



26TACD2020

BETWEEN/

APPELLANT

Appellant

V

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 the "*artists' exemption*".
2. The Appellant is the author of a book entitled "**REDACTED**". The Appellant submitted a claim for artists' exemption to the Revenue Commissioners. By letter dated 30 January 2019 the Respondent advised the Appellant that it did not find it possible to make a determination in accordance with section 195, in other words the claim for the relief was refused. The Appellant duly appealed that decision to the Tax Appeals Commission pursuant to section 196(6)(b) of TCA 1997 on 7 June 2019.
3. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.



Background

4. In order to secure exemption from Income Tax under section 195 TCA 1997 the particular “work” (in this case the book “*REDACTED*”) must be determined to be a work having cultural or artistic merit. An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance has drawn up guidelines (“the guidelines”, see Appendix 2) for determining for the purposes of section 195 TCA 1997 whether a work is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. The Respondent accepts that the book is ‘original and creative’ within the meaning of section 195 and the guidelines. As a work of non-fiction, the book must also meet the criteria as set out in paragraph 7 of the guidelines, in order for the Appellant to be entitled to avail of the exemption. The within appeal is concerned with whether the book “*REDACTED*” is a work which is generally recognised as having, cultural or artistic merit and specifically whether it meets the criteria set out in paragraph 7 of the guidelines.
5. The Appellant claims an entitlement to the exemption in respect of her book on the basis that the book falls within paragraph 7(2)(b) of the guidelines, namely that the work comprises an autobiography.
6. The Respondent is of the view that the book does not clearly come within the criteria for non-fiction work as set out in the guidelines and the Appellant is therefore not eligible to claim the artists exemption in relation this particular work.
7. The book itself explores the topic of *REDACTED*. The introduction of the book reads as follows:

“*REDACTED*”.

Later the book states:

“*REDACTED*”

Legislation

Section 195 of TCA 1997:

This section is set out in Appendix I



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

These are set out in Appendix II. (“the guidelines”)

Submissions by the Appellant

8. The Appellant submits that the book is an autobiography.

Submissions by the Respondent

9. The Respondent submits that while there is a small amount of autobiographical material in the book, nevertheless, it is the Respondent’s view that the amount of such material is insufficient to regard the book as an autobiography, within the generally understood meaning of the term.

The Respondent is of the view “*that is book is about the author’s views on REDACTED and how these can benefit REDACTED*”

10. The Respondent is also of the view that the work does not come within any of the other categories listed in paragraph 7 of the guidelines.

Analysis and findings

11. Paragraph 7 of the guidelines which govern the artists exemption scheme sets out the criteria to be met in order for a non-fiction book to qualify for the artists exemption scheme and states:

(2) The criteria are: ...

(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, ...

12. The matter to be determined relates to the category 7(2)(b) test, specifically, whether the Appellant's work constitutes an 'autobiography' within the meaning of the guidelines.
13. Originally, the Appellant sought relief from the Respondent on the basis that the "**REDACTED**" was a biography. When making her appeal to the Tax Appeals Commission, the Appellant said this was an error on her part and in her Statement of Case relating to this appeal, the Appellant has sought to categorise the book as an autobiography.

There are **REDACTED** chapters in the book. Chapter **REDACTED** is autobiographical and is entitled "**REDACTED**". However, the remainder of the book deals with **REDACTED**. It sets out the insights of the author on **REDACTED** and other related topics.

14. In considering whether the book the subject of this appeal satisfies the requirements of section 195 and the Guidelines made thereunder, I must 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, excerpts 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".

15. 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”.

16. The Commission previously considered the meaning of ‘autobiography’ in Determination 20TACD2017 citing the Supreme Court dicta in **Inspector of Taxes v Kiernan [1981] 1 I.R.117**, applied by Donnelly J. in **Coleman v Revenue Commissioners [2014] IEHC 662**. The Supreme Court dicta provides as follows;

‘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’,

and

‘When the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meaning, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed’.

