



Ref: 118TACD2020

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 "artists' exemption."

Matter under Appeal

2. The Appellant is the co-author of two books entitled '*WORK A*' and '*WORK B*'. The Appellant submitted an artists' exemption claim form in 2016. On July 27th YEAR 2 the Appellant received a letter from the Respondent which stated that the works submitted, '*WORK A*' and '*WORK B*' did not meet the required criteria set out in the Guidelines drawn up under section 195(2) of the Taxes Consolidation Act 1997 (TCA 1997) for the Artists Exemption Scheme by An Chomhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.

3. On November 3rd YEAR 2, following further submissions by the Appellant, the APPELLANT received a letter from the Respondent which stated that the Revenue Commissioners had re-considered the works but failed to make a determination. In this letter the APPELLANT was advised of the option of submitting a Notice of Appeal to the Tax Appeals Commission.
4. The Appellant duly appealed that decision by the Revenue Commissioners to the Tax Appeals Commission, pursuant to Section 195(6)(b) of TCA 1997, in May 2018.
5. This appeal is being determined, by agreement of the parties, without an oral hearing in accordance with Section 949U Taxes Consolidation Act (TCA 1997).

Matters not under appeal

6. For the sake of clarity and to best understand the scope of this appeal, it is necessary for me, in the light of the documentation submitted by the Appellant within this appeal, to explain which works of the Appellant are not covered by this appeal.
7. The Appellant, initially applied for Artist's Exemption when the first book was published (*WORK A*, MEDIA/PUBLISHER). This application was submitted in YEAR 1. In THE application the APPELLANT requested exemption for the work in GENRE K non-fiction books. With this, the APPELLANT delivered copies of the book in question to the Respondent, along with soft copies of the second book (*WORK B*, MEDIA/PUBLISHER) which was still a work in progress.
8. In YEAR 3 the Appellant filed her Notice of Appeal to the Tax Appeals Commission. In submitting the grounds of appeal, the Appellant made the following statement:

"I am appealing against the Revenue Commissioner's failure to make a decision concerning artist's exemption in GENRE K non-fiction. I was instructed by staff at Revenue to file these works under category D (a painting or other like picture). The work successfully met the 'Original and Creative' criteria of the Guidelines but I disagree with the assessment that my illustration work failed to meet the 'Artistic and Cultural Merit' aspect of said criteria..."



REDACTED

9. Subsequently in setting out the Statement of Case in this appeal, the APPELLANT stated

“My further published works since my initial application REDACTED...to be included in the Statement of Case. These titles are:

WORK A

WORK B

OTHER WORKS

OTHER WORKS

OTHER WORKS

OTHER WORKS

REDACTED...”

10. The Appellant apparently believes that the published works, other than ‘*WORK A*’ and ‘*WORK B*’, cited above, may fall within the ambit of this appeal. Alternatively, the APPELLANT may believe that this appeal relates to securing *REDACTED*. However, section 195 (6) TCA 1997 (the subsection dealing with appeals to the Tax Appeals Commission) speaks of the artist who:

“has made due 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...that the individual has written, composed or executed...solely or jointly with another individual...and

The Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2) (a)(ii) in relation to the claim...”

11. Since the Revenue Commissioners have only been asked by the Appellant to make a determination under section 195 TCA 1997 in relation to the two works, namely, ‘*WORK A*’ and ‘*WORK B*’, and the Revenue Commissioners have only failed to make a



determination (for exemption) in respect of those works, then necessarily, only those two works can be the subject of this appeal.

12. Accordingly, all the other works cited by the Appellant will not be considered further within this appeal. That does not, however, preclude the Appellant from making a separate application(s) for exemption to the Revenue Commissioners in respect of those other works.

