



131TACD2020

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal involves a claim for exemption pursuant to Section 195 of the Taxes Consolidation Act 1997, as amended (hereinafter "TCA 1997"), which affords a relief commonly known as "artists' exemption."
2. The Appellant's work is a book titled '*WORK A*' published in REDACTED. The Appellant submitted a claim for Artists' Exemption on REDACTED on the basis that his work was an original and creative work having cultural or artistic merit, for the purposes of section 195 TCA 1997. The Appellant's claim seeking the exemption was refused by the Respondent.
3. Accordingly, the Revenue Commissioners advised the Appellant that they were unable to make a determination that his book qualified for the Artists' Exemption scheme via letter on REDACTED. In that same letter the Appellant was invited to engage with Revenue and to submit further details to Revenue in relation to the eligibility of the work. No further



details were submitted. The letter also advised the Appellant of his right to appeal the matter to the Tax Appeals Commission.

4. The Appellant duly appealed that decision by the Revenue Commissioners to the Tax Appeals Commission, pursuant to Section 195(6)(b) of TCA 1997, in March 2018.
5. This appeal is being determined, by agreement of the parties, without an oral hearing in accordance with Section 949U Taxes Consolidation Act (TCA 1997).

Background

6. The Appellant applied for a determination by the Revenue Commissioners under section 195 TCA 1997 (commonly known as the Artists' Exemption) on REDACTED in respect of his book, 'WORK A' (REDACTED).
7. The book, the subject of this appeal 'WORK A' is the last of a SET of work produced by the Appellant and published by PUBLISHER. The previous OTHER WORKS both received Artists' Tax Exemption status. The first book – WORK B– received such status following an appeal to the Tax Appeals Commission REDACTED.

Relevant Legislation

Section 195 of TCA 1997.

This section is set out in Appendix 1

Guidelines drawn up under Section 195(2) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Chomhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.

These are set out in Appendix 2. ("The Guidelines").

Heritage Act 1995 Section 6

This is set out in Appendix 3.

Submission by the Appellant



8. The Appellant submits that although “each work should be judged on its own merits”, ‘**WORK A**’ is the last of a **SET** of work arising from **REDACTED**. The other works in the **SET**, **OTHER WORKS** were both granted Artists’ Exemption. ‘**WORK A**’ follows the same approach, employs the **REDACTED**, is titled, formatted and visually appears very much like the previous two. Consequently, he contends that by applying the same reasoning that allowed the first two to receive Artist’s tax Exemption – one on appeal and the second determined by the Revenue Commissioners themselves – to ‘**WORK A**’, this work should also be granted the Artists’ Exemption.
9. In making his original application for the Artists Exemption, the author submitted that the book was a work of non-fiction. His submissions in this appeal contend that although this is the case, he submits that the book is a book **REDACTED** and therefore “relies on observations from the real world (non-fiction) married with original thought reflection and interpretation (fiction)”. The Appellant submits that the work **REDACTED** at the **REDACTED** and generally makes sense of **REDACTED**. The Appellant submits that the work has the characteristics of both fiction and non-fiction.

10. In setting out his grounds for appeal the Appellant stated the following:

“1. In the assessment I have received I have been turned down as my work is considered a “work of non-fiction”. I feel that the book should be considered under the category of ‘Fiction’ and not ‘Non-Fiction’ under ‘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’.

*While the book has been grouped as Non-Fiction on a few occasions, such as the **PUBLISHER** and in **PUBLISHER**’s promotional material, from its content I believe it can be clearly seen as being a work of ‘Fiction’. In looking at what constitutes fiction, the Encyclopaedia Britannica defines fiction as ‘literature created from the imagination, not presented as fact, though it may be based on a true story or situation.’*

*While ‘**WORK A**’ is based on **REDACTED** that exist in Ireland the vast majority of its content is how these **REDACTED** explained which is clearly derived from my imagination and not based on facts. For example, **REDACTED** This type of approach is something I do for much of the **REDACTED** pages.*



*And it this approach, where I come up with original and fictitious interpretations of real things, which I employ in my – **OTHER WORKS**. Both of which were granted artists exemption...*

