



163TACD2023

Between

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal involves a claim for exemption pursuant to section 195 of the Taxes Consolidation Act 1997 as amended (“the TCA 1997”) and in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (“the guidelines”), commonly known as “Artists Exemption”.
2. Under section 195(6) TCA 1997, an individual may appeal to the Appeal Commissioners. The appeal is on the grounds that the work or works is or are generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.
3. On 4 November 2022, an application was made by ██████████ (“the Appellant”) for a determination from the Revenue Commissioners (“the Respondent”) under section 195(2) TCA 1997, in respect of the Appellant’s work. The application in respect of the Appellant’s work was made under category (d), “a painting or other like picture”
4. On 23 November 2022, correspondence issued to the Appellant extending the determination, previously issued on 16 February 2015, under category (d), “a painting or other like picture”, in relation to the Appellant’s stained-glass Work. However, the Respondent determined that it would not consider the Appellant’s mural Work (“the Work”) as coming within the categories of work eligible for a determination under the scheme and would consider that the work is decorative in nature and excluded under Section 8(v) of the guidelines.
5. This case is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997, by agreement with the parties. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this determination.

Background

6. The Appellant is an Artist. The Appellant’s Work includes stained-glass Work and mural Work.
7. The Appellant is currently a holder of a tax exemption, specific to the Appellant’s stained-glass Work. The Appellant has had the exemption relating to his stained-glass Work, since 2015.
8. An application dated 4 November 2022, was submitted by the Appellant for a determination under section 195(2) TCA 1997, in respect of the Appellant’s Work. The

application in respect of the Appellant's Work was made under category (d), "a painting or other like picture".

9. In support of the application, the Appellant submitted images of the Work and other supporting material. The images submitted by the Appellant were in relation to two forms of Work, stained-glass and murals.
10. Having considered the Appellant's application and supporting images of stained-glass Work under category (d), "a painting or other like picture", the Respondent is satisfied that the Appellant's stained-glass Work comes within the legislation and the guidelines governing the scheme.
11. On 23 November 2022, the Respondent issued correspondence to the Appellant extending the determination, previously issued on 16 February 2015, under category (d), "a painting or other like picture" to the Appellant's stained-glass Work.
12. On examination of the Appellant's mural work, under category (d), "a painting or other like picture" it is the Respondent's opinion that this Work does not come within the categories of works eligible for a determination under section 195 TCA 1997.
13. It was determined by the Respondent that the Appellant's mural Work primarily served a decorative function and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines.
14. On 28 May 2023, the Appellant duly appealed to the Commission, the decision of the Respondent not to make a determination in respect of the Appellant's mural Work.

Legislation and Guidelines

15. The legislation relevant to this appeal is as follows:-
16. The relevant legislation is contained at section 195 TCA 1997, a copy of which is attached at **Appendix I** for ease of reference.
17. As noted in section 195(12) TCA 1997, the Minister for Arts, Heritage, Gaeltacht and the Islands shall draw up guidelines for determining whether a work is within the category of an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. In addition, under section 195(13)(b) TCA 1997 the Appeal Commissioners shall not determine that the work is original and creative or has, or is generally recognised as having, cultural or artistic merit, unless it complies with the guidelines under section 195(12) TCA 1997.

18. As such, in considering this appeal, the Commissioner is obliged and must ensure, in compliance with section 195(13)(b) TCA 1997, that the Work complies with the guidelines for the time being in force under section 195(12). The Work must satisfy the mandatory requirements of those guidelines, a copy of which is attached at **Appendix II** for ease of reference.

Submissions

Appellant's Submissions

19. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

19.1. *"I submit that the exclusion of mural type work is wrongfully based on a determination that mural work is, of itself, to be considered decorative rather than on any examination of the nature of the particular works submitted, its creative quality or its cultural or artistic merit.*

With regard to the facts and evidence that I submit in support of my Appeal (as previously submitted);

I attach an indexed list of the work, subject matter of my application for the Artists Exemption Scheme, together with further examples of my work in this area.

I also attach the document submitted with my Notice of Appeal which gives further insight into the research and ideas represented in these pieces of artwork.

I submit that on any proper consideration, these works could not be correctly classified as works primarily created for decorative purposes under section 8 (v) of the guidelines but are rather original creative works of art in themselves, presented through a particular medium.

I am currently a holder of a tax exemption with respect to my stained glass work which I have had since 2015. I am still practicing in the discipline and keeping this traditional art form alive in the country while also striving to produce work of cultural heritage in a contemporary fashion.

Like many other artists my practice moves and evolves through a variety of disciplines. I have been honing my craft in larger scale wall paintings over the last 10 years and am now at a stage where as well as producing stained glass panels, my practice includes the creation of original and culturally engaged

murals throughout the country. The freedom to move through a variety of mediums, is vital to the growth and development of my work as an artist.

