



Between:

THE APPELLANT

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a decision of the Revenue Commissioners (hereinafter the “Respondent”) on 5th February 2020 in respect of Value Added Tax (hereinafter “VAT”) and a Value Added Tax Notice of Assessment of Tax Payable (hereinafter the “assessment”) raised on 13th February 2020 relating to the VAT periods from 1 November 2015 to 31 November 2017.
2. The total amount of tax under appeal is €8,239.18. The Appellant represented himself. The Appellant presented as a professional person who had spent a considerable time researching the matters relating to his appeal. This was most helpful to the Commission. The Respondent was represented by its officers. Again, they had spent a considerable time in preparing for the appeal, which assisted the Commission. The Appellant was provided with multiple opportunities to present his appeal. This consisted of two hearings

and being afforded multiple opportunities to forward his evidence and supporting documentation in correspondence.

Background

3. The Appellant is a sole trader registered for VAT and who, during the relevant periods, ran a small tour business under the name of "████████ █████", operated a ██████████ and was involved in the sale of advertising in, and the retail, of the ██████████ magazine.
4. On 5th February 2020, on foot of a VAT intervention, the Respondent raised the following VAT Assessments pursuant to section 111 of the Value Added Tax Consolidation Act 2010 (hereinafter the "VATCA2010") totalling €8,239.18:

VAT Period	VAT on Sales €	VAT on purchases €	VAT Due €	Assessment Amount €
01/11/2015 to 31/12/2015	1,386.48	449.00	937.48	937.48
01/01/2016 to 28/02/2016	1,151.27	430.2	721.07	721.07
01/03/2016 to 30/04/2016	2,293.57	442.42	1,851.15	1,851.15
01/05/2016 to 30/06/2016	1,778.93	393.82	1,385.11	1,385.11
01/07/2016 to 31/08/2016	675.00	174.30	500.70	500.70
01/09/2016 to 31/10/2016	931.39	329.71	631.68	631.68
01/11/2016 to 31/12/2016	705.26	374.15	331.11	331.11
01/01/2017 to 30/06/2017	2,556.00	1,224.59	1,331.41	1,331.41
01/07/2017 to 31/12/2017	1,927.00	1,377.53	549.47	549.47

5. By way of Notice of Appeal dated 5th March 2020 the Appellant appealed the assessments raised by the Respondent on 5th February 2020.
6. This appeal took place by way of two oral hearings which were heard remotely. The first hearing consisted of the Appellant providing the Commission with the factual background to his business and the nature of his appeal. When it became clear that the Appellant had not been provided with the Respondent's bundle of documents and there was a difficulty with the audio sound of the Respondent's equipment, the first oral hearing was then adjourned due to technical difficulties and due to the Appellant not being in possession of the hearing bundle of documentation.
7. At the first hearing the Respondent was asked to respond in due course to questions put to it by the Commissioner as follows:
 - i. Whether the Respondent would accept that the VAT exemption applied if the Appellant was to provide documentation confirming that his tours related to courses taught regularly in schools or universities?
 - ii. Whether the Respondent was willing to accept an exempt element of the supplies and whether this could be separated from the overall supply?
 - iii. Whether a portion of the services provided by the Appellant could qualify for VAT exemption?
8. The Respondent duly responded in writing to these questions and that response was addressed at the second hearing.
9. A second hearing was then rescheduled but was adjourned due to a request relating to the Appellant's health. A further hearing was then scheduled and that took place. The parties were given considerable opportunities to put forward their arguments.
10. The Appellant raised the issue of Legal Aid provision at the hearing. The Appellant was informed that the Commission has no role in granting Legal Aid and has no jurisdiction to do so. The Commission heard both the Appellant and the Respondent at the rescheduled hearing. The Appellant asked for further time to submit further information and that was granted.
11. Following the rescheduled hearing the Commissioner issued the following directions:

1. *“The Commissioner confirmed that the Tax Appeals Commission (the Commission) has no decision making role in terms of legal aid provision. As far as the Commission is aware, legal aid is not available for representation at a hearing of the Commission. But it is not the role of the Commission to advise any party on such matters. The Commission would point out that it has no statutory powers to order costs against any party and any costs are borne by each party;*

2. *The Commissioner noted that the Appellant had not had the opportunity of understanding the inclusion of five legal cases by the Respondent in this appeal and sought an adjournment on that basis. The Appellant was given the option of an immediate adjournment or allowing the Respondent to proceed with their submissions at the hearing. The Appellant chose to proceed to hear the Revenue’s submissions. The Commissioner has granted an adjournment for the Appellant to have the opportunity to consider the legal cases submitted by the Respondent and to reply, if required, to their arguments.*

3. *As such, the Commissioner has directed the following:-*
 - *The Respondent to forward to the Commission and the Appellant their outline of arguments including their references to the case law enclosed. That should be sent within 21 days of today’s date.*
 - *Once those Outline of Arguments is received, the Appellant has a further 21 days to respond in writing to the Commission copied to the Respondent on their Outline of Arguments including the case law and indicate if he wishes for a further final hearing date on receipt of that document. The Appellant was also given liberty to apply for an extension to the 21 days set, if he requires more time and the Commissioner would consider that request fairly at that time. The Commissioner appreciates that the Appellant is unrepresented.*

The Commissioner pointed out to all parties that the Commission has a statutory role to determine if there has been a charge to tax and if so, if the correct amount of tax has been charged. The Commissioner is not prevented from considering any case law and/or statutory provisions both domestic or European in the exercise of that statutory role. Hence, any request to not consider any case law or provisions is not applicable. The Commissioner can also not entertain arguments concerning appeals from the Commission as this appeal process has not been exhausted and no determination has

issued. All parties have a right of appeal on a point of law only and that will be explained to the parties on the emanation of the final determination by the Commission.

The Commission has held two hearings in relation to the appeal. The first was adjourned as there were technical difficulties with the Respondent's connection and in addition, the Appellant did not have a copy of the bundle of documentation. The hearing was rescheduled but was adjourned due to illness on the part of the Appellant. It was rescheduled to the 2 November and part heard and adjourned for another time at the request of the Appellant, as referred to above. It will be relisted for a final hearing, if required, again as stated above."

12. The Commission granted the Respondent 21 days to provide their Outline of Arguments and case law references to the Appellant for him to consider. The Appellant was provided with 21 days to respond to those outline of arguments and indicate if he wishes for a further hearing. The Respondent complied with the Commission's direction. The Appellant wrote to the Commission seeking further time to respond to the Respondent's Outline of Arguments and case law references. He mentioned that the Respondent had failed to provide a reference in a particular tabulation in their case law booklet. That was then provided. The Appellant again referred to equality of arms between the Respondent and himself and legal aid. The Commission granted an extension to the Appellant for a further nearly 3 months period to respond to the Respondent's Outline of Arguments and case law. The Commission also confirmed a further time that the Commission does not grant or refuse Legal Aid applications and has no jurisdiction in relation to Legal Aid. On the last day of the extension granted, the Commission received the Appellant's documentation which was entitled "Statement of Truth". The Appellant did not request a further hearing.
13. The Commission has considered all the information gathered at the two hearings, the extensive documentation provided by both Appellant and Respondent and concluded that a determination can be made in this appeal. The Appellant has supplied considerable documentation to the Commission and has been provided with multiple opportunities to support his appeal, both in oral and written evidence. As such the determination is set out below.

Legislation and Guidelines

14. The legislation relevant to this appeal is set out at **Annex 1** of this determination.

Submissions

Appellant's Submissions

15. The Notice of Appeal dated 5th March 2020 submitted by the Appellant contained the following grounds of appeal:

"The Respondent has failed to

i. distinguish adequately between the two types of tour I provide:

[I] Educational programmes for schools and colleges;

And

[II] Recreational tours

ii. failed to allocate VAT and expenses and tour margin appropriately. My assessment of the Revenue regulations, as previously provided to my local Revenue office is attached;

iii. adequately allow for personal expenses;

iv. proposed to apply interest and penalties which I deem unfair, given the conduct of the local Revenue office addressing the matter."

16. The Appellant appended a letter from him to the Respondent dated 15^h November 2019 to the Notice of Appeal which stated as follows:

"Re VAT classification of tours

Dear Mary

Thank you for acknowledging my previous correspondence.

I have examined the legislation to which the Revenue document "VAT Treatment of Education and Vocational Training" refers.

Please note the following with regard to the legislation, Revenue regulations and your request for information.

- 1. Section 57 of the Finance Act 2017 [and not section 52 as referenced in the Revenue VAT Treatment of Education and Vocational Training] amends Section 54 of the Finance Act 2015 paragraph (3) (a) to read: The provision of—(i) children's or young people's education, school or university education,"*

2. Paragraph 3a provides a list: i.e. 1. children's education; 2. young people's education; 2. school education; or 3. university education. **Note** "Children or young people's education" is distinguished by punctuation from "school or university education" which must imply an educational context other than school or university.
3. Children or young people's education is VAT exempt.
4. Paragraph 4 adds "(4) tuition given privately by teachers and covering school or university education" is VAT exempt.
5. "The provision of education and vocational training by a sole trader is also exempt from VAT if it qualifies as private tuition."
6. "Private tuition given by teachers or instructors is exempt from VAT where it covers school or university education. This means that where tuition is provided by an independent instructor or teacher (i.e. sole proprietor providing tuition on their own account and at their own risk), these activities are exempt from VAT. The subject taught must be one taught regularly in schools or universities."
7. **It is apparent from the legislation and Revenue interpretation that the key issue is whether the provider [be that an institution or sole trader] is providing education in subjects taught regularly in schools and universities and not primarily offering recreation. The core issue therefore to be determined is: Are my tours educational or recreational?**
8. It is evident from the itineraries, already provided to your office, that the focus of my tour programmes are subjects, such as Literature, History, Performing Arts, Peace Studies, are clearly the primary purpose and focus of the tours. These are also, I suggest, beyond any question of doubt, subjects taught regularly in schools and universities.
9. The itineraries also clearly show "the teaching process and teacher / student relationship together with the organisational infrastructure to support the effective transfer of knowledge and skills between the teachers and students."

10. *I am a sole trader. That the focus of my educational tours is school and university education and that the subjects taught are taught regularly at schools and universities is, I suggest, beyond reasonable dispute. If you or anybody in your office wishes to dispute that Irish history, Irish politics, Irish literature or Irish peace studies are not legitimate educational subjects, please justify this opinion.*

11. *You will note that*

- a) *“While the terms “children or young people’s education” and “school or university education” are not defined in VAT legislation, it is Revenue’s view that they refer to the education programmes followed by pupils and students pursuing the prescribed curriculum at ... post-primary school and third level institutions.”*
- b) *All of the educational study abroad tour programmes I provide follow subjects offered at each respective school or university e.g. Irish literature, history or politics.*
- c) *Also, “education is not limited to education which leads to examinations for the purpose of obtaining qualifications but includes other activities which are taught in schools or universities in order to develop students’ knowledge and skills, provided that those activities are not purely recreational.” This calls into question your request regarding academic merit.*
- d) *It is abundantly clear that the activities offered on my educational tours are predominantly academic and not purely recreational.*
- e) *My tour programmes may sometimes take place during academic holidays, and they “deliver a structured learning programme of an academic [and] artistic ... nature which supplements the education programme students are undertaking at school.”*
- f) *Also, all “tuition is given by personnel with the appropriate qualifications or experience”. In fact, many are nationally and internationally recognised authorities.*

12. *The Study Abroad tours I provide are private tuition covering school and university education. Their core focus is subjects taught regularly in schools and universities and therefore VAT exempt.*

13. *In light of all the above, the Study Abroad Tours are therefore VAT exempt.*

14. The [REDACTED] Programme which I provide is young people's education, as referenced in paragraph 3. Its core focus is subjects taught regularly in schools and universities [again, History, Politics, Social Policy and Global Leadership]. The [REDACTED] Programme is therefore also VAT exempt.

15. The golf tours I provide are not, in my case, at present, educational. They are for adults and therefore subject to TAMS.

16. Please note:

- a) If you believe there is any deficit in clarity, please define this precisely.
- b) That the golf tours I currently offer are recreational is not disputed.
- c) That I wish to finalise this matter as soon as possible.
- d) That I now plan to proceed on the above basis, taking into account the VAT considerations of my other business activities.

Sincerely

[REDACTED]

17. The Appellant submitted a Statement of Case to the Commission dated 1st October 2020 which contained the following outline of relevant facts at section 8 thereof:

"I run a small tour business, primarily providing educational tours in Ireland for overseas schools. The itineraries are developed in close consultation with the teachers from the client schools and focus on Irish history, literature, peace studies et cetera. Under Irish legislation, I view these tours as educational and therefore not subject to VAT. Revenue declines this.

I also provide recreational tours, which I agree are subject to VAT.

The question is: Are my tours educational?

I enclose a document which addresses presents key question, especially the legal argument, also relevant in section 9 and 10 below.

I am afraid the section on the website offering guidance how to complete the sections said "coming soon". I apologise if the form does not meet exact requirements."

18. The "document" enclosed in the Appellant's Statement of Case stated as follows:

"Re VAT Classification of [REDACTED]

[REDACTED]

1. I operate a small tour business primarily providing educational tours for overseas schools. The itineraries are developed in close consultation with the teachers from the client schools and focus on Irish history, literature and peace studies. Under Irish legislation, I view these tours as educational and therefore not subject to VAT. Revenue declines this.

2. I also provide recreational tours which I agree are subject to VAT.

3. The question is: Are the educational tours I provide to be viewed as educational within the 2017 Finance Act.

4. I have examined the above legislation and the Revenue document "VAT Treatment of Education and Vocational Training" [2018] as well as referencing the Education Act 1988. I refer to these below and base my argument on these documents.

5. Section 57 of the Finance Act 2017 [and not section 52 as mistakenly referenced in the Revenue VAT Treatment of Education and Vocational Training] amends Section 54 of the Finance Act 2015 paragraph (3) (a) to read:

"(3) (a) The provision of—

- (i) children's or young people's education, school or university education, or*
- (ii) vocational training or retraining (subject to any conditions as may be specified in regulations),*

including the supply of goods and services incidental to that provision, other than the supply of research services, but excluding instruction in the driving of mechanically propelled road vehicles other than the instruction of a kind to which clause (c) relates, by—

- (I) a public body,*
- (II) a provider in receipt of Exchequer funds for the purposes of that provision from a body specified in regulations,*
- (III) a recognised school within the meaning of the Education Act 1998 ,"*

6. Paragraph 3a thus provides a list comprising:

- i. children's or*

ii. *young people's education*;

iii. *school education or*

iv. *university education.*

7. ***“Children or young people's education”*** is distinguished by punctuation from ***“school or university education”*** which distinguishes an educational context of children or young people from that of a school or university.

8. Regardless of the breadth of education defined above, the 1998 Education Act defines a school as follows:

“school” means an establishment which—

(a) provides primary education to its students and which may also provide early childhood education, or

(b) provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training,”

9. The Revenue VAT Treatment of Education and Vocational Training stipulates in section 2 that such services are VAT exempt, including *“the provision of private tuition by a teacher/sole trader covering school or university education”*.

10. In section 5 of the Revenue guidelines it states: *“Private tuition given by teachers or instructors is exempt from VAT where it covers school or university education. This means that where tuition is provided by an independent instructor or teacher (i.e. sole proprietor providing tuition on their own account and at their own risk), these activities are exempt from VAT. The subject taught must be one taught regularly in schools or universities”*.

