



Number 8 of 2011

FINANCE (No. 2) ACT 2011

ARRANGEMENT OF SECTIONS

Section

1. Amendment of section 766B (limitation of tax credits to be paid under section 766 or 766A) of Taxes Consolidation Act 1997.
 2. Amendment of section 55 (air travel tax) of Finance (No. 2) Act 2008.
 3. Rates of value-added tax.
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 5. Care and management of taxes and duties.
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ACTS REFERRED TO

Finance (No. 2) Act 2008	2008, No. 25
Pensions Act 1990	1990, No. 25
Protection of Employees (Employers' Insolvency) Act 1984	1984, No. 21
Stamp Duties Consolidation Act 1999	1999, No. 31
Succession Duty Act 1853	16 & 17 Vict., c.51
Taxes Consolidation Act 1997	1997, No. 39
Value-Added Tax Consolidation Act 2010	2010, No. 31



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FINANCE (No. 2) ACT 2011

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.

[22nd June, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) Section 766B of the Taxes Consolidation Act 1997 is amended—

Amendment of section 766B (limitation of tax credits to be paid under section 766 or 766A) of Taxes Consolidation Act 1997.

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

“(1) In this section—

‘payroll liabilities’ means—

- (a) the amount of income tax which the company is required, by or under Chapter 4 of Part 42, to remit to the Collector-General for the relevant payroll period in respect of emoluments, as defined in section 983, paid to, or on account of, all employees and directors,
- (b) the amount of Pay Related Social Insurance Contributions in respect of the reckonable earnings and reckonable emoluments of all directors and employees which the company is required to remit to the Collector-General for the relevant payroll period by or under the Social Welfare Acts, and
- (c) any other amount of levies or charges the company is required, by or under Parts 18A, 18B or 18D, to remit to the Collector-General for the relevant payroll period;

‘relevant payroll period’ means the period—

(a) beginning at the time the period immediately preceding, and equal in length to, the accounting period in which the expenditure was incurred begins, and

(b) ending at the time that accounting period ends.”,

and

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

“(b) the aggregate of the amounts payable by the company in respect of payroll liabilities for the relevant payroll period in which the expenditure was incurred as reduced by the lesser of—

(i) the amount by which the aggregate of any amounts payable to the company in respect of claims made under section 766(4B) or 766A(4B), as the case may be, in respect of expenditure incurred in a previous accounting period, exceeds the payroll liabilities in respect of the period—

(I) beginning at the time that the accounting period in respect of which the first such claim was made begins, and

(II) ending at the time the accounting period immediately preceding the accounting period in which the expenditure was incurred ends,

and

(ii) the amount of the payroll liabilities for the period—

(I) beginning at the time at which the relevant payroll period begins, and

(II) ending at the time the accounting period immediately preceding the accounting period in which the expenditure was incurred ends.”.

(2) This section applies to accounting periods commencing on or after the passing of this Act.

Amendment of section 55 (air travel tax) of Finance (No. 2) Act 2008.

2.—Section 55 of the Finance (No. 2) Act 2008 is amended by inserting the following after subsection (2):

“(2A) Subsection (2) shall not apply in respect of any departure of a passenger on an aircraft from an airport on or after such day as the Minister for Finance may appoint by order.”.

Rates of value-added tax.

3.—The Value-Added Tax Consolidation Act 2010 is amended with effect on and from 1 July 2011—

- (a) in section 46(1) by substituting “paragraphs (b), (c), (ca) and (d)” for “paragraphs (b), (c) and (d)” in paragraph (a),
- (b) in section 46(1) by inserting “subject to paragraph (ca),” before “13.5 per cent” in paragraph (c),
- (c) in section 46(1) by inserting the following after paragraph (c):

“(ca) during the period 1 July 2011 to 31 December 2013, 9 per cent in relation to goods or services of a kind specified in paragraphs 3(1) to (3), 7, 8, 11, 12 and 13(3) of Schedule 3 on which tax would, but for this paragraph, be chargeable in accordance with paragraph (c);”

and

- (d) in section 18(1)(a)(III), subsections (1) and (2) of section 48 and sections 50(2) and 95(8)(a) by substituting “paragraph (c) or (ca), as appropriate, of section 46(1)” for “section 46(1)(c)” in each place where it occurs.

4.—(1) The Stamp Duties Consolidation Act 1999 is amended— Levy on pension schemes, etc.