*2. The second ground I would like to appeal is that, in reviewing other works that have received a favourable determination as published by Revenue.ie, I can see that **REDACTED** has received an exemption ... This book is very similar to my own in its type **REDACTED**, though obviously narrower in focus; as **REDACTED** represents just one entry of my book. Like my own work, this book is officially classified under **REDACTED** non-fiction, as evidenced by its position in the official **PUBLISHER**. Consequently, I would argue that on simple precedence that my work should therefore also be accepted.*

*In addition, I would like to appeal is due to precedence of my own previous works. '**WORK A**' is the last of a series of books I have published with **PUBLISHER**. Each book takes a very similar approach in looking at real items but in a **REDACTED** way that in all cases is original and creative.*

*In **WORK B** I looked at the **REDACTED**. In **WORK C** I looked at the **REDACTED**. And in '**WORK A**' I look at **REDACTED**. From the design and illustration to the **REDACTED** and approach, all these books mirror each other...*

*3. Thirdly, even if assessing my book under the 'non-fiction' category I believe it should be re-considered in consultation with the Heritage Council. '**WORK A**', in bringing our **REDACTED** heritage to life for a modern audience is clearly supporting one of the Heritage Council's important objectives, which is:
Raising awareness and appreciation of our heritage; To facilitate and build on increased awareness, understanding and enjoyment of the heritage among the community.*

(Source: <http://www.heritagecouncil.ie/about-us/faq/#c6902>)

11. The Appellant challenges the Respondent's assertion that if the work were to be judged as fiction, the work is not 'original and creative', is not 'pioneering' 'or is not generally recognised as having cultural or artistic merit'.
12. The Appellant argues that the work is looking **REDACTED** at **REDACTED** (back cover of the book), the work enhances Irish national culture. He believes evidence for this lies in



much of the positive reviews it has received following its release, perhaps best highlighted in its inclusion on the **MEDIA** website; being listed by the **MEDIA** as one of the **REDACTED** with the following quote:

*'**WORK A (PUBLISHER)** is **REDACTED**.*

as well as being re-invited to speak on **MEDIA**. What is more the book as part of the collection that includes **WORK B** and **WORK C** continues to feature in book shops **REDACTED**.

13. The Appellant, refers to the Tax Appeals Commission determination **REDACTED**.
14. He stated that in the course of this determination, the Appeal Commissioner ruled that **REDACTED**. He believes the same holds true for '**WORK A**' except it is focused on **REDACTED**.
15. The Appellant disagrees with the Respondent's Statement of Case for the appeal that '**WORK A**' is a **REDACTED**. He argues:

*'I could take many, many examples but to look at the very **REDACTED**.*

*A second point is that the Commissioner regarding my **OTHER WORKS** does show an 'extremely high level of originality' that was also present in **WORK B** and therefore also satisfies that part of the legal test.*

Submissions by the Respondent

17. The Respondent has submitted the following arguments in support of its decision not to make a determination qualifying the work for Artists Exemption.
18. The Respondent submits that the Appellant himself categorised the book was a work of non-fiction and that it came within paragraph 7(2)(a) of the Guidelines and described in his own words that it was 'a book which is generally recognised as having cultural and artistic merit'. The Respondent submits that the book does not come under any of the categories within paragraph 7(2)(a). The Respondent did not submit its views on whether the book fell under paragraph 7(2)(b), 7(2)(d) or 7(2)(e) of the Guidelines.



19. The Respondent submits that the book **REDACTED**. The Respondent submits that even if the work were to be treated as a work of fiction, then it would fail the ‘original’ and ‘creative’ tests and the ‘cultural and artistic merit’ tests set out in paragraphs 4, 5 and 6 of the Guidelines.
20. The Respondent contends that “*the work is not original and creative, instead it is a REDACTED*”
21. The Respondent also contends that the book does not have ‘cultural merit’ as it does not enhance national or international culture to a significant degree. The Respondent contends that the work does not have ‘artistic merit’ as it does not enhance to a significant degree the canon of work in the relevant category.
22. The Respondent, in response to the Appellant’s assertion that the work should be reconsidered in consultation with the Heritage Council, submitted that in accordance with Paragraph 7(2)(c)(i) of the Guidelines, the work would only be submitted to the Heritage Council where it is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995. The Respondent submitted that Section 6(1) of the Heritage Act 1995 states that “*The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural objects, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.*” Based on this the Respondent submitted that the work in this appeal does not come within these functions and therefore S.7(2)(c) cannot apply.
23. The Respondent submits 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 submits that it is not possible to interpret section 195 TCA 1997 and the Guidelines for the time being in force thereunder, so as to grant the exemption in respect of the Appellant’s work.

