

3.9 Module 25 Revenue Law

3.9.1 Headline information about the module

Module title	Revenue Law
Module NFQ level (only if an NFQ level can be demonstrated)	8
Module number/reference	Module 25
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	3
Semester (semester1/semester2 if applicable)	Semester 1 or Semester 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	5
List the teaching and learning modes	Full time, Part time
Entry requirements (statement of knowledge, skill and competence)	Successful completion of Stages 1 and 2 of the programme
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	One Semester, 12 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	2
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
24	1:60							101		125
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored examination practical	Proctored examination written	Total		
Percentage contribution							100	100%		

3.9.2 Module aims and objectives

This module affords learners an opportunity to undertake specialized learning relating to an important area of commercial practice in Ireland. The module provides learners with a knowledge of the historical development of Revenue Law and seeks to familiarise learners with a number of specific taxes including income tax, capital gains tax, capital acquisitions tax, corporate tax and VAT. Learners are further familiarized with the jurisdiction and administration of taxation law in Ireland. The module also examines the concepts of tax avoidance and tax evasion and the legal treatment of each. Finally, the module enables learners to employ research, analytical and communication skills to address hypothetical, factual scenarios.

3.9.3 Minimum intended Module Learning Outcomes

On successful completion of this module, learners will be able to:

- (i) Discuss the different types of charges on wealth in Ireland and when and in what context these can be relevant;
- (ii) Critically review and interpret Irish Revenue Law and Statute in a systematic manner;
- (iii) Critically analyse the theoretical and philosophical underpinnings of revenue law;
- (iv) Research and present on issues of Revenue Law;
- (v) Apply Revenue Law rules and principles to the factual scenarios;
- (vi) Critique the societal impact of Revenue Law and to be conversant with areas in which reform of the law may be considered.

3.9.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

Revenue Law has a significant influence on commercial and personal matters throughout the world. Virtually, it is an advantage for every legal professional to be conversant in the law of taxation, as businesses and individuals routinely seek advice on tax matters. As such, irrespective of whether a learner plans to progress to professional practice as a solicitor or barrister, knowledge of Revenue Law is recognised as a valuable and transferable key skill for learners entering the workplace and commercial environment. This module serves to directly underpin programme learning outcomes 1, 4, 5, 6.

3.9.5 Information provided to learners about the module

Learners will receive the following resources and materials in advance of commencement: module descriptor, module learning outcomes, class plan, reading materials, notes etc. Additionally, this material will be made available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

3.9.6 Module content, organisation and structure

The Revenue Law module is a 5 ECTS credit module taught and assessed over one academic semester. The module is delivered over 12 lecture sessions of 2 hours duration. The Learning Outcomes are articulated using the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014)* and for *Generic Higher Education and Training (July 2014)*.

Module Curriculum

- Introduction: historical development and revenue law fundamentals
- Jurisdiction to tax
- Administration of the tax system
- Basic principles of income taxation: Schedule D Case I and II
- Schedule D Case I and II: expenses
- Schedule E
- Income Tax Exemptions, Investment Incentives, Tax Reliefs and Credits
- Capital allowances
- Taxation of Married Couples and Civil Partners
- Capital Gains Tax
- Capital Acquisitions Tax
- Corporation Tax
- Value Added Tax
- Tax Avoidance and Tax Evasion

3.9.7 Module teaching and learning (including formative assessment) strategy

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Revenue Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical revenue law disputes or issues. Learners are also encouraged to develop skills in legislative analysis, an important aspect of revenue law.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn

to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

3.9.8 Work-based learning and practice-placement

There is no work based learning or practical placement involved in this module.

3.9.9 E-learning

Moodle, the College Virtual Learning Environment, is used to disseminate notes, advice, and online resources to support the learners. Moodle can be accessed in the learner's home, various open labs on campus and in the library. The learners are also given access to Lynda.com as a resource for reference.