- (a) by inserting the following after section 125A:

“Levy on pension schemes.

125B.—(1) In this section—

‘Act of 1997’ means the Taxes Consolidation Act 1997;

‘administrator’, in relation to a scheme, means the trustees or other persons having the management of the assets of the scheme, and in particular, but without prejudice to the generality of the foregoing, references to the administrator of a scheme include—

- (a) an administrator, within the meaning of section 770(1) of the Act of 1997,
- (b) a person mentioned in section 784 or 785 of the Act of 1997, lawfully carrying on the business of granting annuities on human life, including the person mentioned in section 784(4A)(ii) of that Act, and
- (c) a PRSA administrator, within the meaning of section 787A(1) of the Act of 1997;

‘assets’ means all property, including investments, deposits, debts and contracts of assurance, held for the purposes of a scheme, other than excluded assets;

‘chargeable amount’, in relation to a chargeable person and any assets, means the aggregate market value of the assets (other than an asset that is land, in which case the market value of the land shall be taken as not including the amount of any outstanding borrowings used to acquire the land)—

- (a) on 30 June for the year 2011, 2012, 2013 or 2014, as the case may be, or
- (b) where the assets are not contracts of assurance and are held for the purposes of a scheme of a kind described in paragraph (a) of the definition of ‘scheme’ that is a defined benefit scheme or a one member scheme and the chargeable person so decides, and where accounts are prepared to an appropriate accounting standard, on the last day of the accounting period of the scheme ended in the period of 12 months immediately preceding 30 June of the year 2011, 2012, 2013 or 2014, as the case may be,

and in respect of which the chargeable person is the administrator or insurer on the date concerned;

‘chargeable person’, in relation to the assets of a scheme, means—

- (a) where the assets are not contracts of assurance, the administrator in relation to the scheme, and
- (b) where the assets are contracts of assurance, the insurer in relation to such a contract,

and, where the context admits, includes a successor within the meaning of subsection (9);

‘contract of assurance’ means—

- (a) any contract of a type described in section 706(3) of the Act of 1997, and
- (b) any other policy or contract of assurance made by an insurer with a person or persons having the management of a scheme of a kind described in paragraph (a) of the definition of ‘scheme’,

other than a one member scheme;

‘defined benefit scheme’ has the meaning assigned to it in section 2(1) of the Pensions Act 1990;

‘due date’ means 25 September of the year 2011, 2012, 2013 or 2014, as the case may be;

‘excluded assets’, in relation to a scheme of a kind described in paragraph (a) of the definition of ‘scheme’, means assets representing the liabilities of the scheme which are attributable to the provision of relevant benefits (within the meaning of section 770 of the Act of 1997) in respect of any member of such a scheme—

(a) whose employment in relation to the scheme at the date the chargeable amount for the year concerned is determined—

(i) is and always was, or

(ii) where the employment has ceased before that date, whose employment always had been,

exercised wholly outside the State and who, at that date, was not in receipt of such benefits, and

(b) whose employment in relation to the scheme was wholly exercised outside the State and who at the date the chargeable amount for the year concerned is determined was in receipt of such benefits;

‘insurer’ means an insurance undertaking within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994);

‘market value’ shall be construed in accordance with section 548 of the Act of 1997;

‘member’, in relation to a scheme of a kind described in paragraph (a) of the definition of ‘scheme’, means any person admitted to membership under the rules of the scheme;

‘one member scheme’ means a scheme of a kind described in paragraph (a) of the definition of ‘scheme’ in respect of which

approval of the scheme by the Commissioners requires the person or persons having the management of the scheme to deliver annual scheme accounts to the Commissioners;

‘pension fund’, in relation to an insurer, shall be construed in accordance with subsection (2) of section 706 of the Act of 1997 and as if the business referred to in paragraph (a) of that subsection includes policies of assurance referred to in paragraph (b) of the definition of ‘contract of assurance’;

‘scheme’ means—

(a) a retirement benefits scheme, within the meaning of section 771 of the Act of 1997—

(i) approved by the Commissioners for the purposes of Chapter 1 of that Act, or

(ii) approved by the Commissioners under any other enactment (including an enactment that is repealed) and in respect of which the provisions of Chapter 1 of the Act of 1997 were applied,

other than a scheme where—

(I) the trustees have passed a resolution to wind up the scheme, and

(II) the employer is insolvent for the purposes of the Protection of Employees (Employers’ Insolvency) Act 1984,

