Overview of
Irish Taxation

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Introduction

Tax

The tax portion of this course comprises seven modules and presents an overview of the Irish taxation system. It looks at the basic principles of the main direct taxes such as income tax, corporation tax, capital gains tax, and capital acquisitions tax (CAT). In addition it looks at indirect taxes in Ireland such as Value Added Tax (VAT) and stamp duty. Finally this course will give you an overview of the Revenue audit system in Ireland.

Module 1 outlines the different categories an individual's income can fall into and illustrates how this is brought together in a total income computation and how tax is charged on this income.

Module 2 looks at the VAT on goods and services, its registration requirements, the conditions governing the charging of VAT, and the different VAT rates.

Module 3 examines the main rules of corporation tax, including computation of profits, tax rates, company withholding tax, reliefs for losses incurred by a company, and other kinds of reliefs.

Module 4 discusses how capital gains and losses for individuals are calculated, how gains are taxed, and how losses are relieved. It also outlines the main reliefs for CGT.

Module 5 looks at CAT and the factors that go into determining the tax liability for gifts and inheritances. It also outlines the various tax exemptions and reliefs.

Module 6 looks at stamp duty, who is liable for it, and how it is calculated. It also outlines the rates, payment requirements, and exemptions.

Module 7 examines the Revenue audit system for self-assessed income, the penalties that apply to different categories of tax default, the ways to mitigate these penalties, and the Revenue powers.

This course can only provide a brief introduction to Irish taxation and the course material should not be relied on as a substitute for specialised professional advice in connection with any particular matter. The law is stated in accordance with legislation up to and including *Finance Act 2014*.

Law

The law portion of this course comprises five modules and is designed to give you an overview of the principal areas of Irish law that are likely to concern you in your work as an accountant.

The first module gives a broad explanation of Irish law, including its various sources and the court system in which legal disputes are determined. It distinguishes between civil and criminal law and discusses the significance of Ireland's membership in the European Union.

The second module covers contract law, perhaps the most important part of civil law. It illustrates what makes a valid contract and what happens when one party fails to carry out their promise.

Continuing with civil law, the third module examines the law of tort — and negligence in particular. Negligence in the professional arena is, of course, of great concern to accountants, as it is for other professionals, and it is given separate consideration before going on to discuss remedies and defences applicable to an action for negligence.

The course then goes on to look at the different types of business: sole traders, agents, companies, and partnerships. Module 4 describes the principal legal considerations applicable to each, including statutory regulation, and explains the basis for understanding the authority and liability of an agent, partner or director as each acts for the business.

The final module considers what happens when a business runs into financial difficulties. In respect of companies, this module covers company voluntary arrangements, administration, and receivership as well as liquidation and striking off. In respect of individuals, including partners, it looks at individual voluntary arrangements and bankruptcy.

This course gives a broad overview of key areas of law. Its purpose is to give a basic understanding and awareness of issues where you would be advised to seek professional legal advice. It is written on the basis of the law as at June 2015.

Although the course material has been carefully prepared by the authors, neither the CPA Ireland nor the course authors or any persons involved in the preparation of this material accept legal responsibility for its contents or for any consequences arising from its use.

Tax Module 1:

Income Tax

Tax Module 1: Income Tax

[1.1 Introduction](#)

[1.2 Rules for Calculation of Income tax](#)

[1.3 Calculation of Income Tax](#)

[1.4 Filing Dates for Income Tax Returns](#)

1.1 Introduction

Income tax in the Irish State (Ireland) is a tax levied on the income a person earn. In general, income tax is charged on the worldwide income of residents and the Irish sourced income of non- residents. An individual who is liable to pay income tax is known as a chargeable person.

In Ireland there are many different categories of income called **cases** and **schedules,** all of which are liable to income tax:

- Case I: Trading profits — Self-employed
- Case II : Profits of professions — Self-employed
- Case III: Untaxed interest and all foreign income — Foreign rental profit, foreign dividends or bank interest
- Case IV: Taxed interest and profits or gains not taxed under any other case
- Case V: Rental income arising from property situated in Ireland — Irish rental profit
- Schedule E: Income earned as an employee
- Schedule F: Income earned from dividends received from an Irish company

A chargeable person's taxable income is the sum of all the income earned from all the cases and schedules listed above. It is not very common for a chargeable person to have income earned from *all* of the above cases and schedules. However, the following is one example of a chargeable person with several categories of taxable income.

EXAMPLE 1.1

Multiple categories of taxable income

1. Working part-time as an employee for a third party (Schedule E);
2. Receipt of dividend income from an Irish Company (Schedule F);
3. Working part-time as a self-employed tradesman — for example, as a carpenter or electrician (Case I);
4. Rental income from an apartment rented out in a popular foreign holiday resort (Case III);
5. Interest earned on a deposit account with an Irish bank. Tax at source, known as Deposit Interest Retention Tax (DIRT), is deducted (Case IV);
6. Rental income on a property rented out in Ireland (Case V).

1.2 Rules For Calculation of Income Tax

Various rules apply to the calculation of tax on income arising from any of the cases and schedules referred to above.

Case I and Case II income is calculated by

- Ascertaining a chargeable person's total turnover (income) for the year in question, and
- Subtracting from that all of the chargeable person's tax allowable revenue expenses, in relation to the trade. These include, for example, salaries and insurance.

