtue of paragraph (a) shall be given in priority to relief due under those Acts by virtue of subsection (2).”

(d) in subsection (4)—

- (i) by the substitution in paragraph (a) of the following subparagraph for subparagraph (i):

“(i) by the Minister, to be a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, and”,

- (ii) by the substitution of the following paragraph for paragraph (c):

“(c) Where under paragraph (a) the Minister makes a determination in relation to a building and, by reason of any alteration made to the building, or any deterioration of the building, subsequent to the determination being made, the Minister considers that the building is no longer a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, the Minister may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on which the Minister considers that the building ceased to be a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, and this subsection shall cease to apply to the building from that date.”,

- (e) by the insertion of the following subsection after subsection (4):

“(4A) (a) In this subsection, ‘approved object’, in relation to an approved building, means an object (including a picture, sculpture, print, book, manuscript, piece of jewellery, furniture, or other similar object) or a scientific collection which is owned by the owner or occupier of the approved building and which, on application to them in that behalf by that person, is determined—

- (i) by the Minister, after consideration of any evidence in relation to the matter which such owner or occupier submits to the Minister and after such consultation (if any) as may seem to the Minister to be necessary with such person or body of persons as in the opinion of the Minister may be of assistance to the Minister, to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and

- (ii) by the Revenue Commissioners, to be an object reasonable access to which is afforded, and in respect of which reasonable facilities for viewing are provided, in the building to the public.

- (b) Without prejudice to the generality of the requirement that reasonable access be afforded, and that reasonable facilities for viewing be provided, to the public, access to and facilities for the viewing of an object shall not be regarded as being reasonable access afforded, or the provision of reasonable facilities for viewing, to the public unless, subject to such temporary removal as is necessary for the purposes of the repair, maintenance or restoration of the object as is reasonable—
- (i) in a case where the approved building is a tourist accommodation facility, the object is displayed in a public place in the building, or
- (ii) in the case of any other approved building—
- (I) access to the object is afforded and such facilities for viewing the object are provided to the public on the same days and at the same times as access is afforded to the public to the approved building in which the object is kept, and
- (II) the price, if any, paid by the public in return for such access is, in the opinion of the Revenue Commissioners, reasonable in amount and does not operate to preclude the public from seeking access to the object.
- (c) Where under paragraph (a) the Minister makes a determination in relation to an object and, by reason of any alteration made to the object, or any deterioration of the object, subsequent to the determination being made, the Minister considers that the object is no longer an object which is intrinsically of significant national, scientific, historical or aesthetic interest, the Minister may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on which the Minister considers that the object ceased to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and this subsection shall cease to apply to the object from that date.
- (d) Where under paragraph (a) the Revenue Commissioners make a determination in relation to an object and—
- (i) reasonable access to the object ceases to be afforded, or reasonable facilities for

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the viewing of the object cease to be provided, to the public, or

- (ii) the object ceases to be owned by the person to whom relief in respect of that qualifying expenditure has been granted under this section,

the Revenue Commissioners may, by notice in writing given to the owner or occupier of the approved building in which the object is or was kept, revoke that determination with effect from the date on which they consider that such access, such facilities for viewing or such ownership, as the case may be, so ceased, and—

- (i) this subsection shall cease to apply to the object from that date, and
- (ii) if relief has been given under this section in respect of qualifying expenditure incurred in relation to that object in the period of two years ending on the date from which the revocation has effect, that relief shall be withdrawn and there shall be made all such assessments or additional assessments as are necessary to give effect to the provisions of this subsection.”,

and

- (f) by the substitution in subsection (5) of the following paragraph 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 relation to which the qualifying expenditure has been incurred for the purpose of 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.”.

(2) Section 29 of the Finance Act, 1993, is hereby amended in subsection (1)—

- (a) by the substitution of the following paragraph for paragraph (a) of the definition of “approved garden”:

“(a) by the Minister for Arts, Culture and the Gaeltacht, to be a garden which is intrinsically of significant horticultural, scientific, historical, architectural or aesthetic interest, and”,

- (b) by the substitution of the following definition for the definition of “qualifying expenditure”:

“‘qualifying expenditure’, in relation to an approved garden, means expenditure incurred, by the person who owns or occupies the approved garden, on one or more of the following—

- (a) the maintenance or restoration of the approved Pt.I S.17 garden, and
- (b) to the extent that the aggregate expenditure in a chargeable period does not exceed £5,000—
 - (i) the repair, maintenance or restoration of an approved object in the approved garden,
 - (ii) the installation, maintenance or replacement of a security alarm system in the approved garden, and
 - (iii) public liability insurance for the approved garden;”,

and

- (c) by the insertion of the following definition after the definition of “qualifying expenditure”:

“ ‘security alarm system’ means an electrical apparatus installed as a fixture in the approved garden which, when activated, is designed to give notice to the effect that there is an intruder present or attempting to enter the approved garden in which it is installed.”.

- (3) (a) *Subparagraphs (ii) and (iii) of paragraph (a), and paragraph (d), of subsection (1) and paragraph (a) of subsection (2) shall be deemed to have come into operation and had effect as on and from the 12th day of March, 1996.*
- (b) *Paragraph (c) of subsection (1) shall apply and have effect as respects qualifying expenditure incurred in a chargeable period being—*
 - (i) where the chargeable period is a year of assessment, the year 1995-96 and any subsequent year of assessment, or
 - (ii) where the chargeable period is an accounting period of a company, an accounting period beginning on or after the 6th day of April, 1995.
- (c) *Subsection (1), other than subparagraphs (ii) and (iii) of paragraph (a) and paragraphs (c) and (d) thereof, and paragraphs (b) and (c) of subsection (2) shall apply and have effect as respects qualifying expenditure incurred in a chargeable period being—*
 - (i) where the chargeable period is a year of assessment, the year 1997-98 and any subsequent year of assessment, or
 - (ii) where the chargeable period is an accounting period of a company, an accounting period beginning on or after the 6th day of April, 1997.

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Amendment of section 134 (deduction for increase in stock values) of Finance Act, 1996.

18.—Section 134 of the Finance Act, 1996, is hereby amended in subsection (3)—

- (a) by the substitution in paragraph (a) of “1999” for “1997”, and
- (b) by the substitution in paragraph (b) of “1998-99” for “1996-97”,

and the said paragraphs (a) and (b), as so amended, are set out in the Table to this section.

TABLE

- (a) A deduction shall not be allowed under the provisions of this section in computing a company's trading income for any accounting period which ends on or after the 6th day of April, 1999.
- (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 have effect for any purpose of the Income Tax Acts for any year of assessment later than the year 1998-99.

Amendment of section 135 (special provision for qualifying farmers) of Finance Act, 1996.

19.—Section 135 of the Finance Act, 1996, is hereby amended in paragraph (b) of subsection (1)—

- (a) by the substitution in subparagraph (ii) of “three immediately succeeding years of assessment, or” for “three immediately succeeding years of assessment.”, and
- (b) by the insertion of the following subparagraph after subparagraph (ii):
 - “(iii) on or after the 6th day of April, 1997, and before the 6th day of April, 1999, for the year of assessment in which the person becomes a qualifying farmer and for the immediately succeeding year of assessment.”.

Farming: allowances for capital expenditure on the construction of farm buildings etc. for control of pollution.

20.—(1) This section applies to any person—

- (a) carrying on farming, the profits or gains of which are chargeable to tax in accordance with the provisions of section 15 of the Finance Act, 1974, and
- (b) for whom, in respect of capital expenditure to which *paragraph (c)* refers and in respect of farm land occupied by him or her, a farm nutrient management plan has been drawn up by an agency or planner approved to draw up such plans by the Department of Agriculture, Food and Forestry, and drawn up in accordance with—
 - (i) the guidelines in relation to such plans entitled “Farm Nutrient Management Plan” which were issued by the Department of Agriculture, Food and Forestry on the 21st day of March, 1997, or
 - (ii) a plan drawn up under the scheme known as the Rural Environment Protection Scheme (REPS) or the scheme known as the Erne Catchment Nutrient

Management Scheme, both being schemes administered by the Department of Agriculture, Food and Forestry, Pt.I S.20

and

- (c) who incurs capital expenditure on or after the 6th day of April, 1997, and before the 6th day of April, 2000, on the construction of those farm buildings (excluding a building or part of a building used as a dwelling) or structures specified in the *Fourth Schedule* in the course of a trade of farming land occupied by such person where such building or structures are constructed in accordance with the said farm nutrient management plan and are certified as being necessary by the said agency or planner for the purpose of securing a reduction in or the elimination of any pollution arising from the trade of farming.

(2) Subject to the provisions of Article 6 of Council Regulation (EEC) No. 2328/91 of 15 July, 1991* on improving the efficiency of agricultural structures, as amended and subject to *subsection (3)*, where a person to whom this section applies has delivered to the Department of Agriculture, Food and Forestry a farm nutrient management plan to which *subsection (1)* relates, incurs capital expenditure to which *subsection (1)* applies, there shall be made to such person during a writing-down period of 8 years beginning with the chargeable period related to that expenditure, writing-down allowances (in this section referred to as “farm pollution control allowances”) in respect of that expenditure and such allowances shall be made in taxing the trade.

(3) The farm pollution control allowances to be made in accordance with *subsection (2)* in respect of capital expenditure incurred in a chargeable period shall be—

- (a) as respects the first year of the said writing-down period referred to in *subsection (2)*—
- (i) where the capital expenditure incurred has not exceeded £20,000, an amount equal to 50 per cent. of the said expenditure, or
 - (ii) where the capital expenditure incurred has exceeded £20,000, an amount equal to £10,000,
- (b) as respects the next 6 years of the said writing-down period, an amount equal to 15 per cent. of the balance of the said expenditure after deducting the amount of any allowance made by virtue of *paragraph (a)*, and
- (c) as respects the last year of the said writing-down period, an amount equal to 10 per cent. of the balance of the said expenditure after deducting the amount of any allowance made by virtue of *paragraph (a)*.

(4) Paragraph 1 of the First Schedule to the Corporation Tax Act, 1976, shall have effect for the interpretation of this section and “basis period” has the meaning assigned to it by section 297 of the Income Tax Act, 1967.

*OJ No. L218, 6 August 1991, page 1.

(5) Any claim by a person for a farm pollution control allowance falling to be made to such person shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains from farming, and section 241 (3) of the Income Tax Act, 1967, shall apply in relation to the allowance as it applies in relation to allowances in respect of wear and tear of machinery or plant.

(6) Any claim for a farm pollution control allowance shall be made to and determined by the inspector, but any person aggrieved by any decision of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after the notification to the person of the decision, appeal to the Appeal Commissioners.

(7) The Appeal Commissioners shall hear and determine an appeal to them made under *subsection (6)* as if it were an appeal against an assessment to tax and the provisions of the Income Tax Acts relating to the rehearing of an appeal and the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(8) Subject to *subsection (9)*, where a person who is entitled to farm pollution control allowances in respect of farm land occupied by the person transfers his or her interest in that farm land or any part of that farm land to another person, that other person shall, to the exclusion of the first-mentioned person be entitled to the allowances under this section for the chargeable periods following the chargeable period in which the transfer of interest took place.

(9) Where the transfer of interest to which *subsection (8)* refers took place in relation to part of the farm land, *subsection (8)* shall apply to so much of the farm pollution control allowance as is properly referable to that part of the land as if it were a separate allowance.

(10) Where expenditure is incurred partly for a purpose for which a farm pollution control allowance falls to be made and partly for another purpose, *subsection (2)* shall apply to so much only of that expenditure as on a just apportionment ought fairly to be treated as incurred for the first-mentioned purpose.

(11) No farm pollution control allowance shall be made in respect of any expenditure if for the same or any other chargeable period an allowance is or has been made in respect of it under Chapter II of Part XV or Chapter I of Part XVI of the Income Tax Act, 1967 or section 22 of the Finance Act, 1974.

(12) Expenditure shall not be regarded for any of the purposes of this section as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State or by any person other than the first-mentioned person.

(13) For the purposes only of determining, in relation to a claim for a farm pollution control allowance, whether and to what extent capital expenditure incurred on the construction of a building or structure to which this section applies is incurred or not incurred in the period specified in *paragraph (c)* of *subsection (1)*, only such an amount of that capital expenditure as is properly attributable to work on the construction of the building or structure which was actually carried out during the said period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is, or is to be treated as, incurred) be treated as having been incurred in that period.

(14) Section 29 of the Finance Act, 1975, shall have effect as if subsection (1) of that section included a reference to this section. Pt.I S.20

21.—(1) (a) Subject to *paragraph (b)*, sections 25 to 29 of the Finance Act, 1973, shall have effect, in relation to expenditure incurred on the provision or hiring of a vehicle to which those sections apply, as if for “£2,500” (construed as a reference to £14,000 by virtue of section 23 of the Finance Act, 1995), in each place where it occurs in those sections, there were substituted “£15,000”. Capital allowances for, and deduction in respect of, vehicles.

(b) *Paragraph (a)* shall apply only to expenditure incurred on or after the 23rd day of January, 1997, on the provision or hiring of a vehicle which, on or after that date is not a used or secondhand vehicle and is first registered in the State under section 131 of the Finance Act, 1992, without having been previously registered in any other State which duly provides for the registration of a mechanically propelled vehicle.

(2) Section 32 of the Finance Act, 1976, shall have effect, in relation to qualifying expenditure (within the meaning of that section) incurred on or after the 23rd day of January, 1997, as if for “£3,500” (construed as a reference to £14,000 by virtue of section 23 of the Finance Act, 1995), in each place where it occurs, there were substituted “£15,000”.

22.—Section 241 of the Income Tax Act, 1967, is hereby amended by the substitution of the following subsections for subsection (10): Amendment of section 241 (wear and tear of machinery, plant, etc.) of Income Tax Act, 1967.

“(10) The preceding provisions of this section shall, with any necessary modifications, apply in relation to professions, employments, offices and, subject to subsection (11), the letting of any premises the profits or gains from which are chargeable under Chapter VI of Part IV as they apply in relation to trades.

(11) (a) Where, by virtue of subsection (10), the provisions of this section apply to the letting of any premises, they shall apply and have effect as respects the year of assessment 1997-98 and subsequent years of assessment in respect of capital expenditure incurred on the provision of machinery or plant within the meaning of subsection (1) (b) (i) where—

- (i) such expenditure is incurred wholly and exclusively in respect of a house which is used solely as a dwelling which is or is to be let as a furnished house, and
- (ii) the said furnished house is provided for renting or letting on *bona fide* commercial terms in the open market.

(b) Where a person incurs capital expenditure of the type to which paragraph (a) applies and an allowance falls to be made in respect of that expenditure under this section—

- (i) subsection (2) of section 16 of the Corporation Tax Act, 1976, shall not apply or have effect as

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respects the whole or part (as the case may be) of any loss which would not have arisen but for the making of the said allowance, and

- (ii) subsection (6) of section 14 of the Corporation Tax Act, 1976, shall not apply or have effect as respects the said allowance.”.

Amendment of Chapter I (Industrial Buildings and Structures: Annual Allowances and Balancing Allowances and Charges) of Part XVI of Income Tax Act, 1967.

23.—(1) Chapter I of Part XVI of the Income Tax Act, 1967, is hereby amended—

- (a) in section 265 by the insertion in paragraph (d) of subsection (1) after “other than rent or an amount treated” of “or partly treated”, and
- (b) in subsection 266 by the addition after subsection (6) of the following subsection:

“(7) If, on receipt of consideration of the type referred to in subsection (1) (d) of section 265, a balancing allowance is made in respect of the expenditure, there shall be written off at the time of the event giving rise to the balancing allowance or, if later, on the 26th day of March, 1997, the amount by which the residue of the expenditure before the said event exceeds the said consideration.”.

(2) Paragraph (a) of subsection (1) shall apply and have effect in relation to consideration of the type referred to in subsection (1) (d) of section 265 which is received on or after the 26th day of March, 1997.

Capital allowances: room ownership schemes.

24.—(1) In this section—

“hotel investment” means capital expenditure incurred either on the construction of, or the acquisition of a relevant interest in, a building or structure which falls to be regarded as an industrial building or structure within the meaning of section 255 (1) (d) of the Income Tax Act, 1967, other than a building or structure to which the first proviso to that provision relates;

“hotel partnership” includes any syndicate, group or pool of persons, whether or not a partnership, through or by means of which, a hotel investment is made;

“market value” shall be construed in accordance with section 49 of the Capital Gains Tax Act, 1975;

“member” in relation to a hotel partnership includes every person who participates in that partnership or who has contributed capital, directly or indirectly, to that partnership;

“preferential terms” in relation to the acquisition of an interest referred to in subsection (4) (a) (i), means terms under which such interest is acquired for a consideration which, at the time of the acquisition, is or may be other than its market value.

(2) This section is for the purpose of counteracting any room ownership scheme entered into in connection with a hotel investment by a hotel partnership.

(3) Subject to *subsection (5)*, no allowance shall be made under Chapter II of Part XV or Chapter I of Part XVI of the Income Tax Act, 1967, in respect of a hotel investment by a hotel partnership where, in connection with any such investment, there exists a room ownership scheme. Pt.I S.24

(4) For the purposes of this section—

(a) a scheme shall be a room ownership scheme in connection with a hotel investment if, at the time a hotel investment is made by a hotel partnership, there exists any agreement, arrangement, understanding, promise or undertaking (whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings), under or by virtue of which any member of that hotel partnership, or a person connected with such member, may—

(i) acquire on preferential terms an interest in, or

(ii) retain for use other than for the purposes of the trade of hotel-keeping,

any room or rooms in, or any particular part of, the building or structure which is the subject of the hotel investment,

(b) where a hotel investment is made by one or more than one member of a hotel partnership, it shall be deemed to be made by the hotel partnership, and

(c) any question whether a person is connected with another shall be determined in accordance with the provisions of section 131 of the Finance Act, 1996.

(5) (a) Except as provided for in *paragraph (b)*, this section shall apply to a hotel investment the capital expenditure in respect of which is incurred on or after the 26th day of March, 1997.

(b) This section shall not apply to a hotel investment if, before the 26th day of March, 1997, in respect of a building or structure which is the subject of such investment—

(i) a binding contract in writing was entered into for the construction of, or the acquisition of a relevant interest in, the building or structure, or

(ii) an application for planning permission for the construction of the building or structure was received by a planning authority.

25.—(1) In this section—

“approved institution” means an institution in the State in receipt of public funding which provides courses to which a scheme approved by the Minister for Education under the Local Authorities (Higher Education Grants) Acts, 1968 to 1992, applies;

Capital allowances for buildings used for third level educational purposes.

“qualifying expenditure” means capital expenditure incurred on—

(a) the construction of a qualifying premises, or

(b) the provision of machinery or plant,

which, following receipt of the advice of An tÚdarás, is approved for that purpose by the Minister for Education with the consent of the Minister for Finance;

“qualifying premises” means a building or structure which—

- (a) apart from this section, is not an industrial building or structure within the meaning of section 255 of the Income Tax Act, 1967, and
- (b) (i) is in use for the purposes of third level education provided by an approved institution,
- (ii) is let to an approved institution on *bona fide* commercial terms for such consideration as might be expected to be paid in a letting of the building or structure which was negotiated on an arm’s length basis,

but does not include any part of a building or structure in use as, or as part of, a dwelling-house;

“An tÚdarás” means the Body established by section 2 of the Higher Education Authority Act, 1971.

(2) Subject to *subsections (3) to (7)*, all the provisions of the Tax Acts (other than section 303(3) of the Income Tax Act, 1967) relating to the making of allowances or charges in respect of capital expenditure which is incurred on the construction of an industrial building or structure shall, notwithstanding anything to the contrary therein, apply in relation to qualifying expenditure on a qualifying premises—

- (a) as if the qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance falls to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV, or Chapter I of Part XVI, of the Income Tax Act, 1967, by reason of its use for a purpose specified in section 255(1)(a) of that Act, and
- (b) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(3) In relation to qualifying expenditure on a qualifying premises section 264 of the Income Tax Act, 1967, shall apply as if—

- (a) in subsection (1), the reference to one-fiftieth were a reference to fifteen-hundredths, and
- (b) in subsection (3), the reference to fifty years were a reference to seven years.

(4) No allowance shall be made under *subsection (2)* unless, prior to the commencement of construction of a qualifying premises, the Minister for Finance certifies that—

- (a) an approved institution has procured or otherwise secured a sum of money, none of which has been met directly or indirectly by the State, which sum is not less than one-half of the qualifying expenditure to be incurred on the qualifying premises, and

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(b) such sum is to be used solely by the approved institution for the following purposes: Pt.I S.25

- (i) paying interest on money borrowed for the purpose of funding the construction of the qualifying premises, and
- (ii) paying any rent on the qualifying premises during such times as the qualifying premises is the subject of a letting on such terms as are referred to in *paragraph (b)(ii)* of the definition of qualifying premises in *subsection (1)*, and
- (iii) purchasing the qualifying premises following the termination of the letting referred to in *subparagraph (ii)*.

(5) Notwithstanding section 265(1) of the Income Tax Act, 1967, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in the said section 265(1) which occurs more than 7 years after the qualifying premises were first used.

(6) This section shall come into operation on the 1st day of July, 1997.

(7) The Minister for Finance may not give a certificate under *subsection (4)* at any time later than the 1st day of July, 2000.

26.—Chapter IV of Part I of the Finance Act, 1994, is hereby amended—

Amendment of Chapter IV (Urban Renewal Reliefs: Introduction of New Scheme in Certain Areas) of Part I of Finance Act, 1994.

(a) in section 38—

(i) by the substitution of the following definition for the definition of “enterprise area” in subsection (1):

“ ‘enterprise area’ means—

- (a) an area or areas specified as an enterprise area by order under section 39, or
- (b) an area or areas described in the *Tenth Schedule* to the *Finance Act, 1997*,”

(ii) by the substitution of the following definition for the definition of “qualifying period” in subsection (1):

“ ‘qualifying period’ means—

- (a) subject to subsection (3) and section 39 and other than for the purposes of section 41B, the period commencing on the 1st day of August, 1994, and ending on the 31st day of July, 1997, or
- (b) in respect of an area or areas described in the *Tenth Schedule* to the *Finance Act, 1997*, the period commencing on the 1st day of July, 1997, and ending on the 30th day of June, 2000;”

- (iii) by the insertion of the following definition after the definition of “qualifying period” in subsection (1):

“ ‘the relevant local authority’, in relation to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of a building or structure to which paragraph (a) of subsection (3) applies, means the council of a county or the corporation of a county or other borough or, where appropriate, the urban district council, in whose functional area the qualifying premises is situated;”

and

- (iv) by the addition of the following subsections after subsection (2):

“(3) (a) Where in relation to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of a building or structure which is—

(i) to be an industrial building or structure to which section 40 applies,

(ii) a qualifying premises within the respective meanings assigned in sections 41, 42 (other than a building or structure to which paragraph (a) (iv) of that meaning in that section applies), 43, 44, 45 and 46, or

(iii) a qualifying building within the meaning assigned in section 41A,

the relevant local authority gives a certificate in writing, on or before the 30th day of September, 1997, to the person constructing, converting or refurbishing, as the case may be, such a building or structure stating that it is satisfied that not less than 15 per cent. of the total cost of the building or structure had been incurred prior to the 31st day of July, 1997, then, the reference in paragraph (a) of the definition of ‘qualifying period’ in subsection (1) to the period ending on the 31st day of July, 1997, shall, as respects such a building or structure, be construed as a reference to a period ending on the 31st day of July, 1998, and the references in paragraph (a) of subsection (2) and paragraph (a) (i) of subsection (3) of section 40 and in paragraphs (a) (i) and (b) (i) (I) of subsection (8) of section 41A to ‘before the 1st day of August, 1997’ and the reference in paragraph (a) (i) of subsection (4) of section 41 to ‘the 1st day of August, 1997’ shall be construed as references to ‘before the 1st day of August, 1998’ and ‘the 1st day of August, 1998’, respectively.

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- (b) In considering whether to give such a certificate as is referred to in paragraph (a), the relevant local authority shall have regard only to the guidelines in relation to the giving of such certificates entitled '*Extension from 31 July, 1997, to 31 July, 1998, of the time limit for qualifying expenditure on developments*' which were issued by the Department of the Environment on the 28th day of January, 1997. Pt.I S.26

(4) The *Tenth Schedule* to the *Finance Act, 1997*, shall apply for the purposes of supplementing this Chapter.”,

(b) in section 39—

- (i) by the addition after subsection (1) of the following subsection:

“(1A) The Minister for Finance may, after consultation with the Minister for Transport, Energy and Communications and following receipt of a proposal from or on behalf of a company intending to carry on qualifying trading operations (within the meaning of section 41A) in an area or areas immediately adjacent to any of the airports commonly known as—

- (a) Cork Airport,
- (b) Donegal Airport,
- (c) Galway Airport,
- (d) Kerry Airport,
- (e) Knock International Airport,
- (f) Sligo Airport, or
- (g) Waterford Airport,

being a company which, if those trading operations were to be carried on in an area which apart from this subsection would be an enterprise area, would be a qualifying company (within the meaning of section 41A), by order direct that—

- (i) the said area or areas described in the order shall be an enterprise area for the purposes of this Chapter, and
- (ii) as respects any such area so described in the order, the reference in paragraph (a) of the definition of ‘qualifying period’ in section 38(1) to the period commencing on the 1st day of August, 1994, and ending on the 31st day of July, 1997, shall be construed as a reference to such period as shall be specified in the order in relation to that area, but

no such period specified in the order shall commence before the 1st day of August, 1994, or end after the 30th day of June, 2000.”,

and

- (ii) by the substitution in subsection (2) of “subsection (1) or (1A)” for “subsection (1)”.
- (c) in section 42 by the substitution of the following definition for the definition of “qualifying lease” in subsection (1):

“ ‘qualifying lease’ means a lease in respect of a qualifying premises granted on *bona fide* commercial terms—

- (a) in the qualifying period in the case of a qualifying premises which is a building or structure to which subsection (3) (a) of section 38 refers, or
- (b) in the qualifying period, or within the period of one year from the day next after the end of the qualifying period in the case of any other qualifying premises,

by a lessor to a lessee who is not connected with the lessor, or with any other person who is entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;”.

Amendment of provisions relating to double rent allowance.

27.—Section 45 of the Finance Act, 1986, section 42 of the Finance Act, 1994, and section 49 of the Finance Act, 1995, are hereby amended—

- (a) in subsection (2) of the said section 45,
- (b) in subsection (3) of the said section 42, and
- (c) in subsection (3) of the said section 49,

by the substitution in each case for “equal to the amount of the first-mentioned deduction” of the following:

“(in this subsection referred to as ‘the second-mentioned deduction’) equal to the amount of the first-mentioned deduction but, as respects a qualifying lease granted on or after the 21st day of April, 1997, where the first-mentioned deduction is on account of rent which is payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction”.

Amendment of section 39B (relief in relation to income from certain trading operations carried on in Custom House Docks Area) of Finance Act, 1980.

28.—Section 39B (as amended by the Finance Act, 1995) of the Finance Act, 1980, is hereby amended by the addition, after subsection (9), of the following subsection:

- “(10) (a) For the purposes of this section, the Minister for Finance, after consultation with the Minister for the Environment, may, by order direct that the definition of ‘the Custom House Docks Area’ contained in section 41 of the Finance Act, 1986, shall include such area or areas

described in the order which, but for the order, would not be included in that definition, and where the Minister for Finance so orders, the said definition of 'the Custom House Docks Area' shall, for the purposes of this section, be deemed to include the said area or areas. Pt.I S.28

- (b) The Minister for Finance may, for the purposes of making an order under this section and an order under section 27 of the Finance Act, 1987, exercise the powers to make those orders by making one order for the purposes of both of those sections.
- (c) The Minister for Finance may make orders for the purpose of this section and any order made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next twenty-one days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder."

29.—(1) Subject to *subsection (4)*, where a person incurs expenditure for the purposes of a trade or profession before the time that the trade or profession has been set up and commenced by that person, and such expenditure—

Relief for pre-trading expenditure.

- (a) is incurred not more than three years before that time, and
- (b) is not allowable, apart from this section, as a deduction for the purpose of computing the profits or gains of the trade or profession for the purposes of Case I or Case II of Schedule D, but would have been so allowable if it had been incurred after that time,

then the expenditure shall be treated for that purpose as having been incurred at that time.

(2) Where—

- (a) a company pays any charges on income (within the meaning of section 10 of the Corporation Tax Act, 1976) before the time it sets up and commences a trade, and
- (b) the payment is made wholly and exclusively for the purposes of that trade,

that payment, to the extent that it is not otherwise deducted from total profits of the company, shall be treated for the purposes of corporation tax as paid at that time.

(3) Where an individual who has set up and commenced a trade or profession has been assessed to tax for any year of assessment under section 434 of the Income Tax Act, 1967, in respect of a payment—

- (a) made before the time the trade or profession has been set up and commenced, and
- (b) wholly and exclusively for the purposes of the trade or profession,

then section 316 of the Income Tax Act, 1967, shall apply in relation to the payment as it would apply if the payment were made at that time.

(4) The amount of any expenditure which is to be treated under *subsection (1)* as incurred at the time that a trade or profession has been set up and commenced shall not be so treated for the purposes of section 307 of the Income Tax Act, 1967, or section 16 (2), 16A (3), 116 or 116A of the Corporation Tax Act, 1976.

(5) An allowance or deduction shall not be made under any provision of the Tax Acts, other than this section, in respect of any expenditure or payment which is treated under this section as incurred on the day on which a trade or profession is set up and commenced.

(6) This section shall apply to expenditure incurred for the purposes of a trade or profession which is set up and commenced on or after the 22nd day of January, 1997.

Amendment of section 35 (relief for investment in films) of Finance Act, 1987.

30.—(1) Section 35 (inserted by section 31 (1) of the Finance Act, 1996) of the Finance Act, 1987, is hereby amended—

(a) in subsection (1)—

(i) in the definition of “film” by the substitution of “means a film of a kind which is included within the categories of films eligible for certification as set out in guidelines referred to in subsection (2) which is produced” for “means a film which is produced”, and

(ii) in the definition of “qualifying company”, to insert after paragraph (a) the following new paragraph:

“(aa) does not contain in its name registered under either or both the Companies Acts, 1963 to 1990, or the Registration of Business Names Act, 1963, the words, ‘Ireland’, ‘Irish’, ‘Éireann’, ‘Éire’ or ‘National’, and”.

(b) in subsection (2)—

(i) in paragraph (a)(i) by the insertion of the following proviso:

“Provided that nothing in this section shall be construed as obliging the Minister to give a certificate under this paragraph, and in any case where in relation to a film, the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced, as the case may be, before application is made by a qualifying company, the Minister shall not issue a certificate under this paragraph.”, and

(ii) in paragraph (b) by the substitution for paragraph (II) of the proviso to subparagraph (ii) of the following paragraph:

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- “(II) (A) (a) in relation to a film (other than an animation film) in respect of which the principal photography commences at any time during the months of October, November, December and January, and the production of the film continues to completion without unreasonable delay from that time, or
- (b) in relation to a film in respect of which post production work is to be carried out wholly or mainly in the State,

the references in paragraph (I) of this proviso to—

- (i) 60 per cent., shall be construed as a reference to 66 per cent.,
- (ii) 50 per cent., shall be construed as a reference to 55 per cent., and
- (iii) £7,500,000 shall be construed as a reference to £8,250,000,

and

- (B) in relation to a film in respect of which not less than one-half of the amount of the total cost of production met by relevant investments has been met by relevant investments paid by allowable investor companies, the references in this proviso, apart from this subparagraph, to—

- (a) £7,500,000 shall be treated as a reference to £15,000,000, and
- (b) £8,250,000 shall be treated as a reference to £16,500,000,”

and

(c) in subsection (4)—

- (i) by the substitution of “£8,000,000” for “£6,000,000”,
- (ii) in paragraph (a) of the proviso by the substitution of “£3,000,000” for “£2,000,000”, and
- (iii) in paragraph (b) of the proviso by the substitution of “£3,000,000” for “£2,000,000”.

(2) *Subsection (1)* shall apply and have effect—

- (a) as respects *paragraph (a)* and *subparagraph (i)* of *paragraph (b)*, in relation to a film in respect of which the Minister did not receive, before the 29th day of April, 1997, the application to enable the Minister to consider whether a certificate should be given under section 35(2) of the Finance Act, 1987,

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- (b) as respects *subparagraph (ii) of paragraph (b)*, in relation to a film in respect of which the Minister has received the application on or after the 26th day of March, 1997, to enable the Minister to consider whether a certificate should be given under section 35(2) of the Finance Act, 1987,
- (c) as respects *subparagraph (i) of paragraph (c)*, in relation to any period of twelve months ending on an anniversary of the 22nd day of January, 1997,
- (d) as respects *subparagraph (ii) of paragraph (c)*, in relation to a relevant investment made on or after the 26th day of March, 1997, and
- (e) as respects *subparagraph (iii) of paragraph (c)*, in relation to any twelve month period commencing on or after the 23rd day of January, 1997.

Amendment of section 14 (special portfolio investment accounts) of Finance Act, 1993.

31.—(1) Section 14 (as amended by section 37 of the Finance Act, 1996) of the Finance Act, 1993 is hereby amended—

- (a) in the definition of “qualifying shares” in paragraph (a) of subsection (1) by the substitution for subparagraph (ii) of the following subparagraph:

“(ii) quoted on the market known as the Developing Companies Market, or the market known as the Exploration Securities Market, of the Irish Stock Exchange,”,

and

- (b) in subsection (2) by the substitution for paragraph (b) of the following paragraph:

“(b) the amount of a specified deposit or, if there is more than one, the aggregate of such amounts in respect of assets held at the same time as part of a special portfolio investment account shall not exceed—

- (i) in the case of a special portfolio investment account in respect of which—

(I) the first specified deposit was made on or before the 5th day of April, 2000, and

(II) an amount (hereafter in this paragraph referred to as the ‘particular amount’) equal to the whole or a part of the specified deposit or specified deposits, has been used to acquire shares in a company quoted on the market known as the Developing Companies Market of

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the Irish Stock Exchange and those shares are, at that time, held as assets of the special portfolio investment account, Pt.I S.31

£50,000 increased by the lesser of—

(A) the particular amount, and

(B) £10,000,

and

(ii) in the case of any other special portfolio investment account, £50,000;”.

(2) This section shall apply and have effect as on and from the 6th day of April, 1997.

32.—Section 18 (as amended by the Finance Act, 1996) of the Finance Act, 1989, is hereby amended in subsection (1) by the insertion of the following proviso to the definition of “specified collective investment undertaking”:

Amendment of section 18 (taxation of collective investment undertakings) of Finance Act, 1989.

“Provided that, for the purposes of this definition, reference to a qualifying management company shall be construed as if—

(i) in subsection (2) of section 39A (inserted by the Finance Act, 1981) of the Finance Act, 1980, there were deleted ‘and any certificate so given shall, unless it is revoked under subsection (4), (4A) or (4B), remain in force until the 31st day of December, 2005’, and

(ii) in subsection (2) of section 39B (inserted by the Finance Act, 1987) of the Finance Act, 1980, there were deleted ‘and any certificate so given shall, unless it is revoked under subsection (4), (5) or (5A), remain in force until the 31st day of December, 2005’.”.

33.—(1) In this section—

Taxation of strips of securities.

“chargeable period” has the meaning assigned to it in paragraph 1 (2) of the First Schedule to the Corporation Tax Act, 1976;

“market value” has the meaning assigned to it in section 49 of the Capital Gains Tax Act, 1975;

“nominal value”, in relation to a unit of a security, means—

(a) where the interest on the unit of the security is expressed to be payable by reference to a given value, that value, and

(b) in any other case, the amount which was paid for the unit of the security on its issue;

“opening value”, in relation to a unit of a security from which at any time strips of the unit have been created by a person means—

(a) in the case of a person who is carrying on a trade, which consists wholly or partly of dealing in securities of which

the unit of the security is an asset in respect of which any profits or gains are chargeable to tax under Case I of Schedule D, an amount equal to the market value of the unit of the security at the time the strips were created, and

(b) in the case of any other person, an amount equal to—

(i) the market value of the unit of the security at the time the strips were created, or

(ii) the nominal value of the unit of the security,

whichever is the lesser;

“relevant day”, in relation to a person who holds a strip, means—

(a) where the person is not a company within the charge to corporation tax, the 5th day of April in a year of assessment, and

(b) where the person is a company within the charge to corporation tax, the day on which an accounting period of the company ends;

“securities” has the same meaning as it has in subsection (1) of section 29 of the Finance Act, 1984, and a unit of a security shall be construed accordingly;

“strip”, in relation to a unit of a security, means an obligation of the person who issued the security to make a payment, whether of interest or of principal, which has been separated from other obligations of that person to make payments in respect of the unit of the security.

(2) Where at any time a person who owns a unit of a security creates strips of that unit—

(a) the unit of the security shall be deemed to have been sold at that time by that person for an amount equal to its market value at that time,

(b) that person shall be deemed to have acquired at that time each strip for the amount which bears the same proportion to the opening value of the unit of the security as the market value of the strip at that time bears to the aggregate of the market value at that time of each of the strips of the unit of the security, and

(c) each strip shall be deemed to be a non-interest-bearing security any profits or gains arising on a disposal or redemption of which shall, subject to *subsection (5)*, be chargeable to tax under Case III of Schedule D unless charged to tax under Case I of that Schedule.

(3) Where a person, other than a person carrying on a trade which consists wholly or partly of dealing in securities in respect of which any profits or gains are chargeable to tax under Case I of Schedule D, acquires a strip of a unit of a security in relation to which section 19 of the Capital Gains Tax Act, 1975, applies, otherwise than in accordance with *subsection (2)*, the person shall be deemed to have acquired the strip for an amount equal to—

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- (a) the amount which bears the same proportion to the nominal value of the unit of the security as the market value of the strip at the time of issue of the security would have borne to the aggregate of the market value at that time of each of the strips of the unit of the security if the strip had been created at the time of issue of the security, or
- (b) the amount paid by the person for the acquisition of the strip,

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whichever is the lesser.

(4) Where at any time strips of a unit of a security are reconstituted into a unit of the security by any person—

- (a) each of the strips shall be deemed to have been sold at that time by that person for an amount equal to its market value at that time, and
- (b) that person shall be deemed to have acquired at that time the unit of the security for an amount equal to the aggregate of the market value at that time of each of the strips.

(5) Where a person holds a strip on a relevant day, that person shall on that day be deemed to have disposed of and immediately reacquired the strip at the market value of the strip on that day.

