

FINANCE BILL 2010

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LIST OF POSSIBLE ITEMS BEING CONSIDERED FOR THE FINANCE BILL

Part 1 - Confirmation of Budget Related Items

(where further examination of details is needed in context of Finance Bill this is indicated)

Note:

- **Items listed only imply an issue is under examination for the Finance Bill not any decision/commitment to make a change. Other items not included here may also arise before finalisation of the Bill.**
- **A number of items on this list are sensitive including certain anti-avoidance provisions and it is essential that this list be kept confidential.**

INCOME TAX

1. INCOME LEVY

Relief from the income levy will be allowed in respect of certain capital expenditure incurred by farmers to comply with the requirements of the EU Nitrates Directive 91/676/EEC. This measure will cost approximately €6m over a three year period and will cost €1.8m in 2010.

2. MORTGAGE INTEREST RELIEF

Mortgage interest relief for principal private residences is being extended, at the applicable rate, until end 2017 for those whose entitlement was due to end in 2010 or later. The relief will be available at current levels for loans taken out between 1 January 2010 and 1 July 2011, also until end 2017. For loans taken out after this date but before end 2012, mortgage interest relief will be available at a reduced rate of 15% with a ceiling of €6,000/€3,000 married/single for first-time buyers and a reduced rate of 10% with a ceiling of €6,000/€3,000 married/single for non first-time buyers. Loans taken out in 2013 will not qualify for mortgage interest relief. Mortgage interest relief will be abolished by end 2017.

3. RESTRICTION OF RELIEFS

The adjusted income threshold at which the restriction will begin to operate is being reduced from €250,000 to €125,000. The adjusted income threshold at which the full restriction will apply is being reduced from €500,000 to €400,000. The relief threshold is being reduced from €250,000 to €80,000. These changes are being introduced to achieve the effective income tax rate of 30% for those subject to the full restriction, as announced in the Budget.

4. NATIONAL SOLIDARITY BOND

The Bill makes provision for amendments to current legislation to facilitate the introduction of a National Solidarity Bond as announced in the Budget. This Bond is being commenced to establish a medium-term national savings product as an additional source of funding for capital investment. It will be marketed by the NTMA at small investors in the early months of 2010. Unlike some other NTMA long-term savings products such as Savings Certs, the Bond will pay interest on a periodic basis over its lifetime in addition to interest at the end of its lifetime.

CORPORATION TAX

5. TAX RELIEF FOR START-UP COMPANIES

The existing scheme of tax exemption on the income and gains of new start-up companies over the first 3 years of operation is being extended to companies who commence to trade in 2010.

CAPITAL ALLOWANCES

6. CAPITAL ALLOWANCES FOR ENERGY-EFFICIENT EQUIPMENT

The scope of the existing scheme of capital allowances for energy-efficient equipment is being extended to cover an additional 3 categories of technology (refrigeration and cooling systems, electro-mechanical systems and catering and hospitality equipment).

REVENUE POWERS

7. VOLUNTARY CONTRIBUTIONS FROM MEMBERS OF THE JUDICIARY

In accordance with the Minister's comments in the Budget Speech, the Bill will include details of a proposed scheme to provide for voluntary deductions from members of the Judiciary that will cover pension-related deductions (i.e. the so-called 'Pension Levy').

INDIRECT TAXES

EXCISE

8. ALCOHOL EXCISE

Excise Duty on Beer and Cider decreased by 12 cent (VAT inclusive) per pint, on Spirits by 14 cent (VAT inclusive) per half glass, and on Wine by 60 cent (VAT inclusive) per 75cl bottle with effect from midnight on 9 December 2009.

9. VEHICLE REGISTRATION TAX (VRT)

Enactment of the following package of measures: (i) Car Scrappage Scheme from 1 January to 31 December 2010; (ii) extension of existing VRT exemption for Electric Vehicles until 31 December 2012; and (iii) extension of existing VRT relief scheme (up to €2,500) for Plug-in Hybrid Electric Vehicles until 31 December 2012.

10. CARBON TAX

A carbon tax at a rate of €15 per tonne is being introduced on fossil fuels. The tax was applied to petrol and auto-diesel with effect from midnight, 9 December 2009; and will apply from 1 May 2010 to kerosene, marked gas oil, liquid petroleum gas (LPG), fuel oil and natural gas. The application of the tax to coal and commercial peat is subject to a Commencement Order.

