

# DÁIL ÉIREANN

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## AN BILLE AIRGEADAIS 2010 —ROGHCHOISTE

### FINANCE BILL 2010 —SELECT COMMITTEE

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*Leasuithe  
Amendments*

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#### SECTION 141

In page 193, before section 141, to insert the following new section:

“Amendment of Part 141.—(1) Part 33 of the Principal Act is amended by inserting the following after 33 (anti-avoidance) Chapter 2: of Principal Act.

#### “CHAPTER 3

##### *Mandatory Disclosure of Certain Transactions*

Interpretation  
and general  
(Chapter 3).

817D.—(1) In this Chapter, unless the context otherwise requires—

‘the Acts’ means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts,
- (c) Part 18A,
- (d) the Value-Added Tax Act 1972, and the enactments amending or extending that Act,
- (e) the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act,
- (f) the Stamp Duties Consolidation Act 1999, and the enactments amending or extending that Act,
- (g) the statutes relating to the duties of excise and to the management of those duties,

and any instruments made thereunder and any instruments made under any other enactment relating to tax;

‘disclosable transaction’ means—

- (a) any transaction, or
- (b) any proposal for any transaction,

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which—

- (i) falls within any specified description,
- (ii) enables, or might be expected to enable, any person to obtain a tax advantage, and
- (iii) is such that the main benefit, or one of the main benefits, that might be expected to arise from the transaction or the proposal is the obtaining of that tax advantage,

whether the transaction or the proposal for the transaction relates to a particular person or to any person who may seek to take advantage of it;

‘marketer’, in relation to any disclosable transaction, means any person who is not a promoter but who has made a marketing contact in relation to the disclosable transaction;

‘marketing contact’, in relation to a disclosable transaction, means the communication by a person of the general nature of the disclosable transaction to another person with a view to that person or any other person considering whether—

- (a) to ask for further details of the disclosable transaction, or
- (b) to seek to have the disclosable transaction made available for implementation,

and ‘makes a marketing contact’ shall be construed accordingly;

‘PPS Number’, in relation to an individual, means the individual’s personal public service number, within the meaning of section 262 of the Social Welfare Consolidation Act 2005;

‘promoter’, in relation to a disclosable transaction, means a person who in the course of a relevant business —

- (a) is to any extent responsible for the design of the disclosable transaction,
- (b) has specified information relating to the disclosable transaction and makes a marketing contact in relation to the disclosable transaction,
- (c) makes the disclosable transaction available for implementation by other persons, or
- (d) is to any extent responsible for the organisation or management of the disclosable transaction;

‘relevant business’ means any trade, profession, vocation or business which—

- (a) includes the provision to other persons of services relating to taxation, or

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(b) is carried on by a bank (within the meaning of section 124(1)(a) of the Stamp Duties Consolidation Act 1999),

and for the purposes of this definition—

- (i) anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business referred to in paragraph (b) carried on by another company, where both companies are members of the same group, and
- (ii) ‘group’ has the meaning that would be given by section 616 if in that section references to residence in a relevant Member State were omitted and for references to ‘75 per cent subsidiaries’ there were substituted references to ‘51 per cent subsidiaries’, and references to a company being a member of a group shall be construed accordingly;

‘relevant date’, in relation to a disclosable transaction, means the earliest of the following dates—

- (a) the date on which the promoter has specified information relating to the disclosable transaction and first makes a marketing contact in relation to the disclosable transaction,
- (b) the date on which the promoter makes the disclosable transaction available for implementation by any other person, or
- (c) the date on which the promoter first becomes aware of any transaction forming part of the disclosable transaction having been implemented;

‘specified description’ has the meaning assigned to it by subsection (2);

‘specified information’ means any information specified in regulations made under section 817Q;

‘specified period’ means the period of time, or time, specified in regulations made under section 817Q;

‘tax’ means any tax, duty, levy or charge which, in accordance with the Acts, is placed under the care and management of the Revenue Commissioners;

‘tax advantage’ means—

- (a) relief or increased relief from, or a reduction, avoidance or deferral of, any assessment, charge or liability to tax, including any potential or prospective assessment, charge or liability,

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- (b) a refund or repayment of, or a payment of, an amount of tax, or an increase in an amount of tax refundable, repayable or otherwise payable to a person, including any potential or prospective amount so refundable, repayable or payable, or an advancement of any refund or repayment of, or payment of, an amount of tax to a person, or
- (c) the avoidance of any obligation to deduct or account for tax,

arising out of or by reason of a transaction, including a transaction where another transaction would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the transaction;

