



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

97TACD2024

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal to the Tax Appeals Commission (“the Commission”) concerns the operation of the exemption from income tax of certain earnings of writers, composers and artists (“the artist’s exemption”), which is provided for under **section 195 of the Taxes Consolidation Act 1997** (“the TCA 1997”) and in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (hereafter “**the guidelines**”).
2. Under **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**. 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

4. On **9 August 2023**, an application was made by [REDACTED] (“the Appellant”) for a determination from the Revenue Commissioners (“the Respondent”) under section 195(2) TCA 1997.
5. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (b) “*a play*”, in respect of the work entitled [REDACTED] (“the Work”). In support of the application, the Appellant submitted certain documentation including a copy of the script of the play, marketing material and a contract.
6. By correspondence dated **6 November 2023**, the Respondent determined that it would not consider the Work as coming within the categories of work eligible for a determination under the scheme and would not consider the Work to be a play, which comes within category (b), or any other categories of the guidelines.
7. On **24 November 2023**, the Appellant duly appealed to the Commission by submitting a Notice of Appeal in relation to the decision of the Respondent not to make a determination in respect of the Work.

Legislation and Guidelines

8. The relevant legislation is contained at section 195 TCA 1997, a copy of which is attached at **Appendix I** for ease of reference.
9. 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.
10. 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

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

“

The show was shown in the [REDACTED] - a live theatre festival in a theatre and uses physical theatre to portray a narrative dialogue between 2 characters, each symbolising different sides of one's psyche. The play was seen by over 400 people and contained plot, characters, stage design, lighting and sound, and was performed live for 5 nights. The play incorporated physical theatre, circus arts, acting and dance to tell this tale. It is the story of inner conflict, one's mind having multiple parts and facets and the journey we go through to consolidate those different parts of ourselves throughout our lives.

Once again the application was denied under the grounds that the play was not seen as a play, but I don't know what else it could be called, by all descriptions it is a theatrical play.

The definition of a play is: 'A play is defined as a type of work that is designed for performance in a theatre in front of an audience. A play is composed of dialogue between various characters and divided into acts and scenes to increase the dramatic effect.'

Although the play has no speech, there is plenty of dialogue, which is defined as 'any communication between 2 characters,' and 'Dialogue is a character's verbal and non-verbal expression of what they are thinking and feeling. It's through dialogue that other characters get a glimpse into what's going on in each other's minds. It's also used to reveal to the audience those inner thoughts, feelings, and actions that want to come out.'

Although the play is non-verbal, I do not believe it justifies it not being considered a play. In this day and age, being able to communicate physically and visually for audiences allows accessibility for the non-hearing community. The communication in the play was created with facial expression, body language, dance, physical emoting, lighting and soundscapes to tell the story of conflict and eventual resolution throughout the piece.

As discussed with the revenue office when the originally submitted, a dear friend was awarded an Artist's Exemption for her physical theatre play the for same [REDACTED] [REDACTED] which also contained circus and movement as narrative and did not contain any spoken word exactly like ours. The name of the show is called [REDACTED] [REDACTED]. I cannot see how her play is considered a play and ours isn't when exactly the same tools of communication and portrayal were used for both shows."

Respondent's submissions

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

"An application dated 9 August 2023 for a determination by the Revenue Commissioners under section 195(2) TCA 1997 was submitted by the appellant.

2.2 The application was in respect of a work entitled [REDACTED]

.....

2.4 The appellant's application was under the category (b), a play

2.5 In support of her application the appellant submitted supporting documentation including a copy of the "script" of the play.

2.6 Upon examination of the script, Revenue were not satisfied that the work could be classified as a play, instead Revenue would regard the script as being outline directions and choreography for a performance.

2.7 The appellant submitted a contract and on examination of this Revenue found that the contract was for a “performance” and not for the creation of a play.

2.8 The appellant also submitted a marketing package which referred to the performance as a “contemporary circus show”.

2.9 Based on the script, contract and marketing package it was Revenue’s view that the work was one consisting of dance and circus performance.

2.10 It was Revenue’s opinion that dance, circus and performance of a work did not come within the scope of section 195 of Taxes Consolidation Act 1997.