It is important to know that some expenses that are allowable for accounting purposes are not allowable for tax purposes. An example is depreciation. The calculation of depreciation, which is an accounting expense, involves an element of subjectivity. Chargeable persons in Ireland are granted tax relief on capital expenditure via capital allowances (also known as tax depreciation) at a rate of 12.5% on the cost of the asset.

Case III income is calculated on any interest a chargeable person earns from monies on deposits, for example, or other income from any sources it receives from outside Ireland.

Case IV income is calculated again on any interest a chargeable person earns from monies on deposits where the financial institution deducts a tax at source on the interest (DIRT).

Case V income is calculated by taking the total rent a chargeable person receives from all his Irish rentals/lettings and deducting from that rental income all the tax allowable Case V expenses.

Schedule E income is essentially the income a chargeable person earns as an employee of somebody else. There are numerous complex tax issues surrounding the area of Schedule E income in Ireland. Some of these relate to:

- Termination payments — when an employee is let go / laid off
- Benefit-in-kind — the emoluments of an employment that are not in the form of cash (for example, free use of a company car, subsidized accommodation)
- Share schemes

Chargeable persons who are taxed under Schedule E (employees) do not need to file annual income tax returns as they pay their tax on a weekly/monthly basis. The tax is collected by their employers at source in the form of a deduction from their weekly/monthly salary under the Pay As You Earn (PAYE) system. The employer later remits this tax to the Revenue Commissioners by specified dates.

Chargeable persons who earn income in the classifications of Case I to Case V and Schedule F are required to submit an annual income tax return to the Irish Revenue Commissioners.

1.3 Calculation of Income Tax

Note: All rates and credits below are applicable at the time of writing this article (for the 2015 tax year).

Once calculated, a chargeable person's taxable income is subject to tax at the following rates:

1) A single person in Ireland can earn €33,800 and pay tax at 20% on that income. Any income the person earns over that amount is taxed at 40%.
2) A married couple in Ireland can earn €67,600 (that is, €42,800 for one spouse with an increase of €24,800 maximum for the second spouse) and pay tax at 20% on that income. The increase in the amount of income that is subject to 20% tax is restricted to the lower of €24,800 or the amount of the income of the Spouse with the lower income. Any income the couple earns over that amount is taxed at 40%.

Once a chargeable person's income tax liability is calculated, there are allowable deductions from it, called **tax credits**. The most common are:

- Single person — €1,650
- Married couple — €3,300

- Single person child carer credit — €1,650
- Home carer — €810
- Dependent relative — €70

EXAMPLE 1.2

Calculating income tax payable

Joe is a single man and a self-employed carpenter. His taxable Case I income for the year to December 31, 2015, is €80,000. He also has Case V net rental income of €20,000.

Joe's tax liability is calculated as follows:

Case I Income	€80,000
Case V income	€20,000
Total taxable income	**€100,000**
Income tax:	
First €33,800 x 20%	= €6,760
Balance above €66,200 x 40%	= €26,480
Tax due	**€33,240**
Less	
Tax credits:	
Single	€(1,650)
Tax payable	**€31,590**

1.4 Filing Dates For Income Tax Returns

Every chargeable person who is required to file an annual income tax return must do so by October 31 in the year after the year of assessment.

In the above example, Joe's income tax return for 2015 is due to be filed and his tax due (€31,590) paid by October 31, 2016.

This must be filed using Form 11.

Tax Module 2:

Value Added Tax (VAT)

Tax Module 2: Value Added Tax (VAT)

2.1 Overview

2.2 VAT: A European Tax

2.3 Charge to VAT

2.4 Rates of VAT in Ireland

2.5 Non-deductible VAT

2.6 Administration of VAT

2.7 Statutory Penalties

2.1 Overview

VAT is a tax on consumer spending operating at each level of the supply chain. It was introduced in Ireland with effect from November 1, 1972, when Ireland became part of the European Economic Community, which later became the European Union (EU). It is collected by VAT-registered traders on their supplies of goods and services effected within the Irish State, for consideration, to their customers. Generally, each such trader, in the chain of supply from manufacturer through to retailer, charges VAT on his or her sales and is entitled to deduct from this amount the VAT paid on his or her purchases. However, in some circumstances, particularly in the construction industry, VAT is not charged by the supplier, but instead the customer simply accounts for the VAT as if it had been charged.

The effect of offsetting VAT on purchases against VAT on sales is to impose the tax on the 'added value' at each stage of production, hence the name "value-added tax." For the final consumer, not being VAT-registered, VAT simply forms part of the purchase price and therefore the ultimate burden of paying VAT rests with the final consumer.

At the time of writing, VAT is charged at a number of different rates. Most goods and services in Ireland are liable at the standard rate of VAT. There is also a reduced rate, a second "temporary" reduced rate, and a zero rate. These lower rates cover a mix of goods and services and cannot be easily categorized. However, it is worth noting that the reduced rate and the temporary reduced rate apply to a number of labour-intensive services, and the zero rate applies to many foods and medicines, and to children's clothes. Finally, there is a special rate which applies principally to

the sale of livestock by VAT-registered traders only. (There is a special scheme dealing with agricultural supplies made by farmers, who are generally not required to register for VAT.)

In addition to these rates, there are a number of activities which are exempt from VAT. These include many services supplied in the public interest — for example, in the areas of health, childcare, and education. The goods and services that are exempt from VAT, as well as the goods and services that are liable at the zero or reduced rates, are all listed in VAT legislation. All other goods and services are standard rated and, accordingly, there will never be a complete list of standard-rated goods and services.

