

PRELIMINARY LIST OF POSSIBLE ITEMS BEING CONSIDERED FOR THE FINANCE BILL

PART 1 - CONFIRMATION OF BUDGET RELATED ITEMS

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 provision and it is essential that this list be kept confidential.

INCOME TAX

INCOME LEVY

An income levy is being introduced that will apply at a rate of 1% to income up to €100,100 per annum or €1,925 per week. A rate of 2% will apply to income in excess of that amount. [see also page 6]

STANDARD RATE BANDS

The single standard band is being increased by €1,000 per annum from €35,400 to €36,400. The married one-earner band is being increased by €1,000 from €44,400 to €45,400. The married two-earner band is being increased from €70,800 to €72,800, with transferability limited to €45,400. The lone parent/widowed parent band is being increased by €1,000 from €39,400 to €40,400.

MORTGAGE INTEREST RELIEF

The current rate of mortgage interest relief is being increased for first-time buyers from 20% to 25% in year 1 and 2 of the mortgage and to 22.5% in years 3, 4 and 5. The rate of relief for non-first-time buyers is being reduced from 20% to 15%.

RELIEF FOR HEALTH EXPENSES

Health expenses relief will be granted at the standard rate only from 1 January 2009 with the exception of nursing home expenses which will be available at the a taxpayers marginal rate in 2009.

INCREASE IN THE SPECIFIED RATES FOR PREFERENTIAL LOANS

An employee in receipt of a preferential loan is charged income tax on the difference between the interest actually paid and the amount which would have been payable at the “specified” rates of interest for the loans. To reflect increases in interest rates, the specified rate in respect of loans other than home loans is being increased from 13% to 15%. These changes will take effect from 1 January 2009.

DIRT

TAX ON SAVINGS

The rates of retention tax that applies to deposit interest, together with the rates of tax that apply to (a) life assurance policies and (b) investment funds, are being increased by 3 percentage points. The increased rates will apply to payments, including deemed payments, made on or after 1 January 2009.

CAPITAL GAINS TAX

CGT - CHANGE IN PAYMENT DATES

The payment date in respect of disposals in the period January to November is being changed to mid-December and the tax on disposals in December will now be due on the following 31st October (the existing pay and file date).

CGT - CHANGE IN RATE OF TAX

The rate of capital gains tax is being increased to 22% in respect of disposals made on and after 15 October 2008.

CORPORATION TAX

TAX CREDIT SCHEME FOR RESEARCH AND DEVELOPMENT EXPENDITURE

The current 20% rate of tax credit for incremental expenditure undertaken by a company on qualifying research and development (R&D) is being increased to 25%. This will apply to accounting periods commencing on or after 1 January 2009. [see also page 8]

PRELIMINARY TAX PAYMENT DATES FOR LARGE COMPANIES

Companies with a corporation tax liability of more than €200,000 in their previous accounting period are obliged to pay preliminary corporation tax, amounting to 90% of the liability for the current accounting period, one month before the end of the current accounting period (and not later than the 21st of the relevant month). The current single payment for large companies' preliminary corporation tax will be split into two instalments. This will apply to accounting periods commencing on or after Budget day, 14 October 2008.

The first instalment will be payable in the 6th month of the accounting period (e.g. 21st June for a company with calendar year accounts) and the amount payable will be 50% of corporation tax liability in the preceding accounting period or 45% of corporation tax liability for the current accounting period. The second instalment will be payable (as at present) in the 11th month of the accounting period (e.g. 21st November for a company with calendar year accounts) and the amount payable will bring the total preliminary tax paid to 90% of corporation tax liability for the current accounting period.

THREE YEAR TAX EXEMPTION FOR START-UP COMPANIES

New start-up companies which commence trading in 2009 will be exempt from tax, including capital gains, in each of the first three years to the extent that their tax liability in the year does not exceed €40,000. This measure is being examined to ensure it is in compliance with EU rules on State Aid.

