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FINANCE ACT 2004

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AN ACT TO PROVIDE FOR THE IMPOSITION, REPEAL, REMISSION, ALTERATION AND REGULATION OF TAXATION, OF STAMP DUTIES AND OF DUTIES RELATING TO EXCISE AND OTHERWISE TO MAKE FURTHER PROVISION IN CONNECTION WITH FINANCE INCLUDING THE REGULATION OF CUSTOMS. [25th March 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

Interpretation

Interpretation
(Part 1).

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

CHAPTER 2

Income Tax

Age exemption.

2.—As respects the year of assessment 2004 and subsequent years of assessment, section 188 of the Principal Act is amended, in subsection (2), by substituting “€31,000” for “€30,000” (inserted by the Finance Act 2003) and “€15,500” for “€15,000” (as so inserted).

Employee tax credit.

3.—(1) As respects the year of assessment 2004 and subsequent years of assessment, section 472 of the Principal Act is amended, in subsection (4), by substituting “€1,040” for “€800” (inserted by the Finance Act 2003) in both places where it occurs.

(2) Section 3 of the Finance Act 2002, shall have effect subject to the provisions of this section.

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Amendment of section 472C (relief for trade union subscriptions) of Principal Act.

4.—As respects the year of assessment 2004 and subsequent years of assessment, section 472C (inserted by the Finance Act 2001) of the Principal Act is amended, in subsection (1), by substituting “€200” for “€130” in the definition of “specified amount”.

Amendment of Schedule 13 (accountable persons for purposes of Chapter 1 of Part 18) to Principal Act.

5.—(1) Schedule 13 to the Principal Act is amended—

(a) by substituting “25. The National Tourism Development Authority.” for paragraph 25,

(b) by deleting paragraph 27,

(c) by substituting “83. The Commission for Communications Regulation.” for paragraph 83,

(d) by substituting “94. The Standards in Public Office Commission.” for paragraph 94, and

(e) by inserting the following after paragraph 140 (inserted by the Personal Injuries Assessment Board Act 2003):

“141. The National Council for Curriculum and Assessment.

142. The State Examinations Commission.

143. The Special Residential Services Board.”.

(2) (a) Paragraphs (a) and (b) of subsection (1) shall be deemed to have come into force and shall take effect as on and from 28 May 2003.

(b) Paragraph (c) of subsection (1) shall be deemed to have come into force and shall take effect as on and from 1 December 2002.

(c) Paragraph (d) of subsection (1) shall be deemed to have come into force and shall take effect as on and from 10 December 2001.

(d) Paragraph (e) of subsection (1) comes into operation on 1 May 2004.

Amendment of section 189 (payments in respect of personal injuries) of Principal Act.

6.—Section 189 of the Principal Act is amended in subsection (1) by substituting the following for paragraph (b):

“(b) (i) pursuant to the issue of an order to pay under section 38 of the Personal Injuries Assessment Board Act 2003, or

(ii) following the institution by or on behalf of the individual of a civil action for damages,

in respect of personal injury giving rise to that mental or physical infirmity.”.

Exemption in respect of certain payments under employment law.

7.—The Principal Act is amended in Chapter 1 of Part 7 by inserting the following after section 192:

“192A.—(1) In this section—

'relevant Act' means an enactment which contains provisions for the protection of employees' rights and entitlements or for the obligations of employers towards their employees; relevant authority' means any of the following—

- (a) a rights commissioner,
- (b) the Director of Equality Investigations,
- (c) the Employment Appeals Tribunal,
- (d) the Labour Court,
- (e) the Circuit Court, or
- (f) the High Court.

(2) Subject to subsections (3) and (5), this section applies to a payment under a relevant Act, to an employee or former employee by his or her employer or former employer, as the case may be, which is made, on or after 4 February 2004, in accordance with a recommendation, decision or a determination by a relevant authority in accordance with the provisions of that Act.

(3) A payment made in accordance with a settlement arrived at under a mediation process provided for in a relevant Act shall be treated as if it had been made in accordance with a recommendation, decision or determination under that Act of a relevant authority.

(4) (a) Subject to subsection (5) and without prejudice to any of the terms or conditions of an agreement referred to in this subsection, this section shall apply to a payment—

(i) made, on or after 4 February 2004, under an agreement evidenced in writing, being an agreement between persons who are not connected with each other (within the meaning of section 10), in settlement of a claim which—

(I) had it been made to a relevant authority, would have been a *bona fide* claim made under the provisions of a relevant Act,

(II) is evidenced in writing, and

(III) had the claim not been settled by the agreement, is likely to have been the subject of a recommendation, decision or determination under that Act by a relevant authority that a payment be made to the person making the claim,

(ii) the amount of which does not exceed the maximum payment which, in accordance with a decision or determination by a relevant authority (other than the Circuit Court or the High Court) under the relevant Act, could have been made under that Act in relation to the claim, had the claim not been settled by agreement, and

(iii) where—

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- (I) copies of the agreement and the statement of claim are kept and retained by the employer, by or on behalf of whom the payment was made, for a period of six years from the day on which the payment was made, and
 - (II) the employer has made copies of the agreement and the statement of claim available to an officer of the Revenue Commissioners where the officer has requested the employer to make those copies available to him or her.
- (b) (i) On being so requested by an officer of the Revenue Commissioners, an employer shall make available to the officer all copies of—
- (I) such agreements as are referred to in paragraph (a) entered into by or on behalf of the employer, and
 - (II) the statements of claim related to those agreements,
- kept and retained by the employer in accordance with subparagraph (iii) of that paragraph.
- (ii) The officer may examine and take extracts from or copies of any documents made available to him or her under this subsection.
- (5) This section shall not apply to so much of a payment under a relevant Act or an agreement referred to in subsection (4) as is—
- (a) a payment, however described, in respect of remuneration including arrears of remuneration, or
 - (b) a payment referred to in section 123(1) or 480(2)(a).
- (6) Payments to which this section applies shall be exempt from income tax and shall not be reckoned in computing total income for the purposes of the Income Tax Acts.”.

Exemption in respect of certain benefits-in-kind.

8.—(1) Part 5 of the Principal Act is amended—

(a) in section 116—

(i) by inserting the following after the definition of “business premises”:

“ ‘business use’, in relation to the use of an asset by a person, means the use of that asset by the person in the performance of the duties of the person’s office or employment;”

and

(ii) by inserting the following after the definition of “employment”:

“ ‘private use’, in relation to an asset, means use of the asset other than business use.” Pr.1 S.8

- (b) in section 118 by substituting the following for subsection (5A) (inserted by the Finance Act 1999):

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

- (b) In this subsection—

‘approved transport provider’ means—

- (a) Coras Iompair Éireann or any of its subsidiaries,
- (b) a holder of a passenger licence granted under section 7 of the Road Transport Act 1932,
- (c) a person who provides a passenger transport service under an arrangement entered into with Coras Iompair Éireann in accordance with section 13(1) of the Transport Act 1950,
- (d) the Railway Procurement Agency or any of its subsidiaries, or
- (e) a person who has entered into an arrangement with the Railway Procurement Agency, in accordance with section 43(6) of the Transport (Railway Infrastructure) Act 2001 to operate a railway;

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

- (5B) (a) Subsection (1) shall not apply to expense incurred by the body corporate in or in connection with the provision, without any transfer of the property in it, for a director or employee of a mobile telephone for business use where private use of the mobile telephone is incidental.

- (b) The mobile telephones to which the exemption provided by this subsection applies include any mobile telephone provided in connection with a car or van notwithstanding that the vehicle is made available as referred to in section 121 or 121A, as the case may be.

(c) In this subsection ‘mobile telephone’ means telephone apparatus which—

(i) is not physically connected to a land-line, and

(ii) is not a cordless telephone.

(d) For the purposes of paragraph (c)—

‘cordless telephone’ means telephone apparatus designed or adapted to provide a wireless extension to a telephone, and used only as such an extension to a telephone that is physically connected to a land-line;

‘telephone apparatus’ means wireless telegraphy apparatus designed or adapted for the purposes of transmitting and receiving either or both spoken messages and information (being information for the same purposes as the Electronic Commerce Act 2000) and connected to a public telecommunications network (as defined in the European Communities (Telecommunications Services) Regulations 1992 (S.I. No. 45 of 1992)).

(5C) (a) Subsection (1) shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee of a high-speed internet connection to the director’s or employee’s home for business use where private use of the connection is incidental.

(b) In this subsection ‘high-speed internet connection’ means a connection capable of transmitting information (being information for the same purposes as the Electronic Commerce Act 2000) at a rate equal to or greater than 250 kilobits per second.

(5D) (a) Subsection (1) shall not apply to expense incurred by the body corporate in or in connection with the provision, without any transfer of the property in it, for a director or employee of computer equipment for business use where private use of the computer equipment is incidental.

(b) In this section ‘computer equipment’, in addition to a computer, includes—

(i) a facsimile machine, and

(ii) printers, scanners, modems, discs, disc drives, and other peripheral devices designed to be used by being connected to or inserted in a computer and computer software to be used in such equipment.

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(5E) (a) Subsection (1) shall not apply to expense Pr.1 S.8
incurred by the body corporate, or incurred
by a director or employee and reimbursed
by the body corporate, in or in connection
with the payment on behalf of a director or
employee of the annual membership fees of
a professional body where membership of
that body by the director or employee is
relevant to the business of the body
corporate.

(b) Membership of a professional body by a
director or employee of a body corporate
may be regarded as relevant to the business
of that body corporate where—

(i) it is necessary for the performance of
the duties of the office or employ-
ment of the director or employee, or

(ii) it facilitates the acquisition of know-
ledge which—

(I) is necessary for or directly
related to the performance of
the duties of the office or
employment of the director or
employee, or

(II) would be necessary for or
directly related to the perform-
ance of prospective duties of
the office or employment of the
director or employee with that
body corporate.

(5F) Subsection (1) shall not apply to expense incurred
by the body corporate in or in connection
with the provision, without any transfer of the
property in it, for a director or employee of
a mechanically propelled road vehicle which
is—

(a) designed or constructed solely or mainly
for the carriage of goods or other
burden, and

(b) of a type not commonly used as a private
vehicle and unsuitable to be so used.”,

and

(c) in section 121A (inserted by the Finance Act 2003)—

(i) in subsection (1)—

(I) by inserting the following before the definition
of “van”:

“ ‘gross vehicle weight’, in relation to a vehicle,
means the weight which the vehicle is designed
or adapted not to exceed when in normal use
and travelling on the road laden.”,

and

(II) in the definition of “van”—

- (A) by deleting “and” in paragraph (b),
- (B) by substituting “areas, and” for “areas.”, in paragraph (c), and
- (C) by inserting the following after paragraph (c):

“(d) has a gross vehicle weight not exceeding 3,500 kilograms.”,

and

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

“(2A) Subsection (2) shall not apply for a year of assessment in respect of the private use of a van made available to a person (in this subsection referred to as the ‘employee’) as set out in that subsection where the following conditions are met—

- (a) the van made available to the employee is necessary for the performance of the duties of the employee’s employment,
- (b) the employee is required by the person who made the van available to keep it, when not in use in the performance of the duties of the employee’s employment, at or in the vicinity of the employee’s private residence,
- (c) apart from travel between the employee’s private residence and workplace, other private use of the van is prohibited by the person making the van available and there is no such other private use, and
- (d) in the performance of the duties of his or her employment, the employee spends at least 80 per cent of his or her time engaged on such duties away from the premises of the employer to which the employee is attached.”.

(2) This section is deemed to have come into force and taken effect as on and from 1 January 2004.

Amendment of Chapter 4 (collection and recovery of income tax on certain emoluments (PAYE system)) of Part 42 of Principal Act.

9.—(1) Chapter 4 of Part 42 of the Principal Act is amended—

(a) in section 985A (inserted by the Finance Act 2003)—

(i) in subsection (1)—

(I) by substituting “Subject to subsection (1A), this section applies” for “This section applies”, and

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(II) by deleting “excluding perquisites or profits whatever in the form of shares (including stock) in a company, but” in paragraph (a),

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

“(1A) Subsection (1) shall not apply to emoluments in the form of perquisites or profits whatever received by an employee in the form of shares (including stock) being shares or stock in—

(a) the company in which the employee holds his or her office or employment, or

(b) a company which has control (within the meaning of section 432) of that company.”,

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

“(4A) Any amount of tax which an employer remits in accordance with subsection (4) and any regulations made under that subsection in respect of a notional payment shall be treated as an amount of tax which, at the time the notional payment is made, is deducted in respect of the employee’s liability to income tax.”,

and

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

“(7) 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.”,

(b) by inserting the following after section 985A—

“PAYE
settlement
agreements.

985B.—(1) In this section ‘qualifying emoluments’ means emoluments, other than emoluments in the form of a payment of money, which are—

(a) minor, as regards the amount or type of emolument involved, and

(b) irregular, as to the frequency in which or the times at which, the emoluments are provided.

(2) Subject to this section, the Revenue Commissioners may, on application in that behalf from an employer, enter into an agreement with the employer under which the employer shall account to them in accordance with the provisions of this section in respect of income tax in respect of qualifying emoluments for a year of assessment of one or more employees of the employer which the employer would otherwise have to account for in accordance with the other provisions of this Chapter and any regulations made under those provisions.

(3) Where an employer accounts for income tax under an agreement made in accordance with this section—

- (a) the employer shall not be liable to account for that tax under the other provisions of this Chapter and any regulations made under those provisions,
- (b) qualifying emoluments covered by the agreement shall not be reckoned in computing, for the purposes of the Income Tax Acts, the total income of the employee concerned,
- (c) the amount accounted for shall not be treated as having been deducted in accordance with the other provisions of this Chapter and any regulations under those provisions,
- (d) an employee shall not be treated as having paid any part of the income tax accounted for by his or her employer and, accordingly, the employee shall not be entitled to a credit in respect of, or to claim or receive repayment of, any part of that tax, and
- (e) emoluments covered by the agreement shall not be included in a return by the employer under Regulation 31 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001).

(4) The amount in respect of income tax to be accounted for by an employer under an agreement entered into under this section shall be specified in the agreement and shall be—

- (a) determined in accordance with the factors specified in subsection (5)(a), and
 - (b) comprised of the amounts specified in subsection (5)(b).
- (5) (a) The factors specified for the purposes of subsection (4)(a) are—
- (i) the aggregate amount of the qualifying emoluments covered by the agreement on which income tax is chargeable,
 - (ii) the total number of employees in receipt of qualifying emoluments covered by the agreement,
 - (iii) the number of those employees respectively chargeable to income tax—

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(I) only at the standard rate for the year of assessment to which the agreement relates, and

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(II) at both the standard rate and the higher rate for that year, and

(iv) such other matters as are agreed by the Revenue Commissioners and the employer to be relevant in relation to the qualifying emoluments covered by the agreement.

(b) The amounts specified for the purposes of subsection (4)(b) are—

(i) an amount equal to income tax on the aggregate of the amounts computed in accordance with paragraph (a)(i), calculated so as to take account of the factor specified in paragraph (a)(iii), and

(ii) a further amount reflecting the income tax on the benefit to the employees of receiving the qualifying emoluments included in the agreement without liability to tax.

(6) Where an employer wishes to avail of this section for a year of assessment, the employer shall make application in writing in that behalf to the Revenue Commissioners which is received by them on or before 31 December in that year.

(7) If the amount of income tax which an employer is to account for in relation to a year of assessment in accordance with an agreement entered into under this section is not paid to the Collector-General within 46 days of the end of that year, the agreement shall be null and void and, accordingly, this Chapter and any regulations made thereunder shall apply as if this section had not been enacted.

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

(c) in section 994, by substituting the following for subsection (1):

“(1) In this section ‘employer’s liability for the period of 12 months’ means the aggregate of—

(a) all sums which an employer was liable under this Chapter and any regulations under this Chapter to deduct from emoluments to

which this Chapter applies paid by the employer, and

- (b) all sums that were not so deducted but which an employer was liable, in accordance with section 985A and any regulations under that section, to remit to the Collector-General in respect of notional payments made by the employer,

during the period of 12 months referred to in subsection (2), reduced by any amounts which the employer was liable under this Chapter and any regulations under this Chapter to repay during the same period, and subject to the addition of interest payable under section 991.”,

and

- (d) in section 995 by substituting the following for paragraph (a)(i):

“(i) which, apart from Regulation 29 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001), would otherwise have been an amount due at the relevant date in respect of—

(I) sums which an employer is liable under this Chapter and any regulations under this Chapter (other than Regulation 29 of those Regulations) to deduct from emoluments, to which this Chapter applies, paid by the employer, and

(II) sums that were not so deducted but which the employer was liable, in accordance with section 985A and any regulations under that section, to remit to the Collector-General in respect of notional payments made by the employer,

during the period of 12 months next before the relevant date.”.

- (2) (a) Subject to *paragraph (b)*, *subsection (1)* has effect as on and from the passing of this Act.

(b) *Subsection (1)(a)(iii)* applies as respects the year of assessment 2004 and subsequent years of assessment.

Amendment of section 122 (preferential loan arrangements) of Principal Act.

10.—(1) Section 122 of the Principal Act is amended in paragraph (a) of subsection (1)—

- (a) by substituting the following for paragraph (i) of the definition of “employer”:

“(i) a person of whom the individual or the spouse of the individual is or was an employee.”,

and

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(b) by substituting “3.5 per cent” for “4.5 per cent” (inserted by the Finance Act 2003) in both places where it occurs in the definition of “the specified rate”.

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(2) (a) *Subsection (1)(a)* applies as respects loans made on or after 4 February 2004.

(b) *Subsection (1)(b)* applies with effect from 1 January 2004.

11.—Section 470 of the Principal Act is amended, as on and from the passing of this Act, in subsection (1)—

Amendment of section 470 (relief for insurance against expenses of illness) of Principal Act.

(a) by substituting the following for the definition of “authorised insurer”:

“ ‘authorised insurer’ means—

(a) any undertaking entered in the Register of Health Benefits Undertakings, lawfully carrying on such business of medical insurance referred to in paragraph (a) of the definition of ‘relevant contract’ but, in relation to an individual, also means any undertaking authorised pursuant to Council Directive No. 73/239/EEC of 24 July 1973¹, Council Directive No. 88/357/EEC of 22 June 1988², and Council Directive No. 92/49/EEC of 18 June 1992³, where such a contract was effected with the individual when the individual was not resident in the State but was resident in another Member State of the European Communities, or

(b) (i) any undertaking standing authorised under—

(I) the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994),

(II) the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976), or

(III) the European Communities (Non-Life Insurance) (Amendment) (No. 2) Regulations 1991 (S.I. No. 142 of 1991),

or

(ii) any undertaking authorised by the authority charged by law with the duty of supervising the activities of insurance undertakings in a Member State of the European Communities other than the State in accordance with Article 6 of Council Directive No. 73/239/EEC of 24

¹ OJ No. L228, 16.8.1973, p.3

² OJ No. L172, 4.7.1988, p.1

³ OJ No. L228, 11.8.1992, p.1

July 1973 as inserted by Article 4 of Council Directive No. 92/49/EEC of 18 June 1992,

lawfully carrying on such business of dental insurance referred to in paragraph (b) of the definition of ‘relevant contract’;”,

and

(b) by substituting the following for the definition of “relevant contract”:

“ ‘relevant contract’ means a contract of insurance which, in relation to an individual, the spouse of the individual, or the children or other dependants of the individual or of the spouse of the individual, provides specifically, whether in conjunction with other benefits or not, for the reimbursement or discharge, in whole or in part, of—

(a) actual health expenses (within the meaning of section 469), being a contract of medical insurance, or

(b) dental expenses other than expenses in respect of routine dental treatment (within the meaning of section 469), being a contract of dental insurance;”.

Payments under Scéim na bhFoghlaimoírí Gaeilge.

12.—The Principal Act is amended in Chapter 1 of Part 7 by inserting the following after section 216A (inserted by the Finance Act 2001):

“Payments under Scéim na bhFoghlaimoírí Gaeilge.

216B.—(1) This section shall apply, in the case of a qualified applicant under a scheme administered by the Minister for Community, Rural and Gaeltacht Affairs and known as Scéim na bhFoghlaimoírí Gaeilge, to any income received under that scheme in respect of a person who is temporarily resident with the qualified applicant, together with any other income received in the ordinary course in respect of such temporary resident.

(2) Notwithstanding any provision of the Income Tax Acts, income to which this section applies shall be disregarded for the purposes of those Acts.”.

Amendment of Chapter 2 (farming: relief for increase in stock values) of Part 23 of Principal Act.

13.—(1) Chapter 2 of Part 23 of the Principal Act is amended—

(a) in subsection 667(1)—

(i) by substituting “In this section, but subject to section 667A,” for “In this section,”,

(ii) in paragraph (b)(iii) of the definition of “qualifying farmer”—

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(I) by inserting “or” after “so set out,” in clause (I), Pr.1 S.13

(II) by substituting “180 hours.” for “180 hours,” in clause (II) and by deleting “or” where it last occurs in that clause, and

(III) by deleting clause (III),

and

(b) by inserting the following after section 667:

“Further provisions for qualifying farmers.

667A.—(1) In this section ‘qualifying farmer’ means an individual who—

(a) in the year 2004 or any subsequent year of assessment first qualifies for grant aid under the Scheme of Installation Aid for Young Farmers operated by the Department of Agriculture and Food under Council Regulation (EEC) No. 797/85 of 12 March 1985¹ or that Regulation as may be revised from time to time, or

(b) (i) first becomes chargeable to income tax under Case I of Schedule D in respect of profits or gains from the trade of farming for the year 2004 or any subsequent year of assessment,

(ii) has not attained the age of 35 years at the commencement of the year of assessment referred to in subparagraph (i), and

(iii) at any time in the year of assessment so referred to satisfies the conditions set out in subsection (2), (3) or (4).

(2) The conditions required by this subsection are that the individual, referred to in the definition of ‘qualifying farmer’ in subsection (1), is the holder of a qualification set out in the Table to this section (in this section referred to as the ‘Table’), and—

(a) in the case of a qualification set out in paragraph 1(f) or paragraph 2(h) of the Table, is also the holder of a certificate awarded by the Further Education and Training Awards Council for achieving the minimum stipulated standard in assessments completed in a course of training, approved by Teagasc—

¹OJ No. L93, 30.3.1985, p.6

(i) in either or both agriculture and horticulture, the aggregate duration of which exceeded 100 hours, and

(ii) in farm management, the aggregate duration of which exceeded 80 hours,

or

(b) in the case of a qualification set out in subparagraph (b), (c) or (d) of paragraph 3 of the Table, is also the holder of a certificate awarded by the Further Education and Training Awards Council for achieving the minimum stipulated standard in assessments completed in a course of training, approved by Teagasc, in farm management, the aggregate duration of which exceeded 80 hours.

(3) The conditions required by this subsection are that the individual, referred to in the definition of ‘qualifying farmer’ in subsection (1)—

(a) has achieved the required standard for entry into the third year of a full-time course of 3 or more years’ duration in any discipline at a third-level institution and that has been confirmed by that institution, and

(b) is the holder of a certificate awarded by the Further Education and Training Awards Council for achieving a minimum stipulated standard in assessments completed in a course of training, approved by Teagasc—

(i) in either or both agriculture and horticulture, the aggregate duration of which exceeded 100 hours, and

(ii) in farm management, the aggregate duration of which exceeded 80 hours.

(4) The conditions required by this subsection are that the individual, referred to in the definition of ‘qualifying farmer’ in subsection (1), is the holder of a letter of confirmation from Teagasc confirming satisfactory completion of a course of training, approved by Teagasc, for persons who in the opinion of Teagasc are restricted in their learning

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capacity due to physical, sensory, mental health or intellectual disability. Pr.1 S.13

(5) For the purposes of subsection (2) where Teagasc certifies that—

- (a) any other qualification corresponds to a qualification set out in the Table, and
- (b) that other qualification is deemed by the National Qualifications Authority of Ireland to be at least at a standard equivalent to that of the qualification set out in the Table,

then that other qualification shall be treated as if it were the qualification set out in the Table.

(6) In the case of a qualifying farmer—

- (a) section 666(1) shall apply as if ‘100 per cent’ were substituted for ‘25 per cent’, and
- (b) paragraph (a) shall apply in computing a person’s trading profits for an accounting period in the case of an individual who becomes a qualifying farmer at any time in the period beginning on or after 1 January 2004 and ending on or before 31 December 2004, for the year of assessment in which the individual becomes a qualifying farmer and for each of the 3 immediately succeeding years of assessment.

(7) For the purposes of this section, an individual who, before 1 January 2004—

- (a) is the holder of a qualification set out in the Table to section 667 or a qualification certified by Teagasc as corresponding to such a qualification so set out, in respect of which—
 - (i) satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, is required in order for the conditions of paragraph (b)(iii) of the definition of ‘qualifying farmer’ in section 667(1) to be satisfied, shall be deemed to be the holder of a qualification corresponding to that set out in paragraph 3(b) of the Table, or

- (ii) satisfactory attendance at a course of training is not required in order for the conditions of paragraph (b)(iii) of the definition of ‘qualifying farmer’ in section 667(1) to be satisfied, shall be deemed to be the holder of a qualification corresponding to that set out in paragraph 2(a) of the Table,
- (b) satisfies the requirements set out in paragraph (b)(iii)(II)(A) of the definition of ‘qualifying farmer’ in section 667(1), shall be deemed to satisfy the requirements set out in subsection (3)(a), and
- (c) is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training—
 - (i) in farm management, the aggregate duration of which exceeded 80 hours, shall be deemed to be the holder of a certificate referred to in subsection (2)(b), or
 - (ii) in either or both agriculture and horticulture, the aggregate duration of which exceeded 180 hours, shall be deemed to be the holder of a certificate referred to in subsection (2)(a).

TABLE

1. Qualifications awarded by the Further Education and Training Awards Council:
 - (a) Vocational Certificate in Agriculture — Level 3;
 - (b) Advanced Certificate in Agriculture;
 - (c) Vocational Certificate in Horticulture — Level 3;
 - (d) Vocational Certificate in Horse Breeding and Training — Level 3;
 - (e) Vocational Certificate in Forestry — Level 3;
 - (f) Awards other than those referred to in subparagraphs (a) to (e) which are, at least, at a standard equivalent to that of the award referred to in subparagraph (a).
2. Qualifications awarded by the Higher Education and Training Awards Council:
 - (a) National Certificate in Agriculture;
 - (b) National Diploma in Agriculture;
 - (c) National Certificate in Science in Agricultural Science;

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- (d) National Certificate in Business Studies in Agri-Business; Pt.1 S.13
(e) National Certificate in Technology in Agricultural Mechanisation;
(f) National Diploma in Horticulture;
(g) National Certificate in Business Studies in Equine Studies;
(h) National Certificate or Diploma awards other than those referred to in subparagraphs (a) to (g).

3. Qualifications awarded by other third-level institutions:

- (a) Primary degrees awarded by the faculties of General Agriculture and Veterinary Medicine at University College Dublin;
(b) Bachelor of Science (Education) in Biological Sciences awarded by the University of Limerick;
(c) Bachelor of Science in Equine Science awarded by the University of Limerick;
(d) Diploma or Certificate in Science (Equine Science) awarded by the University of Limerick.”.

(2) *Subsection (1)* shall apply and have effect as on and from 1 January 2004.

14.—(1) Section 664 of the Principal Act is amended—

Amendment of section 664 (relief from leasing of farm land) of Principal Act.

(a) in subsection (1)(a)—

- (i) in paragraph (i) of the definition of “qualifying lessor” by substituting “40 years” for “55 years”,
(ii) in the definition of “the specified amount” by substituting—

(I) in paragraph (ii)(IV)(B) “in any other case,” for “in any other case, or”, and

(II) the following for paragraph (ii)(V):

“(V) in the period beginning on 23 January 1996, and ending on 31 December 2003—

(A) €7,618.43, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(B) €5,078.95, in any other case,

or

(VI) on or after 1 January 2004—

(A) €10,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(B) €7,500, in any other case,”

and

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(b) in subsection (1)(b) by substituting the following for subparagraph (iii):

“(iii) from a qualifying lease or qualifying leases made in the period beginning on 23 January 1996, and ending on 31 December 2003, and from a qualifying lease made before 23 January 1996, the specified amount shall not exceed—

(I) €7,618.43, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(II) €5,078.95, in any other case;

(iv) from a qualifying lease or qualifying leases made on or after 1 January 2004, and from a qualifying lease made at any other time, the specified amount shall not exceed—

(I) €10,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(II) €7,500, in any other case.”.

(2) *Subsection (1)* shall apply and have effect as on and from 1 January 2004.

Amendment of
Schedule 12
(employee share
ownership trusts) to
Principal Act.

15.—Schedule 12 to the Principal Act is amended—

(a) in paragraph 11(2C) by inserting “or (3)” after “subparagraph (2B)”, and

(b) in paragraph 11A—

(i) in subparagraph (5)(a) by inserting “or, in the case of a company referred to in clause (d) of the definition of ‘relevant company’ in paragraph 1(1), at some time within 9 months prior to that day,” after “established by that relevant company,”,

(ii) in subparagraph (6)(a) by inserting “or, in the case of a company referred to in clause (d) of the definition of ‘relevant company’ in paragraph 1(1), at some time within 9 months prior to that day,” after “established by that relevant company,”, and

(iii) in subparagraph (7) by inserting “or (6)” after “subparagraph (5)”.

Occupational
pension schemes.

16.—(1) Section 772 of the Principal Act is amended by inserting the following after subsection (3D):

“(3E) A retirement benefits scheme shall neither cease to be an approved scheme nor shall the Revenue Commissioners be prevented from approving a retirement benefits scheme for the purposes of this Chapter because of any provision in the rules of the scheme which makes provision for borrowing by the scheme.”.