(b) an annuity contract or a trust scheme or part of a trust scheme approved by the Commissioners under section 784 or 785 of the Act of 1997 or, as the case may be, under both of those sections of that Act, other than an annuity contract or trust scheme or part of a trust scheme so approved in respect of which a lump sum, to which paragraph (b) of section 784(2) of the Act of 1997 applies, has been paid to the individual entitled to an annuity under the contract, trust scheme or part of a trust scheme, as the case may be, or

- (c) a PRSA contract, within the meaning of section 787A of the Act of 1997, in respect of a PRSA product, within the meaning of that section, other than a PRSA contract in respect of which a lump sum, to which paragraph (a) of section 787G(3) of the Act of 1997 applies, has been paid or made available to the PRSA contributor;

‘valuation date’ means the appropriate date as determined for the purposes of paragraph (a) or (b) of the definition of ‘chargeable amount’.

(2) A chargeable person shall in respect of the due date in each of the years 2011, 2012, 2013 and 2014, and not later than the due date concerned, deliver to the Commissioners a statement, in such electronic format as the Commissioners may specify, showing the chargeable amount for that year in respect of the chargeable person.

(3) A stamp duty of an amount equal to 0.6 per cent of the chargeable amount for the year concerned shall be charged on every statement delivered by a chargeable person pursuant to subsection (2).

(4) The duty charged under subsection (3) on a statement delivered by a chargeable person pursuant to subsection (2) shall be paid, by such electronic means as the Commissioners may specify, by the chargeable person on delivery of the statement.

- (5) (a) A chargeable person who, in relation to the assets of a scheme, being a scheme approved by the Commissioners, is liable to pay the duty charged under subsection (3) on a statement delivered by the chargeable person pursuant to subsection (2) shall, for the purposes of payment of the duty, be entitled to dispose of or appropriate such assets of the scheme as are required to meet the amount of the duty so payable and the scheme shall not cease to be a scheme approved by the Commissioners as a consequence of any such disposal or appropriation by the chargeable person.

- (b) Where in pursuance of this section a chargeable person

who, in relation to the assets of a scheme, being a scheme approved by the Commissioners, is not a trustee of the scheme, pays the duty charged under subsection (3) by the disposal or appropriation of such assets of the scheme as are required to meet the amount of duty so payable, then the trustees shall allow such disposal or appropriation and the chargeable person shall be acquitted and discharged of any such disposal or appropriation as if the amount of duty had not been so paid, and the scheme shall not cease to be a scheme approved by the Commissioners as a consequence of any such disposal or appropriation by the chargeable person.

(6) Where in pursuance of this section a chargeable person disposes of or appropriates an asset of a scheme in accordance with subsection (5)(a), then no action shall lie against the chargeable person in any court by reason of such disposal or appropriation.

(7) (a) Where, in relation to the assets of a scheme, being a scheme approved by the Commissioners, the chargeable person is not a trustee of the scheme, then the chargeable person and the trustees of the scheme shall each be liable for the payment of the duty charged under subsection (3) on a statement delivered to the Commissioners by the chargeable person pursuant to subsection (2) and their liability shall be joint and several.

(b) Where, in relation to the assets of a scheme, being a scheme approved by the Commissioners, that is a one member scheme, the chargeable person is a trustee of that scheme but is not a member of that scheme, then the chargeable person and a trustee who is a member of that scheme shall each be liable for the payment of the duty charged under subsection (3) on a statement delivered to the Commissioners by the chargeable person pursuant to subsection (2) and their liability shall be joint and several.

(8) In the case of failure by a chargeable person—

- (a) to deliver not later than the due date any statement required to be delivered by the chargeable person pursuant to subsection (2), or
- (b) to pay the duty chargeable on any such statement on delivery of the statement,

the chargeable person shall—

- (i) from that due date until the day on which the duty is paid, be liable to pay, in addition to the duty, interest on the duty calculated in accordance with section 159D, and
- (ii) from that due date, be liable to pay a penalty of €380 for each day the duty remains unpaid.

