



Number 3 of 2003

FINANCE ACT 2003

ARRANGEMENT OF SECTIONS

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Chapter 1

Interpretation

Section

1. Interpretation (*Part I*).

CHAPTER 2

Income Tax

2. Age exemption.
3. Employee tax credit.
4. Amendment of section 122 (preferential loan arrangements) of Principal Act.
5. Amendment of section 126 (tax treatment of certain benefits payable under Social Welfare Acts) of Principal Act.
6. Application of PAYE to perquisites, benefits-in-kind, etc.
7. Payment of tax in respect of share options in certain circumstances.
8. Payment of tax under section 128 (tax treatment of directors of companies and employees granted rights to acquire shares or other assets) of Principal Act.
9. Amendment of section 244 (relief for interest paid on certain home loans) of Principal Act.
10. Amendment of Chapter 1 (payments in respect of professional services by certain persons) of Part 18 of, and Schedule 13 to, Principal Act.
11. Amendment of section 65 (Cases I and II: basis of assessment) of Principal Act.

Section

12. Restriction of reliefs where individual is not actively participating in certain trades.
13. Income tax: ring-fence on use of certain capital allowances on certain industrial buildings and other premises.
14. Pension arrangements.

CHAPTER 3

Income Tax, Corporation Tax and Capital Gains Tax

15. Amendment of Part 16 (income tax relief for investment in corporate trades — business expansion scheme and seed capital scheme) of Principal Act.
16. Rental income: restriction of relief for certain interest.
17. Claims for repayment, interest on repayments and time limits for assessment.
18. Amendment of section 666 (deduction for increase in stock values) of Principal Act.
19. Amendment of section 667 (special provisions for qualifying farmers) of Principal Act.
20. Amendment of Chapter 4 (transmission capacity rights) of Part 29 of Principal Act.
21. Amendment of section 848A (donations to approved bodies) of Principal Act.
22. Amendment of Schedule 26A (donations to approved bodies, etc.) to Principal Act.
23. Wear and tear allowances.
24. Capital allowances for certain day hospitals.
25. Provisions relating to certain industrial buildings or structures.
26. 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.
27. Amendment of Chapter 7 (qualifying areas) of Part 10 of Principal Act.
28. Amendment of section 372T (non-application of relief in certain circumstances and provision against double relief) of Principal Act.
29. Amendment of Chapter 10 (designated areas of certain towns) of Part 10 of Principal Act.
30. Amendment of Chapter 11 (reliefs for lessors and owner-occupiers in respect of expenditure incurred on the provision of certain residential accommodation) of Part 10 of Principal Act.

Section

31. Amendment of section 749 (dealers in securities) of Principal Act.
32. Conditions relating to relief in respect of expenditure incurred on provision of certain student accommodation.
33. Relevant contracts tax.
34. Filing date for certain returns and elections.
35. Amendment of certain provisions relating to exempt income.
36. Transfer of rent.
37. Matching of relevant foreign currency assets with foreign currency liabilities.
38. Exchange of information.
39. Amendment of section 404 (restriction on use of capital allowances for certain machinery or plant) of Principal Act.
40. Amendment of section 407 (restriction on use of losses and capital allowances for qualifying shipping trade) of Principal Act.
41. Amendment and repeals consequential on abolition of tax credits and advance corporation tax.
42. Amendment of Part 41 (self assessment) of Principal Act.
43. National Development Finance Agency.
44. Restriction on deductibility of certain interest.
45. Amendment of Chapter 2 (additional matters to be treated as distributions, charges to tax in respect of certain loans and surcharges on certain undistributed income) of Part 13 of Principal Act.
46. Amendment of section 249 (rules relating to recovery of capital and replacement loans) of Principal Act.
47. Amendment of section 289 (calculation of balancing allowances and balancing charges in certain cases) of Principal Act.
48. Securitisation and related matters.
49. Wholesale debt instruments and related matters.
50. Amendment of section 737 (special investment schemes) of Principal Act.
51. Amendment of Chapter 1 (income tax and corporation tax) of Part 45 of Principal Act.
52. Cessation of special investment business as separate business.

Section

- 53. Amendment of Chapter 1A (investment undertakings) of Part 27 of Principal Act.
- 54. Amendment of section 706 (interpretation and general (Part 26)) of Principal Act.
- 55. Amendment of section 747E (disposal of an interest in off-shore funds) of Principal Act.
- 56. Amendment of Schedule 2B (investment undertaking declarations) of Principal Act.
- 57. Amendment of Part 26 (life assurance companies) of Principal Act.
- 58. Amendment of section 481 (relief for investment in films) of Principal Act.

CHAPTER 4

Corporation Tax

- 59. Provisions relating to loss relief.
- 60. Unilateral credit relief.
- 61. Amendment of section 130 (matters to be treated as distributions) of Principal Act.
- 62. Amendment of Part 24A (tonnage tax) of Principal Act.
- 63. Amendment of section 430 (meaning of “close company”) of Principal Act.
- 64. Amendment of Schedule 4 (exemption of specified non-commercial State sponsored bodies from certain tax provisions) to Principal Act.

CHAPTER 5

Capital Gains Tax

- 65. Amendment of section 556 (adjustment of allowable expenditure by reference to consumer price index) of Principal Act.
- 66. Restriction of relief on issue of debentures etc.
- 67. Restriction of deferral of capital gains tax.
- 68. Amendment of section 598 (disposal of business or farm on “retirement”) of Principal Act.

Section

- 69. Amendment of Chapter 3 (capital gains tax) of Part 2 of Principal Act.
- 70. Amendment of Chapter 1 (assets and acquisition and disposal of assets) of Part 19 of Principal Act.
- 71. Amendment of section 980 (deduction from consideration on disposal of certain assets) of Principal Act.
- 72. Amendment of Schedule 15 (list of bodies for the purposes of section 610) to Principal Act.

PART 2

EXCISE

CHAPTER 1

Alcohol Products Tax

- 73. Interpretation (*Chapter 1*).
- 74. Qualification to meanings given to certain alcohol products.
- 75. Charging and rates.
- 76. Liability and payment.
- 77. Reliefs.
- 78. Repayment.
- 79. Offences and penalties.
- 80. Amendments relative to penalties.
- 81. Regulations.
- 82. General provisions.
- 83. Repeals and revocations.
- 84. Continuity.
- 85. Care and management of alcohol products tax.
- 86. Commencement.

CHAPTER 2

Miscellaneous

- 87. Amendment of section 97 (excisable products) of Finance Act 2001.

Section

88. Amendment of section 109 (warehousing) of Finance Act 2001.
89. Amendment of Chapter 2 of Part 2 (Intra-Community movement) of Finance Act 2001.
90. Amendment of section 136 (entry and search of premises) of Finance Act 2001.
91. Rates of mineral oil tax.
92. Spirits.
93. Offences in relation to keeping, selling or delivering of unexcised spirits.
94. Amendment of section 102 (offences) of Finance Act 1999.
95. Amendment of section 103 (presumptions in certain proceedings) of Finance Act 1999.
96. Tobacco products.
97. Amendment of section 103 (payment) of Finance Act 2001.
98. Amendment of Chapter 1 (interpretation, liability and payment) of Part 2 of Finance Act 2001.
99. Administrative penalties for breach of provisions or regulations.
100. Delegation of powers, functions and duties of Commissioners.
101. Amendment of section 130 (interpretation) of Finance Act 1992.
102. Amendment of section 131 (registration of vehicles by Revenue Commissioners) of Finance Act 1992.
103. Amendment of section 132 (charge of excise duty) of Finance Act 1992.
104. Amendment of section 134 (permanent reliefs) of Finance Act 1992.
105. Amendment of section 135C (remission or repayment in respect of vehicle registration tax on certain hybrid electric vehicles) of Finance Act 1992.
106. Amendment of section 141 (regulations) of Finance Act 1992.
107. Gaming licences.
108. Amendment of section 43 (gaming machine licence duty) of Finance Act 1975.
109. Amendment of section 120 (interpretation (Chapter III)) of Finance Act 1992.
110. Amendment of section 123 (rates of duty) of Finance Act 1992.

Section

111. Time limits.

PART 3

VALUE-ADDED TAX

112. Interpretation (*Part 3*).
113. Amendment of section 1 (interpretation) of Principal Act.
114. Amendment of section 4 (special provisions in relation to the supply of immovable goods) of Principal Act.
115. Amendment of section 5 (supply of services) of Principal Act.
116. Special scheme for electronic services.
117. Amendment of section 7 (waiver of exemption) of Principal Act.
118. Amendment of section 8 (taxable persons) of Principal Act.
119. Amendment of section 11 (rates of tax) of Principal Act.
120. Amendment of section 12B (special scheme for means of transport supplied by taxable dealers) of Principal Act.
121. Amendment of section 16 (duty to keep records) of Principal Act.
122. Amendment of section 17 (invoices) of Principal Act.
123. Amendment of section 19 (tax due and payable) of Principal Act.
124. Amendment of section 20 (refund of tax) of Principal Act.
125. Interest on refunds of tax.
126. Amendment of section 22 (estimation of tax due for a taxable period) of Principal Act.
127. Amendment of section 27 (fraudulent returns, etc.) of Principal Act.
128. Amendment of section 29 (recovery of penalties) of Principal Act.
129. Amendment of section 30 (time limits) of Principal Act.
130. Amendment of section 32 (regulations) of Principal Act.
131. Amendment of Fourth Schedule to Principal Act.

PART 4

STAMP DUTIES

132. Interpretation (*Part 4*).

Section

133. Amendment of section 1 (interpretation) of Principal Act.
134. Amendment of section 36 (certain contracts for sale of leasehold interests to be chargeable as conveyances on sale) of Principal Act.
135. Amendment of section 69 (operator-instruction deemed to be an instrument of conveyance or transfer) of Principal Act.
136. Amendment of section 79 (conveyances and transfers of property between certain bodies corporate) of Principal Act.
137. Amendment of section 81 (relief from stamp duty in respect of transfers to young trained farmers) of Principal Act.
138. Foreign Government securities.
139. Exemption of National Development Finance Agency, etc. from stamp duty.
140. Amendment of Part 9 (levies) of Principal Act.
141. Levy on certain financial institutions.
142. Amendment of Part 11 (management provisions) of Principal Act.
143. Amendment of Schedule 1 to Principal Act.

PART 5

CAPITAL ACQUISITIONS TAX

144. Interpretation (*Part 5*).
145. Time limits for capital acquisitions tax.
146. Administrative changes.
147. Amendment of section 47 (signing of returns, etc.) of Principal Act.
148. Amendment of section 55 (payment of tax on certain assets by instalments) of Principal Act.
149. Amendment of section 69 (exemption of small gifts) of Principal Act.
150. Amendment of section 81 (exemption of certain securities) of Principal Act.
151. Technical amendments (*Part 5*).
152. Amendment of section 100 (exclusion of value of excepted assets) of Principal Act.
153. Transitional provisions (*Part 5*).

PART 6

RESIDENTIAL PROPERTY TAX

- 154. Amendment of section 100 (market value exemption limit) of Finance Act 1983.
- 155. Time limits.

PART 7

MISCELLANEOUS

- 156. Interpretation (*Part 7*).
- 157. Amendment of Chapter 4 (collection and recovery of income tax on certain emoluments (PAYE system)) of Part 42 of Principal Act.
- 158. Amendment of section 899 (inspector's right to make enquiries) of Principal Act.
- 159. Amendment of Chapter 4 (revenue powers) of Part 38 of Principal Act.
- 160. Amendment of section 1078 (revenue offences) of Principal Act.
- 161. Amendment of Chapter 4 (revenue offences) of Part 47 of Principal Act.
- 162. Amendment of section 1061 (recovery of penalties) of Principal Act.
- 163. Miscellaneous technical amendments in relation to tax.
- 164. Mandatory electronic filing and payment of tax.
- 165. Cesser of certain payments out of Central Fund.
- 166. Payments from Central Fund to certain persons.
- 167. Amendment of section 136 (write-off of certain repayable advances to Shannon Free Airport Development Company Limited) of Finance Act 2002.
- 168. Amendment of section 160 (establishment of Small Savings Reserve Fund) of Finance Act 1994.
- 169. Capital Services Redemption Account.
- 170. Care and management of taxes and duties.
- 171. Short title, construction and commencement.

SCHEDULE 1

REPEALS AND REVOCATIONS RELATING TO EXCISE LAW

SCHEDULE 2

RATES OF ALCOHOL PRODUCTS TAX

SCHEDULE 3

RATES OF EXCISE DUTY ON TOBACCO PRODUCTS

[No. 3.]

Finance Act 2003.

[2003.]

SCHEDULE 4

GAMING LICENCES

SCHEDULE 5

STAMP DUTY ON INSTRUMENTS

SCHEDULE 6

MISCELLANEOUS TECHNICAL AMENDMENTS IN RELATION TO TAX

[2003.]

Finance Act 2003.

[No. 3.]

ACTS REFERRED TO

Asset Covered Securities Act 2001	2001, No. 47
Building Societies Act 1989	1989, No. 17
Capital Acquisitions Tax Act 1976	1976, No. 8
Capital Acquisitions Tax Consolidation Act 2003	2003, No. 1
Central Bank Act 1971	1971, No. 4
Central Bank Act 1989	1989, No. 16
Central Bank Act 1998	1998, No. 2
Child Care Act 1991	1991, No. 17
Companies Act 1963	1963, No. 33
Companies Acts 1963 to 2001	
Courts of Justice Act 1924	1924, No. 10
Credit Union Act 1997	1997, No. 15
Criminal Procedure Act 1967	1967, No. 12
Customs Act 1956	1956, No. 7
Customs Consolidation Act 1876	39 & 40 Vict., c.36
Dormant Accounts Act 2001	2001, No. 32
Dublin Docklands Development Authority Act 1997	1997, No. 7
Family Law (Divorce) Act 1996	1996, No. 33
Finance Act 1901	1 Edw. 7, c.7
Finance Act 1902	2 Edw. 7, c.7
Finance Act 1911	1 & 2 Geo. 5, c.48
Finance Act 1914	5 Geo 5, c.7
Finance Act 1915	5 & 6 Geo. 5, c.62
Finance Act 1921	11 & 12 Geo. 5, c.32
Finance Act 1932	1932, No. 20
Finance Act 1940	1940, No. 14
Finance Act 1949	1949, No. 13
Finance Act 1950	1950, No. 18
Finance Act 1951	1951, No. 15
Finance Act 1956	1956, No. 22
Finance Act 1963	1963, No. 23
Finance Act 1966	1966, No. 17
Finance Act 1975	1975, No. 6
Finance Act 1976	1976, No. 16
Finance Act 1977	1977, No. 18
Finance Act 1979	1979, No. 11
Finance Act 1980	1980, No. 14
Finance Act 1981	1981, No. 16
Finance (No. 2) Act 1981	1981, No. 28
Finance Act 1983	1983, No. 15
Finance Act 1984	1984, No. 9
Finance Act 1985	1985, No. 10
Finance Act 1986	1986, No. 13
Finance Act 1988	1988, No. 12
Finance Act 1989	1989, No. 10
Finance Act 1992	1992, No. 9
Finance Act 1993	1993, No. 13
Finance Act 1994	1994, No. 13
Finance Act 1996	1996, No. 9
Finance Act 1997	1997, No. 22
Finance Act 1998	1998, No. 3
Finance Act 1999	1999, No. 2
Finance Act 2000	2000, No. 3
Finance Act 2001	2001, No. 7
Finance Act 2002	2002, No. 5
Finance (Excise Duty on Tobacco Products) Act 1977	1977, No. 32
Finance (Excise Duties) (Vehicles) Act 1952	1952, No. 24
Gaming and Lotteries Act 1956	1956, No. 2
Industrial Development Act 1995	1995, No. 28
Inland Revenue Act 1880	43 & 44 Vict., c.20
Investment Intermediaries Act 1995	1995, No. 11
Irish Charges Act 1801	41 Geo. 3 c.32
King's Inns Library Act 1945	1945, No. 22
Local Government Act 2001	2001, No. 37
National Development Finance Agency Act 2002	2002, No. 29
National Treasury Management Agency (Amendment) Act 2000	2000, No. 30
Pensions (Amendment) Act 2002	2002, No. 18
Planning and Development Act 2000	2000, No. 30
Postal and Telecommunications Services Act 1983	1983, No. 24
Revenue Act 1906	6 Edw. 7, c.20
Spirits Act 1880	43 & 44 Vict., c.24
Stamp Duties Consolidation Act 1999	1999, No. 31
Stock Exchange Act 1995	1995, No. 8
Succession Duty Act 1853	16 & 17 Vict., c.51
Taxes Consolidation Act 1997	1997, No. 39
Urban Renewal Act 1998	1998, No. 27
Valuation Act 2001	2001, No. 13
Value-Added Tax Act 1972	1972, No. 22
Value-Added Tax Acts 1972 to 2002	
Waiver of Certain Tax, Interest and Penalties Act 1993	1993, No. 24
Wireless Telegraphy Acts 1926 to 1988	



Number 3 of 2003

FINANCE ACT 2003

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.
[28th March, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

Interpretation

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

CHAPTER 2

Income Tax

2.—As respects the year of assessment 2003 and subsequent years of assessment, section 188 of the Principal Act is amended, in subsection (2), by substituting “€30,000” for “€26,000” (inserted by the Finance Act 2002) and “€15,000” for “€13,000” (as so inserted). Age exemption.

3.—(1) As respects the year of assessment 2003 and subsequent years of assessment, section 472 of the Principal Act is amended, in subsection (4), by substituting “€800” for “€660” (inserted by the Finance Act 2002) in both places where it occurs. Employee tax
credit.

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

[No. 3.]

Finance Act 2003.

[2003.]

Pt.1

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

4.—Section 122 of the Principal Act is amended, as respects the year of assessment 2003 and subsequent years of assessment, by substituting in the definition of “the specified rate” in paragraph (a) of subsection (1)—

(a) “4.5 per cent” for “5 per cent” (inserted by the Finance Act 2002) in both places where it occurs, and

(b) “11 per cent” for “12 per cent” (inserted by the Finance Act 2001).

Amendment of
section 126 (tax
treatment of certain
benefits payable
under Social
Welfare Acts) of
Principal Act.

5.—Section 126 of the Principal Act is amended by substituting the following for paragraph (b) (inserted by the Finance Act 2002) of subsection (8):

“(b) Notwithstanding subsection (3) and the Finance Act 1992 (Commencement of Section 15) (Unemployment Benefit and Pay-Related Benefit) Order 1994 (S.I. No. 19 of 1994), subsection (3)(b) shall not apply in relation to unemployment benefit paid or payable, in the period commencing on 6 April 1997 and ending on 31 December 2004, to a person employed in short-time employment.”.

Application of
PAYE to
perquisites,
benefits-in-kind, etc.

6.—(1) The Principal Act is amended—

(a) in section 119 by substituting the following for subsection (4):

“(4) For the purposes of subsection (3), the annual value of the use of an asset shall be taken to be—

(a) in the case of an asset being premises, the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all usual tenant’s rates, and if the landlord undertook to bear the costs of repairs and insurance, and the other expenses, if any, necessary for maintaining the premises in a state to command that rent, and

(b) in the case of any other asset, 5 per cent of the market value (within the meaning of section 548) of the asset at the time when it was first applied by the body corporate in making any provision mentioned in section 118(1).”,

(b) in section 121—

(i) in subsection (1)(a)—

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

“ ‘car’ means any mechanically propelled road vehicle designed, constructed or adapted for the carriage of the driver or the driver and one or more other persons other than—

(a) a motor-cycle,

[2003.]

Finance Act 2003.

[*No. 3.*]

(b) a van (within the meaning of section Pr.1 S.6 121A), or

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

and

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

“ ‘motor-cycle’ means a mechanically propelled vehicle with less than four wheels and the weight of which unladen does not exceed 410 kilograms;”,

(ii) in subsection (2)(b), by substituting the following for subparagraph (ii)—

“(ii) there shall be treated for that year as emoluments of the employment by reason of which the car is made available, and accordingly chargeable to income tax, the amount, if any, by which the cash equivalent of the benefit of the car for the year exceeds the aggregate for the year of the amount which the employee is required to make good and actually makes good to the employer in respect of any part of the costs of providing or running the car.”,

(iii) by substituting the following for paragraph (a) of subsection (3)—

“(a) The cash equivalent of the benefit of a car for a year of assessment shall be 30 per cent of the original market value of the car.”,

(iv) in subsection (4)—

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

“(a) Where in relation to a person the business mileage for a year of assessment exceeds 15,000 miles the cash equivalent of the benefit of the car for that year, instead of being the amount ascertained under subsection (3) shall be the percentage of the original market value of the car applicable to the business mileage under the Table to this subsection.”,

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

“(c) Where a car in respect of which this section applies in relation to a person for a year of assessment is made available to the person for part only of that year, the cash equivalent of the benefit of that car as respects that person for that year shall be an amount determined by applying paragraph (a) as if—

- (i) the figure 15,000 referred to in that paragraph were replaced by a figure (in this paragraph referred to as the ‘new figure’) determined by the formula—

$$15,000 \times \frac{A}{365}$$

where—

A is the number of days in the part of the year, and

- (ii) each figure in columns (1), (2) and (3) of the Table to this section were reduced in the same proportion as the new figure bears to 15,000.”,

(III) by substituting the following for the Table to that subsection:

“

TABLE		
<i>Business Mileage</i>		<i>Percentage of original market value</i>
<i>lower limit</i>	<i>upper limit</i>	
(1)	(2)	(3)
miles	miles	per cent
15,000	20,000	24
20,000	25,000	18
25,000	30,000	12
30,000	—	6

”,

and

- (v) in subsection (6), by deleting paragraph (c),

(c) by inserting the following after section 121:

“Benefit of use of van.

121A.—(1) In this section—

‘van’ means a mechanically propelled road vehicle which—

- (a) is designed or constructed solely or mainly for the carriage of goods or other burden,
- (b) has a roofed area or areas to the rear of the driver’s seat, and
- (c) has no side windows or seating fitted in that roofed area or areas.

- (2) (a) In relation to a person chargeable to tax in

respect of an employment, Pr.1 S.6
 this section shall apply for
 a year of assessment in
 relation to a van which, by
 reason of the employment,
 is made available (without
 a transfer of the property
 in it) to the person and is
 available for his or her
 private use in that year.

(b) In relation to a van in
 respect of which this
 section applies for a year
 of assessment—

(i) Chapter 3 of this Part
 shall not apply for
 that year in relation
 to the expense
 incurred in connec-
 tion with the pro-
 vision of the van, and

(ii) there shall be treated
 for that year as
 emoluments of the
 employment by
 reason of which the
 van is made available,
 and accordingly
 chargeable to income
 tax, the amount, if
 any, by which the
 cash equivalent of the
 benefit of the van for
 the year exceeds the
 aggregate for the year
 of the amounts which
 the employee is
 required to make
 good and actually
 makes good to the
 employer in respect
 of any part of the
 costs of providing or
 running the van.

(3) The cash equivalent of the
 benefit of a van for a year of assess-
 ment shall be 5 per cent of the original
 market value of the van.

(4) The provisions of subsections
 (1) (other than the definition of car in
 paragraph (a)), paragraph (b) of sub-
 section (3), (6) and (7) of section 121
 shall apply, with any necessary modi-
 fications in relation to a van, for the
 purposes of this section as they apply
 in relation to a car for the purposes of
 that section.”

(d) by inserting the following after section 985:

“Application
of section
985 to certain
perquisites,
etc.

985A.—(1) This section applies to emoluments in the form of—

- (a) perquisites and profits whatever which are chargeable to tax under section 112 excluding perquisites or profits whatever in the form of shares (including stock) in a company, but including—
 - (i) an expense incurred by a body corporate in the provision of a benefit, other than a contribution to a PRSA (within the meaning of Chapter 2A of Part 30), for an employee which is treated as a perquisite for the purposes of section 112 by virtue of section 118,
 - (ii) the benefit arising from a preferential loan which is treated as a perquisite for the purposes of section 112 by virtue of section 122, and
 - (iii) a perquisite to which section 112A applies,
- (b) the benefit of the private use of a car which is chargeable to tax by virtue of section 121, and
- (c) the benefit of the private use of a van which is chargeable to tax by virtue of section 121A.

(2) Where an employee is in receipt of any emolument to which this section applies, the employer shall be treated for the purposes of this Chapter and regulations under this Chapter as making a payment (in this section referred to as a ‘notional payment’) of an amount equal to the amount referred to in subsection (3).

(3) The amount referred to in this subsection, is the amount which, on

the basis of the best estimate that can reasonably be made, is the amount of income likely to be chargeable to tax under Schedule E in respect of the emolument. Pt.1 S.6

(4) Where, by reason of an insufficiency of payments actually made to or on behalf of an employee, the employer is unable to deduct the amount (or full amount) of the income tax required to be deducted by virtue of this Chapter and regulations made under this Chapter, the employer shall be liable to remit to the Revenue Commissioners at such time as may be prescribed by regulation an amount of income tax equal to the amount of income tax that the employer would be required, but is unable, to deduct.

(5) In any case where—

- (a) an employee is in receipt of an emolument to which this section applies,
- (b) the employer is required by virtue of this section and regulations made thereunder to remit an amount of income tax (in this subsection referred to as the ‘due amount’) in respect of that emolument, and
- (c) the employee does not, before the end of the year of assessment, make good the due amount to the employer,

the employee shall be chargeable to tax under Schedule E in respect of the due amount for the next following year of assessment and the due amount shall be treated for that year as an emolument to which this section applies.

(6) The Revenue Commissioners may make regulations to make provision—

- (a) with respect to the deduction, collection and recovery of amounts to be accounted for in respect of notional payments;

(b) applying (with or without modifications) any specified provisions of regulations for the time being in force in relation to deductions from actual payments to amounts to be accounted for in respect of any notional payments.”.

(2) This section applies and has effect as on and from 1 January 2004.

Payment of tax in respect of share options in certain circumstances.

7.—Part 5 of the Principal Act is amended in section 128A—

(a) in subsection (1)(a), by deleting “on or after 6 April 2000” and substituting “in the period from 6 April 2000 to the date of the passing of the *Finance Act 2003*”,

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

“(4A) (a) Notwithstanding subsection (4), where an election has been made in accordance with subsection (3) and—

(i) relevant shares are disposed of (in this subparagraph referred to as the ‘first-mentioned disposal’), and

(I) but for this subparagraph, tax would be payable, by reference to the first-mentioned disposal, in accordance with subsection (4)(a), and

(II) the market value of those shares at the date of the first-mentioned disposal is less than the tax chargeable under section 128, by reference to the exercise of an option to acquire those shares,

then an amount, being an amount equal to that market value, shall be due and payable to the Collector-General within 30 days after the date of the first-mentioned disposal or, if later, on or before 30 June 2003, and the balance of the tax chargeable remaining unpaid after that payment shall be payable in the event of, and by reference to, disposals of any shares in a company in a year of assessment, in accordance with paragraph (d), being disposals after the date of the first-mentioned disposal, or

(ii) relevant shares are held at 31 December in the year of assessment beginning 7 years after the relevant year (in this subparagraph referred to as the ‘first-mentioned date’), and

(I) but for this subparagraph, tax would be payable in accordance with subsection (4)(b), and

Pr.1 S.7

(II) the market value of the relevant shares is, at the first-mentioned date, less than the tax chargeable under section 128, by reference to the exercise of an option to acquire those shares,

then an amount, being an amount equal to that market value, shall be due and payable to the Collector-General within 30 days after the date of the first-mentioned date and the balance of the tax chargeable remaining unpaid after that payment shall be payable in the event of, and by reference to, disposals of any shares in a company in a year of assessment, in accordance with paragraph (d), being disposals after the first-mentioned date.

(b) Where a person who is entitled to make an election in accordance with subsection (3), after 6 February 2003 and on or before 31 October in the year of assessment following the relevant year in respect of relevant shares, does not do so, or tax chargeable under section 128, in respect of any gain realised by the exercise before 6 February 2003 of a right to acquire shares, is due after 6 February 2003 but on or before 31 October in the year of assessment following the relevant year, and the market value of the shares on—

(i) that 31 October, or

(ii) where the shares are disposed of before that date, the date of the disposal (referred to in this paragraph as the ‘first-mentioned disposal’) of the shares,

is less than the tax chargeable under section 128, then an amount, being an amount equal to that market value, shall be due and payable to the Collector-General within 30 days after the said 31 October, and the balance of the tax chargeable remaining unpaid after that payment shall be payable in the event of, and by reference to, disposals of any shares in a company in a year of assessment, in accordance with paragraph (d), being disposals after the said 31 October or the date of the first-mentioned disposal of the shares, as the case may be.

(c) In all cases other than those referred to in paragraph (a) or (b), where tax is chargeable under section 128 on an amount equal to a gain realised by the exercise, at any time before 6 February 2003, of a right to acquire

shares in a company, and the market value of the shares on—

- (i) that date, or
- (ii) where the shares are disposed of before that date, the date of the disposal of the shares,

is less than the tax chargeable under section 128, then an amount, being an amount equal to that market value, shall be due and payable to the Collector-General on or before 30 June 2003, and the balance of the tax chargeable remaining unpaid after that payment shall be payable in the event of, and by reference to, disposals of any shares in a company in a year of assessment, in accordance with paragraph (d), being disposals after 6 February 2003.

- (d) (i) A payment that is to be made in the event of, and by reference to, disposals of any shares in a year of assessment shall be a payment which is the lesser of—

- (I) the aggregate of the balances of unpaid tax referred to in paragraphs (a), (b) and (c), as reduced by tax payable in accordance with this paragraph by reference to disposals of shares in a previous year of assessment, and

- (II) the aggregate of the net gains (if any) arising in respect of disposals of shares in the year of assessment.

- (ii) For the purposes of subparagraph (i)(II), the net gain arising in relation to a disposal of shares shall be the market value at the date of disposal of those shares reduced by so much of the aggregate of—

- (I) the amount of the consideration, if any, given for the shares (including, where relevant, the grant of a right to acquire the shares),

- (II)(A) where this subsection does not apply to the payment of income tax chargeable under section 128 by reference to the acquisition of the shares, the amount of the income tax so chargeable, or

- (B) where this subsection does apply to the payment of income tax chargeable under section 128 by reference to the acquisition of the shares, the total amount paid, before the date of the disposal, in respect of that income tax,

and

(III) capital gains tax chargeable by reference to the disposal of the shares, Pr.1 S.7

as does not exceed that market value.

- (iii) For the purposes of subparagraph (ii), the income tax or capital gains tax, as the case may be, so chargeable shall be the amount by which the income tax or capital gains tax, as the case may be, chargeable on the taxpayer for the year of assessment would have been reduced if the acquisition or disposal of the shares, as the case may be, had not taken place.
- (iv) Payments referred to in paragraph (d)(i) which are to be made by reference to disposals of shares shall be due and payable to the Collector-General on or before 31 October in the year following the year of assessment in which the disposal of those shares takes place.
- (e) (i) A taxpayer who wishes to be entitled to avail of the provisions of this subsection shall so elect, by giving notice in writing to the inspector, on or before 1 June 2003 in a form prescribed or authorised by the Revenue Commissioners, and the notice shall contain details of—
 - (I) the date of exercise of the option,
 - (II) the number of shares acquired by exercise of the option,
 - (III) the market value of the shares at date of exercise of that option, and
 - (IV) such further particulars for the purposes of this subsection as may be required or indicated by the Revenue Commissioners.
- (ii) The inspector or such other officer as the Revenue Commissioners shall appoint in that behalf may admit a late election under subparagraph (i) in circumstances where he or she is satisfied that the delay in making the election was due to absence, illness or other reasonable cause.
- (f) In any case where, at any time, the requirements of this subsection have not been fully complied with, any amount of tax chargeable under section 128 which is unpaid shall be due and payable as if this subsection had not been enacted.
- (g) Any tax chargeable under section 128 which is due and payable in accordance with subsection (4) or this subsection, which remains unpaid at the date of death of the chargeable person, shall be discharged by the Revenue Commissioners.

(h) Any amount paid before 6 February 2003 in respect of tax chargeable under section 128 shall not be repaid by reference to any provision of this subsection.

(i) The reference in paragraph (d) to the disposal of shares includes a reference to the disposal of shares by the spouse of the person chargeable—

(I) in a case where section 1017 applies, or

(II) in a case where that section does not apply, but the disposal by the spouse is subsequent to a transfer, on or after 25 February 2003, of the shares from the other spouse, except where the spouses are separated in the circumstances referred to in paragraph (a) or (b) of section 1015(2), or their marriage has been dissolved under either section 5 of the Family Law (Divorce) Act 1996, or the law of a country or jurisdiction other than the State, being a dissolution that is entitled to be recognised as valid in the State.

(j) A person shall not, at any time, be entitled to avail of the provisions of this subsection where, at that time, he or she has not paid, or agreed an arrangement acceptable to the Collector-General for the payment of, tax due and payable which is chargeable under section 128 in respect of the exercise of a right to acquire shares to which this subsection does not apply.

(k) In this subsection—

‘market value’ shall be construed in accordance with section 548;

‘shares’ includes securities within the meaning of section 135 and stock.

(4B) In any case where the provisions of subsection (4A) apply, the amount by which the market value of the shares at the time of acquisition exceeds the market value at the date of disposal of those shares, or any part of that amount, shall not be an allowable loss for the purposes of the Capital Gains Tax Acts until such time as the tax liability of the person under section 128 has been paid in full to the Collector-General.”,

(c) in subsection (5), by substituting “subsections (4)(a) and (4A)” for “subsection (4)(a)”, and

(d) in subsection (7), by substituting “subsections (4) and (4A) but notwithstanding any provisions of subsection (4A)

[2003.]

Finance Act 2003.

[No. 3.]

that subsection shall have no effect as respects the payment of any tax in relation to a gain realised by the exercise on or after 6 February 2003 of a right to acquire shares.” for “subsection (4).”.

Pr.1 S.7

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

(a) by inserting the following after section 128A:

“Payment of tax under section 128.

128B.—(1) This section applies where, by virtue of section 128, a person (in this section referred to as a ‘taxable person’) is chargeable to tax under Schedule E for a year of assessment on an amount equal to the gain realised by the exercise, on or after 30 June 2003, of a right to acquire shares (in this section referred to as ‘relevant shares’) in a company.

(2) Where this section applies for a year of assessment, the taxable person shall pay an amount of tax (in this section referred to as ‘relevant tax’) in respect of the gain realised by the exercise of the right to acquire relevant shares, and that amount of tax shall be determined by the formula—

$$A \times B$$

where—

A is the amount of that gain computed in accordance with section 128(4), and

B is the percentage which is equal to the higher rate in force for the year of assessment in which the taxable person exercises the right to acquire the relevant shares.

(3) Relevant tax shall be due and payable to the Collector-General within 30 days after the exercise of the right to acquire the relevant shares, and shall be so due and payable without the making of an assessment, but relevant tax which has become so due and payable may be assessed on the taxable person (whether or not it has been paid when the assessment is made) if the tax or any part of it is not paid on or before the due date.

(4) Each payment of relevant tax shall be accompanied by a return containing, in relation to the taxable person by whom the payment is made, details of the amount of the gain referred to in subsection (1) and of the relevant tax due in respect of that gain and such other particulars as may be required by the return.

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

(5) Every return under this section shall be in a form prescribed or authorised by the Revenue Commissioners, and shall include a declaration to the effect that the return is correct and complete.

(6) The Collector-General shall give the taxable person a receipt for the amount of relevant tax paid by the taxable person.

(7) Where it appears to an officer of the Revenue Commissioners that there is any amount of relevant tax which ought to have been but has not been included in a return under subsection (4), or where such officer is dissatisfied with any such return, such officer may make an assessment on the taxable person concerned to the best of such officer's judgement, and any amount of relevant tax due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time specified in subsection (3).

(8) Where any item has been incorrectly included in a return under subsection (4) as a gain in respect of which relevant tax is required to be paid, an officer of the Revenue Commissioners may make such assessments, adjustments or set-offs as may in his or her judgement be required for securing that the resulting liability to relevant tax, including interest on unpaid tax, of the taxable person is, in so far as possible, the same as it would have been if the item had not been so included.

(9) (a) The provisions of the Income Tax Acts relating to—

- (i) assessments to income tax,
- (ii) appeals against such assessments (including the rehearing of appeals and the statement of a case for the opinion of the High Court), and
- (iii) the collection and recovery of income tax,

shall, in so far as they are applicable, apply to the assessment, collection and recovery of relevant tax.

- (b) Any amount of relevant tax payable in accordance with this section without the making of an assessment shall carry interest at the rate of 0.0322 per cent for each day or part of a day from the date when the amount becomes due and payable until payment. Pr.1 S.8
- (c) Subsections (3) and (4) of section 1080 shall apply in relation to interest payable under paragraph (b) as they apply in relation to interest payable under that section.
- (d) In its application to any relevant tax charged by any assessment made in accordance with this section, section 1080 shall apply as if subsection (1)(b) of that section were deleted.

(10) Where a taxable person has paid relevant tax in respect of a gain realised by the exercise, in any year of assessment, of a right to acquire relevant shares, the taxable person may claim to have that relevant tax set against the income tax chargeable on the taxable person for that year of assessment and, where that relevant tax exceeds such income tax, to have the excess refunded to the taxable person.

(11) Relevant tax payable by a taxable person in respect of a gain realised by the exercise, in any year of assessment, of a right to acquire relevant shares shall not be regarded as a payment of, or on account of, preliminary tax for the purposes of sections 952 and 958.

(12) Relevant tax payable by a taxable person in respect of a gain realised by the exercise, in any year of assessment, of a right to acquire relevant shares—

- (a) shall not, for the purposes of section 952(2), form part of the income tax which in the opinion of the taxable person is likely to become payable by that person for that year of assessment,
- (b) shall not, for the purposes of section 958(3A), be

regarded as either part of the income tax paid or part of the income tax payable by that person for that year of assessment, and

- (c) shall not, for the purposes of section 958(4), be regarded as income tax payable by the taxable person for that year of assessment.

(13) Notwithstanding any other provision of this section, any gain realised by the exercise, in any year of assessment, of a right to acquire relevant shares and in respect of which relevant tax is payable by a taxable person shall be included in the return required to be delivered by that person under section 951.

(14) Where, on an application in writing having been made to them in that behalf, the Revenue Commissioners are satisfied that an individual is likely to be chargeable to income tax for a year of assessment at the standard rate only, the reference in the meaning of B in subsection (2) to the higher rate shall be construed for the purposes of the payment or payments required to be made by the individual for that year in accordance with subsection (2), as a reference to the standard rate.”,

and

- (b) in section 128(2A), by deleting paragraph (a).

(2) (a) *Paragraph (a) of subsection (1) shall come into operation as on and from 30 June 2003.*

- (b) *Paragraph (b) of subsection (1) shall apply as respects the exercise, assignment or release of a right (within the meaning of section 128 of the Principal Act) on or after 30 June 2003.*

Amendment of section 244 (relief for interest paid on certain home loans) of Principal Act.

9.—(1) Section 244(1)(a) of the Principal Act is amended, in the definition of “relievable interest”, by substituting—

- (a) “7 years” for “5 years”,
 (b) “€8,000” for “€6,350”, and
 (c) “€4,000” for “€3,175”.

(2) *Subsection (1) shall not apply to an individual for whom the fifth year of assessment for which he or she had an entitlement to relief under section 244 of the Principal Act in respect of a qualifying*

[2003.]

Finance Act 2003.

[No. 3.]

loan (within the meaning of that section) was prior to the year of Pr.1 S.9 assessment 2002.

10.—(1) Chapter 1 of Part 18 of the Principal Act is amended:

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

(a) in section 520(1), in the definition of “relevant payment”—

(i) in subparagraph (i) by substituting “applies,” for “applies, and”,

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

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

“(iii) a payment by one accountable person to another in reimbursement of a relevant payment;”, and

(b) in section 525 by substituting the following for subsection (6):

“(6) The provisions of Chapter 2 relating to the assessment, collection and recovery of tax deductible under section 531(1) shall apply to the assessment, collection and recovery of appropriate tax.”.

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

(a) by substituting “79. Horse Racing Ireland.” for paragraph 79,

(b) by deleting “104. The National Pensions Reserve Fund Commission.”, and

(c) by adding the following after paragraph 120:

“121. Human Rights Commission.

122. Pensions Ombudsman.

123. Refugee Appeals Tribunal.

124. The Dublin Institute for Advanced Studies.

125. Pre-Hospital Emergency Care Council.

126. Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland.

127. The Health Insurance Authority.

128. Commission for Aviation Regulation.

129. Railway Procurement Agency.

130. The National Council on Ageing and Older People.

131. National Qualifications Authority of Ireland (NQAI).

132. BreastCheck, The National Breast Screening Programme.

Pt.1 S.10

133. The National Council for the Professional Development of Nursing and Midwifery.
134. Mater and Children's Hospital Development Ltd.
135. The National Consultative Commission on Racism and Interculturalism.
136. Office of Tobacco Control.
137. The Marine Casualty Investigation Board.
138. National Treasury Management Agency as regards the performance of functions by it conferred on, or delegated to, it by or under Part 2 of the National Treasury Management Agency (Amendment) Act 2000. (State Claims Agency).
139. National Development Finance Agency."

(3) (a) *Paragraph (a) of subsection (2) applies with effect from 18 December 2001.*

(b) *Paragraph (c) of subsection (2) applies with effect from 1 May 2003.*

Amendment of section 65 (Cases I and II: basis of assessment) of Principal Act.

11.—Section 65 of the Principal Act is amended in subsection (3) by inserting “notwithstanding anything to the contrary in section 66(2),” after “then,”.

Restriction of reliefs where individual is not actively participating in certain trades.

12.—(1) Chapter 4 of Part 12 of the Principal Act is amended by inserting the following after section 409C:

“409D.—(1) In this section—

‘active trader’, in relation to a trade, means an individual who works for the greater part of his or her time on the day-to-day management or conduct of the trade;

‘electronic’ includes electrical, digital, magnetic, optical, electromagnetic, biometric, photonic and any other form of related technology;

‘specified provisions’ means sections 305 and 381;

‘specified trade’ means a trade consisting of or including—

- (a) the generation of electricity,
- (b) trading operations which are petroleum activities (within the meaning of section 21A),
- (c) the development or production of—
 - (i) films,
 - (ii) film projects,
 - (iii) film properties, or
 - (iv) music properties,

[2003.]

Finance Act 2003.

[No. 3.]

(d) the acquisition of rights to participate in the revenues Pr.1 S.12
of—

(i) film properties, or

(ii) music properties,

or

(e) the production of, the distribution of, or the holding of
an interest in—

(i) either or both a film negative and its associated
soundtrack, a film tape or a film disc,

(ii) an audio tape or audio disc, or

(iii) a film property produced by electronic means or
a music property produced by electronic means;

‘relevant year of assessment’ means—

(a) in relation to a trade consisting of or including the gen-
eration of electricity, the year of assessment 2002 or
any subsequent year during which the individual car-
ried on such trade otherwise than as an active trader,
and

(b) in relation to any other specified trade, the year of
assessment 2003 or any subsequent year during
which the individual carried on that trade otherwise
than as an active trader.

(2) Where, in the case of an individual who carries on a speci-
fied trade otherwise than as an active trader, an amount may
apart from this section be given or allowed under any of the
specified provisions—

(a) in respect of a loss sustained by the individual in the
specified trade in a relevant year of assessment,
including a loss which is computed taking account
of interest laid out or expended by the individual in
respect of a loan where the proceeds of the loan
were used to incur expenditure on machinery or
plant used for the purposes of the specified trade
concerned, or

(b) as an allowance to be made to the individual for a rel-
evant year of assessment either in taxing the speci-
fied trade or by means of discharge or repayment of
tax to which he or she is entitled by reason of the
individual carrying on the specified trade concerned,

then, notwithstanding any other provision of the Tax Acts, such
an amount may be given or allowed only against income from
the specified trade concerned and shall not be allowed in com-
puting any other income or profits or in taxing any other trade
or in charging any other income to tax.”.

(2) This section applies as respects—

(a) an allowance under Part 9 in respect of machinery or plant
to be made—

Pt.1 S.12

(i) for the year of assessment 2002 or any subsequent year in relation to a trade consisting of or including the generation of electricity, and

(ii) for the year of assessment 2003 or any subsequent year in relation to any other trade,

and

(b) any loss sustained in—

(i) a trade consisting of or including the generation of electricity in the year of assessment 2002 or any subsequent year, and

(ii) any other trade in the year of assessment 2003 or any subsequent year.