CAPITAL ALLOWANCES SCHEME FOR CERTAIN ENERGY-EFFICIENT EQUIPMENT

The tax incentive (introduced in Budget and Finance Act 2008) which provides for capital allowances of 100% of expenditure incurred by companies in the year the equipment is purchased is being extended from three categories to seven categories. The new categories to be included in this scheme are:

- Data server related systems and large energy saving office equipment associated with Information & Communications Technology.
- Efficient heating/electricity provision equipment and control systems.
- Efficient electrical and control equipment associated with Process & Heating Ventilation and Air-conditioning systems.
- Alternative fuel vehicles.

CAPITAL ALLOWANCES FOR NEWLY CONSTRUCTED COMMERCIAL BUILDINGS

Where newly constructed commercial buildings are used before being sold and the sale does not take place within one year of first use, the purchaser gets the value of available capital allowances on

expenditure on a more restrictive basis. This makes the purchase of the building a less attractive option. Accordingly, the one year time limit for disposal is being extended to two years.

SEVESO-LISTED INDUSTRIAL FACILITIES

A new ring-fenced tax incentive scheme will be introduced to facilitate the removal and relocation of Seveso-listed industrial facilities which hinder the residential and commercial regeneration of Docklands in urban brown field areas. The EU SEVESO Directive (96/82/EC) seeks to protect public safety by placing land-use restrictions on new residential and commercial development near locations where potentially dangerous activities are undertaken.

This scheme is subject to clearance by the European Commission from an EU State-Aids perspective.

STAMP DUTY

STAMP DUTY ON COMMERCIAL PROPERTY

The current Stamp Duty applicable to non-residential property is being changed in respect of Instruments executed on or after 15 October 2008. The top rate of duty is being reduced from 9% to 6%.

STAMP DUTY ON FINANCIAL CARDS

The duty on ATM, Debit and combined cards is being reduced by 50%. This will take effect for the year ending 31 December 2008 and will apply to the amount of duty which is normally collected from bank customers by financial institutions in early 2009

STAMP DUTY ON BILLS OF EXCHANGE (INCLUDING CHEQUES)

The Stamp Duty rate on Bills of Exchange is being increased from 30 cent to 50 cent in respect of Bills of Exchange drawn on, or after, 15 October 2008.

EXTENSION OF STAMP DUTY RELIEF FOR YOUNG TRAINED FARMERS

Stamp Duty relief is available for farmers acquiring land, who are aged under 35 and have specific agricultural training. The relief is due to terminate on 31 December 2008. This relief is now being extended for 4 years and the relief will now apply in respect of instruments executed no later than 31 December 2012.

EXTENSION OF STAMP DUTY RELIEF FOR FARM CONSOLIDATION

Stamp Duty relief is available to a farmer consolidating his/her holding. The relief is due to terminate on 30 June 2009. The termination date is being extended to 30 June 2011.

PENSIONS

CONTRIBUTION LIMIT

The annual earnings limit for determining maximum tax-relievable contributions for pension purposes is being set at €150,000 for 2009 as compared with the 2008 limit of €275,239.

INDEXATION OF MAXIMUM ALLOWABLE PENSION FUNDS

The adjustment, in line with an earnings index, of the maximum allowable thresholds for pension funds on retirement (the Standard and Personal Fund Thresholds) will not be made for 2009.

INDIRECT TAXES

EXCISE

INCREASE IN MINERAL OIL TAX ON PETROL

The mineral oil tax on petrol increased by 8 cent per litre (including VAT), with effect from midnight on 14 October 2008.

TOBACCO EXCISE

The Excise Duty on a packet of 20 cigarettes increased by 50 cent (including VAT) with a pro-rata increase on other tobacco products, with effect from midnight on 14 October 2008.

ALCOHOL EXCISE

Excise Duty on a standard bottle of wine increased by 50 cent (including VAT) with effect from midnight on 14 October 2008. Pro-rata increases were also applied to other wine, and certain other fermented and intermediate products.