2.11 Revenue determined that the work did not come within category (b) or any of the other categories of work listed in section 195(1) and Revenue were not in a position to make a determination in respect of the appellant’s work.

2.12 Revenue wrote to the appellant on 6 November 2023 advising that they were unable to make a determination in respect of the work.

2.13 Pursuant to section 195(6) the appellant has appealed this failure to make a determination to the Appeal Commissioners.”

Material Facts

13. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

13.1. On 9 August 2023, the Appellant made an application to the Respondent for a determination under section 195(2) TCA 1997.

13.2. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (b) “a play”, in respect of the Work entitled [REDACTED]

13.3. In support of the application, the Appellant submitted certain documentation including a copy of the script of the play, marketing material and a contract.

13.4. On 6 November 2023, the Respondent determined that it would not consider the Work as coming within the categories of work eligible for a determination under

the scheme and would not consider the Work to be a play, which comes within category (b), or any other categories of the guidelines.

- 13.5. On 24 November 2023, the Appellant duly appealed to the Commission by submitting a Notice of Appeal in relation to the decision of the Respondent not to make a determination in respect of the Work.
- 13.6. The Work has no speech and is a non-verbal Work. The communication in the Work was created with facial expression, body language, dance, physical emoting, lighting and soundscapes to tell the story.

Analysis

14. 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 p. 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.”

15. 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.”

16. 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.

17. Section 195(13) 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.
18. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.
19. 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.

Is the Work “a play”

20. The Respondent did not accept that the Work is a play and that it comes within the categories of work listed in section 195(1) TCA 1997. It is therefore in dispute between the parties that the work falls within category (b) “a play”.
21. The Commissioner notes that the Respondent stated that on examination of the Work it was not satisfied that the Work could be classified as a play, rather the Respondent would regard the Work as being outline directions and choreography for a performance. The Appellant submitted with the application, a contract and on examination of the contract, the Respondent found that the contract was for a “performance” and not for the creation of a play. The Commissioner has considered the contract and is of the view that it is a standard contract, likely to have been provided to all performers at the [REDACTED] and serves no assistance in determining the relevant questions herein.
22. In addition, the Respondent contended that the Appellant submitted a marketing package which referred to the performance as a “contemporary circus show”. The Respondent submitted that based on the script, contract and marketing package, it took the view that the Work was one consisting of dance and circus performance and that dance, circus and performance of a work did not come within the scope of section 195 TCA 1997. Therefore, the Respondent determined that the Work did not come within category (b) or any of the other categories of work listed in section 195(1) TCA 1997 and it was not in a position to make a determination in respect of the Work.

23. The Appellant submits that the definition of a play is: *'A play is defined as a type of work that is designed for performance in a theatre in front of an audience. A play is composed of dialogue between various characters and divided into acts and scenes to increase the dramatic effect'* and that despite there being no words in the play communication occurs between two characters through the use of non-verbal expression.
24. A "play" is a word used in common parlance. The Commissioner is satisfied that it is understood by members of the public to mean a stage performance. The Commissioner is satisfied that it is the case that even very young children would understand the meaning of a "play", having likely performed on stage at a dance class or school play. Nevertheless, the Commissioner has consulted the Oxford English Dictionary to assist her with the meaning of the word "play". The Oxford English Dictionary states that the word play is a noun, the meaning of which is *"a dramatic or theatrical performance staged before an audience; an acted representation of an action or story"*.
25. The Commissioner notes that the show was part of the [REDACTED]. The Appellant described the [REDACTED] as "[REDACTED]". The Appellant submitted that the Work uses physical theatre to portray a narrative and dialogue between 2 characters, each symbolising different sides of one's psyche. The Appellant stated that the Work was seen by over 400 people, was performed live for 5 nights and contained a plot, characters, stage design, lighting and sound. Moreover, it was submitted that the Work incorporated physical theatre, circus arts, acting and dance to tell the story of *"inner conflict, one's mind having multiple parts and facets and the journey we go through to consolidate those different parts of ourselves throughout our lives"*. Having considered the Work and the supporting documentation, in particular the script and the marketing material, the Commissioner is satisfied that the Work is a play.

