



02TACD2019

[NAME REDACTED]

Appellant

V

REVENUE COMMISSIONERS

Respondent

## DETERMINATION

### Introduction

1. This appeal is concerned with a claim for exemption from income tax pursuant to Taxes Consolidation Act 1997 (TCA), section 195 commonly known as 'artists' exemption' in respect of the income derived from the production or sale of a book entitled [TITLE REDACTED].

### Background

2. The Appellant is [OCCUPATION REDACTED].
3. The Appellant published a work of non-fiction book in [YEAR REDACTED] entitled, [TITLE REDACTED], and submitted an application to the Respondent to obtain a determination that the Work was original and creative and contained cultural or artistic merit pursuant to TCA, section 195(2)(a)(ii).
4. The Respondent failed to make a determination and the Appellant appealed that failure pursuant to TCA, section 195(6).

### Legislation

#### *Taxes Consolidation Act*

5. Section 195, Taxes Consolidation Act, 1997 provides an exemption from income tax for income received from the production or sale of certain original and creative works generally recognised as having cultural or artistic merit.



6. Earnings derived from such works are exempt from income tax in the year in which the claim was made. For the year 2015 and subsequent years, the maximum amount exempt from income tax is €50,000 per annum. For the years 2011 to 2014 that maximum amount was €40,000 per annum.
7. Guidelines pursuant to statute have been drawn up by the Arts Council and Minister for Arts, Heritage, Gaeltacht and the Islands, with the consent of the Minister for Finance, for the purposes of determining whether a work is an original and creative work and whether it has, or is generally recognised as having cultural or artistic merit. In evaluating such work, the Respondent may consult with a person or body of persons, such as The Arts Council, which may be of assistance in reaching a decision.
8. A “work” is defined in TCA, section 195(1) to mean:
  - (a) a book or other writing;
  - (b) a play;
  - (c) a musical composition;
  - (d) a painting or other like picture;
  - (e) a sculpture
9. TCA, section 195(3) provides the relief from income tax and states:

*“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.”*
10. A right of appeal lies from the failure of the Respondent to make a determination in accordance with TCA, section 195(6)(b) and states:

*“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.”*

11. As noted above, TCA, section 195(12) provides:

*“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.”*

## **Guidelines**

The relevant extracts of the guidelines (the Guidelines) provide as follows: -

### ***“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.*

### ***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 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 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."*

## **Submissions**

### *Appellant*

12. The Appellant claimed an entitlement to the exemption in respect of a work of non-fiction work entitled **[TITLE REDACTED]** (the Work). The Appellant submitted that the Work satisfies the tests set out at paragraph 7 of the Guidelines.

13. The Appellant argued that the Work is original as it reflects the merits of many aspects of life **[DESCRIPTION REDACTED]**. Furthermore, it is creative to the extent that it brings his storytelling style to subjects which could be considered mundane but instead are animated, fun and light hearted.
14. He submitted that the Work is of cultural merit as it is a unique insight into a different Ireland, an Ireland that current and future generations can learn a lot from and be inspired by as it is based on life experiences extracted from diaries that depicts **[DESCRIPTION REDACTED]**.
15. It was argued that the essence of the Work is the unique insights of the Appellant conveyed in a story telling mode as to the importance of **[SUBJECT MATTER REDACTED]**. While many of the points highlighted in the Work could be regarded as being outdated, when they are conveyed in a practical humorous light their importance takes on a new meaning and become relevant in a modern context. The Work is also pioneering as it throws light on the subject matter.
16. The Appellant submitted that the Work qualifies under TCA, section 195 for exemption on the basis of the Guidelines and the plain terms of the section on the basis that the Work:
- (a) is a book or other writing under paragraph 1 of the guidelines,
  - (b) is original and creative as it is a unique work or creative quality brought into existence by the exercise of its creator's imagination,
  - (c) has cultural merit on the basis that its form and/or content enhances to a significant degree one or more aspects of national or international culture,
  - (d) passes the test at paragraph 5 of the Guidelines as it portrays national culture in Ireland during the early part of the writer's life as per his memoirs,
  - (e) passes the test at paragraph 6 of the Guidelines as it enhances the knowledge of life in Ireland a number of decades ago and it informs a younger audience of many aspects of life that are in threat of being forgotten,
  - (f) has artistic merit on the basis that its form and/or content enhances to a significant degree the canon of work in the category applicable under Paragraph 7 of the guidelines,
  - (g) is based on extracts from his diaries and satisfies the requirements of Paragraph 7 of the Guidelines as his diaries are the archives for his books combined with life experience that have given him the unique insights which have informed all his writing,



