An Bille Airgeadais, 2020
Finance Bill 2020

Meabhrán Mínitheach
Explanatory Memorandum

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EXPLANATORY MEMORANDUM

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX, UNIVERSAL SOCIAL CHARGE

Chapter 1

Interpretation

Section 1 contains a definition of "Principal Act" (i.e. the Taxes Consolidation Act 1997) for the purposes of Part 1 of the Bill.

Chapter 2

Universal Social Charge

Section 2 amends section 531AN of the Taxes Consolidation Act 1997 as follows:

- to increase the Universal Social Charge (USC) thresholds:
  - to raise the USC 2% threshold from €19,874 to €20,484 for the 2020 year of assessment, and
  - to raise the USC 2% threshold from €20,484 to €20,687 for the year of assessment 2021 and each subsequent year.

These changes are made in line with the increases in the national minimum wage applicable in 2020 and 2021 and will ensure that the 2% rate remains the highest rate of USC that is charged on the income of full-time minimum wage workers.

- to extend the reduced rate of USC for full medical card holders under 70 years of age whose individual annual income does not exceed €60,000 for a further year until the end of the 2021 tax year.

Chapter 3

Income Tax

Section 3 amends section 126 of the Taxes Consolidation Act 1997 relating to the tax treatment of certain benefits payable under Social Welfare Acts to confirm the tax treatment of the payments commonly known as the pandemic unemployment payments and the Covid-19 pandemic unemployment payment. It provides that the payments are to be treated as an emolument to which Chapter 4 of Part 42 of the Principal Act applies.

Section 4 amends section 192BA Taxes Consolidation Act 1997 to provide an exemption from income tax for certain payments made by or on behalf of the Health Service Executive to a carer in respect of what is generally referred to and commonly known as a Home Sharing Host Allowance.

Section 5 gives effect to the budget announcement to increase the dependent relative tax credit from €70 to €245.

Section 6 inserts a new section 192H into the Taxes Consolidation Act 1997 to provide an exemption from income tax for certain payments made by or on behalf of the Health Service Executive in respect of Mobility Allowances to a person who satisfies the conditions of the Mobility Allowance scheme as administered by the Health Service Executive.

Section 7 amends section 477C (5A) of the Taxes Consolidation Act 1997 to extend the enhanced Help to Buy (HTB) relief. The HTB scheme provides income tax relief to assist first-time buyers with obtaining the deposit required to purchase or build their first home. As part of the July Stimulus plan, a temporary enhanced HTB relief was introduced to increase the HTB relief to the lesser of (i) €30,000 (up from €20,000) or (ii) 10 per cent (up from 5 per cent) of the purchase price of the new home or of the completion value of the property in the case of self builds or (iii) the amount of Income Tax and DIRT paid over the four years prior to making the application. The enhanced HTB relief is set to expire on 31 December 2020. This amendment provides for an extension of the enhanced HTB relief by 12 months to 31 December 2021.

Section 8 amends the reporting requirements with regard to share incentive plans in sections 128C, 128D, 128E and 897B of the Taxes Consolidation Act 1997.

Section 897B provides for the mandatory reporting of information by employers in relation to awards of shares to directors and employees, except where the employer is already obliged to report this information under another provision.

The first amendment extends the scope of the reporting requirements. It is broadened to include awards given in the form of a cash equivalent of shares or where a discount on shares is provided.

The second amendment provides for mandatory electronic reporting of the information in a format prescribed by Revenue.

The amendments to sections 128C, 128D and 128E provide for mandatory electronic reporting of convertible securities, restricted share and forfeitable share plans in a format prescribed by Revenue.

Section 9 gives effect to the budget announcement to increase the earned income credit from €1,500 to €1,650 with effect from 1 January 2020.

Section 10 extends the sea-going Naval personnel credit by one further year, to the 2021 year of assessment, and increases the credit available from €1,270 to €1,500 with effect from 1 January 2021.

Chapter 4

Income Tax, Corporation Tax and Capital Gains Tax

Section 11 inserts two new sections in Chapter 2 of Part 15 of the Taxes Consolidation Act 1997. The new sections provide for the Covid Restrictions Support Scheme ("CRSS"), which is a targeted support for businesses significantly impacted by restrictions introduced by the

Government under public health regulations to combat the effects of the Covid-19 pandemic.