(2) Section 774 of the Principal Act is amended by substituting Pr.1 S.16 the following for subparagraph (ii) of subsection (7)(b):

“(ii) in the case of—

(I) such a contribution made on retirement, following an application in writing made before 6 February 2003 by the employee in response to an invitation in writing under the scheme, pursuant to the rules of the scheme—

(A) to contribute towards the purchase for super-annuation purposes of relevant benefits, consisting of only a pension on retirement not exceeding one-eightieth of the employee’s final remuneration for each year of service up to a maximum of 40 years and a lump sum not exceeding three-eightieths of the employee’s final remuneration for each year of service up to a maximum of 40 years, in respect of actual service by the employee before becoming a member of the scheme, and

(B) to make such purchase by way of such a contribution either on retirement or otherwise,

and as a consequence of which application the employee opted, or was treated by the scheme as opting, to make the contribution on retirement, for the purposes of receiving relevant benefits under the scheme in excess of the benefits which, if the application referred to had not been made, the employee would otherwise have been entitled to receive under those rules, or

(II) a contribution to which paragraph (ba) applies,

be apportioned among such years as the Revenue Commissioners direct, and the amount of the contribution attributed thereby to any year shall be treated as an ordinary annual contribution paid in that year.”.

(3) Section 776 of the Principal Act is amended by substituting the following for subparagraph (ii) of subsection (2)(b):

“(ii) in the case of—

(I) such a contribution made on retirement, following an application in writing made before 6 February 2003 by the employee in response to an invitation in writing under the scheme, pursuant to the rules of the scheme—

(A) to contribute towards the purchase for super-annuation purposes of relevant benefits, consisting of only a pension on retirement not exceeding one-eightieth of the employee’s final remuneration for each year of service up to a maximum of 40 years and a lump sum not exceeding three-eightieths of the employee’s final remuneration for each year of service up to a maximum of 40 years, in respect of actual service by the employee before becoming a member of the scheme, and

(B) to make such purchase by way of such a contribution either on retirement or otherwise,

and as a consequence of which application the employee opted, or was treated by the scheme as opting, to make the contribution on retirement, for the purposes of receiving relevant benefits under the scheme in excess of the benefits which, if the application referred to had not been made, the employee would otherwise have been entitled to receive under those rules, or

(II) a contribution to which paragraph (ba) applies,

be apportioned among such years as the Revenue Commissioners direct, and the amount of the contribution attributed thereby to any year shall be treated as an ordinary annual contribution paid in that year.”.

(4) (a) *Subsection (1)* applies as on and from the date of the passing of this Act.

(b) *Subsections (2) and (3)* are deemed to have applied as on and from 6 February 2003.

CHAPTER 3

Income Tax, Corporation Tax and Capital Gains Tax

Exemption from tax on certain income and gains.

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

(a) in section 189 by substituting the following for subsection (2):

“(2) (a) In this subsection—

‘relevant gains’ means chargeable gains (including allowable losses) within the meaning of the Capital Gains Tax Acts, which accrue to an individual, to or in respect of whom payments to which this section applies are made, from the disposal of—

- (a) assets acquired with such payments,
- (b) assets acquired with relevant income,
or
- (c) assets acquired directly or indirectly with the proceeds from the disposal of assets referred to in paragraphs (a) and (b);

‘relevant income’ means income which arises to an individual, to or in respect of whom payments to which this section applies are made, from the investment—

- (a) in whole or in part of such payments,
or
- (b) of income derived directly or indirectly from such payments,

being income consisting of dividends or other income which, but for this section, would be

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chargeable to tax under Schedule C or under Case III, IV (by virtue of section 59 or section 745) or V of Schedule D or under Schedule F. Pr.1 S.17

- (b) Where for any year of assessment the aggregate of the relevant income arising to and the relevant gains accruing to an individual exceeds 50 per cent of the aggregate of the total income arising to and the total chargeable gains (including allowable losses) accruing to the individual for that year of assessment—
- (i) the relevant income shall be exempt from income tax and shall not be reckoned in computing total income for the purposes of the Income Tax Acts, but the provisions of those Acts relating to the making of returns shall apply as if this section had not been enacted, and
 - (ii) the relevant gains shall be exempt from capital gains tax, but the provisions of the Capital Gains Tax Acts relating to the making of returns shall apply as if this section had not been enacted.
- (c) For the purposes of computing whether a chargeable gain is, in whole or in part, a relevant gain, or whether income is, in whole or in part, relevant income, all such apportionments shall be made as are, in the circumstances, just and reasonable.”,

- (b) in section 189A by substituting the following for subsections (3) and (4):

“(3) Gains accruing to trustees of a qualifying trust in respect of the trust funds shall not be chargeable gains for the purposes of the Capital Gains Tax Acts.

- (4) (a) In this subsection—

‘relevant gains’ means chargeable gains (including allowable losses) within the meaning of the Capital Gains Tax Acts, which accrue to an incapacitated individual from the disposal of—

- (a) assets acquired with payments made by the trustees of a qualifying trust,
- (b) assets acquired with relevant income, or
- (c) assets acquired directly or indirectly with the proceeds from the disposal of assets referred to in paragraphs (a) and (b);

‘relevant income’ means income which—

- (a) consists of payments made by the trustees of a qualifying trust to or in respect of an incapacitated individual, being a subject of the trust, or

(b) arises to such an incapacitated individual from the investment—

(i) in whole or in part of payments, made by the trustees of a qualifying trust, or

(ii) of income derived directly or indirectly from such payments,

being income consisting of dividends or other income which, but for this section, would be chargeable to tax under Schedule C or under Case III, IV (by virtue of section 59 or section 745) or V of Schedule D or under Schedule F.

(b) Where for any year of assessment the aggregate of relevant income arising to and the relevant gains accruing to an individual exceeds 50 per cent of the aggregate of the total income arising to and the total chargeable gains (including allowable losses) accruing to the individual in that year of assessment—

(i) the relevant income shall be exempt from income tax and shall not be reckoned in computing total income for the purposes of the Income Tax Acts, but the provisions of those Acts relating to the making of returns shall apply as if this section had not been enacted, and

(ii) the relevant gains shall be exempt from capital gains tax, but the provisions of the Capital Gains Tax Acts relating to the making of returns shall apply as if this section had not been enacted.

(c) For the purposes of computing whether a chargeable gain is, in whole or in part, a relevant gain, or whether income is, in whole or in part, relevant income, all such apportionments shall be made as are, in the circumstances, just and reasonable.”,

(c) in section 191(3) by substituting “the Income Tax Acts and the Capital Gains Tax Acts” for “the Income Tax Acts”, and

(d) in section 192 by inserting the following after subsection (2):

“(3) Gains which accrue to a person, to or in respect of whom payments to which this section applies are made, from the disposal of—

(a) assets acquired with such payments,

(b) assets acquired with income exempted from income tax under subsection (2), or

(c) assets acquired directly or indirectly with the proceeds from the disposal of assets referred to in paragraphs (a) and (b),

shall not be chargeable gains for the purposes of the Capital Gains Tax Acts.

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(4) For the purposes of computing whether by virtue of this section a gain is, in whole or in part, a chargeable gain, or whether income is, in whole or in part, exempt from income tax, all such apportionments shall be made as are, in the circumstances, just and reasonable.”.

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(2) This section applies for the year of assessment 2004 and subsequent years of assessment.

18.—(1) Part 16 of the Principal Act is amended—

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

(a) in section 489—

(i) by inserting the following after subsection (4A) (inserted by the Finance Act 2002):

“(4B) Notwithstanding any other provision of this section, where—

(a) (i) in accordance with section 508 relief is due in respect of an amount subscribed as nominee for a qualifying individual by the managers of a designated fund,

(ii) the amount so subscribed was subscribed to the designated fund in the period beginning on 1 January 2004 and ending on 4 February 2004, and

(iii) the eligible shares in respect of which the amount is subscribed by the managers of the designated fund are issued on or before 31 December 2004,

or

(b) eligible shares are issued by a qualifying company to a qualifying individual in the period beginning on 1 January 2004 and ending on 4 February 2004,

then the qualifying individual may elect, by notice in writing to the inspector, to have the relief due given as a deduction from his or her total income for the year of assessment 2003 instead of (as provided for in subsection (3)) as a deduction from his or her total income for the year of assessment 2004.”,

and

(ii) in subsection (15), by substituting “4 February 2004” for “31 December 2003”,

and

(b) in section 490—

(i) in subsection (3)(a), by substituting “subsection (4), (4A) or (4B) of section 489” for “section 489(4) or (4A)”, and

(ii) in subsections (3)(b) and (4)(b), by substituting “2006” for “2003”.

(2) Part 16 of the Principal Act, as amended by *subsection (1)*, is further amended—

(a) in section 489(15), by substituting “31 December 2006” for “4 February 2004”,

(b) in subsections (2)(a) and (3)(a) of section 491, by substituting “€1,000,000” for “€750,000”,

(c) in section 494, in subsection (2)(a)(ii), by substituting the following for clause (II):

“(II) €25,000 or, in the case of the year of assessment 2001, €18,500.”,

(d) in section 496(2)(a)—

(i) in subparagraph (i)—

(I) in clause (I), by substituting “this Part,” for “this Part, and”,

(II) in clause (II), by substituting “this Part, and” for “this Part,”, and

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

“(III) as respects a subscription for eligible shares issued on or after 4 February 2004, trading operations consisting of software development services referred to in subparagraph (ii) of paragraph (a) of section 443(10) and which would be qualifying trading operations if the employment grants referred to in subparagraph (I) of that paragraph were made, shall, notwithstanding anything in subparagraph (ii), be regarded as qualifying trading operations if approval for the making of such grant is obtained,”

and

(ii) in subparagraphs (iv) and (xv), by substituting “on or after 1 January 2003 and on or before 31 December 2004” for “on or after 1 January 2003”,

and

(e) in section 499, by inserting the following after subsection (3):

“(3A) (a) A specified individual shall not have received value from a company by virtue of subsection (3)(b) where—

(i) the specified individual has made an investment in the company by way of a loan,

(ii) the loan is converted into eligible shares within one year of the making of the loan, and

(iii) the specified individual provides a statement by the auditor of the company

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certifying that, in his or her opinion, the money raised by the company by way of the loan was used, and only used, by it in accordance with the provisions of section 489(1)(c). Pr.1 S.18

(b) Where paragraph (a) applies, conversion of the loan into eligible shares shall, notwithstanding any other provision of this Part, be treated as the making of a relevant investment by the specified individual on the date of the making of the loan.

(c) For the purposes of this subsection ‘auditor’, in relation to a company, means the person or persons appointed as auditor of the company for all the purposes of the Companies Acts 1963 to 2003.’.

(3) (a) *Subsection (1)* is deemed to have come into operation and have taken effect as on and from 1 January 2004.

(b) Subject to *paragraph (c)*, *subsection (2)* applies as follows—

(i) as respects *paragraphs (a)* and *(e)*, as on and from 4 February 2004,

(ii) as respects *paragraph (b)*, in relation to eligible shares issued on or after 1 January 2004,

(iii) as respects *paragraph (c)*, in relation to relevant investments made on or after 4 February 2004, and

(iv) as respects *paragraph (d)*, as respects subscriptions for eligible shares made on or after 4 February 2004.

(c) *Subsection (2)* comes into operation on the making of an order to that effect by the Minister for Finance.

19.—(1) In this section—

“auditor” means—

Transitional arrangements in relation to *section 18(1)(a)(ii)*.

(a) in relation to a company or its qualifying subsidiary, the person or persons appointed as auditor of the company or its qualifying subsidiary, as appropriate, for all the purposes of the Companies Acts 1963 to 2003, and

(b) in relation to a specified designated fund, the person or persons appointed as auditor of that fund;

“certifying agency” has the meaning assigned to it by section 488 of the Principal Act;

“certifying Minister” has the meaning assigned to it by section 488 of the Principal Act;

“County Enterprise Board” means a board referred to in the Schedule to the Industrial Development Act 1995;

“eligible shares” has the meaning assigned to it by section 488 of the Principal Act;

“industrial development agency” has the meaning assigned to it by section 488 of the Principal Act;

“the principal provisions” means Part 16 of the Principal Act;

“prospectus”, in relation to a company, means any prospectus, notice, circular or advertisement, offering to the public for subscription or purchase any eligible shares of the company, and in this definition “the public” includes any section of the public, whether selected as members of the company or as clients of the person issuing the prospectus or in any other manner;

“qualifying subsidiary”, in relation to a company, has the same meaning as it has for the purposes of section 495 of the Principal Act;

“qualifying trading operations” has the meaning assigned to it by section 496 of the Principal Act;

“specified designated fund” means an investment fund designated under section 508 of the Principal Act which closed on or before 4 February 2004;

“the specified period” means the period beginning on 5 February 2003 and ending on 4 February 2004.

(2) This section applies to a company which, or whose qualifying subsidiary, either carries on or intends to carry on one or more of the qualifying trading operations.

(3) Subject to *subsection (7)* where the conditions in either *subsection (4)* or *(5)* are met, *section 18(1)(a)(ii)* shall apply as if, in the case of a company to which this section applies, “31 December 2004” were substituted for “4 February 2004”.

(4) The conditions of this subsection referred to in *subsection (3)* are—

- (a) the eligible shares are issued by the company on or before 31 December 2004, and
- (b) the eligible shares are issued following a subscription on behalf of an individual by a person or persons having the management of a specified designated fund, and
- (c) the company proves to the satisfaction of the Revenue Commissioners that on or before 4 February 2004 it had the intention of raising money before that date under the principal provisions through the specified designated fund referred to in *paragraph (b)*,

and in determining whether they are satisfied that the company has complied with the requirements specified in *paragraph (c)* the Revenue Commissioners shall have regard to the following—

- (i) (I) signed heads of agreement between the company and the fund, or
- (II) exchange of correspondence between the company and the fund showing a clear intention

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that the fund intended to subscribe for eligible shares in the company, Pr.1 S.19

- (ii) a certificate by the auditor of the fund confirming that it is a specified designated fund, and
- (iii) any other information the Revenue Commissioners deem necessary for the purpose.

(5) The conditions of this subsection referred to in *subsection (3)* are—

- (a) the eligible shares are issued by the company on or before 31 December 2004, and
- (b) the company proves to the satisfaction of the Revenue Commissioners that on or before 4 February 2004 it had an intention to raise money under the principal provisions, and in determining whether they are so satisfied the Revenue Commissioners shall have regard to one or more of the following—
 - (i) an application in writing made by the company to the Revenue Commissioners in the specified period for the opinion of the Revenue Commissioners as to whether the company would be a qualifying company for the purposes of the principal provisions,
 - (ii) an application in writing made by the company to an industrial development agency in the specified period for a certificate referred to in section 489(2)(e) of the Principal Act,
 - (iii) an application in writing made to a certifying agency, certifying Minister or County Enterprise Board in the specified period for a certificate under section 497 of the Principal Act, and
 - (iv) the publication in the specified period of a prospectus by, or on behalf of, the company,

and

- (c) (i) in the case of a company which, or whose qualifying subsidiary, either carries on or intends to carry on a qualifying trading operation as is mentioned in subparagraph (i), (ii), (iii), (v), (viii), (ix), (xi) or (xiii) of paragraph (a) of section 496(2) of the Principal Act, that in the specified period the company or its qualifying subsidiary, as the case may be, had entered into a binding contract in writing—

(I) to purchase or lease land or a building,

(II) to purchase or lease plant or machinery, or

(III) for the construction or refurbishment of a building,

to be used in the carrying on of its qualifying trading operation,

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(ii) in the case of a company which, or whose qualifying subsidiary, either carries on or intends to carry on a qualifying trading operation as is mentioned in subparagraph (vii) of paragraph (a) of section 496(2) of the Principal Act, that in the specified period the company or its qualifying subsidiary, as the case may be, had entered into a binding contract in writing—

(I) to purchase or lease greenhouses,

(II) to purchase or lease plant or machinery, or

(III) for the construction or refurbishment of greenhouses,

to be used in the carrying on of its qualifying trading operation, and

(iii) in the case of a company which, or whose qualifying subsidiary, either carries on or intends to carry on a qualifying trading operation as is mentioned in subparagraph (xii) of paragraph (a) of section 496(2) of the Principal Act, that in the specified period the company or its qualifying subsidiary, as the case may be, had entered into a binding contract in writing for the production, publication, marketing or promotion of the qualifying recording or qualifying recordings which the company or its qualifying subsidiary, as the case may be, intends to produce,

and the company proves to the satisfaction of the Revenue Commissioners that the contract which it or its qualifying subsidiary, as the case may be, had entered into was integral to, or consistent with, the purpose for which it had intended to raise money under the principal provisions and that the consideration of the contract is equal to 25 per cent or more of the money which it is intended to so raise.

(6) For the purposes of *subsection (5)*—

(a) the date on which a contract was entered into by a company or, as the case may be, its qualifying subsidiary, and

(b) the date on which a prospectus was published by, or on behalf of, a company,

shall be confirmed in a certificate by the auditor of the company, or its qualifying subsidiary, as appropriate.

(7) If, in accordance with an order made by the Minister for Finance under *subsection (3)(c) of section 18, subsection (2) of that section* comes into operation on a date earlier than 1 January 2005, this section shall cease to apply and have effect as on and from that earlier date.

Amendment of section 531 (payments to subcontractors in certain industries) of Principal Act.

20.—(1) Section 531 of the Principal Act is amended—

(a) by inserting the following after *subsection (6)(b)*:

“(ba) (i) the setting up by the Revenue Commissioners and the maintenance by them of a register containing details of every person who is a principal within the meaning of section 530(1), and

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- (ii) requiring every such person as is specified in the regulations, to notify the Revenue Commissioners within the period and in such manner as is provided for in the said regulations, that that person is a principal for the purposes of this Chapter;”,

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(b) by inserting the following after subsection (11)(b):

“(ba) Notwithstanding paragraph (a), where the Revenue Commissioners have issued a certificate of authorisation to a person under the provisions of that paragraph or paragraph (b), the Revenue Commissioners may issue a further certificate of authorisation to that person without a requirement that the person make a further application to them in that behalf, where they are satisfied, in respect of that person, in relation to the matters specified in subparagraphs (i) to (vi) of paragraph (a), or, as the case may be, where the provisions of paragraph (b) apply.”,

and

- (c) in subsection (20), by substituting “subsection (17) or subsection (17A)” for “subsection (17)”.
- (2) (a) *Paragraph (a) of subsection (1)* applies as and from the date of passing of this Act.
- (b) *Paragraph (b) of subsection (1)* applies as on and from 1 January 2004.
- (c) *Paragraph (c) of subsection (1)* is deemed to have applied as respects the year 1999-2000 and subsequent years of assessment.

21.—Section 659 of the Principal Act is amended in subsection (1)(c) by substituting “1 January 2007” for “1 January 2004” (inserted by the Finance Act 2001).

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

22.—(1) Chapter 3 of Part 8 of the Principal Act is amended by inserting the following section after section 250:

Restriction of relief to individuals in respect of loans applied in acquiring interest in companies.

“250A.—(1) In this section—

‘distribution’ has the same meaning as it has for the purposes of the Corporation Tax Acts by virtue of section 4;

‘eligible loan’ in relation to an individual and a company, means a loan, being a loan to which section 248 applies, to the individual to defray money applied for any of the purposes specified in that section;

‘relevant interest’ has the same meaning as in section 269;

‘residue of expenditure’ shall be construed in accordance with section 277;

‘specified amount’ in relation to an eligible loan, means the amount of the eligible loan or so much of the eligible loan where the money or, as the case may be, part of the money which was defrayed by that loan and which was applied by the individual—

- (a) is used after 1 January 2003 by the company directly or indirectly—
 - (i) in the acquisition (whether by the company or by any other person) of the relevant interest in relation to any capital expenditure incurred or deemed to be incurred on the construction or refurbishment of a specified building,
 - (ii) in replacing money used in such acquisition of such an interest, or
 - (iii) in paying off a loan used in such acquisition of such an interest,
- (b) pays off another eligible loan or so much of another eligible loan where the money or, as the case may be, part of the money which was defrayed by that other loan (or any previous loan or loans which it replaced) and which was applied by the individual was used after 1 January 2003 by the company directly or indirectly for any of the purposes referred to in paragraph (a), or
- (c) was applied in acquiring, on or after 20 February 2004, any part of the ordinary share capital of a company at least 75 per cent of whose income consists of profits or gains chargeable under Case V of Schedule D in respect of one or more specified buildings;

‘specified building’ means a building or structure, or a part of a building or structure—

- (a) (i) which is or is to be an industrial building or structure by reason of its use or deemed use for a purpose specified in section 268(1) and in relation to which an allowance has been, or is to be, made to a company under Chapter 1 of Part 9, or
- (ii) in relation to which an allowance has been, or is to be, so made to a company by virtue of Part 10 or section 843 or 843A,

in respect of—

- (I) the capital expenditure incurred or deemed to be incurred on the construction or refurbishment of the building or structure or, as the case may be, the part of the building or structure, or
- (II) the residue of that expenditure,

- (b) in relation to which at any time beginning on or after 1 January 2003 the company referred to in paragraph (a) is entitled to the relevant interest in relation to the capital expenditure referred to in that paragraph, and
- (c) in relation to which any other company (not being the company referred to in paragraph (a)) is entitled, at any time subsequent to the time referred to in paragraph (b), to an allowance under Chapter 1 of Part 9, in respect of the capital expenditure referred to in paragraph (a) or the residue of that expenditure, following the acquisition of the relevant interest or any part of the relevant interest in relation to that capital expenditure, whether or not, subsequent to the time referred to in paragraph (b), any other person or persons had previously become entitled to that relevant interest or that part of that relevant interest;

‘specified provisions’ means section 248 and that section as extended by section 250.

(2) Notwithstanding anything in the specified provisions, relief under section 248 for any year of assessment in relation to any payment or payments of interest on the specified amount of an eligible loan by the individual concerned shall not exceed that individual’s return from the company concerned in that year in relation to that specified amount.

(3) Subject to subsection (4), an individual’s return from a company in relation to a specified amount of an eligible loan in any year of assessment is—

- (a) where the specified amount defrays an amount of money applied by the individual for the purpose specified in section 248(1)(a) or (b), the amount, if any, of the distributions (before deduction of any dividend withholding tax under Chapter 8A of Part 6), or, as the case may be, the amount, if any, of the interest, received by the individual from the company in that year as a result of the application by the individual of that amount of money, or
- (b) where the specified amount defrays an amount of money applied by the individual, directly or indirectly, in paying off the specified amount of another eligible loan where the earlier specified amount defrayed an amount of money (subsequently referred to in this paragraph as ‘that earlier amount of money’) which was applied by the individual for the purpose specified in section 248(1)(a) or (b), the amount, if any, of the distributions (before deduction of any dividend withholding tax under Chapter 8A of Part 6), or, as the case may be, the amount, if any, of the interest, received by the individual from the company in that year as a result of the application by the individual of that earlier amount of money.

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(4) In determining for the purposes of this section—

- (a) the amount of any payment or payments of interest by an individual on the specified amount of an eligible loan, or
- (b) the amount of interest received by an individual as a result of the application by the individual of an amount of money which was defrayed by the specified amount of an eligible loan,

such apportionment, where necessary, of the total payments of interest by the individual on the eligible loan, or, as the case may be, the total amount of interest received by the individual as a result of the application of all the money defrayed by the eligible loan, shall be made in the same proportion which the specified amount of the eligible loan bears to the amount of the eligible loan.”.

(2) This section shall apply in relation to any payment or payments of interest by an individual—

- (a) on or after 19 March 2003, or
- (b) where this section applies by virtue of paragraph (c) of the definition of “specified amount” (within the meaning of section 250A (as inserted by this section) of the Principal Act), on or after 20 February 2004,

and for this purpose interest shall be deemed to accrue from day to day.

Qualifying residential units.

23.—(1) Section 268(3A) of the Principal Act is amended—

- (a) in paragraph (b)(ii), by substituting the following for “comprised in a two storey building”:

“comprised in a building of one or more storeys in relation to which building a fire safety certificate under Part III of the Building Control Regulations 1997 (S.I. No. 496 of 1997) (as amended from time to time) is required, and prior to the commencement of the construction works on the building, is granted by the building control authority (within the meaning of section 2 of the Building Control Act 1990, as amended by the Local Government (Dublin) Act 1993 and the Local Government Act 2001) in whose functional area the building is situated”,

and

- (b) in paragraph (c) by substituting “not less than 10 qualifying residential units” for “not less than 20 qualifying residential units”.

(2) This section applies as respects capital expenditure incurred on or after 4 February 2004.

Qualifying hospitals and qualifying sports injuries clinics.

24.—(1) Section 268 of the Principal Act is amended—

- (a) in subsection (1A), by substituting “shall not, as regards a claim for any allowance under this Part by any such person, be regarded as an industrial building or structure”

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for “shall not be regarded as an industrial building or structure”, and Pr.1 S.24

- (b) in subsection (1B), by substituting “shall not, as regards a claim for any allowance under this Part by any such person, be regarded as an industrial building or structure” for “shall not be regarded as an industrial building or structure”.

(2) This section applies as respects capital expenditure incurred on the construction or refurbishment of a building or structure on or after 1 May 2004.

25.—(1) Part 9 of the Principal Act is amended—

Capital allowances for hotels, holiday camps and holiday cottages.

(a) in section 268(13)(b)—

- (i) by substituting “31 July 2006” for “31 December 2004”,
- (ii) in subparagraph (i)(I), by inserting “, in so far as planning permission is required,” after “Development Act 2000”,
- (iii) in subparagraph (i)(II), by substituting “31 December 2004” for “31 May 2003”,
- (iv) by deleting “or” between subparagraphs (i) and (ii),
- (v) in subparagraph (ii)(I), by substituting “a planning application, in so far as planning permission was required,” for “a planning application”,
- (vi) in subparagraph (ii)(III), by substituting “regulations,” for “regulations.”, and
- (vii) by inserting the following after subparagraph (ii):

“or

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

(I) a detailed plan in relation to the development work is prepared,

(II) a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and

(III) work to the value of 5 per cent of the development costs is carried out,

not later than 31 December 2004.”,

(b) in section 272(8)—

- (i) by substituting “31 July 2006” for “31 December 2004”,
- (ii) in paragraph (a)(i), by inserting “, in so far as planning permission is required,” after “Development Act 2000”,
- (iii) in paragraph (a)(ii), by substituting “31 December 2004” for “31 May 2003”,
- (iv) in paragraph (b)(i), by substituting “a planning application, in so far as planning permission was required,” for “a planning application”,
- (v) by inserting the following paragraph after paragraph (b):

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

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

not later than 31 December 2004.”,

and

- (vi) in paragraph (c)(ii), by substituting “31 December 2004” for “31 May 2003”,

(c) in section 274(1A)—

- (i) by substituting “31 July 2006” for “31 December 2004”,
- (ii) in paragraph (a)(i), by inserting “, in so far as planning permission is required,” after “Development Act 2000”,
- (iii) in paragraph (a)(ii), by substituting “31 December 2004” for “31 May 2003”,
- (iv) in paragraph (b)(i), by substituting “a planning application, in so far as planning permission was required,” for “a planning application”,

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(v) by inserting the following paragraph after paragraph Pr.1 S.25 (b):

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

(i) a detailed plan in relation to the development work is prepared,

(ii) a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and

(iii) work to the value of 5 per cent of the development costs is carried out,

not later than 31 December 2004.”,

and

(vi) in paragraph (c)(ii), by substituting “31 December 2004” for “31 May 2003”,

and

(d) in section 316, by inserting the following subsection after subsection (2):

“(2A) For the purposes only of determining, in relation to a claim for an allowance under Chapter 1 of this Part, whether and to what extent capital expenditure incurred on the construction (within the meaning of section 270) of:

(a) a building or structure in use for the purposes of the trade of hotel keeping, or

(b) a building or structure deemed to be a building or structure in use for such purposes by virtue of section 268(3),

is incurred or not incurred on or before 31 July 2006, 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 on or before 31 July 2006 shall (notwithstanding subsection (2) and 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 on or before that date.”.

(2) Paragraphs (a)(ii) and (iv), (b)(ii) and (iii), and (c)(ii) and (iii) of subsection (1) are deemed to have applied as on and from 4 December 2002.

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Amendment of Part 10 (income tax and corporation tax: reliefs for renewal and improvement of certain urban areas, certain resort areas and certain islands) of Principal Act.