3.9.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

3.9.11 Reading lists and other learning materials

Primary Reading:

Relevant provisions of the following seminal legislation:

Taxes Consolidation Act 1997

<http://www.irishstatutebook.ie/eli/1997/act/39/enacted/en/html>

Capital Acquisitions Tax Consolidation Act 2003

<http://www.irishstatutebook.ie/eli/2003/act/1/enacted/en/html>

Value Added Tax Consolidation Act 2010

<http://www.irishstatutebook.ie/eli/2010/act/31/enacted/en/html>

Maguire (2018), Irish Income Tax 2018. Dublin: Bloomsbury Professional

Irish Taxation Institute (2018), Irish Taxation: Law and Practice, 2018-2019

Secondary Reading:

Relevant Revenue Guidance and Tax Briefings www.revenue.ie

Davies (2016) Principles of Tax Law. London: Sweet and Maxwell

Tiley (2016) Revenue Law. London: Hart Publishing

3.9.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

3.9.13 Module summative assessment strategy

Theoretical knowledge will be assessed by end of year examination (100%). The examination will consist of both essay and problem style questions. Essay style questions will place emphasis on the demonstration of understanding pertaining to revenue law. Problem Style questions will enable learners to apply the principles of revenue law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1	Exam	i, ii,iii,iv,v, vi, vii	100%

3.9.14 Sample assessment materials

Sample Examination

Answer any **three** of the following questions.

All questions carry equal marks.

Question 1

On 1 September 2004, Denise was gifted a house in Wexford by her parents. She started a degree course in Dublin a few weeks later and lived in a rented flat in Ranelagh from September 2004 until December 2016. During the summer of 2016, she decided that she would like to live in Dublin permanently.

In December 2016, she purchased a residence in Rathmines and moved there from her flat. She put her first house in Wexford on the market and finally sold it in May 2017. In the period from September 2004 to December 2016, Denise spent practically every weekend in her house in Wexford. In addition, she occasionally stayed overnight in the house midweek (in order to attend family functions in Wexford), commuting from Wexford to college in Dublin the following morning. She never at any stage rented out her house in Wexford while she was studying in Dublin and had originally intended returning to Wexford to live there permanently.

She has realised a substantial gain on the disposal of the Wexford property and understands that she may be able to get relief from capital gains tax on the basis that the house was her principal private residence for all but the last five months of ownership. She now seeks your advice on this matter.

Draft a letter of tax advice to Denise outlining whether or not you believe the relief should be available in her case, and advising her on the best course of action. Your letter should refer to legislation, any relevant case law and Revenue commentary.

Sample Answer 1

O'Brien & Co. Tax Consultants

Dalkey

Co. Dublin

Dear Denise,

I am writing to advise you on your eligibility for principal private residence relief on the gain arising on the disposal of your property in Wexford. In this regard, I have considered in detail the relevant legislation and some case law on the meaning of the term "principal private residence".

Capital Gains Tax Analysis

Section 604(3) TCA 1997 provides that the relief applies if the dwelling house "has been occupied by the individual as his or her only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 12 months of the period..."

Accordingly, the fact that you owned a second residence and lived there for approximately five months before selling the property in Wexford does not preclude you from availing of the relief. The question then arises as to whether or not weekend use of the house amounts to occupation of the house for the purposes of the relief. In this regard, I have been unable to identify an Irish case with facts similar to yours. However, the commentary in the Irish Revenue manual is useful and some UK case law is also relevant.

In the Revenue Commissioners' manual on Capital Gains Tax, it is stated: "The word 'residence' has its normal meaning and for an individual this is a dwelling in which he habitually lives; in other words, it is his home."

It follows that actual physical occupation of the dwelling house by the individual is necessary before a claim can be accepted that it is or was his residence. Whilst each case must depend on its own facts, a dwelling house should not be regarded as an individual's residence where the occupation is on a purely temporary basis. For example, an individual may acquire a house and then decide not to make it his residence and before disposing of it he may arrange to make his home in a second house so that the first house clearly never was his residence. Nevertheless, he may stay in the first house for a very short period in an attempt to show that it was his main residence. Exemption should not be granted in respect of such a period of nominal occupation. Similarly, a few nights spent in a house whilst repairs and redecoration are carried out prior to its disposal would not be sufficient to establish a claim for exemption.

Clearly, a nominal period of occupation will not suffice. The Revenue Guidance is attempting to draw a distinction between what the Revenue Commissioners regard as genuine "residence" and "residence" which they regard as being for the sole purpose of obtaining the relief. It is not clear that the legislation itself makes such distinction. In your case, it should be possible to argue that your weekend stays were not simply "nominal" occupation solely for the purposes of obtaining the relief, on the basis that your original intention was never to sell the house, but rather to live there permanently. I would hope that consistent use of the house at weekends over the course of over five years would not constitute "nominal" occupation. The fact that you occasionally stayed in the house mid-week is also helpful.

UK Case Law

The judgement in the UK case considered below is relevant as the facts of the case have certain similarities with yours. Unfortunately, this decision is not favourable. However, you should bear in mind that UK case law is not binding in Ireland, although it does carry some weight. In addition, it is possible to distinguish your circumstances on the basis that you lived in the house more regularly than the UK taxpayer and on the basis that you never viewed the house as "temporary accommodation".