LOW ALCOHOL PRODUCTS

A reduced rate of excise duty, at 50% of the full appropriate excise duty rate for beer and cider, was introduced for low alcohol beer and cider (beer and cider products with an alcohol by volume content of 2.8% or less), with effect from midnight on 14 October 2008.

EXCISE LICENCES

A range of alcohol-related licensing fees, including off-licences, but excluding pub licences, are being increased to €500 in each case. These increases will apply from the appropriate annual renewal dates in 2009.

BETTING DUTY

The betting duty rate has been increased from 1% to 2% with effect from 1 January 2009.

AIR TRAVEL TAX

An air travel tax applying to all departures from Irish airports will come into force on Monday 30 March 2009. It was announced that the general rate applying would be €10 per passenger, with a lower rate of €2 for shorter air journeys (those up and including 300 kms), and that the airport authorities would be the bodies accountable for collecting and paying the tax to Revenue. There have been concerns raised that Dublin was being favoured relative to other Irish airports in relation to travel to the UK, especially Manchester and Liverpool. The airport authorities have objected to being the liable persons for the tax and legislative difficulties also arose in that respect.

It is now intended that the general rate applying will remain at €10 per passenger, with a lower rate of €2 for shorter air journeys. The lower rate of €2 will now apply to departures from any Irish airport where the destination is 300kms or less from Dublin airport. The airlines will be the liable persons for the tax, with the handling agents as a fallback if necessary in the case of foreign airlines. These changes will reduce the estimated full year yield from €50 million to €48 million.

VAT

INCREASE IN STANDARD VAT RATE FROM 21 PER CENT TO 21.5 PER CENT

The standard rate of VAT has been increased from 21 to 21.5 per cent with effect from 1 December 2008. This increase applies to all goods and services which were subject to VAT at 21 per cent.

TAXATION IN RELATION TO CARS

CAR PARKING LEVY

A car parking levy is being introduced in the main urban areas. An amount of €200 per annum will apply to employees who use car parking facilities provided by their employer. XX It is intended that the employer will collect the charge, in arrears, through the payroll system. A reduced rate will be applicable in certain instances, e.g. to accommodate those who only very occasionally travel by car while certain individuals, e.g. disabled drivers will be excluded.

CHANGE TO THE SYSTEM FOR TAXING THE BENEFIT TO AN EMPLOYEE OF A COMPANY PROVIDED CAR

The proposed system will relate the charge to the CO2 emissions of the vehicle provided and will use the seven CO2 emission categories introduced for the purpose of VRT assessment. These will be grouped into three bands along the lines used for Capital Allowances purposes. Employees provided with cars in the lowest emission band will in general see no change to their BIK charge while those supplied with cars in the two higher bands will face an increase.

TAX INCENTIVES

CYCLE TO WORK SCHEME

The provision of bicycles and associated safety equipment by employers to employees who agree to use the bicycles to cycle to work will be treated as a tax exempt benefit-in-kind. The exemption may only apply once in any five year period in respect of any employee. There will be a limit on the value of such purchases of €1,000 for each employee. The scheme may also be implemented via salary sacrifice arrangements, whereby an employee agrees to forego part of his/her salary to cover the costs associated with the purchase of the bicycle and associated safety equipment. Where such salary sacrifice arrangements are implemented, they must be completed over a maximum period of twelve months.

TAX RELIEF FOR THE DONATION OF HERITAGE ITEMS/HERITAGE PROPERTY

The tax reliefs in respect of the donation of heritage items to approved State institutions and the donation of heritage property to the Irish Heritage Trust are being limited to 80% of the value of the items/property donated respectively. The ceiling on the aggregate value of donations qualifying for each of these schemes in any one year will remain at €6 million.

