

Between/

NAMES REDACTED

Appellants

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. 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*."

B. Matter under appeal

2. The Appellants are the joint authors of a book entitled **REDACTED**, which was published in 2013. The Appellants each submitted an artists' exemption claim form on 9 September 2013 and by letter dated 6 November 2013 the Respondents advised the Appellants that they did not find it possible to make a determination in accordance with section 195. The Appellants duly appealed that decision pursuant to section 195(6)(b) of TCA 1997.
3. The appeal came on for hearing before me and I heard evidence from the first named Appellant on behalf of both Appellants. I reserved my determination at the conclusion of the hearing to allow the Appellants to submit an article from the **NAME OF JOURNAL REDACTED**, which had been referred to in the course of her evidence, and to receive and review the transcript of the hearing.

C. Relevant legislation

4. The relevant 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 the State and not resident elsewhere, or*
 - (II) ordinarily resident and domiciled in the State and not resident elsewhere,*
- and*

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

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

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

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

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

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

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

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

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

(4) (a) Where an individual makes a claim to which subsection (2)(a)(ii)(I) relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may be specified in

the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under subsection (2)(a)(ii)(I).

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

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

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

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

(6) (a) In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim is first made in respect of that work or those works or the particular work, as the case may be.

(b) Where –

(i) an individual –

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

composed or executed, as the case may be, solely or jointly with another individual, and

(II) as respects the claim, has complied with any request made to the individual under subsection (4) or (5) in the relevant period,

and

(ii) the Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to the claim in the relevant period,

the individual may [appeal to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the end of the relevant period] on the grounds that –

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

(B) the particular work has cultural or artistic merit,

as the case may be.

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

(8) (a) On the hearing of an appeal made under subsection (6), the Appeal Commissioners may –

(i) after consideration of –

(I) any evidence in relation to the matter submitted to them by or on behalf of the individual concerned and by or on behalf of the Revenue Commissioners, and

(II) in relation to a work or works or a particular work, the work or works or the particular work,

and

(ii) after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them,

determine that the individual concerned has written, composed or executed, as the case may be, either solely or jointly with another individual –

*(A) a work or works generally recognised as having cultural or artistic merit,
or*

(B) a particular work which has cultural or artistic merit,

and, where the Appeal Commissioners so determine, the individual shall be entitled to relief under subsection (3)(a) as if the determination had been made by the Revenue Commissioners under clause (I) or (II) of subsection (2)(a)(ii), as the case may be.

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

(10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.

(11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.

(12) (a) An 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.”

5. In accordance with section 195(13), I am obliged to have regard to the Guidelines drawn up by An Comhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht for the purposes of determining whether a work is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit (hereinafter referred to as “**the Guidelines**”).

6. The Guidelines in force at the time of the Appellants’ application for a determination pursuant to section 195 provided as follows:-

“Introduction

1. *Guidelines were drawn up in 1994 to determine whether works falling to be considered under Section 195, Taxes Consolidation Act, 1997 are original and creative works and whether they have, or are generally recognised as having, cultural or artistic merit.*

General

2. *Section 195, Taxes Consolidation Act, 1997 provides that a work for the purpose of the Section is an original and creative work in one of the following categories:*

(a) a book or other writing;

(b) a play;

(c) a musical composition;

(d) a painting or other picture;

(e) a sculpture.

Revenue may determine such a work to have, or to be generally recognised as having, cultural or artistic merit.

3. *In broad terms, therefore, in order to secure exemption under Section 195, a work has to be both original and creative and to have either cultural merit or artistic merit.*

4. *In order to be granted a determination under Section 195, it is not necessary for a work to have both cultural and artistic merit - the presence of either quality is sufficient.*

Definitions

Cultural or artistic merit

5. *In applying these guidelines, Revenue may, as provided for in Section 195, consult with such person or body of persons as may, in their opinion provide authoritative assistance to them in establishing whether a work is a qualifying work for the purposes of Section 195.*
6. *A work has cultural merit if its contemplation enhances the quality of individual or social life by virtue of that work's intellectual, spiritual or aesthetic form and content.*
7. *A work has artistic merit when its combined form and content enhances or intensifies the aesthetic apprehension of those who experience or contemplate it.*

Original and Creative

8. *For the purpose of a determination under Section 195, Taxes Consolidation Act, 1997 the term "original and creative" encompasses any unique work which is brought into existence for the first time as an independent entity by the exercise of its creator's imagination.*
9. *A non-fiction work in category (a), a book or other writing, will be considered original and creative only if,*
 - (i) it comes within one of the categories cited in Appendix A, and*
 - (ii) the essence of the work is the presentation of the author's own ideas or insights in relation to the subject matter, and the ideas or insights are of such significance that the work would be regarded as a pioneering work*

casting new light on its subject matter or changing the generally accepted understanding of the subject matter.

