# AN BILLE AIRGEADAIS 2009
# FINANCE BILL 2009

*Mar a tionscnaíodh*
*As initiated*

## EXPLANATORY MEMORANDUM

## PART 1

### Income Levy, Income Tax, Corporation Tax and Capital Gains Tax

### 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 relating to income tax, corporation tax and capital gains tax.

### Chapter 2

*Income Levy*

*Section 2* amends the provisions relating to the income levy by introducing a revised annual composite rate for 2009. It also details the collection mechanism that should be applied for cases where the levy on remuneration is dealt with by way of payroll deduction.

The section also provides for a number of minor technical amendments including—

- clarification that the levy applies on gross income before deductions,
- confirming exemption from income levy for payments covered by Standard Capital Superannuation Benefit (SCSB),
- ensuring that a double taxation for income levy does not arise on emoluments which are subject to exclusion orders, and
- confirming that the income levy rates in force in the first four months of the year will apply to redundancy payments made up to 30 April 2009.

The legislation also provides powers to the Revenue Commissioners to make Regulations in relation to the administration and operation of the income levy.

## Chapter 3

### *Income Tax*

*Section 3* amends section 244 of the Taxes Consolidation Act 1997 so that, with effect from 1 May 2009, the interest payable on a qualifying loan is eligible for tax relief for the first 7 tax years only of the life of that loan.

*Section 4* amends section 244A of the Taxes Consolidation Act 1997 so that, notwithstanding other enactments, the Revenue Commissioners can request information from lenders to determine if tax relief is due on the interest on certain loans.

This section is introduced in tandem with section 3 which restricts mortgage interest relief to the interest payable on a qualifying loan for the first 7 tax years of the life of that loan.

*Section 5* amends section 97 of the Taxes Consolidation Act 1997 in relation to the extent to which interest on borrowed money used to purchase, improve or repair a rented premises can be deducted in computing the amount of taxable rental income.

Where the borrowed money is used to purchase, improve or repair a residential premises, 75% of the interest on the borrowings can now be deducted instead of the normal 100%.

The amendment provides for a just and reasonable apportionment of interest in the case of mixed residential and non-residential premises. The restriction does not depend on when the money was borrowed and used but applies to interest accruing on or after Budget Day (7 April 2009). In that regard, interest is treated as accruing on a daily basis.

The amendment also provides that where a person arranges for the construction of a dwelling, the combined cost of site acquisition and construction is treated as being incurred on the purchase of a residential premises.

*Section 6* amends section 644A of the Taxes Consolidation Act 1997 (which deals with the income tax treatment of income arising from dealing in residential development land) by providing for the abolition of the 20% incentive rate of income tax on such income, with effect from the 2009 tax year. From 2009 onwards such income will be taxed under normal income tax rules.

The section also inserts a new section 644AA into the Taxes Consolidation Act 1997 which introduces new rules for the treatment of certain trading losses arising from a trade of dealing in residential development land where if profits had been earned the profits would have qualified for the 20% incentive rate of income tax.

Under normal income tax rules, a loss sustained in a trade may be set sideways against the person's other income in the year in which the loss arises or may be carried forward for set-off against the income from the trade in subsequent tax years. In the case of losses sustained in a trade of dealing in residential development land, this could lead to a mismatch in that such losses (sustained in a trade in

which if profits had been made would have been taxed at 20%) could be set against the person's other income taxable at the higher 41% rate. The new section provides that such losses must first be converted into a tax credit, valued at 20% of the loss, and then allows the tax credit to be set sideways in the year the loss is sustained against tax payable on the person's other income. Any unused part of the tax credit may be carried forward and set-off against tax on the income from the trade in subsequent years. Where dealing in residential development land is part of a larger trade, any carried forward tax credit may be set against tax on the income from the larger trade.

As respects a claim for the sideways set-off of losses arising in a trade of dealing in residential development land against a property developer's other income, the new rules apply where such a claim has not been made to and received by Revenue before 7 April 2009. As respects the carry forward of such losses within the trade, the new rules apply unless the carry forward claim by the property developer is made to and received by Revenue before that date. For the purposes of the new rules, where a trade comprises partly of dealing in residential development land and partly of other activities the new section requires each part to be treated as a separate trade.

