




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

26TACD2025 

**[REDACTED]**

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought by [REDACTED] (“the Appellant”) regarding the decision by the Respondent to refuse the Appellant’s application for artists’ exemption as provided for under section 195 of the TCA 1997 (“Artists’ Exemption”).
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing.

## Background

3. On 17 January 2024 the Appellant submitted an application to the Respondent for Artists’ Exemption based on his painted mural works (“the Appellant’s Works”).
4. On 9 February 2024 the Respondent referred the application by the Appellant to the Arts Council for its view as to whether the Appellant satisfied the criteria of qualifying for Artists’ Exemption:

*“.....I am attaching a case that I would very much appreciate your opinion on when your time allows please. The customer has claimed the relief under category (d), a painting or other like picture. I am including samples of the applicant's work(s) and a copy of the CV which may be of assistance to you. I would be grateful if you could provide me with your opinion on this case in terms of the applicant's eligibility for the scheme and reference the guidelines in support of your views. In particular, I would welcome your comments on the attached samples which consist of mural work(s) and if you would consider the pieces attached to be original works that would come within category (d). I would also ask that you please complete the attached form AC 1 for record purposes. Your time and assistance are very much appreciated.”*

5. On 27 February 2024 the Arts Council issued its recommendation (“Arts Council Recommendation”) that the Appellant did not satisfy the criteria to qualify for Artists’ Exemption. It stated:

*“Further Notes: [REDACTED] work successfully aligns with the category (d) a painting or other like picture; the work also is clearly both original and creative. However, the work would be excluded from the revenue artists’ exemption as, unfortunately, the work would not be regarded as having significant artistic merit that enhances, to substantial degree the canon of work under section (d) a painting or other like picture. The level of cultural merit of the work would also not satisfy the tax exemption criteria in terms of the quality*

*of form and content as it does not enhance, to a significant degree, one or more aspects of national or international culture”.*

6. On 5 March 2024 the Respondent issued its decision to the Appellant (“the Respondent’s Decision”) and advised that he was not eligible for Artists’ Exemption because:

*“.....regarding the refusal letter that issued for [REDACTED]. When a refusal is issued, it is not providing a general commentary on whether the works are original and creative with cultural or artistic merit. The works have to be viewed with reference to the guidelines and Section 195 of the legislation. Under Section 8 of the guidelines a work shall not be original and creative with artistic merit if the work is, as per 8 (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.” The works were deemed primarily for a decorative purpose and therefore the determination for Artists Exemption was not given. Please note that if a determination had of been granted it would have been from 2024 onwards, it isn’t a backdated relief to income received in 2023 or 2022”.*

7. On 19 March 2024 the Appellant submitted his Notice of Appeal to the Commission. The grounds of appeal are:

*“I seek to appeal a recent ruling by the revenue department regarding my mural artwork, which was categorised as 'primarily decorative' and thus denied eligibility for Artists Exemption. I was initially granted artist exemption on January 1, 2014 (ref [REDACTED]), I understood this exemption to apply to the sale of artworks capable of being bought and resold and mural artwork didn't fall under these guidelines. Recently, I became aware of a ruling concerning a mural artist whose work was similarly deemed decorative by revenue. This artist successfully appealed, resulting in their mural artworks becoming eligible for tax exemption. In light of this precedent, I contacted revenue regarding my own mural artworks, hoping to secure artist exemption for similar pieces. Upon request, I submitted my CV along with a portfolio containing six images of original mural artworks commissioned by local authorities and funded by the arts council. After an 8-week wait, I was informed by revenue that my artworks were deemed decorative. Throughout my career as a self-employed artist over the past decade, I have undertaken mural commissions nationwide, showcasing my unique style, imagination, and creativity. I have honed my craft, establishing a recognisable individual style evident in various endeavors [sic], including artwork for solo and group exhibitions, and large-scale murals. For instance, last summer, I was commissioned by [REDACTED] County Council to paint four murals in [REDACTED] that reflected the rich local history and culture (please see page 1 of*

additional documentation). Other mural examples I've been commissioned to create can also be found in [REDACTED], [REDACTED], [REDACTED] and [REDACTED], to name a few (please see pages 2-6 of additional documentation). Each of these commissions begin with a brief from the client and are meticulously research [sic] to create a bespoke design that reflect local history, heritage and culture. These murals engage the local communities giving them a greater understanding about their pasts while also enhancing the landscape, their identity and also giving more pride in the local areas. These murals create engaging, educational talking points for not only locals but tourists that come to the area.”

