AN BILLE AIRGEADAIS, 2012
FINANCE BILL 2012

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As initiated

EXPLANATORY MEMORANDUM

PART 1

Income Levy, Universal Social Charge, Income Tax, Corporation Tax and Capital Gains Tax

Chapter 1

Interpretation

Section 1 contains a definition of ‘‘Principal Act’’ (i.e. the Taxes Consolidation Act 1997) for the purposes of Part 1 of the Bill relating to income levy, universal social charge, income tax, corporation tax and capital gains tax.

Chapter 2

Universal Social Charge

Section 2 comprises a number of changes to the universal social charge (USC) and gives effect to the Budget announcement to increase the exemption threshold for USC from €4,004 to €10,036 for the year of assessment 2012 and subsequent years. It contains a number of technical amendments principally in relation to the application of the USC to share based remuneration, exclusion orders and relief clawback as well as consequential changes arising from other sections of the Bill.

Section 3 introduces a new section 531AAE into Part 18D of the Taxes Consolidation Act 1997. This new section provides that, if specific conditions are met, an additional amount of Universal Social Charge (USC) is to be paid by certain individuals with effect from 1 January 2012. The additional charge applies where the annual income for USC purposes is €100,000 or greater and is levied at the rate of 5 per cent on that part of the income which is sheltered by ‘‘specified property reliefs’’ in each year. For the purposes of this section ‘‘specified property reliefs’’ essentially means any of the accelerated industrial buildings allowances which are part of the property and area-based property incentive schemes as well as the tax relief for residential lessors (commonly known as section 23-type relief) which form part of these same incentive schemes. Residential owner-occupier relief is unaffected.

Chapter 3

Income Levy and Income Tax

Section 4 amends sections 128A, 128E and 985A of the Taxes Consolidation Act 1997.

Section 128A is amended in respect of certain employees and directors who had deferred the payment of income tax on share option gains. It provides that where such individuals dispose of shares, half of the gains (after paying any relevant income tax, universal social charge and PRSI on those gains) must go to pay down the outstanding income tax liability until that liability has been cleared.

Section 128E is amended to provide for a refund of income levy and universal social charge where shares are forfeited, similar to that which applies in respect of income tax.

Section 985A is amended to allow an employer to withhold or sell sufficient shares, where they have been awarded to employees, to fund the income tax charge on that award of shares, before transferring the balance of the shares to the employee. An employer is only entitled to withhold or sell shares where the employee does not otherwise provide the employer with sufficient cash to pay the income tax charge.

Section 5 amends Schedule 23A to the Taxes Consolidation Act 1997 to include professional cricket players in the list of specified occupations and professions. This will enable them to avail of tax relief on retirement for certain income. Inclusion on the list means they can also avail of tax relief on pension contributions made under Section 787(8A). When the legislation was introduced cricket was an amateur sport in Ireland.

Section 6 provides for changes to the age-related income tax credit for 2012. The credits will be in five-year bands for individuals aged between 60 and 84 and a final band for individuals aged 85 and over. This is the final year of the ‘‘interim’’ tax-based scheme. The section also includes a number of consequential minor technical amendments.

Section 7 amends section 126 of the Taxes Consolidation Act 1997 in order to remove the tax exemption that applies to the first 36 days of Illness Benefit and Occupational Injury Benefit per annum payable by the Department of Social Protection.

Section 8 inserts a new section 472D into the Taxes Consolidation Act 1997 to provide for a relief for key employees engaged in research and development activities as announced in the Budget.

This section sets out how an individual who is a key employee of a company engaged in research and development activities can avail of a reduction in his or her income tax liability as a result of the surrender by his or her employer company of the R&D tax credit to which that company was entitled. The section also provides that such employees can only benefit from the reduction to the extent that the amount of income tax payable on his or her total income for the tax year to which the claim relates is not less than 23 per cent. (The relief arrangements will not impact on an employee's liability to the Universal Social Charge or to PRSI).

Section 9 amends section 244 to provide for a new rate of mortgage interest relief of 30 per cent in respect of qualifying interest paid by those who took out a qualifying loan to purchase their first principal private residence in the period 2004 to 2008 (both years inclusive).

The section also provides for the extension of the rates and ceilings of relief that apply to those who took out a qualifying loan during the period 1 January 2004 to 31 December 2011 (but not the new 30 per cent rate of relief) to those who take out a qualifying loan in 2012 and abolishes the rates and ceilings of relief that were to apply for qualifying loans taken out in 2012.

Section 10 amends section 472A of the Taxes Consolidation Act 1997 which relates to the Revenue Job Assist scheme. The section extends the scope of the scheme such that those signing for PRSI credits can also qualify.

Section 11 amends section 473A of the Taxes Consolidation Act 1997 which relates to tax relief for fees paid for third-level education. It provides for an increase in the amount which is disregarded from €2,000 to €2,250 per claim, where any of the fees are in respect of a full-time course, and from €1,000 to €1,125 per claim where all of the fees relate to part-time courses. This is to reflect the Budget change in relation to the student contribution.

Section 12 inserts a new section 823A into the Taxes Consolidation Act 1997 to provide for a limited tax deduction for individuals who temporarily carry out the duties of their office or employment in Brazil, Russia, India, China or South Africa.

Section 13 provides for the cessation of section 825B of the Taxes Consolidation Act 1997 for the tax year 2012 and subsequent tax years.

The section also provides for a technical amendment to section 825B.

Section 14 inserts a new section into the Taxes Consolidation Act 1997 to provide for a Special Assignee Relief Programme as announced in the Budget. This Programme will exempt 30 per cent of income between €75,000 and €500,000 from income tax for employees who are assigned to work in the State for a minimum period of 12 months by companies located in States with which the State has a double taxation treaty, to work in the Irish-based operations of their employer. The relief will be available for a maximum period of 5 years.

The Programme is being introduced for a 3 year period ending on 31 December 2014.

Section 15 amends sections 372AP, 384 and 485C of the Taxes Consolidation Act 1997. The provision sets out to make three changes to the legislation dealing with certain of the property incentive reliefs.

The first change is to repeal all of the restrictions to the tax relief for lessors (commonly known as section 23-type relief) which were introduced in section 24 of the Finance Act 2011. These restrictions were subject to the making of a commencement order, which will not now be made. It is, therefore, appropriate that these uncommenced provisions should be repealed. In this regard, the relevant section of the Taxes Consolidation Act 1997, section 372AP, reverts back to how it read prior to the 2011 changes.

The second change is to sections 372AP(7) and 384 of the Taxes Consolidation Act 1997 to correct an anomaly created by an undesired interaction between the application of what is known as the High Earners Restriction (provided for in Chapter 2A of Part 15 of the Taxes Consolidation Act 1997) in the context of a ‘‘clawback’’ of section 23-type relief. In certain circumstances, this interaction can cause an individual to be reclassified as a high earner when, in fact, they are not.

The third change is to section 485C of the Taxes Consolidation Act 1997 (High Earners Restriction) to resolve what is essentially the same anomalous interaction as is referred to in the previous paragraph between the High Earners Restriction, but this time in the context of balancing charges arising under capital allowances.

Section 16 replaces the existing Chapter 4A of Part 12 of the Taxes Consolidation Act 1997 with a new Chapter 4A (Termination of carry forward of certain losses). The existing Chapter 4A, which was introduced in section 23 of the Finance Act 2011, and which provided for limits on the use of certain losses, was never commenced and is now being repealed.

The new Chapter 4A applies only to passive investors and ensures that any unused accelerated capital allowances, arising under any of the property or area-based tax incentive schemes that have existed and which are carried forward into the chargeable period immediately after the chargeable period in which the tax life of the building or structure has ended, will be lost. Where the tax life of a building has already ended or ends at any time up to the end of 2014, then the loss of these unused capital allowances will only take place for chargeable periods ending in 2015 and subsequently.

Section 17 makes a number of amendments to certain pension-related provisions in Part 30 of the Taxes Consolidation Act 1997.

It confirms the Budget Day announcement of an increase in the annual imputed distribution applying to the assets in an Approved Retirement Fund (ARF) from 5 per cent to 6 per cent in respect of ARFs with asset values in excess of €2 million and the extension of the imputed distribution regime to assets in vested PRSAs (i.e. PRSAs where benefits have commenced) on the same basis. A new section 790D is being inserted into Chapter 4 of Part 30 that will deal with imputed distributions for both ARFs and vested Personal Retirement Savings Accounts (PRSAs) on a composite basis. Under the new provision, where the aggregate value of the assets held in an ARF(s) and/or a vested PRSA(s) on the specified date (i.e. 30 November each year) is €2 million or less, the rate of the imputed distribution will be 5 per cent of the aggregate value of the assets and where the aggregate value is in excess of €2 million the rate will be 6 per cent of the entire aggregate value (not just the portion that exceeds €2 million).