VAT

11. REDUCTION IN STANDARD VAT RATE FROM 21.5 PER CENT TO 21 PER CENT

The standard rate of VAT was reduced from 21.5 per cent to 21 per cent with effect from 1 January 2010. This reduction applies to all goods and services which had been subject to VAT at 21.5 per cent.

12. INTRODUCTION OF A MARGIN SCHEME FOR SECOND-HAND VEHICLES

The Minister for Finance confirmed on 14 September 2009 the introduction of a margin scheme on 1 January 2010 governing the VAT treatment of second-hand means of transport and agricultural machinery. Under the margin scheme, dealers account for VAT on their profit margin, that is, on the difference between the cost of acquiring the second-hand goods and their selling price. Transitional arrangements were introduced to facilitate moving to the margin scheme.

MISCELLANEOUS – RESIDENCY/INCOME TAX

13. DOMICILE LEVY

The Bill will give effect to the Budget announcement of the introduction of a measure to impose a Domicile Levy on all Irish domiciled individuals by providing details of its operation and putting anti-avoidance measures in place. Wealthy Irish domiciled individuals with Irish located capital greater than €5 million, worldwide income in excess of €1 million and an Irish income tax liability less than €200,000, will pay a Levy of €200,000, regardless of where they live or where they are tax resident. This measure will ensure that wealthy Irish domiciled individuals make a contribution to the State during these times of economic and fiscal difficulty. The Levy will come into effect for the year 2010.

PART 2 - FURTHER MEASURES NOT YET ANNOUNCED

Note:

- **Items listed only imply an issue is under examination for the Finance Bill not any decision/commitment to make a change. Other items not included here may also arise before finalisation of the Bill.**
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INCOME TAX

14. INCOME LEVY

This is a technical measure to place certain tax agreements on the same footing as Double Taxation Treaties with respect to the income levy.

15. CESSATION OF RELIEF FOR LONG TERM CARE POLICIES

This amendment provides that, as recommended by the Commission on Taxation, relief for premiums for long-term care policies will no longer apply with effect from 1 January 2010. There have never been any such premiums offered on the market.

16. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

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17. FILM RELIEF SECTION 481

It is proposed to remove a technical anomaly that arises following the increase in relief for investors from 80% to 100% as provided for in Finance (No 2) Act 2008.

18. DONATIONS RELIEF

The provisions of the tax code relating to charitable tax exemption and relief on charitable donations are being amended to allow for tax relief to apply where donations are made to charities established in other EEA and EFTA states. This change is being introduced to bring the Irish provisions in these areas into line with the European treaties and European case law. Significant safeguards are included in the legislation to ensure that equal scrutiny procedures will apply to applications received from foreign-based charities for charitable tax exemption and the donations scheme, as apply to charities based in Ireland.

19. HEALTH EXPENSES RELIEF

The provisions of the tax code relating to the approval of institutions for the purposes of health expenses relief are being amended so as to remove the requirement that such institutions must be approved before tax relief on expenses incurred in such institutions can be allowed. These institutions are in the main nursing homes (located in Ireland and abroad) and foreign based hospitals. Instead the relief is being refocused on expenses incurred by or on the advice of a medical practitioner.

The provisions are also being amended such that it will be clarified that the contribution made by an individual or their spouse towards the cost of care under the Fair Deal Scheme (FDS) will qualify for tax relief. However, no relief will be allowed in respect of the element of expenses contributed by the State towards the nursing home care of an individual under the FDS.

A number of other technical amendments are being made to the section.

20. SIGNIFICANT BUILDINGS AND GARDENS

The relief available to 'passive' investors under this scheme is being abolished where work has not already commenced before the publication date of the Bill in line with the views of the Commission on Taxation. Transitional arrangements for such investors will apply for the 2010 and 2011 tax years where work has already commenced or a contract exists in relation to executing such work.

21. RENT-A-ROOM SCHEME

The scheme is being amended to deny the tax relief in cases where payments are made by companies to an office holder or an employee for the purposes of the use of a room in the office holder's or employee's principal private residence on an occasional basis by clients of the company.

22. RESTRICTED SHARES

The scheme is being amended to provide that the trusts established to hold the shares while the restrictions are in place, must be established in an EEA state. Some minor technical amendments will also be introduced.

23. SHARE AWARDS – RETURNS OF INFORMATION

Legislation is being introduced which will oblige employers to provide an annual return to Revenue where they have awarded shares to employees or directors within the tax year. Heretofore, the Revenue Commissioners could only request such information from employers. The change will bring the reporting treatment required for such awards into line with the reporting treatment required for other types of share based remuneration.

