



**112TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal involves a claim for exemption pursuant to section 195 of the Taxes Consolidation Act as amended ('TCA 1997') commonly known as 'artists' exemption'.
2. The Appellant's authored work is a non-fiction book titled REDACTED. The Appellant submitted a claim for artists' exemption in 2019 on the basis that his work was an original and creative work having cultural or artistic merit, for the purposes of section 195 TCA 1997. The Appellant's claim for exemption was refused by the Respondent on 28 June 2019 and the Appellant duly appealed to the Tax Appeals Commission.
3. This case is adjudicated without a hearing in accordance with the provisions of Section 949U Taxes Consolidation Act (TCA) 1997 by agreement with the parties.

**Background**

4. The Respondent accepts that the book is a work of non-fiction. However, after examining the book, the Respondent was not satisfied that the work came within any of the categories of work listed in paragraphs 7(2) (a) to (e) of the guidelines for the time being in force under section.195(12) TCA 1997.

**Legislation and Guidelines**

5. The relevant legislation is contained at section 195 of the Taxes Consolidation Act 1997, a copy of which is attached at Appendix I. In considering this appeal, I am obliged, in compliance with section 195(13)(b) TCA 1997 to have regard to the guidelines for the time being in force under s.195(12). The work in question must satisfy the mandatory requirements of those guidelines, a copy of which is attached at Appendix II.

### **Submissions**

6. The Appellant submitted that his work is original and creative, is all his own creation including the drawings.
7. The Appellant submitted that his book is a unique manual, personalised and a creative work of art.
8. The Appellant submitted in his appeal to the Tax Appeals Commission that he believed the work should be considered under paragraph 4 of the guidelines.
9. The Respondent submitted that an application dated 25 June 2019 was received for a determination by the Revenue Commissioners in respect of the work entitled REDACTED in accordance with section 195(2) TCA 1997.
10. The Respondent submitted that it accepts that the work is a book and comes within the categories of work listed in Section 195(1) of the TCA 1997. The Respondent further accepts that the book is a work of non-fiction.
11. The Respondent submitted that the Appellant described the book as a cookbook and after examining the book, the Respondent was not satisfied that the work came within any of the categories of work listed in paragraphs 7(2) (a) to (e) of the guidelines for the time being in force under s.195(12) TCA 1997.

### **Analysis**

12. The Appellants' book is an informative read. It is colourful and well-illustrated and it contains his background in cooking, background stories about various dishes, tips and



techniques for cooking, serving as well as comprehensive recipes for many vegetarian dishes.

13. It is acknowledged that the work falls within paragraph 4 of the guidelines insofar as all parties agree that the book is original and creative.
14. However, to succeed in a claim for artists' exemption, the work the subject of this appeal, being a work of non-fiction, must first fall within paragraph 7 and satisfy the criteria in paragraph 7(2) of the Guidelines, which sets out the qualifying criteria for works of non-fiction books.
15. The book does not fall within paragraph 7 (2) (a), (c), (d) or (e), but in my view, it can be only considered to qualify for the determination sought in this appeal if it meets the criteria set out in paragraph 7(2)(b)(ii) of The Guidelines, i.e. if it is treated as an autobiography.
16. The test therefore to be applied is specifically, whether the Appellants' work constitutes an autobiography within the meaning of the said guidelines.
17. The Tax Appeals Commission already considered the meaning of 'autobiography' in Determination 20TACD2017 citing the Supreme Court dicta in *Inspector of Taxes v Kiernan* [1981] 1 I.R.117, applied by Donnelly J. in *Coleman v Revenue Commissioners* [2014] IEHC 662. The Supreme Court dicta provides as follows;

*'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 meaning, 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.'*

18. The word "autobiography" has widespread and unambiguous currency. It is normally accepted that an autobiography is an account of a person's life written by that person.
19. The Tax Appeals Commission in Determination 20TACD2017 regarded the measurement in a book, of autobiographical content, as a factor which may be considered in the determination of whether a work constitutes an autobiography but suggested that a determination on this basis alone might be unduly reductive. While the actual number of pages of autobiographical material in a book is not conclusive evidence of the character of the work, it is nonetheless an important consideration.
20. In this case, the book does include some background and anecdotes about the author and his family. The recipes, illustrations and styling of the book however, are similar to many other cookbooks and the Appellant described the book as such. The preamble to the book in fact is dedicated entirely to the art of cooking.
21. The book falls significantly short of the characteristics of an autobiography. In my view the character and essence of this work is that of a cookery book and not of an autobiography.
22. I determine that REDACTED does not satisfy the requisite legal tests contained in the guidelines, in particular paragraph 7(2)(b), because it does not constitute an autobiography. As a result, it is not necessary to consider whether the Appellants' work satisfies the second part of the paragraph 7(2)(b) test namely, whether the work '*... 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, ...*'.

## Determination



23. The artist exemption legislation and guidelines set out a series of technical legal tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, I determine that REDACTED does not satisfy the requisite legal tests, in particular paragraph 7(2)(b) of the guidelines and I determine that the Appellant is not entitled to avail of the exemption pursuant to s.195 TCA 1997. This appeal is determined in accordance with s.949AL TCA 1997.

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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**9 April 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, 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 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.”*