(6) Where under *subsection (5)*, a person is deemed to have disposed of a strip on a relevant day, the amount to be included in the profits or gains chargeable to tax under Case III of Schedule D for the chargeable period in which the relevant day falls shall be the aggregate of the amounts of any profits or gains arising on such deemed disposals in the chargeable period after deducting the aggregate of the amounts of any losses arising on such deemed disposals in that chargeable period, and, so far as they have not been allowed as a deduction from profits or gains in any previous chargeable period, any losses arising on such deemed disposals in any previous chargeable period.

34.—Section 138 of the Finance Act, 1990, is hereby amended in the definition of “securities” in subsection (1) by the deletion of “and” at the end of paragraph (a), the substitution of “Agriculture, and” for “Agriculture;” in paragraph (b) and the insertion of the following paragraph after paragraph (b):

Amendment of section 138 (tax treatment of securities issued at a discount) of Finance Act, 1990.

“(c) strips within the meaning of section 54 (10) of the Finance Act, 1970 (inserted by *section 161* of the *Finance Act, 1997*);”.

35.—Section 17 of the Finance Act, 1993, is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

Amendment of section 17 (undertakings for collective investment) of Finance Act, 1993.

- “(a) (i) Every asset of an undertaking for collective investment on the day on which a chargeable period of the undertaking ends shall, subject to the subsequent provisions of this subsection, be deemed to have been disposed of and immediately reacquired by the undertaking at the asset’s market value on the said day.

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(ii) Subparagraph (i) shall not apply to—

(I) assets to which subsection (5) (a) (ii) relates other than where such assets are held in connection with a contract or other arrangement which secures the future exchange of the assets for other assets to which the said subsection does not relate, and

(II) assets which are strips within the meaning of *section 33* of the *Finance Act, 1997*.’.

Amendment of section 31 (interest payments by companies and to non-residents) of Finance Act, 1974.

36.—Section 31 (as amended by the Finance Act, 1996) of the Finance Act, 1974, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) In this section—

‘company’ means any body corporate;

‘relevant security’ means a security issued by a company on or before the 31st day of December, 2005, on terms which oblige the company to redeem the security within a period of 15 years after the date on which the security was issued.”,

and

(b) by the addition, after subsection (3) of the following subsection:

“(4) In relation to interest paid in respect of a relevant security paragraph (cc) of subsection (3) shall apply—

(a) as if there were deleted from subsection (2) of section 39A (inserted by the Finance Act, 1981) of the Finance Act, 1980, ‘, and any certificate so given shall, unless it is revoked under subsection (4), (4A) or (4B), remain in force until the 31st day of December, 2005’, and

(b) as if there were deleted from subsection (2) of section 39B (inserted by the Finance Act, 1987) of the Finance Act, 1980, ‘, and any certificate so given shall, unless it is revoked under subsection (4), (5) or (5A), remain in force until the 31st day of December, 2005’.”.

Tax credits in respect of distributions.

37.—(1) The provisions of the Corporation Tax Act, 1976, specified in *paragraph 1* of the *Second Schedule* shall have effect in relation to distributions made on or after the 6th day of April, 1997, as if the standard rate for the year of assessment 1997-98 and subsequent years of assessment were 21 per cent.

(2) The *Second Schedule* shall have effect for the purpose of supplementing *subsection (1)*.

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38.—Section 37 of the Finance Act, 1992, is hereby amended by the substitution in subsection (1) of “6th day of April, 2002” for “6th day of April, 1997”.

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Amendment of section 37 (application of section 25 (attribution of distributions to accounting periods) of Finance Act, 1989, to interim dividends) of Finance Act, 1992.

39.—(1) Chapter VIII of Part I of the Finance Act, 1991, is hereby amended—

Amendment of Chapter VIII (taxation of acquisition by a company of its own shares) of Part I of Finance Act, 1991.

(a) in section 59—

(i) in subsection (1)—

(I) by the insertion, after the meaning assigned to “control” of the following definition:

“ ‘group’ means a company which has one or more 51 per cent. subsidiaries together with those subsidiaries;”,

and

(II) in the definition of “trading group” by the deletion of the words after “trades”,

and

(ii) in subsection (3), by the substitution for “section 61” of “section 60A or 61”,

and

(b) by the insertion, after section 60, of the following section:

“Purchase of own shares by a quoted company.

60A.—(1) Notwithstanding any provision of Part IX of the Act of 1976, references in the Tax Acts to distributions of a company shall be construed so as not to include references to a payment made by a quoted company on the redemption, repayment or purchase of its own shares.

(2) References in subsection (1) to a quoted company shall include references to a company which is a member of a group of which a quoted company is a member.”.

(2) This section shall have effect as respects payments made on or after the 26th day of March, 1997.

40.—(1) Section 40 of the Finance Act, 1996, is hereby amended in subsection (2) by the insertion of the following paragraphs after paragraph (c):

Amendment of section 40 (treatment under Tax Acts of certain employment grants and recruitment subsidies) of Finance Act, 1996.

“(cc) the Employment Support Scheme, being a scheme established on the 1st day of January, 1993, and administered by the National Rehabilitation Board,

(ccc) the Pilot Programme for the Employment of People with Disabilities, being a programme

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administered by a company incorporated on the 7th day of March, 1995, as The Rehab Group.”.

(2) This section shall have effect as respects grants or subsidies paid on or after the 6th day of April, 1997.

Employers' pension contributions.

41.—(1) Chapter II of Part I of the Finance Act, 1972, is hereby amended—

(a) in section 16, by the substitution of the following for subsection (4):

“(4) (a) Any sum paid by an employer by way of contribution under the scheme shall, for the purposes of Case I or II of Schedule D and of sections 15 and 33(2) of the Corporation Tax Act, 1976, be allowed to be deducted as an expense, or expense of management, incurred in the chargeable period in which the sum is paid but no other sum shall for those purposes be allowed to be deducted as an expense, or expense of management, in respect of the making, or any provision for the making, of any contributions under the scheme.

(b) For the purposes of this section and of section 16A—

(i) a reference to a ‘chargeable period’ shall be construed as a reference to a ‘chargeable period or its basis period’ (within the meaning of paragraph 1 of the First Schedule to the Corporation Tax Act, 1976), and

(ii) in relation to an employer whose chargeable period is a year of assessment, ‘basis period’ means the period on the profits or gains of which income tax for that year of assessment falls to be finally computed for the purposes of Case I or II of Schedule D in respect of the trade, profession or vocation of the employer.

(4A) The amount of an employer’s contributions which may be deducted under subsection (4) shall not exceed the amount contributed by that employer under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to income tax or corporation tax, as the case may be.

(4B) A sum not paid by way of an ordinary annual contribution shall for the purposes of subsection (4) be treated, as the Commissioners may direct, either as an expense incurred in the chargeable period in which the sum is paid, or as an expense to be spread over such period of years as the Commissioners think proper.”,

and

(b) by the insertion of the following section after section 16:

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“Provisions
supplemental to
section 16(4).

16A.—(1) Where—

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- (a) there is, after the 21st day of April, 1997, an actual payment by an employer of a contribution under an exempt approved scheme,
- (b) that payment would, apart from this section, be allowed to be deducted as an expense, or expense of management, of the employer in relation to any chargeable period, and
- (c) the total of previously allowed deductions exceeds the relevant maximum,

the amount allowed to be so deducted in respect of the payment mentioned in paragraph (a) and of any other actual payments of contributions under the scheme which, having been made after the 21st day of April, 1997, fall within paragraph (b) in relation to the same chargeable period shall be reduced by whichever is the smaller of the excess and the amount which reduces the deduction to nil.

(2) In relation to any such actual payment by an employer of a contribution under an exempt approved scheme as would be allowed to be deducted as mentioned in subsection (1) in relation to any chargeable period—

- (a) the reference in that subsection to the total of previously allowed deductions is a reference to the aggregate of every amount in respect of the making, or any provision for the making, of that or any other contributions under the scheme, which has been allowed to be deducted as an expense, or expense of management, of that person in relation to all previous chargeable periods, and
- (b) the reference to the relevant maximum is a reference to the amount which would have been that aggregate if the restriction on deductions for sums other than actual payments imposed by virtue of subsection (4) of section 16 had been applied in relation to every previous chargeable period,

and, for the purposes of this subsection, an amount the deduction of the whole or any

part of which falls to be taken into account as allowed in relation to more than one chargeable period shall be treated as if the amount allowed were a different amount in the case of each of those periods.

(3) For the purposes of this section, any payment which is treated under subsection (4B) of section 16 as spread over a period of years shall be treated as actually paid at the time when it is treated as paid in accordance with that subsection.”.

(2) The Corporation Tax Act, 1976, is hereby amended, in Part 1 of the Second Schedule, by the deletion of paragraph 31.

(3) This section shall have effect in the case of any employer for a chargeable period (within the meaning of section 16 (as amended by this Act) of the Finance Act, 1972) being—

- (a) where the chargeable period is an accounting period of a company, an accounting period ending with a day after the 21st day of April, 1997, and
- (b) where the chargeable period is a year of assessment, any year of assessment the employer’s basis period for which ends with a day after that date.

Deemed disposal of assets on company ceasing to be resident in the State.

42.—(1) (a) In this section and in *section 43*—

“designated area”, “exploration or exploitation activities” and “exploration or exploitation rights” have, respectively, the same meanings as they have in section 33 of the Finance Act, 1973;

“exploration or exploitation assets” means assets used or intended for use in connection with exploration or exploitation activities, carried on in the State or in a designated area;

“market value” shall be construed in accordance with section 49 of the Capital Gains Tax Act, 1975;

“the new assets” and “the old assets” have, respectively, the meanings assigned to them in section 28 of the Capital Gains Tax Act, 1975.

(b) For the purposes of this section and *section 43* a company shall not be regarded as ceasing to be resident in the State by reason only that it ceases to exist.

(2) (a) Subject to *paragraph (b)*, this section and *section 43* shall apply to a company (hereafter in this section referred to as a “relevant company”) if, at any time (hereafter in this section and in *section 43* referred to as “the relevant time”) on or after the 21st day of April, 1997, the company ceases to be resident in the State.

(b) This section and *section 43* shall not apply to a company which is an excluded company.

(c) In this subsection—

“control” shall be construed in accordance with subsections (2) to (6) of section 102 of the Corporation Tax Act, 1976, as if in subsection (6) for “five or fewer participants” there were substituted “persons resident in a relevant territory”; Pt.I S.42

“excluded company” means a company of which not less than 90 per cent. of its issued share capital is held by a foreign company or foreign companies, or by a person or persons who are directly or indirectly controlled by a foreign company or foreign companies;

“foreign company” means a company which—

- (i) is not resident in the State,
- (ii) is under the control of a person or persons resident in a relevant territory, and
- (iii) is not under the control of a person or persons resident in the State;

“relevant territory” means—

- (i) the United States of America, or
- (ii) a territory with the government of which arrangements having the force of law by virtue of section 361 of the Income Tax Act, 1967, have been made.

(3) A relevant company shall be deemed for all purposes of the Capital Gains Tax Acts—

- (a) to have disposed of all its assets, other than assets excepted from this subsection by *subsection (5)*, immediately before the relevant time, and
- (b) immediately to have reacquired them,

at the market value of the assets at that time.

(4) Section 28 of the Capital Gains Tax Act, 1975, shall not apply where a relevant company—

- (a) has disposed of the old assets, or of its interest in those assets, before the relevant time, and
- (b) acquires the new assets, or its interest in those assets, after the relevant time,

unless the new assets are excepted from this subsection by *subsection (5)*.

(5) If at any time after the relevant time a relevant company carries on a trade in the State through a branch or agency—

- (a) any assets which, immediately after the relevant time, are situated in the State and are used in or for the purposes of the trade, or are used or held for the purposes of the branch or agency, shall be excepted from *subsection (3)*, and

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- (b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from *subsection (4)*,

and references in this subsection to assets situated in the State include references to exploration or exploitation assets and to exploration or exploitation rights.

Postponement of charge on deemed disposal under *section 42*.

43.—(1) (a) In this section—

“deemed disposal” means a disposal which, by virtue of *section 42(3)*, is deemed to have been made;

“foreign assets” of a company means any assets of the company which, immediately after the relevant time, are situated outside the State and are used in or for the purposes of a trade carried on by the company outside the State.

- (b) For the purposes of this section a company is a 75 per cent. subsidiary of another company if and so long as not less than 75 per cent. of its ordinary share capital (within the meaning of *section 155* of the Corporation Tax Act, 1976) is owned directly by that other company.

(2) If—

- (a) immediately after the relevant time, a company (hereafter in this section referred to as “the company”) to which this section applies by virtue of *section 42* is a 75 per cent. subsidiary of another company (hereafter in this section referred to as the “principal company”) which is resident in the State, and
- (b) the principal company and the company jointly so elect, by notice in writing given to the inspector within 2 years after the relevant time,

the Capital Gains Tax Acts shall apply subject to the following provisions of this section.

(3) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

- (a) that deemed disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses, and
- (b) the whole of that single chargeable gain shall be treated as not accruing to the company on that disposal but an equivalent amount (hereafter in this section referred to as the “postponed gain”) shall be brought into account in accordance with *subsections (4) and (5)*.
- (4) (a) If at any time within 10 years after the relevant time the company disposes of any assets (hereafter in this subsection referred to as “relevant assets”) the chargeable gains on which were taken into account in arriving at the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain at that time the whole

or the appropriate proportion of the postponed gain so far as not already taken into account under this subsection or *subsection (5)*. Pt.I S.43

- (b) In this subsection “the appropriate proportion” means the proportion which the chargeable gain taken into account in arriving at the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(5) If at any time within 10 years after the relevant time—

- (a) the company ceases to be a 75 per cent. subsidiary of the principal company, or
 (b) the principal company ceases to be resident in the State,

there shall be deemed to accrue to the principal company as a chargeable gain—

- (i) where *paragraph (a)* applies, at that time, and
 (ii) where *paragraph (b)* applies, immediately before that time,

the whole of the postponed gain so far as not already taken into account under this subsection or *subsection (4)*.

(6) If at any time—

- (a) the company has allowable losses which have not been allowed as a deduction from chargeable gains, and
 (b) a chargeable gain accrues to the principal company under *subsection (4)* or *(5)*,

then, if and to the extent that the principal company and the company jointly so elect by notice in writing given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

44.—(1) In this section—

“chargeable period” means a year of assessment or an accounting period, as the case may be;

“controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 102 of the Corporation Tax Act, 1976);

“director”, in relation to a company, has the meaning given by section 119(1) of the Income Tax Act, 1967, and includes any person falling within section 103(5) of the Corporation Tax Act, 1976;

“group” has the meaning which would be given by section 129 of the Corporation Tax Act, 1976, if in that section references to residence in the State were omitted and for references to “75 per cent. subsidiaries” there were substituted references to “51 per cent. subsidiaries”, and references to a company being a member of a group shall be construed accordingly;

Tax on non-resident company recoverable from another member of group or from controlling director.

“specified period”, in relation to a chargeable period, means the period beginning with the specified return date for the chargeable period (within the meaning of section 9 of the Finance Act, 1988) and ending 3 years after the time when a return under section 10 of the Finance Act, 1988, for the chargeable period is delivered to the appropriate inspector (within the meaning of the said section 9);

“tax” means corporation tax or capital gains tax, as the case may be.

(2) This section applies at any time on or after the 21st day of April, 1997, where tax payable (being tax which, but for *section 42* or *43*, would not be payable) by a company (hereafter in this section referred to as the “taxpayer company”) for a chargeable period (hereafter in this section referred to as the “chargeable period concerned”) is not paid within 6 months after the date on or before which the tax is due and payable.

(3) The Revenue Commissioners may, at any time before the end of the specified period in relation to the chargeable period concerned, serve on any person to whom *subsection (4)* applies a notice—

(a) stating the amount which remains unpaid of the tax payable by the taxpayer company for the chargeable period concerned and the date on or before which the tax became due and payable, and

(b) requiring that person to pay that amount within 30 days of the service of the notice.

(4) (a) This subsection applies to any person being—

(i) a company which is, or during the period of 12 months ending with the time when the gain accrued, was a member of the same group as the taxpayer company, and

(ii) a person who is, or during that period was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.

(b) This subsection shall have effect in any case where the gain accrued before the 21st day of April, 1998, with the substitution in *paragraph (a)(i)* of “beginning with the 21st day of April, 1997, and” for “of 12 months”.

(5) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due by the said person, and such person may recover any such amount paid on foot of a notice under this section from the taxpayer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

45.—(1) Section 464 (as amended by the Finance Act, 1992) of the Income Tax Act, 1967, is hereby amended in the proviso by the substitution for “Case I” of “Case I or Case IV”.

Amendment of section 464 (issue of securities with exemption from tax) of Income Tax Act, 1967.

[1997.]

Finance Act, 1997.

[No. 22.]

(2) This section shall apply and have effect in respect of interest and other profits or gains, accruing on or after the 21st day of April, 1997, from a security. Pt.I S.45

46.—(1) Section 470 (as amended by the Finance Act, 1992) of the Income Tax Act, 1967, is hereby amended in paragraph (b) of subsection (1) by the substitution for “Case I” of “Case I or Case IV”. Amendment of section 470 (securities of Irish local authorities issued abroad) of Income Tax Act, 1967.

(2) This section shall apply and have effect in respect of interest and other profits or gains accruing on or after the 21st day of April, 1997, from a security.

47.—(1) Section 474 (as amended by the Finance Act, 1992) of the Income Tax Act, 1967, is hereby amended in subsection (2) by the substitution in the proviso for “Case I” of “Case I or Case IV”. Amendment of section 474 (exemption of certain securities from tax) of Income Tax Act, 1967.

(2) This section shall apply and have effect in respect of interest and other profits or gains, accruing on or after the 21st day of April, 1997, from a security.

48.—(1) In this section and in the *Fifth Schedule*, “relevant port company” has the meaning assigned to it in *paragraph 1* of that Schedule. Replacement of harbour authorities by port companies.

(2) The provisions of the *Fifth Schedule* shall apply where assets are vested in, or transferred to, a relevant port company pursuant to the Harbours Act, 1996.

(3) This section and the *Fifth Schedule* shall have effect from the 1st day of March, 1997.

49.—(1) In this section “the authority” means the Dublin Docklands Development Authority. Treatment of certain profits and gains for tax purposes.

(2) Notwithstanding any provision of the Corporation Tax Acts, profits arising to the authority in any accounting period ending after the 30th day of April, 1997, shall be exempt from corporation tax.

(3) As regards disposals made after the 30th day of April, 1997, section 23 of the Capital Gains Tax Act, 1975, shall apply to a gain accruing to the authority as it does to a body specified in that section.

(4) Section 42 of the Finance Act, 1988, is repealed with effect from the 1st day of May, 1997.

50.—The Finance Act, 1982, is hereby amended—

(a) in section 52, as on and from the passing of this Act, by the substitution of the following for subsections (7) and (8):

“(7) In this Chapter ‘the release date’, in relation to any of a participant’s shares, means the third anniversary of the date on which the shares were appropriated to the participant.

(8) Subject to section 56(4), for the purposes of provisions of this Chapter charging an individual to

Amendment of Chapter IX (profit sharing schemes) of Part 1 of, and Third Schedule (profit sharing schemes) to, Finance Act, 1982.

income tax under Schedule E by reason of the occurrence of an event relating to any of the individual's shares, any reference to 'the appropriate percentage' in relation to those shares shall be determined according to the time of that event, as follows—

- (a) if the event occurs before the third anniversary of the date on which the shares were appropriated to the participant and paragraph (b) does not apply, the appropriate percentage is 100 per cent., and
- (b) if, in a case where at the time of the event the participant—
 - (i) has ceased to be an employee or director of a relevant company as mentioned in subsection (5)(a), or
 - (ii) has reached pensionable age, as defined in section 2 of the Social Welfare (Consolidation) Act, 1993,

the event occurs before the third anniversary of the date on which the shares were appropriated to him, the appropriate percentage is 50 per cent.”,

- (b) as respects sums expended on or after the passing of this Act, by the insertion of the following section after section 58:

“Costs of establishing profit sharing schemes.

58A.—(1) This section applies to a sum expended by a company in establishing a profit sharing scheme which the Revenue Commissioners approve of in accordance with Part I of the Third Schedule and under which the trustees acquire no shares before such approval is given.

(2) A sum to which this section applies shall be included—

- (a) in the sums to be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or
- (b) if the company is an investment company within the meaning of section 15 of the Corporation Tax Act, 1976, or a company in the case of which that section applies by virtue of section 33 of that Act, in the sums to be deducted under section 15(1) of that Act as expenses of management in computing the profits of the company for the purposes of corporation tax.

(3) In a case where—

- (a) subsection (2) applies, and
- (b) the approval is given after the end of the period of nine months beginning with

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the day following the end of the Pt.I S.50
accounting period in which the sum is
expended,

then, for the purpose of subsection (2), the sum
shall be treated as expended in the accounting
period in which the approval is given and not the
accounting period mentioned in paragraph (b).”,

and

(c) in the Third Schedule, as respects profit sharing schemes
approved on or after the passing of this Act—

(i) by the substitution, in subparagraph (1) of paragraph
2, of the following for clause (a):

“(a) is then an employee or full-time director of the
company concerned or, in the case of a group
scheme, a participating company, and”,

and

(ii) by the substitution of the following paragraph for
paragraph 7:

“7.—(1) The shares must be—

(a) fully paid up;

(b) not redeemable; and

(c) not subject to any restrictions other than
restrictions which attach to all shares of the
same class or a restriction authorised by
subparagraph (2).

(2) Subject to subparagraphs (3) and (4), the
shares may be subject to a restriction imposed by the
company’s articles of association—

(a) requiring all shares held by directors or
employees of the company or of any other
company of which it has control to be dis-
posed of on ceasing to be so held; and

(b) requiring all shares acquired, in pursuance
of rights or interests obtained by such direc-
tors or employees, by persons who are not,
or have ceased to be, such directors or
employees to be disposed of when they are
acquired.

(3) A restriction is not authorised by subparagraph
(2) unless—

(a) any disposal required by the restriction will
be by way of sale for a consideration in
money on terms specified in the articles of
association; and

(b) the articles also contain general provisions
by virtue of which any person disposing of
shares of the same class (whether or not

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held or acquired as mentioned in subparagraph (2)) may be required to sell them on terms which are the same as those mentioned in paragraph (a).

(4) Nothing in subparagraph (2) authorises a restriction which would require a person, before the release date, to dispose of his beneficial interest in shares the ownership of which has not been transferred to him.”.

Employee share ownership trusts.

51.—(1) (a) This section applies to an employee share ownership trust which the Revenue Commissioners have approved of as a qualifying employee share ownership trust in accordance with the provisions of the *Third Schedule* and which approval has not been withdrawn.

(b) This section shall be construed together with the *Third Schedule*.

(2) Where, in an accounting period of a company, the company expends a sum—

(a) in establishing a trust to which this section applies, or

(b) (i) in making a payment by way of contribution to the trustees of a trust which at the time the sum is expended is a trust to which this section applies, and

(ii) at that time, the company or a company which it then controls has employees who are eligible to benefit under the terms of the trust deed, and

(iii) before the expiry of the expenditure period the sum is expended by the trustees for one or more of the qualifying purposes,

then, the sum shall be included—

(I) in the sums to be deducted in computing for the purposes of Schedule D the profits or gains for that accounting period of a trade carried on by that company, or

(II) if the company is an investment company within the meaning of section 15 of the Corporation Tax Act, 1976, or a company in the case of which that section applies by virtue of section 33 of that Act, in the sums to be deducted under section 15(1) of that Act as expenses of management in computing the profits of the company for that accounting period for the purposes of corporation tax.

(3) In a case where—

(a) *paragraph (a) of subsection (2)* applies, and

(b) the trust is established after the end of the period of 9 months beginning with the day following the end of the accounting period in which the sum is expended by the company,

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then, for the purposes of *subsection (2)*, the sum shall be treated as expended in the accounting period in which the trust is established and not the accounting period mentioned in *paragraph (b)*. Pt.I S.51

(4) For the purposes of *paragraph (b)(ii)* of *subsection (2)*, the question whether one company is controlled by another shall be construed in accordance with section 102 of the Corporation Tax Act, 1976.

(5) For the purposes of *paragraph (b)(iii)* of *subsection (2)*—

(a) each of the following is a qualifying purpose—

- (i) the acquisition of shares in the company which established the trust;
- (ii) the repayment of sums borrowed;
- (iii) the payment of interest on sums borrowed;
- (iv) the payment of any sum to a person who is a beneficiary under the terms of the trust deed; and
- (v) the meeting of expenses;

and

(b) the expenditure period is the period of 9 months beginning with the day following the end of the accounting period in which the sum is expended by the company, or such longer period as the Revenue Commissioners may allow by notice given to the company.

(6) For the purposes of this section the trustees of an employee share ownership trust shall be taken to expend sums paid to them in the order in which the sums are received by them, irrespective of the number of companies making payments.

(7) Section 13 of the Finance Act, 1976, shall not apply to income consisting of dividends in respect of securities held by a trust to which this section applies.

(8) Where the trustees of a trust to which this section applies transfer securities to the trustees of a profit sharing scheme approved under Part I of the Third Schedule to the Finance Act, 1982, any gain accruing to those first-mentioned trustees on that transfer shall not be a chargeable gain.

(9) Notwithstanding anything in the foregoing provisions of this section, where the Revenue Commissioners in accordance with the provisions of the *Third Schedule* withdraw approval of an employee share ownership trust as a qualifying employee share ownership trust, this section shall not apply or have effect, on or after the date from which that withdrawal has effect, in relation to—

- (a) any sum expended by a company in making a payment to that trust,
- (b) income consisting of dividends in respect of securities held by that trust, or

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- (c) the transfer of securities to a profit sharing scheme approved under Part I of the Third Schedule to the Finance Act, 1982.

Chapter III

*Urban Renewal Reliefs: Introduction of New Scheme
in the Dublin Docklands Area*

Interpretation
(Chapter III).

52.—In this Chapter—

“qualifying area” means an area or areas in the Dublin Docklands Area (within the meaning of section 4 of the Dublin Docklands Development Authority Act, 1997) specified as a qualifying area by order under *section 53*;

“lease”, “lessee”, “lessor”, “premium” and “rent” have the same meanings respectively as in Chapter VI of Part IV of the Income Tax Act, 1967;

“market value”, in relation to a building, structure or house, means the price which the unencumbered fee simple of the building, structure or house would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building, structure or house, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building, structure or house is constructed;

“qualifying period” means, subject to *section 53*, the period commencing on the 1st day of July, 1997, and ending on the 30th day of June, 2000;

“refurbishment”, in relation to a building or structure and other than for the purposes of *section 57*, means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure.

Qualifying area.

53.—(1) Subject to *subsection (2)*, the Minister for Finance may, after consultation with the Minister for the Environment, following a recommendation from the Executive Board (within the meaning of section 17 of the Dublin Docklands Development Authority Act, 1997) of the Dublin Docklands Development Authority (within the meaning of section 14 of the said Act), by order direct that—

- (a) the area or areas described in the order shall be a qualifying area—
- (i) for the purposes of one or more sections of this Chapter, and
 - (ii) in relation to *section 55*, for the purposes of that section, including or excluding the provisions of *subsection (6)* of that section as may be specified in the order, and
- (b) as respects any such area so described in the order, the definition of “qualifying period” in *section 52 (1)* shall be

construed as a reference to such period as shall be specified in the order in relation to that area, but no such period specified in the order shall commence prior to the 1st day of July, 1997, or end after the 30th day of June, 2000. Pt.I S.53

(2) In considering the making of an order under *subsection (1)* in respect of an area and, in particular, for the purposes of determining whether that area should be a qualifying area for the purposes of one or more sections of this Chapter and, where the area is to be a qualifying area for the purposes of *section 55*, whether the relief to be provided by virtue of *section 55* is or is not to be subject to *subsection (6)* of that section, the Minister shall have regard to the following criteria—

- (a) the consistency in relation to the area, of the types of development for which relief is provided in one or more sections of this Chapter with the relevant provisions of the master plan for the Dublin Docklands Area prepared and adopted under section 24 of the Dublin Docklands Development Authority Act, 1997, which consistency shall be certified by the Executive Board of the Dublin Docklands Development Authority,
- (b) the market conditions in the area in terms of the existing and projected supply of, and the existing and projected demand for, the type of development for which relief is provided in one or more sections of this Chapter,
- (c) the significance of the area for the overall regeneration of the Dublin Docklands Area, and
- (d) the nature and extent of any barriers to the regeneration of the area.

(3) Every order made by the Minister for Finance under *subsection (1)* shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

54.—(1) This section shall apply to a building or structure the site of which is wholly within a qualifying area and which is to be an industrial building or structure by reason of its use for a purpose specified in section 255(1)(a) of the Income Tax Act, 1967.

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

(2) Subject to subsection (4), section 254 of the Income Tax Act, 1967, shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

- (a) in paragraph (a) of subsection (2A) of the said section 254, the reference to “before the 1st day of April, 1991” (as provided for in section 50 of the Finance Act, 1988) were a reference to “before the 1st day of July, 2000”,
- (b) paragraph (aa) (inserted by section 74 of the Finance Act, 1990) and paragraph (b) of subsection (2A) of the said section 254 were deleted, and

(c) subsection (2B) (inserted by the said section 74) of the said section 254 were deleted.

(3) Subject to subsection (4), section 25 of the Finance Act, 1978, shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(a) paragraph (b) (as amended by section 76 of the Finance Act, 1990) of subsection (2) (inserted by section 48 of the Finance Act, 1988) of the said section 25 were deleted, and

(b) subsection (2A) (including the proviso to that subsection) of that section were deleted.

(4) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure to which this section applies, *subsections (2) and (3)* shall apply only if the total amount of the capital expenditure so incurred is not less than an amount which is equal to 10 per cent. of the market value of the building or structure immediately before that expenditure is incurred.

(5) For the purposes only of determining, in relation to a claim for an allowance under section 254 of the Income Tax Act, 1967, or section 25 of the Finance Act, 1978, as applied by this section, whether and to what extent capital expenditure incurred on the construction or refurbishment of an industrial building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building or structure actually carried out during the qualifying period shall, notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred, be treated as having been incurred in that period.

Capital allowances in relation to construction or refurbishment of certain commercial premises.

55.—(1) (a) In this section—

“qualifying multi-storey car park” means a building or structure consisting of 2 or more storeys wholly or mainly in use for the purpose of providing, for members of the public generally without preference for any particular class of person, on payment of an appropriate charge, parking space for mechanically propelled vehicles;

“qualifying premises” means a building or structure the site of which is wholly within a qualifying area and which—

(i) apart from this section, is not an industrial building or structure within the meaning of section 255 of the Income Tax Act, 1967, and

(ii) (I) is in use for the purposes of a trade or profession, or

(II) whether or not it is so used, is let on *bona fide* commercial terms for such consideration as might be expected to

be paid in a letting of the building or structure negotiated on an arm's length basis, Pt.I S.55

but does not include a car park (other than a qualifying multi-storey car park) or any part of a building or structure in use as or as part of a dwelling-house.

(b) Where part of a building or structure is a qualifying premises and part of it (in this paragraph referred to as "the second-mentioned part") is not a qualifying premises and the capital expenditure which has been incurred in the qualifying period on the construction or refurbishment of the second-mentioned part is not more than one-tenth of the total capital expenditure which has been incurred in that period on the construction or refurbishment of the building or structure, then, the building or structure and every part thereof shall be treated as a qualifying premises.

(2) (a) Subject to *paragraph (b)* and *subsections (3) to (6)*, the provisions of the Tax Acts (other than *section 54*) relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions apply—

(i) as if a qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV, or Chapter I of Part XVI, of the Income Tax Act, 1967, by reason of its use for a purpose specified in section 255(1)(a) of that Act, and

(ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(b) An allowance shall be given by reason of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises only in so far as that expenditure is incurred in the qualifying period.

(3) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, *subsection (2)* shall apply only if the total amount of the capital expenditure so incurred is not less than an amount which is equal to 10 per cent. of the market value of the qualifying premises immediately before that expenditure is incurred.

(4) For the purposes of the application, by *subsection (2)*, of section 254 of the Income Tax Act, 1967, and section 25 of the Finance Act, 1978, in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises—

(a) the said section 254 shall, notwithstanding section 22 of the Finance Act, 1991, apply as if—

(i) in paragraph (a) of subsection (2A) of the said section 254, the reference to “before the 1st day of April, 1991” (as provided for in section 50 of the Finance Act, 1988) were a reference to “before the 1st day of July, 2000”,

(ii) paragraph (aa) (inserted by section 74 of the Finance Act, 1990) and paragraph (b) of subsection (2A) of the said section 254 were deleted, and

(iii) subsection (2B) (inserted by the said section 74) of the said section 254 were deleted,

and

(b) the said section 25 shall apply—

(i) as if paragraph (b) (as amended by section 76 of the Finance Act, 1990) of subsection (2) (inserted by section 48 of the Finance Act, 1988) were deleted, and

(ii) as if subsection (2A) (including the proviso to that subsection) of that section were deleted.

(5) Notwithstanding section 265(1) of the Income Tax Act, 1967, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in the said section 265(1) which occurs—

(a) more than 13 years after the qualifying premises were first used, or

(b) in a case where section 26 of the Finance Act, 1991, applies more than 13 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

(6) (a) Notwithstanding subsections (2) to (5), any allowance or charge which, apart from this subsection, would be made by reason of subsection (2) in respect of capital expenditure which is incurred on the construction or refurbishment of a qualifying premises may be reduced to one-half of the amount which, apart from this subsection, would be the amount of that allowance or charge.

(b) Paragraph (a) shall apply, where, in respect of an area, the Minister for Finance, having had regard to the criteria set out in section 53(2), has specified in an order under that section that the area is a qualifying area for the purposes of this section and that the relief to apply is subject to this subsection.

(c) For the purposes of paragraph (a) the amount of an allowance or charge to be reduced to one-half thereof shall be computed as if—

(i) this subsection had not been enacted, and

- (ii) effect had been given to all allowances taken into account in so computing that amount. Pt.I S.55

(d) Nothing in this subsection shall affect the operation of section 265(5) of the Income Tax Act, 1967.

(7) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) Where, by virtue of *subsection (2)*, an allowance is given under Chapter II of Part XV of, or Chapter I of Part XVI of, the Income Tax Act, 1967, in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises, relief shall not be given in respect of that expenditure under the said Chapter II or the said Chapter I by virtue of any provision of the Tax Acts other than *subsection (2)*.

56.—(1) (a) In this section—

“qualifying lease” means a lease in respect of a qualifying premises granted in the qualifying period on *bona fide* commercial terms by a lessor to a lessee not connected with the lessor, or with any other person who is entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

“qualifying premises” means, subject to *paragraph (b)* and *subsection (5)(a)*, a building or structure the site of which is wholly within a qualifying area and—

- (i) (I) which is a building or structure in use for a purpose specified in section 255(1)(a) of the Income Tax Act, 1967, and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made, or will by virtue of section 19 (as amended by section 23 of the Finance Act, 1991) of the Finance Act, 1970, be made, for the purposes of income tax or corporation tax, as the case may be, under section 254 of the Income Tax Act, 1967, or section 25 of the Finance Act, 1978, as applied by *section 54*,
- (II) in respect of which an allowance is to be made, or will by virtue of section 19 (as amended by section 23 of the Finance Act, 1991) of the Finance Act, 1970, be made, for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV of, or Chapter I of Part XVI of,

Double rent allowance in respect of rent paid for certain business premises.

the Income Tax Act, 1967, by reason of *section 55*, or

- (III) which is a building or structure in use for the purposes specified in *section 255(1)(d)* of the Income Tax Act, 1967, and in respect of the construction or refurbishment of which capital expenditure is incurred in the qualifying period for which an allowance would, but for *subsection (6)*, be made for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV of, or Chapter I of Part XVI of, the Income Tax Act, 1967,

and

- (ii) which is let on such terms as are referred to in *paragraph (ii)(II)* of the definition of “qualifying premises” in *section 55*.

- (b) Where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure in respect of which an allowance is to be made, or will by virtue of *section 19* of the Finance Act, 1970, be made, or in respect of which an allowance would but for *subsection (6)* be made, for the purposes of income tax or corporation tax, as the case may be, under any of the provisions referred to in *paragraph (a)*, the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 10 per cent. of the market value of the building or structure immediately before that expenditure is incurred.

(2) For the purposes of this section, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

- (a) 10 years, or

- (b) the period by which 10 years exceeds—

- (i) any preceding period, or

- (ii) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable by that person or any other person in relation to that premises under a qualifying lease.

(3) Subject to *subsection (4)*, where, in the computation of the amount of the profits or gains of a trade or profession, a person is apart from this section entitled to any deduction (in this subsection referred to as “the first-mentioned deduction”) on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession which is payable by such person for a relevant rental period in relation to that qualifying premises

under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as “the second-mentioned deduction”) equal to the amount of the first-mentioned deduction but, where the first-mentioned deduction is on account of rent which is payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction.

(4) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created, directly or indirectly, in respect of the qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and either such person or another person connected with such person—

- (a) takes under a qualifying lease a qualifying premises (in this subsection referred to as “the second-mentioned premises”) occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and
- (b) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises,

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under the provisions of this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

- (5) (a) A building or structure in use for the purposes specified in section 255(1)(d) of the Income Tax Act, 1967, shall not be a qualifying premises for the purposes of this section unless the person to whom an allowance under Chapter II of Part XV, or Chapter I of Part XVI, of that Act would but for *subsection (6)* be made for the purposes of income tax or corporation tax, as the case may be, in respect of the capital expenditure incurred in the qualifying period on the construction or refurbishment of the building or structure, elects by notice in writing to the appropriate inspector (within the meaning of section 9 of the Finance Act, 1988) to disclaim all allowances under the said Chapter II and the said Chapter I in respect of the said capital expenditure.
- (b) An election under *paragraph (a)* shall be included in the return required to be made by the person concerned under section 10 of the Finance Act, 1988, for the first year of assessment or the first accounting period, as the case may be, for which an allowance would, but for *subsection (6)*, have been made to that person under the said Chapter II or the said Chapter I in respect of the said capital expenditure.
- (c) An election under *paragraph (a)* shall be irrevocable.
- (d) A person who has made an election under *paragraph (a)* shall furnish a copy of that election to any person (in this

paragraph referred to as “the second-mentioned person”) to whom the person grants a qualifying lease in respect of the qualifying premises and the second-mentioned person shall include the said copy in the return required to be made by the second-mentioned person under section 10 of the Finance Act, 1988, for the year of assessment or accounting period, as the case may be, in which rent is first payable by the second-mentioned person under the qualifying lease in respect of the qualifying premises.

