



**AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION**

Between

122TACD2024

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**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**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 artists’ 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.

## Background

5. On **30 January 2024**, 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 (a) “*a book or other writing*”, in respect of the work entitled [REDACTED] (“**the Work**”).
7. The Appellant is the author of the Work. The Work is a book in the category of non-fiction. The Respondent was in agreement that the Work is a book and is non-fiction. The Appellant submitted that the Work comes within paragraph 7(2)(c)(i) and 7(2)(c)(ii) of the guidelines.
8. By correspondence dated **26 February 2024**, the Respondent determined that it would not consider the Work as coming within the criteria for non-fiction work, as set out in paragraph 7 of the guidelines.
9. On **26 February 2024**, 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:-

*"I applied for the Artists' exemption for my book [REDACTED] This is a book I made for the Heritage Council in 2023.*

*This book was funded by the Heritage Council because it was recognised as a project of huge value in creating awareness of our natural heritage among primary school children. It is given out free to schools and the general public in order to create more awareness of our wonderful biodiversity and habitats in Ireland.*

*I was asked to create this book because of my background in [REDACTED] and having worked in the heritage field for over 20 years. Not only was I responsible for writing the text, I also had to come up with all of the games, crafts, puzzles, facts and where and how game elements should appear and work together. I created a 'mock-up' design for each page including game details/crafts, and then sent these to [REDACTED] so that they could draw illustrations based on my designs.*



*I have no doubt that if you contact [REDACTED]  
[REDACTED] she will verify the above.*

.....

*I would like to appeal the decision to reject my artists' exemption claim, as I don't understand how the book is seen to not satisfy the requirements in par 7 of your guidelines - the book was commissioned and funded by the Heritage Council, which shows how important they felt it was and its significant contribution to natural heritage.*

.....

*I really appreciate the opportunity to appeal this decision. I received a small fee compared to all the work that went into this book, so the artists' exemption really helps me to pursue nature education/publications and creating awareness of biodiversity, a pursuit I believe has true merit and is an art form.”*

#### *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 21 September 2021, for a determination under section 195(2) TCA 1997 was submitted to Revenue in respect of the Appellant's work.*

*2.2 The application was in respect of a book entitled [REDACTED] being a work relating to nature.*

.....

*2.4 It is accepted by Revenue that this work is a book and that it comes within the categories of work listed in section 195(1) TCA 1997.*

.....

*2.9 On examination of the Book, Revenue determined that this book was a work of non-fiction.*

*2.10 Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction books and sets out specific categories within which the work must come in order to qualify for a determination.*

2.11 The appellant’s application described the work as coming within paragraph 7(2)(c)(i) and 7(2)(c)(ii) of the guidelines.

2.12 Paragraph 7(2)(c)(i) is “a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995.”

2.13 The functions of the Heritage Council are contained in section 6 of the Heritage Act 1995 which states “The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage” which includes “flora, fauna, wildlife habitats”.

2.14 The work was examined by Revenue to see whether it came within paragraph 7(2)(c)(i) of the guidelines and Revenue determined that the work was related to the functions of the Heritage Council and in particular section 6(3), The Heritage Act 1995 – “the Council shall in particular– (a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage.

2.15 Paragraph 7(2)(c)(ii) provides that a work “incorporate the authors 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”.

2.16 Revenue were not satisfied that the work met the criteria set out in paragraph 7(2)(c)(ii) of the guidelines.

2.17 Consideration was given to whether the work came within any of the other categories listed in Paragraph 7 of the guidelines and Revenue determined that it did not.

.....”

### **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 Appellant is the author of the Work.
  - 15.2. The Work is a book and the Work is non-fiction.
  - 15.3. On **30 January 2024**, an application was made by the Appellant for a determination from the Respondent under section 195(2) TCA 1997, in respect of the Work.