(9) Where before a due date—

- (a) a chargeable person ceases to carry on a business in the course of which the chargeable person is required to deliver a statement (in this subsection referred to as the ‘first-mentioned statement’) pursuant to subsection (2) (including any case where the chargeable person is so required by virtue of the prior operation of this subsection) but has not done so before that cesser, and
- (b) another person (in this subsection referred to as the ‘successor’) acquires the whole, or substantially the whole, of the business,

then—

- (i) the chargeable person is not required to deliver the first-mentioned statement, and
- (ii) the successor shall—
 - (I) where the successor is, apart from this subsection, required to deliver a statement (in this subsection referred to as the ‘second-mentioned statement’) pursuant to subsection (2)

(including any case where the successor is so required by virtue of the prior operation of this subsection) in respect of the same due date but has not done so before that acquisition, include in that second-mentioned statement the chargeable amount for the year concerned that would have been required to have been shown in the first-mentioned statement had the chargeable person not ceased to carry on the business concerned,

- (II) where subparagraph (I) does not apply, deliver the first-mentioned statement as if the successor were the chargeable person.

(10) 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.

(11) The duty charged by this section shall not be allowed as a deduction or as a credit for the purpose of the computation or charge of any tax or duty under the care and management of the Commissioners.

(12) Notwithstanding any provision of any enactment (including this Act), or any rule of law, or anything contained in the rules of a scheme, being a scheme approved by the Commissioners, or the terms and conditions of any contract, being a contract approved by the Commissioners, if under this section—

- (a) a chargeable person who is an insurer pays an amount to the Commissioners in respect of the duty in relation to a contract of assurance, the amount shall be deemed to be a necessary disbursement from the pension fund of the insurer and the insurer may adjust accordingly any current or prospective benefits or guarantees under the contract, and any such adjustment of benefits or guarantees by the insurer shall

not result in the contract ceasing to be a contract approved by the Commissioners, and

- (b) a chargeable person who is an administrator pays an amount to the Commissioners in respect of the duty in relation to the assets of a scheme, or where an amount in respect of the duty in relation to the assets of a scheme has been paid to the Commissioners by any other chargeable person, the aggregate of the amount of duty paid by the administrator and the other chargeable person shall be deemed to be a necessary disbursement from those assets, and the benefits payable currently or prospectively to any member under the scheme may accordingly be adjusted by the trustees, but the diminution in value of those benefits shall not exceed the amount disbursed from the assets attributable at the valuation date to the scheme's liabilities in respect of that member, and any such adjustment of benefits by the trustees shall not result in the scheme ceasing to be a scheme approved by the Commissioners.

(13) For the purposes of subsections (5) and (12), the Commissioners may, where they consider it appropriate, review any such disposal or appropriation of an asset as is referred to in subsection (5), or any such adjustment of benefits as is referred to in subsection (12), to ensure that any such disposal, appropriation or adjustment, as the case may be, is in keeping with the requirements of this section, and for the purposes of subsection (12) the Commissioners may consult with such other persons as, in their opinion, may be of assistance to them.”,

and

(b) in section 126B(1)—

- (i) by substituting the following for paragraphs (c) and (d) in the definition of “relevant person”:

“(c) a bank or promoter within the meaning of section 124,

(d) an insurer within the meaning of section 125, or

(e) a chargeable person within the meaning of section 125B;”,

and

(ii) by substituting “124B, 125 or 125B” for “124B or 125” in the definition of “specified section”.

(2) The Taxes Consolidation Act 1997 is amended—

(a) in section 772(2)(c) by substituting “, Chapter 2C and section 125B of the Stamp Duties Consolidation Act 1999” for “and Chapter 2C”,

(b) in section 784(4A) by substituting “, by Chapter 2C and by section 125B of the Stamp Duties Consolidation Act 1999” for “and by Chapter 2C”, and

(c) in section 787G(5) by substituting “, Chapter 2C and section 125B of the Stamp Duties Consolidation Act 1999” for “and Chapter 2C”.

Care and management of taxes and duties.

5.—All taxes and duties imposed by this Act are placed under the care and management of the Revenue Commissioners.

Short title and construction.

6.—(1) This Act may be cited as the Finance (No. 2) Act 2011.

(2) *Section 1* which relates to corporation tax, shall be construed together with the Corporation Tax Acts.

(3) *Section 2* which relates to duties of excise, shall be construed together with the statutes which relate to those duties and to the management of those duties.

(4) *Section 3* shall be construed together with the Value-Added Tax Consolidation Act 2010 and may be cited together with that Act as the Value-Added Tax Acts.

(5) *Section 4(1)* shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act and *section 4(2)* shall be construed together with the Tax Acts.