26.—(1) Part 10 of the Principal Act is amended—

(a) in section 344(1), in paragraph (c) of the definition of “qualifying period” by substituting “31 July 2006” for “31 December 2004”,

(b) in section 372A—

(i) in subsection (1), in the definition of “qualifying period”:

(I) by substituting in paragraph (a)(ii), “31 July 2006” for “31 December 2004”, and

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

“(b) subject to section 372BA and in relation to a qualifying street, the period commencing on 6 April 2001 and ending on—

(i) 31 December 2004, or

(ii) where subsection (1B) applies, 31 July 2006;”,

and

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

“(1B) This subsection shall apply in relation to a qualifying street, as respects capital expenditure incurred on the construction or refurbishment of a building or structure, if—

(a) (i) a planning application (not being an application for outline permission within the meaning of section 36 of the Planning and Development Act 2000), in so far as planning permission is required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, is made in accordance with the Planning and Development Regulations 2001 to 2003,

(ii) an acknowledgement of the application, which confirms that the application was received on or before 31 December 2004, is issued by the planning authority in accordance with article 26(2) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), and

(iii) the application is not an invalid application in respect of which a notice is issued by the

planning authority in accordance with article 26(5) of those regulations, Pr.1 S.26

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

or

- (c) where the construction or refurbishment work on the building or structure represented by that expenditure is exempted development for the purposes of the Planning and Development Act 2000 by virtue of section 4 of that Act or by virtue of Part 2 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and—
- (i) a detailed plan in relation to the development work is prepared,
- (ii) a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and
- (iii) work to the value of 5 per cent of the development costs is carried out,

not later than 31 December 2004.”,

(c) in section 372B—

(i) in paragraph (c)(ii), by substituting “31 July 2006” for “31 December 2004”, and

(ii) in paragraph (d)(ii), by substituting “31 July 2006” for “31 December 2004”,

(d) in section 372BA(1)—

(i) in paragraph (ba), by substituting “where such a street is to be a qualifying street for the purposes of section 372AP, that section shall apply in relation to that street” for “where such an area or areas is or are to be a qualifying area for the purposes of section 372AP, that section shall apply in relation to that area or those areas”,

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

“(bb) as respects any such street so described in the order and in so far as this Chapter is concerned, the definition of qualifying period in section 372A shall be construed as a reference to such period as shall be specified in the order in relation to that street; but no such period specified in the order shall commence before 6 April 2001 or end after—

(i) 31 December 2004, or

(ii) where section 372A(1B) applies, 31 July 2006.”,

and

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

“(c) as respects any such street so described in the order and in so far as Chapter 11 of this Part is concerned, the definition of qualifying period in section 372A shall be construed as a reference to such period as shall be specified in the order in relation to that street; but no such period specified in the order shall commence before 6 April 2001 or end after—

(i) 31 December 2004, or

(ii) where section 372AL(1A) applies, 31 July 2006.”,

(e) in section 372L—

(i) by numbering the existing provisions in that section as subsection (1),

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- (ii) in paragraph (a) of the definition of “qualifying period” in the said subsection (1), by substituting the following for “and ending on 31 December 2004”:

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“and ending on—

(i) 31 December 2004, or

(ii) where subsection (2) applies, 31 July 2006”,

and

- (iii) by inserting the following subsection after the said subsection (1):

“(2) This subsection shall apply, as respects capital expenditure incurred on the construction or refurbishment of a building or structure, if—

(a) (i) a planning application (not being an application for outline permission within the meaning of section 36 of the Planning and Development Act 2000), in so far as planning permission is required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, is made in accordance with the Planning and Development Regulations 2001 to 2003,

(ii) an acknowledgement of the application, which confirms that the application was received on or before 31 December 2004, is issued by the planning authority in accordance with article 26(2) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), and

(iii) the application is not an invalid application in respect of which a notice is issued by the planning authority in accordance with article 26(5) of those regulations,

(b) (i) a planning application, in so far as planning permission was required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, was made in accordance with the Local Government (Planning and Development) Regulations 1994 (S.I. No. 86 of 1994), not being an application for outline permission within

the meaning of article 3 of those regulations,

(ii) an acknowledgement of the application, which confirms that the application was received on or before 10 March 2002, was issued by the planning authority in accordance with article 29(2)(a) of the regulations referred to in subparagraph (i), and

(iii) the application was not an invalid application in respect of which a notice was issued by the planning authority in accordance with article 29(2)(b)(i) of those regulations,

or

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

(i) a detailed plan in relation to the development work is prepared,

(ii) a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and

(iii) work to the value of 5 per cent of the development costs is carried out,

not later than 31 December 2004.”,

(f) in section 372U—

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

“ ‘qualifying period’ means the period commencing on 1 July 1999 and ending on—

(a) 31 December 2004, or

(b) where subsection (1A) applies, 31 July 2006;”,

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

“(1A) This subsection shall apply, as respects capital expenditure incurred on the construction or refurbishment of a building or structure, if—

- (a) (i) a planning application (not being an application for outline permission within the meaning of section 36 of the Planning and Development Act 2000), in so far as planning permission is required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, is made in accordance with the Planning and Development Regulations 2001 to 2003,
- (ii) an acknowledgement of the application, which confirms that the application was received on or before 31 December 2004, is issued by the planning authority in accordance with article 26(2) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), and
- (iii) the application is not an invalid application in respect of which a notice is issued by the planning authority in accordance with article 26(5) of those regulations,
- (b) (i) a planning application, in so far as planning permission was required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, was made in accordance with the Local Government (Planning and Development) Regulations 1994 (S.I. No. 86 of 1994), not being an application for outline permission within the meaning of article 3 of those regulations,
- (ii) an acknowledgement of the application, which confirms that the application was received on or before 10 March 2002, was issued by the planning authority in accordance with article 29(2)(a) of the regulations referred to in subparagraph (i), and

- (iii) the application was not an invalid application in respect of which a notice was issued by the planning authority in accordance with article 29(2)(b)(i) of those regulations,

or

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

- (i) a detailed plan in relation to the development work is prepared,

- (ii) a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and

- (iii) work to the value of 5 per cent of the development costs is carried out,

not later than 31 December 2004.”,

- (g) in section 372W(2)(c)(i), by substituting “this Chapter or Chapter 11” for “this Chapter”,

- (h) in section 372AA—

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

“‘qualifying period’ means, subject to section 372AB, the period commencing on 6 April 2001 and ending on—

- (a) 31 December 2004, or

- (b) where subsection (1A) applies, 31 July 2006;”,

and

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

“(1A) This subsection shall apply, as respects capital expenditure incurred on the construction or refurbishment of a building or structure, if—

- (a) (i) a planning application (not being an application for outline permission within the meaning of

section 36 of the Planning and Development Act 2000), in so far as planning permission is required, in respect of the construction or refurbishment work on the building or structure represented by that expenditure, is made in accordance with the Planning and Development Regulations 2001 to 2003, Pr.1 S.26

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

or

- (c) where the construction or refurbishment work on the building or

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

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

not later than 31 December 2004.”,

(i) in section 372AB(1)(c)—

- (i) in subparagraph (i), by substituting “6 April 2001” for “the day referred to in paragraph (a) of the definition of ‘qualifying period’ in section 372AA”, and
- (ii) by substituting the following for “or end after 31 December 2003”:

“or end after 31 December 2004, or—

- (I) in the case of sections 372AC and 372AD where section 372AA(1A) applies, end after 31 July 2006, and
- (II) in the case of any provision of Chapter 11 of this Part where section 372AL(1A) applies, end after 31 July 2006.”,

and

(j) in section 372AL—

(i) in subsection (1)—

- (I) in paragraph (a)(ii) by substituting “31 July 2006” for “31 December 2004”,
- (II) in paragraph (b) by substituting “and ending on 31 December 2004 or, where subsection (1A) applies, ending on 31 July 2006” for “and ending on 31 December 2004”,
- (III) in paragraphs (c)(i) and (c)(ii) by substituting “and ending on 31 December 2004 or, where subsection (1A) applies, ending on 31 July 2006” for “and ending on 31 December 2004”,

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(IV) in paragraph (d) by substituting “and ending on 31 December 2004 or, where subsection (1A) applies, ending on 31 July 2006” for “and ending on 31 December 2004”, Pr.1 S.26

(V) in paragraph (e) by substituting “and ending on 31 December 2004 or, where subsection (1A) applies, ending on 31 July 2006” for “and ending on 31 December 2004”, and

(VI) in paragraph (f) by substituting the following for subparagraph (ii):

“(ii) where subsection (1A) applies, 31 July 2006.”,

and

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

“(1A) This subsection shall apply, as respects expenditure incurred on the construction, conversion or, as the case may be, refurbishment of a building or structure, if—

(a) (i) a planning application (not being an application for outline permission within the meaning of section 36 of the Planning and Development Act 2000), in so far as planning permission is required, in respect of the construction, conversion or refurbishment work on the building or structure represented by that expenditure, is made in accordance with the Planning and Development Regulations 2001 to 2003,

(ii) an acknowledgement of the application, which confirms that the application was received on or before 31 December 2004, is issued by the planning authority in accordance with article 26(2) of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), and

(iii) the application is not an invalid application in respect of which a notice is issued by the planning authority in accordance with article 26(5) of those regulations,

(b) (i) a planning application, in so far as planning permission was required, in respect of the construction, conversion or refurbishment work on the building

or structure represented by that expenditure, was made in accordance with the Local Government (Planning and Development) Regulations 1994 (S.I. No. 86 of 1994), not being an application for outline permission within the meaning of article 3 of those regulations,

(ii) an acknowledgement of the application, which confirms that the application was received on or before 10 March 2002, was issued by the planning authority in accordance with article 29(2)(a) of the regulations referred to in subparagraph (i), and

(iii) the application was not an invalid application in respect of which a notice was issued by the planning authority in accordance with article 29(2)(b)(i) of those regulations,

or

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

(i) a detailed plan in relation to the development work is prepared,

(ii) a binding contract in writing, under which the expenditure on the development is incurred, is in existence, and

(iii) work to the value of 5 per cent of the development costs is carried out,

not later than 31 December 2004.”,

(2) (a) Paragraphs (b)(i)(I), (b)(i)(II), (b)(ii), (c)(i), (d)(ii) and (e) of subsection (1) shall come into operation on the making of an order to that effect by the Minister for Finance.

(b) Paragraphs (d)(i), (g) and (i)(i) of subsection (1) are deemed to have applied as on and from 1 January 2002.

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27.—Section 843 of the Principal Act is amended—

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- (a) in subsection (1), by inserting the following after the definition of “qualifying expenditure”:

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

“ ‘qualifying period’ means the period commencing on 1 July 1997 and ending on 31 July 2006;”,

- (b) in subsection (2), by substituting “Subject to subsections (2A) to (7)” for “Subject to subsections (3) to (7)”,

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

“(2A) An allowance shall be given by virtue of subsection (2) in relation to any qualifying expenditure on a qualifying premises only in so far as that expenditure is incurred in the qualifying period.”,

- (d) in subsection (3), by inserting “incurred in the qualifying period” after “qualifying expenditure”, and

- (e) by inserting the following subsection after subsection (8):

“(9) 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 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 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.”.

28.—(1) Section 481 of the Principal Act is amended—

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

- (a) in subsection (1)—

- (i) by inserting the following after the definition of “authorised officer”:

“ ‘eligible individual’ means an individual who is a citizen of Ireland or of another Member State of the European Communities, or an individual domiciled, resident or ordinarily resident in the State or in another Member State of the European Communities;”,

- (ii) in the definition of “film”, by substituting the following for paragraph (a):

“(a) a film of a kind which is included within the categories of films eligible for certification by the Revenue Commissioners under subsection (2A), as specified in regulations made under subsection (2E), and”,

- (iii) in the definition of “Minister” by substituting “Arts, Sport and Tourism” for “Arts, Heritage, Gaeltacht and the Islands”,

- (iv) by substituting the following for the definition of “qualifying film”:

“ ‘qualifying film’ means a film in respect of which the Revenue Commissioners have issued a certificate under subsection (2A), which has not been revoked under subsection (2D);”

- (v) in the definition of “qualifying period” by substituting “31 December 2008” for “31 December 2004”, and

- (vi) in the definition of “relevant investment”—

- (I) by substituting the following for paragraph (b):

“(b) paid by the allowable investor company or the qualifying individual, as the case may be, for the purposes of enabling the qualifying company to produce a film in respect of which, at the time such sum of money is paid, the authorised officer has given notice in writing to the qualifying company that the Revenue Commissioners are satisfied for the time being that an application in writing, in the form prescribed by the Revenue Commissioners and containing such information as may be specified in regulations made under subsection (2E), has been made to enable the Revenue Commissioners to consider whether a certificate should be issued to that company under subsection (2A), and”

and

- (II) by substituting “other than a provision for its repayment in the event of the Revenue Commissioners not giving a certificate under subsection (2A)” for “other than a provision for its repayment in the event of the Minister not giving a certificate under subsection (2)”

- (b) in subsection (2)—

- (i) by substituting the following for paragraphs (a) and (b):

“(a) The Minister, on request from the Revenue Commissioners following an application to them by a qualifying company for a certificate under subsection (2A) in relation to a film to be produced by the company, may subject to paragraph (b) and in accordance with regulations made under subsection (2E), give authorisation to the Revenue Commissioners that they may, subject to subsection (2A), issue a certificate under that

subsection to the qualifying com- Pr.1 S.28
pany in relation to that film.

(b) In considering whether to give the authorisation referred to in paragraph (a), the Minister, in accordance with regulations made under subsection (2E), shall have regard to—

- (i) the categories of films eligible for certification by the Revenue Commissioners under subsection (2A), as specified in those regulations, and
- (ii) any contribution which the production of the film is expected to make to either or both the development of the film industry in the State and the promotion and expression of Irish culture,

and where such authorisation is given, the Minister, having regard to those matters, shall specify in the authorisation such conditions, as the Minister may consider proper, including a condition—

(I) that not less than—

(A) 75 per cent, or

(B) in the case of a co-production (as specified in regulations made under subsection (2E)), such lower percentage, not being less than 10 per cent, which, the Minister specifies in the authorisation,

of the work on the production of the film shall be carried out in the State,

(II) in relation to—

(A) the employment and responsibilities of the producer, and the producer company, of a film for the production of that film, and

(B) the employment of personnel, including trainees, (other than the producer) for the production of that film.”,

- (ii) in paragraph (c), by substituting “€15,000,000” for “€10,480,000”, and
 - (iii) by deleting paragraphs (d) and (e),
- (c) by inserting the following after subsection (2):

“(2A) (a) Subject to the provisions of this subsection, the Revenue Commissioners, on the making of an application by a qualifying company, may, in accordance with regulations made under subsection (2E), issue a certificate to a qualifying company stating, in relation to a film to be produced by the company, that the film may be treated as a qualifying film for the purpose of this section.

(b) The Revenue Commissioners shall not issue a certificate under paragraph (a) unless given authorisation that they may do so by the Minister under subsection (2)(a).

(c) Nothing in this section shall be construed as obliging the Revenue Commissioners to issue a certificate under paragraph (a) 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 Revenue Commissioners shall not issue a certificate under that paragraph.

(d) An application for a certificate under paragraph (a) shall be in the form prescribed by the Revenue Commissioners and shall contain such information as may be specified in regulations made under subsection (2E).

(e) In considering whether to issue a certificate under paragraph (a) the Revenue Commissioners shall, in respect of the proposed production of the film, examine all aspects of the qualifying company’s proposal.

(f) The Revenue Commissioners may refuse to issue a certificate under paragraph (a) if they are not satisfied with any aspect of the qualifying company’s application and, in particular, the Revenue Commissioners may refuse to issue a certificate—

- (i) if they have reason to believe that the budget or any particular item of proposed expenditure in the budget is inflated, or

(ii) where—

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(I) they are not satisfied that there is a commercial rationale for the corporate structure proposed—

(A) for the production, financing, distribution or sale of the film, or

(B) for all of those purposes,

or

(II) they are of the opinion that the corporate structure proposed would hinder the Revenue Commissioners in verifying compliance with any of the provisions governing the relief.

(g) A certificate issued by the Revenue Commissioners under paragraph (a) shall be subject to such conditions specified in the certificate as the Revenue Commissioners may consider proper, having regard, in particular, to the examination referred to in paragraph (e) and any conditions specified in the authorisation given by the Minister under subsection (2)(a), and in particular the Revenue Commissioners shall specify in the certificate a condition—

(i) in relation to the percentage of the work on the production of the film which shall be carried out in the State, as specified by the Minister in the authorisation,

(ii) in relation to the matters specified by the Minister in the authorisation by virtue of subsection (2)(b)(II),

(iii) subject to subsection (2)(c), that the amount per cent of the total cost of production of the film which may be met by relevant investments shall not exceed the specified percentage, as referred to in that subsection,

(iv) in relation to the minimum amount of money to be expended directly—

(I) on the employment of eligible individuals, and

(II) on the provision of certain goods, services and facilities, as

set out in regulations made under subsection (2E),

on the production of the qualifying film.

- (h) The Revenue Commissioners, having consulted with the Minister as appropriate, may amend or revoke any condition (including a condition added by virtue of this paragraph) specified in the certificate, or add to such conditions, by giving notice in writing to the qualifying company concerned of the amendment, revocation or addition, and 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 so revoked was not specified in the certificate.

(2B) In carrying out their functions under this section the Revenue Commissioners may—

- (a) consult with any person, agency or body of persons, as in their opinion may be of assistance to them, and
- (b) notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by, or under, the Tax Acts or any other statute or otherwise, disclose any detail in a qualifying company's application which they consider necessary for the purposes of such consultation.

(2C) A company shall not be regarded as a qualifying company for the purposes of this section—

- (a) unless the company, in relation to a qualifying film, notifies the Revenue Commissioners in writing immediately when the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced, as appropriate,
- (b) if the financial arrangements which the company enters into in relation to the qualifying film are—
 - (i) financial arrangements of any type with a person resident, registered or operating in a territory other than—
 - (I) a Member State of the European Communities, or
 - (II) a territory with the government of which, arrangements having the force of law by virtue of section 826(1)(a), have been made,

or

(ii) financial arrangements under which funds are channelled, directly or indirectly, to, or through, a territory other than a territory referred to in clause (I) or (II) of subparagraph (i),

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(c) unless the company provides, when requested to do so by the Revenue Commissioners, for the purposes of verifying compliance with the provisions governing the relief or with any condition specified in a certificate issued by them under subsection (2A)(a), evidence to vouch each item of expenditure in the State or elsewhere on the production and distribution of the qualifying film, whether expended by the qualifying company or by any other person engaged, directly or indirectly, by the qualifying company to provide goods, services or facilities in relation to such production or distribution and, in particular, such evidence shall include—

(i) records required to be kept or retained by the company by virtue of section 886, and

(ii) records, in relation to the production and distribution of the qualifying film, required to be kept or retained by that other person by virtue of section 886, or which would be so required if that other person were subject to the provisions of that section,

and

(d) unless the company, within such time as is specified in the regulations made under subsection (2E)—

(i) notifies the Revenue Commissioners in writing of the date of completion of the production of the qualifying film,

(ii) provides to the Revenue Commissioners and to the Minister, such number of copies of the film in such format and manner as may be specified in those regulations, and

(iii) provides to the Revenue Commissioners, a compliance report, in such format and manner specified in those regulations, which proves to the satisfaction of the Revenue Commissioners that—

(I) the provisions of this section in so far as they apply in relation to the company and a qualifying film have been met, and

(II) any conditions attaching to a certificate issued to the company in relation to a qualifying film under

subsection (2A)(a) have been fulfilled.

(2D) Where a company fails—

- (a) to comply with any of the provisions of subsection (2C) or any other provision governing the relief, or
- (b) to fulfil any of the conditions to which a certificate issued to it under paragraph (a) of subsection (2A) is subject, by virtue of paragraph (g) or (h) of that subsection,

that failure shall constitute the failure of an event to happen by reason of which relief may be withdrawn under subsection (11) and the Revenue Commissioners may, by notice in writing served by registered post on the company, revoke the certificate.

(2E) The Revenue Commissioners with the consent of the Minister for Finance, and with the consent of the Minister in relation to the matters to be considered regarding the issue of an authorisation under subsection (2), shall make regulations with respect to the administration by them of the relief under this section and with respect to the matters to be considered by the Minister for the purposes of that subsection and, without prejudice to the generality of the foregoing, regulations under this subsection may include provision—

- (a) governing the application for certification pursuant to subsection (2A) and the information and documents to be provided in or with such application,
- (b) specifying the categories of films eligible for certification by the Revenue Commissioners under subsection (2A),
- (c) prescribing the form of such application,
- (d) governing the records that a qualifying company shall maintain or provide to the Revenue Commissioners,
- (e) governing the period for which, and the place at which, such records shall be maintained,
- (f) specifying the time within which a qualifying company shall notify the Revenue Commissioners of the completion of the production of a qualifying film,
- (g) specifying the time within which, and the format, number and manner in which, copies of a qualifying film shall be provided to the Revenue Commissioners and to the Minister,
- (h) specifying the form and content of the compliance report to be provided to the Revenue Commissioners, the manner in which such

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report shall be made and verified, the documents to accompany the report and the time within which such report shall be provided, Pr.1 S.28

- (i) governing the type of expenditure which may be accepted by the Revenue Commissioners as expenditure on the production of a qualifying film,
- (j) governing the provision of the goods, services and facilities referred to in subsection (2A)(g)(iv)(II), including the place of origin of those goods, services and facilities, the place in which they are provided and the location of the supplier,
- (k) specifying the currency exchange rate to be applied to expenditure on the production of a qualifying film, and
- (l) specifying the criteria to be considered by the Minister, in relation to the matters referred to in subsections (2)(b)(i) and (ii)—
 - (i) in deciding whether to give authorisation to the Revenue Commissioners under subsection (2)(a), and
 - (ii) in specifying conditions in such authorisation, as provided for in subsection (2)(b),

and the information required for those purposes to be included in the application made to the Revenue Commissioners under subsection (2A) by a qualifying company.”,

- (d) in subsection (8), by substituting “the year of assessment 2008” for “the year of assessment 2004”,
- (e) in subsection (9), by substituting “the year of assessment 2008” for “the year of assessment 2004”,
- (f) in subsection (11)(a), by substituting “the revocation, under subsection (2D), by the Revenue Commissioners of a certificate issued by them under subsection (2A)” for “the revocation by the Minister of a certificate under subsection (2)”,
- (g) in subsection (13), by deleting paragraphs (b) and (c), and
- (h) by inserting the following subsection after subsection (21):

“(22) The Revenue Commissioners shall be responsible for verifying compliance with conditions specified in any certificate issued by the Minister prior to the day appointed by order made by the Minister for Finance for the coming into operation of this subsection, where the qualifying company has not, prior to the day so appointed, submitted the items, statements, reports or other matters required to be submitted to the Minister under the terms of

such certificate to enable the Minister to verify such compliance.

(23) 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.”.

(2) This section shall come into operation on such day or days as the Minister for Finance may by order or orders appoint and different days may be appointed for different purposes or different provisions.

Amendment of Chapter 1A (investment undertakings) of Part 27 of Principal Act.

29.—(1) Chapter 1A (inserted by the Finance Act 2000) of Part 27 of the Principal Act is amended—

(a) in the definition of “chargeable event” in section 739B(1)—

(i) by deleting “and” in paragraph (c), and

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

“(cc) the appropriation or cancellation of units of a unit holder by an investment undertaking for the purposes of meeting the amount of appropriate tax payable on any gain arising by virtue of paragraph (c), and”.

(b) in section 739D—

(i) by deleting “and” after “unit holder,” in subsection (2)(d)(ii),

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

“(dd) where the chargeable event is the appropriation or cancellation of units by an investment undertaking as a consequence of the transfer by a unit holder of entitlement to a unit, the amount determined under subsection (5A), and”.

and

(iii) by inserting the following after subsection (5):

“(5A) The amount referred to in subsection (2)(dd) is the amount determined by the formula—

$$A \times G \times \frac{100}{100 - (G \times (S + 3))}$$

where—

A is the appropriate tax payable on the transfer by a unit holder of entitlement to a unit in accordance with subsection (2)(d),

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G is the amount of the gain on that transfer of that unit divided by the value of that unit, and Pr.1 S.29

S is the standard rate per cent (within the meaning of section 4).”,

and

(c) in section 739E—

(i) in subsection (1)(b) by substituting “paragraph (b), (c), (d) or (dd)” for “paragraph (b), (c) or (d)”, and

(ii) in subsection (3)—

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

(II) by inserting the following after paragraph (b)(i):

“(ia) the appropriation or cancellation of units as a consequence of the transfer by a unit holder of entitlement to a unit, or”.

(2) This section applies as respects the appropriation or cancellation of a unit (within the meaning of section 739B of the Principal Act) on or after 4 February 2004.

30.—Chapter 4 of Part 27 of the Principal Act is amended—

Amendment of Chapter 4 (certain offshore funds — taxation and returns) of Part 27 of Principal Act.

(a) in section 747E(4)(b) by substituting “section 396, 396B” for “section 396”, and

(b) by inserting the following after section 747E:

“Reconstructions and amalgamations in offshore funds.

747F.—(1) In this section ‘scheme of reconstruction or amalgamation’ means an arrangement under which each person who has a material interest in an offshore fund (in this section referred to as an ‘old interest’) receives in place of that old interest a material interest in another offshore fund (in this section referred to as the ‘new interest’) in respect of or in proportion to, or as nearly as may be in proportion to, the value of the old interest and as a result of which the value of that old interest becomes negligible.

(2) Where, in connection with a scheme of reconstruction or amalgamation, a person disposes of an old interest and receives in place of that old interest a new interest, the disposal of the old interest shall not give rise to a gain but the new interest shall for the purposes of section 747E(2) be treated as acquired at the same time and at the same cost as the old interest.”.

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Amendment of
Schedule 24 (relief
from income tax
and corporation tax
by means of credit
in respect of foreign
tax) to Principal
Act.

31.—(1) Schedule 24 of the Principal Act is amended—

(a) in paragraph 9A—

(i) in subparagraph (4)(b) by substituting “5 per cent” for “25 per cent”, and

(ii) in subparagraph (5)(a) by deleting “, in respect of taxes covered by these arrangements,”,

(b) in paragraph 9B—

(i) in subparagraph (2) by substituting the following for “underlying tax to be taken into account.”:

“underlying tax to be taken into account: and for this purpose there shall, subject to Part 1, be taken into account as if it were tax payable under the law of the territory in which the third company is resident—

(i) any income tax or corporation tax payable in the State by the foreign company in respect of its profits, and

(ii) any tax which, under the law of any other territory, is payable by the foreign company in respect of its profits.”,

(ii) in subparagraph (5)—

(I) in clause (b)(i) by substituting “5 per cent” for “25 per cent”, and

(II) in clause (b)(iii) by substituting “5 per cent” for “10 per cent”,

and

(c) by adding the following after paragraph 9D—

“Treatment of unrelieved foreign tax

9E. (1) (a) In this paragraph—

‘the aggregate amount of corporation tax payable by a company for an accounting period in respect of relevant dividends received by the company in the accounting period from foreign companies’ means so much of the corporation tax which, apart from this paragraph, would be payable by the company for that accounting period as would not have been payable had those dividends not been received by the company;

‘foreign company’ means a company resident outside the State;

‘unrelieved foreign tax’ has the meaning assigned to it in subparagraph (2).

(b) For the purposes of this paragraph, a dividend is a relevant dividend if it is received by a company (in this clause referred to as

the ‘receiving company’) from a company which is not resident in the State (in this clause referred to as the ‘paying company’) and the paying company is related to the receiving company (within the meaning of paragraph 9B(5)(b)).

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(2) Where as respects a relevant dividend received in an accounting period by a company any part of the foreign tax cannot, apart from this paragraph, be allowed as a credit against any of the Irish taxes and, accordingly, the amount of income representing the dividend is treated under paragraph 7(3)(c) as reduced by that part of the foreign tax, then an amount determined by the formula—

$$\frac{100 - R}{100} \times D$$

where—

R is the rate per cent specified in section 21A(3), and

D is the amount of the part of the foreign tax by which the income is to be treated under paragraph 7(3)(c) as reduced,

shall be treated for the purposes of subparagraph (3) as unrelieved foreign tax of that accounting period.

(3) The aggregate amount of corporation tax payable by a company for an accounting period in respect of relevant dividends received by the company in that accounting period from foreign companies shall be reduced by the unrelieved foreign tax of that accounting period.

(4) Where the unrelieved foreign tax in relation to an accounting period of a company exceeds the aggregate amount of corporation tax payable by the company for the accounting period in respect of relevant dividends received by the company in that accounting period from foreign companies, the excess shall be carried forward and treated as unrelieved foreign tax of the next succeeding accounting period, and so on for succeeding accounting periods.”.

(2) This section comes into operation on such day or days as the Minister for Finance by order appoints, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

32.—(1) Section 817C (inserted by the Finance Act 2003) of the Principal Act is amended—

Amendment of section 817C (restriction on deductibility of certain interest) of Principal Act.

(a) in subsection (2) by substituting “Subject to subsection (2A), this section applies where” for “This section applies where”, and

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

“(2A) (a) This section does not apply where the connected person referred to in subsection (2) is a company which—

(i) is not resident in the State, and

- (ii) is not under the control, whether directly or indirectly, of a person who is, or persons who are, resident in the State.

(b) For the purposes of this subsection—

- (i) ‘control’ shall be construed in accordance with subsections (2) to (6) of section 432 as if in subsection (6) of that section for ‘5 or fewer participators’ there were substituted ‘persons resident in the State’, and
- (ii) a company shall not be treated as under the control whether directly or indirectly, of a person or persons if that person is or those persons are, in turn under the control of another person or other persons.”.

(2) This section is deemed to have applied as respects any chargeable period ending on or after 6 February 2003.

CHAPTER 4

Corporation Tax

Tax credit for research and development expenditure, etc.

33.—(1) The Principal Act is amended—

(a) by substituting the following for section 766:

“Tax credit for research and development expenditure.

766.—(1) (a) In this section—

‘appropriate inspector’ has the same meaning as in section 950;

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

‘expenditure on research and development’, in relation to a company, means expenditure, other than expenditure on a building or structure, incurred by the company in the carrying on by it of research and development activities in a relevant Member State, being expenditure—

- (i) which is allowable for the purposes of tax in the State as a deduction in computing the income from a trade (otherwise than by virtue of section 307) or is relieved under Part 8,
- (ii) on machinery or plant which qualifies for any allowance under Part 9 or this Chapter, or
- (iii) which qualifies for an allowance under section 764,

but—

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(I) expenditure on research and development shall not include a royalty or other sum paid by a company in respect of the user of an invention—

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(A) if the royalty or other sum is paid to a person who is connected with the company within the meaning of section 10 and is income from a qualifying patent within the meaning of section 234, or

(B) to the extent to which the royalty or other sum exceeds the royalty or other sum which would have been paid if the payer of the royalty or other sum and the beneficial recipient of the royalty or other sum were independent persons acting at arm's length,

and

(II) expenditure incurred by a company which is resident in the State shall not be expenditure on research and development if it—

(A) may be taken into account as an expense in computing income of the company,

(B) is expenditure in respect of which an allowance for capital expenditure may be made to the company, or

(C) may otherwise be allowed or relieved in relation to the company,

for the purposes of tax in a territory other than the State;

'group expenditure on research and development', in relation to a relevant period of a group of companies, means the aggregate of the amounts of expenditure on research and development incurred in the relevant period by qualified companies which for the relevant period are members of the group: but—

(i) expenditure incurred by a company which is a member of a group for a part of a relevant period shall only

be included in group expenditure on research and development if the expenditure is incurred at a time when the company is a member of the group, and

- (ii) expenditure on research and development incurred by a company which has been included in group expenditure on research and development in relation to a group shall not be included in group expenditure on research and development in relation to any other group;

‘qualified company’, in relation to a relevant period, means a company which—

- (i) throughout the relevant period—
 - (I) carries on a trade,
 - (II) is a 51 per cent subsidiary of a company which carries on a trade, or
 - (III) is a 51 per cent subsidiary of a company whose business consists wholly or mainly of the holding of stocks, shares or securities of a company which carries on a trade or more than one such company,
- (ii) carries out research and development activities in the relevant period, and
- (iii) maintains a record of expenditure incurred by it in the carrying out by it of those activities;

‘qualifying group expenditure on research and development’, in relation to a relevant period, means an amount equal to the excess of the amount of group expenditure on research and development in relation to the relevant period over the threshold amount in relation to the relevant period;

‘relevant Member State’ means a state which is a Member State of the European Communities or, not being such a Member State, a state which is a contracting party to the EEA Agreement;

‘relevant period’ means—

- (i) in the case of companies which are members of a group the respective ends of the accounting periods of

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the members of which coincide, the period of 12 months throughout which one or more members of the group carries on a trade and ending at the end of the first accounting period which commences on or after 1 January 2004, and

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- (ii) in the case of companies which are members of a group the respective ends of the accounting periods of which do not coincide, the period specified in a notice in writing made jointly by companies which are members of the group and given to the appropriate inspector within a period of 9 months after the end of the period so specified, being a period of 12 months throughout which one or more members of the group carries on a trade and ending at the end of the first accounting period of a company which is a member of the group which accounting period commences on or after 1 January 2004,

and each subsequent period of 12 months commencing immediately after the end of the preceding relevant period;

‘research and development activities’ means systematic, investigative or experimental activities in a field of science or technology, being one or more of the following—

- (i) basic research, namely, experimental or theoretical work undertaken primarily to acquire new scientific or technical knowledge without a specific practical application in view,
- (ii) applied research, namely, work undertaken in order to gain scientific or technical knowledge and directed towards a specific practical application, or
- (iii) experimental development, namely, work undertaken which draws on scientific or technical knowledge or practical experience for the purpose of achieving technological advancement and which is directed at producing new, or improving existing, materials, products, devices, processes, systems or services including incremental improvements thereto:

but activities will not be research and development activities unless they—

- (I) seek to achieve scientific or technological advancement, and
- (II) involve the resolution of scientific or technological uncertainty;

‘threshold amount’, in relation to a relevant period of a group of companies, means—

- (i) where the relevant period is a period commencing at any time after 31 December 2003 and before 1 January 2007, the aggregate of the amounts of expenditure on research and development incurred in the period of one year ending on a date in the year 2003 which corresponds with the date on which the relevant period ends,
- (ii) in any other case, the aggregate of the amounts of expenditure on research and development incurred in the period of one year ending on a date which is 3 years before the end of the relevant period,

by all companies which are members of the group in the threshold period in relation to the relevant period concerned: but expenditure incurred by a company which is a member of the group for a part of the threshold period shall only be included in the threshold amount if the expenditure is incurred at a time when the company is a member of the group;

‘threshold period’, in relation to a relevant period, means the period of one year referred to in the definition of ‘threshold amount’;

‘university or institute of higher education’ means—

- (i) a college or institution of higher education in the State which—
 - (I) provides courses to which a scheme approved by the Minister for Education and Science under the Local Authorities (Higher Education Grants) Acts 1968 to 1992 applies, or
 - (II) operates in accordance with a code of standards which from

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time to time may, with the consent of the Minister for Finance, be laid down by the Minister for Education and Science, and which the Minister for Education and Science approves for the purposes of section 473A; Pr.1 S.33

- (ii) any university or similar institution of higher education in a relevant Member State (other than the State) which—
 - (I) is maintained or assisted by recurrent grants from public funds of that or any other relevant Member State (including the State), or
 - (II) is a duly accredited university or institution of higher education in the Member State in which it is situated.