24. APPROVED PROFIT SHARING SCHEMES

The legislation is being amended to close off a tax avoidance scheme, which is made possible through the use of service companies

25. DEPOSIT INTEREST RETENTION TAX (DIRT)

A number of measures are included in the Bill in relation to DIRT. These include the provision by Financial Institutions of gross and net interest to customer statements, the allowance of refunds for Personal Retirement Savings Accounts (PRSAs) and a provision to allow for a change to payment dates by banks from the current biannual basis to a quarterly one.

26. SAVINGS CERTIFICATES

Changes are being made on foot of an EU Commission infringement proceedings notice, whereby the tax exemption that currently exists for Post Office Savings Certificates is to be extended to similar products from other EU and EEA countries and the tax exemption for Government securities will apply to non-resident individuals as opposed to non-ordinarily resident individuals.

27. RESIDENCE – TRANS-BORDER RELIEF

The day counting rules for 'trans-border relief' (which is mostly claimed by individuals resident in the Republic of Ireland but working in Northern Ireland, to ensure that no further Irish tax is due on their employment income) are being changed to align them with the changes in the day counting rules for residence purposes introduced in Finance (No 2) Act 2008. This means that presence at any time during a day is deemed to be presence on that day.

28. RESIDENCE – GIFTING PROPERTY TO THE STATE

This measure will discontinue section 825 of the Taxes Consolidation Act 1997 (s825 TCA 1997) which allows an individual, who makes a gift of property to Ireland, to be regarded as neither resident nor ordinarily resident in Ireland, notwithstanding being present in Ireland for up to six months a year. Anyone currently claiming the relief can continue to do so. This is in line with Commission on Taxation recommendation 5.31.

29. EXEMPT UNIT TRUSTS

Unit trusts can be deemed exempt from CGT, IT, DIRT and DWT where all the holders of units in the trust are wholly exempt from CGT. The proposed amendment would allow Revenue to ensure that exempt unit trusts only include exempt unit holders.

INCOME TAX/CORPORATION TAX/CAPITAL GAINS TAX

30. ASSISTANCE WITH COLLECTION PROVISIONS AND COUNCIL OF EUROPE-OECD CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

The Bill amends Section 826 TCA 1997 to allow for the signature/ratification of the multilateral Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters, and allow for the inclusion of assistance in collection provisions in our Double Taxation Treaties.

The Bill also includes appropriate provisions in our domestic law to enable us to deal with requests for assistance that should arise from ratification of this Convention. The assistance in collection provisions would also apply to our Double Taxation Treaties.

CAPITAL GAINS TAX

31. EXEMPTION FOR DISPOSAL OF PROPERTY BY LOCAL AUTHORITIES

Provision is being made in the Bill for the extension of existing Capital Gains Tax exemptions and favourable CGT treatment for some Local Authorities to all Local Authorities and certain other Bodies, namely: (i) jointly established by Local Authorities (e.g. Joint Library Committees or Burial Board); and Bodies established under the Local Government Services (Corporate Bodies) Act 1971 such as the Local Government Computer Services Board (LGCSB) and Local Government Management Services Board (LGMSB). This will eliminate circular transfers of funding for the payment of CGT leading to greater efficiencies and effectiveness in the transaction of activities by these Bodies.

As a related measure, it is proposed to extent the favourable CGT treatment for some Local Authorities to cover disposals of property to a number of State Cultural Bodies such as the National Gallery, the National Museum, and the Friends of the National Collection of Ireland. The changes will encourage and facilitate transfers of property to these bodies.

32. COMPULSORY PURCHASE ORDERS

This amendment will allow the proceeds of the sale of property arising from a Compulsory Purchase Order to be assessed to Capital Gains Tax where the person who made the disposal dies before receiving the consideration.

33. CHANGE TO PAYMENT DATES

This measure will amend Section 958(3)(c)(ii) Taxes Consolidation Act 1997, to align the payment dates for Capital Gains Tax (CGT) with the revised payment dates as set out in Finance (No 2) Act 2008.

34. CONTRIVED CAPITAL LOSSES

Section 43 of the Finance (No 2) Act 2008 introduced legislation to counter a specific avoidance scheme relating to the creation of an artificial loss for Capital Gains Tax (CGT) purposes. Further measures are now required to close off these types of schemes and protect Exchequer revenues.