(6) Where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a building or structure in use for the purposes specified in section 255(1)(d) of the Income Tax Act, 1967, makes an election under *paragraph (a) of subsection (5)*, then, notwithstanding any other provision of the Tax Acts—

- (a) no allowance under Chapter II of Part XV, or Chapter I of Part XVI, of the Income Tax Act, 1967, shall be made to the person in respect of that capital expenditure,
- (b) on the occurrence, in relation to the building or structure, of any of the events referred to in section 265(1) of the Income Tax Act, 1967, the residue of expenditure (within the meaning of section 266 of that Act) in relation to that capital expenditure shall be deemed to be nil, and
- (c) section 19 (as amended by section 23 of the Finance Act, 1991) of the Finance Act, 1970, shall not apply in the case of any person who buys the relevant interest (within the meaning of section 268 of the Income Tax Act, 1967) in the building or structure.

(7) For the purposes of determining, in relation to *paragraph (i)(III) of the definition of “qualifying premises” in subsection (1)(a) and subsections (5) and (6)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building or structure actually carried out in the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) Section 33 (as amended by section 49(5) of the Finance Act, 1995) of the Finance Act, 1990, is hereby amended—

- (a) in subsection (1), by the substitution of “section 49 of the Finance Act, 1995, or *section 56 of the Finance Act, 1997*” for “or section 49 of the Finance Act, 1995”, and
- (b) in subsection (2)(a), by the substitution of the following definition for the definition of “qualifying premises”:

“‘qualifying premises’ means a qualifying premises within the meaning of section 45 of the Finance Act, 1986, section 42 of the Finance Act, 1994, section 49 of the Finance Act, 1995 or *section 56 of the Finance Act, 1997*”.

57.—(1) In this section—

Pt. I

Residential accommodation: allowance to owner-occupiers in respect of expenditure on construction or refurbishment.

“qualifying expenditure”, in relation to an individual, means an amount equal to the amount of the expenditure incurred by the individual on the construction or, as the case may be, refurbishment of a qualifying premises which is a qualifying owner-occupied dwelling in relation to the individual after deducting from that amount of expenditure any sum in respect of or by reference to that expenditure, or in respect of or by reference to the qualifying premises or the construction or, as the case may be, refurbishment work in respect of which it was incurred, which the individual has received, or is entitled to receive, directly or indirectly, from the State, any board established by statute or any public or local authority;

“qualifying owner-occupied dwelling”, in relation to an individual, means a qualifying premises which is first used, after the qualifying expenditure has been incurred, by such an individual as that individual’s only or main residence;

“qualifying premises”, in relation to the incurring of qualifying expenditure, means, subject to *subsections (2) and (3) of section 58*, a house—

- (a) the site of which is wholly within a qualifying area,
- (b) which is used solely as a dwelling,
- (c) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of construction or, as the case may be, refurbishment of the house to which the certificate relates is not less than the expenditure actually incurred on such construction or refurbishment, as the case may be, and
- (d) the total floor area of which is not less than 38 square metres and not more than 125 square metres;

“refurbishment”, in relation to a building, means either or both of the following, that is to say:

- (a) the carrying out of any works of construction, reconstruction, repair or renewal, and
- (b) the provision or improvement of water, sewerage or heating facilities,

where the carrying out of such works, or the provision of such facilities, is certified by the Minister for the Environment, in any certificate of reasonable cost granted by that Minister in relation to any house contained in the building, to have been necessary for the purposes of ensuring the suitability as a dwelling of any house in the building and whether or not the number of houses in the building, or the shape or size of any such house, is altered in the course of such refurbishment.

(2) Subject to *subsection (3)*, where an individual, having made a claim in that behalf, proves to have incurred qualifying expenditure in a year of assessment, the individual shall be entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the individual incurred the qualifying expenditure is the only or main residence of

the individual, to have a deduction made from the individual's total income of an amount equal to—

- (a) in the case where the qualifying expenditure has been incurred on the construction of the qualifying premises, 5 per cent. of the amount of that expenditure, or
- (b) in the case where the qualifying expenditure has been incurred on the refurbishment of the qualifying premises, 10 per cent. of the amount of that expenditure.

(3) Where qualifying expenditure in relation to a qualifying premises is incurred by two or more persons, each of those persons shall be treated as having incurred the expenditure in the proportions in which they actually bore the expenditure and the expenditure shall be apportioned accordingly.

(4) Section 137 of the Income Tax Act, 1967, is hereby amended in Part I of the Table to that section by the addition of “*section 57* of the *Finance Act, 1997*”.

(5) *Section 58* shall apply for the purposes of supplementing this section.

Provisions
supplementary to
section 57.

58.—(1) In *section 57*—

“certificate of reasonable cost” means a certificate granted by the Minister for the Environment for the purposes of *section 57*, stating that the amount specified in the certificate in relation to the cost of construction or refurbishment of, the house to which the certificate relates appears to the Minister at the time of the granting of the certificate and on the basis of the information available to the Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

“house” includes any building or part of a building used or suitable for use as a dwelling and any out-office, yard, garden or other land appurtenant thereto or usually enjoyed therewith;

“total floor area” means the total floor area of a house measured in the manner referred to in section 4(2)(b) of the Housing (Miscellaneous Provisions) Act, 1979.

- (2) (a) A house shall not be a qualifying premises for the purposes of *section 57*, in so far as it applies to expenditure other than expenditure on refurbishment, unless it complies with such conditions, if any, as may be determined by the Minister for the Environment from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

- (b) A house shall not be a qualifying premises for the purposes of *section 57*, in so far as it applies to expenditure on refurbishment, unless it complies with such conditions, if any, as may be determined by the Minister for the Environment from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in

relation to standards for improvements of houses and the provision of water, sewerage and other services in houses. Pt.I S.58

- (c) A house shall not be a qualifying premises for the purposes of *section 57* unless the house or, in a case where the house is one of a number of houses in a single development, the development of which it is a part complies with such guidelines as may, from time to time, be issued by the Minister for the Environment, with the consent of the Minister for Finance, for the purposes of furthering the objectives of the Urban Renewal Act, 1986, and, without prejudice to the generality of the foregoing, such guidelines may include provisions in relation to all or any one or more of the following:
- (i) the design and the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, houses,
 - (ii) the total floor area and dimensions of rooms within houses, measured in such manner as may be determined by the Minister for the Environment,
 - (iii) the provision of ancillary facilities and amenities in relation to houses, and
 - (iv) the balance to be achieved between houses of different types and sizes within a single development of two or more houses or within such a development and its general vicinity having regard to the housing existing or proposed in that vicinity.

(3) A house shall not be a qualifying premises for the purposes of *section 57* unless persons authorised in writing by the Minister for the Environment for the purposes of that section are permitted to inspect the house at all reasonable times upon production, if so requested by a person affected, of their authorisations.

(4) For the purposes of *section 57*, references in that section to the construction or refurbishment of any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including, in particular—

- (a) demolition or dismantling of any building on the land,
 - (b) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,
 - (c) walls, power-supply, drainage, sanitation and water supply, and
 - (d) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.
- (5) (a) For the purposes of determining, in relation to any claim under *section 57(2)*, whether and to what extent expenditure incurred on the construction or refurbishment of a

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qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction or refurbishment of the premises which was actually carried out during the qualifying period shall, notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred, be treated as having been incurred during that period.

- (b) Where, by virtue of *subsection (4)*, expenditure on the construction or refurbishment of a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall have effect, with any necessary modifications, as if the references therein to the construction or refurbishment of the qualifying premises were references to the development of such land.

(6) For the purposes of *section 57* other than for the purposes mentioned in *subsection (5)(a)*, expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred that the premises is in use as a dwelling.

(7) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 57* other than a question on which an appeal lies under *section 18* of the Housing (Miscellaneous Provisions) Act, 1979, in like manner as an appeal would lie against an assessment to income tax or corporation tax and the provisions of the Tax Acts relating to appeals shall apply accordingly.

Chapter IV

Corporation Tax

Rate of corporation tax.

59.—(1) As respects any accounting period ending on or after the 1st day of April, 1997, *section 1* (as amended by *section 54* of the Finance Act, 1995) of the Corporation Tax Act, 1976, is hereby amended by the substitution of the following subsection for *subsection (1)*:

“(1) For the financial year 1974 and each subsequent financial year there shall be charged on the profits of companies a tax, to be called corporation tax, at the rate of—

(a) 38 per cent. for—

(i) each financial year until and including the year 1996, and

(ii) that part of the financial year 1997 beginning on the first day of January, 1997, and ending on the 31st day of March, 1997;

and

(b) 36 per cent. for—

(i) that part of the financial year beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1997, and

[1997.]

Finance Act, 1997.

[No. 22.]

(ii) each subsequent financial year.”.

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(2) The *Sixth Schedule* shall have effect for the purpose of supplementing this section.

60.—(1) Section 28A (as inserted by the Finance Act, 1996) of the Corporation Tax Act, 1976, is hereby amended—

Amendment of section 28A (reduced rate of corporation tax for certain income) of Corporation Tax Act, 1976.

(a) as respects accounting periods ending on or after the 1st day of April, 1997, by the substitution in subsection (1) of “28 per cent.” for “30 per cent.”, and

(b) in subsection (10)—

(i) in paragraph (a), by the substitution for the definition of “S” of the following:

“S is an amount equal to so much of the profits of the company for the accounting period as are charged to tax in accordance with subsection (1),

and”,

(ii) in paragraph (b), by the substitution for subparagraph (ii) of the following:

“(ii) by an amount equal to so much of the profits of the company for the accounting period as are charged to tax in accordance with subsection (1).”.

(2) For the purposes of *paragraph (a) of subsection (1)*, where an accounting period of a company begins before the 1st day of April, 1997, and ends on or after that day, it shall be divided into two parts, one beginning on the day on which the accounting period begins and ending on the 31st day of March, 1997, and the other beginning on the 1st day of April, 1997, and ending on the day on which the accounting period ends, and both parts shall be treated for the purpose of this section as if they were separate accounting periods of the company.

(3) *Paragraph (b) of subsection (1)* shall have effect as respects accounting periods ending on or after the 16th day of June, 1996.

61.—(1) In this section—

“the Board” means the Voluntary Health Insurance Board;

“market value” has the meaning assigned to it in section 49 of the Capital Gains Tax Act, 1975.

Repeal of section 80 (exemption of income from carrying out of voluntary health insurance schemes) of Corporation Tax Act, 1976.

(2) Section 80 of the Corporation Tax Act, 1976, shall be deemed to have been repealed with effect from the 1st day of March, 1997.

(3) The provisions of section 16 of the Corporation Tax Act, 1976, shall not apply to a loss incurred by the Board in an accounting period ending before the 1st day of March, 1997.

(4) Notwithstanding any other provision of the Tax Acts, bonds and shares held by the Board on the 28th day of February, 1997, in the course of the business of carrying out schemes of voluntary

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health insurance shall be deemed to have been disposed of and immediately reacquired by the Board on that date at the assets' market value on that date.

Exemption of
harbour authorities
and port companies.

62.—(1) (a) In this section—

“relevant body” means—

- (i) a harbour authority within the meaning of the Harbours Act, 1946,
- (ii) a company established pursuant to section 7 of the Harbours Act, 1996, and
- (iii) any other company which controls a harbour and which carries on a trade which consists wholly or partly of the provision in that harbour of such facilities and accommodation for vessels, goods and passengers as are ordinarily provided by harbour authorities specified in *paragraph (i)*, and companies specified in *paragraph (ii)* which control harbours, situate within the State, in those harbours;

“relevant profits or gains” means so much of the profits or gains of a relevant body controlling a harbour situate within the State as arise from the provision in that harbour of such facilities and accommodation for vessels, goods and passengers as are ordinarily provided by—

- (i) harbour authorities specified in *paragraph (i)*, and
- (ii) companies specified in *paragraph (ii)*,

of the definition of “relevant body”, which control harbours, situate within the State, in those harbours.

- (b) For the purposes of this section, where an accounting period falls partly in a period, the part of the accounting period falling into the period shall be regarded as a separate accounting period.

(2) Section 343 of the Income Tax Act, 1967, shall be deemed to have been repealed with effect from the 1st day of January, 1997.

(3) Exemption shall be granted from tax under Schedule D in respect of relevant profits or gains in the period beginning on the 1st day of January, 1997, and ending on the 31st day of December, 1998.

(4) *Subsection (3)* shall apply to a relevant body which is a harbour authority referred to in *paragraph (i)* of the definition of “relevant body” as if “in the period beginning on the 1st day of January, 1997, and ending on the 31st day of December, 1998” were deleted.

(5) Where a relevant body is chargeable to tax under Schedule D in respect of relevant profits or gains, the relevant profits or gains shall be reduced by an amount equal to—

- (a) as respects accounting periods falling wholly or partly in the year 1999, two-thirds of the said relevant profits or gains, and
- (b) as respects accounting periods falling wholly or partly in the year 2000, one-third of the said relevant profits or gains.

63.—Notwithstanding any provision of the Corporation Tax Acts, income arising in any accounting period ending after the 30th day of April, 1997, to the body designated by the Minister for Enterprise and Employment under section 3 of the Irish Takeover Panel Act, 1997, shall be exempt from corporation tax.

Pt. I
Exemption of
income of body
designated under
Irish Takeover
Panel Act, 1997.

64.—Section 56 (as amended by section 56 of the Finance Act, 1996) of the Finance Act, 1992, is hereby amended—

Amendment of
section 56 (relief for
gifts to The
Enterprise Trust
Ltd.) of Finance
Act, 1992.

- (a) by the substitution in paragraph (a) of subsection (2) of “on or before the 31st day of December, 1999” for “before the 31st day of December, 1997”,
- (b) by the substitution in subsection (3) of “(hereafter in this section referred to as the ‘donor’)” for “(hereafter in this subsection referred to as the ‘donor’)”,
- (c) by the substitution of the following proviso for the proviso to subsection (3):

“Provided that in determining the net amount of the gift, the amount or value of any consideration received by the said donor as a result of making the gift, whether received directly or indirectly from the company or any other person, shall be deducted from the amount of the gift and relief under this section shall not be given to a donor for an accounting period—

- (i) if the net amount of the gift (or the aggregate of the net amounts of gifts) made by it in that accounting period, being a gift or gifts, as the case may be, to which this section applies, does not exceed £500,
- (ii) to the extent to which the net amount of the gift (or the aggregate of the net amounts of gifts) made by it in that accounting period, being a gift or gifts, as the case may be, to which this section applies, exceeds £100,000,
- (iii) in respect of a gift made at any time in the year ending on the 31st day of December in the year 1998 or 1999, if, at that time, the aggregate of the net amounts of all gifts to which this section applies made to the company within that year exceeds £1,500,000.”,

and

- (d) by the addition, after subsection (4), of the following subsections:

“(5) Where a donor makes a gift in respect of which relief is not to be given by virtue of subparagraph (iii) of the proviso to subsection (3), the company shall, by notice in writing given to the donor within 30 days of the making of the gift, advise the donor accordingly.

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(6) Where a gift to which this section applies is made by a donor in an accounting period of the donor which is less than 12 months, the amounts specified in subparagraphs (i) and (ii) of the proviso to subsection (3) shall be proportionately reduced.”.

Amendment of section 51 (relief for gifts made to First Step) of Finance Act, 1993.

65.—Section 51 (as amended by section 67 of the Finance Act, 1995) of the Finance Act, 1993, is hereby amended—

(a) by the substitution in paragraph (a) of subsection (2) of “1st day of January, 2000” for “1st day of June, 1997”, and

(b) in the proviso to subsection (3) by the substitution of the following subparagraphs for subparagraph (iii) of paragraph (b):

“(iii) in respect of a gift made at any time in the year ending on the 31st day of May in the year 1994, 1995, 1996, 1997, 1998 or 1999, if, at that time, the aggregate of the net amount of all gifts to which this section applies made to First Step within that year exceeds £1,500,000, or

(iv) in respect of a gift made at any time in the period commencing on the 1st day of June, 1999, and ending on the 31st day of December, 1999, if, at that time, the aggregate of the net amount of all gifts to which this section applies made to First Step within that period exceeds £875,000.”.

Amendment of section 36 (amendment of section 39B (relief in relation to income from certain trading operations carried on in Custom House Docks Area) of Finance Act, 1980) of Finance Act, 1988.

66.—(1) Section 36 of the Finance Act, 1988, is hereby amended in paragraph (a) of subsection (4) by the substitution for the definition of “foreign life assurance business” of the following definition:

“‘foreign life assurance business’ means relevant trading operations within the meaning of the said section 39B consisting of life assurance business with policy holders and annuitants who, at the time such business is contracted, reside outside the State and as regards any policy issued or contract made, as the case may be, with such policy holders or annuitants in the course of such business, such policy or contract does not provide for—

(a) the granting of any additional contractual rights, or

(b) an option to have another policy or contract substituted for it,

at a time when the policy holder or annuitant, as the case may be, resides in the State;”.

(2) This section shall apply and have effect as on and from the 6th day of April, 1997.

[1997.]

Finance Act, 1997.

[No. 22.]

67.—(1) Section 35 of the Corporation Tax Act, 1976, is hereby amended by the insertion after subsection (1A) of the following subsection:

Pt.I
Amendment of section 35 (profits of life business) of Corporation Tax Act, 1976.

“(1B) (a) In this subsection—

‘policy of assurance’ means—

- (i) a policy of assurance issued by a company (to which subsection (1A) applies) to an individual who, on the date the policy is issued, resides outside the State and who continuously so resides throughout a period of not less than six months commencing on that date, or
- (ii) a policy issued or a contract made which is not a retirement benefits policy solely by virtue of the age condition not being complied with;

‘relevant amount’—

- (i) in relation to a policy of assurance, means the amount determined by the formula—

V-P

and

- (ii) in relation to a retirement benefits policy, means the amount determined by the formula—

$$(V-P) \times \frac{75}{100}$$

where—

V is the amount or the aggregate of amounts by which the market value of all the entitlements under the policy of assurance or the retirement benefits policy, as the case may be, increased during any period or periods in which the policy holder was residing in the State, and

P is the amount of premiums or like sums paid in respect of the policy of assurance or the retirement benefits policy, as the case may be, during any period or periods in which the policy holder was residing in the State;

‘retirement benefits policy’ means a policy issued or a contract made by a company (to which subsection (1A) applies)—

- (i) to or with, as the case may be, an individual who, on the date the policy is issued or the contract is made, resides outside the State and who continuously so resides throughout a period of not less than six months commencing on that date, and

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(ii) on terms which include the condition (in this subsection referred to as the 'age condition') that the main benefit secured by the policy or contract, is the payment by the company (otherwise than on the death or disability of the individual) of a sum to the individual on or after the individual attains the age of sixty years and before the individual attains the age of seventy years and that condition is complied with.

(b) Where, in respect of a policy of assurance or a retirement benefits policy, a sum is payable (otherwise than by reason of death or disability of the policy holder) to a policy holder who is resident or ordinarily resident in the State, (within the meaning of Chapter I of Part VII of the Finance Act, 1994), by a company, then—

(i) the company shall be deemed, for the purposes of this Act, to have made, in the year of assessment in which the sum is payable, an annual payment of an amount equal to the relevant amount in relation to the policy of assurance or the retirement benefits policy, as the case may be, and section 151 (income tax on payments) shall apply for the purposes of the charge, assessment and recovery of such tax,

(ii) the company shall be entitled to deduct the tax out of the sum otherwise payable,

(iii) the recipient of the sum payable shall not be entitled to repayment of, or credit for, such tax so deducted, and

(iv) the sum paid, or any part thereof, shall not be reckoned in computing total income of the recipient thereof, for the purposes of the Income Tax Acts.”.

(2) This section shall apply and have effect as on and from the 6th day of April, 1997.

Amendment of section 36 (investment income reserved for policy holders) of Corporation Tax Act, 1976.

68.—(1) Section 36 (as amended by section 48 of the Finance Act, 1996) of the Corporation Tax Act, 1976, is hereby amended by the substitution for subsection (2) of the following subsections:

“(2) Where in a financial year the rate per cent. (in this subsection and in subsection (2A) referred to as the 'specified rate per cent.') of corporation tax specified in paragraph (b) of subsection (1) of section 1 exceeds the standard rate per cent. for either of the years of assessment, part of each of which falls within the financial year, the corporation tax in respect of any of the said unrelieved profits of the company for that year shall be reduced on a claim in that regard being made by the company, by so much of that tax as is equal to the amount by which—

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- (a) the corporation tax chargeable on the company for that year in respect of the part specified in subsection (5) of the said unrelieved profits, Pt.I S.68

exceeds—

- (b) the corporation tax which would be so chargeable in respect of that part of those profits if the specified rate per cent. for each part of the financial year which coincides with a part of a year of assessment were equal to the standard rate per cent. for the year of assessment.

(2A) In computing that part of those profits for the purposes of paragraph (b) of subsection (2), subsection (1A) of section 13 shall apply as if the rate per cent. of capital gains tax specified in subsection (3) of section 3 of the Capital Gains Tax Act, 1975, were the specified rate per cent.”.

(2) This section shall apply and have effect as on and from the 1st day of January, 1997.

69.—(1) Section 46A (as amended by section 11 of the Finance Act, 1993) of the Corporation Tax Act, 1976, is hereby amended in subsection (3) by the substitution for paragraph (a) of the following paragraph:

Amendment of section 46A (deemed disposal and reacquisition of certain assets) of Corporation Tax Act, 1976.

“(a) (i) assets to which section 19 of the Capital Gains Tax Act, 1975, applies by virtue of any provision of the Capital Gains Tax Acts, other than where such assets are held in connection with a contract or other arrangement which secures the future exchange of the assets for other assets, being assets to which the said section 19 does not apply, or

(ii) assets which are strips within the meaning of *section 33 of the Finance Act, 1997*.”.

(2) This section shall apply and have effect as on and from the 26th day of March, 1997.

Chapter V

Capital Gains Tax

70.—(1) Schedule 2 to the Capital Gains Tax Act, 1975, is hereby amended by the insertion after paragraph 5 of the following paragraph:

Amendment of Schedule 2 to Capital Gains Tax Act, 1975.

“Demutualisation of assurance companies

5A. (1) This paragraph shall apply and have effect in respect of an arrangement between a company and its members, being an arrangement to which subparagraph (1) of paragraph 5 applies by virtue of subparagraph (2) of the said paragraph, and where the company is an assurance company which carries on a mutual life business.

(2) Where, in connection with the arrangement, there is conferred, on a member of the assurance company concerned, any rights—

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- (a) to acquire shares in another company (hereafter in this paragraph referred to as the 'successor company') in priority to other persons, or
- (b) to acquire shares in the successor company for consideration of an amount or value lower than the market value of the shares, or
- (c) to free shares in the successor company,

then, any such rights so conferred on a member shall be regarded for the purposes of capital gains tax as an option (within the meaning of section 47 of the Capital Gains Tax Act, 1975) granted to and acquired by such member for no consideration and having no value at the time of that grant and acquisition.

(3) Where, in connection with the arrangement, shares in the successor company are issued to a member of the assurance company concerned, and such shares are treated under paragraph 5 as having been exchanged by the member for the interest in the company possessed by the member, those shares shall, notwithstanding paragraph 2, be regarded for the purposes of subparagraph (1) of paragraph 3 of Schedule 1—

- (a) as having been issued to the member for a consideration given by the member of an amount or value equal to the amount or value of any new consideration given by the member for the shares or, if no new consideration is given, as having been issued for no consideration, and
- (b) as having, at the time of their issue to the member, a value equal to the amount or value of the new consideration so given or, if no new consideration is given, as having no value:

Provided that this subparagraph is without prejudice to the operation, where applicable, of subparagraph (2).

(4) Subparagraph (5) shall apply in any case where—

- (a) in connection with the arrangement, shares in the successor company are issued by that company to trustees on terms which provide for the transfer of those shares to members of the assurance company concerned for no new consideration, and
- (b) the circumstances are such that in the hands of the trustees the shares constitute settled property.

(5) (a) Where this subparagraph applies, then, for the purposes of capital gains tax—

- (i) the shares shall be regarded as acquired by the trustees for no consideration;
- (ii) the interest of any member in the settled property constituted by the shares shall be regarded as acquired by the member for no consideration and as having no value at the time of its acquisition; and

- (iii) where on the occasion of a member becoming absolutely entitled as against the trustees to any of the settled property, both the trustees and the member shall be treated as if, on the member becoming so entitled, the shares in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within section 8(3) for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees and, accordingly, section 15 (3) shall not apply in relation to that occasion. Pt.I S.70

- (b) Reference in this subparagraph to the case where a member becomes absolutely entitled to settled property as against the trustees shall be taken to include reference to the case where the member would become so entitled but for being a minor or otherwise under a legal disability.

- (6) In this paragraph—

‘assurance company’ has the meaning assigned to it in section 50 (2) of the Corporation Tax Act, 1976;

‘free shares’, in relation to a member of the assurance company, means any shares issued by the successor company to that member in connection with the arrangement but for no new consideration;

‘member’, in relation to the assurance company, means a person who is or has been a member of it, in that capacity, and any reference to a member includes a reference to a member of any particular class or description;

‘new consideration’ means consideration other than—

- (a) consideration provided directly or indirectly out of the assets of the assurance company or the successor company, or
- (b) consideration derived from a member’s shares or other rights in the assurance company or the successor company.”.

(2) This section shall apply and have effect as on and from the 21st day of April, 1997.

71.—(1) Notwithstanding any other provision of the Capital Gains Tax Acts, where by virtue or in consequence of an order made under Part III of the Family Law (Divorce) Act, 1996, on or following the granting of a decree of divorce, either of the spouses concerned disposes of an asset to the other spouse then, subject to *subsection (2)*, both spouses shall be treated for the purposes of those Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal.

Divorced persons:
transfers of assets.

(2) *Subsection (1)* shall not apply if, until the disposal, the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

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(3) Where *subsection (1)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (1)* applies), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

(4) Section 35 of the Family Law (Divorce) Act, 1996, is hereby repealed.

(5) This section shall apply and have effect as on and from the passing of this Act.

Separated spouses:
transfers of assets.

72.—(1) Notwithstanding any other provision of the Capital Gains Tax Acts, where by virtue or in consequence of—

- (a) an order made under Part II of the Family Law Act, 1995, on or following the granting of a decree of judicial separation within the meaning of that Act, or
- (b) an order made under Part II of the Judicial Separation and Family Law Reform Act, 1989, on or following the granting of a decree of judicial separation where such order is treated, by virtue of section 3 of the Family Law Act, 1995, as if made under the corresponding provision of the Family Law Act, 1995, or
- (c) a deed of separation, or
- (d) a relief order (within the meaning of the Family Law Act, 1995) made following the dissolution of a marriage,

either of the spouses concerned disposes of an asset to the other spouse then, subject to *subsection (2)*, both spouses shall be treated for the purposes of those Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal.

(2) *Subsection (1)* shall not apply if, until the disposal, the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(3) Where *subsection (1)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (1)* applies), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

(4) Section 52 of the Family Law Act, 1995, is hereby repealed.

(5) This section shall apply and be deemed to have effect as on and from the 1st day of August, 1996.

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73.—(1) Section 15 of the Capital Gains Tax Act, 1975, is hereby amended by the insertion after subsection (5) of the following subsection:

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Amendment of section 15 (settled property) of Capital Gains Tax Act, 1975.

“(5A) (a) Subject to paragraph (b), where—

- (i) as a consequence of a termination, on the death of the person entitled to it, of a life interest in settled property, subsection (5) applies, and
- (ii) an asset, which forms the whole or any part of that settled property—
 - (I) is comprised in an inheritance (within the meaning of the Capital Acquisitions Tax Act, 1976) taken on the death, and
 - (II) is exempt from tax in relation to the inheritance under section 55 of the said Act of 1976, or that section as applied by section 39 of the Finance Act, 1978,

that asset shall, for the purposes of subsection (5), be excluded from the assets deemed to be disposed of and immediately reacquired.

(b) Where in a year of assessment, in respect of an asset an exemption from tax in relation to an inheritance referred to in paragraph (a) ceases to apply, then the chargeable gain which, but for the provisions of paragraph (a), would have accrued to the trustee on the termination of the life interest in accordance with subsection (5) shall be deemed to accrue to the trustee in that year of assessment and shall accordingly be included in the return required to be made by the trustee concerned under section 10 of the Finance Act, 1988, for that year of assessment.”.

(2) This section shall apply and have effect as respects the year of assessment 1997-98 and subsequent years of assessment.

74.—(1) Section 20A (inserted by section 24 of the Finance Act, 1993) of the Capital Gains Tax Act, 1975, is hereby amended—

Amendment of section 20A (foreign life assurance and deferred annuities: taxation and returns) of Capital Gains Tax Act, 1975.

(a) in subsection (1), by the substitution for paragraph (a) of the following paragraph:

“(a) (i) Subsection (2) applies to any policy of assurance or contract for a deferred annuity on the life of any person which is a policy issued or a contract made, as the case may be, on or after the 20th day of May, 1993—

- (I) otherwise than by an assurance company which is a relevant company, or
- (II) being a policy or contract which is an excluded policy issued or made, as the case may be, by a relevant company to which subsection (1A) of section 35 of the Corporation Tax Act, 1976, applies.

(ii) In this paragraph and in subsection (3)—

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‘assurance company’ and ‘life assurance fund’ have the meanings assigned to them, respectively, in section 50 (2) of the Corporation Tax Act, 1976;

‘an excluded policy’ means a policy of assurance or contract for a deferred annuity on the life of any person where the policy is issued to or the contract is made with, as the case may be, a person who did not continuously reside outside the State throughout the period of six months commencing on the date of issue or the date of contract, as the case may be;

a ‘relevant company’ means a company which is—

(I) resident in the State, or

(II) chargeable under Case III of Schedule D, by virtue of section 43 of the Corporation Tax Act, 1976, in respect of its income from the investment of its life assurance fund.”,

and

(b) in subsection (3), by the substitution for paragraph (a) of the following paragraph:

“(a) (i) to a relevant company, and

(ii) to every person carrying on in the State a trade or business in the ordinary course of the operations of which he acts as an intermediary in or in connection with the issue of such a policy, or the making of such a contract,

in the same manner as it applies to every intermediary within the meaning of that section, and”.

(2) This section shall apply and have effect as on and from the 6th day of April, 1997.

Amendment of section 27 (relief for individuals on certain reinvestment) of Finance Act, 1993.

75.—(1) Section 27 (as amended by section 74 of the Finance Act, 1995) of the Finance Act, 1993, is hereby amended—

(a) in subsection (1)—

(i) by the substitution for the meanings assigned to “eligible shares”, “ordinary shares” and “unquoted company” of the following:

“‘eligible shares’ and ‘ordinary shares’ have, respectively, the meanings assigned to them in Chapter III of Part I of the Finance Act, 1984;”,

and

(ii) by the insertion, after the definition of “trading group” of the following definition—

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“ ‘unquoted company’ means a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange;”,

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and

(b) in subsection (6) by the insertion after paragraph (a) of the following paragraph—

“(aa) A company shall be deemed not to have ceased to be a qualifying company solely by virtue of shares in the company commencing, at any time in the specified period, to be quoted on the market known as the Developing Companies Market of the Irish Stock Exchange.”.

(2) This section shall apply and have effect as on and from the 6th day of April, 1997.

76.—Section 66 (as amended by section 63 of the Finance Act, 1996) of the Finance Act, 1994, is hereby amended as respects disposals made on or after the 6th day of April, 1997—

Amendment of section 66 (reduced rate of capital gains tax on certain disposals of shares by individuals) of Finance Act, 1994.

(a) by the substitution in the definition of “the specified period” in subsection (1) of “3 years” for “5 years”,

(b) by the substitution of the following definition in subsection (1) for the definition of “unquoted company”:

“ ‘unquoted company’ means a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market.”,

and

(c) by the substitution in subsection (6) of “26 per cent.” for “27 per cent.”.

77.—(1) Section 39 of the Finance Act, 1982, is hereby amended by the insertion after subsection (3) of the following subsection:

Amendment of section 39 (amendment of provisions regarding replacement of assets) of Finance Act, 1982.

“(3A)(a) Subject to the following provisions of this subsection, subsection (1) shall not apply to consideration obtained for a relevant disposal where—

(i) throughout a period of five years ending with the time of disposal, the old assets, and

(ii) the new assets within the meaning of section 28 of the Principal Act,

are assets of an authorised racecourse.

(b) Section 28 of the Principal Act shall apply in relation to assets of an authorised racecourse as if—

(i) references in subsections (1) and (2) of that section to new assets ceasing to be used for the purposes of

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a trade included a reference to new assets ceasing to be assets of an authorised racecourse, and Pt.I S.77

(ii) paragraph (b) of section (8) had not been enacted.

(c) In this subsection—

‘assets of an authorised racecourse’ means assets of a racecourse which is an authorised racecourse where the assets are used for the provision of appropriate facilities or services to carry on horseracing at race meetings or to accommodate persons associated with horseracing, including members of the public;

‘authorised racecourse’ has the same meaning as it has in section 2 of the Irish Horseracing Industry Act, 1994.’.

(2) This section shall be deemed to apply and have effect in respect of relevant disposals made on or after the 6th day of April, 1995.

78.—(1) Section 46 of the Capital Gains Tax Act, 1975, is hereby amended in subsection (7) (inserted by section 61 of the Finance Act, 1996)—

Amendment of section 46 (debts) of Capital Gains Tax Act, 1975.

(a) by the deletion of “or” in paragraph (c), and

(b) by the substitution of the following paragraphs for paragraph (d):

“(d) in connection with any transfer of assets as is referred to in section 65 of the Finance Act, 1992,

(e) in connection with any disposal of assets as is referred to in section 66 of the Finance Act, 1992,

(f) in the course of a transaction which is the subject of an application under section 72 of the Finance Act, 1992, or

(g) in pursuance of rights attached to any debenture falling within paragraph (a), (b), (c), (d), (e) or (f).”.

(2) Subsection (1) shall apply and have effect as respects the disposal of a debenture on or after the 26th day of March, 1997.

PART II

Customs and Excise

Chapter I

Vehicle Registration Tax

79.—In this Chapter “the Act of 1992” means the Finance Act, 1992.

Interpretation (Chapter I).

80.—Chapter IV of Part II of the Act of 1992 is hereby amended by the substitution of the following section for section 130A (inserted by section 5 (a) of the Finance (No. 2) Act, 1992):

Vehicle built up from chassis or monocoque or assembly.

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“130A.—For the purposes of this Chapter, an unregistered vehicle includes a vehicle—

- (a) built up from a chassis, or
- (b) built using a monocoque or an assembly serving an equivalent purpose to a chassis,

which chassis or monocoque or assembly is either new and unused or is derived from another unregistered vehicle.”.

81.—Chapter IV of Part II of the Act of 1992 is hereby amended by the insertion of the following section after section 131:

Evidence of computer stored records in court proceedings.

“131A.—(1) In this section—

‘copy record’ means any copy of an original record or a copy of that copy made in accordance with either of the methods referred to in subsection (2) and accompanied by the certificate referred to in subsection (4), which original record or copy of an original record is in the possession of the Commissioners;

‘original record’ means any document, record or record of an entry in a document or record or information stored by means of any storage equipment, whether or not in a legible form, made or stored by the Commissioners for the purposes of or in connection with this Chapter and regulations made thereunder and which is in the possession of the Commissioners;

‘provable record’ means an original record or a copy record and in the case of an original record or a copy record stored in any storage equipment, whether or not in a legible form, includes the production or reproduction of the record in a legible form;

‘storage equipment’ means any electronic, magnetic, mechanical, photographic, optical or other device used for storing information.

(2) The Commissioners may, where by reason of—

- (a) the deterioration of, or
- (b) the inconvenience in storing, or
- (c) the technical obsolescence in the manner of keeping,

any original record or any copy record, make a legible copy of the record or store information concerning that record otherwise than in a legible form so that the information is capable of being used to make a legible copy of the record, and the Commissioners may thereupon destroy the original record or the copy record:

Provided that any authorisation required by the National Archives Act, 1986, for such destruction has been granted.

(3) The legible copy of a record made in accordance with subsection (2) or the information concerning such record stored in accordance with subsection (2) shall be deemed to be an original record for the purposes of this section.

(4) In any proceedings a certificate signed by an officer of the Commissioners stating that a copy record has been made in accordance with the provisions of subsection (2) shall be *prima facie* evidence, until the contrary has been proved, of the fact of the making of such a copy record and that it is a true copy.

(5) In any proceedings a document purporting to be a certificate under subsection (4) shall be deemed, until the contrary has been proved, to be such a certificate without proof of the signature of the person purporting to sign the certificate or that such person was a proper person to so sign.

(6) A provable record shall be admissible in evidence in any proceedings and shall be *prima facie* evidence, until the contrary has been proved, of any fact therein stated or event thereby recorded:

Provided that the court is satisfied of the reliability of the system used to make or compile—

(a) in the case of an original record, that record, and

(b) in the case of a copy record, the original on which it was based.

(7) In any proceedings a certificate signed by an officer of the Commissioners stating that a full and detailed search has been made for a record of an event in every place where such records are kept and that no such record has been found shall be *prima facie* evidence, until the contrary has been proved, that the event did not happen:

Provided that the court is satisfied—

(a) of the reliability of the system used to compile or make or keep such records,

(b) that, if the event had happened, a record would have been made of it, and

(c) that the system is such that the only reasonable explanation for the absence of such a record is that the event did not happen.

(8) For the purposes of this section, and subject to the direction and control of the Commissioners, any power, function or duty conferred or imposed on them may be exercised or performed on their behalf by an officer of the Commissioners.

Chapter II

Miscellaneous

Hydrocarbons and substitute motor fuel.

82.—(1) In this section—

“the Act of 1988” means the Finance Act, 1988;

“the Act of 1996” means the Finance Act, 1996;

“the Order of 1975” means the Imposition of Duties (No. 221) (Excise Duties) Order, 1975 (S.I. No. 307 of 1975).

(2) The duty of excise on mineral hydrocarbon light oil imposed by paragraph 11 (1) of the Order of 1975, shall, in lieu of the rate specified in section 79 (2) of the Act of 1996, be charged, levied and paid, as on and from the 23rd day of January, 1997, at the rate of £328.31 per 1,000 litres.

(3) The rebate of duty on mineral hydrocarbon light oil provided for in section 56 (3) of the Act of 1988, shall, as respects mineral hydrocarbon light oil on which it is shown to the satisfaction of the Revenue Commissioners that duty at the rate specified in *subsection (2)* of this section has been paid on or after the 23rd day of January, 1997, be calculated at the rate of £33.87 per 1,000 litres.