8. On 29 July 2024 the Respondent wrote to the Commission and stated the following:

*“The letter issued to the appellant advising him of Revenues refusal to issue a determination stated that his work did “not meet the required criteria set out in the legislation and the guidelines”. While [.....] (Revenue) email advised the works were excluded under paragraph 8(v) of the guidelines this was not the only consideration and reason for Revenues refusal to issue a determination. Section 195 allows Revenue to consult with any person or body of persons that in their opinion may be of assistance to them when determining whether a work has cultural or artistic merit. Revenue submitted the 6 samples of work together with the appellants CV to the Arts Council for their view as to whether the works came within the scope of the guidelines. It’s important to note that Revenue do not advise the Arts Council of their view on works sent to them for Arts Council opinion. The Arts Council were one of the parties responsible for drawing up the guidelines and as such have the expertise in whether a work comes within the criteria set out in the guidelines. It was the Arts Councils view that the works did not meet the required criteria. In particular, the works did not meet the threshold to be considered as having cultural or artistic merit. I have attached the Arts Council opinion, to my email, for your reference. The appellant submitted 6 samples of his work with his Artists Exemption application. Revenue’s refusal to issue a determination under section 195 was based on these 6 samples only. No further works can be considered by the Tax Appeals Commission as Revenue have not considered any works other than the 6 submitted to Revenue. I have also attached, to my email, images of the works submitted with the appellants application.”*

9. On 14 May 2024 the Appellant submitted his Statement of Case to the Commission.
10. On 1 July 2024 the Respondent submitted its Statement of Case to the Commission.

## Legislation and Guidelines

11. The legislation relevant to this appeal is contained at section 195 of the TCA 1997, a copy of which is attached at Appendix I for ease of reference.
12. As noted in section 195(12) of the 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 (“the Guidelines”), a copy of which is attached at Appendix II for ease of reference.
13. Under section 195(13)(b) of the 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) of the TCA 1997.
14. As such, in assessing this appeal, the Commissioner is obliged and must ensure, in compliance with section 195(13)(b) of the TCA 1997, that the work complies with the Guidelines for the time being in force under section 195(12) of the TCA 1997. The work must satisfy the mandatory requirements of those Guidelines.

## Submissions

### *The Appellant's submissions*

15. The Appellant's Statement of Case submitted that:

*“I was lead to believe that the exemption only applied [sic] artwork that was re-saleable and murals did not fall under this exemption. In January 2024 I became aware of a mural artist been granted artist exemption based on his mural artwork. On my behalf, [...] [(.....)] contacted revenue via 'My Enquiry' on the 4th of January 2024 for clarification whether my murals fell within artist exemption. [...] got back 10 days later explaining we needed to reply to her email with more information. Revenue then requested I apply for a separate artist exemption for my mural artwork. We then completed an artist exemption form sent on the 17th of January 2024 along with the 6 requested images of recent murals and my artists CV. On the 4th of March 2024 [...] replied with a refusal letter from revenue signed by [...], stating: 'I have considered the work submitted by you and I regret that the work does not meet the required criteria set out in the legislation and the guidelines'. We requested additional information and clarification as to why the murals were refused. On the 5th March 2024 [...] replied: 'When a refusal is issued, it is not providing a general commentary on whether the works*

*are original and creative with cultural or artistic merit. The works have to be viewed with reference to the guidelines and Section 195 of the legislation. Under Section 8 of the guidelines a work shall not be original and creative with artistic merit if the work is, as per 8 (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. The works were deemed primarily for a decorative purpose and therefore the determination for Artists Exemption was not given. On the 19th of March my appeal against revenues decision was lodged. On the 1st of May Tax appeals commission requested a statement of case.*

*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. 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. 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. 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.*

*In The Irish Times on Friday 29th December 2023, Gordan Deegan wrote an article about an unnamed mural artist who successfully appealed revenues decision regarding his mural artwork as being decorative and he was awarded artist exemption on his mural artwork. Reference: 'Ms Millrine stated that she was satisfied that the mural work is "a unique work of creative quality brought into existence by the exercise of its creator's imagination" as laid down in the guidelines concerning qualifying for the artists' tax exemption'. Article Link: <https://www.irishtimes.com/business/2023/12/29/mural-artist-wins-tax-ruling/>*