Income tax: ring-fence on use of certain capital allowances on certain industrial buildings and other premises.

13.—(1) Chapter 4 of Part 12 of the Principal Act is amended by inserting the following section after section 409D (inserted by *section 12*):

“409E.—(1) In this section—

‘company’ has the same meaning as in section 4;

‘rent’ has the same meaning as in Chapter 8 of Part 4;

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

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

‘specified amount of rent’, in relation to a specified building and an individual for a year of assessment, means the amount of the surplus in respect of the rent from the specified building to which the individual becomes entitled for the year of assessment, as computed in accordance with section 97(1);

‘specified building’ means—

(a) a building or structure, or a part of a building or structure, 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

(b) any other building or structure, or a part of any other building or structure, 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.

(2) This section applies where—

Pr.1 S.13

- (a) at any time beginning on or after 1 January 2003 a company is entitled to the relevant interest in relation to any capital expenditure incurred or deemed to be incurred on the construction or refurbishment of a specified building,
- (b) subsequent to the time referred to in paragraph (a) an individual becomes entitled to that relevant interest or any part of that relevant interest, whether or not subsequent to that time any other person or persons had previously become so entitled, and
- (c) the individual is entitled, in charging income under Case V of Schedule D, 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.

(3) Where this section applies, then, notwithstanding any other provision of the Income Tax Acts—

- (a) any allowance to be made to the individual for any year of assessment (being the year of assessment 2003 or any subsequent year of assessment) under Chapter 1 of Part 9, in respect of the capital expenditure referred to in subsection (2)(a) or the residue of that expenditure, shall—
 - (i) not exceed the specified amount of rent for that year of assessment,
 - (ii) be made in charging the specified amount of rent under Case V of Schedule D for that year of assessment, and
 - (iii) be available only in charging the specified amount of rent,
- (b) section 278 shall apply with any modifications necessary to give effect to paragraph (a), and
- (c) section 305(1)(c) shall apply in relation to an allowance to be made in accordance with paragraph (a).”.

(2) Section 305(1) of the Principal Act is amended by inserting the following after paragraph (b):

“(c) Notwithstanding any other provision of this subsection, where under this Part an allowance, the amount of which has been determined in accordance with section 409E(3)(a)(i), is to be made to an individual for any year of assessment and the allowance is to be—

- (a) made in charging the specified amount of rent (within the meaning of section 409E) under Case V of Schedule D for that year of assessment, and
- (b) is to be available only in charging that specified amount of rent,

then—

- (i) in charging income under Case V of Schedule D the amount of that allowance shall be deducted from or set off against that specified amount of rent, and
- (ii) if the amount of the allowance which would have been made in charging income under Case V of Schedule D if section 409E had not been enacted is greater than that specified amount of rent, the excess shall—
 - (I) be added to the amount of the allowance to be made to the individual for the next year of assessment under Chapter 1 of this Part in respect of the capital expenditure incurred on the construction or refurbishment of the specified building (within the meaning of section 409E) or the residue of that expenditure (within the meaning of section 409E), and be deemed to be part of the allowance to be so made for that next year, or
 - (II) if there is no such allowance for that next year, be deemed to be the allowance for that next year,

and so on for subsequent years of assessment, and section 409E(3) shall apply in relation to the resulting allowance to be made for that next year or, as the case may be, for any subsequent year of assessment.”.

14.—(1) The Principal Act is hereby amended—

- (a) in Part 19, by substituting the following for subsection (2) of section 608:

“(2) A gain shall not be a chargeable gain if accruing to a person from the person’s disposal of assets held by that person as part of a fund approved under section 774, 784(4) or 785(5) or held by that person as PRSA assets (within the meaning of section 787A).”.

- (b) in Chapter 1 of Part 30—

- (i) in section 774—

- (I) by substituting in subsection (7)(b)(ii), “in the case of a contribution to which paragraph (ba) applies, be apportioned” for “be apportioned”,

- (II) by inserting the following after paragraph (b) of subsection (7):

[2003.]

Finance Act 2003.

[*No. 3.*]

“(ba) This paragraph applies to a contribution, Pr.1 S.14
which is not an ordinary annual con-
tribution, and which—

(i) is required by the rules of the
scheme to be made, in respect
of a benefit to which section
772(3)(b) applies, by way of
deduction from a lump sum
payable to the employee in
accordance with section
772(3)(f), or

(ii) is, following resumption of or
change of employment, made,
on retirement, in connection
with the repayment by the
employee to the scheme of
superannuation contributions
previously refunded to the
employee or of relevant bene-
fits provided to the employee
on the employee’s leaving an
employment in relation to ser-
vice in which the superannu-
ation contributions or, as the
case may be, the relevant bene-
fits related.”,

(III) by inserting the following after paragraph (c) of
subsection (7):

“(d) Where in any year of assessment a
reduction or a greater reduction would
be made under this section in the
remuneration of an individual but for
an insufficiency of remuneration, the
amount of the reduction which would
have been made but for that reason,
less the amount of the reduction which
is made in that year, shall be carried
forward to the next year of assessment,
and shall be treated for the purposes
of relief under this section as the
amount of an annual contribution paid
in the next year of assessment.

(e) In so far as an amount once carried for-
ward under paragraph (d) (and treated
as an amount of an annual contribution
paid in the next year of assessment) is
not deducted from or set off against
the individual’s remuneration for that
year of assessment, it shall be carried
forward again to the following year of
assessment (and treated as the amount
of an annual contribution paid in that
year of assessment) and so on for suc-
ceeding years.”,

and

(IV) by inserting the following after subsection (7):

“(8) Subject to paragraphs (b) and (ba) of subsection (7) where in relation to a year of assessment any contribution, which is not an ordinary annual contribution, is paid by an employee under the scheme after the end of the year of assessment but before the specified return date for the chargeable period (within the meaning of Part 41), the contribution may, if the individual so elects on or before that date, be treated for the purposes of this section as paid in the earlier year (and not in the year in which it is paid); but where the amount of that contribution, together with any other contribution to the scheme paid by the individual in the year to which the contribution relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of contributions allowed to be deducted in that year, the election shall have no effect as respects the excess.”,

(ii) in section 776—

- (I) by substituting in subsection (2)(b)(ii), “in the case of a contribution to which paragraph (ba) applies, be apportioned” for “be apportioned”,
- (II) by the insertion after subsection (2)(b) of the following paragraph:

“(ba) This paragraph applies to a contribution, which is not an ordinary annual contribution, and which—

- (i) is required by the statute under which the scheme is established or by any other statute or regulation to be made in respect of the provision of a pension for any widow, widower, children or dependants of the officer or employee by way of a deduction from a lump sum payable to the employee on retirement, or
- (ii) is, following resumption of or on change of employment, made, on retirement, in connection with the repayment by the officer or employee to the scheme of superannuation contributions previously refunded to the officer or employee or of relevant benefits provided to the officer or employee on the officer or employee’s leaving the office or employment in relation to service in which the superannuation contributions or, as the case may be, the relevant benefits related.”,

[2003.]

Finance Act 2003.

[No. 3.]

(III) by inserting the following after paragraph (c) of Pr.1 S.14 subsection (2):

“(d) Where in any year of assessment a reduction or a greater reduction would be made under this section in the remuneration of an individual but for an insufficiency of remuneration, the amount of the reduction which would have been made but for that reason, less the amount of the reduction which is made in that year, shall be carried forward to the next year of assessment, and shall be treated for the purposes of relief under this section as the amount of an annual contribution paid in the next year of assessment.

(e) In so far as an amount once carried forward under paragraph (d) (and treated as an amount of an annual contribution paid in the next year of assessment) is not deducted from or set off against the individual’s remuneration for that year of assessment, it shall be carried forward again to the following year of assessment (and treated as the amount of an annual contribution paid in that year of assessment) and so on for succeeding years.”,

and

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

“(3) Subject to paragraphs (b) and (ba) of subsection (2), where in relation to a year of assessment any contribution, which is not an ordinary annual contribution, is paid by an employee under the scheme after the end of the year of assessment but before the specified return date for the chargeable period (within the meaning of Part 41), the contribution may, if the individual so elects on or before that date, be treated for the purposes of this section as paid in the earlier year (and not in the year in which it is paid); but where the amount of that contribution, together with any other contribution to the scheme paid by the individual in the year to which the contribution relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of contributions allowed to be deducted in that year, the election shall have no effect as respects the excess.”,

(c) in Chapter 2 of Part 30—

(i) in section 783—

(I) in subsection (1)(a)—

(A) by substituting “In this Chapter” for “In this section”,

(B) by inserting the following after the definition of “approved retirement fund”:

“ ‘close company’ has the same meaning as in section 430;

‘connected person’ has the same meaning as in section 10;”,

and

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

“ ‘participator’ has the same meaning as in section 433;”,

(II) in subsection (2)—

(a) by substituting in paragraph (a), “benefits of a kind referred to in paragraphs (b) and (c) of section 772(3), including any similar benefit provided under a statutory scheme established under a public statute,” for “a lump sum payable on the termination of the service through death before the age of 70 years or some lower age or disability before the age of 70 or some lower age”,

and

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

“(c) For the purposes of calculating the amount of any reduction in net relevant earnings in respect of any qualifying premium or of any PRSA contribution (within the meaning of Chapter 2A of this Part) this Chapter and Chapter 2A shall apply as if any contribution by an employee to a sponsored superannuation scheme relating to service in an office or employment, which is not a pensionable office or employment within the meaning of paragraph (a), were a payment of a qualifying premium for which relief had been given under this Chapter.”,

[2003.]

Finance Act 2003.

[*No. 3.*]

- (ii) in section 784A, by inserting the following after sub- Pr.1 S.14
section (1):

“(1A) Without prejudice to the generality of subsection (1)(d), where assets of an approved retirement fund are used in connection with any of the transactions referred to in subsection (1B), the transaction shall be regarded as a distribution for the purposes of this section of the amount specified in that subsection.

(1B) The transactions referred to in subsection (1A) and the amount to be regarded as a distribution in relation to any such transaction are as follows—

- (a) in the case of a loan made to the individual beneficially entitled to the assets in an approved retirement fund or to any person connected with that individual, the amount to be regarded as a distribution for the purposes of this section is an amount equal to the value of the assets of the approved retirement fund used to make such a loan or used as security for such a loan,
- (b) in the case of the acquisition of property from the individual beneficially entitled to the assets in an approved retirement fund or from any person connected with that individual, the amount to be regarded as a distribution for the purposes of this section is an amount equal to the value of the assets in the approved retirement fund used in or in connection with that acquisition,
- (c) in the case of the sale of any asset in an approved retirement fund to the individual beneficially entitled to the assets in an approved retirement fund or to any person connected with that individual, the amount to be regarded as a distribution for the purposes of this section is an amount equal to the value of the asset sold,
- (d) in the case of the acquisition of—
 - (i) any property which is to be used as holiday property, or
 - (ii) property which is to be used as a residence,by the individual beneficially entitled to the assets in the approved retirement fund or by any person connected with that individual, the

amount to be regarded as a distribution for the purposes of this section is an amount equal to the value of the assets in the approved retirement fund used in or in connection with that acquisition, but where property is acquired, on or after 6 February 2003, in relation to the acquisition of which a distribution is not treated as arising under this Chapter and that property commences to be used for one of the purposes mentioned in subparagraphs (i) or (ii) of this paragraph, the distribution shall be treated as arising at the date such use commences and the amount to be regarded as a distribution for the purposes of this section is an amount equal to the value of the assets of the approved retirement fund used in or in connection with the acquisition together with any assets used in or in connection with any expenditure on the improvement or repair of the property in question,

(e) in the case of the acquisition of shares or any other interest in a company, which is a close company or which would be a close company but for the fact that the company is not resident in the State, in relation to which the individual beneficially entitled to the assets in the approved retirement fund or a person connected with that individual is a participator, the amount to be regarded as a distribution for the purposes of this section is an amount equal to the value of assets in the approved retirement fund used in or in connection with that acquisition, and

(f) in the case of the acquisition of tangible moveable property, the amount to be regarded as a distribution for the purposes of this section is an amount equal to the value of the assets in the approved retirement fund used in or in connection with that acquisition.

(1C) An amount which has been regarded as a distribution from an approved retirement fund, in accordance with this section, shall not be regarded as an asset in that approved retirement fund for any purpose.

(1D) Any property, the acquisition or sale of which is regarded as giving rise to a distribution of assets in an approved retirement fund, shall not be regarded as an asset in that approved retirement fund.

[2003.]

Finance Act 2003.

[No. 3.]

(1E) For the purposes of subsection (1B) references to the value of an asset in an approved retirement fund shall, except where the asset is cash, be construed as references to the market value of the asset, within the meaning of section 548.”, Pr.1 S.14

(iii) in section 784A, by inserting the following after subsection (7):

“(8) (a) Within one month of commencing to act as manager of approved retirement funds, a qualifying fund manager shall give notice to that effect to the Revenue Commissioners.

(b) A qualifying fund manager who commenced to act as manager of an approved retirement fund prior to the passing of the *Finance Act 2003* shall give notice to that effect to the Revenue Commissioners within three months of the passing of that Act.

(c) A notice under paragraph (a) or (b) shall specify the date the qualifying fund manager commenced to so act.”,

and

(iv) in section 784C(5), by substituting “, including any distribution or amount regarded under this Chapter as a distribution, other than—” for “other than—”,

(d) in Chapter 2A of Part 30—

(i) in subsection (1) of section 787E, by substituting the following for subparagraphs (a) to (c):

“(a) in the case of an individual who at any time during the year of assessment was of the age 30 years or over but had not attained the age of 40 years, 20 per cent,

(b) in the case of an individual who at any time during the year of assessment was of the age 40 years or over but had not attained the age of 50 years, 25 per cent,

(c) in the case of an individual who at any time during the year of assessment was of the age 50 years or over or who for the year of assessment was a specified individual, 30 per cent,

and

(d) in any other case, 15 per cent.”,

(ii) in subsection (3) of section 787E, by substituting “Where during a year of assessment an individual is a member either of an approved scheme or of a statutory scheme (hereafter referred to as a ‘scheme’) in relation to an office or employment, not

being a scheme under which the benefits provided in respect of that service are limited to benefits of a kind referred to in paragraphs (b) and (c) of section 772(3), including any similar benefit provided under a statutory scheme established under a public statute,” for “Where during a year of assessment an individual is a member either of an approved scheme or of a statutory scheme (hereafter referred to as a ‘scheme’) in relation to an office or employment”,

- (iii) in section 787G, by inserting the following after subsection (4):

“(4A) Without prejudice to the generality of subsection (4), the circumstances in which a PRSA administrator shall, for the purposes of this Chapter, be treated as making assets of a PRSA available to an individual shall include the use of those assets in connection with any transaction which would, if the assets were assets of an approved retirement fund, be regarded under section 784A as giving rise to a distribution for the purposes of that section and the amount to be regarded as made available shall be calculated in accordance with that section.”,

- (e) in Chapter 4 of Part 30, by inserting the following after section 790:

“Limit on earnings.

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

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

the aggregate of the individual’s remuneration, within the meaning of Chapter 1, and net relevant earnings, within the meaning of Chapter 2 and 2A, shall not exceed €254,000.”,

- (f) in Part 42, by substituting in subparagraph (ii) of paragraph (g) (inserted by the Pensions (Amendment) Act 2002) of section 986(1), “Chapter 1, Chapter 2 or Chapter 2A of Part 30” for “Chapter 1 or Chapter 2A of Part 30”,

and

- (g) in Schedule 29, in column 3, by inserting “section 784A(8)”, after “section 734(5)”.

- (2) (a) Paragraphs (c)(i)(II) and (d) of subsection (1) shall apply as on and from 1 January 2003;

[2003.]

Finance Act 2003.

[No. 3.]

- (b) *paragraphs (b), (c)(i)(I), (c)(ii) and (c)(iv) of subsection (1)* shall be taken to have come into force and have effect as on and from 6 February 2003;
- (c) *paragraph (e) of subsection (1)* shall be taken to have come into force and have effect as on and from 1 January 2002, but shall not apply in respect of any employee's contribution, qualifying premium or PRSA contribution made before 4 December 2002;
- (d) *subsection (1) (other than paragraphs (b), (c)(i), (c)(ii), (c)(iv), (d) and (e))* shall have effect as on and from the passing of this Act.

CHAPTER 3

Income Tax, Corporation Tax and Capital Gains Tax

15.—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 494(2)(b), by substituting “sections 496(2)(a)(iv) and 496(2)(a)(xv)” for “section 496(2)(a)(iv)”,
- (b) in section 495(3)(a)(ii)(III), by inserting the following after “section 496(2)(a)(iv)”:

“and, in the case of a company to which this clause applies, its business shall be regarded as having complied with the conditions of this clause throughout the relevant period (where, otherwise, it would not have done so) if it so complied for that part of the relevant period up to and including 31 December 2002”,

(c) in section 496—

- (i) in subsection (2)(a)(ii)(III), by substituting “1979,” for “1979, or”,

(ii) in subsection (2)(a)(ii)(IV)—

(I) by inserting “and before the passing of the *Finance Act 2003*” after “6 April 2001”, and

(II) by substituting “concerned, or” for “concerned,”,

- (iii) by inserting the following after subsection (2)(a)(ii)(IV):

“(V) as respects a subscription for eligible shares issued on or after the passing of the *Finance Act 2003*, a County Enterprise Board (being a board referred to in the Schedule to the Industrial Development Act 1995) has, in accordance with guidelines agreed between the board and the Minister for Enterprise, Trade and Employment, with the consent of the Minister for Finance, given a certificate certifying that the service industry is a qualifying service industry for the purposes of this section,”

Pt.1 S.15

- (iv) in subsection (2)(a)(iv), by inserting the following after “(within the meaning of section 332)”:

“and in the case of a relevant investment made on or before 31 December 2002, trading operations undertaken on or after 1 January 2003 on an exchange facility established in the Customs House Docks Area will be deemed to be relevant trading operations for the purposes of this section notwithstanding the expiry, in accordance with the provisions of section 446(2)(b), of the certificate given by the Minister for Finance under that subsection”,

- (v) by inserting the following after subsection (2)(a)(xiv):

“(xv) in respect of a relevant investment made on or after 1 January 2003, the rendering of trading operations carried on for the purposes of or in connection with trading operations on an exchange facility established in the Custom House Docks Area (within the meaning of section 322),”,

- (vi) by deleting subsection (2)(b), and

- (vii) in subsection (4)(b)(III), by substituting “subsections (2)(a)(iv) and (2)(a)(xv)” for “subsection (2)(a)(iv)”,

and

- (d) in section 497(4)(a), by substituting “sections 496(2)(a)(iv) and 496(2)(a)(xv)” for “section 496(2)(a)(iv)”.

Rental income:
restriction of relief
for certain interest.

16.—(1) The Principal Act is amended—

- (a) in section 97—

- (i) in subsection (2G), by substituting “in the purchase, other than from the spouse of the person chargeable” for “in the purchase”, and

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

“(2H) The reference to ‘spouse’ in subsection (2G) does not include a spouse to a marriage—

- (a) in which the spouses are separated under an order of a court of competent jurisdiction or by deed of separation, or

- (b) that has been dissolved under either—

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

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

- (b) in section 248A, by inserting the following after subsection (3):

[2003.]

Finance Act 2003.

[No. 3.]

“(4) Notwithstanding subsection (3), subsection (2) shall apply in relation to interest referred to in subsection (2) where the purpose of the loan is the purchase of a residential premises from the spouse of the individual to whom relief is given under section 248 or 253.

Pr.1 S.16

(5) The reference to ‘spouse’ in subsection (4) does not include a spouse to a marriage—

(a) in which the spouses are separated under an order of a court of competent jurisdiction or by deed of separation, or

(b) that has been dissolved under either—

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

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

(2) This section shall apply and have effect in relation to interest referred to in sections 97(2G) and 248A(2) which accrues on or after 6 February 2003 and, for the purposes of this subsection, such interest shall be treated as accruing from day to day.

17.—(1) With effect from the day appointed by the Minister for Finance in accordance with the provisions of *subsection (2)*, the Principal Act is amended—

Claims for repayment, interest on repayments and time limits for assessment.

(a) by substituting the following for section 865:

“Repayment of tax. 865.—(1) (a) In this section and section 865A—

the ‘Acts’ means the Tax Acts and the Capital Gains Tax Acts and instruments made thereunder;

‘chargeable period’ has the meaning assigned to it by section 321;

‘correlative adjustment’ means an adjustment of profits under the terms of arrangements entered into by virtue of section 826;

‘tax’ means any tax, including interest thereon, paid by a person under or in accordance with any provision of the Acts;

‘valid claim’ shall be construed in accordance with paragraph (b).

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

(i) where a person furnishes a statement or return which is

required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim where all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return,

(ii) where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person, and

(iii) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.

(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.

(3) The Revenue Commissioners shall not make a repayment of the tax referred to in subsection (2) unless a valid claim has been made to them for that purpose.

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made—

[2003.]

Finance Act 2003.

[No. 3.]

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

Pr.1 S.17

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made—

(i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years,

after the end of the chargeable period to which the claim relates.

(5) Where a person would, on due claim, be entitled to a repayment of tax for any chargeable period under any provision of the Acts other than this section, and—

(a) that provision provides for a shorter period, within which the claim for repayment is to be made, which ends before the relevant period referred to in subsection (4), then this section shall apply as if that shorter period were the period referred to in subsection (4), and

(b) that provision provides for a longer period, within which the claim for repayment is to be made, which ends after the relevant period referred to in subsection (4), then that provision shall apply as if the longer period were the period referred to in subsection (4).

(6) Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not—

(a) repay an amount of tax paid to them, or

(b) pay interest in respect of an amount of tax paid to them.

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the provisions of section 949 shall apply to

such decision as if it were a determination made on a matter referred to in section 864.

Interest on
repayments.

865A.—(1) Where a person is entitled to a repayment of tax for a chargeable period and that repayment, or part of the repayment, arises because of a mistaken assumption made by the Revenue Commissioners in the application of any provision of the Acts, that repayment or that part of the repayment shall, subject to section 1006A(2A), carry interest for each day or part of a day for the period commencing with the day after the end of the chargeable period or, as the case may be, the end of each of the chargeable periods for which the repayment is due or the date on which the tax was paid (whichever is the later) and ending on the day on which the repayment is made.

(2) Where, for any reason other than that mentioned in subsection (1), a repayment of tax or a part of a repayment is due to a person for a chargeable period, that repayment or the part of the repayment shall, subject to section 1006A(2A), carry interest for the period beginning on the day which is 6 months after the day on which the claim to repayment becomes a valid claim and ending on the day the repayment is made.

(3) (a) Interest payable in accordance with this section shall be simple interest payable at the rate of 0.011 per cent per day or part of a day.

(b) The Minister for Finance may, from time to time, make an order prescribing a rate for the purpose of paragraph (a).

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

(4) (a) Interest shall not be payable under this section if it amounts to less than €10.

(b) Income tax shall not be deductible on payment of interest under this section and such interest shall not be reckoned in computing income, profit or gains for the purposes of the Tax Acts.

(5) This section shall not apply in relation to any repayment or part of a repayment in respect

of which interest is payable under any other provision of the Acts.”, Pr.1 S.17

- (b) in section 941(9), by substituting the following for paragraph (a):

“(a) if too much tax has been paid, the amount overpaid shall be refunded with interest in accordance with the provisions of section 865A, or”,

- (c) in section 942(6), by substituting the following for paragraph (b):

“(b) Notwithstanding paragraph (a), where the amount of tax is altered by the determination of the judge or by giving effect to an agreement under subsection (8), then, if too much tax has been paid, the amount or amounts overpaid shall be repaid and in so far as the amount to be repaid represents tax paid in accordance with this subsection it shall, subject to the provisions of subsection (4) of section 865A, be repaid with interest at the rate specified in subsection (3) of section 865A from the date or dates of payment of the amount or amounts giving rise to the overpayment to the date on which the repayment is made.”,

- (d) by deleting sections 930 and 953,

- (e) in section 931(3), by substituting “sections 920, 922, 924, 928 and 929” for “sections 920, 922, 924 and 928 to 930”,

- (f) by substituting “4 years” for “10 years” in each place where it occurs in the following provisions, namely, sections 401(6), 504(3), 599(4)(b), 611(1)(c), 919(5)(c) and 924(2)(b),

- (g) in section 955(2), by substituting the following for paragraph (a):

“(a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and—

- (i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and
- (ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.”,

(h) in section 956(1)(c), by substituting “4 years” for “6 years”, and

(i) in section 997—

(a) in subsection (1)—

(i) by deleting—

(I) “within 5 years from the end of the year of assessment” in paragraph (a), and

(II) “or estimated to be deductible”, and

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

“(1A) Notwithstanding subsection (1), an assessment under Schedule E in respect of emoluments to which this Chapter applies shall not be made for any year of assessment—

(a) where paragraph (a) of that subsection applies, unless the person assessable has requested the assessment—

(i) in the case of any year of assessment prior to the year of assessment 2003, within 5 years, and

(ii) in the case of the year of assessment 2003 or any subsequent year of assessment, within 4 years,

from the end of the year of assessment concerned, and

(b) where paragraph (b) or (c) of that subsection applies, at any time later than 4 years from the end of the year of assessment concerned.”.

(2) (a) 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.

(b) Notwithstanding the generality of *paragraph (a)*, any order made by the Minister for Finance in accordance with the provisions of that paragraph may contain, and be subject to, such conditions as the Minister considers appropriate and which are specified in the order.

[2003.]

Finance Act 2003.

[No. 3.]

18.—(1) Section 666 of the Principal Act is amended by the substitution of the following for subsection (4):

Pt.1

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

“(4) (a) A deduction shall not be allowed under this section in computing a company’s trading income for any accounting period which ends after 31 December 2004.

(b) Any deduction allowed by virtue of this section in computing the profits or gains of the trade of farming for an accounting period of a person other than a company shall not apply for any purpose of the Income Tax Acts for any year of assessment later than the year 2004.”.

(2) This section comes into operation on 6 February 2003.

19.—(1) Section 667 of the Principal Act is amended in paragraph (b) of subsection (2) by the substitution of the following for subparagraph (ii):

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

“(ii) on or after 6 April 1995 and 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.”.

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

20.—(1) Chapter 4 of Part 29 of the Principal Act is amended—

Amendment of
Chapter 4
(transmission
capacity rights) of
Part 29 of Principal
Act.

(a) in section 769A(1), by inserting the following after the definition of “capacity rights”:

“ ‘control’ shall be construed in accordance with section 432;

‘qualifying expenditure’ means capital expenditure incurred on the purchase of capacity rights, but does not include expenditure incurred on or after 6 February 2003 which consists of a licence fee or other payment paid to the Commission for Communications Regulation in respect of a licence or permission granted by that Commission on or after that date under—

(a) the Wireless Telegraphy Acts 1926 to 1988, or

(b) the Postal and Telecommunications Services Act 1983;”,

(b) in section 769B—

(i) by substituting “qualifying expenditure” for “capital expenditure” in both places where it occurs in subsection (1) and in the meaning of “A” in subsection (2)(b), and

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

“(3) (a) Notwithstanding any other provisions of this Chapter, where a company (in this paragraph

referred to as the ‘buyer’) incurs qualifying expenditure on the purchase from another company (in this paragraph referred to as the ‘seller’) of capacity rights, no allowances shall be made under this Chapter to the buyer in respect of that expenditure if both companies are companies within a group of companies, unless an allowance had been made under this Chapter to the seller (or would have been made to the seller if it had not sold those rights) in respect of the capital expenditure it incurred on the purchase of those rights.

(b) For the purposes of this subsection—

- (i) a ‘group of companies’ means a company and any other companies of which it has control or with which it is associated, and
- (ii) a company is associated with another company where it could reasonably be considered that—
 - (I) any person or any group of persons or groups of persons having a reasonable commonality of identity has or have, as the case may be, or had the means or power, either directly or indirectly, to determine the trading operations carried on or to be carried on by both companies, or
 - (II) both companies are under the control of any person or any group of persons or groups of persons having a reasonable commonality of identity.”,
- (c) in section 769C, by substituting “qualifying expenditure” for “capital expenditure” in each place where it occurs in subsections (1) to (5),
- (d) in section 769E(2), by substituting “qualifying expenditure” for “capital expenditure”, and
- (e) in section 769F by the substitution of “on the date of the passing of the *Finance Act 2003*” for “on such day as the Minister for Finance may, by order, appoint”.

(2) This section applies as on and from the date of the passing of this Act.

21.—(1) Section 848A of the Principal Act is amended—

- (a) in subsection (1)(a), in the definition of “relevant donation” by the insertion of “, subject to subsection (3A),” after “means”, and
- (b) by the insertion of the following after subsection (3):

[2003.]

Finance Act 2003.

[No. 3.]

“(3A) (a) Notwithstanding any other provision of this section, where the aggregate of the amounts of all donations made by an individual in any year of assessment to an approved body or approved bodies with which the individual is associated is in excess of 10 per cent of the total income of the individual for that year of assessment, the amount of the excess shall not be treated as a relevant donation for the purposes of this section.

Pr.1 S.21

(b) For the purposes of this subsection—

- (i) an individual is associated with an approved body if, at the time the donation is made, the individual is an employee or member of, the approved body or another approved body which is associated with that approved body, and
- (ii) an approved body is associated with another approved body if, at the time the donation is made, it could reasonably be considered that—
 - (I) any person or any group of persons or groups of persons having a reasonable commonality of identity has or have, or had the means or power, either directly or indirectly, to determine the activities carried on or to be carried on by both approved bodies, or
 - (II) any person or any group of persons or groups of persons having a reasonable commonality of identity exercises or exercise, or is or are able to exercise, control over the affairs of both approved bodies.”.

(2) Subsection (1) shall apply as respects donations made on or after 6 February 2003.

22.—(1) Schedule 26A to the Principal Act is amended in Part 1 by inserting the following after paragraph 18:

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

“19. The company incorporated under the Companies Acts 1963 to 2001, on 30 January 2003, as US-Ireland Alliance Limited.”.

(2) *Subsection (1)* applies as respects donations made on or after 6 February 2003.

23.—(1) The Principal Act is amended—

Wear and tear
allowances.

(a) in section 284(2)—

- (i) in paragraph (a), by substituting “paragraphs (aa), (ab) and (ad)” for “paragraphs (aa) and (ab)”,

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

“(ad) Notwithstanding any other provision of this subsection but subject to subsection (4), where capital expenditure is incurred on or after 4 December 2002 on the provision of machinery or plant, the amount of the wear and tear allowance to be made shall be an amount equal to 12.5 per cent of the actual cost of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement; but this paragraph shall not apply in the case of—

- (i) machinery or plant to which subsection (3A) relates,
- (ii) machinery or plant which consists of a car within the meaning of section 286, used for qualifying purposes, within the meaning of that section, or
- (iii) machinery or plant provided under the terms of a binding contract evidenced in writing before 4 December 2002 and in respect of the provision of which capital expenditure is incurred on or before 31 January 2003.”,

and

- (iii) in paragraph (b), by substituting “the amount specified in any other provision of this subsection” for “the amount specified in subparagraph (i) or (ii) of paragraph (a), the amount specified in paragraph (aa) or, as the case may be, the amount specified in subparagraph (i) or (ii) of paragraph (ab)”,

(b) in section 310, by substituting the following for subsection (2A):

“(2A) Where, by virtue of subsection (2), a person is entitled to an allowance under section 284 then, for the purposes of determining the amount of wear and tear allowances to be made for any chargeable period or its basis period for the purposes of this section, section 284 shall apply—

- (a) as if the reference in paragraph (aa) of subsection (2) of that section to ‘20 per cent of the actual cost of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement’ were a reference to ‘20 per cent of the capital sum contributed in the chargeable period or its basis period’, and
- (b) as if the reference in paragraph (ad) of subsection (2) of that section to ‘12.5 per cent of the actual cost of the machinery or plant, including in that actual cost any expenditure in the

[2003.]

Finance Act 2003.

[No. 3.]

nature of capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement' were a reference to '12.5 per cent of the capital sum contributed in the chargeable period or its basis period'.",

Pr.1 S.23

and

- (c) in section 692(2), by substituting "as if the references in paragraphs (a)(i), (aa) and (ad) of that section to 15 per cent, 20 per cent and 12.5 per cent, respectively, were each a reference to 100 per cent" for "as if the reference to paragraph (a)(i) of that section to 15 per cent were a reference to 100 per cent".

(2) This section applies as on and from 4 December 2002.

24.—(1) Section 268 of the Principal Act is amended, in subsection (2A), by substituting the following for paragraph (d) of the definition of 'qualifying hospital':

Capital allowances for certain day hospitals.

"(d) has the capacity to provide—

- (i) out-patient services and accommodation on an overnight basis of not less than 70 in-patient beds, or
- (ii) day-case and out-patient medical and surgical services and accommodation for such services of not less than 40 beds,".

(2) This section applies as respects capital expenditure incurred on or after the date of the passing of this Act on the construction (within the meaning of section 270 of the Principal Act) of a building or structure.

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

Provisions relating to certain industrial buildings or structures.

(a) in section 268—

- (i) in subsection (3) by substituting "shall, subject to subsection (13), be deemed" for "shall be deemed",
- (ii) in subsection (12)—
 - (I) by substituting the following for "6 April 2001,":

"6 April 2001 (being capital expenditure in respect of which but for this subsection a writing-down allowance in excess of 4 per cent would be available under section 272 for a chargeable period),".

and

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

"(c) that, in the case of expenditure incurred on or after 1 January 2003 on the construction or refurbishment of a building or structure provided for the purposes of a project which is subject to the notification requirements of—

(i) the ‘Multisectoral framework on regional aid for large investment projects’¹ prepared by the Commission of the European Communities and dated 7 April 1998, or

(ii) the ‘Multisectoral framework on regional aid for large investment projects’² prepared by the Commission of the European Communities and dated 19 March 2002,

as the case may be, approval of the potential capital allowances involved has been received from that Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance, and”,

and

(iii) by inserting the following after subsection (12):

“(13) (a) Notwithstanding subsection (3) but subject to paragraph (b), a holiday cottage referred to in that subsection shall not, as respects capital expenditure incurred on or after 4 December 2002 on its construction (within the meaning of section 270), be deemed to be a building or structure in use for the purposes of the trade of hotel-keeping.

(b) This subsection shall not apply as respects expenditure incurred on or before 31 December 2004 on the construction or refurbishment of a holiday cottage if—

(i) (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 respect of the holiday cottage is made in accordance with the Planning and Development Regulations 2001 to 2002,

(II) an acknowledgement of the application, which confirms that the application was received on or before 31 May

¹OJ No. C 107, 7.4.1998, p.7

² OJ No. C 70, 19.3.2002, p.8

2003, 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

Pr.1 S.25

- (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,

or

- (ii) (I) a planning application in respect of the holiday cottage 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 clause (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.”,

(b) in section 272—

(i) in subsection (3)(c)—

(I) in subparagraph (i) by deleting “or” after “1994,”,

(II) in subparagraph (ii) by inserting “or” after “1994,”, and

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

“(iii) subject to subsection (8), 4 per cent of the expenditure referred to in subsection (2)(c), if the capital expenditure on the construction (within the meaning of section 270) of the building or structure is incurred on or after 4 December 2002,”,

(ii) in subsection (4)(c)—

- (I) in subparagraph (i) by deleting “or” after “1994,”,
- (II) in subparagraph (ii) by inserting “or” after “1994,”, and
- (III) by inserting the following after subparagraph (ii):

“(iii) subject to subsection (8), 25 years beginning with the time when the building or structure was first used, in the case where the capital expenditure on the construction (within the meaning of section 270) of the building or structure is incurred on or after 4 December 2002,”,

and

- (iii) by inserting the following after subsection (7):

“(8) Subsections (3)(c)(iii) and (4)(c)(iii) (as inserted by the *Finance Act 2003*) shall not apply as respects capital expenditure incurred on or before 31 December 2004 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 respect of the building or structure is made in accordance with the Planning and Development Regulations 2001 to 2002,
- (ii) an acknowledgement of the application, which confirms that the application was received on or before 31 May 2003, 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 respect of the building or structure 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,

[2003.]

Finance Act 2003.

[No. 3.]

- (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) (i) the construction or refurbishment of the building or structure is a development in respect of which an application for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development Authority Act 1997 is made to the Authority (within the meaning of that Act),
- (ii) an acknowledgement of the application, which confirms that the application was received on or before 31 May 2003, is issued by that Authority, and
- (iii) the application is not an invalid application.”,

and

(c) in section 274—

(i) in subsection (1)(b)(iii)—

(I) in clause (I) by deleting “or” after “1994,”,

(II) in clause (II) by inserting “or” after “1994,”, and

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

“(III) subject to subsection (1A), 25 years after the building or structure was first used, in the case where the capital expenditure on the construction (within the meaning of section 270) of the building or structure is incurred on or after 4 December 2002,”,

and

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

“(1A) Subsection (1)(b)(iii)(III) (as inserted by the *Finance Act 2003*) shall not apply as respects capital expenditure incurred on or before 31

December 2004 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 respect of the building or structure is made in accordance with the Planning and Development Regulations 2001 to 2002,
 - (ii) an acknowledgement of the application, which confirms that the application was received on or before 31 May 2003, 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 respect of the building or structure 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) (i) the construction or refurbishment of the building or structure is a development in respect of which an application for a certificate under section 25(7)(a)(ii) of the Dublin Docklands Development

[2003.]

Finance Act 2003.

[*No. 3.*]

Authority Act 1997 is made to the
Authority (within the meaning of
that Act),

Pr.1 S.25

(ii) an acknowledgement of the appli-
cation, which confirms that the
application was received on or
before 31 May 2003, is issued by
that Authority, and

(iii) the application is not an invalid
application.”.

(2) (a) Subject to *paragraph (b)*, *subsection (1)* applies as on and
from 4 December 2002.

(b) *Paragraph (a)(ii)(II)* of *subsection (1)* applies as on and
from 1 January 2003.

26.—Part 10 of the Principal Act is amended—

(a) in section 372A—

(i) in subsection (1), in the definition of “relevant local
authority”, by substituting the following for para-
graph (a):

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.

“(a) in relation to a qualifying area—

(i) the county council or the city council or
the borough council or, where appro-
priate, the town council, within the
meaning of the Local Government Act
2001, in whose functional area the area
is situated, or

(ii) the authorised company (within the
meaning of section 3(1) of the Urban
Renewal Act 1998) which prepared the
integrated area plan (within the mean-
ing of that section) in respect of the
area,

and”,

and

(ii) in subsection (1A) by substituting the following for
paragraph (a):

“(a) This subsection shall apply where—

(i) the relevant local authority gives a
certificate in writing on or before 30
September 2003, to the person con-
structing or refurbishing a building
or structure or part of a building or
structure, the site of which is wholly
within a qualifying area, stating that
it is satisfied that not less than 15 per
cent of the total cost of constructing
or refurbishing the building or struc-
ture or the part of the building or

structure, as the case may be, and the acquisition of the site thereof had been incurred on or before 30 June 2003, and

- (ii) the application for such a certificate is received by the relevant local authority on or before 31 July 2003.”,

(b) in section 372U(1), in the definition of “qualifying period”, by substituting “31 December 2004” for “30 June 2004”,

(c) in section 372AA(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 31 December 2004;”,

(d) in section 372AK, by substituting the following for the definition of “relevant local authority”:

“ ‘relevant local authority’,—

(a) in relation to a qualifying urban area, means—

- (i) the county council or the city council or the borough council or, where appropriate, the town council, within the meaning of the Local Government Act 2001, in whose functional area the area is situated, or
- (ii) the authorised company (within the meaning of section 3(1) of the Urban Renewal Act 1998) which prepared the integrated area plan (within the meaning of that section) in respect of the area,

and

(b) in relation to the construction of a house the site of which is wholly within the site of a qualifying park and ride facility and which is a qualifying premises for the purposes of this Chapter, has the same meaning as it has in section 372U(1) in relation to the construction or refurbishment of a park and ride facility or a qualifying premises within the meaning of section 372W;”,

and

(e) in section 372AL—

(i) in subsection (1)—

(I) in paragraph (d) by substituting “31 December 2004” for “30 June 2004”,

(II) in paragraph (e) by substituting “31 December 2004” for “31 December 2003”, and

[2003.]

Finance Act 2003.

[No. 3.]

(III) in paragraph (f)(ii) by substituting “31 December 2004” for “30 September 2005”,

and

(ii) in subsection (2) by substituting the following for paragraph (a):

“(a) This subsection shall apply where—

(i) the relevant local authority gives a certificate in writing on or before 30 September 2003, to the person constructing, converting or, as the case may be, refurbishing a building or part of a building, the site of which is wholly within a qualifying urban area, stating that it is satisfied that not less than 15 per cent of the total cost of constructing, converting or refurbishing the building or the part of the building, as the case may be, and the acquisition of the site thereof had been incurred on or before 30 June 2003, and

(ii) the application for such a certificate is received by the relevant local authority on or before 31 July 2003.”.

27.—(1) Chapter 7 of Part 10 of the Principal Act is amended—

Amendment of
Chapter 7
(qualifying areas) of
Part 10 of Principal
Act.

(a) in section 372A(1) by inserting the following after the definition of “existing building”:

“ ‘facade’, in relation to a building or structure or part of a building or structure, means the exterior wall of the building or structure or, as the case may be, the part of the building or structure which fronts on to a street;”,

(b) in section 372B—

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

“(b) where such an area or areas is or are to be a qualifying area—

(i) for the purposes of section 372D—

(I) one or more of the categories of building or structure mentioned in subsection (2) shall or shall not be a qualifying premises within the meaning of that section, and

(II) that area or those areas shall be a qualifying area for the purposes of either or both the construction of, and the refurbishment of, a qualifying

premises within the meaning of that section;

- (ii) for the purposes of section 372AR, that area or those areas shall be a qualifying area for the purposes of one or more of the following:

- (I) the construction of,

- (II) the conversion into, and

- (III) the refurbishment (within the meaning of Chapter 11 of this Part) of,

- a qualifying premises (within the meaning of that Chapter),”

- (ii) by substituting the following for subsection (2):

“(2) The categories of building or structure referred to in subsection (1)(b)(i)(I) shall be—

- (a) buildings or structures which consist of office accommodation,

- (b) multi-storey car parks,

- (c) any other buildings or structures and in respect of which not more than 10 per cent of the capital expenditure incurred in the qualifying period on their construction or refurbishment relates to the construction or refurbishment of office accommodation,

- (d) the facade of a building or structure or part of a building or structure referred to in paragraph (a),

- (e) the facade of a building or structure or part of a building or structure referred to in paragraph (c).”

and

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

“(2A) The power to make an order under subsection (1) includes the power to amend or revoke the order.”

- (c) in section 372BA by inserting the following after subsection (2):

“(2A) The power to make an order under subsection (1) includes the power to amend or revoke the order.”

- (d) in section 372D—

- (i) in subsection (2)(a), by substituting the following for subparagraph (ii):

“(ii) where any activity—

Pr.1 S.27

(I) carried on in the qualifying premises, or

(II) in a case where the facade of a building or structure or part of a building or structure is a qualifying premises, carried on in the building or structure or the part of the building or structure,

is not a trade, as if it were a trade.”,

and

(ii) in subsection (3A)—

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

“(ii) apart from the capital expenditure incurred in the qualifying period on the construction or refurbishment of the qualifying premises, expenditure is incurred on the upper floor or floors of the existing building or the replacement building, as the case may be, which is—

(I) eligible expenditure within the meaning of Chapter 11 of this Part (being eligible expenditure on necessary construction, or conversion expenditure or refurbishment expenditure within the meaning of that Chapter), or

(II) qualifying expenditure within the meaning of Chapter 11 of this Part (being qualifying expenditure on necessary construction, on conversion or on refurbishment within the meaning of that Chapter),

and in respect of which a deduction has been given, or would on due claim being made be given, under section 372AP or 372AR.”,

and

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

“(b) Notwithstanding paragraph (a), subsection (2) shall not apply in relation to so much (if any) of the capital expenditure incurred in the qualifying period on the construction or refurbishment of the qualifying premises as exceeds the amount of the deduction, or the aggregate amount of the deductions, which has been given, or which would on due claim being made be given, under section 372AP or 372AR in respect

of the eligible expenditure referred to in paragraph (a)(ii)(I) or the qualifying expenditure referred to in paragraph (a)(ii)(II).”,

and

(e) in section 372K—

(i) in subsection (1), by substituting the following for paragraph (c):

“(c) in respect of expenditure incurred on or after 1 January 2003 on the construction or refurbishment of any building or structure or qualifying premises provided for the purposes of a project which is subject to the notification requirements of—

(i) the ‘Multisectoral framework on regional aid for large investment projects’¹ prepared by the Commission of the European Communities and dated 7 April 1998, or

(ii) the ‘Multisectoral framework on regional aid for large investment projects’² prepared by the Commission of the European Communities and dated 19 March 2002,

as the case may be, unless approval of the potential capital allowances involved has been received from that Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance.”,

and

(ii) in subsection (2), by substituting “sections 372C and 372D” for “sections 372C, 372D, 372G and 372H”.