Exclusions from the compass of “original and creative”

10. *The following types of work in the categories set out in Section 195, Taxes Consolidation Act, 1997 will NOT be regarded as coming within the compass of “original and creative”.*

(a) A Book or other writing, notwithstanding paragraph 9 above,

(i) A book or other writing published primarily for, or which is or will be used primarily by, students pursuing a course of study or persons engaged in any trade, profession, vocation or branch of learning as an aid to professional or other practice in connection with the trade, profession, vocation or branch of learning.

(ii) An article or series of articles published in a newspaper, magazine, book or elsewhere – except a book consisting of a series of articles by the same author connected by a common theme and therefore capable of existing independently in its own right.

(b) A Play

Types or kinds of plays written for advertising purposes which do not exist independently in their own right by reason of quality or duration.

(c) A Musical Composition

Types or kinds of musical compositions written for advertising purposes which do not exist independently in their own right by reason of quality or duration.

Arrangements, adaptations and versions of musical compositions by a person other than a bona fide composer who is actively engaged in musical composition.

(d) A Painting or like picture

Types or kinds of photographs or drawings (other than a set or sets of photographs or drawings that are collectively created for an artistic purpose) which are mainly of record, or which serve a utilitarian function, or which would not exist independently in their own right by reason of quality or by reference to their potentiality for inclusion as part of an art exhibition.

(e) A Sculpture

Types or kinds of objects which are primarily functional in nature, objects produced by processes other than by hand, objects produced by hand by persons other than those actively engaged as bona fide artists in the field of the visual arts.

Appendix A

Non-fiction categories applicable to be considered as eligible for a determination under Section 195.

1. *The following categories of literature (and any combination thereof) coming fully within the terms of reference of the Arts Council encompassing the subjects of fiction writing, drama, music, film, dance, mime or visual arts, and related commentaries by bona fide artists:*

- *arts criticism;*
- *arts history;*
- *arts subject works;*
- *arts diaries;*
- *autobiography;*
- *belles-lettres essays;*
- *biography;*
- *cultural dictionaries;*
- *literary translation;*
- *literary criticism;*
- *literary history;*
- *literary diaries.*

2. *The following categories of works coming fully within the terms of reference of the Heritage Council including works which, in their entirety, comprise one or more of these categories:*
 - *archaeology;*
 - *publications associated with items or areas of significant heritage value.*

3. *The following category of works coming fully within the terms of reference of the National Archives Advisory Council:*
 - *Publications which relate to the archives which are more than 30 years old concerning Ireland, and are based largely on research from such archives.*

4. *Categories of works which in their entirety comprise one or more of the categories cited in paragraphs 1 to 3 above."*

Submissions of the Parties

7. I had the benefit of detailed and helpful written submission from both parties, which were ably expanded upon by the first named Appellant and by Counsel for the Respondents in the course of the hearing before me.

8. On behalf of the Appellants, it was submitted that the book the subject matter of the appeal was an original and creative work, which has both cultural merit and artistic merit, and which was not excluded from the exemption by virtue of paragraph 10 of the Guidelines.

9. In relation to their submission that the book is original and creative, the Appellants accepted that, as a work of non-fiction, the book had to come within one of the categories described in Appendix A of the Guidelines and, furthermore, that the essence of the work had to be the presentation of the Appellants' own ideas or insights in relation to the subject matter, and the ideas or insights had to be of such significance that the work would be regarded as a

pioneering work casting new light on its subject matter or changing the generally accepted understanding of the subject matter.