*With over a decade of experience as a professional artist, I frequently receive commissions to create, tailor-made mural pieces in various towns and cities across the*

country. These artworks serve as vibrant reflections of local history and culture, fostering engagement within the communities. My artistic journey spans over a decade, during which I've cultivated a distinctive style, celebrated for its unique blend of creativity and imagination. Clients seek me out for commissions, drawn to my recognisable aesthetic and innovative approach. For example my latest project is a commissioned large-scale mural being designed for [REDACTED]. Rooted in the historical legacy of the [REDACTED] and their connection to the [REDACTED], this mural is designed to transport viewers back to the [REDACTED]. It features a vivid depiction of the [REDACTED] adorned with the [REDACTED] coat of arms, set against the backdrop of an Elizabethan assault. Collaborating closely with a local historian and backed by public funding, this endeavour promises to be a testament to the rich tapestry of Irish heritage. If you have an [sic] additional queries or requirements please don't hesitate to contact me."

#### *The Respondent's submissions*

16. The Respondent's Statement of Case submitted that:

*"1. Statutory provisions being relied on*

*Section 195 of the Taxes Consolidation Act 1997 (TCA 1997) and guidelines drawn up under section 195(12) for the Artists Exemption scheme by the Arts Council and the then Minister for Arts Heritage and the Gaeltacht.*

*2. Outline of relevant facts*

*This is an appeal by [REDACTED] in respect of the failure of Revenue to make a determination under section 195 of Taxes Consolidation Act 1997, In respect of some of his artistic works.*

*2.1 An application dated 17 January 2024, for a determination under section 195(2) TCA 1997, in respect of the appellants work was submitted to Revenue.*

*2.2 Section 195(1) states that the scheme shall apply to original and creative works which are generally recognised as having artistic or cultural merit and come within a number of listed categories.*

*2.3 The application in respect of the appellants work was made under category (d), "a painting or other like picture".*

*2.4 In support of the application, the appellant submitted images of his work and other supporting material.*

*2.5 The images submitted by the appellant were in relation to works of murals.*



2.6 Revenue may only make a determination where a work clearly comes within the criteria set out within the legislation and the guidelines governing the scheme.

2.7 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 (referred to hereafter as the guidelines). 2.8 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. The section further states that the guidelines may specify criteria by reference to which the questions whether works are original and creative and whether they have or are generally recognised as having cultural or artistic merit are to be recognised.

2.9 Section 195(13) states that where an application for a determination is made to Revenue, that Revenue 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.

2.10 The current version of the guidelines is effective for all determinations made by Revenue on or after 30 November 2013.

2.11 Having considered the appellants application and supporting images of murals under category (d), "a painting or other like picture" it is Revenue's opinion that this work does not meet the required criteria set out in the legislation and guidelines.

2.12 In accordance with section 195(2)(a)(ii), Revenue sought an opinion from the Arts Council as to whether, in their opinion the appellants works in category (d), a painting or other like picture, came within the criteria for the scheme. The Arts Council expressed the opinion that the appellants works did not. In particular the Arts Council stated that in their opinion "the work would not be regarded as having significant artistic merit that enhances, to [sic] substantial degree the canon of work under section (d) a painting or other like picture. The level of cultural merit of the work would also not satisfy the tax exemption criteria in terms of the quality of form and content as it does not enhance, to a significant degree, one or more aspects of national or international culture".

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

2.14 Revenue issued a letter to the appellant on 29 February 2024 stating that they were unable to make a determination in respect of the appellants works.

2.15 Pursuant to section 195(6) the appellant has appealed the decision of Revenue not to make a determination in respect of his mural work.

### 3. Relevant case law

*Commissioners of Inland Revenue v Doorley [1933] 1 I.R. 755.*

*Coleman v Revenue Commissioners [2014] IEHC 622*

*Ó'Coindealbháin v Gannon [1986] I.R. 154*

*Inspector of Taxes v Kiernan [1981] 1 IR 117.”*

## Material Facts

17. Having considered and assessed the documentation submitted by the parties in this appeal, the Appeal Commissioner (“the Commissioner”) makes the following findings of material fact:

17.1. On 17 January 2024 the Appellant submitted an application to the Respondent for Artists’ Exemption.

17.2. On 9 February 2024 the Respondent referred the application by the Appellant to the Arts Council for its view as to whether the Appellant satisfied the criteria of qualifying for Artists’ Exemption.

