



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

106TACD2024

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal to the Tax Appeals Commission (“the Commission”) concerns the operation of the exemption from income tax of certain earnings of writers, composers and artists (“the artist’s exemption”), which is provided for under **section 195 of the Taxes Consolidation Act 1997** (“the TCA 1997”) and in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (hereafter “**the guidelines**”).
2. Pursuant to **section 195(6) TCA 1997**, an individual may appeal to the Appeal Commissioners. The appeal is on the grounds that the work or works is or are generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.
3. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**.
4. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has also received a Statement of Case from the Respondent and that has also been considered in this determination. In addition, the Commissioner had the benefit of images of the Appellant’s work, submitted by email dated 11 June 2024.

Background

5. On **6 April 2023**, an application was made by [REDACTED] (“the Appellant”) for a determination from the Revenue Commissioners (“the Respondent”) under section 195(2) TCA 1997, in respect of the Appellant’s work.
6. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (d) “*a painting or other like picture*”, in respect of the Appellant’s artwork which encompassed pieces representing [REDACTED] [REDACTED] (“the Work”). The Appellant submitted samples of the Work in support of her application.
7. In accordance with the provisions of section 195(2)(a)(ii) TCA 1997, the Respondent sought an opinion from the Arts Council as to whether, in their opinion the Work, in category (d) “a painting or other like picture” came within the criteria. The Arts Council expressed the opinion that the Work did not, in particular the Arts Council stated that in its opinion the Work was created primarily for decorative, or other similar purposes.

8. By correspondence dated **14 June 2023**, the Respondent determined that it would not consider the Work as coming within the categories of work eligible for a determination under the scheme as it considered the Work as being created primarily for decorative purposes and therefore excluded from the scheme under paragraph 8(v) of the guidelines.
9. On **15 December 2023**, the Appellant duly appealed to the Commission by submitting her Notice of Appeal in relation to the decision of the Respondent not to make a determination in respect of the Work.

Legislation and Guidelines

10. The relevant legislation is contained at section 195 TCA 1997, a copy of which is attached at **Appendix I** for ease of reference.
11. As noted in section 195(12) TCA 1997, the Minister for Arts, Heritage, Gaeltacht and the Islands shall draw up guidelines for determining whether a work is within the category of an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. In addition, under section 195(13)(b) TCA 1997 the Appeal Commissioners shall not determine that the work is original and creative or has, or is generally recognised as having, cultural or artistic merit, unless it complies with the guidelines under section 195(12) TCA 1997.
12. As such, in considering this appeal, the Commissioner is obliged and must ensure, in compliance with section 195(13)(b) TCA 1997, that the Work complies with the guidelines for the time being in force under section 195(12). The Work must satisfy the mandatory requirements of those guidelines, a copy of which is attached at **Appendix II** for ease of reference.

Submissions

Appellant's submissions

13. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

*"The digital artwork that I have created to date largely encompasses pieces representing [REDACTED]. Here I will outline the reasons I believe that my work does in fact meet the criteria. I will also explain how I believe my work to be **more than merely decorative**. I will make the argument that my work is both **original and creative and has cultural and artistic merit**. It has had an impact of those who have commissioned me to create pieces and I believe I'm contributing something of*

value to the field. My creative process is innovative and one which I believe holds both artistic and cultural merit. I would like to set out the grounds for appeal as follows.

Data Visualization is the discipline of turning data into something visual, encoding the data using shape, colour and size. Data visualizations have a utilitarian function and usually contain labels and explanations with the goal of allowing people to glean insights or make decisions. In the data community there is a field known as 'quantified self'. In this area, people create data visualizations using their own data, whether it is sleep data or running data for example and create charts and visual representations using the data. While my experience started out in the field of Data Visualization, I have gradually moved into the field of Data Art. The goal of my Data Art is more abstract and artistic in nature. The visual pieces stand alone and have a different substance and meaning and the power to impact people at a personal level.