Analysis and Findings

Fiction or Non- Fiction



24. The subject matter of the book is the “*REDACTED*” and *REDACTED*. The author contends that the book is a mixture of fiction and non-fiction.

*‘I believe it reflects the grey area that *REDACTED* falls into. *REDACTED* relies on observations from the world around (non-fiction) married with original thought, reflection and interpretation (fiction).’*

25. The book provides *REDACTED* insights, comparisons, explanations and detailed itemisation of *REDACTED*. While the author has created imaginative (fictional) contexts to explain the usage *REDACTED*, the actual *REDACTED* within the work are substantially factual (non-fiction).

26. The Appellant submits that by applying the same reasoning to ‘*WORK A*’ as was applied to the other works in the *SET*, this work should be granted Artists’ Exemption. While such advocacy by the Appellant is understandable, it is not relevant to this appeal for two reasons. Firstly, the other two works in the *SET* were not considered or reviewed by me in this appeal. Secondly the work, ‘*WORK A*’ must stand on its own when considering whether it qualifies for Artists’ Exemption.

27. The Appellant’s book is *REDACTED* enjoyable read. It comprises *REDACTED* by the author on *REDACTED*. The commentary and *REDACTED*.

28. The back cover of the book says ‘*WORK A REDACTED*’

29. On balance, I believe it is correct to classify the book as non-fiction.

Conditions for Section 195 exemption

30. Exemption under Section 195 TCA 1997 applies to an individual who has written, composed or executed, either solely or jointly with another individual, a work generally recognised as having, cultural or artistic merit.

31. For the purposes of the exemption a ‘work’ means an original and creative work which is within one of the five categories in Section 195(1).

32. The first of the five categories in section 195(1) is (a) ‘a book or other writing’.



Criteria for Non-fiction Work

33. Paragraph 7 of the Guidelines, which govern the artists exemption scheme, sets out the criteria for determining whether 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. For a work of non-fiction, to succeed in a claim for exemption, the work must meet the following tests;

- i. The work must fall within one or more of the categories set out per paragraph 7(2)(a)(i) - (ix) or, within paragraphs 7(2)(b), 7(2)(c), 7(2)(d), or 7(2)(e) of the Guidelines; and
- ii. The work must be determined to be original and creative and to have cultural or artistic merit in accordance with paragraph 7(2) of the guidelines.

34. Paragraph 7 (2) states:

“(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."



35. I do not believe that the work falls within paragraph 7(2)(a)(i)- (ix). Neither the Appellant nor Respondent submitted views on whether the work fell under 7(2)(b) or 7(2)(e) of the Guidelines. Accordingly, it remains to be considered whether the work falls within paragraph 7(2)(d) or paragraph 7(2)(c) which was argued between the Appellant and the Respondent.

Paragraph 7 (2) (d)

36. The Tax Appeals Commission asked the Appellant for his observations on whether the work might qualify under paragraph 7(2)(d), similar to **WORK B**, which was his first work of the **SET**. This paragraph of the Guidelines specifies criteria in respect of which a non-fiction work may satisfy the relevant tests in accordance with subsection 12(b)(ii) of section 195 TCA 1997 and provides that the work in question ‘...relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives...’

37. The Appellant responded in the following terms:

“I do believe that this work could also be considered to come within paragraph 7(2)(d) of the guidelines for the time being in force under section 195(12) TCA 1997 which provides that a non-fiction work may qualify for exemption where: “it relates to archives which are more than 30 years old relating to Ireland or Irish people” and “is based largely on research from such archives”.

What is more, I also believe that within paragraph 7(2)(d) of the guidelines for the time being in force under section 195(12) TCA 1997, my work “incorporates the author’s unique insight into the subject matter, and is regarded as pioneering work that makes significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it”.

*In generating material **REDACTED** that make up the main content of the book ‘**WORK A**’ I took two approaches.*



1. The first was to draw **REDACTED**.

2. The second was to buttress this with **REDACTED**.

As you will see from these **REDACTED**...

What follows are many of the books that I looked through during my research -

The following pieces of work are over 30 years old and I understand constitute archive material -

- **REDACTED**

The following pieces of work are less than 30 years old but have a bibliography that draws on books, some of which are more than 30 years old -

- **REDACTED**

With **REDACTED**.”