*Finally,* where a claim for terminal loss relief (i.e. on the permanent cessation of a trade) has not been made to and received by Revenue before 7 April 2009, the new section restricts the relief so that any part of the terminal loss that relates to a loss sustained, before 1 January 2009, in a trade of dealing in residential development land is "ring-fenced" and can only be set against income arising in that trade, or in that part of a trade, in prior years.

*Section 7* amends section 372AW of the Taxes Consolidation Act 1997 which relates to the Mid-Shannon Corridor Tourism Infrastructure Investment Scheme. One of the conditions of this tax incentive scheme is that the Mid-Shannon Tourism Infrastructure Board must grant approval in principle for investment projects in advance of expenditure being incurred. At present an application for such approval in principle must be made within one year of the commencement of the Scheme, i.e. by 31 May 2009. This amendment extends the period during which such applications can be made from one year to two years so that the latest date for the submission of applications is now 31 May 2010.

Under the Scheme, the current period within which expenditure must be incurred for capital allowances purposes is the three-year period commencing on 1 June 2008 and ending on 31 May 2011. To cater for any projects that may avail of the new date for the submission of applications for approval in principle, this period is also being extended and will now end on 31 May 2013.

*Section 8* amends sections 268 and 316 of the Taxes Consolidation Act 1997 in relation to expenditure incurred on the construction or refurbishment of certain health-related facilities in order to provide for the termination of these capital allowances schemes and for transitional measures for pipeline projects, as announced on Budget Day (7 April 2009). The facilities covered by this section are registered nursing homes, convalescent homes, qualifying hospitals and mental health centres.

The amendments to section 268 provide that certain schemes that were previously open-ended in relation to incurring qualifying expenditure for capital allowances purposes now have a termination date of 31 December 2009, unless certain qualifying criteria are met,

in which case the termination date for qualifying expenditure on pipeline projects is extended. Subsection (9) of that section outlines the dates within which such qualifying expenditure must be incurred.

Termination dates beyond 31 December 2009 will only apply where certain qualifying conditions are met by that date. The qualifying conditions depend on the type of work to be carried out and whether or not the work requires planning permission. Where the work to be carried out does not require planning permission, the termination date is 30 June 2010 so long as at least 30% of the construction or refurbishment costs has been incurred on or before 31 December 2009. Where planning permission is required in relation to the work to be carried out, the qualifying condition for a termination date beyond 31 December 2009 is that a valid application for full planning permission be submitted on or before that date, and be acknowledged by the relevant planning authority. In such cases, the termination date for qualifying expenditure is 30 June 2011 in the case of registered nursing homes, convalescent homes and mental health centres and 31 December 2013 in the case of qualifying hospitals.

The amendment to section 316 ensures that, in relation to these types of facilities, the normal rule about capital expenditure being incurred when it is payable is disregarded and, instead, expenditure is treated as incurred when it is properly attributable to construction or refurbishment work that has actually been carried out.

## Chapter 4

### *Income Tax, Corporation Tax and Capital Gains Tax*

*Section 9* increases Deposit Interest Retention Tax by two percentage points with effect from 8 April 2009.

*Section 10* increases the rates of tax applying to life assurance policies and investment funds by two percentage points with effect from 8 April 2009.

The amendment applies to the rates of exit tax on domestic life assurance policies and investment undertakings under the gross roll-up regime introduced in Finance Act 2000. It also increases the rates of tax that apply to profits and gains on life assurance policies and investment funds in other EU Member States, EEA States and OECD countries with which Ireland has double taxation agreements. A similar increase is being applied to the rate of tax applying to a personal portfolio life policy or to an investment held in a personal portfolio investment undertaking.

## Chapter 5

### *Corporation Tax*

*Section 11* abolishes the effective 20% rate applied to trading profits from dealing in residential development land with effect from 1 January 2009. An accounting period that straddles that date is treated for this purpose as two accounting periods. Profits or gains on dealing in residential development land will now be charged at the general rate of corporation tax that applies to dealing in land, which is 25%.

*Section 11* also introduces a new section 644C to the Taxes Consolidation Act 1997. This section restricts the allowance of losses on residential land incurred before 1 January 2009 and carried forward to accounting periods beginning on or after that date to allowance on a value basis. This is to ensure that the effect of the tax treatment of trading losses is commensurate with the effect of the increase in the tax rate on trading income from 20% to 25%. The section also restricts to relief on a value basis any losses on residential development land activity which are set-off against income chargeable to tax at 25% or which are carried back for set-off against similar income of an immediately preceding accounting period of the same duration, where the claim is made on or after Budget Day (7 April 2009). Finally, the section restricts terminal losses incurred in a trade, to the extent that those losses relate to dealing in residential land incurred before 31 December 2008, to relieving income of the trade charged at the effective rate of 20% applying to trading profits from such dealing in land, where the claim for terminal loss relief is made on or after Budget Day.