35. RETIREMENT RELIEF

This section amends section 598 Taxes Consolidation Act (TCA) 1997 which relates to retirement relief from Capital Gains Tax (CGT). This will ensure that individuals do not receive full retirement

relief on the disposals of assets of a family business where the aggregate of the assets being disposed of exceeds retirement relief threshold of €750,000.

36. PARTICIPATORS IN OFFSHORE COMPANIES – TRADING EXEMPTION

This is an anti-avoidance provision to attribute a gain made by an offshore company to an Irish resident “participator” (e.g., a director) in that company. The provision does not apply where the offshore company is a trading company. It is proposed to extend this exemption to group companies and also to trading in intangible assets as well as tangible assets.

37. COMPULSORY PURCHASE ORDERS - CHANGE TO PAYMENT DATE

The date on which tax on CPO proceeds falls due for non-farmers is being changed to the date on which the compensation proceeds are received. The rate of tax which will apply to land acquired under a CPO will in most cases be the rate on the date when the authority with compulsory purchase powers enters the land.

CAPITAL ACQUISITIONS TAX

38. CAPITAL ACQUISITIONS TAX (CAT) REFORM

The Bill will make provision for amending the Capital Acquisitions Tax Consolidation Act 2003 (CATCA) to give effect to a package of reforms. The measures, which will be delivered on an Exchequer-neutral basis, reflect an extensive consultation process undertaken by Revenue in 2009. The package will modernise and simplify the CAT regime deliver immediate and significant benefits to taxpayers, their legal advisers and the Revenue Commissioners. Most of these changes will come into effect on the passing of the Bill with certain elements taking effect at a later date to be specified by the Revenue Commissioners, to coincide with the release of enhanced ICT developments due to be completed by June of this year.

39. CAPITAL ACQUISITIONS TAX – ANTI-AVOIDANCE

The Bill will include a provision to counter possible tax avoidance in relation to land received through gift/inheritance and subsequently sold in a manner to circumvent the clawback provision relating to gifts/inheritances.

40. PROBATE TAX

Probate tax will be brought into line with other taxes in respect of the four year time limit for making repayment claims. This measure will come into effect on the passing of the Bill.

STAMP DUTY

41. YOUNG TRAINED FARMERS – ADDITIONAL COURSE

An additional course (B. Agr. Sc. in Agri-Environmental Science) is added to the list of training courses to qualify for Stamp Duty relief where land is transferred to a young trained farmer by way of gift or sale. (The conditions for Income Tax Stock Relief are being similarly amended to include this course.)

42. LIFE INSURANCE LEVY

The levy is being removed from pension products in order not to discourage investment in pensions. It is also being increased from 1% to 3% on protection policies other than mortgage protection. The payment date for the levy is being brought forward from a month end date to the 25th of the month to assist in forecasting.

43. ANTI-AVOIDANCE – ARTIFICIALLY SADDLING COMPANIES WITH DEBT

This is to target a scheme whereby the value of a company is artificially reduced so that Stamp Duty is only payable on a nominal amount, but the vendor receives full value for the company. The provision will be targeted at cases where the motivation of the transaction is the avoidance of tax.

CORPORATION TAX

44. R&D TAX CREDIT SCHEME

The Bill contains a proposed amendment to deal with a situation where a company is carrying out R&D activities in different facilities in separate geographical locations and the activities in one of those facilities is permanently discontinued. In these circumstances, the company can exclude from its base year (2003) R&D expenditure used to benchmark incremental expenditure in subsequent years for tax credit purposes, the amount of qualifying R&D expenditure incurred in the discontinued facility in the base year.

45. DIVIDEND WITHHOLDING TAX

The Bill contains amendments to the current arrangements for dividend withholding tax (DWT) which: (i) removes the requirement for non-resident companies to provide a tax residence and/or auditor's certificate in order to obtain exemption from DWT at source; and (ii) provides for the electronic transmission of dividend statements to all shareholders (currently electronic transmission is only allowed to intermediaries).

46. TAXATION OF DIVIDENDS RECEIVED BY IRISH-RESIDENT COMPANIES

Changes are proposed in the Bill to the current tax treatment of dividends received by companies here. The amendments involve (i) charging tax at 12.5% (instead of 25%) on foreign dividends paid out of trading profits from countries with whom Ireland does not have a tax treaty; (ii) simplifying the arrangements under which foreign dividends are treated as sourced from trading or non-trading profits; (iii) providing tax exemption to foreign dividends forming trading income from portfolio investments (holdings of less than 5%); and (iv) introducing an anti-avoidance provision to prevent abuse of the exemption from tax on domestic dividend flows between Irish-resident companies.

