



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

03TACD2025

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal to the Tax Appeals Commission (“the Commission”) concerns the operation of the exemption from income tax of certain earnings of writers, composers and artists (“the artist’s exemption”), which is provided for under **section 195 of the Taxes Consolidation Act 1997** (“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**. In respect of the appeal, [REDACTED] (“the Appellant”) submitted a Statement of Case with accompanying documentation, which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has also received a Statement of Case from the Revenue Commissioners (“the Respondent”) and that has been considered in this Determination.

Background

4. On **27 April 2023**, an application was made by the Appellant for a determination from 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 which focussed on [REDACTED] (“the Work”). In support of the application, the Appellant submitted certain supporting documentation, including a copy of the Appellant’s curriculum vitae (“CV”).
6. On **2 May 2023**, the Appellant submitted a script and contract for the Work entitled [REDACTED] following a request by the Respondent that the Appellant submit a script of the Work for consideration.
7. By correspondence dated **9 May 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. The Respondent stated that it would consider the Work as being outline directions for leisure and recreation [REDACTED] and when it considered the contract, the Respondent was satisfied that the

contract was for direction, project leadership, project management and a lead artist in the Work.

8. On **12 May 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

9. The relevant legislation is contained at section 195 TCA 1997, a copy of which is attached at **Appendix I** for ease of reference.
10. 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.
11. 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

12. 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:-

"we have applied for my client under the category of a 'play', as my client has been in the theatre industry for many years and specialises in [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Under S195, Exemption of certain earnings of writers, composers and artists it states that Revenue Commissioners must, in accordance with statutory guidelines, make a determination that the artistic work is original and creative, is generally recognised as having cultural or artistic merit and is within certain categories of work. The guidelines are drawn up by the Arts council, [REDACTED]

[REDACTED]

The rejection was vague and insulting to our client, and we wish for the Appeals commissioner to reconsider.

.....

Our clients work is:

- 1. Original - she wrote the script herself, and has taken it from the page to production*
- 2. This has cultural merit - it has recieved [REDACTED] performed at respected Arts venues in Ireland with the hugest production values.”
(sic)*

Respondent's submissions

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

“2.1 An application for a determination by [the Respondent] under section 195(2) TCA 1997 was submitted by the appellant on 27 April 2023.

2.2 The application was in relation to works [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 the appellants CV.

2.6 [The Respondent] requested a copy of a script for the appellants work and on 2 May 2023, a script and contract for the work [REDACTED] were submitted.

2.7 Upon examination of the script, [the Respondent] were not satisfied that the work could be classified as a play, instead [the Respondent] would regard the script as being outline directions for leisure and recreation [REDACTED].

2.8 [The Respondent] examined the contract and found that the contract included was for direction, project leadership, project management and lead artist work.

2.9 Based on the script and contract it was [the Respondent's] view that the work was one consisting of recreation and leisure [REDACTED].

2.10 It was [the Respondent's] opinion that recreation and leisure did not come within the scope of section 195 of Taxes Consolidation Act 1997.

2.11 [The Respondent] determined that the appellant's work did not come within category (b) or any of the other categories of work listed in section 195(1) and

[the Respondent] were not in a position to make a determination in respect of the appellant's work.

2.12 *[The Respondent] wrote to the appellant on 9 May 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

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

14.1. On 27 April 2023, the Appellant made an application to the Respondent for a determination under section 195(2) TCA 1997.

14.2. 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 which focussed on [REDACTED].

14.3. On 2 May 2023, in support of the application, the Appellant submitted a script and contract for the Work entitled [REDACTED] following a request by the Respondent that the Appellant submit a script of the Work for consideration

14.4. On 9 May 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.

14.5. On 12 May 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.

Analysis

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

"The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed

generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”

16. 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.”

17. 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.
18. 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.
19. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.
20. 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.

Does the Work fall within category (b) “a play”

21. The Respondent did not accept that the Work was a play and that it came 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”.

22. The Commissioner notes the Respondent submitted that on examination of the Work it was not satisfied that the Work could be classified as a play. Rather, the Respondent considered the Work as being [REDACTED] [REDACTED] Furthermore, when the Respondent considered the “contract for services 2024” from [REDACTED] furnished by the Appellant, the Respondent was satisfied that the contract was for direction, project leadership, project management and a lead artist in the Work. The Commissioner notes that the contract is signed by the Appellant in the capacity of Creator/Director and that the contract relates to the Appellant’s “*engagement as Creator/Director for its forthcoming tour*” [REDACTED] [REDACTED]
23. The Commissioner has considered the Work [REDACTED] The Commissioner has also considered the Appellant’s other work which includes *inter alia* [REDACTED] [REDACTED] [REDACTED] The Commissioner observes that the Work has featured in the media and that the Appellant has been nominated for many awards in relation to the Work. Furthermore, the Commissioner notes that the Work is aimed at [REDACTED] [REDACTED] [REDACTED] and the Work is commendable. However, as stated, in order for the Appellant to avail of the exemption, the Work must comply with the guidelines.
24. A “play” is a word used in common parlance. The Commissioner is satisfied that it would be understood by members of the public to mean a performance on a stage in front of an audience. 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*”. It is common case that a play would usually consist of one or more “acts”, which may be broken down further into “scenes”. The acts and scenes of a play are usually set out in the script of the play, which is the written text or narrative of the play. Furthermore, it is usual that a play would involve various characters and dialogue.
25. The Commissioner has considered the script of the Work entitled [REDACTED] submitted by the Appellant in support of her appeal. The document is entitled “Script” and under the heading “INTRO” the Commissioner notes a series of directions; for example as follows:

“INTRO
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. The Commissioner notes that the Work does not contain any distinct “acts” or “scenes” nor does it contain any written text of the narrative of the play. The Commissioner notes the opening lines of the “script”, but this could not be described as the play’s narrative or dialogue. Moreover, there exists no characters which would be usual in any play. The document submitted lists a number of instructions to individuals to carry out certain directions, what could be described as stage directions. The Commissioner notes that the Work was part of the [REDACTED] and the Work was performed on a stage. However, the fact that the Work is carried out on a stage or in front of an audience does not entitle the Appellant to a determination that the Work falls within category (b) of the guidelines and is “a play”.
27. Having considered the totality of the Work and the supporting documentation, in particular the script and the marketing material, the Commissioner is satisfied that the Work is not “a play” within category (b) of the guidelines.
28. 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. Hence, the Commissioner finds that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997. 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.
29. The Commissioner wishes to state that the outcome of this appeal in no way reflects on the quality of the Work or the skills required to produce the Work. The definitions and

categories specified in the guidelines 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. The Commissioner can see that the Work provides important [REDACTED] [REDACTED] and as stated, the Work is laudable.

Determination

30. 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.
31. 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.
32. 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.
33. 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

34. 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

35. 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
17 October 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.