



Between

05TACD2024

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against the failure by the Revenue Commissioners (“the Respondent”) to make a determination, under section 195 of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), that the Appellant’s non-fiction book ██████████ (“the book”) qualifies for artists’ exemption. The Appellant contends that the book qualifies as “belles-lettres essays” and is therefore exempt.
2. The appeal proceeded by way of a hearing on 17 October 2023.

Background

3. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists, and is commonly known as “artists’ exemption”. The maximum amount of income that can be exempt from income tax is €50,000 per annum.
4. On 28 December 2021, the Appellant claimed artists’ exemption in respect of the book. On 14 January 2022, the Respondent notified the Appellant that it had failed to determine

that the book qualified for artists' exemption, on the ground that it did not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines drawn up pursuant to section 195(12) of the TCA 1997 by the Arts Council and the Minister for Arts, Heritage and the Gaeltacht ("the Guidelines"). The notification stated that the Appellant could make further submissions if she wished.

5. Further submissions were made by the Appellant, and the Respondent subsequently consulted with the Arts Council. On 14 March 2022, the Arts Council notified the Respondent that it did not consider that the book fell within the definition of "belles-lettres". On 15 March 2022, the Respondent confirmed to the Appellant that it did not consider that the book came within the criteria for the granting of artists' exemption.
6. On 29 July 2022, the Appellant appealed the Respondent's failure to make a determination pursuant to section 195(6) of the TCA 1997. The appeal proceeded by way of a remote hearing on 17 October 2023. The Appellant appeared in person. The Respondent was represented by [REDACTED], Assistant Principal.

Legislation and Guidelines

7. Section 195 of the TCA 1997 provides inter alia as follows:

"(1) ... 'work' means an original and creative work which is within one of the following categories: (a) a book or other writing...

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

(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.

[...]

(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.

[...]

(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)...

8. The Guidelines provide inter alia as follows:

“Original and Creative

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

Cultural Merit

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

Artistic Merit

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

Criteria for Non-fiction Work

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

(2) The criteria are:

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

(i) arts criticism,

(ii) arts history,

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

(iv) artists' diaries,

(v) belles-lettres essays,

(vi) literary translation,

(vii) literary criticism,

(viii) literary history,

(ix) literary diaries,

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

Submissions

Appellant

9. In written submissions, the Appellant stated that the definition of belles-lettres used by the Arts Council was just one of many definitions widely used. For example, the Nuttall Encyclopedia defines belles-lettres as the "*(D)epartment of literature which implies literary culture and belongs to the domain of art, whatever the subject may be or the special form.*"
10. The Encyclopaedia Britannica Eleventh Edition defines it as "*the more artistic and imaginative forms of literature, as poetry or romance, as opposed to more pedestrian and exact.*"
11. Wikipedia describes belles-lettres as, "*In the modern narrow sense, it is a label for literary works that do not fall into the major categories such as fiction, poetry, or drama.... The term thus can be used to refer to literature generally.*"

12. The 11th edition of Merriam-Webster's Collegiate Dictionary defines literature as "*Writings having excellence of form or expression and expressing ideas of permanent or universal interest.*"
13. The Appellant contended that the book satisfied the definition set out in the Merriam-Webster dictionary. It was not merely "*informative and practical*", as described by the Head of Literature of the Arts Council. [REDACTED]
[REDACTED]
14. The book could be considered to meet the criterion of 'fine' writing, in that the style is 'clear, reflective, and illuminating'. [REDACTED]
[REDACTED]
[REDACTED] The Appellant submitted that it was also 'original and creative' in that, to her knowledge, there was no similar or comprehensive a treatment of the themes she addressed in the book. [REDACTED]
[REDACTED].
15. [REDACTED]
[REDACTED]
[REDACTED]
16. In oral submissions, the Appellant reiterated the above arguments. She stated that, in 1812, the poet Samuel Taylor Coleridge noted that belles-lettres was a most uncertain term. She stated that there were a number of definitions, and the book met the definitions used by Merriam-Webster, Nuttall and Wikipedia. She stated that it was unfair that it was deemed ineligible by the Respondent on the basis of one arbitrary definition applied by the Arts Council.
17. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

determination that the book was exempt. [REDACTED]
[REDACTED]
[REDACTED]

23. She stated that the Respondent looked at each work on its own merits, [REDACTED]
[REDACTED]
[REDACTED] She stated that if the definition of belles-lettres was expanded too widely, the definition would lose its meaning and many types of non-fiction books would come within scope.