In order to avail of the relief relating to the disposal of a principal private residence it is necessary that it be a dwelling house which has been occupied by the taxpayer (or in certain circumstances by the beneficiary of a trust) "as his only or main residence".

The UK case of Goodwin v Curtis concerned a UK taxpayer who acquired a dwelling house and occupied it for only a very brief period.

The taxpayer had acquired a house with the intention of occupying it as a permanent residence, but due to changes in his circumstances, he almost immediately entered into arrangements to resell it and in consequence occupied the house for only a few weeks. During the time while he occupied the house, it was the only accommodation owned by him which was available to him as a dwelling.

The judge, Sir John Vinelott, quoted Lord Denning in the Court of Appeal decision in the case of Fox v Stirk and Bristol Electrical Registration Officer where he said inter alia "temporary residence at an address does not make a man resident there. A guest who comes for the weekend is not resident.

A short stay visitor is not resident." Sir John Vinelott said "in my judgement (the Commissioners) were fully entitled to take the view that the farmhouse was used not as a residence but as mere temporary accommodation for a period that the taxpayer hoped would be brief and which in fact lasted some 32 days between completion of the sale to him and completion of the sale by him."

The judge concluded that the brevity of stay in the house was such that during the time he lived there, the taxpayer did not reside there, and it was not his residence. The case gave no indication as to the minimum period of occupation of a house, which in the view of the English Courts would constitute "residence". The Fox case from which Lord Denning's quote was taken was not concerned with taxation, nor with whether or not a dwelling house was a person's residence but rather with whether certain persons were resident in a particular constituency for electoral purposes. The decision in the Goodwin v Curtis case is open to criticism but should nonetheless be noted.

Proposed course of action

While you do have a strong basis for claiming principal private residence relief, there is a risk that living in the house during weekends only or on an occasional basis will not suffice. While the Revenue may accept that it was your principal private residence without raising any questions, they have a period of six years during which they may reopen your case at any time. If they do reopen your case and subsequently deny you the principal private residence relief, interest and penalties may arise. Accordingly, I believe it would be helpful to seek their confirmation of your position in advance.

In your letter seeking confirmation of your tax position, you should provide details of the amount of time you spent in the house, emphasising the regular nature of occupation. You should also emphasise the fact that you originally intended living

there permanently. Any information that demonstrates this intention to live there permanently would also be helpful. In this case, if Revenue agrees that the house was your principal private residence, there is no risk of interest penalties in the future. However, a capital gains tax liability will arise if Revenue takes the view that it was not your principal private residence.

Alternatively, if you do not wish to make a formal submission in relation to the status of the house and if you are very concerned about avoiding potential interest penalties, you may prefer to make an “expression of doubt” when filing your return. This will involve filing a return (on the basis that the relief applies) by the relevant due date. However, it will be necessary to include a covering letter with the return making a formal “expression of doubt”.

This involves detailing your concerns about the status of the house as your principal private residence for the relevant period and also explaining the reasons for those concerns. In this scenario, you are totally protected from interest and penalties should the Revenue subsequently decide that you are not entitled to the relief and that capital gains tax is payable.

The relevant due date for filing this return and the “expression of doubt” is 31 October 2018. The due date for payment of any CGT arising is 15 December 2017. If you have any questions regarding the above, please do not hesitate to contact me.

*Yours sincerely
P N O’Brien
Chartered Tax Adviser (CTA)*

Question 2

Answer (a), (b) and (c)

- (a) Explain how a liability to Capital Acquisitions Tax may arise and describe the territorial scope of this tax.
- (b) Janet gives her brother Gerry sole rights to use and enjoy her holiday cottage in Kerry for life and full vacant possession and title to pass to her nephew Patrick, on Gerry’s death. Gerry died some months later and Patrick became entitled to the property.
 - (i) Who is/are the donees?
 - (ii) What is/are the valuation date(s)?
 - (iii) Are they entitled to any exemptions?
- (c) On 1 January 2017, James agreed to transfer his farm to his son Joseph when he marries. Joseph subsequently marries on 1 July 2017.
 - (i) What is the date of disposition?
 - (ii) When does, Joseph become “beneficially entitled in possession”?
 - (iii) What is the valuation date?
 - (iv) When is the CAT payable and when should the CAT return be filed?