38. There can be no doubt that the work relates to **REDACTED** but the matter which arises for consideration is whether the work “relates to archives...”. The word ‘archive’ is commonly understood to relate to public records of an historical nature. The content of ‘**WORK A**’ could be said to relate to **REDACTED** and thus it appears to me that the work could be said to relate to archives of this nature. The Guidelines do not specify any particular type of archive and the Tax Appeals Commission **REDACTED** has previously taken the view that the meaning of ‘archives’ in the Guidelines does not relate only to research of a scholarly nature in the National Archive or the National Library or equivalent institution.

39. 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. The Appellant submitted, as recorded above, that by applying the same reasoning to ‘**WORK A**’ as was applied in a previous related determination made by the TAC **REDACTED**, the book ‘**WORK A**’ should also qualify for the relief. The subject matter of the ‘archive’ in that



appeal were **REDACTED**. The majority of the subject matter related to matters in excess of 30 years vintage.

40. The work reviewed in **REDACTED** can, however, be distinguished from the subject matter in this appeal. Given the **REDACTED** the subject matter (**REDACTED**) in '**WORK A**', has origins going back a number of years. However, the **REDACTED**. The concern of the book is **REDACTED**. The subject matter itself is therefore very current and modern although some of the content matter may have historical origins. From the bibliography supplied by the Appellant coupled with the Appellant's admission that his approach "**REDACTED**" it remains uncertain whether it could be determined that the work '**WORK A**' '*...relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives...*'. For this reason, it is necessary to see if the work could qualify under paragraph 7(2) (c).

Paragraph 7(2) (c)

41. The classification (c) within Paragraph 7 (2) requires the work to be a work, in the opinion of the Revenue Commissioners, following consultation with the Heritage Council, which is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995. There is no evidence that the Respondent consulted the Heritage Council in regard to the works under appeal. The reason for that is presumably because the Respondent was never considering category (c) as having relevance in the first place.
42. Appendix 3 sets out Section 6 of the Heritage Act 1995, which outlines among other things the functions of the Heritage Council as:

"to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways." (emphasis added)... and

3) The Council shall in particular—

(a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage" (emphasis added)



43. The strategic plan for the Heritage Council, entitled, 'Heritage at the Heart, Heritage Council Strategy 2018-2022.' speaks of its mission and heritage in the following terms:

'The mission of the Heritage Council is governed by the Heritage Act 1995 which requires the Council to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage...

The Heritage Council is charged with:

- *Promoting interest, education, knowledge, pride and care of our national heritage and supporting appreciation and enjoyment of our heritage*
- *Co-operating with public authorities, education bodies and others in the promotion of its functions*
- *Advancing the co-ordination of all activities related to the functions of the Council*

The Heritage Council aims to ensure that our heritage is managed and conserved to enrich the lives of people now and for the future. We will continue to promote and nurture our heritage as a source of personal, community and national well-being.'

44. 'National Heritage' is not defined in the Heritage Act 1995, although it includes tangible objects such as "monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways". It remains to be considered whether an intangible **REDACTED** such as the work '**WORK A**' comes within the term 'national heritage'.

45. The strategic plan for the Heritage Council, says:

'Heritage is the bedrock of civilization, the foundation of culture and the steady pulse of contemporary Ireland. It encompasses not just buildings, monuments and museum pieces, but also our distinctive landscapes, native wildlife and woodlands, literature, folklore, and crafts. Passed on to us in all its forms from previous generations, it defines who we are in the present, and our efforts to protect and interpret it today, will be our legacy to future generations...



Tangible and intangible, personal and collective, heritage is at the very heart of Irish society. Its relevance is palpable at local level where it drives economies, stimulates innovation and is the focal point for festivals, conferences and commemorations. A touchstone for identity in a world of accelerating change, heritage fosters a sense of belonging and supports social cohesion at a local and national level. It simultaneously crosses borders and transcends difference to connect people through shared values, history and traditions. *As the nation's most valuable publicly owned asset, heritage must be protected, nurtured and enjoyed so that it continues to count in 2022 and beyond.'* (Emphasis added.)

46. So, based on the above, and given that the Heritage Council “*shall in particular promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage*” and having carefully reviewed the contents of ‘**WORK A**’, I am of the view that the work, being an **REDACTED** can be said to be “*a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995*” as required by Paragraph 7(2) (c) of the Guidelines.