‘tax reference number’, in relation to a person, means—

- (a) in the case of a person who is an individual, the individual’s PPS Number, and
- (b) in any other case—
  - (i) the reference number stated in any return of income form or notice of assessment issued to the person by the Revenue Commissioners, or
  - (ii) the registration number of the person for the purposes of value-added tax;

‘transaction’ means—

- (a) any transaction, action, course of action, course of conduct, scheme or plan,
- (b) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and
- (c) any series of or combination of the circumstances referred to in paragraphs (a) and (b),

whether entered into or arranged by one person or by two or more persons—

- (i) whether acting in concert or not,
- (ii) whether or not entered into or arranged wholly or partly outside the State, or
- (iii) whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions,

and any proposal for any transaction shall be construed accordingly.

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- (2) (a) For the purposes of this Chapter, unless the context otherwise requires, a reference to a specified description shall be construed as a reference to a class or classes of transaction which are specified in regulations made under section 817Q.
- (b) A class of transaction referred to in paragraph (a) and which is specified in regulations made under section 817Q shall fall within at least one of the categories of transaction referred to in paragraph (c).
- (c) The categories of transaction referred to in paragraph (b) are as follows:
- (i) a transaction where, but for the provisions of this Chapter, a promoter or person would, or might reasonably be expected to, wish to keep the transaction or any element of the transaction (including the way in which the transaction is structured) which gives rise to the tax advantage expected to be obtained, confidential from—
    - (I) the Revenue Commissioners, or
    - (II) any other class of person prescribed under section 817Q for the purposes of this subparagraph,  
for any purpose prescribed by regulations made under section 817Q;
  - (ii) a transaction in relation to which a promoter, whether directly or indirectly, obtains from or charges to, or might reasonably be expected to obtain from or charge to, a person implementing, or considering implementing, such transaction, fees that are to a significant extent attributable to, or to any extent contingent upon, the obtaining of a tax advantage;
  - (iii) a transaction which involves standardised or mainly standardised documentation, the form of which is largely determined by the promoter and which require the person implementing the transaction to enter into a specific transaction, or series of transactions, that are standardised, or substantially standardised, in form;
  - (iv) a transaction, or any element of such transaction (including the way in which the transaction is structured), which gives rise to a tax advantage of a class or classes prescribed in regulations made under section 817Q for the purposes of this subparagraph.

817E.—Subject to this Chapter, a promoter shall, within the specified period after the relevant date, provide the Revenue Commissioners with specified information relating to any disclosable transaction.

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817F.—Any person who enters into any transaction forming part of any disclosable transaction in relation to which—

- (a) a promoter is outside the State, and
- (b) no promoter is in the State,

shall, within the specified period after so doing, provide the Revenue Commissioners with specified information relating to the disclosable transaction.

817G.—Any person who enters into any transaction forming part of a disclosable transaction as respects which neither that person nor any other person in the State has an obligation to comply with section 817E or 817F shall within the specified period after so doing provide the Revenue Commissioners with specified information relating to the disclosable transaction.

817H.—(1) Any person who enters into a transaction forming part of a disclosable transaction as respects which the promoter, by virtue of section 817J, does not comply with section 817E, shall within the specified period concerned after entering such transaction, provide the Revenue Commissioners with specified information relating to the disclosable transaction.

(2) A promoter who by virtue of section 817J does not comply with section 817E shall inform each person to whom the promoter has made the disclosable transaction available for implementation of the obligations placed on that person by virtue of subsection (1).

(3) A promoter who by virtue of section 817J does not comply with section 817E shall inform the Revenue Commissioners accordingly within the specified period.

817I.—(1) Where the Revenue Commissioners have reasonable grounds for believing that—

- (a) a person is the promoter of a transaction that may be a disclosable transaction, or
- (b) a person has entered into a transaction that may form part of a disclosable transaction, which if it were such a transaction would require the person to comply with section 817G,

the Commissioners may by written notice (in this Chapter referred to as a ‘pre-disclosure enquiry’) require the person to state—

- (i) whether, in that person’s opinion, the transaction is a disclosable transaction, and
- (ii) if in that person’s opinion the transaction is not considered to be a disclosable transaction, the reasons for that opinion.