Material Facts

24. Having read the documentation submitted, and having listened to the submissions at the hearing, the Commissioner makes the following findings of material fact:
- 24.1. The book is a work of non-fiction authored by the Appellant. The Appellant claimed for artists' exemption for the book on 28 December 2021 on the basis that it qualified as belles-lettres essays.
 - 24.2. The Respondent failed to determine that the book qualified for artists' exemption, as it did not consider it fell within the definition of belles-lettres essays.
 - 24.3. The book was primarily a practical and informative guide [REDACTED], rather than a piece of aesthetic literature that was an end in itself. Consequently, it did not come within the definition of belles-lettres essays.

Analysis

25. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent's failure to determine that the book qualified for artists' exemption was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*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.*"
26. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists. Section 195(12) provides for the drawing up of the Guidelines, and section 195(13) provides that the Respondent, and on appeal, the Appeal Commissioners, shall not determine that the work concerned qualifies for artists' exemption unless it complies with the Guidelines. The current Guidelines have been in force since 30 November 2013.

27. This appeal concerns the book, [REDACTED], which was authored by the Appellant and published in [REDACTED]. The Commissioner has read the book for the purposes of this Determination. [REDACTED]

28. The Commissioner is satisfied that the net issue to be determined in this appeal is whether the book comes within the scope of belles-lettres essays, as set out in paragraph 7(2)(a)(v) of the Guidelines. The Respondent has accepted that the book “*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*”, as stated in the email from the Head of Literature of the Arts Council to the Respondent. Therefore, if the Commissioner finds that the book does fall within the scope of belles-lettres essays, it will follow that the book satisfies either paragraph 5 (cultural merit) or paragraph 6 (artistic merit) of the Guidelines, and will qualify for artists’ exemption under section 195.

29. A number of definitions of belles-lettres have been provided by the parties. The Respondent relies on the definition provided to it by the Arts Council, which was taken from Britannica.com, and which stated that “*Belles lettres is defined as literature that is an end in itself and is not practical or purely informative. The term can generally refer to poetry, fiction, drama etc., or more specifically to light, entertaining, sophisticated literature. It is also often used to refer to literary studies, particularly essays. The word is French and literally means ‘beautiful letters’.*”¹

30. The Appellant submitted a number of alternative definitions which she contended supported her case. The Encyclopaedia Britannica Eleventh Edition (1911) stated that belles-lettres was “*a term used to designate the more artistic and imaginative forms of literature, as poetry or romance, as opposed to more pedestrian and exact studies. The term appears to have been first used in English by Swift (1710).*”²

¹ <https://www.britannica.com/art/belles-lettres>

² <https://www.gutenberg.org/cache/epub/34533/pg34533-images.html#ar120>

31. The Nuttall Encyclopaedia (1907) stated that belles-lettres was “*that department of literature which implies literary culture and belongs to the domain of art, whatever the subject may be or the special form; it includes poetry, the drama, fiction, and criticism.*”³
32. Wikipedia states that “*Belles-lettres is a category of writing, originally meaning beautiful or fine writing. In the modern narrow sense, it is a label for literary works that do not fall into the major categories such as fiction, poetry, or drama...The term thus can be used to refer to literature generally...However, for many modern purposes, belles-lettres is used in a narrower sense to identify literary works that do not fall into other major categories, such as fiction, poetry or drama. Thus, it would include essays, récits, published collections of speeches and letters, satirical and humorous writings, and other miscellaneous works.*”⁴
33. The Appellant also referred to the Merriam-Webster dictionary. This defines belles-lettres as “*literature that is an end in itself and not merely informative; specifically: light, entertaining, and often sophisticated literature.*”⁵ The dictionary defines literature as “*writings in prose or verse; especially: writings having excellence of form or expression and expressing ideas of permanent or universal interest.*”⁶
34. In addition to the definitions provided by the parties, the Commissioner notes that the Concise Oxford English Dictionary defines belles-lettres as “*literary works written and read for their aesthetic effect.*”⁷ Similarly, the Collins Dictionary defines belles-lettres as “*literary works, esp essays and poetry, valued for their aesthetic rather than their informative or moral content.*”⁸
35. Furthermore, the Commission previously considered belles-lettres in 18TACD2020. In that case, Commissioner Cummins sought guidance from the Arts Council, which advised as follows:

“Belles-lettres: The French term for “fine writing”, originally used (as in “fine art”) to distinguish artistic literature from scientific or philosophical writing. Since the 19th century, though, the term has more often been used dismissively to denote a category of elegant essay-writing and lightweight literary chatter, of which much was published

³ https://en.wikisource.org/wiki/The_Nuttall_Encyclop%C3%A6dia/B#Belles-lettres

⁴ <https://en.wikipedia.org/wiki/Belles-lettres>

⁵ <https://www.merriam-webster.com/dictionary/belles%20lettres>

⁶ <https://www.merriam-webster.com/dictionary/literature>

⁷ Concise Oxford English Dictionary, 12th ed, 2011, OUP

⁸ <https://www.collinsdictionary.com/dictionary/english/belles-lettres>

in Britain in the late 19th and early 20th centuries: Max Beerbohm's essays and Andrew Lang's Letters to Dead Authors (1896) are examples.' (p. 35)

Oxford Dictionary of Literary Terms by Chris Baldick.

