



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

29TACD2025

Between

████████████████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal, submitted by [REDACTED] (“the Appellant”), 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**.
4. In support of her appeal, the Appellant submitted a Notice of Appeal, with accompanying documentation. On 19 August 2024, following a request by the Commission for a Statement of Case from the parties, the Appellant informed the Commission that she had no further information to submit in support of her appeal. On 24 September 2024, the Commissioner received a Statement of Case from the Revenue Commissioners (“the Respondent”). The Commissioner has also received a copy of the book, the subject matter of this appeal.
5. The Commissioner has considered the Appellant’s Notice of Appeal, accompanying documentation and the Appellant’s book in this Determination. In addition, the Commissioner has considered the Respondent’s Statement of Case.

Background

6. On **8 March 2024**, an application was made by the Appellant for a determination from the Respondent under section 195(2) TCA 1997.
7. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (a) “*a book or other writing*”, in respect of the work entitled [REDACTED] (“the Work”). The Appellant’s application for a determination from the Respondent stated that the work came within paragraph 7(2)(b) of the guidelines, which refers to (i) a biography and (ii) an autobiography.
8. In support of the application, the Appellant submitted certain supporting documentation and a copy of the Work. The Appellant is the author of the Work. The Work is a book in

the category of non-fiction. The Respondent is in agreement that the Work is a book and is non-fiction. This is not in dispute in this appeal.

9. By correspondence dated **19 March 2024**, 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 non-fiction book or other writing, which meets the criteria set out in Paragraph 7(2) (a), (b), (c), (d) or (e) of the guidelines for non-fiction work.
10. On **22 June 2024**, 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

11. The relevant legislation is contained at section 195 TCA 1997, a copy of which is attached at **Appendix I** for ease of reference.
12. 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.
13. 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

14. 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 accompanying documentation:-

[REDACTED] *is original in its design and content.*

This book in time could give a glimpse of how life was for older people

Both national and non national and those marginalised

It is also an educational tool”.

Respondent’s submissions

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

“2.2 *An application dated 8 March 2024 for a determination by [the Respondent] under section 195(2) TCA 1997 was submitted by the appellant.*

2.3 *The application was in respect of a book entitled [REDACTED]*

.....

2.6 *It is accepted by [the Respondent] that this is a book as set out within the categories of work listed in section 195(1).*

2.11 *In the Appellant’s application, for a determination, it is stated that the work is a work of non-fiction. [The Respondent] would accept this categorisation of the work.*

.....

2.13 *The Appellant’s application stated that the work comes within paragraph 7(2)(b) of the guidelines, which refers to (i) a biography, (ii) an autobiography.*

2.14 *[The Respondent] determined that the work was not a work that could be considered to come within the meaning of a biography or an autobiography.*

2.15 *consideration was given to whether the work [REDACTED] came within any of the other categories of Paragraph 7(2)(a).*

.....

2.17 *[The Respondent] determined that the work did not meet the criteria of Paragraph 7(2)(d).*

2.18 *Consideration was given whether the work [REDACTED] met the criteria set out in paragraph 7(2)(c) of the guidelines.....*

2.19 *it is [the Respondent’s] view that it does not relate to National Heritage, as set out in the Heritage Act 1995.*

- 2.20 *Paragraph 7(2)(d) of the guidelines states.....*
- 2.21 *[The Respondent] determined that the work did not meet the criteria of Paragraph 7(2)(c).*
- 2.22 *The work did not meet the criteria set out in Paragraph 7(2)(a), (b), (c) or (d) of the guidelines therefore it cannot meet the criteria of Paragraph 7(2)(e) which is "any combination of Paragraph 7(2)(a), (b), (c) or (d)".*
- 2.23 *In addition to being a type of work listed in paragraph 7 of the guidelines, the guidelines provide that a work "that incorporates the authors unique insight into the subject matter and is regarded as pioneering work and also makes a significant contribution to the subject by casting new light on it or by changing the generally accepted understanding of it".*
- 2.24 *It is [the Respondent's] view that the work does not meet this requirement.*
- 2.25 *[The Respondent] issued a letter to the appellant on 19 March 2024 stating that that they were unable to make a determination in respect of the work.*
- 2.26 *Pursuant to section 195(6) on the appellant has appealed the decision of [the Respondent] not to make a determination in respect of the work."*[sic]

Material Facts

16. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
- 16.1. On **8 March 2024**, an application was made by the Appellant for a determination from the Respondent under section 195(2) TCA 1997.
- 16.2. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (a) "a book or other writing", in respect of the Work entitled [REDACTED]
- 16.3. The Appellant's application for a determination from the Respondent stated that the Work comes within paragraph 7(2)(b) of the guidelines, which refers to (i) a biography and (ii) an autobiography.
- 16.4. The Appellant is the author of the Work.
- 16.5. The Work is a book in the category of non-fiction.
- 16.6. The Respondent is in agreement that the Work is a book and is in the category of non-fiction. This is a fact not in dispute in this appeal.

- 16.7. By correspondence dated **19 March 2024**, 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 non-fiction book or other writing, which meets the criteria set out in Paragraph 7(2) (a), (b), (c), (d) or (e) of the guidelines for non-fiction work.
- 16.8. On **22 June 2024**, 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

17. 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.”

18. 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.”

19. 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.

20. 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.
21. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.
22. 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.

