

Between/

NAME REDACTED

Appellant

-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 Appellant is the author of a book entitled ‘**REDACTED**’, which was published in 2013. The Appellant submitted an artists’ exemption claim form on 17 February 2014 and by letter dated 17 July 2014 the Respondents advised the Appellant that they did not find it possible to make a determination in accordance with section 195. The Appellant duly appealed that decision pursuant to section 195(6)(b) of TCA 1997 on 31 July 2014.
3. The appeal came on for hearing before me and I heard evidence from the Appellant and, on behalf of the Respondent, from Ms Helen Meany of the Arts Council. I reserved my determination at the conclusion of the hearing to allow the Appellant to submit a number of reviews of her book, 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 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 provide as follows:-

“Introduction

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

General

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

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

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

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

Original and Creative

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

Cultural Merit

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

Artistic Merit

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

Criteria for Non-fiction Work

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

(2) *The criteria are:*

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

(i) arts criticism,

(ii) arts history,

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

(iv) artists' diaries,

(v) belles-lettres essays,

(vi) literary translation,

(vii) literary criticism,

(viii) literary history,

(ix) literary diaries,

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

or

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

(i) a biography,

(ii) an autobiography,

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

or

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

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

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

or

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

Types of Works Excluded from the Artists Exemption Scheme.

8. Notwithstanding anything else in these Guidelines, a work-

(a) shall not be an original and creative work, and
(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit

if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below –

(i) a book or other writing published primarily for, or which is or will be used primarily by-

(I) students pursuing a course of study, or

(II) persons engaged in any trade, business, profession, vocation or branch of learning as an aid to trade or business related practice, or to professional, vocational or other practise in connection with a trade, business, profession, vocation or branch of learning,

(ii) any work of journalism, published in a newspaper, journal, magazine, or other similar medium or published on the internet or on any other similar medium,

(iii) any writing, visual or musical work, or other like work, created for advertising or publicity purposes,

(iv) any arrangement, adaptation or version of musical composition, or other like work, which is not of such musical significance as to amount to an original composition,

(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes,
(vi) types or kinds of works of sculpture which primarily serve a utilitarian function.”

Submissions and Evidence of the Parties

7. I had the benefit of detailed and helpful written submissions from both parties, which were ably expanded upon by the Appellant and by Counsel for the Respondents in the course of the hearing before me.
8. It was submitted by the Appellant that the book the subject matter of the appeal is an original and creative work, which has cultural merit.
9. In relation to her submission that the book is original and creative, the Appellant accepted that, if it is a work of non-fiction, the book has to come within one of the categories described in paragraph 7(2) of the Guidelines. The Appellant submitted that the book falls within or overlaps a number of those categories, namely 7(2)(a)(ii) (arts history), 7(2)(a)(iii) (arts subject work), 7(2)(a)(viii) (literary history), 7(2)(b) (autobiography) and 7(2)(d) (work relating to archives more than 30 years old relating to Ireland or Irish people).
10. The Appellant submitted that the book is original and creative, in that it was the first book of its kind written in Ireland. She submitted that it incorporates her unique insight into the subject matter and casts a new light on people’s perception of **REDACTED** in a light-hearted, accessible manner, and argued that the book would change the generally-accepted understanding of **REDACTED** for most readers. She further submitted that the work is pioneering not only because of its content, but also because of the humorous and accessible manner in which it conveys the information contained therein.

11. The Appellant further submitted that the first section of the book explores the rich literary history regarding the subject matter of Irish **REDACTED** and **REDACTED** life from the 1950s to the present day, and comments on the work of authors such as John B. Keane, William Trevor and Patrick Kavanagh. The book also includes various excerpts and advertisements from Irish newspapers over the years, from the 1880s to the present day, commenting on their meaning and how they reflect the society of the time.
12. The Appellant further submitted that the book contains a discussion of academic research by historians such as **REDACTED**, **REDACTED**, **REDACTED** and **REDACTED**, presenting it in an easy-to-follow format designed to be accessible to readers.
13. The Appellant further submitted that the book is, at least in part, autobiographical because it includes many details of her own **REDACTED** experiences and is based on her personal observations and recollections. She submitted that it reflected her unique insight into life on **REDACTED**, married to a **REDACTED**.
14. The Appellant submitted a number of reviews and items of correspondence in support of her arguments, which I have carefully considered. I note that Mr Des Kenny of Kenny's Bookshop expressed the view in an e-mail to the Appellant that:-
- "Whereas [the book] is couched in apparently satiric terms, it does give an insight into the realities of a **REDACTED** life **REDACTED** in a significant and meaningful way and can equally be categorised under the headings of Sociology, Rural Studies and Gender Studies."*
15. 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 Appellant.
16. The Respondents further submitted that the book is a work of non-fiction and that it therefore could only qualify for exemption under section 195 if it meets the tests contained in paragraph 7 of the Guidelines.