The new provision applies to ARFs created on or after 6 April 2000 (when the existing gross roll-up regime for ARFs was introduced) and to PRSAs vested on or after 7 November 2002 (the date of introduction of PRSAs) where the ARF/PRSA holder is 60 years of age or over for the whole of a tax year. As with the previous imputed distribution regime for ARFs, actual distributions made during the year may be deducted from the imputed distribution to arrive at the net imputed amount, if any, to be regarded as a distribution.

Where an individual has a number of ARFs and/or vested PRSAs which are not all managed by the same qualifying fund manager/PRSA administrator, provision is made for a nominee manager to be appointed for the purposes of operating the new provision. Where, in those circumstances, the aggregate asset value exceeds €2 million the appointment of a nominee is compulsory. Where a nominee is appointed, the nominee must act as if all of the ARFs and/or all of the vested PRSAs and any actual distributions from them were, respectively, managed and distributed by the nominee in that tax year. The nominee must then account for any tax due on the overall net imputed amount in the normal way.

The new regime will apply for the tax year 2012 and subsequent tax years.

The section also confirms the Budget day announcement of an increase from 20 per cent to 30 per cent in the rate of final liability tax applying to a ‘‘post-death’’ distribution from an ARF to a child aged 21 or over. This change will apply from the date of passing of the Finance Act 2012.

The section makes provision to mitigate the harsher impacts at retirement for certain individuals resulting from the significant reduction to €2.3 million in the maximum allowable pension fund at retirement for tax purposes (the Standard Fund Threshold or SFT) given effect to in Budget and Finance Act 2011. The section does not remove the tax liability arising on a chargeable excess but provides for more flexible recovery of the tax payable.

Where the capital value of an individual’s pension benefits at retirement exceeds the reduced SFT of €2.3 million, or a higher Personal Fund Threshold (PFT) if applicable, a ‘‘chargeable excess’’ arises which suffers an immediate ring-fenced tax charge of 41 per cent, with further tax implications when the individual’s pension benefits are drawn down. Currently, the administrator of a pension scheme is obliged to pay any tax due on a chargeable excess ‘‘up-front’’ and to recover it from the benefits paid to the individual under the scheme.

The current arrangements give rise to particular difficulties in the context of public sector schemes due to the fact that the administrator of such schemes is required, in order to be recompensed for tax paid ‘‘upfront’’ on a chargeable excess, to appropriate, for that purpose, sufficient of the scheme member’s entitlements, both lump sum and pension, over a very short period. The new arrangements provide a more structured and flexible reimbursement regime as follows:

- the amount of reimbursement from the lump sum is limited to a maximum of 50 per cent of the value of the lump sum, or a higher percentage if agreed between the individual and the administrator,

- the balance, if any, of the amount to be reimbursed is to be recovered from the gross annual pension payable to the individual over a period to be agreed between the individual and the administrator up to a maximum of 10 years, or

- by the discharge of the outstanding balance by way of a payment by the individual to the administrator (e.g. from own resources or by way of a tax-free distribution from an ARF beneficially owned by the individual), or

- by a combination of a reduction in pension and payment of a sum by the individual.

These changes come into effect from 8 February 2012.

The section addresses an unintended double taxation anomaly in the 2011 legislation where tax at the standard rate arises on a lump sum paid to an individual under a pension arrangement (i.e. on the excess of a lump sum above the tax-free lifetime limit of €200,000) and tax also arises on a chargeable excess in relation to that individual (the amount of which will have been influenced by the lump sum). The pension scheme administrator is required to offset the tax on the lump sum against the chargeable excess tax. Any amount of the lump sum tax that remains ‘‘unused’’ can be carried forward for offset against tax on the individual’s next chargeable excess (if any). This change applies in respect of a chargeable excess arising and a lump sum paid on or after 8 February 2012.

In situations where individuals have dual private sector and public service pension arrangements particular difficulties arise from the operation of the SFT regime. This is because, unlike in the private sector where there is the ability to avoid or minimise any breaching of the SFT, or an individual’s PFT, by ceasing to contribute to or accrue benefits under a pension scheme and taking compensation in some other manner, affected individuals in the public service have no control over their accrual of public service pension entitlements and, as a result, significant chargeable excesses could arise in certain circumstances.

The section introduces a one-off opportunity for individuals who meet the conditions to encash their private pension rights, in whole or in part, from age 60, with a view to avoiding or minimising the chargeable excess that would otherwise arise when the public service pension crystallises. The exercise of the option will attract tax at the point of encashment on the full value of the rights at a ring-fenced rate of 41 per cent plus USC usually at the rate of 7 per cent, depending on age. This means that no tax-free lump sum will be available and that tax relief granted is repaid. The private pension rights encashed on this basis would not count towards using up the SFT or an individual’s PFT.

These changes come into effect from 8 February 2012, with transitional arrangements for affected individuals who may already have drawn down their private sector pensions before that date but remain members of a public sector scheme on or after that date.

Chapter 4

Income Tax, Corporation Tax and Capital Gains Tax

Section 18 amends section 176 of the Taxes Consolidation Act 1997. That section relates to the purchase of unquoted shares by the company that issued those shares or its subsidiary. The amendment corrects an incorrect reference in the section to the period within which inheritance tax must be paid.

Section 19 makes a number of amendments to Part 23 of the Taxes Consolidation Act 1997 which deals with the tax treatment of farmers. The amendments relating to carbon tax and registered farm partnerships were announced in the Budget Statement.

Firstly, it introduces a new section 664A which provides for a double deduction in computing the profits of a trade of farming for the increase in the rate of carbon tax on farm diesel due to come into effect on 1 May 2012.

Secondly, it amends the Table to section 667B which provides that an individual is entitled to enhanced stock relief of 100 per cent for a period of four years commencing in the year he or she becomes a "qualifying farmer", within the meaning of that section. Subject to the individual's circumstances, a "qualifying farmer" must hold a qualification (or the equivalent) set out in the Table to section 667B. The amendment adds a new qualification — Level 6 Specific Purpose Certificate in Farm Administration — to the qualifications in paragraph 1 of the Table.

Finally, the section introduces a new section 667C which provides for an enhanced 50 per cent rate of stock relief for the partners in registered farm partnerships and a 100 per cent rate of stock relief for certain "qualifying farmers", within the meaning of section 667B of the Tax Consolidation Act 1997, who are partners in such partnerships.

This scheme of stock relief, which is subject to clearance with the European Commission under State Aid rules and which is to apply until December 2015, will come into operation on such day as the Minister for Finance may appoint by Ministerial Order.

Section 20 amends Schedule 13 to the Taxes Consolidation Act 1997 in order to update the list of accountable persons who are obliged to operate Professional Services Withholding Tax (PSWT). The amendments include the addition of the name of one body, the deletion of the names of four bodies and a change of name for two bodies.

Section 21 provides for revisions to the legislative framework underpinning the new modernised electronic Relevant Contract Tax (e-RCT) regime that came into effect on 1 January 2012. The revisions are primarily driven by refinement throughout 2011 regarding the practical application of the new regime.

Most of the changes are of a technical nature and/or involve clarification of procedural matters. The following are some of the more substantive changes:

- clarification as to the basis on which RCT credits will be treated as a payment on account of income tax or corporation tax and the way offsets of RCT credits against other tax liabilities will work,

- clarification that the penalty provision in section 530F of the Taxes Consolidation Act 1997 will apply where a principal fails to notify Revenue in advance of making payment to a subcontractor,

- clarification that RCT applies where a relevant contract is entered into for the installation, alteration or repair of systems of telecommunications,

- clarification in a number of sections of the matters which may be dealt with in regulations.

Section 22 amends section 482 of the Taxes Consolidation Act 1997 such that in order for any future expenditure on significant buildings and gardens to qualify for tax relief, the relevant building and/or garden will be required to open for public visits during National Heritage Week as part of their minimum required number of opening days.

Section 23 amends section 481 of the Taxes Consolidation Act 1997 which provides relief for investment in films. Relief is given where a company or individual invests in a qualifying film that is produced by a qualifying company. On completion of such film the company must provide the Revenue Commissioners with a compliance report as referred to in section 481(2C)(*d*)(iii) of the Taxes Consolidation Act 1997. The effect of the amendment will be to impose a penalty on the directors or secretary of the company where a compliance report is not filed with the Revenue Commissioners within 6 months after the completion of the film.