Background

13. The Appellant, REDACTED
14. The Appellant, initially applied for Artist's Exemption for 'WORK A' and 'WORK B' under Category (a): Guidelines under Section 195(12), as works being "*A book or other writing*".
15. On July 27th YEAR 2, the Appellant was notified that the work submitted did not meet the required criteria set out in the Guidelines. On November 3rd YEAR 2 the Revenue Commissioners advised, following further correspondence with the Appellant that they had re-considered the work submitted but failed to make a determination.
16. The Respondent on 11 November YEAR 1 advised that the APPELLANT had incorrectly stated that the works 'WORK A' and 'WORK B' fell under Category (a). Instead, the Respondent advised the Appellant to change the application so as to fall under Category (d) as works being "a painting or other like picture". The Respondent wrote:
- "If you wish to claim for the work in GENRE K your work does not come under the description a book or other writing and Category (d) painting or other like picture is the correct category"*
17. The Appellant changed the application accordingly. The relevant correspondence between the Appellant and the Respondent is set out in Appendix 4.
18. The Appellant has stated in REDACTED submissions to this appeal:

"REDACTED"

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").

Heritage Act 1995 Section 6

This is set out in Appendix 3.

Submission by the Appellant

19. The Appellant stated:

"I am appealing against the Revenue Commissioner's failure to make a decision concerning artist's exemption in GENRE K non-fiction. I was instructed by staff at Revenue to file these works under category D (a painting or other like picture). The work successfully met the 'Original and Creative' criteria of the Guidelines but I disagree with the assessment that my work in GENRE K failed to meet the 'Artistic and 'Cultural Merit' aspect of said criteria.

REDACTED

As I was instructed to enter the work into category D (painting) and not category A (book or other writing), ...REDACTED I was involved in producing each book from the initial conception of the idea for each, the research and content plans, selecting content for each and then the creative editing throughout.

The theme of all books in question is REDACTED. I am at a loss as to why this work would not fulfil the 'cultural merit' section of the Guidelines, as the whole aim of the work is to highlight and celebrate Irish culture at home and abroad. REDACTED

REDACTED

The content and form of my work enhances national and international culture by REDACTED



REDACTED

Subsection 6, Artistic Merit, states “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.”

It is hard to try and justify how my work has artistic merit – REDACTED

I believe that the failure to make a determination is due to the original misinformation that my work should be assessed as a painting rather than a book. REDACTED

20. In support of the appeal the Appellant submitted witness testimonials by experts in the field... REDACTED

Submissions by the Respondent

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

“2.1 An application dated 19 September Year 1 for a determination by the Revenue Commissioners under section 195(2) was submitted by the appellant.

2.2 The application was in respect of GENRE K. 2 books entitled “WORK A” and “WORK B”.

2.3 Section 195(12) provides for the drawing up of guidelines for the Artists Exemption scheme by the Arts Council and the then Minister for Arts Heritage and the Gaeltacht (referred to hereafter as the guidelines)...

2.5 Section 195(13) states that where a claim for a determination is made to the Revenue Commissioners, that the Revenue Commissioners shall not make a determination in respect of a work unless it complies with the guidelines...

2.6 It a requirement of the scheme that in order for a work to qualify for a determination the work must be generally recognised as having either cultural or artistic merit.

2.7 Paragraph 5 of the guidelines sets out the criteria to be met in order for a work to be regarded as having cultural merit

2.8 Paragraph 6 of the guidelines sets out the criteria to be met in order for a work to be regarded as having artistic merit.



2.9 The Revenue Commissioners were not satisfied that the work met the criteria of either paragraphs 5 or 6 of the guidelines and were therefore unable to make a determination in respect of the work..."

22. The Respondent also addressed the comments of the expert witness's submitted by the Appellant, in the following terms:

" Artistic and Cultural Merit

In order for a work to be granted a determination by the Revenue Commissioners under the provisions of section 195 TCA 1997, it is necessary for the work to have either cultural or artistic merit.

The terms cultural and artistic merit are defined in paragraphs 5 and 6 of the guidelines for the artists exemption scheme...

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.

In order for the appellant's appeal to succeed it is submitted that it is necessary for the appellant to satisfy the Appeal Commissioner that the work clearly comes within the requirements of either paragraph 5 or paragraph 6 of the guidelines governing the scheme.

Witness Statement from REDACTED...

In particular, no evidence is contained in the statement of how the works meet the requirement to "enhance to a significant degree one or more aspects of national or international culture" (paragraph 5) or "enhances to a significant degree the canon of work in the relevant category" (paragraph 6).