Sample Answer 2

Part (a) - Liability to CAT and Territorial scope of CAT

A liability to CAT arises for a beneficiary when a gift or inheritance is received.

Every individual has three tax free group thresholds i.e. Group A, B and C. The category depends on the relationship of the beneficiary to the disposer e.g. Group A are benefits from parents to children and the current tax free threshold is €310,000.

The thresholds are lifetime limits and once exceeded, CAT is payable at 33% on the excess.

A small gift exemption of €3,000 from each disposer is also available to a beneficiary per annum.

For dispositions/benefits on or after 1 December 1999, the entire property comprising a gift or inheritance is within the scope of CAT where:

The disposer is resident or ordinarily resident in the State, or

The donee or successor is resident or ordinarily resident in the State, or

The property is situated in the State

Explanation of:

Res (183-day test and 280-day test) and

Ord Res (3 years of consecutive Irish tax residency) also required.

Part (b)

- *Gerry is the donee of a life interest and Patrick is the donee of a freehold interest.*
- *The valuation date for Gerry is when he received the right to use the cottage. The valuation date for Patrick is the date of death of Gerry.*
- *Gerry is entitled to the small gift exemption of €3,000.*
- *The date of disposition is 1 January 2017.*
- *Joseph becomes "beneficially entitled in possession" on 1 July 2017.*
- *The valuation date is 1 July 2017.*
- *CAT is payable on 31 October 2017. The return must be filed by 31 October 2017.*

Question 3

Answer (a), (b) and (c)

Dermot is establishing a food market in Dublin. He is currently an employee of a competing food store and his salary is paid via payroll and taxed at source. He understands that once he starts trading his food market he will have to pay income tax arising on his profits to the Revenue. He is unsure how the process works and would like some guidance.

- (a) Describe **five** pieces of advice in relation to the operation of the income tax system in Ireland for individuals who are self-employed.

- (b) Outline **four** examples of the type of allowable expenses that Dermot can offset against any taxable profits in order to reduce his income tax liability. He will incur the normal business expenses common to the food industry.
- (c) Outline **three** examples of the type of expenses that Dermot cannot use to reduce his income tax liability (i.e. disallowable expenses/add-backs for tax purposes).

Sample Answer 3

Part (a) – Operation of Income tax system

Explanation of any 5 of the below

- *Pay and file dates (i.e. “Pay and File” system)*
- *ROS and 31 Oct/Nov extension*
- *Payment of preliminary tax for current tax year and payment of balance of income tax for the previous year*
- *Explanation of preliminary tax (i.e. 105%/100%/90%)*
- *Interest on late payment – 0.0219%*
- *Late filing – 5% and 10% surcharge – subject to 2 maximums*
- *Expression of doubt*
- *Maintenance of records for 6 years – details of documents to be held onto*
- *Revenue audit*
- *Appeals procedure*

Part (b) – Allowable expenses/trade related expenditure

Explanation of any 4 of the below

- *Heat and light*
- *Bank charges*
- *Accountancy fees*
- *Staff wages*
- *Entertaining staff*
- *IT support*

Part (c) – Disallowable/add backs

Explanation of any 3 of the below

- *Depreciation – added back. Depreciation rates for accounting purposes can be quite arbitrary and policies can vary between businesses. Capital allowances are granted instead.*
- *Entertaining suppliers – added back. Statutory exception in TCA*
- *Donation to eligible charity – added back. Finance Act 2013 change – tax relief in all cases are refunded to the approved charity itself.*
- *Interest on late payment of VAT - added back. Statutory exception in TCA.*
- *Home insurance for Dermot added back - Personal expense.*

Question 4

Define and explain **three** of the following terms from a tax perspective.

- (i) Employee
- (ii) Schedule D Case II
- (iii) Joint Assessment
- (iv) Agricultural Relief
- (v) Industrial Buildings Annual Allowances

Sample Answer 4

Employee

- *Schedule E*
- *PAYE tax payer*
- *Tax deducted at source.*
- *No obligation to file tax return (if Schedule E only source of income).*
- *Entitled to holiday and sick pay.*

Case II

- *Schedule D Case II is professional income*
- *Professions are vets, doctors, dentists etc.(distinguished from trades such as butcher, printer, mechanic etc.)*
- *Case I and II rules are the same*
- *Self-assessment basis of taxation*
- *Files his/her own tax return and remits own tax to Revenue*
- *Expenses are allowable*
- *Not entitled to holiday pay or sick pay.*
- *Case law – Vet Council*