The new section 485 makes provision for CRSS and its key features are—

- CRSS provides support for businesses that are forced to temporarily close or to operate at significantly reduced levels because of Covid restrictions that either prohibit, or significantly restrict, customers of the business from accessing the premises in which the business is carried on. Generally, this refers to Covid restrictions at Level 3, 4 or 5 of the Government's Plan for Living with Covid-19 but certain businesses may qualify for the support where lower levels of restrictions are in operation.
- The scheme is available to affected self-employed individuals and companies who carry on a trade or trading activities, the profits from which are chargeable to tax under Case I of Schedule D, from a business premises located wholly within a geographical region for which Covid restrictions are in operation. It is also available to persons who carry on a trade in partnership.
- To qualify under the scheme, a business must be able to demonstrate that, because of the Covid restrictions, the turnover of the business in the period for which the restrictions are in operation, and for which a claim is made, will be no more than 25% of an amount equal to the average weekly turnover of the business in 2019 (or average weekly turnover in 2020 in the case of a new business) multiplied by the number of weeks in the period for which a claim is made.
- Qualifying taxpayers will be able to make a claim for an amount equal to 10% of their average weekly turnover in 2019 up to €20,000 and 5% thereafter, subject to a maximum weekly payment of €5,000, for each week that their business is affected by the Covid restrictions. For businesses established between 26 December 2019 and 12 October 2020, the claim will be based on their actual weekly average turnover in the period between the date of commencement and 12 October 2020 (subject to the weekly cap of €5,000). Payments made under the scheme will be treated as an advance credit for trading expenses.
- To make a claim under the scheme, a number of other conditions must be satisfied including that the person has an up to date tax clearance certificate and complied with their Value-Added Tax obligations. The person must register to claim on the 'Revenue Online Service' and make a declaration that they satisfy the conditions to make a claim under this section. Where Covid restrictions for a geographical region are extended beyond the date on which they were due to expire, a new claim is required for each extension period.
- Provision is made for the publication of the name of claimants of CRSS on Revenue's website.
- The scheme will operate from 13 October 2020 to 31 March 2021 and there is provision for the Minister for Finance to vary aspects of the scheme by Ministerial Order.

The new section 484 sets out the objectives and purpose of section 485 and certain duties of the Minister for Finance in connection with it.

Section 12 provides for the extension up to 31 December 2023 of the scheme under which accelerated wear and tear allowances are available for capital expenditure incurred on the provision of certain energy efficient equipment.

Section 13 is concerned with the Professional Services Withholding Tax regime which provides for the deduction of tax at the standard rate of income tax by accountable persons (Government Departments, Local Authorities etc.) when making relevant payments in respect of certain professional services to individuals and companies. This amendment provides for the modernisation of the scheme, an underlying feature of which is the use of electronic means for the transfer of information, data and returns etc. and other small technical amendments. The commencement of the provision will be subject to Ministerial Commencement Order.

Section 14 provides for an amendment to the emissions-based capital allowances regime for expenditure incurred on business cars. Arising from the introduction of the new EU emissions testing system, technical changes are required to this regime by updating the definition of 'CO2 emissions' and the category references which determine eligibility for capital allowances. This provision will apply to expenditure incurred from 1 January 2021 except in cases where a contract for hire of a car is entered into, and the first payment under that contract is made, prior to that date.

Section 15 provides for two amendments to Part 35A (Transfer Pricing) of the Taxes Consolidation Act 1997. The purpose of these amendments is to ensure that certain aspects of the transfer pricing legislation operate as intended.

Firstly, the definition of 'relevant person' is amended to ensure that, in relation to an arrangement, a supplier or acquirer, whose profits or gains or losses within the charge to tax would take account of any results of the arrangement, will be regarded as a 'relevant person' for the purposes of documentation requirements.

Secondly, a new section 835E is introduced containing several changes, including:

- An amended definition of 'qualifying relevant person' to clarify that a relevant person must have profits or gains or losses chargeable to tax under Schedule D, the computation of which directly takes account of the actual results of the arrangement. In addition, the definition is amended to clarify when a party to certain loan arrangements will be regarded as a 'qualifying relevant person'.
- Subsection (3) sets out the circumstances in which profits or gains or losses will be regarded as "taking account of the actual results of an arrangement".

These amendments apply for chargeable periods commencing on or after 1 January 2021.

Section 16 makes a number of changes to Schedule 2 of the Taxes Consolidation Act 1997 (machinery for assessment, charge and payment of tax under Schedule C and, in certain cases, Schedule D).

Tax charged under Schedule 2 is commonly known as encashment tax and *Section 16* makes the following changes to encashment tax.

Firstly, it introduces an exemption from encashment tax for Irish companies, which is in line with other exemptions from withholding taxes available to Irish companies.

Secondly, it increases the rate of encashment tax to be deducted from 20% to 25%.

Finally, it provides a requirement for those responsible for the collection and return of encashment tax to make automatic returns of certain information to Revenue.

Chapter 5

Corporation Tax

Section 17 amends section 288 of the Taxes Consolidation Act 1997 which provides for an adjustment to the amount of capital allowances made in respect of expenditure on certain capital assets where balancing events, including the disposal or writing off of the asset, occur. These adjustments are referred to as balancing allowances and balancing charges. In the case of capital allowances for specified intangible assets within the meaning of section 291A, currently a balancing charge, or clawback of allowances made, does not arise where the balancing event occurs more than 5 years after the beginning of the accounting period of the company in which the asset was first provided. This is subject to the condition that the event may not result in a connected company claiming allowances under section 291A in excess of the tax written down value of the asset at the time of transfer.

The amendment to section 288 TCA 1997 provides that balancing charges may now arise in respect of specified intangible assets acquired on or after 14 October 2020 regardless of when a balancing event occurs

Section 18 amends section 481 Taxes Consolidation Act 1997 by extending the period that the Regional Film Development Uplift will be available at the highest rate of 5% by one year. Where the Cultural certificate for a film specifies that the Regional Film Development Uplift applies, and the first claim is made on or before 31 December 2021, the uplifted rate for calculating the credit will be 37%. The periods at which the uplifted rates of 35% and 34% may be applicable are each advanced by 12 months. No uplift is available for the calculation of the film tax credit for claims made after 31 December 2023.