Witness Statement from... REDACTED

REDACTED

The witness statement does not address how the appellants work meets the criteria that are set out in paragraphs 5 and 6 of the guidelines and no evidence is contained in the statement to show how the works meet the criteria required in either of the paragraphs. In particular, no evidence is contained in the statement of how the works meet the requirement to “enhance to a significant degree one or more aspects of national or international culture” (paragraph 5) or “enhances to a significant degree the canon of work in the relevant category” (paragraph 6).”

Analysis and Findings

23. Both works, ‘WORK A’ and ‘WORK B’ are represented by the Appellant as works of non-fiction. The cover of ‘WORK A’ describes the book as a “REDACTED” about “REDACTED”. ‘WORK B’ is described on its cover as “REDACTED” and “REDACTED”. The latter book includes REDACTED

24. The author describes the work in the following terms:

“REDACTED.”

25. For the above reasons, I believe, on balance, it is reasonable to class the works as non-fiction.

Conditions for Section 195 exemption

26. Exemption under Section 195 TCA 1997 applies to an individual who has written, composed or executed, either solely or jointly with another individual, a work generally recognised as having, cultural or artistic merit.

27. For the purposes of the exemption a ‘work’ means an original and creative work which is within one of the five categories in Section 195(1).

28. The first of the five categories in section 195(1) is (a) ‘a book or other writing’ while the fourth category is (d) “a painting or other like picture”. The Respondent, based on the correspondence appears to accept that the two works are ‘original and creative’ within the meaning of Section 195 and the Guidelines thereunder. However, as can be seen from Appendix 4, which sets out the exchange of correspondence between the Respondent and



the Appellant, upon the original application for exemption, the Respondent steers the Appellant to make the application under section 195(1)(d) and not under section 195(1)(a) as originally intended by the Appellant.

29. I fail to understand how the Respondent has sought to classify the two works ‘*WORK A*’ and ‘*WORK B*’ under section 195(1)(d) as a work of “painting or other like picture”. True there are paintings or other like pictures within both works but the works are clearly “a book or other writing”. It may be that the Appellant’s language in her original application placing emphasis on GENRE K caused the Respondent to believe REDACTED

30. In responding to the expert witness statement from WITNESS B, the Respondent stated in Year 4:

“REDACTED”

31. To me, it seems strange that the Respondent, who will have handled multiple applications for artist’s exemption, would seek to make such a distinction when handling a first time applicant for the relief, such as the Appellant. REDACTED This is equally mystifying when Section 195 (2) (a) speaks of the relief applying to an individual “*who has written, composed or executed, as the case maybe, either solely or jointly with another individual, a particular work...*” The legislation does not use the term “author”.

32. The Appellant has stated:

“REDACTED.”

33. The Appellant further asserts:

“REDACTED.”

34. Based on the submissions received and shared between the parties in this appeal and the correspondence outlined in Appendix 4, I can find no basis for the assertion by the Respondent that the Appellant cannot or did not make an application under section 195 (1) (a).

Criteria for Non-fiction Work



35. Paragraph 7 of the Guidelines, which govern the artists exemption scheme, sets out the criteria for determining whether a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit.

36. I am satisfied, and find as a material fact, that both '*WORK A*' and '*WORK B*' are properly classed as works of non-fiction. Accordingly, the books can only be considered original and creative and to have, or to be generally considered as having, cultural or artistic merit if they satisfy the criteria detailed in paragraph 7(2) of the Guidelines. Therefore, the Respondent's assertion when commenting on the expert testimonials REDACTED

is not pertinent since the criteria to establish cultural or artistic merit for a non-fiction work, such as '*WORK A*' and '*WORK B*' resides in paragraph 7(2).

37. Paragraph 7 (2) 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.”

38. The question arises then as into which category, the two works in this appeal might fall.

39. I do not believe either work falls easily with category 7 (2) (a), 7 (2) (b), 7 (2) (d) or 7 (2) (e). It remains to be considered whether the work falls within category 7(2) (c).