(2) (a) Subject to paragraphs (b), (c) and (d), subsection (1) is deemed to have applied as on and from 1 March 1999.

(b) Paragraph (c) of subsection (1) is deemed to have applied as on and from 6 April 2001.

(c) Paragraphs (d)(ii) and (e)(ii) of subsection (1) are deemed to have applied as on and from 1 January 2002.

(d) Paragraph (e)(i) of subsection (1) applies as on and from 1 January 2003.

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

28.—Section 372T(1) of the Principal Act is amended by inserting the following after paragraph (aa):

“(ab) in respect of expenditure incurred on or after 1 January 2003 on the construction or refurbishment of any building

¹ OJ No. C 107, 7.4.1998, p.7

² OJ No. C 70, 19.3.2002, p.8

[2003.]

Finance Act 2003.

[No. 3.]

or structure or qualifying premises provided for the purposes of a project which is subject to the notification requirements of— Pr.1 S.28

- (i) the ‘Multisectoral framework on regional aid for large investment projects’¹ prepared by the Commission of the European Communities and dated 7 April 1998, or
- (ii) the ‘Multisectoral framework on regional aid for large investment projects’² prepared by the Commission of the European Communities and dated 19 March 2002,

as the case may be, unless approval of the potential capital allowances involved has been received from that Commission by the Minister for Finance, or by such other Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance.”.

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

Amendment of Chapter 10 (designated areas of certain towns) of Part 10 of Principal Act.

(a) in section 372AA(1)—

- (i) by inserting the following after “In this Chapter—”:

“‘facade’, in relation to a building or structure, part of a building or structure, or a house, means the exterior wall of the building or structure, the part of the building or structure or, as the case may be, the house which fronts on to a street;”,

- (ii) in the definition of “refurbishment” by substituting “structure;” for “structure.”, and

- (iii) by inserting the following after the definition of “refurbishment”:

“‘street’, includes part of a street and the whole or part of any road, square, quay or lane.”,

(b) in section 372AB—

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

“(b) where such an area or areas is or are to be a qualifying area—

- (i) for the purposes of section 372AC, that area or those areas shall be a qualifying area for the purposes of one or more of the following—

(I) the construction,

(II) the refurbishment, and

(III) the refurbishment of the facade,

of a building or structure to which that section applies,

¹ OJ No. C 107, 7.4.1998, p.7

² OJ No. C 70, 19.3.2002, p.8

(ii) for the purposes of section 372AD—

(I) one or more of the categories of building or structure mentioned in subsection (2) shall or shall not be a qualifying premises within the meaning of that section, and

(II) that area or those areas shall be a qualifying area for the purposes of either or both the construction of, and the refurbishment of, a qualifying premises within the meaning of that section,

and

(iii) for the purposes of section 372AR, that area or those areas may be a qualifying area for the purposes of one or more of the following—

(I) the construction of,

(II) the conversion into,

(III) the refurbishment (within the meaning of Chapter 11 of this Part) of, and

(IV) the refurbishment (within the meaning of Chapter 11 of this Part) of the facade of,

a qualifying premises (within the meaning of that Chapter),”

(ii) by substituting the following for paragraphs (ba)(ii) and (ba)(iii) of subsection (1):

“(ii) conversion expenditure incurred in relation to a house,

(iii) refurbishment expenditure incurred in relation to a house, and

(iv) refurbishment expenditure incurred in relation to the facade of a house,”

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

“(2) The categories of building or structure referred to in subsection (1)(b)(ii)(I) shall be—

(a) buildings or structures in use as offices,

(b) any other buildings or structures and in respect of which not more than 10 per cent of the capital expenditure incurred in the qualifying period on their construction or refurbishment relates to the construction or refurbishment of buildings or structures in use as offices,

[2003.]

Finance Act 2003.

[No. 3.]

(c) the facade of a building or structure or part of a building or structure referred to in paragraph (a), and

Pr.1 S.29

(d) the facade of a building or structure or part of a building or structure referred to in paragraph (b).”,

and

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

“(2A) The power to make an order under subsection (1) includes the power to amend or revoke the order.”,

(c) in section 372AD(2)(a), by substituting the following for subparagraph (ii):

“(ii) where any activity—

(I) carried on in the qualifying premises, or

(II) in a case where the facade of a building or structure or part of a building or structure is a qualifying premises, carried on in the building or structure or the part of the building or structure,

is not a trade, as if it were a trade.”,

and

(d) in section 372AJ—

(i) in subsection (1), by substituting the following for paragraph (c):

“(c) in respect of expenditure incurred on or after 1 January 2003 on the construction or refurbishment of any building or structure or qualifying premises provided for the purposes of a project which is subject to the notification requirements of—

(i) the ‘Multisectoral framework on regional aid for large investment projects’¹ prepared by the Commission of the European Communities and dated 7 April 1998, or

(ii) the ‘Multisectoral framework on regional aid for large investment projects’² prepared by the Commission of the European Communities and dated 19 March 2002,

as the case may be, unless approval of the potential capital allowances involved has been received from that Commission by the Minister for Finance, or by such other

¹ OJ No. C 107, 7.4.1998, p.7

² OJ No. C 70, 19.3.2002, p.8

Minister of the Government, agency or body as may be nominated for that purpose by the Minister for Finance.”,

and

- (ii) in subsection (2), by substituting “sections 372AC and 372AD” for “sections 372AC, 372AD, 372AF and 372AG”.

(2) (a) Subject to *paragraphs (b) and (c)*, *subsection (1)* is deemed to have applied as on and from 6 April 2000.

(b) *Paragraph (d)(i) of subsection (1)* applies as on and from 1 January 2003.

(c) *Paragraph (d)(ii) of subsection (1)* is deemed to have applied as on and from 1 January 2002.

Amendment of Chapter 11 (reliefs for lessors and owner-occupiers in respect of expenditure incurred on the provision of certain residential accommodation) of Part 10 of Principal Act.

30.—(1) Chapter 11 of Part 10 of the Principal Act is amended—

(a) in section 372AK, in paragraph (b) of the definition of “refurbishment”, by inserting “carried out” after “renewal”,

(b) in section 372AM(4)(c)(ii)(II) by substituting “the conversion or the refurbishment of the house” for “the refurbishment of the house”, and

(c) in section 372AS by inserting the following after subsection (2):

“(2A) For the purposes of determining the amount of eligible expenditure or qualifying expenditure incurred on or in relation to a building, the site of which—

(a) is situated partly inside and partly outside the boundary of a qualifying urban area, or

(b) is situated partly inside and partly outside the boundary of a qualifying town area,

and where expenditure incurred or treated as having been incurred in the qualifying period is attributable to the building in general, such an amount of that expenditure shall be deemed to be attributable to the part which is situated outside the boundary of the qualifying area as bears to the whole of that expenditure the same proportion as the floor area of the part situated outside the boundary of the qualifying area bears to the total floor area of the building.”.

(2) *Subsection (1)* is deemed to have applied as on and from 1 January 2002.

Amendment of section 749 (dealers in securities) of Principal Act.

31.—(1) Section 749 of the Principal Act is amended by inserting the following after subsection (2):

“(2A) (a) Subsection (1) shall not apply for a chargeable period if the securities are overseas securities purchased by the first buyer in the ordinary course

[2003.]

Finance Act 2003.

[No. 3.]

of the first buyer's trade as a dealer in securities Pr.1 S.31
and the following conditions are satisfied—

- (i) that the interest payable in respect of all such overseas securities to which this Chapter applies is brought into account in computing, for the purposes of the Tax Acts, the profits or gains arising from, or losses sustained in, the trade for the chargeable period, and
- (ii) where credit against tax would, but for this section, fall to be allowed for the chargeable period in respect of that interest by virtue of Part 14 or 35 or Schedule 24, that the first buyer elects by notice in writing, on or before the specified return date for the chargeable period, that such credit shall not be so allowed.

(b) In this subsection—

‘foreign local authority’ means an authority, corresponding in substance to a local authority for the purposes of the Local Government Act 2001, which is established outside the State and whose functions are carried on primarily outside the State;

‘foreign local government’ means any local or regional government in any jurisdiction outside the State;

‘foreign public authority’ means an authority, corresponding in substance to a public authority for the purposes of the Local Government Act 2001, which is established outside the State and whose functions are carried on primarily outside the State;

‘overseas securities’ means securities issued—

- (i) by a government of a territory outside of the State,
- (ii) by a foreign local authority, foreign local government or foreign public authority, or
- (iii) by any other body of persons not resident in the State;

‘specified return date for the chargeable period’ has the same meaning as in section 950.

(2B) Where an election is made in accordance with subsection (2A)(a)(ii)—

- (a) then, notwithstanding Parts 14 and 35 and Schedule 24, credit against tax in respect of the interest shall not be allowed by virtue of either of those Parts or, as the case may be, that Schedule,

Pt.1 S.31

(b) that election shall be included in the return, required to be made by the first buyer under section 951, for the chargeable period, and

(c) that election shall have effect only for the chargeable period for which it is made.

(2C) Subsection (1) shall not apply for a chargeable period if the securities are securities, which are not chargeable assets for the purposes of the Capital Gains Tax Acts by virtue of section 607, purchased by the first buyer in the ordinary course of the first buyer's trade as a dealer in securities and the interest payable in respect of all such securities to which this Chapter applies is brought into account in computing, for the purposes of the Tax Acts, the profits or gains arising from, or losses sustained in, the trade for the chargeable period.”.

(2) *Subsection (1)* applies as respects securities purchased on or after 1 January 2003.

Conditions relating to relief in respect of expenditure incurred on provision of certain student accommodation.

32.—(1) Section 372AM of the Principal Act is amended by inserting the following after subsection (9):

“(9A) A house, the site of which is wholly within a qualifying student accommodation area, is not a qualifying premises or a special qualifying premises for the purposes of section 372AP—

(a) (i) if any person, other than the person (in this subsection referred to as the “investor”) who incurred or, by virtue of subsection (8), (9) or (10) of that section, is treated as having incurred eligible expenditure on or in relation to the house, receives or is entitled to receive the rent, or any part of the rent, from the letting of the house during the relevant period in relation to the house, or

(ii) where two or more investors have incurred or, by virtue of subsection (8), (9) or (10) of that section, are treated as having incurred eligible expenditure on or in relation to the house, unless that part of the gross rent received or receivable from the letting of the house during the relevant period in relation to the house which is received or receivable by each investor bears the same proportion to that gross rent as the amount of the eligible expenditure which is incurred, or is so treated as having been incurred, on or in relation to the house by that investor bears to the total amount of the eligible expenditure which is incurred, or is so treated as having been incurred, on or in relation to the house by all such investors;

(b) where borrowed money is employed by an investor in the construction of, conversion into, refurbishment of, or, as the case may be, purchase of, the house, unless—

[2003.]

Finance Act 2003.

[No. 3.]

(i) that borrowed money is borrowed directly by the investor from a financial institution (within the meaning of section 906A), Pr.1 S.32

(ii) the investor is personally responsible for the repayment of, the payment of interest on, and the provision of any security required in relation to, that borrowed money, and

(iii) there is no arrangement or agreement, whether in writing or otherwise and whether or not the person providing that borrowed money is aware of such agreement or arrangement, whereby any other person agrees to be responsible for any of the investor's obligations referred to in subparagraph (ii);

(c) where management or letting fees payable to a person in relation to the letting of the house are claimed by the investor as a deduction under section 97(2) for any chargeable period (within the meaning of section 321) ending in the relevant period in relation to the house, unless—

(i) such fees are shown by the claimant to be bona fide fees which reflect the level and extent of the services rendered by the person, and

(ii) the aggregate amount of such fees for that chargeable period is not more than an amount which is equal to 15 per cent of the gross amount of the rent received or receivable by the investor from the letting of the house for that chargeable period.

(9B) Subject to subsection (9C), subsection (9A) applies—

(a) as respects eligible expenditure incurred on or in relation to a house on or after 18 July 2002, unless a binding contract for the construction of, conversion into or, as the case may be, refurbishment of the house was evidenced in writing before that date, and

(b) where subsection (9) or (10) of section 372AP applies, as respects expenditure incurred on the purchase of a house on or after 18 July 2002, unless a binding contract for the purchase of the house was evidenced in writing before that date.

(9C) Paragraphs (a) and (c) of subsection (9A) shall not apply as respects eligible expenditure incurred on or in relation to a house or, where subsection (9) or (10) of section 372AP applies, as respects expenditure incurred on the purchase of a house where, before 6 February 2003, the Revenue Commissioners have given an opinion in writing to the effect that the lease of the house between an investor and an educational institution referred to in the relevant guidelines, or a subsidiary (within the meaning of section 155 of the Companies Act 1963) of such an institution, would be a qualifying lease.”.

(2) This section is deemed to have come into operation as on and from 18 July 2002.

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

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

“(3B) (a) Subject to paragraph (b), where a principal or any person who was previously a principal makes a remittance of tax in respect of a year of assessment or a period comprised in a year of assessment and details of the remittance are not included in a return required to be made under subsection (3A), the amount comprised in the remittance shall be deemed to be a remittance in respect of the first income tax month of the year of assessment.

(b) Where, within 1 month of interest being demanded of a person by the Collector-General under subsection (9) by virtue of the application of paragraph (a), the person makes a return to the Collector-General under subsection (3A) for the income tax month or months to which the remittance of tax relates and of the amount comprised in the remittance for each of those income tax months, paragraph (a) shall be deemed not to have applied and the remittance shall be treated for the purposes of this section as a remittance or, as the case may be, remittances of tax for the respective income tax month or months.”,

(b) by substituting the following for paragraph (ii) of subsection (10):

“(ii) where the notice relates to a year of assessment, for the first income tax month in the year of assessment to which the notice relates, but where the inspector determines, or, on appeal against the notice, the Appeal Commissioners determine, the amount of tax which the person was liable to remit, but had not remitted, for each income tax month comprised in the year of assessment, interest shall be calculated and payable in respect of each amount so determined in accordance with subsection (9) as if that amount were included in a notice in respect of the income tax month in question.”,

and

(c) in subsection (12)—

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

“(c) Notwithstanding paragraphs (a) and (b), a principal may apply for a relevant payments card in respect of a subcontractor for a year of assessment where—

(i) the principal has been issued with a relevant payments card in respect of the subcontractor for the immediately preceding year of assessment,

- (ii) the relevant contract between the principal and the subcontractor in relation to which the relevant payments card is required is likely to be ongoing at the end of that preceding year, and
- (iii) the principal has obtained from the subcontractor details of the subcontractor's certificate of authorisation for the year of assessment to which the application for the relevant payments card relates.”,

and

- (ii) in paragraph (d), by substituting “the making of an application under paragraph (a), (b) or (c)” for “such application”.

- (2) (a) *Paragraphs (a) and (b) of subsection (1) apply as respects the year of assessment 2003 and subsequent years of assessment.*
- (b) *Paragraph (c) of subsection (1) applies as respects applications made under section 531(12)(c) of the Principal Act on or after the date of the passing of this Act.*

34.—(1) The Principal Act is amended—

Filing date for certain returns and elections.

- (a) in section 128A, by substituting the following for subsection (3):

“(3) An election under this section shall be made by notice in writing to the inspector on or before—

- (a) where the relevant year is the year of assessment 2000-2001, 31 January 2002, and
- (b) where the relevant year is the year of assessment 2001 or any subsequent year of assessment, 31 October in the year of assessment following the relevant year.”,

- (b) in section 894(1), by substituting the following for paragraph (a) of the definition of “specified return date for the chargeable period”:

- “(a) (i) where the chargeable period is the year of assessment 2000-2001, 31 January 2002, and
- (ii) where the chargeable period is the year of assessment 2001 or any subsequent year of assessment, 31 October in the year of assessment following that year,

and”,

- (c) in section 895(1), by substituting the following for paragraph (a) of the definition of “specified return date for the chargeable period”:

- “(a) (i) where the chargeable period is the year of assessment 2000-2001, 31 January 2002, and

Pt.1 S.34

- (ii) where the chargeable period is the year of assessment 2001 or any subsequent year of assessment, 31 October in the year of assessment following that year,

and”,

and

- (d) in section 950(1), by substituting the following for paragraph (a) of the definition of “specified return date for the chargeable period”:

“(a) (i) where the chargeable period is a year of assessment for income tax or capital gains tax purposes, being the year of assessment 2000-2001, 31 January 2002, and

- (ii) where the chargeable period is a year of assessment for income tax or capital gains tax purposes, being the year of assessment 2001 or any subsequent year of assessment, 31 October in the year of assessment following that year,”.

(2) This section is deemed to have come into operation as on and from 6 April 2001.

Amendment of
certain provisions
relating to exempt
income.

35.—(1) The Principal Act is amended—

- (a) in section 231—

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

- (ii) by substituting in that provision “shall be exempt from income tax and corporation tax” for “shall not be taken into account for any purpose of the Tax Acts”, and

- (iii) by inserting the following after that provision:

“(2) As respects the making of a return of income (being a return which a chargeable person, within the meaning of section 950, is required to deliver under section 951), the Tax Acts shall apply—

- (a) as if subsection (1) had not been enacted,

- (b) notwithstanding anything to the contrary in Part 41, as if a person to whom profits or gains referred to in subsection (1) arise for any chargeable period (within the meaning of section 321(2)) were, if such person would not otherwise be, a chargeable person (within the meaning of section 950) for that chargeable period,

- (c) where a person to whom profits or gains referred to in subsection (1) arise for any chargeable period (within the meaning of section 321(2)) is a person to whom a notice under section 951(6) has been

issued, as if such a notice had not been issued, and Pr.1 S.35

- (d) in so far as those Acts relate to the keeping of records (within the meaning of section 886) and the making available of such records for inspection, as if such profits or gains were chargeable to income tax or corporation tax, as the case may be.

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

- (a) profits or gains referred to in subsection (1) or a loss referred to in paragraph (b) shall be computed in accordance with the Tax Acts as if subsection (1) had not been enacted, and
- (b) where a loss is incurred for any chargeable period (within the meaning of section 321(2)), the amount of that loss shall be included in the return of income referred to in subsection (2) for that chargeable period.”,

(b) in section 232—

- (i) in subsection (2), by substituting “shall be exempt from income tax and corporation tax” for “shall not be taken into account for any purpose of the Tax Acts”, and
- (ii) by inserting the following after subsection (2):

“(3) As respects the making of a return of income (being a return which a chargeable person, within the meaning of section 950, is required to deliver under section 951), the Tax Acts shall apply—

- (a) as if subsection (2) had not been enacted,
- (b) notwithstanding anything to the contrary in Part 41, as if a person to whom profits or gains referred to in subsection (2) arise for any chargeable period (within the meaning of section 321(2)) were, if such person would not otherwise be, a chargeable person (within the meaning of section 950) for that chargeable period,
- (c) where a person to whom profits or gains referred to in subsection (2) arise for any chargeable period (within the meaning of section 321(2)) is a person to whom a notice under section 951(6) has been issued, as if such a notice had not been issued, and
- (d) in so far as those Acts relate to the keeping of records (within the meaning of section 886) and the making available of such records for inspection, as if such profits

or gains were chargeable to income tax or corporation tax, as the case may be.

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

- (a) profits or gains referred to in subsection (2) or a loss referred to in paragraph (b) shall be computed in accordance with the Tax Acts as if subsection (2) had not been enacted, and
- (b) where a loss is incurred for any chargeable period (within the meaning of section 321(2)), the amount of that loss shall be included in the return of income referred to in subsection (3) for that chargeable period.”,

and

(c) in section 233—

- (i) in subsection (2), by substituting “shall be exempt from income tax and corporation tax” for “shall not be taken into account for any purpose of the Tax Acts”, and

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

“(3) As respects the making of a return of income (being a return which a chargeable person, within the meaning of section 950, is required to deliver under section 951), the Tax Acts shall apply—

- (a) as if subsection (2) had not been enacted,
- (b) notwithstanding anything to the contrary in Part 41, as if a person to whom profits or gains referred to in subsection (2) arise for any chargeable period (within the meaning of section 321(2)) were, if such person would not otherwise be, a chargeable person (within the meaning of section 950) for that chargeable period,
- (c) where a person to whom profits or gains referred to in subsection (2) arise for any chargeable period (within the meaning of section 321(2)) is a person to whom a notice under section 951(6) has been issued, as if such a notice had not been issued, and
- (d) in so far as those Acts relate to the keeping of records (within the meaning of section 886) and the making available of such records for inspection, as if such profits or gains were chargeable to income tax or corporation tax, as the case may be.

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

[2003.]

Finance Act 2003.

[*No. 3.*]

- (a) profits or gains referred to in subsection (2) or a loss referred to in paragraph (b) shall be computed in accordance with the Tax Acts as if subsection (2) had not been enacted, and
- (b) where a loss is incurred for any chargeable period (within the meaning of section 321(2)), the amount of that loss shall be included in the return of income referred to in subsection (3) for that chargeable period.”.

(2) *Subsection (1)* applies as respects any chargeable period (within the meaning of section 321(2) of the Principal Act) commencing on or after 1 January 2004.

36.—(1) Chapter 8 of Part 4 of the Principal Act is amended by inserting the following after section 106:

“106A.—(1) (a) In this section—

‘relevant transaction’ means any scheme, arrangement or understanding under which a person becomes entitled to receive a capital sum and the consideration given for the entitlement to receive the sum consists wholly or mainly of the direct or indirect transfer to another person of a right to receive rent which, in the absence of the scheme, arrangement or understanding, could reasonably have been expected to accrue to the first-mentioned person or to a person connected with that person;

‘rent’ includes any sum which—

(i) is chargeable to tax under Case V of Schedule D, or

(ii) would be so chargeable if the source of the sum were in the State.

(b) For the purposes of this section, a scheme, arrangement or understanding under which a person grants a lease in connection with which—

(i) the person is entitled to a capital sum,

(ii) rent is payable to another person, and

(iii) the consideration given for the entitlement to receive the capital sum consists wholly or mainly of the grant to the other person or a person connected with the other person of a right to rent under the lease,

shall be treated as a relevant transaction and this section applies as if the capital sum were a capital sum under the relevant transaction.

(2) (a) Subject to paragraph (b), where a person other than a company becomes entitled to receive a capital sum under a relevant transaction, the capital sum shall be treated for the purposes of the Tax Acts as being an amount of income of the person chargeable to tax under Case IV of Schedule D for the year of assessment—

(i) in which the person becomes entitled to the capital sum, or

(ii) if it is earlier, in which the sum was received.

(b) Paragraph (a) does not apply to a person, other than an individual, if the consideration for the capital sum—

(i) was given by the person, and

(ii) is a qualifying asset (within the meaning of section 110) acquired by a qualifying company (within the meaning of that section) in the course of its business.

(3) Any profits or gains arising by virtue of a relevant transaction to the person to whom the right to receive rent was transferred shall be computed in accordance with section 97, and shall, notwithstanding any other provision of the Tax Acts, be chargeable to tax under Case V of Schedule D: but this subsection does not apply in relation to a person if—

(a) the consideration received by the person for the capital sum is a qualifying asset (within the meaning of section 110) acquired by a qualifying company (within the meaning of that section) in the course of its business, and

(b) the asset was acquired from a person other than an individual.”.

(2) This section applies—

(a) in the case of subsection (2) of section 106A (as inserted by this section) of the Principal Act, as respects any capital sum received on or after 6 February 2003, and

(b) in the case of subsection (3) of section 106A (as inserted by this section) of the Principal Act, as respects amounts received on or after 6 February 2003.

Matching of relevant foreign currency assets with foreign currency liabilities.

37.—(1) The Principal Act is amended by inserting the following after section 79:

“79A.—(1) (a) In this section—

‘foreign currency asset’, in relation to a company, means an asset, not being a relevant monetary

[2003.]

Finance Act 2003.

[No. 3.]

item (within the meaning of section 79), of the company the consideration for the acquisition of which consisted solely of an amount denominated in a currency other than the currency of the State;

Pr.1 S.37

‘foreign currency liability’, in relation to a company, means—

- (i) a liability, not being a relevant monetary item (within the meaning of section 79), or
- (ii) a sum subscribed for paid-up share capital or contributed to the capital,

of the company which is denominated in a currency other than the currency of the State;

‘rate of exchange’ has the meaning assigned to it by section 79.

(b) For the purposes of this section—

- (i) a foreign currency asset is a relevant foreign currency asset in relation to a company if it consists of shares in another company acquired by the company and immediately after the acquisition by the company of the shares in the other company—
 - (I) the company owns not less than 25 per cent of the share capital of the other company, and
 - (II) the other company is a trading company or a holding company of a trading company,
- (ii) where at any time a company disposes of a relevant foreign currency asset which has been matched with a corresponding foreign currency liability and the company does not discharge the liability at that time, the company shall be deemed to discharge the liability, and to incur a new liability equal to the amount of the liability, at that time,
- (iii) where in accordance with subsection (2) a company specifies that a relevant foreign currency asset acquired by it at any time is to be matched with a corresponding foreign currency liability incurred by it before that time, the company shall be deemed to discharge the foreign currency liability, and to incur a new liability equal to the amount of the liability, at that time, and
- (iv) the amount of a gain or loss on the discharge of a foreign currency liability shall be the amount which would be the gain accruing to, or as the case may be the loss incurred by, the company on the disposal of an asset acquired by it at the time the liability was

incurred and disposed of at the time at which the liability was discharged if—

(I) the amount given by the company to discharge the liability was the amount given by the company as consideration for the acquisition of the asset, and

(II) the amount of the liability incurred by the company was the consideration received by the company on the disposal of the asset.

(2) (a) A company may, by giving notice in writing to the inspector, specify that a relevant foreign currency asset denominated in a currency other than the currency of the State shall be matched with such corresponding foreign currency liability denominated in that currency as is specified by the company.

(b) A notice under paragraph (a) shall be given within 3 weeks after the acquisition by the company concerned of the relevant foreign currency asset.

(3) Where in an accounting period a company disposes of a relevant foreign currency asset which has been matched by the company under subsection (2) with a foreign currency liability of the company, any chargeable gain or allowable loss on the relevant foreign currency asset shall be computed for the purposes of capital gains tax as if the consideration received for the disposal of the asset—

(a) where the company incurs a loss on discharge of the liability which loss results directly from a change in a rate of exchange, were reduced by an amount equal to the amount of that loss, but the amount of any such reduction shall not exceed the amount of so much of any gain on the disposal of the asset as results directly from a change in a rate of exchange, and

(b) where the company realises a gain on discharge of the liability which gain results directly from a change in a rate of exchange, were increased by an amount equal to the amount of that gain, but the amount of any such increase shall not exceed the amount of so much of any loss incurred on the disposal of the asset which loss results directly from a change in a rate of exchange.”.

(2) This section applies as respects accounting periods ending on or after 6 February 2003.

Exchange of
information.

38.—For the purposes of assisting the prevention and detection of tax evasion, by means of the exchange of information between the Revenue Commissioners and the tax authorities of certain other territories, the Principal Act is amended—

(a) in section 826 by the substitution for subsection (1) of the following:

“(1) Where the Government by order declare that arrangements specified in the order have been made

with the government of any territory outside the State Pr.1 S.38
in relation to—

- (a) affording relief from double taxation in respect of—
 - (i) income tax;
 - (ii) corporation tax in respect of income and chargeable gains;
 - (iii) any taxes of a similar character imposed by the laws of the State or by the laws of that territory,

or

- (b) exchanging information for the purposes of the prevention and detection of tax evasion in respect of the taxes specified in paragraph (a),

and that it is expedient that those arrangements should have the force of law, then, subject to this section and section 835, the arrangements shall, notwithstanding any enactment, have the force of law.”,

and

- (b) by inserting the following after section 912:

“Information for tax authorities in other territories.

912A.—(1) In this section—

‘foreign tax’ means a tax chargeable under the laws of a territory in relation to which arrangements (in this section referred to as ‘the arrangements’) having the force of law by virtue of section 826 apply;

‘liability to foreign tax’, in relation to a person, means any liability in relation to foreign tax to which the person is or may be, or may have been, subject, or the amount of any such liability.

(2) For the purposes of complying with provisions with respect to the exchange of information contained in the arrangements, sections 900, 901, 902, 902A, 906A, 907 and 908 shall, subject to subsection (3), have effect—

- (a) as if references in those sections to tax included references to foreign tax, and
- (b) as if references in those sections to liability, in relation to a person, included references to liability to foreign tax, in relation to a person.

(3) Where sections 902A, 907 and 908 have effect by virtue only of this section, they shall have effect as if—

- (a) there were substituted ‘“a taxpayer” means a person;’ for the definition of ‘a taxpayer’

Pt.1 S.38

in subsection (1) of each of those sections, and

(b) the references in those sections to—

(i) tax, were references to foreign tax, and

(ii) any provision of the Acts, were references to any provision of the law of a territory in accordance with which foreign tax is charged or collected.”.

Amendment of section 404 (restriction on use of capital allowances for certain machinery or plant) of Principal Act.

39.—Section 404 of the Principal Act is amended in subsection (6)(b) by substituting “it is a lease of machinery or plant provided for leasing by a lessor to a lessee” for “the leasing of the asset is carried on”.

Amendment of section 407 (restriction on use of losses and capital allowances for qualifying shipping trade) of Principal Act.

40.—Section 407 of the Principal Act is amended in subsection (1) by substituting “31 December 2006” for “31 December 2002” in the definition of “the relevant period”.

Amendment and repeals consequential on abolition of tax credits and advance corporation tax.

41.—(1) The Principal Act is amended—

(a) in section 83 of the Principal Act—

(i) in subsection (3) by deleting “(other than subsection (5))”, and

(ii) by deleting subsections (5) and (6),

(b) in section 137(3) by deleting “and the relevant tax credit”,

(c) in section 144(8) by substituting the following for the meaning of T:

“T is the amount of the distributions received by the company in the accounting period which is included in its franked investment income of the accounting period with the addition of any amount received by the company in the accounting period to which section 140(3)(a), 141(3)(a), 142(4) or 144(3)(a) applies.”,

(d) in section 154—

(i) by substituting in subsection (1) “and 144” for “, 144 and 145” in each place in which it occurs, and

(ii) by substituting in subsection (6) “the day in question” for “that day”,

(e) in section 155 by substituting in subsection (3) “or 144(3)(a)” for “, 144(3)(a) or 145”,

(f) in Chapter 7 of Part 6—

(i) by substituting the following for section 156—

Pr.1 S.41

“Franked
investment income
and franked
payments.

156.—(1) Income of a company resident in the State which consists of a distribution made by another company resident in the State shall be referred to in the Corporation Tax Acts as ‘franked investment income’ of the company, and the amount of the franked investment income of such a company shall be the amount or value of the distribution.

(2) A reference in the Corporation Tax Acts to a ‘franked payment’ in relation to a company resident in the State which makes a distribution shall be construed as a reference to the amount or value of the distribution and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution is made.”,

and

(ii) by deleting sections 157 and 158,

(g) in Chapter 8 of Part 6 by deleting sections 159 to 164 and sections 166 and 167,

(h) in section 448(1)(a) by deleting “157, 158,”,

(i) in section 679(3)(a) by deleting “section 157,”,

(j) in section 716(3) by deleting “(including, where a claim is made under section 157 for the purposes mentioned in subsection (2)(a) of that section, any franked investment income)”,

(k) in section 751(1)(b) by deleting “157 or”,

(l) in section 753(b) by deleting “157 or”,

(m) in section 817 by deleting subsection (6),

(n) by inserting the following after section 845A:

“Set-off of surplus
advance
corporation tax.

845B.—(1) In this section—

‘surplus advance corporation tax’, in relation to an accounting period of a company, means an amount of advance corporation tax—

(a) to which the company was liable under section 159 in respect of a distribution made before 6 April 1999,

(b) which was paid by the company and not repaid to it, and

(c) which was not set against the company's liability to corporation tax for any preceding accounting period.

(2) Where in the case of an accounting period of a company there is an amount of surplus advance corporation tax, that amount shall be set against the company's liability to corporation tax on any income charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.

(3) For the purposes of this section—

(a) the income of a company charged to corporation tax for any accounting period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne exclusive of the part of the profits attributable to chargeable gains, and

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

(4) For the purposes of this section, a notice under section 884 may require the inclusion in the return to be delivered by a company under that section of particulars of any surplus advance corporation tax carried forward in relation to that company under subsection (2).

(5) Where an inspector discovers that any set-off of surplus advance

corporation tax under this section Pr.1 S.41
ought not to have been made, or is or
has become excessive, the inspector
may make any such assessments as
may in his or her judgment be
required for recovering any tax that
ought to have been paid and generally
for securing that the resulting liabilities
to tax (including interest on unpaid
tax) of the person concerned are what
they would have been if only such set-
offs had been made as ought to have
been made.”,

(o) in section 884 by deleting subsection (2)(c), and

(p) in section 1085—

(i) in subsection (2) by deleting subparagraphs (d) and (e), and

(ii) by substituting the following for subsections (3) and (4):

“(3) Subject to subsection (4), any restriction or reduction imposed by paragraph (a), (b), (ba), (c), (ca) or (cb) of subsection (2) in respect of a chargeable period in the case of a company which fails to deliver a return of income on or before the specified return date for the chargeable period shall apply subject to a maximum restriction or reduction, as the case may be, of €158,715 in each case for the chargeable period.

(4) Where in relation to a chargeable period a company, having failed to deliver a return of income on or before the specified return date for the chargeable period, delivers that return before the expiry of 2 months from the specified return date for the chargeable period, paragraphs (a) to (cb) of subsection (2) shall apply as if the references in those paragraphs to ‘50 per cent’ were references to ‘75 per cent’ in the case of paragraphs (a) and (b) and ‘25 per cent’ in the case of paragraphs (ba), (c), (ca) and (cb) subject to a maximum restriction or reduction, as the case may be, of €31,740.”,

and

(q) in Chapter 2 of Part 24 by deleting section 691.

(2) This section applies as respects accounting periods ending on or after 6 February 2003.

42.—(1) Part 41 of the Principal Act is amended—

Amendment of Part
41 (self assessment)
of Principal Act.

(a) in section 950(1), by substituting the following for paragraphs (b) and (c) of the definition of “specified return date for the chargeable period”:

“(b) where the chargeable period is an accounting period of a company and subject to paragraph (c), the

last day of the period of 9 months commencing on the day immediately following the end of the accounting period, but in any event not later than day 21 of the month in which that period of 9 months ends, and

- (c) where the chargeable period is an accounting period of a company which ends on or before the date of commencement of the winding up of the company and the specified return date in respect of that accounting period would apart for this paragraph fall on a day after the date of commencement of the winding up but not within a period of 3 months after that date, the day which falls 3 months after the date of commencement of the winding up but in any event not later than day 21 of the month in which that period of 3 months ends.”,

(b) in section 951—

- (i) in subsection (1), by substituting for all the words from “Every chargeable person” down to “a return in the prescribed form of—” the following:

“Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form of—”,

- (ii) in subsection (3), by substituting “the Collector-General” for “the Collector-General or an inspector, as the case may be”,
- (iii) in subsection (4), by substituting “the Collector-General” for “the Collector-General or the appropriate inspector, as the case may be”, and
- (iv) in subsection (11), by substituting the following for paragraph (d):

“(d) The Collector-General may designate an address for the delivery of returns which in accordance with this section are required to be delivered to the Collector-General by chargeable persons.”,

and

(c) in section 958—

- (i) in subsection (1)(a)—

(I) by substituting “number of days” for “number of months” in both places in which it occurs in the definition of “corresponding corporation tax for the preceding chargeable period”,

(II) by inserting the following after the definition of “corresponding corporation tax for the preceding chargeable period”:

“ ‘tax payable for the initial period’, in relation to a chargeable period which is a year of assessment for capital gains tax (being the year of assessment 2003 or any subsequent year of assessment), means the tax which would be payable by the chargeable person if the year of assessment ended on 30 September in that year instead of 31 December in that year; Pr.1 S.42

‘tax payable for the later period’, in relation to a chargeable period which is a year of assessment for capital gains tax (being the year of assessment 2003 or any subsequent year of assessment), means the tax payable for the year of assessment less the tax payable for the initial period in relation to that year of assessment;”,

- (ii) in subsection (2A) by substituting the following for paragraphs (b) to (e):

“(b) The first of the 2 instalments referred to in paragraph (a) (in this section referred to as the ‘first instalment’) shall be due and payable not later than the day which is 31 days before the day on which the accounting period ends, but where that day is later than day 21 of the month in which the first-mentioned day occurs, the first instalment shall be due and payable not later than day 21 of that month.

(c) Notwithstanding paragraph (b), in a case where an accounting period of a company is less than one month and one day in length, the first instalment shall be due and payable not later than the last day of the accounting period, but where that day is later than day 21 of the month in which that day occurs, the first instalment shall be due and payable not later than day 21 of that month.

(d) The second of the 2 instalments referred to in paragraph (a) (in this section referred to as the ‘second instalment’) shall be due and payable within the period of 6 months from the end of the accounting period, but in any event the second instalment shall be due and payable not later than day 21 of the month in which that period of 6 months ends.”,

- (iii) by substituting the following for subsection (2B):

“(2B) (a) Preliminary tax appropriate to a chargeable period which is an accounting period of a company ending on or after 1 January 2006 shall be due and payable not later than the day which is 31 days before the day on which the accounting period ends, but where

that day is later than day 21 of the month in which the first-mentioned day occurs, that tax shall be due and payable not later than day 21 of that month.

- (b) Notwithstanding paragraph (a), in a case where an accounting period of a company ending on or after 1 January 2006 is less than one month and one day in length, preliminary tax shall be due and payable not later than the last day of the accounting period, but where that day is later than day 21 of the month in which that day occurs, that tax shall be due and payable not later than day 21 of that month.”,

(iv) by substituting the following for subsection (3):

“(3) (a) Subject to subsections (3A), (4), (4B), (4C), (4D) and (4E), tax payable by a chargeable person for a chargeable period shall be due and payable—

- (i) subject to subparagraphs (ii) and (iii), where an assessment is made on the chargeable person for the chargeable period before the due date for the payment of an amount of preliminary tax for the chargeable period, on or before that date,
- (ii) where an assessment is made on the chargeable person for the chargeable period (being a year of assessment for income tax) before the specified return date for the chargeable period, on or before that date,
- (iii) where an assessment has not been made on the chargeable person for the chargeable period (being a year of assessment for income tax) on or before the specified return date for the chargeable period,
- (iv) where an assessment has not been made on the chargeable person for the chargeable period (being the year of assessment 2002 for capital gains tax), on or before the specified return date for the chargeable period,
- (v) where the chargeable period is a year of assessment for capital gains tax (being the year of assessment 2003 for capital

gains tax or any subsequent year of assessment for capital gains tax) and an assessment has not been made on the chargeable person for the year of assessment—

Pr.1 S.42

- (I) as respects tax payable for the initial period, on or before 31 October in the year of assessment, and
- (II) as respects tax payable for the later period, on or before 31 January in the next following year of assessment, or
- (vi) where the chargeable period is an accounting period of a company, on or before the specified return date for the chargeable period.
- (b) Where in relation to a chargeable period (being a year of assessment for income tax) the tax payable by a chargeable person for a year of assessment is due and payable in accordance with paragraph (a)(iii), then, the tax specified in any subsequent assessment made on the chargeable person for that year shall be deemed to have been due and payable on or before the specified return date for the chargeable period.
- (c) (i) Where in relation to a chargeable period (being the year of assessment 2002 for capital gains tax) the tax payable by a chargeable person for the year of assessment is due and payable in accordance with paragraph (a)(iv), then, the tax specified in any subsequent assessment made on the chargeable person for that year shall be deemed to have been due and payable on or before the specified return date for the chargeable period.
- (ii) Where in relation to a chargeable period (being the year of assessment for capital gains tax 2003 or any subsequent year of assessment for capital gains tax) the tax payable by a chargeable person for a year of assessment is due and payable in accordance with paragraph (a)(v), then, the tax specified in any subsequent assessment made on the chargeable person for that year shall be

deemed to have been due and payable—

(I) on or before 31 October in the year of assessment as respects tax payable for the initial period, and

(II) on or before 31 January in the next following year of assessment as respects tax payable for the later period.

(d) Where in relation to a chargeable period (being an accounting period of a company) the tax payable by a chargeable person for an accounting period is due and payable in accordance with paragraph (a)(vi), then, the tax specified in any subsequent assessment made on the chargeable person for that accounting period shall be deemed to have been due and payable on or before the specified return date for the chargeable period.”,

and

(v) by substituting the following for subsection (3A):

“(3A) (a) In this paragraph the ‘specified amount’, in relation to a year of assessment for income tax and the year of assessment 2002 for capital gains tax, means the greater of—

(i) 5 per cent of the tax payable by that person for that year or €3,175, whichever is the lesser, and

(ii) €635.

(b) Subject to subsection (3), where—

(i) an assessment to tax has not been made on a chargeable person on or before the specified return date for the chargeable period (being a year of assessment for income tax and the year of assessment 2002 for capital gains tax), and

(ii) the chargeable person has—

(I) delivered a return for the year of assessment by the specified return date for the chargeable period,

(II) made in the return a full and true disclosure of all material facts necessary for the making of a correct assessment for the year of assessment, and

(III) paid an amount of tax for the year of assessment on or before the specified return date, being an amount which is less than the tax payable by the chargeable person for that year of assessment by not more than the specified amount,

Pr.1 S.42

then, subject to subsection (8), any additional tax payable by that person for that year shall be due and payable on or before 31 December in the next following year of assessment.”.

(2) (a) This section is deemed to have come into operation in relation to income tax and capital gains tax, as on and from 1 January 2003.

(b) This section applies in relation to corporation tax—

- (i) in the case of the amendment made to paragraphs (b) and (c) of subsection (2A) of section 958 by *subsection (1)(c)(ii)*, as respects accounting periods of companies ending on or after 2 July 2003, and
- (ii) in any other case, as respects accounting periods of companies ending on or after 1 January 2003.

43.—(1) The Principal Act is amended—

National
Development
Finance Agency.

(a) in section 38 by substituting the following for subsection (1):

“(1) This section applies to any securities which are issued by a body corporate and in respect of which the payment of interest and the repayment of principal are guaranteed by a Minister of the Government under statutory authority; but does not apply to securities—

(a) specified in the Table to section 37, or

(b) issued by a company formed by the National Development Finance Agency in accordance with section 5 of the National Development Finance Agency Act 2002.”,

(b) by inserting the following after section 230A:

“National
Development
Finance Agency.

230AB.—(1) Notwithstanding any provision of the Corporation Tax Acts, profits arising to the National Development Finance Agency in any accounting period shall be exempt from corporation tax.

(2) Notwithstanding any provision of the Tax Acts, any interest, annuity or other annual payment paid by the National Development Finance Agency shall be paid without deduction of income tax.”,

Pt.1 S.43

(c) by inserting in subsection (1) of section 256 the following after subparagraph (iii*b*) of paragraph (a) of the definition of “relevant deposit”:

“(iii*c*) the National Development Finance Agency,”,

and

(d) by inserting the following after paragraph (f) of subsection (1) of section 607—

“(f*a*) securities issued by the National Development Finance Agency under section 6 of the National Development Finance Agency Act 2002,”.

(2) This section applies on and from 6 February 2003.

Restriction on deductibility of certain interest.

44.—(1) Part 33 of the Principal Act is amended by inserting the following after section 817B:

“817C.—(1) In this section—

‘chargeable period’ and ‘basis period’ have the same meanings as they have for the purposes of section 817B;

‘relevant date’, in relation to a chargeable period, means the date on which the basis period for the chargeable period ends;

‘relevant liability’ means a liability of one person to another person.