(b) For the purposes of this section—

- (i) 2 companies shall be deemed to be members of a group if one company is a 51 per cent subsidiary of the other company or both companies are 51 per cent subsidiaries of a third company: but in determining whether one company is a 51 per cent subsidiary of another company, the other company shall be treated as not being the owner of—
 - (I) any share capital which it owns directly in a company if a profit on a sale of the shares would be treated as a trading receipt of its trade, or
 - (II) any share capital which it owns indirectly, and which is owned directly by a company for which a profit on a sale of the shares would be a trading receipt;
- (ii) sections 412 to 418 shall apply for the purposes of this paragraph as they would apply for the purposes of Chapter 5 of Part 12 if—
 - (I) ‘51 per cent subsidiary’ were substituted for ‘75 per cent subsidiary’ in each place where it occurs in that Chapter, and
 - (II) paragraph (c) of section 411(1) were deleted;

- (iii) a company and all its 51 per cent subsidiaries shall form a group and, where that company is a member of a group as being itself a 51 per cent subsidiary, that group shall comprise all its 51 per cent subsidiaries and the first-mentioned group shall be deemed not to be a group: but a company which is not a member of a group shall be treated as if it were a member of a group which consists of that company;
- (iv) in determining whether a company was a member of a group of companies (in this subparagraph referred to as the ‘threshold group’) for the purposes of determining the threshold amount in relation to a relevant period of a group of companies (in this subparagraph referred to as the ‘relevant group’), the threshold group shall be treated as the same group as the relevant group notwithstanding that one or more of the companies in the threshold group is not in the relevant group, or vice versa, where any person or group of persons which controlled the threshold group is the same as, or has a reasonable commonality of identity with, the person or group of persons which controls the relevant group;
- (v) expenditure shall not be regarded as having been incurred by a company if it has been or is to be met directly or indirectly by grant assistance or any other assistance which is granted by or through the State, any board established by statute, any public or local authority or any other agency of the State;
- (vi) where a company—
- (I) incurs expenditure on research and development at a time when the company is not carrying on a trade, being expenditure which, apart from this subparagraph, is not included in group expenditure on research and development, and
- (II) the company begins to carry on a trade after that time,
- the expenditure shall be treated as it would if the company had commenced to carry on the trade at the time the expenditure was incurred;

(vii) where in any period a company— Pr.1 S.33

(I) incurs expenditure on research and development, and

(II) pays a sum to a university or institute of higher education in order for that university or institute to carry on research and development activities in a relevant Member State,

so much of the sum so paid as does not exceed 5 per cent of that expenditure shall be treated as if it were expenditure incurred by the company on the carrying on by it of research and development activities.

(2) Where for any accounting period a company makes a claim in that behalf to the appropriate inspector, the corporation tax of the company for that accounting period shall be reduced by an amount equal to 20 per cent of qualifying expenditure attributable to the company as is referable to the accounting period.

(3) For the purposes of subsection (2)—

(a) qualifying expenditure attributable to a company in relation to a relevant period shall be so much of the amount of qualifying group expenditure on research and development in the relevant period as is attributed to the company in the manner specified in a notice made jointly in writing to the appropriate inspector by the qualified companies that are members of the group: but where no such notice is given means an amount determined by the formula—

$$Q \times \frac{C}{G}$$

where—

Q is the qualifying group expenditure on research and development in the relevant period,

C is the amount of expenditure on research and development incurred by the company in the relevant period at a time when the company is a member of the group, and

G is the group expenditure on research and development in the relevant period,

(b) where a relevant period coincides with an accounting period of a company, the amount of qualifying expenditure on

research and development attributable to the company as is referable to the accounting period of the company shall be the full amount of that expenditure, and

(c) where the relevant period does not coincide with an accounting period of the company—

(i) the qualifying expenditure on research and development attributable to the company shall be apportioned to the accounting periods which fall wholly or partly in the relevant period, and

(ii) the amount so apportioned to an accounting period shall be treated as the amount of qualifying expenditure on research and development attributable to the company as is referable to the accounting period of the company.

(4) Where as respects any accounting period of a company the amount by which the company is entitled to reduce corporation tax of the accounting period exceeds the corporation tax of the company for the accounting period, the excess shall be carried forward and treated as an amount by which corporation tax for the next succeeding accounting period may be reduced, and so on for succeeding accounting periods.

(5) Where a company claims relief under this section in respect of any accounting period, it shall specify the amount of relief claimed in its return under section 951 for that accounting period.

(6) (a) The Minister for Enterprise, Trade and Employment, in consultation with the Minister for Finance, may make regulations for the purposes of this section providing—

(i) that such categories of activities as may be specified in the regulations are not research and development activities, and

(ii) that such other categories of activities as may be specified in the regulations are research and development activities.

(b) Where regulations are to be made under this subsection, a draft of the regulations shall be laid before Dáil Éireann and the regulations shall not be made until a resolution approving the draft has been passed by Dáil Éireann.

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Tax credit on expenditure on buildings or structures used for research and development.

766A.—(1) (a) In this section—

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‘qualified company’, ‘relevant member State’ and ‘research and development activities’ have the same meanings as in section 766;

‘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;

‘relevant expenditure’ on a building or structure, in relation to a company, means expenditure incurred by the company on the construction of a building or structure which is to be used wholly and exclusively for the purposes of the carrying on by the company of research and development activities in a relevant Member State, being expenditure which qualifies for an allowance under Part 9 or this Part: but expenditure incurred by a company which is resident in the State shall not be relevant expenditure if it—

- (i) may be taken into account as an expense in computing income of the company,
- (ii) is expenditure in respect of which an allowance for capital expenditure may be made to the company, or
- (iii) may otherwise be allowed or relieved in relation to the company,

for the purposes of tax in a territory other than the State.

(b) For the purposes of this section—

- (i) expenditure shall not be regarded as having been incurred by a company if it has been or is to be met directly or indirectly by the State;
- (ii) a reference to expenditure incurred on the construction of a building or structure includes expenditure on the refurbishment of the building or structure, but does not include—
 - (I) any expenditure incurred on the acquisition of, or of rights in or over, any land,

- (II) any expenditure on the provision of machinery or plant or on any asset treated for any chargeable period as machinery or plant, or
- (III) any expenditure on research and development within the meaning of section 766;
- (iii) where a building or structure which is to be used for the purposes of the carrying on of research and development activities forms 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 construction of the whole building or number of buildings, as the case may be, for the purpose of determining the expenditure incurred on the construction of the building or structure which is to be used for the purposes of carrying on of research and development activities,
- (iv) paragraphs (i) to (iii) of section 766(1)(b) shall apply.

(2) Where in an accounting period a qualified company incurs relevant expenditure on a building or structure, the corporation tax of the company for each accounting period falling wholly or partly into the period of 4 years commencing at the beginning of that accounting period shall be reduced by an amount determined by the formula—

$$E \times \frac{M}{1460}$$

where—

E is an amount equal to 20 per cent of the amount of the relevant expenditure on the building or structure, and

M is the number of days in the accounting period which fall into that period of 4 years.

(3) Where—

- (i) in an accounting period a company incurs relevant expenditure on a building or structure,
- (ii) in relation to that expenditure the corporation tax of the company is reduced under subsection (2), and

- (iii) at any time in the period of 10 years commencing at the beginning of that accounting period the building or structure is sold or commences to be used for purposes other than the carrying on by the company of research and development activities,

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then the company—

- (I) shall not be entitled to reduce corporation tax under subsection (2) for any accounting period ending after the time specified in paragraph (iii), and
 - (II) shall be charged to tax under Case IV of Schedule D for the accounting period in which the building or structure is sold, or as the case may be commences to be used for purposes other than the carrying on by the company of research and development activities, in an amount equal to 4 times the aggregate amount by which corporation tax of the company or another company was reduced under subsection (2) or (4) in relation to that expenditure.
- (4) (a) Subject to paragraphs (b) and (c) where as respects any accounting period of a company the amount by which the company is entitled under this section to reduce corporation tax of the accounting period exceeds the relevant corporation tax of the company for the accounting period, the excess shall be carried forward and treated as an amount by which corporation tax for the next succeeding accounting period may be reduced, and so on for succeeding accounting periods.
- (b) Where the company referred to in paragraph (a) is a member of a group of companies, the company may specify that the excess specified in paragraph (a), or any part of that excess, is to be treated as an amount by which corporation tax payable by another company which is a member of that group for that other company's corresponding accounting period is to be reduced.
- (c) So much of the excess specified under paragraph (a) as is treated under paragraph (b) as an amount by which tax payable by another company is to be reduced shall not be carried forward under paragraph (a).

(5) Where a company claims relief under this section in respect of any accounting period, it shall specify the amount of relief claimed in its return under section 951 for that accounting period.”

and

- (b) in section 141(5)(a), by substituting the following for the definition of “research and development activities”:

“‘research and development activities’ has the meaning that it would have in section 766 if *section 33* of the *Finance Act 2004* had not been enacted.”.

- (2) This section comes into operation on such day as the Minister for Finance may appoint by order and has effect as respects expenditure incurred on or after that day.

Amendment of section 831 (implementation of Council Directive No. 90/435/EEC concerning the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States) of Principal Act.

34.—Section 831 of the Principal Act is amended—

- (a) in subsection (1)—

(i) in the definition of “company” by deleting “, other than in the expression ‘unlimited company’ in subsection (5A),”;

(ii) in the definition of “the Directive” by inserting “, as amended by Council Directive No. 2003/123/EC of 22 December 2003¹,” after “1990”;

- (iii) in the definition of “parent company”—

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

“(i) a company which owns at least 5 per cent of the share capital of another company which is not resident in the State, or”;

and

(II) by substituting “5 per cent” for “25 per cent” in each place where it occurs in paragraphs (ii), (I) and (II),

- (b) in subsection (2)—

(i) by deleting “which is resident in this State”, and

(ii) in paragraph (a)—

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

“(i) any withholding tax charged on the distribution by a Member State pursuant to a derogation duly given from Article 5.1 of the Directive,”;

(II) in subparagraph (ii) by substituting “resident, and” for “resident,” and

¹OJ No. L7 of 13.1.2004, p.41

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(III) by inserting the following after subparagraph (ii): Pr.1 S.34

“(iii) any foreign tax borne by a company that would be allowed under paragraph 9B of Schedule 24 if in subparagraphs (2) and (3) ‘and is connected with the relevant company’ in each place where it occurs were deleted.”,

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

“(2A) Subject to subsections (3) and (4), where by virtue of the legal characteristics of a subsidiary (being a company which is not resident in the State) of a parent company, the parent company is chargeable to tax in the State on its share of the profits of the subsidiary company as they arise credit shall be allowed for so much of—

(a) any foreign tax borne by the subsidiary, and

(b) any foreign tax that would be treated as tax paid by the subsidiary company under paragraph 9B of Schedule 24 if—

(i) the subsidiary company were the foreign company for the purposes of that paragraph, and

(ii) in subparagraphs (2) and (3) of that paragraph ‘and is connected with the relevant company’ in both places where it occurs were deleted,

as is properly attributable to the proportion of the subsidiary’s profits which are chargeable on the parent company in the State against corporation tax in respect of the profits so chargeable on the parent company to the extent that credit for such foreign tax would not otherwise be so allowed.”,

(d) in subsection (3) by inserting “or (2A)” after “(2)(a)”, and

(e) by deleting subsection (5A).

35.—(1) Chapter 5 of Part 4 of the Principal Act is amended by inserting the following after section 80:

Taxation of certain short-term leases plant and machinery.

“80A.—(1) In this section—

‘asset’ means machinery or plant;

‘fair value’, in relation to a leased asset, means an amount equal to such consideration as might be expected to be paid for the asset at the inception of the lease on a sale negotiated on an arm’s length basis, less any grants receivable by the lessor towards the purchase of the asset;

‘inception of the lease’ means the date on which the leased asset is brought into use by the lessee or the date from which lease payments under the lease first accrue, whichever is the earlier;

‘lease payments’ means the lease payments over the term of the lease to be paid to the lessor in relation to the leased asset, and includes any residual amount to be paid to the lessor at or after the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee or under the terms of any scheme or arrangement between the lessee and any other person;

‘lessee’ and ‘lessor’ have the same meanings, respectively, as in section 403;

‘normal accounting practice’ means normal accounting practice in relation to the accounts of companies incorporated in the State;

‘predictable useful life’, in relation to an asset, means the useful life of the asset estimated at the inception of the lease, having regard to the purpose for which the asset was acquired and on the assumption that—

- (a) its life will end when it ceases to be useful for the purpose for which it was acquired, and
- (b) it will be used in the normal manner and to the normal extent throughout its life;

‘relevant period’ means the period—

- (a) beginning at the inception of the lease, and
- (b) ending at the earliest time at which the aggregate of amounts of the discounted present value at the inception of the lease of lease payments under the terms of the lease which are payable at or before that time amounts to 90 per cent or more of the fair value of the leased asset, and, for the purposes of this definition, relevant lease payments shall be discounted at a rate which, when applied at the inception of the lease to the amount of the relevant lease payments, produces discounted present values the aggregate of which equals the amount of the fair value of the leased asset at the inception of the lease;

‘relevant short-term asset’ in relation to a company means an asset—

- (a) the predictable useful life of which does not exceed 8 years, and
- (b) the expenditure on which is incurred by the company on or after the date referred to in subsection (3);

‘relevant short-term lease’ means a lease—

- (a) of a relevant short-term asset, and
- (b) the relevant period in relation to which does not exceed 8 years.

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(2) Where a company makes a claim under this section— Pr.1 S.35

- (a) the amount to be included in the trading income of the company in respect of all relevant short-term leases is the amount of income from such leases computed in accordance with normal accounting practice,
- (b) the company will not be entitled to any allowance in respect of expenditure incurred on assets which are the subject of relevant short-term leases under Part 9, section 670, Part 29 or any other provision of the Tax Acts relating to the making of allowances in accordance with Part 9, and
- (c) the income from relevant short-term leases will be treated for the purposes of section 403 as if it were not income from a trade of leasing.

(3) A claim by a company under this section shall be made by the time by which a return under section 951 falls to be made for an accounting period of the company and shall apply as respects expenditure incurred on or after the date on which the accounting period begins.”.

(2) This section applies as respects accounting periods ending on or after 4 February, 2004.

36.—Section 434 of the Principal Act is amended in subsection (1) by substituting the following for the definition of “investment income”:

Amendment of section 434 (distributions to be taken into account and meaning of “distributable income”, “investment income”, “estate income”, etc.) of Principal Act.

“ ‘investment income’ of a company means income other than estate income which, if the company were an individual, would not be earned income within the meaning of section 3, but, without prejudice to the meaning of ‘franked investment income’ in this section, does not include—

- (a) any interest or dividends on investments which, having regard to the nature of the company’s trade, would be taken into account as trading receipts in computing trading income but for the fact that they have been subjected to tax otherwise than as trading receipts, or but for the fact that by virtue of section 129 they are not to be taken into account in computing income for corporation tax, and
- (b) any dividends or other distributions received by the company in respect of shares at a time when any gain on a disposal of the shares would not have been a chargeable gain by virtue of section 626B or would not have been a chargeable gain by virtue of section 626B if paragraphs (a) and (b) of subsection (3) of that section were deleted.”.

37.—(1) Section 396B of the Principal Act is amended, in subsection (1), by substituting the following for the definition of “relevant corporation tax”:

Amendment of section 396B (relief for certain trading losses on a value basis) of Principal Act.

“ ‘relevant corporation tax’, in relation to an accounting period of a company, means the corporation tax which would be

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chargeable on the company for the accounting period apart from—

(a) this section and sections 239, 241, 420B, 440 and 441, and

(b) where the company carries on a life business (within the meaning of section 706 of the Principal Act), any corporation tax which would be attributable to policyholders' profits;”.

(2) This section shall apply as respects any claim for relief made on or after 4 February 2004.

Amendment of section 420B (group relief: relief for certain losses on a value basis) of Principal Act.

38.—(1) Section 420B of the Principal Act is amended, in subsection (1), by substituting the following for the definition of “relevant corporation tax”:

“ ‘relevant corporation tax’, in relation to an accounting period of a company, means the corporation tax which would be chargeable on the company for the accounting period apart from—

(a) this section and sections 239, 241, 440 and 441, and

(b) where the company carries on a life business (within the meaning of section 706 of the Principal Act), any corporation tax which would be attributable to policyholders' profits;”.

(2) This section shall apply as respects any claim for relief made on or after 4 February 2004.

Amendment of section 486B (relief for investment in renewable energy generation) of Principal Act.

39.—(1) Section 486B of the Principal Act is amended in subsection (1) by substituting “31 December 2006” for “31 December 2004” in the definition of “qualifying period”.

(2) Subsection (1) comes into operation on such day as the Minister for Finance may appoint by order.

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

40.—Schedule 4 to the Principal Act is amended by inserting “83A. The Personal Injuries Assessment Board.” after “83. The Pensions Board.”.

Exemption from tax for certain interest and royalties payments.

41.—(1) Part 8 of the Principal Act is amended by substituting the provisions set out in *Schedule 1* for Chapter 6 (inserted by the European Communities (Abolition of Withholding Tax on Certain Interest and Royalties) Regulations 2003 (S.I. No. 721 of 2003)).

(2) The European Communities (Abolition of Withholding Tax on Certain Interest and Royalties) Regulations 2003 are revoked.

Exemption from tax in the case of gains on certain disposals of shares.

42.—(1) The Principal Act is amended—

(a) in Chapter 1 of Part 20 by inserting the following after section 626A:

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“Exemption from tax in the case of gains on certain disposals of shares.

626B.—(1) (a) In this section, section 626C and Pr.1 S.42 Schedule 25A—

‘investor company’ and ‘investee company’ have the meanings assigned by subsection (2);

‘relevant territory’ means—

- (i) a Member State of the European Communities, or
- (ii) not being such a Member State, a territory with the government of which arrangements having the force of law by virtue of section 826(1)(a) have been made;

‘relevant time’, in relation to a disposal by an investor company of shares in an investee company, means—

- (i) for the purposes of subsection (2)(a)(i)(II), the time immediately before—
 - (I) that disposal, or
 - (II) any previous disposal—
 - (A) at a time within the period, or if there was more than one such period the most recent period, during which the investor company was a parent company of the investee company, or
 - (B) within the 2 year period beginning on the most recent day on which the investor company was a parent company of the investee company,

and

- (ii) for the purposes of subsection (2)(a)(ii)(II), the time immediately before—
 - (I) that disposal, or

(II) any previous disposal—

(A) at a time within the period, or if there was more than one such period the most recent period, during which the investor company would have been a parent company of the investee company, or

(B) within the 2 year period beginning on the most recent day on which the investor company would have been a parent company of the investee company,

if in subsection (1)(b)(i) ‘5 per cent’ were substituted for ‘10 per cent’ in each place where it occurs;

‘tax’ in relation to a relevant territory other than the State means any tax imposed in that territory which corresponds to income tax or corporation tax in the State;

‘2 year period’ means a period ending on the day before the second anniversary of the day on which the period began.

(b) For the purposes of this section, section 626C and Schedule 25A—

(i) a company shall only be a parent company in relation to another company at any time if that time falls within an uninterrupted period of not less than 12 months throughout which it directly or indirectly holds shares in that company by virtue of which—

(I) it holds not less than 10 per cent of the company’s ordinary share capital,

(II) it is beneficially entitled to not less than 10 per cent of the profits available for distribution to

equity holders of the Pr.1 S.42
company, and

- (III) it would be beneficially entitled on a winding up to not less than 10 per cent of the assets of the company available for distribution to equity holders,

and for the purposes of this subparagraph—

- (A) subsections (2) to (10) of section 9 shall apply with any necessary modifications, and

- (B) sections 413 to 419 shall apply as they apply for the purposes of Chapter 5 of Part 12 but as if ‘in a relevant territory’ were substituted for ‘in the State’ in subparagraph (iii) of section 413(3)(a) and as if paragraph (c) of section 411(1), other than that paragraph as it applies by virtue of subparagraphs (i) and (ii), were disregarded,

- (ii) in determining whether the conditions in paragraph (a) of subsection (2) are satisfied, a company that is a member of a group shall be treated as holding so much of any shares held by any other company in the group and as having so much of the entitlement of any such company to any rights enjoyed by virtue of holding shares—

- (I) as the company would not, apart from this paragraph, hold or have, and

- (II) as are not part of a life business fund within the meaning of section 719,

and, for the purposes of this subparagraph, ‘group’ means a company which has one or more 51 per cent subsidiaries together with those subsidiaries,

(iii) in determining whether the treatment provided for in subsection (2) applies, the question of whether there is a disposal shall be determined without regard to section 584 or that section as applied by any other section: and, to the extent to which an exemption under subsection (2) does apply in relation to a disposal, section 584 shall not apply in relation to the disposal,

(iv) where assets of a company are vested in a liquidator under section 230 of the Companies Act 1963 or otherwise, the assets shall be deemed to be vested in, and the acts of liquidation in relation to the assets shall be deemed to be the acts of, the company (and acquisitions from, and disposals to, the liquidator shall be disregarded accordingly),

(v) section 616 shall not apply.

(2) A gain accruing to a company (in this section referred to as the 'investor company') on a disposal of shares in another company (in this section referred to as the 'investee company') is not a chargeable gain if—

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

(A) when the investor company is a parent company of the investee company, or

(B) within the 2 year period beginning on the most recent day on which the investor company was a parent company of the investee company,

and

(II) the aggregate market value of shares held at a time which is a relevant time by the investor company in the investee company is not less than €15,000,000,

or

(ii) (I) the disposal by the investor company is at a time— Pr.1 S.42

(A) when the investor company would have been a parent company of the investee company, or

(B) within the 2 year period beginning on the most recent day on which the investor company would have been a parent company of the investee company,

if in subsection (1)(b)(i) ‘5 per cent’ were substituted for ‘10 per cent’ in each place where it occurs, and

(II) the aggregate market value of shares held at a time which is a relevant time by the investor company in the investee company is not less than €50,000,000,

(b) the investee company is, by virtue of the law of a relevant territory, resident for the purposes of tax in the relevant territory at the time of the disposal, and

(c) at the time of the disposal—

(i) the investee company is a company whose business consists wholly or mainly of the carrying on of a trade or trades, or

(ii) the business of—

(I) the investor company,

(II) each company of which the investor company is the parent company, and

(III) the investee company, if it is not a company referred to in clause (II), and any company of which the investee company is the parent company,

taken together consists wholly or mainly of the carrying on of a trade or trades.

(3) The treatment of a gain, as not being a chargeable gain, provided by this section and section 626C shall not apply—

(a) to a disposal that by virtue of any provision relating to chargeable gains is deemed to

be for a consideration such that no gain or loss accrues to the person making the disposal,

- (b) to a disposal a gain on which would, by virtue of any provision other than this section or section 626C, not be a chargeable gain,
- (c) to disposals, including deemed disposals, of shares which are part of a life business fund within the meaning of section 719,
- (d) to a disposal of shares deriving their value or the greater part of this value directly or indirectly from assets specified in paragraphs (a) and (b) of section 29(3).

(4) Schedule 25A shall have effect for the purposes of supplementing this section and section 626C.

Treatment of assets related to shares.

626C.—(1) For the purposes of this section—

- (a) an asset is related to shares in a company if it is—
 - (i) an option to acquire or dispose of shares in that company,
 - (ii) a security to which are attached rights by virtue of which the holder is or may become entitled, whether by conversion or exchange or otherwise, to acquire or dispose of—
 - (I) shares in that company,
 - (II) an option to acquire or dispose of shares in that company, or
 - (III) another security falling within this paragraph,
- or
- (iii) an option to acquire or dispose of any security within subparagraph (ii) or an interest in any such security,
- (b) in determining whether a security is within paragraph (a)(ii), no account shall be taken—
 - (i) of any rights attached to the security other than rights relating, directly or indirectly, to shares of the company in question, or
 - (ii) of rights as regards which, at the time the security came into existence, there was no more than a negligible likelihood that they would in due

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course be exercised to a significant Pr.1 S.42 extent.

(2) A gain accruing to a company (in this subsection referred to as the ‘first-mentioned company’) on the disposal of an asset related to shares in another company is not a chargeable gain if—

(a) (i) immediately before the disposal the first-mentioned company holds shares in the other company, and

(ii) any gain accruing to the first-mentioned company on a disposal at that time of the shares would, by virtue of section 626B, not be a chargeable gain,

or

(b) (i) immediately before the disposal the first-mentioned company does not hold shares in the other company but is a member of a group and another member of that group does hold shares in the other company, and

(ii) if the first-mentioned company, rather than the other member of the group, held the shares, any gain accruing to the first-mentioned company on a disposal at that time of the shares would, by virtue of section 626B, not be a chargeable gain;

and for the purposes of this paragraph ‘group’ means a company which has one or more 51 per cent subsidiaries together with those subsidiaries.”,

and

(b) by inserting the following after Schedule 25:

“Section 626B
Section 626C

SCHEDULE 25A

EXEMPTION FROM TAX IN THE CASE OF GAINS ON CERTAIN DISPOSALS OF SHARES

Effect of earlier no-gain/no-loss transfer

1. (1) For the purposes of this paragraph shares are ‘derived’ from other shares only where—

(a) one holding of shares is treated by virtue of section 584 as the same asset as another, or

(b) there is a sequence of 2 or more of the occurrences mentioned in paragraph (a).

(2) The period for which a company has held shares is treated as extended by any earlier period during which the shares concerned, or shares from which they are derived, were held—

(a) by a company from which the shares concerned were transferred to the company on a no-gain/no-loss transfer, or

(b) by a company from which the shares concerned, or shares from which they are derived, were transferred on a previous no-gain/no-loss transfer—

(i) to a company within clause (a), or

(ii) to another company within this clause.

(3) For the purposes of subparagraph (2) a ‘no-gain/no-loss transfer’ means a disposal and corresponding acquisition that, by virtue of the Capital Gains Tax Acts, are deemed to be for a consideration such that no gain or loss accrues to the person making the disposal.

(4) Where subparagraph (2) applies to extend the period for which a company (in this paragraph referred to as the ‘first-mentioned company’) is treated as having held any shares, the first-mentioned company shall be treated for the purposes of section 626B(2)(a) as having had at any time the same entitlement—

(a) to shares, and

(b) to any rights enjoyed by virtue of holding shares,

as the company (in this paragraph referred to as the ‘other company’) that at that time held the shares concerned or, as the case may be, the shares from which they are derived.

(5) The shares and rights to be attributed to the first-mentioned company include any holding or entitlement attributed to the other company under section 626B(1)(b)(ii).

Effect of deemed disposal and reacquisition

2. (1) In this paragraph—

‘deemed disposal and reacquisition’ means a disposal and immediate reacquisition

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treated as taking place under the Capital Pr.1 S.42
Gains Tax Acts;

‘derived’ has the same meaning as in para-
graph 1.

(2) A company is not regarded as having
held shares throughout a period if, at any
time during that period, there is a deemed
disposal and reacquisition of—

- (a) the shares concerned, or
- (b) shares from which those shares are
derived.

Effect of repurchase agreement

3. (1) In this paragraph a ‘repurchase
agreement’ means an agreement under
which—

- (a) a person (in this paragraph
referred to as the ‘original
owner’) transfers shares to
another person (in this para-
graph referred to as the ‘interim
holder’) under an agreement to
sell them, and
- (b) the original owner or a person con-
nected with him is required to
buy them back either—
 - (i) in pursuance of an obli-
gation to do so imposed by
that agreement or by any
related agreement, or
 - (ii) in consequence of the exer-
cise of an option acquired
under that agreement or
any related agreement,

and for the purposes of paragraph (b)
agreements are related if they are entered
into in pursuance of the same arrangements
(regardless of the date on which either
agreement is entered into).