PART 2 - PRELIMINARY LIST OF POSSIBLE ITEMS BEING CONSIDERED FOR THE FINANCE BILL (OTHER THAN BUDGET ISSUES)

Note:

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INCOME TAX

INCOME LEVY

An exemption of €18,304 will be introduced to ensure that persons on low income are exempt from the income levy.

An exemption of €20,000 single / €40,000 married will also be introduced to ensure that persons aged 65 and over who are exempt from tax under the age exemption limits will be exempt from the levy.

A 1% point increase will be introduced on incomes in excess of €250,120 (€4,810 per week). This will be applied in addition to the 2% already announced in the Budget for incomes in excess of €100,100 (€1,925 per week). [see also page 1]

BUSINESS EXPANSION SCHEME (BES) AND SEED CAPITAL SCHEME (SCS)

The normal cut-off point for claims made under the schemes is being extended by three months where the required statements are submitted within the prevailing time limits by companies that have raised BES/SCS funding. The purpose of this measure is to make the schemes more user-friendly for those availing of them and to reduce the administrative pressure on the Revenue Commissioners in dealing with certain claims.

WITHDRAWAL OF REVENUE APPROVAL FOR EMPLOYEE FINANCIAL PARTICIPATION SCHEMES

There are currently four approved employee financial participation schemes which receive favourable tax treatment. In two of the schemes, approval may be withdrawn where the company fails to make the necessary returns of information. An amendment is being made that will give the necessary powers to Revenue to allow for the withdrawal of approval for the other two schemes in similar circumstances.

TAX TREATMENT OF EMPLOYEES/DIRECTORS WHO ARE GRANTED RIGHTS TO ACQUIRE SHARES OR OTHER ASSETS – EXCHANGE OF RIGHTS

An amendment is being made to close off a potential loophole in the tax code regarding the tax treatment of employees and directors who are granted rights to acquire shares or other assets where they exchange those rights. The amendment will ensure that an income tax charge will arise on the assignment or release of a right where rights are exchanged but the substituted right is never exercised.

RETURNS OF INFORMATION IN RELATION TO CONVERTIBLE SECURITIES

Schedule 29 of the Taxes Consolidation Act 1997 is being amended so that the imposition of penalties for failure to make certain returns and for fraudulently or negligently making incorrect returns will include the returns of information on convertible securities. The amendment will ensure that failure to comply with the rules on making returns will attract the appropriate penalties.

CORPORATION TAX

EXTENSION OF PREFERENTIAL TAX TREATMENT TO PAYMENTS TO AND FROM COUNTRIES THAT HAVE SIGNED A DOUBLE TAXATION AGREEMENT BUT HAVE YET TO RATIFY

There are a number of provisions in the Taxes Acts that grant preferential treatment for payments to and from treaty countries. These typically deal with granting exemption from Irish tax on payments by Irish companies to non-resident recipients of dividends and interest and favourable tax treatment of such payments when received by Irish companies from foreign sources. There is also a capital gains tax exemption for gains from disposals of foreign company shares. This preferential treatment is conditional on there being a tax treaty in force with the relevant foreign country. This new measure extends preferential treatment to countries that have signed a treaty but have not yet ratified which means that preferential benefits would be afforded at an earlier date as there is often a significant time lag between signing and ratification. It will not result in accelerating the granting of reliefs that are contained in the tax treaties themselves, such as general relief of double taxation provisions that apply to both companies and individuals. These reliefs will only apply when both countries duly ratify the treaty and the treaty takes effect in accordance with its entry into force provisions, which is normally for tax periods in the year following ratification by both countries.