(2) This section applies where—

(a) interest is payable by a person, directly or indirectly, to a connected person (being interest which, if it were paid, would be chargeable to tax under Schedule D),

(b) the interest would, apart from this section, be allowable in computing trading income of a trade carried on by the person, and

(c) (i) in a case where the connected person is chargeable to tax in respect of the interest, the interest does not fall to be taken into account, or

(ii) in any other case, if the connected person were resident in the State the interest would not fall to be taken into account,

in computing the trading income of a trade carried on by the connected person.

(3) Where this section applies, so much of any interest payable, or treated under subsection (4) as payable, by a person, directly or indirectly, to a connected person in respect of a relevant liability shall not be allowable in computing trading income chargeable on the person for a chargeable period (in this subsection referred to as the ‘first-mentioned chargeable period’) as is greater than the excess of A over B where—

[2003.]

Finance Act 2003.

[No. 3.]

A is the aggregate of amounts of interest on the relevant liability which are chargeable to tax as income of the connected person, or would be so chargeable but for the provisions of section 198 or of arrangements having the force of law by virtue of section 826, for all chargeable periods the basis periods for which end on or before the relevant date in relation to the first-mentioned chargeable period, and

Pr.1 S.44

B is the aggregate of the amounts of interest on the relevant liability which have been allowed as deductions in computing trading income for the purposes of tax for, or have otherwise been allowed or relieved for the purposes of tax in, chargeable periods the basis periods for which end before the relevant date in relation to the first-mentioned chargeable period.

(4) Interest which, by virtue of subsection (3), is not allowable in computing trading income for a chargeable period shall be treated as being payable in the basis period for the following chargeable period.

(5) Where under arrangements made by any person (in this subsection referred to as the ‘first person’)—

(a) interest is payable by the first person to another person such that this section does not apply by virtue only of the fact that the persons concerned are not connected, and

(b) interest is payable by some other person to a person (in this subsection referred to as the ‘second person’) connected with the first person such that this section does not apply by virtue only of the fact that the other person and the second person are not connected,

then, subsections (3) and (4) shall apply as if the interest had been payable by the first person to the second person.”.

(2) This section applies as respects any chargeable period ending on or after 6 February 2003.

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

Amendment of Chapter 2 (additional matters to be treated as distributions, charges to tax in respect of certain loans and surcharges on certain undistributed income) of Part 13 of Principal Act.

(a) in section 438(6) by substituting “to a company not resident in a Member State of the European Communities and, for the purposes of this subsection, a company is a resident of a Member State of the European Communities if the company is by virtue of the law of that Member State resident for the purposes of tax (being, in the case of the State, corporation tax and, in any other case, being any tax imposed in the Member State which corresponds to corporation tax in the State) in such Member State” for the words “to a company not resident in the State”, and

(b) by inserting the following section after section 438:

“Extension of section 438 to loans by companies controlled by close companies.

438A.—(1) In this section ‘loan’ includes advance.

(2) Subject to subsection (5), where a company which is controlled by a close company makes a loan which, apart from this section, does not give

[No. 3.]

Finance Act 2003.

[2003.]

rise to a charge under subsection (1) of section 438, that section applies as if the loan had been made by the close company.

(3) Subject to subsection (5), where a company which is not controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 438 and a close company subsequently acquires control of it, that section applies as if the loan had been made by the close company immediately after the time when it acquired control.

(4) Where 2 or more close companies together control the company that makes or has made the loan, subsections (2) and (3) apply—

(a) as if each of them controlled that company, and

(b) as if the loan had been made by each of those close companies,

but the loan shall be apportioned between those close companies in such proportion as may be appropriate having regard to the nature and amount of their respective interests in the company that makes or has made the loan.

(5) Subsections (2) and (3) do not apply if it is shown that no person has made any arrangements (otherwise than in the ordinary course of a business carried on by that person) as a result of which there is a connection—

(a) between the making of the loan and the acquisition of control, or

(b) between the making of the loan and the provision by the close company of funds for the company making the loan,

and the close company shall be regarded as providing funds for the company making the loan if it directly or indirectly makes any payment or transfers any property to, or releases or satisfies (in whole or in part) a liability of, the company making the loan.

[2003.]

Finance Act 2003.

[No. 3.]

(6) Where, by virtue of this section, section 438 applies as if a loan made by one company had been made by another company, any question under that section whether—

Pr.1 S.45

(a) the company making the loan did so otherwise than in the ordinary course of a business carried on by it which includes the lending of money,

(b) the loan or any part of it has been repaid to the company,

(c) the company has released or written off the whole or part of the debt in respect of the loan,

shall be determined by reference to the company that makes the loan.

(7) References to a company making a loan include references to cases in which the company is, or if it were a close company would be, regarded as making a loan by virtue of section 438(2).

(8) This section shall be construed together with section 438.”.

(2) This section applies as respects—

(a) the making of a loan,

(b) the advance of any money,

(c) the incurring of any debt, or

(d) the assignment of any debt,

on or after 6 February 2003.

46.—(1) Section 249 of the Principal Act is amended—

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

Amendment of section 249 (rules relating to recovery of capital and replacement loans) of Principal Act.

“(a) (i) In this section—

‘specified loan’, in relation to a company, means—

(I) any loan or advance made to the company before 6 February 2003 (other than a loan referred to in paragraph (II)), or

(II) any loan or advance in respect of which any interest paid is, or if charged would be, deductible if the company were within the charge to Irish tax—

(A) in computing the company's profits or gains for the purposes of Case I of Schedule D, or

(B) in computing the company's profits or gains for the purposes of Case V of Schedule D;

'relevant period', in relation to a loan to which section 247 applies, means the period beginning 2 years before the date of application of the proceeds of the loan and ending on the date of application of the proceeds of the loan.

(ii) Where at any time in the relevant period in relation to a loan to which section 247 applies the investing company recovered any amount of capital from the company concerned, other than a repayment in respect of a specified loan, the investing company shall immediately after the application of the loan to which section 247 applies be treated for the purposes of this section as if the investing company had repaid out of the loan an amount equal to the amount of capital recovered and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered, but this subparagraph shall not apply to so much of the capital so recovered as was applied by the investing company—

(I) before the application of the loan to which section 247 applies, in repayment of any other loan to which section 247 applies, or

(II) in accordance with paragraph (a) or (b) of section 247(2);

and, for the purposes of this section, the investing company shall not be treated as having repaid so much of an amount out of a loan as does not exceed the amount, if any, of capital so recovered which has been previously treated under this section as being in repayment of a loan.

(iii) Where at any time after the application of the proceeds of the loan to which section 247 applies the investing company—

[2003.]

Finance Act 2003.

[*No. 3.*]

(I) has recovered any amount of capital from the company concerned or from a connected company, or

Pr.1 S.46

(II) is deemed, under subsection (2)(aa), to have recovered any amount of capital from the company concerned,

without using the amount recovered or an amount equal to the amount deemed to have been recovered in repayment of the loan, the investing company shall be treated for the purposes of this section as if the investing company had at that time repaid out of the loan an amount equal to the amount of capital recovered or deemed to have been recovered and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered or so deemed to have been recovered.

(iv) Where, after the application of the proceeds of a loan to which section 248 applies, the individual has recovered any amount of capital from the company concerned or from a connected company without using that amount in repayment of the loan, the individual shall be treated for the purposes of this section as if the individual had repaid that amount out of the loan and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.”,

and

(b) by substituting the following for paragraph (a) of subsection (2):

“(a) The investing company or the individual, as the case may be (in this paragraph referred to as the ‘borrower’) shall be treated as having recovered an amount of capital from the company concerned or from a connected company if—

(i) the borrower receives consideration of that amount or value for the sale of any part of the ordinary share capital of the company concerned or of a connected company or any consideration of that amount or value by means of repayment of any part of that ordinary share capital,

(ii) the company concerned or a connected company repays that amount of a loan or advance from the borrower,

(iii) the borrower receives consideration of that amount or value for assigning any debt due to the borrower from the company concerned or from a connected company.

(aa) (i) Where the company concerned is a company to which section 247(2)(a)(ii) applies, the investing company shall be deemed to have recovered from the company concerned an amount equal to so much of any capital recovered by the company concerned from another company, being a company more than 50 per cent of the ordinary share capital of which was directly owned by the company concerned, as is not applied by the company concerned—

(I) in repayment of any loan or part of a loan made to it by the investing company,

(II) in redemption, repayment or purchase of any of its ordinary share capital acquired by the investing company,

(III) in accordance with paragraph (a) or (b) of section 247(2), or

(IV) in repayment of a loan to which section 247 applies.

(ii) The company concerned shall be treated as having recovered an amount of capital from another company if—

(I) the company concerned receives consideration of that amount or value for the sale of any part of the ordinary share capital of the other company or any consideration of that amount or value by means of repayment of any part of that ordinary share capital,

(II) the other company repays that amount of a loan or advance from the company concerned, other than a repayment in respect of a specified loan,

(III) the company concerned receives consideration of that amount or value for assigning any debt due to the company concerned from the other company.

(iii) Where subparagraph (i) applies and more than one investing company has either—

[2003.]

Finance Act 2003.

[No. 3.]

(I) made a loan to the company concerned, or

Pr.1 S.46

(II) acquired any part of its share capital,

the amount deemed to have been recovered under that subparagraph shall be apportioned between the investing companies in proportion to the aggregate amount of any loan made and any money applied in acquiring that share capital by each company, but if the companies concerned agree between them to such other apportionment of the amount as they may consider appropriate and jointly specify in writing to the inspector, then the amount deemed to have been so recovered shall be apportioned accordingly.”.

(2) This section applies as respects any recovery of capital or deemed recovery of capital (within the meaning of section 249 as amended by this section) effected on or after 6 February 2003.

47.—(1) Section 289 of the Principal Act is amended—

Amendment of section 289 (calculation of balancing allowances and balancing charges in certain cases) of Principal Act.

(a) in subsection (6) by substituting “Subject to subsection (6A), where in a case within subsection (5)” for “Where in a case within subsection (5)”, and

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

“(6A) (a) Subsection (6) shall only apply in a case where the donor or seller is connected with the recipient or purchaser.

(b) Notwithstanding paragraph (a), subsection (6) shall not apply in any case where the donor or seller is not a company and the recipient or purchaser is a company.”.

(2) This section shall apply as respects a gift or sale of machinery or plant on or after 6 February 2003.

48.—(1) Chapter 9 of Part 4 of the Principal Act is amended by substituting the following for section 110:

Securitisation and related matters.

“Securitisation.

110.—(1) In this section—

‘authorised officer’ means an officer of the Revenue Commissioners authorised by them in writing for the purposes of this section;

‘qualifying asset’, in relation to a qualifying company, means an asset which consists of, or of an interest in, a financial asset;

‘financial asset’ includes—

(a) shares, bonds and other securities,

[No. 3.]

Finance Act 2003.

[2003.]

- (b) futures, options, swaps, derivatives and similar instruments,
- (c) invoices and all types of receivables,
- (d) obligations evidencing debt (including loans and deposits),
- (e) leases and loan and lease portfolios,
- (f) hire purchase contracts,
- (g) acceptance credits and all other documents of title relating to the movement of goods, and
- (h) bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments;

‘qualifying company’ means a company—

- (a) which is resident in the State,
- (b) which—
 - (i) acquires qualifying assets from a person,
 - (ii) as a result of an arrangement with another person holds or manages qualifying assets, or
 - (iii) has entered into a legally enforceable arrangement with another person which arrangement itself constitutes a qualifying asset,
- (c) which carries on in the State a business of holding, managing, or both the holding and management of, qualifying assets,
- (d) which, apart from activities ancillary to that business, carries on no other activities,
- (e) in relation to which company—
 - (i) the market value of all qualifying assets held or managed, or
 - (ii) the market value of all qualifying assets in respect of which the company has entered into legally enforceable arrangements,

is not less than €10,000,000 on the day on which the qualifying

assets are first acquired, first held, or an arrangement referred to in subparagraph (iii) of paragraph (b) is first entered into, by the company, and

Pr.1 S.48

- (f) which has notified in writing the authorised officer in a form prescribed by the Revenue Commissioners that it is or intends to be a company to which paragraphs (a) to (e) apply and has supplied such other particulars relating to the company as may be specified on the prescribed form,

but a company shall not be a qualifying company if any transaction or arrangement is entered into by it otherwise than by way of a bargain made at arm's length, apart from a transaction or arrangement where subsection (4) applies to any interest or other distribution payable under the transaction or arrangement unless the transaction or arrangement concerned is excluded from that provision by virtue of subsection (5).

(2) For the purposes of the Tax Acts, profits arising to a qualifying company, in relation to activities carried out by it in the course of its business, shall, notwithstanding any other provisions of the Tax Acts, be treated as annual profits or gains within Schedule D and shall be chargeable to corporation tax under Case III of that Schedule, and for that purpose—

- (a) the profits or gains shall be computed in accordance with the provisions applicable to Case I of that Schedule,
- (b) there shall be deducted, in computing the amount of the profits or gains to be charged to tax, the amount, in so far as it is not—
 - (i) otherwise deductible, or
 - (ii) recoverable from any other person or under any insurance, contract of indemnity or otherwise,

of any debt which is proved to be bad and of a doubtful debt to the extent that it is estimated to be bad, and

- (c) where at any time an amount or part of an amount which had been deducted under paragraph (b) is

recovered or is no longer estimated to be bad, the amount which had been deducted shall, in so far as it is recovered or no longer estimated to be bad, be treated as income of the qualifying company at that time.

(3) (a) Notwithstanding Chapter 5 of Part 12, a qualifying company shall not be eligible to surrender in accordance with that Chapter any amount eligible for relief from corporation tax.

(b) (i) Where in an accounting period a qualifying company incurs a loss, the company may make a claim requiring that the amount of the loss be set off against the amount of any profits of the company for any subsequent accounting period for so long as the company continues to be a qualifying company, and the company's profits for any accounting period shall be treated as reduced by the amount of the loss.

(ii) The claim referred to in subparagraph (i) shall be included with the return which the company is required to make under section 951 for the subsequent accounting period concerned.

(iii) The amount of a loss incurred by a qualifying company in an accounting period shall be computed for the purposes of this paragraph in the same way as any profits of the company in that period would have been computed under subsection (2).

(4) Any interest or other distribution which is paid out of the assets of a qualifying company to another person and is so paid in respect of a security referred to in section 130(2)(d)(iii) shall not be a distribution by virtue only of section 130(2)(d)(iii) unless the application of this subsection is excluded by subsection (5).

(5) (a) Subject to paragraph (b), subsection (4) shall not apply in respect of any interest or other distribution paid or payable out of the

assets of a qualifying company if such interest or other distribution has been paid as part of a scheme or arrangement the main purpose or one of the main purposes of which is to obtain a tax relief or the reduction of a tax liability, in either case arising from the operation of subsection (4), by a person within the charge to corporation tax (in this subsection referred to as the ‘beneficiary’) and the beneficiary is the person—

- (i) from whom the qualifying assets were acquired by the qualifying company, or
- (ii) with whom the qualifying company has entered into an arrangement referred to in subparagraph (ii) or (iii) of paragraph (b) of the definition of ‘qualifying company’.

(b) Paragraph (a) shall only apply where the qualifying company concerned is, at the time of the acquisition of the asset or the entering into of the arrangement, in possession, or aware, of information which can reasonably be used by it to identify the beneficiary.”.

(2) Section 246(3) of the Principal Act is amended by inserting the following after paragraph (c):

“(cc) interest paid in the State to a qualifying company (within the meaning of section 110),

(ccc) interest paid by a qualifying company (within the meaning of section 110) to a person who, by virtue of the law of a relevant territory, is resident for the purposes of tax in the relevant territory, except, in a case where the person is a company, where such interest is paid to the company in connection with a trade or business which is carried on in the State by the company through a branch or agency,”.

(3) Section 198(1) of the Principal Act is amended—

(a) in paragraph (c)(ii)(II), by deleting “and”,

(b) in paragraph (c)(iii)—

(i) by substituting “paid” for “payable”, and

(ii) by substituting “section 3 of the Asset Covered Securities Act 2001, and” for “section 2 of the Asset Covered Securities Act 2001.”,

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

“(iv) a person shall not be chargeable to income tax in respect of interest paid by a qualifying company (within the meaning of section 110) if the person is not a resident of the State and is regarded as being a resident of a relevant territory for the purposes of this subsection, and the interest is paid out of the assets of the qualifying company.”.

(4) (a) *Subsection (1)* shall apply as respects any asset—

- (i) acquired or, as a result of an arrangement with another person, held or managed, by a qualifying company (within the meaning of section 110 of the Principal Act as amended by this section), or
- (ii) in relation to which a qualifying company (within that meaning) has entered into a legally enforceable arrangement with another person,

on or after 6 February 2003.

(b) *Subsections (2) and (3)* shall apply as respects interest paid on or after 6 February 2003.

Wholesale debt instruments and related matters.

49.—(1) Chapter 3 of Part 8 of the Principal Act is amended by inserting the following after section 246:

“Interest in respect of wholesale debt instruments.

246A.—(1) In this section—

‘approved denomination’, in relation to a whole-sale debt instrument, means a denomination of not less than—

- (a) in the case of an instrument denominated in euro, €500,000;
- (b) in the case of an instrument denominated in United States Dollars, US\$500,000; or
- (c) in the case of an instrument denominated in a currency other than euro or United States Dollars, the equivalent in that other currency of €500,000;

and, for the purposes of this definition, the equivalent of an amount of euro in another currency shall be determined by reference to the rate of exchange—

- (i) in the case of instruments issued under a programme, at the time the programme under which the instrument is to be issued is first publicised; or
- (ii) in the case of all other instruments, on the date of issue of the instrument;

[2003.]

Finance Act 2003.

[No. 3.]

‘Revenue officer’ means an officer of the Revenue Commissioners; Pr.1 S.49

‘certificate of deposit’ means an instrument, either in physical or electronic form, relating to money in any currency which has been deposited with the issuer or some other person, being an instrument—

- (a) issued by a financial institution,
- (b) which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and
- (c) (i) in the case of instruments held in physical form, by the delivery of which, with or without endorsement, the right to receive the stated amount is transferable, or
(ii) in the case of instruments held in electronic form, in respect of which the right to receive the stated amount is transferable;

‘commercial paper’ means a debt instrument, either in physical or electronic form, relating to money in any currency, which—

- (a) is issued by—
 - (i) a financial institution, or
 - (ii) a company that is not a financial institution,
- (b) recognises an obligation to pay a stated amount,
- (c) carries a right to interest or is issued at a discount or at a premium, and
- (d) matures within 2 years;

‘financial institution’ has the same meaning as it has in section 906A;

‘relevant person’ means the person by or through whom a payment in respect of a wholesale debt instrument is made;

‘tax reference number’ has the meaning assigned to it by section 885;

‘wholesale debt instrument’ means a certificate of deposit or commercial paper, as appropriate.

- (2) (a) In this section and in any other provision of the Tax Acts or the Capital Gains Tax Acts which applies this

[No. 3.]

Finance Act 2003.

[2003.]

subsection, ‘recognised clearing system’ means the following clearing systems—

- (i) Bank One NA, Depository and Clearing Centre,
- (ii) Central Moneymarkets Office,
- (iii) Clearstream Banking SA,
- (iv) Clearstream Banking AG,
- (v) CREST,
- (vi) Depository Trust Company of New York,
- (vii) Euroclear,
- (viii) Monte Titoli SPA,
- (ix) Netherlands Centraal Instituut voor Giraal Effectenverkeer BV,
- (x) National Securities Clearing System,
- (xi) Sicovam SA,
- (xii) SIS Sega Intersettle AG, and
- (xiii) any other system for clearing securities which is for the time being designated, for the purposes of this section or any other provision of the Tax Acts or the Capital Gains Tax Acts which applies this subsection, by order of the Revenue Commissioners under paragraph (b) as a recognised clearing system.

(b) For the purposes of this section and sections 64 and 739B, the Revenue Commissioners may, designate by order one or more than one system for clearing securities as a ‘recognised clearing system’.

(c) An order of the Revenue Commissioners under paragraph (b) may—

- (i) contain such transitional and other supplemental provisions as appear to the Revenue Commissioners to be necessary or expedient, and
- (ii) be varied or revoked by a subsequent order.

[2003.]

Finance Act 2003.

[*No. 3.*]

(3) As respects any payment made in respect of a wholesale debt instrument— Pr.1 S.49

(a) if either—

(i) the person by whom the payment is made, or

(ii) the person through whom the payment is made,

is not resident in the State and the payment is not made by or through a branch or agency through which a company not resident in the State carries on a trade or business in the State, and

(I) the wholesale debt instrument is held in a recognised clearing system, and

(II) the wholesale debt instrument is of an approved denomination,

then—

(A) section 246(2) shall not apply to that payment, and

(B) the wholesale debt instrument shall not be treated as a relevant deposit (within the meaning of section 256) for the purposes of Chapter 4 of this Part,

or

(b) (i) if either—

(I) the person by whom the payment is made, or

(II) the person through whom the payment is made,

is resident in the State or the payment is made either by or through a branch or agency through which a company not resident in the State carries on a trade or business in the State,

and

(ii) (I) the wholesale debt instrument is held in a recognised clearing system and is of an approved denomination, or

(II) the person who is beneficially entitled to the interest is a resident of the State and

has provided the person's tax reference number to the relevant person, or

- (III) the person who is the beneficial owner of the whole-sale debt instrument and who is beneficially entitled to the interest is not resident in the State and has made a declaration of the kind described in subsection (5),

then, subject to subsection (4) or (5)—

- (A) section 246(2) shall not apply to that payment, and

- (B) the wholesale debt instrument shall not be treated as a relevant deposit (within the meaning of section 256) for the purposes of Chapter 4 of this Part.

(4) A relevant person who makes a payment in respect of a wholesale debt instrument shall as respects a case which is within paragraph (b)(ii)(I) or (b)(ii)(II), as the case may be, of subsection (3) and which is not within paragraph (a) of that subsection—

- (a) (i) be regarded as a person to whom section 891(1) applies as respects that case, if that provision would not otherwise apply to that person,

- (ii) be regarded as a 'relevant person' (within the meaning of section 894) for the purposes of that section as respects that case, if that person would not otherwise be a 'relevant person' (within that meaning), and

- (iii) in addition to the matters to be included in a return to be made under section 891 for a chargeable period (within the meaning of section 321(2)), include on that return, in respect of that case, the tax reference number of the person to whom the payment was made,

and

- (b) on being so required by notice given in writing by a Revenue officer, in relation to any person named by the

officer in the notice, deliver an account in writing of the amount of any payment made in respect of a wholesale debt instrument to that person together with details of the person's name and address and tax reference number if such details have not been included in a return made by that person under section 891.

Pr.1 S.49

(5) The declaration referred to in subsection (3)(b)(ii)(III) is a declaration in writing to a relevant person which—

- (a) is made by a person (in this section referred to as 'the declarer') to whom any payment in respect of which the declaration is made is payable by the relevant person, and is signed by the declarer,
- (b) is made in such form as may be prescribed or authorised by the Revenue Commissioners,
- (c) declares that at the time the declaration is made the person who is beneficially entitled to the interest is not resident in the State,
- (d) contains as respects the person mentioned in paragraph (c)—
 - (i) the name of the person,
 - (ii) the address of that person's principal place of residence, and
 - (iii) the name of the country in which that person is resident at the time that the declaration is made,
- (e) contains an undertaking by the declarer that, if the person referred to in paragraph (c) becomes resident in the State, the declarer shall notify the relevant person accordingly, and
- (f) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this section.

(6) Where a relevant person is satisfied that any payment made by that person in respect of a wholesale debt instrument has been made to a person to whom paragraph (b)(ii)(II) or (b)(ii)(III), as the case may be, of subsection (3) applies, the relevant person shall be entitled to continue to treat that person as a person to whom that paragraph applies until such time as

[No. 3.]

Finance Act 2003.

[2003.]

the relevant person is in possession, or aware, of information which can reasonably be taken to indicate that that paragraph no longer applies to that person.

(7) (a) A relevant person shall—

(i) keep and retain for the longer of the following—

(I) a period of 6 years after the declaration is made, and

(II) a period which ends not earlier than 3 years after the latest date on which any payment in respect of which the declaration was made is paid,

and

(ii) on being required by notice given in writing by a Revenue officer, make available to that officer within the time specified in the notice,

all declarations of the kind mentioned in this section that have been made in respect of any payment made by the relevant person.

(b) A Revenue officer may examine or take extracts from or copies of any declarations made available under paragraph (a).’.

(2) *Subsection (1)* shall apply as respects a wholesale debt instrument (within the meaning of section 246A of the Principal Act) issued on or after such day as the Minister for Finance may appoint by order.

(3) (a) Section 64 of the Principal Act is amended, as respects a “quoted eurobond” (within the meaning of that section) issued on or after the date of the passing of this Act, by—

(i) deleting the definition of “recognised clearing system” in subsection (1),

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

“(1A) The definition of ‘recognised clearing system’ in section 246A(2) applies for the purposes of this section as it applies for the purposes of section 246A.”,

and

(iii) deleting subsection (6).

[2003.]

Finance Act 2003.

[No. 3.]

(b) The Interest On Quoted Eurobonds (Designation of Registered Clearing Systems) Order 1995 (S. I. No. 15 of 1995) is revoked.

(c) Section 739B of the Principal Act is amended as on and from the passing of this Act by—

(i) deleting the definition of “recognised clearing system”, and

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

“(1A) The definition of ‘recognised clearing system’ in section 246A(2) applies for the purposes of this Chapter as it applies for the purposes of section 246A.”.

(4) Section 904A of the Principal Act is amended in subsection (3)(b) by substituting the following for subparagraph (ii):

“(ii) the relevant deposit taker is, in respect of each deposit in the sample of deposits, in possession of—

(I) a declaration mentioned in section 246A(3)(b)(ii)(III) or 263,

(II) the number referred to in paragraph (f)(ii) or (h)(ii) of the definition of ‘relevant deposit’ in section 256, or

(III) as respects a case within paragraph (b)(ii)(I) or (b)(ii)(II) of subsection (3) of section 246A, the tax reference number referred to in subsection (4) of that section,

as the case may be, and”.

(5) Section 20 of the Finance Act 2002 is amended by substituting the following for subsection (2):

“(2) (a) Subject to paragraph (b), subsection (1) applies as respects deposits made on or after the date of the passing of this Act.

(b) Paragraph (b) (in so far as it relates to a pension scheme) and paragraph (c) of subsection (1) apply to interest paid or credited on or after 1 January 2003 in respect of a deposit made on or after the date of the passing of this Act.”.

50.—Section 737 of the Principal Act is amended in subsection (8) by inserting the following after paragraph (b):

“(bb) Where in a year of assessment (in this section referred to as the ‘year of cessation’) the business of a special investment scheme ceases and an amount, but for that cessation, would under paragraph (b)(iii) be treated as an amount of allowable loss incurred in the next year of assessment, that amount may be deducted from chargeable gains accruing to the

Amendment of section 737 (special investment schemes) of Principal Act.

Pt.1 S.50

special investment scheme in the 3 years of assessment preceding the year of cessation taking chargeable gains accruing in a later year before those accruing in an earlier year, and there shall be made all such amendments of assessments or repayments as may be necessary to give effect to this paragraph.”.

Amendment of Chapter 1 (income tax and corporation tax) of Part 45 of Principal Act.

51.—(1) Chapter 1 of Part 45 of the Principal Act is amended—

(a) in section 1035 by substituting “Subject to section 1035A, a non-resident person” for “A non-resident person”, and

(b) by inserting after section 1035 the following section:

“Relieving provision to section 1035. 1035A.—(1) In this section—
‘authorised agent’ means—

(a) a person acting as an investment business firm, or an authorised member firm—

(i) under an authorisation given by the Central Bank of Ireland under section 10(1) of the Investment Intermediaries Act 1995 or, as the case may be, section 18 of the Stock Exchange Act 1995 and not subsequently revoked, or

(ii) under an authorisation, which corresponds to either of the authorisations referred to in subparagraph (i), given by a competent authority in another Member State for the purpose of Council Directive 93/22/EEC of 10 May 1993¹ as amended or extended from time to time, and not subsequently revoked,

or

(b) a credit institution duly authorised by virtue of Directive No. 2000/12/EC of 20 March 2000² which provides investment business services and in so doing does not exceed the terms of its authorisation and that authorisation has not been revoked,

and ‘authorisation’ shall be construed accordingly;

¹ OJ No. L.141, of 11 June 1993, p.27.

² OJ No. L.126, of 26 May 2000, p.1.

[2003.]

Finance Act 2003.

[No. 3.]

‘authorised member firm’ has the meaning assigned to it by section 3 of the Stock Exchange Act 1995; Pr.1 S.51

‘competent authority’ has the meaning assigned to it by section 2 of the Investment Intermediaries Act 1995;

‘financial trade’ means a trade exercised in the State by a non-resident person through an authorised agent under and within the terms of the authorised agent’s authorisation;

‘investment business firm’ has the meaning assigned to it by section 2 of the Investment Intermediaries Act 1995;

‘investment business services’ has the meaning assigned to it by section 2 of the Investment Intermediaries Act 1995.

(2) For the purposes of this section—

(a) an authorised agent, through whom a non-resident person exercises a financial trade in the State, is independent in relation to the non-resident person for a chargeable period if throughout the chargeable period—

(i) the authorised agent does not otherwise act on behalf of the non-resident person,

(ii) the authorised agent, when acting on behalf of the non-resident person, does so in an independent capacity,

(iii) the authorised agent, when acting on behalf of the non-resident person, does so in the ordinary course of the authorised agent’s business, and

(iv) the requirements referred to in subsection (4), in relation to the financial trade, are satisfied,

(b) an authorised agent shall not be regarded as acting in an independent capacity when acting on behalf of a non-resident person unless, having regard to its legal, financial and commercial characteristics, the relationship between them is a relationship between persons carrying on independent businesses that deal with each other at arm’s length, and

(c) references to an amount of profits or gains of a trade, exercised in the State by a non-resident person, to which another person has a beneficial entitlement are references to the amount of profits or gains of the trade to which the other person has, or may acquire, a beneficial entitlement by virtue of—

(i) any interest of the other person (whether or not an interest giving a right to an immediate payment of a share of the profits or gains of the trade) in property in which the whole or any part of the profits or gains of the trade are represented, or

(ii) any interest of the other person in, or other rights in relation to, the non-resident person.

(3) Notwithstanding section 18, a non-resident person shall not be assessable and chargeable to income tax in respect of any profits or gains arising or accruing for a chargeable period to the non-resident person from a financial trade exercised in the State solely through an authorised agent who throughout the chargeable period is independent in relation to the non-resident person.

(4) The requirements of this subsection are satisfied, at any time, in relation to a financial trade exercised in the State by a non-resident person through an authorised agent where at that time—

(a) the aggregate of the amount of the profits or gains of the trade, to which the authorised agent and persons, who are both resident in the State and connected with the authorised agent, have a beneficial entitlement, does not exceed 20 per cent of the amount of the profits or gains of the trade, or

(b) the Revenue Commissioners are satisfied that it is the intention of the authorised agent, that the aggregate of the amount of the profits or gains of the trade, to which the authorised agent and persons who are resident in the State and connected with the authorised agent have beneficial entitlement, does not exceed 20

[2003.]

Finance Act 2003.

[No. 3.]

per cent of the amount of the profits or gains of the trade and that the reasons for the failure to fulfill that intention, at that time, are of a temporary nature.

Pr.1 S.51

(5) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by them.”.

(2) This section is deemed to have applied in respect of chargeable periods commencing on or after 1 January 2002.

52.—(1) The Principal Act is amended in Chapter 1 of Part 26—

Cessation of special investment business as separate business.

(a) in section 707—

(i) in subsection (2)—

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

“(a) Where the life assurance business of an assurance company includes more than one of the following classes of business—

(i) pension business,

(ii) general annuity business, and

(iii) life assurance business (excluding such pension business and general annuity business),

then, for the purposes of the Corporation Tax Acts, the business of each such class shall be treated as though it were a separate business, and subsection (1) shall apply separately to each such class of business as if it were the only business of the company.”,

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

“(c) Any amount of excess referred to in section 83(3) in relation to special investment business, which is available to be carried forward from an accounting period ending in 2002, may for the purposes of that section, be carried forward to the succeeding accounting period and treated as relating to life assurance business, other than new basis business (within the meaning of section 730A(1)).”,

and

(ii) by deleting subsection (5)(a)(iii),

(b) in section 708 by inserting the following after subsection (6):

“(6A) Acquisition expenses for any accounting period ending on or before 31 December 2002 which relate to special investment business shall, for the purposes of subsection (6), be treated as acquisition expenses which relate to life assurance business (excluding pension business and general annuity business).”

(c) in section 711—

- (i) in subsection (1)(c) by deleting “, otherwise than in respect of the special investment fund,”
- (ii) in subsection (4) by substituting “(excluding pension business and general annuity business)” for “(excluding pension business, general annuity business and special investment business)”

(d) in section 713(3) by deleting “, other than special investment business,”

(e) in section 719—

- (i) in subsection (1), in the definition of “life business fund” by deleting “other than its special investment business”
- (ii) in subsection (3)—
 - (I) in paragraph (b) by deleting “or special investment business”
 - (II) by substituting “(excluding pension business and general annuity business)” for “(excluding pension business, general annuity business and special investment business)”

(iii) in subsection (4)—

- (I) in paragraph (a)(i) by substituting the following for clause (I):

“(I) assets linked solely to life assurance business (excluding pension business and general annuity business), or pension business, and”

and

- (II) in paragraph (b)(i)(I) by deleting “or special investment business”

(iv) in subsection (5)(a) by deleting “or special investment business”

(v) in subsection (6) by substituting “(excluding pension business or general annuity business)” for “(excluding pension business, general annuity business or special investment business)” and

(vi) by substituting the following for subsection (7)—

[2003.]

Finance Act 2003.

[No. 3.]

“(7) For the purposes of this section, assets of the foreign life assurance fund and liabilities of the foreign life assurance business shall be disregarded in determining the investment reserve.”, Pr.1 S.52

(f) in section 723—

(i) in subsection (1)—

(I) by substituting the following for the definition of “special investment fund”:

“‘special investment fund’ means a fund in respect of which the conditions specified in subsection (2) are satisfied as respects accounting periods ending on or before 31 December 2002, of the assurance company concerned;”,

and

(II) in the definition of “special investment policy” by substituting the following for paragraph (a):

“(a) the conditions specified in subsection (3) are satisfied as respects accounting periods ending on or before 31 December 2002, of the assurance company concerned, and”,

and

(III) by deleting subsections (6) and (7),

(g) in section 724 by substituting “Where, in an accounting period ending on or before 31 December 2002, an assurance company transfers” for “Where an assurance company transfers”,

(h) in section 725—

(i) in subsection (1) by substituting “at any particular time on or before 31 December 2002,” for “at any particular time”, and

(ii) in subsection (2) by substituting “at any time on or before 31 December 2002,” for “at any time”,

and

(i) in section 839—

(i) in subsection (1) by deleting paragraph (b),

(ii) in subsection (2)(a) by substituting “paragraph (c) or (d)” for “paragraph (b), (c) or (d)”,

(iii) in subsection (2)(a)(ii) by substituting “section 737(3)(a)(ii) or 838(2)(b)” for “section 723(3)(b), 737(3)(a)(ii) or 838(2)(b)”,

(iv) in subsection (2)(b)(i) by substituting “paragraph (c) or (d)” for “paragraph (b), (c) or (d)”,

Pt.1 S.52

- (v) in subsection (2)(b)(ii) by substituting “paragraph (c) or (d)” for “paragraph (b), (c) or (d)”,
- (vi) in subsection (2)(b)(ii)(II) by substituting “section 737(3)(a)(ii) or 838(2)(b)” for “section 723(3)(b), 737(3)(a)(ii) or 838(2)(b)”, and
- (vii) in subsection (3) by deleting “723,”.

(2) This section applies as respects accounting periods ending in 2003 and subsequent years.

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

53.—The Principal Act is amended in Chapter 1A of Part 27—

(a) in section 739B—

(i) in subsection (1)—

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

“‘credit union’ has the meaning assigned to it in section 2 of the Credit Union Act 1997;”,

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

“‘money market fund’ has the same meaning as it has in Regulation (EC) No. 2423/2001 of the European Central Bank of 22 November 2001¹;”,

(III) by substituting the following for the definition of “relevant Regulations”:

“‘relevant Regulations’ means the European Communities (Undertaking for Collective Investment in Transferable Securities) Regulations 1989 (S.I. No. 78 of 1989) as amended or extended from time to time and any other regulations that may be construed as one with those Regulations;”, and

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

“‘Service’ means the Courts Service;”,

and

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

“(2A) (a) Where money under the control or subject to the order of any Court is applied to acquire units (in this section referred to as ‘relevant units’) in an investment undertaking, subsections (2) and (3) of section 739E, section 739F and section 904D shall apply as if references in those

¹ OJ No. L333 of 17 December 2001, p.1

sections and subsections to the investment undertaking were to read as references to the Service. Pr.1 S.53

(b) The Service shall in respect of each year of assessment, on or before 28 February in the year following the year of assessment, make a return (including where it is the case, a nil return) to the Revenue Commissioners in electronic format approved by them, which in respect of each year of assessment—

(i) specifies the total amount of gains (in this section referred to as the ‘total gains’) arising to the investment undertaking in respect of relevant units, and

(ii) specifies in respect of each person who is or was beneficially entitled to those units—

(I) where available, the name and address of the person,

(II) the amount of the total gains to which the person has beneficial entitlement, and

(III) such other information as the Revenue Commissioners may require.”,

(b) in section 739C by substituting the following for subsection (1):

“(1) Notwithstanding anything in the Acts, an investment undertaking shall, subject to subsection (1A), not be chargeable to tax in respect of relevant profits otherwise than to the extent provided for in this Chapter.

(1A) (a) An investment undertaking that is an investment undertaking within the meaning of paragraph (b) of the definition of investment undertaking shall not be chargeable to tax in respect of relevant profits where—

(i) it is constituted otherwise than under trust law or statute law, and

(ii) each of the units of the investment undertaking—

(I) is beneficially owned by a pension fund, or

(II) is held by a custodian or trustee for the benefit of a pension fund.

- (b) For the purposes of the Acts, relevant income and relevant gains in relation to an investment undertaking to which paragraph (a) applies, shall be treated as arising or, as the case may be, accruing, to each unit holder of the investment undertaking in proportion to the value of the units beneficially owned by the unit holder, as if the relevant income and relevant gains had arisen or, as the case may be, accrued, to the unit holders in the investment undertaking without passing through the hands of the investment undertaking.”,
- (c) in section 739D(6)—
- (i) in paragraph (h) by substituting “Schedule 2B,” for “Schedule 2B, or”, and
- (ii) by inserting the following after paragraph (i) (inserted by section 4(1)(c) of the Pensions (Amendment) Act 2002):
- “(j) is a credit union that has made a declaration to the investment undertaking in accordance with paragraph 9B of Schedule 2B, or
- (k) (I) is a company that—
- (A) is or will be within the charge to corporation tax in accordance with section 739G(2), in respect of payments made to it by the investment undertaking,
- (B) has made a declaration to that effect and has provided the investment undertaking with the company’s tax reference number (within the meaning of section 885),
- and
- (II) the investment undertaking is a money market fund,”,
- (d) in section 739D(9A)(b), in subparagraph (iii) by substituting “paragraphs (a) to (k)” for “paragraphs (a) to (h)”,
- and
- (e) in section 739G(2) by substituting the following for paragraph (b):
- “(b) where the unit holder is not a company and the payment is a payment from which appropriate tax has not been deducted, the payment shall be treated as if it were a payment from an offshore fund to which the provisions of Chapter 4 of this Part apply, and the provisions of section 747D, or section 747E apply as appropriate,”.

[2003.]

Finance Act 2003.

[No. 3.]

54.—Section 706 of the Principal Act is amended in subsection (3)—

Pr.1
Amendment of
section 706
(interpretation and
general (Part 26))
of Principal Act.

(a) in paragraph (a) by substituting “an individual who, at the time the contract is made, is” for “an individual who is”, and

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

“(d) (i) any PRSA contract (within the meaning of Chapter 2A of Part 30), and

(ii) any contract with a PRSA provider (within that meaning) being a contract which was entered into for the purposes only of the PRSA concerned;”.

55.—(1) Section 747E of the Principal Act is amended in subsection (1) by substituting the following for paragraph (a):

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

“(a) be treated as an amount of income chargeable to tax under Case IV of Schedule D, and the rate of corporation tax to be charged on that income shall, notwithstanding section 21A(3), be the rate of income tax chargeable on income referred to in paragraph (b), and”.

(2) *Subsection (1)* is deemed to have applied as on and from 1 January 2001.

56.—Schedule 2B of the Principal Act is amended—

Amendment of
Schedule 2B
(investment
undertaking
declarations) of
Principal Act.

(a) by inserting the following after paragraph 9A:

“Declaration of Credit Union

9B. The declaration referred to in section 739D(6)(j) is a declaration in writing to the investment undertaking which—

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

(b) is signed by the declarer,

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

(d) contains the name and address of the declarer,

(e) declares that, at the time when the declaration is made the person entitled to the units is a credit union,

(f) contains such other information as the Revenue Commissioners may reasonably require for the purposes of Chapter 1A of Part 27.”,

and

Pt.1 S.56

- (b) in paragraph 14(d), in clause (i) by substituting “paragraphs (a) to (k)” for “paragraphs (a) to (h)”.

Amendment of Part
26 (life assurance
companies) of
Principal Act.

57.—The Principal Act is amended in Part 26—

- (a) in section 730A(1)—

- (i) by inserting the following after the definition of “assurance company”:

“ ‘credit union’ has the meaning assigned to it in section 2 of the Credit Union Act 1997;

‘financial institution’ means—

- (a) a person who holds 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 duly authorised by virtue of Directive No. 2000/12/EC of 20 March 2000¹;

and

- (ii) by inserting the following after the definition of “new basis business”:

“ ‘Service’ means the Courts Service;”,

- (b) in section 730B by inserting the following after subsection (3):

“(4) For the purposes of this Chapter—

- (a) where a policyholder is a person entrusted to pay all premiums (in this subsection referred to as ‘group premiums’) in respect of a life policy (in this subsection referred to as a ‘group policy’), out of money under the control or subject to the order of any Court, this Chapter shall apply as if the group policy comprised separate life policies (in this subsection referred to as ‘separate life policies’),
- (b) each person beneficially entitled to any part of the rights conferred by the group policy shall be treated as being the policyholder of a separate life policy,
- (c) the premiums paid in respect of each separate life policy shall be such amount of the said money included in group premiums paid, which is beneficially owned by the policyholder of the separate life policy,
- (d) a gain which, but for the provisions of section 730D(2), would have arisen on the happening

¹OJ No. L126, of 26 May 2000, p.1

[2003.]

Finance Act 2003.