10. The Appellants submitted that the work came within the category of “*autobiography*” in paragraph 1 of Appendix A of the Guidelines. They argued that the book is autobiographical and contains the reflected life experiences of both Appellants. They contended that the autobiographical stories and poems throughout the book provide the foundation for the guided self-help pathways outlined to help readers engage with their own life stories and develop a greater sense of happiness and well-being. The Appellants submitted that the autobiographical content, whether personal or professional, forms the spinal column from which the authors reflect and invite their readers to reflect and engage with their own life experiences.
11. In support of this contention, the Appellants highlighted the Preface to the book and four further extracts from the body of the text.
12. In relation to the requirement that the Appellants’ ideas and insights into the subject matter are of such significance that the work would be regarded as pioneering work casting new light on its subject matter or changing the generally accepted understanding of the subject matter, the Appellants submitted that their book met this criterion because the essence of the work is the presentation of both Appellants’ insights and ideas based on their reflected life experience, both professional and personal, on the theme of resilience. The Appellants’ submitted that they have developed a unique **REDACTED** programme which, within the field of psychology, is viewed as ground-breaking, casting new light on the process of recovery and resilience, in particular for people who experience loss of hope and depression. They pointed out that the Professor and Head of the School of Psychology at **REDACTED** has endorsed the book based on the unique insights and processes developed, and is leading a team of researchers investigating the impact on the individual of engaging with the processes developed in the book.
13. The Appellants submitted that the book is a pioneering work in that it is in the realm of positive psychology, and uses autobiographical pieces to build different pathways that people can actually use to work through their lives and overcome obstacles that can lead to

depression and feelings of hopelessness. They argued that the book was ground-breaking in that this particular pathway system has never been developed before. In support of this, they pointed out that the techniques described in the book were being studied at **REDACTED** using five groups. They further referred to an article in the May 2014 **NAME OF JOURNAL REDACTED**, co-authored by the first named Appellant and the Head of Psychology at **REDACTED**, which gave a detailed description of the programme developed by the Appellants and described in the book.

14. I note that the closing paragraph of that journal article states:-

*“The **REDACTED** program shares much in common with other approaches based on an integration of CBT and positive psychology (e.g. Bannink 2014; Karwoski et al. 2006). In the **REDACTED** program there is a focus in early sessions on strengths, resilience and the establishment of positive goals, and throughout the program the therapeutic process involves both developing skills for coping with challenges and building strengths. The principal differences between the **REDACTED** program and other similar programs is the range of theoretical influences and session content... Both Bannink’s (2014) and Karwoski et al. (2006) approaches are presented as a basis for conducting individual psychotherapy, whereas the **REDACTED** program is a group psychoeducational intervention.”*

15. Turning to the requirement that a work have cultural or artistic merit, the Appellants noted that the Guidelines provide that a work has cultural merit if its contemplation enhances the quality of individual or social life by virtue of the work’s intellectual, spiritual or aesthetic form and content. They submitted that the intellectual content of their book is specifically written to enhance the reader’s quality of life. The overarching aim of the book is to encourage readers to reflect on the quality of their lives and take specific steps to enhance that quality. To that end, they have included chapters on **REDACTED** and **REDACTED**, and exercises designed to help the readers connect with their individual core strengths and qualities, thereby re-engaging on a deeply spiritual level with life. Blocks to happiness are explored and processes outlined to overcome obstacles. Similarly, they have included a chapter on **REDACTED** to enhance and encourage the connectedness that comes about through interaction with community, thereby impacting on the overall quality of social life.

- 16.** The Appellants further noted that the Guidelines provide that a work has artistic merit when its combined form and content enhances or intensifies the aesthetic apprehension of those who experience or contemplate it. They submitted that their work seeks to engage readers and enhance their quality of life through a variety of modalities, and so they included a large number of original poems and stories, written from an Irish cultural perspective.
- 17.** Finally, the Appellants submitted that their work was not excluded by virtue of the exclusions contained in paragraph 10 of the Guidelines; I should record that such an argument was not at any stage advanced by the Respondents.
- 18.** The Respondents submitted in the first instance that the onus of proof lay upon the Appellants to establish that a section 195 exemption was warranted, and this contention was not challenged by the Appellants.
- 19.** The Respondents further submitted that paragraph 9(i) of the Guidelines operates so that a non-fiction work such as the book the subject of this appeal can only be considered original and creative if it comes within one of the categories listed in Appendix A. To meet the requirements of Category 1 in Appendix A, the Respondents submitted that a non-fiction work had to comprise a category of literature coming fully within the terms of reference of the Arts Council encompassing the subjects of fiction writing, drama, music, film, dance, mime or visual arts, and related commentaries by bona fide artists.
- 20.** The Respondents submitted that the terms of reference of the Arts Council can be gleaned from sections 2 and 9 of the Arts Act 2003. Section 9 of the Act sets out the general functions of the Arts Council as regards the support and promotion of “*the arts*”, which are defined in section 2(1) as follows:-
- “arts’ means any creative or interpretative expression (whether traditional or contemporary) in whatever form and includes, in particular, visual arts, theatre, literature, music, dance, opera, film, circus and architecture, and includes any medium when used for those purposes.”*