FURTHER AMENDMENTS TO THE R&D TAX CREDIT SCHEME

The scheme is being amended as follows

- To allow options for the carry-back by companies of unused tax credits for set-off against corporation tax paid in the previous year and to allow for any remaining unused credit to be refunded in equal instalments over a 3 year period by way of a payable credit. In this way, a company will obtain over a 3 year period the full benefit of the R&D tax credit arising in any one year.
- To provide for the permanent setting of 2003 as the base year against which to measure incremental R&D expenditure for the purpose of the tax credit. The base year is already set as 2003 until 2013. For 2014, the base year for calculating incremental expenditure was due to roll forward to 2004. For 2014 and the years beyond, the base year 2003 will continue to be used. Over time, the scheme will become effectively volume-based.
- To allow for a proportion of the expenditure on new or refurbished buildings used in part for R&D purposes to qualify for a tax credit (subject to a minimum level of R&D occurring there over a period). The current requirement is that new or refurbished buildings under the scheme must be used wholly and exclusively for R&D.

Some of these changes may require clearance from the EU Commission from a State Aid perspective. [see also page 3]

AMENDMENTS TO THE SCHEME OF CAPITAL ALLOWANCES FOR SPECIALIST PALLIATIVE CARE UNITS

The scheme is being amended to provide (i) for a reduction in the minimum in-patient bed capacity for specialist palliative care facilities from 20 beds to 8 beds and (ii) to make the scheme effective from the passing of Finance Act 2008 into law (13 March 2008) so that any qualifying capital expenditure incurred from that date is covered pending approval of the scheme from an EU State aid perspective.

AMENDMENTS TO SECTIONS 239 AND 958 TAXES CONSOLIDATION ACT 1997

Technical amendments are being made to these provisions to provide in legislation for the existing administrative practice of Revenue that allows companies' payments to Revenue in respect of income tax deducted from certain payments to be made in accordance with preliminary tax payment rules for Corporation Tax.

AMENDMENT TO SECTION 81 TAXES CONSOLIDATION ACT 1997 IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

An amendment is being made to provide that a deduction for tax purposes is not allowed in respect of compensation payments made by Irish companies arising from a transfer pricing adjustment made in another jurisdiction. The amendment will ensure that the appropriate adjustments to Irish tax liabilities can only be obtained, as intended, under the appropriate Double Taxation Agreement or EU Arbitration Convention mechanisms.

EXEMPTION FOR THE PRIVATE RESIDENTIAL TENANCIES BOARD AND THE INSTITUTE OF PUBLIC HEALTH IN IRELAND LIMITED

A provision to exempt the above Bodies from corporation tax is being made.

CAPITAL ALLOWANCES

HOTEL CAPITAL ALLOWANCES - LIMIT ON QUALIFYING EXPENDITURE FOR LARGE PROJECTS

To amend the scheme for accelerated capital allowances for hotels to ensure that where European Commission approval is required the reduced expenditure approved by the Commission will replace the expenditure that would otherwise have qualified for capital allowances. The proposed amendment will also provide that the relevant hotel projects will not lose capital allowances because of delays in receiving that approval.

Where capital expenditure on the construction or refurbishment of certain hotel projects exceeds the limit imposed by the European Commission for State Aid purposes, approval for the accelerated 7 year capital allowances must be sought from the Commission. The Commission may impose a ceiling on the amount of expenditure that can qualify for the accelerated capital allowances.

FINANCIAL SERVICES

EQUALISATION RESERVES

Finance Act 2008 introduced an amendment allowing equalisation reserves for credit reinsurance to be tax deductible. This brought our tax treatment into line with other EU countries and removed a competitive disadvantage being suffered by Irish companies compared to competitors in those other EU Member States. Although we intended that the relief should also apply to direct credit insurance, a further legislative amendment is needed to make this happen. The cost of allowing this measure is negligible.

WHOLESALE DEBT INSTRUMENTS

The exemption provided by Section 198, TCA 1997 for certain interest payments to non-residents from Irish tax (where the recipient is resident in an EU country or a country with which we have a double taxation agreement) does not currently extend to interest on wholesale debt instruments covered by Section 246A of TCA 1997. The issue of bonds and other debt instruments is a significant and vital activity of many international financial services companies but the Industry believes that the exposure to Irish tax on interest paid on such instruments is a disincentive to overseas investors. The question of an Exchequer cost does not arise since there is no withholding tax on these instruments and there is no mechanism in place for ensuring payment.