40. The classification (c) within Paragraph 7 (2) requires the work(s) be a work, in the opinion of the Revenue Commissioners, following consultation with the Heritage Council, which is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995. There is no evidence that the Respondent consulted the Heritage Council in regard to the works under appeal. The reason for that is presumably because the Respondent was never considering category (c) as having relevance in the first place.

41. Appendix 3 sets out Section 6 of the Heritage Act 1995, which outlines among other things 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.” (emphasis added)... and

3) The Council shall in particular—

(a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage” (emphasis added)

42. So, is this work related to the identification, protection, preservation and enhancement of the national heritage? In this regard....REDACTED



47. I agree with the Appellant's assertion that:

"REDACTED."

48. The Appellant asserts that the works and her work are:

"REDACTED"

"The content and form of my work enhances national and international culture REDACTED... was the sole purpose of my ...titles – 'WORK A' and 'WORK B'."

49. The Appellant states:

"REDACTED."

50. The Appellant further states:

"REDACTED..."

51. Based on my review of 'WORK A' and 'WORK B', I find the Appellant's submissions concerning the Irish cultural relevance of the two works to be both credible and persuasive.

52. Given that the Heritage Council *"shall in particular promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage"* and having carefully reviewed the contents of 'WORK A' and 'WORK B', I am satisfied that these are works very much related to the functions of the Heritage Council. I have little doubt but had the Respondent consulted with the Heritage Council, they would have concurred with such an assessment.

53. Having so determined, I now need to consider whether the condition in paragraph 7(2) (C) (II) is met so that each work *"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"*,

54. I quote further from the testimonial witness statement provided by WITNESS A
REDACTED



55. In her Testimonial witness statement WITNESS B stated:

“REDACTED

56. The work ‘*WORK A*’ is a book that covers aspects of life and heritage... REDACTED... and is regarded, as evidenced by her testimonials, as a pioneering work that makes a significant contribution to all things Irish and Irish culture; REDACTED.

57. The work ‘*WORK B*’ is a book that covers...REDACTED...is regarded, as evidenced by the testimonials, as a pioneering work that makes a significant contribution to all things Irish and our understanding of Irish history; by casting new light on our Irish culture and by changing the generally accepted understanding of it REDACTED

58. In considering whether the book, the subject of this appeal, satisfies the 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.”

59. 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."

60. I believe that the two works 'WORK A' and 'WORK B' are qualifying works for artist's exemption under the "letter of the Act of 1997 and the Guidelines made thereunder" as mandated by Donnelly J.

Determination

For the reasons outlined above, I find that: -

61. Both books, the subject matter of this appeal, are non-fiction work within paragraph 7(2) (c) of the Guidelines.

62. I therefore conclude that the Appellant is entitled to the artists' exemption in respect of the works, 'WORK A' and 'WORK B'.

63. I will, therefore, allow 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 not stand.

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

PAUL CUMMINS

APPEAL COMMISSIONER

6 May 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 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 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.



Appendix 4

Extracts from correspondence between the Respondent and the Appellant regarding the application for artists exemption on WORK A and WORK B.

Respondent to the Appellant (Email dated November 10 YEAR 1)

"I refer to your recent claim for Artists Exemption for work REDACTED... GENRE K only. Please confirm if the category you are claiming under is Category (a) or was it your intention to claim under category (d) a painting or Other like picture.

I attach herewith an Artists Exemption application form to resubmit if it was your intention to claim under category (d)"

Appellant to Respondent (emails dated November 11 YEAR 1)

"I am claiming as an GENRE K for a series of books, so category A is where it should fall, as tax exemption will be applied for my royalties etc."

and

"It should maybe be highlighted that although I am credited as GENRE K, I am also the co-creator of the franchise and share all credit and royalties 50/50 with the Other contributor."

Respondent to the Appellant (Email dated November 15 YEAR 1)

"If you wish to claim for the work of a GENRE K your work does not come under the description a book or other writing and Category (d) painting or other like picture is the correct category,

Please confirm that this is the category that you want to claim under."

Appellant to Respondent (email dated November 15 YEAR 1)

"If that's the correct category then Ok, I will change it to category d"