11. It is apparent from both the legislation and Revenue interpretation that the key issue is whether the provider [be that an institution or sole trader] is providing education in subjects taught regularly in schools and universities and not primarily offering recreation. The core issue therefore to be determined is: Are my tours educational or recreational?

12. It is evident from the itineraries, sample copies of which have been provided to Revenue and below, that the focus of my tour programmes are subjects, such as Literature, History, Performing Arts, Peace Studies. Education is clearly the purpose

and focus of the tours. These subjects are also clearly subjects taught regularly in schools and universities.

13. The itineraries also clearly show “the teaching process and teacher / student relationship together with the organisational infrastructure to support the effective transfer of knowledge and skills between the teachers and students”.

14. I am a sole trader. That the focus of my educational tours is school and university education and that the subjects taught are taught regularly at schools and universities is beyond dispute, being Irish history, Irish politics, Irish literature or Irish peace studies.

15. Please note that

a) In section 3, “While the terms “children or young people’s education” and “school or university education” are not defined in VAT legislation, it is Revenue’s view that they refer to the education programmes followed by pupils and students pursuing the prescribed curriculum at ... post-primary school and third level institutions”.

b) All of the educational study abroad tour programmes I provide follow subjects offered at each respective school or university.

c) Again, in section 3: “Education is not limited to education which leads to examinations for the purpose of obtaining qualifications but includes other activities which are taught in schools or universities in order to develop students’ knowledge and skills, provided that those activities are not purely recreational”. There is therefore no requirement to establish evidence of a grade of academic attainment to establish academic merit.

d) It is abundantly clear, I proffer, that the activities offered on my educational tours are predominantly academic and not purely recreational.

e) My tour programmes take place throughout the year, often forming part of a school’s study abroad programme, during academic holidays, and, as in example 6 of the Revenue guide, they “deliver a structured learning programme of an academic [and] artistic ... nature which supplements the education programme students are undertaking at school”.

f) Again, in accord with example 6, all “tuition is given by personnel with the appropriate qualifications or experience”. In fact, many are nationally and internationally recognised authorities [see ██████████], and I myself have been active in this field for 35 years.

16. The Study Abroad tours I provide are private tuition covering school and university education. Their core focus is subjects taught regularly in schools and universities and therefore, in light of all the above, I maintain, they are VAT exempt.

17. The ██████████ Programme which I provide is young people’s education, as referenced in paragraph 3 of the 2017 Act. Its core focus is subjects taught regularly in schools and universities [again, History, Politics, Social Policy and Global Leadership]. The ██████████ Programme is also therefore VAT exempt.

18. I also occasionally provide recreational tours, such as golf tours. These are not an educational service and are for adults and subject to VAT under TAMS.

Sample Itinerary

█████████ School ██████████, Global leadership studies syllabus

Day 1

Monday ██████████
2019

The International Wall on the Falls Road, with a focus on the Hunger Strike

Republican plot, Milltown

Presentation at Republican Felons' Club, Falls Road. Former QM IRA

Leadership presentation - guest speaker ██████████

Tuesday ██████████
2019

Day 2

Police HQ: Presentation on policing, security, terrorism and reform by former RUC Ass. Chief Constable.

Presentation on policing, security, terrorism and reform by former RUC Ass. Chief Constable.

Stormont with Former [REDACTED] [REDACTED]: Brexit presentation

Campbell College - study session with history & politics students

Study Tour Loyalist Lower Newtownards Road

City Centre Tour

presentation on Brexit by [REDACTED], former [REDACTED]

Wednesday [REDACTED]

2019

Day 3

Clinton Centre, Enniskillen

NI / Ireland Reflections on Brexit on the border & "Imagine an Island".

Yeats Country Tour, Sligo:

Glencar - Stolen Child

Rathcormack - Countess Markievicz

Lissadell House

Drumcliffe - Battle of Books & Yeats' Grave

Rosses Point

[REDACTED]
1st October 2020

<http://www.irishstatutebook.ie/eli/2017/act/41/section/57/enacted/en/html>

<https://revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Services/services-education-vocational-training-post-2015.pdf>

<http://www.irishstatutebook.ie/eli/1998/act/51/enacted/en/print.html>”

19. The Appellant’s Statement of Case also included an undated letter from [REDACTED], High School Counsellor, Head of Secondary Student Support Services of the [REDACTED] School [REDACTED] which stated as follows:

“Dear [REDACTED],

Pursuant to our discussion yesterday, I am writing to extol the educational nature and merits of the programming that you offer through your school tours. Let me begin by saying that, according to any standard, the type of program that you offer is of the highest educational caliber, bringing to life the historical, political, and literary (among other) attributes of the physical spaces throughout Ireland. In my 21 years as an

educator, in reflecting back on those trips I have engaged with you and your programs, I find myself confronted with the most impactful educational experiences, both for me and for my students. Seeing those elements come to life, as it were, that had previously only been relegated to books and assignments proves to be a palpable and powerful force in the educational journey of individuals. Speaking to the specific experience of my tours while working at [REDACTED] -- as well as approved plans at [REDACTED] Academy, [REDACTED] School, and [REDACTED] School [REDACTED] that were never actualized for various reasons due to my moving into new positions and COVID-19 -- the intense scrutiny of the educational officers would also confirm that these trip met with each of those schools' individual requirements for educational endeavors. Consistent across all of these schools' criteria are standards involving a commitment to subject-specific domains, and, in the case of your trips, as mentioned, the cultivation of the itinerary and discussions with you when creating the trips were heavily imbued with a focus on the history, the literature, and the politics, not to mention the underlying psychology, the sociology, the geography, the linguistics, the culture, and so on. In so many ways, your trips reflect the very essence of educational practices and principles.

I hope that this testimony serves to speak to the educational merits of your programs. Please let me know if I may provide additional support.

With thanks,

[REDACTED]"

20. The Appellant's Statement of Case also included an undated letter from [REDACTED] of [REDACTED] School, [REDACTED], USA which stated as follows:

"To whom it may concern,

I am a history and government teacher at [REDACTED] School in the United States and I had the pleasure of working with [REDACTED] to bring a group of students from my school over to Ireland and Northern Ireland in 2016. The students took part in [REDACTED] [REDACTED] program, which was a six-day educational tour of Ireland and Northern Ireland. There are many tour programs available to schools in the U.S. that allow students to experience a foreign country, but I chose [REDACTED] program because I felt that it attempted to teach students about the peace process, make them aware of the tensions still running through Irish society, and encourage them to think about how to sensitively engage with that tension in Ireland and their own culture. I believed that [REDACTED] would be more than just visiting some popular tourist spots in Ireland and Northern Ireland. [REDACTED] tour delivered on giving my students the historical

background that they needed to better understand modern Irish society. The first two days for example included trips to St. Kevin's Monastic City to discuss the role of early Celtic Christianity in shaping Ireland and to the battleground for the Battle of the Boyne to learn about the consequences of the English victory on the relationship between Protestants and Catholics on the island. These experiences gave our students a better foundation to understand the conflict between largely Protestant Unionists and largely Catholic Republicans that raged in the later part of the twentieth century and to allowed them to recognize divisions that still exist right under the surface in many towns and cities across the two countries.

██████████ program also allowed the students the unique opportunity to engage with people who engaged in the peace process, such as ██████████, ██████████ ██████████ ██████████. However, it was not just the people we met that made this such a remarkable learning experience for my students. The daily structure of the program allowed for the students to reflect, share, and process what they experienced. This classroom approach to the program was essential for them to understand these complicated and sensitive issues in Ireland and Northern Ireland. The space for reflection also allowed them to make the connections between their experiences and their curriculum at ██████████ School in their Modern World History class. A major part of that class is studying colonialism. This trip provided them with a case study to explore the legacy of colonialism in modern society. The week was truly a powerful and unique educational experience for our students, many who had never been outside the United States. The students left the island with a better understanding of the cultures on the island and encouraged them to personally engage with the resistance that exists in Irish and their own cultures. I was so impressed with its educational value that I am currently engaged in planning a trip for our Comparative Government class which specifically studies the government, economy, and culture of the United Kingdom as part of its curriculum. We hope to back, working with ██████████ in the near future."

21. The Appellant's Statement of Case also included an undated letter from ██████████, Director of Advisory Programme, ██████████ School in ██████████ which stated as follows

"██████████ educational and global programs that delve into history, politics, economics, literature, poetry, and current events are among some of the best educational experiential learning my students have had. I have had the pleasure of bringing multiple school groups to Ireland from two different schools, ██████████ School in the USA and ██████████ School in ██████████ in the UK. On each of these

ventures, the students learned much during their time in Ireland under ██████ guidance.

Tours such as his would generally be part of a US curriculum in social studies or history, but his tours encompass much more than that. Each site visit and experience is designed around different perspectives across the borders of Ireland and the UK/Northern Ireland; they are tours of "place and people" with some of Yeats' poetry woven in as a backdrop. The beauty of those tours is that the ideologies and policies (and literature) that grow up around conflict and peace are transferable across different cultures at different times. In our world, that type of education is priceless."

22. As stated above, by email dated 29th October 2021 the Appellant submitted a document entitled "Statement of Truth and Facts By ██████" which stated as follows:

"1. I, ██████, of ██████, ██████, ██████, a business man, being eighteen years and upwards, am the Appellant and say as follows.

2. The returns submitted to Revenue were submitted as correct and lawful.

3. The Respondent, in its Book of Documents, at point 1, lists the Statutory Provisions being relied on. These include:

[a] S60. (2) VAT Consolidation Act 2010. This refers to conferences, which are defined as follows:

"qualifying conference" means a conference or meeting in the course or furtherance of business organised to cater for 50 or more delegates, which takes place at a venue designed and constructed for the purposes of hosting 50 or more delegates.

The programmes the Appellant provide are not conferences for 50 or more people; therefore the above has no relevance to the matter in hand.

[b] Schedule 1 (4) (3) (a) & (b) VAT Consolidation Act 2010. This schedule relates to exempted activities and states:

Children and education.

(3) The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the

provision by other persons of education, training or retraining of a similar kind, but excluding instruction in the driving of mechanically propelled road vehicles other than—

(a) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or

(b) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

The Appellant's business is primarily involved in the provision by other persons of education and therefore, in accordance with this section, is VAT exempt.

4. *The Respondent more recently sent a book of EU Case Law in reference to this appeal hearing. However, the Respondent identifies in its Book of Documents at pt 1 the Statutory Provisions, and again at pt 6, the documents on which the Respondent intends to rely. Neither the documents listed at pt 1 nor pt 6 carry any reference to the book of EU Case Law. Therefore, it has not been possible for the Appellant to examine any argument the Respondent might present with reference to the EU case law.*

Furthermore, given the extensive and detailed nature of the judgements in the book of EU Case Law, some five cases, it would be unjust for the Respondent to draw on these cases in any oral presentation during the appeal without having first presented any argument in writing in the Book of Documents, which, notably, the Respondent has not done.

Therefore, the Appellant requests the Commissioner to disallow any reference to the book of EU Case Law during the appeal hearing. If this request is declined, an adjournment of the hearing will be sought in order that the Respondent can firstly provide to the Appellant its argument in writing based on any EU Case Law it might wish to reference.

The Appellant shall further request, based on the equity of Equality of Arms, that the Appeal's Commissioner endorse an application by the Appellant for legal aid as the Appellant does not have the resources, being a person in receipt of social welfare, charitable donations, and grant aid, unlike the Office of The Revenue Commissioners, to engage with tax law in the context of the superiority of EU or National tax law.

The Appellant believes the High Court would view this as being a question in the national interest, especially as it raises constitutional matters similar to those currently being addressed between the EU Commission and The Supreme Courts in Germany, Poland and Hungary regarding the superiority of National law over EU law.

5. At point 2 in its Book of Documents, the Respondent states: "The appellant is a sole trader and operates as a tour guide operator"; and further in pt 2, The Respondent states: "Since 2010 Tour Operators must use a Margin Scheme called TAMS".

The Respondent's statement referring to the Appellant as "a tour guide operator" is both misleading and incorrect. It is misleading in that it mingles, and thus confuses, two concepts; one of which, at least, is defined in Irish law.

The Transport (Tour Operators and Travel Agents) Act, 1982 defines a Tour Operator as:

"... a person other than a carrier who arranges for the purpose of selling or offering for sale to the public accommodation for travel by air, sea or land transport to destinations outside Ireland, or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or services;"

The same Act also provides the legal definition of a Travel Agent as:

"travel agent" means a person other than a carrier who, as agent, sells or offers to sell to, or purchases or offers to purchase on behalf of, the public accommodation on air, sea or land transport to destinations outside Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or services.

The Commission for Aviation Guidelines for Tour Operators & Travel Agents, with regard to the 1982 Act, reference Ireland as including Northern Ireland, as distinct from simply the State.

Therefore, as the Appellant does not offer for sale to the public destinations outside Ireland, he cannot lawfully, for tax or regulatory purposes, be defined as either a Tour Operator or a Travel Agent; nor can he lawfully be so defined by any merger of words

concocted by the Respondent in an attempt to imply that the Appellant is, in some way, legally a tour operator or travel agent.

The Appellant has never presented himself as either a Tour Operator or Travel Agent; has never become a member of any tour organization; nor has the Department of Trade and Tourism ever required the Appellant to be one thing or another under their regulations. Just because someone in Revenue claims the Appellant is a Tour Operator or Travel Agent does not make the Appellant one. The Appellant refuses to be either a Tour Operator or a Travel Agent; has no interest in either business; and refutes any attempt to be so defined.

At best, the Respondent is working on an assumption of the Appellant being a Tour Operator or Travel Agent being a true; but it is not true and utterly rejected by the Appellant.

Does the Respondent have difficulty with the word Tour? If this word was omitted from the title, [REDACTED] [REDACTED], and replaced with Educational Programmes, would the Respondent's claim make sense? However, what matters are definitions in law.

The importance of legal definitions is clearly recognised by Revenue, including specifically, in fact, in the same Travel Agents Margin Scheme to which, in this instance, the Respondent refers and grounds much of its case. In TAMS Section 1.8. Revenue states: "What does 'traveller' mean? A traveller is not defined in the legislation and so has its ordinary meaning". Therefore, where Travel Agent or Tour Operator are legally defined, as in The Transport (Tour Operators and Travel Agents) Act, 1982, such definitions are superior to any "ordinary" meaning, including that synthesised by the Respondent, as in "tour guide operator".

For clarity, with regard to any remaining confusion over the meaning of names, it is irrelevant to place any significance, for tax purposes, on the trading name, [REDACTED] [REDACTED]". For example, The King's Hospital is not a hospital, but a school; thus, like [REDACTED] [REDACTED], its business is education. Similarly, Wilson's Hospital is a school, and not a hospital. Nor is there any legal prohibition in using the name Tour; such as applies to the words Hotel or Bank.

The Respondent, having attempted to describe the Appellant, for VAT purposes, as some form of "tour guide operator", mistakenly proceeds to apply the Travel Agents

Margin Scheme even though the Appellant does not meet, and refuses utterly that his business is either a Travel Agent or a Tour Operator as defined in Irish law.