Section 19 amends Part 35B TCA 1997 (Controlled Foreign Companies (CFC) rules) by inserting a new section, section 835YA, to provide that section 835T (the Effective tax rate exemption), section 835U (the Low profit margin exemption) and section 835V (the Low accounting profit exemption) will not apply for an accounting period of a CFC where that CFC is resident in a jurisdiction which is listed in Annex 1 of the "EU list of non-cooperative jurisdictions for tax purposes - Report by the Code of Conduct (business taxation) suggesting amendments to the Annexes to the Council conclusions of 18 February 2020" (as published in the Official Journal No. C 331 on 7 October 2020).

The new section takes effect in respect of accounting periods of CFCs beginning on or after 1 January 2021.

Section 20 amends the anti-hybrid rules contained in Part 35C of the Principal Act, which were introduced by Finance Act 2019 in line with Ireland's commitments to implementing the EU Anti-Tax Avoidance Directive (ATAD). The amendments ensure that the anti-hybrid rules operate as intended by:

- amending a technical error in the definition of associated enterprises to ensure compliance with ATAD;
- amending provisions relating to the timing of the test of association to address unintended consequences of the current legislation;
- providing that certain anti-hybrid rules do not apply where there is no economic mismatch outcome because a charge to tax arises under a Controlled Foreign Company regime; and
- clarifying the application of one of the anti-hybrid rules where the participator is a tax exempt entity.

Section 21 provides for the extension of the Knowledge Development Box relief for a further two years until 1 January 2023. The Knowledge Development Box provides for a deduction equal to 50% of the profits from patented inventions and copyrighted software (qualifying assets) earned by a company, to the extent it relates to Research and Development (R&D) undertaken by the company.

Chapter 6

Capital Gains Tax

Section 22 amends section 541 of the Taxes Consolidation Act 1997. That section provides that a chargeable gain shall not accrue on the disposal of a debt by the original creditor unless the debt is a debt on a security. Subsection (6) ensures that gains arising from disposals of currencies held in a bank account, which are not in the currency of the State, are subject to CGT. The purpose of this amendment is to address the situation whereby the same foreign currency transferred between bank accounts held by the same person has the potential to crystallise a chargeable gain or an allowable loss without an accompanying economic capital gain or loss. The amendment applies to disposals on or after 14 October 2020.

Section 23 amends section 597AA of the Taxes Consolidation Act 1997. That section provides a capital gains tax relief to individuals who dispose of assets of a qualifying business or shares in a qualifying company or group of companies which are owned for a continuous period of 3 years in the 5-year period immediately prior to the disposal of those assets.

Gains on the disposal of such assets are charged at the rate of 10% rather than the normal rate of 33%, subject to a lifetime limit of chargeable gains up to €1,000,000 accruing to that individual on or after 1 January 2016. Gains above this limit are subject to the rate of capital gains tax in force at the time of the disposal.

The amendment gives effect to a change announced by the Minister for Finance in his Budget 2021 statement that the requirement for an individual to have owned a holding of at least 5% of the ordinary share capital for a continuous period of 3 years in the 5 years immediately prior to the disposal is being changed so that the shares can qualify for relief if they were held for a continuous period of 3 years at any time prior to the disposal of those shares.

The amendment will apply to disposals of chargeable business assets made on or after 1 January 2021.

Section 24 amends section 629 of the Taxes Consolidation Act 1997 (TCA 1997), which provides that a company can opt to pay exit tax charged under section 627 TCA 1997 in 6 equal instalments over 5 years, subject to the payment of interest in respect of the amount of exit tax which remains unpaid. The amendment, which is technical in nature, applies in respect of exit tax which remains unpaid on or after 14 October 2020. The amendment confirms the existing position under section 629 TCA 1997 whereby interest is calculated: (i) on the total amount of exit tax which is unpaid immediately before each instalment is paid; and (ii) at the rate of 0.0219% per day or part of a day from the specified date (i.e. 9 months after the date that the exit tax charge arose under corporation tax pay and file rules) to the date of payment. Interest so calculated becomes payable on each instalment date.

PART 2

EXCISE

Chapter 1

Section 25 confirms the Budget increases in the rates of Tobacco Products Tax and Minimum Excise Duty for cigarettes. The Tobacco Products Tax rate increase amounts to 50 cent on a pack of 20 cigarettes in the most popular price category, on a VAT inclusive basis, with pro-rata increases on other tobacco products. The Minimum Excise Duty rate on cigarettes is also increased and now applies at the rate of duty applicable to a packet of 20 cigarettes sold at €11.50.

Section 26 provides for ten annual increases to rates of the carbon component of mineral oil tax, including confirming the Budget increase in the rate of mineral oil tax on auto fuels from 14 October 2020. The rate increases are based on charging an additional €7.50 per tonne of carbon dioxide emissions each year for nine years and an additional €6.50 per tonne in the tenth year. From 1 May 2030 mineral oil tax rates are based on charging €100 per tonne of carbon dioxide emissions. Section 96 of Finance Act 1999 is amended from 1 May 2021 to support the operation of the ten-year trajectory of rate increases.

Section 27 provides for annual increases to the rate of natural gas carbon tax commencing in 2021 and concluding in 2030. The increased rates come into effect on the first day of May each year and are based on charging an additional €7.50 per tonne of carbon dioxide up to and including 2029 and an additional €6.50 per tonne in 2030. Section 67 of Finance Act 2010 is amended to include a table specifying yearly rates of natural gas carbon tax. Section 67 is further amended to support the operation of the ten-year trajectory of rate increases.

