



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

194TACD2024

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] [REDACTED] (“the Appellant”) under sections 195(6) and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a failure by the Revenue Commissioners (“the Respondent”) to make a determination under section 195 of the TCA 1997 in relation to [REDACTED] (“the Work”).
2. By agreement with the parties, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. Section 195 of the TCA 1997 allows for an exemption from income tax for certain earnings of writers, composers, or artists. For the exemption to apply, the Respondent must make a determination under section 195(2) of the TCA 1997.
4. The Respondent submitted that on 31 March 2023, the Appellant made an application for a determination under section 195(2) of the TCA 1997 in respect of the Work.
5. On 5 May 2023, the Respondent wrote to the Appellant to inform [REDACTED] of its decision to refuse to make a determination in respect of the Work, on the ground that the Work did not meet the required criteria set out in the legislation and the guidelines drawn up under section 195 of the TCA 1997 by the Minister for Culture, Heritage and the Gaeltacht (“the Guidelines”). The Respondent stated that in particular it would consider the Work to be a work of journalism and excluded under the provisions of paragraph 8(ii) of the Guidelines.
6. On 23 October 2023, the Appellant submitted a Notice of Appeal to the Commission.
7. On 7 March 2024, the Appellant submitted a Statement of Case and on 19 March 2024, the Respondent submitted a Statement of Case.
8. The Commissioner has considered all of the documentation submitted by the parties in this appeal, including a copy of the Work provided by the Appellant: [REDACTED]
[REDACTED]

Legislation and Guidelines

9. The legislation relevant to this appeal is contained in section 195 of the TCA 1997, a copy of which is enclosed at Appendix 1 to this Determination.
10. A copy of the Guidelines is enclosed at Appendix 2 to this Determination.

Submissions

Appellant

11. In [REDACTED] Notice of Appeal, the Appellant submitted the following:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Printed matter liable at the zero rate 2.1 Books and booklets. The zero-rate of VAT applies to printed books and booklets including: atlases children's picture, drawing and colouring books, books of music, and annual publications. In order for a printed book or booklet to qualify for the zero rate, it must meet the following four requirements: 1. it must consist essentially of textual or pictorial matter 2. it must have a distinctive front cover which is devoid of body text 3. it must comprise not less than four leaves (eight pages) exclusive of the cover, and 4. it must be bound (loose-leaf or otherwise) or stitched or stapled."

12. In [REDACTED] Statement of Case, the Appellant reiterated the points made in [REDACTED] Notice of Appeal and also submitted the following:

*"I am appealing the decision to reject tax exemption for [REDACTED]
[REDACTED]. In addition the majority of editorials are pieces of creative non-fiction and it is not time sensitive, like a piece of journalism..."*

[REDACTED] should be tax exempt but perhaps it should be exempt based on its status as a publication rather than its artistic merit, despite its obvious visual and textual artistic merit.

My appeal falls under Printing and Printed Matter - Please see Paragraph 9 of Schedule 2 and paragraph 7 of Schedule 3 to the VAT Consolidation Act 2010 (VATCA 2010). Upon reviewing the legislation for Printed Matter liable for the standard rate,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent

13. In its Statement of Case, the Respondent submitted the following (among other things):

“It is accepted by Revenue that this work is “a book or other writing” and that it comes within category (a), being one of the categories of work listed in section 195(1) TCA 1997...

Revenue issued an email to the Appellant on 3 April 2023 seeking clarification of the Appellant’s role in the work. The Appellant confirmed on 3 April 2023 that [REDACTED] created and edited the work, [REDACTED]. On examination of the work, Revenue determined that it was a work of non-fiction...

The Appellant’s application described the work as coming within paragraph 7(2)(a)(iii) of the guidelines – “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”. The Work was examined by Revenue to see whether it came within paragraph 7(2)(a)(iii) of the Guidelines and Revenue determined that the Work was not a work in the category of arts subject matter, as [REDACTED]

[REDACTED]

Revenue examined the Work to see whether it came within any of the other categories of work listed in paragraph 7. Revenue were not satisfied that the work came within any of the categories of work listed in paragraphs 7(2)(a) to (e) of the Guidelines...