(4) Subject to compliance with such conditions as the Revenue Commissioners may think fit to impose a rebate of duty of excise on mineral hydrocarbon light oil imposed by paragraph 11 (1) of the Order of 1975, shall be allowed at the rate of £4.14 per 1,000 litres, in respect of such oil which is deemed to be unleaded by virtue of section 56(3)(a) of the Act of 1988, which does not qualify for a rebate under section 56(3)(b) of that Act and on which duty has been paid at the rate specified in *subsection (2)* of this section on or after the 23rd day of January, 1997.

(5) The duty of excise on hydrocarbon oil imposed by paragraph 12 (1) of the Order of 1975, shall, in lieu of the rate specified in section 79 (4) of the Act of 1996, be charged, levied and paid, as on and from the 23rd day of January, 1997, at the rate of £256.14 per 1,000 litres.

(6) The duty of excise on substitute motor fuel imposed by section 116 (2) of the Finance Act, 1995, shall, in lieu of the rate specified in section 79 (5) of the Act of 1996, be charged, levied and paid, as on and from the 23rd day of January, 1997, at the rate of £256.14 per 1,000 litres.

83.—(1) Section 56 of the Finance Act, 1988, is hereby amended in subsection (3) (as amended by section 80 (1) of the Finance Act, 1996)—

Amendment of section 56 (hydrocarbons) of Finance Act, 1988.

(a) in paragraph (b)—

- (i) by the substitution of “has a research octane number of 96.2 or less or a motor octane number of 86.0 or less” for “has a research octane number of 95.4 or less”, and
- (ii) by the substitution of “has a research octane number of less than 96 or a motor octane number of less than 86” for “has a research octane number of 96.2 or less or a motor octane number of 86.0 or less” (inserted by *subparagraph (i)*),

and

(b) by the substitution of the following paragraph for paragraph (c):

“(c) In paragraph (b) ‘research octane number’ and ‘motor octane number’ mean, respectively, the research octane number and motor octane number measured in accordance with the methods outlined

in the Irish Standard I.S./EN 228 : 1994 or other equivalent methods.”.

(2) Paragraphs (a)(i) and (b) shall be deemed to have come into operation as on and from the 1st day of September, 1996, and paragraph (a)(ii) shall come into operation as, on and from the passing of this Act.

Recycled hydrocarbon oil used as a motor fuel.

84.—(1) In this section “motor” means any device that converts hydrocarbon oil or gaseous hydrocarbons in liquid form into mechanical energy to produce motion, and includes a motor vehicle and a stationary engine.

(2) Notwithstanding the provisions of paragraph (1) of Regulation 24 of the European Communities (Customs and Excise) Regulations, 1992 (S.I. No. 394 of 1992), or that duty in respect of hydrocarbon oil chargeable with the duty of excise imposed by virtue of paragraph 12 (1) of the Imposition of Duties (No. 221) (Excise Duties) Order, 1975 (S.I. No. 307 of 1975) may have already been paid, used hydrocarbon oil, which is shown to the satisfaction of the Revenue Commissioners to have undergone a process of recycling to render it suitable for use as a motor fuel, shall be liable to duty under the said paragraph 12(1).

(3) Subject to compliance with such conditions as the Revenue Commissioners may think fit to impose and notwithstanding the provisions of paragraph 12(3) of the Imposition of Duties (No. 221) (Excise Duties) Order, 1975, the amount of the rebate allowed under the said paragraph 12(3) shall, in respect of hydrocarbon oil referred to in subsection (2) and which is imported or delivered from the premises of a refiner of hydrocarbon oil or from a tax warehouse, be the amount of the excise duty chargeable on the quantity of hydrocarbon oil so imported or delivered.

Tobacco products.

85.—(1) In this section and in the *Seventh Schedule*—

“the Act of 1977” means the Finance (Excise Duty on Tobacco Products) Act, 1977;

“cigarettes”, “cigars”, “fine-cut tobacco for the rolling of cigarettes” and “other smoking tobacco” have the same meanings as they have in the Act of 1977, as amended by the Imposition of Duties (No. 243) (Excise Duty on Tobacco Products) Order, 1979 (S.I. No. 296 of 1979), and by Regulations 26 and 29 of the European Communities (Customs and Excise) Regulations, 1992 (S.I. No. 394 of 1992).

(2) The duty of excise on tobacco products imposed by section 2 of the Act of 1977, shall, in lieu of the several rates specified in the Third Schedule to the Finance Act, 1996 (No. 9 of 1996), be charged, levied and paid, as on and from the 23rd day of January, 1997, at the several rates specified in the *Seventh Schedule*.

Amendment of section 1 (interpretation) of Finance (Excise Duty on Tobacco Products) Act, 1977.

86.—(1) Section 1 of the Finance (Excise Duty on Tobacco Products) Act, 1977, is hereby amended in subsection (1) by the substitution of the following definitions for the definitions of “cigarettes”, “cigars”, “fine-cut tobacco for the rolling of cigarettes”, “smoking tobacco” and “tobacco product”:

“ ‘cigarettes’ means—

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- (a) rolls of tobacco capable of being smoked as they are and which are not cigars; Pt.II S.86
- (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 paragraphs (a) or (b);

and to which Council Directive No. 95/59/EC of 27 November 1995*, relates;

'cigars' means—

- (a) rolls of tobacco made entirely of natural tobacco;
- (b) rolls of tobacco with an outer wrapper of natural tobacco;
- (c) rolls of tobacco with an outer wrapper of the normal colour of a cigar, and a binder, of reconstituted tobacco, where at least 60 per cent. by weight of the tobacco particles are both wider and longer than 1.75 millimetres 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 an outer wrapper, of the normal colour of a cigar, of reconstituted tobacco, where the unit weight, not including filter or mouth-piece, is not less than 2.3 grammes and if at least 60 per cent. by weight of the tobacco particles are both wider and longer than 1.75 millimetres 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 paragraphs (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;

'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;

'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;

*O.J. No. L291 of 6th December 1995, page 40.

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- (c) products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in paragraphs (a) or (b);

and to which Council Directive No. 95/59/EC of 27 November 1995, relates;

‘tobacco product’ means any product specified in the First Schedule to this Act except where such product contains no tobacco and is used exclusively for medical purposes;”.

(2) Paragraph 6 of the Imposition of Duties (No. 243) (Excise Duty on Tobacco Products) Order, 1979 (S.I. No. 296 of 1979), is hereby revoked.

Amendment of section 10A (offences in relation to tax stamps) of Finance (Excise Duty on Tobacco Products) Act, 1977.

87.—Section 10A (inserted by the Finance Act, 1994) of the Finance (Excise Duty on Tobacco Products) Act, 1977, is hereby amended—

- (a) in subsection (1) (as amended by the Finance Act, 1995 and the Finance Act, 1996) by the insertion of “keeps for sale or delivery,” after “offers for sale,” and by the insertion of “keeping,” after “offer,”,
- (b) by the substitution of the following subsection for subsection (3):

“(3) A person who is guilty of an offence under subsection (1) or (2) of this section shall be liable—

- (a) on summary conviction, to a fine of £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.”,

and

- (c) by the substitution of the following subsection for subsection (4):

“(4) In a prosecution for an offence under subsection (1) of this section, it shall be presumed until the contrary is shown—

- (a) that duty had not been paid in respect of any pack or packs which do not have a tax stamp affixed thereto,
- (b) 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, and
- (c) that a thing is a cigarette or other tobacco product where, in the opinion of an

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officer of the Revenue 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.”

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88.—Section 106 of the Finance Act, 1992, is hereby amended by the substitution of the following subsection for subsection (6):

Amendment of section 106 (treatment of excisable products released for consumption in another Member State) of Finance Act, 1992.

“(6) Any person who contravenes or fails to comply with any provision of this section or of any regulations made thereunder or any person who takes possession or charge of excisable products to which this section applies in the knowledge that a requirement specified in paragraph (a), (b) or (c) of subsection (4) has not been complied with in respect of those products shall, without prejudice to any other penalty to which that person may be liable, be guilty of an offence under the Customs Acts and shall for each offence be liable—

- (a) on summary conviction, to a fine of £1,000, or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment,
- (b) on conviction on indictment, to a fine of three times the value of the excisable products concerned, including any duty or tax chargeable thereon, or £10,000, whichever is the greater, or, at the discretion of the court to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.”.

89.—In section 186 of the Customs Consolidation Act, 1876, there shall be substituted, in lieu of the penalty for each such offence specified therein (being forfeiture of either treble the value of goods including the duty payable thereon, or one hundred pounds, whichever is the greater)—

Amendment of penalties under section 186 (illegally importing) of Customs Consolidation Act, 1876.

- (a) on summary conviction, a fine of £1,000, or at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment,
- (b) on conviction on indictment, a fine of treble the value of the goods, including the duty payable thereon, or £10,000, whichever is the greater, or at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

90.—Section 34 of the Finance Act, 1963, is hereby amended by the insertion in subsection (6) of the following paragraph after paragraph (b):

Amendment of section 34 (amendments relative to penalties) of Finance Act, 1963.

“(c) the application of section 13 of the Criminal Procedure Act, 1967, to offences under section 186 of the Customs Consolidation Act, 1876, section 3 of the Customs Act, 1956, or any other provision of the Customs Acts or section 106 of the Finance Act, 1992.”.

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Amendment of section 89 (seizure of goods and vehicles) of Finance Act, 1995.

91.—Section 89 of the Finance Act, 1995, is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) Anything liable to forfeiture under section 10A (inserted by the Finance Act, 1994) of the Finance (Excise Duty on Tobacco Products) Act, 1977, may be seized by a member of the Garda Síochána and shall be delivered to an officer.”.

Obligation to answer certain questions, detention and arrest in respect of certain tobacco products.

92.—Chapter II of Part II of the Finance Act, 1995, is hereby amended by the insertion of the following section after section 87:

“87A.—(1) An officer or a member of the Garda Síochána may require any person whom such officer or member has reasonable cause to believe to be guilty of an offence under section 10A (inserted by the Finance Act, 1994) of the Finance (Excise Duty on Tobacco Products) Act, 1977, to furnish to such officer or member of the Garda Síochána—

(a) his or her name, address and date of birth,

(b) all such information in relation to the goods in question as may be reasonably required by such officer or member and which is in the possession or procurement of the person.

(2) Any person who, when required under subsection (1) to furnish information—

(a) fails or refuses to supply such information,

(b) gives any such information which is false or misleading, or

(c) resists, impedes or obstructs an officer or member in the exercise of any power conferred on such officer or member by this section,

shall be guilty of an offence and shall be liable on summary conviction to a penalty, under the law relating to excise, of £1,000.

(3) (a) Where an officer has reasonable grounds to believe that a person is or has been committing an offence under section 10A (inserted by the Finance Act, 1994) of the Finance (Excise Duty on Tobacco Products) Act, 1977, then such officer may detain the person and, as soon as practicable thereafter—

(i) present the person, or

(ii) bring and present the person,

to a member of the Garda Síochána.

(b) Where a member of the Garda Síochána has reasonable grounds to believe—

(i) that a person is or has been committing an offence under section 10A of the Finance (Excise Duty on Tobacco Products) Act, 1977, or

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- (ii) in case of a person presented or brought and presented to such member by an officer, that an offence under the said section 10A was or had been committed by the person and the person was duly detained by an officer under paragraph (a) for the offence and was either presented or brought and presented to such member in accordance with that paragraph,

then, such officer may arrest the person without warrant.

- (c) Where an arrest by a member of the Garda Síochána under paragraph (b) is consequent on a detention by an officer under paragraph (a) then, for the purposes of any initial time limit imposed by any enactment in respect of a period of arrest, the period of that time limit shall be construed as reduced by the length of period of such detention.’’.

93.—Section 94 of the Finance Act, 1995, is hereby amended by the insertion in subsection (1) of “or by a member of the Garda Síochána” after “by an officer”.

Amendment of section 94 (power to deal with seizures before condemnation) of Finance Act, 1995.

94.—Nothing in section 100 or section 126 (as amended by the Finance Act, 1967) of the Customs Consolidation Act, 1876, shall prohibit or restrict the exportation or the entry for exportation from the State of goods taken or delivered from a warehouse without payment of duty and shipped or intended to be shipped as stores in any vessel of the burden of less than 40 tons and the shipment or entry for shipment of such goods in such vessel shall not, by virtue of such shipment or entry for shipment, incur the forfeiture of such goods or any penalty under section 7 of the Customs and Inland Revenue Act, 1879.

Ships stores.

PART III

Value-Added Tax

95.—In this Part—

Interpretation (*Part III*).

“the Principal Act” means the Value-Added Tax Act, 1972;

“the Act of 1978” means the Value-Added Tax (Amendment) Act, 1978;

“the Act of 1992” means the Finance Act, 1992;

“the Act of 1993” means the Finance Act, 1993;

“the Act of 1996” means the Finance Act, 1996.

96.—Section 1 of the Principal Act is hereby amended in subsection (1)—

Amendment of section 1 (interpretation) of Principal Act.

- (a) by the insertion after the definition of “Appeal Commissioners” of the following definition:

“‘assignment’, in relation to an interest in immovable goods, means the assignment by a person of that interest in those goods or of any part of those goods to another person:

Provided that where that other person at the time of the assignment retains the reversion on that interest in those goods, that assignment shall be a surrender;”

- (b) by the insertion after the meaning assigned to “supply” of the following definition:

“‘surrender’, in relation to an interest in immovable goods, means the surrender by a person (hereafter referred to in this definition as ‘the lessee’) of an interest in those goods or any part of those goods to the person (hereafter referred to in this definition as ‘the lessor’) who at the time of the surrender retains the reversion on the interest in those goods and also includes the abandonment of that interest by the lessee and the failure of the lessee to exercise any option of the type referred to in subsection (1)(b) of section 4 in relation to that interest and surrender of an interest also includes the recovery by the lessor of that interest in those goods by ejection or forfeiture prior to the date that that interest would, but for its surrender, have expired;”

and

- (c) by the insertion after the definition of “taxable services” of the following definition:

“‘telecommunications services’ means services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the transfer or assignment of the right to use capacity for such transmission, emission or reception;”

Amendment of section 3A (intra-Community acquisition of goods) of Principal Act.

97.—Section 3A (inserted by the Act of 1992) of the Principal Act is hereby amended in paragraph (a) of subsection (1) by the insertion after “supplied by a person registered for value-added tax in a Member State,” of “or by a person obliged to be registered for value-added tax in a Member State,”.

Amendment of section 4 (special provisions in relation to the supply of immovable goods) of Principal Act.

98.—Section 4 of the Principal Act is hereby amended—

- (a) in subsection (1):

- (i) by the substitution of the following paragraph for paragraph (b):

“(b) In this section ‘interest’, in relation to immovable goods, means an estate or interest therein which, when it was created was for a period of at least ten years or, if it was for a period of less than ten years, its terms contained an option for the person in whose favour the interest was created to extend it to a period of at least ten years, but does not include a mortgage, and a reference to the

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disposal of an interest includes a reference to the creation of an interest, and an interval of the type referred to in subsection (2A) shall be deemed to be an interest for the purposes of this section.”,

and

- (ii) by the insertion of the following paragraph after paragraph (b):

“(c) Where an interest is created and, at the date of its creation, its terms contain one or more options for the person in whose favour the interest was so created to extend that interest, then that interest shall be deemed to be for the period from the date of creation of that interest to the date that that interest would expire if those options were so exercised.”,

- (b) in subsection (2) by the insertion after “disposes” of “(including by way of surrender or by way of assignment)”,

- (c) by the insertion of the following subsections after subsection (2):

“(2A) Where the surrender of an interest in immovable goods is chargeable to tax, and those goods have not been developed since the date of creation of that interest (hereafter referred to in this subsection as a ‘surrendered interest’), and the person to whom the surrendered interest was surrendered subsequently disposes, as regards the whole or any part of those goods, of an interest or of an interest which derives therefrom on a date before the date on which the surrendered interest would, but for its surrender, have expired, then that disposal shall be deemed to be a supply of immovable goods, for the purposes of this Act, and where the interest (hereafter referred to in this section as a ‘subsequent interest’) disposed of is for a period which extends beyond the date on which the surrendered interest would, but for its surrender, have expired, the disposal of that subsequent interest shall be treated, for the purposes of this Act, as if it were the disposal of an interest for the period equal to the interval between the date of the disposal of the subsequent interest and the date on which the surrendered interest would, but for its surrender, have expired (a period hereafter referred to in this section as an ‘interval’), and where such interval is for a period of less than ten years, that disposal shall be treated as a supply of immovable goods to which subsection (6) applies:

Provided that the person, who disposes of a subsequent interest in which the interval is for a period of less than ten years, may opt, subject to and in accordance with regulations, if any, to have that disposal treated as a supply of immovable goods to which subsection (6) does not apply.

(2B) Where a person disposes of a subsequent interest in such circumstances that such person retains the reversion on the interest disposed of, then—

- (a) if the subsequent interest expires on or after the date on which the surrendered interest which enabled that person to dispose of a subsequent interest (hereafter referred to in this subsection as ‘the surrendered interest’) would, but for its surrender, have expired, the provisions of subsection (4) shall not apply to that reversion;
- (b) if the subsequent interest expires prior to the date on which the surrendered interest would, but for its surrender, have expired, the provisions of subsection (4) shall apply to that reversion and that reversion shall be deemed for the purposes of subsection (4) to be for the period between the date of expiry of the subsequent interest and the date on which the surrendered interest would, but for its surrender, have expired.

(2C) Where the surrender of an interest in immovable goods is chargeable to tax, and those goods have not been developed since that interest was created and the person to whom the interest that was surrendered surrenders possession of those goods or any part thereof, on a date before the date on which the interest that was surrendered would, but for its surrender, have expired, in such circumstances that that surrender of possession does not constitute a supply of goods, that surrender of possession shall be deemed for the purposes of section 3(1)(f), to be an appropriation of the goods or of the part thereof, as the case may be, for a purpose other than the purpose of that person’s business except where such surrender of possession is made—

- (a) in accordance with an agreement for the leasing or letting of those goods where the person surrendering possession is chargeable to tax in respect of the rent or other payment under the agreement, or
- (b) in connection with a transfer which, in accordance with section 3 (5), is deemed, for the purposes of this Act, not to be a supply.”,

and

- (d) by the insertion of the following subsection after subsection (7):

“(8) 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—

- (a) a taxable person,

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(b) a Department of State or a local authority, or Pt.III S.98

(c) a person supplying 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, for the purposes of this Act, the person to whom the goods are supplied shall be deemed to supply those goods in the course or furtherance of business and shall be liable to pay the said tax and in that case the person who makes that surrender or assignment shall be deemed not to supply the goods:

Provided that where a Department of State or a local authority is deemed to make a supply under this subsection, an order under subsection (2A) (a) of section 8 shall be deemed to have been made in respect of that supply.'".

99.—Section 5 of the Principal Act is hereby amended in subsection (6) by the insertion of the following paragraph after paragraph (d):

Amendment of section 5 (supply of services) of Principal Act.

“(dd) Notwithstanding the provisions of subparagraph (v) of paragraph (e), where a person supplies a telecommunications service in the course or furtherance of business from outside the Community to a person in the State who is not a person to whom the provisions of subparagraph (ii), (iii) or (iv) of paragraph (e) apply, the place of supply of that service shall be deemed, for the purposes of this Act, to be the State.”.

100.—Section 7 of the Principal Act is hereby amended—

Amendment of section 7 (waiver of exemption) of Principal Act.

(a) by the addition of the following proviso to subsection (1):

“Provided that where a person waives his right to exemption from tax in respect of the leasing or letting of goods which are subject to an agreement of the type referred to in section 4(2C)(a) then that waiver shall only apply to the supply of services under that agreement.”,

and

(b) by the substitution of the following subsection for subsection (3):

“(3) Provision may be made by regulations for the cancellation, at the request of a person, of a waiver made by him under subsection (1) and for the payment by him to the Revenue Commissioners as a condition of cancellation of such sum (if any) as when added to the total amount of tax (if any) due by him in accordance with section 19 in relation to the supply of services by him to which the waiver applied is equal to the total of—

(a) the amount of tax deducted by him in accordance with section 12 in respect of tax borne or paid in relation to the supply of such services,

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- (b) the amount of tax that would be deductible by him in accordance with section 12 if tax had been chargeable on the transfer of ownership of goods to him in respect of which the provisions of section 3(5)(b)(iii) were applied, and those goods were used by him in the supply of such services, and
- (c) the amount of tax that would be deductible by him in accordance with section 12 if tax had been chargeable on the supply to him of goods or services in respect of which the provisions of paragraph (via) of the Second Schedule were applied, and those goods or services were used in relation to the supply of services by him to which the waiver applied.”.

Amendment of section 8 (taxable persons) of Principal Act.

101.—Section 8 of the Principal Act is hereby amended in subsection (3)—

(a) by the substitution of the following paragraph for paragraph (a):

“ (a) a farmer, for whose supply in any continuous period of twelve months of—

(i) agricultural services, other than insemination services, stock-minding or stock-rearing, the total consideration has not exceeded and is not likely to exceed £20,000, or

(ii) goods of the type specified in paragraph (xia) of the Sixth Schedule to persons who are not engaged in supplying those goods in the course or furtherance of business, the total consideration has not exceeded and is not likely to exceed £40,000, or

(iii) services and goods specified in subparagraph (i) and (ii), the total consideration has not exceeded and is not likely to exceed £20,000,”

and

(b) by the insertion of the following subparagraph after subparagraph (i) in the proviso to the subsection:

“(a) where a farmer supplies services or goods of the kind specified in paragraph (a)(i) or (a)(ii), subparagraph (i) of this proviso shall be deemed to apply to those supplies, notwithstanding that the provisions of that subparagraph do not otherwise apply to supplies by a farmer;”.

Amendment of section 10 (amount on which tax is chargeable) of Principal Act.

102.—Section 10 of the Principal Act is hereby amended—

(a) in subsection (3) by the addition of the following paragraph:

“(d) If, following the issue of an invoice by a taxable person in respect of a supply of goods or services, the person who issued the invoice allows a reduction or

discount in the amount of the consideration due in respect of that supply, the relief referred to in paragraph (c) shall not be given until the person who issued the invoice issues the credit note required in accordance with the provisions of section 17(3)(b) in respect of that reduction or discount.”,

(b) by the addition of the following proviso to subsection (4):

“Provided that where the supply in question is a supply of immovable goods, (hereafter referred to in this proviso as ‘appropriation’), the cost to the person making that appropriation shall include an amount equal to the amount on which tax was chargeable on the supply of those goods to that person, being the last supply of those goods to that person which preceded the appropriation.”,

(c) in subsection (7)—

(i) in paragraph (c) by the insertion before “supplies” of “subject to subsection (7A),”, and

(ii) by the deletion of paragraph (d),

(d) by the insertion of the following subsection after subsection (7):

“(7A) (a) Where a supplier sells a voucher to a buyer at a discount and promises to subsequently accept that voucher at its face value in full or part payment of the price of goods purchased by a customer who was not the buyer of the voucher, and who does not normally know the actual price at which the voucher was sold by the supplier, the consideration represented by the voucher shall, subject to regulations, if any, be the sum actually received by the supplier upon the sale of the voucher.

(b) Paragraph (a) is for the purpose of giving further effect to Article 11A.1.(a) of Council Directive No. 77/388/EEC of 17 May 1977¹, and shall be construed accordingly.”,

(e) in subsection (9), by the addition of the following proviso to paragraph (b):

“Provided that where a surrender or an assignment of an interest in immovable goods is a supply of immovable goods which is chargeable to tax, the open market price of such interest shall be determined as if the person who surrendered or assigned that interest were disposing of an interest in those goods which that person had created for the period between the date of the surrender or assignment and the date on which that surrendered or assigned interest would, but for its surrender or assignment, have expired.”,

and

(f) by the substitution of the following subsection for subsection (10):

¹O.J. No. L145 of 13 June 1977, p. 1.

“(10) In this section—

‘interest’, in relation to immovable goods, and ‘disposal’ in relation to any such interest, shall be construed in accordance with section 4 (1), provided that for the purposes of determining the open market price of a surrendered or assigned interest in accordance with the proviso to paragraph (b) of subsection (9), an interest in immovable goods shall also mean an estate or interest which, when it was created, was for a period equal to the period referred to in that proviso, regardless of the duration of that period;

‘the open market price’—

(a) in relation to the value of an interest in immovable goods which is not a freehold interest, means the price, excluding tax, which the right to receive an unencumbered rent in respect of those goods for the period of the interest would fetch on the open market at the time that that interest is disposed of, and

(b) in relation to the supply of any other goods or services or the intra-Community acquisition of goods, means the price, excluding tax, which the goods might reasonably be expected to fetch or which might reasonably be expected to be charged for the services if sold in the open market at the time of the event in question;

‘unencumbered rent’, for the purposes of valuing an interest in immovable goods, means the rent at which an interest would be let, if that interest was let on the open market free of restrictive conditions.’.

Amendment of section 11 (rates of tax) of Principal Act.

103.—Section 11 of the Principal Act is hereby amended—

(a) in subsection (1) (inserted by the Act of 1992) by the substitution in paragraph (f) of “3.3 per cent.” for “2.8 per cent.” (inserted by the Act of 1996), and

(b) in the proviso to subsection (3) (inserted by the Act of 1978) by the substitution of “25 pence” for “5 pence”.

Amendment of section 12 (deduction for tax borne or paid) of Principal Act.

104.—Section 12 of the Principal Act is hereby amended in paragraph (a) of subsection (1) by the insertion of the following subparagraphs after subparagraph (iii**b**):

“(iii**c**) the tax chargeable during the period, being tax for which he is liable by virtue of section 4(8), in respect of a supply of immovable goods deemed to be supplied by him:

Provided that this subparagraph shall apply only where he would be entitled to a deduction of that tax elsewhere under this subsection if the goods in question were supplied to him by another person and if he had not been deemed to have supplied them in accordance with section 4(8),

- (iii*d*) the tax chargeable to him during the period by other taxable persons in respect of goods or services directly related to a supply of immovable goods which is deemed not to be supplied by him in accordance with section 4(8),”.

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105.—Section 12A (inserted by the Act of 1978) of the Principal Act is hereby amended in subsection (1) by the substitution of “3.3 per cent.” for “2.8 per cent.” (inserted by the Act of 1996).

Amendment of section 12A (special provisions for tax invoiced by flat-rate farmers) of Principal Act.

106.—Section 13 of the Principal Act is hereby amended—

Amendment of section 13 (remission of tax on goods exported, etc.) of Principal Act.

- (a) by the insertion of the following subsections after subsection (1):

“(1A) The Revenue Commissioners shall, subject to and in accordance with regulations (if any), allow the application of paragraph (b) of subsection (1) of section 11 (hereafter referred to in this section as ‘zero-rating’) to—

- (a) the supply of a traveller’s qualifying goods, and
- (b) the supply of services by a VAT refunding agent consisting of the service of repaying the tax claimed by a traveller in relation to the supply of a traveller’s qualifying goods or the procurement of the zero-rating of the supply of a traveller’s qualifying goods,

where they are satisfied that the supplier of the goods or services as the case may be—

- (i) has proof that the goods were exported by or on behalf of the traveller by the last day of the third month following the month in which the supply takes place,
- (ii) repays, within such time limit as may be specified in regulations, any amount of tax paid by the traveller and claimed by that person in respect of goods covered by the provisions of paragraph (i),
- (iii) notifies the traveller in writing of any amount (including the mark-up) charged by the supplier for procuring the repayment of the amount claimed or arranging for the zero-rating of the supply,
- (iv) uses, as the exchange rate in respect of monies being repaid to a traveller in a currency other than the currency of the State, the latest selling rate recorded by the Central Bank of Ireland for the currency in question

at the time of the repayment, or where there is an agreement with the Revenue Commissioners for a method to be used in determining the exchange rate, the exchange rate obtained using the said method, and

- (v) has made known to the traveller such details concerning the transaction as may be specified in regulations.

(1B) Regulations may make provision for the authorisation, subject to certain conditions, of taxable persons or a class of taxable persons for the purposes of zero-rating of the supply of a traveller's qualifying goods or to operate as a VAT refunding agent in the handling of a repayment of tax on the supply of a traveller's qualifying goods and such regulations may provide for the cancellation of such authorisation and matters consequential to such cancellation.

(1C) A VAT refunding agent acting as such may, in accordance with regulations, treat the tax charged to the traveller on the supply of that traveller's qualifying goods as tax that is deductible by the agent in accordance with paragraph (a) of subsection (1) of section 12, provided that that agent fulfils the conditions set out in subsection (1A) in respect of that supply.”,

and

- (b) by the insertion of the following subsections after subsection (3A):

“(3B) In this section—

‘traveller’ means a person whose domicile or habitual residence is not situated within the Community and includes a person who is normally resident in the Community but who, at the time of the supply of the goods intends to take up residence outside the Community in the near future and for a period of at least 12 consecutive months;

‘traveller's qualifying goods’ means goods, other than goods transported by the traveller for the equipping, fuelling and provisioning of pleasure boats, private aircraft or other means of transport for private use, which are supplied within the State to a traveller and which are exported by or on behalf of that traveller by the last day of the third month following the month in which the supply takes place;

‘VAT refunding agent’ means a person who supplies services which consist of the procurement of a zero-rating or repayment of tax in relation to supplies of a traveller's qualifying goods.

(3C) For the purposes of this section, and subject to the direction and control of the Revenue Commissioners, any power, function or duty conferred or

imposed on them may be exercised or performed on their behalf by an officer of the Revenue Commissioners.”. Pt.III S.106

107.—Section 19 of the Principal Act is hereby amended—

Amendment of section 19 (tax due and payable) of Principal Act.

(a) by the insertion of the following subsection after subsection (2):

“(2A) Where a payment is made prior to the 1st day of July, 1997, in respect of a telecommunications service which is to be supplied by a person in the course or furtherance of business from outside the State on or after that date and the place of supply of that service is deemed by virtue of paragraph (e) of subsection (6) of section 5 to be, at the time of its supply, the State, then that payment shall be deemed, for the purposes of subsection (2), to be made on that date.”.

(b) by the deletion of the proviso (inserted by the Act of 1993) to paragraph (a) of subsection (3), and

(c) by the deletion of subsection (6) (inserted by the Act of 1993).

108.—Section 20 of the Principal Act is hereby amended by the deletion of the proviso to subsection (1) (inserted by the Act of 1993).

Amendment of section 20 (refund of tax) of Principal Act.

109.—Section 25 (1) of the Principal Act is hereby amended by the insertion of the following paragraph after paragraph (ac):

Amendment of section 25 (appeals) of Principal Act.

“(ad) the refusal of an application for authorisation to operate as a VAT refunding agent (within the meaning assigned by section 13 (3B)) or the cancellation of any such authorisation.”.

110.—The First Schedule (inserted by the Act of 1978) to the Principal Act is hereby amended—

Amendment of First Schedule to Principal Act.

(a) in paragraph (ii) by the insertion before “school” of “children’s or young people’s education,” and

(b) in paragraph (vi) by the insertion after “profit” of the following:

“and the supply of services for the protection or care of children and young persons, and the provision of goods closely related thereto, provided by persons whose activities may be regulated by regulations made under Part VII of the Child Care Act, 1991;”.

111.—The Second Schedule to the Principal Act is hereby amended—

Amendment of Second Schedule to Principal Act.

(a) in paragraph (i):

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- (i) by the substitution in subparagraph (a) of the following clause for clause (I):

“(I) outside the Community:

Provided that this subparagraph shall not apply to a supply of goods to a traveller (within the meaning assigned by section 13 (3B)) which such traveller exports on behalf of the supplier and such supply shall be deemed to be a supply of the type referred to in subparagraph (f), or”,

and

- (ii) by the addition of the following subparagraph after subparagraph (e):

“(f) which are a traveller’s qualifying goods (within the meaning assigned by subsection (3B) of section 13), provided that the provisions of subsection (1A) of that section and regulations (if any) made thereunder are complied with;”,

and

- (b) by the addition of the following subparagraph after subparagraph (via):

“(vib) the supply of services in procuring a repayment of tax due on the supply of a traveller’s qualifying goods (within the meaning assigned by subsection (3B) of section 13) or the application of the provisions of subparagraph (i) (f) of this Schedule to that supply of goods, provided that the provisions of subsection (1A) of that section and regulations (if any) made thereunder are complied with;”.

Amendment of Fourth Schedule to Principal Act.

112.—The Fourth Schedule to the Principal Act is hereby amended by the insertion of the following paragraph after paragraph (iii):

“(iii a) telecommunications services;”.

Amendment of Sixth Schedule to Principal Act.

113.—The Sixth Schedule (inserted by the Act of 1992) to the Principal Act is hereby amended by the addition of the following paragraph after paragraph (xi):

“(xia) nursery or garden centre stock consisting of live plants, live trees, live shrubs, bulbs, roots and the like, not being of a type specified in paragraph (xv) of the Second Schedule, and cut flowers and ornamental foliage not being artificial or dried flowers or foliage;”.

Revocation (Part III).

114.—The European Communities (Value-Added Tax) Regulations, 1993 (S.I. No. 345 of 1993), and the Value-Added Tax (Threshold for Advance Payment) (Amendment) Order, 1994 (S.I. No. 342 of 1994), shall be deemed to have been revoked with effect from the 7th day of November, 1996.

[1997.]

Finance Act, 1997.

[No. 22.]

PART IV

Stamp Duties

Chapter I

Special provisions relating to residential property

115.—In this Chapter—

Interpretation
(Chapter I).

“the Act of 1891” means the Stamp Act, 1891;

“the Act of 1978” means the Local Government (Financial Provisions) Act, 1978;

“the Commissioners” means the Revenue Commissioners;

“the First Schedule” means the First Schedule, as amended by the Finance Act, 1970, and subsequent enactments, to the Act of 1891;

“community hall”, “mixed hereditament”, “secondary school” and “valuation lists” have the meanings, respectively, assigned to them by section 1 of the Act of 1978.

116.—This Chapter shall have effect as respects instruments executed on or after the 23rd day of January, 1997:

Commencement
(Chapter I).

Provided that this Chapter shall not apply as respects any instrument executed prior to the 1st day of May, 1997, in pursuance of a contract which was evidenced in writing prior to the 23rd day of January, 1997.

117.—The First Schedule is hereby amended—

Amendment of the
First Schedule.

(a) by the substitution of the Heading and the provisions thereto which are set out in Part I of the *Eighth Schedule* for the Heading (as amended by the Finance Act, 1992) “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” and the provisions thereto, and

(b) by the substitution of the subparagraph set out in Part II of the *Eighth Schedule* for subparagraph (a) of paragraph (3) of the Heading “LEASE” (inserted by the Finance Act, 1991).

118.—Section 122 of the Act of 1891 is hereby amended by the insertion of the following definition after the definition of “marketable security”:

Amendment of
section 122
(definitions) of the
Act of 1891.

“The expression ‘residential property’, in relation to a sale or lease, means—

(a) a building or part of a building which, at the date of the instrument of conveyance or lease—

(i) was used or was suitable for use as a dwelling, or

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(ii) was in the course of being constructed or adapted for use as a dwelling, or

(iii) had been constructed or adapted for use as a dwelling and had not since such construction or adaptation been adapted for any other use,

and

(b) the curtilage of the residential property up to an area (exclusive of the site of the residential property) of one acre:

Provided that—

(i) where in the year ending on the 31st day of December immediately prior to the date of that instrument of conveyance or lease—

(I) a rate was made by a rating authority as regards any hereditament to which the provisions of section 3 of the Act of 1978 did not apply, or

(II) a rate was made by a rating authority, and an allowance made under that section of that Act, as regards any hereditament which was at the time the rate was made a mixed hereditament, secondary school or community hall, or

(III) a hereditament was described as exempt, or partially exempt, from rating in the valuation lists,

then the whole or an appropriate part of that hereditament as is referable to ordinary use other than as a dwelling at the date of that instrument of conveyance or lease or, where appropriate, when last ordinarily used, shall not be residential property, in relation to that sale or lease,

(ii) where the area of the curtilage (exclusive of the site of the residential property) exceeds one acre then the part which shall be residential property shall be taken to be the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residential property.”.

119.—Section 58 of the Act of 1891 is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) Where—

(a) any property which consists partly of an interest in residential property is sold to any person and the sale (hereinafter in this subsection referred to as ‘the first-mentioned sale’) does not form part of a larger transaction or of a series of transactions, or

Amendment of section 58 (conveyances on sale: direction as to duty in certain cases) of the Act of 1891.

- (b) the sale to any person of property consisting in whole or in part of such an interest forms part of a larger transaction or of a series of transactions, Pt.IV S.119

the consideration attributable to the first-mentioned sale and the aggregate consideration (other than rent) attributable to that larger transaction or series of transactions, as the case may be, shall be apportioned, on such basis as is just and reasonable, as between that interest in residential property and the other property or part concerned, and that aggregate consideration shall likewise be apportioned as between each other such interest (if any) comprised in that larger transaction or series of transactions and the other property or parts concerned, and notwithstanding the amount or value of the consideration set forth in any instrument, the consideration so apportioned to that interest shall be the amount or the value of the consideration for the sale which is deemed to be attributable to that interest and the consideration so apportioned to the aggregate of all such interests comprised in that larger transaction or series of transactions shall be the amount or value of that aggregate consideration which is deemed to be attributable to residential property.”.

120.—Section 77 of the Act of 1891 is hereby amended by the addition of the following subsection after subsection (5):

Amendment of section 77 (leases: directions as to duty in certain cases) of the Act of 1891.

“(6) Where—

- (a) any property which consists partly of an interest in residential property is leased to any person and that lease (hereinafter in this subsection referred to as ‘the first-mentioned lease’) does not form part of a larger transaction or of a series of transactions, or
- (b) the lease to any person of any property consisting in whole or in part of such an interest forms part of a larger transaction or of a series of transactions,

the consideration other than rent attributable to that first-mentioned lease and the aggregate consideration (other than rent) attributable to that larger transaction or series of transactions, as the case may be, shall be apportioned, on such basis as is just and reasonable, as between that interest in residential property and the other property or part concerned, and that aggregate consideration shall likewise be apportioned, as between each other such interest (if any) comprised in that larger transaction or series of transactions and the other property or parts concerned, and notwithstanding the amount or value of the consideration set forth in any instrument, the consideration so apportioned to that interest shall be the amount or the value of the consideration for the lease which is deemed to be attributable to that interest and the consideration so apportioned to the aggregate of all such interests comprised in that larger transaction or series of transactions shall be the amount or value of that aggregate consideration which is deemed to be attributable to residential property.”.

121.—(1) In this section—

Surcharges.