Section 28 provides for annual increases to the rates of solid fuel carbon tax commencing in 2021 and concluding in 2030. The increased rates come into effect on the first day of May each year and are based on charging an additional €7.50 per tonne of carbon dioxide up to and including 2029 and an additional €6.50 per tonne in 2030. Schedule 1 to Finance Act 2010 is amended to specify yearly rates for each description of solid fuel. Section 78 is amended to support the operation of the ten-year trajectory of rate increases.

Section 29 amends the Finance Act 2001 to transpose Article 12(1)(ba) and (c) of the EU General Excise Directive (2008/118/EC), as amended by Article 2 of EU Directive 2019/2235. The section confirms the exemptions applied to excisable products delivered to NATO forces and, with effect from 1 July 2022, delivered to forces of Member States undertaking a common defence effort under the Common Security and Defence Policy (CSDP) of the EU.

Section 30 waives the excise duty due on the renewal of certain intoxicating liquor licences in the licensing year 2020/2021. This section also waives the excise duty due on the renewal of public dancing licences and certificates of registration of clubs in 2020. This arises from the Government's decision of the 28 August to provide a €16 million support package for pubs, bars and nightclubs, having recognised the economic impact of COVID-19 on their businesses and to assist with the planning and adaptation for their reopening.

Section 31 amends section 96 of the Finance Act 2001 to adjust the definition of "registered consignor", a type of excise trader under EU law who is involved in the dispatch of excise goods on a duty suspended basis.

The purpose of this amendment is to bring the definition in closer alignment with the scope of functions for this type of excise trader as defined in the EU General Excise Directive (2008/118/EC).

Section 32 amends Section 132 of the Finance Act 1992 by introducing a new charging table and two multiplier formulae for Category A (passenger and light duty) vehicles. The purpose of this is to adapt the charging provisions for Category A vehicles to the new Worldwide Harmonised Light Vehicle Testing Procedure (WLTP). The amended table will reflect the new rates applicable to WLTP Carbon Dioxide (CO2) emissions. The formulae will be applied to the emissions of cars tested under older emissions standards before the rate of tax due is established from the table.

This amendment comes into effect from 1 January 2021.

This section further amends Section 132 by adjusting the existing Nitrogen Oxide (NOx) charging table such that the lowest band will now be 0 – 40 mg/km (formerly 0 – 60 mg/km) and the middle band will be 41 – 80 mg/km (formerly 61 – 80 mg/km).

Section 33 amends Section 135C of the Finance Act 1992 by adjusting the amount of relief given to certain electric vehicles. As a result of this amendment electric vehicles with an Open Market Selling Price (OMSP) of up to €40,000 will continue to be granted the relief up to €5,000. Vehicles with an OMSP in excess of €40,000 but less than €50,000 will receive a reduced level of relief calculated by the formula contained in the amendment. Vehicles with an OMSP of or in excess of €50,000 will no longer receive the relief.

This amendment comes into effect from 1 January 2021.

Section 34 this section gives effect to the motor tax changes for cars that are taxed on the basis of carbon dioxide emissions (CO2), as announced in the Budget.

A new motor tax table is opened for new cars registered in the State on or after 1 January 2021. This table contains an increased number of emissions bands.

The existing CO2-based table for cars is being amended with higher rates for the most pollutant cars. NEDC-tested cars registered outside the State in the period from July 2008 to 2020 inclusive, but registered in the State on or after 2021, will be subject to the existing CO2-based table. For used imports which were subject to the WLTP test, the new WLTP table will apply.

PART 3

VALUE-ADDED TAX

Section 35 is a definitions section.

Section 36 amends Section 2 of the Value-Added Tax Consolidation Act 2010 to align the definition of immovable goods with the definition applied for the purposes of the VAT Directive (2006/112/EC).

Section 37 amends the Value-Added Tax Consolidation Act 2010 to provide that the 9% rate of value-added tax applies from 1 November 2020 to 31 December 2021 to the supply of restaurant and catering services, guest and holiday accommodation and entertainment services such as admissions to cinemas, theatres, museums, fairgrounds and amusement parks. It will also apply to hairdressing and the sale of certain printed matter such as brochures, maps and programmes. The 9% rate applying to

magazines and newspapers and to the provision of sporting facilities will remain unaffected.

Section 38 amends the Value-Added Tax Consolidation Act 2010 to provide that the flat-rate addition for farmers is increased to 5.6%.

Section 39 amends the Value-Added Tax Consolidation Act 2010 to insert a new section into that Act in order to transpose the second subparagraph of Article 204(1) and Article 205 of (Council Directive 2006/112/EC) in respect of the appointment of a tax representative by a non-established trader and the application of joint and several liability in respect of that representative.

Section 40 amends the Value-Added Tax Consolidation Act 2010 to transpose relevant provisions of Article 151(1) and Article 143(1) of the VAT Directive in respect of exemptions applied to supplies of goods and services to NATO forces and, with effect from 1 July 2022, to supplies of goods and services to forces of Member States undertaking a common defence effort under the Common Security and Defence Policy (CSDP) of the EU.