47. SHARE-BUY BACKS

The Bill includes an amendment to provide for an anti-avoidance provision in relation to the redemption, repayment or purchase of its own shares by a quoted company.

48. CROSS-BORDER MERGERS

The Bill includes an amendment bringing the tax treatment of certain transactions involving the merger or division of companies into line with the requirements of the EU Mergers Directive.

49. UNILATERAL CREDIT RELIEF FOR ROYALTIES

Companies currently entitled to manufacturing relief are also entitled to unilateral credit relief under Section 449, TCA 1997 in respect of withholding taxes on royalty income from non-treaty countries. However, this entitlement will cease on 31 December 2010 as part of the ending of the 10% Corporate Tax Manufacturing regime. The amendment would extend unilateral credit relief in respect of withholding taxes on royalty income from non-treaty countries to all trading companies.

50. PROPOSAL FOR AN ANTI-ABUSE AMENDMENT TO TAXES CONSOLIDATION ACT DEALING WITH TAX PAID TO SHAREHOLDERS IN RECEIPT OF DIVIDENDS FROM COMPANIES IN CERTAIN JURISDICTIONS (I.E. MALTA)

The Bill will close an uncertainty in the Taxes Consolidation Act dealing with taxation of foreign dividends so that where a shareholder in a foreign company receives a dividend from the company and also receives a payment related to the tax paid by the company on the underlying profits out of which the dividend is paid, this additional payment will be brought within the charge to tax in Ireland.

CAPITAL ALLOWANCES

51. ORDER IN WHICH CAPITAL ALLOWANCES AND LOSSES BROUGHT FORWARD ARE TO BE USED IN COMPUTING TAXABLE RENTAL INCOME

So as to clear up any uncertainty and remove a potential for tax planning, it is proposed to include an amendment that will clearly set out the priority to be given between the order in which Capital Allowances and Losses brought forward are to be used in computing taxable rental income.

PENSION TAXATION

52. AMENDMENT OF FORMULA RELATING TO NOTIONAL DISTRIBUTION FROM ARFs

An imputed or notional distribution from Approved Retirement Funds (ARFs) was introduced in 2006 which is subject to tax at the ARF owner's marginal income tax rate. The notional distribution is 3% of the ARF value for 2009 and subsequent years. A technical amendment is being made to the formula in the legislation to put this issue beyond doubt.

53. EXTENSION OF THE DEFINITION OF BENEFIT CRYSTALLISATION EVENT

On each occasion that an individual becomes entitled to a benefit under his pension scheme (known as a Benefit Crystallisation Event or BCE) part of the individual's total lifetime benefits that he can draw down from tax relieved funds (known as a Standard Fund or Personal Fund Threshold) is "used up". If the total value of an individual's BCEs exceeds the relevant threshold a "chargeable excess" arises equal to the amount by which the threshold is exceeded. This excess is subject to a penal tax charge. Under the existing provisions relating to BCEs, leaving pension fund benefits in a personal pension plan (PRSA) does not constitute a BCE and, therefore, would not count towards the using up of an individual's fund threshold. The Bill proposes to amend the legislation to ensure that, where an individual opts to leave funds in a PRSA, rather than transfer them to an ARF (or to use them to purchase an annuity), such an option will also constitute a BCE. This will close a potential loophole and ensure that the legislation relating to the maximum tax relieved pension fund operates in the manner intended.

54. ELECTRONIC REPORTING OF INFORMATION BY SMALL-SELF ADMINISTERED PENSION SCHEMES (SSASs)

The Bill contains a provision requiring the administrators of SSASs to supply annual pension scheme accounts or relevant extracts from such accounts electronically to the Revenue Commissioners.

TAX ADMINISTRATION

55. PROFESSIONAL SERVICES WITHHOLDING TAX

There will be a routine update of the Schedule of Accountable Persons via additions, deletions and amendments.

56. RCT – INTRODUCTION OF QUARTERLY FILING

It is proposed to reduce the filing / payment obligations on approximately 38,500 RCT (Relevant Contracts Tax) principals by offering a quarterly filing / payment facility instead of the current monthly return.

57. RCT – AMEND THE LIMIT ON A RELEVANT PAYMENTS CARD

Under this proposal, Revenue will have the power to amend the limit on a card unilaterally, at present only the subcontractor can request such an amendment.