[No. 3.]

of a chargeable event in relation to the group policy shall be treated as if it were a gain arising on a chargeable event in relation to any separate policy where, and to the extent that, the gain is beneficially owned by the policyholder of that separate policy, Pr.1 S.57

(e) subsections (2), (3) and (4) of section 730F, sections 730G and 730GA and section 904C apply as if references in those subsections and sections to an assurance company were to read as references to the Service, and

(f) the Service shall in respect of each year of assessment, on or before 28 February in the year following the year of assessment, make a return (including where it is the case, a nil return) to the Revenue Commissioners in electronic format approved by them, which in respect of each year of assessment—

(i) specifies the total amount of gains (in this section referred to as the ‘total gains’) arising in respect of the group policy, and

(ii) specifies in respect of each policyholder of a separate policy—

(I) where available, the name and address of the policyholder,

(II) the amount of the total gains to which the person has beneficial entitlement, and

(III) such other information as the Revenue Commissioners may require.”,

(c) in section 730C(2)(a) by deleting “(within the meaning of section 906A)”,

(d) in section 730D—

(i) in subsection (2) by substituting the following for paragraph (b):

“(b) immediately before the chargeable event, the policyholder is—

(i) a company carrying on life business,

(ii) an investment undertaking (within the meaning of section 739B),

(iii) (I) a person who is entitled to exemption from income tax under Schedule D by virtue of section 207(1)(b), or

(II) a person who is entitled to exemption from corporation tax by virtue of section 207(1)(b) as it

applies for the purposes of corporation tax under section 76(6),

- (iv) a PRSA provider (which has the same meaning as that assigned to it in Chapter 2A (inserted by the Pensions (Amendment) Act 2002) of Part 30),
- (v) a credit union, or
- (vi) a person entrusted to pay all premiums payable, in respect of the life policy, out of money under the control or subject to the order of any Court,

and the assurance company which commenced the life policy is in possession of a declaration, in relation to the life policy, of a kind referred to in section 730E(3), or”,

(e) in section 730E(3)—

- (i) by substituting the following for paragraphs (e) and (f):

“(e) declares that the policyholder, at the time the declaration is made, is—

- (i) a company carrying on life business,
- (ii) an investment undertaking (which has the same meaning as that assigned to it in section 739B),
- (iii) (I) a person who is entitled to exemption from income tax under Schedule D by virtue of section 207(1)(b), or
- (II) a person who is entitled to exemption from corporation tax by virtue of section 207(1)(b) as it applies for the purposes of corporation tax under section 76(6),
- (iv) a PRSA provider (which has the same meaning as that assigned to it in Chapter 2A (inserted by the Pensions (Amendment) Act 2002) of Part 30),
- (v) a credit union, or
- (vi) a person entrusted to pay all premiums payable, in respect of the life policy, out of money under the control or subject to the order of any Court,

[2003.]

Finance Act 2003.

[No. 3.]

- (f) contains an undertaking that should the policyholder cease to be a person referred to in subparagraph (i) to (v), or (vi) of paragraph (e), the assurance company will be advised accordingly, and”,

Pr.1 S.57

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

“(5) An insurance company shall keep and retain declarations referred to in this section for a period of 6 years from the time the life policy in respect of which the declaration was made ceases.”,

and

(f) by substituting the following for section 730GB:

“Capital
acquisitions tax: set-
off.

730GB.—Where on the death of a person, an assurance company is liable to account for appropriate tax (within the meaning of section 730F(1)) in connection with a gain arising on a chargeable event in relation to a life policy, the amount of such tax, in so far as it does not exceed the amount of appropriate tax to which the assurance company would be liable if that tax was calculated in accordance with section 730F(1)(a), shall be treated as an amount of capital gains tax paid for the purposes of section 63 of the Finance Act 1985.”.

58.—(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) in the definition of “qualifying period” by substituting “31 December 2004” for “5 April 2005”,

(b) in subsection (2)(c)(ii) by substituting “ $66 - \frac{(11 \times E)}{€1,270,000}$ ” for the formula,

(c) in subsection (8) by substituting “the year of assessment 2004” for “the year 1999-2000”,

(d) in subsection (9) by substituting “the year of assessment 2004” for “the year 1999-2000”, and

(e) by substituting the following for subsection (14):

“(14) (a) A certificate referred to in subsection (12) shall not be issued without the approval in writing of the authorised officer and where the authorised officer has not received the information sought under subsection (13)(d), or has reason to believe that the conditions for the relief are not, or will not be, satisfied, the authorised officer shall not give such approval.

Pt.1 S.58

(b) Where, in accordance with paragraph (a), the authorised officer does not give the approval referred to in that paragraph, the officer shall issue a determination to that effect and the provisions of section 949 shall apply to such determination as if it were a determination made on a matter referred to in section 864.”.

(2) (a) Paragraphs (a) and (e) of subsection (1) shall apply with effect from the date of the passing of this Act.

(b) Paragraph (b) of subsection (1) is deemed to have applied as on and from 1 January 2002.

(c) Paragraphs (c) and (d) of subsection (1) are deemed to have applied as on and from 20 July 2000.

CHAPTER 4

Corporation Tax

Provisions relating
to loss relief.

59.—(1) The Principal Act is amended—

(a) in section 243B(4)(b) (inserted by the Finance Act 2002), by substituting “The” for “Subject to paragraph (c), the”,

(b) in section 396A (inserted by the Finance Act 2001), by inserting the following after subsection (4):

“(5) A claim under subsection (3) shall be made within 2 years from the end of the accounting period in which the loss is incurred.”,

(c) in section 396B (inserted by the Finance Act 2002)—

(i) in subsection (2) by substituting “amounts which could, if a timely claim for such set off had been made by the company, have been set off” for “amounts set off”, and

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

“(6) A claim under subsection (2) shall be made within 2 years from the end of the accounting period in which the loss is incurred.”,

(d) in section 420B (inserted by the Finance Act 2002) by substituting the following for subsection (2):

“(2) Where in any accounting period the surrendering company has incurred a relevant trading loss, computed as for the purposes of section 396(2), or an excess of relevant trading charges on income, in carrying on a trade in respect of which the company is within the charge to corporation tax, and the amount of the loss or excess is greater than an amount equal to the aggregate of the amounts which could, if timely claims had been made for such set off, have been set off in respect of that loss or excess for the purposes of corporation tax against—

(a) the income of the company in accordance with section 243A or section 396A,

[2003.]

Finance Act 2003.

[No. 3.]

(b) the income of the company from the sale of goods in accordance with section 454 or 455, and

(c) income of any other company in accordance with section 420A or 456,

the claimant company may claim relief under this section for its corresponding accounting period in respect of the amount (in this section referred to as the ‘relievable loss’) by which the loss or excess is greater than that aggregate.”,

and

(e) in section 1085 in subsection (2)—

(i) in paragraph (a) by inserting “, 396A(3)” after “396(2)”,

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

“(ba) the total amount of the relevant trading loss referred to in subsection (2) of section 396B for the chargeable period shall be treated for the purposes of that section as reduced by 50 per cent,”

and

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

“(ca) the total amount of the loss or excess referred to in subsection (3) of section 420A for the chargeable period shall be treated for the purposes of Chapter 5 of Part 12 as reduced by 50 per cent,

(cb) the total amount of the relevant trading loss referred to in subsection (2) of section 420B for the chargeable period shall be treated for the purposes of Chapter 5 of Part 12 as reduced by 50 per cent,”.

(2) This section applies—

(a) subject to paragraph (b), as respects accounting periods ending on or after 6 February 2003, and

(b) in the case of paragraphs (c)(i) and (d) of subsection (1), as respects a claim under section 396B, or as the case may be section 420B, made on or after 6 February 2003.

60.—(1) The Principal Act is amended in section 449(2)—

Unilateral credit relief.

(a) in paragraph (a) by inserting “reduced by the relevant foreign tax” after “the amount so receivable”, and

(b) in paragraph (b), by inserting “increased by the amount of the relevant foreign tax,” after “for the relevant accounting period”.

(2) Schedule 24 to the Principal Act is amended—

(a) in paragraph (9D)(1)(a) by substituting the following for the definition of relevant interest:

“ ‘relevant interest’ means interest receivable by a company—

(a) which falls to be taken into account in computing the trading income of a trade carried on by the company, and

(b) from which relevant foreign tax is deducted.”,

and

(b) in paragraph (9D)(1)(b)—

(i) in subclause (i) by inserting “reduced by the relevant foreign tax” after “the amount of the relevant interest”, and

(ii) in subclause (ii) by inserting “increased by the amount of the relevant foreign tax” after “for the accounting period”.

(3) This section applies as respects accounting periods ending on or after 6 February.

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

61.—(1) Section 130 of the Principal Act is amended by inserting the following after subsection (2A):

“(2B) Subsection (2)(d)(iv) shall not apply as respects interest, other than interest to which section 452 or 845A applies, paid to a company which is a resident of a Member State of the European Communities other than the State and, for the purposes of this subsection, a company is a resident of a Member State of the European Communities if the company is by virtue of the law of that Member State resident for the purposes of tax (being any tax imposed in the Member State which corresponds to corporation tax in the State) in such Member State.”.

(2) This section applies as respects any interest paid or other distribution made on or after 6 February 2003.

Amendment of Part 24A (tonnage tax) of Principal Act.

62.—(1) The Principal Act is amended in Part 24A—

(a) in section 697A(1)—

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

“ ‘commencement date’ means the date of the passing of the *Finance Act 2003*;”,

and

(ii) in the definition of “relevant shipping income”—

[2003.]

Finance Act 2003.

[No. 3.]

- (I) by the deletion of the following from paragraph Pr.1 S.62
(a):

“, including income in respect of which the conditions set out in section 697I are met”,

- (II) by the deletion of the following from paragraph
(b):

“, including income in respect of which the conditions set out in section 697I are met”,

- (III) by substituting the following for paragraph (c):

“(c) towage, salvage or other marine assistance by a qualifying ship operated by the company, but does not include income from any such work undertaken in a port or an area under the jurisdiction of a port authority,”,

- (IV) by substituting the following for paragraph (e):

“(e) the provision on board a qualifying ship operated by the company of goods or services ancillary to the carriage of passengers or cargo, but only to the extent that such goods or services are provided for consumption on board the qualifying ship,”,

and

- (V) by deleting paragraphs (h) and (m),

- (b) by deleting section 697I,

- (c) in section 697L, by inserting the following after subsection (2):

“(3) A company to which subsection (1) applies shall, as respects any activities which are treated by virtue of that subsection as a separate trade distinct from all other activities carried on by that company as part of its trade, comply with all the requirements of the Tax Acts and the Capital Gains Tax Acts as respects those activities regarding the computation of tax and the keeping of records separate from any other activity carried on by that company.”,

and

- (d) by the insertion of the following after section 697L:

“Transactions between associated persons and between tonnage tax trade and other activities of same company.

697LA.—(1) In this section—

‘control’ shall be construed in accordance with section 11;

‘losses’ includes amounts in respect of which relief may be given in accordance with section 83(3) and Part 12;

‘transaction’ includes any agreement, arrangement or understanding of any kind (whether or not it is, or is intended to be, legally enforceable).

(2) Where—

(a) provision is made or imposed as between a tonnage tax company and another company by means of a transaction,

(b) the results of the transaction are taken into account in computing the tonnage tax company’s relevant shipping income,

(c) at the time of the transaction—

(i) one of the companies is directly or indirectly under the control of the other, or

(ii) both of the companies are, directly or indirectly, under the control of the same person or persons,

and

(d) the relevant shipping income of the tonnage tax company is greater than it would be if the parties to the transaction had been independent parties dealing at arm’s length,

then, the income or losses of both companies shall be computed for any purpose of the Tax Acts as if the consideration in the transaction had been that which would have obtained if the transaction had been a transaction between independent persons dealing at arm’s length.

(3) Subsection (2) shall apply in relation to a tonnage tax company where provision is made or imposed as between the company’s tonnage tax trade and other activities carried on by the company as if—

- (a) that trade and those other activities were carried on by two different persons,
 - (b) those persons had entered into a transaction, and
 - (c) the two persons were both controlled by the same person at the time of the making or imposition of the provision.
- (4) A company to which subsection (2) or (3) applies shall keep for a period not less than 6 years sufficient documentation to prove how prices and terms have been determined in a transaction to which that subsection applies, including a written and detailed explanation of the pricing principles it has applied in relation to any such business transaction.
- (5) An officer of the Revenue Commissioners may by notice in writing require a company to which subsection (2) or (3) applies to furnish him or her with such information, particulars or documentation as may be necessary for that officer to establish whether or not the company has complied with this section.
- (6) Section 1052 shall apply to a failure to comply with subsection (5) as it applies to a failure to deliver a return referred to in that section.
- (7) Sections 900 and 901 shall apply to records under this section as if they were books, records or documents within the meaning of section 900.
- (8) Nothing in this section is to be construed as affecting the computation of a company's tonnage tax profits.

Treatment of
finance costs.

697LB.—(1) (a) In this section—

‘deductible finance costs outside the tonnage tax trade’ means—

- (i) in relation to a tonnage tax company, the total of the amounts that may be taken into account in respect of finance costs in calculating for the purpose of corporation tax the

company's profits other than relevant shipping profits, and

(ii) in relation to a group of companies, so much of the group's finance costs as may be taken into account in calculating for the purposes of corporation tax—

(I) in the case of a group member which is a tonnage tax company, the company's profits other than relevant shipping profits, and

(II) in the case of a group member which is not a tonnage tax company, the company's profits;

'finance costs', in relation to a company, means the cost of debt finance for that company, including—

(i) any interest expense which gives rise to a deduction under section 81 or relief under Part 8,

(ii) any gain or loss referred to in section 79 in relation to debt finance,

(iii) the finance cost implicit in a payment under a finance lease,

(iv) the finance cost payable on debt factoring or on any similar transaction, and

(v) any other costs arising from what would be considered on generally accepted accounting practice to be a financing transaction;

'finance lease', in relation to finance costs, means any arrangements that provide for machinery or plant to be leased or

otherwise made available by a person (in this definition referred to as the ‘lessor’) to another person such that, in cases where the lessor and persons connected with the lessor are all companies resident in the State—

- (i) the arrangements, or
- (ii) the arrangements in which they are comprised,

fall, in accordance with generally accepted accounting practice, to be treated in the accounts, including any consolidated group accounts relating to two or more companies of which that company is one, of one or more of those companies as a finance lease or as a loan;

‘total finance costs’ means—

- (i) in relation to a tonnage tax company, so much of the company’s finance costs as could, if there were no tonnage tax election, be taken into account in calculating the company’s profits for the purposes of corporation tax, and
- (ii) in relation to a group of companies, so much of the group’s finance costs as could, if there were no tonnage tax election, be taken into account in calculating for the purposes of corporation tax the profits of any group member.

- (b) For the purposes of this section, where, in the case of a group of companies, an accounting period of a company does not coincide with the corresponding accounting period of another group company or companies, then the periods shall be matched on whatever basis appears to be just and reasonable.

(2) Where it appears, in relation to an accounting period of a tonnage tax company (not being a member of a group of companies) which carries on tonnage tax activities and which also carries on other activities, that the company's deductible finance costs outside the tonnage tax trade exceed a fair proportion of the company's total finance costs, then an adjustment as determined in accordance with subsection (3) shall be made in computing the company's profits for corporation tax purposes for that accounting period.

(3) (a) The proportion of the company's deductible finance costs outside the tonnage tax trade which are to be treated as exceeding a fair proportion of the company's total finance costs shall be determined on a just and reasonable basis.

(b) The just and reasonable determination referred to in paragraph (a) shall be made by reference to the extent to which the debt finance of the company, in respect of which the company's total finance costs are incurred, is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.

(4) Where an adjustment is to be made under subsection (2), an amount equal to the excess determined in accordance with subsection (3) shall be taken into account in computing the trading income of the company's non-tonnage tax activities for the accounting period in respect of which the adjustment arises.

(5) Where it appears, in relation to an accounting period of a tonnage tax company (being a member of a tonnage tax group) where the activities carried on by the members of the group include activities other than the carrying on of a tonnage tax trade or tonnage tax trades, that the group's deductible finance costs outside the tonnage tax trade exceed a fair proportion of the group's total finance costs, then an adjustment as determined in accordance with subsection (6) shall be made in computing the company's profits for corporation tax purposes for that accounting period.

(6) (a) The proportion of the group's deductible finance costs outside the tonnage tax trade which are to be treated as exceeding a fair proportion of the company's total finance costs shall be determined on a just and reasonable basis.

(b) The just and reasonable determination referred to in paragraph (a) shall be made by reference to the extent to

[2003.]

Finance Act 2003.

[No. 3.]

which the debt finance of the group, in respect of which the group's total finance costs are incurred, is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.

Pr.1 S.62

(7) Where an adjustment is to be made under subsection (5), an amount equal to the proportion of the excess determined in accordance with subsection (6) which the company's tonnage tax profits bears to the tonnage tax profits of all the members of the group shall be taken into account in computing the trading income of the company's non-tonnage tax activities for the accounting period in respect of which the adjustment arises.

(8) No adjustment shall be made under this section if—

(a) in calculating for a period a company's deductible finance costs outside the tonnage tax trade of the company, or

(b) in calculating for a period a group's deductible finance costs outside the tonnage tax trades of the group,

the amount taken into account in respect of costs and losses is exceeded by the amount taken into account in respect of profits and gains.”.

(2) Section 53 of the Finance Act 2002 is amended by substituting the following for subsection (5):

“(5) This section shall come into operation as on and from the date of passing of the *Finance Act 2003*.”.

(3) This section shall apply as on and from the date of the passing of this Act.

63.—Section 430 of the Principal Act is amended—

(a) in subsection (1) by—

(i) the deletion of “or” in the second place in which it occurs in paragraph (d), and

(ii) the insertion of the following after paragraph (d):

“(da) a company controlled by or on behalf of—

(i) a Member State of the European Communities (other than the State) or,

(ii) the government of a territory, with which government, arrangements having the force of law by virtue of section 826 have been made,

and which company is not otherwise a close company, or”.

Amendment of section 430 (meaning of “close company”) of Principal Act.

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

“(2A) For the purposes of this section—

(a) a company shall be treated as controlled by or on behalf of a Member State of the European Communities (other than the State) or the government of a territory with which arrangements having the force of law by virtue of section 826 have been made only if it is under the control of that Member State or the government of that territory, or of persons acting on behalf of that Member State or the government of that territory, independently of any other person, and

(b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company by virtue of being under the control of persons acting independently of that Member State or the government of that territory.”.

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

64.—Schedule 4 to the Principal Act is amended—

- (a) by inserting “57A. The Irish Sports Council.” after “57. The Irish Medicines Board.”,
- (b) by inserting “69A. National Consultative Committee on Racism and Interculturalism.” after “69. The National Concert Hall Company Limited — An Ceoláras Náisiúnta.”,
- (c) by inserting “74AB. National Qualifications Authority of Ireland.” after “74A. The National Milk Agency.” (inserted by the Taxes Consolidation Act 1997 (Amendment of Schedule 4) Order 2001 (S.I. No. 43 of 2001)),
- (d) by inserting “81A. Occupational Safety and Health Institute of Ireland.” after “81. The North Western Regional Fisheries Board.”, and
- (e) by inserting “98A. Tourism Ireland Limited.” after “98. Temple Bar Renewal Limited.”.

CHAPTER 5

Capital Gains Tax

Amendment of
section 556
(adjustment of
allowable
expenditure by
reference to
consumer price
index) of Principal
Act.

65.—Section 556 of the Principal Act is amended—

- (a) in subsection (2)(a) by substituting “specified in subsection (5), determined under subsection (6) or specified in subsection (6A), as the case may be.” for “specified in subsection (5) or determined under subsection (6), as the case may be.”,
- (b) in subsection (6)(a) by substituting “in each subsequent year of assessment up to and including the year of assessment 2003.” for “each subsequent year of assessment.”,

[2003.]

Finance Act 2003.

[No. 3.]

- (c) in subsection (6)(b) by substituting “any subsequent year of assessment up to and including the year of assessment 2003,” for “any subsequent year of assessment,”, and

- (d) by inserting the following after subsection (6):

“(6A) In relation to the disposal of an asset made in the year 2004 or any subsequent year of assessment, the multiplier shall be the figure mentioned in column (2) of the Table to this subsection opposite the mention in column (1) of that Table of the year of assessment in which the deductible expenditure was incurred.

TABLE

Year of assessment in which deductible expenditure incurred (1)							Multiplier (2)
1974-75	...	...	...	...	...	...	7.528
1975-76	...	...	...	...	...	...	6.080
1976-77	...	...	...	...	...	...	5.238
1977-78	...	...	...	...	...	...	4.490
1978-79	...	...	...	...	...	...	4.148
1979-80	...	...	...	...	...	...	3.742
1980-81	...	...	...	...	...	...	3.240
1981-82	...	...	...	...	...	...	2.678
1982-83	...	...	...	...	...	...	2.253
1983-84	...	...	...	...	...	...	2.003
1984-85	...	...	...	...	...	...	1.819
1985-86	...	...	...	...	...	...	1.713
1986-87	...	...	...	...	...	...	1.637
1987-88	...	...	...	...	...	...	1.583
1988-89	...	...	...	...	...	...	1.553
1989-90	...	...	...	...	...	...	1.503
1990-91	...	...	...	...	...	...	1.442
1991-92	...	...	...	...	...	...	1.406
1992-93	...	...	...	...	...	...	1.356
1993-94	...	...	...	...	...	...	1.331
1994-95	...	...	...	...	...	...	1.309
1995-96	...	...	...	...	...	...	1.277
1996-97	...	...	...	...	...	...	1.251
1997-98	...	...	...	...	...	...	1.232
1998-99	...	...	...	...	...	...	1.212
1999-00	...	...	...	...	...	...	1.193
2000-01	...	...	...	...	...	...	1.144
2001 ...	...	...	...	...	...	...	1.087
2002 ...	...	...	...	...	...	...	1.049
2003 and subsequent years	...	...	...	...	...	...	1.000

”.

66.—The Principal Act is amended in Chapter 4 of Part 19—

Restriction of relief
on issue of
debentures etc.

- (a) in section 584—

- (i) in subsection (3) by substituting “Subject to subsections (4) to (9)” for “Subject to subsections (4) to (8)”, and

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

“(9) Subsection (3) shall not apply to the extent that the new holding comprises debentures, loan stock or other similar securities issued or allotted on or after 4 December 2002, unless—

- (a) they were so issued or allotted pursuant to a binding written agreement made before that date, or

(b) this section has application by virtue of section 586.”,

(b) in section 585(1), in the definition of “conversion of securities”, by substituting the following for paragraph (b):

“(b) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash where the conversion takes place before 4 December 2002, or where the conversion takes place after that date pursuant to a binding written agreement made before that date, and”,

(c) in section 586(3) by inserting the following after paragraph (b):

“(c) This section shall not apply where, on or after 4 December 2002, a company issues debentures, loan stock or other similar securities to a person in exchange for shares of another company unless—

- (i) such issue is pursuant to a binding written agreement made before that date, or
- (ii) the company issuing the debentures, loan stock or other similar securities and the person to whom they are issued are members of the same group (within the meaning of section 616) throughout the period commencing one year before and ending one year after the day the debentures, loan stock or other similar securities are issued, or
- (iii) the other company is a company quoted on a recognised stock exchange and its board of directors had, before 4 December 2002, made a public announcement that they had agreed the terms of a recommended offer to be made for the company’s entire issued, and to be issued, ordinary share capital.”,

and

(d) in section 587(4) by inserting the following after paragraph (b):

“(c) This section shall not apply to any person to whom, under a scheme of reconstruction or amalgamation, a company issues debentures, loan stock or other similar securities on or after 4 December 2002, unless—

- (i) they were issued pursuant to a binding written agreement made before that date, or
- (ii) that person and the company are members of the same group (within the meaning of section 616) throughout the period commencing one year before and ending one year after the day the debentures, loan stock or other similar securities were issued, or
- (iii) they were issued pursuant to a scheme or arrangement, the principal terms of which had been brought to the attention of the Revenue

[2003.]

Finance Act 2003.

[No. 3.]

Commissioners and the Revenue Commissioners had acknowledged in writing before 4 December 2002, to the effect that the scheme or arrangement was a scheme of reconstruction and amalgamation.”.

Pr.1 S.66

67.—(1) The Principal Act is amended in Part 19—

Restriction of
deferral of capital
gains tax.

- (a) in section 591(2)(a) by substituting “obtains for any material disposal, before 4 December 2002, by” for “obtains for any material disposal by”;
- (b) in section 597(4)(a)(i) by substituting “obtains for the disposal, before 4 December 2002, of,” for “obtains for the disposal of,”;
- (c) in section 600A(2)(a) by substituting “for the disposal, before 4 December 2002, of” for “for the disposal of”, and
- (d) in section 605(1) by substituting “Where a person makes a disposal, before 4 December 2002, of” for “Where a person makes a disposal of”.

(2) *Subsection (1)* does not apply—

- (a) as respects *paragraph (b)*, to a disposal by a person, on or after 4 December 2002 and on or before 31 December 2003, of an asset used for the purposes of the person’s trade (or any other activity of the person as is referred to in section 597(2) of the Principal Act), where the person claims that, but for the provisions of *subsection (1)(b)*, the person would have been entitled to claim that the chargeable gain accruing on that disposal could not accrue to the person until assets, which were acquired by the person before 4 December 2002 or acquired under an unconditional contract entered into by the person before that date, ceased to be used for the purposes of that trade of the person, or, as the case may be, that other activity of the person,
 - (b) as respects *paragraph (c)*, to a disposal by a person, on or after 4 December 2002 and on or before 31 December 2003, of a qualifying premises (within the meaning of section 600A of the Principal Act) where the person claims that, but for the provisions of *subsection (1)(c)*, the person would have been entitled to claim that the chargeable gain accruing on that disposal could not accrue to the person until a replacement premises (within that meaning) which were acquired by the person before 4 December 2002, or acquired by the person under an unconditional contract entered into before that date—
 - (i) was disposed of by the person, or
 - (ii) ceased to be a replacement premises,
- and
- (c) as respects *paragraph (d)*, to a disposal by a person, on or after 4 December 2002 and on or before 31 December 2003, of original assets (within the meaning of section 605

Pt.1 S.67

of the Principal Act), where the person claims and proves to the satisfaction of the Revenue Commissioners that, but for the provisions of *subsection (1)(d)*, the person would have been entitled to claim that that disposal would not be treated as a disposal for the purposes of the Capital Gains Tax Acts by virtue of the person having, before 4 December 2002, acquired, or entered into an unconditional contract to acquire, new assets (within that meaning).

Amendment of
section 598
(disposal of
business or farm on
“retirement”) of
Principal Act.

68.—(1) Section 598 of the Principal Act is amended—

(a) in subsection (1)(a), by substituting the following for the definition of “the Scheme”:

“ ‘the Scheme’ means the scheme known as—

- (i) the Scheme of Early Retirement From Farming introduced by the Minister for Agriculture and Food for the purpose of implementing Council Regulation (EEC) No. 2079/92 of 30 June 1992¹, or
- (ii) the Scheme of Early Retirement From Farming introduced by the Minister for Agriculture, Food and Rural Development for the purpose of implementing Council Regulation (EC) No. 1257/1999 of 17 May 1999²,”

(b) by substituting the following for subsection (1)(d)(i):

- “(i) (I) the period of ownership of an asset by a spouse of an individual as if it were a period of ownership of the asset by the individual, and
- (II) where a spouse of an individual has died, the period of use of an asset by the spouse as if it were a period of use of the asset by the individual,”

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

- “(iia) the period for which an individual was a director or, as the case may be, a full-time working director of the following companies as if it were a period for which the individual was a director of a ‘relevant company’ (which, for the purposes of this subparagraph, means a company referred to in paragraph (ii) of the definition of qualifying assets in subsection (1)(a)):
- (I) a company that was treated as being the same company as the relevant company for the purposes of section 586,
- (II) a company involved in the same scheme of reconstruction or amalgamation under section 587 with the relevant company,”

and

¹OJ No. L.215, of 30.7.92, p.91.

²OJ No. L.160, of 26.6.99, p.80.

[2003.]

Finance Act 2003.

[No. 3.]

- (d) by substituting “€500,000” for “€476,250” in each place where it occurs in subparagraphs (i) and (ii) of subsection (2)(a). Pr.1 S.68

(2) *Paragraph (a) of subsection (1)* is deemed to have applied as respects a disposal of an asset on or after 27 November 2000 and *paragraphs (b), (c) and (d)* of that subsection apply as respects a disposal of an asset on or after 6 February 2003.

69.—(1) Chapter 3 of Part 2 of the Principal Act is amended by inserting the following after section 29:

Amendment of
Chapter 3 (capital
gains tax) of Part 2
of Principal Act.

“Temporary non-residents. 29A.—(1) (a) In this section—

‘intervening year’, in relation to an individual, means any year of assessment falling within the period commencing with the first day of the year of assessment immediately following the year of his or her departure and ending with the last day of the year of assessment immediately preceding the year of his or her return;

‘relevant assets’, in relation to an individual, means shares in a company, or rights to acquire shares in a company, being shares or rights which he or she beneficially owned on the last day of the year of his or her departure and the market value of which on that day—

- (i) is equal to, or exceeds, 5 per cent of the value of the issued share capital of the company, or

- (ii) exceeds €500,000;

‘year of departure’, in relation to an individual, means the last year of assessment before the year of return, for which the individual is resident in the State, and references to year of his or her departure shall be construed accordingly;

‘year of return’, in relation to an individual, has the meaning assigned to it by subsection (2), and references to year of his or her return shall be construed accordingly.

- (b) References in this section to an individual being resident in the State for a year of assessment shall be construed as references to an individual—

- (i) who is resident in the State for the year of assessment, and

- (ii) who could be taxed in the State for that year in respect of gains on a disposal, on each day of that year,

of his or her relevant assets, if such a disposal were made by the individual on that day and gains accrued on the disposal.

- (c) References in this section to an individual being not resident in the State for a year of assessment shall be construed as references to an individual who could not be taxed in the State for that year in respect of gains on a disposal in that year, or part of that year, of his or her relevant assets, or part of those assets, if the individual had made such a disposal in that year, or, as the case may be, that part of that year, and gains accrued on the disposal.

(2) This section applies to an individual where—

- (a) the individual has relevant assets,
- (b) the individual is resident in the State for a year of assessment (in this section referred to as the ‘year of return’),
- (c) the individual was not resident in the State for one or more years of assessment immediately preceding the year of his or her return; but there is a year of assessment before the year of return for which the individual was resident in the State and, at any time during that year, the individual was domiciled in the State, and
- (d) there are not more than 5 years of assessment falling between the year of his or her departure and the year of his or her return.

(3) Where an individual to whom this section applies, disposes of his or her relevant assets or any part of them (as the case may be) in one or more intervening years, the individual shall, for the purposes of the Capital Gains Tax Acts, be deemed to have disposed of and immediately reacquired, the relevant assets or that part of them (as the case may be), on the last day of the year of his or her departure, for a consideration equal to their market value on that day.

(4) Where by virtue of subsection (3), an individual is chargeable to capital gains tax in respect of a deemed disposal of his or her relevant assets or any part of them (as the case may be), credit shall be allowed against such tax in respect of tax (in this section referred to as ‘foreign tax’) payable on the subsequent disposal by the individual of those relevant assets or that part of them (as the case may be) under the law of any territory outside the State, the government of which has entered into arrangements having the force of law by virtue of section 826, and the amount of such credit—

[2003.]

Finance Act 2003.

[No. 3.]

(a) shall be calculated having regard to the provisions of Schedule 24, and

(b) notwithstanding those provisions, shall not exceed the amount by which capital gains tax payable by the individual would be reduced if the individual had not been deemed to have disposed of relevant assets or that part of them (as the case may be).

(5) Where by virtue of subsection (3) a chargeable gain accrues to an individual, the provisions of Part 41 shall apply in relation to the chargeable gain, as if the year of his or her departure were the year of his or her return.”.

(2) (a) Subject to *paragraph (b)*, *subsection (1)* applies as respects an individual who ceases to be resident in the State for the year of assessment 2003, or a subsequent year of assessment.

(b) *Subsection (1)* does not apply as respects an individual who before 24 February 2003 ceases to be resident in the State for the year of assessment 2003, but who would not have so ceased, if *paragraph (c)(ii)* had not been enacted.

(c) For the purposes of *paragraphs (a)* and *(b)*, an individual is resident in the State for a year of assessment so long as he or she—

(i) is resident in the State for the year of assessment, and

(ii) could be taxed in the State for that year in respect of gains on a disposal, on each day of that year, of his or her relevant assets, if such a disposal were made by the individual on that day and gains accrued on the disposal.

70.—(1) The Principal Act is amended in Chapter 1 of Part 19 by inserting after section 541A the following section:

Amendment of Chapter 1 (assets and acquisition and disposal of assets) of Part 19 of Principal Act.

“Restrictive covenants.

541B.—(1) Where—

(a) a person gives an undertaking (whether absolute or qualified and whether legally valid or not), the tenor or effect of which is to restrict the person as to the person’s conduct or activities,

(b) in respect of the giving of that undertaking by the person, or of the total or partial fulfilment of that undertaking by the person, any sum is paid either to the person or to any other person, and

(c) that sum is neither—

(i) treated, for the purposes of the Tax Acts, as profits or gains chargeable to tax under Schedule D or Schedule E, nor

- (ii) treated as consideration for the disposal of an asset for the purposes of the Capital Gains Tax Acts,

the amount of the sum shall be deemed for the purposes of the Capital Gains Tax Acts to be the amount of a chargeable gain accruing to the person to whom it is paid (for the year of assessment in which it is paid) on the disposal of a chargeable asset.

(2) Where valuable consideration otherwise than in the form of money is given in respect of the giving of, or the total or partial fulfilment of, any undertaking, subsection (1) applies as if a sum had instead been paid equal to the value of that consideration.”.

(2) This section applies as respects the giving of an undertaking by a person on or after 6 February 2003, the tenor or effect of which is to restrict the person as to the person’s conduct or activities.

Amendment of section 980 (deduction from consideration on disposal of certain assets) of Principal Act.

71.—(1) Section 980 of the Principal Act is amended by substituting the following for subsection (8):

“(8) (a) A person chargeable to capital gains tax on the disposal of an asset to which this section applies, or another person (in this section referred to as an ‘agent’) acting under the authority of such person, may apply to the inspector for a certificate that tax should not be deducted from the consideration for the disposal of the asset and that the person acquiring the asset should not be required to give notice to the Revenue Commissioners in accordance with subsection (9)(a).

(b) If the inspector is satisfied that the person making the application is either the person making the disposal, or an agent, and that—

- (i) the person making the disposal is resident in the State,
- (ii) no amount of capital gains tax is payable in respect of the disposal, or
- (iii) the capital gains tax chargeable for the year of assessment for which the person making the disposal is chargeable in respect of the disposal of the asset and the tax chargeable on any gain accruing in any earlier year of assessment (not being a year ending earlier than the 6th day of April, 1974) on a previous disposal of the asset has been paid,

the inspector shall issue the certificate to the person making the disposal or, as the case may be, the agent, and shall issue a copy of the certificate to the person acquiring the asset.

(c) Where an application is made under this subsection by an agent, it must include the name and address of the person making the disposal and where such person is resident in the State, that person’s tax reference number (within the meaning of section 885).”.

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

72.—Schedule 15 to the Principal Act is amended in Part 1—

Pt.1

Amendment of
Schedule 15 (list of
bodies for the
purposes of section
610) to Principal
Act.

(a) in paragraph 3 by substituting “section 213 or where the gain is applied solely for the purposes of its registered trade union activities.” for “section 213.”, and

(b) by adding the following after paragraph 34:

“35. National Development Finance Agency.

36. Tourism Ireland Limited.

37. An approved body (within the meaning of section 235(1)) to the extent that its income is exempt from income tax or, as the case may be, corporation tax.

38. Any body established by statute for the principal purpose of promoting games or sports and any company wholly owned by such a body, where the gain is applied solely for that purpose.”.

PART 2

EXCISE

CHAPTER 1

Alcohol Products Tax

73.—(1) In this Chapter and *Schedule 2* except where the context otherwise requires— Interpretation
(Chapter 1).

“alcohol” means pure ethyl alcohol;

“alcohol product” means beer, wine, other fermented beverage, spirits or intermediate beverage;

“authorised warehousekeeper” means a person authorised by the Commissioners under section 109 of the Finance Act 2001 to produce, process, hold, receive or dispatch alcohol products under a suspension arrangement;

“beer”, subject to *section 74*, means—

(a) beer made from malt, and

(b) any beverage containing a mixture of such beer with any non-alcoholic beverage,

in either case exceeding 0.5% vol;

“beer concentrate” means a product, produced from beer, not exceeding 0.5% vol, which is intended for addition to beer as a flavourant or colourant;

“cider and perry” means a beverage exceeding 1.2% vol but not exceeding 15% vol, obtained from the fermentation of apple or pear juice and without the addition of—

(a) any other alcoholic beverage, or

(b) any other beverage or substance which imparts colour or flavour and which, by such addition in the opinion of the

Commissioners significantly alters the character of the product;

“CN Code” means a Community subdivision to the combined nomenclature of the European Communities referred to in Article 1 of Council Regulation (EEC) No. 2658/87 of 23 July 1987¹ in force on 19 October 1992;

“Commissioners” means the Revenue Commissioners;

“denature” means to mix an alcohol product with any substance so as to render the mixture unfit for human consumption and includes to methylate and cognate words shall be construed accordingly;

“Directive” means Council Directive No. 92/83/EEC of 19 October 1992²;

“intermediate beverage”, subject to *section 74*, means any beverage other than beer, wine, or other fermented beverage, the alcoholic content of which is at least partly of fermented origin and which—

(a) in the case of a still beverage exceeds 10% vol,

(b) in the case of a sparkling beverage exceeds 13% vol,

and which in either case does not exceed 22% vol;

“materials” means any ingredient or other substance intended to be used in the production of, or for incorporation in, any alcohol product;

“medicinal product” has the same meaning as it has in Article 1 of Council Directive No. 65/65/EEC of 26 January 1965³;

“non-alcoholic beverage” means any beverage not exceeding 0.5% vol;

“officer” means an officer of the Commissioners;

“other fermented beverage”, subject to *section 74*, means a beverage other than beer and wine exceeding 1.2% vol which—

(a) has an alcoholic content which is entirely of fermented origin and does not exceed 15% vol, or

(b) has an alcoholic content which is only partly of fermented origin and which—

(i) in the case of a still beverage does not exceed 10% vol,

(ii) in the case of a sparkling beverage does not exceed 13% vol,

and includes any mixture, exceeding 1.2% vol, of such beverage with any non-alcoholic beverage;

“prescribed” means specified in or determined in regulations made by the Commissioners;

¹OJ No. L256 of 7 September, 1992, p.1

²OJ No. L316 of 31 October, 1992, p.21

³OJ S. Edn. 1965-66, p.20

[2003.]

Finance Act 2003.

[No. 3.]

“production” includes manufacturing, the blending of alcohol products and the blending of any alcohol product with any non-alcoholic beverage or with any other substance, and cognate words shall be construed accordingly; Pt.2 S.73

“prohibited goods” means any machinery, apparatus, equipment, vessel, substance or other thing which is being used, or was used, or is intended to be used in the removal from any alcohol product of any denaturant;

“repealed enactments” has the meaning given in *section 83*;

“suspension arrangement” means an arrangement under which excisable products are produced, processed, held or moved, excise duty being suspended;

“sparkling” in relation to any beverage means any such beverage which—

- (a) is contained in bottles with mushroom stoppers held in place by ties or fastenings, or
- (b) which has an excess pressure due to carbon dioxide in solution of three bar or more;

“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, or
- (d) any beverage exceeding 22% vol,

and includes any such product which contains a non-alcoholic product, whether in solution or not;

“still” means other than sparkling;

“tax warehouse” means a premises or place approved by the Commissioners under section 109 of the Finance Act 2001 where alcohol products are produced, processed, held, received or dispatched under a suspension arrangement by an authorised warehousekeeper in the course of business;

“wash” means any wort in which fermentation has begun;

“wine”, subject to *section 74*, means any beverage exceeding 1.2% vol the alcoholic content of which is entirely of fermented origin—

- (a) obtained from the total or partial fermentation of grapes or the must of fresh grapes,
- (b) not exceeding 15% vol, or in the case of still wine produced without enrichment, not exceeding 18% vol,

and includes such wine flavoured with plants or aromatic extracts and grape must in fermentation or with fermentation prevented or arrested otherwise than by the addition of spirits;

Pt.2 S.73

“wort” means the liquid which is intended for fermentation as part of the process of producing spirits;

“% vol” means alcoholic strength by volume which is the ratio, expressed as a percentage, of the volume of alcohol present in a product to the total volume of the product at a temperature of 20° Celsius.

(2) A word or expression that is used in this Chapter and which is also used in Part 2 of the Finance Act 2001 has, unless a meaning is provided by *subsection (1)* or the contrary intention otherwise appears, the same meaning in this Chapter as it has in that Part.

(3) A word or expression that is used in this Chapter and which is also used in the Directive has, unless a meaning is provided by *subsection (1)* or (2) or the contrary intention otherwise appears, the same meaning in this Chapter as it has in the Directive.

Qualification to meanings given to certain alcohol products.

74.—Only a product which is classified—

- (a) under CN Code 2203, or which is a mixture of such product with any non-alcoholic drink covered by CN Code 2206, is beer,
- (b) under CN Code 2204 or 2205, is wine,
- (c) under CN Code 2204, 2205 or 2206, is an other fermented beverage or intermediate beverage.

Charging and rates.

75.—(1) In addition to any other duty which may be chargeable, and subject to the provisions of this Chapter and any regulations made under it, a duty of excise, to be known as alcohol products tax, shall be charged, levied and paid at the rates specified in *Schedule 2* on all alcohol products—

- (a) produced in the State, or
- (b) imported into the State.

(2) In the case of spirits produced in the State by a process of distillation, where the quantity of spirits produced by such a process cannot be otherwise determined to the satisfaction of an officer, the Commissioners may charge alcohol products tax on the quantity of alcohol capable of being produced from the wort or wash used in such process, 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.

Liability and payment.

76.—(1) Liability to alcohol products tax shall arise at the time such products are—

- (a) produced in the State,
- (b) imported into the State,
- (c) cease to be held under a suspension arrangement,

whichever is the later.

(2) The Commissioners may, subject to such conditions for securing the duty as they may prescribe or otherwise impose, permit payment of the duty imposed by *section 75* to be deferred to a day not later than the last day of the month succeeding the month in which the duty is payable. Pt.2 S.76

77.—Without prejudice to any other relief from excise duty which may apply, and subject to such conditions as the Commissioners may prescribe or otherwise impose, a relief from alcohol products tax shall be granted on any alcohol products which are shown to the satisfaction of the Commissioners— Reliefs.

(a) to be intended for use or to have been used in the production of—

- (i) any beverage, other than beer, not exceeding 1.2% vol,
- (ii) vinegar,
- (iii) flavours for the preparation either of foodstuffs or of beverages not exceeding 1.2% vol,
- (iv) medicinal products,
- (v) foodstuffs, whether such alcohol product is used—

(I) either as a filling in such foodstuff or otherwise,

(II) either directly or as a constituent of semi-finished products for use in the production of such foodstuff,

and where the alcohol contained in such foodstuffs does not exceed 8.5 litres of alcohol per 100 kilogrammes of the product when used in the production of chocolates and 5 litres of alcohol per 100 kilogrammes of the product when used in the production of other foodstuffs, or

(vi) beer concentrate,

(b) to be intended to be denatured in accordance with their requirements, or to have been so denatured,

(c) to have been denatured in accordance with the requirements of another Member State and used in the production of a product not fit for human consumption,

(d) to have been completely denatured in accordance with the requirements of another Member State, where such requirements have been notified to the European Commission and accepted in accordance with paragraphs 3 and 4 of Article 27 of the Directive,

(e) to be intended for use or to have been used for experimental, quality control, scientific or research purposes,

(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

Pt.2 S.77

the family or guests of such producer, and not to have been produced or supplied for consideration.

Repayment.

78.—(1) In any case of relief under *section 77*, effect may be given to such relief by means of repayment.

(2) Subject to such conditions as may be prescribed or otherwise imposed, the Commissioners may remit or repay alcohol products tax on any alcohol products which are shown to their satisfaction—

(a) to have become spoilt, unfit for human consumption or use or unmarketable by reason of quality, and

(b) to have been destroyed or otherwise disposed of in accordance with their requirements.

(3) (a) Claims for repayment under this section shall be in such form as the Commissioners may direct and shall be in respect of alcohol products used, destroyed or disposed of, as the case may be, within a period of 3 calendar months.

(b) A repayment may not be made unless the claim is made within 6 months following the end of each such period of 3 calendar months or within such longer period as the Commissioners may, in any particular case, allow.

Offences and penalties.

79.—(1) Except where *subsection (3) or (6)* applies, it is an offence under this subsection for any person to contravene or fail to comply with any provision of this Chapter or any regulation made under *section 81* or any condition imposed under this Chapter or under such regulation in relation to such provision.

(2) Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under *subsection (1)* is liable on summary conviction to a fine of €1,900.

(3) It is an offence under this subsection—

(a) without the consent in writing of the Commissioners, to remove or to attempt to remove or to be knowingly concerned in removing or attempting to remove any denaturant from any alcohol product,

(b) to knowingly deal in any alcohol products from which any such denaturant has been removed, or

(c) to keep prohibited goods in any premises or on any land.