*Section 12* amends section 626B of the Taxes Consolidation Act 1997 so as to exclude from the scope of that section shares deriving their value or the greater part of that value from exploration and exploitation rights of the sea bed and subsoil. This puts the treatment of such shares on a par with the treatment of shares deriving their value or the greater part of that value from land in the State or minerals in the State or any rights, interests or other assets in relation to mining or minerals or searching for minerals.

*Section 13* provides for a new scheme of tax relief for capital expenditure incurred by companies on intangible assets, as announced in the Supplementary Budget. A new section 291A is being included in Part 9 Chapter 2 of the Taxes Consolidation Act 1997 (TCA) for this purpose.

The scheme provides for capital allowances against taxable income on capital expenditure incurred by companies on the provision of intangible assets for the purposes of a trade. The scheme applies to intangible assets which are recognised as such under generally accepted accounting practice and which are included in the specified categories listed in the new section.

Allowances provided under the scheme will reflect the standard accounting treatment of intangible assets and will be based on the amount charged to the profit and loss account of the company for the accounting period in respect of the amortisation or depreciation of the specified intangible asset. However, companies can opt instead for a fixed write-down period of 15 years at a rate of 7 per cent per annum and 2 per cent in the final year.

There will be no claw-back of allowances where an intangible asset is disposed of more than 15 years after the beginning of the accounting period in which the asset was first provided, provided that the disposal does not result in a connected company claiming allowances in respect of capital expenditure on the asset.

Activities which consist of the managing, developing or exploiting of a specified intangible asset and carried on by a company as part of a trade are to be treated as a separate trade (referred to as a "relevant trade") and income from such activity is to be assessed separately. In addition, the aggregate amount of any allowances and related interest expense in an accounting period shall not exceed 80% of the trading income from the relevant trade for that period excluding such allowances and/or interest. However, any excess

allowances and/or interest expense shall be available for carry forward for offset against trading income of the relevant trade for succeeding accounting periods. Provision has also been made for a corresponding restriction on the amount of interest relief which may be claimed (under section 247 of the TCA) by an investing company providing funds to a company to acquire a specified intangible asset.

Expenditure on the provision of specified intangible assets will not qualify under the scheme where relief for such expenditure is otherwise available under the Taxes Consolidation Act. The scheme shall not apply to capital expenditure on specified intangible assets to the extent that this expenditure is in excess of an arm's length amount payable between independent parties and provision is made to enable the Revenue Commissioners to consult with an expert in this regard. Relief is also not available in respect of any expenditure incurred as part of a tax avoidance arrangement.

In the case of transfers of specified intangible assets between group companies, the acquiring company will be able to claim capital allowances on the assets acquired where both it and the transferring company jointly elect to opt out of the existing capital gains tax group relief provisions (under section 617 of the TCA).

The allowances currently available for capital expenditure on the provision of computer software (under section 291 of the TCA) are being retained and the new scheme does not therefore apply to computer software. As patent rights and know-how are being included in the new scheme, the existing reliefs for capital expenditure on patent rights (section 755 of the TCA) and know-how (section 768 of the TCA) are being discontinued for companies, but with provision for companies to opt for these reliefs for a further 2 year period.

The new scheme applies to expenditure incurred by a company after 7 May 2009.

## Chapter 6

### *Capital Gains Tax*

*Section 14* gives effect to the proposal announced in the Budget statement to increase the rate of capital gains tax from 22% to 25% in respect of disposals made from midnight on 7 April 2009.

## PART 2

### Excise

*Section 15* confirms the Budget increase in the rate of Mineral Oil Tax on auto-diesel which, when VAT is included, amounts to 5 cent on a litre. The same increase is applied to jet kerosene for non-business use, and to diesel used for private pleasure navigation.

*Section 16* confirms the Budget increases in the rates of Tobacco Products Tax which, when VAT is included, amount to 25 cent on a packet of 20 cigarettes with pro-rata increases on other tobacco products.

*Section 17* amends the definition of ''airport'' in section 55 of the Finance (No. 2) Act 2008 to exclude from the scope of air travel tax (ATT) airports from which fewer than 50,000 (formerly 10,000)

persons departed on aircraft in the previous calendar year. It also removes the requirement on airline operators to make monthly returns when making payments of ATT.