My artistic process involves connecting a software tool to data-sets. The visuals that form the substance of my Data Art are not 'out of the box' visual representations however. There is an advanced level of expertise and skill involved. An understanding of mathematical concepts is required to create the radial shapes that I find most striking and the process of deciding on an effective combination of form and colour relies on my creativity and imagination. This is not a straight-forward process and I have spent anything from five to 30 hours on individual pieces.

For my [REDACTED], my process involves using estimates and generating randomized datasets to represent personal [REDACTED]. I then create unique and personalized pieces of art from this. I believe this is an innovating and original approach. The clients I have worked with to date and been involved in the creative process and some of their testimonies can be read at the end of this document. The guidelines state that 'A work shall be regarded as original and creative only if it is a unique work of creative quality brought into existence by the exercise of its creator's imagination.' I believe my work meets this criteria. I have come up with a unique way of capturing and representing these meaningful journeys. It couldn't exist without the inspiration of the data and personal experiences, but the product is a unique creation. If we think about more traditional artistic methods like painting, there is often a source of inspiration, whether it's the a landscape or a still life piece.

My intention is not for these pieces to be simply decorative. Collins dictionary defines 'decorative' as follows: 'Something that is decorative is intended to look pretty or attractive'. Britannica defines 'decorative art' as 'any of those arts that are concerned

with the design and decoration of objects that are chiefly prized for their utility, rather than for their purely aesthetic qualities'. My artwork is created with the express intention of generating an emotional response in the viewer and is a means of communicating my appreciation of various subjects through the data available in a truly unique way. That the colour, composition and final form may be described as beautiful is intended, but it is not the reason that the work exists.

My intention is to make a visual impact which inspires thought and conversation and evokes emotion in people or invites curiosity. My [REDACTED] pieces symbolize a cherished time in someone's life, one where they were [REDACTED]. It represents a bond between parent and child in an abstract way and highlights the time-consuming nature of something and this is often unseen and undervalued. If we think about some more traditional artworks, whether acrylic or oil paintings of landscapes or animals, people will often connect with pieces for personal reasons. We all gravitate towards different styles and approaches and perspectives of what constitutes fine art can vary and evolve over time.

Cultural and Artistic Merit

I believe what I am creating has cultural and artistic merit. Firstly, in it there is a merging of technology and art. I'm leveraging technology in an innovative way to create meaningful abstract art. Data is everywhere and the ability to use data for artistic expression opens up a range of possibilities when it comes to representing our culture. Ireland has come to be recognised as a hub for technology companies and data centres. An art form where technology can actually enable us to create unique personalised art using data is an exciting prospect in my view.

*Given Ireland's lower than average [REDACTED] rates, my work [REDACTED] should be seen as a way of making the lived experiences of people visible, helping to normalise [REDACTED] and encourage conversation. An article in the Irish Times from June this year ([REDACTED]) stated that [REDACTED]
[REDACTED]
[REDACTED] it's an area I feel very passionate about. There is a lack of support enabling parents and it can be a challenge to do it in public, with certain private establishments and public spaces making it difficult for parents [REDACTED]*

██████████. There is also a level of taboo around the subject so I believe anything that normalises ██████████ and makes it more visible is of value.

My artistic method has allowed me to represent musical works of huge cultural significance through a new medium, creating something tangible that will forever symbolize the original composition. A client who had a personal connection with Mozart's Requiem having performed it several times was moved by my artwork based on the musical score. Using colour and shape I gave the piece expression through an entirely different medium, essentially giving visual life to a musical composition traditionally only experienced aurally. It is a unique visual representation of a musical masterpiece, and is in no sense merely decorative.

Edgar Degas said that 'Art is not what you see, but what you make others see.' I believe that my work truly fits this description with its unique creation, cultural relevance and demonstrably emotional impact. Certain moments or feelings warrant recollection and art allows us to revisit these emotions and feelings in a very powerful way. My pieces have evoked emotion in people, such is the significance of what they represent, whether it's a ██████████. I believe I am creating beautiful customized prints in an innovative way that should not be judged by comparison to anything that predates it. I'm currently exploring the themes of ██████████ ██████████ but given the rate data is accumulating the subject matter of my future works is infinite."