Section 41 amends the Value-Added Tax Consolidation Act 2010 to align it with the VAT Directive in relation to the supply of restaurant and catering services.

Section 42 amends the Value-Added Tax Consolidation Act 2010 to provide for the temporary zero rating of personal protection equipment, thermometers, hand sanitiser, oxygen, medical ventilators and specialist respiratory equipment including respirators for intensive and sub-intensive care and other oxygen therapy apparatus including oxygen tents, supplied to the Health Service Executive and other health facilities for use in the delivery of Covid-19 related health care services. It also provides that the Minister is required to extend this period if the European Commission makes a decision to extend it.

Section 43 amends the Value-Added Tax Consolidation Act 2010 to align our national VAT legislation with the provisions of the VAT Directive and with the jurisprudence of the Court of Justice of the European Union to ensure that all supplies of guest and holiday accommodation are taxable at the reduced rate of VAT.

Section 44 amends Schedules 2 and 3 to the Value-Added Tax Consolidation Act 2010 to provide for the:

closer alignment of the Value-Added Tax Consolidation Act 2010 with the VAT Directive (2006/112/EC), to clarify the circumstances under which the zero rate of VAT applies to supplies of services relating to vessels and aircraft,

application of the standard rate of VAT to all candles, with effect from 1 January 2021,

application of the reduced rate of VAT to certain sanitary products, with effect from 1 January 2021

and

application of the reduced rate of VAT to admission fees to amusement parks/fairgrounds, as provided for in the VAT Directive (2006/112/EC).

PART 4

STAMP DUTIES

Section 45 is the interpretation section for Part 4. It provides that in Part 4 the "Principal Act" means the Stamp Duties Consolidation Act 1999.

Section 46 amends section 31C of the Stamp Duties Consolidation Act 1999 which imposes an additional charge on certain share transactions relating to land. A new subsection (7A) interacts with section 31D and prioritises section 31C over section 31D in certain circumstances. A transaction chargeable under section 31D that would, in the absence of this subsection, be chargeable under section 31C is now chargeable only under section 31C.

Section 47 amends section 81C of the Stamp Duties Consolidation Act 1999 which provides relief for the consolidation of farm holdings. The relief is extended for a further two years from 31 December 2020 to 31 December 2022. This aligns the end date for this relief with a similar capital gains tax relief. The measure is subject to a Commencement Order.

Section 48 amends section 83D of the Stamp Duties Consolidation Act 1999 which provides for a partial refund of stamp duty where land is developed for residential purposes. Paragraph (a) extends the period allowed for the completion of construction from two years, i.e. 24 months, to 30 months. Paragraph (b) corrects a previous drafting error. Paragraph (c) extends the relief for a further year to construction operations commenced before 31 December 2022.

Section 49 amends the Stamp Duties Consolidation Act 1999 to update insurance references to reflect the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) (also referred to as the 'Solvency II' Regulations). The following definitions are updated:

"appropriate person" in section 103(1),

"insurer" in sections 124B, 125 and 125B, and

"assessable amount" in section 125(1).

Section 50 amends section 126AA of the Stamp Duties Consolidation Act 1999 in relation to a fixed annual levy of €150 million imposed on certain financial institutions. The levy is charged on the Deposit Interest Retention Tax (DIRT) paid by the relevant financial institutions in a series of base years. To maintain the €150 million yield for the year 2021, the levy is increased from its current rate of 170% to 308 % of the DIRT paid in the 2019 base year.

Section 51 amends Schedule 1 to the Stamp Duties Consolidation Act 1999 to extend the termination date for consanguinity relief (which applies to sales and transfers of farmland between certain blood relatives) from 31 December 2020 to 31 December 2023. The rate of stamp duty where consanguinity relief applies is a fixed rate of 1 per cent of the consideration.

PART 5

CAPITAL ACQUISITIONS TAX

Section 52 is an interpretation section. It provides that, in Part 5, the Principal Act means the Capital Acquisitions Tax Consolidation Act 2003.

Section 53 amends section 46 Capital Acquisitions Tax Consolidation Act 2003 which provides for the delivery of returns. The amendment requires the delivery of a return where a gift or inheritance comprises agricultural property or relevant business property where agricultural relief or business

relief, respectively, apply. A return must now be delivered in respect of such gifts or inheritances irrespective of whether the taxable value of such agricultural property or relevant business property, when aggregated with the taxable value of previous gifts or inheritances since 5 December 2001, exceeds 80% of the relevant group threshold.

Section 54 amends sections 46, 49 and 57 of the Capital Acquisitions Tax Consolidation Act 2003 which, inter alia, provide for a standard 4-year time period during which the Revenue Commissioners can, respectively, make enquiries, raise assessments and make repayments. The amendments provide for a fixed commencement date for this 4-year time period of 31 December in the year in which a return is received. An amendment also provides that the Revenue Commissioners may raise an assessment at any time where an event occurs after a return is received which gives rise to any facts or matters relevant to the assessment.

PART 6

MISCELLANEOUS

Section 55 contains a definition of "Principal Act" (i.e. the Taxes Consolidation Act 1997) for the purposes of Part 6 of the Bill.

Section 56 makes several amendments to the Taxes Consolidation Act 1997 to facilitate improvements to the tax appeals process.

Paragraphs (a) and (b) amend sections 949AP and 949AV to allow the Appeal Commissioners to dismiss an appeal where an appellant does not comply with their direction to submit information required to progress the appeal (i.e. documents known as, respectively, a 'statement of case' or an 'outline of arguments').

