



Ref: 143TACD2020

BETWEEN/

REDACTED

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**" (hereafter referred to as the work). The Appellant submitted a claim for artists' exemption dated 15 December 2017 on the basis that her 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 31 May 2018 and the Appellant duly appealed to the Tax Appeals Commission on 11 July 2018.
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 work is a book and that it is original and creative within the meaning of section 195 TCA 1997. However, after examining the work, the Respondent did not find it possible to make a determination for the purposes of exemption from income tax provided for in section 195 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 the work in question qualifies under paragraph 7(2)(b) of the Artists Exemption Guidelines, drawn up under section 195(12), Taxes Consolidation Act, 1997, as 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. The Appellant further submitted that the title and front cover of the work in question might not look like a conventional autobiography, but as referenced above, there is a large amount of autobiographical content throughout the book, a fact which is further highlighted on the blurb/description on the back cover.
7. The Appellant submitted that the description on the back of the book states “*From being unable to cope with the thought of going outside, to walking away from her fast-paced job, to the different treatments available, REDACTED shows us how she found a way of managing her anxiety which worked for her.*” This wording sets the tone for the book, which is autobiographical in how the issues are presented, and how REDACTED story is told.
8. The Appellant submitted that the work has been sold on the back of the author’s personal story, with continued references to her life and personal experiences, and it continues to be promoted & reviewed in this autobiographical context.
9. The Appellant submitted that the author went into a large amount of personal autobiographical detail in her work, and outlined the particular pages of the work that were of an autobiographical nature.



10. The Appellant submitted that the additional requirements under paragraph 7(2)(b) of the guidelines can be broken down as follows;

a) *“incorporates the author’s unique insight into the subject matter” –*

This is the author’s personal story, and throughout she has offered her unique insight into the subject matter of anxiety and mental health.

b) *“regarded as a pioneering work”*

The book can be considered pioneering by virtue of the unique methods introduced by the author, that she used to deal with her own anxiety, which in turn helped many others to deal with theirs, using these same methods. Another pioneering aspect to the book is the accessible and straightforward way in which it is written, which helped demystify the complex subject of personal anxiety for many Irish readers.

c) *“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”*

This book has made a significant contribution to the subject matter of anxiety and mental health for young women in modern Ireland. The publicity around the book kept this conversation going nationally. Many readers have shared their stories online and privately to the author, and have said how much this book helped them. Most definitely a new light is cast onto the author as a person, and by telling her story through the book the generally accepted understanding of the author has changed. Without this book the view of the author would be restricted to the snippets of her life that have been shared through Social Media, which usually gives only a positive spin on a person’s life. This book very much changed that view of her, and people in a similar position to her.



11. The Appellant submitted that since publishing this book, the Appellant's name has been publicly synonymous with the subject matter of anxiety and depression in young women in Ireland. This would not be the case had the book not been written in an autobiographical manner, with constant references to the personal life of the author. It was therefore submitted that the work has the overall intention of an autobiography.
12. The Appellant submitted in support of her appeal, the case *Kiernan v. De Brún* reported as *Inspector of Taxes v. Kiernan* [1981] 1 I.R. 117, the Supreme Court (per Henchy J) at page 122 stated "*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.*" The Appellant submitted that the word "autobiography" is not defined in the relevant legislation or the guidelines, therefore it is necessary to rely on the natural and ordinary meaning to the word "autobiography".
13. The Appellant also relied on the judgement in the case before the Tax Appeals Commissioners with reference 21TACD2017 ("the case"). The Appellant submitted her book is similar to the book in that case in that it is not autobiographical from start to finish but clearly autobiographical in sections, and general intention, which is sufficient for the book to qualify as such within the meaning of paragraph 7(2)(b) of the Guidelines. The Appellant further submitted that while both books in question are clearly very different, and should be considered on their own merits, there is still a relevance to be drawn from the TAC decision in how broadly the term "autobiography" can be applied to a written work.
14. The Appellant finally submitted that the additional requirements with paragraph 7(2)(b) which state that the autobiography should incorporate "*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*" are also clearly met.
15. The Respondent submitted that the Revenue Commissioners have not found it possible to decide that the work should be determined to be an original and creative work, having cultural or artistic merit, for the purposes of the exemption from income tax provided by section 195 of the Taxes Consolidation Act 1997 ("TCA 97").