2.2 VAT: A European Tax

As previously referred to, a requirement of Ireland's entry into the European Economic Community, now the EU, was to put in place a VAT system. Directives in relation to VAT have been subsequently issued by the European Council. Each directive that is issued is an update of an earlier one, and these directives are the primary source of EU VAT legislation. Each EU member state must ensure that its national VAT legislation is in harmony with these directives. If there is a disharmony between a member's national VAT legislation and the directives, then the national legislation must be changed. The two main bodies in the EU that deal with VAT are:

1. The European Commission
2. The European Court of Justice (ECJ)

2.3 Charge to VAT

In Ireland, before any business can charge VAT on its sales, it must be regarded as an "accountable person." This essentially means that he/she supplies goods or services:

- For sale
- For consideration
- That must be effected within the State, that is, Ireland.
- That must be in the furtherance of business.

Once a retailer satisfies these conditions, he/she is regarded as a "taxable person." To be regarded as an accountable person, the turnover from the supply of the goods or services must exceed or be likely to exceed the following thresholds:

- €37,500 from the supply of services
- €75,000 from the supply of goods
- €75,000 from the supply of goods and services where 90% or more of the turnover is derived from supplies of goods

All businesses satisfying the above conditions are obliged to register for VAT and charge VAT on their sales to consumers.

2.4 Rates of VAT in Ireland

At the time of writing, the following are the rates of VAT in Ireland and (generally) what supply they relate to:

- The standard rate of VAT is 23%, and this generally applies to the supply of goods and services.
- The reduced rate of VAT is 13.5%, and this generally certain fuels, building services, repair, cleaning and maintenance services.
- The second reduced rate of VAT is 9%, and this generally applies to the supply of tourism related goods and services such as restaurant and catering services and hotel and holiday accommodation.
- Zero-rated goods and services: On the sale of certain goods and services in Ireland, the retailer will charge VAT, but at 0% (for example: books, oral medicine).
- Exempt goods and services: The term "exempt" means that VAT is not charged on the supply of such goods and services (for example: financial services, insurance services). The business who supplies exempt goods or services will never be regarded as an accountable person and hence will not need to register for VAT.

2.5 Non-deductible VAT

Every business that charges VAT on their respective sales must submit a periodic VAT return to the Irish Revenue Commissioners. The retailer must pay the VAT collected from their sales *less* the VAT they paid on all of the purchases they, in turn, have made in relation to these sales (for example, raw materials, telephone bills, light and heat bills).

If VAT is incurred by an accountable person in the following circumstances, it cannot be recovered, that is, deducted from the VAT they have charged on their sales.

- The provision of food/drink or accommodation to staff, clients, and so on
- VAT incurred on any entertainment expenses
- The acquisition or hire of cars (unless they are the trader's stock-in-trade)
- The purchase of petrol (unless it is the trader's stock-in-trade)
- The private element of any expenses

2.6 Administration of VAT

Books and Records

Every accountable person is responsible for keeping full and true records of all transactions that relate to VAT — for example, a copy of all sales invoices. These must be kept for a period of six years, in either hard or soft copy format.

VAT Returns

VAT returns are made on a VAT 3 form online via the Revenue Online Service (ROS). VAT returns are usually made bi-monthly and must be filed by the 19th of the month following the bi-monthly period. For example, the January/February VAT return must be filed online by the 19th of March.

Payment of VAT

VAT must be paid online when the return is filed online.

Interest

At the time of writing, if VAT is not paid on time, interest is charged at a daily rate of 0.0274% per day.

2.7 Statutory Penalties

There are a number of fixed statutory penalties of €4,000 for failure to comply with certain obligations in relation to VAT, such as:

- Failure to register for VAT
- Failure to keep proper books and records
- Failure to comply with invoicing requirements
- Failure to charge the tax and pay the tax over to Revenue

Tax Module 3:

Corporation Tax

Tax Module 3: Corporation Tax

3.1 Overview

3.2 Calculating Company Profits

3.3 Company Losses

3.4 Company Withholding Tax

3.5 Irish Close Companies

3.6 Company Tax Filing Dates

3.1 Overview

The corporation tax was introduced in Ireland in 1976. Since then, all companies in Ireland are charged the corporation tax on all company profits. This includes trading profits and capital gains on the disposal of assets. The legislation which governs Ireland's corporation tax regime is contained in the *Taxes Consolidation Act 1997* (TCA 1997). This legislation can be found at http://www.irishstatutebook.ie/1997/en/act/pub/0039/

Corporation tax is not the only tax a company in Ireland may be liable to pay. Depending on a company's circumstances and how it transacts its business, it may be liable to some or all of the following taxes also.

- Income tax
- Capital gains tax
- Value-added tax
- Stamp duty
- Dividend withholding tax
- Relevant contract tax

A company resident in Ireland is subject to corporation tax on its worldwide profits, which are defined as its income and chargeable gains. A non-resident company which operates a trade in Ireland through a branch or agency will only be liable to Irish corporation tax on any profits earned by that branch or agency.

3.2 Calculating Company Profits

The different types of income a company in Ireland generates are taxed under various schedules and cases. There are separate figures for each case and they are all then added together to arrive at total income. The various cases are as follows:

- Case I: Trading profits
- Case III: Untaxed interest and all foreign income
- Case IV: Taxed interest and profits or gains not taxed under any other case
- Case V: Rental income arising from property situated in Ireland

See Module 4 on capital gains tax to ascertain how a capital gain is calculated.