17. The Respondents contended that the book cannot be said to meet the requirements of paragraph 7(2)(a). They noted that the Appellant's written submissions stated that the book "*blurs the lines between fiction and non-fiction*" and that part of the book could be described as a dating manual. They submitted that the book is a humorous guide in the genre of self-help and could not be said to fall within any of the 'arts and literature' categories described in paragraph 7(2)(a).

18. In support of this argument, I heard evidence from Ms Helen Meany, who is Literature Advisor to the Arts Council. She gave evidence that she would classify the book as humorous and in the 'how-to' or self-help genre broadly. She stated that the first section of the book, the historical section, presented a lot of interesting factual material in a light and engaging way. Having discussed the book's genesis as a **REDACTED** written by the Appellant, she stated that:-

"So it is not wholly based on research, necessarily, though some might be, nor is it wholly based on personal first-hand observation, but it could be a combination of any of those elements and that would definitely fall within the term 'journalism'."

19. In cross-examination, Ms Meany stated that:-

*"[T]he way the book is couched once we move beyond the first chapter is in kind of maybe a parody of 'how to find a husband' or 'how to find your perfect match' type of genre. So you have taken that and put a humorous spin on it, but there is definitely whole sections which are about ... how to understand **REDACTED** and the realities of **REDACTED** ...*

I think the genre which you have chosen to frame your serious information is very humorous and is done in an exaggerated, slightly parodistic style, which makes it accessible. So you are certainly, the reader is laughing at this stuff but also gaining some serious information. So I think that it is a humorous take on the how-to, self-help manual."

20. When asked where she would expect to find the book in a bookshop, Ms Meany said that she would expect to find the book in the Irish Interest, Contemporary Ireland or Humour sections, but added that it could also be included in the Self-Help section.

21. In closing, Ms Meany was asked whether, in her view, the book falls within any of the categories contained in paragraph 7(2)(a). She said that she did not believe that it does from an Arts Council perspective. While there are references to writers in the first section, she believed that they were illustrating points about the realities of **REDACTED** life in 20th century Ireland, and the Appellant was not examining the work of those writers in a critical light; it was not a literary study of those writers, and there was nothing else in the book which could bring it within any of the 'arts subject' categories.
22. The Respondents further submitted that the book was not original and creative within the meaning of section 195 and the Guidelines, and that the Appellant had failed to discharge the onus of proof to show that the work had cultural or artistic merit.
23. The Respondents further submitted that, even if I was to find that the book met the requirements of paragraph 7 of the Guidelines, it was excluded from the artists' exemption scheme pursuant to paragraph 8(iii) of the Guidelines, because it was a work created for advertising or publicity purposes.
24. In support of this argument, the Appellant was cross-examined in relation to her business interests. The Appellant gave evidence that she has a website that sells merchandise relating to the book, that she has a website that provides **REDACTED** courses, and has a website that provides a **REDACTED** service for businesses. Counsel for the Respondents put it to the Appellant that the book was written with a view to promoting the Appellant's social media profile and/or her online businesses. The Appellant strongly rejected this, and stated that her social media profile and television and radio appearances were undertaken to promote the book.

D. Analysis and Findings

25. 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.

26. The Respondents submitted, which I accept, that an appropriate starting point for the correct interpretation of Revenue statutes generally is the decision of Murphy J in **Ó Coindealbháin –v- Gannon [1986] I.R. 154**, where he stated:-

“The principles of legal interpretation to be applied to the construction of revenue statutes are well established. It is a general principle that to be liable to tax the citizen must come clearly within the words of the charge to tax. On the other hand, once within the scope and terms of the charge to tax, he cannot escape unless clearly within the terms of an exemption. There is no rule of law against the citizen making genuine and lawful arrangements of his affairs by which the incidence of tax on his property is lessened. In the construction of a Taxing Act the court has primary regard to the statutory words themselves and to their proper judicial construction. Particular words must be construed in their context. Taxing Acts are to be construed strictly, in the sense that one has to look merely at what was clearly said, there being no room for any intendment, but a fair and reasonable construction must be given to the language without leaning to one side or the other. Whether applying the terms of the charge or the terms of the exemption, no considerations of equity or hardship affect the construction of the Act...”