Respondent's submissions

14. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:-

"2.1 An application dated 6 April 2023 for a determination under section 195(2) TCA 1997 in respect some of the appellant's works was submitted to Revenue.

2.2 The application in respect of the appellants works was made under category (d) "a painting or other like picture".

2.3 In support of her application, the appellant submitted supporting material which included samples of her work.

2.4 The work consisted of images created using data analytics where the data is displayed in graphical image format.

2.5 Section 195(1) states that the scheme shall apply to original and creative works which are generally accepted as having artistic and cultural merit and which come within a number of listed categories.

2.6 Revenue may only make a determination where a work clearly comes within the criteria set out within the legislation and the guidelines governing the scheme.

.....

2.11 Having considered the appellants application under category (d), a painting or other like picture, it was Revenue's view that the appellants work in this category did not come within the legislation and guidelines governing the scheme.

2.12 Paragraph 8 of the guidelines states that a work shall not be regarded as original and creative and shall not be recognised as generally having cultural and artistic merit if the works come within a range of criteria set out within subparagraphs (i) to (vi).

2.13 Paragraph 8(v) refers to "types or kinds or photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function or which are created primarily for advertising, publicity, information, decorative or other similar purposes".

2.14 It was Revenue's view that the appellants work primarily served a decorative or other similar function and therefore could not qualify for a determination by virtue of paragraph 8(v) of the guidelines.

2.15 In accordance with section 195(2)(a)(ii), Revenue sought an opinion from the Arts Council as to whether, in their opinion the appellants works in category (d), a painting or other like picture, came within the criteria for the scheme. The Arts Council expressed the opinion that the appellants works did not. In particular, the Arts Council stated that in their opinion the works were created primarily for decorative, or other similar purposes.

2.16 Having considered the Arts Council's opinion, Revenue determined that the appellants works in the category "a painting and other like picture" primarily serve a decorative or other similar purpose and were therefore ineligible for a determination as they were excluded from the scheme under paragraph 8(v) of the guidelines.

2.17 A letter issued to the appellant on 16 June 2023 stating that Revenue were unable to make a determination in respect of the works.

....."

Material Facts

15. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
 - 15.1. The Work is a painting or other like picture.
 - 15.2. On **6 April 2023**, an application was made by the Appellant for a determination from the Respondent under section 195(2) TCA 1997, in respect of the Appellant's work.
 - 15.3. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (d) "*a painting or other like picture*", in respect of the Appellant's artwork which encompassed pieces representing [REDACTED] [REDACTED] ("the Work").
 - 15.4. The Appellant submitted samples of the Work in support of her application.
 - 15.5. In accordance with the provisions of section 195(2)(a)(ii) TCA 1997, the Respondent sought opinion from the Arts Council as to whether, in their opinion the Work, in category (d) "a painting or other like picture" came within the criteria.
 - 15.6. The Arts Council expressed the opinion that the Work did not. In particular the Arts Council stated that in its opinion the Work was created primarily for decorative, or other similar purposes.
 - 15.7. By correspondence dated **14 June 2023**, the Respondent determined that it would not consider the Work as coming within the categories of work eligible for a determination under the scheme as it considered the Work as being created primarily for decorative purposes and therefore excluded from the scheme under paragraph 8(v) of the guidelines.
 - 15.8. On **15 December 2023**, the Appellant appealed the decision of the Respondent not to make a determination in respect of the Work.

Analysis

16. In circumstances where the Appellant is seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in *Revenue Commissioners v Doorley* [1933] IR 750 must be considered. The Commissioner has had regard to the *dictum* of Kennedy C. J. at page 766, wherein he stated that:

“The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”

17. More recently, in a case stated by the Appeal Commissioners to the High Court in relation to the artists exemption, Donnelly J. in *Coleman v Revenue Commissioners* [2014] IEHC 662 held that:

“On the basis of the decision in Doorley, the Appeal Commissioner was obliged to give effect to the clear and express terms of the legislation in considering the artist’s exemption from income tax. The liability to income tax having been established, that exemption must be brought within the letter of the Act of 1997 and the Guidelines made thereunder as interpreted by the established canons of construction. There was no basis in law for adopting any other approach to the interpretation of the Act and the Statutes.”