*Section 18* amends section 135B of the Finance Act 1992 (as amended by section 65(*b*) of the Finance (No. 2) Act 2008) to amend the formula that is used for the calculation of a repayment of vehicle registration tax (VRT) on a pro-rata basis, where the first registered owner of a vehicle which is eligible for the repayment of VRT has disposed of the vehicle prior to the date of repayment. The amendment is required in order to provide a more accurate calculation of the repayment due.

## PART 3

### Stamp Duties

*Section 19* is an interpretation section.

*Section 20* inserts a new section 83C into the Stamp Duties Consolidation Act 1999 to provide for a deferral of the stamp duty that would normally be chargeable on the transfer of a second-hand house, where it is traded-in against a new house and the instrument giving effect to the trade-in is executed on or after 7 May 2009 and on or before 31 December 2010. The stamp duty chargeable on the second-hand house is deferred until the earlier of (a) the subsequent sale-on of the traded-in house or (b) 31 December 2010.

Where the second-hand house has land attached to it which is in excess of 0.4047 Ha., the deferral will not apply to the excess area where it is included in the trade-in. In addition, stamp duty will be chargeable on the new house in the normal way, subject to any already existing reliefs being available.

*Finally,* to benefit from the deferral, any payment in respect of equality, for either the second-hand house or the new house, must be made in cash.

*Section 21* amends the definition of ‘‘intellectual property’’ in section 101 of the Stamp Duties Consolidation Act 1999 which provides for an exemption from stamp duty on the sale, transfer or other disposition of ‘‘intellectual property’’. The purpose of the change is to broadly align the definition of ‘‘intellectual property’’ in the stamp duty code with a similar definition in the new section 291A being inserted into the Taxes Consolidation Act 1997 by section 13 of the Bill in relation to the new corporation tax relief on capital expenditure incurred in the acquisition of intellectual property. The change applies to instruments executed after 7 May 2009.

*Section 22* provides for an increase in the current non-life insurance levy by 1 per cent to 3 per cent and for a new 1 per cent levy on life assurance policies. The increase in the non-life levy applies to premiums received on or after 1 June 2009 in respect of offers of insurance or notices of renewal of insurance issued by an insurer on or after 8 April 2009. The new levy on life assurance policies applies to premiums received on or after 1 August 2009 in respect of life assurance policies whenever entered into by an insurer.

## PART 4

### Capital Acquisitions Tax

*Section 23* gives effect to the proposal announced in the Budget statement to reduce the current tax-free thresholds from €542,544 (Group A — broadly speaking, from parent to child), €54,254 (Group B — broadly speaking, between siblings, from children to parents, from grandparents to grandchildren, and from uncles and aunts to nephews and nieces) and €27,127 (Group C — all cases not covered by Group A and Group B) to €434,000, €43,400 and €21,700 respectively. The section also increases from 22% to 25% the rate of tax in respect of gifts or inheritances taken after midnight on 7 April 2009.

## PART 5

### Miscellaneous

*Section 24* contains a definition of ‘‘Principal Act’’ i.e. the Taxes Consolidation Act 1997, for the purposes of Part 5 of the Bill.

*Section 25* amends the rates of interest paid on overdue tax. In the case of income tax, corporation tax, capital gains tax, capital acquisitions tax and stamp duty, the daily rate of interest is being reduced from 0.0273% to 0.0219%. In the case of other taxes and duties, the daily rate is being reduced from 0.0322% to 0.0274%.

These new rates apply from 1 July 2009.

*Section 26* provides for technical amendments to the Taxes Consolidation Act 1997, the Stamp Duties Consolidation Act 1999, and the Finance (No. 2) Act 2008.

The amendments for the most part involve the correction (through deletion, amendment or insertion of text) of incorrect references and minor drafting errors.

Most of the amendments occur as a consequence of the new penalty regime which was brought in across all tax heads by Schedule 5 to the Finance (No. 2) Act 2008. Other amendments occur as a result of the transposing of the EU Seveso II Directive into Irish law by section 21 of the Finance (No. 2) Act 2008.

*Section 27* deals with the ‘‘care and management’’ of taxes and duties.

*Section 28* contains the provisions relating to short title, construction and commencement.

*An Roinn Airgeadais*,
*Bealtaine* 2009.

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