DISCOUNTS ON SECURITIES

The Section 198 exemption, as described above, currently does not include discounts on securities. Industry requests that we extend the definition of interest to include discounts on securities because the liability to tax is a significant impediment to the issuance of certain bonds and securities to an international investment market by Irish based entities. Although there is no mechanism for ensuring collection where payment due is not made, the issuers of these bonds and securities are obliged to refer to Finance (No 2) Bill 2008

number of issues have been identified that require to be addressed before the provisions come into effect. These require the refinement of enabling provisions and re-organisation of some sections, as well as the exclusion of certain low yield documents from stamping. An incentive scheme will be provided as a once-off opportunity to regularise the stamping of any outstanding documents.

CAPITAL ACQUISITIONS TAX

CAPITAL ACQUISITIONS TAX – AGRICULTURAL LAND

The definition of “agricultural property” in the Capital Acquisitions Tax Consolidation Act 2003 is being amended to provide that agricultural relief applies to land situated in another EU Member State.

CAPITAL ACQUISITIONS TAX – INCREASE IN RATE

The rate of tax that applies to inheritances and gifts is being increased by 2% to 22%.

FARM TAX

FARMERS STOCK RELIEF

The Bill will make provision to renew the 25% general farming stock relief and the special 100% stock relief for a further 2 years to 31 December 2010.

FARM POLLUTION CONTROL RELIEF

To extend the 31 December 2008 deadline of the scheme of capital allowances for expenditure on certain pollution control measures relief to 31 December 2010.

INDIRECT TAXES

EXCISE

ASSESSMENTS FOR EXCISE DUTIES

It is proposed to provide in the Finance Bill for the raising of estimated excise assessments in any case where there is reason to believe that a liability to excise duty, including VRT, has not been paid. This will bring the excise law into line with other tax heads in that regard.

PRE-REGISTRATION VEHICLE CHECKS AND TEMPORARY REGISTRATION FACILITY

It is proposed that enabling provisions be introduced in the 2009 Finance Bill to provide that:

- (i) all second-hand vehicles must be subject to a pre-registration check by the NCT as a condition of registration and
- (ii) a Temporary Register be set up in respect of foreign registered vehicles intending to remain in the State for a specified period e.g. more than 42 days.

Likely implementation dates first half of 2010.

VRT RELIEF APPLICABLE TO SHORT-TERM CAR-HIRE OPERATORS

Arising from concerns expressed about the amendment to Section 134 of the Finance Act 1992 introduced by Section 80 of the Finance Act 2008, it is proposed to amend the definition of short-term self-drive contracts from not exceeding 5 weeks in any period of 12 months to not exceeding 5 weeks in any period of 6 months. It is also proposed to provide for the phasing out of this VRT relief scheme for short-term self-drive cars so as to withdraw the relief for cars entering short-term car-hire fleets from 1 October 2011. **XX.**

CLARIFICATION OF MEASUREMENT OF CO2 EMISSIONS USED IN VRT LEGISLATION

It is proposed to amend section 130 (interpretation) of the Finance Act 1992 to clarify that the measurement of CO2 emissions of a vehicle as indicated on the Certificate of Conformity, used for VRT purposes, is the CO2 emissions figure given for the combined cycle, as it was always meant and understood to be. (Certificates of Conformity also provide separate figures for CO2 emissions based on the urban cycle and the extra urban cycle.)

REPEAL OF PROVISION IN RELATION TO CERTAIN ALCOHOL LICENCES

It is proposed to repeal the provision of a 50% discount of the duty payable on an alcohol wholesale dealer's licence where the licence is taken out by a person who is the holder of a retailer's off-licence for the same category of intoxicating liquor.