(2) Any reference in this paragraph to
the period of a repurchase agreement is a
reference to the period beginning with the
transfer of the shares by the original owner
to the interim holder and ending with the
repurchase of the shares in pursuance of
the agreement.

(3) This paragraph applies where a com-
pany that holds shares in another company
transfers the shares under a repurchase
agreement.

(4) In determining whether the conditions in paragraph (a) of section 626B(2) are satisfied but subject to subparagraph (5)—

- (a) the original owner shall be treated as continuing to hold the shares transferred and accordingly as retaining entitlement to any rights attached to them, and
- (b) the interim holder shall be treated as not holding the shares transferred and as not becoming entitled to any such rights,

during the period of the repurchase agreement.

(5) If at any time before the end of the period of the repurchase agreement the original owner, or another member of the same group as the original owner, becomes the holder—

- (a) of any of the shares transferred, or
- (b) of any shares directly or indirectly representing any of the shares transferred,

subparagraph (4) does not apply after that time in relation to those shares or, as the case may be, in relation to the shares represented by those shares; and for the purposes of this subparagraph ‘group’ means a company which has one or more 51 per cent subsidiaries together with those subsidiaries.

Effect of stock lending arrangements

4. (1) In this paragraph a ‘stock lending arrangement’ means arrangements between two persons (in this paragraph referred to as the ‘borrower’ and the ‘lender’) under which—

- (a) the lender transfers shares to the borrower otherwise than by way of sale, and
- (b) a requirement is imposed on the borrower to transfer those shares back to the lender otherwise than by way of sale.

(2) Any reference in this paragraph to the period of a stock lending arrangement is a reference to the period beginning with the transfer of the shares by the lender to the borrower and ending—

(a) with the transfer of the shares back to the lender in pursuance of the arrangement, or

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(b) when it becomes apparent that the requirement for the borrower to make a transfer back to the lender will not be complied with.

(3) This paragraph applies where a company that holds shares in another company transfers the shares under a stock lending arrangement.

(4) In determining whether the conditions in paragraph (a) of section 626B(2) are satisfied but subject to subparagraph (5)—

(a) the lender shall be treated as continuing to hold the shares transferred and accordingly as retaining entitlement to any rights attached to them, and

(b) the borrower shall be treated for those purposes as not holding the shares transferred and as not becoming entitled to any such rights,

during the period of the stock lending arrangement.

(5) (a) If at any time before the end of the period of the stock lending arrangement the lender, or another member of the same group as the lender, becomes the holder—

(i) of any of the shares transferred, or

(ii) of any shares directly or indirectly representing any of the shares transferred,

subparagraph (4) does not apply after that time in relation to those shares or, as the case may be, in relation to the shares represented by those shares.

(b) For the purposes of this subparagraph 'group' means a company which has one or more 51 per cent subsidiaries together with those subsidiaries.

Effect in relation to investee company of earlier company reconstruction etc.

5. (1) In this paragraph ‘original shares’ and ‘new holding’ shall be construed in accordance with sections 584, 586 and 587.

(2) This paragraph applies where shares in one company (in this paragraph referred to as the ‘first company’)—

(a) are exchanged (or deemed to be exchanged) for shares in another company (in this paragraph referred to as the ‘second company’), or

(b) are deemed to be exchanged by virtue of section 587 for shares in the first company and shares in the second company,

in circumstances such that, under section 584 as that section applies by virtue of section 586 or 587, the original shares and the new holding are treated as the same asset.

(3) Where the second company—

(a) is an investee company, and is accordingly the company by reference to which the shareholding requirement under section 626B(2)(a) falls to be met, or

(b) is a company by reference to which, by virtue of this paragraph, that requirement may be met,

that requirement may instead be met, in relation to times before the exchange, or deemed exchange, by reference to the first company.

(4) If in any case that requirement can be met by virtue of this paragraph, it shall be treated as met.

Negligible value

6. A claim under section 538(2) may not be made in relation to shares held by a company if by virtue of section 626B any loss accruing to the company on a disposal of the shares at the time of the claim, or at any earlier time at or after which the value of the shares becomes negligible, would not be an allowable loss.

Degrouping: time when deemed sale and reacquisition treated as taking place Pr.1 S.42

7. Where—

- (a) a company, as a result of ceasing at any time (in this paragraph referred to as the ‘time of degrouping’) to be a member of a group, is treated by section 623(4) as having sold and immediately reacquired an asset, and
- (b) if the company owning the asset at the time of degrouping had disposed of it immediately before that time, any gain accruing on the disposal would by virtue of section 626B not have been a chargeable gain,

then section 623(4) shall have effect as if it provided for the deemed sale and reacquisition to be treated as taking place immediately before the time of degrouping.

Appropriations to trading stock

8. (1) Where—

- (a) an asset acquired by a company otherwise than as trading stock of a trade carried on by it is appropriated by the company for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise), and
- (b) if the company had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to the company but for the provisions of section 626B,

then the company shall be treated for the purposes of the Capital Gains Tax Acts as if it had thereby disposed of the asset for its market value.

(2) Section 618 applies in relation to this paragraph as it applies in relation to section 596.”.

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

PART 2

EXCISE

Amendment of
Chapter 1 (alcohol
products tax) of
Part 2 of Finance
Act 2003, etc.

43.—(1) Chapter 1 of Part 2 of the Finance Act 2003 is amended—

(a) in subsection (1) of section 73 by substituting the following for the definition of “spirits”:

“ ‘spirits’ means any product which exceeds 1.2% vol and which is—

(a) distilled ethyl alcohol,

(b) an alcoholic beverage the full alcohol content of which is the result of a process of distillation,

(c) any other product falling within CN Code 2207 or 2208, even when such product forms part of a product which is not an alcohol product, or

(d) any beverage exceeding 22% vol,

and includes any such product which contains a non-alcoholic product, whether in solution or not;”,

(b) in section 75 by substituting the following for subsection (2):

“(2) In the case of spirits produced in the State by a process of distillation, where the quantity of spirits produced is less than the quantity capable of being produced from the wort or wash used in such process, the Commissioners may require that, instead of a charge on the quantity of spirits produced, alcohol products tax be charged on the quantity capable of being produced from such wort or wash on the assumption that one litre of alcohol is produced for every 8.8 degrees of attenuation, that is to say, for every 8.8 degrees of difference between the highest gravity of the wort and the lowest gravity of the wash before distillation.

(3) In calculating the quantity of spirits to be charged under subsection (2), allowance may be made for losses covered by section 106 of the Finance Act 2001.”,

and

(c) in section 77 by substituting the following for paragraph (f):

“(f) in the case of wine, beer, or other fermented beverage the alcoholic content of which is entirely of fermented origin, to have been produced solely by a private individual in a private premises for consumption by the producer or by the family or guests of such producer, and not to have been produced or supplied for consideration,

(g) to be intended for use or to have been used for medical purposes in hospitals and pharmacies,

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- (h) to be intended for use or to have been used in an industrial process provided that the final product does not contain alcohol, Pr.2 S.43
- (i) to be intended for use or to have been used in the manufacture of a component which is not subject to alcohol products tax, or
- (j) to be intended for use or to have been used in the manufacture of an oral hygiene product.”.

(2) Schedule 2 to the Finance Act 2003 is amended by substituting “*Intermediate Beverages*” for “*Intermediate Products*”.

44.—(1) Section 93 of the Finance Act 2003 is amended in subsection (1) by substituting the following for the definition of “spirits”:

Amendment of section 93 (offences in relation to keeping, selling or delivering of unexcised spirits) of Finance Act 2003.

“‘spirits’ has the same meaning as it has in section 73(1) (as amended by the *Finance Act 2004*) of the Finance Act 2003;”.

(2) Subsection (1) comes into operation on such day as the definition of “spirits” in section 73 (1) of the Finance Act 2003 comes into operation by virtue of an order under section 86 of that Act and to the extent provided for in such order.

45.—(1) In this section and in *Schedule 2*—

Tobacco products.

“Act of 1977” means the Finance (Excise Duty on Tobacco Products) Act 1977;

“cigarettes”, “cigars”, “fine-cut tobacco for the rolling of cigarettes” and “smoking tobacco” have the same meanings as they have in the Act of 1977, as amended by section 86 of the Finance Act 1997 and by section 94 of the Finance Act 2002.

(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 Schedule 3 to the Finance Act 2003, be charged, levied and paid, as on and from 4 December 2003 at the several rates specified in *Schedule 2*.

46.—Section 104 of the Finance Act 2001 is amended by inserting the following after subsection (3):

Amendment of section 104 (reliefs) of Finance Act 2001.

“(4) (a) Where, as allowed under the terms of the treaty of accession which applies to a Member State, such Member State applies to any tobacco product a rate of excise duty which is less than the minimum rate stipulated for that product in either Council Directive 92/79/EEC of 19 October 1992¹ or Council Directive 92/80/EEC of 19 October 1992², the Minister for Finance may by order provide that—

(i) subsection (2)(a) shall not apply, and

(ii) the quantitative limits set down in such order shall apply,

¹OJ No. L316, 31.12.1992, p.8

²OJ No. L316, 31.12.1992, p.10

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to such tobacco products which, in the circumstances outlined in that subsection, have been acquired in such Member State and transported into the State.

- (b) The Minister may by order amend or revoke an order made under paragraph (a).
- (c) An order under this subsection 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 sitting 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.”.

Amendment of section 124A (administrative penalties) of Finance Act 2001.

47.—Section 124A (inserted by the Finance Act 2003) of the Finance Act 2001 is amended by substituting the following for subsection (1):

“(1) An authorised warehousekeeper who contravenes or fails to comply with—

- (a) any condition imposed on him or her under section 109(5), or
- (b) any requirement imposed on him or her under—
- (i) this Part,
 - (ii) the Finance (Excise Duty on Tobacco Products) Act 1977,
 - (iii) Chapter 1 of Part 2 of the Finance Act 1999,
 - (iv) Chapter 1 of Part 2 of the Finance Act 2003, or
 - (v) any regulation made under the provisions referred to in subparagraphs (i) to (iv),

is liable to a penalty of €1,500 for each such contravention or failure.”.

Rates of mineral oil tax.

48.—The Finance Act 1999 is amended by substituting the following for Schedule 2 to that Act, as amended by section 91 of the Finance Act 2003:

“SCHEDULE 2

Rates of Mineral Oil Tax
(With effect as on and from 4 December 2003)

Description of Mineral Oil	Rate of Duty
<i>Light Oil:</i>	
Leaded petrol	€553.04 per 1,000 litres
Unleaded petrol	€442.68 per 1,000 litres
Super unleaded petrol	€547.79 per 1,000 litres
Aviation gasoline	€276.52 per 1,000 litres

Description of Mineral Oil	Rate of Duty
<i>Heavy Oil:</i>	
Used as a propellant with a maximum sulphur content of 50 milligrammes per kilogramme	€368.05 per 1,000 litres
Other heavy oil used as a propellant	€420.44 per 1,000 litres
Kerosene used other than as a propellant	€31.74 per 1,000 litres
Fuel oil	€13.45 per 1,000 litres
Other heavy oil	€47.36 per 1,000 litres
<i>Liquefied Petroleum Gas:</i>	
Used as a propellant	€53.01 per 1,000 litres
Other liquefied petroleum gas	€18.15 per 1,000 litres
<i>Substitute Fuel:</i>	
Used as a propellant	€368.05 per 1,000 litres
Other substitute fuel	€47.36 per 1,000 litres

”.

49.—Section 94 of the Finance Act 1999 is amended in subsection (1)—

Amendment of section 94 (interpretation) of Finance Act 1999.

(a) by substituting the following for the definition of “biofuel”:

“ ‘biofuel’ means any mineral oil which is produced from biomass;”

and

(b) by inserting the following definition after the definition of “biofuel”:

“ ‘biomass’ means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;”.

50.—Chapter 1 of Part 2 of the Finance Act 1999 is amended by inserting the following after section 98:

Biofuel pilot projects.

“98A.—(1) Where the Minister, after consultation with the Minister for Communications, Marine and Natural Resources, is satisfied that any biofuel is essential to a pilot project undertaken in the State which is designed either—

(a) to produce biofuel, or

(b) to test the technical viability of biofuel for use as motor fuel,

a relief from mineral oil tax shall, subject to such conditions as the Commissioners may impose, apply to such biofuel.

(2) An application for relief under subsection (1) shall be made in writing to the Minister on or before 31 December 2007 and the applicant shall—

(a) furnish such information as the Minister may reasonably require,

(b) show to the satisfaction of the Minister that such applicant can provide a suitable premises and the equipment necessary for the project concerned.

(3) Relief under subsection (1) may, as determined by the Minister, be restricted to—

- (a) a specified quantity of biofuel, and
- (b) a specified period in which such biofuel may be produced or tested,

and such quantity or period may be increased or extended by the Minister following consultation with the Minister for Communications, Marine and Natural Resources.

(4) Relief under subsection (1) may be withdrawn where any condition referred to in that subsection has not been complied with and where the Minister so thinks fit. The Commissioners may transmit to the Minister any information relevant to such non-compliance.

(5) Relief under subsection (1) may be granted by the Commissioners by means of remission or repayment.

(6) (a) Claims for repayment under subsection (5) shall be in such form as the Commissioners may direct and shall be in respect of biofuel produced or tested, as the case may be, within a period of not less than one and not more than 6 calendar months.

(b) A repayment under subsection (5) may not be made unless the claim is made within 4 months following the end of each such period or within such longer period as the Commissioners may, in any particular case, allow.

(7) This section comes into operation on such day as the Minister may appoint by order.”.

Amendment of section 100 (reliefs from mineral oil tax for certain mineral oils) of Finance Act 1999.

51.—Section 100 of the Finance Act 1999 is amended in subsection (1) by substituting the following for paragraph (l) (inserted by the Finance Act 2001):

“(l) mineral oil used by a manufacturer in the production of mineral oil;

(m) heavy oil which is intended for use or which has been used in aircraft engines during testing and maintenance of such engines.”.

Amendment of section 6 of Roads Act 1920.

52.—(1) Section 6 of the Roads Act 1920 (as amended by section 131 of the Finance Act 1992) is amended by deleting subsection (2).

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

Amendment of section 141 (regulations) of Finance Act 1992.

53.—(1) Section 141 of the Finance Act 1992 is amended—

(a) in subsection (2)—

(i) by deleting paragraph (d), and

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(ii) by substituting “subsections (7) and (11)” for “subsections (7), (11) and (15)” in paragraph (s) (inserted by section 74 of the Finance Act 1996),

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and

(b) in subsection (3) (inserted by section 56(b) of the Finance Act 1993) by substituting “other than subsections (6), (7) and (11)” for “other than subsections (6), (7), (11) and (15)”.

(2) Subsection (1)(a)(i) comes into operation on such day as the Minister for Finance by order appoints.

PART 3

VALUE-ADDED TAX

54.—In this Part—

Interpretation
(Part 3).

“Act of 1978” means the Value-Added Tax (Amendment) Act 1978;

“Act of 2001” means the Finance Act 2001;

“Principal Act” means the Value-Added Tax Act 1972.

55.—Section 1 of the Principal Act is amended by substituting the following for the definition of “taxable dealer”:

Amendment of
section 1
(interpretation) of
Principal Act.

“ “taxable dealer” —

(a) in relation to supplies of gas through the natural gas distribution system, or of electricity, has the meaning assigned to it by section 3(6A),

(b) in relation to supplies of movable goods other than a means of transport, has the meaning assigned to it by section 10A, and

(c) in relation to supplies of means of transport, has the meaning assigned to it by section 12B;”.

56.—Section 3 of the Principal Act is amended—

Amendment of
section 3 (supply of
goods) of Principal
Act.

(a) in subsection (6) (inserted by the Finance Act 1992) by substituting in the proviso to paragraph (d) “such supplies,” for “such supplies.” and by inserting the following paragraphs after the proviso to paragraph (d):

“(e) in the case of the supply of gas through the natural gas distribution system, or of electricity, to a taxable dealer, whether in the State, or in another Member State of the Community, or outside the Community, the place where that taxable dealer has established the business concerned or has a fixed establishment for which the goods are supplied, or in the absence of such a place of business or fixed establishment the place where that taxable dealer has a permanent address or usually resides,

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(f) in the case of the supply of gas through the natural gas distribution system, or of electricity, to a customer other than a taxable dealer, the place where that customer has effective use and consumption of those goods; but if all or part of those goods are not consumed by that customer, then the goods not so consumed shall be deemed to have been supplied to that customer and used and consumed by that customer at the place where that customer has established the business concerned or has a fixed establishment for which the goods are supplied or in the absence of such a place of business or fixed establishment, the place where that customer has a permanent address or usually resides,”

and

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

“(6A) In subsection (6) ‘taxable dealer’ means a taxable person whose principal business in respect of supplies of gas through the natural gas distribution system, or of electricity, received by that person, is the supply of those goods for consideration in the course or furtherance of business and whose own consumption of those goods is negligible.”.

Amendment of section 4 (special provisions in relation to the supply of immovable goods) of Principal Act.

57.—Section 4 of the Principal Act is amended by substituting the following for subsection (6)—

“(6) Notwithstanding anything in this section or in section 2 tax shall not be charged on the supply of immovable goods—

(a) in relation to which a right in favour of the person making the supply to a deduction under section 12 in respect of any tax borne or paid on the supply or development of the goods did not arise and would not, apart from section 3(5)(b)(iii), have arisen, or

(b) which had been occupied before the specified day and had not been developed between that date and the date of the supply,

other than a supply of immovable goods to which the provisions of subsection (5) apply.”.

Amendment of section 8 (taxable persons) of Principal Act.

58.—Section 8 of the Principal Act is amended—

(a) in subsection (1) (as amended by the Finance Act 2003) by substituting “in paragraph (f) or (g) of subsection (1A)” for “in subsection (1A)(f)”, and

(b) by inserting the following after subsection (1A)(f):

“(g) Where a taxable person not established in the State supplies gas through the natural gas distribution system, or electricity, to a recipient in the State and where such recipient is—

(i) a taxable person,

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(ii) a Department of State or local authority, Pr.3 S.58

(iii) a body established by statute, or

(iv) a person who receives that supply for the purpose of any activity specified in the First Schedule,

then that recipient shall in relation to that supply be a taxable person or be deemed to be a taxable person and shall be liable to pay the tax chargeable as if that recipient supplied those goods in the course or furtherance of business.”.

59.—Section 11 of the Principal Act is amended in subsection (1)(f) (inserted by the Finance Act 1992) by substituting “4.4 per cent” for “4.3 per cent” (inserted by the Act of 2001). Amendment of section 11 (rates of tax) of Principal Act.

60.—Section 12 of the Principal Act is amended in subsection (1)(a) by inserting the following after subparagraph (v): Amendment of section 12 (deduction for tax borne or paid) of Principal Act.

“(va) the tax chargeable during the period, being tax for which the taxable person is liable by virtue of section 8(1A)(f) in respect of goods which are installed or assembled; but this subparagraph shall apply only where the taxable person would be entitled to a deduction of that tax elsewhere under this subsection if that tax had been charged to such person by another taxable person,

(vb) the tax chargeable during the period, being tax for which the taxable person is liable by virtue of section 8(1A)(g) in respect of the supply to such person of gas through the natural gas distribution network, or of electricity; but this subparagraph shall apply only where the taxable person would be entitled to a deduction of that tax elsewhere under this subsection if that tax had been charged to such person by another taxable person.”.

61.—Section 12A (inserted by the Act of 1978) of the Principal Act is amended in subsection (1) by substituting “4.4 per cent” for “4.3 per cent” (inserted by the Act of 2001). Amendment of section 12A (special provisions for tax invoiced by flat-rate farmers) of Principal Act.

62.—Section 15B (inserted by the European Communities (Value-Added Tax) Regulations 1994 (S.I. 448 of 1994)) of the Principal Act is amended— Amendment of section 15B (goods in transit (additional provisions)) of Principal Act.

(a) by substituting “before the date of accession” for “on or before the 31st day of December, 1994” in each place where it occurs,

(b) by substituting “date of accession” for “1st day of January, 1995” in each place where it occurs,

(c) in subsection (5) by deleting the proviso to paragraph (c),

(d) by inserting the following after subsection (5):

“(5A) Subsection (5)(c) shall be deemed to be complied with where it is shown to the satisfaction of the Revenue Commissioners that—

- (i) the date of the first use of the means of transport was before 1 January 1987 in the case of means of transport entering the State from the Republic of Austria, the Republic of Finland (excluding the Åland Islands) or the Kingdom of Sweden,
- (ii) the date of the first use of the means of transport was before 1 May 1996 in the case of means of transport entering the State from the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia or the Slovak Republic, or
- (iii) the tax due by reason of the importation does not exceed €130.”,

and

(e) in paragraph (7)(a)—

- (i) by inserting the following definition before the definition of “the enlarged Community”:

“‘date of accession’ means 1 January 1995 in respect of the Republic of Austria, the Republic of Finland (excluding the Åland Islands) and the Kingdom of Sweden or 1 May 2004 in respect of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic;”,

and

- (ii) by substituting the following for the definition of “new Member State”:

“‘new Member State’ means any state referred to in the definition of ‘date of accession’ with effect from the relevant date.”.

Amendment of section 17 (invoices) of Principal Act.

63.—Section 17 of the Principal Act is amended in subsection (1) by inserting the following after “section 11(1),”:

“or who supplies goods or services to a person in another Member State who is liable to pay value-added tax pursuant to Council Directive No. 77/388/EEC of 17 May 1977 on such supply,”.

64.—The First Schedule to the Principal Act is amended—

Pt.3

Amendment of
First Schedule to
Principal Act.

(a) in paragraph (i)(g) (as substituted by the Finance Act 1991)—

(i) by substituting “the management of an undertaking specified in one of the following clauses, and such management may comprise any of the three functions listed in Annex II to Directive 2001/107/EC of the European Parliament and Council (being the functions included in the activity of collective portfolio management) where those functions are supplied by the person with responsibility for the provision of the functions concerned in respect of the undertaking, and which is—” for “the management of an undertaking which is—”,

(ii) in clause (IV) by substituting “this subparagraph apply, or” for “this subparagraph apply;”, and

(iii) by inserting the following after clause (IV):

“(V) an undertaking which is a qualifying company for the purposes of section 110 of the Taxes Consolidation Act 1997;”,

(b) in paragraph (xxv)(b) by substituting “the school;” for “the school.”, and

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

“(xxvi) the importation of gas through the natural gas distribution system, or the importation of electricity.”.

65.—The Fourth Schedule to the Principal Act is amended—

Amendment of
Fourth Schedule to
Principal Act.

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

“(iiid) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services;”,

and

(b) in paragraph (v) by inserting “and financial fund management functions” after “re-insurance”.

PART 4

STAMP DUTIES

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

Interpretation
(Part 4).

67.—(1) Section 73 of the Principal Act is amended in subsection (1)—

Amendment of
section 73
(exemptions) of
Principal Act.

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(a) in paragraph (b) by substituting “in priority, or” for “in priority.”, and

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

“(c) in respect of an operator-instruction effecting a transfer of rights to securities, in a company which is not an unquoted company within the meaning of section 63, where that transfer is a renunciation of those rights under a letter of allotment.”.

(2) This section has effect in relation to instruments executed on or after 1 March 2003.

Amendment of section 80 (reconstructions or amalgamations of companies) of Principal Act.

68.—(1) Section 80 of the Principal Act is amended by inserting the following after subsection (2):

“(2A) (a) This subsection applies to any property, an instrument for the conveyance of which is chargeable to stamp duty under or by reference to the heading ‘CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance’ in Schedule 1.

(b) Subsection (2) shall not apply to an instrument made for the purposes of or in connection with the transfer of an undertaking of a target company that includes any property to which this subsection applies, where a conveyance of that property has not been obtained by the target company prior to the date of the execution of the instrument.”.

(2) This section has effect in relation to instruments executed on or after 20 February 2004.

Amendment of section 81 (young trained farmers) of Principal Act.

69.—Section 81 of the Principal Act is amended by substituting the following for subsection (9):

“(9) This section shall apply as respects instruments executed before the date of the passing of the *Finance Act 2004.*”.

Further relief from stamp duty in respect of transfers to young trained farmers.

70.—The Principal Act is amended—

(a) by inserting the following after section 81:

“81A.—(1) In this section and Schedule 2A—

‘interest in land’ means an interest which is not subject to any power (whether or not contained in the instrument) on the exercise of which the land, or any part of or any interest in the land, may be revested in the person from whom it was conveyed or transferred or in any person on behalf of such person;

‘land’ means agricultural land and includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm

houses and mansion houses) as are of a character appropriate to the land; Pr.4 S.70

‘Schedule 2A qualification’ means a qualification set out in Schedule 2A;

‘young trained farmer’ means a person in respect of whom it is shown to the satisfaction of the Commissioners that—

- (a) the person had not attained the age of 35 years on the date on which the instrument, in respect of which relief is being claimed under this section, was executed, and
- (b) the conditions referred to in subsection (2), (3) or (4) are satisfied.

(2) The conditions required by this subsection are that the person, referred to in paragraph (a) of the definition of young trained farmer, is the holder of a Schedule 2A qualification, and—

- (a) in the case of a qualification set out in subparagraph (f) of paragraph 1, or subparagraph (h) of paragraph 2, of that Schedule, is also the holder of a certificate awarded by the Further Education and Training Awards Council for achieving the minimum stipulated standard in assessments completed in a course of training approved by Teagasc—
 - (i) in either or both agriculture and horticulture, the aggregate duration of which exceeded 100 hours, and
 - (ii) in farm management, the aggregate duration of which exceeded 80 hours,

or

- (b) in the case of a qualification set out in subparagraph (b), (c) or (d) of paragraph 3 of that Schedule, is also the holder of a certificate awarded by the Further Education and Training Awards Council for achieving the minimum stipulated standard in assessments completed in a course of training, approved by Teagasc, in farm management, the aggregate duration of which exceeded 80 hours.

(3) The conditions required by this subsection are that the person, referred to in paragraph (a) of the definition of young trained farmer—

- (a) has achieved the required standard for entry into the third year of a full-time course in any discipline of 3 or more years’ duration at a third-level institution, and that has been confirmed by that institution, and
- (b) is the holder of a certificate awarded by the Further Education and Training Awards

Council for achieving a minimum stipulated standard in assessments completed in a course of training, approved by Teagasc—

- (i) in either or both agriculture and horticulture, the aggregate duration of which exceeded 100 hours, and
- (ii) in farm management, the aggregate duration of which exceeded 80 hours.

(4) The conditions required by this subsection are that the person, referred to in paragraph (a) of the definition of young trained farmer, is the holder of a letter of confirmation from Teagasc, confirming satisfactory completion of a course of training, approved by Teagasc, for persons, who in the opinion of Teagasc, are restricted in their learning capacity due to physical, sensory, mental health or intellectual disability.

(5) For the purposes of subsection (2), where Teagasc certifies that—

- (a) any other qualification corresponds to a Schedule 2A qualification, and
- (b) that other qualification is deemed by the National Qualifications Authority of Ireland to be at least at a standard equivalent to that of the Schedule 2A qualification,

the Commissioners shall treat that other qualification as if it were a Schedule 2A qualification.

(6) No stamp duty shall be chargeable under or by reference to the heading 'CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance' in Schedule 1 on any instrument to which this section applies.

(7) This section applies to any instrument which operates as a conveyance or transfer (whether on sale or as a voluntary disposition inter vivos) of an interest in land to a young trained farmer where—

- (a) the instrument contains a certificate that this section applies,
- (b) a declaration made in writing by the young trained farmer, or each of them if there is more than one, is furnished to the Commissioners when the instrument is presented for stamping, confirming, to the satisfaction of the Commissioners, that it is the intention of such person, or each such person, for a period of not less than 5 years from the date of execution of the instrument to—
 - (i) spend not less than 50 per cent of that person's normal working time, farming the land, and

(ii) retain ownership of the land,

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and

(c) the identifying reference number, known as the Personal Public Service (PPS) Number, of the young trained farmer, or each of them if there is more than one, is furnished to the Commissioners when the instrument is presented for stamping.

(8) Notwithstanding subsection (7), this section shall apply where the property is conveyed or transferred into joint ownership where all the joint owners are young trained farmers or where any of the joint owners is a spouse of another joint owner who is a young trained farmer.

(9) (a) For the purposes of this subsection, a person ‘achieves the standard’ at any time where at that time the person—

(i) is the holder of a Schedule 2A qualification or a qualification treated, by virtue of subsection (5), as being a Schedule 2A qualification,

(ii) satisfies the conditions set out in subsection (3)(a), or

(iii) satisfies the conditions set out in subsection (4),

and whether a person has or has not achieved the standard shall be construed accordingly.

(b) This subsection applies to an instrument by means of which land is conveyed or transferred to a person (in this subsection referred to as the ‘transferee’) who on the date the instrument was executed—

(i) was not a young trained farmer by reason only of the fact that the transferee on that date had not achieved the standard, and

(ii) had completed not less than one academic year of a course necessary to be taken to achieve the standard.

(c) Where within 3 years from the date of execution of an instrument to which this subsection refers, the transferee achieves the standard, the Commissioners shall, on production to them, within 6 months after the date on which the standard was achieved, of—

(i) the stamped instrument,

(ii) subject to paragraph (d), the declaration referred to in subsection (7)(b),

(iii) the Personal Public Service (PPS) Number referred to in subsection (7)(c), and

(iv) satisfactory evidence of compliance with this subsection,

cancel and refund such duty as would not have been chargeable had this section applied to the instrument when it was first presented for stamping.

(d) For the purposes of paragraph (c)(ii), the period of 5 years referred to in subsection (7)(b) as it relates to the requirement that a person spend not less than 50 per cent of the person's normal working time farming land, shall be reduced by the period of time that elapsed between the date of the instrument and the date on which the transferee achieved the standard.

(10) Subsection (6) shall not apply to an instrument unless it has, in accordance with section 20, been stamped with a particular stamp denoting that it is not chargeable with any duty.