- (a) a reference to a sale includes a reference to a lease,

- (b) a reference to a vendor includes a reference to a lessor,
- (c) a reference to a vendee includes a reference to a lessee,
- (d) a reference to subsection (1A) of section 58 of the Act of 1891 includes a reference to subsection (6) of section 77 of the Act of 1891, and
- (e) “residential consideration” means—
 - (i) in the case of a sale to which paragraph (a) of subsection (1A) of section 58 of the Act of 1891 refers, the amount or value of the consideration for the sale which is deemed to be attributable to residential property, and
 - (ii) in the case of a sale to which paragraph (b) of subsection (1A) of section 58 of the Act of 1891 refers, the amount or value of the aggregate consideration (within the meaning of that subsection) which is deemed to be attributable to residential property.

(2) Where, in relation to any sale, the provisions of subsection (1A) of section 58 of the Act of 1891 apply, an estimate (hereinafter in this section referred to as the “vendor’s estimate” or as the “vendee’s estimate”, as the case may be) of the residential consideration shall be made by the vendor and by the vendee and those estimates together with the amount or value of the aggregate consideration (within the meaning of that subsection), shall be brought to the attention of the Commissioners in the statement delivered under the provisions of subsection (2) of section 5 of that Act and that statement shall be signed by the vendor and the vendee and where the requirements of this subsection are not complied with any person who executes the instrument whereby that sale is effected shall for the purposes of subsection (3) of section 5 of that Act be presumed, until the contrary is proven, to have acted negligently:

Provided that where—

- (a) the aggregate consideration (within the meaning of subsection (1A) of section 58 of the Act of 1891), or
- (b) in the case where the sale does not form part of a larger transaction or of a series of transactions, the consideration for the sale,

does not exceed £150,000, those estimates need not be brought to the attention of the Commissioners in that statement unless a request in that regard is made by the Commissioners.

(3) Where the vendee’s estimate (hereinafter in this subsection referred to as the “submitted value”) is less than the residential value agreed with, or ascertained by, the Commissioners (hereinafter in this subsection referred to as the “ascertained value”) then, as a penalty, the duty chargeable upon the instrument shall be increased by an amount (hereinafter in this subsection referred to as the “surcharge”) calculated according to the following provisions:

- (a) where the submitted value is less than the ascertained value by an amount which is greater than 10 per cent. of the ascertained value but not greater than 30 per cent. of the ascertained value, a surcharge equal to 50 per cent. of the difference between the duty chargeable by reference to the ascertained value and the duty chargeable by reference to the submitted value;

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(b) where the submitted value is less than the ascertained value by an amount which is greater than 30 per cent. of the ascertained value, a surcharge equal to the difference between the duty chargeable by reference to the ascertained value and the duty chargeable by reference to the submitted value: Pt.IV S.121

Provided that—

- (i) notwithstanding any other provision to the contrary in the Act of 1891, the vendee shall, subject to subparagraph (ii) of this proviso, be entitled to recover from the vendor one-half of that surcharge,
- (ii) where the vendor’s estimate is greater than the submitted value, the amount which the vendee shall be entitled to recover from the vendor shall not exceed one-half of what the surcharge would be if the submitted value were equal to the vendor’s estimate.

122.—The furnishing of an incorrect certificate for the purpose of the First Schedule shall be deemed to constitute the delivery of an incorrect statement for the purposes of section 94 of the Finance Act, 1983. Furnishing of an incorrect certificate.

Chapter II

Miscellaneous

123.—The amount upon which stamp duty is chargeable by virtue of the provisions of section 112 (as amended by section 100 of the Finance Act, 1993) of the Finance Act, 1990, shall be deemed, for the purposes of the Stamp Act, 1891, to be the amount or value of the consideration for the sale or lease in respect of which that duty is chargeable. Amount chargeable to duty where chargeable on new dwellinghouse or apartment.

124.—For the avoidance of doubt it is hereby declared that subsection (2) of section 112 of the Finance Act, 1990, does not apply and shall be deemed never to have applied where the dwellinghouse or apartment concerned was occupied by any person, other than in connection with the building of that dwellinghouse or apartment, at any time prior to the agreement for sale or lease of the land. Provision relating to section 112 (stamp duty on transfers of building land) of Finance Act, 1990.

125.—Section 207 of the Finance Act, 1992, is hereby amended— Amendment of section 207 (exemption from stamp duty of certain financial services instruments) of Finance Act, 1992.

(a) in subsection (1) by the insertion in subparagraph (I) of paragraph (b) of the definition of “American depository receipt” of “or Canada” after “United States of America”, and

(b) in subsection (2) by the substitution of the following paragraph for paragraph (II) of the proviso to that subsection:

“(II) the stocks or marketable securities of a company, other than a company which is a collective investment undertaking within the meaning of section 18 of the Finance Act, 1989, which is registered in the State.”.

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Amendment of section 112 (relief from stamp duty in respect of transfers to young trained farmers) of Finance Act, 1994.

126.—Section 112 of the Finance Act, 1994, is hereby amended in subsection (7) by the substitution of “31st day of December, 1999” for “31st day of December, 1996”.

Exemption of certain transfers from stamp duty following the dissolution of a marriage.

127.—(1) Subject to *subsection (3)*, stamp duty shall not be chargeable on an instrument by which property is transferred pursuant to an order to which this subsection applies by either or both of the spouses who were parties to the marriage concerned to either or both of them.

(2) Section 74 (2) of the Finance (1909-10) Act, 1910, shall not apply to a transfer to which *subsection (1)* applies.

(3) (a) *Subsection (1)* applies—

(i) to a relief order, within the meaning of section 23 of the Family Law Act, 1995, made following the dissolution of a marriage, or

(ii) to an order under Part III of the Family Law (Divorce) Act, 1996.

(b) *Subsection (1)* does not apply in relation to an instrument referred to in that subsection by which any part of or beneficial interest in the property concerned is transferred to a person other than the spouses concerned.

(4) Section 50 of the Family Law Act, 1995, and section 33 of the Family Law (Divorce) Act, 1996, are hereby repealed.

Exemption from stamp duty of certain instruments (Dublin Docklands Development Authority).

128.—(1) No stamp duty shall be chargeable on any instrument under which any land, easement, way-leave, water right or other right whatsoever over or in respect of the land or water is acquired by the body to be established under subsection (1) of section 14 of the Dublin Docklands Development Authority Act, 1997.

(2) Subsection (1) shall have effect as respects instruments executed on or after the 1st day of May, 1997.

(3) Section 65 of the Finance Act, 1989, is hereby repealed.

Exemption from stamp duty of certain policies of health insurance.

129.—(1) Stamp duty shall not be chargeable on a health insurance contract (being a health insurance contract within the meaning of section 2 of the Health Insurance Act, 1994).

(2) This section shall have effect with respect to instruments executed on or after the 1st day of March, 1997.

Repeal (*Part IV*).

130.—(1) The following exemption under the Heading “BILL OF EXCHANGE or PROMISSORY NOTE”, in the First Schedule (as amended by the Finance Act, 1970) to the Stamp Act, 1891, is hereby repealed:

“(1) Bill or note issued by the Bank of England or the Bank of Ireland.”.

(2) This section shall have effect with respect to instruments executed on or after the date of passing of this Act.

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PART V

Residential Property Tax

131.—Residential property tax shall not be charged, levied or paid under the provisions of section 96 of the Finance Act, 1983, by reference to any valuation date (within the meaning of section 95 (1) of that Act) occurring on or after the 5th day of April, 1997.

Abolition of residential property tax.

132.—Section 110A of the Finance Act, 1983 (inserted by the Finance Act, 1993) shall have effect, and shall be deemed always to have had effect, as if the following definition were inserted after the definition of “consideration”:

Amendment of section 110A (clearance on sale of certain residential property) of Finance Act, 1983.

“ ‘general exemption limit’ has the meaning assigned to it by section 100;”

PART VI

Capital Acquisitions Tax

133.—In this Part “the Principal Act” means the Capital Acquisitions Tax Act, 1976.

Interpretation (*Part VI*).

134.—(1) Section 19 of the Principal Act is hereby amended—

Amendment of section 19 (value of agricultural property) of Principal Act.

(a) by the substitution of the following definition for the definition of “agricultural value” in subsection (1) (inserted by the Finance Act, 1996):

“ ‘agricultural value’ means the market value of agricultural property reduced by 90 per cent. of that value;”

(b) in paragraph (II) of the proviso (inserted by the Finance Act, 1996) to paragraph (a) (inserted by the Finance Act, 1994) of subsection (5), by the insertion of “or *section 134* of the *Finance Act, 1997*,” after “Finance Act, 1996,”.

(2) This section shall have effect in relation to gifts or inheritances taken on or after the 23rd day of January, 1997.

135.—(1) Subsection (3) of section 57 of the Principal Act is hereby amended by the substitution of “disposition” for “disposition, or at the date of the gift or the date of the inheritance”.

Amendment of section 57 (exemption of certain securities) of Principal Act.

(2) This section shall have effect in relation to securities or units comprised in a gift or an inheritance where the date of the gift or the date of the inheritance is on or after the 26th day of March, 1997, and the securities or units come into the beneficial ownership of the disponent on or after the 26th day of March, 1997, or become subject to the disposition on or after that date without having been previously in the beneficial ownership of the disponent.

136.—(1) For the avoidance of doubt it is hereby declared that paragraph 3 (inserted by the Finance Act, 1984) of the Second Schedule to the Principal Act shall have effect and be deemed always to have had effect as if the following paragraph were substituted therefor:

Second Schedule (computation of tax) to Principal Act, declaratory provision.

“3. Subject to the provisions of paragraph 6, the tax chargeable on the taxable value of a taxable gift or a taxable inheritance taken by a donee or successor shall be of an amount equal to the amount by which the tax computed on aggregate A exceeds the tax computed on aggregate B, where—

- (a) aggregate A is the aggregate of the following:
 - (i) the said taxable value, and
 - (ii) the taxable value of each and every taxable gift and taxable inheritance taken previously by the said donee or successor on or after the 2nd day of June, 1982,
- (b) aggregate B is the aggregate of the taxable values of all taxable gifts and taxable inheritances so previously taken, and
- (c) the tax on an aggregate is computed at the rate or rates of tax applicable under the Table to that aggregate:

Provided that—

- (i) in a case where no taxable gift or taxable inheritance was so previously taken, the amount of the tax computed on aggregate B shall be deemed to be nil,
- (ii) in every other case, the amount of the tax chargeable shall not exceed the amount which would be chargeable if the threshold amount which applies to aggregate A were deemed, irrespective of the definition of ‘threshold amount’, to be also the threshold amount which applies to aggregate B, and
- (iii) the amount of an aggregate that comprises only a single taxable value shall be equal to that value.”.

(2) *Subsection (1)* shall not apply to a gift or inheritance in relation to which paragraph 3 of the Second Schedule to the Principal Act was the subject of a determination of the Appeal Commissioners, being a determination made before the 1st day of May, 1997, under section 52 of the Principal Act.

Amendment of section 39 (extension of section 55 (exemption of certain objects) of Capital Acquisitions Tax Act, 1976) of Finance Act, 1978.

137.—(1) Section 39 of the Finance Act, 1978, is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) Without prejudice to the generality of subsection (1), the provision of facilities for the viewing by members of the public of a house or garden shall not be regarded as reasonable in relation to any year, which is the year 1997 or any subsequent year and which is taken into account for the purposes of paragraphs (b) and (c) of subsection (1), unless—

- (a) Bord Fáilte Éireann (hereinafter in this section referred to as ‘the Board’) has, as regards the year 1997, on or before the 1st day of July, 1997, and, as regards any subsequent year, on or before the 1st day of January in that year, been provided with particulars of—
 - (i) the name, if any, and address of the house or garden, and

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- (ii) the days and times during the year when access to the house or garden is afforded to the public and the price, if any, payable for such access, and

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(b) in the opinion of the Commissioners—

- (i) subject to such temporary closure necessary for the purpose of the repair, maintenance or restoration of the house or garden as is reasonable, access to the house or garden is afforded for not less than 60 days (including not less than 40 days during the period commencing on the 1st day of May and ending on the 30th day of September) in that year;
- (ii) on each day on which access to the house or garden is afforded, the access is afforded in a reasonable manner and at reasonable times for a period, or periods in the aggregate, of not less than four hours;
- (iii) access to the whole or to a substantial part of the house or garden is afforded at the same time; and
- (iv) the price, if any, paid by members of the public in return for that access is reasonable in amount and does not operate to preclude members of the public from seeking access to the house or garden.”.

(2) The Capital Acquisitions Tax (Heritage Houses and Gardens) Regulations, 1987 (S.I. No. 28 of 1987), shall be deemed to have been revoked with effect from the 1st day of January, 1997.

(3) This section shall have effect in relation to gifts and inheritances taken on or after the 1st day of February, 1987.

138.—(1) Section 117 of the Finance Act, 1991 (as amended by section 144 of the Finance Act, 1994), is hereby amended by the substitution in subsection (1) of “£80,000” for “£60,000”.

Amendment of section 117 (reduction of market value of certain dwellings) of Finance Act, 1991.

(2) This section shall have effect in relation to inheritances taken on or after the date of the passing of this Act.

139.—(1) Section 126 (inserted by the Finance Act, 1995) of the Finance Act, 1994, is hereby amended by the substitution of “90 per cent.” for “75 per cent.” (inserted by the Finance Act, 1996).

Amendment of section 126 (business relief) of Finance Act, 1994.

(2) This section shall have effect in relation to gifts or inheritances taken on or after the 23rd day of January, 1997.

140.—(1) Section 127 of the Finance Act, 1994, is hereby amended by the substitution of the following subsections for subsection (6):

Amendment of section 127 (relevant business property) of Finance Act, 1994.

“(6) Any land, building, machinery or plant used wholly or mainly for the purposes of a business carried on as mentioned in subsection (1) (e) shall not be relevant business property in relation to a gift or inheritance, unless the disponer’s interest in

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the business is, or shares in or securities of the company carrying on the business immediately before the gift or inheritance are, relevant business property in relation to the gift or inheritance or in relation to a simultaneous gift or inheritance taken by the same donee or successor.

(7) The references to a disponent in subsections (1) (e) and (6) shall include a reference to a person in whom the land, building, machinery or plant concerned is vested for a beneficial interest in possession immediately before the gift or inheritance.

(8) Where shares or securities are vested in the trustees of a settlement, any powers of voting which they give to the trustees of the settlement shall, for the purposes of subsection (1) (e), be deemed to be given to the person beneficially entitled in possession to the shares or securities except in a case where no individual is so entitled.”.

(2) This section shall have effect in relation to gifts and inheritances taken on or after the 26th day of March, 1997.

Amendment of section 135 (withdrawal of relief) of Finance Act, 1994.

141.—(1) Section 135 of the Finance Act, 1994, is hereby amended, in subparagraph (iii) of the proviso (inserted by the Finance Act, 1996) to subsection (2), by the substitution of “four-ninths” for “one-third”.

(2) This section shall have effect in relation to gifts or inheritances taken on or after the 23rd day of January, 1997.

Exemption of certain transfers from capital acquisitions tax following the dissolution of a marriage.

142.—(1) Notwithstanding the provisions of the Principal Act, a gift or inheritance (within the meaning, in each case, of that Act) taken by virtue or in consequence of an order to which this subsection applies by a spouse who was a party to the marriage concerned shall be exempt from any capital acquisitions tax under that Act and shall not be taken into account in computing such a tax.

(2) *Subsection (1) applies—*

(a) to a relief order or an order under section 25 of the Family Law Act, 1995, made following the dissolution of a marriage, or

(b) to a maintenance pending relief order made following the granting of leave under section 23 (3) of the Family Law Act, 1995, to a spouse whose marriage has been dissolved,

(c) to an order referred to in section 41 (a) of the Family Law Act, 1995, or an order under section 42 (1) of that Act made in addition to or instead of an order under section 41 (a) of that Act, in favour of a spouse whose marriage has been dissolved, and

(d) to an order under Part III of the Family Law (Divorce) Act, 1996.

(3) Section 51 of the Family Law Act, 1995, and section 34 of the Family Law (Divorce) Act, 1996, are hereby repealed. Pt.VI S.142

143.—(1) Subsection (1) of section 115A of the Finance Act, 1993 (which was inserted by the Finance Act, 1994, and provides for the abatement or postponement of probate tax payable by a surviving spouse)— Abatement and postponement of probate tax on certain property.

(a) shall apply to a spouse in whose favour an order has been made—

(i) under section 25 of the Family Law Act, 1995, or

(ii) under section 18 of the Family Law (Divorce) Act, 1996,

as it applies to a spouse referred to in the said section 115A, and

(b) shall apply to property or an interest in property the subject of such an order as it applies to the share of a spouse referred to in the said section 115A in the estate of a deceased referred to in that section or the interest of such a spouse in property referred to in that section,

with any necessary modifications.

(2) Section 53 of the Family Law Act, 1995, and section 36 of the Family Law (Divorce) Act, 1996, are hereby repealed.

PART VII

Miscellaneous Pre-Consolidation Provisions

Chapter I

Income Tax, Corporation Tax and Capital Gains Tax

144.—(1) In this section, “securities” means any bonds, certificates of charge, debentures, debenture stock, notes, stock or other forms of security. Securities of certain State-owned companies.

(2) The securities specified in the Table to this section shall be deemed to be securities issued under the authority of the Minister for Finance under section 466 of the Income Tax Act, 1967, and that section shall apply accordingly.

(3) Notwithstanding anything in the Tax Acts, in computing for the purposes of assessment under Schedule D the amount of the profits or gains of a company (being a company referred to in the Table to this section) for any accounting period, there shall be allowed as a deduction the amount of the interest on any securities which, by direction of the Minister for Finance given under section 466 of the Income Tax Act, 1967, as applied by *subsection (2)*, is paid by the company without deduction of income tax for such period.

TABLE

Securities issued by The Agricultural Credit Corporation, Limited.

Securities issued on or after the 13th day of July, 1954, by the Electricity Supply Board.

Securities issued on or after the 13th day of July, 1954, by Córas Iompair Éireann.

Securities issued on or after the 18th day of July, 1957, by Bord na Móna.

Securities issued on or after the 2nd day of July, 1964, by Aer Lingus, Teoranta.

Securities issued on or after the 2nd day of July, 1964, by Aer Rianta, Teoranta.

Securities issued on or after the 2nd day of July, 1964, by Aerlínte Éireann, Teoranta.

Securities issued on or after the 25th day of May, 1988, by Bord Telecom Éireann.

Securities issued on or after the 25th day of May, 1988, by Irish Telecommunications Investments p.l.c.

Securities issued on or after the 24th day of May, 1989, by Radio Telefís Éireann.

Securities issued on or after the 24th day of May, 1989, by The Industrial Credit Corporation p.l.c.

Securities issued on or after the 28th day of May, 1992, by Bord Gáis Éireann.

Relief for interest
paid on certain
home loans.

145.—(1) (a) In this section—

“dependent relative”, in relation to an individual, means any of the persons mentioned in paragraph (a) or (b) of section 142 (1) of the Income Tax Act, 1967, in respect of whom the individual is entitled to a deduction under that section;

“loan” means any loan or advance or any other arrangement whatever by virtue of which interest is paid or payable;

“qualifying interest”, in relation to an individual and a year of assessment, means the amount of interest paid by the individual in the year of assessment in respect of a qualifying loan;

“qualifying loan”, in relation to an individual, means a loan or loans which, without having been used for any other purpose, is or are used by the individual solely for the purpose of defraying money employed in the purchase, repair, development or improvement of a qualifying residence or in paying off another loan or loans used for such purpose;

“qualifying residence”, in relation to an individual, means a residential premises situated in the State, Northern Ireland or Great Britain, which is used—

- (i) as the sole or main residence of the individual,
- (ii) as the sole or main residence of a former or separated spouse of the individual, or

- (iii) as the sole or main residence of a person who, in relation to the individual, is a dependent relative, and is, where the residential premises is provided by the individual, provided rent-free and without any other consideration;

“relievable interest”, in relation to an individual and a year of assessment, means an amount equal to that part of the qualifying interest paid by the individual in the year of assessment which is determined by the formula—

$$(I \times 80\%) - M$$

where—

I is—

- (i) in the case of an individual who is assessed to tax for the year of assessment in accordance with section 194 of the Income Tax Act, 1967, the amount of qualifying interest paid by that individual in the year of assessment or, if less, £5,000,
- (ii) in the case of a widowed individual, the amount of qualifying interest paid by that individual in the year of assessment or, if less, £3,600,
- (iii) in the case of any other individual, the amount of qualifying interest paid by that individual in the year of assessment or, if less, £2,500, and

M is—

- (i) in the case of an individual who is assessed to tax for the year of assessment in accordance with section 194 of the Income Tax Act, 1967, £200 or, if less, the amount of qualifying interest paid by that individual in the year of assessment,
- (ii) in the case of any other individual, £100 or, if less, the amount of qualifying interest paid by that individual in the year of assessment,

but, notwithstanding the preceding provisions of this definition and subject to *paragraph (c)*, as respects the first 5 years of assessment for which there is an entitlement to relief under this section in respect of a qualifying loan, “relievable interest”, in relation to an individual and a year of assessment, shall mean an amount equal to that part of the qualifying interest paid by the individual in the year of assessment which is determined by the formula—

where I has the same meaning as in the preceding provisions of this definition;

“residential premises” means—

- (i) a building or part of a building used, or suitable for use, as a dwelling, and
- (ii) land which the occupier of a building or part of a building used as a dwelling has for the occupier’s own occupation and enjoyment with that building or that part of a building as its garden or grounds of an ornamental nature;

“separated” means separated under an order of a court of competent jurisdiction or by deed of separation or in such circumstances that the separation is likely to be permanent.

(b) For the purposes of this section, in the case of an individual who is assessed to tax for a year of assessment in accordance with section 194 of the Income Tax Act, 1967, any payment of qualifying interest made by the individual’s spouse, in respect of which the individual’s spouse would have been entitled to relief under this section if that spouse were assessed to tax for the year of assessment in accordance with section 193 (apart from the proviso thereto) of the said Act, shall be deemed to have been made by the individual.

(c) For the purposes of the second-mentioned formula in the definition of “relievable interest”, the number of years of assessment in which the amount of relievable interest is to be determined in accordance with that formula shall be reduced by one year of assessment for each year of assessment in which an individual was entitled to relief for a year of assessment prior to the year 1997-98 under section 76 (1) or section 496 of, or paragraph 1 (2) of Part III of Schedule 6 to, the Income Tax Act, 1967.

(2) (a) In this subsection, “appropriate percentage”, in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year.

(b) If an individual makes a claim in that behalf in the manner prescribed by the Income Tax Acts, makes a return in the prescribed form of such individual’s total income for a year of assessment and proves that in the year of assessment such individual paid an amount of qualifying interest, then, the income tax to be charged, other than in accordance with section 5 (3) of the Finance Act, 1974, on such individual for that year of assessment shall be reduced by an amount which is the lesser of—

(i) the amount equal to the appropriate percentage of the relievable interest, and

(ii) the amount which reduces that income tax to nil.

- (c) Except for the purposes of sections 1 and 2 of the Finance Act, 1980, no account shall be taken of relievable interest in calculating the total income of the individual by whom the relievable interest is paid.

(3) (a) Where the amount of relievable interest is determined in accordance with the second-mentioned formula in the definition of “relievable interest”, then, notwithstanding any other provision of the Tax Acts, in the case of an individual who has elected or could be deemed to have duly elected to be assessed to tax for the year of assessment in accordance with section 194 of the Income Tax Act, 1967, where either—

- (i) the individual, or
- (ii) the individual’s spouse,

was previously entitled to relief under this section or under section 76 (1) or section 496 of, or paragraph 1 (2) of Part III of Schedule 6 to, the Income Tax Act, 1967, and the other person was not so entitled—

- (I) the relief to be given under this section, other than that part of the relief (in this subsection referred to as “the additional relief”) which is represented by the difference between the relievable interest and the amount which would have been the amount of the relievable interest had the first-mentioned formula in that definition applied, shall be treated as given in equal proportions to the individual and that individual’s spouse for that year of assessment, and
- (II) the additional relief shall be reduced by 50 per cent. and the additional relief, as so reduced, shall be given only to the person who was not previously entitled to relief under this section or under section 76 (1) or section 496 of, or paragraph 1 (2) of Part III of Schedule 6 to, the Income Tax Act, 1967.

(b) *Paragraph (a)* shall apply notwithstanding that—

- (i) section 197 of the Income Tax Act, 1967, may have applied for the year of assessment, and
 - (ii) the payments in respect of which relief is given may not have been made in equal proportions.
- (4) (a) Notwithstanding anything in this section, a loan shall not be a qualifying loan, in relation to an individual, if it is used for the purpose of defraying money applied in—
- (i) the purchase of a residential premises or any interest in such premises from an individual who is the spouse of the purchaser,
 - (ii) the purchase of a residential premises or any interest in such premises if, at any time after the 25th day of March, 1982, that premises or interest was disposed of by the purchaser or by his or her spouse or if any interest which is reversionary to the interest purchased was so disposed of after that date, or

- (iii) the purchase, repair, development or improvement of a residential premises, and the person who, directly or indirectly, received the money is connected with the individual and it appears that the purchase price of the premises substantially exceeds the value of what is acquired or, as the case may be, the cost of the repair, development or improvement substantially exceeds the value of the work done.

(b) *Subparagraphs (i) and (ii) of paragraph (a)* shall not apply in the case of a husband and wife who are separated.

(5) Where an individual acquires a new sole or main residence but does not dispose of the previous sole or main residence owned by that individual and it is shown to the satisfaction of the inspector that it was the individual's intention, at the time of the acquisition of the new sole or main residence, to dispose of the previous sole or main residence and that the individual has taken and continues to take all reasonable steps necessary to dispose of it, the previous sole or main residence shall be treated as a qualifying residence, in relation to the individual, for the period of 12 months commencing with the date of the acquisition of the new sole or main residence.

(6) (a) In this subsection, "personal representatives" has the same meaning as in section 450 of the Income Tax Act, 1967.

(b) Where any interest paid on a loan used for a purpose mentioned in the definition of "qualifying loan" by persons as the personal representatives of a deceased person or as trustees of a settlement made by the will of a deceased person would, on the assumptions stated in *paragraph (c)*, be eligible for relief under this section and, in a case where the condition stated in that paragraph applies, that condition is satisfied, that interest shall be so eligible notwithstanding the preceding provisions of this section.

(c) For the purposes of *paragraph (b)*, it shall be assumed that the deceased person would have survived and been the borrower; and if, at the time of the person's death, the residential premises was used as that person's sole or main residence, it shall be further assumed that the person would have continued so to use it and the following condition shall then apply, namely, that the residential premises was, at the time the interest was paid, used as the sole or main residence of the deceased's widow or widower or of any dependent relative of the deceased.

146.—(1) The enactments specified in *Part I* of the *Ninth Schedule* shall apply subject to the amendments specified in that Schedule, being amendments designed to facilitate, or otherwise desirable in connection with, the consolidation of the Tax Acts and the Capital Gains Tax Acts.

(2) Each enactment specified in *column (2)* of *Part II* of the *Ninth Schedule* is hereby repealed to the extent specified in *column (3)* of *Part II* of that Schedule.

(3) The amendments and repeals in each Part of the *Ninth Schedule* are subject to the provisions of this Act and, in particular, to the provision made at the end of each Part of that Schedule.

Urban Renewal: Temple Bar Area

147.—(1) In this Chapter—

Preliminary and general.

“qualifying period” means the period commencing on the 6th day of April, 1991, and ending on the 5th day of April, 1999; but, for the purposes of *sections 151 to 153*, “qualifying period” means the period commencing on the 30th day of January, 1991, and ending on the 5th day of April, 1999;

“refurbishment” means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure, which is consistent with the original character or fabric of the building or structure;

“the Temple Bar Area” means the area described in Part II of the Second Schedule to the Finance Act, 1991.

(2) The provisions specified in this Chapter as applying in relation to capital or other expenditure incurred or rent payable in relation to any building or premises (however described in this Chapter) in the Temple Bar Area shall apply only if the relevant building or premises, in relation to which that capital or other expenditure was incurred or rent is so payable, is approved for the purposes of this Chapter by the company known as Temple Bar Renewal Limited.

(3) Notwithstanding any other provision of the Tax Acts, where part of a building or structure is used for commercial purposes and part is used for residential purposes, the total amount of the expenditure incurred on the construction or refurbishment of the building or structure shall be apportioned as between the respective parts of the building or structure in such manner as is just and reasonable for the purpose of giving effect to this Chapter.

(4) The Second Schedule to the Finance Act, 1991, shall apply for the purposes of supplementing this Chapter.

148.—(1) This section shall apply to a building or structure—

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

(a) which is—

- (i) constructed in the Temple Bar Area in the qualifying period, or
- (ii) an existing building or structure in the Temple Bar Area as on the 1st day of January, 1991, and is the subject of refurbishment in the qualifying period,

and

(b) which is to be an industrial building or structure by reason of its use for a purpose specified in paragraph (a) or (d) of section 255(1) of the Income Tax Act, 1967.

(2) Section 254 of the Income Tax Act, 1967, shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(a) in subsection (1)(a) of that section “equal to one-tenth thereof” were deleted,

(b) (i) in the case where the capital expenditure is incurred on the construction of the building or structure, the following subsection were substituted for subsections (2), (2A) and (2B) of that section:

“(2) An industrial building allowance shall be of an amount equal to 25 per cent. of the capital expenditure mentioned in subsection (1).”,

and

(ii) in the case where the capital expenditure is incurred on the refurbishment of the building or structure, the following subsection were substituted for subsections (2), (2A) and (2B) of that section:

“(2) An industrial building allowance shall be of an amount equal to 50 per cent. of the capital expenditure mentioned in subsection (1).”,

and

(c) subsection (7) of that section were deleted.

(3) Section 25 of the Finance Act, 1978, shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(a) in the case where the capital expenditure is incurred on the construction of the building or structure, the following paragraph were substituted for paragraph (b) of subsection (2) of that section:

“(b) As respects any qualifying expenditure, any allowance made under section 264 of the Income Tax Act, 1967, and increased under paragraph (a), in respect of that expenditure, whether claimed in one chargeable period or more than one such period, shall not in the aggregate exceed 50 per cent. of the amount of that qualifying expenditure.”,

(b) in the case where the capital expenditure is incurred on the refurbishment of the building or structure, paragraph (b) of subsection (2) of that section were deleted,

and

(c) subsection (2A) (including the proviso to that subsection) of that section were deleted.

(4) For the purposes of this section, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure to which this section applies, such expenditure shall be deemed to include the lesser of—

(a) any expenditure incurred on the purchase of the building or structure, other than expenditure incurred on the acquisition of, or of rights in or over, any land, and

- (b) an amount which is equal to the value of the building or structure on the 1st day of January, 1991, other than any amount of such value as is attributable to, or to rights in or over, any land,

if the expenditure referred to in *paragraph (a)* or the amount referred to in *paragraph (b)*, as the case may be, is not greater than the amount of the capital expenditure actually incurred in the qualifying period on the refurbishment of the building or structure.

(5) Notwithstanding section 265(1) of the Income Tax Act, 1967, in the case of a building or structure to which this section applies by reason of its use for a purpose specified in section 255(1)(a) of that Act, no balancing charge shall be made by reason of any of the events specified in section 265(1) of that Act which occurs—

- (a) more than 13 years after the building or structure was first used, or
- (b) in a case where section 26 of the Finance Act, 1991, applies, more than 13 years after the capital expenditure on refurbishment of the building or structure was incurred.

(6) For the purposes only of determining, in relation to a claim for an allowance under section 254 of the Income Tax Act, 1967, or section 25 of the Finance Act, 1978, as applied by this section, whether and to what extent capital expenditure incurred on the construction or refurbishment of an industrial building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, refurbishment of the building or structure actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period; but nothing in this subsection shall affect the operation of *subsection (4)*.

(7) Where, in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies, any allowance or charge has been made under the provisions of the Tax Acts relating to the making of allowances and charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure by virtue of section 42 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991, that allowance or charge shall be deemed to have been made under those provisions by virtue of this section.

149.—(1) In this section—

“multi-storey car park” means a building or structure consisting of 3 or more storeys wholly or mainly in use for the purpose of providing, for members of the public generally without preference for any particular class of person, on payment of an appropriate charge, parking space for mechanically propelled vehicles;

Capital allowances in relation to construction or refurbishment of certain commercial premises.

“qualifying premises” means a building or structure which—

- (a) (i) is constructed in the Temple Bar Area in the qualifying period, or

- (ii) is an existing building or structure in the Temple Bar Area as on the 1st day of January, 1991, and is the subject of refurbishment in the qualifying period,
- (b) apart from this section is not an industrial building or structure within the meaning of section 255 of the Income Tax Act, 1967, and
- (c) (i) is in use for the purposes of a trade or profession, or
 - (ii) whether or not it is so used, is let on *bona fide* commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but does not include any part of a building or structure in use as, or as part of, a dwelling house.

- (2) (a) Subject to *subsections (3) to (8)*, the provisions of the Tax Acts relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply—
 - (i) as if a qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV, or under Chapter I of Part XVI, of the Income Tax Act, 1967, by reason of its use for a purpose specified in section 255(1)(a) of that Act, and
 - (ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.
- (b) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises only in so far as that expenditure is incurred in the qualifying period.

(3) Section 254 of the Income Tax Act, 1967, shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises as if—

- (a) in subsection (1)(a) of that section “equal to one-tenth thereof” were deleted,
- (b) the following subsection were substituted for subsections (2), (2A) and (2B) of that section:

“(2) An industrial building allowance shall be of an amount equal to 50 per cent. of the capital expenditure mentioned in subsection (1).”,

and

- (c) subsection (7) of that section were deleted.

(4) Section 25 of the Finance Act, 1978, shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises as if— Pt.VII S.149

(a) paragraph (b) of subsection (2) of that section,

and

(b) subsection (2A) (including the proviso to that subsection) of that section,

were deleted.

(5) For the purposes of this section, where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, such expenditure shall be deemed to include the lesser of—

(a) any expenditure incurred on the purchase of the building or structure, other than expenditure incurred on the acquisition of, or of rights in or over, any land, and

(b) an amount which is equal to the value of the building or structure as on the 1st day of January, 1991, other than any amount of such value as is attributable to, or to rights in or over, any land,

if the expenditure referred to in *paragraph (a)* or the amount referred to in *paragraph (b)*, as the case may be, is not greater than the amount of the capital expenditure actually incurred in the qualifying period on the refurbishment of the qualifying premises.

(6) Notwithstanding section 265(1) of the Income Tax Act, 1967, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in that section which occurs—

(a) more than 13 years after the qualifying premises was first used, or

(b) in a case where section 26 of the Finance Act, 1991, applies, more than 13 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

(7) (a) Notwithstanding *subsections (2) to (4)*, any allowance or charge which apart from this subsection would be made by virtue of *subsection (2)* in respect of capital expenditure incurred on the construction of a qualifying premises, other than a qualifying premises which is a multi-storey car park, shall be reduced to one-half of the amount which apart from this subsection would be the amount of that allowance or charge.

(b) For the purposes of *paragraph (a)*, the amount of an allowance or charge to be reduced to one-half shall be computed as if—

(i) this subsection had not been enacted, and

(ii) effect had been given to all allowances taken into account in so computing that amount.

(c) Nothing in this subsection shall affect the operation of section 265(5) of the Income Tax Act, 1967.

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(8) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period; but nothing in this subsection shall affect the operation of *subsection (5)*.

(9) Where, in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises, any allowance or charge has been made under the provisions of the Tax Acts relating to the making of allowances and charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure by virtue of section 42 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991, that allowance or charge shall be deemed to have been made under those provisions by virtue of this section.

Double rent allowance in respect of rent paid for certain business premises.

150.—(1) (a) In this section—

“lease”, “lessee”, “lessor” and “rent” have the same meanings respectively as in Chapter VI of Part IV of the Income Tax Act, 1967;

“market value”, in relation to a building or structure, means the price which the unencumbered fee simple of the building or structure would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building or structure, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building or structure is constructed;

“qualifying lease” means a lease in respect of a qualifying premises granted in the qualifying period, or within the period of 2 years from the day after the end of the qualifying period, on *bona fide* commercial terms by a lessor to a lessee not connected with the lessor, or with any other person entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

“qualifying premises” means a building or structure in the Temple Bar Area—

- (i) (I) which is an industrial building or structure within the meaning of section 255(1) of the Income Tax Act, 1967, and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV, or under Chapter I of Part XVI, of that Act, or

(II) in respect of which an allowance is to be made, or, as respects rent payable under a qualifying lease entered into on or after the 18th day of April, 1991, will by virtue of section 19 of the Finance Act, 1970, be made, for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV, or under Chapter I of Part XVI, of the Income Tax Act, 1967, by virtue of *section 149*, and

(ii) which is let on *bona fide* commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but, as respects rent payable under a qualifying lease entered into on or after the 6th day of May, 1993, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under Chapter II of Part XV, or under Chapter I of Part XVI, of the Income Tax Act, 1967, the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 10 per cent. of the market value of the building or structure immediately before that expenditure is incurred.

(b) For the purposes of this section but subject to *paragraph (c)*, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

(i) 10 years, or

(ii) the period by which 10 years exceeds—

(I) any preceding period, or

(II) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable—

(A) by that person or any other person, or

(B) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 11th day of April, 1994, by that person or any person connected with that person,

in relation to that premises under a qualifying lease.

(c) Notwithstanding *paragraph (b)*, as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, "relevant rental period", in relation to a qualifying premises, means the period of 10 years commencing on the

day on which rent in respect of that premises is first payable under any qualifying lease.

(2) Subject to *subsection (3)*, where in the computation of the amount of the profits or gains of a trade or profession a person is apart from this section entitled to any deduction (in this subsection referred to as “the first-mentioned deduction”) on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession payable by such person—

- (a) for a relevant rental period, or
- (b) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, in the relevant rental period,

in relation to that qualifying premises under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as “the second-mentioned deduction”) equal to the amount of the first-mentioned deduction but, as respects a qualifying lease granted on or after the 21st day of April, 1997, where the first-mentioned deduction is on account of rent which is payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction.

(3) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created, directly or indirectly, in respect of that qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and such person or, as respects rent payable in relation to any qualifying premises under a qualifying lease entered into on or after the 6th day of May, 1993, either such person or another person connected with such person—

- (a) takes under a qualifying lease a qualifying premises (in this subsection referred to as “the second-mentioned premises”) occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and
- (b) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises,

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

(4) Section 33 of the Finance Act, 1990, is hereby amended—

- (a) in subsection (1), by the substitution of “section 49 of the Finance Act, 1995, *section 56* of the *Finance Act, 1997*, or *section 150* of the *Finance Act, 1997*” for “or section 49 of the Finance Act, 1995”, and

[1997.]

