



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

132TACD2024

██████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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### **Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against the refusal by the Revenue Commissioners (“the Respondent”) to make a determination, under section 195 of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), that the Appellant’s artworks qualify for artists’ exemption. The Respondent refused to make a determination on the basis that the artworks were created primarily for decorative purposes.
2. The appeal proceeded by way of a hearing on 11 July 2024.

### **Background**

3. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists, and is commonly known as “artists’ exemption”. The maximum amount of income that can be exempt from income tax is €50,000 per annum.
4. On 24 May 2023, the Appellant claimed artists’ exemption in respect of six artworks created by her (“the works”), under section 195(1)(d) of the TCA 1997, “a painting or other

like picture". The works were artworks created by the Appellant using textiles. On 8 November 2023, the Respondent notified the Appellant that it was unable to make a determination that the works qualified for artists' exemption, on the ground that they were excluded by virtue of paragraph 8(v) of the guidelines drawn up pursuant to section 195(12) of the TCA 1997 by the Arts Council and the Minister for Arts, Heritage and the Gaeltacht ("the Guidelines").

5. On 20 February 2024, the Appellant appealed the Respondent's refusal to make a determination pursuant to section 195(6) of the TCA 1997. The appeal proceeded by way of a remote hearing on 11 July 2024. The Appellant appeared in person. The Respondent was represented by [REDACTED], Assistant Principal.

### **Legislation and Guidelines**

6. Section 195 of the TCA 1997 provides *inter alia* as follows:

*"(1) ... 'work' means an original and creative work which is within one of the following categories:...(d) a painting or other like picture...*

*(2) (a) This section shall apply to an individual...*

*(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.*

*[...]*

*(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.*

[...]

(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)...*

7. The Guidelines provide *inter alia* as follows:

***“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.*

[...]

***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 paragraphs (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...”

## Submissions

*Appellant*

8. In written submissions, the Appellant stated *inter alia* that:

*“At the start of 2022, I established myself as a full time professional artist having completed my studies of a BA and MA in Art. Over this past year, I have been building my reputation as a contemplation artist with an increasing number of textile art works for sale.*

*I have been successful in receiving a number of grants over this year which allow me to bring my artworks to both the National and International audience...*

*I have three core outlets for my work, which continue to evolve and touch on a number of creative outputs.*

1. *My Online shop, which allows me to both sell my own work and convey to the audience the complete stories for my pieces. My art works are primarily woven pieces, with each weave expressing some element of how we care for ourselves and navigate the challenges of our time through reflective practice and compassion...*

2. *In addition, I am continually seeking opportunities to exhibit and present my work.*

*I have been involved with 3 exhibitions in 2022: [REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]*

3. *My work has been on sale in [REDACTED] 2022. I am currently looking at expanding my work to national galleries in 2024.*

*Through the evidence above I have shown the exploratory, creative and artistic value of my work. I would appreciate a review of my application.”*

9. In oral submissions at the hearing, the Appellant stated that she was a visual artist who uses wool and thread to produce abstract representations of aspects of her life. She is a

process-based artist who works intuitively and who has chosen to use wool in order to express her thoughts and feelings about herself and the world around her.

10. She has been a full-time artist since 2022, following eight years of formal education in art. Some of her work concerns community well-being, focusing on weaving as a form of self-expression and healing. She has received two grants for this work, one of which was fully funded, and the other part-funded, by the Arts Council.
11. She is a full member of [REDACTED], which has strict criteria for membership. Her work was currently exhibited for [REDACTED], and was hanging in [REDACTED]. Her work was original and creative, and had both cultural and artistic merit. In this regard, she referred to testimonials provided on her behalf by [REDACTED]  
[REDACTED]  
[REDACTED]. She stated that her work had an aesthetic quality and was not simply decorative in nature.
12. In reply to the Respondent, she stated that she accepted her work came within section 195(1)(d) of the TCA 1997, and she also accepted that receiving funding for her work, and her membership of [REDACTED] did not mean she automatically would be entitled to artist's exemption, but she believed it was relevant. She stated that the works reviewed by the Respondent were created 18/24 months ago, and that she had more up to date artworks which show how her practice has evolved.

#### *Respondent*

13. In written submissions, the Respondent stated *inter alia* that

*"Having considered the appellant's application under category (d), a painting or other like picture, Revenue were not satisfied that the Appellant's works in this category came within the legislation and the guidelines governing the scheme...*

*In accordance with section 195(2)(a)(ii), Revenue sought an opinion from the Arts Council as to whether, in their opinion the Appellant's 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 Appellant's works did not. In particular the Arts Council stated that in their opinion the works were created primarily for decorative or other similar purposes...*

*Having considered the Arts Council's opinion, Revenue determined that the Appellant's works in the category (d) a painting or other like picture, were ineligible for*

*a determination as they were excluded from the scheme under paragraph 8(v) of the guidelines.”*

14. In oral submissions, the Respondent’s officer stated that the Respondent examined the six works submitted by the Appellant. The Respondent was uncertain whether the works came within the scope of the Guidelines, and therefore it consulted with the Arts Council. The Respondent sent photographs of the works and the Appellant’s CV to the Arts Council, who advised that it considered the works to be primarily decorative.
15. The Respondent stated that receiving funding from the Arts Council did not necessarily mean that an artwork would qualify for artist’s exemption. Similarly, the Appellant’s membership of [REDACTED] did not automatically mean the works would be entitled to artist’s exemption.
16. The Respondent had only considered the six works submitted by the Appellant, and if she wished to submit additional artworks for consideration the Respondent would consider that a new application. The Respondent agreed with the Arts Council that the works under appeal were primarily decorative.