6. The Respondent at pt 2. (i) in its Book of Documents states “VAT was not returned on tour income”. However, thus far, the Appellant has shown that his business cannot lawfully be described as either a Travel Agent nor a Tour Operator; and that TAMS ought not be applied.

Furthermore, the Appellant will later demonstrate, very clearly, with documentary evidence, and beyond any reasonable doubt, that his business is educational, and as such is VAT exempt.

7. The Revenue’s Travel Agent’s Margin Scheme guidance document cites 14 examples of the sort of businesses which should apply TAMS or accounting procedures. There is only one example that bears slight similarity to the Appellant’s business. The other examples largely consider travel to destinations outside of Ireland. In section 2.1.2 Example 8 is as follows.

A German business customer engages an Irish intermediary to arrange accommodation and other services in Ireland;

- Business customer purchases Irish accommodation and other services through an intermediary.*
- Irish intermediary arranges for reservations, tickets and possibly payments to the providers of the accommodation and other services.*
- Intermediary charges the customer a fee.*
- Place of supply of intermediary’s services is Germany (i.e. place where the business customer is established).*
- German business customer accounts for VAT in Germany on intermediary’s fee (reverse charge procedure).*

All the Appellant’s customers, apart from one, are US schools or colleges from outside Ireland and outside the EU. Therefore, in accord with Example 8 above, the place of supply of any intermediary service, even if relevant, and it is not, is not Ireland, nor even the EU, but the US; and as such, as a non-EU location, no VAT should apply. In addition to the other examples cited in TAMS guidance that do not apply to the Appellant’s business, this example indicates where any VAT is to be accounted and, in the Appellant’s case, where it cannot be charged on export to US.

8. At point 2. (iii) The Respondent alleges: "The apportionment used for dual use expenditure did not seem reasonable"; yet the Respondent made no request for an explanation of apportionment.

9. The Respondent continues in pt 2 "Since 2010 Tour Operators must use a Margin Scheme called TAMS for calculation of VAT...". As explained above, TAMS does not apply to the Appellant's business as he is neither a Travel Agent, nor a Tour Operator, as defined in Irish law.

10. The Appellant rejects the rest of the Respondent's claims in pt 2, other than the purchase of glasses, which were initially acquired to help with night-time coach driving. As for the other items mentioned: The Mountain Warehouse was work clothing; and Lidl, Pennys, Super Valu items were either purchases for work volunteers or the [REDACTED]

VAT claimed in diesel is business related; as was that relating to different phone bills, which would have been office broadband, broadband for [REDACTED] and cell phone.

Electricity should also be allowed for the [REDACTED] and volunteer accommodation, as this is also work related. The Respondent made no effective attempt to seek an explanation for these items. Many of these matters should and could have been addressed by the Respondent to the Appellant.

The alleged VAT claimed is therefore rejected by the Appellant.

11. At pt 3 in the Respondent's Book of Documents, the Respondent addresses the matter of the Appellant's business being educational. This is based on Schedule 1. 4.3 of VAT Consolidated Act 2010 which is explicit in stating that the education of children and young people is exempt VAT; and that such exemption is not restricted to educational establishments.

4 (3) The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind, but excluding instruction in the driving of mechanically propelled road vehicles

other than— (a) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or (b) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

The Respondent states: “Appellant has been requested on numerous occasions to provide evidence from the schools to support his claim that the tours being provided formed part of each school curriculum.” It is implied here that the Appellant has failed to supply this information. The Appellant refutes this and invites the Respondent to provide documentary evidence to support this claim.

Attached are letters from the Appellant’s clients. These state very clearly the educational nature of the services and specifically how they relate to the schools’ curricula. Excerpts are quoted below.

██████████ educational and global programs that delve into history, politics, economics, literature, poetry, and current events are among some of the best educational experiential learning my students have had. ... Tours such as his would generally be part of a US curriculum in social studies or history, but his tours encompass much more than that. - ██████████ -- Director of Advisory Program, ██████████ School in ██████████

... I am a history and government teacher at ██████████ School in the United States and I had the pleasure of working with ██████████ to bring a group of students from my school over to Ireland and Northern Ireland in 2016. ██████████ ██████████ tour delivered on giving my students the historical background that they needed to better understand modern Irish society. ... The daily structure of the program allowed for the students to reflect, share, and process what they experienced. This classroom approach to the program was essential The space for reflection also allowed them to make the connections between their experiences and their curriculum at ██████████ School in their Modern World History class. ... I was so impressed with its educational value that I am currently engaged in planning a trip for our Comparative Government class which specifically studies the government, economy, and culture of the United Kingdom as part of its curriculum. We hope to back, working with ██████████ in the near future. - ██████████ School United States

..., I am writing to extol the educational nature and merits of the programming that you offer through your school tours. Let me begin by saying that, according to any standard, the type of program that you offer is of the highest educational calibre, bringing to life the historical, political, and literary (among other) attributes of the physical spaces throughout Ireland. In my 21 years as an educator,... I find myself confronted with the most impactful educational experiences, both for me and for my students. ... Speaking to the specific experience of my tours while working at [REDACTED] -- ... [REDACTED] [REDACTED] Academy, [REDACTED] School, and [REDACTED] School [REDACTED] ... the intense scrutiny of the educational officers would also confirm that these trip met with each of those schools' individual requirements for educational endeavours. ... In so many ways, your trips reflect the very essence of educational practices and principles. ... -- [REDACTED] [REDACTED]

12. The Respondent continues in pt 3 “Appellant has actually claimed that he cannot provide this information due to GDPR.” Once again, not only is this statement incorrect, but the tone is inappropriate. Instead of proof that the programmes were educational, the Respondent had, in fact, asked for the contact details of the clients. The Appellant does indeed “actually” stand under GDPR. There are limited legal circumstances in which these details can be shared with a third party; and the Respondent is not such a party in this instance.

Please note, the Appellant has not consented and does not consent to the Respondent contacting his clients; and if the Respondent disregards GDPR regulations appropriate legal action will be taken.

13. The Respondent continues that “Recreational and Golf tours were also provided. No VAT was returned on this income. Appellant now acknowledges that these are liable to VAT”. However, the Appellant no longer accepts this, as it is now understood that TAMS does not apply to his domestic tour business, as his clients are based outside the EU and he does not tour outside of Ireland.

14. The Respondent continues in pt 3 of the Book of Documents by referring to and, apparently, attempting to quote Schedule 1 of VAT Consolidated Act 2010. Schedule 1(4)(3). However, the text the Respondent provides is not that which is provided in the Irish Statute. The correct text is provided below, in its entirety and clearly shows that

the provision of young people's education, school or university education, (including the supply of goods and services incidental to that provision, by other persons of education, is an exempt activity.

Schedule 1 of VAT Consolidated Act 2010. Schedule 1 (4) (3)

4. (3) The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind, but excluding instruction in the driving of mechanically propelled road vehicles other than— (a) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or (b) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

15. The Respondent's conclusion in pt 5 of the Book of Documents that the Appellant must show "that he falls under the definition of a "recognised body" as defined by Schedule 1(4) (3) (b) of the VAT Consolidation Act 2010" is inaccurate, untrue and unfounded. The Respondent is in error. This schedule, which defines educational services as exempt, very clearly does not limit education to a "recognised body". Exempt activities, it states are: "The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), **and** the provision by **other persons** of education, training or retraining **of a similar kind** ...

"The provision by other persons of education" is clearly in addition to "The provision by educational establishments recognised by the State".

Furthermore, the Revenue Commissioners, in its publication VAT Treatment of Education and Vocational Training, addresses in section 2 the question: "What type of education and training is exempt?" and then provides the answer "the provision of private tuition by a teacher / sole trader covering school or university education".

16. In summary, the Appellant rejects the Respondent's claims. The might of the Revenue with the Resources at hand for them against a sole trader, an individual, is a David & Goliath type battle for the individual. Many in the Appellant's situation would

just wither and bow to the might of the State. The Appellant makes his stand not only for himself but all the other sole traders in Ireland today who have their affairs picked over with a fine tooth comb. We all have seen the argument made by the State to not take €30 billion in revenue awarded to the State, where Domestic Law was used to show that EU Law did not matter in our Domestic Tax affairs. Since then, a Global initiative has been set in place to have a 15% Corporation Tax as a minimum, to which Ireland has reluctantly consented. Such measures had to be taken globally for the stance of jurisdictions like Ireland, who for many years collected little tax from big corporations. There is also an ad hoc practice to tie vulture funds to charities, to avoid paying billions in tax in Ireland. Again, The State or its Revenue Commissioners do not scrutinize that system or try to impose any EU directives upon them.

The Appellant believes that the Oireachtas makes Law to suit the domestic market; more especially, in tax affairs and company operational affairs. As a progressive member of the EU, all law in Ireland is in harmony with EU Law; or if not, it is on the Oireachtas radar for change. As such, the EU is generally happy to allow States conduct their own Tax affairs, a point driven in the Apple Tax debacle. How is anyone in the Appellant's position to argue with the great arm of the State? What Law has the Appellant broken? Is this a Claim based on Law or a Claim based upon an assumption?

In closing:

- i. The Appellant does not deliver programmes outside Ireland;*
- ii. The Appellant does not provide chargeable services to EU citizens;*
- iii. The Respondent cannot legally define the Appellant as either a Travel Agent or a Tour Operator: and*
- iv. Therefore, TAMS does not apply.*

Furthermore

- v. The Appellant's business activity is clearly educational;*
- vi. The Appellant clearly delivers programmes that meet his clients' school curricula;*
- vii. The Appellant's educational business is therefore legally VAT exempt.*

Therefore, the Respondent's claims are unjustifiable and incorrect.

23. By email dated 28^h February 2022 the Appellant submitted a document entitled "Statement of Truth and Facts By [REDACTED]" which stated as:

"1. I, [REDACTED], a businessman, being eighteen years and upwards, am the Appellant and say as follows.

2. The returns submitted by the Appellant to Revenue were submitted as correct and lawful.

3. The Respondent claims the "quantum of the VAT assessments under appeal is €6,818." the Appellant rejects this claim.

4. The Appellant rejects the Respondent's position that the Appellant acts as a principal in the supply to travellers of margin scheme services and must account for VAT under the travel agent's margin scheme.

5. The Respondent is in error, as he disregards the law. The Respondent fails to recognise the lawful purpose and legal nature of my business.

6. The Respondent denies the Public Interest recognised in law and denies the Appellant's right to that legal entitlement, according to Value-Added Tax Consolidation Act 2010, Schedule 1, Exempt Activities, PART 1, Activities in the Public Interest, where this part sets out the exemptions for certain activities in the public interest in accordance with Chapter 2 of Title IX of the VAT Directive.

7. The Respondent denies the Appellant's status as a Person and as a Sole Trader and has ignored the evidence provided to date.

8. The Respondent denies the Appellant's status as an "other person of education" under Schedule 1 (4) (3) VAT Consolidation Act 2010 which relates to exempted activities and states:

"Children and education. (3) The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind,"

9. The Respondent denies the acts Appellant's as a sole trader in education under The Revenue VAT Treatment of Education and Vocational Training which stipulates in

section 2 that such services are VAT exempt, including “the provision of private tuition by a teacher/sole trader covering school or university education”

10. The Respondent denies the right to education under Human Rights, Protocol 1, Article 2: Right to education: “No person shall be denied a right to an education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.”

11. The Respondent states in its Outline of Arguments, page 10:

“The context in which ██████ delivers his ‘in-house’ talks does not appear to be that of a teacher and student. No evidence has been provided to demonstrate that he has been engaged by the students or their schools to provide tuition covering their school or university education.”

“Revenue would need substantive proof that he is acting as a teacher to these students and provides them with tuition covering their university or school education to apply the education exemption provided at paragraph 4 (4) of Schedule 1.

“On balance and based on the evidence provided to date, Revenue considers that ██████ is supplying the services of a tour guide and not a teacher in delivering these services. He cannot, therefore, avail of the education exemption under Schedule 1 paragraph 4 (4) VATCA 2010 for the in-house services he provides to students.”

12. The Respondent also states in its Book of Documents pt 3:

“Appellant has been requested on numerous occasions to provide evidence from the schools to support his claim that the tours being provided formed part of each school curriculum.”

13. These statements by the Respondent are incorrect and fail to address and engage with the documentary evidence provided to date by the Appellant. To ignore the evidence provided by the Appellant is deemed by the Appellant as an attempt to discredit the Appellant and an attempt to mislead the Commission.

14. The Appellant holds that the use, by the Respondent, of a number of phrases, such as ‘in-house’ talks attempts to diminish both the standing of the Appellant and the

nature of the teaching provided by the Appellant. The Appellant holds that such conduct is dishonourable.

15. The claim by the Respondent that the Appellant has failed to supply evidence that “the tours being provided formed part of each school curriculum.”; and the refusal by the Respondent to acknowledge that such evidence has been provided, is deemed to be disingenuous conduct by the Respondent. Not only does the Appellant refute this false and misleading claim by the Respondent, but he invites the Respondent to provide documentary evidence to support the Respondent’s misleading claim that the Respondent has asked the Appellant “**on numerous occasions**” to provide such evidence.

16. Furthermore, the claim by the Respondent in its Book of Documents [pt 3] that the “Appellant has **actually** claimed that he cannot provide this information due to GDPR” is also false and misleading. The Respondent had, in fact, asked for the contact details of the Appellant’s clients. The Appellant does indeed “**actually**” stand under GDPR. There are limited legal circumstances in which these details can be shared with a third party; and the Respondent is **not** such a party in this instance: And by way of reminder, the Respondent is to note that the Appellant **has not** consented, and **does not** consent, to the Respondent contacting his clients: And if the Respondent disregards GDPR regulations appropriate legal action will be taken.

17. The Appellant has provided the documentary evidence requested to show that he is an “other person of education”, and it is referenced in detail below. However, in light of Respondent’s persistence in making misleading claims, detailed herein, the Appellant wonders what agenda is being pursued and by whom. Furthermore, with the Appellant being required to give evidence under oath, and that this requirement was not placed on the Respondent, who the Appellant believes has misled the Commission, the Appellant requires that, in any future hearing, the Respondent will **also** be required to give evidence under oath.

18. Central to the Respondent’s claim is that the Appellant is not an “other person of education”, and the Respondent attempts repeatedly to undermine the Appellant’s role, as such a role would exempt the Appellant from TAMS. The Appellant refers below to extracts from the documentary evidence provided, the full text of which has already been provided, and is attached as an appendix herewith.

██████████ educational and global programs that delve into history, politics, economics, literature, poetry, and current events are among some of the best educational experiential learning my students have had.... Tours such as his would generally be part of a US curriculum in social studies or history... In our world, that type of education is priceless."

██████████ School, ██████████

"I am a history and government teacher at ██████████ School in the United States and I had the pleasure of working with ██████████ to bring a group of students from my school over to Ireland and Northern Ireland ... , which was a six-day educational tour of Ireland and Northern Ireland. ... more than just visiting some popular tourist spots in Ireland and Northern Ireland. ██████████ tour delivered on giving my students the historical background that they needed to better understand modern Irish society. ... The daily structure of the program allowed for the students to reflect, share, and process what they experienced. This classroom approach to the program was essential for them to understand these complicated and sensitive issues ... The space for reflection also allowed them to make the connections between their experiences and their curriculum at ██████████ School in their Modern World History class.... This trip provided them with a case study to explore the legacy of colonialism in modern society. The week was truly a powerful and unique educational experience for our students, ... I was so impressed with its educational value that I am currently engaged in planning a trip for our Comparative Government class which specifically studies the government, economy, and culture of the United Kingdom as part of its curriculum."