Paragraph (c) inserts a new chapter 8 into Part 40A (Appeals to Appeals Commissioners). It makes provision for the procedures that are to apply if an Appeal Commissioner, who has been involved in the adjudication of an appeal, ceases to serve as an Appeal Commissioner before the appeal process is completed.

Where a hearing has commenced but is not completed, or a hearing is completed but a determination has not been made, the appeal must be reheard as if a previous hearing had not taken place or be determined without a hearing by another Appeal Commissioner.

Where an appeal has been determined and a 'case stated' for an appeal to the High Court has been requested but not been completed, another Appeal Commissioner may rehear the appeal; adjudicate on the appeal without a hearing; or proceed with the completion of the 'case stated'. The High Court is given the discretion not to deal with such a 'case stated' where it considers that justice would not be served by it's doing so and may instead order that the appeal be reheard by the Appeal Commissioners.

Paragraph (d) amends section 959AF in relation to an appeal against the imposition of a surcharge for the late submission of a return to the Revenue Commissioners. The amendment provides that an appeal against an assessment containing a surcharge is allowed only where a person's grounds for the appeal relate to certain specified matters set out in section 1084(1)(b), such as a dispute about the information contained in the return, or where there is a dispute about the date on which the return was submitted.

Section 57 amends Chapter 3 of Part 33 of the Taxes Consolidation Act 1997 (TCA 1997), which provides for Ireland's domestic mandatory disclosure regime. The mandatory disclosure regime places an obligation on promoters, marketers and users of disclosable transactions to notify

Revenue about those transactions. Penalties apply where there is a failure to comply with these obligations and the section providing for these penalties is amended to clarify the date from which such penalties are calculated.

Section 57 also amends Chapter 3A of Part 33 of the TCA 1997, which provides for the EU mandatory disclosure regime. Under the EU mandatory disclosure regime intermediaries, and taxpayers in certain circumstances, are required to make a return to the Revenue Commissioners of information regarding cross-border arrangements. *Section 57* amends Chapter 3A as follows:

- by clarifying the taxes coming within the scope of the disclosure regime;
- by clarifying that a filing exemption will be available for intermediaries where another intermediary files the same information in another Member State;
- by clarifying the circumstances in which a person who obtains or seeks to obtain a tax advantage from a reportable cross-border arrangement will be a chargeable person;
- by providing that certain classes of arrangements that will not be reportable in respect of arrangements involving the use of standardised structures and/or documentation; and
- by clarifying where the reporting obligation falls when an intermediary is exempt from filing certain information due to legal professional privilege.

Section 58 updates references in the Taxes Consolidation Act 1997 to reflect Ireland's transposition of the 'Solvency II Directive' in the European Union (Insurance and Reinsurance) Regulations 2015. The Solvency II framework sets out strengthened requirements around capital, governance and risk management in all EU authorised (re)insurance undertakings along with introducing increased regulatory reporting requirements and public disclosure requirements.

The proposed amendments to TCA 1997 update the relevant references as required by removing references to revoked regulations, maintaining references which are still required and inserting references to the updated regulations. These amendments will come into operation on 1 January 2021.

Section 59 inserts a new Section 891DA – "Returns of certain payment card transactions by payment card payment providers" into the Taxes Consolidation Act 1997.

The new Section 891DA allows the Revenue Commissioners to make regulations which require debit and credit card issuers to make returns in respect of online credit or debit card payments to non-resident businesses.

Consolidated amendments relating to the post-Brexit migration of Irish shares and securities to EU CSD

Section 60 makes a number of amendments to the Taxes Consolidation Act 1997 and the Capital Acquisitions Tax Act 2003 arising from the withdrawal of the United Kingdom from the European Union. This involves the migration of shares and securities in Irish registered companies from a central securities depository (CSD) in the United Kingdom to a CSD in Belgium and the future settlement of trades in those shares and securities in the latter CSD. The amendments have a number of objectives: ensuring the tax-neutrality of the migration event, providing for the new CSD arrangements in relation to dividend withholding tax (DWT) and

maintaining the status quo, pre and post migration, in relation to certain tax treatments.

Chapter 8A of Part 6 of the Taxes Consolidation Act 1997 which provides for the application of DWT to distributions made by Irish resident companies is being amended. The purpose of the amendments is to ensure that the status quo is maintained in relation to the operation of the DWT system following the migration of shares to the Belgian CSD. The amendments will ensure that the current treatment which enables an authorised withholding agent to receive dividends on a gross basis will be maintained.

The markets claims provisions in section 172LA are also being amended to maintain the functioning of the market claims process post-migration and to ensure the appropriate person is responsible for settling the market claim. The concept of beneficial ownership of the distribution is used and the definitions in section 172LA have been amended to specify that the "recorded owner" is the person who is beneficially entitled to the relevant distribution before the specified event and the "proper owner" is the person who is beneficially entitled to the relevant distribution as a result of the specified event.

Capital gains tax

A new section, section 545A, is being inserted in the Taxes Consolidation Act 1997. Firstly, the new section provides that the migration of shares under the Migration of Participating Securities Act 2019 will not be treated as a disposal of those shares for the purposes of the Capital Gains Tax Acts.