(4) Whenever a person, who is the owner or the occupier for the time being of premises or land in or on which prohibited goods are found, is charged in any legal proceedings with contravening *subsection (3)*, the prohibited goods shall, until the contrary is proved, be presumed to have been kept by such person in the said premises, or on the said land (as the case may be), in contravention of that subsection.

(5) Without prejudice to any other penalty to which a person may be liable, such person convicted of an offence under *subsection (3)* is liable—

[2003.]

Finance Act 2003.

[No. 3.]

(a) on summary conviction to a fine of €1,900 or, at the discretion of the Court, to imprisonment for a term not exceeding 12 months, or to both, or

Pr.2 S.79

(b) on a conviction on an indictment, to a fine of €12,695 or, at the discretion of the Court, to imprisonment for a term not exceeding 5 years, or to both.

(6) It is an offence under this subsection for any person to record in any account, return or other record relating to alcohol products or materials which is required to be kept in accordance with any provision of this Chapter or any regulations under *section 81*—

(a) a quantity, strength, or gravity for any alcohol product or materials which is found by an officer taking account to be greater or less than the actual quantity, strength or gravity of such alcohol product or materials, or

(b) any other particular relevant to the liability of any alcohol product to alcohol products tax which is not true and accurate.

(7) *Subsection (6)* does not apply where any discrepancy—

(a) is accounted for by a loss due to force majeure or by a loss inherent in the nature of the product, or

(b) is otherwise accounted for to the satisfaction of the Commissioners, and the duty due on the products in question is paid.

(8) Without prejudice to any other penalty to which a person may be liable a person guilty of an offence under *subsection (6)* is liable on summary conviction to a fine of €1,900.

(9) Any alcohol products, materials or prohibited goods in respect of which an offence has been committed under this section are liable to forfeiture.

(10) Where an offence under this section is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of an offence and may be proceeded against and punished as if guilty of the first-mentioned offence.

80.—Section 34 of the Finance Act 1963 is amended in subsection (6) by the substitution of the following paragraph for paragraph (c):

Amendments
relative to penalties.

“(c) the application of section 13 of the Criminal Procedure Act 1967 to offences under section 186 of the Customs Consolidation Act 1876, section 3 of the Customs Act 1956, any other provision of the Customs Acts, section 119 of the Finance Act 2001 or *section 79(3)* of the *Finance Act 2003*.”.

81.—(1) The Commissioners may, for the purposes of managing, securing and collecting alcohol products tax or for the protection of the revenue derived from that tax, make regulations.

Regulations.

(2) In particular, but without prejudice to the generality of *subsection (1)*, regulations made under this section may, in respect of alcohol products, make provision for—

- (a) governing the production, movement, importation, treatment, sale, delivery, warehousing, keeping, storage, removal to and from storage, exportation and use of such products,
- (b) governing the means to be used for determining the strength and quantity of any alcohol product,
- (c) providing for the method of charging, securing, paying, collecting, remitting and repaying alcohol products tax,
- (d) requiring a person who produces or processes alcohol products, or who imports such products, or who holds such products under a suspension arrangement—
 - (i) to keep in a specified manner and for a specified period such accounts and other records relating to such production, processing, importation, or holding as may be specified,
 - (ii) to furnish, at such times and in such form as may be specified, such information and returns in relation to such products as may be specified,

and

- (e) governing the denaturing of alcohol products.

(3) Regulations made under this section may make different provisions for—

- (a) different alcohol products and for different types of each alcohol product, and
- (b) persons, premises or products of different classes or descriptions, for different circumstances and for different cases.

82.—(1) (a) Subject to *paragraph (b)* and to *subsection (2)*, the provisions of the Customs Acts and of any instrument relating to duties of customs made under statute and not otherwise applied by this Chapter apply, with any necessary modifications, in relation to alcohol products tax imposed by *section 75* on alcohol products imported into the State as they apply in relation to duties of customs.

- (b) Where there is a provision in this Chapter corresponding to a provision of the Customs Acts or of any instrument relating to duties of customs made under statute, the provision of the Customs Acts or of any such instrument does not apply in relation to alcohol products tax.

(2) (a) Subject to *paragraph (b)*, the provisions of the statutes which relate to the duties of excise and the management of those duties and of any instrument relating to the duties of excise made under statute and not otherwise

applied by this Chapter apply, with any necessary modifications, in relation to alcohol products tax imposed by *section 75* on alcohol products produced in the State or exported to or imported from another Member State, as they apply to duties of excise. Pr.2 S.82

- (b) Where there is a provision in this Chapter corresponding to a provision of the statutes which relate to the duties of excise or of any other instrument relating to the duties of excise made under statute, the provision of those statutes or of any such instrument does not apply in relation to alcohol products tax.

(3) This Chapter shall be construed—

- (a) so far as it relates to alcohol products tax on such products made in the State or exported to or imported from a Member State, together with the statutes which relate to the duties of excise and the management of those duties and any instruments relating to the duties of excise and the management of those duties made under statute,
- (b) so far as it relates to alcohol products tax on imported products, together with the Customs Acts and any instrument relating to duties of customs made under statute.

83.—(1) The enactments set out in *Part 1* and *Part 2* of *Schedule 1* (in this Chapter referred to as the “repealed enactments”) are repealed in the case of those set out in *Part 1*, and revoked in the case of those set out in *Part 2*, to the extent mentioned in the third column of those Parts opposite the reference to the enactment concerned. Repeals and revocations.

(2) If and in so far as a provision of this Chapter operates, as from the day appointed under *section 86*, in substitution for a provision of the repealed enactments, any order or regulation made or having effect as if made, and any thing done or having effect as if done, under the substituted provision before that day shall be treated as from that day as if it were an order or regulation made or a thing done under such provision of this Chapter.

84.—(1) The provisions of this Chapter shall apply subject to so much of any Act which contains provisions relating to or affecting excise duties as— Continuity.

- (a) is not repealed by this Chapter, and
- (b) would have operated in relation to these duties if this Chapter had not been substituted for the repealed enactments.

(2) The Commissioners shall have all the jurisdictions, powers and duties in relation to alcohol products tax which they had in relation to the corresponding excise duties.

(3) The continuity of the operation of the law relating to excise duties on alcohol products shall not be affected by the substitution of this Chapter for the repealed enactments.

(4) Any reference, whether express or implied, in any enactment (including this Chapter) or document—

- (a) to any provision of this Chapter, or

Pt.2 S.84

- (b) to things done or to be done under or for the purposes of any provision of this Chapter,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments applied or had applied, a reference to, or, as the case may be, to things done or to be done under or for the purposes of, that corresponding provision.

(5) Any reference, whether express or implied, in any enactment or document (including the repealed enactments and enactments passed and documents made)—

- (a) to any provision of the repealed enactments, or

- (b) to things done or to be done under or for the purposes of any provision of the repealed enactments,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Chapter applies, a reference to, or as the case may be, to things done or deemed to be done or to be done under or, for the purposes of, that corresponding provision.

(6) Every officer who immediately before the commencement of this provision, stood authorised or nominated for the purposes of any provision of the repealed enactments is, upon such commencement, deemed to be authorised or nominated, as the case may be, for the purposes of the corresponding provision of this Chapter.

(7) Every instrument, document, authorisation and letter or notice of appointment made or issued under the repealed enactments and in force immediately before the commencement of this provision continues, upon such commencement, in force as if made or issued under this Chapter.

Care and management of alcohol products tax.

85.—Alcohol products tax imposed by *section 75* is placed under the care and management of the Commissioners.

Commencement.

86.—This Chapter comes into operation on such day as the Minister for Finance may appoint by order, and different days may be so appointed for different provisions or for different purposes.

CHAPTER 2

Miscellaneous

Amendment of section 97 (excisable products) of Finance Act 2001.

87.—Section 97 of the Finance Act 2001 is amended—

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

“(1) For the purposes of this Part the following are excisable products:

- (a) until such day as the Minister for Finance may appoint by order under *section 86* of the *Finance Act 2003* for the coming into operation of *section 75* of that Act—

[2003.]

Finance Act 2003.

[No. 3.]

- (i) spirits chargeable with the duty of excise imposed by paragraph 4(2) of the Order of 1975; Pr.2 S.87
- (ii) wine chargeable with the duty of excise imposed by paragraph 5(2) of the Order of 1975;
- (iii) made wine chargeable with the duty of excise imposed by paragraph 6(2) of the Order of 1975;
- (iv) beer chargeable with the duty of excise imposed by section 90 of the Finance Act 1992;
- (v) cider and perry chargeable with the duty of excise imposed by paragraph 8(2) of the Order of 1975;

(b) from such day as the Minister for Finance may appoint by order under *section 86* of the *Finance Act 2003* for the coming into operation of *section 75* of that Act, alcohol products (within the meaning given by *section 73* of that Act) chargeable with the duty of excise imposed by the said *section 75*;

(c) tobacco products chargeable with the duty of excise imposed by section 2 of the Finance (Excise Duty on Tobacco Products) Act 1977;

(d) mineral oil chargeable with the duty of excise imposed by section 95 of the Finance Act 1999.”,

and

(b) in paragraph (a) of subsection (2) by substituting “(d)” for “(h)”.

88.—Section 109 of the Finance Act 2001 is amended by inserting the following after subsection (6):

Amendment of
section 109
(warehousing) of
Finance Act 2001.

“(6A) An authorised warehousekeeper or any person acting on behalf of such warehousekeeper shall, in respect of any warehouse approved in relation to such warehousekeeper, provide such appliances, facilities and assistance as an officer may reasonably require to take account of any excisable product or materials, and allow an officer at any reasonable time to use anything so provided.”.

89.—Chapter 2 of Part 2 of the Finance Act 2001 is amended by substituting the following for section 110:

Amendment of
Chapter 2 of Part 2
(Intra-Community
movement) of
Finance Act 2001.

“Scope
(Chapter 2).

110.—(1) This Chapter shall apply to all excisable products — except that, in the case of mineral oil, it shall apply only to products specified in paragraph (1) of Article 2a of Council Directive No. 92/81/EEC of 19 October 1992¹ or which have been the subject, under paragraph (2) of that article, of a decision to make such products subject to the

¹ OJ No. L316 of 31 October, 1992, p.12

[No. 3.]

Finance Act 2003.

[2003.]

Pt.2 S.89

control and movement provisions of the Directive.

(2) Notwithstanding the relief from alcohol products tax under paragraph (d) of section 77 of the *Finance Act 2003* for completely denatured alcohol products, this Chapter shall apply to all such products.”.

Amendment of section 136 (entry and search of premises) of Finance Act 2001.

90.—Section 136 of the Finance Act 2001 is amended by inserting the following after subsection (4):

- “(4A) (a) Where an officer in or on any premises or place pursuant to this section has reason to believe that any concealed pipe, conveyance, utensil or other equipment is being kept or made use of in or on such premises or place with intent to evade alcohol products tax, then such officer or any person assisting such officer may break open any floor or wall of such premises or place, or any ground in or adjoining it, to search for such concealed pipe, conveyance, utensil or equipment.
- (b) Where no concealed pipe, conveyance, utensil or other equipment, to which paragraph (a) relates, is found as a result of the breaking open of any floor or wall of any premises or place, then nothing in that paragraph shall be used as a defence in any civil proceedings to a claim arising out of any damage caused by that breaking open.”.

Rates of mineral oil tax.

91.—The Finance Act 1999 is amended by substituting the following for Schedule 2 to that Act, as amended by section 89 of the Finance Act 2002 (No. 5 of 2002):

“SCHEDULE 2

Rates of Mineral Oil Tax (with effect as on and from 5 December 2002)

Description of Mineral Oil	Rate of Duty
<i>Light Oil:</i>	
Leaded petrol	€511.72 per 1,000 litres
Unleaded petrol	€401.36 per 1,000 litres
Super unleaded petrol	€506.47 per 1,000 litres
Aviation gasoline	€255.86 per 1,000 litres
<i>Heavy Oil:</i>	
Used as a propellant with a maximum sulphur content of 50 milligrammes per kilogramme	€326.73 per 1,000 litres
Other heavy oil used as a propellant	€379.12 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	€326.73 per 1,000 litres
Other substitute fuel	€47.36 per 1,000 litres

”.

92.—(1) In this section “alcohol” means pure ethyl alcohol.

Pt.2
Spirits.

(2) The duty of excise on spirits imposed by paragraph 4(2) of the Imposition of Duties (No. 221) (Excise Duties) Order 1975 (S.I. No. 307 of 1975) shall be charged, levied and paid, as on and from 5 December 2002, at the rate of €39.25 per litre of alcohol in the spirits.

(3) Section 82 of, and the Second Schedule to, the Finance Act 1996 (as amended by section 240 of, and Part 3 of Schedule 5 to, the Finance Act 2001), are repealed with effect as on and from 5 December 2002.

93.—(1) In this section—

Offences in relation
to keeping, selling
or delivering of
unexcised spirits.

“counterfeit goods” has the same meaning as it has in Article 1 of Council Regulation (EC) No. 241/99 of 25 January 1999¹;

“spirits” has the same meaning as it has in paragraph 4(8) of the Imposition of Duties (No. 221) (Excise Duties) Order 1975 (No. 307 of 1975).

(2) It is an offence under this subsection to invite an offer to treat for, offer for sale, keep for sale or delivery, sell or deliver, or to be in the process of delivering spirits on which the appropriate rate of excise duty has not been paid.

(3) Without prejudice to any other penalty to which a person may be liable, such person convicted of an offence under *subsection (2)* is liable on summary conviction to a fine of €1,900.

(4) Any spirits in respect of which an offence has been committed under *subsection (2)* are liable to forfeiture.

(5) In the case of an offence under *subsection (2)*, where it is shown that spirits are counterfeit goods, it shall be presumed (unless the contrary is proved) that excise duty has not been paid at the appropriate rate on such spirits.

94.—Section 102 of the Finance Act 1999 is amended—

Amendment of
section 102
(offences) of
Finance Act 1999.

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

“(b) to use as a propellant, to invite an offer to treat for, offer for sale, keep for sale or delivery, sell or deliver, or to be in the process of delivering for such use or to keep in a fuel tank—

(i) any mineral oil on which mineral oil tax at the appropriate standard rate has not been paid,

(ii) any mineral oil containing one or more of the markers prescribed by regulations under section 104, or

(iii) any substance where the importation of mineral oil containing such substance is

¹ OJ No. L27 of 2 February, 1999, p.1

prohibited by regulations made under section 104.”,

(b) by substituting the following for subsection (6):

“(6) (a) In the case of an offence under subsection (1), which relates to paragraph (b) of that subsection, that consists of the use of mineral oil as a propellant or keeping of mineral oil in a fuel tank in contravention of that subsection, any vehicle concerned in such offence shall be liable to forfeiture only where—

- (i) a concealed tank, other container or any device, contrivance or method of any kind is employed to conceal the presence in a motor vehicle of mineral oil intended for use as a propellant, or
- (ii) the owner or person in charge of the motor vehicle concerned in such offence does not have a permanent address in the State, or
- (iii) proof of payment of mineral oil tax at the rate appropriate for use of the mineral oil concerned in a fuel tank is not produced, following interrogation under the provisions of Chapter 4 of Part 2 of the Finance Act 2001, and an officer has reasonable grounds to suspect that mineral oil tax has not been so paid, or
- (iv) the offence is a second or subsequent such offence by the person concerned.

(b) Section 125(3) of the Finance Act 2001 does not apply to an offence to which this subsection relates.”.

Amendment of section 103 (presumptions in certain proceedings) of Finance Act 1999.

95.—Section 103 of the Finance Act 1999 is amended by inserting the following after subsection (3):

“(4) Where, in any proceedings for an offence under section 102(1)(b)(i) it is proved that the mineral oil which is the subject of the offence is heavy oil other than fuel oil or kerosene, with a sulphur content exceeding 350 milligrammes per kilogramme, it shall be presumed, until the contrary is proved, that mineral oil tax at the appropriate standard rate has not been paid on such mineral oil.”.

Tobacco products.

96.—(1) In this section and in *Schedule 3*—

“Act of 1977” means the Finance (Excise Duty on Tobacco Products) Act 1977;

“Act of 2002” means the Finance Act 2002;

[2003.]

Finance Act 2003.

[No. 3.]

“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 Act of 2002.

Pr.2 S.96

(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 Part 2 of Schedule 4 to the Act of 2002, be charged, levied and paid, as on and from 5 December 2002, at the several rates specified in *Schedule 3*.

97.—Section 103 of the Finance Act 2001 is amended by substituting the following for subsection (2):

Amendment of
section 103
(payment) of
Finance Act 2001.

“(2) (a) Without prejudice to the provisions of section 74 of the Finance Act 2002 concerning betting duty, where any amount of excise duty becomes payable under subsection (1) or under any other provision of the statutes which relate to the duties of excise, or any instrument relating to the duties of excise made under statute, and is not paid, simple interest on the amount shall be paid by the person liable to pay the duty and such interest shall be calculated from the date on which the amount became payable at a rate of 0.0322 per cent for each day or part of a day during which the amount remains unpaid.

(b) The interest payable under this section is deemed to be a debt to the Minister for Finance for the benefit of the Central Fund and shall be payable to the Commissioners and may (without prejudice to any other mode of recovery of such interest) be sued for and recovered by action, or other appropriate proceedings, at the suit of the Commissioners by an officer authorised by them for the purposes of this subsection in any court of competent jurisdiction.

(c) In proceedings instituted for the recovery of any amount of interest—

(i) a certificate signed by an officer which certifies that a stated amount of interest is due and payable by the defendant shall be evidence, until the contrary is proved, that that amount is so due and payable, and

(ii) a certificate so certifying and purporting to be signed by an officer may be tendered in evidence without proof and shall be deemed, until the contrary is proved, to have been signed by an officer.”.

98.—Chapter 1 of Part 2 of the Finance Act 2001 is amended by inserting the following sections after section 105:

Amendment of
Chapter 1
(interpretation,
liability and
payment) of Part 2
of Finance Act
2001.

“Underpayments.

105A.—(1) Unless a notification in writing stating that an amount of excise duty is due has been issued by the Commissioners before the expiry of a period of 4 years from the date of the act or event giving rise to the liability for that duty, proceedings for the

[No. 3.]

Finance Act 2003.

[2003.]

Pt.2 S.98

recovery of such an amount may not be instituted or other action for such recovery taken, except where there are reasonable grounds to believe that any form of fraud or neglect has been committed by or on behalf of any person in connection with that liability.

(2) In this section ‘neglect’ means negligence or a failure to give any notice, information or record or to make any return required to be given or made under the provisions of the statutes which relate to the duties of excise, and of any instruments relating to those duties made under statute.

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

Repayment of overpaid duty.

105B.—(1) Subject to the other provisions of this section and section 105C where a person has paid an amount of excise duty or interest on excise duty which was not due from that person, the person is entitled to repayment of the amount involved.

(2) The Commissioners are liable to repay an amount under this section only where a claim in writing, or in such other form as they may allow, is made to them for that purpose.

(3) Except as provided by this section or by or under any other provision of the law relating to excise, the Commissioners are not liable to repay an amount of excise duty or interest on excise duty by virtue of the fact that it was not due.

Period for repayment claims.

105C.—(1) For the purposes of this section—

‘excise law’ means the statutes which relate to the duties of excise and instruments relating to those duties made under statute.

(2) Subject to subsections (3) and (4) the Commissioners shall not make a repayment of excise duty or interest paid in respect of such duty unless a claim for that repayment is made within a period of 4 years from the date of payment to which the claim relates or from the date of any other act or event giving rise to an entitlement to a repayment.

(3) Subject to subsection (4), where a claim for repayment—

- (a) the payment in respect of which, or
- (b) the act or event giving rise to an entitlement to repayment,

[2003.]

Finance Act 2003.

[No. 3.]

occurs prior to 1 May 2003, subsection (2) Pr.2 S.98 shall apply with effect from 1 January 2005.

(4) Where a person would, on due claim, be entitled to repayment of excise duty or interest paid on that duty under any other provision of excise law which provides for a shorter period within which the claim for repayment is to be made, then no repayment shall be made unless the claim for repayment is made within the shorter period concerned.

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

Interest on
repayment of duty.

105D.—(1) For the purposes of this section—

‘claimant’ means a person who submits a valid claim for a repayment amount;

‘excise law’ means the statutes which relate to the duties of excise and instruments relating to those duties made under statute;

‘repayment amount’ means an amount which a person becomes entitled to receive from the Commissioners and which is claimed—

(a) within such period (if any) set down in respect of the provision of excise law under which the claim for repayment is made, where this applies, or

(b) in all other cases, within a period of 4 years from the date of payment of excise duty or of any other act or event giving rise to an entitlement to repayment,

but such amount does not include interest payable under this section;

‘valid claim’ means a claim, which includes all information required by the Commissioners to enable them to determine if and to what extent a repayment is due and, where applicable, is furnished in accordance with the provision of excise law under which such claim is made.

(2) Where a mistaken assumption in the application of a provision of excise law is made by the Commissioners and as a result a repayment amount is payable to a claimant, interest is, subject to section 1006A(2A) of the Taxes Consolidation Act 1997, payable by the Commissioners on that amount from—

(a) in the case of an overpaid amount, the date that overpaid amount was received by the Commissioners, and

(b) in all other cases, the date on which the claimant would have been entitled to the repayment amount but for that mistaken assumption,

to the date on which the repayment amount is paid by the Commissioners to the claimant.

(3) Where, for any reason other than a mistaken assumption made by the Commissioners in the application of a provision of excise law, a repayment amount is payable to a claimant but is not paid until after the expiry of 6 months from the date the Commissioners receive a valid claim for that amount, interest is, subject to section 1006A(2A) of the Taxes Consolidation Act 1997, payable by the Commissioners on that amount from the date on which that 6 month period expires to the date on which the repayment amount is paid by the Commissioners to the claimant.

(4) Interest payable in accordance with this section, shall be simple interest payable at the rate of 0.011 per cent per day or part of a day, or such other rate as may be prescribed by the Minister for Finance by order under subsection (7).

(5) Interest shall not be payable under this section if it amounts to less than €10.

(6) This section shall not apply in relation to any repayment or part of a repayment in respect of which interest is payable under or by virtue of any provision of any other enactment.

(7) (a) The Minister for Finance may, from time to time, make an order prescribing a rate for the purposes of subsection (4).

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

[2003.]

Finance Act 2003.

[No. 3.]

(8) The Commissioners may make regulations as necessary governing the operation of this section. Pr.2 S.98

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

99.—Chapter 3 of Part 2 of the Finance Act 2001 is amended by inserting the following section after section 124:

Administrative penalties for breach of provisions or regulations.

“124A.—(1) A person who contravenes or fails to comply with—

(a) any condition imposed under section 109(5), or

(b) any condition referred to in section 153(2)(c) and which is contained in a regulation under that section,

is liable to a penalty of €1,500 for each such contravention or failure.

(2) Any penalty payable under this section is deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and shall be payable to the Commissioners and may (without prejudice to any other mode of recovery of such penalty) be sued for and recovered by action, or other appropriate proceedings, at the suit of the Commissioners by an officer authorised by them for the purposes of this subsection in any court of competent jurisdiction.”.

100.—Chapter 5 of Part 2 of the Finance Act 2001 is amended by inserting the following section before section 145:

Delegation of powers, functions and duties of Commissioners.

“144A.—(1) For the purposes of this Part, other than sections 107 and 153, and subject to the direction and control of the Commissioners, any power, function or duty conferred or imposed on them may, subject to subsection (2), be exercised or performed on their behalf by an officer.

(2) Any power, function or duty conferred or imposed on the Commissioners by section 109, 112, 113 or 116 may be exercised or performed on their behalf, and subject to their direction and control, by an officer authorised by them in writing for the purposes of the section concerned.”.

101.—(1) Section 130 of the Finance Act 1992 is amended—

Amendment of section 130 (interpretation) of Finance Act 1992.

(a) in the definition of “Category B vehicle” (amended by section 169 of the Finance Act 2001):

(i) by inserting “a pick-up” after “a category D vehicle”, and

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

“(a) in the case of a crew cab, is less than 3,500 kilograms gross vehicle weight, or”,

(b) by substituting the following for the definition of “crew cab” (amended by section 169 of the Finance Act 2001):

“ ‘crew cab’ means a vehicle that comprises a cab, with seating for a driver and a minimum of 3 and a maximum of 6 other persons, and an area to the rear of the cab that is designed, constructed or adapted exclusively for the carriage of goods and which area—

- (i) is completely and permanently separated from the cab by a rigid partition that is fixed in such manner as may be prescribed by the Commissioners, and
- (ii) has a floor length that is not less than 45 per cent of the wheelbase when measured in such manner as may be prescribed by the Commissioners;”,

(c) by inserting the following definition after the definition of “the order of 1984”:

“ ‘pick-up’ means a vehicle that comprises a cab, with a single row of seating for a driver and a maximum of two other persons, and an uncovered area to the rear of the cab that is designed, constructed or adapted exclusively for the carriage of goods and which area—

- (i) is completely and permanently separated from the cab by a rigid partition that is fixed in such manner as may be prescribed by the Commissioners, and
- (ii) has a floor length that is not less than 45 per cent of the wheelbase when measured in such manner as may be prescribed by the Commissioners;”,

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

Amendment of
section 131
(registration of
vehicles by
Revenue
Commissioners) of
Finance Act 1992.

102.—(1) Section 131 of the Finance Act 1992 is amended—

by substituting the following for subsection (5) (amended by section 100 of the Finance Act 2000):

“(5) (a) The Commissioners shall assign in the prescribed manner a unique identification mark to each vehicle entered in the register and, following the issue of a licence under section 1 of the Act of 1952, the Minister for the Environment and Local Government shall issue to the owner of each such vehicle a certificate of registration in the prescribed form.

(b) Notwithstanding the provisions of paragraph (a), a certificate of registration may be issued where a licence under the Act of 1952 is not issued and the Minister for the Environment and Local Government or a licensing authority, as appropriate, is satisfied that the vehicle has not or will not in the future be used in any public place within the meaning of section 64 of the Finance Act 1976.”.

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

103.—(1) Section 132 of the Finance Act 1992, is amended in paragraphs (a) and (aa) (inserted by section 116 of the Finance Act 1999) of subsection (3) by substituting “1,900 cubic centimetres” for “2,000 cubic centimetres”.

Pr.2
Amendment of
section 132 (charge
of excise duty) of
Finance Act 1992.

(2) This section applies as and from 1 January 2003.

104.—(1) Section 134 of the Finance Act 1992 is amended by deleting subsection (15).

Amendment of
section 134
(permanent reliefs)
of Finance Act
1992.

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

105.—(1) Section 135C (inserted by section 168 of the Finance Act 2001) of the Finance Act 1992 is amended in subsection (1) by substituting “31 December 2004” for “31 December 2002”.

Amendment of
section 135C
(remission or
repayment in
respect of vehicle
registration tax on
certain hybrid
electric vehicles) of
Finance Act 1992.

(2) This section applies as and from 1 January 2003.

106.—Section 141 of the Finance Act 1992 is amended in subsection (2), by substituting the following for paragraph (t) (inserted by section 74 of the Finance Act 1996):

Amendment of
section 141
(regulations) of
Finance Act 1992.

“(t) prescribe what constitutes permanently fitted equipment for the purposes of the definition of ‘motor caravan’ in section 130,

(u) prescribe the manner in which the rigid partition which completely and permanently separates the cab from the area designed, constructed or adapted exclusively for the carriage of goods in a crew cab or a pick-up is to be fixed for the purposes of the definition of ‘crew cab’ and ‘pick-up’ in section 130,

(v) prescribe the manner in which the floor length of the area designed, constructed or adapted exclusively for the carriage of goods in a crew cab or a pick-up is to be measured for the purposes of the definition of ‘crew cab’ and ‘pick-up’ in section 130.”.

107.—(1) The duty of excise imposed by section 17 of the Finance Act 1956 on gaming licences issued under section 19 of the Gaming and Lotteries Act 1956 shall be charged, levied and paid on such licences issued on or after 1 June 2003 at the rates specified in *Schedule 4* in lieu of the rates specified in Part III of the Sixth Schedule to the Finance Act 1992 (as amended by reference to section 240 of, and Part 3 of Schedule 5 to, the Finance Act 2001).

Gaming licences.

(2) In respect of licences issued on or after 1 June 2003, Part III of the Sixth Schedule to the Finance Act 1992 is repealed.

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

Pt.2

Amendment of
section 43 (gaming
machine licence
duty) of Finance
Act 1975.

108.—(1) Section 43 of the Finance Act 1975 is amended—

(a) in subsection (2)(a) (as amended by paragraph (b) of section 176 of the Finance Act 2001) by deleting “once more” after “to play again”,

(b) by substituting the following for subsection (6):

“(6) There shall be charged, levied and paid on the grant of a gaming machine licence a duty of excise at whichever of the following rates is appropriate having regard to the period for which the licence is to remain in force, that is to say, where the period for which the licence is to remain in force—

(a) does not exceed 3 months, €145,

(b) exceeds 3 months but does not exceed 12 months, €505.”,

and

(c) by deleting subsection (7).

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

Amendment of
section 120
(interpretation
(Chapter III)) of
Finance Act 1992.

109.—(1) Section 120 of the Finance Act 1992 (as amended by section 175 of the Finance Act 2001) is amended in subsection (2)(d) by deleting “once more” after “to play again”.

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

Amendment of
section 123 (rates of
duty) of Finance
Act 1992.

110.—(1) Section 123 of the Finance Act 1992 is amended by deleting paragraph (c) (inserted by section 70(b) of the Finance Act 1993).

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

Time limits.

111.—(1) The Finance Act 2002 is amended by inserting the following after section 73:

“73A.—(1) (a) In relation to any month or period commencing on or after 1 May 2002, an estimate of betting duty payable or an assessment of betting duty payable under section 72 or 73 may be made at any time not later than 4 years after the end of the month or period to which the estimate or assessment relates or, where the period in respect of which the estimate or assessment is made consists of 2 or more months or periods, after the end of the earlier or the earliest month or period comprised in such month or period.

(b) Notwithstanding paragraph (a), in a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to betting duty, an estimate

or assessment as aforesaid may be made at any time for any month or period for which, by reason of the fraud or neglect, betting duty would otherwise be lost to the Exchequer. Pr.2 S.111

- (c) A person shall be deemed not to have failed to do anything required to be done within a limited time if he or she did it within such further time, if any, as the Revenue Commissioners may have allowed.
- (d) Where a person has a reasonable excuse for not doing anything required to be done, he or she shall be deemed not to have failed to do it if he or she did it without unreasonable delay after the excuse had ceased.
- (e) In this subsection “neglect” means negligence or a failure—
 - (i) to give any notice,
 - (ii) to furnish particulars,
 - (iii) to make any return, or
 - (iv) to produce or furnish any information, book, document, record or declaration,

required to be given, furnished, made or produced under this Chapter or regulations.

- (2) (a) Where a person dies, an estimate or assessment of betting duty under section 72 or 73, as the case may be, may be made on his or her personal representative for any period for which such an estimate or assessment—
 - (i) could have been made upon him or her immediately before his or her death, or
 - (ii) could be made upon him or her if he or she were living,

in respect of betting duty which became due by such person before his or her death, and the amount of betting duty recoverable under such estimate or assessment shall be a debt due from and payable out of the estate of such person.
- (b) Subject to paragraph (c), an estimate or assessment of betting duty shall not be made by virtue of this subsection—
 - (i) later than 3 years after the expiration of the year in which the deceased person died, in a case in which the grant of probate or letters of administration was made in that year, and
 - (ii) later than 2 years after the expiration of the year in which such grant was made in any other case.

Pt.2 S.111

(c) Where a personal representative to whom paragraph (b) relates—

(i) after the year in which the deceased person died, delivers an additional affidavit under section 48 of the Capital Acquisitions Tax Consolidation Act 2003, or

(ii) is liable to deliver an additional affidavit under the said section 48, has been so notified by the Revenue Commissioners and did not deliver such an affidavit in the year in which the deceased person died,

then such estimate or assessment referred to in paragraph (b) may be made at any time before the expiration of 2 years after the end of the year in which the additional affidavit was or is delivered.”.

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

PART 3

VALUE-ADDED TAX

Interpretation
(*Part 3*).

112.—In this Part “Principal Act” means the Value-Added Tax Act 1972.

Amendment of
section 1
(interpretation) of
Principal Act.

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

“ ‘electronically supplied services’ includes—

(a) website supply, web-hosting, distance maintenance of programmes and equipment,

(b) supply of software and updating of it,

(c) supply of images, text and information, and making databases available,

(d) supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events, and

(e) supply of distance teaching,

and ‘electronic service’ shall be construed accordingly, but where the supplier of a service and his or her customer communicates by means of electronic mail, this shall not of itself mean that the service performed is an electronic service;”.

114.—Section 4 of the Principal Act is amended in subsection (3A)(d)— Pt.3
Amendment of section 4 (special provisions in relation to the supply of immovable goods) of Principal Act.

(a) by substituting “the total amount on which tax was chargeable” for “the amount on which tax was chargeable”, and

(b) by substituting “in respect of or in relation to” for “in respect of” in both places where it occurs.

115.—Section 5 of the Principal Act is amended in subsection (6)— Amendment of section 5 (supply of services) of Principal Act.

(a) by inserting in paragraph (dd) “or a radio or television broadcasting service,” after “subsection (6A),”,

(b) by substituting in paragraph (e) “paragraphs (ddd), (ee) and (eee)” for “paragraphs (ddd) and (ee)”, and

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

“(eee) The place of supply of services of the description specified in paragraph (iiic) of the Fourth Schedule shall be deemed, for the purposes of this Act, to be the State when those services are supplied from outside the Community in the course or furtherance of business by a person who has an establishment outside the Community and has not also an establishment in the Community and are received, otherwise than for a business purpose, by a person whose usual place of residence is the State.”.

116.—The Principal Act is amended by inserting the following section after section 5: Special scheme for electronic services.

“5A.—(1) In this section—

‘electronic services scheme’ means the special arrangements for the taxation of electronically supplied services provided for in Article 26c of Council Directive No. 77/388/EEC¹ of 17 May 1977;

‘EU value-added tax’ means value-added tax referred to in Council Directive No. 77/388/EEC of 17 May 1977 and includes tax within the meaning of section 1;

‘identified person’ has the meaning assigned to it by subsection (5);

‘Member State of consumption’ means the Member State in which the supply of the electronic services takes place according to Article 9(2)(f) of Council Directive No. 77/388/EEC of 17 May 1977;

‘Member State of identification’ means the Member State which the non-established person chooses to contact to state when his or her activity within the Community commences in accordance with the provisions of the electronic services scheme;

¹O.J. No. L 145 of 13 June, 1977, p.1

‘national tax number’ means a number (whether consisting of either or both numbers and letters) assigned to a non-established person by his or her own national taxation authorities;

‘non-established person’ means a person who has his or her establishment outside the Community and has not also an establishment in the Community and who is not otherwise required to be a person registered for value-added tax within the meaning of section 1;

‘scheme participant’ means a non-established person who supplies electronic services into the Community and who opts to use the electronic services scheme in any Member State;

‘VAT return’ means the statement containing the information necessary to establish the amount of EU value-added tax that has become chargeable in each Member State under the electronic services scheme.

(2) Subject to and in accordance with the provisions of this section, a non-established person may opt to apply the electronic services scheme to his or her supplies of electronic services to non-taxable persons within the Community.

(3) The Revenue Commissioners shall set up and maintain a register, referred to in this section as an ‘identification register’, of non-established persons who are identified in the State for the purposes of the electronic services scheme.

(4) A non-established person who opts to be identified in the State for the purposes of the electronic services scheme shall inform the Revenue Commissioners by electronic means in a manner specified by them, when his or her taxable activity commences and shall, at the same time, furnish them electronically with the following information—

- (a) the person’s name and postal address,
- (b) his or her electronic addresses, including website addresses,
- (c) his or her national tax number, if any, and
- (d) a statement that the person is not a person registered, or otherwise identified, for value-added tax purposes within the Community.

(5) Where a person has furnished the particulars required under subsection (4), the Revenue Commissioners shall register that person in accordance with subsection (3), allocate to that person an identification number and notify such person electronically of it, and, for the purposes of this section, a person to whom such an identification number has been allocated shall be referred to as an ‘identified person’.

(6) An identified person shall, within 20 days immediately following the end of each calendar quarter, furnish by electronic means to the Revenue Commissioners a VAT return, prepared in accordance with, and containing such particulars as are specified in, subsection (7), in respect of supplies made in the Community in that quarter and shall at the same time remit to the Revenue Commissioners, into a bank account designated by

them and denominated in euro, the amount of EU value-added tax, if any, payable by such person in respect of such quarter in relation to— Pr.3 S.116

- (a) supplies made in the State in accordance with section 5(6)(*eee*), and
- (b) supplies made in other Member States in accordance with the provisions implementing Article 9(2)(f) of Council Directive No. 77/388/EEC of 17 May 1977 in such other Member States:

but if the identified person has not made any such electronic supplies to non-taxable persons into the Community within a calendar quarter that person shall furnish a nil VAT return in respect of that quarter.

(7) The VAT return referred to in subsection (6) shall be made in euro and shall contain the following details—

- (a) the person's identification number,
- (b) for each Member State of consumption where EU value-added tax has become due—
 - (i) the total value, exclusive of EU value-added tax, of supplies of electronic services for the quarter,
 - (ii) the amount of the said value liable to EU value-added tax at the applicable rate, and
 - (iii) the amount of EU value-added tax corresponding to the said value at the applicable rate,

and

- (c) the total EU value-added tax due, if any.

(8) Notwithstanding section 10(9A), where supplies have been made using a currency other than the euro, the exchange rate to be used for the purposes of expressing the corresponding amount in euro on the VAT return shall be that published by the European Central Bank for the last date of the calendar quarter for which the VAT return relates, or, if there is no publication on that date, on the next day of publication.

(9) Notwithstanding section 12, a scheme participant who supplies services which are deemed in accordance with section 5(6)(*eee*) to be supplied in the State shall not, in computing the amount of tax payable by him or her in respect of such supplies, be entitled to deduct any tax borne or paid in relation to those supplies but shall be entitled to claim a refund of such tax in accordance with, and using the rules applicable to, Council Directive 86/560/EEC¹ of 17 November 1986, notwithstanding Articles 2(2), 2(3) and 4(2) of that Directive.

(10) A scheme participant who supplies services which are deemed in accordance with section 5(6)(*eee*) to be supplied in the State shall be deemed to have fulfilled his or her obligations under sections 9, 16 and 19 of this Act if such participant has

¹O.J. No. L 326 of 21 November, 1986, p.1

accounted in full in respect of such supplies in any Member State under the provisions of the electronic services scheme.

(11) For the purposes of this Act, a VAT return required to be furnished in accordance with the electronic services scheme shall, in so far as it relates to supplies made in accordance with section 5(6)(*eee*), be treated, with any necessary modifications, as if it were a return required to be furnished in accordance with section 19.

(12) (a) An identified person shall—

- (i) keep full and true records of all transactions covered by the electronic services scheme which affect his or her liability to EU value-added tax,
- (ii) make such records available, by electronic means and on request, to the Revenue Commissioners,
- (iii) make such records available, by electronic means and on request, to all Member States of consumption, and
- (iv) notwithstanding section 16, retain such records for each transaction for a period of 10 years from the end of the year when that transaction occurred.

(b) A scheme participant who is deemed to supply services in the State in accordance with section 5(6)(*eee*) shall be bound by the requirements of subparagraphs (i), (ii) and (iv) in relation to such supplies.

(13) An identified person shall notify the Revenue Commissioners of any changes in the information submitted under subsection (4) and shall notify them if his or her taxable activity ceases or changes to the extent that such person no longer qualifies for the electronic services scheme. Such notification shall be made electronically.

(14) The Revenue Commissioners shall exclude an identified person from the identification register if—

(a) they have reasonable grounds to believe that that person's taxable activities have ended, or

(b) the identified person—

- (i) notifies the Revenue Commissioners that he or she no longer supplies electronic services,
- (ii) no longer fulfils the requirements necessary to be allowed to use the electronic services scheme, or
- (iii) persistently fails to comply with the provisions of the electronic services scheme.

(15) The Revenue Commissioners may make regulations as necessary for the purpose of giving effect to the electronic services scheme.”

[2003.]

Finance Act 2003.

[*No. 3.*]

117.—Section 7 of the Principal Act is amended by inserting the following after paragraph (a) of subsection (3)—

Pt.3
Amendment of
section 7 (waiver of
exemption) of
Principal Act.

“(aa) the amount of tax deducted by him in accordance with section 12, prior to the commencement of the letting of the immovable goods to which the waiver relates, in respect of or in relation to his acquisition of his interest in, or his development of, those immovable goods.”.

118.—Section 8 of the Principal Act is amended—

Amendment of
section 8 (taxable
persons) of
Principal Act.

(a) in subsection (1) by substituting “goods in the State in the circumstances set out in subsection (1A)(f) or supplies a service in the State in the circumstances set out in subsection (2)(aa),” for “a service in the State in the circumstances set out in subsection (2)(aa)”, and

(b) in subsection (1A) by inserting the following paragraph after paragraph (e)—

“(f) Where a person not established in the State supplies goods in the State which are installed or assembled, with or without a trial run, by or on behalf of that person, and where the recipient of the supply of those goods is—

(i) a taxable person,

(ii) a Department of State or local authority,

(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 of those goods 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.”.

119.—Section 11(1)(d) of the Principal Act is amended by substituting “13.5 per cent” for “12.5 per cent”.

Amendment of
section 11 (rates of
tax) of Principal
Act.

120.—Section 12B of the Principal Act is amended—

Amendment of
section 12B (special
scheme for means
of transport
supplied by taxable
dealers) of Principal
Act.

(a) in subsection (10), by deleting “and” at the end of paragraph (a), by substituting “of that motor vehicle to that person, and” for “of that motor vehicle to that person.” in paragraph (b) and by inserting the following after paragraph (b):

“(c) a supply by a taxable dealer of a means of transport being a motor vehicle as defined in section 12(3)(b) which has been declared for registration in accordance with section 131 of the Finance Act

1992 on that dealer's own behalf, unless it can be shown to the satisfaction of the Revenue Commissioners that, on the basis of the use to which that means of transport has been put by that taxable dealer, the provisions of subsection (11)(b) should not apply to that supply.”,

and

(b) by inserting the following after subsection (10):

“(11) (a) Where a means of transport which is a motor vehicle as defined in section 12(3)(b) is declared for registration to the Revenue Commissioners in accordance with section 131 of the Finance Act 1992 by a taxable dealer on that dealer's own behalf and on which deductibility in accordance with section 12 has been claimed by that dealer, then that means of transport shall be treated for the purposes of this Act as if it were removed from stock-in-trade and such removal is deemed to be a supply of that means of transport by that taxable dealer for the purposes of section 3(1)(e).

(b) At the time when a taxable dealer supplies to another person a means of transport which is deemed to have been supplied in accordance with paragraph (a), then that means of transport is deemed to be re-acquired by that dealer as stock-in-trade and, notwithstanding subsection (2), the taxable dealer is entitled to deduct residual tax referred to in subsection (1) and in that case for the purposes of the formula in subsection (4) the residual tax is calculated as if ‘A’ were equal to the total of—

- (i) the amount on which tax was chargeable on the supply of that means of transport to the dealer,
- (ii) the tax which was chargeable on the supply referred to at subparagraph (i), and
- (iii) the vehicle registration tax accounted for by that dealer in respect of the registration of that means of transport,

and, apart from the cases provided for in paragraph (c), the amount referred to in subparagraph (i) is the amount on which tax was chargeable on the supply of that means of transport in accordance with section 3(1)(e).

(c) Where a taxable dealer declares a means of transport for registration in the circumstances described in paragraph (a) but does not claim deductibility in accordance with section 12 in

[2003.]

Finance Act 2003.

[*No. 3.*]

respect of that means of transport, then paragraph (b) applies when that dealer supplies that means of transport to another person.”.

Pr.3 S.120

121.—Section 16 of the Principal Act is amended—

Amendment of
section 16 (duty to
keep records) of
Principal Act.

- (a) in subsection (3) by inserting “, subject to subsection (4),” after “any copy thereof which is in the power, possession or procurement of the person shall”, and

- (b) by inserting the following subsection after subsection (3):

“(4) Notwithstanding the retention period specified in subsection (3) the following retention periods shall apply:

- (a) where a person acquires or develops immovable goods to which section 4 applies, the period for which that person shall retain records pursuant to this section in relation to that person’s acquisition or development of those immovable goods shall be the duration that such person holds a taxable interest in such goods plus a further period of six years,

- (b) where a person exercises a waiver of exemption from tax in accordance with section 7, the period for which that person shall retain records pursuant to this section shall be the duration of the waiver plus a further period of six years.”.