██████████ School

"I am writing to extol the educational nature and merits of the programming that you offer through your school tours... according to any standard, the type of program that you offer is of the highest educational caliber, bringing to life the historical, political, and literary (among other) attributes of the physical spaces throughout Ireland. In my 21 years as an educator ... I find myself confronted with the most impactful educational experiences, both for me and for my students. ... Speaking to the specific experience of my tours while working at ██████████ -- as well as approved plans at ██████████ Academy, ██████████ School, and ██████████ School ██████████ ... the intense scrutiny of the educational officers would also confirm that these trip met with each of those schools' individual requirements for educational endeavors. Consistent across all of

these schools' criteria are standards involving a commitment to subject-specific domains, and, in the case of your trips, as mentioned, the cultivation of the itinerary and discussions with you when creating the trips were heavily imbued with **a focus on the history, the literature, and the politics, not to mention the underlying psychology, the sociology, the geography, the linguistics, the culture**, and so on. In so many ways, **your trips reflect the very essence of educational practices and principles.**"

██████████ School, ██████████

19. The statements above, from teachers at some of the world's leading educational establishments, clearly rebut any claim by the Respondent that the Appellant's programmes are simply "tour guiding" and, "in-house talks" but are, in fact, educational and serve the schools' curricula.

20. The evidence above clearly shows "the teaching process and teacher / student relationship together with the organisational infrastructure to support the effective transfer of knowledge and skills between the teachers and students" exist.

21. The Revenue VAT Treatment of Education and Vocational Training stipulates in section 2 that such services are VAT exempt, including "the provision of private tuition by a teacher/sole trader covering school or university education"

22. Again, in section 3: "Education is not limited to education which leads to examinations for the purpose of obtaining qualifications but includes other activities which are taught in schools or universities in order to develop students' knowledge and skills, provided that those activities are not purely recreational." The Appellant's tour programmes include a variety of activities. They are certainly not "purely recreational", and all activities contribute to the educational experience the Appellant provides. They often form part of a school's study abroad programme, during academic holidays, and, as in example 6 of the Revenue guide, they "deliver a structured learning programme of an academic [and] artistic ... nature which supplements the education programme students are undertaking at school."

23. In section 5 of the Revenue guidelines, it states: "Private tuition given by teachers or instructors is exempt from VAT where it covers school or university education. This means that where tuition is provided by an independent instructor or teacher (i.e. sole

proprietor providing tuition on their own account and at their own risk), these activities are exempt from VAT”.

24. When other educators are involved in the Appellant’s programmes on a particular theme, it is always on a collaborative basis. The Appellant is both present and integral to the teaching opportunity. He doesn’t simply hire someone and dump a bus load of students with them! Such educators are akin to guest speakers in the Appellant’s class.

25. The chief aim of the Appellant’s business is education and all the services he hires are ancillary, ie to “provide necessary support to the primary activities or operation of his organization”.

*26. Any attempt by the Respondent to diminish the educational nature of the Appellant’s business is unacceptable. Any attempt to displace its essence as being educational and to cast the Appellant’s business as some form of “travel agency” is rejected. To date, the Respondent has denied, ignored and failed to engage with the clear evidence of the nature the Appellant’s business. On what basis? Education is not solely defined nor controlled by the State, and certainly not by a tax office! Ireland’s history clearly portrays the essential human right of education and that education must not be dominated by the then government policy. In the penultimate paragraph of the Respondent’s Outline of Arguments document, the respondent states “the ‘tutorials’ provided by him personally ... appear to be provided on an ad hoc basis or on occasion as required if another speaker is unavailable”. This is untrue and not grounded on any evidence. It is further evidence of a prejudicial attitude adopted by the Respondent. It makes a claim and fails to substantiate it. What does the Respondent know of the programmes the Appellant provides? Have any Revenue staff ever participated in a programme? Has the Respondent presented any evidence from a third party to substantiate any of the Respondent’s attempts to deny the essence of the Appellant’s business? Yet the Respondent presents what “appears” to it, which stands in total contrast to the clear documentary evidence the Appellant has provided from teachers from some of the world’s top schools. The Appellant finds this a shameful, unprofessional and unacceptable assault by the Respondent, a State agency, on the Appellant’s integrity. It is also an attack on the human right to education. Who is driving such behaviour within the Respondent’s office? Is it simply systemic prejudice? The Respondent is invited to refute the evidence the Appellant has provided and compare its claims alongside the written testimony of schools who bring the Appellant students, such as “according to **any standard**, the type of program that [the Appellant] offers is*

of the highest educational caliber” ... that the Appellant’s “trips **reflect the very essence of educational practices and principles.**”

27. In point 5 of the Respondent’s Outline of Arguments the Respondent states

“██████████ may also act as a tour guide for portions of the tour.” And “Just because a tour may have an educational element does not qualify the tour for exemption from VAT.” Once again, the Respondent displays ignorance of the Appellant’s business. Throughout the programme the Appellant is teaching, every place the students visit is part of the educational experience. It is not simply “tour-guiding”. Furthermore, the Appellant’s tour programmes are educational. It is not a case that they “may have an educational element”. Their aim, purpose and function is education. the Appellant’s business is, in its very essence, education.

28. It is in the above context that the services which the Appellant buys-in, in totality, are to be viewed: i.e. as ancillary to the educational programmes which the Appellant delivers and therefore, as ancillary services, they are exempt from TAMS. The Appellant does not simply assemble a package and sell it on to some entity. The Appellant designs, assembles, buys-in **and** delivers.

29. The Respondent asserts that “██████████ supplies bought in services to travellers and is therefore subject to the travel agent’s margin scheme.” In presenting the Appellant’s service to schools, of course the Appellant will advise that he “books accommodation, transport and meals and organises speakers for groups of foreign students”; that he “assemble an itinerary, price the itinerary and invoice the school for the total amount including accommodation, breakfast and an evening meal.” The Respondent is in error as he has failed to recognise that the essence of the Appellant’s business is education and that therefore the services bought-in are ancillary i.e. necessary to the Appellant’s educational business.

30. The Appeal Commissioner put three questions to the Respondent.

1. Whether the Respondent would accept that the VAT exemption applied if ██████████ was to provide documentation confirming that the tours related to topics subject of school & university education?

31. Revenue responded “that these tours cannot be treated as services ancillary to education. The Education exemption is only available to certain providers of ancillary

educational services. These persons are detailed at Paragraph 4(3) of the First Schedule VATCA2010. ██████████ is **not** one of these persons.” The Respondent is incorrect. The Appellant is, in fact, “one of these persons”. The legislation states:

“Children and education

4. (3) The provision by educational establishments recognised by the State of children’s or young people’s education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind ...”

32. *“Other persons of education” applies to the Appellant’s business. The essence of the Appellant’s business is education. The Appellant’s role in the business is primarily education. The Appellant’s business is very clearly “of a similar kind” to that of schools and universities.*

33. *There is no Irish legal definition of “other persons of education”, and so the ordinary meaning of the words applies. Similarly, “of a similar kind” also carries the ordinary meaning – and the Appellant’s business is very clearly, as endorsed by the teachers, of a similar kind to their schools.*

34. *The Commissioner’s second question is:*

2. If Revenue were willing to accept an exempt element of the supplies and whether this could be separated from the overall supply?

35. *The Respondent argues “that to avail of the Education exemption as a provider of ancillary educational services, the person **must** be a public body having educational aims or an organisation recognised as having similar objectives. This principle is established in legislation at paragraph 4(3) of the First Schedule VATCA 2010 and in the following CJEU case: Horizon College C-434/05.”*

36. *Once more the Respondent truncates its reference to relevant law. This seems to be a habit! Paragraph 4(3) of the First Schedule VATCA 2010 reads:*

(3) The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind, but excluding instruction in the driving of mechanically propelled road vehicles other than—

(a) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or (b) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

*37. Once again, the Appellant refers to that part of the definition which says: "the provision by other persons of education". The Respondent argues this **must** be a "public body", but the Irish law does not state an "other person of education" must be a "public body"! In fact, the legislation goes on to exclude driving instructors. By specifically excluding driving instructors from "other persons of education", it leaves a much wider scope of what can be included than just "public bodies" as asserted by Revenue! Other Irish legislation refers to "sole traders" being exempt – and no "public body" can be a "sole trader". Therefore, the Respondent is in error.*

38. The definition provided in the EU case law: CJEU case: Horizon College C-434/05 differs slightly from the Irish legislation, and by adding "other organisations defined by the member State concerned as having similar objectives". The Irish legislation's phrase for "other organisations" is precisely "other persons of education", and specifically includes sole traders.

*39. Furthermore, the Respondent ignores the CJEU ruling and states :
"the person **must** be a public body having educational aims or an organisation recognised as having similar objectives. This principle is established in ... the following CJEU case: Horizon College C-434/05." **This is not so.** Once again, the Respondent errs in law. The CJEU judgment, with reference to National legislation, in pt2, rules: "educational services to be defined by public administration regulation, which **may** specify that the exemption shall apply only in respect of operators not seeking to profit by such education".*

The Respondent uses the word **must**; whereas CJEU ruling uses **may**. There is no such requirement in Irish law for the “persons of education” to be not for profit.

40. Therefore, as an “other person of education” the services the Appellant buys-in are ancillary to the essence of the Appellant’s business, which is education; and as such, these ancillary services are exempted from TAMS.

41. The Respondent also argues that “to avail of the Education exemption at paragraph 4(4) of the First Schedule VATCA 2010 tuition covering school or university must be given privately by a teacher. This principle is established in legislation at paragraph 4(4) of the First Schedule VATCA 2010 and in the following CJEU case: Eulitz, C-473/08”

It must be pointed out that in the Irish legislation there is **no paragraph 4(4)** of the First Schedule VATCA 2010. But in any event, the context of Eulitz, C-473/08 involves a self-employed director of a company, providing education as acting for that company. This relates to the meaning of “privately”. The Appellant was not employed by, nor had he any role in any of the schools for whom he provided educational programmes. The Appellant was, in fact, engaged in a private capacity by the schools, for the benefit of the students. Nor was he representing any company of which he may have been a director etc. Therefore, he met the requirement for teaching in a private capacity.

42. The Respondent states at pt 9 in its Outline of Arguments:

“Firstly, that the Travel Agents Margin Scheme is a mandatory scheme for all taxable persons who act as principals in the supply of bought in services for onward supply to travellers.”

And

“This principle is established in legislation in S88(1) VATCA 201 and in the following CJEU cases: Commissioners of Customs and Excise v T.P. Madgett, R.M. Baldwin and The Howden Court Hotel (C-308/96 and C-94/97) and Finanzamt Heidelberg v iSt international Sprach- und Studienreisen GmbH (C-200/04”

43. In the CJEU case: Commissioners of Customs and Excise v T.P. Madgett, R.M. Baldwin and The Howden Court Hotel (C-308/96 and C-94/97), the central issue was that the **essential business was that of an hotelier**. By contrast, the Appellant’s **essential business is that of education**, which he has clearly established above.

Therefore, in this context, the services the Appellant buys-in are ancillary / necessary to the essential function of education, and as such are exempt TAMS.

44. In the CJEU case: *Finanzamt Heidelberg v iSt international Sprach- und Studienreisen GmbH* (C-200/04”, the central issues were that the essential business was that of a placement service. By contrast, the Appellant’s essential function is education. He designs and delivers each tour. He does not simply “tour-guide”, but he teaches throughout the entire tour and is present in all teaching sessions that involve third parties. This is in total contrast to the placement service provided by *iSt international Sprach- und Studienreisen GmbH*.

45. In its second point in “Issues to be addressed by the Respondent”, page 6, the Respondent states that “margin scheme supplies” are to be taxed as a single taxable supply. This does not apply to the Appellant’s business, as the services bought-in are ancillary supplies, essential to the Appellant’s business as an educator.

46. Each of the five Issues listed by the Respondent in its “Outline of Arguments” document have been shown, with clear reference to the law, not to apply to the Appellant.

47. Throughout these proceedings, the Respondent has frequently used inaccurate terms to describe the Appellant. Reference has previously been made to the Respondent’s Book of Documents, where the Respondent states: “The appellant is a sole trader and operates as a tour guide operator”. This statement, as previously addressed, is both misleading and incorrect. This statement is part of a **pattern of statements** by the Respondent that are deliberate attempts to mislead and diminish the educational role of the Appellant. They are deliberate because the Respondent cannot claim to be ignorant of the precise legal issues, especially legal definitions, which apply to this appeal.

48. Throughout its argument the Respondent has used terms that attempt to classify him as a tour operator and diminish the Commission’s understanding of the essence of his business i.e. education. Such terms include.

“tour guide operator...”

“██████████ may also act as a tour guide...”

“Just because a tour may have an educational element...”

“in-house talks”

“Ad hoc tutorials”

“No evidence has been provided to demonstrate that he has been engaged ... to provide tuition...”

“██████████ ... does not appear to be ... a teacher”

However, it is clear from the evidence presented by the Appellant and Irish and EU law That the Appellant is an “other person of education”.

49. The Respondent relies on “appearance” instead of establishing fact. It states: “It appears some of the expenditure relates to activities which are outside the scope of VAT” such as the “work volunteers referenced by ██████████ which appear to relate to the ██████████ Organisation.” On what evidence is this statement based? This has already been explained as being part of the ██████████ business as well as the magazine the Appellant produces and therefore is eligible. Volunteers do not take part in the educational programmes. And what was the “██████████ organisation” to which the Respondent refers? No evidence is provided to substantiate what “appears” to the Respondent!

50. Similarly, “refreshments purchased at filling stations which were disallowed in full.” Yet, previously, the Respondent acknowledged that subsistence for being away from home is an allowable expense.

51. When quoting from the Appellant’s website, the Respondent does so partially. It has omitted the context in which phrases are used, specifically, the word “Operator”. This word is used in the context of the Terms and Conditions which form part of the contract, and therefore “Operator” is a specific contractual role and not a “tour operator”. The phrase “tour operator” is never used in the Terms and Conditions. In fact, even the word tour is scarcely used, and when it is, it relates to tours that form a part of the entire programme. Furthermore, “tour members” is never used, but the phrase participants or programme participants is. Reference has previously been made to the word “Tour” and that it has no strict legal definition, unlike tour operator, bank or hotel. The Respondent has a legal responsibility to engage truthfully and impartially with the facts. That the Respondent concocts and applies terms such as “tour guide operator” which the Appellant has not used, and repeatedly uses phrases designed to diminish and discredit the Appellant’s business as essentially educational, is at least disingenuous.

52. Further examples of the Respondent misleading the Commission is when during oral evidence, whilst referring to definitions in the Transport Act, the Respondent stated that the Act stated such definitions relate only to that Act. However, in its Outline of Arguments document, the Respondent takes a more measured approach and states

“The Respondent’s position is that, while these terms are defined in S2 of the Transport Act, this section is prefaced with the wording “In this Act”. It is the Respondent’s position that these definitions therefore apply only for the purpose of the Transport Act and are not intended as an all-encompassing legal definition of the terms”.