A new paragraph (*e*) is inserted into subsection (2C) to provide that a company shall not be a qualifying company where, any amount of the sums invested by the investors are repaid, before the Revenue Commissioners have notified the qualifying company in writing that a compliance report has been received. A technical drafting amendment removes paragraph (ba) from subsection (2C) and inserts those measures separately into a new subsection (2CA).

Section 24 extends the provisions of section 486B of the Taxes Consolidation Act 1997 which deals with relief for companies for investment in renewable energy generation projects, for a further 3 years. These provisions will now expire on 31 December 2014.

Section 25 amends section 33(2) of the Finance Act 2011 and Part 16 (as amended by section 33(1)(*a*) of the Finance Act 2011) of the Taxes Consolidation Act 1997.

State Aid approval by the European Commission of the Employment and Investment Incentive (EII), which replaced the Business Expansion Scheme (BES), was conditional on certain legislative amendments.

The section effectively replaces references to "carrying on relevant trading activities principally in the State" to carrying on such activities from a "fixed place of business in the State".

The section also amends section 33(2) of the Finance Act 2011 to commence the EII scheme in respect of shares issued on or after 25 November 2011. In addition, the amendment provides that where shares issued between 25 November 2011 and 31 December 2011, such shares may continue to qualify for relief under the BES provisions where an election to that effect is made in writing to the Revenue Commissioners before 31 December 2011.

Section 26 amends sections 766 and 766A of the Taxes Consolidation Act 1997 to provide for changes to the research and development (R&D) tax credit scheme announced in Budget 2012 and other changes.

Section 766 provides for a 25 per cent tax credit for incremental expenditure on certain R&D activities over expenditure in a base year (2003) defined as the "threshold amount". The section makes a number of amendments to section 766 as follows:

- The first €100,000 of group expenditure on R&D is excluded from the incremental basis of calculation. The tax credit will be due on such expenditure at 25 per cent without reference to the

2003 "threshold amount". The tax credit in respect of group expenditure in excess of €100,000 will continue to be allowed on an incremental basis with reference to the 2003 threshold amount.

- The definition of "expenditure on research and development" is amended to clarify that expenditure incurred by a company in the managing or control of research and development activities will not qualify for the tax credit unless such activities are carried on by the company itself.

- The section provides for a company to surrender all or part of the R&D tax credit, which it could otherwise have used to reduce current corporation tax, to one or more key employees as the company may specify. A new section 472D of the Taxes Consolidation Act 1997 setting out the requirements for such key employees to make a claim, is inserted by *section 8* of the Bill.

- Expenditure shall not be regarded as qualifying expenditure for the purpose of the tax credit where it has been or is to be met directly or indirectly by grant assistance or any other assistance from the EU or European Economic Area (such assistance from the State is already excluded).

- Amounts paid to unconnected third parties to carry out R&D activities are eligible for the tax credit where such expenditure does not exceed 10 per cent of total R&D expenditure by the company or 5 per cent in the case of sub-contracting to universities or third-level education institutions. The expenditure which can qualify for the credit is increased to the greater of the relevant 5 per cent or 10 per cent limits, as appropriate, or up to €100,000 as matched by the company's own R&D expenditure.

- A new measure of relief applies where a company which has made a claim under section 766 ceases to carry on a trade and another company commences to carry on that trade and the R&D activities. The successor company may claim any R&D tax credit amounts not used by the predecessor company against corporation tax provided both companies were members of the same group of companies at the time of the transfer of the trade.

- Finally the section provides that where a company makes a claim for payable credits under this section or section 766A or where unused tax credits are surrendered to key employees and the amounts in either case are found not to be due, the amounts may be recovered by an assessment to tax under Case IV of Schedule D and interest and penalties will apply.

Section 766A of the Taxes Consolidation Act 1997 provides for a 25 per cent tax credit for expenditure on buildings or structures used for research and development. The section also provides for the following amendments to section 766A:

- Expenditure shall not be regarded as relevant or qualifying expenditure where it has been or is to be met directly or indirectly by grant assistance or any other assistance from the EU or European Economic Area (such assistance from the State is already excluded).

- A new measure of relief applies where a company which has made a claim under section 766A ceases to carry on a trade and

> another company commences to carry on that trade and R&D activities and the building or structure to which the claim relates is transferred to the successor company. The building or structure must continue to meet all the requirements of a qualifying building in the hands of the successor and, at the time of the transfer both companies must be members of the same group of companies. The successor company may claim any tax credits not used by the predecessor company against corporation tax. In addition, the claw-back of tax credits provided for in subsection (3) of section 766 will not apply.

These various provisions apply in respect of accounting periods commencing on or after 1 January 2012, with the exception of the provisions relating to payments to unconnected parties and third-level education institutions which apply in respect of accounting periods ending on or after 1 January 2012.

Section 27 increases the rates of tax applying to life assurance policies and investment funds by three percentage points with effect from 1 January 2012.

The amendment applies to the rates of exit tax on profits and gains from domestic life assurance policies and investment undertakings under the "Gross Roll-up" regime introduced in Finance Act 2000. It also increases the rates of tax that apply to profits and gains from life assurance policies and investment funds in other EU Member States, EEA States and OECD countries with which Ireland has double taxation agreements. A similar increase is being applied to the rate of tax applying to a personal portfolio life policy and to an investment held in a personal portfolio investment undertaking.

Section 28 amends sections 730D(2) and 730E(3) of Chapter 5 of Part 26 of the Taxes Consolidation Act 1997 which set out the categories of policyholders who are regarded as having not made a gain on the happening of a chargeable event in relation to a life policy provided the appropriate declaration is held by the assurance company. Accordingly, no exit tax is then imposed under the "Gross Roll-up" regime introduced in Finance Act 2000.

The categories covered by this amendment are certain pension schemes, approved retirement funds and approved minimum retirement funds.

Section 29 amends sections 738 and 739 of Chapter 1 of Part 27 of the Taxes Consolidation Act 1997. Section 738 deals with the tax treatment of undertakings for collective investment and Section 739 deals with the tax treatment of the unit holders in such funds.

The section increases the effective rate of tax for undertakings for collective investment to a rate of 30 per cent. This increase is being applied from 8 February 2012. Where a unit holder is a company, any payments received and gains arising are treated as a net amount from the gross amount of which the fund has deducted tax at the increased rate of 30 per cent.

Section 30 amends section 739D of Chapter 1A of Part 27 of the Taxes Consolidation Act 1997. Section 739D sets out how to compute a gain arising on a chargeable event in respect of which the investment undertaking may be liable to account for tax. It also provides for exemption from exit tax for certain unit holders through a declaration procedure. The section is amended in two respects.

Firstly, it extends the declaration procedure for non-resident investors to also apply to declarations from intermediaries investing on behalf of such non-residents.

Secondly, it inserts a new subsection (8E) to provide that, once a migrating company has been authorised by the Central Bank of Ireland, the holder of such an authorisation may make a declaration to the Revenue Commissioners, which will ensure that exit tax will not be applied to payments by the investment undertaking to non-resident unit holders. This subsection also provides that, where an existing non-resident unit holder later becomes resident in the State, exit tax will be applied to any gains arising on subsequent chargeable events.

Section 31 amends section 739G(2)(*h*) of Chapter 1A of Part 27 of the Taxes Consolidation Act 1997. Paragraph (*h*) of section 739G(2) provides that, where the unit holder in an investment undertaking is a non-resident company or, in the case of a non-corporate unit holder, is neither resident nor ordinarily resident in the State, the unit holder is not chargeable to income tax or capital gains tax on any payment made to it by the investment undertaking.

This amendment ensures that such non-resident unit holders are also exempt from income tax and capital gains tax on any payment they receive in respect of the sale of a unit in an investment undertaking.

Section 32 amends Chapters 1A and 4 of Part 27 of the Taxes Consolidation Act 1997 as a consequence of the implementation of the UCITS IV Directive which provides for the cross-border merger of two or more UCITS. Chapter 1A deals with the tax treatment of unit holders in investment undertakings while Chapter 4 deals with the tax treatment of Irish resident investors in offshore funds.

The section provides that, where an investment undertaking merges with an offshore fund (an outbound merger) or, an offshore fund merges with an investment undertaking (an inbound merger), an exchange of units will not be regarded as a disposal for tax purposes. However, on a subsequent disposal, the new holding will be treated as acquired at the same time and at the same cost as the original holding.