- (h) falls under the category of archives based on his diaries that are 50 years old and relate to **[SUBJECT MATTER REDACTED]** and what he learned and how this has influenced his life and he reveals aspects of Irish life to younger generations,
  - (i) is about life and living **[SUBJECT MATTER REDACTED]**. It is a guide to life using the unique insights from his life as recorded in his diaries as a reference,
  - (j) is a work falling under the category of an autobiography or biography that incorporates the well-known 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,
  - (k) it otherwise falls under a category or criteria under paragraph 7 of the Guidelines, and
  - (l) does not fall under the categories excluded under paragraph 8 of the Guidelines.
17. The Appellant submitted that the Work provides an insight into **[SUBJECT MATTER REDACTED]**.
18. He argued that the Work is both original and creative and of cultural merit and to the best of his knowledge, this type of book has not been written before.
19. During oral submissions, the Appellant accepted that his Work was not an autobiography but argued that it fell under the category of work described as 'artists' diaries' as set out at paragraph 7.2(a)(iv) of the Guidelines. As an author of a previous book, an autobiography, that was approved by the Respondent as falling within the parameters of TCA, section 195, his credentials as an artist are undeniable. To this extent he produced evidence of his collection of diaries spanning a period of over 50 years. The Appellant argued that much of the material contained in the Work was inspired by memories drawn from those diaries. Thereafter it was submitted that his Work provides a unique insight **[SUBJECT MATTER REDACTED]**.
20. In the alternative, the Appellant argued that the Work fell within the definition of *"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"* pursuant to 7.2(d) of the Guidelines. 'Archives', the Appellant submitted, are his diaries which are more than 30 years old. The Work was therefore created from research from his diaries, and as already acknowledged by the Respondent as being original and creative, and therefore pioneering work by making a significant contribution to reviving former traditions that benefits not only the person but society as a whole.



*Respondent*

21. The Respondent submitted that in refusing the exemption, there is no intention to disparage the Appellant's Work in any way but submits that the matter of entitlement to the exemption is a technical one, requiring the Appellant to demonstrate compliance with all relevant legal tests. The Respondent submitted that it is not possible to interpret TCA, section 195 and the Guidelines so as to grant the exemption in respect of the Appellant's Work.
22. The Respondent considered the Work and following consultation with the Arts Council was unable to make a determination that the Work complied with the legislative provisions and Guidelines that would have entitled the Appellant relief from income tax. Specifically, it was the view of the Respondent that the Work is non-fiction and as such must meet the set criteria set out in paragraph 7 of the Guidelines.
23. The Respondent accepts that the Work is original and creative work as defined in paragraph 4 of the guidelines. However, it does not contain cultural or artistic merit.
24. The Respondent referred to the preface to the work in which the Appellant sets out his views on **[SUBJECT MATTER REDACTED]** and how they are still important in the modern world. On page xiii, the Respondent highlighted the following extract: **[TEXT REDACTED]**.
25. It is not accepted by the Respondent that the Work has cultural or artistic merit as it does not enhance to a significant degree one or more aspects of national or international culture nor does it enhance to a significant degree the canon of work in the relevant category.
26. **[TEXT REDACTED]**
27. The Respondent submitted that the Work is non-fiction dealing with the subject matter of **[TEXT REDACTED]**. Therefore, such Work is non-fiction concerning **[SUBJECT MATTER REDACTED]** and does not qualify for the exemption as it does not fall within the categories listed in paragraph 7 of the Guidelines.
28. The Respondent noted that in the Appellant's submission, a claim was made that the Work fell to be considered as an autobiography or biography. The Respondent disputed both classifications as the Appellant does not provide sufficient autobiographical material to categorise the Work as an autobiography.
29. To date or according to best information, the Respondent has never received an application seeking approval of a work constituting 'Artists' diaries'. Notwithstanding that fact, it is the view of the Respondent that the Work cannot be regarded as falling within such a category as the Work contains a small amount of material inspired by





the diaries and what is included is of insufficient quantity or quality. The Respondent argued the Work is a book on **[TEXT REDACTED]**.

30. The Respondent also disputed the Appellant's claim the Work falls within the category of 'archives' which are more than 30 years old relating to Ireland or Irish people or based on research on such archives pursuant to 7.2(d) of the Guidelines.
31. On such grounds, the Respondent submitted that the Work does not fall within the categories prescribed by legislation or indeed as specified in the Guidelines.
32. The Respondent also disputes the Appellant's assertion that the Work is based on archives as it does not contain sufficient historical material.