The rate of corporation tax that applies to a company's profits is largely dependent on the type of income earned by the company. The rates applicable at the time of writing are:

- Case I income is taxed at 12.5%.
- Case III, Case IV, and Case V income is taxed at 25%.

Case I income is calculated on taxable trading profits. The financial statements prepared that are prepared will form the basis of the calculation of taxable trading profits. Case III income is calculated on any interest a company earns from monies on deposit, and so on, or income from any sources it receives from outside Ireland.

Case IV income is calculated again on any interest a company earns from monies on deposit, and so on, except this time the financial institution will deduct a tax at source on the interest. This is known as **deposit interest retention tax** (DIRT).

Case V income is calculated by taking the total rent an Irish company receives from all its rentals/lettings and deducting from that all the tax-allowable Case V expenses.

Companies in Ireland also get a deduction against their profit for expenditure on capital assets; this is known as **capital allowances or tax depreciation**. At the time of writing, this capital expenditure is expensed at 12.5% over eight years. The asset types this rate applies to are: machinery, plant, motor vehicles, and fixtures and fittings. A separate capital allowance, at 4% per annum, is allowed on a qualifying expenditure on industrial buildings (essentially the building where the trade is carried out).

Companies, for the calculation of taxable income, have to adjust their accounting profits as calculated by their financial accountants. Not all of the expenses that are allowable from an accounting point of view are allowable from a tax point of view. To calculate the taxable profits, the accounting profits will be increased by adding back some expenses (that are not tax

deductible) where those expenses were deducted from income in the financial statements. An example is a pension payment made by the company on behalf of an employee. The accountant will allow for this payment on an accruals basis. The Irish Revenue Commissioners will only allow the company to get a tax deduction on this pension payment if it has actually been paid at the year end and not merely accrued. For corporation tax purposes, each company must adjust its accounting profits accordingly to arrive at its tax-adjusted profits.

3.3 Company Losses

In Ireland, if a company makes a trading loss in a particular trading period, it can get tax relief for this loss. A trading loss can be offset against profits of any kind in the current accounting period. If a trading loss is being offset against Case III/IV/V income or chargeable gains, it must be done so on a value basis. If a loss is not used in the current accounting period, it can be offset against profits of a preceding accounting period of equal length. Again, Case III/IV/V and chargeable gains offsets will be on a value basis. An unused trading loss may be carried forward for offset against trading profits of the next and later accounting periods

3.4 Company Withholding Tax

In Ireland, companies use a variety of methods to place company profits in the hands of the shareholders. The most common method used is when companies pay cash dividends on shares. These dividends are not an allowable deduction in calculating a company’s profits. Hence, the dividend is paid out of income that has already been subject to corporation tax.

When the dividend is received by the shareholders, it is liable to income tax in their hands. When companies pay these dividends, they must deduct a 20% withholding tax and pay this to the Irish Revenue. There are a number of exceptions to this rule. For examples when dividends are paid to a corporate shareholder.

3.5 Irish Close Companies

A close company in Ireland can be defined as:

a) A company that is controlled by five or fewer participators (essentially shareholders), OR
b) A company that is controlled by any number of participators, all of whom are directors.

Special legislation has been passed in Ireland in respect of close companies. The legislation is designed specifically to negate any possibility of tax avoidance by such companies.

3.6 Company Tax Filing Dates

The obligations of a company in Ireland with regard to paying corporation tax and filing its tax returns are as follows:

- All companies must pay preliminary tax online via Revenue's Online Service (ROS) no later than the 23rd of the month before the month in which its accounting period ends. For example: November 23 if the company's year end is December 31. Companies can generally satisfy preliminary tax requirements by paying 100% of the previous period's total corporation tax liability. If a company is regarded by Irish tax legislation as being a large company, then its preliminary tax is due in two installments.
- For a company, a Form CT1 – corporation tax return must be filed online and any tax liability which is due must paid by the 23rd day of the ninth month following the end of the accounting period. For example, a company with a year end December 31, must file their Form CT1 online by September 23.

Tax Module 4:

Taxation of Capital Gains

Tax Module 4: Taxation of Capital Gains

4.1 Charge to Tax

4.2 What are Chargeable Assets?

4.3 Territoriality of Capital Gains Tax

4.4 Capital Losses

4.5 Reliefs

4.6 Administration of Capital Gains Tax

4.1 Charge to Tax

In Ireland, capital gains tax (CGT) is charged in accordance with the Taxes Consolidation Act 1997 (TCA 1997) in respect of capital gains that accrue to a person on the disposal of assets.

The chargeable gain itself is calculated on the amount of consideration received for the asset less any costs involved in acquiring or enhancing the value of the asset. These costs can also be adjusted to take inflation into account. This is called **indexation** and it is where each cost is multiplied by a specific factor depending on its date of purchase. The charge to the tax can only arise where there is an actual, or statutorily deemed, disposal of an asset. There are special rules set out in the legislation in regard to the "time of a disposal" and the location of assets. At the time of writing, the rate of CGT is 33%.

4.2 What Are Chargeable Assets

The legislation generally describes chargeable assets as:

All forms of property, whether situated in the State or not, and includes:

- Options, debts, and incorporeal property generally
- Any currency other than Irish currency
- Any form of property created by the person disposing of it or otherwise becoming owned without being acquired

All assets must be owned prior to disposal for the possible charge to CGT to arise. A **chargeable person** is the person who disposes of the above assets and crystallizes a chargeable gain.