Paragraph 7 of the guidelines

23. The Respondent accepts that the Work is a book and that it comes within the categories of work listed in section 195(1) TCA 1997. It is therefore not in dispute between the parties that the Work is a “*book or other writing*”. On examination of the Work, the Commissioner notes that the Respondent considered the Work to be that of non-fiction. The Commissioner has considered the Work, in addition to the parties’ submissions in this appeal. The Commissioner is of the view that the Work is both a book and the Work is non-fiction. Therefore, **paragraph 7 of the guidelines** entitled “**Criteria for Non-fiction Work**” is engaged in this appeal, in circumstances where the Work is a non-fiction book or other writing.
24. Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction work in accordance with section 195(12)(b)(ii) TCA 1997, by reference to the question to be determined of whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has or is generally recognised as having, cultural or artistic merit. The Commissioner observes that the Appellant described the Work in her application for a determination from the Respondent, as coming within **paragraph 7(2)(b) of the guidelines** which refers to (i) biography and (ii) autobiography.
25. The guidelines are specific that the criteria set out at paragraph 7(2)(b)(i) or (ii) must be satisfied, in addition to the overriding requirement that the Work “*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.”

Biography

26. Section 195 TCA 1997 and the guidelines made thereunder are addressed to the public generally. The word “biography” has widespread and unambiguous currency. It is normally accepted that a biography is an account of a person’s life written by another. In this regard, the Commissioner has consulted the Oxford Dictionary to assist her with the meaning of the word “biography”. The Oxford Dictionary defines “biography” as having three definitions, two of which the Commissioner considers relevant herein, as follows:

“1. A written account of the life of an individual, esp. a historical or public figure; (also) a brief profile of a person’s life or work. Later more generally: a themed narrative history of a specific subject in any various written or recorded or visual media.

2. The process of recording the events and circumstances of another person’s life, esp. for publication (latterly in any various written, recorded or visual media); the documenting of individual life histories (and later, other forms of thematic historical narrative), considered as a genre of writing or social history.”

27. In addition, the Commissioner consulted the Collins English Dictionary for the definition of “biography”, to ensure there was no other meaning to this unambiguous word, used in common parlance. The Commissioner notes that the Collins English Dictionary defines “biography” as “*an account of their life, written by someone else*” and “*the branch of literature which deals with accounts of people’s lives.*” In determining this appeal, the Commissioner has given the word “biography” its ordinary and natural meaning, in accordance with the principles of statutory interpretation enunciated by the superior courts.

28. Having read the Work submitted in this appeal, the Commissioner is satisfied that the Work does not include biographical accounts. By its own description, in the forward to the Work, the Work states that it is not the author of the Work that records the account of the person’s life into the Work. The Work states that [REDACTED]

[REDACTED]

[REDACTED] Thus, the Commissioner is satisfied that the Work does not contain details on the lives of individuals, to be considered a biography. Rather, the Work is a tool to enable the reader or other person, who is not the author of the Work, to record an account of the person’s life.

Autobiography

29. The word “autobiography” has widespread and unambiguous currency. It is normally accepted that an autobiography is an account of a person’s life written by that person. The Commissioner has consulted the Oxford Dictionary as to the definition of the word “autobiography”, which describes it as a noun and which defines the word as “*An account of a person's life given by himself or herself, esp. one published in book form.*” In determining this appeal, the Commissioner has given the word “autobiography” its ordinary and natural meaning
30. The Commissioner carefully read and considered the Work that the Appellant submitted in support of her appeal. However, the Commissioner finds that the Work falls significantly short of the characteristics of an autobiography, as there are no autobiographical accounts given by the Appellant in the Work of a person’s life. Rather, this is left to the reader of the Work to complete. As stated, the Work is a tool to enable the reader or other person, who is not the author of the Work, to record an account of the person’s life. It is not the Appellant that is providing the account of the person’s life.
31. Furthermore, the Commissioner is not satisfied that the Work is a pioneering work and that it 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, in accordance with the test as outlined in paragraph 7(b) of the guidelines. The Work has a very laudable aim to assist people [REDACTED]. However, it is the case that the Commissioner must interpret and apply the necessary legislative provisions in this appeal. Therefore, the Commissioner must find that the criteria set out in paragraph 7(2)(b) of the guidelines, has not been met.
32. The Commissioner has also considered whether the Work came within any of the other categories in paragraph 7 namely, paragraph 7(a). However, the Commissioner was satisfied that the Work, by its nature, did not come within any of the categories of Paragraph 7(2)(a) of the guidelines. Furthermore, the Commissioner considered paragraph 7(2)(c) of the guidelines, but determined that the Work does not relate to National Heritage, as set out in the Heritage Act 1995. In relation to paragraph 7(d) of the guidelines, the Commissioner was satisfied that the Work did not relate to the archives which are more than 30 years old. The Work was also not capable of satisfying a combination of the criteria outlined in Paragraph 7(2)(a), (b), (c) or (d) of the guidelines, to satisfy paragraph 7(2)(e) of the guidelines.
33. The artist exemption legislation and guidelines sets 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. Therefore, the Commissioner must find that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997. The Commissioner therefore determines 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.

34. 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 seeks to provide a means by which

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Determination

35. 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.
36. 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.
37. 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.
38. 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

39. 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

40. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
10 December 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, 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, 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

Guidelines drawn up under Section 195(12) 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.