(11) (a) If and to the extent that any person to whom land was conveyed or transferred by any instrument in respect of which relief from duty under this section was allowed—

(i) disposes of such land, or part of such land, within a period of 5 years from the date of execution of the instrument, and

(ii) does not replace such land with other land within a period of one year from the date of such disposal,

then such person or, where there is more than one such person, each such person, jointly and severally, shall become liable to pay to the Commissioners a penalty equal to the amount of the duty which would have been charged in the first instance if the land disposed of had been conveyed or transferred by an instrument to which this section had not applied, together with interest on that amount as may so become payable charged at a rate of 0.0322 per cent for each day or part of a day from the date of disposal of the land to the date the penalty is remitted.

(b) Where any claim for relief from duty under this section has been allowed and it is subsequently found that a declaration made, or a certificate contained in the instrument, in accordance with subsection (7)—

(i) was untrue in any material particular which would have resulted in the relief afforded by this section not being granted, and

- (ii) was made, or was included, knowing same to be untrue or in reckless disregard as to whether it was true or not, Pt.4 S.70

then any person who made such a declaration, or where a false certificate has been included, the person or persons to whom the land is conveyed or transferred by the instrument, jointly and severally, shall be liable to pay to the Commissioners as a penalty an amount equal to 125 per cent of the duty which would have been charged on the instrument in the first instance had all the facts been truthfully declared and certified, together with interest on that amount as may so become payable charged at a rate of 0.0322 per cent for each day or part of a day from the date when the instrument was executed to the date the penalty is remitted.

(12) Notwithstanding subsection (11)—

- (a) where relief under this section was allowed in respect of any instrument, a disposal by a young trained farmer of part of the land to a spouse for the purpose of creating a joint tenancy in the land, or where the instrument conveyed or transferred the land to joint owners, a disposal by one joint owner to another of any part of the land, shall not be regarded as a disposal to which subsection (11) applies, but on such disposal, such part of the land shall be treated for the purposes of subsection (11) as if it had been conveyed or transferred immediately to the spouse or other joint owner by the instrument in respect of which relief from duty under this section was allowed in the first instance,
- (b) a person shall not be liable to more than one penalty under paragraph (b) of subsection (11),
- (c) a person shall not be liable to a penalty under paragraph (a) of subsection (11), if and to the extent that such person has paid a penalty under paragraph (b) of subsection (11), and
- (d) a person shall not be liable to a penalty under paragraph (b) of subsection (11), if and to the extent that such person has paid a penalty under paragraph (a) of subsection (11).

(13) A person who, before the date of the passing of the *Finance Act 2004*, for the purposes of section 81—

- (a) is the holder of a qualification set out in Schedule 2 or a qualification certified by Teagasc as corresponding to a qualification set out in Schedule 2, and—

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- (i) a satisfactory attendance at a course of training in farm management, the aggregate duration of which exceeded 80 hours, is required, shall be deemed, for the purposes of this section, to be the holder of a qualification corresponding to that set out in subparagraph (b) of paragraph 3 of Schedule 2A, or
 - (ii) a satisfactory attendance at a course of training is not required, shall be deemed, for the purposes of this section, to be the holder of a qualification corresponding to that set out in subparagraph (a) of paragraph 2 of Schedule 2A,
- (b) satisfies the requirements set out in paragraph (b)(ii)(I) of the definition of young trained farmer in subsection (1) of that section, shall be deemed for the purposes of this section, to have satisfied the requirements set out in subsection (3)(a), and
- (c) is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training—
- (i) in farm management, the aggregate duration of which exceeded 80 hours, shall be deemed for the purposes of this section to be the holder of a certificate referred to in subsection (2)(b), or
 - (ii) in either or both agriculture and horticulture, the aggregate duration of which exceeded 180 hours, shall be deemed for the purposes of this section to be the holder of a certificate referred to in subsection (3)(b).

(14) This section shall apply as respects instruments executed on or after the date of the passing of the *Finance Act 2004* and on or before 31 December 2005.”,

and

(b) by inserting the following after Schedule 2:

“Section 81A.

SCHEDULE 2A

Qualifications for Applying for Relief From Stamp Duty in Respect of Transfers to Young Trained Farmers

1. Qualifications awarded by the Further Education and Training Awards Council:
 - (a) Vocational Certificate in Agriculture — Level 3;
 - (b) Advanced Certificate in Agriculture;
 - (c) Vocational Certificate in Horticulture — Level 3;

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- (d) Vocational Certificate in Horse Breeding and Training — Level 3; Pr.4 S.70
- (e) Vocational Certificate in Forestry — Level 3;
- (f) Awards other than those referred to in subparagraphs (a) to (e) of this paragraph which are at a standard equivalent to the standard of an award under subparagraph (a) of this paragraph.
2. Qualifications awarded by the Higher Education and Training Awards Council:
- (a) National Certificate in Agriculture;
- (b) National Diploma in Agriculture;
- (c) National Certificate in Science in Agricultural Science;
- (d) National Certificate in Business Studies in Agri-Business;
- (e) National Certificate in Technology in Agricultural Mechanisation;
- (f) National Diploma in Horticulture;
- (g) National Certificate in Business Studies in Equine Studies;
- (h) National Certificate or Diploma awards other than those referred to in subparagraphs (a) to (g) of this paragraph.
3. Qualifications awarded by other third-level institutions:
- (a) Primary degrees awarded by the faculties of General Agriculture and Veterinary Medicine at University College Dublin;
- (b) Bachelor of Science (Education) in Biological Sciences awarded by the University of Limerick;
- (c) Bachelor of Science in Equine Science awarded by the University of Limerick;
- (d) Diploma or Certificate in Science (Equine Science) awarded by the University of Limerick.”.

71.—Section 91 of the Principal Act is amended by inserting the following after subsection (2):

“(3) This section shall apply as respects instruments executed before 1 April 2004.”.

Amendment of section 91 (new dwellinghouses and apartments with floor area certificate) of Principal Act.

Pt.4

New dwellinghouses
and apartments
with floor area
compliance
certificate.

72.—(1) The Principal Act is amended by inserting the following after section 91:

“91A.—(1) (a) In this section—

‘floor area compliance certificate’, in respect of a dwellinghouse or apartment, means a certificate issued by the Minister for the Environment, Heritage and Local Government certifying that that Minister is satisfied, on the basis of the information available to that Minister at the time of so certifying, that—

(i) the total floor area of the dwellinghouse or apartment—

(I) does not, or will not, exceed 125 square metres, and

(II) is not, or will not, be less than 38 square metres,

and

(ii) the dwellinghouse or apartment complies or will comply with such conditions, if any, as may be set down in regulations made by that Minister from time to time for the purposes of this section;

‘valid floor area compliance certificate’ means a floor area compliance certificate which has not been withdrawn.

(b) For the purposes of this section the Minister for the Environment, Heritage and Local Government—

(i) may make regulations from time to time—

(I) specifying the manner in which the total floor area of a dwellinghouse or apartment is to be measured, and

(II) setting down conditions in relation to standards of construction of dwellinghouses and apartments and the provision of water, sewerage and other services therein,

(ii) may issue a floor area compliance certificate in respect of a dwellinghouse or apartment to a person where that Minister is satisfied, on the basis of information provided to that Minister by the person, or by a person on behalf of the person, that the person is registered for value-added tax and is the holder of a current certificate of authorisation within the meaning

of section 530(1) of the Taxes Consolidation Act 1997 or a current tax clearance certificate within the meaning of section 1094(1) or section 1095(1) of the Taxes Consolidation Act 1997, Pr.4 S.72

(iii) may, by notice in writing, withdraw any such certificate already issued, and

(iv) may not issue a floor area compliance certificate in respect of a dwellinghouse or apartment unless any person authorised in writing by that Minister for the purposes of this section is permitted to inspect the dwellinghouse or apartment at all reasonable times on production, if so requested by a person affected, of his or her authorisation.

(2) For the purposes of this section, the Commissioners or any person authorised by the Commissioners on their behalf, may, by notice in writing, request the Minister for the Environment, Heritage and Local Government to provide them, or any person so authorised, with the information, referred to in paragraph (b)(ii) of subsection (1), which was supplied by a person in support of the person's application for a floor area compliance certificate.

(3) Subject to subsection (4), an instrument giving effect to the purchase of a dwellinghouse or apartment on the erection of that dwellinghouse or apartment shall be exempt from all stamp duties.

(4) Subsection (3) shall have effect in relation to an instrument only if the instrument contains a statement, in such form as the Commissioners may specify, certifying that—

(a) the instrument gives effect to the purchase of a dwellinghouse or apartment on the erection of that dwellinghouse or apartment,

(b) until the expiration of the period of 5 years commencing on the date of the execution of the instrument or the subsequent sale of the dwellinghouse or apartment concerned, whichever event first occurs, that dwellinghouse or apartment will be occupied as the only or principal place of residence of the purchaser, or if there be more than one purchaser, of any one or more of the purchasers or of some other person in right of the purchaser or, if there be more than one purchaser, of some other person in right of any one or more of the purchasers and that no person—

(i) other than a person who, while in such occupation, derives rent or payment in the nature of rent in consideration for the provision, on or after 1 April 2004, of furnished residential accommodation in part of the dwellinghouse or apartment concerned, or

- (ii) other than by virtue of a title prior to that of the purchaser,

will derive any rent or payment in the nature of rent for the use of that dwellinghouse or apartment, or of any part of it, during that period, and

- (c) on the date of execution of the instrument there exists a valid floor area compliance certificate in respect of that dwellinghouse or apartment.

(5) In subsection (4)(b), the reference to the subsequent sale does not include a reference to a sale the contract for which, if it were a written conveyance, would not, apart from section 82, be charged with full ad valorem duty or a sale to a company under the control of the vendor or of any person entitled to a beneficial interest in the dwellinghouse or apartment immediately prior to the sale or to a company which would, in relation to a notional gift of shares in that company taken, immediately prior to the sale, by any person so entitled, be under the control of the donee or successor within the meaning of section 27 of the Capital Acquisitions Tax Consolidation Act 2003, irrespective of the shares the subject matter of the notional gift.

(6) Where, in relation to an instrument which is exempted from stamp duty by virtue of subsection (3) and at any time during the period referred to in subsection (4)(b), some person, other than a person referred to in subparagraph (i) or (ii) of subsection (4)(b), derives any rent or payment in the nature of rent for the use of the dwellinghouse or apartment concerned, or of any part of it, then the purchaser, or where there be more than one purchaser, each such purchaser, shall—

- (a) jointly and severally become liable to pay to the Commissioners a penalty equal to the amount of the duty which would have been charged in the first instance if the dwellinghouse or apartment had been conveyed or transferred or leased by an instrument to which this section had not applied together with interest on that amount charged at a rate of 0.0322 per cent for each day or part of a day from the date when the rent or payment is first received to the date the penalty is remitted, and

- (b) the person who receives the rent or payment shall, within 6 months after the date of the payment, notify the payment to the Commissioners on a form provided, or approved of, by them for the purposes of this section, unless that person is already aware that the Commissioners have already received such a notification from another source.

(7) Where a valid floor area certificate, within the meaning of section 91, has issued in respect of a dwellinghouse or apartment, that certificate shall be deemed to be a valid floor area compliance certificate within the meaning of this section, where an exemption from stamp duty is claimed under this section in respect of the dwellinghouse or apartment concerned.

(8) The furnishing of an incorrect statement within the meaning of subsection (4) shall be deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act 1997.

[2004.]

Finance Act 2004.

[No. 8.]

(9) 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.”

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(2) This section applies as respects instruments executed on or after 1 April 2004.

73.—(1) Section 92 of the Principal Act is amended—

(a) in subsection (1)(a)(iii) by substituting “sections 29, 53, 91 and 91A” for “sections 29, 53 and 91”,

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

“(i) the instrument—

(I) is one to which section 29 or 53, applies and that sections 91 and 91A do not apply, or

(II) gives effect to the purchase of a dwellinghouse or apartment on the erection of that dwellinghouse or apartment and that sections 29, 53, 91 and 91A do not apply,

(ia) on the date of execution of the instrument there exists a certificate, signed by such person or class of persons as may be set down in regulations made by the Minister for the Environment, Heritage and Local Government from time to time for the purposes of this section, stating that the total floor area of the dwellinghouse or apartment does or will exceed 125 square metres, and”

and

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

“(3) The furnishing of an incorrect statement within the meaning of subsection (1)(b) shall be deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act 1997.

(4) For the purposes of this section, the Minister for the Environment, Heritage and Local Government may make regulations from time to time—

(a) specifying the manner in which the total floor area of a dwellinghouse or apartment is to be measured, and

(b) specifying the person or class of persons who may sign a certificate referred to in subsection (1)(b)(ia).

Amendment of section 92 (new dwellinghouses and apartments with no floor area certificate) of Principal Act.

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(5) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

(2) This section applies as respects instruments executed on or after 1 July 2004 other than instruments executed on or after 1 July 2004 solely in pursuance of binding contracts entered into before 1 April 2004.

Intellectual property.

74.—(1) The Principal Act is amended by substituting the following for section 101:

“101.—(1) In this section—

‘intellectual property’ means—

- (a) any patent, trade mark, registered design, design right, invention or domain name,
- (b) any copyright or related right within the meaning of the Copyright and Related Rights Act 2000,
- (c) any supplementary protection certificate provided for under Council Regulation (EEC) No. 1768/92 of 18 June 1992¹,
- (d) any supplementary protection certificate provided for under Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996²,
- (e) any plant breeders’ rights within the meaning of section 4 of the Plant Varieties (Proprietary Rights) Act 1980, as amended by the Plant Varieties (Proprietary Rights) (Amendment) Act 1998,
- (f) any application for the grant or registration of anything within paragraph (a), (b), (c), (d) or (e),
- (g) any licence or other right in respect of anything within paragraph (a), (b), (c), (d), (e) or (f),
- (h) any rights granted under the law of any country, territory, state or area, other than the State, or under any international treaty, convention or agreement to which the State is a party, that correspond to or are similar to those within paragraph (a), (b), (c), (d), (e), (f) or (g),
- (i) goodwill to the extent that it is directly attributable to anything within paragraph (a), (b), (c), (d), (e), (f), (g) or (h).

¹ OJ No. L198, 8.8.1996, p.30

² OJ No. L182, 2.7.1992, p.1

(2) Subject to subsection (3), stamp duty shall not be chargeable under or by reference to any heading in Schedule 1 on an instrument for the sale, transfer or other disposition of intellectual property.

(3) Where stamp duty is chargeable on an instrument under or by reference to any heading in Schedule 1 and part of the property concerned consists of intellectual property—

(a) the consideration in respect of which stamp duty would otherwise be chargeable shall be apportioned, on such basis as is just and reasonable, as between the part of the property which consists of intellectual property and the part which does not, and

(b) the instrument shall be chargeable only in respect of the consideration attributable to such of the property as is not intellectual property.

(4) The amount or value of the consideration attributable to intellectual property, shall be disregarded for the purposes of the statement provided for in paragraphs 7 to 14A of the heading ‘CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance’ and any statement referred to in those paragraphs shall be construed accordingly.

(5) Where part of the property referred to in subsection (1) of section 45 consists of intellectual property, that subsection shall have effect as if the words ‘in such manner as is just and reasonable’ were substituted for ‘in such manner, as the parties think fit’.

(6) Where part of the property referred to in subsection (3) of section 45 consists of intellectual property and both or, as the case may be, all the relevant persons are connected with one another, that subsection shall have effect as if the words ‘, the consideration shall be apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating to such separate part or parcel, and such conveyance shall be charged with ad valorem duty in respect of such distinct consideration.’ were substituted for ‘for distinct parts of the consideration, then the conveyance of each separate part or parcel shall be charged with ad valorem duty in respect of the distinct part of the consideration specified in the conveyance.’.

(7) For the purposes of subsection (6), a person is a relevant person if that person is a person by or for whom the property is contracted to be purchased and the question of whether persons are connected with one another shall be construed in accordance with section 10 of the Taxes Consolidation Act 1997 and as if the reference to the Capital Gains Tax Acts in the definition of relative in that section was replaced by a reference to the Stamp Duties Consolidation Act 1999.

(8) Where subsection (5) or (6) applies, and the consideration is apportioned in a manner that is not just and reasonable, the conveyance relating to the separate part or parcel of property shall be chargeable with ad valorem duty as if the value of that separate part or parcel of property were substituted for the distinct consideration set forth in that conveyance.”.

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(2) This section shall come into operation on such day or days as the Minister for Finance may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Amendment of section 125 (certain premiums of insurance) of Principal Act.

75.—(1) Section 125 of the Principal Act is amended by inserting the following after paragraph (d) of the definition of “excluded amount”:

“(e) a premium received in respect of a contract of insurance, the sole purpose of which is to provide for the making of payments for the reimbursement or discharge in whole or in part of fees or charges in respect of the provision of dental services, other than those involving surgical procedures carried out in a hospital by way of hospital in-patient services within the meaning of section 2(1) of the Health Insurance Act 1994;”.

(2) This section applies as respects contracts of insurance entered into on or after the date of the passing of the *Finance Act 2004*.

PART 5

CAPITAL ACQUISITIONS TAX

Interpretation (*Part 5*).

76.—In this Part “Principal Act” means the Capital Acquisitions Tax Consolidation Act 2003.

Amendment of section 2 (general interpretation) of Principal Act.

77.—Section 2 of the Principal Act is amended, in subsection (5), by deleting “in lawful wedlock”.

Amendment of section 93 (relevant business property) of Principal Act.

78.—(1) Section 93 of the Principal Act is amended by substituting the following for subsection (4):

“(4) Subsection (3) shall not apply to shares in or securities of a company if—

(a) the business of the company consists wholly or mainly in being a holding company of one or more companies whose business does not fall within that subsection, or

(b) the value of those shares or securities, without having regard to the provisions of section 99, is wholly or mainly attributable, directly or indirectly, to businesses that do not fall within that subsection.”.

(2) This section has effect in relation to gifts or inheritances taken on or after the date of the passing of this Act.

Amendment of section 106 (arrangements for relief from double taxation) of Principal Act.

79.—Section 106 of the Principal Act is amended by substituting the following for subsection (1):

“(1) If the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to—

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- (a) affording relief from double taxation in respect of gift tax or inheritance tax payable under the laws of the State and any tax imposed under the laws of that territory which is of a similar character or is chargeable by reference to death or to gifts *inter vivos*, or
- (b) exchanging information for the purposes of the prevention and detection of tax evasion in respect of the taxes specified in paragraph (a),

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and that it is expedient that those arrangements should have the force of law, the arrangements shall, notwithstanding anything in any enactment, have the force of law.”.

PART 6

MISCELLANEOUS

80.—In this Part “Principal Act” means the Taxes Consolidation Act 1997. Interpretation (Part 6).

81.—(1) Section 28(3) of the Finance Act 1931, the proviso to section 55(3) of the Capital Acquisitions Tax Act 1976 and section 77(3) of the Capital Acquisitions Tax Consolidation Act 2003 are amended by inserting “the Commissioners of Public Works in Ireland,” after “national institution,” in each place where it occurs. Sale of certain objects to Commissioners of Public Works in Ireland.

(2) *Subsection (1)* is deemed to have applied as respects sales on or after 1 August 1994.

82.—Section 912A (inserted by the Finance Act 2003) of the Principal Act is amended, in subsection (1), in the definition of “foreign tax” by inserting “or section 106 of the Capital Acquisitions Tax Consolidation Act 2003” after “section 826”. Amendment of section 912A (information for tax authorities in other territories) of Principal Act.

83.—(1) Part 22 of the Principal Act is amended— Amendment of Part 22 (provisions relating to dealing in or developing land and disposals of development land) of Principal Act.

(a) in section 644A(1) in the definition of “residential development land” by substituting “the Local Government (Planning and Development) Acts 1963 to 1999 or the Planning and Development Act 2000,” for “section 26 of the Local Government (Planning and Development) Act, 1963,”, and

(b) in section 648—

(i) by inserting the following after the definition of “the Act of 1963”:

“ ‘the Act of 2000’ means the Planning and Development Act 2000;”,

(ii) in the definition of “current use value” by substituting “(within the meaning of section 3 of the Act of 1963, or, on or after 21 January 2002, within the meaning of section 3 of the Act of 2000)” for “(within the meaning of section 3 of the Act of 1963)”, and

- (iii) by substituting the following for the definition of “development of a minor nature”:

“‘development of a minor nature’ means development (not being development by a local authority or a statutory undertaker within the meaning of section 2 of the Act of 1963, or, on or after 11 March 2002, within the meaning of section 2 of the Act of 2000) which, under or by virtue of section 4 of the Act of 1963, or, on or after 11 March 2002, under or by virtue of section 4 of the Act of 2000, is exempted development for the purposes of the Local Government (Planning and Development) Acts 1963 to 1999 or the Act of 2000;”.

- (2) (a) Subject to *paragraph (b)*, *subsection (1)* is deemed to have applied as on and from 11 March 2002.
- (b) *Subparagraphs (i) and (ii) of paragraph (b) of subsection (1)* are deemed to have applied as on and from 21 January 2002.

Amendment of section 962 (recovery by sheriff or county registrar) of Principal Act.

84.—Section 962 of the Principal Act is amended by inserting the following after subsection (1):

“(1A) (a) A certificate to be issued by the Collector-General under this section may—

- (i) be issued in an electronic or other format, and
 - (ii) where the certificate is issued in a non-paper format, be reproduced in a paper format by the county registrar or sheriff or by persons authorised by the county registrar or sheriff to do so.
- (b) A certificate issued in a non-paper format in accordance with paragraph (a) shall—
- (i) constitute a valid certificate for all the purposes of this section,
 - (ii) be deemed to have been made by the Collector-General, and
 - (iii) be deemed to have been issued on the date that the Collector-General caused the certificate to issue.
- (c) (i) Where a certificate issued by the Collector-General in a non-paper format is reproduced in a paper format in accordance with paragraph (a)(ii) and—
- (I) the reproduction contains, or there is appended to it, a note to the effect that it is a copy of a certificate so issued, and
 - (II) the note contains the signature of the county registrar or sheriff or of the person authorised under paragraph (a)(ii) and the date of such signing,

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then the copy of the certificate with the note so signed and dated shall, for all purposes, have effect as if it was the certificate itself. Pr.6 S.84

(ii) A signature and date in a note, on a copy of, or appended to, a certificate issued in a non-paper format by the Collector-General, and reproduced in a paper format in accordance with paragraph (a)(ii), that—

(I) in respect of such signature, purports to be that of the county registrar or sheriff or of a person authorised to make a copy, shall be taken until the contrary is shown to be the signature of the county registrar or sheriff or of a person who at the material time was so authorised, and

(II) in respect of such date, shall be taken until the contrary is shown to have been duly dated.

(d) For the purposes of this subsection—

‘electronic’ has the meaning assigned to it by the Electronic Commerce Act 2000 and an ‘electronic certificate’ shall be construed accordingly;

‘issued in a non-paper format’ includes issued by facsimile.”.

85.—Section 1003 of the Principal Act is, as respects determinations made under subsection (2)(a) of that section on or after the passing of this Act, amended—

Amendment of section 1003 (payment of tax by means of donation of heritage items) of Principal Act.

(a) in subsection (1)—

(i) by substituting the following for paragraphs (i) to (vii) of the definition of “selection committee”:

“(i) an officer of the Minister for Arts, Sport and Tourism, who shall act as Chairperson of the committee,

(ii) the Chief Executive of the Heritage Council,

(iii) the Director of the Arts Council,

(iv) the Director of the National Archives,

(v) the Director of the National Gallery of Ireland,

(vi) the Director of the National Library of Ireland,

(vii) the Director of the National Museum of Ireland, and

(viii) the Director and Chief Executive of the Irish Museum of Modern Art,”,

and

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

“(iii) For the purposes of making a decision in relation to an application made to it for a determination under subsection (2)(a), the selection committee shall not include the member of that committee who represents the approved body to which it is intended that the gift of the heritage item is to be made where that approved body is so represented but that member may participate in any discussion of the application by that committee prior to the making of the decision.”,

and

- (b) in subsection (2)—

- (i) by substituting, in paragraph (a), “is, subject to the provisions of paragraphs (aa) and (ab), determined by the selection committee” for “is determined by the selection committee, after consideration of any evidence in relation to the matter which the person submits to the committee and after such consultation (if any) as may seem appropriate to the committee to be necessary with such person or body of persons as in the opinion of the committee may be of assistance to them,”,

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

“(aa) In considering an application under paragraph (a), the selection committee shall—

- (i) consider such evidence as the person making the application submits to it, and
- (ii) seek and consider the opinion in writing in relation to the application of—
- (I) the approved body to which it is intended the gift is to be made, and
- (II) the Heritage Council, the Arts Council or such other person or body of persons as the committee considers to be appropriate in the circumstances.

- (ab) Where an application under paragraph (a) is in respect of a collection of items, the selection committee shall not make a determination under that paragraph in relation to the collection unless, in addition to the making of a determination in relation to the collection as a whole, the selection committee is satisfied that, on the basis of its consideration of the application in accordance with

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paragraph (aa), it could make a determination in respect of at least one item comprised in the collection, if such were required.”, Pr.6 S.85

and

(iii) in paragraph (c)—

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

“(i) is less than,

(I) subject to clause (II),
€150,000, and

(II) in the case of at least one
item comprised in a collection
of items, €50,000, or”,

and

(II) by substituting “€150,000” for “€100,000” in subparagraph (ii).

86.—(1) Chapter 3 of Part 38 of the Principal Act is amended by inserting the following after section 897:

Information in
respect of certain
tax expenditures.

“Returns by
employers in
relation to
pension
products.

897A.— (1) In this section—

‘Consolidated Regulations’ means the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001);

‘emoluments’ means emoluments to which Chapter 4 of Part 42 applies;

‘employee’—

(a) in relation to an employee pension contribution, has the same meaning as it has for the purposes of Chapter 1 of Part 30, and

(b) in relation to a PRSA contribution, has the same meaning as in subsection (1) of section 787A;

‘employee pension contribution’, in relation to a year of assessment and a scheme referred to in either section 774 or 776, means an allowable contribution within the meaning of paragraph (b) of Regulation 41 (inserted by the Income Tax (Employments) Regulations 2002 (S.I. No. 511 of 2002)) of the Consolidated Regulations;

‘employer’—

(a) in relation to an employee pension contribution and an employer pension contribution, shall be construed for the purposes of this section in the same way as it is construed for the purposes of Chapter 1 of Part 30, and

- (b) in relation to a PRSA employee contribution and a PRSA employer contribution, has the same meaning as in section 787A(1);

‘employer pension contribution’, in relation to a year of assessment and an exempt approved scheme (within the meaning of section 774), means any sum paid by an employer in the year of assessment by means of a contribution under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to tax;

‘PRSA’ shall be construed in accordance with section 787A(1);

‘PRSA contribution’ has the meaning assigned to it by section 787A(1);

‘PRSA employee contribution’, in relation to a year of assessment, means any PRSA contribution made by an employee in the year of assessment which is an allowable contribution within the meaning of paragraph (c) of Regulation 41 (inserted by the Income Tax (Employments) Regulations 2002) of the Consolidated Regulations;

‘PRSA employer contribution’, in relation to a year of assessment, means any PRSA contribution referred to in section 787E(2) made by an employer to a PRSA in the year of assessment;

‘RAC premium’, in relation to a year of assessment, means any qualifying premium (within the meaning of section 784) paid by an individual in the year of assessment which is an allowable contribution within the meaning of paragraph (d) (inserted by the Income Tax (Employments) Regulations 2003 (S.I. No. 613 of 2003)) of Regulation 41 of the Consolidated Regulations.

(2) Any person who, in relation to a year of assessment, is required by Regulation 31 of the Consolidated Regulations to send prescribed or approved forms to the Collector-General shall include, in one of those forms, details of the following matters in the manner specified in that form—

- (a) the respective numbers of employees in respect of whom that person deducted—
- (i) an employee pension contribution,
 - (ii) a PRSA contribution,
 - (iii) a RAC premium,

from emoluments due to the employee in the year of assessment in relation to which the return is being made,

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(b) the respective numbers of employees in respect of whom that person made—

(i) an employer pension contribution,

(ii) a PRSA employer contribution,

in that year,

(c) the respective total amounts of—

(i) employee pension contributions,

(ii) PRSA contributions,

(iii) RAC premiums,

deducted by the person from emoluments due to the employees of that person in that year,

(d) the respective total amounts of—

(i) employer pension contributions,

(ii) PRSA employer contributions,

made by that person in respect of the employees of that person in that year.

(3) Sections 1052 and 1054 shall apply to a failure by a person to make the return required by subsection (2) as they apply to a failure to deliver a return referred to in section 1052.”.

(2) Section 1052(1) of the Principal Act is amended—

(a) by substituting “precept,” for “precept, or” in paragraph (a), and

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

“(aa) has delivered a return in the prescribed form for the purposes of any of the provisions specified in column 1 or 2 of Schedule 29 and has failed to include on the prescribed form the details required by that form in relation to any exemption, allowance, deduction, credit or other relief the person is claiming (in this paragraph referred to as the ‘specified details’) where the specified details are stated on the form to be details to which this paragraph refers; but this paragraph shall not apply unless, after the return has been delivered, it had come to the person’s notice or had been brought to the person’s attention that specified details had not been included on the form and the person failed to remedy matters without unreasonable delay, or”.

(3) Section 1084 of the Principal Act is amended—

(a) in subsection (1)(b) by inserting the following after subparagraph (ia):

“(ib) where a person delivers a return of income for a chargeable period (within the meaning of section 321(2)) and fails to include on the prescribed form the details required by the form in relation to any exemption, allowance, deduction, credit or other relief the person is claiming (in this subparagraph referred to as the ‘specified details’) and the specified details are stated on the form to be details to which this subparagraph refers, then, without prejudice to any other basis on which a person may be liable to the surcharge referred to in subsection (2), the person shall be deemed to have failed to deliver the return of income on or before the specified return date for the chargeable period and to have delivered the return of income before the expiry of 2 months from that specified return date; but this subparagraph shall not apply unless, after the return has been delivered, it had come to the person’s notice or had been brought to the person’s attention that specified details had not been included on the form and the person failed to remedy matters without unreasonable delay,”

and

(b) in subsection (2)(a) by substituting “and, except where the surcharge arises by virtue of subparagraph (ib) of subsection (1)(b), if the tax contained in the assessment is not the amount of tax as so increased,” for “and, if the tax contained in the assessment is not the amount of tax as so increased,”.

(4) Section 1085 of the Principal Act is amended in subsection (1)(b) by substituting “(ia), (ib),” for “(ia),”.