Part disposal of assets

There are special rules that apply to the part disposal of assets. This is where not all of the ownership rights to the whole of the assets are disposed of. An example would be the sale of 20 hectares of a 100-hectare farm.

Development land

For the purpose of Irish CGT, development land is defined as "land in the State the consideration for the disposal of which exceeds its current use value at the time of disposal." Specific rules apply to the disposal of development land. Indexation on the sale of development land is restricted.

4.3 Territoriality of Capital Gains Tax

The charge to CGT will be made in a year of assessment in respect of gains accruing to a person in the year of assessment on the disposal or deemed disposal of capital assets. Stock in a business is not regarded as a capital asset, so the sale of same will be liable to income tax for an individual or corporation tax for a company.

The degree to which a person pays CGT will depend largely on three definitions:

Residence — A person is resident in Ireland if:

1. He was present in Ireland for 183 days or more in a calendar year, or
2. He was present for more than 280 days in Ireland over a period of two consecutive years, (for example, if the person spent 140 days in Ireland in year one and 150 days in Ireland in year two, then the person will be treated as resident in Ireland in year two). Also, the person must have been resident in Ireland for not less than 30 days in year one or two.

Ordinarily resident — Once a person has been resident in Ireland for three years, they then automatically become ordinarily resident.

Domicile — This is not defined in the legislation, but it is the notion of where a person is from, that is, where they were born, grew up, and are a national citizen. To decide a person's domicile, case law such as the *Claire Proes case* must be carefully considered. Pages 470 to 475 on the following link refer to the Claire Proes case: http://ec.europa.eu/civiljustice/publications/docs/report_conflits_ireland.pdf

If a person is resident, ordinarily resident, and domiciled in Ireland, they will pay CGT on any gains on the disposal of all worldwide assets. These gains need not be remitted to Ireland.

If a person is resident or ordinarily resident but not domiciled in Ireland, they will pay CGT on any gains on the disposal of all Irish assets and the remittance of any capital gains made on the

sale of non-Irish capital assets. A remittance is basically any amount of the foreign gain that is received in Ireland.

A person who is not resident or domiciled will pay CGT in Ireland on the disposal of Irish specified assets only. These are:

- land in the State
- minerals in the State or any rights, interests or other assets in relation to mining or minerals or the searching for minerals
- shares in a private company that derive the greater part of their value from the above
- assets used in the State for the purpose of a trade

Allowances

Every individual in Ireland is entitled to an annual allowance of €1,270. This means that if the gain arising on the disposal of the asset does not exceed €1,270 in a year of assessment, then no tax is chargeable.

Exemptions

There are a number of exemptions from CGT:

- Married couples: There is no CGT on inter-spousal transfers.
- Death: There is no CGT on disposals that take place as a result of an individual's death.
- Non-wasting chattels: If an asset with a life of more than 50 years is sold for less than €2,540, there is no CGT on any gain.

4.4 Capital Losses

A capital loss is calculated in the same way as a capital gain. The same calculation rules apply, that is, the sales proceeds less the cost of purchase/enhancement of the asset. There are restrictions on indexation in computing losses. Indexation cannot be used to

- create a loss, or
- increase an existing monetary loss.

Capital losses can be used in the same year as capital gains, in that the capital loss on one asset can be offset against the capital gain on another. If the capital loss is not utilized in the year of assessment, it can be carried forward and used to shelter future capital gains as they crystallize in future years of assessment. Capital losses can be carried back and set against past capital gains but only in the year of death.

4.5 Reliefs

The main reliefs from CGT are as follows.

1. **Principal private residence (PPR):** This is the house where an individual lives. If a person sells his home and up to 1 acre of land (garden), there will be no CGT on the disposal by the individual who has used it as his principal private residence throughout his period of ownership.

   The gain will be calculated on the disposal, and the extent of the exemption will depend on the following formula:

   $$\text{Gain} \times \frac{\text{Period of occupancy as PPR}}{\text{Period of ownership}} = \text{Exempt from CGT}$$

   The more time the person has used the house as his PPR, the less CGT he will be required to pay on its disposal. There are three periods of deemed occupancy even if the person has not been living there:

   - The last 12 months of ownership.
   - Any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside of Ireland.
   - Any period of up to four years during which the individual was required by the conditions of his/her employment to reside elsewhere.

2. **Retirement relief**: This is one of the most important reliefs from CGT in Irish legislation.

   This relief is granted to individuals on the disposal of all or part of their qualifying business assets. The individual must also be 55 years of age or older. There are two separate sections in the legislation which deal with:

   a. The disposal of chargeable business assets to a child. Where the individual disposing of the assets is between 55 and 65 years of age (inclusive) there is no limit on the amount of consideration that can qualify for retirement relief.
   b. The disposal of chargeable business assets to a non-child. Where the individual disposing of the assets is between 55 and 65 years of age (inclusive) and the consideration does not exceed €750,000, relief is given in respect of the full amount of tax chargeable on the disposal.

If full retirement relief cannot be claimed by the individual, then the individual can try and claim marginal (reduced) relief.

There are also distinctions made in the legislation when claiming retirement relief on:

- The disposal of the ownership of a sole trader business, and
- The disposal of the shares in a family company.

Each disposal has its own set of qualifying conditions that must be satisfied to obtain the relief.

From 1 January 2014, the amount of retirement relief available on the disposal of assets to a child has been restricted to assets with a market value of €3,000,000 in respect of disposals by an individual who is aged 66 or over.