Finance Act, 1997.

[No. 22.]

- (b) in subsection (2)(a), by the substitution of the following definition for the definition of “qualifying premises”:

“‘qualifying premises’ means a qualifying premises within the meaning of section 45 of the Finance Act, 1986, section 42 of the Finance Act, 1994, section 49 of the Finance Act, 1995, *section 56 of the Finance Act, 1997, or section 150 of the Finance Act, 1997.*”

(5) In determining whether a period is a relevant rental period for the purposes of this section, rent payable by any person in relation to a premises in respect of which a further deduction was given under section 45 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991 (or would have been so given but for the operation of paragraph (b) of the proviso to subsection (2) of section 45 of the Finance Act, 1986), shall be treated as having been payable by that person in relation to the premises under a qualifying lease.

151.—(1) In this section—

“qualifying lease”, in relation to a house, means, subject to *section 155(2)*, a lease of the house the consideration for the grant of which consists—

Rented residential accommodation: deduction for certain expenditure on construction.

- (a) solely of periodic payments all of which are or are to be treated as rent for the purposes of Chapter VI of Part IV of the Income Tax Act, 1967, or
- (b) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent. of the relevant cost of the house;

“qualifying premises” means, subject to *subsections (3), (4)(a) and (5) of section 155*, a house in the Temple Bar Area—

- (a) which is used solely as a dwelling,
- (b) the total floor area of which—
- (i) is not less than 30 square metres and not more than—
- (I) 125 square metres, or
- (II) as respects expenditure incurred before the 12th day of April, 1995, 90 square metres,
- in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or
- (ii) in any other case, is not less than 35 square metres and not more than 125 square metres,
- (c) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost, the amount specified in which in respect of the cost of construction of the house is not less than the expenditure actually incurred on such construction, and

- (d) which without having been used is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

“relevant cost”, in relation to a house, means, subject to *subsection (3)*, an amount equal to the aggregate of—

- (a) the expenditure incurred on the acquisition of, or of rights in or over, any land on which the house is constructed, and
- (b) the expenditure actually incurred on the construction of the house;

“relevant period”, in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred expenditure on the construction of a qualifying premises—

- (a) such person shall be entitled, in computing for the purposes of section 81(4) of the Income Tax Act, 1967, the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of that expenditure as is to be treated under *section 155(7)* or under this section as having been incurred by such person in the qualifying period, and
- (b) Chapter VI of Part IV of the Income Tax Act, 1967, shall apply as if that deduction were a deduction authorised by section 81(5) of that Act.
- (3) (a) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.
- (b) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of section 81 of the Income Tax Act, 1967, the expenditure to be treated as having been incurred in the qualifying period on the construction of the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—
- (i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and
- (ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the expenditure actually incurred on the construction of the qualifying premises which is to be treated under *section 155(7)* as having been incurred in the qualifying period bears to the whole of the expenditure incurred on that construction.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary—

- (a) of the expenditure incurred on the construction of that building or those buildings, and
- (b) of the amount which would be the relevant cost in relation to that building or those buildings if the building or buildings, as the case may be, were a single qualifying premises,

for the purposes of determining the expenditure incurred on the construction of the qualifying premises and the relevant cost in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

- (a) the house ceases to be a qualifying premises, or
- (b) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of expenditure incurred on the construction of the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

- (6) (a) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of expenditure on the construction of the house equal to the amount which under *section 155(7)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period on the construction of the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed the relevant price paid by such person on the purchase.
- (b) For the purposes of this subsection and *subsection (7)*, the relevant price paid by a person on the purchase of a house shall be the amount which bears to the net price paid by such person on that purchase the same proportion as the amount of the expenditure actually incurred on the construction of the house which is to be treated under *section 155(7)* as having been incurred in the qualifying period bears to the relevant cost in relation to that house.
- (7) (a) Subject to *paragraph (b)*, where expenditure is incurred on the construction of a house and before the house is used it is sold, the person who purchases the house shall

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be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the lesser of—

- (i) the amount of such expenditure which is to be treated under *section 155(7)* as having been incurred in the qualifying period, and
- (ii) the relevant price paid by such person on the purchase;

but, where the house is sold more than once before it is used, this subsection shall apply only in relation to the last of those sales.

(b) Where expenditure is incurred on the construction of a house by a person carrying on a trade or part of a trade which consists, as to the whole or any part of the trade, of the construction of buildings with a view to their sale and the house, before it is used, is sold in the course of that trade or, as the case may be, that part of that trade—

- (i) the person (in this paragraph referred to as “the purchaser”) who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the relevant price paid by the purchaser on the purchase (in this paragraph referred to as “the first purchase”), and
- (ii) in relation to any subsequent sale or sales of the house before the house is used, *paragraph (a)* shall apply as if the reference to the amount of expenditure which is to be treated as having been incurred in the qualifying period were a reference to the relevant price paid on the first purchase.

(8) This section shall apply as if a deduction given to a person under *section 23* of the Finance Act, 1981, as applied by *section 56* of the Finance Act, 1991 (in so far as it applied in relation to the Temple Bar Area), were a deduction given to such person under this section in respect of expenditure incurred in the qualifying period on the construction of a qualifying premises.

(9) *Section 155* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on conversion.

152.—(1) In this section—

“conversion expenditure” means, subject to *subsection (2)*, expenditure incurred on—

(a) refurbishment in the course of the conversion into a house of a building in the Temple Bar Area which has not been previously in use as a dwelling,

and

(b) refurbishment in the course of the conversion into 2 or more houses of a building in the Temple Bar Area which prior to the conversion had not been in use as a dwelling or had been in use as a single dwelling,

[1997.]

Finance Act, 1997.

[No. 22.]

and references in this section and in *section 155* to “conversion”, Pt.VII S.152
“conversion into a house” and “expenditure incurred on conversion”
shall be construed accordingly;

“qualifying lease”, in relation to a house, means, subject to *section 155(2)*, a lease of the house the consideration for the grant of which consists—

- (a) solely of periodic payments all of which are or are to be treated as rent for the purposes of Chapter VI of Part IV of the Income Tax Act, 1967, or
- (b) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent. of the market value of the house at the time the conversion is completed and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house at the time the conversion is completed shall for the purposes of this paragraph be taken to be an amount which bears to the market value of the building at that time the same proportion as the total floor area of the house bears to the total floor area of the building;

“qualifying premises” means, subject to *subsections (3), (4)(b) and (5) of section 155*, a house—

- (a) which is used solely as a dwelling,
- (b) the total floor area of which—
 - (i) is not less than 30 square metres and not more than—
 - (I) 125 square metres, or
 - (II) as respects expenditure incurred before the 26th day of January, 1994, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or
 - (ii) in any other case, is not less than 35 square metres and not more than 125 square metres,
- (c) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of conversion in relation to the house is not less than the expenditure actually incurred on such conversion, and
- (d) which without having been used subsequent to the incurring of the expenditure on the conversion is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

“relevant period”, in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) For the purposes of this section, expenditure incurred on the conversion of a building shall be deemed to include expenditure incurred in the course of the conversion on either or both of the following—

- (a) the carrying out of any works of construction, reconstruction, repair or renewal, and
- (b) the provision or improvement of water, sewerage or heating facilities,

in relation to the building or any outoffice appurtenant to or usually enjoyed with the building, but shall not be deemed to include—

- (i) any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts, or
- (ii) any expenditure attributable to any part (in this section referred to as a “non-residential unit”) of the building which on completion of the conversion is not a house.

(3) For the purposes of *subsection (2)(ii)*, where expenditure is attributable to a building in general and not directly to any particular house or non-residential unit comprised in the building on completion of the conversion, such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building.

(4) Subject to *subsection (5)*, where a person, having made a claim in that behalf, proves to have incurred conversion expenditure in relation to a house which is a qualifying premises—

- (a) such person shall be entitled, in computing for the purposes of section 81(4) of the Income Tax Act, 1967, the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 155(7)* or under this section as having been incurred by such person in the qualifying period, and
 - (b) Chapter VI of Part IV of the Income Tax Act, 1967, shall apply as if that deduction were a deduction authorised by section 81(5) of that Act.
- (5) (a) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.
- (b) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of section 81 of the Income Tax Act, 1967, the conversion expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (4)* to be reduced by the lesser of—

- (i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and Pt.VII S.152
- (ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the conversion expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 155(7)* as having been incurred in the qualifying period bears to the whole of the conversion expenditure incurred in relation to the qualifying premises.

(6) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the conversion of that building or those buildings for the purposes of determining the conversion expenditure incurred in relation to the qualifying premises.

(7) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

- (a) the house ceases to be a qualifying premises, or
- (b) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (4)* in respect of conversion expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(8) Where the event mentioned in *subsection (7)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of conversion expenditure in relation to the house equal to the amount of the conversion expenditure which under *section 155(7)* or under this section (apart from *subsection (5)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

- (a) the net price paid by such person on the purchase, or
- (b) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 155(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house.

(9) Where conversion expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the

qualifying period conversion expenditure in relation to the house equal to the lesser of—

- (a) the amount of such expenditure which is to be treated under *section 155(7)* as having been incurred in the qualifying period, and
- (b) (i) the net price paid by such person on the purchase, or
 - (ii) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 155(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the conversion expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(10) This section shall not apply in the case of a conversion unless planning permission in respect of the conversion has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(11) This section shall apply as if a deduction given to a person under section 23 of the Finance Act, 1981, by virtue of section 24 of that Act or section 22 of the Finance Act, 1985, as respectively applied by sections 56 and 58 of the Finance Act, 1991 (in so far as those sections applied to the Temple Bar Area), were a deduction given to such person under this section in respect of conversion expenditure incurred in the qualifying period in relation to a house which is a qualifying premises.

(12) *Section 155* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on refurbishment.

153.—(1) In this section—

“qualifying lease”, in relation to a house, means, subject to *section 155(2)*, a lease of the house the consideration for the grant of which consists—

- (a) solely of periodic payments all of which are or are to be treated as rent for the purposes of Chapter VI of Part IV of the Income Tax Act, 1967, or
- (b) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium—
 - (i) which is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or which, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment, and
 - (ii) which does not exceed 10 per cent. of the market value of the house on the date of completion of the refurbishment to which the relevant expenditure relates; and, in the case of a house which is a part of

a building and which is not saleable apart from the building of which it is a part, the market value of the house on that date shall for the purposes of this subparagraph be taken to be an amount which bears to the market value of the building on that date the same proportion as the total floor area of the house bears to the total floor area of the building;

“qualifying premises” means, subject to *subsections (3), (4)(b) and (5) of section 155*, a house—

- (a) which is used solely as a dwelling,
- (b) the total floor area of which—
 - (i) is not less than 30 square metres and not more than—
 - (I) 125 square metres, or
 - (II) as respects expenditure incurred before the 26th day of January, 1994, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or
 - (ii) in any other case, is not less than 35 square metres and not more than 125 square metres,
- (c) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of refurbishment in relation to the house is not less than the relevant expenditure actually incurred on such refurbishment, and
- (d) which on the date of completion of the refurbishment to which the relevant expenditure relates is let (or, if not let on that date, is, without having been used after that date, first let) in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

“relevant expenditure” means expenditure incurred on the refurbishment of a specified building, other than expenditure attributable to any part (in this section referred to as a “non-residential unit”) of the building which on completion of the refurbishment is not a house, and for the purposes of this definition where expenditure is attributable to the specified building in general (and not directly to any particular house or non-residential unit comprised in the building on completion of the refurbishment), such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building;

“relevant period”, in relation to a qualifying premises, means the period of 10 years beginning on the date of the completion of the refurbishment to which the relevant expenditure relates or, if the premises was not let under a qualifying lease on that date, the period

of 10 years beginning on the date of the first such letting after the date of such completion;

“specified building” means a building in the Temple Bar Area—

- (a) in which prior to the refurbishment to which the relevant expenditure relates there are 2 or more houses, and
- (b) which on completion of that refurbishment contains (whether in addition to any non-residential unit or not) 2 or more houses.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred relevant expenditure in relation to a house which is a qualifying premises—

- (a) such person shall be entitled, in computing for the purposes of section 81 (4) of the Income Tax Act, 1967, the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 155(7)* or under this section as having been incurred by such person in the qualifying period, and
- (b) Chapter VI of Part IV of the Income Tax Act, 1967, shall apply as if that deduction were a deduction authorised by section 81(5) of that Act.

(3) (a) This subsection shall apply to any premium or other sum which—

- (i) is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor, and
- (ii) is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or, if payable before that date, is so payable by reason of, or otherwise in connection with, the carrying out of the refurbishment.

(b) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of section 81 of the Income Tax Act, 1967, the relevant expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

- (i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and
- (ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the relevant expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 155(7)* as having been incurred in the qualifying period bears to the whole of the

relevant expenditure incurred in relation to the Pt.VII S.153
qualifying premises.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the relevant expenditure incurred on that building or those buildings for the purposes of determining the relevant expenditure incurred in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

- (a) the house ceases to be a qualifying premises, or
- (b) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of relevant expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of relevant expenditure in relation to the house equal to the amount of the relevant expenditure which under *section 155(7)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

- (a) the net price paid by such person on the purchase, or
- (b) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 155(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house.

(7) Where relevant expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period relevant expenditure in relation to the house equal to the lesser of—

- (a) the amount of such expenditure which is to be treated under *section 155(7)* as having been incurred in the qualifying period, and
- (b) (i) the net price paid by such person on the purchase, or

- (ii) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 155(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the relevant expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(8) This section shall not apply in the case of any refurbishment unless planning permission, in so far as it is required, in respect of the work carried out in the course of the refurbishment has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(9) Expenditure in respect of which a person is entitled to relief under this section shall not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts.

(10) This section shall apply as if a deduction given to a person under section 23 of the Finance Act, 1981, by virtue of section 21 of the Finance Act, 1985, as applied by section 57 of the Finance Act, 1991 (in so far as that section applied to the Temple Bar Area), were a deduction given to such person under this section in respect of relevant expenditure incurred in the qualifying period in relation to a house which is a qualifying premises.

(11) *Section 155* shall apply for the purposes of supplementing this section.

Residential accommodation: allowance to owner-occupiers in respect of expenditure on construction or refurbishment.

154—(1) In this section—

“qualifying expenditure”, in relation to an individual, means an amount equal to the amount of the expenditure incurred by the individual in the qualifying period on the construction or, as the case may be, refurbishment of a qualifying premises which is a qualifying owner-occupied dwelling in relation to the individual after deducting from that amount of expenditure any sum in respect of or by reference to—

- (a) that expenditure,
- (b) the qualifying premises, or
- (c) the construction or, as the case may be, refurbishment work in respect of which that expenditure was incurred,

which the individual has received or is entitled to receive, directly or indirectly, from the State, any board established by statute or any public or local authority;

“qualifying owner-occupied dwelling”, in relation to an individual, means a qualifying premises which is wholly within the Temple Bar Area and is first used, after the qualifying expenditure has been incurred, by the individual as his or her only or main residence;

“qualifying premises”, in relation to the incurring of qualifying expenditure, means, subject to *subsections (4) and (5) of section 155*, a house—

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- (a) which is used solely as a dwelling,
- (b) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of construction or, as the case may be, refurbishment of the house is not less than the expenditure actually incurred on such construction or refurbishment, as the case may be, and
- (c) the total floor area of which—
 - (i) is not less than 30 square metres and not more than—
 - (I) 125 square metres, or
 - (II) as respects expenditure incurred before the 12th day of April, 1995, on the construction of a house, and expenditure incurred before the 26th day of January, 1994, on the refurbishment of a house, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or
 - (ii) in any other case, is not less than 35 square metres and not more than 125 square metres.

(2) Where an individual, having made a claim in that behalf, proves to have incurred qualifying expenditure in a year of assessment, the individual shall be entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the expenditure was incurred is the only or main residence of the individual, to have a deduction made from his or her total income of an amount equal to—

- (a) in the case where the qualifying expenditure has been incurred on the construction of the qualifying premises, 5 per cent. of the amount of that expenditure, or
- (b) in the case where the qualifying expenditure has been incurred on the refurbishment of the qualifying premises, 10 per cent. of the amount of that expenditure.

(3) For the purposes of this section, where qualifying expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, such expenditure shall be deemed to include the lesser of—

- (a) any expenditure incurred on the purchase of the qualifying premises, other than expenditure incurred on the acquisition of, or of rights in or over, any land, and
- (b) an amount equal to the amount of the value of the qualifying premises as on the 1st day of January, 1991, other than any amount of such value as is attributable to, or to rights in or over, any land,

if the expenditure referred to in *paragraph (a)* or the amount referred to in *paragraph (b)*, as the case may be, is not greater than the amount of the qualifying expenditure actually incurred in the qualifying period on the refurbishment of the qualifying premises.

(4) Where the qualifying expenditure in relation to a qualifying premises is incurred by 2 or more persons, each of those persons shall be treated as having incurred the expenditure in the proportions in which they actually bore the expenditure, and the expenditure shall be apportioned accordingly.

(5) This section shall apply as if a deduction given to an individual for any year of assessment under section 44 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991, were a deduction given to the individual under this section in respect of qualifying expenditure.

(6) *Section 155* shall apply for the purposes of supplementing this section.

Provisions
supplementary to
sections 151 to 154.

155.—(1) In *sections 151 to 154*—

“certificate of reasonable cost” means a certificate granted by the Minister for the Environment for the purposes of *section 151, 152, 153 or 154*, as the case may be, stating that the amount specified in the certificate in relation to the cost of construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

“house” includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

“lease”, “lessee”, “lessor”, “premium” and “rent” have the meanings respectively assigned to them by Chapter VI of Part IV of the Income Tax Act, 1967;

“total floor area” means the total floor area of a house measured in the manner referred to in section 4(2)(b) of the Housing (Miscellaneous Provisions) Act, 1979.

(2) A lease shall not be a qualifying lease for the purposes of *section 151, 152 or 153* if the terms of the lease contain any provision enabling the lessee or any other person, directly or indirectly, at any time to acquire any interest in the house to which the lease relates for a consideration less than that which might be expected to be given at that time for the acquisition of the interest if the negotiations for that acquisition were conducted in the open market at arm’s length.

(3) A house shall not be a qualifying premises for the purposes of *section 151, 152 or 153* if—

(a) it is occupied as a dwelling by any person connected with the person entitled, in relation to the expenditure incurred on

the construction of, conversion into, or, as the case may be, refurbishment of, the house, to a deduction under *section 151(2), 152(4) or 153(2)*, as the case may be, and

(b) the terms of the qualifying lease in relation to the house are not such as might have been expected to be included in the lease if the negotiations for the lease had been at arm's length.

(4) (a) A house shall not be a qualifying premises for the purposes of *section 151*, or, in so far as it applies to expenditure other than expenditure on refurbishment, *section 154*, unless it complies with such conditions, if any, as may be determined by the Minister for the Environment from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(b) A house shall not be a qualifying premises for the purposes of *section 152, 153* or, in so far as it applies to expenditure on refurbishment, *section 154*, unless it complies with such conditions, if any, as may be determined by the Minister for the Environment from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(5) A house shall not be a qualifying premises for the purposes of *section 151, 152, 153* or *154* unless persons authorised in writing by the Minister for the Environment for the purposes of those sections are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(6) For the purposes of *sections 151* to *154*, references in those sections to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including in particular—

(a) demolition or dismantling of any building on the land,

(b) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(c) walls, power supply, drainage, sanitation and water supply, and

(d) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

(7) (a) For the purposes of determining, in relation to any claim under *section 151(2), 152(4), 153(2) or 154(2)*, as the case may be, whether and to what extent expenditure incurred on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of,

a qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the premises which was actually carried out during the qualifying period shall be treated as having been incurred during that period.

(b) Where by virtue of *subsection (6)* expenditure on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall apply with any necessary modifications as if the references in that paragraph to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the qualifying premises were references to the development of such land.

(c) Nothing in this subsection shall affect the operation of *section 154(3)*.

(8) (a) For the purposes of *sections 151* and *152* other than the purposes mentioned in *subsection (7)(a)*, expenditure incurred on the construction of, or, as the case may be, conversion into, a qualifying premises shall be deemed to have been incurred on the date of the first letting of the premises under a qualifying lease.

(b) For the purposes of *section 153* other than the purposes mentioned in *subsection (7)(a)*, relevant expenditure incurred in relation to the refurbishment of a qualifying premises shall be deemed to have been incurred on the date of the commencement of the relevant period in relation to the premises, determined as respects the refurbishment to which the relevant expenditure relates.

(c) For the purposes of *section 154* other than the purposes mentioned in *subsection (7)(a)*, expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred on which the premises is in use as a dwelling.

(9) For the purposes of *sections 152* and *153*, expenditure shall not be regarded as incurred by a person in so far as it has been or is to be met, directly or indirectly, by the State, by any board established by statute or by any public or local authority.

(10) Paragraph 5 of Schedule 1 to the Capital Gains Tax Act, 1975, shall apply as if a deduction under *section 151(2)*, *152(4)* or *153(2)*, as the case may be, were a capital allowance and as if any rent deemed to have been received by a person under *section 151(5)*, *152(7)* or *153(5)*, as the case may be, were a balancing charge.

(11) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 151*, *152*, *153* or *154* (other than a question on which an appeal lies under section 18 of the Housing (Miscellaneous Provisions) Act, 1979) in like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

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[No. 22.]

156.—(1) The following provisions of Chapter VII of Part I of the Finance Act, 1991, are hereby repealed—

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Repeals and consequential amendments.

- (a) sections 54 and 55,
- (b) subparagraph (iii) of paragraph (a) of subsection (1), and the proviso to subsection (2), of section 56,
- (c) paragraph (a) of subsection (1), and subsection (2), of section 57, and
- (d) paragraph (a) of subsection (1), and subsection (2), of section 58.

(2) Section 137 of the Income Tax Act, 1967, is hereby amended in Part I of the Table to that section by the addition of “*Section 154 of the Finance Act, 1997*”.

(3) Section 33A of the Corporation Tax Act, 1976, is hereby amended in subsection (1) by the substitution of “section 42 of the Finance Act, 1994, or *section 150 of the Finance Act, 1997*,” for “or section 42 of the Finance Act, 1994”.

(4) Section 56 of the Finance Act, 1991, is hereby amended in paragraph (c) of subsection (1) by the substitution of “subparagraph (i) or (ii)” for “subparagraph (i), (ii) or (iii)”.

Part VIII

Miscellaneous

157.—As on and from the passing of this Act, section 162 of the Income Tax Act, 1967, is hereby amended, in subsection (3), by the deletion, in both paragraphs (a) and (b) (inserted by the Finance Act, 1987), of the words “and at his direction”.

Amendment of section 162 (Collector-General) of Income Tax Act, 1967.

158.—As respects the year 1997 and subsequent years, section 23 of the Finance Act, 1983, is hereby amended—

Amendment of section 23 (publication of names of defaulters) of Finance Act, 1983.

- (a) by the substitution of the following subsection for subsection (2):

“(2) The Revenue Commissioners shall, as respects each relevant period (being the period beginning on the 1st day of January, 1997, and ending on the 30th day of June, 1997, and each subsequent period of three months beginning with the period ending on the 30th day of September, 1997), compile a list of names and addresses and the occupations or descriptions of every person—

- (a) upon whom a fine or other penalty was imposed by a court under any of the Acts during that relevant period,
- (b) upon whom a fine or other penalty was otherwise imposed by a court during that relevant period in respect of an act or omission by the person in relation to tax, or
- (c) in whose case the Revenue Commissioners, pursuant to an agreement made with the

person in that relevant period, refrained from initiating proceedings for recovery of any fine or penalty of the kind mentioned in paragraphs (a) and (b) and, in lieu of initiating such proceedings, accepted, or undertook to accept, a specified sum of money in settlement of any claim by the Revenue Commissioners in respect of any specified liability of the person under any of the Acts for—

- (i) payment of any tax,
- (ii) payment of interest thereon, and
- (iii) a fine or other monetary penalty in respect thereof.”,

and

(b) by the substitution of the following subsection for subsection (3):

“(3) Notwithstanding any obligation as to secrecy imposed on them by the Acts or the Official Secrets Act, 1963—

- (a) the Revenue Commissioners shall, before the expiration of three months from the end of each relevant period, cause each such list referred to in subsection (2) in relation to that period to be published in *Iris Oifigiúil*, and
- (b) the Revenue Commissioners may, at any time, cause any such list referred to in subsection (2) to be publicised in such manner as they shall consider appropriate.”.

Evidence of
authorisation.

159.—(1) In this section, except where the context otherwise requires—

“the Acts” means—

- (a) (i) the Customs Acts,
- (ii) the statutes relating to the duties of excise and to the management of those duties,
- (iii) the Tax Acts,
- (iv) the Capital Gains Tax Acts,
- (v) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (vi) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,
- (vii) the statutes relating to stamp duty and to the management of that duty,

and any instruments made thereunder or under any other enactment and relating to tax, and

(b) the European Communities (Intrastat) Regulations, 1993 (S.I. No. 136 of 1993);

“authorised officer” means an officer of the Revenue Commissioners who is authorised, nominated or appointed under any provision of the Acts, to exercise or perform any functions under any of the specified provisions, and “authorised” and “authorisation” shall be construed accordingly;

“functions” includes powers and duties;

“identity card”, in relation to an authorised officer, means a card which is issued to the officer by the Revenue Commissioners and which contains—

- (a) a statement to the effect that the officer—
 - (i) is an officer of the Revenue Commissioners, and
 - (ii) is an authorised officer for the purposes of the specified provisions,
- (b) a photograph and signature of the officer,
- (c) a hologram showing the logo of the Office of the Revenue Commissioners,
- (d) the facsimile signature of a Revenue Commissioner, and
- (e) particulars of the specified provisions under which the officer is authorised;

“specified provisions”, in relation to an authorised officer, means either or both the provisions of the Acts under which the authorised officer—

- (a) is authorised and which are specified on his or her identity card, and
- (b) exercises or performs functions under the Customs Acts or any statutes relating to the duties of excise and to the management of those duties;

“tax” means any tax, duty, levy, charge under the care and management of the Revenue Commissioners.

(2) Where, in the exercise or performance of any functions under any of the specified provisions in relation to him or her, an authorised officer is requested to produce or show his or her authorisation for the purposes of that provision, the production by the authorised officer of his or her identity card—

- (a) shall be taken as evidence of authorisation under that provision, and
- (b) shall satisfy any obligation under that provision which requires the authorised officer to produce such authorisation on request.

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

160.—(1) Section 242(1) of the Finance Act, 1992, is hereby amended in the definition of “licence” (as amended by the Finance Act, 1993)—

- (a) by the substitution of “ ‘licence’ means a licence or authorisation, as the case may be, of the kind referred to—” for “ ‘licence’ means a licence of the kind referred to—”, and

Tax clearance for moneylenders, mortgage intermediaries and credit intermediaries.

(b) by the insertion of the following paragraph after paragraph (g):

“(gg) in section 93, 116 or 144 of the Consumer Credit Act, 1995;”.

(2) The Consumer Credit Act, 1995, is hereby amended—

(a) in section 93—

(i) by the substitution, in subsection (10), of the following for paragraph (d):

“(d) the applicant has failed to provide satisfactory evidence that a current tax clearance certificate in relation to the licence has been issued in accordance with the provisions of section 242 (as amended by the *Finance Act, 1997*) of the Finance Act, 1992;”.

and

(ii) by the insertion of the following after subsection (10):

“(10A)(a) Where in relation to a moneylender’s licence—

(i) an application in accordance with section 242 of the Finance Act, 1992, for a tax clearance certificate has been made—

(I) not less than four months prior to the commencement date of such licence, and

(II) a tax clearance certificate has not yet been issued or refused,

or

(ii) a tax clearance certificate has been refused and an appeal against such refusal has been made and accepted in accordance with subsection (6) of the said section 242,

and in either case, the licence could, but for the provisions relating to a tax clearance certificate, have been issued, then—

(I) in a case where a licence has been granted in respect of the previous licensing period, such licence may continue in force beyond its latest expiry date pending—

(A) the issue or refusal of a tax clearance certificate, or

(B) in the case of an appeal, the final determination of that appeal,

and

(II) in a case where a licence has not been granted in respect of the previous licensing period, a licence may be issued temporarily and remain in force pending—

(A) the issue or refusal of a tax clearance certificate, or

(B) in the case of an appeal, the final determination of that appeal:

Provided that the amount of the fee that would be payable on the application for the licence is duly deposited with the Director.

(b) Every licence issued temporarily or continued in force in accordance with paragraph (a) shall, while it remains in force, be deemed to be a licence within the meaning of this section.

(c) Where—

(i) a determination is made to issue a tax clearance certificate, in respect of an application referred to in subparagraph (i) of paragraph (a), or

(ii) the final determination of an appeal referred to in subparagraph (ii) of paragraph (a) is to the effect that the application for a tax clearance certificate in relation to a licence is an acceptable application,

and where the tax clearance certificate has been issued, the licence continued in force or issued temporarily under this subsection shall expire upon the grant of a licence under this section and the duty deposited shall be set against the appropriate duty payable on the grant of the licence.

(d) Where—

(i) a determination is made to refuse a tax clearance certificate, in respect of an application referred to in subparagraph (i) of paragraph (a), or

(ii) the final determination of an appeal under subparagraph (ii) of paragraph (a) is to the effect that the refusal of an application for a tax clearance certificate in relation to a licence is a valid refusal,

the licence continued in force or issued temporarily under this subsection shall expire not later than seven days after such refusal or after the determination of such appeal, and the amount of any duty deposited in excess of the proportion of

that duty attributable to the period when the licence was temporarily in force shall be repaid,”

(b) in section 116—

(i) by the substitution, in subsection (9), of the following for paragraph (d):

“(d) the applicant has failed to provide satisfactory evidence that a current tax clearance certificate in relation to the authorisation has been issued in accordance with the provisions of section 242 (as amended by the *Finance Act, 1997*) of the Finance Act, 1992,”

and

(ii) by the insertion of the following after subsection (9):

“(9A) (a) Where in relation to an authorisation—

(i) an application in accordance with section 242 of the Finance Act, 1992, for a tax clearance certificate has been made—

(I) not less than four months prior to the commencement date of such authorisation, and

(II) a tax clearance certificate has not yet been issued or refused,

or

(ii) a tax clearance certificate has been refused and an appeal against such refusal has been made and accepted in accordance with subsection (6) of the said section 242,

and in either case, the authorisation could, but for the provisions relating to a tax clearance certificate, have been issued, then—

(I) in a case where an authorisation has been granted in respect of the previous authorisation period, such authorisation may continue in force beyond its latest expiry date pending—

(A) the issue or refusal of a tax clearance certificate, or

(B) in the case of an appeal, the final determination of that appeal,

and

(II) in a case where an authorisation has not been granted in respect of the previous authorisation period, an authorisation may be issued temporarily and remain in force pending—

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(A) the issue or refusal of a tax clearance certificate, or Pt.VII S.160

(B) in the case of an appeal, the final determination of that appeal:

Provided that the amount of the fee that would be payable on the application for the authorisation is duly deposited with the Director.

(b) Every authorisation issued temporarily or continued in force in accordance with paragraph (a) shall, while it remains in force, be deemed to be an authorisation within the meaning of this section.

(c) Where—

(i) a determination is made to issue a tax clearance certificate, in respect of an application referred to in subparagraph (i) of paragraph (a), or

(ii) the final determination of an appeal referred to in subparagraph (ii) of paragraph (a) is to the effect that the application for a tax clearance certificate in relation to an authorisation is an acceptable application,

and where the tax clearance certificate has been issued, the authorisation continued in force or issued temporarily under this subsection shall expire upon the grant of an authorisation under this section and the duty deposited shall be set against the appropriate duty payable on the grant of the authorisation.

(d) Where—

(i) a determination is made to refuse a tax clearance certificate, in respect of an application referred to in subparagraph (i) of paragraph (a), or

(ii) the final determination of an appeal under subparagraph (ii) of paragraph (a) is to the effect that the refusal of an application for a tax clearance certificate in relation to an authorisation is a valid refusal,

the authorisation continued in force or issued temporarily under this subsection shall expire not later than seven days after such refusal or after the determination of such appeal, and the amount of any duty deposited in excess of the proportion of that duty attributable to the period when the authorisation was temporarily in force shall be repaid.”,

and

(c) in section 144—

- (i) by the substitution, in subsection (9), of the following for paragraph (d):

“(d) the applicant has failed to provide satisfactory evidence that a current tax clearance certificate issued in relation to the authorisation has been issued in accordance with the provisions of section 242 (as amended by the *Finance Act, 1997*) of the Finance Act, 1992,”

- (ii) by the insertion of the following after subsection (9):

“(9A) (a) Where in relation to an authorisation—

- (i) an application in accordance with section 242 of the Finance Act, 1992, for a tax clearance certificate has been made—

(I) not less than four months prior to the commencement date of such an authorisation, and

(II) a tax clearance certificate has not yet been issued or refused,

or

- (ii) a tax clearance certificate has been refused and an appeal against such refusal has been made and accepted in accordance with subsection (6) of the said section 242,

and in either case, the authorisation could, but for the provisions relating to a tax clearance certificate, have been issued, then—

- (I) in a case where an authorisation has been granted in respect of the previous authorisation period, such authorisation may continue in force beyond its latest expiry date pending—

(A) the issue or refusal of a tax clearance certificate, or

(B) in the case of an appeal, the final determination of that appeal,

and

- (II) in a case where an authorisation has not been granted in respect of the previous authorisation period, an authorisation may be issued temporarily and remain in force pending—

(A) the issue or refusal of a tax clearance certificate, or

(B) in the case of an appeal, the final determination of that appeal:

Provided that the amount of the fee that would be payable on the application for the authorisation is duly deposited with the Director.

(b) Every authorisation issued temporarily or continued in force in accordance with paragraph (a) shall, while it remains in force, be deemed to be an authorisation within the meaning of this section.

(c) Where—

(i) a determination is made to issue a tax clearance certificate, in respect of an application referred to in subparagraph (i) of paragraph (a), or

(ii) the final determination of an appeal referred to in subparagraph (ii) of paragraph (a) is to the effect that the application for a tax clearance certificate in relation to an authorisation is an acceptable application,

and where the tax clearance certificate has been issued, the authorisation continued in force or issued temporarily under this subsection shall expire upon the grant of an authorisation under this section and the duty deposited shall be set against the appropriate duty payable on the grant of the authorisation.

(d) Where—

(i) a determination is made to refuse a tax clearance certificate, in respect of an application referred to in subparagraph (i) of paragraph (a), or

(ii) the final determination of an appeal under subparagraph (ii) of paragraph (a) is to the effect that the refusal of an application for a tax clearance certificate in relation to an authorisation is a valid refusal,

the authorisation continued in force or issued temporarily under this subsection shall expire not later than seven days after such refusal or after the determination of such appeal, and the amount of any duty deposited in excess of the proportion of that duty attributable to the period when the authorisation was temporarily in force shall be repaid.”.

(3) This section shall apply and have effect in relation to an application under—

(a) section 93 of the Consumer Credit Act, 1995, for a money-lender's licence,

(b) section 116 of that Act, for a mortgage intermediaries authorisation,

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(c) section 144 of that Act, for a credit intermediaries authorisation,

the commencement date of which is on or after the 1st day of January, 1998.

Amendment of section 54 (creation and issue of securities by Minister for Finance) of Finance Act, 1970, etc.

161.—(1) Section 54 of the Finance Act, 1970, is hereby amended by the insertion after subsection (9) (inserted by the Finance Act, 1993) of the following subsection:

“(10) (a) The Minister for Finance may, whenever and so often as the Minister thinks fit, nominate any securities issued under subsection (1) of this section as securities under which each obligation to make a payment whether of principal or of interest, may be separated and each such separated obligation (in this subsection referred to as ‘strips’) shall constitute securities for the purposes of this section.

(b) Strips created by virtue of paragraph (a) may be used to constitute securities fungible with the securities from which such strips were derived.

(c) The Minister may, whenever and so often as the Minister thinks fit, prescribe such terms and conditions for the purposes of implementing the provisions of paragraphs (a) and (b).”.

Advance of moneys to Post Office Savings Bank Fund by the Minister for Finance.

162.—(1) The Minister for Finance may advance moneys from the Central Fund or the growing produce thereof to the Post Office Savings Bank Fund on such terms and conditions as that Minister thinks fit for the purpose of the acquisition, holding or disposal of any rights or interests, direct or indirect, in any securities of the State to which section 138(1)(b)(i) of the Finance Act, 1993, relates.

(2) (a) In respect of any moneys advanced by virtue of *subsection (1)*, such moneys shall, subject to *paragraph (b)*, be repaid to the Minister for Finance at such time or in such circumstances as that Minister may specify, together with any interest thereon at such rate or rates as that Minister may fix.

(b) The Minister for Finance may, from time to time, alter the time or circumstances under which any moneys advanced by virtue of *subsection (1)* are to be repaid.

Amendment of National Treasury Management Agency Act, 1990.

163.—The National Treasury Management Agency Act, 1990, is hereby amended—

(a) in section 4 by the insertion of the following subsection after subsection (1):

“(1A) An additional function of the Agency shall be:

(a) to perform, on behalf of the Minister for Agriculture, Food and Forestry whenever requested by that Minister, the borrowing function set out

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in Regulation 11 of the European Communities Pt.VIII S.163
(Common Agricultural Policy) (Market
Intervention) Regulations, 1973 (S.I. No. 24 of
1973), and

(b) to exercise the function of that Minister in
relation to the management of the indebtedness
arising from such borrowing, on such terms and
conditions as may be agreed by the Agency with
that Minister.”,

and

(b) in the First Schedule, by the insertion of the following para-
graph after paragraph (g):

“(gg) section 54(10) (inserted by *section 161* of the *Fin-
ance Act, 1997*) of the Finance Act, 1970.”.

164—(1) In this section—

Capital Services
Redemption
Account.

“the 1996 amending section” means section 138 of the Finance Act,
1996;

“capital services” has the same meaning as it has in the principal
section;

“the forty-seventh additional annuity” means the sum charged on
the Central Fund under *subsection (4)*;

“the principal section” means section 22 of the Finance Act, 1950.

(2) In relation to the twenty-nine successive financial years com-
mencing with the financial year ending on the 31st day of December,
1997, subsection (4) of the 1996 amending section shall have effect
with the substitution of “£88,264,810” for “£83,599,421”.