2008 (first published in 1990), Oxford University Press, New York.

'Belles lettres: The term is the literary counterpart of beaux arts. Formerly, it was the equivalent of the "humanities" or literae humaniores (literally, "the more human letters"). Swift appears to have been the first to use the term in English literature, in Tatler No. 230 (1710), where he refers to "...Traders in History and Politicks, and Belles letters". Now it is applied almost exclusively to literary studies, the aesthetics of literature, and, conceivably, what may be described as 'light' literature, but not fiction or poetry. Often the essay is the favoured form of the belle-lettrist. The works of Max Beerbohm provide good examples. So do those of Aldous Huxley, many of whose collections of essays (Themes and Variations, Vulgarity in Literature, Music at Night, etc.) are listed as belles lettres. They are witty, elegant, urbane and learned – the characteristics one would expect of belles lettres.'

The Penguin Dictionary of Literary Terms and Literary Theory by J.A. Cuddon and revised by C.E. Preston. 1999 (first published in 1977). Penguin Books, London, England.

In the opinion of the Head of Literature at the Arts Council, contemporary examples of belles lettres would include much of the content of RTÉ's Sunday Miscellany and light essay collections such as Michael Harding's Staring at Lakes."

36. The Commissioner considers from the above that the term "belles-lettres essays" is not easy to define, and that the definitions provided are, perhaps inevitably, quite general and vague. It does not therefore seem possible to state unequivocally, in general terms, what non-fiction works will come within the scope of paragraph 7(2)(a)(v) of the Guidelines, and each work submitted has to be considered on its own merits. However, the Commissioner considers that the preponderance of the definitions set out herein envisage that belles-lettres essays will be primarily written for aesthetic rather than informative purposes.
37. In this instance, the Commissioner considers that the book is evidently a work of erudition, learning and wisdom. [REDACTED]
[REDACTED]
[REDACTED]. Furthermore, the book is written in an eloquent and engaging style.

38. However, the Commissioner regrettably finds that the Appellant has not demonstrated that the book comes within the definition of belles-lettres, and he concludes that it does not.

[REDACTED]
[REDACTED] and that it is this intention to inform and provide guidance, rather than to provide aesthetic pleasure from the writing in and of itself, that is the primary aim and effect of the book.

39. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

40. [REDACTED],
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

41. The Commissioner is satisfied that the above quotes accurately reflect the content of the book and illustrate that it is primarily a practical and informative guide [REDACTED], rather than a piece of aesthetic literature that is an end in itself.

42. In *Revenue Commissioners v Doorley* [1933] IR 750, Kennedy CJ stated that
“If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. 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." (emphasis added)

43. Therefore, exemptions from taxation must be construed strictly. For the reasons set out herein, the Commissioner is not satisfied that the book clearly and without doubt comes within the scope of paragraph 7(2)(a)(v) of the Guidelines, which provides for the exemption from income tax for belles-lettres essays. Consequently, the Commissioner determines that the book does not qualify for artists' exemption under section 195 of the TCA 1997.

44. The Commissioner appreciates that the Appellant will be disappointed with this determination. [REDACTED]

[REDACTED]

45. Finally, it became apparent during the hearing that the Respondent had not copied the Appellant on its submission of its pre-hearing documentation to the Commission, in advance of the hearing date. While it seemed to the Commissioner, looking at the Commission's own electronic file, that the Appellant had been copied on the relevant email, she subsequently advised [REDACTED] that she had not received the Respondent's pre-hearing documentation prior to the hearing, and [REDACTED] accepted that this was the case. While the Commissioner considers that this was unfortunate, he is satisfied that no prejudice has accrued to the Appellant, as it seems to him that the only item that had not either previously been provided to her, or had emanated from her, was the Arts Council's opinion on the book. However, the Appellant was already aware of the basis for the Arts Council's opinion that the book did not qualify as belles-lettres essays, and both parties were afforded a full opportunity to comment and make submissions on the relevant issues arising during the hearing.

Determination


46. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in failing to determine that the book that is the subject of this appeal qualifies for artists' exemption under section 195 of the TCA 1997, on the ground that the book does not satisfy the criterion set out in paragraph 7(2)(a)(v) of the Guidelines. Therefore, the Respondent's failure to determine that the book qualifies for artists' exemption stands.
47. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

48. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the 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

49. 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 of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.


Simon Noone Appeal
Commissioner 24th
October 2023

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997