### **Review of the Work**

33. Based on personal memories, the general objective of the Appellant is to motivate the reader to pay attention to the **[SUBJECT MATTER REDACTED]**.
34. **[TEXT REDACTED]**
35. The Appellant covers topics such as **[SUBJECT MATTER REDACTED]**.
36. **[TEXT REDACTED]**
37. **[TEXT REDACTED]**

### **ANALYSIS**

38. There is no dispute between the parties that the work is original and creative. It was also acknowledged at the hearing by the Appellant that the Work is not an autobiography. The Appellant is therefore relying on paragraph 7(2)(a)(iv) and 7(2)(d) of the Guidelines as falling under the category of "artists' diaries" and "archives" respectively.

#### *Artists' diaries*

39. In determining this appeal and to determine whether the Work constitutes "artists' diaries", significant reliance has to be placed on Paragraph 7(2)(a)(iv) of the Guidelines that requires that the Work:



*“...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 ...”*

40. In a previous determination of this Commission, 21TACD2017, reference was made to the High Court decision in *Coleman –v- Revenue Commissioners* [2014] IEHC 662 arising from a case stated made by the Appeal Commissioners in relation to the ‘artists’ exemption’, where Donnelly J 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.”*

41. In this regard and based on the evidence of the Respondent, there is no record of any application made by an individual seeking to claim ‘artists’ exemption’ under the classification ‘*artists’ diaries*’. As such no interpretative assistance can be derived to establish the type of work that could be classified as ‘artists’ diaries’ that gives a *“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”*. As such the standard approach in statutory interpretation as applied by Donnelly J. in *Coleman*, is in accordance with the 1<sup>st</sup> test in *Inspector of Taxes v Kiernan* [1981] 1 I.R. 117 where Henchy J. said:

*“Where statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily”,*

42. There is no doubt that the inspiration of the Work is derived from the Appellant’s personal experiences as catalogued by his diaries. Furthermore, I am satisfied that the Appellant is an artist. However, while the theme or subject matter of the Work is **[DESCRIPTION REDACTED]**, the Appellant’s insights could not be 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”*. Much of what the Appellant opines in the Work could be classified as common sense and is applied today as much as it was in the Appellant’s youth.

43. Furthermore, there is no evidence to suggest that the core set of principles of caring, consideration and community as espoused by the Appellant has fundamentally changed. On this basis, I cannot accept that the Appellant’s Work can be classified as ‘artists’ diaries’ that provides a unique insight and is a pioneering work that makes a



significant contribution to basic social behaviour that still is in existence. **[TEXT REDACTED]**.

44. By reason of the foregoing, it is not necessary for me to define what constitutes 'artists' diaries'.

#### *Archives*

45. Correspondingly, the meaning of 'archives' has to be interpreted in accordance with Paragraph 7(2)(d) of the Guidelines which states:

*"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,*

46. In line with a previous determination of this Commission reported at 20TACD2016, where it was stated: -

*"The word 'archive' is commonly understood to relate to public records of an historical nature. ... I do not take the view that the meaning of 'archives' in the guidelines relates only to research of a scholarly nature in the National Archive or the National Library, though the historical content of this work is of such a nature as to be found in these archives. The stipulation in the guidelines that the archive be 'more than 30 years old' means the material in the archive will undoubtedly take on an historical character."*

47. An 'archive' is a collection of historical documents or records providing information about a place, institution, or group of people. However, with all due respect to the Appellant and notwithstanding his public profile and designation in the media as a **[DESCRIPTION REDACTED]**, his diaries, which are more than 30 years old, could not be considered to a collection of historical documents but rather a personal record of a small proportion of the life of a public personality. References to the Appellant's past in the Work, as pointed out by the Respondent, comprises 14 pages out of a total of 231 pages and represents approximately 6% of the content. Furthermore, much of the 14 pages of personal content depicts the Appellant's current experiences and therefore only a small portion relates to events that happened over 30 years ago.

48. On this basis, I cannot accept that the Appellant's Work can be classified as a work that *"relates to archives"* that provides a unique insight constituting a pioneering work that makes a significant contribution to **[REDACTED BEHAVIOUR]** that still is in existence. Furthermore, the work does not cast new light on **[REDACTED BEHAVIOUR]** or change the generally accepted understanding of it. However, with



the exception of **[REDACTED BEHAVIOUR]**, a significant amount of material in the Work is common sense invoked and practiced by many people on a daily basis.

## **Conclusion**

49. The artists' exemption legislation and Guidelines set out a series of legal tests which must be satisfied by an Appellant in order for the exemption to be allowed. In this case, I have determined that the Appellant's Work does not meet all of the requisite legal tests and thus I determine that the exemption pursuant to TCA, section 195 is not available. The appeal is therefore determined in accordance with TCA, section 949AL.

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**Conor Kennedy**  
**Appeal Commissioner**  
**23<sup>rd</sup> November 2018**

**No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.**