17.3. On 27 February 2024 the Arts Council Recommendation issued stating that the Appellant did not satisfy the criteria to qualify for Artists’ Exemption.

17.4. On 5 March 2024 the Respondent’s Decision issued that the Appellant was not eligible for Artists’ Exemption.

17.5. On 19 March 2024 the Appellant submitted his Notice of Appeal to the Commission.

## Analysis

18. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.

19. In this regard, the jurisdiction of an Appeal Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 (“*Lee*”) wherein Murray J. stated at paragraph 20:

*“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation”.*

20. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, wherein at paragraph 22, Charleton, J. stated:

*“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”.*

21. 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.”*

22. 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.”*

23. 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*”.
24. 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*”.
25. 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.
26. The current version of the Guidelines is effective for all determinations made by the Respondent on or after 30 November 2013.
27. 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.
28. Paragraph 1 of the Guidelines states that section 195(1) of the TCA 1997 provides that a “work” for the purposes of the section must be both an original and creative work in one of the listed categories one of them listed at (d) thereof as a painting or other like picture.[Emphasis added]
29. Paragraph 2 of the Guidelines provides that to secure exemption under section 195 of the TCA 1997 a 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. [Emphasis added]

30. Paragraph 3 of the Guidelines provides that in making a determination under section 195 of the TCA 1997, the Respondent 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.
31. Paragraph 4 of the Guidelines provides that 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. [Emphasis added]
32. Paragraph 5 of the Guidelines provides 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. [Emphasis added]
33. Paragraph 6 of the Guidelines provides 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. [Emphasis added]
34. Paragraph 8 provides that certain types of work are excluded from the Artists Exemption Scheme and they are:

*"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 –*

.....

*(iii) any writing, visual or musical work, or other like work, created for advertising or publicity purposes,*

*(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.*  
[Emphasis added]

35. The Respondent's Decision was that the Appellant's Works were deemed to be primarily for a decorative purpose and therefore the Appellant did not qualify under the Guidelines for Artists' Exemption.

36. It is noted that in these circumstances the Respondent did consult with the Arts Council as to their opinion and recommendation on whether the Appellant's Works were works which could be generally recognised as having cultural or artistic merit. The Arts Council Recommendation states that the Appellant's "*.....work successfully aligns with the category (d) a painting or other like picture; the work also is clearly both original and creative*". The Arts Council Recommendation is that the Appellant's Works do not meet the threshold of artistic merit as they do not have "*.....significant artistic merit that enhances, to substantial degree the canon of work of painting or other like picture*" and nor do they have cultural merit as "*.....in terms of the quality of form and content..... it does not enhance, to a significant degree, one or more aspects of national or international culture.*"
37. The Respondent's Decision states that the reasons for refusing the Appellant's application for Artists' Exemption are because of the provisions of section 8 of the Guidelines which *inter alia* provides "*.... that a work shall not be original and creative with artistic merit if the work is, as per 8 (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' and that the Appellant's Works were deemed primarily for a decorative purpose and therefore the determination for Artists Exemption was not given.*"
38. It is noted that the Respondent's Decision goes further than the Arts Council Recommendation in that the Respondent's Decision finds that the Appellant's Works shall not be considered as "*....original and creative with artistic merit if the work is, as per 8 (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' and that the Appellant's Works were deemed primarily for a decorative purpose and therefore the determination for Artists Exemption was not given.*" Whereas the Arts Council Recommendation is that the Appellant's Works were both *original and creative* but that they do not meet the threshold of artistic merit as they do not have "*.....significant artistic merit that enhances, to substantial degree the canon of work of painting..*".
39. Section 195(6)(b) of the TCA 1997 provides *inter alia* that where an individual has made due claim to the Respondent for a determination under section 195(2)(a)(ii) clause (I) of the TCA 1997 in relation to works that the individual has executed and the Respondent fail to make a determination under clause (I) of section 195(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 of the TCA 1997 within 30 days after the end of the relevant period on the grounds that the works are generally recognised as having cultural or artistic merit.

40. Section 195(8)(a) of the TCA 1997 provides *inter alia* that on the hearing of an appeal made under section 195(6) of the TCA 1997 the Appeal Commissioners may after consideration of 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 Respondent and in relation to the works and after such consultation 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 executed, either solely or jointly with another individual, works generally recognised as having cultural or artistic merit, or and, where the Appeal Commissioners so determine, the individual shall be entitled to relief under section 195(3)(a) of the TCA 1997 as if the determination had been made by the Revenue Commissioners under section 195(2)(a)(ii)(l) of the TCA 1997.
  