On further examination of the Work, it was Revenue’s opinion that the Appellant’s work was excluded under paragraph 8(ii) – “any work of journalism, published in a

newspaper, journal, magazine, or other similar medium or published on the Internet or in any other similar medium” as the Work was [REDACTED]

[REDACTED].

Material Facts

14. Having read the documentation submitted, including the copy of the Work submitted, the Commissioner makes the following findings of material fact:
 - 14.1. The Appellant created, edited and contributed to the Work.
 - 14.2. The Work is a “book or other writing” of non-fiction.
 - 14.3. On 31 March 2023, the Appellant made a claim for a determination under section 195(2) of the TCA 1997.
 - 14.4. On 5 May 2023, the Respondent failed to make a determination under section 195(2) on the ground that the Work did not meet the criteria as set out under the Guidelines.

Analysis

15. This appeal relates to the Respondent’s refusal of the Appellant’s claim for a determination under section 195(2) of the TCA 1997.
16. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to fail to make a determination in relation to the Work. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [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”.
17. As the Appellant seeks to claim an exemption from tax, the Commissioner has had regard to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, in which Kennedy CJ stated:

“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.”

18. The Commissioner has also had regard to the High Court judgment of *Coleman v Revenue Commissioners* [2014] IEHC 662, in which Donnelly J stated:

“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.”

19. The exemption authorised under section 195 of the TCA 1997 applies to an individual who has “written, composed or executed, as the case may be, either solely or jointly with another individual” the work in question. In this appeal, the Respondent has not disputed that the Appellant is such an individual. Having read the copy of the Work provided, the Commissioner notes that the Appellant [REDACTED]. The Commissioner further notes that the Appellant informed the Respondent that [REDACTED] created and edited the Work and that the Respondent has not disputed that the Appellant did create and edit the Work. Accordingly, the Commissioner has found it to be a material fact that the Appellant created, edited and contributed to the Work. In the circumstances as outlined above, the Commissioner is satisfied to proceed on the basis that the Appellant composed or executed the Work.
20. The exemption authorised under section 195 of the TCA 1997 applies to a work which is both “an original and creative work” and one which has, or is generally recognised as having, “cultural or artistic merit”.
21. Section 195(12) of the TCA 1997 requires that guidelines are drawn up for the purposes of determining whether a work within a category specified in section 195(1) is “an original and creative work” and whether it has, or is generally recognised as having, “cultural or artistic merit”. Section 195(13) (a) of the TCA 1997 provides that the Respondent shall not determine that a work meets those criteria unless it complies with the Guidelines. Section 195(13) (b) of the TCA 1997 provides that section 195(13) (a) shall apply to a determination by the Appeal Commissioners in an appeal to them under section 195(6) of the TCA 1997. It is therefore clear that in determining whether the Work meets the criteria for exemption under section 195 of the TCA 1997, the Commissioner is statutorily obliged to apply the Guidelines.

22. In [REDACTED] Statement of Case, the Appellant submitted that the Work "[REDACTED] [REDACTED] should be tax exempt but perhaps it should be exempt based on its status as a publication rather than its artistic merit, despite its obvious visual and textual artistic merit". However, the fact that the Work is a publication does not suffice to qualify for exemption under the Guidelines. As noted above, the Work must be an "original and creative work" and one which has, or is generally recognised as having, "cultural or artistic merit". In order to determine this question, the Commissioner must apply the Guidelines.
23. Section 195(12) (b)(ii) of the TCA 1997 provides that the Guidelines may specify criteria by reference to which the questions whether works are original or creative or whether they have, or are generally recognised as having, cultural or artistic merit are to be determined. Paragraph 7 of the Guidelines specifies criteria, in accordance with section 195(12) (b)(ii), by reference to which those questions are to be determined in relation to a non-fiction book or other non-fiction writing.
24. The Appellant and the Respondent agreed that the Work is a book or other writing of non-fiction and the Commissioner has found this to be a material fact. Accordingly, the exemption authorised under section 195 of the TCA 1997 will only apply to the Work if the Work satisfies the criteria set out in paragraph 7 of the Guidelines.