*However, the Respondent fails to mention that in the very same Act, **immediately** following the definition of a Travel Agent and Tour Operator, reference is made to definitions that do in fact relate specifically to that Act and are preceded with the phrase **“For the purpose of this Act”**. That implies that the preceding definitions, such as Tour Operator or Travel Agent are NOT restricted to the purposes of the Act.*

53. In addition, the EU views the national law as the primary reference and there are many examples of this throughout the five case laws quoted. In Ireland, the law provides a precise definition of a travel agent and a tour operator, specifically that it involves overseas travel. The EU Commission, which does not have a such legal definition and uses instead the ordinary meaning of the words “tour operator or travel agent”. The EU Commission’s definition is less precise than Ireland’s definition, which, as has been shown above, cannot be consistently argued to be a definition just restricted to the particular Act.

54. The EU position is that points of law must first be addressed by national courts before being referred to the EU. This is evident throughout the five referenced cases as well as the Apple Revenue Commissioners case or the NI Gay Wedding Cake case.

55. The Transport (Tour Operators and Travel Agents) Act, 1982 defines a Tour Operator as:

“... a person other than a carrier who arranges for the purpose of selling or offering for sale to the public accommodation for travel by air, sea or land transport to destinations outside Ireland, or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or services;”

The same Act also provides the legal definition of a Travel Agent as:

“travel agent” means a person other than a carrier who, as agent, sells or offers to sell to, or purchases or offers to purchase on behalf of, the public accommodation on air, sea or land transport to destinations outside Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or services.

The importance of legal definitions is clearly recognised by Revenue, including specifically, in fact, in the same Travel Agents Margin Scheme. In TAMS Section 1.8. Revenue states: “What does 'traveller' mean? A traveller is not defined in the legislation and so has its ordinary meaning”. However, Travel Agent and Tour Operator are legally defined, as in The Transport (Tour Operators and Travel Agents) Act, 1982, and this definition, which is not simply restricted to the particular Act, must be respected.

56. If there is disharmony between Irish and EU legislation, that must be resolved elsewhere; but the EU practice is that, in the first instance, national law takes precedence.

57. Furthermore, The Guidelines on Tour Operators and Travel Agents Licences references the Transport (Tour Operators and Travel Agents) Act, 1982 as amended by The Package Holiday and Travel Trade Act, 1995. Therefore, the Irish legal definition of a Travel Agent or Tour Operator is not simply being confined to the 1982 Act but is depended on elsewhere.

58. The Appellant has never presented himself as either a Tour Operator or Travel Agent; has never become a member of any tour organization; nor has the Department of Trade and Tourism ever required the Appellant to be one thing or another under their regulations. Just because someone in Revenue concocts a title like tour guide operator or ignores legal definitions and claims the Appellant is a Tour Operator or Travel Agent does not make the Appellant one. The Appellant refuses to be either a Tour Operator or a Travel Agent; has no interest in either business; and refutes any attempt to be so defined.

59. The Respondent, having attempted to describe the Appellant, for VAT purposes, as some form of “tour guide operator”, mistakenly proceeds to apply the Travel Agents Margin Scheme, whilst ignoring both the Irish definition of a travel agent and the abundantly clear documentary evidence that the essence of the Appellants business is education and therefore exempt TAMS.

60. The Appellant believes the High Court would view this as being a question in the national interest, especially as it raises constitutional matters similar to those currently being addressed between the EU Commission and The Supreme Courts in Germany, Poland and Hungary regarding the superiority of National law over EU law.

61. The Oireachtas makes Law to suit the domestic market; more especially, in tax affairs and company operational affairs. The EU holds that National law is the primary reference. As a progressive member of the EU, all law in Ireland is in harmony with EU Law; or if not, it is on the Oireachtas radar for change. As such, the EU is generally happy to allow States conduct their own Tax affairs, a point driven by the Respondent in the EU Apple Tax case.

62. The Appellant rejects utterly the Respondent's claims and asserts his lawful right to be an other person of education; that the services he buys in are ancillary to his function as an educator; and that he is therefore not subject to TAMS.

Signed: [REDACTED] 28th February, 2022"

24. The following documents were submitted by the Appellant in support of his claim:

i. A 2016 tour itinerary for an unidentified client as follows:

<i>Date</i>	<i>Day</i>	<i>Time</i>	<i>Activity</i>	<i>Pp</i>	<i>grp</i>	
[REDACTED]	Sat	08:15	Arrive Dublin airport Travel to Kerry – Dingle Peninsula Lunch (students responsibility) Dingle Peninsula Orientation tour Group Dinner (early) Group accommodation in Dingle	20 35	15 175	35
[REDACTED]	Sun	14:30	Intro to classes Lunch (students responsibility) Blasket Island Centre	2 20	15	

			<i>Group Dinner</i> <i>Free time</i> <i>Group accommodation in Dingle</i>	35	175	
██████	Mon	10:00	<i>Boat trip to Blasket Islands</i> <i>Packed lunch (students responsibility)</i> <i>Literature reading on Great Blasket with ██████</i> <i>██████ poet, guest author & guide</i> <i>Group dinner on way back from Blasket</i> <i>Group accommodation in Dingle</i>	40 20 35	40 15 100 20 175	
██████	Tues		<i>Group walking tour of Dingle town</i> <i>Lunch (students responsibility)</i> <i>Free time in Dingle town</i> <i>Dinner on your own</i> <i>Group accommodation in Dingle</i>	 35	100 15 20 175	
██████	Wed		<i>Depart for Sligo via Galway Via Thor Tower, Kiltartan Cross & lady Gregory's Coole Park</i> <i>Lunch en route or at Coole Park (students responsibility)</i> <i>Irish Literary Revival & Lady Augusta Gregory</i> <i>Travel to Sligo</i> <i>Group accommodation Strandhill</i> <i>Dinner in Strandhill</i>	 20	15 500 20	

██████████	Thurs	19:00	<p>Sligo</p> <p>Easy morning</p> <p>Lunch (students responsibility)</p> <p>Recreational afternoon: Horse riding, golf, seaweed baths, surfing etc</p> <p>Gourmet dinner in Temple House with ██████████ 0</p> <p>"Kavanagh to Heaney" 0 setting the scene for Irish literature & renowned traditional fiddle player ██████████</p> <p>Group accommodation Strandhill</p>	45	500	15
██████████	Fri		<p>Sligo Tour Yeats County Time in Sligo Town Yeats Statue</p> <p>Free time in Sligo</p> <p>Lunch in Sligo (students responsibility)</p> <p>Tobermault Holywell: A necessary introduction to the Celtic underworld</p> <p>Dooney Rock, Innisfree, Parke's Castle and Lough Gill</p> <p>Glencar Valley & Waterfall: The Stolen Child & glacial geography including Famine Road walk</p> <p>Dinner on your own</p> <p>Group accommodation Strandhill</p>	5	500	15
██████████	Sat		Sligo Tour			

			<i>Drumcliffe: Yeat's Grave, Round Tower, Battle of Books, Riverside walk & visit craft shop</i> <i>Lunch at Drumcliffe (students responsibility)</i> <i>Lissadell House: Tour & exhibitions</i> <i>Yeat's Literary supper at Brock House</i> <i>Group accommodation Strandhill</i>	17	65	15	500	
██████	Sun		<i>Sligo Tour – Myths and Legends</i> <i>Markree Castle</i> <i>Lunch (students responsibility)</i> <i>Myths & Legends with ██████</i> <i>██████ at Carrowkeel Tombs – older than the Egyptian pyramids</i> <i>Dinner in Limoncello</i> <i>Group accommodation Strandhill</i>	20	100	15	500	
██████	Mon		<i>Travel to Glendalough</i> <i>Lunch at Wicklow Heather restaurant writers room (students responsibility)</i> <i>Explore Glendalough then travel to Dublin</i> <i>Dinner at Templebar: small groups</i> <i>Accommodation in Lucan Centre</i>	20	36	15	175	35
██████	Tues		<i>Book of Kells TSD</i>	7		15		

		15:30	Lunch (students responsibility)	6 20		
		19.30	Tour of Abbey Theatre Dinner Temple Bar Play at Abbey Theatre Othello Accommodation city centre hotel	36	432	
██████	Wed	09:00	Kilmainham Gaol Lunch (students responsibility)	5	15	
		14:30	1916 day: Walking Tour of Dublin City Centre End of Tour dinner Accommodation city centre hotel	25 36	327 175	35
██████	Thurs	10:10	Depart for Dublin Airport		15	
			Itinerary planning & booking fee		2500	
			Total pp	605	15125	
			Coach hire		2800	14 200
			Parking & tolls		100	
			Collect and return coach		300	
			Coach diesel		700	14 50
			Coach driver		2800	14 200
			Total tour costs		29729	
			Contribution to annual overheads costs 5 Pa w DS		15000	
					44729	

			<i>Margin</i>		1311	
			<i>Students</i>			20
			<i>Faculty</i>			2
			<i>Other adults</i>			2
			■ <i>staff</i>			1
			<i>Total pax cost</i>			25
			<i>Single rooms</i>			5
			<i>Income</i>			
			<i>Student fee pp</i>		2302	
			<i>Invoice total</i>		46040	
			<i>Scholarship</i>		-1000	
			<i>Revised invoice total</i>		45040	
			<i>Payments received</i>		9867.81	
					9762.23	
					10553.73	
					8763.84	
					608.84	
			<i>Total payments received</i>		39556.44	
			<i>Write down due to students</i>		-5483.56	
			<i>funding limits</i>			

ii. ■■■■■ Statement ■■■■■

■■■■■

<i>Total Fee</i>	46,040.00
■■■■■	-1000.00
<i>Total</i>	45,040.00

Payment received

<i>Received 1st December 2015</i>	9,867.81
<i>Received 25th January 2016</i>	9,762.23
<i>Received 16th March 2016</i>	10,672.66
<i>Received 18th April 2016</i>	8,763.86
<i>Balance due</i>	705.00

iii. ■■■■■ Statement ■■■■■

■■■■■

For [REDACTED] [REDACTED] charter tour services:

All accommodations [sharing double or twin room], meals [excl lunches] entrance to visitors centres. Speakers & guides; transport in Ireland as per itinerary & conditions

<i>Total Fee</i>	
<i>Standard pp cost</i>	2,302
<i>Discount</i>	-350
<i>Total Now Due</i>	1,953

iv. [REDACTED] [REDACTED] Invoice [REDACTED]
[REDACTED] School

For [REDACTED] [REDACTED] charter tour services for mini [REDACTED] programme:

All accommodations, meals [excl lunches] entrance to visitors centres, speakers & guides; transport in Ireland as per itinerary & conditions

Total fee

Minimum 3 students and one faculty

<i>Students fee</i>	1,800 pp x 3	5,400
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<i>Total now due</i>	5,400
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v. [REDACTED] [REDACTED] Invoice / Statement [REDACTED]

Irish Golf Tour

For [REDACTED] [REDACTED] charter tour services: Golf Tour as per agreed itinerary for twelve persons [revised from 20]:

- Group coach transport within Ireland
- Accommodation Yeats' County Hotel Sligo
- Green fees (caddies and karts not included)
- Tour planning: Itinerary booking & management services

<i>Total fee: 10 pax at 1,550 pp [discount rate]</i>	<i>€15,500.00</i>
<i>Payments received</i>	
<i>4th November 2015 Deposit received</i>	<i>€ 2,490.00</i>
<i>16th June 2016-07-19 payment received</i>	<i>€ 6,990.00</i>
<i>Balance now due</i>	<i>€ 6,020.00</i>

Respondent's Submissions

25. The Respondent submitted that the Appellant is a sole trader and operates as a tour guide operator, [REDACTED] and the sale of advertising in, and the retail of, the [REDACTED] magazine.
26. The Respondent submitted that the Appellant was selected for an Aspect Query as there were VAT returns and Income Tax returns outstanding for several years. When the outstanding returns were filed the Respondent's caseworker requested backing schedules from the Appellant and on receipt of those it was noted that:
- i. VAT was not returned on tour income;
 - ii. VAT was claimed on personal expenditure; and
 - iii. the apportionment used for dual use expenditure did not seem reasonable.
27. The Respondent submitted that since 2010 tour operators must use the Travel Agent's Margin Scheme (hereinafter referred to as "TAMS") for the calculation of VAT. TAMS services include services such as transport, accommodation, tour guides and bought-in travel which are sold by the travel agent as a package to a traveller. In this scheme, unlike the normal VAT system, VAT is accounted for on the basis of the travel agent's margin rather than on the full consideration the travel agent received for the supply.
28. The Respondent submitted that a simplified accounting system must be maintained by the taxpayer to support the scheme with the gross margin being worked out by deducting direct expenses from sales. VAT is then accounted for on the margin. The gross margin can be worked out for a year and applied to each sale and reconciled at the end of the year. In the alternative, a margin can be applied to each tour separately.

29. The Respondent submitted that in order to calculate VAT on the Appellant's tour sales, it calculated a margin based on costings provided by the Appellant for one of the tours named for which details were provided: "██████████" in 2015 – 2016. The Respondent submitted that the Appellant did not provide an invoice for coach hire for this tour nor was any evidence of payment of this amount submitted by the Appellant. The Respondent submitted that the Appellant did not provide any backup for the expense costs claimed by him for this tour but that the Respondent allowed the expense costs claimed by the Appellant in order to prepare the margin calculation in as fair as a manner as possible.

30. The Respondent submitted the following calculations which it had used in relation to the "██████████":

Total Receipt €			45,040
Less costs €	per Appellant's records	14,120	
Coach Hire €	per Appellant's records	2,800	
Parking Tolls €	per Appellant's records	100	
Coach Diesel €	per Appellant's records	700	
Total Expenses €			17,720
Therefore Margin €			27,320
Equates to a Margin % of			60%

31. The Respondent submitted that thereafter a 60% margin was applied to each of the Appellant's tours and VAT was calculated as follows:

Period	Gross Receipt € x 60%	Adjusted figure gross €	VAT €
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Nov/Dec 15	9867.81 x 60%	5,920.68	1,107.12
Nov / Dec 15	2,490.00 x 60%	1,490.00	279.36
Jan / Feb 16	9,762.23 x 60%	5,857.33	1,095.27
Mar / Apr 16	10,672.66 x 60%	6,403.59	1,197.42
Mar / Apr 16	8,763.00 x 60%	5,257.80	983.17
May / Jun 16	6,990.00 x 60%	4,194.00	784.24
May / Jun 16	608.00 x 60%	364.80	68.21
May / Jun 16	6,137.66 x 60%	3,682.60	847.00
Jul / Aug 16	4,891.30	2,934.78	675.00
Jul / Dec 17	3,247.00 x 60%	1,948.00	364.29

32. The Respondent stated that during the audit it was noted that the Appellant was claiming VAT on invoices that related to personal items such as Specsavers, Mountain Warehouse, Lidl, Penneys and Super Valu. This VAT was identified and disallowed by the Respondent pursuant to section 60 of the VATCA2010. In addition the Appellant was claiming VAT on items which would also have had a personal element such as diesel, three separate mobile phone bills and electricity. The Respondent disallowed 20% of the VAT credit claimed on these inputs pursuant to section 61(2) of the VATCA2010 as follows:

Year	VAT period	VAT claimed on purchases	VAT disallowed
2016	Jan / Feb	542.91	112.48
	Mar / Apr	572.26	229.84
	May / Jun	692.84	229.22
	Jul / Aug	723.84	549.54
	Sep / Oct	494.90	165.19
	Nov / Dec	551.44	174.27

		3,678.19	1,460.54
2017	Jan / Jun	1,755.00	530.41
	Jul / Dec	1,840.00	462.28
		3,595.00	992.69

33. The Respondent submitted that the Appellant acts as a principal in the supply to travellers of margin scheme services and that he must account for VAT under the travel agents margin scheme.
34. The Respondent submitted that the Appellant has not shown that he falls under the definition of a “recognised body” as defined by Schedule 1(4)(3)(b) of the VATCA2010. In addition the Respondent submitted that the Appellant had been requested on numerous occasions to provide evidence from the schools who used his services to support his claim that the tours being provided formed part of each school curriculum but he had failed to do so.
35. In addition VAT was not returned by the Appellant on golf tours, VAT was claimed on personal expenses which is not deductible under section 61(2) of the VATCA2010 and insufficient apportionment was made for dual use VAT inputs by the Appellant.
36. On 16th November 2021 the Respondent submitted an Outline of Arguments to the Commission which, *inter alia*, addressed the questions put by the Commissioner as set out in paragraph 7 above as follows:

- i. Whether the Respondent would accept that the VAT exemption applied if the Appellant was to provide documentation confirming that his tours related to courses taught regularly in schools or universities?