18. Section 195(12) TCA 1997 provides for the drawing up of **guidelines** for the Artists Exemption scheme by the Arts Council and the then Minister for Arts Heritage and the Gaeltacht. Section 195(12) TCA 1997 states that guidelines may include specifications of the types or kinds of works that are not original or creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose.
19. Section 195(13) TCA 1997 states that where an application for a determination is made to the Respondent, that the Respondent shall not make a determination in respect of a work unless it complies with the guidelines. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.
20. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.
21. Section 195(1) TCA 1997 provides that the scheme shall apply to original and creative works which come within a number of listed categories. To secure exemption under Section 195 TCA 1997, the work must be determined by the Respondent to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.

22. It is clear from the Respondent's submission, it considers that the Work was created primarily for decorative purposes and, therefore, could not qualify for a determination by virtue of paragraph 8(v) of the guidelines.
23. Paragraph 8 of the guidelines states that a work shall not be regarded as original and creative and shall not be recognised as generally having cultural and artistic merit if the works come within a range of criteria set out within subparagraphs (i) to (vi) as follows:-

"8. Notwithstanding anything else in these Guidelines, a work-

(a) shall not be an original and creative work, and

(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit

if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below –

.....

(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes."

A painting or other like picture

24. Before proceeding to consider the test to be applied and paragraph 8 of the guidelines, the Commissioner must consider whether the Work falls within paragraph 1(d) of the guidelines, that the work is a "painting or other like picture".
25. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("Perrigo"), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v The Revenue Commissioners [2019] IESC 50 at paragraphs 63 to 72 and were reaffirmed recently in the decision in Bookfinders Ltd v The Revenue Commissioners [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;”

26. The Commissioner considers that the words “*painting or other like picture*” should be given the meaning which an ordinary member of the public would intend them to have when using the words ordinarily and that the words “*Painting or other like picture*” are simple words, which are unambiguous. Consequently, the Commissioner is satisfied that the Work is “a painting or other like picture”, which is widely termed by the legislature, such that it cannot be said that the Work is not an “other like picture”. The Commissioner is satisfied that the Work falls within paragraph 1(d) of the guidelines.

Original and Creative

27. The Commissioner will now consider if the Work meets the tests as set out in the guidelines, namely that the Work is “original and creative” and the Work has, or is generally recognised as having, either “cultural or artistic merit”. In order to succeed in a claim for exemption, the Work must be determined to be work which is both original and creative and work which has, or is generally recognised as having, either cultural or artistic merit.

28. For the purposes of the exemption under section 195 TCA 1997, a work can only be regarded as being original and creative, if it meets the test set out in paragraph 4 of the guidelines. Paragraph 4 of the guidelines provides that for the purposes of a determination under section 195 TCA 1997, “*a work shall be regarded as original and creative only if it is a unique work of creative quality brought into existence by the exercise of its creator’s imagination.*” The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Work satisfies the test set out in paragraph 4 of the guidelines.

29. The Commissioner has considered the Work herein and the Commissioner is satisfied that the Work satisfies the test set out in paragraph 4 of the guidelines as the Work is “*a unique work of creative quality brought into existence by the exercise of its creator’s imagination.*”

Cultural or Artistic Merit

30. Were originality and creativity the only requirements that had to be met to avail of the exemption, the Commissioner would find in the Appellant’s favour. However, the legislation, which the Commissioner is bound to follow, requires that a second condition

be met, namely that the works have either cultural or artistic merit. It must also be repeated that section 195(13) of the TCA 1997 requires the Commissioner to adhere to the guidelines drawn up by the Minister and the Arts Council, which elaborate on what is meant by “cultural merit” and “artistic merit”.