27. In considering whether the book the subject of this appeal satisfies these requirements of section 195 and the Guidelines made thereunder, I must also 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.”

28. 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.”

29. Although the Appellant’s written submissions asserted that her book blurs the lines between fiction and non-fiction, I am wholly satisfied, and find as a material fact, that it is properly classed as a work of non-fiction. Accordingly, the book can only be considered original and creative and to have, or to be generally considered as having, cultural or artistic merit if it satisfies the criteria detailed in paragraph 7(2) of the Guidelines.
30. I accept as correct the evidence of Ms Meany, and the submissions of the Respondent based thereon, that the book cannot be said to be a work in the category of arts history, arts subject work or literary history, or indeed any of the other categories contained in paragraph 7(2)(a) of the Guidelines. While the book does include references to and quotations from notable Irish authors, it cannot on any reasonable basis be described as a work of literary criticism or literary history. Any finding to the contrary would be to do serious violence to the plain wording and meaning of that paragraph. This appears to have been largely accepted by the Appellant in the course of her evidence.
31. I do not accept Ms Meany’s view, and the submissions of the Respondents based thereon, that the book falls within the self-help genre. Although it is perhaps presented as such a book in its appearance, superficial theme and lay-out, I believe that this is done for the purposes of parody and humour, and that it is not, and was not intended to be, a serious guide advising readers on whether they should and/or how they can **REDACTED**. It is instead an overview and portrayal of **REDACTED** life in historic times and in the current day, written from the perspective of a **REDACTED** spouse. While couched in a humorous and accessible tone, it contains no small amount of research and scholarship and conveys serious information and insight into the realities and challenges of **REDACTED** life.
32. Having carefully read and considered the book, I am satisfied that the majority of the book (in particular the latter sections) constitutes a work of autobiography. While it is not characterised as such, and the Appellant stated in the course of her evidence that she did

not believe that it contained sufficient autobiographical material to be categorised solely as autobiography, I believe that is, in reality, the essence of the book and its subject matter.

33. The book does contain occasional autobiographical passages (see, e.g., pages REDACTED, REDACTED, REDACTED, REDACTED, REDACTED and REDACTED) but, more importantly, almost all of the latter section of the book is comprised of the Appellant's own experiences of and observations on life as the spouse of a REDACTED. The fact that these are expressed as humorous general observations, couched in the form of light-hearted advice to someone considering a life similar to the Appellant's, rather than expressly recounted as first-hand, personal experiences, does not take away from their true character. Equally, the fact that the book is not presented as a 'conventional' autobiography, with major life events recounted in chronological order, does not in my view preclude it from being essentially autobiographical in nature

34. In considering this issue, I have had regard to 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.”

35. 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.

36. Applying that approach, I am satisfied, and find as a material fact, that sections 2 to 5 inclusive of the book the subject of this appeal are a work of autobiography within the meaning of paragraph 7(2)(b) of the Guidelines.

37. The first section of the book cannot be said to be autobiographical. It constitutes an overview of the place and role of **REDACTED** in Irish society in the 19th and 20th centuries and is based in part on works of literature (such as John B. Keane's *The Chastitute, Letters of a Love-Hungry Farmer, Letters of a Matchmaker, The Field and Sive*, William Trevor's *The Ballroom of Romance* and Patrick Kavanagh's *The Great Hunger*), articles in scholarly journals (such as *History Ireland, Women and Gender Studies Series* and *Irish Geography*) and academic textbooks (such as *Irish Women and Irish Migration* and *Women in Ireland 1800-1918: A Documentary History*). It also incorporates a number of newspaper advertisements, ranging in time from the *Irish Times* in 1875 to *The Kerryman* in 1989.

38. It is manifest that a significant level of research into relevant historical material was necessary to write this section of the book, and most of that material is significantly more than 30 years old. Accordingly, I am satisfied, and find as a material fact, that the first section of the book relates to archives which are more than 30 years old relating to Ireland or Irish people and is based largely on research from such archives, within the meaning of paragraph 7(2)(d) of the Guidelines.