(5) (a) *Subsection (1)* applies as respects the year of assessment 2005 and subsequent years of assessment.

(b) *Subsections (2) to (4)* apply as respects any chargeable period (within the meaning of section 321(2) of the Principal Act) commencing on or after 1 January 2004.

Amendment of Chapter 4 (revenue powers) of Part 38 of Principal Act.

87.—Chapter 4 of Part 38 of the Principal Act is amended by inserting the following after section 908A:

“Application to High Court seeking order requiring information: associated institutions. 908B.—(1) In this section— ‘the Acts’ has the meaning assigned to it by section 1078(1); ‘associated institution’, in relation to a financial institution, means a person that—

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(a) is controlled by the financial institution Pr.6 S.87
(within the meaning of section 432), and

(b) is not resident in the State;

‘authorised officer’ means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

‘books, records or other documents’ includes—

(a) any records used in the business of an associated institution, or used in the transfer department of an associated institution acting as registrar of securities, whether—

(i) comprised in bound volume, loose-leaf binders or other loose-leaf filing system, loose-leaf ledger sheets, pages, folios or cards, or

(ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form,

(b) every electronic or other automatic means, if any, by which any such thing in non-legible form is so capable of being reproduced,

(c) documents in manuscript, documents which are typed, printed, stencilled or created by any other mechanical or partly mechanical process in use from time to time and documents which are produced by any photographic or photostatic process, and

(d) correspondence and records of other communications between an associated institution and its customers;

‘financial institution’ means—

(a) a person who holds or has held a licence under section 9 of the Central Bank Act 1971,

(b) a person referred to in section 7(4) of the Central Bank Act 1971, or

(c) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)) which has been authorised by the Central Bank and Financial Services Authority of Ireland to carry on business of a credit institution in accordance with the

provisions of the supervisory enactments (within the meaning of those Regulations);

‘judge’ means a judge of the High Court;

‘liability’ in relation to a person means any liability in relation to tax which the person is or may be, or may have been, subject, or the amount of such liability;

‘tax’ means any tax, duty, levy or charge under the care and management of the Revenue Commissioners;

‘a taxpayer’ means any person including a person whose identity is not known to the authorised officer, and a group or class of persons whose individual identities are not so known.

(2) An authorised officer may, subject to this section, make an application to a judge for an order requiring a financial institution to do either or both of the following, namely—

- (a) to make available for inspection by the authorised officer, such books, records or other documents as are in the power, possession or procurement of an associated institution, in relation to the financial institution, as contain, or may (in the authorised officer’s opinion formed on reasonable grounds) contain information relevant to a liability in relation to a taxpayer, or
- (b) to furnish to the authorised officer such information, explanations and particulars held by, or available from, the financial institution or an associated institution, in relation to the financial institution, as the authorised officer may reasonably require, being information, explanations or particulars that are relevant to any such liability,

and which are specified in the application.

(3) An authorised officer shall not make an application under subsection (2) without the consent in writing of a Revenue Commissioner, and without being satisfied—

- (a) that there are reasonable grounds for suspecting that the taxpayer, or where the taxpayer is a group or class of persons, all or any one of those persons, may have failed or may fail to comply with any provision of the Acts,
- (b) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax

(having regard to the amount of a liability in relation to the taxpayer, or where the taxpayer is a group or class of persons, the amount of a liability, in relation to all or any one of them, that arises or might arise from such failure), and

(c) that the information—

- (i) which is likely to be contained in the books, records or other documents to which the application relates, or
- (ii) which is likely to arise from the information, explanations and particulars to which the application relates,

is relevant to the proper assessment or collection of tax.

(4) Where the judge, to whom an application is made under subsection (2), is satisfied that there are reasonable grounds for the application being made, then the judge may, subject to such conditions as he or she may consider proper and specify in the order, make an order requiring the financial institution—

- (a) to make available for inspection by the authorised officer, such books, records or other documents, and
- (b) to furnish to the authorised officer such information, explanations and particulars,

as may be specified in the order.

(5) The persons who may be treated as a taxpayer for the purposes of this section include a company which has been dissolved and an individual who has died.

(6) Where in compliance with an order made under subsection (4) a financial institution makes available for inspection by an authorised officer, books, records or other documents, then the financial institution shall afford the authorised officer reasonable assistance, including information, explanations and particulars, in relation to the use of all the electronic or other automatic means, if any, by which the books, records or other documents, in so far as they are in a non-legible form, are capable of being reproduced in a legible form, and any data equipment or any associated apparatus or material.

(7) Where in compliance with an order made under subsection (4) a financial institution makes books, records or other documents available for inspection by the authorised officer, then the authorised officer may make extracts from or copies of

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all or any part of the books, records or other documents.

(8) Every hearing of an application for an order under this section and of any appeal in connection with that application shall be held in camera.”.

Amendment of section 908A (revenue offence: power to obtain information from financial institutions) of Principal Act.

88.—The Principal Act is amended in section 908A by substituting the following for subsection (2)—

“(2) (a) In this subsection ‘documentation’ includes information kept on microfilm, magnetic tape or in any non-legible form (by use of electronics or otherwise) which is capable of being reproduced in a permanent legible form.

(b) If, on application made by an authorised officer, with the consent in writing of a Revenue Commissioner, a judge is satisfied, on information given on oath by the authorised officer, that there are reasonable grounds for suspecting—

(i) that an offence, which would result (or but for its detection would have resulted) in serious prejudice to the proper assessment or collection of tax, is being, has been, or is about to be committed (having regard to the amount of a liability in relation to any person which might be, or might have been, evaded but for the detection of the relevant facts), and

(ii) that there is material in the possession of a financial institution specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the relevant facts,

the judge may make an order authorising the authorised officer to inspect and take copies of any entries in the books, records or other documents of the financial institution, and any documentation associated with or relating to an entry in such books, records or other documents, for the purposes of investigation of the relevant facts.”.

Miscellaneous technical amendments in relation to tax.

89.—The enactments specified in *Schedule 3* are amended to the extent and in the manner specified in that Schedule.

Taxation of savings income in the form of interest payments.

90.—(1) Part 38 of the Principal Act is amended by substituting the provisions set out in *Schedule 4* for Chapter 3A (inserted by the European Communities (Taxation of Savings Income in the Form of Interest Payments) Regulations 2003 (S.I. No. 717 of 2003)).

(2) The European Communities (Taxation of Savings Income in the Form of Interest Payments) Regulations 2003 are revoked.

91.—(1) In this section—

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Deferred surrender
to Central Fund.

“Appropriation Act” means, in relation to a financial year, the Act—

(a) appropriating to the proper supply services and purposes sums granted by the Central Fund (Permanent Provisions) Act 1965, and making certain provision in relation to financial resolutions passed by Dáil Éireann in that financial year,

(b) providing for matters, if any, to which this section relates;

“capital supply service and purpose” means a supply service voted by Dáil Éireann, the purpose of which is to create an asset intended for use on a continuing basis with an expected life of more than one year;

“first financial year” means any financial year in respect of which there are undischarged appropriations;

“Minister” means the Minister for Finance;

“second financial year”, in relation to the first financial year, means the financial year immediately following the first financial year;

“subhead” means the individual categories of expenditure within a vote under which the expenditure is accounted for in the Appropriation Accounts;

“vote” means a coherent area of Government expenditure which is the responsibility of a single Government Department or office which is in turn accountable to the Dáil for the expenditure shown.

(2) Notwithstanding section 24 of the Exchequer and Audit Departments Act 1866, the Minister may determine that, in respect of the obligation (but for this section) to surrender to the Central Fund undischarged appropriations for the first financial year—

(a) that obligation may, by reference to the capital supply services and purposes included in a vote, be deferred into the second financial year in respect of the sums concerned up to a maximum not greater than 10 per cent of the supply granted for capital supply services and purposes under that vote by Dáil Éireann, and

(b) accordingly, that obligation may, subject to *subsection (3)*, be discharged in the second financial year to the extent that the funds are applied towards making good supply for the capital supply services and purposes approved by Dáil Éireann for the first financial year,

and such determination shall only have effect if the sums concerned and the related Votes and Titles are set out in the Appropriation Act for the first financial year.

(3) Where in accordance with *subsection (2)* one or more undischarged sums have been determined and are set out in the Appropriation Act then, in respect of any such sum, no sum shall be made available for application towards making good supply in the second financial year until an order is made by the Minister in that year under *subsection (4)*.

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- (4) (a) The Minister may make an order for the purposes of *subsection (3)* determining by reference to subheads for the capital supply services and purposes the sums to be made available for application towards making good supply in the second financial year.
- (b) An order under this subsection shall be made no later than 31 March in the second financial year.
- (c) An order under this subsection may by order be amended or revoked by the Minister.
- (d) Where the Minister proposes to make an order, or amend or revoke an order, under this subsection, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann in the second financial year.
- (5) Any sums determined in accordance with *subsection (1)* and to which an order under *subsection (4)* relates shall—
- (a) be deemed to be appropriations for the second financial year,
- (b) to the extent that they are discharged, be deemed from the date of the making of the order to be a first charge on the subheads concerned for the second financial year, and
- (c) to the extent that they are not discharged before the end of the second financial year, be surrendered to the Central Fund.

Capital Services
Redemption
Account.

92.—(1) In this section—

“capital services” has the same meaning it has in the principal section;

“fifty-second additional annuity” means the sum charged on the Central Fund under *subsection (3)*;

“principal section” means section 22 of the Finance Act 1950.

(2) In relation to the twenty-nine successive financial years commencing with the financial year ending on 31 December 2004, *subsection (2)* of section 169 of the Finance Act 2003 shall have effect with the substitution of “€0.00” for “€29,663,454”.

(3) A sum of €80,533,677 to redeem borrowings, and interest on such sum, in respect of capital services shall be charged annually on the Central Fund or the growing produce of that Fund in the thirty successive financial years commencing with the financial year ending on 31 December 2004.

(4) The fifty-second additional annuity shall be paid into the Capital Services Redemption Account in such manner and at such times in the relevant financial year as the Minister for Finance may determine.

(5) Any amount of the fifty-second additional annuity, not exceeding €61,900,000 in any financial year, may be applied towards defraying the interest on the public debt.

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(6) The balance of the fifty-second additional annuity shall be applied in any one or more of the ways specified in subsection (6) of the principal section. Pr.6 S.92

93.—All taxes and duties imposed by this Act are placed under the care and management of the Revenue Commissioners. Care and management of taxes and duties.

94.—(1) This Act may be cited as the Finance Act 2004. Short title, construction and commencement.

(2) *Part 1* shall be construed together with—

(a) in so far as it relates to income tax, the Income Tax Acts,

(b) in so far as it relates to corporation tax, the Corporation Tax Acts, and

(c) in so far as it relates to capital gains tax, the Capital Gains Tax Acts.

(3) *Part 2*, in so far as it relates to duties of excise, shall be construed together with the statutes which relate to those duties and to the management of those duties.

(4) *Part 3* shall be construed together with the Value-Added Tax Acts 1972 to 2003 and may be cited together with those Acts as the Value-Added Tax Acts 1972 to 2004.

(5) *Part 4* shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act.

(6) *Part 5* shall be construed together with the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act.

(7) *Part 6* in so far as it relates to—

(a) income tax, shall be construed together with the Income Tax Acts,

(b) corporation tax, shall be construed together with the Corporation Tax Acts,

(c) capital gains tax, shall be construed together with the Capital Gains Tax Acts,

(d) customs, shall be construed with the Custom Acts,

(e) duties of excise, shall be construed together with the statutes which relate to duties of excise and the management of those duties,

(f) value-added tax, shall be construed together with the Value-Added Tax Acts 1972 to 2004,

(g) stamp duty, shall be construed together with the Stamp Duties Consolidation Act 1999, and the enactments amending or extending that Act,

- (h) residential property tax, shall be construed together with Part VI of the Finance Act 1983, and the enactments amending or extending that Part,
 - (i) gift tax or inheritance tax, shall be construed together with the Capital Acquisitions Tax Act 1976, the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending either of those Acts.
- (8) Except where otherwise expressly provided in *Part 1*, that Part is deemed to have come into force and takes effect as on and from 1 January 2004.
- (9) In relation to *Part 3*:
- (a) *section 57* shall be taken to have come into force and shall take effect as on and from 4 December 2003;
 - (b) *sections 59 and 61* shall be taken to have come into force and shall take effect as on and from 1 January 2004;
 - (c) *section 62* comes into force and takes effect as on and from 1 May 2004;
 - (d) *paragraph (a) of section 55, sections 56, 58, section 60* (in so far as it relates to the insertion of subparagraph (vb) into section 12 of the Value-Added Tax Act 1972), *paragraphs (b) and (c) of section 64 and paragraph (a) of section 65* come into force and take effect as on and from 1 January 2005;
 - (e) the provisions of this Part, other than those specified in *paragraphs (a) to (d)* have effect as on and from the date of passing of this Act.
- (10) Except where otherwise expressly provided for, where a provision of this Act is to come into operation on the making of an order by the Minister for Finance, that provision shall come into operation on such day or days as the Minister for Finance shall appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (11) Any reference in this Act to any other enactment shall, except in so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment including this Act.
- (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.

SCHEDULE 1

Section 41.

EXEMPTION FROM TAX FOR CERTAIN INTEREST AND ROYALTIES
PAYMENTS*Amendment of Part 8 (Annual Payments, Charges and Interest) of the
Taxes Consolidation Act 1997*

“CHAPTER 6

*Implementation of Council Directive 2003/49/EC of 3 June 2003 on a
common system of taxation applicable to interest and royalty pay-
ments made between associated companies of different Member States.*

267G.—(1) In this Chapter—

Interpretation
(Chapter 6).‘arrangements’ means arrangements having the force of law by virtue
of section 826(1)(a);‘bilateral agreement’ means any arrangements, protocol or other
agreement between the Government and the government of another
state;‘permanent establishment’ means a fixed place of business through
which the business of a company of a Member State is wholly or
partly carried on which place of business is situated in a territory
other than that Member State;

‘company’ means a company of a Member State;

‘company of a Member State’ has the meaning assigned to it by
Article 3(a) of the Directive;‘the Directive’ means Council Directive 2003/49/EC of 3 June
2003¹;‘interest’ means income from debt-claims of every kind, whether or
not secured by mortgage and whether or not carrying a right to par-
ticipate in the debtor’s profits, and in particular, income from securi-
ties and income from bonds or debentures, including premiums and
prizes attaching to such securities, bonds or debentures but does not
include penalty charges for late payment;‘Member State’ means a Member State of the European Com-
munities;

‘royalties’ means payments of any kind as consideration for

(a) the use of, or the right to use—

(i) any copyright of literary, artistic or scientific work,
including cinematograph films and software,(ii) any patent, trade mark, design or model, plan, secret
formula or process,(b) information concerning industrial, commercial or scientific
experience;(c) the use of, or the right to use, industrial, commercial or
scientific equipment;¹OJ No. L157, 26.6.2003, p.49

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'tax', in relation to a Member State other than the State, means any tax imposed in that Member State which is specified in Article 3(a)(iii) of the Directive.

(2) For the purposes of this Chapter—

(a) a company shall be treated as an 'associated company' of another company during an uninterrupted period of at least 2 years throughout which—

(i) one of them directly controls not less than 25 per cent of the voting power of the other company, or

(ii) in respect of those companies, a third company directly controls not less than 25 per cent of the voting power of each of them,

(b) a permanent establishment of a company in a Member State shall be treated as being the beneficial owner of interest or royalties if—

(i) the debt-claim, right or asset in respect of which the interest arises, or as the case may be the royalties arise, consists of property or rights used by, or held by or for, the permanent establishment, and

(ii) the interest or royalties are taken into account in computing income of the permanent establishment which is subject to one of the taxes specified in Article 1.5(b) or Article 3(a)(iii) of the Directive,

(c) a word or expression used in this Chapter and in the Directive has, unless the contrary intention appears, the same meaning in this Chapter as in the Directive.

Application
(Chapter 6).

267H.—(1) Subject to subsection (2), this Chapter shall apply to a payment, being interest or royalties, made—

(a) by either—

(i) a company resident in the State, or

(ii) a company not so resident which carries on a trade in the State through a permanent establishment if, in relation to the trade the interest gives, or as the case may be the royalties give, rise to a deduction under section 81 or 97 or relief under Part 8,

(b) to or for the benefit of—

(i) where subparagraph (ii) does not apply, a company which—

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

(II) is, by virtue of the law of a Member State other than the State, resident for the purposes of tax in such a Member State,

or

(ii) a permanent establishment—

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- (I) which is situated in a Member State (in this subparagraph referred to as the ‘first Member State’) other than the State,
- (II) which is treated as the beneficial owner of the interest, or as the case may be the royalties, and
- (III) through which a company, which is (by virtue of the law of a Member State other than the State) resident for the purposes of tax in such a Member State, carries on a business in the first Member State,

if the company referred to in paragraph (a) is an associated company of the company referred to in paragraph (b).

(2) This Chapter shall not apply to—

(a) interest or royalties paid—

- (i) to a company where the debt-claim, right or asset in respect of which the payment is made consists of property or rights used by, or held by or for, a permanent establishment of the company through which the company carries on a trade—

(I) in the State, or

(II) in a territory which is not a Member State,

or

- (ii) by a company for the purposes of a business carried on by it through a permanent establishment in a territory which is not a Member State,

(b) interest on a debt-claim in respect of which there is no provision for repayment of the principal amount or where the repayment is due more than 50 years after the creation of the debt, or

(c) so much of any royalties paid as exceeds the amount which would have been agreed by the payer, and the beneficial owner, of the royalties if they were independent persons acting at arms’ length.

267I.—(1) Where, apart from this section, section 238, 246(2) or 257 would apply to a payment of interest or royalties to which this Chapter applies, those sections shall not apply to that payment.

Exemptions from tax and withholding tax.

(2) A company which, by virtue of the law of a Member State other than the State, is resident for the purposes of tax in that Member State, shall not be chargeable to corporation tax or income tax in respect of interest or royalties to which this Chapter applies except where the interest is, or as the case may be the royalties are, paid to the company in connection with a trade which is carried on in the State by that company through a permanent establishment.

SCH.1
Credit for foreign
tax.

267J.—(1) Where interest or royalties are received by a company resident in the State from an associated company, credit shall be allowed for—

(a) any withholding tax charged on the interest or royalties by Greece or Portugal, and

(b) any withholding tax charged on the royalties by Spain,

pursuant to the derogations provided for in Article 6 of the Directive against corporation tax in respect of the interest or royalties to the extent that credit for such withholding tax would not otherwise be allowed.

(2) Where by virtue of paragraph (a) a company is to be allowed credit for tax payable under the laws of a Member State other than the State, Schedule 24 shall apply for the purposes of that paragraph as if that paragraph were arrangements providing that the tax so payable shall be allowed as a credit against tax payable in the State.

(3) This section applies without prejudice to a provision of a bilateral agreement.

Miscellaneous.

267K.—(1) Sections 267G, 267H, 267I and 267J shall not apply to interest or royalties unless it can be shown that the payment of the interest or royalties was made for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to income tax, corporation tax or capital gains tax.

(2) Where a company which—

(a) is entitled to receive a payment of interest or royalties from any person, and

(b) had received from that person a payment of interest or royalties which was exempt from tax in accordance with the Directive,

ceases to fulfil the requirements specified in the Directive for exemption to apply, the company shall without delay inform that person that it has so ceased.”.

[2004.]

Finance Act 2004.

[No. 8.]

SCHEDULE 2

Section 45.

RATES OF EXCISE DUTY ON TOBACCO PRODUCTS

Description of Product	Rate of Duty
Cigarettes	€133.39 per thousand together with an amount equal to 18.32 per cent of the price at which the cigarettes are sold by retail
Cigars	€196.409 per kilogram
Fine-cut tobacco for the rolling of cigarettes	€165.740 per kilogram
Other smoking tobacco ...	€136.261 per kilogram

SCHEDULE 3

MISCELLANEOUS TECHNICAL AMENDMENTS IN RELATION TO TAX

1. The Taxes Consolidation Act 1997 is amended in accordance with the following provisions:

- (a) in section 23A(1)(a) by substituting “826(1)(a)” for “section 826” in the definition of “arrangements”,
- (b) in section 29A(4) by substituting “section 826(1)(a)” for “section 826”,
- (c) in section 44(1) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant territory”,
- (d) in section 130(3)(d) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant Member State”,
- (e) in section 153(1) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant territory”,
- (f) in section 172A (1)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant territory”,
- (g) in section 198 (1)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “arrangements”,
- (h) in section 222(1)(b) by substituting “section 826(1)(a)” for “section 826” in both places where it occurs,
- (i) in section 246(1) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant territory”,
- (j) in section 410(1)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant Member State”,
- (k) in section 411(1)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant Member State”,
- (l) in section 430—
 - (i) in subsection (1)(da) by substituting “section 826(1)(a)” for “section 826”, and
 - (ii) in subsection (2A) by substituting “section 826(1)(a)” for “section 826”,
- (m) in section 452(1)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “arrangements”,
- (n) in section 519(8B) by substituting “subsection (7A)(iii)” for “subsection (7A)(c)”,
- (o) in section 579B(1) by substituting “section 826(1)(a)” for “section 826” in the definition of “arrangements”,
- (p) in section 613(6) by substituting “section 826(1)(a)” for “section 826” in the definition of “arrangements”,

[2004.]

Finance Act 2004.

[No. 8.]

- (q) in section 627(2)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant territory”,
- (r) in section 690(2) by substituting “section 826(1)(a)” for “section 826” in both places where it occurs,
- (s) in section 730H(1) by substituting “section 826(1)(a)” for “section 826” in the definition of “offshore state”,
- (t) in section 747B(1) by substituting “section 826(1)(a)” for “section 826” in the definition of “offshore state”,
- (u) in section 817C(3) by substituting “section 826(1)(a),” for “section 826,”,
- (v) in section 825A(1) by substituting “section 826(1)(a)” for “section 826” in the definition of “qualifying employment”,
- (w) in section 829(2) by substituting “section 826(1)(a)” for “section 826(1)”,
- (x) in section 830(2) by substituting “section 826(1)(a),” for “section 826,”,
- (y) in section 831(1)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “arrangements”,
- (z) in section 847 by inserting the following subsection after subsection (8):
- “(9) (a) The provisions of this section shall not apply to an accounting period ending after 31 December 2010.
- (b) Where an accounting period begins before 31 December 2010 and ends after that date, it shall be divided into 2 parts, one beginning on the date on which the accounting period begins and ending on 31 December 2010 and the other beginning on 1 January 2011 and ending on the date on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods of the company.”,
- (aa) in section 865(1)(a) by substituting “section 826(1)(a)” for “section 826” in the definition of “correlative adjustment”,
- (ab) in section 917B by substituting “section 826(1)(a)” for “section 826” in subsection (1),
- (ac) in section 958 subsection (4D)(d) by substituting “subsection (2A)” for “subsection (2)”,
- (ad) in section 1048(2)(a) by substituting “section 48 of the Capital Acquisitions Tax Consolidation Act 2003” for “section 38 of the Capital Acquisitions Tax Act, 1976”,
- and

(ae) in Schedule 24—

(i) in paragraph 1(1)—

(I) by substituting “section 826(1)(a)” for “section 826” in the definition of “arrangements”, and

(II) by substituting “section 826(1)(a)” for “section 826” in the definition of “relevant Member State”,

and

(ii) in paragraph 5(2) by substituting “section 826(1)(a)” for “section 826”.

2. The Capital Acquisitions Tax Consolidation Act 2003 is amended in accordance with the following provisions:

(a) in section 2(1)—

(i) after the definition of “gift”, by inserting the following definition:

“ ‘the Income Tax Acts’ has the meaning assigned to it by section 2 of the Taxes Consolidation Act 1997;”, and

(ii) after the definition of “tax”, by inserting the following definition:

“ ‘the Tax Acts’ has the meaning assigned to it by section 2 of the Taxes Consolidation Act 1997;”,

(b) in section 6(1)(b), by substituting “disponer’s” for “donee’s” in each place where it occurs,

(c) in section 46(3)(b), by substituting “section 56” for “section 58”,

(d) in section 72(1)—

(i) in the definition of “insured”, in paragraph (i), by substituting “are deemed” for “is deemed”, and

(ii) in the definition of “relevant tax”, in paragraph (b), by substituting “death, or” for “death, and”,

(e) in section 75, by inserting “(1)” before “In this section—”, and

(f) in section 93(1)—

(i) in paragraph (b), by substituting “all such questions” for “those shares”, and

(ii) in paragraph (c), by substituting “otherwise” for “othewise”.

[2004.]

Finance Act 2004.

[No. 8.]

3. The Stamp Duties Consolidation Act 1999 is amended in section 40(1) by substituting “in respect of the value of that stock or security on the date of execution of the conveyance.” for “in respect of the value of that stock or security.” SCH.3

4. Section 12 of the Finance Act 2003 is amended in subsection (2)(a) by substituting “Part 9 of the Principal Act” for “Part 9”.

5. (a) As respects *paragraph 1*—

(i) *subparagraphs (a) to (ab) and subparagraph (ae)* have effect as on and from the passing of this Act,

(ii) *subparagraph (ac)* is deemed to have come into force and have taken effect as and from 1 January 2002, and

(iii) *subparagraph (ad)* is deemed to have come into force and have taken effect as and from 21 February 2003.

(b) *Paragraph 2* is deemed to have come into force and have taken effect as on and from 21 February 2003.

(c) *Paragraph 3* has effect as on and from the passing of this Act.

(d) *Paragraph 4* is deemed to have come into force and have taken effect as and from 28 March 2003.

SCHEDULE 4

TAXATION OF SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

Amendment of Part 38 (Returns of Income and Gains, Other Obligations and Returns, and Revenue Powers) of the Taxes Consolidation Act 1997

“CHAPTER 3A

Implementation of Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments¹ and Related Matters

Interpretation
(Chapter 3A).

898B.—(1) In this Chapter and in any regulations made under this Chapter, except where the context otherwise requires—

‘arrangements’ has the meaning assigned to it by section 898P;

‘beneficial owner’ has the meaning assigned to it by section 898C(1);

‘building society’ and ‘credit union’ have the same meanings, respectively, as in section 256;

‘certificate of residence for tax purposes’, in relation to a third country, means a certificate given by the competent authority of that country certifying that an individual is by virtue of the law of that country resident for the purposes of tax in that country, and references to a tax residence certificate shall be construed accordingly;

‘competent authority’ means—

(a) in relation to a Member State, the authority notified to the European Commission by the Member State for the purposes of the Directive, and

(b) in relation to a third country, the competent authority for the purposes of bilateral or multilateral tax conventions or, in the absence of any such authority, the authority competent in that country to issue certificates of residence for tax purposes;

‘deemed interest payment’ has the meaning assigned to it by section 898E(7)(a);

‘deemed UCITS’ has the meaning assigned to it by section 898D(3)(a);

‘the Directive’ means Council Directive 2003/48/EC of 3 June 2003¹;

‘electronic means’ includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic means of transmission of data and other forms of related technology by means of which data is transmitted;

‘interest payment’ has the meaning assigned to it by section 898E;

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

‘money’ includes money expressed in a currency other than euro;

¹OJ No. L157, 26.6.2003, p.38

[2004.]

Finance Act 2004.

[No. 8.]

‘money debt’ means a debt arising from a transaction for the lending of money and which may be settled by—

- (a) the payment of money, or
- (b) the transfer of a right to settlement under a debt which may be settled by the payment of money,

whether or not the debt creates or evidences a charge on assets and whether or not the debt carries a right to participate in the profits of the debtor;

‘official identity card’ has the meaning assigned to it by section 898G(1);

‘paying agent’ has the meaning assigned to it by section 898D(1);

‘PPS number’, in relation to an individual resident in the State, means that individual’s Personal Public Service Number within the meaning of section 223 of the Social Welfare (Consolidation) Act 1993;

‘residual entity’ has the meaning assigned to it by section 898D(1);

‘relevant territory’ means—

- (a) a Member State other than the State, or
- (b) a territory with which arrangements have been made;

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

‘securities’ includes—

- (a) assets which are not chargeable assets for the purposes of capital gains tax by virtue of section 607,
- (b) stocks, bonds and obligations of any government, municipal corporation, company or other body corporate, whether or not creating or evidencing a charge on assets, and
- (c) any other money debts whether or not evidenced in writing,

but does not include shares (within the meaning of the Companies Act 1963) of a company (within the meaning of that Act) or similar body;

‘strip of a security’ shall be construed in accordance with section 55;

‘UCITS’ has the meaning assigned to it by section 898D(2)(c);

‘UCITS Directive’ means Council Directive 85/611/EEC of 20 December 1985¹;

‘tax year’ means a year of assessment for income tax or capital gains tax, as appropriate;

‘third country’ means a territory other than a Member State;

¹OJ No. L375, 31.12.1985, p.3

SCH.4

'TIN', in relation to a relevant territory, means a unique identification number allocated by the relevant territory to an individual for the purposes of taxation and, in relation to the State, means an individual's PPS number.

(2) (a) Subject to paragraph (b), for the purposes of this Chapter an individual's residence is to be treated as situated in the country in which the individual has his or her permanent address, and any reference in this Chapter to an individual being resident in a country shall be construed accordingly.

(b) Paragraph (a) shall not apply for the purposes of—

(i) the definition of 'certificate of residence for tax purposes' in subsection (1) and any use of that definition or of the term tax residence certificate in this Chapter, and

(ii) subsection (3) and any reference in this Chapter to a person being a resident of a territory for tax purposes.

(3) For the purposes of this Chapter, a person is to be regarded as being a resident of a territory for tax purposes if the person is by virtue of the law of that territory resident for the purposes of tax in that territory.

(4) A word or expression that is used in this Chapter and is also used in the Directive has, unless the contrary intention appears, the meaning in this Chapter that it has in the Directive.

Beneficial owner.

898C.—(1) In this Chapter 'beneficial owner', in relation to an interest payment, means an individual who receives the interest payment or an individual for whom the interest payment is secured, but does not include an individual to whom subsection (2) applies.