Original and Creative

26. The Commissioner will now consider if the Work meets the tests as set out in the guidelines, namely that the Work is "original and creative" and the Work has, or is generally recognised as having, either "cultural or artistic merit". In order to succeed in a claim for exemption, the Work must be determined to be work which is both original and creative and work which has, or is generally recognised as having, either cultural or artistic merit.
27. For the purposes of the exemption under section 195 TCA 1997, a work can only be regarded as being original and creative, if it meets the test set out in paragraph 4 of the guidelines. Paragraph 4 of the guidelines provides that for the purposes of a determination under section 195 TCA 1997, *"a work shall be regarded as original and*

creative only if it is a unique work of creative quality brought into existence by the exercise of its creator's imagination."

28. The Commissioner is satisfied that the Work satisfies the test set out in paragraph 4 of the guidelines as the Work is "*a unique work of creative quality brought into existence by the exercise of its creator's imagination.*"

Cultural Merit or Artistic Merit

29. Were originality and creativity the only requirements that had to be met to avail of the exemption, the Commissioner would find in the Appellant's favour. However, the legislation, which the Commissioner is bound to follow, requires that a second condition be met, namely that the works have either cultural or artistic merit. It must also be repeated that section 195(13) of the TCA 1997 requires the Commissioner to adhere to the Guidelines drawn up by the Minister and the Arts Council, which elaborate on what is meant by "cultural merit" and "artistic merit".
30. In relation to Cultural or Artistic Merit, paragraph 5 and 6 of the guidelines are relevant. Paragraph 5 of the guidelines states that "*a work shall be regarded as having cultural merit only if by reason of its quality of form and/or content it enhances to a significant degree one or more aspects of national or international culture*". Paragraph 6 of the guidelines states that "*a work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.*"
31. With regard to what is to be held to have cultural merit, the guidelines prescribe that the Work must enhance "to a significant degree" one or more aspects of national or international culture. In the Commissioner's view the Work produced in accompaniment to the appeal does not suggest that it has such an enhancing effect. On the evidence of the Work proffered in support of the Appellant's appeal, the Commissioner finds that the Work does not enhance "to a significant degree" one or more aspects of national or international culture. The Commissioner considers that there is no evidence adduced by the Appellant to suggest that the Work enhances national or international culture to a significant degree.
32. With regard to whether the Work is of artistic merit, the guidelines prescribe, in similar fashion, that the Work must only be so defined if it enhances "*to a significant degree the canon of work in the relevant category*". The Commissioner is of the view that the Work does not enhance to a significant degree the canon of work. The Commissioner has considered the meaning of the word "enhance" and notes that it is defined in the Collins

English Dictionary as meaning “*to improve its value, quality, or attractiveness.*” In addition, the Commissioner has considered the meaning of the word, “significant” and notes that it is defined in the Collins English Dictionary as meaning “*A significant amount or effect is large enough to be important or affect a situation to a noticeable degree.*”. Further, the Commissioner notes that the definition of “*canon of work*” as contained in the Cambridge English Dictionary is “*the writings or other works that are generally agreed to be good, important, and worth studying.*”. In the Commissioner’s view, the Appellant’s Work submitted in support of this appeal does not suggest that it had such an enhancing effect.

33. 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 paragraph 5 and 6 of the guidelines. Hence, the Commissioner finds that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997.
34. The Commissioner must therefore determine that the Appellant is not eligible for the Artists’ Exemption pursuant to the provisions of section 195 of the TCA 1997, in respect of the Work the subject matter of this appeal.
35. The Commissioner wishes to state that the outcome of this appeal in no way reflects on the quality of the Appellant’s 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

36. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary evidence, as well as the submissions from both parties, 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.
37. The Commissioner determines that the decision of the Respondent to refuse to make a determination that the Appellant is entitled to avail of the artist’s exemption on the taxation of earnings from the Work submitted as part of this appeal, must stand affirmed.
38. 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 of craftsmanship.

39. 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

40. 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

41. 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
31 May 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, 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

Guideline drawn up under Section 195(2) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle Ealaion 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 16

(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.