Respondent’s answer:

“Revenue’s position is that these tours cannot be treated as services ancillary to education. The Education exemption is only available to certain providers of ancillary educational services. These persons are detailed at Paragraph 4(3) of the First Schedule VATCA2010. ██████████ is not one of these persons.

A taxable person who supplies tours and buys in services for that purpose from other taxable persons is a supplier of travel agent margin scheme services. This

position is confirmed in section 88(1) (of the VATCA2010) and in case law (Finanzamt Heidelberg v ISt International Sprach – und Studienreisen GmbH C-200/04) Commissioners of Customs and Excise v Madgett and Baldwin trading as the Howden Court Hotel (C308/96 and C94/97).

When a service is supplied as part of a traveller's journey it is a margin scheme service and forms part of a single indivisible supply. This position is again confirmed in section 88(2) (of the VATCA2010) and in case law (Commissioners of Customs and Excise v Madgett and Baldwin trading as the Howden Court Hotel C308/96 and C94/97)."

- ii. Whether the Respondent was willing to accept an exempt element of the supplies and whether this could be separated from the overall supply?

Respondent's answer:

"The Respondent's position is that every taxable person selling bought-in services in their own name for the benefit of travellers falls to be taxed under TAMS. This is set out in section 88(1) of the VATCA20210.

When a service is supplied as part of a traveller's journey it is a margin scheme service and forms part of a single indivisible supply. This is set out in section 88(2) (of the VATCA2010) and in case law (Commissioners of Customs and Excise v Madgett and Baldwin trading as the Howden Court Hotel C308/96 and C94/97).

Notwithstanding that a supply may include elements, which would attract different VAT rates if supplied under normal circumstances, these cannot be separated out and taxed under normal rules.

The bundled elements of the travel services supplies form a single indivisible supply which cannot be split out. It is therefore not appropriate to consider the supply as composing constituent taxable elements. A consideration of the VAT rate applicable to constituent elements when supplied individually is simply not applicable in the circumstances. It is irrelevant whether any of the services supplied are exempt or taxable when supplied individually as the normal VAT rates do not apply.

The students make a journey to Ireland and all the services that ██████ supplies to them which he buys in from other taxable persons are services in the provision of travel facilities. The supply made to the students is a single supply and taxable under the travel agents margin scheme.

Revenue would not be prepared to accept that any element could be separated out and treated for VAT purposes as outside of the scheme. This would be in contravention of section 88 (of the VATCA2010) and CJEU case law which provide that services supplied for the benefit of a traveller must be treated as a single supply.

To highlight the application of these principles it is useful to examine the VAT treatment of the supply of passenger transport and their accompanying baggage. These services are currently exempted under Irish provisions (paragraph 14 of Schedule 1 of the VATCA2010)

However, when bought in by a travel agent and supplied to a traveller they are subject to the VAT rules applicable under the Travel Agents Margin Scheme. The value of these exempt services is not separated out and treated under normal VAT rules. They remain within the scheme because they have been purchased from a third party for onward supply to a traveller.

Revenue cannot separate an exempt element from the overall supply.”

iii. Whether a portion of the services provided by the Appellant could qualify for VAT exemption?

“Revenue would be willing to accept that certain supplies made by ██████ personally may not be margin scheme services because they are not ‘bought-in’. These services would therefore not fall to be taxed under the margin scheme.

This does not preclude the other elements supplied by ██████ as principal and bought in from other taxable persons from being taxed under the rules applicable under TAMS. It is only the services supplied by ██████ himself which could be taxed outside of the special scheme.

However, ██████ would need to demonstrate that his services have been supplied as part of the total consideration received. He would need to apportion the consideration between margin scheme services and those supplied from his

own resources, An open market value would need to be assigned to the in-house services he supplies. The value of these services would then be taxed under normal VAT rules.

The issue would then arise as to the appropriate VAT rate.

The VAT rate applicable to lecturing services is the standard rate. The reduced rate applies to the services of a tour guide.

The context in which ██████████ delivers his 'in-house' talks does not appear to be that of a teacher and student. No evidence has been provided to demonstrate that he has been engaged by the students or their schools to provide tuition covering their school or university education.

Revenue would need substantive proof that he is acting as a teacher to these students and provides them with tuition covering their university or school education to apply the education exemption provided at paragraph 4(4) of Schedule 1. Additionally, there would need to be an identifiable link between these services and the consideration received. Fees charged would need to be directly linked to the 'tutorial' service.

On balance and based on the evidence provided to date, Revenue considers that ██████████ is supplying the services of a tour guide and not a teacher in delivering these services. He cannot, therefore, avail of the education exemption under Schedule 1 paragraph 4(4) VATCA2010 for the in-house services he provides to students.

They should be taxed outside the margin scheme under normal VAT rules. An open market value must be assigned to these services. VAT will be due on these services at the appropriate rate, currently 13.55, paragraph 4 of schedule 3 to the VATCA2010 – services supplied in the course of their profession of tour guides.

I would note however that to date, to my knowledge, ██████████ has not charged separately for the 'tutorials' provided by him personally and they appear to be provided on an adhoc basis or on occasion as required if another speaker is unavailable. Revenue would accept that where the in-house supplies are minor / inconsequential that they could continue to be accounted for under the TAMS."

Material Facts

37. The following material fact is not at issue in the within appeal:

- i. The Appellant is a business man who, during the period 1 November 2015 to 31 December 2017, was registered for VAT and undertook a number of different business activities to include delivering tours, operating a [REDACTED] and selling advertising in, and the retail, of the [REDACTED] magazine;
- ii. The Appellant delivered golf tours during the period 1 November 2015 to 31 December 2017.

38. The following material fact is at issue in the within appeal:

- i. The tours which the Appellant delivered were children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services);

39. The Commissioner has considered the material fact at issue.

40. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."

41. The Appellant claims that the tours which he delivered during the period from 1 November 2015 to 31 December 2017 were children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services) such that he is entitled to an exemption from VAT pursuant to Schedule 1 paragraph 4(3) of the VATCA2010.

42. During the course of this appeal the Appellant has delivered lengthy and detailed submissions which set out his claim as set out in the section "*Appellant's Submissions*" above. The Appellant has been provided with multiple opportunities by the Commission to provide all information to support his appeal. The Respondent also delivered submissions. The Commissioner has considered all of the submissions made by the Appellant and the Respondent. The Commission must first consider the factual position in any appeal and the establishment of the facts.

43. The Appellant claims that the tours which he delivered from 1 November 2015 and the period under review by the Respondent were educational tours.

44. In the document which the Appellant submitted dated 1 October 2020 which was appended to his Statement of Case he states at paragraphs 12 and 13 that:

“12. It is evident from the itineraries, sample copies of which have been provided to Revenue and below, that the focus of my tour programmes are subjects, such as Literature, History, Performing Arts, Peace Studies. Education is clearly the purpose and focus of the tours. These subjects are also clearly subjects taught regularly in schools and universities.

13. The itineraries also clearly show “the teaching process and teacher / student relationship together with the organisational infrastructure to support the effective transfer of knowledge and skills between the teachers and students”.

45. The Appellant has submitted one tour itinerary to the Commissioner which is set out in full in the Appellant’s Submissions section above. In addition the Appellant has submitted two Statements from ██████████ ██████████ which appear to relate to the itinerary which he submitted, although that itinerary does not identify the client to which it relates. The Commissioner notes the contents of this tour itinerary and the details contained therein and notes that the itinerary does not contain any items of academic value which the Appellant delivered and appears to mainly contain items of cultural and touristic value such as:

- i. ██████████ attendance at Blasket Island Centre with an additional cost per person of €2,
- ii. ██████████ boat trip to Blasket Islands which included a literature reading by ██████████ ██████████ with a €100 fee attached thereto
- iii. ██████████ Group Walking tour of Dingle with a €100 fee attached thereto;
- iv. ██████████ Visit to Thoor Tower and Coole Park in Galway
- v. ██████████ A dinner in Temple House Sligo with a talk by ██████████ ██████████ with a fee attached thereto
- vi. ██████████ A talk at Tobernault Holywell in Sligo with an additional cost per person of €5;

- vii. ██████ A visit to Lissadell House in Sligo with an additional cost per person of €17;
- viii. ██████ A talk by ██████ on Myths and Legends with a €100 fee attached thereto
- ix. ██████ Visit to Book of Kells with an additional cost per person of €7; A tour of the Abbey Theatre with an additional cost per person of €6
- x. ██████ Tour of Kilmainham Goal with an additional cost per person of €5

46. The Commissioner notes that the majority of talks which were delivered as part of the tour were paid talks and the Appellant has not given or adduced any evidence of specific talks. Classes or tuition which he delivered during this tour.

47. The only other tour itinerary which the Appellant has submitted during the course of this appeal is a "*Sample Itinerary*" in relation to a tour which the Appellant claims took place in 2019 which does not relate to the period 1 November 2015 to 31 December 2017 to which this appeal relates.

48. The Appellant has submitted the following three documents in support of his claim. Each of the documents appear to be printouts and do not appear to be original documents. The Appellant has not established to the Commissioner whether these documents were received by post or by email. None of the writers of these letters gave evidence to the Commissioner during the course of this appeal. The following letters are set out in full in the "*Appellant's Submissions*" section above:

- i. Undated and unsigned letter from ██████ of the ██████ School ██████. The Commissioner notes that this letter does not give any details as to the dates of any tours which ██████ undertook which were provided by the Appellant and specifically the letter does not state that he undertook tours with the Appellant during the period 1 November 2015 to 31 December 2017 to which this appeal relates. The Commissioner also notes that this document does not set out that the Appellant delivered any of the classes and / or tuition himself.
- ii. Undated and unsigned letter from ██████ of the ██████ School in ██████ which states, inter alia, that she had "*... the pleasure of bringing multiple school groups to Ireland from two different schools. ██████ School in the USA and ██████ School in ██████ in the UK...*". Again, the Commissioner notes that this letter does not give any details as to the dates of any tours which ██████ undertook which were provided by the Appellant and specifically does

not state that she undertook tours with the Appellant during the period 1 November 2015 to 31 December 2017 to which this appeal relates. The Commissioner does note that the “Sample Itinerary” referenced by the Appellant in the document which he submitted dated 1 October 2020 contains details of the itinerary of a tour “██████████ School ██████████, *Global leadership studies syllabus*” which the Appellant claims took place from ██████████ 2019 to ██████████ 2019. This does not relate to the period under appeal. The Commissioner also notes that this document does not set out that the Appellant delivered any of the classes and / or tuition himself.

- iii. Signed letter from ██████████ School, ██████████, USA. The Commissioner notes that this letter is undated and refers to a tour which the writer states was, *inter alia*, “... a six-day educational tour of Ireland and Northern Ireland” which the writer states took place “...in 2016”. This letter however does not set out the dates of this tour nor does it set out that the Appellant himself delivered any of the classes and/or tuition during the course of the tour. The Commissioner does note that the Appellant submitted ██████████ ██████████ Invoice ██████████ which was addressed to ██████████ however this invoice is not accompanied by an itinerary or any detail in relation to this tour.

49. The Commissioner did not hear any evidence from the writers of these three documents and as such the contents of the documents has not been opened to scrutiny or cross-examination from the Respondent. The Commissioner has accepted them as part of the Appellant’s appeal but their lack of specificity, and accompanying invoices is a factor in their evidential weight attached.

50. The Commissioner finds that it is reasonable to expect that the Appellant would have produced the invoices which he issued for the tours set out in the letters which would include details of the dates of the tours and the Appellant has produced one invoice relating to ██████████ at ██████████ School although no evidence of the payment of this invoice has been submitted by the Appellant. The Commissioner finds it is reasonable to expect that the Appellant would have submitted the itineraries, invoices and evidence of payment received in relation to the tours relating to ██████████ and ██████████. He did not.

51. The Appellant did not adduce any evidence to the Commissioner which established that he himself delivered any classes or tuition during the period 1 November 2015 to 31 December 2017. The Appellant has submitted an itinerary relating to one tour during the period 1 November 2015 and 31 December 2017. However, the Appellant has not submitted any evidence of any talks, classes or tuition which he delivered during the

course of the tours which he delivered. The Commissioner considers it is reasonable to expect that, in circumstances where he is claiming that he is entitled to an exemption from VAT pursuant to Schedule 1 paragraph 4(3) of the VATCA2010, the Appellant would have adduced evidence of the details of the type of education which he himself delivered during the period 1 November 2015 to 31 December 2017. He did not.

52. In addition, the Commissioner considers that it is reasonable to expect that in seeking to establish that he is entitled to an exemption from VAT pursuant to Schedule 1 paragraph 4(3) of the VATCA2010, the Appellant would have adduced evidence of the specific dates during the period 1 November 2015 to 31 December 2017 on which he himself delivered talks, classes and/or tuition and details of same. He did not.

53. The Appellant did not adduce any evidence or any details of any specific tours which he undertook in the period 1 November 2015 to 31 December 2017. The Appellant did not adduce any evidence in relation to payments which he received during that period, whether relating to tours or any other business which the Appellant undertook.

54. As set out above the burden of proof in this appeal is on the Appellant and the standard of proof is the balance of probabilities. The Appellant has set out in his submissions and multiple documentation matters relating to human rights and specifically the right to education under Protocol 1, Article 2 of the European Convention of Human Rights. He has also claimed that he cannot provide information due to the “GDPR” and data protection rights of third parties. The Commission does not consider that the Respondent seeking information from the Appellant about his own business comes within the remit of the various data protection laws. The Commission does not consider it unreasonable for the Commission to expect that the Appellant can provide details of his own business and support his appeal with invoices and details of the education he is providing. The Commission does not consider that the Appellant has provided the necessary documentation to demonstrate he is an “other person of education”. The Commission must be provided with factual information before it can determine if an individual falls within a legislation framework.