122.—Section 17 of the Principal Act is amended—

Amendment of
section 17 (invoices)
of Principal Act.

- (a) by inserting in subsection (1) “or to a Department of State or local authority or to a body established by statute or to a person who carries on an exempted activity” after “who supplies goods or services to another taxable person”,

- (b) by deleting in subsection (10)(a) “goods or services are supplied to a registered person by another registered person or”,

- (c) by substituting in subsection (10)(b) “agricultural produce” for “goods”, and

- (d) by inserting the following after subsection (13):

“(14) (a) An invoice required under this section to be issued in respect of a supply by a person, in this subsection referred to as the ‘supplier’, is deemed to be so issued by that supplier if that invoice is drawn up and issued by the person to whom that supply is made, in this subsection referred to as the ‘customer’, where—

- (i) there is prior agreement between the supplier and the customer that the customer may draw up and issue such invoice,

- (ii) the customer is a person registered for value-added tax,
 - (iii) any conditions which are imposed by this Act or by regulations on the supplier in relation to the form, content or issue of the invoice are met by the customer, and
 - (iv) agreed procedures are in place for the acceptance by the supplier of the validity of the invoice.
- (b) An invoice, which is deemed to be issued by the supplier in accordance with paragraph (a), is deemed to have been so issued when such invoice is accepted by that supplier in accordance with the agreed procedures referred to in paragraph (a)(iv).
- (c) An invoice required to be issued by a supplier under this section shall be deemed to be so issued by that supplier if—
 - (i) that invoice is issued by a person who acts in the name and on behalf of the supplier, and
 - (ii) any conditions which are imposed by this Act or by regulations on the supplier in relation to the form, content or issue of the invoice are met.
- (d) Any credit note or debit note issued in accordance with this section which amends and refers specifically and unambiguously to an invoice is treated as if it were an invoice for the purposes of this subsection.
- (e) The Revenue Commissioners may make regulations in relation to the conditions applying to invoices covered by this subsection.
- (15) (a) A person who issues, or is deemed to issue, an invoice under this section shall ensure that—
 - (i) a copy of any invoice issued by such person,
 - (ii) a copy of any invoice deemed to be issued by such person in the circumstances specified in subsection (14), and
 - (iii) any invoice received by such person,

is stored, and for the purposes of section 16(1) the reference to the keeping of full and true records therein shall be construed accordingly in so far as it relates to invoices covered by this section.
- (b) Any invoice not stored by electronic means in a manner which conforms with requirements laid down by the Revenue Commissioners

[2003.]

Finance Act 2003.

[No. 3.]

shall be stored within the State, but subject to the agreement of the Revenue Commissioners and any conditions set by them such invoice may be stored outside the State.”.

Pr.3 S.122

123.—Section 19 of the Principal Act is amended by inserting the following after subsection (5):

Amendment of section 19 (tax due and payable) of Principal Act.

“(6) Notwithstanding the provisions of subsection (3), in cases where the provisions of section 5A are applied, the tax shall be payable at the time the VAT return is required to be submitted in accordance with section 5A(6).”.

124.—Section 20 of the Principal Act is amended—

Amendment of section 20 (refund of tax) of Principal Act.

(a) in subsection (4)(a)—

(i) by substituting “1 May 2003” for “the 1st day of May, 1998”, and

(ii) by substituting “six years” for “ten years”,

(b) in subsection (4)(b)—

(i) by substituting “1 May 2003” for “the 1st day of May, 1998”,

(ii) by substituting “1 January 2005” for “the 1st day of May, 1999,”, and

(iii) by substituting “four years” for “six years”,

(c) in subsection (5)(e) by inserting “together with any interest payable in accordance with section 21A” after “refund to the claimant that part of the withheld amount”, and

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

“(7) The Revenue Commissioners shall not refund any amount of tax except as provided for in this Act, or any order or regulation made under this Act.”.

125.—The Principal Act is amended by inserting the following section after section 21—

Interest on refunds of tax.

“21A.—(1) For the purposes of this section—

‘claimant’ means a person who submits a valid claim for a refundable amount;

‘overpaid amount’ means an amount which is a refundable amount as a result of a claimant having made a payment of tax;

‘refundable amount’ means an amount which a person is entitled to receive from the Revenue Commissioners in accordance with this Act or any order or regulation made under this Act and which is claimed within the period provided for in subsection 20(4), but such amount does not include interest payable under this section;

‘valid claim’ means a return or a claim, furnished in accordance with this Act or any order or regulation made under it, and which includes all information required by the Revenue Commissioners to establish the refundable amount.

(2) Where a mistaken assumption in the operation of the tax is made by the Revenue Commissioners and as a result a refundable amount is payable to a claimant, interest at the rate set out in subsection (4) or prescribed by order under subsection (7) shall, subject to section 1006A(2A) of the Taxes Consolidation Act 1997, be payable by the Revenue Commissioners on that amount from—

- (a) in the case of an overpaid amount, the day that overpaid amount was received by the Revenue Commissioners,
- (b) in the case of any other refundable amount, the 19th day of the month following the taxable period in respect of which a claimant would have been entitled to receive a refundable amount but for the mistaken assumption in the operation of the tax by the Revenue Commissioners, but where a return was due in accordance with section 19 from that claimant in respect of that taxable period, the day such return was received,

to the day on which the refundable amount is paid by the Revenue Commissioners to the claimant.

(3) Where, for any reason other than a mistaken assumption in the operation of the tax made by the Revenue Commissioners, a refundable amount is payable to a claimant but is not paid until after the expiry of six months from the day the Revenue Commissioners receive a valid claim for that amount, interest at the rate specified in subsection (4) or prescribed by order under subsection (7) shall, subject to section 1006A(2A) of the Taxes Consolidation Act 1997, be payable by the Revenue Commissioners on that amount from the day on which that six months expires to the day on which the refundable amount is paid by the Revenue Commissioners to the claimant.

(4) Interest payable in accordance with this section shall be simple interest payable at the rate of 0.011 per cent per day or part of a day, or such other rate as may be prescribed by the Minister for Finance by order under subsection (7).

(5) Interest shall not be payable if it amounts to less than €10.

(6) (a) The Revenue Commissioners shall not pay interest in respect of any amount under this Act except as provided for by this section.

(b) This section shall not apply in relation to any refund of tax in respect of which interest is payable under or by virtue of any provision of any other enactment.

(7) (a) The Minister for Finance may, from time to time, make an order prescribing a rate for the purposes of subsection (4).

(b) Every order made by the Minister for Finance under paragraph (a) shall be laid before Dáil Éireann as

soon as may be after it is made and, if a resolution Pr.3 S.125 annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

(8) The Revenue Commissioners may make regulations as necessary governing the operation of this section.”.

126.—Section 22 of the Principal Act is amended by replacing the proviso in subsection (1) with the following:

Amendment of section 22 (estimation of tax due for a taxable period) of Principal Act.

“Provided that where the Revenue Commissioners are satisfied that—

- (a) the amount so estimated is excessive, they may amend the amount so estimated by reducing it, or
- (b) the amount so estimated is insufficient, they may amend the amount so estimated by increasing it,

then, in either case, they shall serve notice on the person concerned of the revised amount estimated and such notice shall supercede any previous notice issued under this subsection.”.

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

Amendment of section 27 (fraudulent returns, etc.) of Principal Act.

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

“(1A) Where a person fraudulently or negligently fails to comply with a requirement in accordance with this Act or regulations to furnish a return, that person shall be liable to a penalty of—

- (a) €125, and
- (b) the amount, or in the case of fraud twice the amount, of the difference between—
 - (i) the amount of tax properly payable by such person if such return had been furnished by that person and that return had been correct, and
 - (ii) the amount of tax (if any) paid in respect of the taxable period for which the said return was not furnished.”,

and

(b) in subsection (2)—

- (i) by substituting “subsection (1) or (1A)” for “the foregoing subsection”, and
- (ii) by substituting “any reference in those subsections” for “the reference in paragraph (a) of that subsection”.

Pt.3

Amendment of
section 29 (recovery
of penalties) of
Principal Act.

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

(a) in subsection (1), by substituting “for the recovery of the penalty in any court of competent jurisdiction as a liquidated sum, and, where appropriate, section 94 of the Courts of Justice Act 1924 shall apply accordingly.” for “for the recovery of the penalty in the High Court as a liquidated sum and the provisions of section 94 of the Courts of Justice Act, 1924, shall apply accordingly.”, and

(b) in subsection (6), by substituting “the rules of court” for “the rules of the High Court”.

(2) Subsection (1) applies as respects civil proceedings commenced on or after the passing of this Act.

Amendment of
section 30 (time
limits) of Principal
Act.

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

(a) in subsection (4)(a)(i)—

(i) by substituting “1 May 2003” for “the 1st day of May, 1998”, and

(ii) by substituting “six years” for “ten years”,
and

(b) in subsection (4)(a)(ii)—

(i) by substituting “1 May 2003” for “the 1st day of May, 1998”,

(ii) by substituting “1 January 2005” for “the 1st day of May, 1999,”, and

(iii) by substituting “four years” for “six years”.

Amendment of
section 32
(regulations) of
Principal Act.

130.—Section 32 of the Principal Act is amended in subsection (1)—

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

“(ba) the manner in which the electronic services scheme referred to in section 5A shall operate;”,

and

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

“(ma) the conditions governing a person’s entitlement to interest in accordance with section 21A;”.

Amendment of
Fourth Schedule to
Principal Act.

131.—The Fourth Schedule to the Principal Act is amended by inserting the following after paragraph (iia):

“(iiib) radio and television broadcasting services;

(iiic) electronically supplied services;”.

PART 4

STAMP DUTIES

132.—In this Part—

Interpretation
(Part 4).

“Commissioners” means the Revenue Commissioners;

“Principal Act” means the Stamp Duties Consolidation Act 1999.

133.—(1) Section 1 of the Principal Act is amended in subsection (1) by substituting the following for paragraph (I) of the definition of “residential property”—

Amendment of
section 1
(interpretation) of
Principal Act.

“(I) in the year ending on 31 December immediately prior to the date of that instrument of conveyance or lease a rating authority—

(A) has made a rate or has not made a rate in respect of any particular property falling within Schedule 3 to the Valuation Act 2001, or

(B) has not made a rate in respect of any particular property falling within Schedule 4 to the Valuation Act 2001,

then the whole or an appropriate part of that property as is referable to ordinary use other than as a dwelling at the date of that instrument of conveyance or lease or, where appropriate, when last ordinarily used, shall not be residential property, in relation to that sale or lease, or”.

(2) This section has effect in relation to instruments executed on or after the passing of this Act.

134.—(1) Section 36 of the Principal Act is amended by inserting the following subsection after subsection (2):

Amendment of
section 36 (certain
contracts for sale of
leasehold interests
to be chargeable as
conveyances on
sale) of Principal
Act.

“(3) Where on or after 1 March 2003 a charge arises under subsection (2) in respect of a contract or agreement for sale executed prior to 4 December 2002, the ad valorem stamp duty payable on that contract or agreement for sale shall be calculated by reference to the rates of ad valorem stamp duty in force on the date that the charge arises.”.

(2) *Subsection (1)* applies and has effect in relation to contracts or agreements for sale executed prior to 4 December 2002 in respect of charges arising on or after 1 March 2003.

135.—(1) Section 69 of the Principal Act is amended by inserting the following after subsection (3):

Amendment of
section 69
(operator-
instruction deemed
to be an instrument
of conveyance or
transfer) of
Principal Act.

“(4) Where a transfer of title to securities through a relevant system is effected by an operator-instruction relating to a single netted settlement in a relevant system of two or more contracts for sale of the same type of securities of a company that operator-instruction shall not be treated as an operator-instruction falling within subsection (1) and shall, instead, be deemed to be a separate operator-instruction generated in respect of each contract for sale included in that single netted settlement and

Pt.4 S.135

each such operator-instruction shall be deemed to be an executed instrument of conveyance or transfer of the securities which are the subject of the contract for sale concerned and the date of execution of each such conveyance or transfer shall be taken to be the date the operator-instruction relating to the single netted settlement is generated.

(5) Where no operator-instruction is generated in connection with a single netted settlement in a relevant system of two or more contracts for sale of the same type of securities of a company, a separate operator-instruction shall be deemed to have been generated on the date of the single netted settlement in respect of each contract for sale included in that single netted settlement and each such operator-instruction shall be deemed to be an executed instrument of conveyance or transfer of the securities which are the subject of the contract for sale concerned and the date of execution of each such conveyance or transfer shall be taken to be the date the deemed operator-instruction is generated.”.

(2) *Subsection (1)* has effect in relation to instruments executed on or after the passing of this Act.

Amendment of
section 79
(conveyances and
transfers of
property between
certain bodies
corporate) of
Principal Act.

136.—(1) Section 79 of the Principal Act is amended—

(a) in subsection (3)—

(i) by substituting “ordinary share capital” for “issued share capital” in the first 2 places where it occurs, and

(ii) by substituting the following for paragraphs (a), (b) and (c):

“(a) references to company were references to body corporate, and

(b) references to companies were references to bodies corporate.”,

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

“(3A) For the purposes of subsection (3) ‘ordinary share capital’, in relation to a body corporate, means all the issued share capital (by whatever name called) of the body corporate, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the body corporate.”,

and

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

“(9) This section shall apply notwithstanding that a body corporate, referred to in this section, is incorporated outside the State, and such body corporate, corresponds, under the law of the place where it is incorporated, to a body corporate which has an ordinary share capital within the meaning given in subsection (3A) and subject to any necessary modifications for the purpose of so corresponding, all the other provisions of this section are met.”.

(2) *Subsection (1)* applies and has effect in relation to instruments executed on or after 6 February 2003. Pt.4 S.136

137.—(1) Section 81 of the Principal Act is amended in subsection (9), by substituting “31 December 2005” for “31 December 2002”.
 (2) *Subsection (1)* applies and has effect in relation to instruments executed on or after 1 January 2003.

Amendment of section 81 (relief from stamp duty in respect of transfers to young trained farmers) of Principal Act.

138.—(1) The Principal Act is amended by the substitution of the following section for section 89:

Foreign Government securities.

“89.—(1) In this section—

‘foreign local authority’ means an authority, corresponding in substance to a local authority for the purposes of the Local Government Act 2001, which is established outside the State and whose functions are carried on primarily outside the State;

‘foreign local government’ means any local or regional government in any jurisdiction outside the State.

(2) Stamp duty shall not be chargeable on any conveyance or transfer of stocks or other securities of the government of any territory outside the State, of a foreign local government or of a foreign local authority.”.

(2) This section has effect in relation to instruments executed on or after 6 February 2003.

139.—(1) The Principal Act is amended by the insertion of the following section after section 108—

Exemption of National Development Finance Agency, etc. from stamp duty.

“National Development Finance Agency, etc.

108A.—(1) In this section—

‘land’ includes an interest in land;

‘the Agency’ means the National Development Finance Agency established by section 2 of the National Development Finance Agency Act 2002.

(2) Stamp duty shall not be chargeable on any instrument executed—

(a) by or on behalf of the Agency whereby property is acquired by the Agency, or

(b) by a company formed by the Agency under section 5 of the National Development Finance Agency Act 2002 whereby land is acquired from the Agency, from a company formed by the Agency under section 5 of the National Development Finance Agency Act 2002, or from a State authority within the meaning of section 1 of the National

[No. 3.]

Finance Act 2003.

[2003.]

Development Finance Agency
Act 2002.

(3) Subsection (2)(b) shall not apply to an instrument executed by a company formed by the Agency under section 5 of the National Development Finance Agency Act 2002 unless—

(a) on the date the instrument is executed, the company is 100 per cent beneficially owned, either directly or indirectly by the State, and

(b) on or before that date, the Minister has received confirmation in writing from the Agency that such company will remain indefinitely so beneficially owned by the State.

(4) Where, in relation to an instrument which is exempt from stamp duty by virtue of subsection (2)(b)—

(a) the company disposes of the land or any part of the land the subject matter of such instrument, other than to a company formed by the Agency under section 5 of the National Development Finance Agency Act 2002, the company shall become liable to pay to the Commissioners a penalty equal to the amount of stamp duty which would have been charged on the instrument in the first instance if the land disposed of had been conveyed or transferred by an instrument to which subsection (2)(b) had not applied, or

(b) the company ceases, at any time, to be 100 per cent beneficially owned, either directly or indirectly by the State, the company shall become liable to pay to the Commissioners a penalty equal to the amount of stamp duty which would have been charged on the instrument in the first instance had subsection (2)(b) not applied,

together with interest on the penalty at a rate of 0.0322 per cent per day or part of a day from the date of any such disposal or cessation to the date the penalty is remitted.

(5) Notwithstanding paragraphs (a) and (b) of subsection (4), the maximum penalty

[2003.]

Finance Act 2003.

[No. 3.]

payable on any instrument shall not exceed Pt.4 S.139
the amount of duty which would have been
charged on the instrument in the first
instance had subsection (2)(b) not applied.”.

(2) This section has effect in relation to instruments executed on
or after 1 January 2003.

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

Amendment of Part
9 (levies) of
Principal Act.

(a) in section 123—

(i) in subsection (1)—

(I) by substituting the following for the definition of
bank:

“‘bank’ means a person who holds a licence
granted by the Central Bank of Ireland under
section 9 of the Central Bank Act 1971;”,

(II) by substituting the following for the definitions
of card account and cash card:

“‘card account’ means an account maintained
by a promoter to which amounts of cash
obtained by a person by means of a cash card
are charged or to which amounts in respect of
goods, services or cash obtained by a person by
means of a combined card are charged;

‘cash card’ means a card, not being a combined
card, issued by a promoter to a person having
an address in the State by means of which cash
may be obtained by the person from an auto-
mated teller machine;”,

and

(III) by inserting the following definition after the
definition of cash card:

“‘combined card’ means a cash card which also
contains the functions of a debit card within the
meaning assigned to it by section 123A;”,

(ii) in subsections (2) and (11)(c) by substituting “cash
cards and combined cards” for “cash cards”,

(iii) in paragraphs (a) and (b) of subsection (3) and in
subsection (9) by substituting “cash card or com-
bined card” for “cash card”,

(iv) in subsection (3) by substituting the following for
paragraph (c):

“(c) if the cash card is a replacement for a cash
card, or a combined card is a replacement
for a combined card, which is already
included in the relevant statement,”,

and

(v) by substituting the following for subsection (4):

“(4) There shall be charged on every statement delivered in pursuance of subsection (2) a stamp duty at the rate of €10 in respect of each cash card and €20 in respect of each combined card included in the number of cash cards and combined cards shown in the statement.”,

(b) by inserting the following section after section 123:

“Debit
cards.

123A.—(1) In this section—

‘accounting period’ has the same meaning as it has for the purposes of section 27 of the Taxes Consolidation Act 1997;

‘bank’ means a person who holds a licence granted by the Central Bank of Ireland under section 9 of the Central Bank Act 1971;

‘building society’ means a building society which stands incorporated, or deemed by section 124(2) of the Building Societies Act 1989, to be incorporated, under that Act and includes a company registered under section 106 of that Act;

‘card account’ means an account maintained by a promoter to which, amongst other possible amounts, amounts in respect of goods, services or cash obtained by a person by means of a debit card, within the meaning of this section, are charged;

‘debit card’ means a card, not being a combined card within the meaning assigned to it by section 123, issued by a promoter to a person having an address in the State by means of which goods, services or cash may be obtained by the person and amounts in respect of the goods, services or cash may be charged to the card account;

‘due date’ means—

(a) in the case of the year 2002, the date of the end of the accounting period ending in that year, where that date is on or after 5 December 2002, and

(b) in the case of the year 2003 and each subsequent year, the date of the end of the

accounting period ending Pr.4 S.140
in that year;

‘promoter’ means a bank or a building
society.

(2) A promoter shall, within 2
months of the due date falling in the
year 2002 and, within 1 month of the
due date falling in the year 2003 and
each subsequent year, deliver to the
Commissioners a statement in writing
showing the number of debit cards
issued at any time by the promoter
and which are valid—

(a) in the case of the year 2002,
at any time during the per-
iod from 5 December 2002
to the due date,

(b) in the case of the year 2003,
at any time during the
accounting period ending
in that year but not before
5 December 2002 where
that date falls within the
accounting period, and

(c) in the case of the year 2004
and each subsequent year,
at any time during the
accounting period ending
in that year.

(3) Notwithstanding subsection
(2)—

(a) if the debit card is not used
at any time during any
period referred to in para-
graph (a), (b) or (c) of
subsection (2),

(b) if the debit card is issued in
respect of a card account—

(i) which is a deposit ac-
count, and

(ii) the average of the
daily positive bal-
ances in the account
does not exceed
€12.70 in any of the
periods referred to in
paragraph (a), (b) or
(c) of subsection (2),

or

(c) if the debit card is a replace-
ment for a debit card

which is already included
in the relevant statement,

then it shall not be included in the
statement relating to such period.

(4) There shall be charged on every
statement delivered in pursuance of
subsection (2) a stamp duty at the rate
of €10 in respect of each debit card
included in the number of cards
shown in the statement.

(5) The duty charged by subsection
(4) on a statement delivered by a pro-
moter pursuant to subsection (2) shall
be paid by the promoter on delivery
of the statement.

(6) There shall be furnished to the
Commissioners by a promoter such
particulars as the Commissioners may
deem necessary in relation to any
statement required by this section to
be delivered by the promoter.

(7) In the case of failure by a pro-
moter to deliver any statement
required by subsection (2) within the
time provided for in that subsection
or of failure to pay the duty charge-
able on any such statement on the
delivery of the statement, the pro-
moter shall be liable to pay, by means
of penalty, in addition to the duty,
interest on the duty at the rate of
0.0322 per cent for each day or part
of a day from the date to which the
statement relates (in this subsection
referred to as the 'due date') to the
date on which the duty is paid and
also, by means of further penalty, a
sum of €380 for each day the duty
remains unpaid after the expiration of
one month from the due date and
each penalty shall be recoverable in
the same manner as if the penalty
were part of the duty.

(8) The delivery of any statement
required by subsection (2) may be
enforced by the Commissioners under
section 47 of the Succession Duty Act
1853 in all respects as if such state-
ment were such account as is men-
tioned in that section and the failure
to deliver such statement were such
default as is mentioned in that section.

(9) A promoter shall be entitled to
charge to the card account the
amount of stamp duty payable in
respect of the debit card by virtue of

this section and may apply the terms and conditions governing that account to interest on that amount. Pt.4 S.140

(10) An account, charge card, company charge card or supplementary card within the meaning, in each case, assigned to it by section 124 and which attracts the payment of the stamp duty payable by virtue of that section shall not attract the payment of the stamp duty payable by virtue of this section.

(11) Where a promoter changes its accounting period and, as a result, stamp duty under this section would not be chargeable or payable in a year (in this section referred to as the ‘relevant year’), then the following provisions shall apply:

- (a) duty shall be chargeable and payable in the relevant year as if the accounting period had not been changed,
- (b) duty shall also be chargeable and payable within one month of the date of the end of the accounting period ending in the relevant year, and
- (c) the duty chargeable and payable by virtue of paragraph (b) shall, subject to subsection (3), be chargeable and payable in respect of debit cards issued at any time by the promoter and which are valid at any time during the period from the due date as determined by paragraph (a) to the due date as determined by paragraph (b).”,

and

(c) in section 124—

- (i) in subsection (1)(b), by substituting “maintained by the bank at any time during the 12 month period or any shorter period, as may be appropriate, ending on that 1st day of April” for “maintained by the bank on that 1st day of April”,
- (ii) in subsection (1)(c), by substituting “€40” for “€19”,

(iii) in subsection (2)—

(I) (A) in paragraph (c), by substituting “€20” for “€9.50”, and

(B) in subparagraph (ii) of paragraph (d), by substituting “€40” for “€19”, and

(II) (A) in paragraph (a), by deleting the definition of “quarter”, and

(B) by substituting the following for paragraphs (b), (c) and (d):

“(b) A promoter shall, in each year, within 3 months of the 1st day of April in that year, deliver to the Commissioners a statement in writing showing the number of charge cards, company charge cards and supplementary cards issued or renewed by the promoter and expressed to be valid at any time during the 12 month period or any shorter period, as may be appropriate, ending on the 1st day of April in that year.

(c) There shall be charged on every statement delivered in accordance with paragraph (b) a stamp duty at the rate of €40 in respect of each charge card, company charge card and supplementary card included in the number of cards shown in the statement.”,

and

(iv) in subparagraph (ii) of subsection (5)(a), by substituting “the 1st day of April in the year in which” for “the end of the quarter within 2 months of which”.

(2) (a) *Paragraph (a) of subsection (1)* has effect as respects cash cards and combined cards valid at any time after 4 December 2002 which are included in any statement which falls to be delivered by a promoter under section 123 of the Principal Act after that date.

(b) *Paragraph (b) of subsection (1)* has effect as respects any statement which falls to be delivered by a promoter under section 123A of the Principal Act on or after 5 December 2002.

(c) *Subparagraph (i) of subsection (1)(c)* has effect as respects any statement which falls to be delivered by a bank under section 124 of the Principal Act in respect of a due date falling after 1 April 2003.

[2003.]

Finance Act 2003.

[No. 3.]

- (d) *Subparagraph (ii) of subsection (1)(c)* has effect as respects any statement which falls to be delivered by a bank under section 124 of the Principal Act on or after 5 December 2002. Pt.4 S.140
- (e) *Clause (I) of subsection (1)(c)(iii)* has effect as respects any statement which falls to be delivered by a promoter under section 124 of the Principal Act on or after 5 December 2002.
- (f) *Clause (II) of subsection (1)(c)(iii)* has effect as respects any statement which falls to be delivered by a promoter under section 124 of the Principal Act in respect of a due date falling after 1 April 2003.
- (g) *Subparagraph (iv) of subsection (1)(c)* has effect as respects any statement which falls to be delivered by a promoter under section 124 of the Principal Act in respect of a due date falling after 1 April 2003.

141.—The Principal Act is amended by inserting the following after section 126:

Levy on certain
financial
institutions.

“126A.—(1) (a) In this section—

‘appropriate tax’ has the meaning assigned to it by section 256 of the Taxes Consolidation Act 1997;

‘assessable amount’, in relation to a relevant person, means the relevant retention tax in relation to the person;

‘average relevant deposits’, in relation to a company, means an amount specified in a notice given by the Central Bank to a company for the purposes of this section, being an amount equal to the average of the end-month amounts of non-Government deposits of Irish residents for each of the calendar months in the year 2001;

‘company’ has the same meaning as in section 4 of the Taxes Consolidation Act 1997;

‘non-Government deposits of Irish residents’, in relation to a company, means the amount specified as non-Government deposits of Irish residents in a return made by the company before 4 December 2002 to the Central Bank of Ireland in accordance with section 18 of the Central Bank Act 1971 (as amended by section 37 of the Central Bank Act 1989 and section 8 of the Central Bank Act 1998);

‘due date’ means—

- (i) in respect of the year 2003, 20 October 2003,

[No. 3.]

Finance Act 2003.

[2003.]

(ii) in respect of the year 2004, 20 October 2004, and

(iii) in respect of the year 2005, 20 October 2005;

‘group assessable amount’, in relation to a year, means the aggregate of the assessable amounts in relation to companies which, at the due date for the year, are members of the group;

‘group relevant deposits’ for any year in relation to a group of companies, means the aggregate of the amounts of average relevant deposits in relation to companies which, on the due date for the year, are members of the group;

‘group stamp duty’, in relation to a group of companies, means the aggregate of the amounts of stamp duty which would, if subsection (7) were deleted, be payable under subsection (6) by companies which, on the due date for the year, are members of the group;

‘relevant person’ means a person who was obliged to pay—

(i) appropriate tax under section 258(3), or

(ii) an amount on account of appropriate tax under section 258(4) or 259(4),

of the Taxes Consolidation Act 1997 in the year 2001;

‘relevant retention tax’, in relation to a relevant person, means an amount determined by the formula—

$$A + B - C$$

where—

A is an amount equal to the aggregate of—

(i) appropriate tax paid by the person in the year 2001 under section 258(3) of the Taxes Consolidation Act 1997, and

(ii) the amount paid by the person in the year 2001 on account of appropriate tax under section 258(4) or 259(4) of that Act,

B is the aggregate of any amounts of appropriate tax, or any amounts on account of appropriate tax, paid by the

[2003.]

Finance Act 2003.

[*No. 3.*]

person after the year 2001 which, in accordance with section 258 or 259 of that Act, should have been paid by the person in the year 2001, and

Pr.4 S.141

C is the aggregate of any amounts of appropriate tax paid by the person in the year 2001 which—

- (i) are included in A, and
- (ii) were agreed by the person and an officer of the Commissioners at or before the time of payment as being tax which, in accordance with the said section 258, should have been paid before the year 2001;

‘year 2001’ means the period of 12 months ending on 31 December 2001.

(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 (within the meaning of section 9 of the Taxes Consolidation Act 1997) of the other company or both companies are 51 per cent subsidiaries of a third company, and
- (ii) 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, and accordingly references to group assessable amount, group relevant deposits and group stamp duty shall be construed as if they were respectively references to assessable amount, relevant deposits and stamp duty of that company.

(2) A relevant person shall for each of the years 2003, 2004 and 2005, not later than the due date in respect of that year, deliver to the Commissioners a statement in writing showing—

- (a) the assessable amount for that person, and

- (b) any amount which has been apportioned to the person in accordance with subsection (7).

(3) Where at any time in a period commencing on 1 January 2001 and ending immediately before a due date—

- (a) a relevant person ceased to carry on a business in the course of which the person was obliged to pay any amount under section 258 or 259 of the Taxes Consolidation Act 1997, and
- (b) another person (in this section referred to as the ‘successor person’) acquired the whole, or substantially the whole, of the business,

the relevant person shall not be required to deliver a statement on the due date in accordance with subsection (2) but the successor person shall—

- (i) where the successor person is, apart from this subsection, required to deliver a statement on the due date in accordance with subsection (2), increase the assessable amount in that statement by the assessable amount in relation to the relevant person, and
- (ii) in any other case, deliver a statement on the due date in accordance with subsection (2) as if the successor person were the relevant person.

(4) Where at any time in a period commencing at the time at which a successor person acquired the whole, or substantially the whole, of a business from the relevant person referred to in subsection (3) such that that subsection applies to the successor person and ending immediately before a due date—

- (a) the successor person ceased to carry on the business so acquired, and
- (b) another person (in this section referred to as the ‘next successor person’) acquired the whole, or substantially the whole, of the business,

the successor person shall not be required to deliver a statement on the due date in accordance with subsection (3) but the next successor person shall—

- (i) where the next successor person is, apart from this subsection, required to deliver a statement on the due date in accordance with subsection (2), increase the assessable amount in that statement by the assessable amount in relation to the relevant person, and
- (ii) in any other case, deliver a statement on the due date in accordance with subsection (2) as if the next successor person were the relevant person.

(5) Where at any time in a period commencing at the time at which a next successor person acquired the whole, or substantially the whole, of a business such that that person was required—

(a) to increase an assessable amount by an assessable amount in relation to a relevant person, or

(b) to deliver a statement as if the next successor person were a relevant person,

and ending immediately before a due date—

(i) the next successor person ceased to carry on the business so acquired, and

(ii) another person (in this section referred to as the ‘further successor person’) acquired the whole, or substantially the whole, of the business,

the next successor person shall not be required to deliver a statement on the due date in accordance with subsection (4) but the further successor person shall—

(I) where the further successor person is, apart from this subsection, required to deliver a statement on the due date in accordance with subsection (2), increase the assessable amount in that statement by the assessable amount in relation to the relevant person, and

(II) in any other case, deliver a statement on the due date in accordance with subsection (2) as if the further successor person were the relevant person,

and so on for further successions.

(6) Subject to subsection (7), there shall be charged on any statement delivered in accordance with subsection (2) a stamp duty of an amount equal to 50 per cent of the assessable amount.

(7) (a) Where, as respects a group of companies, the group stamp duty for a year exceeds an amount equal to 0.15 per cent of the group relevant deposits for the year, so much of the excess as bears to that amount the same proportion as the assessable amount for the year in relation to a company which is a member of the group bears to the group assessable amount for that year shall be apportioned to the company; but the companies which are members of the group may, by giving notice in writing to the Commissioners by the due date for that year, elect to have the excess apportioned in such manner as is specified in the notice.

(b) Where an amount (in this paragraph referred to as the ‘apportioned amount’) has been apportioned to a company under paragraph (a), the amount to be charged under subsection (6) shall be reduced by the apportioned amount.

(8) The stamp duty charged by subsection (6) upon a statement delivered by a relevant person in accordance with subsection (2) shall be paid by that person upon delivery of the statement.

(9) There shall be furnished to the Commissioners by a relevant person such particulars as the Commissioners may require in relation to any statement required by this section to be delivered by the person.

(10) In the case of failure by a relevant person—

(a) to deliver any statement required to be delivered by that person under subsection (2), or

(b) to pay the stamp duty chargeable on any such statement,

on or before the due date in respect of the year concerned, the person shall, from the due date concerned until the day on which the stamp duty is paid, be liable to pay, by way of penalty, in addition to the stamp duty, interest on the stamp duty at the rate of 0.0322 per cent per day or part of a day and also from 20 October of the year in which the statement is to be delivered in accordance with subsection (2), by way of penalty, a sum equal to 1 per cent of the stamp duty for each day the stamp duty remains unpaid and each penalty shall be recoverable in the same manner as if the penalty were part of the stamp duty.

(11) The delivery of any statement required by subsection (2) may be enforced by the Commissioners under section 47 of the Succession Duty Act 1853, in all respects as if such statement were such account as is mentioned in that section and the failure to deliver such statement were such default as is mentioned in that section.

(12) The stamp duty and any penalty due under subsection (10) charged by this section shall not be allowed as a deduction for the purposes of the computation of any tax or duty payable by the relevant person which is under the care and management of the Commissioners.”.

Amendment of Part
11 (management
provisions) of
Principal Act.

142.—(1) Part 11 of the Principal Act is amended by inserting the following chapter after Chapter 6:

“CHAPTER 7

Time limit for repayment of stamp duty, interest on repayment and time limits for enquiries and assessments

Time limits for
claiming a
repayment of stamp
duty.

159A.—(1) Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners or the date the operator-instruction referred to in section 69 was made.

[2003.]

Finance Act 2003.

[No. 3.]

(2) Subsection (1) shall not apply to a repayment claim in respect of stamp duty arising on or before the date of the passing of the *Finance Act 2003*, where a valid claim is made on or before 31 December 2004.

Pr.4 S.142

Interest on
repayments of
stamp duty.

159B.—(1) In this section—

‘relevant date’, in relation to a repayment of stamp duty, means:

- (a) the date which is 183 days after the date on which a valid claim in respect of the repayment is made to the Commissioners, or
- (b) where the repayment is due to a mistaken assumption in the operation of stamp duty on the part of the Commissioners, the date which is the date of the payment of stamp duty, interest, a surcharge or a penalty, as the case may be, which has given rise to that repayment.

‘relevant document’ means—

- (a) an instrument stamped by the Commissioners, or a statement of liability delivered to the Commissioners under any provision of this Act, or
- (b) an operator-instruction entered in a relevant system under section 69.

‘repayment’ means a repayment of stamp duty including a repayment of—

- (a) any interest charged,
- (b) any surcharge imposed,
- (c) any penalty incurred,

under any provision of this Act in relation to stamp duty.

(2) No interest shall be payable in respect of a repayment claim made under any other provision of this Act unless such interest falls to be paid under this section.

(3) Subject to the provisions of this section, where a person is entitled to a repayment in respect of a relevant document, to which this section applies, the amount of the repayment shall, subject to a valid claim in respect of the repayment being made to the Commissioners and subject to section 1006A(2A) of the Taxes Consolidation Act 1997, carry simple interest at the rate of 0.011

[No. 3.]

Finance Act 2003.

[2003.]

per cent, or such other rate (if any) prescribed by the Minister by order under subsection (8), for each day or part of a day for the period commencing on the relevant date and ending on the date upon which the repayment is made.

(4) A claim for repayment under this section shall only be treated as a valid claim when—

(a) it has been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made,

and

(b) all information which the Commissioners may reasonably require to enable them determine if and to what extent a repayment is due, has been furnished to them.

(5) Interest shall not be payable under this section if it amounts to €10 or less.

(6) This section shall not apply in relation to any repayment or part of a repayment of stamp duty in respect of which interest is payable under or by virtue of any provision of any other enactment.

(7) Income tax shall not be deductible on any payment of interest under this section and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(8) (a) The Minister may, from time to time, make an order prescribing a rate for the purposes of subsection (3).

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

(9) The Commissioners may make regulations as they deem necessary in relation to the operation of this section.

[2003.]

Finance Act 2003.

[No. 3.]

Time limits for
making enquiries
etc. and assessments
by the
Commissioners.

159C.—(1) In this section—

Pt.4 S.142

‘neglect’ means negligence or a failure to—

(a) deliver to the Commissioners an instrument chargeable with stamp duty or a statement of liability required under any provision of this Act, or

(b) enter a correct instruction in a relevant system within the meaning of section 68;

‘relevant instrument’ means—

(a) an instrument stamped by the Commissioners or a statement delivered to the Commissioners under any provision of this Act, or

(b) an instruction of the type referred to in section 76;

‘relevant period’, in relation to a relevant instrument, means the period of 4 years commencing on the date the instrument was stamped by the Commissioners, or the date the statement was delivered to the Commissioners, or the date the instruction was made.

(2) The making of enquiries or the taking of other action by the Commissioners for the purpose of satisfying themselves as to the correctness or otherwise of the charge arising, either directly or indirectly, to stamp duty in respect of a relevant instrument may not be initiated after the expiry of the relevant period.

(3) Notwithstanding any other provision in any other section of this Act, an assessment made in connection with or in relation to any relevant instrument may not be made after the expiry of the relevant period.

(4) The time limit referred to in subsections (2) and (3) shall not apply where the Commissioners have reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to any relevant instrument which is the subject of any enquiries, action or assessment.”.

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

Pt.4

Amendment of
Schedule 1 to
Principal Act.

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

- (a) in the Heading “BILL OF EXCHANGE or PROMISSORY NOTE” by substituting “€0.15” for “€0.08” in both places where it occurs,
- (b) in the Heading “CONVEYANCE or TRANSFER on sale of any stocks or marketable securities” by substituting “the amount so calculated shall, if less than €1, be rounded up to €1 and, if more than €1, be rounded down to the nearest €” for “the amount so calculated shall be rounded down to the nearest €”,
- (c) by substituting the paragraphs set out in *Part 1* of *Schedule 5* for paragraphs (7) to (14) 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
- (d) by substituting the subparagraph set out in *Part 2* of *Schedule 5* for subparagraph (b) of paragraph (3) of the Heading “LEASE”.

(2) *Subsection (4)(c)* does not apply to *paragraphs (c) and (d) of subsection (1)* as respects any instrument executed before 1 March 2003, where—

- (a) the effect of the application of *subsection (4)(c)* would be to increase the duty otherwise chargeable on the instrument, and
- (b) the instrument contains a statement, in such form as the Commissioners may specify, certifying that the instrument was executed solely in pursuance of a binding contract entered into prior to 4 December 2002.

(3) The furnishing of an incorrect certificate for the purposes of *subsection (2)* shall be deemed to constitute the delivery of an incorrect statement for the purposes of section 1078 of the Taxes Consolidation Act 1997.

- (4) (a) *Subsection (1)(a)* applies and has effect with respect to bills of exchange (other than cheques) and promissory notes drawn on or after 1 January 2003 and with respect to cheques drawn on or after 5 December 2002,
- (b) *subsections (1)(b) and (3)* apply and have effect as respects instruments executed on or after 6 February 2003, and
- (c) subject to *subsection (2)*, *paragraphs (c) and (d) of subsection (1)* apply and have effect as respects instruments executed on or after 4 December 2002.

PART 5

CAPITAL ACQUISITIONS TAX

144.—In this Part “Principal Act” means the Capital Acquisitions Tax Consolidation Act 2003.

145.—(1) The Principal Act is amended—

Pt.5

Time limits for
capital acquisitions
tax.

(a) in section 18, by deleting subsection (5),

(b) in section 46, by inserting the following after subsection (7):

“(7A) The making of enquiries by the Commissioners for the purposes of subsection (7)(a) or the authorising of inspections by the Commissioners under subsection (7)(b) in connection with or in relation to a relevant return (within the meaning given in section 49(6A)(b)) may not be initiated after the expiry of 4 years commencing on the date that the relevant return is received by the Commissioners.

(7B) (a) The time limit referred to in subsection (7A) shall not apply where the Commissioners have reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of any accountable person in connection with or in relation to any relevant return which is the subject of any enquiries or inspections.

(b) In this subsection ‘neglect’ means negligence or a failure to deliver a correct relevant return (within the meaning given in section 49(6A)(b)).”,

(c) in section 49, by inserting the following after subsection (6):

“(6A) (a) For the purposes of subsection (6) an assessment, a correcting assessment or an additional assessment made in connection with or in relation to a relevant return may not be made after the expiry of 4 years from the date that the relevant return is received by the Commissioners.

(b) In this subsection ‘relevant return’ means a return within the meaning of section 21(e) or a return or an additional return within the meaning of section 46.

(6B) The time limit referred to in subsection (6A) shall not apply where the Commissioners have reasonable grounds for believing that any form of fraud or neglect (within the meaning given in section 46(7B)(b)) has been committed by or on behalf of any accountable person in connection with or in relation to any relevant return (within the meaning given in subsection (6A)) which is the subject of assessment.”,

and

(d) by substituting the following for section 57:

“Overpayment of tax. 57.—(1) In this section—

‘relevant date’, in relation to a repayment of tax means—

(a) the date which is 183 days after the date on which a valid claim in

[No. 3.]

Finance Act 2003.

[2003.]

respect of the repayment is made to the Commissioners, or

- (b) where the repayment is due to a mistaken assumption in the operation of the tax on the part of the Commissioners, the date which is the date of the payment of the tax which has given rise to that repayment;

‘repayment’ means a repayment of tax including a repayment of—

- (a) any interest charged,
- (b) any surcharge imposed,
- (c) any penalty incurred,

under any provision of this Act in relation to tax;

‘tax’ includes interest charged, a surcharge imposed or a penalty incurred under any provision of this Act.

(2) Where, a claim for repayment of tax made to the Commissioners, is a valid claim, the Commissioners shall, subject to the provisions of this section, give relief by means of repayment of the excess or otherwise as is reasonable and just.

(3) Notwithstanding subsection (2), no tax shall be repaid to an accountable person in respect of a valid claim unless that valid claim is made within the period of 4 years commencing on the later of the valuation date or the date of the payment of the tax concerned.

(4) Subsection (3) shall not apply to a claim for repayment of tax arising by virtue of section 18(3), Article VI of the First Schedule to the Finance Act 1950, or Article 9 of the Schedule to the Double Taxation Relief (Taxes on Estates of Deceased Persons and Inheritances and on Gifts) (United Kingdom) Order 1978 (S.I. No. 279 of 1978).

(5) Subsection (3) shall not apply to a claim for repayment of tax arising on or before the date of the passing of the *Finance Act 2003*, where a valid claim is made on or before 31 December 2004.

(6) Subject to the provisions of this section, where a person is entitled to a repayment, the amount of the repayment shall, subject to a valid claim in respect of

the repayment being made to the Commissioners and subject to section 1006A(2A) of the Taxes Consolidation Act 1997, carry simple interest at the rate of 0.011 per cent, or such other rate (if any) prescribed by the Minister for Finance by order under subsection (11), for each day or part of a day for the period commencing on the relevant date and ending on the date upon which the repayment is made. Pt.5 S.145

(7) A claim for repayment under this section shall only be treated as a valid claim when—

- (a) it has been made in accordance with the provisions of the law (if any) relating to tax under which such claim is made, and
- (b) all information which the Commissioners may reasonably require to enable them determine if and to what extent a repayment is due, has been furnished to them.

(8) Interest shall not be payable under this section if it amounts to €10 or less.