(2) This subsection applies to an individual (in this section referred to as the 'intermediary') who provides evidence to the person making an interest payment to, or securing an interest payment for, the intermediary that, in relation to the interest payment, the intermediary—

(a) is a paying agent,

(b) acts on behalf of a person (not being an individual) or an undertaking referred to in section 898D(2),

(c) acts on behalf of a residual entity, where both of the conditions set out in subsection (3) are met, or

(d) acts on behalf of another individual (in this section referred to as the 'other individual') who receives the interest payment or for whom the interest payment is secured, where the condition set out in subsection (4) is met in relation to the other individual.

(3) The conditions of this subsection are that—

(a) the intermediary provides the name and address of the residual entity to the person making or securing the interest payment, and

- (b) the person making the interest payment makes a return to the Revenue Commissioners within 3 months of the end of the tax year in which the information referred to in paragraph (a) is provided to the person of each name and address so provided in that tax year. SCH.4

(4) The condition of this subsection is that the intermediary provides the person from whom he or she receives an interest payment with the identity of the other individual established in accordance with section 898F or 898G, as appropriate.

(5) If a paying agent has information to the effect, or information indicating, that an individual is not the beneficial owner of an interest payment and paragraph (a), (b) or (c) of subsection (2) does not apply to that individual, the paying agent shall take reasonable steps to identify the beneficial owner in accordance with the provisions of section 898F or 898G, as appropriate.

(6) A paying agent shall treat an individual as the beneficial owner in relation to an interest payment received by, or secured for, the individual if the paying agent is otherwise unable to identify a beneficial owner.

898D.—(1) In this Chapter—

Paying agent and residual entity.

‘paying agent’, in relation to any interest payment, means a person who in the course of the person’s business or profession carried on in the State makes the interest payment to, or secures the interest payment for, the immediate benefit of a beneficial owner and includes, in particular, a residual entity but only as respects a deemed interest payment, a Minister of the Government and any agency or body established by statute;

‘residual entity’, in relation to any interest payment, means a person or undertaking established in the State or in a relevant territory to which the interest payment is made for the benefit of a beneficial owner or for which the interest payment is secured for the benefit of a beneficial owner, unless the person making the payment is satisfied on the basis of evidence produced by the person or the undertaking that subsection (2) applies to that person or that undertaking.

(2) This subsection applies to a person or undertaking which—

- (a) is a legal person (not being an individual) other than the legal persons referred to in Article 4.5 of the Directive,
- (b) is a person within the charge to corporation tax or within the charge to a tax in a relevant territory which corresponds to corporation tax in the State, or
- (c) is an undertaking for collective investment in transferable securities (in this Chapter referred to as a ‘UCITS’) recognised as such under the UCITS Directive or an equivalent undertaking for collective investment established in a relevant territory other than a Member State.
- (3) (a) A residual entity shall be entitled to elect for the purposes of this Chapter to be treated in the same manner as a UCITS recognised as such under the UCITS Directive is treated (in this Chapter referred to as a ‘deemed UCITS’).

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- (b) Where this election is exercised a reference in this Chapter to a UCITS recognised as such under the UCITS Directive includes a reference to a residual entity which has elected to be treated in the same manner as such a UCITS.
- (c) An election under this subsection shall not be valid unless the person or undertaking concerned presents a certificate issued to it by the competent authority of the relevant territory in which it is resident for tax purposes to the person making an interest payment to it, or securing an interest payment for it, certifying that the election provided for by this subsection has been made by the person or undertaking named on the certificate.
- (d) As respects a person or undertaking to which this subsection applies who is resident in the State for tax purposes, the Revenue Commissioners shall make regulations—
- (i) prescribing the form in which the election provided for by this subsection is to be made,
 - (ii) providing for the issue of a certificate to a person or undertaking exercising the election provided for by this subsection,
 - (iii) prescribing the details to be included on any such certificate,
 - (iv) requiring a residual entity making such an election to provide them with such information as respects its constitution, legal status, ownership, investments, income and customers as may be set out in such regulations, and
 - (v) providing for such incidental matters as may be necessary for the purposes of the preceding provisions of this paragraph.

Interest payment.

898E.—(1) Subject to section 898K, in this Chapter ‘interest payment’ means—

- (a) any payment of interest of money, whether yearly or otherwise, including any bonus or interest payable under an instalment savings scheme (within the meaning of section 53 of the Finance Act 1970) and any accumulated interest payable in respect of any savings certificate referred to in section 42;
- (b) any dividend or other distribution made in respect of shares in a building society;
- (c) any dividend or other distribution made in respect of shares in a credit union;
- (d) the excess of any amount received in respect of the redemption of a security, a unit of a security or a strip of a security over the amount paid for the security, unit or strip on issue;

- (e) any prize attaching to a security, including a prize in respect of a prize bond issued under section 22 of the Finance (Miscellaneous Provisions) Act 1956; SCH.4
- (f) any amount realised on the sale, refund or redemption of a security, unit of a security, or a strip of a security, which is referable to accrued or capitalised interest, whether or not any such accrued or capitalised interest is separately identified;
- (g) subject to subsections (2), (5) and (6), income distributed by—
- (i) a UCITS authorised in accordance with the UCITS Directive or an equivalent undertaking for collective investment established in a relevant territory other than a Member State,
 - (ii) a deemed UCITS, or
 - (iii) an undertaking for collective investment established in a territory other than a relevant territory,

which income derives from an interest payment within the meaning of any of the preceding paragraphs of this subsection and which income is received by any of these undertakings either directly or indirectly from a residual entity;

- (h) subject to subsections (2) to (6), income realised on the sale, refund or redemption of shares or units in—
- (i) a UCITS authorised in accordance with the UCITS Directive or an equivalent undertaking for collective investment established in a relevant territory other than a Member State,
 - (ii) a deemed UCITS, or
 - (iii) an undertaking for collective investment established in a territory other than a relevant territory.

(2) Where a paying agent has no information with which to establish the proportion of any income referred to in paragraphs (g) and (h) of subsection (1) which is income derived from an interest payment that paragraphs (a) to (f) of that subsection relates, then the paying agent is to treat the full amount of any such income as an 'interest payment' within the meaning of this section.

- (3) (a) Income referred to in paragraph (h) of subsection (1) is only to be regarded as an interest payment where the UCITS or equivalent undertaking for collective investment established in a relevant territory other than a Member State, deemed UCITS or undertaking concerned has invested directly, or by way of the acquisition of shares or units in another such UCITS or equivalent undertaking, deemed UCITS or undertaking, more than 40 per cent of its assets in investments which produce or have the potential to produce interest or other income such as is referred to in paragraphs (a) to (f) of subsection (1); but where a paying agent has no information with which to establish the percentage of such assets so invested, then for the purposes of this Chapter more than 40 per cent of such assets are to be treated as so invested.

- (b) As on and from 1 January 2011, paragraph (a) shall apply with the substitution of '25 per cent' for '40 per cent' in both places in which it occurs.

(4) Where a paying agent is unable to determine the amount of income realised by a beneficial owner from the sale, refund or redemption of any shares or units referred to in paragraph (h) of subsection (1), then the full proceeds from the sale, refund or redemption of the shares or units shall be treated as the amount of income realised by the beneficial owner for the purposes of that paragraph.

(5) Income referred to in paragraphs (g) and (h) of subsection (1) shall not be regarded as an interest payment in the case of such income from a UCITS (being an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989 (S.I. No. 78 of 1989)) or a deemed UCITS (being a person resident in the State) where the UCITS or deemed UCITS investment in assets referred to in paragraphs (a) to (e) of subsection (1) do not exceed 15 per cent of its total assets.

(6) (a) Income referred to in paragraphs (g) and (h) of subsection (1) shall not be regarded as an interest payment in the case of income from a UCITS authorised in accordance with the UCITS Directive or a deemed UCITS established in a Member State other than the State where the Member State concerned has exercised the option in paragraph 6 of Article 6 of the Directive to derogate from subparagraphs (c) and (d) of paragraph 1 of that Article.

(b) Income referred to in paragraphs (g) and (h) of subsection (1) shall not be regarded as an interest payment in the case of income from an undertaking for collective investment which is equivalent to a UCITS or from a deemed UCITS established in a relevant territory not being a Member State where the relevant territory concerned has exercised, under arrangements, an option equivalent to the option in paragraph 6 of Article 6 of the Directive to derogate from a provision equivalent to subparagraphs (c) and (d) of paragraph 1 of that Article.

(7) (a) An interest payment to a residual entity which has not elected to be treated as a UCITS in accordance with section 898D(3) shall, at the time the interest payment is received by the residual entity, be treated for the purposes of this Chapter as an interest payment (in this Chapter referred to as a 'deemed interest payment') made by the residual entity at that time.

(b) This subsection shall not apply to—

(i) a residual entity resident in the State where the residual entity's investment in assets referred to in subsection (1) does not exceed 15 per cent of the total investments of the residual entity, and

(ii) (I) a residual entity established in a Member State other than the State where the Member State concerned has exercised the option in paragraph 6 of Article 6 of the Directive to derogate from paragraph 4 of that Article, or

- (II) a residual entity established in a relevant territory not being a Member State where the relevant territory concerned has exercised, under arrangements, an option equivalent to the option in paragraph 6 of Article 6 of the Directive to derogate from a provision equivalent to paragraph 4 of that Article. SCH.4

(8) For the purposes of this Chapter—

(a) the percentages referred to in subsections (3), (5) and (7)(b)(i) shall be determined by reference to the most recent investment policy of the person or undertaking concerned as laid down in the instrument of incorporation of the person or the rules of the undertaking,

(b) in the absence of the information referred to in paragraph (a) or where a paying agent is in possession of information to suggest that the investment policy is not being implemented, the percentages shall be determined by the actual composition of the assets of the undertaking or the person.

(9) For the purposes of this Chapter any amount credited as interest shall be treated as a payment of interest, and references in this Chapter to interest being paid shall be construed accordingly.

(10) For the purposes of this Chapter any reference in this Chapter to the amount of an interest payment in a case where the interest payment is subject to deduction of tax shall be construed as a reference to the amount which would be the amount of that payment if no tax were to be deducted from that payment.

(11) For the purposes of this Chapter penalty charges for the late payment of any interest or other payment referred to in paragraphs (a) to (f) of subsection (1) shall not be regarded as an ‘interest payment’ within the meaning of that subsection.

898F.—(1) This section applies for the purposes of enabling a paying agent to establish the identity and residence of an individual to whom the agent may make an interest payment or for whom the agent may secure an interest payment where the agent entered into contractual relations with the individual before 1 January 2004.

Obligations of paying agents where contractual relations entered into before 1 January 2004.

(2) A paying agent shall as respects contractual relations entered into before 1 January 2004 between the paying agent and an individual establish—

(a) the identity of each such individual consisting of his or her name and address in accordance with the procedure set out in subsection (3), and

(b) the residence of each such individual in accordance with the procedure set out in subsection (4).

(3) A paying agent shall establish the name and address of an individual using all relevant information at its disposal, in particular information it acquires by virtue of section 32 of the Criminal Justice Act 1994.

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(4) A paying agent shall establish the residence of an individual using all relevant information at its disposal, in particular information it acquires by virtue of section 32 of the Criminal Justice Act 1994.

(5) A paying agent who establishes the identity and residence of an individual in accordance with this section shall retain or, in a case where the relevant documentation is held by another person, have access to—

- (a) a copy of all materials used to identify the individual,
- (b) a copy of all materials used to establish the residence of the individual, and
- (c) the original documents or copies admissible in legal proceedings relating to the making of any interest payment to or the securing of any interest payment for the individual where the payment is made or secured on or after 1 January 2005,

for a period of at least 5 years after the relationship between the paying agent and the individual has ended.

(6) (a) Where a paying agent has established the identity and residence of an individual in accordance with the procedures set out in this section, the paying agent shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.

(b) Where in accordance with paragraph (a) a paying agent becomes aware or has reason to believe that the individual's circumstances have changed or have been incorrectly established, the paying agent shall make all reasonable efforts to establish the individual's correct identity and residence in accordance with the procedures set out in subsection (4) or (5) of section 898G, as appropriate.

(7) Where an individual informs a paying agent that his or her circumstances as established in accordance with the procedure set out in this section have changed, the paying agent shall establish his or her new circumstances in accordance with the procedure set out in subsection (4) or (5) of section 898G, as appropriate.

Obligations of paying agents in other contractual relations entered into.

898G.—(1) In this section 'official identity card', in relation to an individual resident in the State, means an official document issued by the Revenue Commissioners or the Minister for Social and Family Affairs which document contains the individual's name, address and PPS number and includes any other official document which may be specified in regulations made by the Revenue Commissioners.

(2) This section applies for the purposes of enabling a paying agent to establish the identity and residence of an individual to whom the agent may make an interest payment or for whom the agent may secure an interest payment where—

- (a) the agent enters into contractual relations with the individual on or after 1 January 2004, or

- (b) in the absence of contractual relations, the agent carries out a transaction on behalf of the individual on or after 1 January 2004, SCH.4

but where, on the basis of documentary proof of identity and residence presented by the individual which is acceptable for the purposes of section 32 of the Criminal Justice Act 1994, the paying agent is satisfied that the individual is resident in the State this section shall not apply to that individual as respects contractual relations entered into or transactions carried out before 1 June 2004, but where the paying agent comes into possession of, or becomes aware of, information which can reasonably be taken to indicate that the individual is not, or may not be, so resident the paying agent shall make all reasonable efforts to determine the individual's correct identity and residence in accordance with the procedures set out in subsections (4) and (5).

(3) A paying agent shall as respects contractual relations entered into, or as respects a transaction carried out in the absence of contractual relations, on or after 1 January 2004 between the paying agent and an individual establish—

- (a) the identity of each such individual consisting of his or her—

(i) name,

(ii) address, and

(iii) in a case where the relevant territory in which the individual is resident for tax purposes allocates a TIN, the individual's TIN,

in accordance with the procedure set out in subsection (4), and

- (b) the residence of each such individual in accordance with the procedure set out in subsection (5).

(4) (a) A paying agent shall establish the name, address and, where relevant, the TIN of an individual by reference to the details of the person's name, address and TIN as set out in the person's passport or official identity card as presented by the individual.

(b) If an individual's address does not appear on his or her passport or official identity card the paying agent shall establish the individual's address on the basis of any other documentary proof of identity presented by the individual which is acceptable for the purposes of section 32 of the Criminal Justice Act 1994.

(c) If there is no TIN or if an individual's TIN does not appear on his or her passport, official identity card or any other documentary proof of identity referred to in paragraph (b) as presented by the individual, such as the individual's certificate of residence for tax purposes, the individual's identity as established in accordance with either or both paragraphs (a) and (b) shall be supplemented by the paying agent establishing the individual's date of birth and place of birth by reference to his or her passport or official identity card.

(5) A paying agent shall establish the residence of an individual—

- (a) in the case of an individual who presents a passport or official identity card issued by a relevant territory and who at the time of such presentation claims to be resident in a third country, by reference to a tax residence certificate issued by the competent authority of the third country in which the individual claims to be so resident, and in the absence of such a certificate the individual is to be regarded as resident in the relevant territory which issued the passport or other official identity card presented,
- (b) in any other case, by reference to the address of the individual as set out—
 - (i) in his or her passport,
 - (ii) in his or her official identity card, or
 - (iii) if the paying agent has reason to believe that the person's residence is other than that shown on his or her passport or official identity card, in any other documentary proof of identity presented by the individual which is acceptable for the purposes of section 32 of the Criminal Justice Act 1994.

(6) A paying agent who establishes the identity and residence of an individual in accordance with this section shall retain or, in a case where the documentation is held by another person, have access to—

- (a) a copy of all materials used to identify the individual,
- (b) a copy of all materials used to establish the residence of the individual, and
- (c) the original documents or copies admissible in legal proceedings relating to the making of any interest payment to or the securing of any interest payment for the individual made on or after 1 January 2005,

for a period of at least 5 years after the relationship between the paying agent and the individual has ended or, in the case of a transaction carried out in the absence of contractual relations, for a period of at least 5 years after the interest payment was made or secured.

(7) The Revenue Commissioners may make regulations governing the application of this section in a case where contractual relations are entered into, or any other transaction to which this section applies takes place, by postal, telephonic or electronic means. Any such regulations may provide for the use of notarised or certified copies of the documents referred to in this section.

- (8) (a) Where a paying agent has established the identity and residence of an individual in accordance with the procedure set out in this section, the paying agent shall continue to treat that individual as so identified and so resident until such time as the paying agent is in possession, or aware, of information which can reasonably be taken to indicate that the individual has been incorrectly identified or is not so resident or has changed his or her residence.

- (b) Where in accordance with paragraph (a) a paying agent becomes aware or has reason to believe that the individual's circumstances have changed or have been incorrectly established, the paying agent shall make all reasonable efforts to determine the individual's correct identity and residence in accordance with the procedures set out in this section. SCH.4

(9) Where an individual informs a paying agent that his or her circumstances as established in accordance with the procedures set out in this section have changed, the paying agent shall establish his or her new circumstances in accordance with the procedure set out in subsection (4) or (5), as appropriate.

898H.—(1) Every paying agent shall, as respects an interest payment made for the immediate benefit of a beneficial owner on or after 1 January 2005 who is resident in a relevant territory make and deliver to the Revenue Commissioners within 3 months of the end of a tax year (being the tax year 2005 and subsequent tax years) a return of all interest payments so made by that paying agent during that year consisting of— Returns of interest payments made to or secured for beneficial owners.

- (a) the details relating to the paying agent set out in subsection (2),
- (b) the details relating to each beneficial owner to which an interest payment is so made as set out in subsection (3), and
- (c) the details relating to the total amount of interest payments so made as set out in subsection (4).
- (2) The details relating to the paying agent are—
- (a) name,
- (b) address (in the case of a company, the address of the company's registered office, if different), and
- (c) tax reference number and for this purpose 'tax reference number' has the meaning assigned to it by section 885 in relation to a specified person within the meaning of that section.
- (3) The details relating to a beneficial owner are—
- (a) in a case where contractual relations were entered into before 1 January 2004—
- (i) name,
- (ii) address, and
- (iii) residence (being the individual's country of residence),
- as established in accordance with the procedure set out in section 898F, and

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(b) in a case where contractual relations were entered into on or after 1 January 2004 or, as respects a transaction carried out on or after 1 January 2004, where there are no contractual relations—

(i) name,

(ii) address,

(iii) residence (being the individual's country of residence), and

(iv) (I) TIN, or

(II) if there is no TIN or the TIN has not been made available to the paying agent, date and place of birth,

as established in accordance with the procedure set out in section 898G.

(4) The details relating to an interest payment are—

(a) (i) the account number associated with the interest payment, or

(ii) in a case where there is no account number associated with the interest payment, information capable of identifying the asset giving rise to the interest payment,

(b) (i) the total amount of interest payments, or

(ii) in a case where the paying agent is a residual entity, the total amount of deemed interest payments attributable to each beneficial owner who is resident for tax purposes in a relevant territory.

(5) Sections 891 and 891A shall not apply to an interest payment which has been included in a return made under this section.

Returns of interest payments to residual entities.

898I.—Every person who in the course of the person's business or profession carried on in the State makes an interest payment to, or secures an interest payment for, a residual entity in a tax year which residual entity is established in a relevant territory, shall make and deliver to the Revenue Commissioners within 3 months of the end of the tax year (being the tax year 2005 and subsequent tax years) a return consisting of—

(a) the name of the residual entity,

(b) the address of the residual entity, and

(c) the total amount of the interest payments so made or so secured by it in the tax year.

Exchange of information between Member States.

898J.—(1) The Revenue Commissioners are authorised to communicate information contained in a return made under section 898H in relation to a beneficial owner of any interest payment to the competent authority of the relevant territory of residence of the beneficial owner.

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(2) The Revenue Commissioners are authorised to communicate SCH.4 information contained in a return made under section 898I in relation to a residual entity to the competent authority of the relevant territory in which the residual entity is resident.

(3) The Revenue Commissioners are to communicate the information referred to in subsections (1) and (2) to the relevant competent authority within 6 months of the end of the tax year in which an interest payment is made.

898K.—(1) Subject to subsection (2), section 898E shall not apply to a security (being a security issued under a programme)— Special arrangements for certain securities.

(a) which issued before 1 March 2001, or

(b) where the issuing prospectus was approved before that date by the competent authorities of a Member State (within the meaning of Council Directive 80/390/EEC¹) or by the responsible authorities of a third country.

(2) Subsection (1) shall cease to apply—

(a) in the case of a security issued under a programme promoted by any Government or an entity referred to in the Annex to the Directive, to all securities issued under that programme if on or after 1 March 2002 any further security is issued under that programme, and

(b) in any other case, to any security issued under that programme on or after 1 March 2002.

(3) Subject to subsection (4), this section shall cease to apply as on and from the earlier of—

(a) the end of the transitional period referred to in Article 10 of the Directive, and

(b) 31 December 2010.

(4) If the transitional period referred to in Article 10 of the Directive continues after 31 December 2010, this section shall continue to apply to interest paid in respect of a security referred to in subsection (1) which contains gross-up or early redemption clauses or both.

898L.—(1) Where an individual resident in the State for tax purposes makes an application to the Revenue Commissioners containing such information in relation to— Certificate for the purposes of Article 13.2 of the Directive.

(a) the individual,

(b) the individual's contractual relations with a paying agent, and

(c) the identification of the asset which may give rise to an interest payment to be paid or secured by the paying agent,

¹OJ No. L100, 17.4.1980, p.1

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as the Revenue Commissioners may require, the Revenue Commissioners shall, within 2 months of the receipt of the application, issue a certificate to the applicant containing details of—

- (i) the name, address and PPS number of the applicant,
- (ii) the name and address of the paying agent identified by the applicant, and
- (iii) the account number or other information supplied by the applicant to identify the asset which may give rise to an interest payment to be paid or secured by the paying agent.

(2) A certificate issued in accordance with subsection (1) shall be valid—

- (a) for a period of 3 years from its date of issue, or
- (b) until such time as any of the information contained in the certificate becomes inaccurate.

Credit for withholding tax.

898M.—(1) Subject to subsections (3) and (4), where tax has been deducted from an interest payment in a relevant territory under provisions applicable in such territory in accordance with the Directive or the arrangements and the interest payment—

- (a) is, or but for an exemption from tax would be, taken into account in computing the total income of an individual for a tax year for the purposes of income tax, or
- (b) is not within the charge to income tax for that tax year,

then, the individual may claim—

- (i) a credit for the tax deducted from the interest payment against any income tax chargeable on that individual for that year, and the amount of the credit shall be the amount of the tax deducted from the interest payment, and
- (ii) where—
 - (I) the tax deducted exceeds any such income tax chargeable, the excess shall be repaid, or
 - (II) no such income tax is chargeable, an amount equal to the tax deducted shall be repaid to the individual.

(2) Subject to subsections (3) and (4), where tax has been deducted from an interest payment in a relevant territory under provisions applicable in such territory in accordance with the Directive or the arrangements and the interest payment is, or but for an exemption from tax would be, taken into account in computing the chargeable gains of an individual for a tax year for the purposes of the Capital Gains Tax Acts, then the individual may claim—

- (a) a credit for the tax deducted from the interest payment against the capital gains tax chargeable on that individual for that year, and the amount of the credit shall be the

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amount of the tax deducted from the interest payment, SCH.4
and

(b) where—

- (i) the tax deducted exceeds any such capital gains tax, the excess shall be repaid to the individual, or
- (ii) no such capital gains tax is chargeable, an amount equal to the tax deducted shall be repaid to the individual.

(3) The credit referred to in subsection (1) or (2), as the case may be, shall apply only after the application of any other credit to which the individual may be entitled under any arrangement made under section 826 in respect of any tax deducted from the interest payment under provisions other than those referred to in subsection (1) or (2).

(4) The credit or repayment referred to in subsection (1) or (2), as the case may be, shall not be given—

(a) unless the individual claiming the credit or repayment—

- (i) makes a claim in that behalf to the Revenue Commissioners,
- (ii) makes a return in the prescribed form of the individual's total income or chargeable gains, as the case may be, for the tax year in which the interest payment is, or but for an exemption from tax would be, taken into account for the purposes of income tax or capital gains tax, as the case may be, and
- (iii) provides to the Revenue Commissioners the statement referred to in subsection (5), and

(b) the Revenue Commissioners are satisfied that tax has been deducted from the interest payment concerned under provisions applicable in the territory concerned in accordance with the Directive or the arrangements.

(5) The statement referred to in subsection (4) is a statement in writing given to the individual by the person who deducted the tax certifying—

- (a) the name and address of the person deducting the tax,
- (b) the name and address of the beneficial owner of the interest payment,
- (c) the date of the interest payment,
- (d) the amount of the interest payment, and
- (e) the amount of tax deducted from the interest payment.

898N.—(1) In this section—

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'associated company', in relation to a paying agent, means a company which is itself a paying agent and which is the paying agent's associated company within the meaning of section 432;

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'authorised officer' means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

'books, records or other documents' includes—

- (a) any records used in the business of a paying agent or used in the transfer department of a paying agent acting as a registrar of securities, whether—
 - (i) comprised in bound volumes, loose-leaf binders or other loose-leaf filing system, loose leaf ledger sheets, pages, folios or cards, or
 - (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form,
- (b) every electronic or other automated means, if any, by which any such thing in non-legible form is so capable of being reproduced,
- (c) documents in manuscript, documents which are typed, printed, stencilled or created by any other mechanical or partly mechanical process in use from time to time and documents which are produced by any photographic or photostatic process,
- (d) correspondence and records of other communications (including e-mails) between a paying agent and a beneficial owner or between a paying agent and a residual entity, and
- (e) the materials and documents referred to in sections 898F(5) and 898G(6).

(2) A Revenue officer may by notice in writing require a paying agent, or a person who appears to that officer to be a paying agent, to furnish him or her within such time, not being less than 14 days, as may be provided by the notice, with such information (including copies of any relevant books, records or other documents) as he or she may reasonably require for the purposes of determining whether information contained in a report under this Chapter by that paying agent was correct and complete.

(3) Any person who has been required by a notice under subsection (2) to furnish information (including copies of any relevant books, records or other documents) and that person fails to comply with the notice shall be liable to a penalty of €1,265.

(4) An authorised officer may at all reasonable times enter any premises or place of business of a paying agent or a person who appears to that officer to be a paying agent for the purposes of determining whether information—

- (a) included in a report under this Chapter by that paying agent was correct and complete, or
- (b) not included in a report under this Chapter was correctly not so included.

(5) Without prejudice to the generality of subsection (4), an authorised officer may— SCH.4

- (a) examine the procedures put in place by the paying agent for the purpose of ensuring compliance by the paying agent with the paying agent's obligations under sections 898F and 898G,
- (b) check a sample of accounts or transactions in respect of which interest has been paid to a beneficial owner to determine whether—
 - (i) the procedures referred to in paragraph (a) have been observed in practice and whether they are adequate, and
 - (ii) the paying agent is, in respect of each account or transaction in the sample, in possession of the materials and documents referred to in section 898F(5) or 898G(6), as appropriate.

(6) An authorised officer may require a paying agent or an employee of the paying agent to produce books, records or other documents and to furnish information, explanations and particulars and to give all assistance, which the authorised officer reasonably requires for the purposes of the determination and examination referred to in subsections (4) and (5).

(7) An authorised officer may require an associated company in relation to a paying agent or an employee of such an associated company to produce books, records or other documents and to furnish information, explanations and particulars and to give all assistance, which the authorised officer reasonably requires for the purposes of the determination and examination referred to in subsections (4) and (5).

(8) An authorised officer may make extracts from or copies of all or any part of the books, records or other documents or other materials made available to him or her or require that copies of books, records or other documents be made available to him or her, in exercising or performing his or her powers under this section.

(9) An employee of a paying agent or of an associated company in relation to a paying agent who fails to comply with the requirements of an authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of €1,265.

(10) A paying agent or an associated company in relation to a paying agent which fails to comply with the requirements of the authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of €19,045 and if that failure continues a further penalty of €2,535 for each day on which the failure continues.

898O.—(1) Where any person required to make a return under this Chapter—

Penalty for failure to make returns, etc.

- (a) fails, without reasonable excuse, to comply with any of the requirements of section 898F or 898G,
- (b) fails, without reasonable excuse, to make such a return, or

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(c) makes an incorrect or incomplete return under this Chapter,

that person shall be liable to a penalty of €19,045 and, in the case of paragraphs (a) and (b), if the failure continues that person shall be liable to a further penalty of €2,535 for each day on which the failure continues.

(2) For the purposes of the recovery of a penalty under this section or section 898N, section 1061 applies in the same manner as it applies for the purposes of the recovery of a penalty under any of the sections referred to in that section.

(3) (a) A certificate signed by a Revenue officer which certifies that he or she has examined the relevant records and that it appears from those records that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return.

(b) A certificate certifying as provided for in paragraph (a) and purporting to be signed by a Revenue officer may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by such officer.

Arrangements with dependent and associated territories of Member States.

898P.—This Chapter shall apply for the purposes of implementing any arrangements made with a territory being a dependent or associated territory of a Member State (in this Chapter referred to as the ‘arrangements’) in relation to the automatic exchange of information and the application of a withholding tax referred to in paragraph 2 (ii) of Article 17 of the Directive.

Miscellaneous and supplemental.

898Q.—(1) Where a person is required under this Chapter or under regulations made under this Chapter to—

- (a) deliver a return,
- (b) give or furnish a certificate,
- (c) make a declaration or election,
- (d) make an application,

the return, certificate, declaration, election or application is to be made, given or furnished in such form as the Revenue Commissioners may require.

(2) The Revenue Commissioners may nominate any Revenue officer to perform any acts and discharge any functions authorised by this Chapter or by regulations made under this Chapter to be performed or discharged by the Revenue Commissioners apart from the making of regulations under this Chapter.

(3) Every regulation made under this Chapter 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 under the regulation.

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(4) Regulations made by the Revenue Commissioners under this Chapter may contain such supplemental and incidental matters as appear to the Revenue Commissioners to be necessary—

(a) to enable persons to fulfil their obligations under this Chapter, or

(b) for the general administration of this Chapter.

898R.—(1) This Chapter, other than sections 898H, 898I, 898J, 898L, 898M and 898P, is deemed to have applied as on and from 1 January 2004. Commencement (Chapter 3A).

(2) Section 898P shall apply as respects an act or omission which takes place or begins on or after the date of the passing of the Finance Act 2004.

(3) The provisions of sections 898H, 898I, 898J, 898L and 898M shall come into operation on such day, being a day not earlier than 1 January 2005, as the Minister for Finance may specify by order.”.