21. The Respondents submitted that the definition of “arts” and the functions delineated in section 9 of the 2003 Act together comprised the Arts Council’s terms of reference for the purposes of the Guidelines.
22. The Respondents further submitted that the Appellants’ book was a popular psychology/self-help guide to living life. They submitted that this meant that the book was not about an ‘arts’ subject and could not come within the Arts Council’s terms of reference and, furthermore, that it did not constitute an autobiography or any of the other categories of literature listed in the bullet points in paragraph 1 of Appendix A to the Guidelines.
23. The Respondents further argued that the Appellants’ book did not meet the requirements of paragraph 9(ii) of the Guidelines and further submitted that the book did not have artistic or cultural merit.

D. Analysis and Findings

24. It is clear from the legislation that, in general terms, in order to secure exemption under section 195, a work (a) has to be original and creative, and (b) has to have either cultural merit or artistic merit, or both.
25. In considering whether the book the subject of this appeal satisfies these requirements, 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, 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.”

26. 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.”

27. As the Appellants’ book is a work of non-fiction, it was common case between the parties that the provisions of paragraph 9 of the Guidelines applied, and accordingly the book can only be considered original and creative if:-

- (i) it comes within one of the categories cited in Appendix A, and
- (ii) the essence of the work is the presentation of the author's own ideas or insights in relation to the subject matter, and the ideas or insights are of such significance that the work would be regarded as a pioneering work casting new light on its subject matter or changing the generally accepted understanding of the subject matter.

28. I will deal with each of these requirements in turn.

29. The Appellants contend that their book is a work of autobiography. When I questioned the first named Appellant on this issue, she accepted that the book was not exclusively an autobiography but said that the autobiographical elements formed the “*bedrock*” upon which the rest of the book was built. Unsurprisingly, the Respondents did not accept this characterisation of the book and argued strongly that it is a work of popular psychology and a self-help manual, which could not be categorised as an autobiography.

30. There was some debate during the hearing before me as to the percentage of the book that contained autobiographical elements. It was submitted on behalf the Respondents that the autobiographical elements cited by the Appellants in their submissions amounted to only 8 pages out of a total of **REDACTED**, and that additional anecdotal elements based on the life story of the second named Appellant were found on a further 8 pages. I believe that the Respondents may have understated the extent of the autobiographical content of the book; by my own estimation, there were 27 separate autobiographical passages in the book.

31. However, I believe that it would be incorrect to approach the issue of whether a book constitutes an autobiography solely by reference to the amount of biographical material contained therein; such an approach would, in my view, be unduly reductive.

32. It is clear from the decision of the Supreme Court in *Inspector of Taxes –v- Kiernan* [1981] 1 I.R. 117, which was applied by Donnelly J in *Coleman –v- Revenue Commissioners*, that:-

“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

“[W]hen 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 meanings, 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.”

33. 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.

34. 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 carefully, I am satisfied that the book falls squarely within the genre of ‘self-help’ works of popular psychology; it is, as described on its cover, a “**REDACTED.**” While I accept that the book has autobiographical passages contained therein, and further accept that Appellants are of the view that these passages form the

“spinal column” of the work and the *“bedrock”* on which the rest of the book is constructed, that is not sufficient to make the book an autobiography.

35. Even if the book could be said to be an autobiography, I do not believe that that would suffice to satisfy the requirements of paragraph 1 of Appendix A of the Guidelines. The book does not have as its subject matter fiction writing, drama, music, film, dance, mime or visual arts, or related commentaries by bona fide artists. While there may be fleeting reference to some of those art forms within the book, they do not constitute the book’s subject matter, nor can the book’s subject matter be said to encompass those subjects.

36. In reaching this conclusion, I have had regard to the evidence of the first named Appellant during cross-examination that:-

“The subject matter of the book is ... around engaging with life in a meaningful and positive fashion, manner.”

Having regard to the contents of the book, I find this to be a fair and accurate summary of the subject-matter. I am therefore satisfied, and find as a material fact, that the subject-matter of the book does not come fully within the terms of reference of the Arts Council encompassing the subjects of fiction writing, drama, music, film, dance, mime or visual arts, and related commentaries by bona fide artists.

37. I must therefore determine that the book does not fall within the categories described in paragraph 1 of Appendix A to the Guidelines, and, by virtue of paragraph 9(i) of the Guidelines, it therefore cannot be said to be an original and creative work for the purposes of section 195.