17. There is no doubt but that section 195 and the Guidelines made thereunder are addressed to the public generally. I also believe that the word “*autobiography*” is a simple word which has a widespread and unambiguous currency. I must therefore give the word its ordinary and natural meaning when determining this appeal.
18. Applying that approach, I am satisfied, and find as a material fact, that the book the subject of this appeal cannot be said to be an autobiography within the ordinary and natural meaning of that word. Having read the book, I am satisfied that the book falls squarely within the genre of **REDACTED**; it is, as described on its cover, a “**REDACTED**.” While I accept that the book has autobiographical passages, that is not sufficient to make the book an autobiography.

Conclusion





19. The artist's exemption legislation and guidelines set out a series of technical legal tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal. I determine that "**REDACTED**" does not satisfy the requisite legal tests, in particular paragraph 7(2)(b) of the guidelines and I determine that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997.

20. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

27 January 2020

Appendix I

Section 195 of the Taxes Consolidation Act 1997 (Exemption of certain earnings of writers, composers and artists)

(1) In this section—

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

"EEA state" means a state which is a contracting party to the EEA Agreement;



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

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

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

[(i) who is —

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

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

(ii)(I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may be, either solely or jointly with another individual, a work or works generally recognised as having cultural or artistic merit, or

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

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

(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under paragraph



(a)(ii)(II)) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and

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

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

[(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of paragraph (a) [shall not exceed €50,000 for the year of assessment 2015] and each subsequent year of assessment.]

(b) The exemption authorised by this section shall not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under clause (I) or (II) of subsection (2)(a)(ii) in respect of which the Revenue Commissioners make a determination referred to in clause (I) or (II) of subsection (2)(a)(ii), as the case may be.

(c) The relief provided by this section may be given by repayment or otherwise.

(4)(a) Where an individual makes a claim to which subsection (2)(a)(ii)(I) relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may be specified in the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under subsection (2)(a)(ii)(I).

(b) Where an individual makes a claim to which subsection (2)(a)(ii)(II) relates, the individual shall –

(i) in the case of a book or other writing or a play or musical composition, if the Revenue Commissioners so request, furnish to them 3 copies, and

(ii) in the case of a painting or other like picture or a sculpture, if the Revenue Commissioners so request, provide, or arrange for the provision of, such facilities as the Revenue Commissioners may consider necessary for the purposes of a determination under subsection (2)(a)(ii)(II) (including any requisite permissions



or consents of the person who owns or possesses the painting, picture or sculpture).

(5) The Revenue Commissioners may serve on an individual who makes a claim under subsection (3) a notice or notices in writing requiring the individual to make available within such time as may be specified in the notice all such books, accounts and documents in the individual's possession or power as may be requested, being books, accounts and documents relating to the publication, production or sale, as the case may be, of the work in respect of the profits or gains of which exemption is claimed.

(6)(a) In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim 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(2) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.

Introduction

These Guidelines have been drawn up under the provisions of section 195 of the Taxes Consolidation Act 1997 for the purposes of determining whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having cultural or artistic merit.

General



1. Section 195(1) provides that a “work” for the purposes of the section must be both an original and creative work in one of the following categories, namely:

(a) a book or other writing,

(b) a play,

(c) a musical composition,

(d) a painting or other like picture,

(e) a sculpture.

2. To secure exemption under section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.

3. In making a determination under section 195, the Revenue Commissioners may, as provided for in that section, consult with such person or body of persons as may, in their opinion, be of assistance to them.

Original and Creative

4. A work shall be regarded as original and creative only if it is a unique work of creative quality brought into existence by the exercise of its creator’s imagination.

Cultural Merit

5. A work shall be regarded as having cultural merit only if by reason of its quality of form and/or content it enhances to a significant degree one or more aspects of national or international culture. ***Artistic Merit***

6. A work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.

Criteria for Non-fiction Work

7. (1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of section 195, by reference to which the questions whether a work, being a nonfiction book or other 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.

The above Guidelines were drawn up by An Comhairle Ealaíon and the Minister of Arts Heritage and the Gaeltacht, with the consent of the Minister for Finance, in accordance with section 195(12) of the Taxes Consolidation Act 1997 and are effective for all determinations made by the Revenue Commissioners on or after 30 November 2013.