Secondly, it provides that where a person disposes of a co-ownership interest in shares held by a CSD whose rules require holders of interests in such shares to hold those interests by way of a co-ownership interest in a fungible pool of underlying shares, the asset deemed to have been disposed of for the purposes of the Capital Gains Tax Acts will be the person's interest in the underlying shares.

Thirdly, it provides that references to shares quoted on a stock exchange in sections 29(1A) (b) and 980(2) (d) and (e) of the Taxes Consolidation Act 1997 and shares in a company in the definition of "relevant assets" in section 29A(1)(a) of that Act will be deemed to include references to a co-ownership interest in shares held by a CSD, as defined.

Offshore funds

Section 743 of the Taxes Consolidation Act 1997 is being amended by inserting a new subsection (1A). Subsection (1A) ensures that any rights in the nature of a co-ownership interest in a fungible pool of underlying shares and securities created under the arrangements for the indirect holding of interests in shares and securities in the Belgian CSD will not be regarded as a material interest in an offshore fund under section 743(1)(c).

Capital Acquisitions Tax

The Capital Acquisitions Tax Consolidation Act 2003 is amended in sections 6, 11 and 75. Sections 6 and 11 set out what comprises a taxable gift and a taxable inheritance, respectively. The current tax treatment in relation to the receipt of gifts and inheritances of property comprising shares in Irish companies, where neither the donor nor recipient of the shares is Irish tax resident, is that the shares are treated as situated in Ireland and therefore taxable in the hands of the recipient. The amendments similarly ensure that property comprising depository interests in shares in Irish companies and co-ownership interests in a fungible pool of underlying shares created

under the arrangements for the indirect holding of interests in shares in the Belgian CSD will be treated as situated in Ireland.

The amendment to section 75 clarifies that a CSD will not come within the definition of a "collective investment scheme", for the purposes of the tax exemption provided by this section, by virtue of the CSD's acquisition and holding of securities. Gifts and inheritances comprising units in certain foreign collective investment schemes are exempted from gift and inheritance taxes.

The section is subject to a Commencement Order.

Section 61 amends section 28B (inserted by the Financial Provisions (Covid-19)(No.2) Act 2020) of the Emergency Measures in the Public Interest (Covid-19) Act 2020 to provide for the inclusion of certain proprietary directors within the Employment Wage Subsidy Scheme from 1 September 2020.

Section 62 amends section 28 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 by inserting a new section; section 28C, to make provision for warehousing of excess Temporary Wage Subsidy Scheme (TWSS) payments received by an employer which must be refunded to Revenue. Amounts to be refunded to Revenue are referred to as 'relevant tax'.

This scheme will operate on a similar basis to the existing warehousing schemes for PAYE (Employer) and VAT liabilities.

Warehousing of excess TWSS payments will only apply to employers who as a consequence of Covid-19 are unable to pay their relevant tax and who have filed all relevant PAYE and TWSS returns.

All "small and medium enterprises" (SMEs) whose tax affairs are dealt with in Revenue's Business Division or Personal Division will qualify automatically. Other employers must notify Revenue that they have formed the opinion that they are unable to repay their relevant tax.

Employers will be required to continue to file returns and comply with their other tax obligations (such as paying liabilities in a timely fashion) to avail of a reduced interest rate of 3% per annum on repayment of relevant tax in Period 3.

If an employer fails to meet the conditions for debt warehousing, the benefit of the 0% (during Period 2) and 3% (during Period 3) interest rates will no longer apply and interest at a rate of c. 8% per annum will be re-imposed.

Revenue will not issue demands for warehoused debt while the employer complies with the provisions of the section and employers who have "warehoused" debt will obtain tax clearance, provided their other tax obligations have been met.

Section 63 inserts a new section, section 1080B, in Chapter 5, Part 47 of the Taxes Consolidation Act 1997 (TCA). This section provides for warehousing of "Covid-19 income tax", which relates to income tax payable through self-assessment and includes the balance of income tax due for 2019 (IT 2019) and preliminary tax for 2020 (PT 2020). These amounts are due for payment on 31 October 2020 or, if the taxpayer is paying and filing electronically via Revenue's Online Service (ROS), on such later date as is announced by the Collector-General (10 December 2020 for this year). A taxpayer may avail of warehousing if, as a result of Covid-19 restrictions, her/his income for 2020 is at least 25 per cent lower than her/his income for 2019; or, if the taxpayer did not have income subject to self-assessment in

2019, if s/he is unable to pay her/his "Covid-19 income tax" because of the adverse impact of Covid-19 restrictions.

No interest will be charged on Covid-19 income tax from the filing date (period 1) or for twelve months thereafter (period 2, the "zero-interest period"). After that (in period 3) interest will be charged at the reduced rate of 3 per cent per annum until the debt is paid in full.

If an individual's income for 2021 is at least 25% lower than her/his income for 2019; or, if the taxpayer did not have income subject to self-assessment in 2019, if s/he is unable to pay her/his balance of income tax for 2020 (IT 2020) and preliminary tax for 2021 (PT 2021), Period 1 may be extended until the pay and file date for 2021.

Taxpayers who warehouse Covid-19 income tax will be required to comply with requirements in relation to filing returns and paying other liabilities in full and on time. Otherwise the normal 8 per cent per annum interest will apply.