55. The Appellant has not adduced any evidence or any details of the specific tours which he undertook during the period under appeal. The Appellant has not adduced any evidence of the payments which he received during the period under appeal. In addition the Appellant has not adduced any evidence of details of the talks, classes or tuition which he claims he delivered as part of tours during the period under appeal. As previously set out the burden of proof lies with the Appellant in this appeal. In the circumstances, the Commissioner finds on the balance of probabilities that the Appellant has failed to adduce

any evidence, whether oral or documentary, which tends to establish his claim that during the period from 1 November 2015 to 31 December 2017 his tours were children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services). Therefore the Appellant has not discharged the burden of proof in relation to this material fact. Therefore this material fact is not accepted.

56. Therefore the Commissioner accepts the following as a material fact in the within appeal:

- i. The Appellant is a business man who, during the period 1 November 2015 to 31 December 2017, was registered for VAT and undertook a number of different business activities to include delivering tours, operating a [REDACTED] and selling advertising in, and the retail, of the [REDACTED] magazine;
- ii. The Appellant delivered golf tours during the period 1 November 2015 to 31 December 2017.

Analysis

Substantive Appeal

57. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."

58. The issue which arises between the Parties in this appeal is whether the exemption to VAT contained in Schedule 1(4)(3) of the VATCA2010 is applicable to the Appellant for the tours which he delivered during the period 1 November 2015 to 31 December 2017.

59. There is no dispute between the Parties that the Appellant was registered for VAT during the period 1 November 2015 and 31 December 2017. The Appellant also does not dispute that VAT is a chargeable and leviable tax and in his submissions has accepted that VAT is payable and leviable on golf tours which he delivered

60. The Commissioner has considered the submissions made on behalf of both Parties along with the relevant legislation and the material facts.

61. The Commissioner has found the following as material facts:

- i. The Appellant is a business man who, during the period 1 November 2015 to 31 December 2017, undertook a number of different business activities to include delivering tours, operating a [REDACTED] and selling advertising in, and the retail, of the [REDACTED] magazine;
- ii. The Appellant delivered golf tours during the period 1 November 2015 to 31 December 2017.

62. Section 3 of the VATCA2010 sets out the charge to VAT as follows:

“Except as expressly otherwise provided by this Act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions:

(a) the supply for consideration of goods by a taxable person acting in that capacity when the place of supply is the State;

(b) the importation of goods into the State;

(c) the supply for consideration of services by a taxable person acting in that capacity when the place of supply is the State;

(d) the intra-Community acquisition for consideration by an accountable person of goods (other than new means of transport) when the acquisition is made within the State;

(e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State.”

63. Section 59 of the VATCA2010 sets out the deductions which can be made in the calculation of VAT to be returned to the Respondent by VAT registered persons. Section 60 of the VATCA2010 sets out the general limits of deductibility in the calculation of VAT to be returned to the Respondent by VAT registered persons. There is no dispute between the Parties in relation to the application of these sections of the VATCA2010 to the Appellant.

64. Schedule 1(4)(3) of the VATCA2010 set out that an exemption to VAT applies to the following:

“4(3)(a) The provision by a recognised body of children’s or young people’s education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), but excluding instruction in the driving of

mechanically propelled road vehicles other than—

(i) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or

(ii) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

(b) In this subparagraph—

'recognised body' means—

(i) a public body,

(ii) any of the following bodies:

(I) a recognised school within the meaning of the Education Act 1998 ;

(II) an education or training provider within the meaning of the Education and Training Boards Act 2013 , to which section 22 of that Act applies;

(III) a body in receipt of moneys advanced under section 21 of the Further Education and Training Act 2013 ;

(IV) a body providing training for initial or continued access to a regulated profession, within the meaning of the Recognition of Professional Qualifications (Directive 2005/36/EC) Regulations 2008 (S.I. No. 139 of 2008);

(V) a body providing a course leading to an award which is recognised within the National Framework of Qualifications;

(VI) a body, included for the time being on a list published by the Minister for Justice and Equality from time to time, which provides a course, attendance at which, that Minister considers provides an acceptable basis for the granting of an immigration permission;

(VII) a body providing a course leading to an award by an approved college, within the meaning assigned by section 473A of the Taxes Consolidation Act 1997 ;

(VIII) a provider of a programme of education and training, within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012 which is, for the time being, validated under section 45 of that Act;

(IX) a body, providing education to children or young people which, if provided by a recognised school within the meaning of section 10 of the Education Act 1998 , would be the curriculum prescribed under section 30 of that Act.”

65. The Commissioner has already found that the Appellant has not succeeded in discharging the burden of proof to establish that the tours which he delivered during the period 1 November 2015 to 31 December 2017 were children’s or young people’s education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services). Therefore, the exemption contained in Schedule 1(4) of the VATCA2010 is not applicable to the Appellant for the period 1 November 2015 to 31 November 2017.

66. Section 88 of the VATCA2010 sets the provisions of the Travel Agents Margin Scheme (hereinafter “TAMS”) which was introduced in 2010. There is no dispute between the Parties as to the operation of TAMS.

67. Section 88 of the VATCA2010 sets out the operation of TAMS and subsection 2 thereof provides that a supply of margin scheme services, that is to say bought-in services supplies by a travel agent to a traveller, shall be treated as a single supply. Tour operators must therefore use TAMS for the calculation of VAT. TAMS services include services such as transport, accommodation, tour guides and bought-in travel which are sold by the travel agent as a package to a traveller. In this scheme, unlike the normal VAT system, VAT is accounted for on the basis of the travel agent’s margin rather than on the full consideration the travel agent received for the supply and the method of calculation of the margin is set out in section 88(1) of the VATCA2010 as follows:

“travel agent’s margin”, in relation to a supply of margin scheme services, means an amount which is calculated in accordance with the formula—

$$A - B$$

where—

A is the total consideration which the travel agent becomes entitled to receive in respect of or in relation to that supply of margin scheme services, including all taxes, commissions, costs and charges whatsoever and value-added tax payable in respect of that supply, and

B is the amount payable by the travel agent to a supplier in respect of bought-in services included in that supply of margin scheme services to the traveller, but any bought-in services purchased by the travel agent prior to 1 January 2010 in respect of which that travel agent claims deductibility in accordance with Chapter 1 of Part 8 shall be disregarded in calculating the margin,

and if that B is greater than that A, then the travel agent's margin in respect of that supply shall be deemed to be nil;

68. Once the travel agents margin is calculated VAT is then accounted for on the margin. The gross margin can be worked out for a year and applied to each sale and reconciled at the end of the year. In the alternative, a margin can be applied to each tour separately. The Appellant has not supplied information to the Respondent or to the Commissioner to make it possible to differentiate between the different tours which he delivered in the period 1 November 2015 to 31 December 2017 and has only supplied information on one tour. As a result the margin applied has been calculated on the information which the Appellant has supplied and the Respondent calculated the Appellant's margin as being 60%. The Appellant has not disputed this calculation.

69. As a result, the Commissioner determines that the provisions of section 88 of the VATCA2010 apply to the Appellant's tour business for the period 1 November 2015 to 31 December 2017 and the TAMS thereunder is the method which must be used for the calculation of VAT by the Appellant for that period.

70. As the Commissioner has determined that the calculation of VAT by the Appellant for the period 1 November 2015 to 31 November 2016 was to be made by reference to TAMS, the Commissioner does not consider that the questions which the Commissioner raised with the Respondent and set out at paragraph 7 above are relevant and considers that she, therefore, does not need to comment on same.

Legal Aid

71. By email dated 7th December 2021 the Appellant submitted the following in relation to Legal Aid:

“2. At our last hearing, I raised the grave concern regarding equality of arms for legal support and requested the assistance of the State to enable me to engage with this matter fully. Unlike Revenue staff, I do not have the vast resources of the State to draw on, and my work on this matter takes me away from generating income, to not only keep my business afloat, but to provide the basics of food, heat and accommodation. You will appreciate, I trust, that due to the government’s decision to close much of the economy in response to the perceived covid threat, I have been unable to generate income for the past nearly two years; the State has also stopped paying me the covid pandemic allowance, even though I am still not able to trade; and it is most unlikely I will generate income for another year from my educational business. The outworking of government policy, not only to close the economy but also to stop protecting people in businesses like me, has, and will have, very serious implications. It is therefore necessary that I allocate as much time as possible to provide for myself and my family, whilst trying to keep my business afloat. The government’s covid policies have essentially no impact on the financial security of public sector staff who, throughout, continue to receive their salaries, pensions and expenses etc. This is a further inequality and therefore, if I am to be able to engage fairly in refuting Revenue’s case, of which I am confident, I request [a] that an extension of time is allowed until after the end of January; and [b] that through your office you enquire, on my behalf, from wherever, what resources are available through the State to allow equality of arms, by way of legal aid, as the matters under consideration are, in fact, matters of law.”

72. In response on 13th December 2021 the Commission responded as follows in relation to Legal Aid:

“As indicated and explained in considerable detail at the hearing, the Commission does not either grant or refuse any applications for Legal Aid. It has no jurisdiction in relation to that matter and its role is defined in statute.

It is understood that legal aid is not available for tax appeals but the appellant is advised to undertake his own research in this area. The appellant will appreciate that he must seek his own advice on such matters. It is not the role of the Commission to seek legal aid support for any appellant including the appellant in this appeal. To do so would take the Commission outside its statutory powers and remit.”

73. The Commissioner reiterates the position that an Appeal Commissioner does not have the jurisdiction to either grant or refuse Legal Aid and that to do so would be outside the jurisdiction and powers granted to Appeal Commissioners by statute.

74. The Commissioner is satisfied that the Appellant was granted sufficient opportunities to provide supporting documentation in the form of specific written testimonies for the period under appeal, supporting specific lecture/educational information and supporting invoices relating to those tours. The Appellant was provided with sufficient time to collate any documentation and send to the Commission. The Commissioner is satisfied that supporting documentation in relation to supporting invoices and date specific material in relation to the matters under appeal and specific supporting corroboration in relation to the factual matters outlined in this appeal should have been within the Appellant's possession or ability to obtain without legal assistance.

Determination

75. For the reasons set out above, the Commissioner determines that the Appellant has failed to discharge the burden of proof and has not succeeded in his appeal.

76. Therefore the Assessments to VAT raised by the Respondent on 5 February 2020 for the period 1 November 2015 to 31 December 2017 in relation to the Appellant shall stand. The Commissioner appreciates that the Appellant will no doubt be disappointed by this determination.

77. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
Tax Appeals Commission
24 May 2023

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.

Annex 1

Section 3 of the Value-Added Tax Consolidation Act 2010 (hereinafter the "VATCA2010"):

"Except as expressly otherwise provided by this Act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions:

(a) the supply for consideration of goods by a taxable person acting in that capacity when the place of supply is the State;

(b) the importation of goods into the State;

(c) the supply for consideration of services by a taxable person acting in that capacity when the place of supply is the State;

(d) the intra-Community acquisition for consideration by an accountable person of goods (other than new means of transport) when the acquisition is made within the State;

(e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State."

Section 59 of the Value-Added Tax Consolidation Act 2010:

"(1) In this subsection and subsection (2)—

"qualifying activities" means—

(a) transport outside the State of passengers and their accompanying baggage,

(b) supplies of goods which, by virtue of section 30, are deemed to have taken place in the territory of another Member State but only if the supplier of those goods is registered for value-added tax in that other Member State,

(c) the operation, in accordance with Commission Regulation (EC) No. 2777/2000 of 18 December 2000⁵, of the Cattle Testing or Purchase for Destruction Scheme, by a body who is an accountable person by virtue of the Value-Added Tax (Agricultural Intervention Agency) Order 2001 (S.I. No. 11 of 2001),

(d) services specified in paragraph 6, 7 or 8 of Schedule 1 supplied—

(i) outside the Community, or

(ii) directly in connection with the export of goods to a place outside the Community,

(e) services consisting of the issue of new stocks, new shares, new debentures or other new securities by the accountable person in so far as such issue is made to raise capital for the purposes of the accountable person's taxable supplies, and

(f) supplies of goods or services outside the State which would be taxable supplies if made in the State;

“qualifying vehicle” means a motor vehicle which, for the purposes of vehicle registration tax, is first registered, in accordance with section 131 of the Finance Act 1992 , on or after 1 January 2009 and has, for the purposes of that registration, a level of CO2 emissions of less than 156g/km.

(2) Subject to subsection (3), in computing the amount of tax payable by an accountable person in respect of a taxable period, that person may, in so far as the goods and services are used by him or her for the purposes of his or her taxable supplies or of any of the qualifying activities, deduct—

(a) the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations, in respect of supplies of goods or services to him or her,

(b) in respect of goods imported by him or her in the period, the tax paid by him or her or deferred as established from the relevant customs documents kept by him or her in accordance with section 84 (3),

(c) subject to such conditions (if any) as may be specified in regulations, the tax chargeable during the period, being tax for which he or she is liable in respect of intra-Community acquisitions of goods,

(d) subject to section 61 and regulations (if any), 20 per cent of the tax charged to the accountable person in respect of the purchase, hiring, intra-Community acquisition or importation of a qualifying vehicle, where that vehicle is used primarily for business purposes, being at least 60 per cent of the use to which that vehicle is put, and where the accountable person subsequently disposes of that vehicle the tax deducted by that person in accordance with this subsection shall be treated as if it were not deductible by that person for the purposes of paragraph 12(c) of Schedule 1 ,

(e) the tax chargeable during the period, being tax for which the accountable person is liable by virtue of section 10 (1) in respect of the supply to such person of gas through the natural gas distribution network, or of electricity, but only where the accountable person would be entitled to a deduction of that tax elsewhere under this subsection if that tax had been charged to such person by another accountable person,

(f) the tax chargeable during the period, being tax for which the accountable person is liable by virtue of section 10 (2) in respect of goods which are installed or assembled but only where the accountable person would be entitled to a deduction of that tax elsewhere under this subsection if that tax had been charged to such person by another accountable person,

(g) the tax chargeable during the period, being tax for which he or she is liable by virtue of section 12 , 13 or 17 (1) in respect of services received by him or her,

(h) the tax chargeable during the period, being tax for which the recipient (within the meaning of section 16 (2)) is liable by virtue of section 16 (2) in respect of greenhouse gas emission allowances (within the meaning of section 16 (2)) received by that recipient, but only where the recipient would be entitled to a deduction of that tax elsewhere under this subsection if that tax had been charged to such recipient by an accountable person,

(i) the tax chargeable during the period, being tax for which the principal is liable by virtue of section 16 (3) in respect of construction operations services received by that principal but only where that principal would be entitled to a

deduction of that tax elsewhere under this subsection if that tax had been charged to such principal by another accountable person,

(j) the tax chargeable during the period, being tax for which the accountable person is liable by virtue of section 16 (1), 94 (6)(a) or 95 (8)(c) to (e), in respect of a supply to that person of immovable goods,

(k) the tax chargeable during the period in respect of goods (other than supplies of goods referred to in section 30) treated as supplied by him or her in accordance with section 19 (1)(f),

(l) subject to and in accordance with regulations, in respect of goods supplied under section 19 (1)(h) an amount equal to any residual tax included in the consideration for the supply,

(m) the tax charged to him or her during the period by other accountable persons in respect of services directly related to the transfer of ownership of goods specified in section 20 (2)(c),

(n) the tax chargeable during the period in respect of services treated as supplied by him or her for consideration in the course or furtherance of his or her business in accordance with section 27 (1)(c),

(o) a flat-rate addition, which shall be deemed to be tax, charged to him or her during the period by means of invoices prepared in the manner prescribed by regulations and issued to him or her in accordance with section 86 (1),

(p) the tax chargeable during the period, being tax for which he or she is liable by virtue of section 90 (5)(a) in respect of investment gold (within the meaning of section 90) received by him or her, and

(q) subject to such conditions (if any) as may be specified in regulations, in respect of goods referred to in section 92 , the tax due in the period in accordance with that section.