Joint Assessment

- *Where a husband and wife elect for joint assessment, the husband and wife may be taxed on both their own and their spouse's income for any part of the year during which they are living together. A husband and wife may elect for joint assessment and the election will apply for that year and subsequent years unless either spouse withdraws the election by writing to the inspector of taxes. However, if the Inspector receives no instructions to the contrary an election is deemed to have been made for joint assessment.*
- *Under joint assessment, the married couple will be entitled to a married tax credit which is double the single person's tax credit, the home carer's tax credit (subject to certain conditions), double the maximum mortgage interest relief which is available to a single person or an increased standard rate band³⁶ on that available to a single person.*
- *Married couples who are assessed to tax on the basis of joint assessment can elect to have either spouse regarded as the assessable spouse. The election must be made before 1 April in the year of assessment.*

Agricultural Relief

- This relief operates by reducing the market value of “agricultural property” in calculating the taxable value of a gift or inheritance taken by a qualifying “farmer”. The market value of the property is reduced by a flat rate of 90%.

The agricultural value of the property is calculated as follows:

- Market value of agricultural property €300,000
- Relief: 90% reduction of market value €270,000
- Agricultural Value of property € 30,000

For the purposes of the relief, a 'farmer' means: an individual in respect of whom at least 80% of his or her assets, after taking a gift or inheritance, consist of agricultural property on the valuation date of the gift or the inheritance.

From Finance Act 2014, “active farmer” test. Must actively farm the land or lease to someone who will actively farm the land.

By way of example, if John transfers agricultural property with a market value of €300,000 to his daughter Patricia, at a time when Patricia’s only asset is a car worth €10,000. Patricia qualifies as a 'farmer' as 80% of her assets on taking the benefit comprise agricultural assets.

Industrial Buildings Annual Allowance

- Similar to capital allowances for plant and machinery i.e. 12.5% x 8 years
- IBAA – 4% per annum over 25 years
- Creches, nursing homes is 15% x 6 years plus 10% for one year
- Case Law Examples and brief overview of same:
- e.g. *Inland Rev Comm v Lambhill*
- *Abbott Labs Limited v Carmody*

Question 5

The Revenue Guidance in relation to tax avoidance provides as follows:

“Tax avoidance can be described as using tax reliefs and allowances in a way in which they were not intended to be used. Tax avoidance may also involve the re-labelling or re-characterisation of a transaction which was undertaken primarily to claim a tax advantage, and not primarily for business reasons. Tax avoidance often involves contrived, artificial transactions that serve little or no purpose other than to give rise to a tax advantage.”

Describe the ways in which the Taxes Consolidation Act 1997 attempts to prevent transactions which seek to avoid tax. Refer to tax legislation and relevant case law in your answer.

Sample Answer 5

Tax advantage means a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment, or a refund of or a payment of an amount of tax, or an increase in an amount of tax, refundable or otherwise payable to a person, including any potential or prospective amount so refundable or payable, 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 consequences in relation to a tax avoidance transaction, means such adjustments and acts as may be made and done by the Revenue in order to withdraw or deny the tax advantage resulting from the tax avoidance transaction;

Transaction means any transaction, action, course of action, course of conduct, scheme, plan or proposal, 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 any series of or combination whether entered into or arranged by one person or by 2 or more persons— whether acting in concert or not, whether or not entered into or arranged wholly or partly outside the State, or whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions.

A transaction shall be a “tax avoidance transaction” if having regard to any one or more of the following—

- ✓ the results of the transaction,*
- ✓ its use as a means of achieving those results,*
- ✓ and any other means by which the results or any part of the results could have been achieved,*

the Revenue Commissioners form the opinion that the transaction gives rise to, or but for this section would give rise to, a tax advantage, and the transaction was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage,

If the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction, they shall immediately on forming such an opinion give notice in writing of the opinion to any person from whom a tax advantage would be withdrawn or to whom a tax advantage would be denied or to whom relief from double taxation would be given if the opinion became final and conclusive.

