



**179TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction and Background**

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 "artists' exemption."
2. The Appellant's works, that are the subject of this appeal, consist of, inter alia, **DESIGN A** which are incorporated into originally crafted framed artworks on ceramic, metal, paper or other materials. The Appellant submitted a claim for Artists' Exemption on 1 September 2019 in respect of a body of his artistic works, including those with and those without **DESIGN A**, on the basis that all his works were original and creative and having cultural or artistic merit, for the purposes of Section 195 TCA 1997.
3. The Appellant's claim seeking the exemption was part refused by the Respondent. The exemption was refused only in respect of works that were, in the Respondent's opinion, predominantly reproductions of **DESIGN A** and which included calligraphy and a literary



quote. It is the Respondent's view that **DESIGN A** are not original material as required by the legislation and that the calligraphy and quotes do not come within the category of "a painting or other like picture" under which the Appellant made his application.

4. Accordingly, the Revenue Commissioners advised the Appellant that they were unable to make a determination that his **DESIGN A** works qualified for the Artists' Exemption scheme via letter on 13 September 2019. In that same letter the Respondent advised the Appellant that his other works, which were not predominantly **DESIGN A**, did qualify for a determination that they were original and creative and generally recognised as having cultural or artistic merit. The letter also advised the Appellant of his right to appeal the matter to the Tax Appeals Commission.
5. The Appellant duly appealed that decision by the Revenue Commissioners to the Tax Appeals Commission, pursuant to Section 195(6) (b) of TCA 1997, on 20 March 2020.
6. This appeal is being determined, by agreement of the parties, without an oral hearing in accordance with Section 949U Taxes Consolidation Act (TCA 1997).

## **Relevant Legislation**

### Section 195 of TCA 1997.

This section is set out in Appendix 1

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

These are set out in Appendix 2. ("The Guidelines").

## **Submissions by the Appellant**

In his Notice of Appeal the Appellant submitted:



*"2: ...The design and layout of the products are unique and my design. Every border I use I have designed and drawn to fit my products. The layout of **DESIGN A** combination is again my design and unique to me. Each and every **WORK** - the layout is different - its balanced to suit the weight of **DESIGN A**.*

*3: The products: **THE WORKS** are unique and entirely my design - they are not found anywhere else. I have designed the layout of each and every single job is again different - its NOT just a case of changing a **DESIGN A** from a clipart collection! I make the **WORKS**..... they are described by customers of pieces of art.*

*4: The process:*

*The process of making each item is in itself part of the creative process and use similar printing techniques as print artists do. Again, its NOT just a case of hitting print on a computer! In general; I get the brief from the customer as to what **DESIGN A** they want and any text or other elements they want in the design. If I haven't already drawn **DESIGN A**, I then research and draw them, using my mantle and colours and unique **DESIGN A**. I then create a balanced layout with any additional text and add my own design border (which I have designed and drawn). This is output in negative format. For a **WORK** - I then use a heat press process to place image on the main piece. Then for instance a **WORK** - I'd design layout for the **WORK**, and finish making the **WORK** for hanging.*

*Again; I do not just reprint existing **DESIGN A**. The **DESIGN A** is only a part of each product. The whole product/ process is unique and every product is my design and cannot be found anywhere else.*

*The **DESIGN A** are my design, the borders are my design and I have drawn. Each and every product layout is different and of my design and unique to me..."*

*"It is not a case of using clipart of **DESIGN A**. The **DESIGN A** are only part of the product – many of which I create/draw myself. Every part of my products I have designed and made myself... No two items are the same. Every item goes through the same process as an artisan printmaker. My designs and products are not a cheap mass-produced item, Each one is custom made and hand-made..."*



The Appellant was asked to submit details and examples of the works that did qualify for a determination and to advise whether the use of **DESIGN A** was the only distinguishing factor or alternatively set out what the distinguishing factors were? He replied as follows:

*"I am writing in connection with my **DESIGN A** designs. And putting my case forward that these are regarded as original work.*

*1. The **DESIGN A** I use in my work - are only one element in any of my products. All of the other elements are unique to me. For instance: • My **WORK**: The product itself is designed to be a piece of art. I have designed the concept, look and feel of the product (You will not find this or similar anywhere in the world). I have designed the layout of the **WORK**. The printing of the **WORK** is handmade - its the very same process as traditional printmaking- it requires skill and knowledge to produce an even and strong print. I have created the **DESIGN A** myself - usually from **REDACTED**. I have designed and produced the **WORK**. My tiles are Italian made, my frames are handmade in Ireland. I put together the whole product myself, by hand. • Another **WORK**. Again, The **DESIGN A** is only one element. The concept, design and layout of the item is unique to me. (Again, you will not see similar elsewhere). I would have designed many of the borders myself and drawn all of them from scratch. The making of the **WORK** - also requires printmaking techniques, skill and knowledge. My **WORK** bases, where possible are hand-made in Ireland. I make the whole item myself from start to finish. I created the process for positioning and drilling and inserting the timepiece. • My **WORK** collection again use my **DESIGN A**, but are designed as watercolor **DESIGN A WORKS**. All of this I design and make, and is unique to me. All my items are all designed and made by me. You will not see the same anywhere.*

*2. The **DESIGN A** artwork I use I HAVE CREATED myself. And all my products (bar some of the prints) - go through a printmaking process - the end product is not just printed from a computer. Please don't mix my work with some **DESIGN A** Companies that have a database of **DESIGN A** and they just print off a template as a product.*

*My **DESIGN A** is created by me and all my products use different processes in making them. All of my **DESIGN A** I have drawn/created for me, by me. My products do not use templates, each one I go through one by one and all are hand made.*