(9) This section shall not apply in relation to any repayment or part of a repayment of tax in respect of which interest is payable under or by virtue of any provision of any other enactment.

(10) Income tax shall not be deductible on any payment of interest under this section and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(11) (a) The Minister for Finance may, from time to time, make an order prescribing a rate for the purposes of subsection (6).

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

(12) The Commissioners may make regulations as they deem necessary in relation to the operation of this section.”.

(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.

Administrative
changes.

146.—(1) The Principal Act is amended—

(a) by substituting the following for section 25:

“Penalty. 25.—(1) Any person who contravenes or fails to comply with any requirement under section 21(e) is liable to a penalty of—

(a) €1,265, or

(b) twice the amount of tax payable in respect of the taxable inheritance to which the return relates,

whichever is the lesser.

(2) Where a person fails to comply with a requirement to deliver a return under section 21(e), by reason of fraud or neglect by that person, that person shall be liable to a penalty of—

(a) €1,265, and

(b) the amount, or in the case of fraud twice the amount, of the difference specified in subsection (3).

(3) The difference referred to in subsection (2)(b) is the difference between—

(a) the amount of tax paid by that person in respect of the taxable inheritance to which the return relates, and

(b) the amount of tax which would have been payable if the return had been delivered by that person and the return had been correct.”,

(b) by inserting the following after section 45:

“Obligation to
retain certain
records.

45A.—(1) In this section—

‘records’ includes books, accounts, documents, and any other data maintained manually or by any electronic, photographic or other process, relating to—

(a) property, of any description, which under or in consequence of any

disposition, a person becomes Pt.5 S.146
beneficially entitled in pos-
session to, otherwise than for
full consideration in money or
money's worth paid by that
person,

- (b) liabilities, costs and expenses prop-
erly payable out of that
property,
- (c) consideration given in good faith,
in money or money's worth,
paid by a person for that
property,
- (d) a relief or an exemption claimed
under any provision of this Act,
and
- (e) the valuation, on the valuation date
or other date, as the case may
be, of property the subject of the
disposition.

(2) Every person who is an accountable
person shall retain, or cause to be retained
on his or her behalf, records of the type
referred to in subsection (1) as are required
to enable—

- (i) a true return, additional return or
statement to be made for the
purposes of this Act, or
- (ii) a claim to a relief or an exemption
under any provision of this Act
to be substantiated.

(3) Records required to be retained by
virtue of this section shall be retained—

- (a) in written form in an official langu-
age of the State, or
- (b) subject to section 887(2) of the
Taxes Consolidation Act 1997,
by means of any electronic,
photographic or other process.

(4) Records retained for the purposes of
subsections (2) and (3) shall be retained by
the person required to retain the records—

- (a) where the requirements of section
21(e) or section 46(2), requiring
the preparation and delivery of
a return on or before the date
specified in each of those pro-
visions, are met, for the period
of 6 years commencing on the

valuation date of the gift or inheritance, or

(b) notwithstanding paragraph (a), where an accountable person fails to comply with the requirements of the provisions referred to in paragraph (a) in the manner so specified, or, where any person is required to deliver a return, additional return or statement under this Act other than the provisions referred to in paragraph (a), for the period of 6 years commencing on the date that the return, additional return or statement is received by the Commissioners.

(5) Any person who fails to comply with subsection (2), (3) or (4) in respect of the retention of any records relating to a gift or inheritance is liable to a penalty of €1,520; but a penalty shall not be imposed under this section on any person who is not liable to tax in respect of that gift or inheritance.”,

(c) by inserting the following after section 46:

“Expression of doubt.

46A.—(1) Where an accountable person is in doubt as to the correct application of law to, or the treatment for tax purposes of, any matter to be included in a return or additional return to be delivered by such person under this Act, then that person may deliver the return or additional return to the best of that person’s belief but that person shall draw the Commissioners’ attention to the matter in question in the return or additional return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

(2) Subject to subsection (3), where a return or additional return, which includes an expression of doubt as to the correct application of law to, or the treatment for tax purposes of, any matter contained in the return or additional return, is delivered by an accountable person to the Commissioners in accordance with this section, then section 51(2) does not apply to any additional liability arising from a notification to that person by the Commissioners of the correct application of the law to, or the treatment for tax purposes of, the matter contained in the return or additional return the subject of the expression of doubt, on condition that such additional liability is accounted for and remitted to the Commissioners within 30 days of the date on which that notification is issued.

(3) Subsection (2) does not apply where the Commissioners do not accept as genuine an expression of doubt as to the correct application of law to, or the treatment for tax purposes of, any matter contained in the return or additional return and an expression of doubt shall not be accepted as genuine where the Commissioners are of the opinion that the person was acting with a view to the evasion or avoidance of tax.

(4) Where the Commissioners do not accept an expression of doubt as genuine they shall notify the accountable person accordingly within the period of 30 days after the date that the expression of doubt is received by the Commissioners, and the accountable person shall account for any tax, which was not correctly accounted for in the return or additional return referred to in subsection (1) and section 51(2) applies accordingly.

(5) An accountable person who is aggrieved by a decision of the Commissioners that that person's expression of doubt is not genuine may, by giving notice in writing to the Commissioners within the period of 30 days after the notification of the said decision, require the matter to be referred to the Appeal Commissioners.”,

and

(d) in section 58—

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

“(1A) Where a person fails to comply with a requirement to deliver a return or additional return under subsection (2), (6) or (8) of section 46, by reason of fraud or neglect by that person, that person is liable to a penalty of—

(a) €2,535, and

(b) the amount, or in the case of fraud twice the amount, of the difference specified in subsection (5A).”,

and

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

“(5A) The difference referred to in paragraph (b) of subsection (1A) is the difference between—

(a) the amount of tax paid by that person in respect of the taxable gift or taxable inheritance to which the return or additional return relates, and

Pt.5 S.146

- (b) the amount of tax which would have been payable if the return or additional return had been delivered by that person and that return or additional return had been correct.”.

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

Amendment of section 47 (signing of returns, etc.) of Principal Act.

147.—Section 47 of the Principal Act is amended by inserting the following after subsection (5):

“(6) For the purposes of this section, references to an oath shall be construed as including references to an affirmation and references in this section to the administration or making of an oath shall be construed accordingly.”.

Amendment of section 55 (payment of tax on certain assets by instalments) of Principal Act.

148.—(1) Section 55(2)(b) of the Principal Act is amended by substituting “0.0241 per cent or such other rate (if any) as stands prescribed by the Minister for Finance by regulations, for each day or part of a day” for “0.75 per cent or such other rate (if any) as stands prescribed by the Minister for Finance by regulations, for each month or part of a month”.

(2) *Subsection (1)* applies on and from 1 September 2002 to interest payable under the provision mentioned in *subsection (1)* in respect of an amount due to be paid whether before, on or after that date in accordance with that provision.

Amendment of section 69 (exemption of small gifts) of Principal Act.

149.—Section 69(2) of the Principal Act is amended as respects relevant periods ending after 31 December 2002, by substituting “€3,000” for “€1,270”.

Amendment of section 81 (exemption of certain securities) of Principal Act.

150.—(1) Section 81 of the Principal Act is amended—

(a) in subsection (2)(a), by substituting “15 years” for “6 years”, and

(b) in subsection (4), by substituting “15 years” for “6 years”.

(2) (a) *Subsection (1)(a)* has effect in relation to securities or units comprised in a gift or an inheritance where the date of the gift or the date of the inheritance is on or after 24 February 2003 and the securities or units—

(i) come into the beneficial ownership of the disponent on or after 24 February 2003, or

(ii) become subject to the disposition on or after that date without having been previously in the beneficial ownership of the disponent.

(b) *Subsection (1)(b)* has effect as on and from 24 February 2003.

151.—The Principal Act is amended—

Pt.5
Technical
amendments
(Part 5).

- (a) in section 74(3), by substituting “paragraphs” for “subparagraphs” in paragraph (b), and
- (b) in section 75(3), by substituting “paragraphs” for “subparagraphs” in paragraph (b).

152.—The Principal Act is amended in section 100—

Amendment of
section 100
(exclusion of value
of excepted assets)
of Principal Act.

- (a) in subsection (1)(b), by substituting “subsection (8)” for “subsection (7)”, and
- (b) in subsection (9), by substituting “subsection (8)” for “subsection (7)”.

153.—In this Part, any reference, whether express or implied—

Transitional
provisions
(Part 5).

- (a) to any provision of the Principal Act, or
- (b) to things done or to be done under or for the purposes of any provision of the Principal Act,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments applied or had applied, a reference to, or, as the case may be, to things done or to be done under or for the purposes of, that corresponding provision.

PART 6

RESIDENTIAL PROPERTY TAX

154.—(1) Section 100 of the Finance Act 1983 is amended in subsection (1), in the definition of “general exemption limit”, by substituting “€1,000,000” for “€382,000” (inserted by the Finance Act 2001) and “2003” for “2000” (inserted by the Finance Act 2000).

Amendment of
section 100 (market
value exemption
limit) of Finance
Act 1983.

(2) This section has effect in relation to any valuation date (within the meaning of section 95(1) of the Finance Act 1983) occurring on or after 5 April 2003.

155.—Part VI of the Finance Act 1983 is amended by inserting the following section after section 107:

Time limits.

“107A.—(1) The provisions of section 159A and 159B of the Stamp Duties Consolidation Act 1999 (inserted by the *Finance Act 2003*) shall, with any necessary modifications for the purpose of so corresponding, apply to the provisions of this Part in relation to amounts to be repaid, and the interest to be paid in respect of such amounts under section 107.

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

PART 7

MISCELLANEOUS

Interpretation
(Part 7).

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

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

157.—Chapter 4 of Part 42 of the Principal Act is amended—

(a) in section 989—

(i) in subsection (3)(d), by substituting “has been completed;” for “has been completed.”,

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

“(e) where—

(i) the amount of tax estimated in the notice is remitted and a declaration referred to in paragraph (c) is not furnished, or

(ii) the Revenue Commissioners have reason to believe that the amount estimated in the notice is less than the amount which the person was liable to remit,

the Revenue Commissioners may amend the amount so estimated by increasing it and serve notice on the person concerned of the revised amount estimated and such notice shall supersede any previous notice issued under subsection (2).”,

and

(iii) by inserting “or subsection (3)(e)” after “subsection (2)” in subsection (4),

and

(b) in section 990, by inserting the following after subsection (1A)(c):

“(d) Where—

(i) the amount of tax estimated in a notice under subsection (1) is remitted and the return required by Regulation 31 of the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001) is not submitted, or

(ii) the inspector or other officer has reason to believe that the amount estimated in the notice is less than the amount which the employer was liable to remit,

the inspector or other officer may amend the amount so estimated by increasing it and

[2003.]

Finance Act 2003.

[*No. 3.*]

serve notice on the employer concerned of the revised amount estimated and such notice shall supersede any previous notice issued under subsection (1).”.

Pr.7 S.157

158.—Section 899 of the Principal Act is amended—

Amendment of section 899 (inspector’s right to make enquiries) of Principal Act.

(a) in subsection (1) by substituting for “, sections 889 and 890, and sections 892 to 894” of “and sections 889 to 896”, and

(b) by deleting subsection (3).

159.—Chapter 4 of Part 38 of the Principal Act is amended by inserting the following after section 904I:

Amendment of Chapter 4 (revenue powers) of Part 38 of Principal Act.

“Power of inspection: tax deduction from payments in respect of professional services by certain persons.

904J.—(1) In this section—

‘accountable person’ has the same meaning as in section 521;

‘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 accountable person 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,

and

(b) every electronic or other automatic means, if any, by which any such thing in non-legible form is so capable of being reproduced, and

(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

[No. 3.]

Finance Act 2003.

[2003.]

- (d) correspondence and records of other communications between an accountable person and a specified person;

‘specified person’ has the same meaning as in section 520.

(2) An authorised officer may at all reasonable times enter any premises or place of business of an accountable person for the purpose of auditing for a year of assessment returns made by the accountable person under section 525.

(3) Without prejudice to the generality of subsection (2), the authorised officer may—

- (a) examine the procedures put in place by the accountable person for the purpose of ensuring compliance by the accountable person with that person’s obligations under Chapter 1 of Part 18, and
- (b) examine all or a sample of the returns made by the accountable person to determine whether the procedures referred to in paragraph (a) have been observed in practice and whether they are adequate.

(4) An authorised officer may require an accountable person or an employee of the accountable person 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 his or her audit and examination under subsections (2) and (3).

(5) An authorised officer may make extracts from or copies of all or any part of the books, records or other documents or other material 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 or duties under this section.

(6) An authorised officer when exercising or performing his or her powers or duties under this section shall, on request, produce his or her authorisation for the purposes of this section.

(7) An employee of an accountable person who 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 is liable to a penalty of €1,265.

[2003.]

Finance Act 2003.

[No. 3.]

(8) An accountable person who 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 is 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.”

Pr.7 S.159

160.—(1) The Principal Act is amended in section 1078(3)(a) by substituting “€3,000” for “€1,900”.

Amendment of section 1078 (revenue offences) of Principal Act.

(2) *Subsection (1)* applies as respects an offence committed on or after the day that this Act is passed.

161.—The Principal Act is amended in Chapter 4 of Part 47 by inserting the following after section 1078:

Amendment of Chapter 4 (revenue offences) of Part 47 of Principal Act.

“Concealing facts disclosed by documents.

1078A.—(1) Any person who—

- (a) knows or suspects that an investigation by an officer of the Revenue Commissioners into an offence under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993 is being, or is likely to be, carried out, and
- (b) falsifies, conceals, destroys or otherwise disposes of material which the person knows or suspects is or would be relevant to the investigation or causes or permits its falsification, concealment, destruction or disposal,

is guilty of an offence.

(2) Where a person—

- (a) falsifies, conceals, destroys or otherwise disposes of material, or
- (b) causes or permits its falsification, concealment, destruction or disposal,

in such circumstances that it is reasonable to conclude that the person knew or suspected—

- (i) that an investigation by an officer of the Revenue Commissioners into an offence under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993 was being, or was likely to be, carried out, and
- (ii) that the material was or would be relevant to the investigation,

the person shall be taken, for the purposes of this section, to have so known or suspected, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or suspected.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction to a fine not exceeding €3,000, or at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €127,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

Presumptions.

1078B.—(1) In this section—

‘return, statement or declaration’ means any return, statement or declaration which a person is required to make under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993.

(2) The presumptions specified in this section apply in any proceedings, whether civil or criminal, under any provision of the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993.

(3) Where a document purports to have been created by a person it shall be presumed, unless the contrary is shown, that the document was created by that person and that any statement contained therein, unless the document expressly attributes its making to some other person, was made by that person.

(4) Where a document purports to have been created by a person and addressed and sent to a second person, it shall be presumed, unless the contrary is shown, that the document was created and sent by the first person and received by the second person and that any statement contained therein—

(a) unless the document expressly attributes its making to some other person, was made by the first person, and

(b) came to the notice of the second person.

(5) Where a document is retrieved from an electronic storage and retrieval system, it shall be presumed unless the contrary is shown, that the author of the document is the person who ordinarily uses that electronic storage and retrieval system in the course of his or her business. Pt.7 S.161

(6) Where an authorised officer in the exercise of his or her powers under subsection (2A) of section 905 has removed records (within the meaning of that section) from any place, gives evidence in proceedings that to the best of the authorised officer's knowledge and belief, the records are the property of any person, the records shall be presumed unless the contrary is proved, to be the property of that person.

(7) Where in accordance with subsection (6) records are presumed in proceedings to be the property of a person and the authorised officer gives evidence that, to the best of the authorised officer's knowledge and belief, the records are records which relate to any trade, profession, or, as the case may be, other activity, carried on by that person, the records shall be presumed unless the contrary is proved, to be records which relate to that trade, profession, or, as the case may be, other activity, carried on by that person.

(8) In proceedings, a certificate signed by an inspector or other officer of the Revenue Commissioners certifying that a return, statement or declaration to which the certificate refers is in the possession of the Revenue Commissioners in such circumstances as to lead the officer to conclude that, to the best of his or her knowledge and belief it was delivered to an inspector or other officer of the Revenue Commissioners, it shall be presumed unless the contrary is proved, to be evidence that the said return, statement, or declaration was so delivered.

(9) In proceedings, a certificate, certifying the fact or facts referred to in subsection (8) and purporting to be signed as specified in that subsection, may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by a person holding, at the time of the signature, the office or position indicated in the certificate as the office or position of the person signing.

(10) References in this section to a document are references to a document in written, mechanical or electronic format and, for this purpose 'written' includes any form of notation or code whether by hand or otherwise and regardless of the method by which,

or the medium in or on which, the document concerned is recorded.

Provision of
information to
juries.

1078C.—(1) In a trial on indictment of an offence under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993, the trial judge may order that copies of any or all of the following documents shall be given to the jury in any form that the judge considers appropriate:

- (a) any document admitted in evidence at the trial,
- (b) the transcript of the opening speeches of counsel,
- (c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,
- (d) the transcript of the whole or any part of the evidence given at the trial,
- (e) the transcript of the closing speeches of counsel,
- (f) the transcript of the trial judge's charge to the jury,
- (g) any other document that in the opinion of the trial judge would be of assistance to the jury in its deliberations including, where appropriate, an affidavit by an accountant or other suitably qualified person, summarising, in a form which is likely to be comprehended by the jury, any transactions by the accused or other persons which are relevant to the offence.

(2) If the prosecutor proposes to apply to the trial judge for an order that a document mentioned in subsection (1)(g) shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance of the trial and, on the hearing of the application, the trial judge shall take into account any representations made by or on behalf of the accused in relation to it.

(3) Where the trial judge has made an order that an affidavit by an accountant or other person mentioned in subsection (1)(g) shall be given to the jury, the accountant, or as the case may be, the other person so mentioned—

[2003.]

Finance Act 2003.

[*No. 3.*]

(a) shall be summoned by the prosecution to attend at the trial as an expert witness, and

Pr.7 S.161

(b) may be required by the trial judge, in an appropriate case, to give evidence in regard to any relevant procedures or principles within his or her area of expertise.”.

162.—(1) Section 1061 of the Principal Act is amended—

Amendment of
section 1061
(recovery of
penalties) of
Principal Act.

(a) in subsection (1), by substituting “for the recovery of the penalty in any court of competent jurisdiction as a liquidated sum, and, where appropriate, section 94 of the Courts of Justice Act 1924 shall apply accordingly.” for “for the recovery of the penalty in the High Court as a liquidated sum, and section 94 of the Courts of Justice Act 1924, shall apply accordingly.”, and

(b) in subsection (6), by substituting “the rules of court” for “the rules of the High Court.”.

(2) *Subsection (1)* applies as respects civil proceedings commenced on or after the passing of this Act.

163.—The enactments specified in *Schedule 6* are amended to the extent and in the manner specified in that Schedule.

Miscellaneous
technical
amendments in
relation to tax.

164.—(1) The Principal Act is amended—

Mandatory
electronic filing and
payment of tax.

(a) in Chapter 6 of Part 38 by inserting the following after section 917E—

“Mandatory
electronic filing and
payment of tax.

917EA.—(1) In this section—

‘electronic means’ includes electrical, digital, magnetic, optical, electromagnetic, biometric, photonic means of transmission of data and other forms of related technology by means of which data is transmitted;

‘repayment of tax’ includes any amount relating to tax which is to be paid or repaid by the Revenue Commissioners;

‘specified person’ means any person, group of persons or class of persons specified in regulations made under this section for the purposes of either or both paragraphs (a) and (b) of subsection (3);

[No. 3.]

Finance Act 2003.

[2003.]

‘specified return’ means a return specified in regulations made under this section;

‘specified tax liabilities’ means liabilities to tax including interest on unpaid tax specified in regulations made under this section.

(2) Section 917D shall apply for the purposes of regulations made under this section in the same way as it applies for the purposes of this Chapter.

(3) The Revenue Commissioners may make regulations—

(a) requiring the delivery by specified persons of a specified return by electronic means where an order under section 917E has been made in respect of that return,

(b) requiring the payment by electronic means of specified tax liabilities by specified persons, and

(c) for the repayment of any tax specified in the regulations to be made by electronic means.

(4) Regulations made under this section shall include provision for the exclusion of a person from the requirements of regulations made under this section where the Revenue Commissioners are satisfied that the person could not reasonably be expected to have the capacity to make a specified return or to pay the specified tax liabilities by electronic means, and allowing a person, aggrieved by a failure to exclude such person, to appeal that failure to the Appeal Commissioners.

(5) Regulations made under this section may, in particular and without prejudice to the generality of subsection (3), include provision for—

(a) the electronic means to be used to pay or repay tax,

(b) the conditions to be complied with in relation to

the electronic payment or repayment of tax, Pr.7 S.164

- (c) determining the time when tax paid or repaid using electronic means is to be taken as having been paid or repaid,
- (d) the manner of proving, for any purpose, the time of payment or repayment of any tax paid or repaid using electronic means, including provision for the application of any conclusive or other presumptions,
- (e) notifying persons that they are specified persons, including the manner by which such notification may be made, and
- (f) such supplemental and incidental matters as appear to the Revenue Commissioners to be necessary.

(6) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by regulation made under this section to be performed or discharged by the Revenue Commissioners.

(7) Where a specified person—

- (a) makes a return which is a specified return for the purposes of regulations made under this section, or
- (b) makes a payment of tax which is specified tax liabilities for the purposes of regulations made under this section,

in a form other than that required by any such regulation, the specified person shall be liable to a penalty of €1,520 and, for the purposes of the recovery of a penalty under this subsection, 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.

(8) 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 under the regulation.”,

(b) in section 1084(1)(b) by inserting the following after subparagraph (i):

“(ia) where a person who is a specified person in relation to the delivery of a specified return for the purposes of any regulations made under section 917EA delivers a return of income on or before the specified return date for the chargeable period but does so in a form other than that required by any such regulations the person shall be deemed to have delivered an incorrect return on or before the specified return date for the chargeable period and subparagraph (ii) shall apply accordingly,”

and

(c) in section 1085(1)(b) by inserting “(ia),” after “(i),”.

(2) This section has effect from such day as the Minister for Finance may appoint by order.

Cesser of certain payments out of Central Fund.

165.—Such sums are payable out of the Central Fund or the growing produce of that Fund—

- (a) to the Under Library Keeper of Marsh’s Library at St. Patrick’s, Dublin, under the Irish Charges Act 1801,
- (b) to the Lord Mayor and citizens of Dublin, under the Irish Charges Act 1801, and
- (c) to the Benchers of the Honorable Society of King’s Inns, Dublin, under the King’s Inns Library Act 1945,

shall cease to be paid in respect of the financial year 2004 and subsequent financial years and, accordingly, those Acts shall cease to have effect in so far as they relate to the matters set out in this section.

Payments from Central Fund to certain persons.

166.—(1) In this section—

“Accounting Officer” means the Accounting Officer of the Office of the Revenue Commissioners;

“CPI number” means the All Items Consumer Price Index Number compiled by the Central Statistics Office;

“relevant period” means the period commencing on the first day of the year of assessment next following the year of assessment in which

[2003.]

Finance Act 2003.

[No. 3.]

the tax repaid was paid and concluding on the date of the issue of Pt.7 S.166 the repayment of the tax;

“specified judgement” means the decision of the High Court in the case of *O’Coindealbhain (Inspector of Taxes) v Breda O’Carroll* reported in the Irish Tax Reports, Volume IV, at page 221;

“specified payment”, in relation to a repayment of tax made for a year of assessment, means a payment made in respect of the loss of purchasing power in respect of that repayment for the relevant period.

(2) In this section the CPI number applicable to the commencement of a relevant period shall be the CPI number relating to the immediately preceding survey date, and the CPI number applicable to the conclusion of the relevant period shall be the CPI number relating to the immediately succeeding survey date.

(3) This section shall apply for the purpose of permitting the Revenue Commissioners to make a specified payment in respect of the repayment of tax in a particular case to which *subsection (4)* applies where, at the discretion of the Accounting Officer, that Officer considers it appropriate that such payment should be made and approves the making of that payment.

(4) Subject to the approval of the Accounting Officer as mentioned in *subsection (3)*, a specified payment may be made by the Revenue Commissioners in respect of a repayment of income tax made by reference to the specified judgement.

(5) Where a specified payment is made under this section—

(a) the amount of the specified payment shall be computed solely by reference to the amount of the repayment concerned and to the movement in the CPI number for the relevant period,

(b) it shall be made without deduction of income tax, and

(c) it shall not be reckoned in computing total income for the purposes of the Income Tax Acts.

(6) Where a specified payment is made by the Revenue Commissioners in accordance with this section—

(a) it shall be paid out of the Central Fund or the growing produce thereof, and

(b) the aggregate of all such payments made by virtue of this section shall not exceed €7,000,000.

167.—Section 136 of the Finance Act 2002 is amended in subsection (2) by substituting “an amount of up to €11,409,916.13” for “amounting to the sum of €11,409,916.13”.

Amendment of section 136 (write-off of certain repayable advances to Shannon Free Airport Development Company Limited) of Finance Act 2002.

Pt.7

Amendment of
section 160
(establishment of
Small Savings
Reserve Fund) of
Finance Act 1994.

168.—Section 160 of the Finance Act 1994 is amended—

(a) in subsection (1), by substituting “instalment savings schemes” for “national instalment savings”, and

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

“(4A) The Minister may, from time to time, pay out of the Fund into the Central Fund an amount equivalent, in whole or in part, to so much of any amount transferred to the Dormant Accounts Fund under paragraph (b) of section 12(3) of the Dormant Accounts Act 2001 as represents accrued interest on savings bonds, savings certificates and instalment savings schemes referred to in subparagraph (i) of that paragraph.”.

Capital Services
Redemption
Account.

169.—(1) In this section—

“capital services” has the same meaning as it has in the principal section;

“fifty-first additional annuity” means the sum charged on the Central Fund under *subsection (2)*;

“principal section” means section 22 of the Finance Act 1950.

(2) A sum of €29,663,454 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 2003.

(3) The fifty-first 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.

(4) Any amount of the fifty-first additional annuity, not exceeding €22,799,999 in any financial year, may be applied towards defraying the interest on the public debt.

(5) The balance of the fifty-first additional annuity shall be applied in any one or more of the ways specified in subsection (6) of the principal section.

Care and
management of
taxes and duties.

170.—All taxes and duties imposed by this Act are placed under the care and management of the Revenue Commissioners.

Short title,
construction and
commencement.

171.—(1) This Act may be cited as the Finance Act 2003.

(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.

[2003.]

Finance Act 2003.

[*No. 3.*]

(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. Pr.7 S.171

(4) *Part 3* shall be construed together with the Value-Added Tax Acts 1972 to 2002 and may be cited together with those Acts as the Value-Added Tax Acts 1972 to 2003.

(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 residential property tax, shall be construed together with Part VI of the Finance Act 1983 and the enactments amending or extending that Part.

(8) *Part 7* 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,
- (c) in so far as it relates to capital gains tax, the Capital Gains Tax Acts,
- (d) in so far as it relates to value-added tax, the Value-Added Tax Acts 1972 to 2003,
- (e) in so far as it relates to residential property tax, Part VI of the Finance Act 1983 and the enactments amending or extending that Part, and
- (f) in so far as it relates to gift tax or inheritance tax, the Capital Acquisitions Tax Act 1976 and the enactments amending or extending that Act.

(9) Except where otherwise expressly provided in *Part 1*, that Part applies as on and from 1 January 2003.

(10) In relation to *Part 3*:

- (a) *section 119* shall be taken to have come into force and shall take effect as on and from 1 January 2003;
- (b) *section 120* comes into force and takes effect as on and from 1 May 2003;
- (c) *sections 113, 115, 116, 123, paragraph (a) of section 130, and section 131* come into force and take effect as on and from 1 July 2003;
- (d) *section 122* comes into force and takes effect as on and from 1 January 2004;
- (e) *sections 124, 125, 129 and paragraph (b) of section 130* shall take effect as on and from such day or days as the Minister for Finance may, by order or orders, appoint;

(f) the provisions of this Part, other than those specified in *paragraphs (a) to (e)*, have effect as on and from the date of passing of this Act.

(11) Any reference in this Act to any other enactment shall, except 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.

[2003.]

Finance Act 2003.

[No. 3.]

SCHEDULE 1

Section 83.

REPEALS AND REVOCATIONS RELATING TO EXCISE LAW

PART 1

Repeals

Session and Chapter or Number and Year (1)	Short title (2)	Extent of repeal (3)
43 & 44 Vict., c.20.	Inland Revenue Act 1880.	In so far as it relates to excise duties and is not repealed, the whole Act.
43 & 44 Vict., c.24.	Spirits Act 1880.	In so far as it is unrepealed, the whole Act except sections 3, 100, 102, 104 and 140.
1 Edw. 7, c.7.	Finance Act 1901.	Section 8.
2 Edw. 7, c.7.	Finance Act 1902.	Section 8.
6 Edw. 7, c.20.	Revenue Act 1906.	Sections 3 and 7.
1 & 2 Geo. 5, c.48.	Finance Act 1911.	Section 10.
5 Geo. 5, c.7.	Finance Act 1914.	Section 6.
5 & 6 Geo. 5, c.62.	Finance Act 1915.	Section 8.
11 & 12 Geo. 5, c.32.	Finance Act 1921.	Sections 15 and 16.
No. 20 of 1932.	Finance Act 1932.	Section 35.
No. 14 of 1940.	Finance Act 1940.	Subsections (1), (2), (5), (6)(a), (6)(b), (6)(c), (6)(e), (7) and (8) of section 10.
No. 13 of 1949.	Finance Act 1949.	Section 11.
No. 15 of 1951.	Finance Act 1951.	Section 11.
No. 17 of 1966.	Finance Act 1966.	Section 15.
No. 6 of 1975.	Finance Act 1975.	Sections 36, 37 and 39.
No. 16 of 1976.	Finance Act 1976.	Sections 36, 37 and 39.
No. 18 of 1977.	Finance Act 1977.	Sections 45 and 46.
No. 11 of 1979.	Finance Act 1979.	Sections 39, 40, 42 and 43.
No. 14 of 1980.	Finance Act 1980.	Sections 64, 65, 67 and 68.
No. 16 of 1981.	Finance Act 1981.	Sections 31, 33, 34 and 39.
No. 28 of 1981.	Finance (No. 2) Act 1981.	Sections 2, 3 and 5.
No. 9 of 1984.	Finance Act 1984.	Sections 69, 71 and 72.
No. 10 of 1985.	Finance Act 1985.	Section 28.
No. 13 of 1986.	Finance Act 1986.	Sections 64, 66, 67 and 68.
No. 12 of 1988.	Finance Act 1988.	Section 57.

[No. 3.]

Finance Act 2003.

[2003.]

SCH.1

Session and Chapter or Number and Year (1)	Short title (2)	Extent of repeal (3)
No. 10 of 1989.	Finance Act 1989.	Sections 35, 36, 37, 38 and 41.
No. 9 of 1992.	Finance Act 1992.	Chapter 1 (sections 89 to 102) of Part 2.
No. 13 of 1993.	Finance Act 1993.	Sections 67, 68, 73, 74 and 75.
No. 13 of 1994.	Finance Act 1994.	Sections 80, 81, 82 and 83.
No. 9 of 1996.	Finance Act 1996.	Sections 81 and 82.
No. 22 of 1997.	Finance Act 1997.	Section 90.
No. 3 of 1998.	Finance Act 1998.	Sections 92 and 93.
No. 7 of 2001.	Finance Act 2001.	Sections 162 and 167.
No. 5 of 2002.	Finance Act 2002.	Section 90.

PART 2

Revocations

Number and Year (1)	Subject matter or citation (2)	Extent of revocation (3)
S.R. & O. 1906, No. 622.	Regulations, dated 11th day of August, 1906, made by the Commissioners of Inland Revenue relating to the manufacture and sale of spirits and to spirits received for use in the arts and manufactures.	The whole Regulations.
S.R. & O. 1912, No. 1715.	Regulations, dated 8th day of March, 1912, made by the Commissioners of Customs and Excise under section 10 of the Finance Act 1911, relating to certain restrictions and prohibitions on a manufacturer for the sale of British wines or sweets or made wines.	The whole Regulations.
S.R. & O. 1915, No. 1058.	Regulations, dated 3rd November, 1915, made by the Commissioners of Customs and Excise under section 4 of the Finance Act 1915 as to the allowance in respect of Duty on spoilt beer.	The whole Regulations.

[2003.]

Finance Act 2003.

[No. 3.]

SCH.1

Number and Year (1)	Subject matter or citation (2)	Extent of revocation (3)
S.R. & O. 1915, No. 1059.	Regulations, dated 5th November, 1915, made by the Commissioners of Customs and Excise under section 6 of the Finance Act 1914 (Session 2), and relating to the deposit of beer in warehouses.	The whole Regulations.
S.R. & O. 1920, No. 2344.	The Tinctures and Spirits of Wine, Regulations 1920.	The whole Regulations.
S.R. & O. 1925, No. 14.	Spirits (Medical Purposes) Regulations 1925.	The whole Regulations.
S.R. & O. 1925, No. 16.	Spirits (Scientific Purposes) Regulations 1925.	The whole Regulations.
S.R. & O. 1937, No. 95.	Power Methylated Spirits Regulations 1937.	The whole Regulations.
S.R. & O. 1941, No. 35.	Cider Duty (No. 2) Regulations 1940.	The whole Regulations.
S.I. No. 160 of 1966.	Wine Duty Regulations 1966.	The whole Regulations.
S.I. No. 249 of 1973.	Imposition of Duties (No. 208) (Beer, Spirits and Tobacco) Order 1973.	Paragraphs 4 and 5.
S.I. No. 307 of 1975.	Imposition of Duties (No. 221) (Excise Duties) Order 1975.	Paragraphs 4, 5(2), 6(2), 7 and 8(2).
S.I. No. 398 of 1980.	Made Wine Duty Regulations 1980.	The whole Regulations.
S.I. No. 405 of 1980.	European Communities (Deferred Payment of Excise Duty on Spirits and Imported Made Wine and Beer) Regulations 1980.	The whole Regulations.
S.I. No. 394 of 1992.	European Communities (Customs and Excise) Regulations 1992.	Part III (Regulations 13 to 20).
S.I. No. 285 of 1993.	Beer Regulations 1993.	The whole Regulations.

SCHEDULE 2

RATES OF ALCOHOL PRODUCTS TAX

Description of Product	Rate of Duty
<i>Spirits:</i>	€39.25 per litre of alcohol in the spirits
<i>Beer:</i>	
Exceeding 1.2% 	€19.87 per hectolitre per cent of alcohol in the beer
Other beer 	Nil
<i>Wine:</i>	
Still and sparkling, not exceeding 5.5% vol	€90.98 per hectolitre
Still, exceeding 5.5% vol but not exceeding 15% vol 	€273.00 per hectolitre
Still, exceeding 15% vol 	€396.12 per hectolitre
Sparkling, exceeding 5.5% vol	€546.01 per hectolitre
<i>Other Fermented Beverages:</i>	
<i>(1) Cider and Perry:</i>	
Still and sparkling, not exceeding 6.0% vol	€83.25 per hectolitre
Still and sparkling, exceeding 6.0% vol but not exceeding 8.5% vol 	€192.47 per hectolitre
Still, exceeding 8.5% vol 	€273.00 per hectolitre
Sparkling, exceeding 8.5% vol	€546.01 per hectolitre
<i>(2) Other than Cider and Perry:</i>	
Still and sparkling, not exceeding 5.5% vol	€90.98 per hectolitre
Still, exceeding 5.5% vol 	€273.00 per hectolitre
Sparkling, exceeding 5.5% vol	€546.01 per hectolitre
<i>Intermediate Products:</i>	
Still, not exceeding 15% vol 	€273.00 per hectolitre
Still, exceeding 15% vol 	€396.12 per hectolitre
Sparkling 	€546.01 per hectolitre

[2003.]

Finance Act 2003.

[No. 3.]

SCHEDULE 3

Section 96.

RATES OF EXCISE DUTY ON TOBACCO PRODUCTS

(with effect as on and from 5 December 2002)

Description of Product	Rate of Duty
Cigarettes	€124.94 per thousand together with an amount equal to 18.46 per cent of the price at which the cigarettes are sold by retail
Cigars	€185.701 per kilogram
Fine-cut tobacco for the rolling of cigarettes	€156.704 per kilogram
Other smoking tobacco	€128.832 per kilogram

SCHEDULE 4

Section 107.

GAMING LICENCES

Description of licence	Rate of Duty
Where the period for which the licence is to be issued as specified in the certificate under the Gaming and Lotteries Act 1956 authorising the issue of the licence—	
(a) does not exceed 3 months	€175
(b) exceeds 3 months but does not exceed one year	€630

SCHEDULE 5

STAMP DUTY ON INSTRUMENTS

Part 1

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

“(7) Where the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €10,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

- (a) wholly attributable to property which is not residential property, or
- (b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €10,000:

for the consideration which is attributable to property which is not residential property Exempt.

(8) Where paragraph (7) does not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €20,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

- (a) wholly attributable to property which is not residential property, or
- (b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €20,000

1 per cent of the consideration which is attributable to property which is not residential

[2003.]

Finance Act 2003.

[No. 3.]

property but SCH.5
where the
calculation
results in an
amount which is
not a multiple
of €1 the
amount so
calculated shall
be rounded
down to the
nearest €.

(9) Where paragraphs (7) and (8) do not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €30,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

- (a) wholly attributable to property which is not residential property, or
- (b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €30,000

2 per cent of
the
consideration
which is
attributable to
property which
is not
residential
property but
where the
calculation
results in an
amount which is
not a multiple
of €1 the
amount so
calculated shall
be rounded
down to the
nearest €.

(10) Where paragraphs (7) to (9) do not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €40,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

- (a) wholly attributable to property which is not residential property, or

- (b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €40,000

3 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(11) Where paragraphs (7) to (10) do not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €70,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

- (a) wholly attributable to property which is not residential property, or
- (b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €70,000

4 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is

[2003.]

Finance Act 2003.

[No. 3.]

not a multiple SCH.5
of €1 the
amount so
calculated shall
be rounded
down to the
nearest €.

(12) Where paragraphs (7) to (11) do not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €80,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

(a) wholly attributable to property which is not residential property, or

(b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €80,000

5 per cent of
the
consideration
which is
attributable to
property which
is not
residential
property but
where the
calculation
results in an
amount which is
not a multiple
of €1 the
amount so
calculated shall
be rounded
down to the
nearest €.

(13) Where paragraphs (7) to (12) do not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €100,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

(a) wholly attributable to property which is not residential property, or

(b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction

[No. 3.]

Finance Act 2003.

[2003.]

SCH.5

or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €100,000

6 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(14) Where paragraphs (7) to (13) do not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €120,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

- (a) wholly attributable to property which is not residential property, or
- (b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €120,000

7 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

[2003.]

Finance Act 2003.

[No. 3.]

SCH.5

(14A) Where paragraphs (7) to (14) do not apply and the amount or value of the consideration for the sale which is attributable to property which is not residential property does not exceed €150,000 and the instrument contains a statement certifying that the consideration for the sale is, as the case may be—

- (a) wholly attributable to property which is not residential property, or
- (b) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration which is attributable to property which is not residential property exceeds €150,000

8 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(14B) Where paragraphs (7) to (14A) do not apply and the amount or value of the consideration for the sale is wholly or partly attributable to property which is not residential property ...

9 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.”.

Part 2

Lease

“(b) where the consideration, or any part of the consideration (other than rent), moving either to the lessor or to any other person, consists of any money, stock or security, and—

- (i) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €10,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

- (I) wholly attributable to property which is not residential property, or

- (II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €10,000:

for the consideration which is attributable to property which is not residential property Exempt.

- (ii) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €20,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

- (I) wholly attributable to property which is not residential property, or

- (II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or

[2003.]

Finance Act 2003.

[No. 3.]

SCH.5

the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €20,000 and clause (i) does not apply

1 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(iii) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €30,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

(I) wholly attributable to property which is not residential property, or

(II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €30,000 and clauses (i) and (ii) do not apply

2 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an

[No. 3.]

Finance Act 2003.

[2003.]

amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

- (iv) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €40,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

(I) wholly attributable to property which is not residential property, or

(II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €40,000 and clauses (i) to (iii) do not apply

3 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

- (v) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €70,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

[2003.]

Finance Act 2003.

[No. 3.]

SCH.5

(I) wholly attributable to property which is not residential property, or

(II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €70,000 and clauses (i) to (iv) do not apply

4 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(vi) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €80,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

(I) wholly attributable to property which is not residential property, or

(II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than

[No. 3.]

Finance Act 2003.

[2003.]

rent) which is attributable to property which is not residential property exceeds €80,000 and clauses (i) to (v) do not apply

5 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(vii) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €100,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

(I) wholly attributable to property which is not residential property, or

(II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €100,000 and clauses (i) to (vi) do not apply

6 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is

not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

SCH.5

(viii) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €120,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

(I) wholly attributable to property which is not residential property, or

(II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €120,000 and clauses (i) to (vii) do not apply

7 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(ix) the amount or value of such consideration which is attributable to property which is not residential property does not exceed €150,000 and the lease contains a statement certifying that the consideration for the lease is, as the case may be—

[No. 3.]

Finance Act 2003.

[2003.]

(I) wholly attributable to property which is not residential property, or

(II) partly attributable to residential property,

and that the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €150,000 and clauses (i) to (viii) do not apply

8 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.

(x) the amount or value of such consideration is wholly or partly attributable to property which is not residential property and clauses (i) to (ix) do not apply

9 per cent of the consideration which is attributable to property which is not residential property but where the calculation results in an amount which is not a multiple of €1 the amount so calculated shall be rounded down to the nearest €.”.

MISCELLANEOUS TECHNICAL AMENDMENTS IN RELATION TO TAX

1. The Taxes Consolidation Act 1997 is amended in accordance with the following provisions:

(a) in section 409C(3)(b), by inserting “under a passive investment scheme” after “transferee”,

(b) in section 434—

(i) in subsection (1) by deleting the definitions of “distributable income” and “trading income”, and

(ii) in subsection (5)(a) by substituting the following for subparagraph (ii):

“(ii) an amount determined by applying to the amount of the income of the company for the accounting period the fraction—

$$\frac{A}{B}$$

where—

A is the aggregate of the amounts of estate income and investment income taken into account in computing the income of the company for the accounting period, and

B is the amount of the company’s income before taking account of any amount specified in paragraphs (d) to (g) of subsection (4),”

(c) in section 440 by deleting subsection (2A),

(d) in section 469(1), in the definition of “health expenses”, by substituting the following for paragraph (i):

“(i) as respects a dependant of the individual referred to in paragraphs (a) and (b)(ii) of the definition of ‘dependant’ who for the year of assessment—

(a) is under the age of 18 years, or

(b) if over the age of 18 years, at the commencement of the year of assessment, is receiving full-time instruction at any university, college, school or other educational establishment,

either or both—

(i) educational psychological assessment carried out by an educational psychologist, and

- (ii) speech and language therapy carried out by a speech and language therapist;”,
 - (e) in section 496(2)(a)(v), by substituting “€2,540” for “£2,000”,
 - (f) in section 669B(3), by substituting “A is the amount of the qualifying expenditure incurred on the purchase of the milk quota,” for “A is the amount of the capital expenditure incurred on the purchase of the milk quota,”,
 - (g) in section 784(2B)(b), by substituting “certificate of tax credits and standard rate cut-off point” for “certificate of tax free allowances”,
 - (h) in Schedule 29, Column 3, by substituting “section 128(11) and (12)” for “section 128(11) and (11A)”.
2. The Value-Added Tax Act 1972 is amended in paragraph (vi) of the First Schedule by substituting “Part VII or Part VIII of the Child Care Act 1991” for “Part VII of the Child Care Act 1991”.
3. (a) As respects *paragraph 1*—
- (i) *subparagraphs (a) and (e)* shall be deemed to have come into force and take effect as on and from 1 January 2002,
 - (ii) *subparagraphs (b) and (c)* shall be deemed to apply to accounting periods ending on or after 14 March 2001,
 - (iii) *subparagraphs (d) and (h)* shall have effect as on and from the passing of this Act,
 - (iv) *subparagraph (f)* shall be deemed to have come into force and take effect as on and from 1 November 2001, and
 - (v) *subparagraph (g)* shall be deemed to have come into force and take effect as on and from 6 April 2001.
- (b) *Paragraph 2* shall have effect as on and from the passing of this Act.