41. The Appellant submits that his Works are works which are generally recognised as having cultural or artistic merit. In his Notice of Appeal, the Appellant submits *inter alia* that he has “.....over a decade of experience as a professional artist, I frequently receive commissions to create, tailor-made mural pieces in various towns and cities across the country. These artworks serve as vibrant reflections of local history and culture, fostering engagement within the communities. My artistic journey spans over a decade, during which I've cultivated a distinctive style, celebrated for its unique blend of creativity and imagination. Clients seek me out for commissions, drawn to my recognisable aesthetic and innovative approach..... Throughout my career as a self-employed artist over the past decade, I have undertaken mural commissions nationwide, showcasing my unique style, imagination, and creativity. I have honed my craft, establishing a recognisable individual style evident in various endeavors,[sic] including artwork for solo and group exhibitions, and large-scale murals. For instance, last summer, I was commissioned by ██████████ County Council to paint four murals in ██████████ that reflected the rich local history and culture..... Other mural examples I've been commissioned to create can also be found in ██████████, ██████████, ██████████ and ██████████, to name a few ..... Each of these commissions begin with a brief from the client and are meticulously research to create a bespoke design that reflect local history, heritage and culture. These murals engage the local communities giving them a greater understanding about their pasts while also enhancing the landscape, their identity and also giving more pride in the local areas. These murals create engaging, educational talking points for not only locals but tourists that come to the area.”

42. The Commissioner refers to the Respondent's Decision that the Appellant's Works do not satisfy the threshold of having sufficient "*artistic merit*" on the basis that they were considered by the Respondent to be "...*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*' and that the Appellant's Works were deemed primarily for a decorative purpose". The Commissioner notes that the Arts Council Recommendation did not make any recommendations that the Appellant's Works were of a "... *utilitarian function, or which are created primarily for advertising publicity, information, decorative or other similar purposes*" but instead that it found that the Appellant's Works did not have "... *significant artistic merit that enhances, to substantial degree the canon of work of painting or other like picture*".
43. The Commissioner refers to the Appellant's CV which was submitted to the Commission and notes that the Appellant:
- 43.1. holds third level qualifications in classical animation drawing studies and computer animation; and
  - 43.2. has had a number of solo exhibitions in the State; and
  - 43.3. has had a large number of national and international selected group exhibitions; and
  - 43.4. has had a large number of live painting events commissioned by local authorities, arts and media bodies and festivals organisers; and
  - 43.5. has had a large number of selected commissions from 2014 to date, commissioned by local authorities, arts bodies and festivals organisers.
44. In order to secure exemption under section 195 of the TCA 1997 a work must be determined by the Respondent to be a work which is both original and creative and be in one of the listed categories, one of them being a painting or other like picture and being a work which has, or is generally recognised as having, either cultural or artistic merit.
45. 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. 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. Further, 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.



46. The Commissioner having assessed all the material before the Commission, the legislation and the Guidelines finds that the Appellant's Works are a work which is both original and creative as it is a unique work of creative quality brought into existence by the exercise of its creator's, the Appellant's imagination.
47. Further the Commissioner having assessed all the material before the Commission, the legislation and the Guidelines finds that the Appellant's Works are a work which is generally recognised as having artistic merit as the quality of form and/or content enhances to a significant degree the canon of work in the relevant category of painting or other like picture. The Commissioner notes the Appellant's submissions that the Appellant was commissioned by ██████ County Council with respect to a local history of ██████. The Appellant cites other examples relating to local communities and their culture and history. The Commissioner considers that due to the significant commissions across various counties and by several communities and councils, the Appellant's Works enhance to a significant degree the canon of work.

#### **Determination**

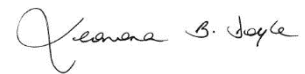
48. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is successful and the Appellant shall be entitled to relief under section 195(3)(a) of the TCA 1997 as if the determination had been made by the Respondent under section 195(2)(a)(ii)(l) of the TCA 1997.
49. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL(1) and 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**

50. 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

51. 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.



Leonora B. Doyle  
Appeal Commissioner  
20 November 2024

## 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.**