*3. In Summary: The **DESIGN A** are only one element in each of my products. My **DESIGN A** do not come from a clipart collection database. My **DESIGN A** are created by me. My*



*products do not come from a computer printer - there are other techniques in making them. The processes I use to create my products are similar/same as fine art printmaking. All my work is personalised to each customer - no part is mass-produced or template form All of my items are handmade and require skill and knowledge to produce. You will not find my products anywhere else. My products are unique - its not just a reproduction of **DESIGN A**, Each item I make is an original and a creative work. The following pages are some of my **DESIGN A** artwork. As you can see the image of the **DESIGN A** is just one element on these pieces. The design, technique and processes make these unique works of art. Customers own comments - refer to them as unique and special pieces of art..."*

### **Submissions by the Respondent**

The Respondent, in its statement of Case submitted the following:

*"...2.8 Paragraph 4 of the guidelines sets out the criteria to be met in order for a work to be regarded as original and creative and states that 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.*

*2.9 The Revenue Commissioners were not satisfied that all of the appellant's works met the requirements of paragraph 4 of the guidelines, in particular the works which include **DESIGN A**..."*

The Commission asked the Respondent to submit details and examples of the works that did qualify for a determination and advise whether the use of **DESIGN A** was the only distinguishing factor or alternatively set out what the distinguishing factors were?

The Respondent replied;

*"A determination was granted by Revenue in respect of items numbered 1-3, this determination will also apply to any future similar works. No determination was granted in respect of items 4 – 6, the works in question are predominantly **DESIGN A**, which include calligraphy and in one instance a quote. It is the view of the Revenue that the **DESIGN A** are not original material as required by the legislation and guidelines governing the scheme. Furthermore the additional content does not come within the category of work "a painting or other like picture" under which the appellant made his application.*



## Analysis and Findings

7. Under the Guideline, 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”*.
8. The Artists’ Exemption was refused in respect of works that were, in the Respondent’s opinion, predominantly **DESIGN A** and which included calligraphy and a literary quote. The generation and manufacture of **WORKS** of **DESIGN A** is a commonly sold product. The concept of presenting **DESIGN A** for **WORKS** is also common. While the drawing or painting of **DESIGN A** can be original and imaginative, most **DESIGN A** are already predetermined **REDACTED** and are not the product from the creator’s imagination.
9. There are elements within the Appellant’s **DESIGN A** works that clearly derive from his imagination, and indeed in some instances he creates **DESIGN A** where none previously existed. Also significant artistic skill is applied in the design of the presentation of the **DESIGN A**. Nevertheless, I do not accept that his body of **DESIGN A** works, which is predominantly made up of reproductions, albeit with modification, of **DESIGN A**, falls within *“a unique work of creative quality brought into existence by the exercise of its creator’s imagination”*.
10. I agree with the Respondent’s view that the **DESIGN A** are not original material as required by the legislation and that the addition of the calligraphy and quotes to **DESIGN A** do not come within the category of “a painting or other like picture” under which the Appellant made his application.

## Determination

For the reasons outlined above, I conclude that the Appellant is not entitled to the Artists’ Exemption in respect of the works under appeal.

I will, therefore, not allow the appeal and determine that the decision of the Respondents that the Appellant in respect of the body of work under appeal is not entitled to the exemption afforded by Section 195(3) of the Taxes Consolidation Act 1997, as amended, should stand.





11. This appeal is thus determined in accordance with S.949AL TCA 1997.

**APPEAL COMMISSIONER**

**PAUL CUMMINS**

**Designated Public Official**

**6 October 2020**



## Appendix 1

The provisions of Section 195 of TCA 1997, as they were as of the date of the application for exemption, provided as follows: -

“(1) In this section...

“work” means an original and creative work which is within one of the following categories:

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

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

(i) who is —

(I) resident in one or more Member States, or in another EEA state or in the UK, and not resident elsewhere, or

(II) ordinarily resident and domiciled in one or more Member States, or in another EEA state or in the UK, 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.

.....

(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.

.....

(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 Chomhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

(b) Without prejudice to the generality of paragraph (a), a guideline under that paragraph may –

(i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and

(ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.



(13)(a) Where a claim for a determination under subsection (2) is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under subsection (12) for the time being in force.

(b) Paragraph (a) shall, with any necessary modifications, apply to –

(i) a determination by the Appeal Commissioners under subsection (8) on an appeal to them under subsection (6) in relation to a claim mentioned in paragraph (a), and

(ii) a rehearing by a judge of the Circuit Court of an appeal mentioned in subparagraph (i) and, to the extent necessary, to the determination by the High Court of any question of law arising on such an appeal or rehearing and specified in the statement of a case for the opinion of the High Court, by the Appeal Commissioners or, as the case may be, a judge of the Circuit Court.

(14) Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.

(15) On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under subsection (12) for the time being in force.

(16)(a) The Revenue Commissioners may publish, or cause to be published, the name of an individual who is the subject of a determination under subsection (2).

(b) Publication under paragraph (a) may, as appropriate, include the title or category of the work of an individual.”



## **Appendix 2**

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

#### **Introduction**

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

#### **General**

1. Section 195(1) provides that a “work” for the purposes of the Section must be both an original and creative work in one of the following categories, namely:
  - (a) a book or other writing,
  - (b) a play,
  - (c) a musical composition,
  - (d) a painting or other like picture,
  - (e) a sculpture.
2. To secure exemption under Section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.
3. In making a determination under Section 195, the Revenue Commissioners may, as provided for in that Section, consult with such person or body of persons as may, in their opinion, be of assistance to them.

#### **Original and Creative**

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



### **Cultural Merit**

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

### **Artistic Merit**

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

### **Criteria for Non-fiction Work**

7. (1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of Section 195, by reference to which the questions whether a work, being a nonfiction book or other 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.”