Section 33 amends section 747E of Chapter 4 of Part 27 of the Taxes Consolidation Act 1997. Section 747E sets out the treatment, for tax purposes, of a disposal of a material interest in offshore investment funds in other EU Member States, EEA States and OECD countries with which Ireland has double taxation agreements. This amendment provides that, where a person exchanges all or part of a material interest in a sub-fund of an offshore umbrella fund for an interest in another sub-fund of that umbrella fund, the exchange is not regarded as a disposal.

Section 34 amends section 739D(8D) of Chapter 1A of Part 27 of the Taxes Consolidation Act 1997 in two respects.

Firstly, it amends the definition of ‘‘scheme of migration and amalgamation’’ so as to also provide for the issue, by the investment undertaking, of units directly to an offshore fund.

Secondly, it provides that, where an existing non-resident investor in the offshore fund at the time of the scheme of migration and amalgamation, later becomes resident in the State, exit tax will be applied to any gains arising on subsequent chargeable events.

Section 35 amends Part 8 of the Taxes Consolidation Act 1997 which deals with deposit interest retention tax (DIRT).

- Firstly it provides for the increase of 3 percentage points in the rates of DIRT announced in the Budget.

- Secondly, it makes two technical amendments to the legislation to clarify the 2010 Finance Act provisions governing (1) exemption for deposits made on behalf of a Personal Retirement Savings Account and (2) the return of DIRT by credit unions.

- Lastly, the section amends section 267M. At present, this section governs the tax treatment of deposit interest received from EU financial institutions. *Section 35* extends the application of section 267M so that it also covers deposit interest received from non-EU financial institutions. A summary of the tax treatment of deposit interest received by individuals from non-resident financial institutions following the amendment is as follows:

- Deposit interest from EU countries will be taxed at 30 per cent if the income is returned on time or at 41 per cent if it is not so returned and

Deposit interest from non-EU countries will be taxed at 30 per cent where the recipient is a standard rate taxpayer and makes a timely return of the income and at 41 per cent where the recipient is a higher rate taxpayer, or has not made a timely return of the income.

Section 36 concerns Part 8A of the Taxes Consolidation Act 1997 dealing with the taxation of ‘‘specified financial transactions’’. It provides a regime to tax certain Islamic financial transactions in the same way as conventional financial transactions. This section makes two technical amendments to Part 8A.

Paragraph (a) amends the definition of ‘‘finance company’’ in section 267N to allow such a company to have other income in addition to income from leasing and/or income from specified financial transactions.

Paragraph (b) amends section 267U. At present section 267U requires the finance undertaking that is the counter-party to the transaction to elect for Part 8A treatment. Paragraph (*b*) amends the section to enable either party to the transaction to make the election.

Section 37 amends several provisions of the Taxes Consolidation Act 1997 relating to the assessment, return and collection of encashment tax.

Encashment tax is the name given to the income tax required to be deducted in accordance with Schedule C, or Chapter 2 of Part 4 of the Taxes Consolidation Act 1997 by paying and collecting agents when they pay or receive payment of certain public revenue dividends or of interest and dividends of certain non-resident entities.

The tax collected is paid to the Collector-General. Encashment tax is not a final tax so recipients of income from which encashment tax has been deducted are required to return details of the relevant income on their annual returns of income and to pay any further tax due at their marginal rate where appropriate.

Schedule 2 of the Taxes Consolidation Act 1997 deals with the assessment, charge and payment of encashment tax. Currently, paying and collecting agents who are liable to deduct encashment tax are only required to submit a return when requested to do so by the Collector-General, there is no provision for the imposition of interest on late returns and a further aspect of the tax is that paying agents are remunerated for their part in collecting the tax.

This section amends Schedule 2 as follows:

- to require the paying/collecting agents to submit a return along with the tax deducted without the necessity of having to be requested to do so by the CG,

- to enable the inspector of taxes make assessments in the absence of such a return,

- to require the paying/collecting agent to keep records of all dividend payments and to produce same when requested in writing by the inspector,

- to allow the inspector to make adjustments to a paying/collecting agents liability where any amount has been incorrectly included in a return,

- to apply the provisions of the Income Tax Acts relating to the assessment, collection and recovery of income tax to assessments, collection and recovery of encashment tax,

- to charge interest on unpaid encashment tax at the same rates as other unpaid taxes, and

- to delete the provision enabling remuneration of the paying/collecting agents.

Section 853 of the Taxes Consolidation Act 1997 appoints the Governor and directors of the Bank of Ireland as Commissioners for the purpose of assessing tax on interest, annuities and public revenue and other dividends. Section 37 deletes this section as it is obsolete.

Section 38 amends section 198 of the Taxes Consolidation Act 1997. Section 198 exempts non-resident persons from the charge to income tax in respect of interest received from Irish resident persons where the company or person receiving the interest is a tax resident of another EU State or a tax resident of a country with which Ireland has entered into a double taxation treaty.

This section amends section 198 in order to extend the exemption to payments of interest on Eurobonds as defined in section 64, wholesale debt instruments within the meaning of section 246A, and asset covered securities within the meaning of section 3 of the Asset Covered Securities Act 2001, to a company that is resident in a non-Treaty country where that company is controlled by persons resident in a Treaty country or where the ultimate parent of that company is quoted on a stock exchange in a Treaty country.

Section 39 amends the definition of specified assets in section 80A in order to clarify that definition.

Section 40 amends section 110 of the Taxes Consolidation Act 1997 which deals with the tax treatment of securitisation companies in several respects:

- Firstly, it extends the type of assets that a section 110 company can acquire, to include forest carbon offsets;

- Secondly, it amends the definition of a qualifying company to include a due date for submission of the notification to Revenue confirming that the company is or intends to be a qualifying company for the purposes of the section;

Lastly, it ensures that the 2011 Finance Act provisions which denied a deduction for interest payments in certain circumstances do not apply to a company operating in the State through a branch or agency that is within the charge to Corporation Tax in respect of the interest payment.

Section 41 inserts a new section 452A into the Taxes Consolidation Act 1997. Section 130(2)(*d*)(iv) treats a payment of interest to a connected person who is resident in a territory with which Ireland does not have a tax treaty, as a dividend. The effect is to disallow a tax deduction for the interest payment.

The new section 452A applies to a qualifying company. This is defined as a company:

- that advances money in the ordinary course of a trade carried on in the State which includes the lending of money and

- for which any interest payable in respect of money so advanced is taken into account in computing the income of its trade.

Where that company pays interest to a connected person who is resident in a territory with which Ireland does not have a tax treaty, section 452A provides that section 130 will not apply to a proportion of the interest paid. This means that the company will be able to claim a tax deduction in respect of that proportion of the interest.

The deductible amount essentially represents the amount of the interest that will be taxed in the recipient country provided that the tax rate applicable in that country is not less than 12.5 per cent.

Section 42 makes two amendments of a technical nature to sections 238 and 241 of the Taxes Consolidation Act 1997. Section 241 requires non-resident companies that are within the charge to Irish corporation tax, e.g. because they are trading in the State through a branch or agency, to make a return of payments made under deduction of tax to an Inspector. However, the section only relates to payments made under deduction of tax by virtue of section 238 i.e. annual payments excluding yearly interest, so an amendment is required to section 241 to secure the payment of income tax deducted from payments of yearly interest by those non-resident companies. The amendment will also ensure that the income tax so deducted is treated as part of the companies' corporation tax liability. A minor amendment is also being made to section 238 to remove an incorrect reference.

Section 43 clarifies the direct tax implications of certain transactions in emissions allowances under the EU Emissions Trading Scheme. The Scheme, established under Directive 2003/87/EC, operates by setting an overall EU limit on the level of greenhouse gas emissions, allocating emission allowances to enterprises coming within the Scheme and requiring these enterprises to surrender sufficient allowances each year to cover their emission levels. Within the overall EU limit, enterprises can buy and sell emissions allowances having regard to their current and projected needs.

Two new sections are being inserted into the Taxes Consolidation Act 1997 in relation to the tax treatment of emissions allowances. Firstly, a new section 81C confirms that a tax deduction is available to a company for expenditure incurred for the purposes of the trade on the purchase of emissions allowances and that amounts received or receivable for the disposal of purchased allowances are deemed to be trading receipts of the trade in computing the company's trading income.