58. RCT – AMEND VALIDITY PERIOD OF C2s

A provision will be included to allow for C2s to be issued for a two-year period.

59. BIK – ISLAMIC FINANCE

Minor changes relating to introduction of Islamic finance package.

60. BIK – EXEMPTION ON EMPLOYER-PROVIDED ART OBJECTS

It is proposed to terminate this relief in line with the recommendation of the Commission on Taxation.

61. TAX IN RESPECT OF PREFERENTIAL LOANS

Amendment relating to interaction of Sections 122 & 244 of Taxes Consolidation Act, 1997, in respect of preferential loans and mortgage interest relief.

62. TAX RELIEF ON SERVICE CHARGES

It is proposed to terminate this relief in line with the recommendation of the Commission on Taxation.

REVENUE POWERS

63. TAX TREATMENT OF COMPANY DIRECTORS

Section 997A of the Taxes Consolidation Act, 1997 to be amended to confine the amount of the credit available to any individuals to a maximum of the actual amount of tax deducted from that individual.

EXCISE

64. RE-CLASSIFICATION OF VEHICLES FOR VRT PURPOSES

It is proposed to introduce, from 1 January 2011, a revised classification system for the registration of vehicles within the State. The new system will reflect the categories used for vehicle classification at European level, under EC Directive 2001/116/EC.

65. PENALTIES FOR EXCISE AND CUSTOMS OFFENCES

It is proposed to make a number of changes to the penalties applicable to certain offences under excise law. The key feature of the proposed changes is that they will increase substantially the fines which a Court may impose on persons convicted of such offences on indictment. Similar changes are to be made to the provisions of Customs law dealing with the penalties that may be applied by a Court where a person is convicted of an offence.

66. AMEND VRT LEGISLATION TO EXTEND THE REMIT OF THE ‘COMPETENT PERSON’ IN RELATION TO THE REGISTRATION OF VEHICLES

It is proposed to amend section 131 of the Finance Act 1992 to provide for the empowerment of the ‘competent person’ nominated by Revenue to carry out pre-registration checks for second-hand vehicles brought into the State to also collect the VRT and assign the registration number allocated by Revenue; and also to provide for the payment of a small fee (around €7.50 per vehicle) to the ‘competent person’ for the additional functions being assigned.

67. UPDATING OF EXCISE LAW PROVISIONS TO REFLECT NEW EU EXCISE DIRECTIVE

72. VAT TREATMENT OF MEDICAL SERVICES

The VAT exemption for professional medical services is being amended to align it more closely with the wording of Article 132(1)(c) of the EU VAT Directive, which provides for this exemption, in order to avoid an over broad interpretations being applied to the existing provision. The existing services exempted will continue to be exempted.

73. VAT TREATMENT OF POSTAL SERVICES - ECJ C-357/07 (TNT Post)

The VAT treatment of postal services is being slightly amended to comply with a ruling in case C-357/07 (TNT Post UK Ltd) on postal services, so that “incidental goods and services” will exclude individually negotiated contracts. While many services provided by An Post, in particular postage stamps, franking etc, will continue to be VAT exempt, some income streams that are currently exempt may become taxable as a result of this change.

74. EU VAT REGULATIONS 2009 - TRANSFER INTO FINANCE BILL

The EU VAT Regulations 2009, SI No 520 of 2009, are being revoked and their provisions inserted into the Finance Bill. The Regulations were enacted to give effect to EC Council Directives 2008/8/EC (the place of supply of services), 2008/9/EC (refunds to foreign traders) and 2008/117/EC (increased anti-fraud reporting measures).

75. TRANSPOSITION OF DIRECTIVE 2009/69/EC - TRANSITING OF IMPORTED GOODS

The VAT Act is being amended to provide for the transposition of Directive 2009/69/EC, which strengthens anti-avoidance measures in regard to the importation of goods which is followed by a supply or transfer of those goods to a taxable person in another Member State.

76. VAT DEDUCTIBILITY ON CONFERENCE ACCOMMODATION

Amendments are being made to ensure that the operation of the new travel agent’s margin scheme does not adversely affect the entitlement to VAT deductibility on qualifying conference accommodation. This change will apply from 1 January 2010, the date of the introduction of the margin scheme.

77. FORCED SALES OF PROPERTY

The VAT treatment of forced sales of exempt property is being amended to allow, subject to some anti-avoidance measures, a joint option for tax by seller and purchaser to apply as currently applies in the case of normal sales. The change will apply in the case of forced sales by examiners, receivers, liquidators and by other bodies such as financial institutions.