Individuals whose taxes are warehoused will still be able to obtain tax clearance certificates if they comply with their other tax obligations.

Enforcement action by the Collector-General of warehoused debt will be suspended for the three periods of the warehousing scheme provided the business complies with all the provisions of this scheme but enforcement action will recommence if the provisions are breached.

Section 64 amends subsection (8) of section 991B Taxes Consolidation Act 1997 to correct a drafting error related to the calculation of the 3% per annum interest rate applying to warehoused PAYE (Employer) liabilities (income tax and USC) which businesses were unable to pay because of disruption caused by the Covid-19 pandemic. The amendment ensures that account is taken of any payments made by an employer, reducing the amount outstanding.

This amendment also ensures that the calculation of interest in circumstances where an employer does not comply with the conditions of the section, is consistent with that provided for in subsection (8).

Section 65 amends subsection (8) of section 114B Value-Added Tax Consolidation 2010 to correct a drafting error related to the calculation of the 3% per annum interest rate applying to warehoused VAT liabilities which businesses were unable to pay because of disruption caused by the Covid-19 pandemic. The amendment ensures that account is taken of any payments made by an accountable person, reducing the amount outstanding.

This amendment also ensures that the calculation of interest in circumstances where an accountable person does not comply with the conditions of the section, is consistent with that provided for in subsection (8).

Section 66 amends subsection (8) of section 17C of the Social Welfare Consolidation Act to correct a drafting error related to the calculation of the 3% per annum interest rate applying to warehoused PRSI liabilities which businesses were unable to pay because of disruption caused by the Covid-19 pandemic. The amendment ensures that account is taken of any payments made by an accountable person, reducing the amount outstanding.

This amendment also ensures that the calculation of interest in circumstances where an accountable person does not comply with the conditions of the section, is consistent with that provided for in subsection (8).

Section 67 inserts a new section, section 960GA, into Chapter 1B, Part 42 of the Taxes Consolidation Act 1997 (TCA) which deals with collection of taxes under a number of Acts including the Taxes Consolidation Act 1997, Value-Added Tax Consolidation Act 2010, Stamp Duties Consolidation Act 1999 and Capital Acquisitions Tax Consolidation Act 2003.

This section provides that where a taxpayer appeals an assessment, and in connection with that appeal, makes a payment to Revenue and subsequently wins the appeal, the taxpayer will not be entitled to interest on the amount repaid under section 865A TCA, section 159B Stamp Duties Consolidation Act 1999, section 57 Capital Acquisitions Tax 2003, section 105 Value-Added Tax Consolidation Act 2010 and / or section 105D Finance Act 2001 (which relates to excise duty) as applicable.

Section 68 amends Section 1001 of the Taxes Consolidation Act 1997. That section provides that, where a person holds a fixed charge on the book debts of a company and that company fails to pay its PAYE/PRSI/USC, VAT or Local Property Tax liability, the fixed charge holder is, on notification in writing from the Revenue Commissioners, liable for that tax, up to the amount paid by the company to the charge holder in discharge of its debt. Where the fixed charge holder notifies Revenue of the existence of the fixed charge within 21 days of its creation, or within 21 days of the transfer of the fixed charge to a new holder of the charge, the fixed charge holder's liability is confined to amounts incurred by the company after the charge holder has been notified by Revenue of any potential liability under this section. The amendments re-organise the provisions of the section more coherently but do not make any substantive change to the operation of the section.

Section 69 amends section 1077E(1) of the Taxes Consolidation Act 1997 (TCA). Section 1077E TCA deals with penalties for deliberately or carelessly submitting incorrect returns or failing to file returns. Subsection (1) defines various terms used in the section.

This section amends the definition of 'period' in subsection (1), clarifying that where an employer fails to file a monthly PAYE return or files an incorrect monthly PAYE return, a tax geared penalty under section 1077E TCA may apply.

Section 70 amends Part 3 of Schedule 26A of the Taxes Consolidation Act 1997 to provide that, where one or more eligible charities that had been previously granted exemption from tax under section 207 (known as the charitable tax exemption) amalgamates or restructures, that exemption can continue to apply if the body or bodies held Revenue authorisation and had met all relevant conditions prior to restructuring for a period of at least 2 years.

Section 71 amends Section 908E of the Principal Act which provides for an application by an authorised officer to a judge of the District Court for an order to produce particular documents in connection with the investigation of a "relevant offence". The amendment replaces a reference in the definition of "relevant offence" to a repealed piece of customs legislation with the corresponding provision in the Customs Act, 2015.

Section 72 and *Schedule 1* provide for technical amendments to the—

- Taxes Consolidation Act 1997 (paragraph 1),
- Stamp Duties Consolidation Act 1999 (paragraph 2),
- Capital Acquisitions Tax Consolidation Act 2003 (paragraph 3),
- Value-Added Tax Consolidation Act 2010 (paragraph 4), and

- Emergency Measures in the Public Interest (Covid-19) Act 2020 (paragraph 5).

The amendments for the most part involve the correction (through deletion, amendment or insertion of text) of incorrect references and minor drafting errors. Paragraph 6 contains the commencement provisions relating to paragraphs 1 to 5 above.

Section 73 deals with the "care and management" of taxes and duties.

Section 74 contains provisions relating to the short title, construction and commencement of the Bill.

An Roinn Airgeadais,
Deireadh Fómhair, 2020

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