As an art form, murals have become an integral part of the artistic landscape of the country over the last 5 years in particular. While some murals may be created primarily for decorative purposes, such as colourful patterns to adorn the side of a building or a wall, there are also many that seek to examine and artistically interpret societal and cultural topics both past and present. The view that the art form itself, or the fact that such works are executed on walls in outdoor spaces, renders the nature of the work created on that surface to be uniform, is not a reflection of the reality of the manner in which much original creative work, including work of cultural merit is developed.

Many artists' practice exist both out on the streets of our cities and on the walls of our gallery spaces. Take Joe Caslin's murals that deal with many social topics. This artist's work was displayed of the National Gallery of Ireland a few years ago. The work of stained glass artists such as Harry Clarke and Evie Hone also hang in the National Gallery of Ireland - their masterpieces a credit to their art form. Within a kilometre radius of this work there are many decorative stained glass panels over doorways and stairs. This illustrates the fact that although stained glass is sometimes used in a decorative way, this does not render it a purely decorative medium. There are Irish mural artists who are selling fine artwork through Sotheby's, collaborating with the Hugh Lane Gallery and creating installations in the National Gallery of Ireland. Are these works to be considered decorative within the meaning of section 8 (v) of the guidelines?

I submit that my murals hold both cultural and artistic merit. Many highlight people and times of historical significance across the city of [REDACTED] and further afield. The murals have helped people to further understand their cultural and heritage. I believe that many of my murals have created significant impact. I am conscious of this in particular, having taken part in workshops and tours with hundreds of people leading to social discussion and debate on several issues. The nature of the work (in particular it's significance outside the sphere of decorative) is such that it has been unveiled in ceremonies by Lord Mayors of [REDACTED] and on one occasion by [REDACTED]

Part of my current work involves exploring glazed ceramic tiles to create large scale paintings which originate as acrylic paintings at their design stage. These tiles are cut, underglaze and glazed and then fired in a kiln before being

assembled. Some of these tiles are combined with tiles that have been printed on with glaze and then fired also. The work is then assembled to create a figurative painting on a large scale.

The process of this artwork is very similar to the stained glass process. The main difference is really the fact that one is on porcelain ceramics and the other on glass. I have attached an image of the artwork as well as an insight into the meaning behind the piece. I designed and researched this piece the same way I would design, research and produce a stained glass piece. The only real difference here is the scale and material used. I am aware that many artists who work in various different media are benefiting from an artists' tax exemption and which does not restrict them to work in particular media only. It is undoubtedly the case that working exclusively in a particular medium is extremely restrictive and not conducive to the development or progression of creative work.

I submit that the body of work that I have developed and the progression of my work should also be taken into account when considering my application for this exemption.

With respect to facts concerning the nature of the determination under Appeal, as previously set out;

I submit that there was no proper basis under the Taxes Consolidation Act, 1997 or the relevant guidelines for a determination that the fact that a piece of work is created in mural form (by way of a painting or other work of art executed directly on a wall) thereby renders it a work created primarily for decorative purposes so as to be excluded from the scheme, under section 8 (v) of the guidelines and such interpretation of the guidelines must be erroneous.

.....

The guidelines do not provide a definition of the word "decorative". Dictionary definitions of the term include "serving to make something look more attractive; ornamental", "made to look attractive", "intended to look pretty or attractive".

There is nothing in the guidelines that provides that works of a mural nature should be automatically considered to have been created for a primarily decorative purpose. Further, the determination does not set out any criteria specially applied with respect to consideration of the work that I have submitted that supports such a determination in my particular case.

I submit that the determination excluding my mural work for the Artists Exemption Scheme is not properly grounded in the circumstances and that it did not have adequate regard to the proper considerations to be applied in considering the nature of the work submitted.

By reference to the examples that I have submitted in support of my application for an artists' exemption with respect to this work, I submit that on any proper consideration, these works could not be correctly classified as works primarily created for decorative purposes under section 8 (v) of the guidelines but are rather original creative works of art in themselves, presented through a particular medium."

Respondent's Submissions

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

- 20.1. An application dated 4 November 2022, for a determination under section 195(2) TCA 1997, in respect of the Appellant's Work was submitted by the Appellant. The application in respect of the Appellant's Work was made under category (d), "a painting or other like picture".
- 20.2. In support of the application, the Appellant submitted images of his work and other supporting material. The images submitted by the Appellant were in relation to two forms of work, stained-glass and murals.
- 20.3. The Appellant had previously received a determination on 16 February 2015 in respect of his stained-glass Work. The Respondent may only make a determination where a work clearly comes within the criteria set out within the legislation and the guidelines governing the scheme.
- 20.4. Having considered the Appellant's application and supporting images of stained-glass work under category (d), "a painting or other like picture", the Respondent is satisfied that the Appellant's stained-glass work comes within the legislation and the guidelines governing the scheme.
- 20.5. On 23 November 2022, a letter issued from the Respondent to the Appellant extending the determination, previously issued on 16 February 2015, under category (d), "a painting or other like picture", in respect of his stained-glass Work only.