(2) A notice under subsection (1) shall specify the transaction to which it relates.

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(3) The reasons referred to in subsection (1)(ii) (in this Chapter referred to as a 'statement of reasons') shall demonstrate, by reference to this Chapter and regulations made under it, why the person holds the opinion that the transaction is not a disclosable transaction and, in particular, if the person asserts that the transaction does not fall within any specified description, the reasons shall provide sufficient information to enable the Revenue Commissioners to affirm the assertion.

(4) For the purposes of this section, it is not sufficient for the person to state that they have received an opinion given by a barrister or solicitor or a person referred to in subparagraph (i) or (ii) of section 817P(5)(a) to the effect that the transaction is not a disclosable transaction.

(5) A person to whom the Revenue Commissioners have issued a notice under subsection (1) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice, or such longer period as the Commissioners may agree.

817J.—Nothing in this Chapter shall be construed as requiring a promoter to disclose to the Revenue Commissioners information with respect to which a claim to legal professional privilege could be maintained by that promoter in legal proceedings.

817K.—(1) Where a person has provided the Revenue Commissioners with information in purported compliance with section 817E, 817F, 817G or 817H(1) and the Commissioners have reasonable grounds for believing that the person has not provided all of the specified information, the Commissioners may by notice in writing require the person to provide the information, specified in the notice, that the Commissioners have reasonable grounds for believing form part of the specified information.

(2) Where a person has provided the Revenue Commissioners with specified information in compliance with section 817E, 817F, 817G or 817H(1) the Commissioners may by notice in writing require the person to provide such other information about, or documents relating to the disclosable transaction, as the Commissioners may reasonably require in support of or in explanation of the specified information.

(3) A person to whom the Revenue Commissioners have issued a notice under subsection (1) or (2) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice, or such longer period as the Commissioners may agree.

817L.—(1) Where the Revenue Commissioners have reason to believe that a person is a marketer in relation to a transaction that may be a disclosable transaction, the Commissioners may by written notice require the person to provide the Commissioners with the name, address and, where known to the person, the tax reference number of each person who has provided that person with any information in relation to the transaction.

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(2) A notice under subsection (1) shall specify the transaction to which it relates.

(3) A person to whom the Revenue Commissioners have issued a notice under subsection (1) shall comply with the notice within the period of time specified in the notice, not being less than 21 days from the date of the notice or such longer period as the Commissioners may agree.

817M.—A person who is a promoter shall, in relation to each disclosable transaction in respect of which specified information has been provided by that promoter under section 817E, provide to the Revenue Commissioners—

- (a) within the period of time set out in regulations made under section 817Q, and
- (b) at such times falling after the end of that period as may be set out in those regulations,

the name, address and, where known to the person, the tax reference number of each person to whom that person has made the disclosable transaction available for implementation (in this Chapter referred to as the ‘client list’).

817N.—(1) Where a promoter provides the Revenue Commissioners with specified information relating to a disclosable transaction and the client list in respect of that disclosable transaction, the provision of that information shall, as respects any person included on the client list who implements the transaction, be wholly without prejudice as to whether any opinion that the disclosable transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

(2) Where a person, other than a promoter, provides the Revenue Commissioners with specified information relating to a disclosable transaction the person shall be treated as making that information available wholly without prejudice as to whether any opinion that the disclosable transaction concerned was a tax avoidance transaction, if such an opinion were to be formed by the Revenue Commissioners, would be correct.

(3) Where a person provides the Revenue Commissioners with specified information relating to a disclosable transaction, the provision of that information shall not be regarded as being, or being equivalent to, the delivery of a protective notification by that person in relation to the transaction for the purposes of section 811A.

(4) Nothing in this Chapter shall be construed as preventing the Revenue Commissioners from—

- (a) making any enquiry, or
- (b) taking any action,

at any time in connection with section 811 or 811A.

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817O.—(1) A person who fails to comply with any of the obligations imposed on that person by this Chapter and any regulations made under it shall—

- (a) where the failure relates to the obligation imposed on a person under section 817H(2), 817H(3), 817L, 817K(1), 817K(2), 817L or 817M, be liable to—
  - (i) a penalty not exceeding €4,000, and
  - (ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of €100 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph,

and

- (b) where the failure relates to the obligation imposed on a person under section 817E, 817F, 817G or 817H(1), be liable to—
  - (i) a penalty not exceeding €500 for each day during the initial period, and
  - (ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of €500 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph.