From 1 January 2014, the amount of retirement relief available on the disposal of assets to a non-child has been restricted to assets for a consideration of €500,000 in respect of disposals by an individual who is aged 66 or over.

4.6 Administration of Capital Gains Tax

CGT is a self-assessment tax. Every person who is chargeable to CGT in a year of assessment is required to file a return.

Payment and return dates

If a CGT liability arises between January 1st and November 30th in a year of assessment, then the tax due must be paid by December 15th in the same year. If a CGT liability arises in December in a year of assessment, then the tax must be paid by January 31st in the following year.

The actual return itself must be made by October 31st in the year following the year of assessment. The forms used can be either a Form 11: http://www.revenue.ie/en/tax/it/forms/form11.pdf or a Form CG1: http://www.revenue.ie/en/tax/cgt/forms/formcg1.pdf .

Failure to submit the return on time will result in the application of a surcharge of:

- 5% of the CGT liability up to a maximum of €12,695 if filed within two months of the due date.
- 10% of the CGT liability up to a maximum of €63,485 if filed more than two months after the due date.

Tax Module 5:

Capital Acquisitions Tax

Tax Module 5: Capital Acquisitions Tax (CAT)

5.1 Overview

5.2 Territoriality Rules

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5.1 Overview

The CAT is a tax on acquisitions such as a gift or inheritance. The person who receives the benefit of the gift or the inheritance pays the CAT. The amount of CAT a recipient of a gift or inheritance pays depends on a number of factors:

a) The relationship between the recipient and the person from whom the gift or inheritance is taken (often referred to as the disponer). There are three "class thresholds" in Ireland. These thresholds are essentially the amount one person can transfer to another without a charge to CAT arising. The class thresholds (at the date of writing) are:

    1. Class A — €225,000 This class is between a parent and a child or the minor child of a deceased child. (Minor child of a deceased child is where a child of a deceased person is also deceased and that (second deceased person) has a child that is under 18 years of age, that child (under 18) is a minor child of a deceased child).
    2. Class B — €30,150 This class is among all other family relationships, that is, blood relatives. For example, where the recipient is a brother, sister,
    3. niece, nephew or grandchild.
    4. Class C - €15,075 All other relationships.

    These thresholds are subject to change annually in line with the Finance Acts.

b) The taxable value of the gift or inheritance received is the amount of the benefit that is subject to CAT. The taxable value is the market value of the benefit less any liabilities, costs, and so on, that must be paid by the beneficiary.

c) The aggregate of the taxable value of all previous benefits taken by the beneficiary from persons belonging to the same class threshold.

The current rate of CAT in Ireland (at the date of writing) is 33%.

The Revenue Commissioners publishes the up-to-date tax rates, bands and thresholds. (See http://www.revenue.ie/en/tax/cat/thresholds.html)

5.2 Territoriality Rules

There are territorial rules for determining whether or not a particular gift or inheritance is within the scope of CAT. A liability to CAT may not result even where the territoriality rules apply, as a gift or inheritance may be below the appropriate class threshold.

For Irish CAT to apply to a gift or inheritance taken, the gift or inheritance must meet one of the following conditions:

1. It must consist of Irish property.
2. The disponer is resident or ordinarily resident in the State in the year the gift or inheritance is made.
3. The donee/recipient is resident or ordinarily resident in the State in the year the gift or inheritance is made.

There are specific rules that deal with non-domiciled individuals also.

5.3 Valuation Date

The valuation date is a critical aspect of Irish CAT. It is the date when the gift/inheritance is received and the starting point for the following determinations:

1. The market value of all the elements of the gift/inheritance is established on the valuation date.
2. The taxable value of a gift/inheritance is established on the valuation date.
3. The valuation date determines when CAT is payable and when the CAT return must be filed.
4. The valuation date determines what the value of the class thresholds are and what tax rate is in force. These values and rates may change from year to year.

The valuation date of a gift is normally the date of the gift. The valuation date of an inheritance is the earlier of the following dates:

- When the beneficiary is entitled to retain the subject matter of the inheritance.
- When the beneficiary takes actual delivery/payment of the inheritance.

If assets are passing under a will or intestacy, the valuation date is usually the date on which the Grant of Representation/Probate issues from the Probate Office.

5.4 Exemptions from CAT

The following are exempt from CAT:

- Small gifts — The first €3,000 per annum made in gifts by any one disponer to any one donee is exempt.
- Married couples — Inter-spousal transfers are exempt from CAT.
- Certain dwelling houses — A gift/inheritance of certain dwelling houses are exempt if the following conditions are satisfied:
    - The recipient must have occupied the dwelling house continuously as his/her only residence for a full three years prior to the date of the gift or inheritance.
    - The recipient must not, at the date of the gift/inheritance, be beneficially entitled to any other dwelling house.
    - The recipient must continue to live there (unless they are over 55 years old) for six years.
    - There are also extra conditions to be satisfied when the house is transferred by way of a gift.

5.5 CAT Reliefs

The two biggest reliefs from Irish CAT are:

1. **Agricultural relief**. This relief is granted when the gift/inheritance consists of agricultural property. The relief itself permits the market value of the agricultural property to be reduced by 90% in computing the taxable value of the gift/inheritance taken by a “farmer.”

For the purposes of agricultural relief, a farmer means: an individual in respect of whom at least 80% of his or her assets (all the property he/she is beneficially entitled to in possession in the EU), after taking a gift or inheritance, consist of agricultural property on the valuation date of the gift or the inheritance.