Secondly, a new section 540A provides that where a permit holder (i.e. an operator of an installation or aircraft operator) sells, transfers or disposes of emissions allowances acquired free of charge from the Environment Protection Agency under the EU Scheme, or where it disposes of any interest in or rights over such allowances, the transaction will be treated as the disposal of an asset for capital gains tax purposes and chargeable to tax at the 30 per cent CGT rate. The tax charge will also apply to the disposal of such allowances acquired by a company under the capital gains tax deferral provisions of sections 615, 617 or 631. However, such a tax charge will not arise where the allowances were previously transferred from one company to another in circumstances where the transfer did not benefit from any of these deferral provisions. As the allowances are acquired free of charge, no sum, apart from incidental costs, will be allowed as a deduction from the consideration for the disposal in computing the chargeable gain arising on such disposal. Also, in computing the chargeable gain, any purchased allowances will be deemed to have been disposed of before free allowances are disposed of by a company. The new section will apply to disposals made on or after 8th February 2012.

Chapter 5

Corporation Tax

Section 44 provides for the extension of the 3 year tax relief for start-up companies, contained in section 486C of the Taxes Consolidation Act 1997 to those companies which commence a new trade in 2012, 2013 or 2014.

Section 45 inserts the Food Safety Authority of Ireland and the Sustainable Energy Authority of Ireland into the list of non-commercial State sponsored bodies specified in Schedule 4 to the Taxes Consolidation Act 1997 which have an exemption from tax in respect of non-trading income otherwise chargeable to income tax or corporation tax. The exemption is granted with effect from 1 January 1999 for the Food Safety Authority of Ireland and 1 May 2002 for the Sustainable Energy Authority of Ireland, which are the respective dates of establishment for each body.

Section 46 extends group relief so than an Irish resident company can surrender losses to another Irish resident company if both companies are members of the same group and the group includes a company resident in a treaty country or listed on a recognised stock exchange.

Section 47 amends the definition of "transfer pricing guidelines" in section 835D of the Taxes Consolidation Act 1997 so that it includes both the modification and the update published by the OECD on 22 July 2010.

Section 48 amends paragraph 9DB of Schedule 24 of the Taxes Consolidation Act 1997 so that any foreign tax which cannot be treated as reducing income by virtue of a double taxation treaty or under the unilateral relief provision, due to an insufficiency of income, may be used to reduce the income referable to other foreign trading royalty income.

Section 49 amends section 77 of the Taxes Consolidation Act 1997 so that where, for a relevant accounting period, the trading income of a trade carried on by a company includes relevant royalties or relevant interest the amount of the income, relating to the relevant royalty or interest, chargeable to tax can be reduced by the relevant foreign tax attaching to that income.

Section 50 inserts a new section 633D into the Taxes Consolidation Act 1997 to ensure that where a company is dissolved without going into liquidation and transfers all its assets and liabilities to its 100 per cent parent it shall not be treated as involving a disposal by the parent of the share capital of the company. This amendment arises from recent changes in company law.

Section 51 extends unilateral credit relief to Irish resident companies in respect of foreign withholding tax suffered on leasing payments in a jurisdiction with which Ireland does not have a Double Taxation Agreement.

The provision will remove barriers to Irish companies conducting business with persons resident in non-treaty countries where withholding taxes apply to leasing income.

Section 52 makes a change to the tax treatment of certain foreign dividends received by Irish resident companies and liable to corporation tax at the 25 per cent rate. Currently, the 12½ per cent corporation tax rate applies to dividends paid out of trading profits received from a company that is resident in an EU Member State, or a territory with which Ireland has a tax treaty or from a company that is part of a quoted group. This treatment will now also apply to dividends paid out of trading profits received from companies resident in a territory that has ratified the Convention on Mutual Assistance in Tax Matters. The change will apply to dividends received on or after 1 January 2012.

Section 53 provides for a schedule of amendments following on from the expiration of the scheme of relief for certain manufacturing companies (the effective 10 per cent rate of corporation tax). Since 1 January 2011, manufacturing relief is no longer available to manufacturing companies operating in the State. The amendments for the most part involve the deletion of Part 14 of the Taxes Consolidation Act 1997 and consequential legislative changes arising out of the removal of references to the relief.

Chapter 6

Capital Gains Tax

Section 54 gives effect to the proposal in the Budget statement to increase the rate of capital gains tax from 25 per cent to 30 per cent. The amendment applies to disposals made on or after 7 December 2011.

Section 55 amends section 533 of the Taxes Consolidation Act 1997. That section relates to the location of assets for CGT purposes. The amendment ensures that shares in an Irish-incorporated company will be treated as located in this country for CGT purposes, irrespective of where the share certificate is situated. It applies to disposals made on or after 8 February 2012.

Section 56 amends section 562 of the Taxes Consolidation Act 1997. That section provides that a contingent liability is disregarded in computing a gain or a loss on the disposal. An adjustment is made if the liability is enforced. The amendment ensures that a contingent liability must be actually paid before a repayment of CGT will arise. It applies to disposals made on or after 8 February 2012.

Section 57 amends section 598 of the Taxes Consolidation Act 1997. That section grants relief from capital gains tax on disposals made by individuals aged 55 or over in respect of the disposal of business or agricultural assets. Full relief is given where the consideration for the disposal is less than €750,000. This amendment gives effect to the proposal in the Budget statement to reduce the relief for disposals by individuals aged 66 or over from €750,000 to €500,000. The current threshold of €750,000 continues to apply to disposals by individuals aged 55 or over but who have not attained the age of 66. The reduction of the amount of relief given to individuals aged 66 or over will apply to disposals made on or after 1 January 2014.

Section 58 amends section 599 of the Taxes Consolidation Act 1997. That section grants unrestricted relief to individuals aged 55 or over who dispose of business or agricultural assets to their children and certain other individuals. The amendment gives effect to the proposal in the Budget statement to introduce an upper limit of €3 million on the relief in the case of disposals by individuals aged 66 or over. Unrestricted relief continues to apply to individuals aged 55 or over but who have not attained the age of 66. The upper limit of €3 million will apply to disposals made on or after 1 January 2014.

Section 59 amends section 611 of the Taxes Consolidation Act 1997. That section exempts disposals for less than market value to the State, public bodies and charities from CGT. The amendment extends this exemption to disposals to local government corporate services bodies. It applies to disposals made on or after 8 February 2012.

Section 60 amends section 613 of the Taxes Consolidation Act 1997. That section grants exemption from CGT in respect of miscellaneous kinds of property. The amendment exempts compensation paid to turf cutters for giving up the right to cut turf in Special Areas of Conservation or Natural Heritage Areas under the scheme administered by the Minister for Arts, Heritage and the Gaeltacht.

Section 61 amends Schedule 15 to the Taxes Consolidation Act 1997. That Schedule lists bodies which are exempt from CGT under section 610 of the Act. The amendment exempts from CGT disposals of assets by Teagasc, disposals of assets to the Grangegorman Development Agency by the Dublin Institute of Technology and disposals by the Agency itself. It applies to disposals made on or after 8 February 2012.

Section 62 gives effect to the proposal in the Budget statement to give relief from CGT for properties purchased between 7 December 2011 and 31 December 2013, where the property is held for more than 7 years. Where such property is held for more than 7 years, the gains attributed to that 7-year period will not attract CGT. This amendment comes into effect on or after 7 December 2011.

Section 63 amends section 579 of the Taxes Consolidation Act 1997. That section is designed to prevent the avoidance of CGT by persons who are Irish-domiciled and either resident or ordinarily resident in the State by putting assets into non-resident trusts. A beneficiary of such a trust who is domiciled and either resident or ordinarily resident in the State is chargeable on his or her proportionate share of capital gains made by the trust. The amendment closes off avoidance schemes where individuals have become temporarily non-resident and temporarily removed and re-appointed as beneficiaries of an offshore trust in order to avoid CGT. The amendment applies to disposals made on or after 8 February 2012.

PART 2

Excise

Section 64 confirms the Budget increase in the carbon tax on petrol and auto-diesel, and provides for an increase, from 1 May 2012, in the carbon tax on other mineral oils. The carbon tax is increased from €15 to €20 per tonne of CO_2.

Section 65 confirms the Budget increases in the rates of Tobacco Products Tax which, when VAT is included, amount to 25 cent on a packet of 20 cigarettes with pro-rata increases on other tobacco products.

Section 66 makes a number of amendments to Chapter 1 of Part 2 of the Finance Act 1999, which provides for Mineral Oil Tax. Many of these changes are in preparation for a proposed Excise Consolidation Bill, and they include the deletion of redundant and overlapping provisions, repositioning of provisions, and rewording for greater clarity. Some more substantial developments are, however, also provided for.

Paragraphs (a) to *(m)* amend Mineral Oil Tax definitions for greater clarity and consistency.