31. In relation to cultural or artistic merit, paragraph 5 and 6 of the guidelines are relevant. Paragraph 5 of the guidelines states that “*a work shall be regarded as having cultural merit only if by reason of its quality of its form and/or content it enhances to a significant degree one or more aspects of national or international culture*”. Paragraph 6 of the guidelines states that “*a work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.*”
32. The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Work satisfies the tests set out in paragraphs 5 and 6 of the guidelines. The Respondent submits that the Work fails the tests as outlined in paragraph 4, 5 and 6 by virtue of paragraph 8(v) of the guidelines.
33. With regard to what is to be held to have cultural merit, the guidelines prescribe that the Work must enhance “to a significant degree” one or more aspects of national or international culture. In the Commissioner’s view the Work submitted in accompaniment to the appeal does not suggest that it has such an enhancing effect. On the evidence of the Work proffered in support of the Appellant’s appeal, the Commissioner finds that the Work does not enhance “to a significant degree” one or more aspects of national or international culture. The Commissioner considers that there is no evidence adduced by the Appellant to suggest that the Work enhances national or international culture to a significant degree.
34. With regard to whether the Work is of artistic merit, the guidelines prescribe, in similar fashion, that the Work must only be so defined if it enhances “*to a significant degree the canon of work in the relevant category*”. The Commissioner has considered the Work and is of the view that the Work does not enhance to a significant degree the canon of work. The Commissioner has considered the meaning of the word “enhance” and notes that it is defined in the Collins English Dictionary as meaning “*to improve its value, quality, or attractiveness.*” In addition, the Commissioner has considered the meaning of the word, “significant” and notes that it is defined in the Collins English Dictionary as meaning “*A significant amount or effect is large enough to be important or affect a situation to a noticeable degree*”. Further, the Commissioner notes that the definition of “canon of work” as contained in the Cambridge English Dictionary is “*the writings or other works that are*

generally agreed to be good, important, and worth studying". In the Commissioner's view, the Appellant's Work submitted in support of this appeal does not suggest that it had such an enhancing effect. Moreover, no evidence has been submitted by the Appellant which tends to suggest that the Work is generally agreed to be good, important and worth studying.

35. In coming to her decision, the Commissioner notes that the Respondent contacted the Arts Council for its opinion as to whether the Work came within the criteria for the scheme. The Respondent submitted that the Arts Council expressed the opinion that the Work did not and that in particular, its opinion was that the Work was created primarily for decorative, or other similar purposes.
36. The artists exemption legislation and guidelines set out a series of tests which must be satisfied by an appellant in order to avail of the exemption. In this appeal, the Commissioner determines that the Work does not satisfy the requisite tests, in particular paragraph 5 and 6 of the guidelines. Hence, the Commissioner finds that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997.
37. The Commissioner must therefore determine that the Appellant is not eligible for the Artists Exemption pursuant to the provisions of section 195 TCA 1997, in respect of the Work, the subject matter of this appeal.
38. The Commissioner wishes to state that the outcome of this appeal in no way reflects on the quality of the Work or the skills or craftsmanship required to produce the Work. The definition of artistic and cultural merit would exclude many a work done by a capable and skilled person. It is no criticism of the Appellant's Work whatsoever where the Commissioner finds that the Work does not meet the necessary test to avail of the exemption.

Determination

39. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary evidence and submissions, the Commissioner has concluded that the Appellant has not succeeded in discharging the burden of proof in relation to this appeal, to show that the Work comes within the categories of works eligible for a determination under section 195 TCA 1997.
40. The Commissioner determines that the decision of the Respondent to refuse to make a determination that the Appellant is entitled to avail of the artist's exemption on the taxation of earnings from the Work submitted as part of this appeal, must stand affirmed.

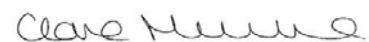
41. The Commissioner appreciates that this determination is likely to be disappointing to the Appellant. The Commissioner wishes only to repeat again that the reasons given in no way reflect on the quality of the Appellant's Work or the skills or craftsmanship.
42. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

Notification

43. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

44. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
28 June 2024

Appendix I

The provisions of Section 195 TCA 1997, as they were as of the date of the application for exemption, provided as follows: -

(1) In this section...