39. In reaching this conclusion, I am applying the same approach adopted by this Commission in the determination reported at **20TACD2016**, where it was stated:-

"The word 'archive' is commonly understood to relate to public records of an historical nature. The content of '[TITLE REDACTED]' is predominantly historical in terms of fact and information. I do not take the view that the meaning of 'archives' in the guidelines relates only to research of a scholarly nature in the National Archive or the National Library, though the historical content of this work is of such a nature as to be found in these archives. The stipulation in the guidelines that the archive be 'more than 30 years old' means the material in the archive will undoubtedly take on

an historical character. In this work, the majority of the data relates to events which travel back far in excess of 30 years. For the minority of content which references more recent events, I do not believe that this content adversely affects the application of paragraph 7(2)(d) from the Appellant's point of view. In relation to such content I apply the maxim 'de minimis non curat lex'."

40. Having so determined, I must next consider whether the book the subject of this appeal incorporates the Appellant's unique insight into the subject matter, is regarded as a pioneering work and makes a significant contribution to the subject matter by casting new light on the subject matter (or person in the case of biographies and autobiographies) by casting new light thereon or changing the generally accepted understanding.

41. As outlined in previous determinations of this Commission, the aforesaid test as contained in the second part of paragraphs 7(a) to 7(d) of the 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 the subject or person,

or

(ii) changing the generally accepted understanding of the subject or person.

42. I have concluded that all three elements of the test have been satisfied in the instant appeal. While the thresholds set are undoubtedly high, both the book itself and the evidence given by the Appellant supported her submission that the work was the result of her unique insight into and understanding of **REDACTED** life in Ireland. I am also satisfied that the work can be said to be pioneering; the uncontroverted evidence of the Appellant was that this is the only book of its kind published in Ireland. I am further satisfied that the book casts new light on the life of the Appellant and other spouses of **REDACTED**.

- 43.** While the book is presented in a light-hearted and accessible manner, the information contained therein is serious, relevant and thought-provoking, and constitutes a worthwhile piece of sociology. I am therefore satisfied that the work has cultural merit within the meaning of paragraph 5 of the Guidelines.
- 44.** I have therefore concluded, and find as a material fact, that the book satisfies the requirements of paragraph 7(2)(d) in relation to section 1 of the book and satisfies the requirements of paragraph 7(2)(b) in relation to sections 2 to 5 inclusive. As paragraph 7(2)(e) permits a work to satisfy the requirements of paragraph 7 if it satisfies any combination of paragraphs 7(2)(a), 7(2)(b), 7(2)(c) and 7(2)(d), I have determined that the Appellant's book is original and creative and has cultural merit.
- 45.** The final issue to be considered is whether the Appellant is excluded from relief by virtue of paragraph 8(b)(iii) of the Guidelines because the work was created for advertising or publicity purposes. Having carefully considered the evidence, I find that the Appellant is not so excluded.
- 46.** The Appellant gave evidence, which I found to be truthful and accurate, that her television and radio appearances are intended to increase sales of the book, and not vice versa. There is only one brief reference to the Appellant's website in the book. Any gain to the Appellant's online businesses which results from the book can only be seen as an incidental benefit. I am therefore satisfied, and find as a material fact, that the book the subject matter of this appeal was not written for advertising or publicity purposes.

E. Determination

- 47.** For the reasons outlined above, I find that:-

(a) The book the subject matter of this appeal is in large part (sections 2 to 5) a work of autobiography within the meaning of paragraph 7(2)(b) of the Guidelines and in a lesser part (section 1) a work relating to archives which are more than 30 years old relating to Ireland and Irish people, and based largely on research from those archives within the meaning of paragraph 7(2)(d) of the Guidelines;

- (b) The book incorporates the Appellant's unique insight into the subject matter of **REDACTED** life in Ireland in past and present times, can be regarded as a pioneering work and makes a significant contribution to the subject matter by casting new light on the subject matter by casting new light or changing the generally accepted understanding;
- (c) The book is therefore an original and creative work;
- (d) The book does have cultural merit within the meaning of the Guidelines; and,
- (e) The exclusion to eligibility contained in paragraph 8(b)(iii) of the Guidelines is not applicable in the instant case.

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

October 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