Paragraphs (n) and *(p)* amend the charging and rates provisions for Mineral Oil Tax to provide that, in the case of recycled mineral oil, the tax is chargeable at the appropriate rate in accordance with usage, and that liability is not confined, as at present, to such oil that is suitable for use as auto-fuel. Changes are also made to take account of repositioning of provisions throughout the Mineral Oil Tax chapter.

Paragraphs (o) and *(y)* delete provisions for Mineral Oil Tax on coal, which are, under paragraph *(r)*, to be repositioned in a single section.

Paragraph (q) makes a number of changes to the provisions for relief from MOT.

These changes are for clarification only, by removing overlapping provisions and repositioning provisions, specific to Mineral Oil Tax, that were included in general excise law.

The provision for relief for mineral oil supplied to sea-going vessels is also amended, in accordance with agreed EU guidelines, to clarify that it does not apply to mineral oil used for industrial purposes on floating structures designed for such purposes.

Provision is made for relief from the carbon tax element of the MOT charge for mineral oil used for environmentally friendly heat and electricity cogeneration with output capacity of equal to or greater than $50kW_e$. This relief, and the existing relief for mineral oil used in an installation covered by a greenhouse gas emissions trading permit, are made subject to conditions that may be set by Revenue.

Paragraph (r) consolidates all the provisions relating to mineral oil tax on coal in a single section.

Paragraph (s) extends the current licensing requirements of section 101 of the Finance Act 1999, for any person who produces, sells, delivers or deals in auto-fuels (petrol and diesel), to persons engaged in similar dealing with the main ‘‘non-auto’’ fuels (marked gas oil and marked kerosene) and with aviation gasoline. There will be separate auto-fuel trader’s and marked fuel trader’s licences. A separate licence will be required for every premises or place at which the fuel concerned is produced, held or dealt in, and the licence must be clearly displayed at that premises or place.

All licences will be subject to such conditions as Revenue may impose, and no licence may be issued to a person who does not hold a tax-clearance certificate, or who has been convicted of an indictable tax offence. A licence may be revoked where the licensee is guilty of any such offence, or for failure to satisfy the conditions imposed by Revenue.

Provision is also made for Revenue to publish lists of persons who hold an auto-fuel trader’s licence or a marked fuel trader’s licence, and of the premises and places to which the licences relate.

Paragraph (t) deletes a provision that is now included in the consolidated section under *paragraph (r).*

Paragraphs (u) and *(v)* amend the provisions for summary Mineral Oil Tax offences that relate to unlicensed trading and dealing in mineral oils, so that they are expressed in terms of the new licensing requirements (under *paragraph (t)).* These offence provisions will now apply to both the auto-fuel trader’s and marked fuel trader’s licences.

Paragraphs (w) and *(x)* update the terminology of certain Mineral Oil Tax offences relating to marked fuels.

Paragraph (y) extends the provision for forfeiture, in respect of any offence that relates to the sale, dealing in, or keeping for sale or delivery, of mineral oil at a premises or place, so that it applies, not just to the mineral oil concerned, but to all pumps and other equipment used for supplying the mineral oil concerned at that premises or place.

Paragraph (z) deletes a superfluous provision for the application of customs law, and other excise law, to mineral oil tax.

Provision is made for the commencement of the licensing related provisions (under *paragraphs (s), (v)* and *(y)* by Ministerial order.

Section 67 amends the cesser provision for the application of Mineral Oil Tax to coal, to take account of changes (under *section 66*) to the relevant provisions of the Mineral Oil Tax chapter.

Section 68 removes the requirement for an electricity supplier who is not established in the State to establish a company in the State to undertake the Electricity Tax responsibilities of that supplier, including liability for, and payment of, the tax. The supplier must instead make arrangements with Revenue for payment of the tax and accounting for it, and appoint a competent person in the State to see to those arrangements.

Section 69 provides for changes to the law for Natural Gas Carbon Tax.

The rate of that tax is increased, with effect from 1st May 2012, from €3.07 to €4.10 per megawatt hour, as announced by the Minister on Budget day.

Provision is also made that where a consumer of natural gas provides false or misleading information to a supplier, it is that consumer (and not the supplier) who is liable for any resulting undercharging of tax.

The section also removes the requirement for a natural gas supplier who is not established in the State to establish a company in the State to undertake the Natural Gas Carbon Tax responsibilities of that supplier, including liability for, and payment of, the tax. The supplier must instead make arrangements with Revenue for payment of the tax and accounting for it, and appoint a competent person in the State to see to those arrangements.

A relief is introduced for natural gas supplied for environmentally friendly heat and electricity cogeneration with output capacity of equal to or greater than $50kW_e$. The relief is a partial one, subject to payment of tax at the minimum rate set down in EU excise law i.e. currently €0.54 per megawatt hour.

Section 70 amends the law for Solid Fuel Carbon Tax, to provide that, where a consumer of solid fuel provides false or misleading information to a supplier, it is that consumer (and not the supplier) who is liable for any resulting undercharging of tax.

Provision is also made for a relief for solid fuel used for environmentally friendly heat and power cogeneration with output capacity of equal to or greater than $50kW_e$. In the case of coal, the relief is a partial one, subject to payment of tax at the minimum rate set down in EU excise law i.e. currently €4.18 per tonne. For peat, a full relief is provided for.

Section 71 amends certain sections within Chapter IV of Part II of the Finance Act 1992 including the insertion of a new section 135D (repayment of amounts of vehicle registration tax on export of certain vehicles) to provide for an Export Refund Scheme.

PART 3

Value-Added Tax

Section 72 is a definitions section.

Section 73 amends sections 2, 52 and 103 of the VAT Consolidation Act 2010 to strengthen the provisions relating to the making of Ministerial orders and to provide for certain requirements to be complied with by a person following receipt of a refund under an order.

Section 74 amends sections 16, 19, 41, 59 and 66 of the VAT Consolidation Act 2010 to extend the VAT reverse charge mechanism to supplies of construction services between connected persons. The amendments provide for the application of a reverse charge in the case of an accountable person carrying on a business in the State, who supplies construction services to a connected person in the course or furtherance of business. In such instances the recipient of the service will account for VAT on construction services on a reverse charge basis. At present the person who supplies the construction service is accountable for this tax (other than where that service is supplied to a principal contractor, in which case a reverse charge already applies). This provision will be effective from 1 May 2012.

Section 75 amends section 46 of the VAT Consolidation Act 2010 which deals with rates of tax. The amendment confirms the Budget change, which provided for an increase in the standard rate of VAT from 21 per cent to 23 per cent, with effect from 1 January 2012.

Section 76 amends section 66 of the VAT Consolidation Act 2010 which deals with the issue of invoices and other documents. The amendment deletes a provision that facilitated deductibility within the travel agents' margin scheme in certain circumstances. This will not affect the deductibility in relation to conference accommodation where the accommodation is supplied under the normal VAT system.

Section 77 amends Section 84 of the VAT Consolidation Act 2010 which deals with record keeping. The amendment provides that, where a company has been liquidated, records must be retained for a period of 6 years. This is to ensure that VAT rules are in line with the OECD standard, which requires that accounting records, including underlying documentation, need to be kept for at least 5 years. This amendment corresponds with changes being made to the Taxes Consolidation Act 1997.

Section 78 amends section 95 of the VAT Consolidation Act 2010 which deals with transitional measures for supplies of immovable goods. The amendment clarifies that the adjustment period for transitional properties will not revert to 20 years where development has taken place and where that development constitutes a 'refurbishment' for VAT purposes.

Section 79 amends section 111 of the VAT Consolidation Act 2010 which deals with assessment of tax due. The amendment provides that an assessment may be raised to recover VAT refunded to a person under a refund order where it subsequently transpires that the tax was not properly refundable.

Section 80 inserts a new section 114A to the VAT Consolidation Act 2010 to provide that interest may apply where a person who receives a refund of tax under a refund order fails to repay the amount of that refund to Revenue where the tax was not properly refundable to the person.

Section 81 amends section 115 of the VAT Consolidation Act 2010 which deals with penalties generally. The amendment provides for a fixed penalty where a person has failed to comply with a requirement specified in a refund order.

Section 82 amends Schedule 2 to the VAT Consolidation Act 2010 which deals with goods and services chargeable at the zero rate. The amendment modernises the definition of bread to ensure that the zero rate applies to certain products that are commonly accepted as being bread but which were previously excluded from that zero rate.