VAT treatment of printing and printed matter

25. In both [REDACTED] Notice of Appeal and Statement of Case, the Appellant cited text from the Respondent's Tax and Duty Manual on the VAT treatment of printing and printed matter ("the Manual"). The Commissioner notes that the Manual relates to the application of certain provisions contained in the Value-Added Tax Consolidation Act 2010. However, those provisions concern the zero-rating of VAT and do not apply to the question arising in this appeal. In determining whether section 195 of the TCA 1997 applies to the Work, the Commissioner must apply the relevant legislative criteria, as outlined above. Accordingly, the Commissioner wishes to make clear that she has had no regard to the Manual in making this Determination.

Work of Journalism

26. In its Statement of Case, the Respondent stated that its opinion was that the Work was excluded under paragraph 8(ii) of the Guidelines ("any work of journalism"), as the Work was [REDACTED] - [REDACTED] [REDACTED] [REDACTED]. In any event, the Commissioner

any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture; artists' diaries; belles-lettres essays; literary translation; literary criticism; literary history; or literary diaries.

31. The Respondent stated that the Appellant's application described the Work as coming within paragraph 7(2)(a)(iii) of the Guidelines, as "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". In [REDACTED] appeal submissions, the Appellant stated that the Work [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Commissioner therefore does not identify a basis on which to find that the Work is a work in the categories listed in paragraphs 7(2)(a) (i) – (iv) or (vi) – (ix).

32. As noted above, the majority of the contributions to the Work are articles. For completeness, the Commissioner has therefore considered whether the Work is a work in the category of "belles-lettres essays" under paragraph 7(2)(a)(v) of the Guidelines. The Oxford English Dictionary defines "belles-lettres" as "*Originally: writing regarded for its aesthetic quality and originality of style rather than for its informative content; literature; (also) the study of this (now chiefly historical). In later use usually: writings on the subject of literature or art; (now esp.) essays on intellectual or literary subjects, typically regarded as light and sophisticated, or (in more negative contexts) overly refined or characterized by aestheticism.*" The Commissioner considers it appropriate to apply the later rather than the historical use of the term "belles-lettres". Nonetheless, as [REDACTED] [REDACTED] the Commissioner does not consider that they could reasonably be characterised as essays on intellectual or literary subjects.

33. Even if the Work could be viewed in the category of "arts subject work" or "belles-lettres essays", the Work would be required to meet the additional criteria that it: "*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*". Yet no evidence has been presented to the Commissioner to show how the Work "is regarded", or that it meets any of the three criteria specified in paragraph 7(2)(a). Accordingly, the Commissioner is not satisfied that the Work falls under paragraph 7(2)(a) of the Guidelines.

34. The Commissioner must then consider whether the Work falls under paragraphs 7(2)(b), (c) or (d) of the Guidelines. The Appellant does not contend that the Work is a biography or autobiography; that it relates to the function or functions of the Heritage Council; or that it relates to archives which are more than 30 years old relating to Ireland or Irish people. Moreover, the Commissioner finds nothing in the content of the Work to indicate that it falls into any of those categories. Therefore, the Commissioner is not satisfied that the Work falls under paragraphs 7(2)(b), (c) or (d) of the Guidelines.
35. It follows from the above that the Commissioner is not satisfied that the Work falls under paragraph 7 of the Guidelines and therefore finds that the Work does not qualify for an exemption under section 195 of the TCA 1997.
36. The Commissioner wishes to make clear to the Appellant that the Commissioner's sole remit in this appeal is to decide whether the Work meets specific and defined criteria laid down in guidelines made under statute. The Commissioner thoroughly enjoyed reading the Work and found it to be interesting and thought-provoking. The Commissioner wishes the Appellant every success with the Work.

Determination

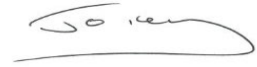
37. For the reasons set out above, the Commissioner determines that the Respondent was correct to refuse to make a determination in relation to the Work under section 195 of the TCA 1997.
38. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

39. 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

40. 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.



Jo Kenny
Appeal Commissioner
03 October 2024

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

Appendix 1

Section 195 of the Taxes Consolidation Act 1997 provides:

(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, or in the United Kingdom, 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 2

Guidelines drawn up under Section 195(2) 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.

The above Guidelines were drawn up by An Comhairle Ealaíon and the Minister of Arts Heritage and the Gaeltacht, with the consent of the Minister for Finance, in accordance with section 195(12) of the Taxes Consolidation Act 1997 and are effective for all determinations made by the Revenue Commissioners on or after 30 November 2013.