“work” means an original and creative work which is within one of the following categories:

(a) a book or other writing;

(b) a play;

(c) a musical composition;

(d) a painting or other like picture;

(e) a sculpture.

(2) (a) This section shall apply to an individual –

(i) who is —

(I) resident in one or more Member States, or in another EEA state, or in the United Kingdom and not resident elsewhere, or

(II) ordinarily resident and domiciled in one or more Member States, or in another EEA state, and not resident elsewhere, and

(ii) (I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may be, either solely or jointly with another individual, a work or works generally recognised as having cultural or artistic merit, or

(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of

persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.

(b) The Revenue Commissioners shall not make a determination under this subsection unless –

(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under paragraph (a)(ii)(II)) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and

(ii) the individual complies with any request to him or her under subsection (4).

(3) (a) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, subject to paragraphs (aa) and (b), be entitled to have the profits or gains arising to him or her from the publication, production or sale, as the case may be, of a work or works in relation to which the Revenue Commissioners have made a determination under clause (I) or (II) of subsection (2)(a)(ii), or of a work of the individual in the same category as that work, and which apart from this section would be included in an assessment made on him or her under Case II of Schedule D, disregarded for the purposes of the Income Tax Acts.

(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of paragraph (a) shall not exceed €50,000 for the year of assessment 2015 and each subsequent year of assessment.

(b) The exemption authorised by this section shall not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under clause (I) or (II) of subsection (2)(a)(ii) in respect of which the Revenue Commissioners make a determination referred to in clause (I) or (II) of subsection (2)(a)(ii), as the case may be.

(c) The relief provided by this section may be given by repayment or otherwise.

(4) (a) Where an individual makes a claim to which subsection (2)(a)(ii)(I) relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may

be specified in the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under subsection (2)(a)(ii)(I).

(b) Where an individual makes a claim to which subsection (2)(a)(ii)(II) relates, the individual shall –

(i) in the case of a book or other writing or a play or musical composition, if the Revenue Commissioners so request, furnish to them 3 copies, and

(ii) in the case of a painting or other like picture or a sculpture, if the Revenue Commissioners so request, provide, or arrange for the provision of, such facilities as the Revenue Commissioners may consider necessary for the purposes of a determination under subsection (2)(a)(ii)(II) (including any requisite permissions or consents of the person who owns or possesses the painting, picture or sculpture).

(5) The Revenue Commissioners may serve on an individual who makes a claim under subsection (3) a notice or notices in writing requiring the individual to make available within such time as may be specified in the notice all such books, accounts and documents in the individual's possession or power as may be requested, being books, accounts and documents relating to the publication, production or sale, as the case may be, of the work in respect of the profits or gains of which exemption is claimed.

(6) (a) In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim 11 is first made in respect of that work or those works or the particular work, as the case may be.

(b) Where –

(i) an individual –

(I) has made due claim (in this subsection referred to as a "claim") to the Revenue Commissioners for a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

(II) as respects the claim, has complied with any request made to the individual under subsection (4) or (5) in the relevant period,

and

(ii) the Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to the claim in the relevant period,

the individual may appeal to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the end of the relevant period on the grounds that –

(A) the work or works is or are generally recognised as having cultural or artistic merit, or

(B) the particular work has cultural or artistic merit,

as the case may be.

(8)(a) On the hearing of an appeal made under subsection (6), the Appeal Commissioners may

(i) after consideration of –

(I) any evidence in relation to the matter submitted to them by or on behalf of the individual concerned and by or on behalf of the Revenue Commissioners, and

(II) in relation to a work or works or a particular work, the work or works or the particular work, and

(ii) after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them,

determine that the individual concerned has written, composed or executed, as the case may be, either solely or jointly with another individual –

(A) a work or works generally recognised as having cultural or artistic merit, or

(B) a particular work which has cultural or artistic merit,

and, where the Appeal Commissioners so determine, the individual shall be entitled to relief under subsection (3)(a) as if the determination had been made

by the Revenue Commissioners under clause (I) or (II) of subsection (2)(a)(ii), as the case may be.