(3) Subsection (6) of the 1996 amending section shall have effect
with the substitution of “£66,821,199” for “£64,256,400”.

(4) A sum of £94,679,697 to redeem borrowings, and interest ther-
eon, in respect of capital services shall be charged annually on the
Central Fund or the growing produce thereof in the thirty successive
financial years commencing with the financial year ending on the
31st day of December, 1997.

(5) The forty-seventh 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.

(6) Any amount of the forty-seventh additional annuity, not
exceeding £72,772,950 in any financial year, may be applied towards
defraying the interest on the public debt.

(7) The balance of the forty-seventh additional annuity shall be
applied in any one or more of the ways specified in subsection (6) of
the principal section.

Pt.VIII
Care and
management of
taxes and duties.

165.—All taxes and duties imposed by this Act are hereby placed under the care and management of the Revenue Commissioners.

Short title,
construction and
commencement.

166.—(1) This Act may be cited as the Finance Act, 1997.

(2) *Parts I and VII* (so far as relating to income tax) shall be construed together with the Income Tax Acts and (so far as relating to corporation tax) shall be construed together with the Corporation Tax Acts and (so far as relating to capital gains tax) shall be construed together with the Capital Gains Tax Acts.

(3) *Part II* (so far as relating to customs) shall be construed together with the Customs Acts and (so far as relating to duties of excise) shall be construed together with the statutes which relate to the duties of excise and to the management of those duties.

(4) *Part III* shall be construed together with the Value-Added Tax Acts, 1972 to 1996, and may be cited together therewith as the Value-Added Tax Acts, 1972 to 1997.

(5) *Part IV* shall be construed together with the Stamp Act, 1891, and the enactments amending or extending that Act.

(6) *Part V* shall be construed together with Part VI of the Finance Act, 1983, and the enactments amending or extending that Part.

(7) *Part VI* (so far as relating to capital acquisitions tax) shall be construed together with the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act.

(8) *Part VIII* (so far as relating to income tax) shall be construed together with the Income Tax Acts and (so far as relating to corporation tax) shall be construed together with the Corporation Tax Acts and (so far as relating to capital gains tax) shall be construed together with the Capital Gains Tax Acts and (so far as relating to value-added tax) shall be construed together with the Value-Added Tax Acts, 1972 to 1996, and (so far as relating to Residential Property Tax) shall be construed together with Part VI of the Finance Act, 1983, and the enactments amending or extending that Act and (so far as relating to capital acquisitions tax) shall be construed together with the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act.

(9) *Part I and VII* shall, save as is otherwise expressly provided therein, be deemed to have come into force and shall take effect as on and from the 6th day of April, 1997.

(10) In relation to *Part III*:

(a) *section 95*, paragraphs (b) and (c) of *section 107*, *section 108* and *section 114* shall be deemed to have come into force and shall take effect as on and from the 7th day of November, 1996;

(b) *paragraph (a) of section 103* and *section 105* shall be deemed to have come into force and shall take effect as on and from the 1st day of March, 1997;

(c) *paragraphs (a) and (b) of section 96*, *section 98*, *section 100*, *paragraphs (b), (e) and (f) of section 102* and *section 104* shall be deemed to have come into force and shall take effect as on and from the 26th day of March, 1997;

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(d) *section 110* shall be deemed to have come into force and shall take effect as on and from the 1st day of May, 1997; Pt.VIII S.166

(e) *paragraph (c) of section 96, section 99, section 106, paragraph (a) of section 107, section 109, section 111 and section 112* shall take effect as on and from the 1st day of July, 1997;

(f) *sections 101 and 113* shall take effect as on and from such date as the Minister for Finance may by order, appoint;

(g) the provisions of this Part, other than those specified in *paragraphs (a), (b), (c), (d), (e) and (f)*, shall have effect as on and from the date of passing of this Act.

(11) Any reference in this Act to any other enactment shall, except 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.

(12) 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.

(13) 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.

FIRST SCHEDULE

Amendments Consequential on Changes in Personal Reliefs

1. The Income Tax Act, 1967, is hereby amended in accordance with the following provisions:

(a) in section 138 (inserted by the Finance Act, 1980)—

- (i) in paragraph (a) (inserted by the Finance Act, 1996), by the substitution of “£5,800” for “£5,300”,
- (ii) in paragraph (b) (as amended by the Finance Act, 1988), by the substitution of “£3,400” and “£5,800”, respectively, for “£3,150” and “£5,300” (inserted by the Finance Act, 1996), and
- (iii) in paragraph (c), by the substitution of “£2,900” for “£2,650” (inserted by the Finance Act, 1996),

and

(b) in subsection (2) of section 138A (inserted by the Finance Act, 1985), by the substitution of “£2,400” and “£2,900”, respectively, for “£2,150” and “£2,650” (inserted by the Finance Act, 1996).

2. Section 8 of the Finance Act, 1974, is hereby amended, in subsection (1), by the substitution of “£800” for “£400” (inserted by the Finance Act, 1986) and of “£400” for “£200” (inserted by the Finance Act, 1986).

Amendments Consequential on Changes in Amounts of Tax
Credits in Respect of Distributions

1. The provisions referred to in *section 37 (1)* are sections 45 (5), 64 (2), 66A (1), 82 (2), 82 (7), 88 (2) and 178 of the Corporation Tax Act, 1976.

2. For the purposes of section 45 (5) of the Corporation Tax Act, 1976, where an accounting period begins before the 6th day of April, 1997, and ends on or after that date, it shall be divided into one part, beginning on the day on which the accounting period begins and ending on the 5th day of April, 1997, and another part beginning on the 6th day of April, 1997, and ending on the day on which the accounting period ends and both parts shall be treated as separate accounting periods.

3. (1) This paragraph applies to a distribution which is made by a company in the year of assessment 1997-98 and subsequent years of assessment, and to which section 64 of the Corporation Tax Act, 1976, applies.

(2) Section 28 (7) of the Finance Act, 1978, section 28 (3) of the Finance Act, 1983, paragraph 4 of Part I of the Second Schedule to the Finance Act, 1988, paragraph 3 of the First Schedule to the Finance Act, 1990, and paragraph 3 of the Second Schedule to the Finance Act, 1995, shall each not apply to a distribution to which this paragraph applies.

(3) The reference to certain tax credits in the definition of "B" in subsection (2) of section 64 of the Corporation Tax Act, 1976, shall, in relation to distributions which were received by a company which makes a distribution to which this paragraph applies, be construed—

- (a) as a reference to such tax credits multiplied by .4937 in so far as they are tax credits in respect of distributions which were made before the 6th day of April, 1978, or which were made after the 5th day of April, 1983, and before the 6th day of April, 1988,
- (b) as a reference to such tax credits multiplied by .6203 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1978, and before the 6th day of April, 1983,
- (c) as a reference to such tax credits multiplied by .5649 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1988, and before the 6th day of April, 1989,
- (d) as a reference to such tax credits multiplied by .6835 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1989, and before the 6th day of April, 1991,
- (e) as a reference to such tax credits multiplied by .7975 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1991, and before the 6th day of April, 1995, and
- (f) as a reference to such tax credits multiplied by .8899 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1995, and before the 6th day of April, 1997.

THIRD SCHEDULE

Employee Share Ownership Trusts

Interpretation

1. (1) For the purposes of this Schedule—

“ordinary share capital” has the meaning assigned to it by section 155 of the Corporation Tax Act, 1976;

“securities” mean shares (including stock) and debentures.

(2) For the purposes of this Schedule, the question whether one company is controlled by another shall be construed in accordance with section 102 of the Corporation Tax Act, 1976.

(3) For the purposes of this Schedule a person shall be regarded as an employee or a director of a company falling within the founding company’s group at a particular time if, at the time or within 18 months prior to the time, that person is or was an employee or director of—

(a) the founding company, being a company resident in the State,

(b) a company resident in the State and controlled by the founding company, or

(c) a company, being the founding company or a company controlled by the founding company, which carries on a trade in the State through a branch or agency in which that person is employed.

(4) (a) For the purposes of this Schedule a person shall be treated as having a material interest in a company if the person, either on his or her own or with any one or more of his or her associates, or if any associate of his or her with or without any such other associates is the beneficial owner of, or able directly or through the medium of other companies or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company.

(b) In this subparagraph—

“associate” has the meaning given to it by section 103 of the Corporation Tax Act, 1976;

“control” has the same meaning as in section 102 of that Act.

(5) For the purposes of this Schedule a trust is established when the deed under which it is established is executed.

Approval of Qualifying Trusts

2. On the application of a body corporate (in this Schedule referred to as “the founding company”) which has established an employee share ownership trust, the Revenue Commissioners shall approve of the trust as a qualifying employee share ownership trust if they are satisfied that the conditions set out in *paragraphs 6 to 18* are met in relation to the trust.

3. (1) If, at any time after the Revenue Commissioners have approved of a trust—

- (a) there is, with respect to the operation of the trust, any contravention of the conditions set out in *paragraphs 6 to 18*, or
- (b) any shares of a class of which shares have been acquired by the trustees receive different treatment in any respect from the other shares of that class, in particular, different treatment in respect of—
 - (i) the dividend payable,
 - (ii) repayment,
 - (iii) the restrictions attaching to the shares, or
 - (iv) any offer of substituted or additional shares, securities or rights of any description in respect of the shares,

the Revenue Commissioners may, subject to *subparagraph (3)*, withdraw the approval with effect from that time or from such later time as they may specify.

(2) If, at any time after the Revenue Commissioners have approved of a trust, an alteration is made to the terms of the trust, the approval shall not have effect after the date of the alteration unless they have approved of the alteration.

(3) It shall not be a ground for withdrawal of approval of a trust that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment which is less favourable than that accorded to shares issued before that date.

(4) The Revenue Commissioners may by notice in writing require any person to furnish to them, within such time as they may direct which is not less than 30 days, such information as they think necessary to enable them to either or both—

- (a) determine whether to approve of an employee share ownership trust or withdraw an approval already given, and
- (b) determine the liability to tax of any beneficiary under an approved employee share ownership trust.

4. (1) If the founding company is aggrieved by—

- (a) the failure of the Revenue Commissioners to approve of an employee share ownership trust,
- (b) the failure of the Revenue Commissioners to approve of an alteration as mentioned in *paragraph 3(2)*, or
- (c) the withdrawal of approval,

the company may, by notice in writing given to the Revenue Commissioners within 30 days from the date on which it is notified of their decision, make an application to have its claim for relief heard and determined by the Appeal Commissioners.

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(2) Where an application is made under *subparagraph (1)*, the Appeal Commissioners shall hear and determine the claim in like manner as an appeal made to them against an assessment and all the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the re-hearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

5. The Revenue Commissioners may nominate any of their officers, including an inspector, to perform any acts and discharge any functions authorised by this Schedule to be performed or discharged by them.

General

6. (1) The trust shall be established under a deed (in this Schedule and *section 51*, referred to as “the trust deed”).

(2) The trust shall be established by the founding company which, at the time the trust is established, is not controlled by another company.

Trustees

7. The trust deed shall provide for the establishment of a body of trustees complying with the provisions of *paragraph 8, 9 or 10*.

8. (1) The trust deed shall—

- (a) appoint the initial trustees;
- (b) contain rules for the retirement and removal of trustees;
- (c) contain rules for the appointment of replacement and additional trustees.

(2) The trust deed shall provide that at any time while the trust subsists (in this subparagraph referred to as “the relevant time”)—

- (a) the number of trustees shall not be less than three;
- (b) all the trustees shall be resident in the State;
- (c) the trustees shall include one person who is a trust corporation, a solicitor, or a member of such other professional body as the Revenue Commissioners may from time to time allow for the purposes of this paragraph;
- (d) the majority of the trustees must be persons who are not and have never been directors of any company which falls within the founding company’s group at the relevant time;
- (e) the majority of the trustees shall be representatives of the employees of the companies which fall within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company;
- (f) the trustees to whom *subparagraph (e)* relates, shall, before being appointed as trustees, have been selected by a majority of the employees of the companies falling within

the founding company's group at the time of the Sch.3 selection.

9. (1) The trust deed shall—

- (a) appoint the initial trustees;
- (b) contain rules for the retirement and removal of trustees;
- (c) contain rules for the appointment of replacement and additional trustees.

(2) The trust deed shall be so framed that at any time while the trust subsists the conditions set out in *subparagraph (3)* are fulfilled as regards the persons who are then trustees, and in that subparagraph “the relevant time” means that time.

(3) The conditions referred to in *subparagraph (2)* are that—

- (a) the number of trustees is not less than three;
- (b) all the trustees are resident in the State;
- (c) the trustees include at least one person who is a professional trustee and at least two persons who are non-professional trustees;
- (d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with *subparagraph (6)* or *(7)*;
- (e) all the trustees so selected are persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.

(4) For the purposes of this paragraph a trustee is a professional trustee at a particular time if—

- (a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Revenue Commissioners allow for the purposes of this subparagraph,
- (b) the trustee is not then an employee or director of any company then falling within the founding company's group, and
- (c) the trustee meets the requirements of *subparagraph (5)*,

and for the purposes of this paragraph a trustee is a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.

(5) A trustee meets the requirements of this subparagraph if—

- (a) he or she was appointed as an initial trustee and, before being appointed as trustee, was selected by, and only by, the persons who later became the non-professional initial trustees, or

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(b) he or she was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected by, and only by, the persons who were the non-professional trustees at the time of the selection.

(6) Trustees are selected in accordance with this subparagraph if the process of selection is one under which—

(a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are, so far as is reasonably practicable, given the opportunity to stand for selection,

(b) all the employees of the companies falling within the founding company's group at the time of the selection are, so far as is reasonably practicable, given the opportunity to vote, and

(c) persons gaining more votes are preferred to those gaining less.

(7) Trustees are selected in accordance with this subparagraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.

10. (1) This paragraph applies where the trust deed provides that at any time while the trust subsists there shall be a single trustee.

(2) The trust deed shall—

(a) be so framed that at anytime while the trust subsists the trustee is a company which at that time is resident in the State and controlled by the founding company;

(b) appoint the initial trustee;

(c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.

(3) The trust deed shall be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions set out in *subparagraph (4)* are then fulfilled as regards the persons who are then directors of the company, and in that subparagraph "the relevant time" means that time and "the trust company" means that company.

(4) The conditions referred to in *subparagraph (3)* are that—

(a) the number of directors is not less than three;

(b) all the directors are resident in the State;

(c) the directors include at least one person who is a professional director and at least two persons who are non-professional directors;

(d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with *subparagraph (7)* or *(8)*;

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- (e) all the directors so selected are persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company. Sch.3

(5) For the purposes of this paragraph a director is a professional director at a particular time if—

- (a) the director is then a solicitor or a member of such other professional body as the Revenue Commissioners may at that time allow for the purposes of this subparagraph,
- (b) the director is not then an employee of any company then falling within the founding company's group,
- (c) the director is not then a director of any such company other than the trust company, and
- (d) the director meets the requirements of *subparagraph (6)*,

and for the purposes of this paragraph a director is a non-professional director at a particular time if the director is not then a professional director for those purposes.

(6) A director meets the requirements of this subparagraph if—

- (a) he or she was appointed as an initial director and, before being appointed as director, was selected by and only by the persons who later became the non-professional initial directors, or
- (b) he or she was appointed as a replacement or additional director and, before being appointed as director, was selected by and only by the persons who were the non-professional directors at the time of the selection.

(7) Directors are selected in accordance with this subparagraph if the process of selection is one under which—

- (a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are, so far as is reasonably practicable, given the opportunity to stand for selection,
- (b) all the employees of the companies falling within the founding company's group at the time of the selection are, so far as is reasonably practicable, given the opportunity to vote, and
- (c) persons gaining more votes are preferred to those gaining less.

(8) Directors are selected in accordance with this subparagraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.

Beneficiaries

11. (1) The trust deed shall contain provision as to the beneficiaries under the trust, in accordance with the following.

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(2) The trust deed shall provide that a person is a beneficiary at a particular time (in this subparagraph referred to as “the relevant time”) if—

- (a) the person is at the relevant time an employee or director of a company which at that time falls within the founding company’s group,
- (b) at each given time in a qualifying period the person was such an employee or director of a company falling within the founding company’s group at that given time, and
- (c) in the case of a director, at that given time the person worked as a director of the company concerned at the rate of at least 20 hours a week (ignoring such matters as holidays and sickness).

(3) The trust deed may provide that a person is a beneficiary at a particular time (in this subparagraph referred to as “the relevant time”) if—

- (a) the person has at each given time in a qualifying period been an employee or director of a company falling within the founding company’s group at that given time,
- (b) the person has ceased to be an employee or director of the company or the company has ceased to fall within that group, and
- (c) at the relevant time a period of not more than 18 months has elapsed since the person so ceased or the company so ceased, as the case may be.

(4) The trust deed may provide for a person to be a beneficiary if the person is a charity and the circumstances are such that—

- (a) there is no person who is a beneficiary within the rule which is included in the deed and conforms with *subparagraph (2)* or with any rule which is so included and conforms with *subparagraph (3)*, and
- (b) the trust is in consequence being wound up.

(5) For the purposes of *subparagraph (2)* a qualifying period is a period—

- (a) whose length is not more than 5 years,
- (b) whose length is specified in the trust deed, and
- (c) which ends with the relevant time (within the meaning of that subparagraph).

(6) For the purposes of *subparagraph (3)* a qualifying period is a period—

- (a) whose length is equal to that of the period specified in the trust deed for the purposes of a rule which conforms with *subparagraph (2)*, and
- (b) which ends when the person or company, as the case may be, ceased as mentioned in *subparagraph (3)(b)*.

(7) The trust deed shall not provide for a person to be a beneficiary unless the person falls within the rule which is included in the deed and conforms with *subparagraph (2)* or any rule which is so included and conforms with *subparagraph (3)* or *(4)*. Sch.3

(8) The trust deed shall provide that, notwithstanding any other rule which is included in it, a person cannot be a beneficiary at a particular time (in this subparagraph referred to as “the relevant time”) by virtue of a rule which conforms with *subparagraph (2)*, *(3)* or *(4)* if—

- (a) at the relevant time the person has a material interest in the founding company, or
- (b) at any time in the period of one year preceding the relevant time the person has had a material interest in that company.

(9) For the purposes of this paragraph “a charity” means any body of persons or trust established for charitable purposes only.

Trustees’ functions

12. (1) The trust deed shall contain provision as to the functions of the trustees.

(2) The functions of the trustees shall be so expressed that it is apparent that their general functions are—

- (a) to receive sums from the founding company and other sums, by way of loan or otherwise;
- (b) to acquire securities;
- (c) to grant rights to acquire shares to persons who are beneficiaries under the terms of the trust deed;
- (d) to transfer either or both securities and sums to persons who are beneficiaries under the terms of the trust deed;
- (e) to transfer securities to the trustees of profit sharing schemes approved under Part I of the Third Schedule to the Finance Act, 1982;
- (f) pending transfer, to retain the securities and to manage them, whether by exercising voting rights or otherwise.

Sums

13. (1) The trust deed shall require that any sum received by the trustees—

- (a) shall be expended within the expenditure period,
- (b) may be expended only for one or more of the qualifying purposes, and
- (c) shall, while it is retained by them, be kept as cash, or be kept in an account with a relevant deposit taker (within the meaning of section 31 of the Finance Act, 1986).

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(2) For the purposes of *subparagraph (1)* the expenditure period is the period of 9 months beginning with the day determined as follows:

(a) in a case where the sum is received from the founding company, or a company which is controlled by that company at the time the sum is received, the day following the end of the accounting period in which the sum is expended by the company from which it is received;

(b) in any other case, the day the sum is received.

(3) For the purposes of *subparagraph (1)* each of the following is a qualifying purpose—

(a) the acquisition of shares in the founding company;

(b) the repayment of sums borrowed;

(c) the payment of interest on sums borrowed;

(d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;

(e) the meeting of expenses.

(4) The trust deed shall provide that, in ascertaining for the purposes of a relevant rule (being a provision which is included in the trust deed and conforms with *subparagraph (1)*) whether a particular sum has been expended, sums received earlier by the trustees shall be treated as expended before sums received by them later.

(5) The trust deed shall provide that, where the trustees pay sums to different beneficiaries at the same time, all the sums shall be paid on similar terms.

(6) For the purposes of *subparagraph (5)*, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.

Securities

14. (1) Subject to *paragraph 15*, the trust deed shall provide that securities acquired by the trustees shall be shares in the founding company which—

(a) form part of the ordinary share capital of the company,

(b) are fully paid up,

(c) are not redeemable, and

(d) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by *subparagraph (2)*.

(2) Subject to *subparagraph (3)*, a restriction is authorised by this subparagraph if—

(a) it is imposed by the founding company's articles of association,

- (b) it requires all shares held by directors or employees of the founding company, or of any other company which it controls for the time being, to be disposed of on ceasing to be so held, and
- (c) it requires all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not, or have ceased to be, such directors or employees to be disposed of when they are acquired.
- (3) A restriction is not authorised by *subparagraph (2)* unless—
- (a) any disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
- (b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in *subparagraph (2)*) may be required to sell them on terms which are the same as those mentioned in *clause (a)*.
- (4) The trust deed shall provide that shares in the founding company may not be acquired by the trustees at a price exceeding the price they might reasonably be expected to fetch on a sale in the open market.
- (5) The trust deed shall provide that shares in the founding company may not be acquired by the trustees at a time when that company is controlled by another company.
15. The trust deed may provide that the trustees may acquire securities other than shares in the founding company—
- (a) if they are securities issued to the trustees in exchange in circumstances mentioned in paragraph 4 of Schedule 2 to the Capital Gains Tax Act, 1975, or
- (b) if they are securities acquired by the trustees as a result of a reorganisation or reduction of share capital, and the original shares the securities represent are shares in the founding company (construing “reorganisation or reduction of share capital” and “original shares” in accordance with paragraph 2 of that Schedule).
16. (1) The trust deed shall provide that—
- (a) where the trustees transfer securities to a beneficiary, they shall do so on qualifying terms;
- (b) the trustees shall transfer securities before the expiry of twenty years beginning with the date on which they acquired them.
- (2) For the purposes of *subparagraph (1)* a transfer of securities is made on qualifying terms if—
- (a) all the securities transferred at the same time are transferred on similar terms,
- (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed when the transfer is made, and

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(c) securities are transferred to all such beneficiaries who have accepted.

(3) For the purposes of *subparagraph (2)*, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.

(4) The trust deed shall provide that, in ascertaining for the purposes of a relevant rule (being a provision which is included in the trust deed and conforms with *subparagraph (1)*) whether particular securities are transferred, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later.

Other features

17. The trust deed shall not contain features which are not essential or reasonably incidental to the purpose of acquiring sums and securities, transferring sums and securities to employees and directors, and transferring securities to the trustees of profit sharing schemes approved under Part I of the Third Schedule to the Finance Act, 1982.

18. (1) The trust deed shall provide that, for the purposes of the deed, the trustees—

- (a) acquire securities when they become entitled to them;
- (b) transfer securities to another person when that other becomes entitled to them;
- (c) retain securities if they remain entitled to them.

(2) If the trust deed provides for the matter set out in *paragraph 15*, it shall provide for the following exceptions to any rule which is included in it and conforms with *subparagraph (1)(a)*, namely, that—

- (a) if securities are issued to the trustees in exchange in circumstances mentioned in paragraph 4 of Schedule 2 to the Capital Gains Tax Act, 1975, they shall be treated as having acquired them when they became entitled to the securities for which they are exchanged;
- (b) if the trustees become entitled to securities as a result of a reorganisation or reduction of share capital, they shall be treated as having acquired them when they became entitled to the original shares which those securities represent (construing “reorganisation or reduction of share capital” and “original shares” in accordance with paragraph 2 of the said Schedule 2).

(3) The trust deed shall provide that—

- (a) if the trustees agree to take a transfer of securities, for the purposes of the deed they become entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement;
- (b) if the trustees agree to transfer securities to another person, for the purposes of the deed the other person becomes entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.

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FOURTH SCHEDULE

Section 20.

Farm Buildings and Structures to Which Allowances for the
Control of Pollution Apply

1. Waste storage facilities including slurry tanks.
2. Soiled water tanks.
3. Effluent tanks.
4. Tank fences and covers.
5. Dungsteads and manure pits.
6. Yard drains for storm and soiled water removal.
7. Walled silos, silage bases and silo aprons.
8. Housing for cattle, including drystock accommodation, byres, loose houses, slatted houses, sloped floor houses and kennels, roofed feed or exercise yards where such houses or structures eliminate soiled water.
9. Housing for sheep and unroofed wintering structures for sheep and sheep dipping tanks.

FIFTH SCHEDULE

Replacement of Harbour Authorities by Port Companies

Interpretation

1. In this Schedule—

“relevant port company” means a company formed pursuant to section 7 or 87 of the Harbours Act, 1996;

“relevant transfer” means—

- (a) the vesting in a relevant port company of assets in accordance with section 96 of the Harbours Act, 1996, and
- (b) the transfer to a relevant port company of rights and liabilities in accordance with section 97 of the said Act of 1996.

Capital Allowances

2. (1) The provisions of this paragraph shall have effect for the purposes of—

- (a) allowances and charges provided for in Parts XIII to XVIII of the Income Tax Act, 1967, or any other provision of the Income Tax Acts relating to the making of allowances or charges under or in accordance with any of those Parts, and
- (b) allowances or charges provided for by section 14 of the Corporation Tax Act, 1976.

(2) The relevant transfer shall not be treated as giving rise to any such allowance or charge under any of the provisions referred to in *subparagraph (1)*.

(3) There shall be made to or on the relevant port company in accordance with section 14 of the Corporation Tax Act, 1976, all such allowances and charges in respect of an asset acquired by it in the course of a relevant transfer as would have fallen to be made if—

- (a) allowances in relation to the asset made to the person from whom the asset was acquired had been made to the relevant port company, and
- (b) everything done to or by that person, in relation to the asset had been done to or by the relevant port company.

Capital Gains

3. (1) The provisions of this paragraph shall have effect for the purposes of the Capital Gains Tax Acts and of the Corporation Tax Act, 1976, in so far as it relates to chargeable gains.

(2) The disposal of an asset by a person in the course of a relevant transfer shall be deemed to be for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the person.

(3) Where *subparagraph (2)* has had effect in relation to a disposal of an asset, then in relation to any subsequent disposal of the asset

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by the relevant port company, the relevant port company shall be Sch.5
treated as if the acquisition or provision of the asset by the person
from whom it was acquired by the said relevant port company was
that company's acquisition or provision of it.

(4) For the purposes of section 28 of the Capital Gains Tax Act,
1975, the relevant port company and the person from whom an asset
was acquired in the course of a relevant transfer, shall be treated as
if they were the same person.

SIXTH SCHEDULE

Change in Rate of Corporation Tax: Consequential Provisions

Part I

Application of sections 6 (3), 13 (1B), 182 and 184 of Corporation Tax Act, 1976

1. Section 6 (3) and the proviso to section 13 (1B) of the Corporation Tax Act, 1976, shall have effect, as respects accounting periods ending on or after the 1st day of April, 1997, as if—

- (a) the period beginning on the 1st day of January, 1996, and ending on the 31st day of March, 1997, and
- (b) the period beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1998,

were each a financial year.

2. (1) For the purposes of *subparagraph (3)* and of sections 182 and 184 of the Corporation Tax Act, 1976, where an accounting period begins before the 1st day of April, 1997, and ends on or after that day, it shall be divided into one part, beginning on the day on which the accounting period begins and ending on the 31st day of March, 1997, and another part beginning on the 1st day of April, 1997, and ending on the day on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods.

(2) Where, under *subparagraph (1)*, a part of an accounting period is treated as a separate accounting period, the corporation tax charged for the part which is so treated shall, in so far as it is affected by the rate of corporation tax which is taken to have been charged, be taken, for the purposes of the said section 184, to be the corporation tax which would have been charged if that part were a separate accounting period.

(3) Section 182(3) and 184(3) of the said Act shall have effect for any accounting period beginning on or after the 1st day of April, 1997, as if the standard rate were 21 per cent., for the year of assessment 1997-98 and each subsequent year of assessment.

Part II

Amendment of Chapter VI (Corporation Tax: Relief in relation to Certain Income of Manufacturing Companies) of Part I of Finance Act, 1980

1. (1) As respects any accounting period which begins before the 1st day of April, 1997, and ends on or after that day, section 41 (2) (as amended by the Finance Act, 1995) of the Finance Act, 1980, referred to subsequently in this Part as “section 41(2)”, shall have effect as if for the words from “shall be reduced by twenty-eight-thirty-eighths” to the end of the subsection there were substituted the following:

“shall be reduced—

- (a) by twenty-eight-thirty-eighths, in so far as it is corporation tax charged on profits which, under section 6

(3) of the Corporation Tax Act, 1976, are apportioned Sch.6
to the period beginning on the 1st day of January,
1996, and ending on the 31st day of March, 1997, and

- (b) by twenty-six-thirty-sixths, in so far as it is corporation
tax charged on profits which, under the said section
6 (3), are apportioned to the period beginning on the
1st day of April, 1997, and ending on the 31st day of
December, 1998,

and the corporation tax referable to the income from the sale of
those goods—

- (i) shall, for the purposes of paragraph (a), be such
an amount as bears to the part of the relevant
corporation tax charged on profits which, under
the said section 6(3), are apportioned to the per-
iod beginning on the 1st day of January, 1996,
and ending on the 31st day of March, 1997, the
same proportion as the income from the sale of
those goods bears to the total income brought
into charge to corporation tax for the relevant
accounting period, and
- (ii) shall, for the purposes of paragraph (b), be such
an amount as bears to the part of the relevant
corporation tax charged on profits which, under
the said section 6(3), are apportioned to the per-
iod beginning on the 1st day of April, 1997, and
ending on the 31st day of December, 1998, the
same proportion as the income from the sale of
those goods bears to the total income brought
into charge to corporation tax for the relevant
accounting period.”.

(2) Section 41 (2) is hereby amended as respects any accounting
period beginning on or after the 1st day of April, 1997, by substitution
of “twenty-six-thirty-sixths” for “twenty-eight-thirty-eighths”.

2. (1) Sections 47(2) and 48(2) (as amended by the Finance Act,
1995) of the Finance Act, 1980, are hereby amended as respects any
accounting period beginning on or after the 1st day of April, 1997—

- (a) in paragraph (i) of section 47(2), by the substitution of
“36/26” for “38/28”,
- (b) in paragraph (ii) of the said section 47(2), by the substitution
of “10/26” for “10/28”, and
- (c) in paragraph (ii) of the said section 48(2), by the substitution
of “10/26” for “10/28”.

(2) Where by virtue of *paragraph 2(1) of Part I* a part of an
accounting period is treated as a separate accounting period for the
purposes of sections 182 and 184 of the Corporation Tax Act, 1976,
that part shall also be treated as a separate accounting period for the
purposes of this paragraph and for the purposes of sections 47(2)
and 48(2) of the Finance Act, 1980, and the corporation tax charged
for a part of an accounting period which is so treated shall, in so far
as it is affected by the rate of corporation tax which is taken to have
been charged, be taken for the purposes of the said sections 47(2)
and 48(2), to be the corporation tax which would have been charged
if that part were a separate accounting period.

SEVENTH SCHEDULE

Rates of Excise Duty on Tobacco Products

Description of Product	Rate of Duty
Cigarettes	£62.64 per thousand together with an amount equal to 16.93 per cent. of the price at which the cigarettes are sold by retail
Cigars	£94.652 per kilogram
Fine-cut tobacco for the rolling of cigarettes ...	£79.872 per kilogram
Other smoking tobacco	£65.666 per kilogram

EIGHTH SCHEDULE

Stamp Duty on Instruments

Part I

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

“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.

(1) Where the amount or value of the consideration for the sale does not exceed £5,000 and the instrument contains a statement certifying that the transaction thereby effected does not 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 exceeds £5,000 Exempt

(2) Where paragraph (1) does not apply and the amount or value of the consideration for the sale does not exceed £10,000 and the instrument contains a statement certifying that the transaction thereby effected does not 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 exceeds £10,000:

for every £100, or fractional part of £100, of the consideration £1.00

(3) Where paragraphs (1) and (2) do not apply and the amount or value of the consideration for the sale does not exceed £15,000 and the instrument contains a statement certifying that the transaction thereby effected does not 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 exceeds £15,000:

for every £100, or fractional part of £100, of the consideration £2.00

(4) Where paragraphs (1) to (3) do not apply and the amount or value of the consideration for the sale does not exceed £25,000 and the instrument contains a statement certifying that the transaction thereby effected does not 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 exceeds £25,000:

for every £100, or fractional part of £100, of the consideration £3.00

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(5) Where paragraphs (1) to (4) do not apply and the amount or value of the consideration for the sale does not exceed £50,000 and the instrument contains a statement certifying that the transaction thereby effected does not 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 exceeds £50,000:

for every £100, or fractional part of £100, of
the consideration £4.00

(6) Where paragraphs (1) to (5) do not apply and the amount or value of the consideration for the sale does not exceed £60,000 and the instrument contains a statement certifying that the transaction thereby effected does not 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 exceeds £60,000:

for every £100, or fractional part of £100, of
the consideration £5.00

(7) Where paragraphs (1) to (6) do not apply:

(a) if the instrument contains a statement—

(i) that the amount or value of the consideration for the sale does not exceed £150,000 and that the transaction thereby effected does not 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 exceeds £150,000, or

(ii) that no part of the consideration for the sale is attributable, or deemed to be attributable, to residential property:

for every £100, or fractional part of
£100, of the consideration which is
not deemed to be attributable to resi-
dential property £6.00

(b) if the instrument contains a statement that the provisions of subsection (1A) of section 58 of this Act apply in relation to the sale:

for every £100, or fractional part of
£100, of the consideration for the sale
which is not deemed to be attribu-
table to residential property ... £6.00

(c) if the amount or value of the consideration for the sale which is attributable to residential property or which is deemed to be attributable to residential property:

(i) does not exceed £150,000 and the instrument contains a statement certifying that the provisions of subsection (1A) of section 58 of this Act apply in relation to that sale and that the amount or value of the aggregate consideration (within the meaning of that subsection) which is deemed to be attributable to residential property, or which would be deemed to be so attributable if the contents of residential property were considered to be residential property, does not exceed £150,000... .. £6.00 for every £100, or fractional part of £100, of the consideration

(ii) does not exceed £160,000 and the instrument contains a statement certifying that the provisions of subsection (1A) of section 58 of this Act do not apply in relation to the sale or that the provisions of that subsection do apply in relation to the sale and that the amount or value of the aggregate consideration (within the meaning of that subsection) which is deemed to be attributable to residential property, or which would be deemed to be so attributable if the contents of residential property were considered to be residential property, does not exceed £160,000, and subparagraphs (a) (i) and (c) (i) do not apply £7.00 for every £100, or fractional part of £100, of the consideration

(iii) does not exceed £170,000 and the instrument contains a statement certifying that the provisions of subsection (1A) of section 58 of this Act do not apply in relation to that sale or that the provisions of that subsection do apply in relation to the sale and that the amount or value of the aggregate consideration (within the meaning of that subsection) which is deemed to be attributable to residential property, or which would be deemed to be so attributable if

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the contents of residential property were considered to be residential property, does not exceed £170,000, and subparagraphs (a)(i), (c)(i) and (c)(ii) do not apply

£8.00 for every £100, or fractional part of £100, of the consideration

(8) Of any other kind whatsoever not hereinbefore described:

for every £100, or fractional part of £100, of the consideration £9.00

(9) Where in the case of a conveyance or transfer on sale or in the case of a conveyance or transfer operating as a voluntary disposition *inter vivos* the consideration for the sale or the value of the property exceeds £5,000 and the instrument contains a certificate by the party to whom the property is being conveyed or transferred to the effect that the person becoming entitled to the entire beneficial interest in the property (or, where more than one person becomes entitled to a beneficial interest therein, each of them) is related to the person or each of the persons immediately theretofore entitled to the entire beneficial interest in the property in one or other of the following ways, that is to say, as a lineal descendant, parent, grandparent, step-parent, husband or wife, brother or sister of a parent or brother or sister, or lineal descendant of a parent, husband or wife or brother or sister:

a duty of an amount equal to one-half of the *ad valorem* stamp duty which, but for the provisions of this paragraph, would be chargeable under this Heading.”.

PART II

Lease

“(a) where the consideration, or any part of the consideration (other than rent), moving either to the lessor or to any other person, consists of any money, stock or security, and—

- (i) the amount or value of such consideration does not exceed £5,000 and the lease contains a statement certifying that the transaction thereby effected does not 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 other than rent
 exceeds £5,000 Exempt

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- (ii) the amount or value of such consideration does not exceed £10,000 and the lease contains a statement certifying that the transaction thereby effected does not 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 other than rent exceeds £10,000 and subparagraph (i) does not apply:

for every £100, or fractional part of £100, of the consideration ... £1.00

- (iii) the amount or value of such consideration does not exceed £15,000 and the lease contains a statement certifying that the transaction thereby effected does not 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 other than rent exceeds £15,000 and subparagraphs (i) and (ii) do not apply:

for every £100, or fractional part of £100, of the consideration ... £2.00

- (iv) the amount or value of such consideration does not exceed £25,000 and the lease contains a statement certifying that the transaction thereby effected does not 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 other than rent exceeds £25,000 and subparagraphs (i) to (iii) do not apply:

for every £100, or fractional part of £100, of the consideration ... £3.00

- (v) the amount or value of such consideration does not exceed £50,000 and the lease contains a statement certifying that the transaction thereby effected does not 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 other than rent

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exceeds £50,000 and subparagraphs (i) to (iv) do not apply:

for every £100, or fractional part of £100, of the consideration ... £4.00

- (vi) the amount or value of such consideration does not exceed £60,000 and the lease contains a statement certifying that the transaction thereby effected does not 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 other than rent exceeds £60,000 and subparagraphs (i) to (v) do not apply:

for every £100, or fractional part of £100, of the consideration ... £5.00

- (vii) where subparagraphs (i) to (vi) do not apply:

(I) if the instrument contains a statement—

- (A) that the amount or value of the consideration other than rent does not exceed £150,000 and that the transaction thereby effected does not 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 other than rent exceeds £150,000, or

- (B) that no part of the consideration is attributable, or deemed to be attributable, to residential property

£6.00 for every £100, or fractional part of £100, of the consideration

- (II) if the instrument contains a statement that the provisions of subsection (6) of section 77 of this Act apply in relation to the lease:

for every £100, or fractional part of £100, of the consideration which is not deemed to be attributable to residential property £6.00

(III) if the amount or value of such consideration which is attributable to residential property or which is deemed to be attributable to residential property:

(A) does not exceed £150,000 and the instrument contains a statement certifying that the provisions of subsection (6) of section 77 of this Act apply in relation to that lease and that the amount or value of the aggregate consideration (within the meaning of that subsection) which is deemed to be attributable to residential property, or which would be deemed to be so attributable if the contents of residential property were considered to be residential property, does not exceed £150,000 £6.00 for every £100, or fractional part of £100, of the consideration

(B) does not exceed £160,000 and the instrument contains a statement certifying that the provisions of subsection (6) of section 77 of this Act do not apply in relation to that lease or that the provisions of that subsection do apply in relation to that lease and that the amount or value of the aggregate consideration (within the meaning of that subsection) which is deemed to be attributable to residential property, or which would be deemed to be so attributable if the contents of residential property were considered to be residential property, does not exceed £160,000, and clauses (I)(A) and (III)(A) do not apply £7.00 for every £100, or fractional part of £100, of the consideration

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(C) does not exceed £170,000 and the instrument contains a statement certifying that the provisions of subsection (6) of section 77 of this Act do not apply in relation to that lease or that the provisions of that subsection do apply in relation to that lease and that the amount or value of the aggregate consideration (within the meaning of that subsection) which is deemed to be attributable to residential property, or which would be deemed to be so attributable if the contents of residential property were considered to be residential property, does not exceed £170,000 and clauses (I)(A), (III)(A) and (III)(B) do not apply £8.00 for every £100, or fractional part of £100, of the consideration

(viii) the case is of any other kind whatsoever not hereinbefore described:

for every £100, or fractional part of £100, of the consideration ... £9.00.”.