- 15.4. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (a) “*a book or other writing*”, in respect of the work entitled [REDACTED]
- 15.5. The Respondent was in agreement that the Work is a book and is non-fiction.
- 15.6. The Respondent was in agreement that the Work satisfies the criteria in paragraph 7(c)(i) of the guidelines, but not (ii). Both are required to be met for the exemption to be afforded to the Appellant.
- 15.7. The Work was produced in partnership with the Heritage Council.
- 15.8. The Work was inspired by the artwork and message of the film [REDACTED]
- 15.9. The Work is a children’s’ activity book filled with games and outdoor activities to help children to engage with nature, to investigate Ireland's unique biodiversity and to make nature art.
- 15.10. By correspondence dated **26 February 2024**, the Respondent determined that it would not consider the Work as coming within the criteria for non-fiction work, as set out in paragraph 7 of the guidelines.
- 15.11. On **26 February 2024**, 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. The Respondent accepts that the Work is a book and that it comes within the categories of work listed in section 195(1) TCA 1997. It is therefore not in dispute between the parties that the Work is a *“book or other writing”*. On examination of the Work, the Commissioner notes that the Respondent considered the Work to be that of non-fiction. The Commissioner has considered the Work, in addition to the parties’ submissions in this appeal. The Commissioner is of the view that the Work is both a book and is non-fiction. Therefore, **paragraph 7 of the guidelines** entitled **“Criteria for Non-fiction Work”** is engaged in this appeal, in circumstances where the Work is a non-fiction book.
23. Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction work in accordance with section 195(12)(b)(ii) TCA 1997, by reference to the question to be

determined of whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has or is generally recognised as having, cultural or artistic merit. The Commissioner observes that the Appellant describes the Work as coming within **paragraph 7(2)(c) of the guidelines**.

24. The Appellant submitted that the Work comes within both paragraph 7(2)(c)(i) and 7(2)(c)(ii) of the guidelines. The Commissioner notes that the guidelines are specific that the criteria set out at **both** (i) and (ii) must be satisfied, in order to come within paragraph 7(c) of the guidelines. The guidelines clearly state “and” between the criteria in (i) and (ii).
25. The Commissioner has considered the criteria set out in paragraph 7(2)(c)(i) of the guidelines, that the Work “*is a work related to the function or functions of the Heritage Council as described in the Heritage Act 1995...*” The Commissioner notes that section 6(1) of the Heritage Act 1995 provides for its functions and states that: “*The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.*” In addition, subsection (3) provides that: “*The Council shall in particular – (a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage*”.
26. Paragraph 7(2)(c)(ii) of the guidelines requires that the Work “*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.*” [Emphasis added]
27. The Commissioner notes that it is not in dispute that the Work satisfies the criteria set out in (i) that the Work “*is a work related to the function or functions of the Heritage Council as described in the Heritage Act 1995*”, but that the Respondent did not consider that the Work satisfied the criteria in (ii). As stated above, **both criteria** must be satisfied in order to come within paragraph 7 of the guidelines.
28. The Commissioner has read and considered the Work in detail. The Work is an activity book for children to read from or undertake the exercises within each part of the Work. The Work is described as being filled with games and outdoor activities to help children to engage with nature, to investigate Ireland's unique biodiversity and to make nature art. The Work has a very laudable aim to assist children with their understanding of animals, their habitats and nature generally. However, it is the case that the Commissioner must interpret and apply the necessary legislative provisions in this appeal.

29. The Commissioner notes the second page of the Work which states that “[t]his book was produced in partnership by [REDACTED] [REDACTED] Having regard to this statement, the Commissioner would question whether the Work was the author’s own unique insight. But even if the Commissioner accepts that it was the Appellant’s own unique insight into the subject matter, the Commissioner has been presented with no evidence to suggest that the Work is a “pioneering work” or that it makes a “significant contribution” to the subject matter or that it changes the “generally accepted understanding” of the subject matter. Therefore, the Commissioner must find that the criteria set out in paragraph 7(2)(c)(ii) of the guidelines, has not been met.
30. Whilst the Work is a lovely activity book for children and may have been commissioned and funded by the Heritage Council, the Work is not sufficiently distinguished to have cultural or artistic merit, such that it would satisfy the relevant section in the TCA 1997. The Work does not satisfy the definitions set out in the guidelines with respect to cultural or artistic merit. As set out at paragraph 24 of this Determination, the criteria at both (i) and (ii) in paragraph 7(2)(c) must be met. The evidence herein does not suggest that the Work satisfies the criteria at (ii).
31. The artist 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 the criteria in paragraph 7(2)(c)(ii) of the guidelines. Hence, the Commissioner finds that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997.
32. 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**

33. 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.

34. The Commissioner determines that the decision of the Respondent to refuse to make a determination that the Appellant is entitled to avail of the artists' exemption on the taxation of earnings from the Work submitted as part of this appeal, must stand affirmed.
35. 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.
36. 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**

37. 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**

38. 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  
4 July 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.*