38. For the sake of completeness, I should record that the Appellants did satisfy me, on the basis of the evidence given, that the essence of the book was the presentation of the Appellants’ own ideas and insights in relation to the subject matter, and the ideas and insights were of such significance that the work would be regarded as a pioneering work casting new light on its subject matter or changing the generally accepted understanding of the subject matter, as required by paragraph 9(ii) of the Guidelines.

39. As outlined in previous determination of the Tax Appeals Commission (see, *e.g.*, the determination reported at **20TACD2016**), the test contained in paragraph 9(ii) of the former Guidelines (and now paragraph 7(2)(d) of the current Guidelines) is three-fold, and requires that:-

(a) The work incorporates the author's unique insight into the subject matter,

and

(b) The work is regarded as pioneering work,

and

(c) The work makes a significant contribution to the subject matter by:-

(i) casting new light on it,

or

(ii) changing the generally accepted understanding of it.

40. I have concluded that all three elements of the test have been satisfied in the instant appeal. While the thresholds set are undoubtedly high, the evidence given by the first named Appellant supported the Appellants' submission that the work was the result of their unique insight, that their work was pioneering, and I am satisfied that the **REDACTED** approach described in their book casts a new light on the use of an integration of cognitive behavioural therapy and positive psychology as a basis for group psychoeducational intervention.

41. In reaching this view, I have had regard to the evidence of the first named Appellant that the programme described in the book was unique and was viewed as ground-breaking in the field of positive psychology. I have further had regard to the detailed description of the programme described in the book contained in the article in the **NAME OF JOURNAL REDACTED** (which I note to be a peer-reviewed journal), and the description therein of the differences between the programme devised by the Appellants and other programmes based on an integration of cognitive behavioural therapy and positive psychology. I have also had regard to the fact that no evidence was adduced on behalf of the Respondents in relation to this issue; rather, they confined themselves to questioning the evidence given by

the first named Appellant. On balance, having considered the evidence carefully, I am satisfied that the Appellants have discharged the burden of proof in relation to this issue.

42. Next, again for the sake of completeness, I have considered the question of whether the book has cultural merit or artistic merit, or both.
43. As set out *supra*, paragraph 6 of the Guidelines provides that a work has cultural merit if its contemplation enhances the quality of individual or social life by virtue of the work's intellectual, spiritual or aesthetic form and content.
44. I have carefully considered the evidence given and submissions made in relation to this issue, and have had careful regard to the contents of the book. Having done so, I accept the Appellants' argument that the intellectual content of their book is specifically written to enhance the reader's quality of life, and that the overarching aim of the book is to encourage readers to reflect on the quality of their lives and take specific steps to enhance that quality.
45. I am therefore satisfied, and find as a material fact, that the book has cultural merit, and it is therefore unnecessary for me to determine whether the book also has artistic merit.
46. Finally, I should record that I am satisfied that, as was agreed by the parties, the book is not rendered ineligible for relief pursuant to section 195 by reason of the exclusions contained in paragraph 10 of the Guidelines.

E. Determination

47. For the reasons outlined above, I find that:-
 - (a) The book the subject matter of this appeal is not a work of autobiography;
 - (b) The subject-matter of the book does not come fully within the terms of reference of the Arts Council encompassing the subjects of fiction writing, drama, music, film, dance, mime or visual arts, and related commentaries by bona fide artists;

- (c) The book therefore does not come within paragraph 1 of the categories detailed in Appendix A to the Guidelines;
- (d) By reason of paragraph 9(i) of the Guidelines, the book therefore cannot be considered as original and creative for the purposes of section 195 of TCA 1997;
- (e) The book does satisfy the requirements of paragraph 9(ii) of the Guidelines;
- (f) The book does have cultural merit within the meaning of paragraph 6 of the Guidelines;
- (g) The exclusions to eligibility contained in paragraph 10 of the Guidelines are not applicable in the instant case.

48. I therefore conclude that the Appellants are not entitled to the artists' exemption. I will therefore refuse the appeal of the Appellants and determine, in accordance with section 949AL(1), that the decision of the Respondents that the Appellants are not entitled to the exemption afforded by section 195(3) of the Taxes Consolidation Act 1997, as amended, should stand.

September 2017

APPEAL COMMISSIONER

The parties to the appeal have not requested the Appeal Commissioners to state and sign a case for the opinion of the High Court