(3) Subsection (2) shall not apply to—

(a) an accountable person referred to in section 9 (4) or 12 (3), or

(b) an accountable person referred to in section 9 (6) or 12 (5) unless the tax relates to racehorse training services supplied by him or her.

(4)(a) A person who, by election or in accordance with section 5 (2) is deemed to become an accountable person, shall, in accordance with regulations, be entitled, in computing the amount of tax payable by him or her in respect of the first taxable period for which he or she is so deemed to be an accountable person, to treat as tax deductible under subsection (2) such part of the value of the stock-in-trade held by him or her immediately before the commencement of that taxable period as could reasonably be regarded as the amount which he or she would be entitled to claim under subsection (2) if that person had been an accountable person at the time of the delivery to him or her of such stock-in-trade.

(b) No claim shall lie under this subsection for a deduction for the tax relating to any stock-in-trade if, and to the extent that, a deduction under subsection (2) could be claimed apart from this subsection.

(5) Where, in relation to any taxable period, the total amount deductible under this Chapter exceeds the amount which, but for this Chapter, would be payable in respect of such period, the excess shall be refunded to the accountable person in accordance with section 99 (1), but subject to section 100.”

Section 60 of the VATCA2010:

(1) In this subsection and subsection (2)—

“delegate” means a taxable person or a taxable person’s employee or agent who attends a qualifying conference in the course or furtherance of the taxable person’s business;

“motor vehicles” means motor vehicles designed and constructed for the conveyance of persons by road and sports motor vehicles, estate cars, station wagons, motor cycles, motor scooters, mopeds and auto cycles, whether or not

so designed and constructed, excluding vehicles designed and constructed for the carriage of more than 16 persons (inclusive of the driver), invalid carriages and other vehicles of a type designed for use by invalids or infirm persons;

“qualifying accommodation” means the supply to a delegate of a service consisting of the letting of immovable goods or accommodation covered by paragraph 11 of Schedule 3, for a maximum period starting from the night prior to the date on which the qualifying conference commences and ending on the date on which the conference concludes;

“qualifying conference” means a conference or meeting in the course or furtherance of business organised to cater for 50 or more delegates, which takes place at a venue designed and constructed for the purposes of hosting 50 or more delegates and in respect of which the person responsible for organising the conference issues in writing the details of the conference to each taxable person who attends or sends a delegate, and such details shall include—

(a) the location and dates of the conference,

(b) the nature of the business being conducted,

(c) the number of delegates for whom the conference is organised, and

(d) the name, business address and value-added tax registration number of the person responsible for organising the conference.

(2)(a) Notwithstanding anything in this Chapter, a deduction of tax under this Chapter shall not be made if, and to the extent that, the tax relates to—

(i) expenditure incurred by the accountable person on food or drink, or accommodation (other than qualifying accommodation in connection with attendance at a qualifying conference), or other personal services, for the accountable person, the accountable person’s agents or employees, except to the extent (if any) that such expenditure is incurred in relation to a supply of services in respect of which that accountable person is accountable for tax,

(ii) expenditure incurred by the accountable person on food or drink, or accommodation or other entertainment services, where such expenditure forms all or part of the cost of providing an advertising service in respect of which tax is due and payable by the accountable person,

(iii) entertainment expenses incurred by the accountable person, his or her agents or his or her employees,

(iv) subject to section 59 (2)(d), the purchase, hiring, intra-Community acquisition or importation of motor vehicles otherwise than as stock-in-trade or for the purpose of the supply thereof by a person supplying financial services of the kind specified in paragraph 6(1)(e) of Schedule 1 in respect of those motor vehicles as part of an agreement of the kind referred to in section 19 (1)(c) or for the purposes of a business which consists in whole or part of the hiring of motor vehicles or for use, in a driving school business, for giving driving instruction,

(v) the purchase, intra-Community acquisition or importation of petrol otherwise than as stock-in-trade, or

(vi) the procurement of a supply of contract work where such supply consists of the handing over of goods to which this paragraph applies.

(b)(i) In subparagraph (i) of paragraph (a), reference to the provision of accommodation includes expenditure by the accountable person on a building, including the fitting out of such building, to provide such accommodation.

(ii) In subparagraph (iii) of paragraph (a), entertainment expenses includes expenditure on a building or facility, including the fitting out of such building or facility, to provide such entertainment.

(3) Notwithstanding anything in this Chapter, where section 87 (3) or (8) or 89 (3) has been applied to a supply of goods to an accountable person, that accountable person shall not deduct, in accordance with section 59 (2), any tax in relation to the supply to him or her.”

Section 61 of the VATCA2010:

“(1) In this section—

“deductible supplies or activities” means the supply of taxable goods or taxable services, or the carrying out of qualifying activities within the meaning of section 59 (1);

“dual-use inputs” means movable goods or services (other than goods or services on the purchase or acquisition of which, by virtue of section 60 (2), a deduction of tax shall not be made, or services related to the development of immovable goods that are subject to Chapter 2) which are not used solely for the purposes of either deductible supplies or activities or non-deductible supplies or activities;

“non-deductible supplies or activities” means the supply of goods or services or the carrying out of activities other than deductible supplies or activities;

“total supplies and activities” means deductible supplies or activities and non-deductible supplies or activities.

(2) Where an accountable person engages in both deductible supplies or activities and non-deductible supplies or activities, then, in relation to the person’s acquisition of dual-use inputs for the purpose of that person’s business for a period, the person shall be entitled to deduct in accordance with section 59 (2) only such proportion of tax, borne or payable on that acquisition, which is calculated in accordance with this section and regulations, as being attributable to his or her deductible supplies or activities and such proportion of tax is, for the purposes of this section, referred to as the “proportion of tax deductible”.

(3) For the purposes of this section, the reference in subsection (2) to “tax, borne or payable” shall, in the case of an acquisition of a qualifying vehicle (within the meaning of section 59 (1)) be deemed to be a reference to “20 per cent of the tax, borne or payable”.

(4) For the purposes of this section and regulations, the proportion of tax deductible by an accountable person for a period shall be calculated on any basis which results in a proportion of tax deductible which—

(a) correctly reflects the extent to which the dual-use inputs are used for the purposes of the person's deductible supplies or activities, and

(b) has due regard to the range of the person's total supplies and activities.

(5) The proportion of tax deductible may be calculated on the basis of the ratio which the amount of a person's tax-exclusive turnover from deductible supplies or activities for a period bears to the amount of the person's tax-exclusive turnover from total supplies and activities for that period but only where that basis results in a proportion of tax deductible which is in accordance with subsection (4).

(6) Where it is necessary to do so to ensure that the proportion of tax deductible by an accountable person is in accordance with subsection (4), the accountable person shall—

(a) calculate a separate proportion of tax deductible for any part of that person's business, or

(b) exclude, from the calculation of the proportion of tax deductible, amounts of turnover from incidental transactions by that person of the kind specified in paragraph 6 of Schedule 1 or amounts of turnover from incidental transactions by that person in immovable goods.

(7) The proportion of tax deductible as calculated by an accountable person for a taxable period shall be adjusted in accordance with regulations if, for the accounting year in which the taxable period ends, that proportion does not—

(a) correctly reflect the extent to which the dual-use inputs are used for the purposes of the person's deductible supplies or activities, or

(b) have due regard to the range of the person's total supplies and activities.”

Section 88 of the VATCA2010:

(1) *In this section—*

“bought-in services” means goods or services which a travel agent purchases for the direct benefit of a traveller—

(a) from another taxable person, or

(b) from a person engaged in business outside the State;

“margin scheme services” means bought-in services supplied by a travel agent to a traveller;

“travel agent” means a taxable person who acts as a principal in the supply to a traveller of margin scheme services, and for the purposes of this section travel agent includes tour operator;

“travel agent’s margin”, in relation to a supply of margin scheme services, means an amount which is calculated in accordance with the formula—

$$A - B$$

where—

A is the total consideration which the travel agent becomes entitled to receive in respect of or in relation to that supply of margin scheme services, including all taxes, commissions, costs and charges whatsoever and value-added tax payable in respect of that supply, and

B is the amount payable by the travel agent to a supplier in respect of bought-in services included in that supply of margin scheme services to the traveller, but any bought-in services purchased by the travel agent prior to 1 January 2010 in respect of which that travel agent claims deductibility in accordance with Chapter 1 of Part 8 shall be disregarded in calculating the margin,

and if that B is greater than that A, then the travel agent's margin in respect of that supply shall be deemed to be nil;

"travel agent's margin scheme" means the special arrangements for the taxation of margin scheme services.

(2) A supply of margin scheme services by a travel agent to a traveller in respect of a journey shall be treated as a single supply.

(3) The place of supply of margin scheme services is—

(a) unless paragraph (b) applies, the place where a travel agent has established the travel agent's business,

(b) if those services are provided from a fixed establishment of that travel agent located in a place other than the place where the travel agent has established his or her business, the place where that fixed establishment is located.

(4) The travel agent's margin scheme shall apply to the supply of margin scheme services in the State.

(5) Notwithstanding Chapter 1 of Part 5, the amount on which tax is chargeable by virtue of section 2(1)(a) on a supply of margin scheme services shall be the travel agent's margin less the amount of tax included in that margin.

(6) Notwithstanding sections 57, 58, 102 and 104 (1), (4) and (5) and Chapter 1 of Part 8, a travel agent shall not be entitled to a deduction or a refund of tax borne or paid in respect of bought-in services supplied by the travel agent as margin scheme services.

(7) Where a travel agent supplies margin scheme services together with other goods or services to a traveller for a total consideration, then—

(a) that total consideration shall be apportioned by the travel agent so as to correctly reflect the ratio which the value of those margin scheme services bears to that total consideration, and

(b) the proportion of that total consideration relating to the value of the margin scheme services shall be subject to the travel agent's margin scheme.

(8) Margin scheme services shall be treated as intermediary services when the bought-in services are performed outside the Community.

(9) Where a travel agent makes a supply of margin scheme services that includes some services that are treated as intermediary services in accordance with subsection (8), then the total travel agent's margin in respect of that supply shall be apportioned by the travel agent so as to correctly reflect the ratio which the cost to that travel agent of the bought-in services used in the margin scheme services that are treated as intermediary services in that supply bears to the total cost to that travel agent of all bought-in services used in making that supply of margin scheme services.

(10) A travel agent, being an accountable person who supplies margin scheme services, shall include the tax due on the person's supplies of margin scheme services for a taxable period in the return that that person is required to furnish in accordance with section 76 or 77.

(11) The Revenue Commissioners may make such regulations as they consider necessary for the purposes of the operation of this section, including provisions for simplified accounting arrangements."

Section 111 of the VATCA2010:

"(1) Where, in relation to any period, the inspector of taxes, or such other officer as the Revenue Commissioners may authorise to exercise the powers conferred by this section (in this section referred to as "other officer"), has reason to believe that an amount of tax is due and payable to the Revenue Commissioners by a person in any of the following circumstances:

(a) the total amount of tax payable by the person was greater than the total amount of tax (if any) paid by that person;

(b) the total amount of tax refunded to the person in accordance with section 99 (1) was greater than the amount (if any) properly refundable to that person;

(c) an amount of tax is payable by the person and a refund under section 99 (1) has been made to the person,

then, without prejudice to any other action which may be taken, the inspector or other officer—

(i) may, in accordance with regulations but subject to section 113, make an assessment in one sum of the total amount of tax which in his or her opinion should have been paid or the total amount of tax (including a nil amount) which in accordance with section 99 (1) should have been refunded, as the case may be, in respect of such period, and

(ii) may serve a notice on the person specifying—

(I) the total amount of tax so assessed,

(II) the total amount of tax (if any) paid by the person or refunded to the person in relation to such period, and

(III) the total amount so due and payable (referred to subsequently in this section as “the amount due”).

(2) Where notice is served on a person under subsection (1), the following provisions shall apply:

(a) the person may, if he or she claims that the amount due is excessive, on giving notice to the inspector or other officer within the period of 21 days from the date of the service of the notice, appeal to the Appeal Commissioners, and

(b) on the expiration of the said period, if no notice of appeal is received or, if notice of appeal is received, on determination of the appeal by

agreement or otherwise, the amount due or the amended amount due as determined in relation to the appeal, shall become due and payable as if the tax were tax which the person was liable to pay for the taxable period during which the period of 14 days from the date of the service of the notice under subsection (1) expired or the appeal was determined by agreement or otherwise, whichever taxable period is the later.

(3) Where a person appeals an assessment under subsection (1), within the time limits provided for in subsection (2), then—

(a) he or she shall pay to the Revenue Commissioners the amount which he or she believes to be due, and

(b) if—

(i) the amount paid is greater than 80 per cent of the amount of the tax found to be due on the determination of the appeal, and

(ii) the balance of the amount found to be due on the determination of the appeal is paid within one month of the date of such determination,

interest in accordance with section 114 shall not be chargeable from the date of raising of the assessment.”

Schedule 1 of the VATCA2010 – Exempt Activities (as enacted during tax year 2015):

“Children and education.

...

4(3) The provision by educational establishments recognised by the State of children’s or young people’s education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind, but excluding instruction in the driving of mechanically propelled road vehicles other than—

(a) vehicles designed or constructed for the carriage of 1.5 tonnes of

goods or more, or
(b) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).”

Schedule 1 of the VATCA2010 – Exempt Activities (as enacted during tax years 2016 and 2017 inserted by section 54(b)(i) and (ii) of the Finance Act 2015):

“4(3)(a) The provision by a recognised body of children’s or young people’s education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), but excluding instruction in the driving of mechanically propelled road vehicles other than—

(i) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or

(ii) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

(b) In this subparagraph—

‘recognised body’ means—

(i) a public body,

(ii) any of the following bodies:

(I) a recognised school within the meaning of the Education Act 1998 ;

(II) an education or training provider within the meaning of the Education and Training Boards Act 2013 , to which section 22 of that Act applies;

(III) a body in receipt of moneys advanced under section 21 of the Further Education and Training Act 2013 ;

(IV) a body providing training for initial or continued access to a regulated profession, within the meaning of the Recognition of Professional

Qualifications (Directive 2005/36/EC) Regulations 2008 (S.I. No. 139 of 2008);

(V) a body providing a course leading to an award which is recognised within the National Framework of Qualifications;

(VI) a body, included for the time being on a list published by the Minister for Justice and Equality from time to time, which provides a course, attendance at which, that Minister considers provides an acceptable basis for the granting of an immigration permission;

(VII) a body providing a course leading to an award by an approved college, within the meaning assigned by section 473A of the Taxes Consolidation Act 1997 ;

(VIII) a provider of a programme of education and training, within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012 which is, for the time being, validated under section 45 of that Act;

(IX) a body, providing education to children or young people which, if provided by a recognised school within the meaning of section 10 of the Education Act 1998 , would be the curriculum prescribed under section 30 of that Act.”