EXCISE RELIEFS FOR MICROBREWERIES

Arising from the introduction of new Alcohol Products Tax rates for low alcohol beer and cider, not in excess of 2.8% strength, it is necessary to amend section 78A of the Finance Act 2003 so that microbreweries, as is required under the relevant EU Directive, do not benefit a double excise reduction on low alcohol beer. Microbreweries (up to 20,000 hectolitres) will retain the 50% relief on excise on beer in excess of 2.8% strength which they currently enjoy.

REPEAL OF CERTAIN EXCISE PROVISIONS RELATING TO PROPERTY TRANSACTIONS

The Property Services Regulatory Authority Bill, which is expected to be published before the end of the year, will repeal the Auctioneers and House Agents Act 1947, and take over the regulation of auctioneers etc. Consequently the existing excise duties on auctioneers' licences, auction permits and house agents' licences, charging provisions in tax law will be made redundant. It is therefore proposed to provide for the repeal of those provisions in the Finance Bill 2009, subject to Commencement Order.

AMENDMENT TO REQUIREMENTS FOR BOOKMAKERS' LICENCES IN RELATION TO PHOTOGRAPHS

Section 7 of the Betting Act 1931 requires that every application for a bookmaker's licence includes a photograph of the applicant, which is affixed to the licence when it is issued. Revenue are currently engaged in a project to streamline and automate the administration of excise licences. There are no enforcement reasons for keeping the photograph and its requirement is not compatible with automation. Consequently it is proposed to delete the photograph requirement from the Betting Act 1931.

MINERAL OIL TAX

- (i) Technical amendments are required to section 94(1) and section 96(2A) of FA 1999 to delete certain words and phrases not longer required following the introduction, with effect from 1 November 2008, of single rates of tax for petrol and for diesel used as a propellant.
- (ii) Amend section 97B(3) of FA 1999 to correct a technical defect in the 2008 Act in relation to rate of tax on aviation gasoline used for air navigation other than private pleasure flying.

TAX ON ELECTRICITY

It is necessary to introduce technical, administrative or clarification amendments to sections 60, 63 and 64 of the Finance Act 2008 which deals with the collection of excise on electricity which was introduced with effect from 1 October 2008.

VAT

TOUR OPERATORS AND TRAVEL AGENTS

Following an Appeal Commissioners' decision, which allows some tour operators reclaim VAT input credit without paying VAT on the services supplied, it is necessary to make changes in relation to the VAT treatment of tour operators. It is proposed, with effect from 1 January 2010, to introduce a Margin

Scheme for tour operators and to make travel agents liable to VAT on their commission. Most EU Member States operate a Margin Scheme for tour operators. Yield/save around €10m per annum.

UNJUST ENRICHMENT VAT AND VRT

Arising from evolving ECJ and national case law, and based on legal advice, it is proposed to amend section 20(5) of the VAT Act 1972 which deals with unjust enrichment (tax being reclaimed by a trader while the tax had been borne by the consumer) to ensure that the provision can be used effectively in the way that was originally intended. It is also proposed to extend the scope of unjust enrichment so as to cover VRT in certain circumstances.

CLARIFICATION OF VAT RATE APPLICABLE TO TAKE-AWAY COFFEE AND SIMILAR DRINKS

Arising from a recent challenge, it is proposed to amend the VAT Act 1972 to provide clarification and to ensure that, as at present, the supply of teas, coffees and similar drinks in non-drinkable form attract the zero rate, and when prepared for consumption attract the reduced rate of 13.5%.

VAT ON PROPERTY TRANSACTIONS

Arising from the significant changes made in the Finance Act 2008 concerning the VAT treatment of property transactions a number of minor and technical amendments are required. These amendments are primarily to clarify and ensure that the sections as enacted are having the effect that had been intended. It is also proposed to introduce three amendments in regard to anti-avoidance measures relating to the VAT treatment of property transactions.