Part I

Pre-Consolidation Amendments

The Income Tax Act, 1967**(No. 6 of 1967)**

1. The Income Tax Act, 1967, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 1(1), after the definition of “the National Debt Commissioners” there shall be inserted the following:

“ ‘ordinary share capital’ has the same meaning as in section 155 of the Corporation Tax Act, 1976;”.

(2) In section 58(1), for “sections 59 and 60” there shall be substituted “sections 58A, 59 and 60”.

(3) In section 61, after “charged” there shall be inserted “to tax under Case I or Case II of Schedule D”.

(4) In section 76(1), for paragraph (c) there shall be substituted the following:

“(c) to a deduction on account of any annuity or other annual payment (apart from annual interest) payable out of the income to a person not resident in the State,”.

(5) In section 77(5), for “as if references therein to income which arises or which arose were references to income which is or was so received” there shall be substituted “as if the reference therein to income arising was a reference to income which is so received”.

(6) In section 81(5)(b), for “in respect of county rate, municipal rate or other rate” there shall be substituted “in respect of any rate levied by a local authority”.

(7) In section 89(2), for “the first subsequent assessment, and so far as it cannot be so given then from the next assessment” there shall be substituted “the assessment for the first subsequent year of assessment and, so far as it cannot be so given, from the assessment for the next year of assessment”.

(8) In section 137, in Part II of the Table, after “Section 5 of the Finance Act, 1996” there shall be inserted the following:

“Section 15 of the Finance Act, 1996
Section 145 of the Finance Act, 1997”.

(9) In section 138B, with effect as on and from the 6th day of April, 1996—

(a) in subsection (2), after the definition of “proprietary director” there shall be inserted the following:

“ ‘specified employed contributor’ means a person who is an employed contributor for the purposes of

the Social Welfare (Consolidation) Act, 1993, but does not include a person—

(a) who is an employed contributor for those purposes by reason only of section 9(1)(b) of that Act, or

(b) to whom Article 81, 82 or 83 of the Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 (S.I. No. 312 of 1996), applies.”, and

(b) in subsection (2A)(a), for Clause (I) of subparagraph (i) there shall be substituted “(I) the individual is a specified employed contributor, or”.

(10) In section 142(1)(b), before “widowed mother” there shall be inserted “widowed father or”.

(11) In section 183, for subsection (7) there shall be substituted the following:

“(7) In this section, ‘personal reliefs’ means relief under any of the provisions specified in the Table to section 137.”.

(12) In section 197, for subsection (6) there shall be substituted the following:

“(6) In this section and in section 198, ‘personal reliefs’ means relief under any of the provisions specified in the Table to section 137 apart from relief under section 138A and section 4 of the Finance Act, 1991.”.

(13) In section 198, for paragraph (a) of subsection (1) there shall be substituted the following:

“(a) subject to subsection (2), the benefit flowing from the personal reliefs may be given either by means of reduction of the amount of the tax to be paid, or by repayment of any excess of tax which has been paid, or by both of those means, as the case requires, and shall be allocated to the husband and the wife—

(i) so far as it flows from relief under—

(I) sections 138 and 141 (other than subsection (2)),

(II) section 11 of the Finance Act, 1971, or

(III) section 8 of the Finance Act, 1974,

in the proportions of one-half and one-half,

(ii) so far as it flows from relief under section 138B, to the husband or to the wife according as the emoluments from which the deduction under that section is made are emoluments of the husband or of the wife,

(iii) so far as it flows from relief in respect of a child under section 141(2) or relief in respect of a dependent relative under section 142, to the

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husband or to the wife according as he or she maintains the child or relative, Sch.9

- (iv) so far as it flows from relief under section 142A or 145, to the husband or to the wife according as he or she made the payment giving rise to the relief,
- (v) so far as it flows from relief under—
 - (I) section 12 of the Finance Act, 1967,
 - (II) section 8 of the Finance Act, 1979,
 - (III) section 12 of the Finance Act, 1986,
 - (IV) section 44 of the Finance Act, 1986,
 - (V) section 4 of the Finance Act, 1989,
 - (VI) section 46 of the Finance Act, 1994,
 - (VII) section 6 of the Finance Act, 1995,
 - (VIII) section 7 of the Finance Act, 1995,
 - (IX) section 5 of the Finance Act, 1996,
 - (X) section 15 of the Finance Act, 1996,
 - (XI) section 69 of the Finance Act, 1996,
 - (XII) *section 57 of the Finance Act, 1997,*
 - (XIII) *section 145 of the Finance Act, 1997, or*
 - (XIV) *section 154 of the Finance Act, 1997,*in the proportions in which they incurred the expenditure giving rise to the relief,
- (vi) so far as it flows from relief under section 3 of the Finance Act, 1969, in the proportions in which they bear the cost of employing the person in respect of whom the relief is given,
- (vii) so far as it flows from relief under Chapter III of Part I of the Finance Act, 1984, in the proportions in which they subscribed for the eligible shares giving rise to the relief,
- (viii) so far as it flows from relief under section 35 of the Finance Act, 1987, in the proportions in which they made the relevant investment giving rise to the relief.”.

(14) In section 225—

- (a) for “is paid to him or to his widow or his child or any of his relatives or dependants” there shall be substituted “is paid to that person or to that person’s widow or widower or that person’s child or any of that person’s relatives or dependants”, and

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(b) for “under whom he held such office or by whom he was so employed,” there shall be substituted “under whom that person held such office or by whom that person was so employed,”.

(15) In section 239(4), for “the notice shall be conclusive” there shall be substituted “the notice shall be evidence until the contrary is proved”.

(16) In section 241(1)(b)(i), with effect as on and from the 6th day of April, 1996, for “15 per cent. of the capital expenditure incurred as aforesaid” there shall be substituted “15 per cent. of the actual cost of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement or reinstatement”.

(17) In section 241A, after subsection (2) there shall be inserted the following:

“(3) The preceding provisions of this section shall, as respects chargeable periods ending on or after the 6th day of April, 1994, and with any necessary modifications, apply in relation to professions, employments and offices as they apply in relation to trades.”.

(18) In section 256—

(a) in subsection (1), after “structure” there shall be inserted “includes expenditure on the refurbishment of the building or structure but”, and

(b) after subsection (2), there shall be inserted the following:

“(3) In this section, ‘refurbishment’, in relation to a building or structure, means any work of construction, reconstruction, repair or renewal, including the provision of water, sewerage or heating facilities carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure.”.

(19) In section 284(3), for “section 130 of the Industrial and Commercial Property (Protection) Act, 1927” there shall be substituted “section 77 of the Patents Act, 1992”.

(20) In section 304—

(a) in subsection (2), for “this Part” there shall be substituted “this Part, or in Part XIII or Chapter I of Part XV”,

(b) in subsection (3), for “this Part” there shall be substituted “this Part, Part XIII and Chapter I of Part XV”, and

(c) in subsection (6), for “this Part” there shall be substituted “this Part, or in Part XIII or Chapter I or II of Part XV”.

(21) In section 309(2), for “the first subsequent assessment, and so far as it cannot be so given then from the next assessment” there shall be substituted “the assessment for the first subsequent year of assessment and, so far as it cannot be so given, from the assessment for the next year of assessment”.

(22) In section 310(3), for “the first subsequent assessment, and so far as it cannot be so given then from the next assessment” there shall be substituted “the assessment for the first subsequent year of assessment and, so far as it cannot be so given, from the assessment for the next year of assessment” Sch.9

(23) In section 318, for subsection (1) there shall be substituted the following:

“(1) Subject to this Chapter, any claim made under section 307 for relief in respect of a loss sustained in any trade in any year of assessment (in this Chapter referred to as ‘the year of the loss’) may require the amount of the loss to be determined as if an amount equal to the capital allowances for the year of the loss were to be deducted in computing the profits or gains or losses of the trade in the year of the loss, and a claim may be so made notwithstanding that, apart from those allowances, a loss had not been sustained in the trade in the year of the loss.”.

(24) In section 319, for subsection (1) there shall be substituted the following:

“(1) The capital allowances for any year of assessment shall be taken into account under section 318(1) only if and so far as such capital allowances are not required to offset balancing charges for the year; and relief shall not be given by reference to the capital allowances so taken into account in respect of an amount greater than the amount non-effective in the year of assessment for which the claim is made.”.

(25) In section 349—

(a) for subsection (1)(b) there shall be substituted the following:

“(b) (i) any body of persons that, as respects the year 1983-84 or any earlier year of assessment, was granted exemption from income tax under the provisions of the Income Tax Act, 1967, for which this section was substituted, or

(ii) any company that, as respects any accounting period ending before the 6th day of April, 1984, was granted exemption from corporation tax under those provisions as applied for corporation tax by section 11(6) of the Corporation Tax Act, 1976,”.

(b) in subsection (2), after “income tax” there shall be inserted “or, as the case may be, corporation tax”, and

(c) in subsection (3), after “income tax” where it first occurs there shall be inserted “or, as the case may be, corporation tax”.

(26) For section 354 there shall be substituted the following:

“Exemption of child benefit.

354.—Child benefit payable under Part IV of the Social Welfare (Consolidation) Act, 1993, or any subsequent Act together with which that Act may be cited, shall be exempt from tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.”.

(27) In section 429(4), for the proviso there shall be substituted the following:

“Provided that where the amount of tax is altered by the determination of the judge or by giving effect to an agreement under subsection (6), then, if too much tax has been paid, the amount or amounts overpaid shall be repaid and (except where the interest amounts to less than £10) in so far as the amount to be repaid represents tax paid in accordance with this subsection it shall be repaid with interest at the rate of 0.6 per cent., or such other rate (if any) as stands prescribed by the Minister for Finance by regulations, for each month or part of a month from the date or dates of payment of the amount or amounts giving rise to the overpayment to the date on which the repayment is made.”.

(28) In section 441(1), for “shall be conclusive evidence” there shall be substituted “shall be evidence until the contrary is proved”.

(29) In section 446(1), for “shall be conclusive evidence” there shall be substituted “shall be evidence until the contrary is proved”.

(30) In section 450(2)—

(a) for the definition of “personal representatives” there shall be substituted the following:

“ ‘personal representative’, in relation to the estate of a deceased person, means his or her personal representative within the meaning of section 3(1) of the Succession Act, 1965, and includes any person who takes possession of or intermeddles with the property of the deceased and also includes any person having, in relation to the deceased, under the law of another country any functions corresponding to the functions for administration purposes under the law of the State of a personal representative within the meaning of that section, and references to personal representatives as such shall be construed as references to personal representatives in their capacity as having such functions as aforesaid;”.

and

(b) for paragraph (ii) of the definition of “charges on residue” there shall be substituted the following:

“(ii) general legacies, demonstrative legacies, and annuities and”.

(31) In section 466(3)(b), for “the person” there shall be substituted “the name and address of the person”.

(32) In section 474(1), for the words “in pursuance of” to the end of the subsection there shall be substituted the following:

“in pursuance of—

(a) section 472,

(b) section 59 of the Finance Act, 1970,

(c) section 92 of the Finance Act, 1973,

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(d) section 161 of the Finance Act, 1994,

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(e) section 39 of the Finance Act, 1996, or

(f) *section 144 of the Finance Act, 1997.*”.

(33) In section 484—

(a) in subsection (1), for “Schedule D or E” there shall be substituted “Schedule D, E or F”,

(b) in subsection (2), for “the Accountant General of Revenue” there shall be substituted “the Collector-General”,

(c) in subsection (3), for “the Accountant General of Revenue” there shall be substituted “the Collector-General”,

(d) in subsection (6), for “to the Accountant General or to the Collector” there shall be substituted “to the Collector-General”, and

(e) after subsection (6), there shall be inserted the following:

“(7) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.”.

(34) In section 492(1)(d), for “conclusive evidence” there shall be substituted “evidence until the contrary is proved”.

(35) In section 525(5), for paragraph (a) there shall be substituted the following:

“(a) In this section—

(i) ‘accounting period’ means an accounting period determined in accordance with section 9 of the Corporation Tax Act, 1976;

(ii) ‘basis period’ means the period on the profits or gains of which income tax falls to be finally computed under Schedule D or, where, by virtue of this Act, the profits or gains of any other period are to be taken to be the profits or gains of that period, that other period;

(iii) ‘office or employment’ means any office or employment whatever such that the emoluments of that office or employment, if any, are or would be chargeable to income tax under Schedule E, or under Case III of Schedule D, for any year of assessment.”.

(36) In Schedule 6, Part III, paragraph 1(2), for “any annual interest or any annuity or other annual payment” there shall be substituted “any annuity or other annual payment (apart from annual interest)”.

The Finance Act, 1967

(No. 17 of 1967)

2. In section 12(1) of the Finance Act, 1967, for the definitions of “hospital” and “practitioner” there shall be substituted the following, respectively:

“ ‘hospital’ means—

- (a) any institution which is provided and maintained by a health board for the provision of services pursuant to the provisions of the Health Acts, 1947 to 1996,
- (b) any institution in which services are provided on behalf of a health board pursuant to the provisions of the Health Acts, 1947 to 1996,
- (c) any hospital, nursing home, maternity home or other institution approved of for the purposes of this section by the Minister for Finance after consultation with the Minister for Health;”

“ ‘practitioner’ means any person who is registered in the register established under section 26 of the Medical Practitioners Act, 1978, or who is registered in the register established under section 26 of the Dentists Act, 1985, or, in relation to health care provided outside the State, any person who is entitled under the laws of the country in which the care is provided to practise medicine or dentistry there;”.

The Finance (Miscellaneous Provisions) Act, 1968

(No. 7 of 1968)

3. In section 9 of the Finance (Miscellaneous Provisions) Act, 1968—

- (a) in subsection (1), for “any pension or similar benefit” there shall be substituted “any pension, benefit or allowance”, and
- (b) in subsection (2), for the words from the commencement of the subsection to the end of paragraph (a) there shall be substituted the following:

“(2) This section shall apply to any pension, benefit or allowance which—

- (a) is given in respect of past services in an office or employment or is payable under the provisions of the law of the country in which it arises which correspond to the provisions of Chapter 12, 16 or 17 of Part II of, or Chapter 4 or 6 of Part III of, the Social Welfare (Consolidation) Act, 1993, or any subsequent Act together with which that Act may be cited, and”.

The Finance Act, 1970

Sch.9

(No. 14 of 1970)

4. The Finance Act, 1970, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 14(2), for “subsections (6) and (7) of the said section 241” there shall, as respects chargeable periods ending on or after the 6th day of April, 1996, be substituted “subsections (1)(b)(ii), (1A)(a) and (6) of the said section 241”.

(2) In section 19(2A), in the definition of “D”, for “section 256” there shall be substituted “section 256(1)”.

(3) In section 59(1), for “(other than securities to which section 467, 468, 471 or 473 of the Income Tax Act, 1967, applies)” there shall be substituted “(other than securities specified in the Table to section 144 of the *Finance Act, 1997*)”.

The Finance Act, 1972**(No. 19 of 1972)**

5. The Finance Act, 1972, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 15—

(a) in subsection (2)—

(i) in paragraph (a), for “the widow” there shall be substituted “the widow or the widower”, and

(ii) in paragraph (b), for “which concern him” there shall be substituted “which concern the employee”;

(b) in subsection (3)—

(i) for paragraph (b) there shall be substituted:

“(b) that any pension for any widow or widower of an employee who dies before retirement shall be a pension payable on the employee’s death of an amount that does not exceed two-thirds of any pension or pensions which, consonant with the condition in paragraph (a), could have been provided for the employee on retirement on attaining the specified age, if the employee had continued to serve until he or she attained that age at an annual rate of remuneration equal to his or her final remuneration,”

(ii) in paragraph (c), for “widow” there shall be substituted “widow or widower”,

(iii) for paragraph (d) there shall be substituted:

“(d) that any benefit for any widow or widower of an employee payable on the employee’s death after retirement is a

[No. 22.]

Finance Act, 1997.

[1997.]

pension such that the amount payable to the widow or widower does not exceed two-thirds of any pension or pensions payable to the employee,”

- (iv) in paragraph (e), for “his death” there shall be substituted “his or her death”, and
- (v) in paragraph (f), for “by commutation of his pension, a lump sum or sums not exceeding in all three-eighths of his final remuneration” there shall be substituted “by commutation of the employee’s pension, a lump sum or sums not exceeding in all three-eighths of his or her final remuneration”.

(2) In section 18(5), for “that employee’s wife or widow,” there shall be substituted “that employee’s spouse or widow or widower.”.

(3) In the First Schedule, Part III, for paragraph 4 there shall be substituted the following:

“4. (1) The repeal of Chapter II of Part XII of the Income Tax Act, 1967, by the Finance Act, 1972, shall, subject to subparagraph (2), not affect—

- (i) section 235(7) of the Income Tax Act, 1967,
- (ii) section 3(1)(b)(ii) of the Finance Act, 1968, or
- (iii) any other enactment which contains a reference to that Chapter or to any part of that Chapter.

(2) In so far as any of the provisions of section 226 of the Income Tax Act, 1967, apply for the purposes of any of the enactments specified in subparagraph (1), the definition of ‘ordinary share capital’ in section 1 of that Act (inserted by the *Finance Act, 1997*) shall apply for the purposes of those enactments to the exclusion of the definition of that term in section 226 of that Act.”.

The Finance Act, 1973

(No. 19 of 1973)

6. The Finance Act, 1973, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 25(1), for “subsection (7) of that section” there shall, as respects chargeable periods ending on or after the 6th day of April, 1996, be substituted “subsection (1)(b)(ii) of that section”.

(2) In section 34(3), for “section 92 of the Patents Act, 1964” there shall be substituted “section 77 of the Patents Act, 1992”.

The Finance (Taxation of Profits of Certain Mines) Act, 1974

(No. 17 of 1974)

7. The Finance (Taxation of Profits of Certain Mines) Act, 1974, is hereby amended in accordance with the following provisions of this paragraph.

[1997.]

Finance Act, 1997.

[No. 22.]

(1) In section 7, for subsection (4) there shall be substituted the following: Sch.9

“(4) (a) Subsections (3) and (4) of section 22 and sections 24 and 25 of the Finance Act, 1971, shall, subject to paragraph (b), apply as if for subsections (1) and (2) of section 22 of that Act, in so far as they apply to a person carrying on the trade of working a qualifying mine, there were substituted subsection (3) of this section.

(b) For the purposes of paragraph (a), section 24 of the Finance Act, 1971, shall apply as if for subsection (1) of that section there were substituted the following:

‘(1) For the purposes of ascertaining the amount of any allowance to be made to any person under section 241 of the Income Tax Act, 1967, in respect of expenditure incurred during the chargeable period on any qualifying machinery or plant, no account shall be taken of an investment allowance made in respect of that expenditure.’.

(c) Subsections (2), (3) and (3A) of section 297 of the Income Tax Act, 1967, shall apply in determining the chargeable period (being a year of assessment) for which an allowance is to be made under subsection (3) of this section.”.

(2) In section 8A(1), after paragraph (b), there shall be inserted the following:

“(c) Paragraph 1 of the First Schedule to the Corporation Tax Act, 1976, shall have effect for the interpretation of this section.

(d) Subsections (2), (3) and (3A) of section 297 of the Income Tax Act, 1967, shall apply in determining the chargeable period (being a year of assessment) for which an allowance is to be made under this section.”.

The Finance Act, 1974

(No. 27 of 1974)

8. The Finance Act, 1974, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 32(1)(c), for “repayment of tax under section 496 of the Income Tax Act, 1967, as amended by section 29,” there shall be substituted “a reduction in tax under *section 145* of the *Finance Act, 1997*.”.

(2) In section 59, for subsection (5) there shall be substituted the following:

“(5) In this section, ‘settlement’ and ‘settlor’ have the same meanings respectively as in section 131 of the Finance Act, 1996.”.

The Capital Gains Tax Act, 1975**(No. 20 of 1975)**

9. The Capital Gains Tax Act, 1975, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 2(1), for the definitions of “settlement” and “settlor” there shall be substituted the following:

“ ‘settlement’ and ‘settlor’ have the same meanings respectively as in section 131 of the Finance Act, 1996, and ‘settled property’ shall be construed accordingly;”.

(2) In section 25(9A)(a), for “widowed mother (whether or not she is so incapacitated)” there shall be substituted “widowed father or widowed mother (whether or not he or she is so incapacitated)”.

(3) In section 38(1), for “for references to income there shall be substituted references to capital gains” there shall be substituted “for references to income there shall be substituted references to chargeable gains, for references to this Act there shall be substituted references to the Capital Gains Tax Acts”.

The Corporation Tax Act, 1976**(No. 7 of 1976)**

10. The Corporation Tax Act, 1976, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 76, after subsection (6), there shall be inserted the following:

“(6A) For the purposes of subsection (6), the distributable income of a company for an accounting period shall be an amount determined by the formula—

$$(R - S) + T$$

where R, S and T have the same meanings respectively as in paragraph (a) of subsection (1) of section 45 of the Finance Act, 1980.”.

(2) (a) In section 84A, as inserted by the Finance Act, 1984, in subsection (6), for the definitions of “agricultural society” and “fishery society” there shall be substituted the following:

“ ‘agricultural society’ and ‘fishery society’ have respectively the meanings assigned to them by subsection (1CC8) (inserted by the Finance Act, 1992) of section 39 of the Finance Act, 1980;”, and

(b) in section 84A, as substituted by the Finance Act, 1989, in subsection (9), for the definitions of “agricultural society” and “fishery society” there shall be substituted the following:

“ ‘agricultural society’ and ‘fishery society’ have respectively the meanings assigned to them by subsection (1CC8) (inserted by the Finance Act, 1992) of section 39 of the Finance Act, 1980;”.

[1997.]

Finance Act, 1997.

[No. 22.]

(3) In section 93(7), for “section 64(4)” there shall be substituted Sch.9 “section 76(6A)”.

(4) In section 101, for subsection (6) there shall be substituted the following:

“(6) The provisions of the Corporation Tax Acts relating to—

(a) assessments to corporation tax,

(b) appeals against such assessments (including the rehearing of appeals and the statement of a case for the opinion of the High Court), and

(c) the collection and recovery of corporation tax,

shall apply in relation to a surcharge made under this section as they apply to corporation tax charged otherwise than under this section.”.

(5) In section 103(3), for “section 96(3)(h) of the Income Tax Act, 1967,” there shall be substituted “section 131 of the Finance Act, 1996,”.

(6) In section 124(6), for “Part XVI (Annual Allowances for Certain Capital Expenditure) of that Act” there shall be substituted “Parts XIII to XVI of that Act and in the Finance (Taxation of Profits of Certain Mines) Act, 1974,”.

(7) In section 145, for subsection (3) there shall be substituted the following:

“(3) Section 550 of the Income Tax Act, 1967, apart from the proviso to subsection (1), shall apply for the purposes of corporation tax as it applies for the purposes of income tax, and section 28 of the Finance Act, 1975, shall apply to interest which, under section 550 of the Income Tax Act, 1967, as applied by this section, is chargeable in respect of corporation tax.”.

(8) In section 160, for “Part VI of the Income Tax Act, 1967, by virtue of section 153(2) of that Act” there shall be substituted “any of the provisions specified in the Table to section 137 of the Income Tax Act, 1967, by virtue of subsection (2) or (3) of section 153 of that Act”.

(9) In section 162 (5), for “with the substitution in section 101(2)” there shall be substituted “with the substitution in subsections (2) and (3) of section 101”.

(10) In section 170(7), for “section 64(4)” there shall be substituted “section 76(6A)”.

The Finance Act, 1980

(No. 14 of 1980)

11. The Finance Act, 1980, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 39 (1CC), with effect from the 1st day of January, 1994, for subsection (I) there shall be substituted the following:

[No. 22.]

Finance Act, 1997.

[1997.]

Sch.9

“(I) (A) an employment grant was made by the Industrial Development Authority under section 25 of the Industrial Development Act, 1986, or

(B) an employment grant was made by the Industrial Development Agency (Ireland) or Forbairt, as may be appropriate, under section 12(2) of the Industrial Development Act, 1993, or”.

(2) In section 45(1)(a), in the definition of “R”, for “or section 71 of the Corporation Tax Act, 1976” there shall be substituted “section 71 of the Corporation Tax Act, 1976, or section 25 of the Finance Act, 1996”.

The Finance Act, 1982

(No. 14 of 1982)

12. The Finance Act, 1982, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 8—

(a) in subsection (1), for subparagraph (I) of paragraph (i) of the definition of “the specified rate” there shall be substituted the following:

“(I) the interest which is paid on the preferential loan qualifies for relief under *section 145* of the *Finance Act, 1997*, or”, and

(b) in subsection (4), for “for the purposes of sections 76(1) and 496 of, and paragraph 1(2) of Part III of Schedule 6 to, the Income Tax Act, 1967” there shall be substituted “for the purposes of *section 145* of the *Finance Act, 1997*”.

(2) For section 18 there shall be substituted the following:

“Exemption of employment grants.

18.—(1) This section shall apply to a grant made, whether before or after the passing of the *Finance Act, 1997*, being an employment grant under—

(a) section 25 of the Industrial Development Act, 1986, or

(b) section 12 of the Industrial Development Act, 1993.

(2) A grant to which this section applies shall be disregarded for all the purposes of the Tax Acts.”.

(3) In section 58(3), for “after any deduction or addition by virtue of section 31A of the Finance Act, 1975” there shall be substituted “after any deduction by virtue of section 134 of the Finance Act, 1996”.

The Finance Act, 1984

Sch.9

(No. 9 of 1984)

13. The Finance Act, 1984, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 12(7)(b), for “as respects sections 15, 16 and 26” there shall be substituted “as respects sections 15, 16, 22 and 26”.

(2) In section 13A(1A)—

(a) after “relief shall not be given in respect of” there shall be inserted “the excess of”, and

(b) in the definition of “B”, after “the date of the relevant issue” there shall be inserted “(other than the amount raised through the relevant issue)”.

(3) In section 13B(1)—

(a) in the proviso, after “the date of the relevant issue” there shall be inserted “(other than the amount raised through the relevant issue)”, and

(b) in the definition of “A” in the Table, after “the date of the relevant issue” there shall be inserted “(other than the amount raised through the relevant issue)”.

(4) In section 14(1), for paragraph (a) there shall be substituted the following:

“(a) An individual qualifies for relief if he subscribes on his own behalf for eligible shares in a qualifying company and is not at any time in the relevant period connected with the company.”.

(5) In section 15(3C), for paragraph (b) there shall be substituted the following:

“(b) unless and until it shows to the satisfaction of the Revenue Commissioners that a certificate referred to in the said subsection (2D) has been given by the Minister for Arts, Culture and the Gaeltacht to the company in relation to such qualifying recording or qualifying recordings;

but, where a certificate referred to in the said subsection (2D) is revoked by the Minister for Arts, Culture and the Gaeltacht, the company shall not be a qualifying company.”.

The Finance Act, 1986**(No. 13 of 1986)**

14. In section 33A(3) of the Finance Act, 1986, for “apart from that subsection” there shall be substituted “apart from subsection (2)”.

The Finance Act, 1988

(No. 12 of 1988)

15. In section 12 of the Finance Act, 1988—

(a) in subsection (7), for “at which it would carry interest if it were an amount of tax repaid under the provisions of section 30(4) of the Finance Act, 1976” there shall be substituted “of 0.6 per cent., or such other rate (if any) as stands prescribed by the Minister for Finance by regulations, for each month or part of a month for the period from the date or dates of the payment of the amount or amounts giving rise to the overpayment, as the case may require, to the date on which the repayment is made”, and

(b) after subsection (11), there shall be inserted the following:

“(12) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

The Finance Act, 1992

(No. 9 of 1992)

16. The Finance Act, 1992, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 45(1)(a), in the definitions of “base tax” and “tax liability” for “exclusive of the part of the company’s profits attributable to chargeable gains” there shall be substituted “exclusive of the corporation tax on the part of the company’s profits attributable to chargeable gains”.

(2) In section 84(11), for “Subsections (2) and (3)” there shall be substituted “Subsections (2), (3) and (3A)”.

The Finance Act, 1993

(No. 13 of 1993)

17. The Finance Act, 1993, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 14—

(a) in subsection (1)(a), for the definition of “ordinary shares” there shall be substituted the following:

“ ‘ordinary shares’ means shares forming part of a company’s ordinary share capital;”, and

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Finance Act, 1997.

[No. 22.]

(b) in subsection (5)(b), after “eligible shares” there shall be inserted “in qualifying companies”.

(2) In section 35(1)(a), for the definition of “society” there shall be substituted the following:

“ ‘society’ means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978, which is an agricultural society or a fishery society within the meaning of subsection (1CC8) (inserted by the Finance Act, 1992) of section 39 of the Finance Act, 1980.”.

The Finance Act, 1994

(No. 13 of 1994)

18. The Finance Act, 1994, is hereby amended in accordance with the following provisions of this paragraph.

(1) In section 14(3)(b)(i), for “under that subsection” there shall be substituted “under subsection (5A) of that section”.

(2) In the proviso to section 45(2), after “where any premium or other sum which is payable (directly or indirectly),” there shall be inserted “under a qualifying lease, or otherwise under the terms subject to which the lease is granted,”.

(3) In section 66(7)(a), for “subsections (8) and (8A)” there shall be substituted “subsection (8)”.

The Finance Act, 1995

(No. 8 of 1995)

19. In section 48(5) of the Finance Act, 1995, for “paragraph (a) of the definition of ‘qualifying premises’ ” there shall be substituted “paragraph (a) of the definition of ‘qualifying tourism facilities’ ”.

The Finance Act, 1996

(No. 9 of 1996)

20. In the proviso to section 68(2) of the Finance Act, 1996, after “where any premium or other sum which is payable (directly or indirectly),” there shall be inserted “under a qualifying lease, or otherwise under the terms subject to which the lease is granted,”.

21. The amendments in this Part of this Schedule shall not, except where otherwise expressly provided in those amendments, affect the liability to income tax or capital gains tax for years of assessment ending on or before the 5th day of April, 1997, or the liability to corporation tax for accounting periods ending on or before that date, or the assessment, collection or recovery of any of those taxes or of interest on those taxes or other proceedings relating to those taxes or that interest.

Part II

Pre-Consolidation Repeals

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 6 of 1967	Income Tax Act, 1967.	<p>In section 1(1), the definitions of "county rate" and "municipal rate".</p> <p>Section 46. Section 68(2). Section 82. Section 106. Section 177.</p> <p>In section 307(1), the words "other than farming" and the words " or in farming in a case in which this section applies."</p> <p>Section 307(1A).</p> <p>In section 317(2), paragraph (a), and the matter from "In paragraph (a)" to the end.</p> <p>In section 340(2), paragraphs (e) and (f).</p> <p>Section 365. Section 366. Section 419. Section 467. Section 467A. Section 467B. Section 467C. Section 468(1) and (2). Section 469. Section 471. Section 472(2). Section 473. Section 484(5). Section 486(3). Section 496. Section 550(2A). Schedule 1, Part II. In Schedule 18, paragraph VIII, the first subparagraph.</p>
No. 19 of 1972	Finance Act, 1972.	Section 11.
No. 27 of 1974	Finance Act, 1974.	<p>In section 16(5), the definition of "ordinary share capital".</p> <p>Section 38. Section 44. Section 52. Section 54.</p>
No. 20 of 1975	Capital Gains Tax Act, 1975.	<p>In section 32(4)(b), the words " , before any deduction under section 13(1) of the Corporation Tax Act, 1976,".</p> <p>Section 49(7).</p>
No. 7 of 1976	Corporation Tax Act, 1976.	<p>Section 6(4) (including the proviso).</p> <p>In section 66A(3), the proviso.</p> <p>Section 66A(4).</p> <p>In section 76A(2), the proviso.</p> <p>In section 76(6), the words "(as defined in section 64(4))".</p> <p>Section 76A(3).</p> <p>In section 152(3), the words "and subsections (2) and (2A)".</p>
No. 16 of 1976	Finance Act, 1976.	Section 25. Section 30.
No. 14 of 1980	Finance Act, 1980.	Section 7.
No. 16 of 1981	Finance Act, 1981.	Section 6. Section 18.
No. 14 of 1982	Finance Act, 1982.	Section 21. Section 22.

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 15 of 1983	Finance Act, 1983.	In section 50(11), in paragraph (d), the words "and subsections (2) and 2(A)" and paragraph (e).
No. 13 of 1986	Finance Act, 1986.	Section 8. Part I, Chapter III. In section 33(9), in paragraph (d), the words "and subsections (2) and 2(A)" and paragraph (e). Section 46(4).
No. 10 of 1987	Finance Act, 1987.	Section 6. Section 35(22).
No. 12 of 1988	Finance Act, 1988.	Section 19(1). Section 21(6). Section 22.
No. 10 of 1989	Finance Act, 1989.	Section 7. In the First Schedule, in paragraph 1(7) (d), the words "and subsections (2) and 2(A)" and paragraph 1(7)(e).
No. 13 of 1993	Finance Act, 1993.	Section 5. Section 38. Section 49.
No. 13 of 1994	Finance Act, 1994.	Section 6. Section 66(8A).
No. 9 of 1996	Finance Act, 1996.	Section 15(6).

The repeals in this Part of this Schedule shall not affect the liability to income tax or capital gains tax for years of assessment ending on or before the 5th day of April, 1997 or the liability to corporation tax for accounting periods ending on or before that date, or the assessment, collection or recovery of any of those taxes or of interest on those taxes or other proceedings relating to those taxes or that interest.

TENTH SCHEDULE

Section 26.

Income Tax and Corporation Tax : Reliefs for Certain Enterprise Areas

Part I

Interpretation

In this Schedule—

“thoroughfare” includes any canal, lane, motorway, railway line and road;

a reference to a line drawn along any thoroughfare is a reference to a line drawn along the centre of that thoroughfare;

a reference to the point where any thoroughfare intersects, joins or traverses any other thoroughfare is a reference to the point where a line drawn along the centre of one thoroughfare would be intersected, joined or traversed by a line drawn along the centre of the other thoroughfare;

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a reference to a point where any thoroughfare is intersected by the projection of a boundary is a reference to the point where a line drawn along the centre of such thoroughfare would be intersected by the projection of such boundary.

Part II

Description of Cherry Orchard/Gallanstown Enterprise Area

That part of the county borough of Dublin and the administrative county of South Dublin bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the Grand Canal is traversed by the M50 motorway, then continuing in an easterly direction along the Grand Canal to the point where it is traversed by the unnamed road to the east of the Dublin Corporation Waterworks installation, then continuing in a north-westerly direction along the said unnamed road for a distance of 250 metres, then continuing in a straight undefined line in a north-easterly direction to a point on the South Western Railway Line which is 950 metres east of the point where the said railway line is traversed by the M50 motorway, then continuing in a westerly direction along the said railway line to the point where it is traversed by the M50 motorway, then continuing in a south-easterly direction along the said motorway to the first-mentioned point.

Part III

Description of Finglas Enterprise Area

That part of the county borough of Dublin and the administrative county of Fingal bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where Jamestown Road is intersected by the western projection of the northern boundary of Poppintree Industrial Estate, then continuing in a northerly direction along Jamestown Road to the point where it joins St. Margaret’s Road, then continuing in an easterly direction along St. Margaret’s Road for a distance of 110 metres, then continuing in a straight undefined line due north to the point where it intersects the M50 motorway, then continuing in an easterly direction along the M50 motorway to the point where it is traversed by the unnamed road immediately to the west of the playing fields on the northern side of St. Margaret’s Road, then continuing in a southerly direction along the said unnamed road to the point where it joins St. Margaret’s Road, then continuing in an easterly direction along St. Margaret’s Road for a distance of 115 metres, then continuing in a straight undefined line in a southerly direction to the point where Balbutcher Lane is intersected by the eastern projection of the northern boundary of Poppintree Industrial Estate, then continuing in a westerly direction along the last-mentioned projection and boundary and the western projection of the last-mentioned boundary to the first-mentioned point.

*Description of Rosslare Harbour Enterprise Area**Ballygerry Area*

That part of the administrative county of Wexford bounded by a line commencing at the point where the N25 road intersects the Ballygerry Road at Kilrane (in this description referred to as “the first-mentioned point”), then continuing initially in a northerly direction along the said Ballygerry Road to the point where it next joins the N25 road, then continuing initially in a southerly direction along the said N25 road to the first-mentioned point.

Harbour Area

That part of the town of Rosslare Harbour in the administrative county of Wexford bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the high-water mark joins the south-eastern end of the pier wall to the north-west of the premises known locally as the Old Customs Shed, then continuing in a north-westerly direction along the said pier to the point where it intersects the eastern end of the new revetment, then continuing in a south-westerly direction along the said revetment to the point which is a distance of 150 metres from the western end of the said revetment, then continuing in a straight undefined line due south to the point where it intersects the railway track, then continuing in a north-easterly direction along the said railway track to the point where it is intersected by the southern projection of the western boundary of the said Old Customs Shed property, then continuing in a northerly direction along the last-mentioned projection and boundary to the point where it joins the north-western boundary of the said Old Customs Shed property, then continuing in a north-easterly direction in a straight undefined line to the first-mentioned point.