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**AN BILLE AIRGEADAIS (Uimh. 2), 2011**  
**FINANCE (No. 2) BILL 2011**

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*Mar a ritheadh ag Dáil Éireann*  
*As passed by Dáil Éireann*

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**ARRANGEMENT OF SECTIONS**

Section

1. Amendment of section 766B (limitation of tax credits to be paid under section 766 or 766A) of Taxes Consolidation Act 1997.
  2. Amendment of section 55 (air travel tax) of Finance (No. 2) Act 2008.
  3. Rates of value-added tax.
  4. Levy on pension schemes, etc.
  5. Care and management of taxes and duties.
  6. Short title and construction.
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ACTS REFERRED TO

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



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AN BILLE AIRGEADAIS (Uimh. 2), 2011  
FINANCE (No. 2) BILL 2011

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# BILL

*entitled*

5 AN ACT TO PROVIDE FOR THE IMPOSITION, REPEAL,  
REMISSION, ALTERATION AND REGULATION OF  
TAXATION, OF STAMP DUTIES AND OF DUTIES  
RELATING TO EXCISE AND OTHERWISE TO MAKE  
10 FURTHER PROVISION IN CONNECTION WITH  
FINANCE.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

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

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

15 “(1) In this section—

‘payroll liabilities’ means—

20 (a) the amount of income tax which the company is  
required, by or under Chapter 4 of Part 42, to  
remit to the Collector-General for the relevant  
payroll period in respect of emoluments, as  
defined in section 983, paid to, or on account  
of, all employees and directors,

25 (b) the amount of Pay Related Social Insurance  
Contributions in respect of the reckonable  
earnings and reckonable emoluments of all  
directors and employees which the company is  
required to remit to the Collector-General for  
the relevant payroll period by or under the  
Social Welfare Acts, and

30 (c) any other amount of levies or charges the com-  
pany is required, by or under Parts 18A, 18B  
or 18D, to remit to the Collector-General for  
the relevant payroll period;

‘relevant payroll period’ means the period—

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

(b) ending at the time that accounting period ends.”, 5

and

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

“(b) the aggregate of the amounts payable by the company in respect of payroll liabilities for the relevant payroll period in which the expenditure was incurred as reduced by the lesser of— 10

(i) the amount by which the aggregate of any amounts payable to the company in respect of claims made under section 766(4B) or 766A(4B), as the case may be, in respect of expenditure incurred in a previous accounting period, exceeds the payroll liabilities in respect of the period— 15

(I) beginning at the time that the accounting period in respect of which the first such claim was made begins, and 20

(II) ending at the time the accounting period immediately preceding the accounting period in which the expenditure was incurred ends, 25

and

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

(I) beginning at the time at which the relevant payroll period begins, and 30

(II) ending at the time the accounting period immediately preceding the accounting period in which the expenditure was incurred ends.”. 35

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

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

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

“(2A) Subsection (2) shall not apply in respect of any departure of a passenger on an aircraft from an airport on or after such day as the Minister for Finance may appoint by order.”. 40

Rates of value-added tax.

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

(a) in section 46(1) by substituting “paragraphs (b), (c), (ca) and (d)” for “paragraphs (b), (c) and (d)” in paragraph (a),

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(b) in section 46(1) by inserting “subject to paragraph (ca),” before “13.5 per cent” in paragraph (c),

(c) in section 46(1) by inserting the following after paragraph (c):

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

and

15

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

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

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

“Levy on pension schemes.

125B.—(1) In this section—

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

25

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

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(a) an administrator, within the meaning of section 770(1) of the Act of 1997,

35

(b) a person mentioned in section 784 or 785 of the Act of 1997, lawfully carrying on the business of granting annuities on human life, including the person mentioned in section 784(4A)(ii) of that Act, and

40

(c) a PRSA administrator, within the meaning of section 787A(1) of the Act of 1997;

45

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

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

(a) on 30 June for the year 2011, 2012, 2013 or 2014, as the case may be, or

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

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

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

(a) where the assets are not contracts of assurance, the administrator in relation to the scheme, and

(b) where the assets are contracts of assurance, the insurer in relation to such a contract,

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

‘contract of assurance’ means—

(a) any contract of a type described in section 706(3) of the Act of 1997, and

(b) any other policy or contract of assurance made by an insurer with a person or persons having the management of a scheme of a kind described in paragraph (a) of the definition of ‘scheme’,

other than a one member  
scheme;

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

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

10 'excluded assets', in relation to a scheme of  
a kind described in paragraph (a) of the  
definition of 'scheme', means assets rep-  
resenting the liabilities of the scheme which  
are attributable to the provision of relevant  
15 benefits (within the meaning of section 770  
of the Act of 1997) in respect of any  
member of such a scheme—