REVENUE POWERS

AMENDMENT TO S811A OF THE TCA RE PROTECTIVE NOTIFICATIONS

Under section 811A, where a PN is made by the taxpayer and the Revenue Commissioners are issuing a notice under s811 that the transaction is a tax avoidance transaction or are contending that the PN is defective (i.e. not complete and/or not made within the 90 day time limit) they must issue a notice to the taxpayer to that effect, along with the s811 notice. Revenue are seeking to allow the making of this s811A notice to be delegated to an authorised officer in the same way as the making of the s811 notice itself can be so delegated.

RE-DEFINE THE TERM “PROFESSION” IN CERTAIN SECTIONS

To amend the Taxes Consolidation Act 1997 so that the term “profession” is defined restrictively to ensure that the provision on professional confidentiality may only be relied upon in the situations for which it was originally intended, being information concerning doctor/patient confidentiality and solicitor/client privilege. The necessity for this measure arises from a legal challenge to an attempt by Revenue to obtain data on the offshore property markets from Estate Agents who claimed privilege.

AMEND THE DEFINITION OF “FINANCIAL INSTITUTION”

To amend the definition of “financial institution” to include financial institutions authorised in another Member State operating in Ireland under a passport arrangement in sections 891B, 906A, 908A and 908B TCA.

AMEND SECTION 1078 B (6) TCA

A technical amendment to section 1078 B (6) TCA so as to include section 908C (3) as a provision which attracts the presumptions of ownership of records set out in that section. Section 1078B TCA creates certain presumptions as to the origin of certain documents and their contents in a civil or criminal prosecution by Revenue. These presumptions are rebuttable. Section 1078B (6) refers to a presumption of ownership of records removed by a Revenue official in the exercise of powers of removal and retention of records under section 905 (2A), which are powers granted on foot of warrant from the District Court. The granting of such powers under warrant occurs only occasionally in the TCA and primarily where it

concerns entry into a private residence. Clearly, as the entry into premises in cases under this section, do not occur as a result of the taxpayers consent, problems could later arise in relation to ownership of records seized. Any potential problem in this regard is dealt with by the presumptions set out in 1078B (6). This provision was introduced in the Finance Act 2003.

However, similar powers of removal and retention of records under search warrant also exist under section 908C (3) of the TCA (introduced in Finance Act 2007). That section provides the Revenue Commissioners with the power to apply to a District Court judge for a search warrant where they are investigating a tax offence with a view to having an offender prosecuted. Unfortunately, at that time the necessary consequential amendment was not made to section 1078B so as to extend the benefit of the presumptions contained in that section to records removed under section 908C.

30 DAY TIME LIMIT FOR COMPLIANCE WITH COURT ORDERS ISSUED UNDER SECTION 1078 (3A)

To provide for a 30 day time limit for compliance with Court Orders issued under section 1078 (3A) TCA. In cases where a person has been convicted of non-filing of returns, section 1078 (3A) TCA makes provision for the issuing of a Court Order requiring the returns to be filed. Section 1078 (3B) states that failure to comply with the instruction of this Court Order is an offence but does not specify a time limit for filing returns under the Order. As there is no time limit it makes it impossible to state with certainty when and if an offence has been committed making prosecution for non-compliance with the Court Order almost impossible

REVENUE CIVIL PENALTIES: COMPATIBILITY THE EUROPEAN CONVENTION OF HUMAN RIGHTS AND THE CONSTITUTION

The Bill will make provision to amend Revenue's civil penalties regime (across all taxes and duties except customs) in accordance with the advice which Revenue received from the Attorney General, so as to ensure its compatibility with the provisions of Article 6 of the European Convention of Human Rights (ECHR), and with the Constitution.

Part of the proposed change would involve putting Revenue's current administrative regime for mitigating penalties by reference to the nature of the taxpayer's behaviour and degree of disclosure and cooperation (as set out in Revenue's Code of Practice for Revenue Auditors) on a statutory footing.

Approval is also sought for a number of consequential/related amendments including updating a number of fixed penalty levels, correcting a number of drafting and other errors in some penalty sections, placing the current treatment of death cases on a statutory basis and other tidying-up.

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