### **Material Facts**

17. Having read the documentation submitted, and having listened to the submissions at the hearing, the Commissioner makes the following findings of material fact:
  - 17.1. The works under appeal are six artworks created by the Appellant using textiles.
  - 17.2. The Appellant had claimed artists’ exemption in respect of the works under category (d), a painting or other like picture. The Respondent had refused the application on the ground that the works were created primarily for decorative purposes.
  - 17.3. The Arts Council had provided an opinion to the Respondent that the works did not meet the criteria for artist’s exemption, on the ground that they were created primarily for decorative purposes.
  - 17.4. The works under appeal were created primarily for decorative purposes.

### **Analysis**

18. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent’s failure to determine that the works qualified for artists’ exemption was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that “*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 Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*

19. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists. Section 195(12) provides for the drawing up of the Guidelines, and section 195(13) provides that the Respondent, and on appeal, the Appeal Commissioners, shall not determine that the work concerned qualifies for artists’ exemption unless it complies with the Guidelines. The current Guidelines have been in force since 30 November 2013.

20. It is settled law that exemptions to taxation must be interpreted strictly. In *Revenue Commissioners v Doorley* [1933] IR 750, Kennedy CJ stated that

*“If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. 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, excepts 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.”*

21. This appeal concerns six works, which were created by the Appellant using textiles (wool/thread). Photographs of the works were submitted to the Commission by the Respondent. The Appellant had claimed artists’ exemption under section 195(1)(d) of the TCA 1997: *“an original and creative work which is within one of the following categories... (d) a painting or other like picture”*. The Respondent declined to make a determination that the works qualified for artists’ exemption, on the ground that they were excluded by virtue of paragraph 8(v) of the Guidelines.

22. The Appellant is a professional artist with third-level qualifications in art. She stated that she has been a full-time artist since 2022 and that she uses textiles in her practice. In support of her appeal, she referred to her membership of [REDACTED], and also to two testimonials submitted on her behalf.

23. In her letter, [REDACTED] stated *inter alia* that

*“[The Appellant’s] artistic practice shows a commitment to cultural enhancement, expanding the reach of creativity from beyond the confines of conceptual and skill-based learning into the practical engagement of the general public in a more embodied, sensitive approach to material. These ideologies flow from her arts facilitation and therapeutic background into the creation and making of her own artwork, which is evolving through her choice of textiles, from threads to wools, to deepen the communion between arts and health. She encourages us to explore the role of the arts in tending to desires for wellness, connection and belonging in our world.”*

24. In her letter, ██████████ discussed some recent exhibitions featuring textiles as fine art and stated that

*“I would support weaving as an art language and believe it should be admitted under the Artist Exemption as an art form. Therefore I support [the Appellant] in making this appeal for recognition of her practice as exempt. Her textiles are exhibited as art, and understood and intended as a fine art practice.”*

25. The Commissioner considers it important to note that there does not appear to be anything in the TCA 1997 or the Guidelines that necessarily excludes *all* textile/woven art from the scope of artist’s exemption *in principle*. The Commissioner agrees with the Respondent that the only artworks that can be assessed by it, and by the Commission on appeal, are those submitted by an artist when an application is made for artist’s exemption.

26. In this instance, the artworks under appeal are the six works submitted by the Appellant with her application dated 24 May 2023. The Commissioner has considered the photographs of the works under appeal. He considers that they were clearly made with a high degree of skill, care and creativity and that they are aesthetically pleasing. However, he is not satisfied that the Appellant has demonstrated that the Respondent was incorrect to determine that they were created primarily for decorative purposes.

27. In coming to this view, the Commissioner has had particular regard to the opinion of the Arts Council, as provided to the Respondent, that the works were created primarily for decorative purposes. Neither the Respondent nor the Commissioner is bound to accept the view of the Arts Council when considering whether an artwork qualifies for artist’s exemption. However, the Commissioner considers that significant weight should be afforded to the opinion of the Arts Council in this instance, as it has a particular expertise in the matter and, importantly, it based its opinion on a consideration of the works under appeal.



28. In contrast, it seems to the Commissioner that the testimonials provided on behalf of the Appellant did not address the works specifically, but addressed the Appellant's practice more generally, and/or the artistic merit and significance of textile art more widely. Therefore, the Commissioner does not consider these testimonials to have the same degree of direct relevance to the works under appeal as the opinion of the Arts Council.
29. Therefore, the Commissioner concludes that the Appellant has not demonstrated that the Respondent's refusal to make a determination that the works qualify for artist's exemption was incorrect. The Commissioner appreciates that this determination will be disappointing for the Appellant. He wishes to stress that he is no way questioning the artistic ability and skill that went into creating the works, and he wishes the Appellant every success in the future. Finally, he notes that it is open to the Appellant to make a new application to the Respondent on the basis of her more recent artworks, should she wish to do so.

### **Determination**

30. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing to determine that the works that are the subject of this appeal qualify for artists' exemption under section 195 of the TCA 1997, and its refusal to so determine stands.
31. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

32. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the 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) of the TCA 1997. This notification under section 949AJ of the 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**

33. 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 of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

A handwritten signature in black ink, appearing to read 'Simon Noone', written in a cursive style.

Simon Noone  
Appeal Commissioner  
31 July 2024