(2) In subsection (1)(b)—

‘the initial period’ means the period—

- (a) beginning on the relevant day, and
- (b) ending on the day on which an application referred to in subsection (3) is made;

‘relevant day’ means the first day after the specified period.

- (3) (a) Notwithstanding section 1077B, the Revenue Commissioners shall, in relation to a failure referred to in subsection (1), make an application to the relevant court for that court to determine whether the person named in the application has failed to comply with the obligation imposed on that person by a section referred to in subsection (1)(a) or (b), as the case may be.
- (b) In paragraph (a) ‘relevant court’ means the District Court, the Circuit Court or the High Court, as appropriate, by reference to the jurisdictional limits for civil matters laid down in the Courts of Justice Act 1924, as amended, and the Courts (Supplemental Provisions) Act 1961, as amended.

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(4) A copy of any application under subsection (3) shall be issued to the person to whom the application relates.

(5) The relevant court shall determine whether the person named in the application referred to in subsection (3) is liable to the penalty provided for in subsection (1) and the amount of that penalty, and, where the relevant court is the High Court, in determining the amount of the penalty the Court shall have regard to paragraph (a) or (b) of subsection (6), as the case may be.

(6) In determining the amount of a penalty under subsection (5) the High Court shall have regard—

- (a) in the case of a person who is a promoter, to the amount of any fees received, or likely to have been received, by the person in connection with the disclosable transaction, and
- (b) in any other case, to the amount of any tax advantage gained, or sought to be gained, by the person from the disclosable transaction.

(7) Section 1077C shall apply for the purposes of a penalty under subsection (1).

(8) Section 1077D shall not apply for the purposes of a penalty under subsection (1).

817P.—(1) The Revenue Commissioners may, by notice in writing, make an application to the Appeal Commissioners for a determination in relation to any of the following matters—

- (a) requiring information or documents to be made available by a person in support of a statement of reasons (to the effect that a transaction is not a disclosable transaction) given by that person to the Revenue Commissioners in compliance with a notice under section 817I,
- (b) requiring information, that the Revenue Commissioners have reasonable grounds for believing form part of the specified information relating to a disclosable transaction, to be made available by a person to the Revenue Commissioners, following the failure of the person to comply with a notice under section 817K(1),
- (c) requiring information about, or documents relating to, a disclosable transaction to be made available by a person to the Revenue Commissioners, following the failure of the person to comply with a notice under section 817K(2),
- (d) that a transaction is to be treated as a disclosable transaction, or
- (e) that a transaction is a disclosable transaction.

(2) On the hearing of an application made—

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- (a) on the grounds referred to in subsection (1)(a), the Appeal Commissioners shall determine the application by ordering if they—
  - (i) consider that the information or documents should be so made available, that the information or documents should be so made available,
  - (ii) consider that the information or documents should not be so made available, that the information or documents should not be so made available,
- (b) on the grounds referred to in subsection (1)(b), the Appeal Commissioners shall determine the application by ordering if they—
  - (i) consider that the Revenue Commissioners have reasonable grounds for so believing, that the information be so made available to the Revenue Commissioners,
  - (ii) consider that the Revenue Commissioners do not have reasonable grounds for so believing, that the information not be made available to the Revenue Commissioners,
- (c) on the grounds referred to in subsection (1)(c), the Appeal Commissioners shall determine the application by ordering if they—
  - (i) consider that the information or documents (or, as the case may be, a part of that information or some of those documents) should be so made available, that the information or documents (or, as the case may be, a part of that information or some of those documents) should be so made available,
  - (ii) consider that the information or documents should not be so made available, that the information or documents should not be so made available,
- (d) on the grounds referred to in subsection (1)(d), the Appeal Commissioners shall determine the application by ordering if they—
  - (i) are satisfied that the Revenue Commissioners have taken all reasonable steps to establish whether the transaction is a disclosable transaction and have reasonable grounds for believing that the transaction may be disclosable, that the transaction is to be treated as a disclosable transaction,
  - (ii) are not satisfied that the Revenue Commissioners have taken all reasonable steps to establish whether the transaction is a disclosable transaction or have reasonable grounds for believing that the transaction may be disclosable, that the transaction is not to be treated as a disclosable transaction,