78. RETAIL EXPORT SCHEME

The VAT retail export scheme, which applies to travellers from non-EU countries who purchase goods in Ireland, is being tightened. In particular, where the supply to the customer includes VAT, a refund to a refund agent or supplier will be conditional on actual repayment of the VAT refund by that agent or supplier to the traveller. In addition, where the supply to the customer is zero-rated at the time of the sale, the zero rating is disapplied if the evidence of export is not sent back to the supplier by the set deadline.

79. MINOR AMENDMENTS

A number of minor amendments are being made to sections 12E and 16 (assignment or surrender of legacy leases under the capital goods scheme), section 25 (section 23 assessments) and section 32(1) (ah) (intra-Community supply of goods) of the VAT Act.

FINANCIAL SERVICES

80. NON-RESIDENT INVESTORS IN IRISH FUNDS

An Investment Undertaking (IU) operating in Ireland is required to deduct exit tax when making a payment to a unit-holder unless the IU is in possession of a declaration by the unit-holder to the effect that the unit-holder is not resident or ordinarily resident in Ireland for tax purposes. As the vast majority of Irish domiciled funds in the international funds sector are distributed solely to non-Irish residents, it is considered that the current requirements present a disproportionate administrative burden on industry. In addition, existing procedures under the European Anti-Money Laundering legislation already highlight any investor holding an Irish passport or address. This amendment will provide for exemption from completion of non-resident declarations for foreign investors in Irish domiciled funds that are not marketed within Ireland.

81. TAX TREATMENT OF FOREIGN FUNDS MANAGED FROM IRELAND UNDER UCITS IV DIRECTIVE

The recently adopted UCITS IV (Undertakings for Collective Investments in Transferable Securities) Directive provides for the establishment and operation of a UCITS ‘Management Company Passport’. This will effectively enable UCITS management companies in one member state to offer portfolio management services to investment funds in another member state. The proposed amendments will provide clarity with regard to the tax treatment that would apply to foreign funds that are managed from Ireland under the new arrangements.

a) Section 1035A of TCA 1997 removes the charge to Irish tax on the profits of a trade exercised in the State where it is exercised through an independent Irish resident agent in certain cases. The amendment will extend this provision to include companies authorised under the European UCITS legislation. This will provide certainty to non-Irish domiciled funds managed by an Irish UCITS management company by ensuring that trading activities of the Irish UCITS management company would not bring the non-Irish domiciled funds within the charge to Irish tax.

b) Irish investment undertakings are not subject to any taxes on their income (profits) or gains arising on their underlying investments. Generally speaking, tax is levied on the returns to individual Irish-resident investors and where an investment undertaking is located in Ireland, it is obliged to deduct exit tax when making a payment to an Irish-resident investor. This amendment will extend the tax treatment that applies to Irish funds to foreign funds managed by an Irish management company authorised under the UCITS IV Directive. In addition, the amendment will clarify that unit-holders in such a foreign fund will continue to be treated as unit-holders in a foreign fund - this means that they will not be subject to the exit tax charging mechanism but will continue to make returns under self assessment.

82. EXTENSION OF STAMP DUTY RELIEFS TO ACCOMMODATE MERGERS OF INVESTMENT UNDERTAKINGS

a) The creation, transfer or switching of units or shares in an investment undertaking is exempt from Irish stamp duty. Finance Act 2008 introduced a further exemption from stamp duty relating to the reconstruction or amalgamation of Irish regulated funds. Notwithstanding this change, due to differences in the legal nature of Irish investment undertakings, a technical liability to stamp duty can still arise in the case of investment undertakings structured as unit trusts. This amendment will eliminate that technical liability.

b) Finance Act 2006 introduced Section 88B of the Stamp Duties Consolidation Act, 1999, which provides that where foreign collective funds transfer assets to an Irish investment undertaking, in exchange for the issue of units to the unit-holders in that foreign fund, such transfers are exempt from stamp duty. That amendment was essentially to accommodate the merger of a foreign fund with an Irish fund. This amendment will extend that exemption to cover situations where the units that are issued, in exchange for the assets that are being transferred to the Irish fund, are given directly to the foreign fund rather than to the unit-holders in that fund._

83. DEFINITION OF A “QUALIFYING MANAGEMENT COMPANY”

This is a technical amendment to update the definition of a “qualifying management company” to take account of the ending of the IFSC tax regime.