The GAAR is set out in section 811C of the Taxes Consolidation Act 1997, and applies to transactions which commenced after 23 October 2014. The GAAR is intended to defeat tax avoidance schemes which have little or no commercial purpose, and which are primarily entered into to obtain a tax advantage. If a

taxpayer has entered into a transaction which it would be reasonable to consider is a tax avoidance transaction under the GAAR, then the taxpayer is not entitled to claim the tax advantage when submitting their tax return. If a taxpayer has entered into a tax avoidance transaction and has claimed the benefit of a tax advantage contrary to the GAAR, there is no time limit on when Revenue can:

- *carry out enquiries as to whether or not the transaction is a tax avoidance transaction*
- *withdraw the tax advantage by, for example, amending an assessment*
- *collect or recover any amount of tax.*

Examples of relevant case law – lots of examples and those used by students may not be listed below so check if they are a tax avoidance case

- *McGrath v. McDermott*
- *Furniss v Dawson*
- *O'Flynn Construction*
- *IRC v Duke of Westminster*
- *Cussens v Brosnan*

Question 6

Answer both (a) and (b)

- (a) Explain the operation of the Irish VAT system. In doing so, describe how a VAT registered business can reclaim VAT incurred, and discharge VAT due, to the Revenue Commissioners.
- (b) With regard to **one** of the following cases, describe the background facts of the case and the key principle that it established.
- (i) *Yarmouth v France* CA (1887) 19 QBD 647
 - (ii) *J. Lyons & Co Ltd. v. Attorney General* [1944] Ch. 281
 - (iii) *Jarrold v. John Good & Sons Ltd.* (1962) 40 T.C. 681

Sample Answer 6

Part (a) – VAT

Explanation of the below required:

- *VAT returns must be filed on ROS on a bi-monthly basis.*
- *Filing date is 23rd day of month following bi-monthly period.*
- *VAT3 returns are bi-monthly, RTD is yearly.*
- *VAT thresholds - €37,500 for services and €75,000 for goods*
- *VAT rates are 23%, 13.5%, 9% and 0%*
- *When paying VAT to Revenue for a period an accountable person may deduct the VAT charged on the goods and services which were used for*

the purposes of his taxable business in that period by claiming an input credit.

- *If the input credit is higher than the VAT collected from clients and customers in that VAT period, the taxpayer will get a VAT refund from Revenue.*
- *No deduction may be made for the VAT on goods and services which are not used to make VAT supplies, for example goods used in a VAT exempt activity (e.g. providing financial advice).*
- *If a person carries on both a taxable and exempt business, he can only deduct the VAT relating to the taxable business. If dual-use inputs are used e.g. goods/ services are used for both a taxable and an exempt activity, the VAT paid should be apportioned between the taxable and exempt supplies.*

Part (b)

Yarmouth v France - laying down three essential qualifications for a matter to be "plant":

"in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business - not his stock-in-trade which he buys or makes for sale; but all his goods and chattels, fixed or variable, dead or alive, which he keeps for permanent employment in his business".

- *It must be "Apparatus";*
- *It must be used for the carrying on of a business;*
- *It must be kept for permanent use in the business.*
- *He stated that the difficulty in any case was in determining what "business apparatus" actually was.*

Yarmouth made it clear that the business premises are not plant because they are not 'goods or chattels' employed in carrying on the business. Rather, they are the place or setting in which the business is conducted.

The test of whether an item is apparatus used in carrying on a business is the 'functionality test'.

If the asset has a function, it will be plant and capital allowances can be claimed. However, if expenditure has been incurred by the trader on part of the setting within which he runs his business, it will not be plant and no allowances can be claimed.

In J. Lyons & Co Ltd. v. Attorney General [1944] Ch. 281; the test of "apparatus" was refined further. The question in the case was whether electric sockets, wires and lamps used for lighting a restaurant were "plant" (for the purpose of the War Damage Act 1943!). Uthwatt J posed the question: "are the lamps and fittings properly to be regarded as part of the setting in which the business is carried out or as part of the apparatus used in carrying on the business?" ...He held that the lamps

were simply part of the setting where the business was carried out and were not apparatus:

...the presence of lamps in the building is not dictated by the particular trade there carried on, or the fact that it is for trade purposes that the building is used. Lamps are required to enable the building to be used where natural light is insufficient. The actual lamps present no special features either in construction, purpose or position, and being supplied with electricity from public suppliers, they form no part of an electric lighting plant in the building...

Jarrold v. John Good & Sons Ltd. (1962) 40 T.C. 681 - Firm of shipping agents used special partitioning to divide up floor space in its premises. The partitioning was fixed to the structure of the building by screws in the floor and ceiling which could be easily moved. Although it was accepted on all sides that the partitions formed no part of the structure of the building, the Crown tried to argue that since they were merely part of the setting for the taxpayer's business, they could not constitute "plant". The court held in favour of the taxpayer. The Commissioners found as a fact that as a matter of commercial necessity the partitions had to possess mobility and flexibility for the day to day running of the business. They were apparatus with which the company carried on its business.