(10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.

(11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.

(12) (a) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

(b) Without prejudice to the generality of paragraph (a), a guideline under that paragraph may –

(i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and

(ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.

(13) (a) Where a claim for a determination under subsection (2) is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under subsection (12) for the time being in force.

(b) Paragraph (a) shall, with any necessary modifications, apply to –

(i) a determination by the Appeal Commissioners under subsection (8) on an appeal to them under subsection (6) in relation to a claim mentioned in paragraph (a), and

(ii) a determination by the High Court under section 949AR.

(14) Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.

(15) On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under subsection (12) for the time being in force.

(16) (a) The Revenue Commissioners may publish, or cause to be published, the name of an individual who is the subject of a determination under subsection (2).

(b) Publication under paragraph (a) may, as appropriate, include the title or category of the work of an individual.

Appendix II

Guidelines drawn up under Section 195(12) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.

Introduction

These Guidelines have been drawn up under the provisions of section 195 of the Taxes Consolidation Act 1997 for the purposes of determining whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

General

1. Section 195(1) provides that a “work” for the purposes of the Section must be both an original and creative work in one of the following categories, namely:

- (a) a book or other writing,*
- (b) a play,*
- (c) a musical composition,*
- (d) a painting or other like picture,*
- (e) a sculpture.*

2. To secure exemption under Section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.

3. In making a determination under Section 195, the Revenue Commissioners may, as provided for in that Section, consult with such person or body of persons as may, in their opinion, be of assistance to them.

Original and Creative

4. A work shall be regarded as original and creative only if it is a unique work of creative quality brought into existence by the exercise of its creator’s imagination.

Cultural Merit

5. A work shall be regarded as having cultural merit only if by reason of its quality of form and/or content it enhances to a significant degree one or more aspects of national or international culture.

Artistic Merit

6. A work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.

Criteria for Non-fiction Work

7. (1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of Section 195, by reference to which the questions whether a work, being a nonfiction book or other nonfiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined.

(2) The criteria are:

(a) that the work, in the opinion of the Revenue Commissioners, following consultation with the Arts Council, is a work in one or more of the following categories:

(i) arts criticism,

(ii) arts history,

(iii) arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture,

(iv) artists' diaries,

(v) belles-lettres essays,

(vi) literary translation,

(vii) literary criticism,

(viii) literary history,

(ix) literary diaries,

that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(b) that the work, in the opinion of the Revenue Commissioners, is a work in one of the following categories:

(i) a biography,

(ii) an autobiography,

that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on the person or by changing the generally accepted understanding of the person,

or

(c) that the work, in the opinion of the Revenue Commissioners following consultation with the Heritage Council,

(i) is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995, and

(ii) incorporates the author's unique insight into the subject matter and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(d) that the work, in the opinion of the Revenue Commissioners, relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives, incorporates the author's unique insight into the subject matter, and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(e) any combination of (a), (b), (c) or (d) above.

Types of Works Excluded from the Artists Exemption Scheme.

8. Notwithstanding anything else in these Guidelines, a work-

(a) shall not be an original and creative work, and

(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit

if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below –

(i) a book or other writing published primarily for, or which is or will be used primarily by-

(I) students pursuing a course of study, or

(II) persons engaged in any trade, business, profession, vocation or branch of learning as an aid to trade or business-related practice, or to professional, vocational or other practise in connection with a trade, business, profession, vocation or branch of learning,

(ii) any work of journalism, published in a newspaper, journal, magazine, or other similar medium or published on the internet or on any other similar medium,

(iii) any writing, visual or musical work, or other like work, created for advertising or publicity purposes,

(iv) any arrangement, adaptation or version of musical composition, or other like work, which is not of such musical significance as to amount to an original composition,

(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes,

(vi) types or kinds of works of sculpture which primarily serve a utilitarian function.