47. Having so determined, I now need to consider whether the condition in paragraph 7(2) (C) (II) is met so 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*”,

48. I believe the Appellant has incorporated his own unique insight into the subject matter. He has generated his own descriptions that are based on his **REDACTED** are his unique insight.

49. The Appellant's approach to **REDACTED**

50. I accept the Appellant's assertion that the work is pioneering, when he states:

*“ **REDACTED**”*



51. I also accept that the work “*makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it*”.
REDACTED.

52. In considering whether the book, the subject of this appeal, satisfies the requirements of section 195 and the Guidelines made thereunder, I must also have regard to the decision of Kennedy CJ in *Commissioners of Inland Revenue –v- Doorley* [1933] 1 I.R. 750, where he 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, excepts 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.”

53. 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.”

54. I believe that the work ‘**WORK A**’ is a qualifying work for artist’s exemption under the “*letter of the Act of 1997 and the Guidelines made thereunder*” as mandated by Donnelly J.

Determination

For the reasons outlined above, I find that: -





55. The book '*WORK A*', the subject matter of this appeal, is a non-fiction work within paragraph 7(2) (c) of the Guidelines.

56. I conclude that the Appellant is entitled to the Artists' Exemption in respect of that work.

57. I will, therefore, allow the appeal and determine that the decision of the Respondents that the Appellant is not entitled to the exemption afforded by Section 195(3) of the Taxes Consolidation Act 1997, as amended, should not stand.

58. This appeal is thus determined in accordance with S.949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

9 June 2020



Appendix 1

The provisions of Section 195 of TCA 1997, as they were as of the date of the application for exemption, provided as follows: -

“(1) In this section...

“work” means an original and creative work which is within one of the following categories:

- (a) a book or other writing;
- (b) a play;
- (c) a musical composition;
- (d) a painting or other like picture;
- (e) a sculpture.

(2)(a) This section shall apply to an individual –

(i) who is —

(I) resident in one or more Member States, or in another EEA state, and not resident elsewhere, or

(II) ordinarily resident and domiciled in one or more Member States, or in another EEA state, and not resident elsewhere, and

(ii) (I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may



be, either solely or jointly with another individual, a work or works generally recognised as having cultural or artistic merit, or

(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.

(b) The Revenue Commissioners shall not make a determination under this subsection unless –

(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under paragraph (a)(ii)(II)) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and

(ii) the individual complies with any request to him or her under subsection (4).

(3)(a) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, subject to paragraphs (aa) and (b), be entitled to have the profits or gains arising to him or her from the publication, production or sale, as the case may be, of a work or works in relation to which the Revenue Commissioners have made a determination under clause (I) or (II) of subsection (2)(a)(ii), or of a work of the individual in the same category as that work, and which apart from this section would be included in an assessment made on him or her under Case II of Schedule D, disregarded for the purposes of the Income Tax Acts.

(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of paragraph (a) shall not exceed €40,000 for the year of assessment 2011 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 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.

(7) The Appeal Commissioners shall hear and determine an appeal made to them under subsection (6) as if it were an appeal against an assessment to income tax and, subject to subsection (8), the provisions of the Income Tax Acts relating to such appeals and to the rehearing of such an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(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.

(9) For the purposes of the hearing or rehearing of an appeal made under subsection (6), the Revenue Commissioners may nominate any of their officers to act on their behalf.

(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 Chomhairle 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 rehearing by a judge of the Circuit Court of an appeal mentioned in subparagraph (i) and, to the extent necessary, to the determination by the High Court of any question of law arising on such an appeal or rehearing and specified in the statement of a case for the opinion of the High Court, by the Appeal Commissioners or, as the case may be, a judge of the Circuit Court.
- (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

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

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.”



Appendix 3

Heritage Act 1995

- 6.—(1) The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.
- (2) References to the National Monuments Advisory Council, the Historic Monuments Council or the Wildlife Advisory Council in any enactment or instrument made thereunder shall, where appropriate, be construed as references to the Council.
- (3) The Council shall in particular—
- (a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,
 - (b) co-operate with public authorities, educational bodies and other organisations and persons in the promotion of the functions of the Council,
 - (c) promote the coordination of all activities relating to the functions of the Council.