84. CAPITAL ACQUISITIONS TAX (CAT) ON FOREIGN FUNDS ADMINISTERED IN IRELAND

The amendment will eliminate a technical CAT exposure for non-domiciled funds administered in Ireland (where the share register is maintained here).

85. LEASING

Section 80A, TCA 1997 effectively allows for accelerated capital allowances for lessors of short-life assets (assets with a useful life of less than 8 years). This provision was introduced in Finance Act 2004 and it works by allowing lessors elect to be taxed according to the accounts depreciation treatment of the asset. The provision currently only applies to finance leases. The proposed amendment would extend the provision to cover operating leases. The amendment has been requested by the asset-financing industry.

86. LEASING - ANTI-AVOIDANCE MEASURE

Section 299, TCA 1997 enables a lessee to claim capital allowances on an asset where he bears the burden of wear and tear. Revenue has come across cases where both the lessor and lessee of an asset are getting the benefit of capital allowances on the same item. This amendment will ensure that only one party to a lease can claim capital allowances.

87. TAX EXEMPTION FOR FOREIGN BRANCH PROFITS

A small number of companies obtained certificates from the Minister for Finance under Section 847, TCA 1997 such that qualifying activities undertaken by them in listed overseas territories and countries with which Ireland has a double tax treaty would not be subject to tax in Ireland. This provision expires on 31 December 2010 at which point the companies concerned will fall to be taxed in accordance with normal rules. The absence of transitional provisions to cater for the cessation of the relief has led to an anomaly whereby it would not be possible to take into account the previous losses of a foreign branch when calculating its liability to Irish tax in 2011. This amendment will correct that anomaly.

88. FUNCTIONAL CURRENCY PROVISIONS

In general, tax returns are prepared and tax is charged in Euro values. However, where a company's functional currency is a currency other than the Euro, Section 402 enables it to compute its capital allowances and loss relief in that functional currency. This eliminates potential uncertainty arising from fluctuations in exchange rates. However, at present this legislation applies only where a company is carrying on a "trade". This amendment will extend this facility to non-trading aircraft leasing companies.

89. CARRY-FORWARD OF UNRELIEVED FOREIGN TAX ON BRANCH PROFITS

An Irish resident company with branches outside the State is generally taxable on the profits of the foreign branches with a credit available for foreign taxes suffered on those profits. Finance Act 2007 introduced a unilateral form of foreign tax credit relief for taxes paid by foreign branches in non-treaty jurisdictions, together with a pooling system for such credits. This amendment will allow that unused credits in a given year can be carried forward. A similar provision already exists in respect of income from foreign subsidiaries – this amendment affords the same tax treatment to income flows from branches.

90. ISLAMIC FINANCE

The term Islamic finance describes any financing arrangement that is compliant with the principles of Shari'a law. Specifically, there are sets of strict rules that forbid the making or receiving of interest payments. Islamic finance arrangements use common legal structures in an alternative way (insofar as debt is concerned) to achieve the financing objectives. The Bill is designed to extend the tax treatment applicable to conventional finance transactions to Shari'a compliant or Islamic financial products which are the same in substance as the conventional products. It does this by inserting a new Part 8A

into the Taxes Consolidation Act, 1997. The new Part deals with the taxation of “Equivalent Finance Transactions” and essentially treats the return on any product defined as an “equivalent finance transaction” as interest for the purpose of the Tax Acts. The transactions covered by the legislation are: credit transactions, deposit transactions and investment transactions.

It will also require consequential amendments to the Stamp Duty Consolidated Acts and the VAT Acts to ensure that the tax treatment applicable to conventional finance transactions is extended to equivalent finance transactions under the new Part 8A of the Taxes Consolidation Act, 1997.

NON TAX ITEM

91. CAPITAL SERVICES REDEMPTION ACCOUNT (CSRA)

The Bill amends the annuity payment set in the Finance Act 2009 to take account of the borrowing outturn for 2009 and provides for the standard annuity payment in respect of the estimated level of borrowing in 2010. The CSRA is a sinking fund set up in the 1950s to provide for the repayment of interest and capital on loans to the Government. This is a standard provision in the Finance Bill.

TECHNICAL AMENDMENTS

The Bill is to include a series of minor technical and drafting amendments. These cover, for example, drafting changes aimed at providing greater clarity or to correct minor errors, amendments to deal with changes in the official names of bodies, corrections of definitions or anomalies, changes addressing non-controversial legal and administrative issues, and so forth