Section 83 amends Schedule 3 to the VAT Consolidation Act 2010 which deals with goods and services chargeable at the reduced rates. Firstly, an amendment is made to include a definition of an open farm for the purposes of the Schedule. Secondly, an amendment is made to provide that the temporary reduced rate of 9 per cent applies to admissions to open farms. Thirdly, an amendment is made to provide that the supply of district heating is liable at the reduced rate of 13.5 per cent.

PART 4

Stamp Duties

Section 84 defines the ‘‘Principal Act’’ as the Stamp Duties Consolidation Act 1999 for the purposes of Part 4 of the Finance Bill.

Section 85 gives effect to the Budget announcement that a single rate of stamp duty at 2 per cent will be applied to all non-residential property transactions executed on or after Budget night and to the decision to abolish consanguinity relief in 3 years time.

Section 86 amends section 75A of the Stamp Duties Consolidation Act 1999 which provides for relief for clearing houses. There are two technical changes; the reference to SIS x-clear as a recognised clearing house is updated, and confirmation is given that the relief applies to share transfers between recognised clearing houses.

Section 87 inserts a new section 87B into the Stamp Duties Consolidation Act 1999 which provides for a stamp duty exemption on company mergers, including cross-border mergers.

Section 88 contains nine separate technical amendments to the Stamp Duties Consolidation Act 1999 which extend the range and scope of stamp duty exemptions applying to certain financial transactions and confirm the stamp duty treatment of options over shares.

(*a*) Clarification in legislation that options over Irish shares are subject to the same level of duty that applies to share transfers.

(*b*) Extension of stamp duty exemption to cover in specie transfer of pension and charity scheme assets between certain investment vehicles including unit trusts and investment companies.

(*c*) Extension of stamp duty exemption to cover transfer of units in an exempt unit trust.

(*d*) Extension of the stamp duty exemption for shares/securities of foreign companies to cover a wider range of foreign legal entities.

(*e*) Extension of stamp duty exemption to cover cross-border mergers of investment funds.

(*f*) Exemption for the transfer of Irish assets between two offshore funds (in EU/Treaty countries) in cases of reconstructions or amalgamations.

(*g*) Exemption for the transfer of assets between an exempt unit trust and a corporate fund.

(*h*) Extension of the existing stamp duty exemption for the transfer of a lease (other than a lease of real property) to cover the transfer of an "interest in a lease".

(*i*) Clarification of existing stamp duty exemption for foreign land.

Section 89 amends section 90A of the Stamp Duties Consolidation Act 1999 which exempts the trading of greenhouse gas emissions allowances from stamp duty. For consistency across taxheads, greenhouse gas emissions allowances are now being linked to the definition of carbon offsets in section 110 of the Taxes Consolidation Act 1997.

Section 90 amends the Stamp Duties Consolidation Act 1999 to provide an exemption from stamp duty in relation to transfers of land to the Grangegorman Development Agency. The Agency is tasked with bringing the Dublin Institutes of Technology together in the Grangegorman area of Dublin. The exemption will allow the Agency to acquire appropriate lands without having to pay a stamp duty.

Section 91 makes a number of changes to Part 9 of the Stamp Duties Consolidation Act 1999 which imposes levies. An increased levy applies to all health insurance renewals and new contracts entered into from 1 January 2012, at the rate of €95 for each insured person aged less than 18 years and €285 for each insured person aged 18 years or over. The levy is also being changed into an annual levy from 1 January 2013. The section also brings forward the due date for the payment of the levy on non-life insurance policies to the 25th day of the month, instead of the 30th day of the month. Technical changes are being made to the pension schemes levy and the provisions that allow the Revenue Commissioners to make assessments where an accountable person does not pay a levy.

Section 92 amends Schedule 2B to the Stamp Duties Consolidation Act 1999 which lists the qualifications that a young trained farmer must hold to obtain relief from stamp duty on the purchase of farmland. The FETAC Level 6 Specific Purpose Certificate in Farm Administration is being added to the list of qualifications.

Section 93 provides for the modernisation of the stamping of instruments liable to stamp duty and introduces self-assessment into the stamp duty code. The amendments are listed in *Schedule 3* and will apply, from a date to be specified, to instruments executed on or after that date. In relation to instruments executed prior to that date, the existing provisions continue to apply.

PART 5

Capital Acquisitions Tax

Section 94 is an interpretation section. It provides that, in Part 5, the Principal Act means the Capital Acquisitions Tax Consolidation Act 2003.

Section 95 amends Schedule 2 to the Capital Acquisitions Tax Consolidation Act 2003. That Schedule deals with the computation of CAT. The amendment gives effect to the proposals announced in the Budget statement to reduce the Group A tax-free threshold from €332,084 (after indexation) to €250,000 and to increase the rate of CAT from 25 per cent to 30 per cent. In addition, the amendment rounds up the Group B and C tax-free thresholds (after indexation) from €33,204 and €16,602 to €33,500 and €16,750 respectively and abolishes the indexation of the tax-free group thresholds. The amendment applies to gifts and inheritances taken on or after 7 December 2011.

Section 96 amends section 2 of the Capital Acquisitions Tax Consolidation Act 2003. That section defines terms used throughout the Act. The amendment aligns the definition of ‘‘child’’ in section 2 with the Adoption Act 2010. The amendment applies on and from 8 February 2012.

Section 97 amends the provisions in the Capital Acquisitions Tax Consolidation Act 2003 relating to discretionary trusts. It extends the 6 per cent initial charge and the 1 per cent annual Discretionary Trust Tax to entities known as ‘‘foundations’’. It also ensures that property will be treated as being subject to a discretionary trust on the date of the disponer’s death where such a discretionary trust is created in his or her will. The amendment applies on and from 8 February 2012.

Section 98 amends section 36 of the Capital Acquisitions Tax Consolidation Act 2003. That section relates to dispositions involving powers of appointment. The amendment ensures that the disponer will be treated as the original settlor and the disposition will be treated as the original settlement where the exercise of, the failure to exercise, or the release of, a general power of appointment form part of an arrangement whose sole or main purpose is the avoidance of CAT. In addition, the amendment ensures that the 6 per cent and 1 per cent charges imposed on certain discretionary trusts will not be prejudiced where the grant of a general power of appointment forms part of an arrangement whose sole or main purpose is the avoidance of CAT. The amendment applies to gifts and inheritances (including inheritances taken by discretionary trusts under section 15(1) or section 20(1) of the Act) taken on or after 8 February 2012.

Section 99 amends sections 77(3) and 78(7) of the Capital Acquisitions Tax Consolidation Act 2003. Those provisions provide for a clawback of the exemption from CAT granted in respect of certain heritage objects where they are sold within 6 years of the valuation date. The clawback does not apply, however, where the relevant objects are sold by private treaty to certain State institutions. The amendment adds cultural institutions funded by grant or grant-in-aid or funded directly by the Department of Arts, Heritage and the Gaeltacht to the list of bodies mentioned in sections 77(3) and 78(7). The amendment applies to sales occurring on or after 8 February 2012.

Section 100 amends section 89 of the Capital Acquisitions Tax Consolidation Act 2003. That section provides that only 10 per cent of the value of agricultural property taken by a ‘‘farmer’’ is taken into account in calculating CAT due in respect of such property. A farmer for this purpose is an individual at least 80 per cent of whose assets comprise agricultural property after taking the gift or the inheritance. Debts and encumbrances are allowable against an individual’s off-farm dwelling in deciding whether or not an individual qualifies as a ‘‘farmer’’. The amendment ensures that a loan that is secured on an off-farm dwelling will not be allowed as a deduction unless it is used for the purchase, improvement or repair of that house. The amendment also removes the condition that an individual must be resident in the State for 3 years after the date of the gift or the inheritance in order to comply with EU law. The amendment applies to gifts and inheritances taken on or after 8 February 2012.

Section 101 makes certain technical changes to the Capital Acquisitions Tax Consolidation Act 2003 consequential on the modernisation of CAT in 2010. The changes include clarification that the 4-month period of grace continues to apply to Discretionary Trust Tax, the abolition of the provision dealing with the apportionment of benefits taken on the same day and changes the method of how payments on account of CAT are to be dealt with. The amendment applies on and from 8 February 2012.

Section 102 changes the pay and file date for CAT from 30 September each year to 31 October. The amendment makes consequential changes to sections 51 and 53A relating to interest on outstanding tax and the surcharge applicable where returns are filed after the due date for delivery of such returns respectively. The amendment applies on and from 8 February 2012.

PART 6

Miscellaneous

Section 103 contains a definition of ‘‘Principal Act’’ (i.e. the Taxes Consolidation Act 1997) for the purposes of Part 6 of the Bill.

