



05TACD2020

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

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."

Matter under Appeal

2. The Appellant is the author of a book entitled '**Redacted**', which was published in 2018. The Appellant submitted an artists' exemption claim form in 2018 and by letter dated 23 October 2018 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 10 April 2019.
3. This appeal is being determined, by agreement of the parties, without a hearing in accordance with Section 949U Taxes Consolidation Act (TCA 97).

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 Comhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.

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

Heritage Act 1995 Section 6

This is set out in Appendix 3.

Submissions by the Appellant

4. It is submitted by the Appellant that the book the subject matter of the appeal is **Redacted**. The book is

*“a new way of looking at the **Redacted**”*

5. In his Statement of Case to this Appeal, the Appellant states that he is submitting the book under Paragraph 7 (c) (ii) where the work

“incorporates the authors’ 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”.

6. The Appellant goes on to say:

*“the book is endorsed by **Redacted**”*

Submissions by the Respondent

7. The Respondent has submitted the following arguments in support of its decision not to make a determination qualifying the work for Artists Exemption:



“In the appellants original application to the Revenue Commissioners for a determination in respect of this work, the appellant stated that the book was a work of non-fiction and the appellant stated on the application form that the book came within paragraph 7(2)(a) of the guidelines. The appellant did not specify which of the categories in 7(2)(a)(i) – (ix) the work came within. However, the appellant stated the work “incorporates the authors unique insight into the subject matter and is regarded as a pioneering work and also make a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it”.

It is noted that the appellants Notice of Appeal to the Tax Appeals Commission, dated 10 April 2019, repeats the same point.

8. Paragraph 7 sets two hurdles which must be overcome in order for a non-fiction work to qualify for an artist’s exemption determination by the Revenue Commissioners. Firstly, the work must come within one of categories listed in the paragraph. Secondly the work must also incorporate the authors unique insight into the subject matter and be regarded as a pioneering work, making a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.
9. It is submitted by the Revenue Commissioners that a work must overcome both hurdles in order to qualify for the exemption and that if a work fails to overcome one of the hurdles that the other requirement becomes moot.
10. The Revenue Commissioners accept that the book is a work of non-fiction and examined the book to determine whether it came under any of the categories of work listed in paragraph 7 of the guidelines.
11. The Revenue Commissioners concluded that this work is a guide to **Redacted**. In support of this view Revenue would make the following points:
 - The subtitle of the book is “**Redacted**”.
 - The book is described on the inside cover as “**Redacted**”.
 - In the Introduction to the book on page 1 it states, “**Redacted** is written as a practical guide to provide **Redacted**”.



- The book is **Redacted** pages long.
- The book includes approx. **Redacted** pages at the back of the book which include **Redacted**.
- The remainder of the book focuses on the **Redacted**
- The book does not have as its subject matter any of the arts subjects listed in paragraph 7(2)(a) of the guidelines. It is not a biography, or an autobiography as set out in paragraph 7(2)(b). In addition, it does not meet the requirement regarding the function of the Heritage Council as required by paragraph 7(2)(c) nor is it based on archives more than 30 years old as required by paragraph 7(2)(d). It is also not a combination of the aforementioned paragraphs as required by paragraph 7(2)(e).

12. It is therefore the view of the Revenue Commissioners that this work does not meet the criteria for non-fiction works that is required by paragraph 7 of the guidelines.

Analysis and Findings

13. Paragraph 7 of the guidelines which govern the artists exemption scheme sets out the criteria to be met in order for a non-fiction book to qualify for the artists exemption scheme and states:

(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,



- (vii) literary history,*
- (viii) 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.

14. 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.

15. 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.”

16. 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.”

17. I am wholly satisfied, and find as a material fact, that “Redacted” 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. Within paragraph



7(2) there are five categories of qualifying non-fiction works, viz., (a), (b), (c) (d) and (e) (See Appendix 2).

18. The Appellant, according to the Respondent, originally sought to have his work classified under Paragraph 7(a) of the Guidelines. I fully accept the Respondent's view that the book does not meet any of the classifications of non-fiction work within paragraph 7(a).

19. The Appellant, in his Statement of Case to this appeal, stated that he was seeking the classification c(ii) within Paragraph 7 for his work. This classification states that the work:

"(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,"

However, the classification c) within Paragraph 7 also requires the work to meet the classification c (i) within Paragraph 7(2) as follow:

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

20. Appendix 3 sets out Section 6 of the Heritage Act 1995, which outlines the functions of the Heritage Council as:

"to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways."

21. Having carefully read and considered the book "**Redacted**", I am satisfied that the book is not a work related to the functions of the Heritage Council.

22. Having so determined, I need not consider whether the book the subject of this appeal

“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,”

Determination

For the reasons outlined above, I find that: -

23. The book the subject matter of this appeal is not a non-fiction work within paragraph 7(2) of the Guidelines.
24. I therefore conclude that the Appellant is not entitled to the artists’ exemption.
I will, therefore, disallow the appeal and determine 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 stand.
25. This appeal is thus determined in accordance with S.949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

19th December 2019



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, and not resident elsewhere, or

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



Appendix 2

Guideline drawn up under Section 195(2) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle 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 practice 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.”



Appendix 3

Heritage Act 1995

- 6.—(1) The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.
- (2) References to the National Monuments Advisory Council, the Historic Monuments Council or the Wildlife Advisory Council in any enactment or instrument made thereunder shall, where appropriate, be construed as references to the Council.
- (3) The Council shall in particular—
- (a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,
 - (b) co-operate with public authorities, educational bodies and other organisations and persons in the promotion of the functions of the Council,
 - (c) promote the coordination of all activities relating to the functions of the Council.