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- (e) on the grounds referred to in subsection (1)(e), the Appeal Commissioners shall determine the application by ordering if they—
  - (i) are satisfied that the transaction is a disclosable transaction, that it is a disclosable transaction,
  - (ii) are satisfied that the transaction is not a disclosable transaction, that it is not a disclosable transaction.
- (3) For the purposes of the hearing of an application made on the grounds referred to in subsection (1)(d)—
  - (a) reasonable steps may (but need not) include the making of a pre-disclosure enquiry or the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a), and
  - (b) reasonable grounds for believing may include—
    - (i) the fact that the transaction falls within a specified description,
    - (ii) an attempt by the promoter to avoid or delay providing information or documents about the transaction on foot of a pre-disclosure enquiry or on foot of a determination of the Appeal Commissioners following the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a),
    - (iii) the failure of the promoter to comply with a pre-disclosure enquiry or a determination of the Appeal Commissioners following the making of an application by the Revenue Commissioners on the grounds referred to in subsection (1)(a), in relation to another transaction.
- (4) An application under subsection (1) shall, with any necessary modifications, be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax.
- (5) (a) On any application, the Appeal Commissioners shall permit any barrister or solicitor to plead before them on behalf of the Revenue Commissioners or the other party either orally or in writing and shall hear—
  - (i) any accountant, being any person who has been admitted a member of an incorporated society of accountants, or
  - (ii) any person who has been admitted a member of the Irish Taxation Institute.

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- (b) Notwithstanding paragraph (a), the Appeal Commissioners may permit any other person representing the Revenue Commissioners or the other party to plead before them where they are satisfied that such permission should be given.

817Q.—(1) The Revenue Commissioners may, with the consent of the Minister for Finance, make regulations—

- (a) specifying a class or classes of transaction which are to be transactions of a specified description for the purposes of this Chapter,
  - (b) prescribing a class of persons referred to in section 817D(2)(c)(i),
  - (c) prescribing a purpose referred to in section 817D(2)(c)(i),
  - (d) prescribing a class or classes of tax advantage for the purposes of section 817D(2)(c)(iv),
  - (e) specifying the information to be provided to the Revenue Commissioners by a person in relation to a disclosable transaction (in this Chapter referred to as the ‘specified information’),
  - (f) specifying the period of time within which, or time by which, as the case may be, the information referred to in paragraph (e) shall be provided to the Revenue Commissioners (in this Chapter referred to as the ‘specified period’),
  - (g) specifying the period of time within which, or time by which, as the case may be, any other information required to be provided to the Revenue Commissioners under this Chapter, is to be provided,
  - (h) specifying the circumstances in which a person is not to be treated as a promoter in relation to a disclosable transaction, and
  - (i) specifying the procedure to be adopted in giving effect to this Chapter, in so far as such procedure is not otherwise provided for, and providing generally as to the administration of this Chapter including—
    - (i) the form and manner of delivery of information to be provided under the regulations, and
    - (ii) such supplemental and incidental matters as appears to the Revenue Commissioners to be necessary.
- (2) (a) In relation to regulations made pursuant to subsection (1)(a), the regulations may specify the circumstances in which the regulations—
- (i) shall apply, or

(ii) shall not apply,  
to a particular class of transaction.

(b) The circumstances referred to in paragraph (a) shall be specified by reference to the categories of transaction referred to in section 817D(2)(c).

(3) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation.

817R.—(1) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this Chapter and regulations made under it to be performed or discharged by the Revenue Commissioners, and references in this Chapter to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so appointed.

(2) (a) In this subsection, ‘disclosable transaction’, ‘promoter’ and ‘relevant date’ have the same meaning as in Chapter 3 of Part 33 of the Principal Act, as inserted by subsection (1).

(b) Subsection (1) shall apply—

(i) to a promoter in the case of—

(I) any disclosable transaction in respect of which the relevant date falls on or after the date of the passing of this Act, and

(II) any disclosable transaction in respect of which the relevant date falls on or after the date of the passing of this Act (where that relevant date is determined on the basis of whichever of the dates referred to in the definition of ‘relevant date’ in section 817D(1) of the Principal Act, is the earliest of such dates falling on or after the date of the passing of this Act),

and

(ii) to a person referred to in sections 817F, 817G and 817H(1) of the Principal Act who enters into any transaction forming part of a disclosable transaction where the whole of the disclosable transaction is undertaken on or after the date of the passing of this Act.”.”.

—An tAire Airgeadais.