



25TACD2024

Between

████████████████████

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.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), this appeal is determined without a hearing.

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. The Appellant claimed artists’ exemption in respect of the book on the ground that it was a biography. On 21 March 2023, 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").

5. On 6 April 2023, the Appellant appealed the Respondent's failure to make a determination pursuant to section 195(6) of the TCA 1997. On 4 October 2023, the Commission notified the parties that the appeal was considered suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the appeal proceeding without an oral hearing within 21 days of the notice. No objection was received from either party. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation and Guidelines

6. 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)...

7. 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,

or

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

- (i) *a biography,*
- (ii) *an autobiography,*

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

or,

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

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

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

or

(d) that the work, in the opinion of the Revenue Commissioners, relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives, incorporates the author's unique insight into the subject matter, and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(e) any combination of (a), (b), (c) or (d) above."

Submissions

Appellant

8. In his Notice of Appeal, the Appellant stated that:

"My book is a unique and pioneering work that offers a fresh perspective on [REDACTED]. Through my extensive research and personal experiences, I have developed a comprehensive guide [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]."

According to the guidelines under Section 195(12) of the Taxes Consolidation Act 1997, a non-fiction work can be considered original and creative if it incorporates the author's unique insight and is regarded as a pioneering work that makes a significant contribution to the subject matter.

[REDACTED]

Additionally, my work contributes to the national culture [REDACTED]

[REDACTED] In this regard, I believe my work possesses cultural merit as per the guidelines.

In light of the above arguments, I kindly request that the Revenue Commissioners reconsider my application for the Artist's Tax Exemption. I am confident that my work meets the criteria set forth in the guidelines, and I firmly believe that it is deserving of this exemption."

9. In the Statement of Case submitted to the Commission, the Appellant's agent additionally stated that

"[The Appellant] is the author of [the book]....

[The book] is a non-fiction book which is original and creative. The book offers [the Appellant's] unique insight into the subject matter, [REDACTED]

[The Appellant] presents his story and information in a unique and interesting manner, offering ideas [REDACTED]

This book, which is a work of non-fiction, is auto-biographical in parts, [REDACTED] [The Appellant] gives a detailed account of a very important part of his life and shares this information with his readers.

Paragraph 7(2)(b)(ii) of the guidelines allows for works of an autobiographical nature to be awarded Artist Exemption.

[REDACTED]

[REDACTED]

This is a pioneering piece of work, as there is no other book on the market like it, and the reviews and thanks which [the Appellant] has received from many people who have purchased his book will give credence to this.”

Respondent

10. In its Statement of Case, the Respondent states inter alia that

“It is accepted by Revenue that this work is a book and that it comes within the categories of work listed in section 195(1) TCA 1997...

On examination of the book... Revenue determined that this book was a work of non-fiction...The appellant’s application described the work as coming within paragraph 7(2)(b)(i) of the guidelines, “a biography”... Revenue determined that the work did not meet the specific criteria within paragraph 7(2)(b)(i) of the guidelines, as the work did not come within the ordinary definition of a biography. Consideration was given to whether, the work came within any of the other categories listed in Paragraph 7 of the guidelines and Revenue determined that it did not.”

Material Facts

11. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:

11.1. The book is a work of non-fiction authored by the Appellant. The Appellant claimed for artists’ exemption for the book on the basis that it qualified as a biography/autobiography.

11.2. The Respondent failed to determine that the book qualified for artists’ exemption, as it did not consider it fell within the definition of biography/autobiography.

11.3. The book is primarily a practical guide [REDACTED]. Consequently, it does not qualify as a biography/autobiography, and does not otherwise fall within the categories of non-fiction books set out in paragraph 7 of the Guidelines.

[REDACTED]

16. [REDACTED]

17. Having considered the book, [REDACTED] the Commissioner considers that it provides a very helpful guide [REDACTED]

18. However, the Commissioner does not consider that the Appellant has demonstrated that the book qualifies for artists' exemption, and he is satisfied that it does not. The book was submitted on the basis that it was a biography / autobiography, and therefore met the criteria set out in paragraph 7(2)(b) of the Guidelines. The Commissioner notes that the book does contain details of the Appellant's own experiences [REDACTED]. However, the Commissioner considers that this chapter is primarily illustrative in nature, [REDACTED]. He does not consider that the material in this chapter comes within the generally understood definition of an autobiography, which is an account of one's life. [REDACTED]

19. [REDACTED]

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However, he does not consider that this ██████████ brings the book within the scope of paragraph 7(2)(b) of the Guidelines.

20. Consequently, the Commissioner is satisfied that the book does not qualify as a biography / autobiography as set out in paragraph 7(2)(b) of the Guidelines. While the Appellant has not claimed that any of the other criteria for non-fiction work set out in paragraph 7 apply to the book, the Commissioner has considered whether any of them could apply, and he is satisfied that they could not. While the Appellant has submitted that the book is original, creative and pioneering, this in itself is not sufficient to qualify for artists' exemption; it is also necessary for a non-fiction book to satisfy at least one of the criteria listed in paragraph 7 of the Guidelines.

21. Therefore, the Commissioner determines that the book does not qualify for artists' exemption under section 195 of the TCA 1997. He appreciates that the Appellant will be disappointed with this determination. However, the Commissioner is obliged, pursuant to section 195(13)(b) of the TCA 1997, to determine the appeal by reference to the Guidelines, and as set out herein, he is satisfied that the book does not meet the requirements of paragraph 7 of the Guidelines.

22. Furthermore, it is settled law that exemptions from taxation must be construed strictly. 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)

23. Consequently, for the reasons set out herein, the Commissioner determines that the book does not qualify for artists' exemption, and therefore the appeal is not successful. However, in arriving at this determination, the Commissioner does not in any way doubt

the utility and relevance of the book, [REDACTED], and the Commissioner wishes the Appellant every success with it.

Determination

24. 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 criteria set out in paragraph 7(2) of the Guidelines. Therefore, the Respondent's failure to determine that the book qualifies for artists' exemption stands.
25. This Appeal is determined in accordance with Part 40A of the 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) of the TCA 1997.

Notification

26. 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

27. 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.

A handwritten signature in black ink, appearing to read 'S. Noone', written in a cursive style.

Simon Noone
Appeal Commissioner
04 December 2023