To qualify for agricultural relief, the person receiving the gift or inheritance must be a farmer at the valuation date.

The 80% test does not apply in the case of agricultural property consisting of trees and underwood.

In order for agricultural relief to apply to gifts or inheritances taken on or after 1 January 2015, additional conditions must be satisfied. The beneficiary must farm the agricultural property for a period of not less than 6 years or lease the agricultural property for a period of not less than 6 years. In addition, the beneficiary (or the lessee, where relevant) must have an agricultural qualification (as defined) or farm the agricultural property for not less than 50% of his or her normal working time.

2. **Business relief.** This is the relief for the gift/inheritance of business property if certain conditions are met. The relief is a 90% reduction in the value of qualifying relevant business property which is being transferred by way of gift or inheritance.

   Relevant business property is defined as one of the following:
   - A business or an interest in a business.
   - Unquoted shares in a company subject to the condition that on the valuation date:
     - The beneficiary holds more than 25% of the voting rights, or
     - The company is controlled by the beneficiary, or
     - The beneficiary holds at least 10% of the issued share capital and has worked full-time in the company for five years.
   - Land, buildings, plant or machinery owned by the disponer but used by a company controlled by the disponer.

   Any assets held as investments will not qualify for the relief.

   There is also a condition on the period of ownership by the disponer. The disponer must have owned the relevant business property for two years in the case of an inheritance, and five years in the case of a gift, prior to their transfer.

5.6 Administration of CAT

Any individual who is required to file a CAT return will do so on Form IT38. The Form IT38 must be filed online (where certain reliefs and exemptions are being claimed) and it must be accompanied by electronic payment of any CAT due.

Where the valuation date for the gift/inheritance is between January 1st and August 31st in the year of assessment, the CAT return and payment are due before October 31st in that year.

Where the valuation date for the gift/inheritance is between September 1st and December 31st in the year of assessment, the CAT return and payment are due before October 31st in the following year.

If the return is late, interest of 0.0219% will apply per day on the liability due.

Tax Module 6: Stamp Duty

Tax Module 6: Stamp Duty

6.1 Overview

6.2 Calculation of Stamp Duty

6.3 Rates of Stamp Duty

6.4 Exemptions from Stamp Duty

6.5 Late Filing Fees and Interest

6.1 Overview

Stamp duty, in Ireland, is a tax in Ireland that relates to written documents where there is a transfer of the ownership of assets e.g. land. The legislation that governs Stamp Duty is the Stamp Duty Consolidation Act (SDCA) 1999.

Section 2 of the SDCA 1999 provides that there is a charge to stamp duty on certain written documents referred to as "instruments" in the stamp duty code. Such instruments also must be either executed in the State or, if executed outside the State, must relate to Irish property or to something done or to be done in the State.

So as the tax applies to written documents, there will be no tax applicable in the event of oral agreements.

6.2 Calculation of Stamp Duty

The rate of tax varies according to the category of instrument involved. Some kinds of instruments are liable to what is called an ad valorem duty i.e. the tax is a percentage of the transaction. Other transactions are liable to a fixed rate of stamp duty.

Who pays the stamp duty?

The person who is liable for the stamp duty on an instrument is referred to as the Accountable Person. This is the person the Revenue Commissioners will pursue for the tax if it is not paid.
The person who is regarded as the Accountable Person depends on the type of instrument involved. For example;

a) If the instrument is a Conveyance on sale – the Accountable Person is the buyer.

b) If the instrument is a Lease – the Accountable Person is the tenant.
c) If the instrument is a Mortgage – the Accountable Person is the lender.

How and when is the stamp duty paid?

Where an instrument is liable to stamp duty, an e-stamping return must be filed with Revenue and the full amount of stamp duty paid within 44 days of the date of execution. Failure to file and pay within 44 days will result in late filing and interest charges.

6.3 Rates of Stamp Duty

At the time of writing the rates of stamp duty in Ireland are;

a) Transfer Shares 1%
b) Transfer Residential Property – the first €1,000,000 at 1% and the balance at 2%.
c) Transfer Non-Residential Property – 2%

6.4 Exemptions of Stamp Duty

The following are the exemptions from stamp duty;

a) Transfer of Government Stocks
b) Transfers via Wills
c) Inter-Spousal Transfers
d) Young Trained Farmer
e) Transfers between associated companies
f) Conveyances made for charitable purposes.

6.5 Late Filing Fees and Interest

If a stamp duty return is not filed within 44 days of the execution of the instrument there is a €3,000 fine and a surcharge of

a) 5% of the stamp duty liability (up to a maximum of €12,695) where the return is filed after 44 days and/or stamp duty remains unpaid but filed/paid within 92 days of the date of execution.
b) 10% of the stamp duty liability (up to a maximum of €63,485) where the return remains unfiled and unpaid after 92 days of the date of execution.

Interest will be charged at a rate of 0.219% per day on late payment of stamp duty.

Tax Module 7:
Revenue Audit & Powers

Tax Module 7: Revenue Audit and Powers

7.1 Types of Revenue Intervention

7.2 Code of Practice for Revenue Audit and other Compliance Interventions

7.3 Revenue Powers

7.1 Types of Revenue Intervention

There are two tax systems in operation in Ireland. The first one is the **Pay As You Earn** (PAYE) system where the tax paid by each person is deducted weekly/monthly from his salary by his employer. The second one is the **self-assessment** system; this is where the person who is liable to pay the tax, the "chargeable person," is obliged to pay the tax himself. This applies to self-employed people and to those people receiving income from sources where some, or all, of the tax cannot be collected under the PAYE system. This includes, for example, profits from rents, investment income, foreign income and foreign pensions, maintenance payments to separated persons, fees, and profit arising on exercising various share options/share incentives.