- 20.6. On examination of the Appellant's mural Work, under category (d), "a painting or other like picture" it is the Respondent's opinion that this Work does not come within the categories of works eligible for a determination under section 195 TCA 1997.
- 20.7. Paragraph 8 of the guidelines states that a work shall not be regarded as original and creative and shall not be recognised as generally having cultural and artistic merit if the works come within a range of criteria set out within subparagraphs (i) to (vi).
- 20.8. Paragraph 8 (v) refers to "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".
- 20.9. It was determined that the Appellant's mural Work primarily served a decorative function and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines.
- 20.10. On 24 November 2022, the Respondent issued correspondence to the Appellant stating that it was unable to make a determination in respect of the Work.

Material Facts

21. Having read and considered the documentation submitted, the Commissioner makes the following findings of material fact:
 - 21.1. The Appellant is an Artist.
 - 21.2. The Appellant's Work consists of stained-glass Work and mural Work.
 - 21.3. The Appellant holds an existing tax exemption specific to his stained-glass Work which the Respondent extended, by way of correspondence dated on 23 November 2022.
 - 21.4. The Appellant's Work is a painting or other like picture.

Analysis

22. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well

established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

23. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute...”

24. In circumstances where the Appellant is seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in *Revenue Commissioners -v- Doorley* [1933] IR 50 must be considered. The Commissioner has had regard to the dictum of Kennedy C. J. at p. 766, wherein he stated that:

“The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”

25. 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.”

26. Section 195(12) TCA 1997 provides for the drawing up of **guidelines** for the Artists Exemption scheme by the Arts Council and the then Minister for Arts Heritage and the

Gaeltacht. Section 195(12) TCA 1997 states that guidelines may include specifications of the types or kinds of works that are not original or creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose.

27. Section 195(13) states that where an application for a determination is made to the Respondent, that the Respondent shall not make a determination in respect of a work unless it complies with the guidelines. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.
28. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.
29. It is clear from the Respondent's submission, it considers that the Work was created primarily for decorative purposes and, therefore, could not qualify for a determination by virtue of **paragraph 8(v) of the guidelines**.
30. Paragraph 8 of the guidelines state that a work shall not be regarded as original and creative and shall not be recognised as generally having cultural and artistic merit if the works come within a range of criteria set out within subparagraphs (i) to (vi) as follows:-

"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 –

.....

(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes," [Emphasis added]

31. Before proceeding to consider the test to be applied and paragraph 8 of the guidelines, the Commissioner must consider whether the Work falls within paragraph 1 of the guidelines.

32. In interpreting the applicable legislative requirements, the Commissioner considers the dicta of Henchy J. in the Supreme Court judgement in *Inspector of Taxes -v- Kiernan* [1981] 1 IR 117 to be relevant, wherein he stated that:

“...if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in either a narrowed or an extended connotation, or as a term of art, then in the absence of internal evidence suggesting the contrary, the word should be given its ordinary or colloquial meaning...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 from his own experience of its use.”

33. The Commissioner considers that the words “painting or other like picture” should be given the meaning which an ordinary member of the public would intend them to have when using the words ordinarily and that the words “painting or other like picture” are simple words which are unambiguous.

34. The Commissioner is satisfied that the Work falls into the category of “painting or other like picture”, which is widely termed by the legislature, such that it cannot be said that the Work is not an “other like picture”. The Commissioner is satisfied that the Work is “a *painting or other like picture*” in accordance with **paragraph 1(d) of the guidelines**.

35. The Commissioner will now consider if the Work meets the tests as set out in the guidelines, namely that the Work is original and creative and the Work has or is generally recognised as having either cultural or artistic merit. In order to succeed in a claim for exemption, the Work must be determined to be Work which is both original and creative and Work which has, or is, generally recognised as having, either cultural or artistic merit.

36. For the purposes of the exemption under section 195 TCA 1997, a Work can only be regarded as being original and creative, if it meets the test set out in paragraph 4 of the guidelines. **Paragraph 4 of the guidelines** provides that for the purposes of a determination under section 195 TCA 1997, “*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.*”

37. The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Work satisfies the test set out in paragraph 4 of the guidelines.

38. In relation to Cultural or Artistic Merit, paragraph 5 and 6 of the guidelines are relevant. Paragraph 5 of the guidelines states that “*a work shall be regarded as having cultural*

merit only if by reason of its quality of its form and/or content it enhances to a significant degree one or more aspects of national or international culture". Paragraph 6 of the guidelines states that "a work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category".