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

(i) is and always was, or

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

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

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

40 'insurer' means an insurance undertaking  
within the meaning of the European Com-  
munities (Life Assurance) Framework  
Regulations 1994 (S.I. No. 360 of 1994);

'market value' shall be construed in accord-  
ance with section 548 of the Act of 1997;

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

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

approval of the scheme by the Commissioners requires the person or persons having the management of the scheme to deliver annual scheme accounts to the Commissioners; 5

'pension fund', in relation to an insurer, shall be construed in accordance with subsection (2) of section 706 of the Act of 1997 and as if the business referred to in paragraph (a) of that subsection includes policies of assurance referred to in paragraph (b) of the definition of 'contract of assurance'; 10

'scheme' means—

(a) a retirement benefits scheme, 15  
within the meaning of section  
771 of the Act of 1997—

(i) approved by the Commissioners for the purposes of Chapter 1 of that Act, or 20

(ii) approved by the Commissioners under any other enactment (including an enactment that is repealed) and in respect of which the provisions of Chapter 1 of the Act of 1997 were applied, 25

other than a scheme where—

(I) the trustees have passed a resolution to wind up the scheme, and 30

(II) the employer is insolvent for the purposes of the Protection of Employees (Employers' Insolvency) Act 1984, 35

(b) an annuity contract or a trust scheme or part of a trust scheme approved by the Commissioners under section 784 or 785 of the Act of 1997 or, as the case may be, under both of those sections of that Act, other than an annuity contract or trust scheme or part of a trust scheme so approved in respect of which a lump sum, to which paragraph (b) of section 784(2) of the Act of 1997 applies, has been paid to the individual entitled to an annuity under the contract, trust scheme or part of a trust scheme, as the case may be, or 40  
45  
50

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

15 ‘valuation date’ means the appropriate date  
as determined for the purposes of para-  
graph (a) or (b) of the definition of ‘charge-  
able amount’.

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

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

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

40 (5) (a) A chargeable person who, in  
relation to the assets of a  
scheme, being a scheme  
approved by the Commis-  
sioners, is liable to pay the duty  
charged under subsection (3) on  
a statement delivered by the  
chargeable person pursuant to  
45 subsection (2) shall, for the pur-  
poses of payment of the duty,  
be entitled to dispose of or  
appropriate such assets of the  
scheme as are required to meet  
the amount of the duty so pay-  
50 able and the scheme shall not  
cease to be a scheme approved  
by the Commissioners as a con-  
sequence of any such disposal  
or appropriation by the charge-  
55 able person.

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

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

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

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

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

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

5 (a) to deliver not later than the due date any statement required to be delivered by the chargeable person pursuant to subsection (2), or

10 (b) to pay the duty chargeable on any such statement on delivery of the statement,

the chargeable person shall—

15 (i) from that due date until the day on which the duty is paid, be liable to pay, in addition to the duty, interest on the duty calculated in accordance with section 159D, and

20 (ii) from that due date, be liable to pay a penalty of €380 for each day the duty remains unpaid.

(9) Where before a due date—

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

35 (b) another person (in this subsection referred to as the ‘successor’) acquires the whole, or substantially the whole, of the business,

40 then—

(i) the chargeable person is not required to deliver the first-mentioned statement, and

(ii) the successor shall—

45 (I) where the successor is, apart from this subsection, required to deliver a statement (in this subsection referred to as the ‘second-mentioned statement’) pursuant to subsection (2)

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

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

(10) The delivery of any statement required by subsection (2) may be enforced by the Commissioners under section 47 of the Succession Duty Act 1853 in all respects as if such statement were such account as is mentioned in that section and the failure to deliver such statement were such default as is mentioned in that section.

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

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

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

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

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

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

and

50 (b) in section 126B(1)—

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

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

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

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

and

(ii) by substituting “124B, 125 or 125B” for “124B or 125” in the definition of “specified section”. 5

(2) The Taxes Consolidation Act 1997 is amended—

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

(b) in section 784(4A) by substituting “, by Chapter 2C and by section 125B of the Stamp Duties Consolidation Act 1999” for “and by Chapter 2C”, and 10

(c) in section 787G(5) by substituting “, Chapter 2C and section 125B of the Stamp Duties Consolidation Act 1999” for “and Chapter 2C”. 15

Care and management of taxes and duties.

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

Short title and construction.

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

(2) *Section 1* which relates to corporation tax, shall be construed together with the Corporation Tax Acts. 20

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

(4) *Section 3* shall be construed together with the Value-Added Tax Consolidation Act 2010 and may be cited together with that Act as the Value-Added Tax Acts. 25

(5) *Section 4(1)* shall be construed together with the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act and *section 4(2)* shall be construed together with the Tax Acts. 30