As a result of the onus being on the taxpayer to meet his/her tax obligations in a correct and timely manner, the revenue intervention system was put in place to select certain tax returns for examination to ensure they are correct and in accordance with tax law. Irish Revenue has a multi-faceted approach to tackling non-compliance and amongst the activities carried out are:

- Revenue Non-Audit Compliance Interventions
- Revenue Audits (including risk selected audits, random audits and re-audits)
- Revenue Investigations

7.2 Code of Practice for Revenue Audit and Other Compliance Interventions

The Irish Revenue Commissioners Code of Practice for Revenue Audit and other Compliance Interventions: www.**revenue**.ie/en/practitioner/**code-of-practice-revenue**-audit.pdf at the time of writing is the current administrative practice guide for revenue audits in Ireland. This Code took effect from August 14, 2014. Its main features are:

- It applies a system of tax-geared penalties.
- It allows for taxpayers to make disclosures in relation to their tax returns.

Tax-geared penalties

When an audit or intervention takes place, a revenue inspector will examine the books and records, and so on, involved in a tax return. If there are mistakes/errors found in the tax return, the taxpayer may be liable to a tax-geared penalty, which is essentially a percentage of any underpaid tax. The percentage penalty a tax payer will have to pay will depend on these factors:

- The category of tax default. Each category of tax default has its own tax-geared penalty.
- The level of co-operation a taxpayer provides during an audit.
- Whether or not the taxpayer has made disclosures in relation to the tax return and what type of disclosures they are.

Categories of tax default

Deliberate behaviour

This involves a breach of a tax obligation where indicators show there was a deliberate intent on the part of the taxpayer to default. For example:

- Failure to keep proper books and records
- Deliberate omissions for the tax return
- Concealment of bank accounts or other assets

Careless behaviour

This is defined per Section 1077E TCA1997 as the "failure to take reasonable care." Where careless behaviour has taken place, the penalty depends on whether the careless behaviour gave rise to significant consequences or not.

Careless Behaviour with Significant Consequences essentially means that the amount of tax underpaid as a result of the careless behaviour is more than 15% of the actual tax correctly payable. Let us take an example where the tax paid per an incorrect tax return was €80,000. If the tax actually due was €100,000, then the tax was underpaid by €20,000. As the underpayment was more than 15% of €100,000, the underpayment is viewed as falling into the Careless Behaviour with Significant Consequences category.

Careless Behaviour without Significant Consequences essentially means that the amount of tax underpaid as a result of the careless behaviour is less than 15% of the actual tax correctly payable. Let us take an example where the tax paid per an incorrect tax return was €80,000. The tax actually due was €90,000. As the underpayment was €10,000, which is less than 15% of €90,000, the underpayment is viewed as falling into the Careless Behaviour without Significant Consequences category.

Level of cooperation

Tax-geared penalties can be mitigated depending on the level of co-operation a taxpayer gives to an auditor during a revenue audit. This is dealt with in Section 1077E TCA 1997. Co-operation includes:

- Having all books and records available for the Inspector of Taxes at the commencement of the audit.
- Responding promptly to all requests, and so on.

Disclosures

Tax-geared penalties can again be mitigated if disclosures are made by the taxpayer in relation to their tax return. This is dealt with in Section 1077E (1) TCA 1997.

A *qualifying disclosure* must contain the following elements:

- It must be in writing and signed by the taxpayer or on his or her behalf.
- The tax due must be paid with the disclosure.
- A full explanation of all the events giving rise to the disclosure must be made.

There are two types of disclosure:

1) Prompted qualifying disclosure: It must contain all the above elements and is made by the taxpayer as a result of a notification received by him/her to tell them they are being audited.

2) Un-prompted qualifying disclosure: It must contain all the above elements and is made by the taxpayer of their own free will and not as a result of them being notified of a pending revenue audit.

Actual tax-geared penalties

Category of default	Base penalty	Mitigation co-operation only	Co-operation with prompted disclosure	Co-operation with unprompted disclosure
Deliberate behaviour	100%	75%	50%	10%
Careless behaviour with significant consequences	40%	30%	20%	5%
Careless behaviour without significant consequences	20%	15%	10%	3%

7.3 Revenue Powers

The Revenue Commissioners have the power to seek information from the taxpayer or his advisors (for example, tax payer's accountant) and the ability to search for relevant records.

There are two categories of revenue powers:

1. Normal verification powers
2. Non-routine powers

Normal verification powers

These are the powers an auditor has in an audit situation — for example, the right of the auditor to make enquiries to ensure that an accurate tax return has been made.

Non-routine powers

These are the powers the Revenue Commissioners may use in the course of investigating a taxpayer with a view to criminal prosecution. For example, they can obtain financial information about a taxpayer from his bank once the appropriate legal documents have been obtained.

Other non-routine powers are the ability to search for what they regard as documents that are pertinent to a tax return and, once retrieved, they can seize them. Broadly, this gives the Revenue Commissioners the right to:

- Enter premises without a warrant, except where the premises are wholly used as a dwelling house, and to seize documents.
- Enter a premises wholly used as a dwelling house once an appropriate legal warrant has been obtained.