39. The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Work satisfies the requisite tests to be afforded a determination by the Respondent in relation to the Work. The Respondent submits that the Work fails the test as outlined in paragraph 4, 5 and 6 by virtue of paragraph 8(v) of the guidelines.
40. The Commissioner has considered the documentary evidence submitted by the Appellant in support of his appeal, in particular the Commissioner has considered the document entitled "Tax Exemption Appeal Portfolio". The portfolio contains a number of examples of the Appellant's mural Work and an example of a tiled mural. In addition to a photograph of the particular murals, the Appellant has included a narrative whereby the Appellant sets out an account of his inspiration for the various murals. It is apparent that a number of the murals have historical themes and relate to the history of various counties in Ireland. In this regard, the Commissioner has considered the Appellant's submission that *"...my murals hold both cultural and artistic merit. Many highlight people and times of historical significance across the city of [REDACTED] and further afield. The murals have helped people to further understand their cultural and heritage....The nature of the work (in particular it's significance outside the sphere of decorative) is such that it has been unveiled in ceremonies by Lord Mayors of [REDACTED] and on one occasion by [REDACTED]*
41. The Commissioner is satisfied that the Work is *"a unique work of creative quality brought into existence by the exercise of its creator's imagination"* having regard to the nature of the Work. The Commissioner is satisfied having considered the Work, that the Appellant satisfies the test under paragraph 4 of the guidelines.
42. Moreover, the Commissioner finds that the Work satisfies the test as set out at paragraph 5 and 6 of the guidelines. Paragraph 5 of the guidelines states that *"a work shall be regarded as having cultural merit only if by reason of its quality of its form and/or content it enhances to a significant degree one or more aspects of national or international culture"*. Paragraph 6 of the guidelines states that *"a work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the*

canon of work in the relevant category". The Commissioner does not agree with the Respondent's determination that the Work is decorative in nature only.

43. The Work can be considered "a painting or other like picture" and the Commissioner considers that the documentary evidence submitted illustrates that the Work is original and creative and that it has cultural or artistic merit. It is not for the Commissioner to judge the merits of the art itself, but to consider if the test as set out in the legislation and guidelines herein is satisfied, such that the Appellant is entitled to an exemption to tax. The artist exemption legislation and guidelines set out a series of tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, the Commissioner determines that the Work does satisfy the requisite tests, in particular paragraphs 4, 5, and 6 of the guidelines. Hence, the Commissioner finds that the Appellant is entitled to avail of the exemption pursuant to section 195 TCA 1997.

Determination

44. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary evidence, as well as the submissions from both Parties, the Commissioner has concluded that the Appellant has succeeded in discharging the burden of proof in relation to this appeal, such that the Work comes within the categories of works eligible for a determination under section 195 TCA 1997.
45. As a result, the Commissioner determines that the Appellant is entitled to an exemption pursuant to section 195(3) of the TCA 1997.
46. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

47. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ (5) and section 949AJ (6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ (6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

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

Claire Millrine

Claire Millrine
Appeal Commissioner
10 October 2023

Appendix I

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 11 is first made in respect of that work or those works or the particular work, as the case may be.

(b) Where –

(i) an individual –

(I) has made due claim (in this subsection referred to as a "claim") to the Revenue Commissioners for a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

(II) as respects the claim, has complied with any request made to the individual under subsection (4) or (5) in the relevant period, and (ii) the Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to the claim in the relevant period, the individual may [appeal to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the end of the relevant period] on the grounds that –

(a) the work or works is or are generally recognised as having cultural or artistic merit, or

(b) the particular work has cultural or artistic merit, as the case may be.

(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 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 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 II

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

Introduction

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

General

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

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

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

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

Original and Creative

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

Cultural Merit

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

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

Criteria for Non-fiction Work

7. (1) *This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of Section 195, by reference to which the questions whether a work, being a nonfiction book or other nonfiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined.*

(2) *The criteria are:*

(a) *that the work, in the opinion of the Revenue Commissioners, following consultation with the Arts Council, is a work in one or more of the following categories:*

(i) *arts criticism,*

(ii) *arts history,*

(iii) *arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture,*

(iv) *artists' diaries,*

(v) *belles-lettres essays,*

(vi) *literary translation,*

(vii) *literary criticism,*

(viii) *literary history,*

(ix) *literary diaries, that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it, or*

(b) *that the work, in the opinion of the Revenue Commissioners, is a work in one of the following categories:*

(i) *a biography,*

(ii) *an autobiography, that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a*

significant contribution to the subject matter by casting new light on the person or by changing the generally accepted understanding of the person, or

(c) that the work, in the opinion of the Revenue Commissioners following consultation with the Heritage Council,

(i) is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995, and

(ii) incorporates the author's unique insight into the subject matter and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it, or 16

(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.