Section 104 amends section 886 to provide that the general 6 year record retention period for tax purposes also applies to companies in liquidation or dissolved without being liquidated. It also provides that the records must be maintained for the 6 year period:

- By the liquidator, in the case of a liquidated company, and

- By the directors of the company immediately prior to dissolution in the case of a company that is dissolved without being liquidated.

Section 105 makes a number of minor changes to section 851A of the Taxes Consolidation Act 1997 which concerns taxpayer confidentiality. The Customs Acts are now included in the list of acts to which the section applies.

Section 106 amends section 891B of the Taxes Consolidation Act 1997. Section 891B (introduced by section 125 of the Finance Act 2006) enables the Revenue Commissioners to make regulations, with the consent of the Minister for Finance, for the automatic annual reporting of payments made by certain persons, including collective funds. This amendment removes collective funds from section 891B and, instead, introduces a new section 891C which will provide for regulations to be made for the automatic annual reporting by investment undertakings of investment values of certain unit holders.

Section 107 inserts a new section 891D into the Taxes Consolidation Act 1997. This is an enabling provision that allows the Revenue Commissioners to make regulations that require merchant acquirers and other payment settlement entities to make returns of transactions to the Revenue Commissioners. The earliest year in respect of which a return may be required is 2010.

Section 108 amends section 898K of the Taxes Consolidation Act 1997 which transposed Article 15 of the EU Taxation of Savings Directive 2003/48/EC into Irish law. Section 898K provides that interest payments on certain domestic and international bonds and other negotiable debt securities are not reportable subject to certain conditions. The amendment provides that such payments are now to be reported.

Section 109 amends section 1077E of the Taxes Consolidation Act 1997 which provides for penalties for deliberately or carelessly making incorrect returns. The penalty provisions will now also apply to returns that are required in respect of the domicile levy and the universal social charge.

Section 110 enables the Collector-General or a nominated Revenue officer to request a statement of affairs from persons who are not engaging with Revenue in relation to outstanding tax. A statement of affairs can be requested from a spouse or civil partner of an individual where the individual and his or her spouse or civil partner are jointly assessed to income tax under section 1017 or section 1031C of the Taxes Consolidation Act 1997. The statement of affairs must contain details of all the assets and liabilities of the persons concerned. Provision is also made for the inclusion of property of minor children and trustees in the statement of affairs. The person completing the statement of affairs must sign it and complete a declaration to the effect that it is correct to the best of that person's knowledge and belief.

Section 111 inserts a new section 960S into the Taxes Consolidation Act 1997 which requires a person in business to give a security to the Collector-General in relation to fiduciary taxes where the Collector-General forms a view that such security is necessary to protect the Exchequer. It shall be on offence for a person, who is required to provide a security, to engage in business without providing the security. A person who is dissatisfied with a requirement to provide a security has a right of appeal to the Appeal Commissioners against such requirement.

Section 112 inserts new sections 908E and 908F into the Taxes Consolidation Act 1997 which will facilitate the more effective investigation of white collar crime and will speed up investigations and prosecutions. The provisions are targeted at serious and complex revenue offences attracting a penalty of at least 5 years imprisonment. An authorised officer of the Revenue Commissioners may apply to the District Court for an order to require a person to produce documents or to provide information required by that officer in an investigation.

Section 113 provides for the modernisation of the assessing rules for direct taxes (i.e. income tax, corporation tax and capital gains tax) in order to provide for a common integrated set of rules for those taxes in the Taxes Consolidation Act 1997. This involves replacing older assessing rules, in Part 39 of the Taxes Consolidation Act 1997, as well as the current Pay & File rules, in Part 41 of the Taxes Consolidation Act 1997, with a set of consolidated rules in a new Part 41A of the Taxes Consolidation Act 1997.

The new rules simplify and streamline the current rules, particularly those relating to due dates for the payment of tax. The new rules also provide for a move, from 2013, to a system of full self-assessment for direct taxes whereby tax returns will be required to include a self assessment of the tax payable for a year or accounting period. The first returns (including self-assessments) under the new arrangements will, in general, be made by companies in September 2014 and by individuals in October 2014. Individuals who file paper tax returns will have the option to submit a tax return each year by 31 August if they want Revenue to do a self-assessment on their behalf.

Section 114 makes a number of amendments relating to the administration of direct taxes (i.e. income tax, corporation tax and capital gains tax). These include updating certain definitions and declarations and making them applicable across all those taxes. The section also deletes some obsolete sections from Part 37 of the Taxes Consolidation Act 1997 and makes other sections in that Part applicable across the direct taxes. Finally, for transparency reasons, this section deletes section 123 of the Finance Act 2006 (which relates to the prescribing of forms) and provides for the insertion of a similar provision in Part 37 of the Taxes Consolidation Act 1997.

Section 115 amends section 195 of the Taxes Consolidation Act 1997 to provide a formal statutory basis for the current practice of publishing information in respect of beneficiaries of this tax exemption.

Section 116 amends section 884 of the Taxes Consolidation Act 1997 which sets out what is to be included in the corporation tax return of a company. The amendment clarifies the "further particulars" which may be required on the return, to include: the accounts, prepared in accordance with the Companies Act 1963, statements, reports and further particulars relevant to the tax liability of the company, or otherwise relevant to the application of the Corporation Tax Acts to the company. This is to facilitate the submission of electronic financial statements (in iXBRL) with the corporation tax return via the Revenue On-line Service (ROS).

Section 117 makes a change in respect of the tax treatment of civil partners subsequent to the passing of Finance (No. 3) Act 2011. The section addresses issues in relation to maintenance arrangements for civil partners as compared to the maintenance relief provisions for married couples.

It also places civil partnerships on the same footing as married relationships where it is accepted, that after the break-up of a relationship, often for economic reasons, persons may continue to live under the same roof.

A number of minor technical amendments identified after passage of Finance (No. 3) Act 2011 are also being dealt with.

Section 118 ceases section 161 of Finance Act 2010, which was introduced to facilitate the implementation on a voluntary basis by members of the judiciary of pay restrictions equivalent to those imposed by section 2 of the Financial Emergency Measures in the Public Interest Act 2009 (as amended by section 13 of the Social Welfare and Pensions Act 2009).

The passing of the Twenty-Ninth Amendment of the Constitution (Judges' Remuneration) Act 2011 means this provision is no longer necessary.

Section 119 gives effect to the proposal announced in the Budget statement that citizenship be removed as a requirement for payment of the domicile levy. This means that, regardless of citizenship, the domicile levy will be payable by Irish-domiciled individuals whose Irish assets exceed €5m, whose worldwide income exceeds €1m and whose liability to Irish income tax for the relevant year is less than

€200,000. This amendment applies to the domicile levy chargeable for the year 2012 and subsequent years.

Section 120 amends Parts 1 and 3 of Schedule 24A to the Taxes Consolidation Act 1997. This Schedule lists all international tax agreements entered into by Ireland. Part 1 lists all the existing Double Taxation Agreements. Part 3 lists all the Tax Information Exchange Agreements.

Part 1 is amended by adding 4 countries to the list of countries with which the State has entered into a Double Taxation Agreement. These countries are Armenia, Germany, Panama and Saudi Arabia.

Part 3 is amended by adding 2 countries/territories to the list of countries/territories in Part 3 with which the State has entered into a Tax Information Exchange Agreement. These countries/territories are Grenada and Vanuatu.

The addition of these 6 countries/territories to Schedule 24A is the final step in the legislative and ratification procedure which will ensure that these Agreements will have the force of law. This section will have effect from the date of the passing of the Act.

Section 121 and *Schedule 6* provide for technical amendments to the—

- Taxes Consolidation Act 1997 (*paragraph 1*),

- Capital Acquisitions Tax Consolidation Act 2003 (*paragraph 2*), and

- Value-Added Tax Consolidation Act 2010 (*paragraph 3*).

The amendments for the most part involve the correction (through deletion, amendment or insertion of text) of incorrect references and minor drafting errors. *Paragraph 4* contains the commencement provisions relating to *paragraphs 1* to *3* above.

Section 122 fixes a new annuity for 30 years in respect of estimated borrowing in 2012 for Voted Capital Services in relation to the Capital Services Redemption Account. It also amends the 2011 annuity in the light of the actual amount of capital borrowing in 2011. The CSRA is a sinking fund set up in the 1950s to provide for the repayment of interest and capital on loans to the Government. This is a standard annual provision.

Section 123 deals with the ‘‘care and management’’ of taxes and duties.

Section 124 contains the provisions relating to short title, construction and commencement.

An Roinn Airgeadais,
Feabhra, 2012.

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