16. The Respondent submitted that the onus of proof lies on the Appellant to satisfy the Appeal Commissioners that the section 195 exemption is warranted and that this onus can only be discharged by the Appellant proving that her book comes clearly within the terms of the exemption currently applicable to the category of “a book or other writing”.
17. The Respondent submitted that in considering this appeal, the Appeal Commissioners must, in compliance with section 195(13)(b) TCA 97 have regard to the guidelines in force under section 195(12) TCA 1997, and the work in question must satisfy the mandatory requirements of those guidelines.
18. The Respondent submitted that the conditions for section 195 exemption, 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. The Respondent pointed out that 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) TCA 1997.
19. The Respondent in its submission detailed the nature of the requirements of the legislation in relation to what it described as the paragraph 5 and 6 tests as follows:

Paragraph 5 test: *Paragraph 5 of the guidelines states that, for the purposes of a determination under section 195, a work shall be regarded as having cultural merit only if by reason of its quality of its form and/or content it enhances to a significant degree one or more aspects of national or international culture.*

The Paragraph 6 test: *Paragraph 6 of the guidelines states that for the purposes of a determination under section 195, 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.*
20. The Respondent submitted and accepted that the work satisfies at least one of the tests set out in paragraphs 5 and 6 of the guidelines.
21. The Respondent submitted that Paragraph 7 of the guidelines specifies criteria to which the questions whether a non-fiction book is original and creative and whether it has, or is generally recognized as having cultural or artistic merit are to be determined. The Respondent then outlined the criteria as set out in Paragraph 7 (2) of the guidelines.
22. The Respondent noted the Appellants claim that the work “*goes into a huge amount of personal autobiographical detail*” and accepted that there is an amount of



autobiographical material in the Appellant's work. The Respondent submitted however that some of the pages listed in the Appellants statement of case contain very little autobiographical material and that the total sum of autobiographical material contained in the book is insufficient to regard the book as an autobiography.

23. The Respondent submitted that the term autobiography is not defined in either the primary legislation or the guidelines. It was submitted therefore, in considering whether the work comes within these categories, it is necessary to rely on the natural and ordinary meaning to the words in the guidelines. The Appellant had relied for this in the case *Kiernan v. De Brún* reported as *Inspector of Taxes v. Kiernan* [1981] 1 I.R. 117, where the Supreme Court (per Henchy J) at page 122 stated "*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.*" The Respondent submitted that the guidelines governing the scheme for exemption are a statutory provision by virtue of section 2 of the Interpretation Act 2005.
24. The Respondent submitted that the work does not come within the ordinary meaning of autobiography. The Respondent further submitted that the Appellant does relate some information regarding her life and experiences, in particular in relation to how she coped with and dealt with anxiety, however the Respondent submitted that these are not in sufficient detail or extensive enough to qualify as an autobiography. It is the Respondent's view that these are introduced to the book to enhance the Appellant's points and philosophies about coping and dealing with anxiety.
25. The Respondent outlined that in the Appellant's submission references were made to another appeal case. However, the Respondent submitted that this can have no bearing on the case currently before the Tax Appeals Commission. It was submitted that each work must be considered on its own merits under the scheme
26. In summary it was the Respondent's view that the work does not clearly come within the criteria for non-fiction work set out in Paragraph 7(2) of the guidelines and that the Appellant in her submissions has failed to clearly demonstrate that the work meets the criteria necessary to be eligible for the artist's exemption scheme.

Analysis

27. The Appellant's work is a book and it is 'original and creative' within the meaning of section 195 TCA 1997 as amended and the guidelines issued thereunder. This is agreed by both parties to this appeal.



28. In order to secure exemption, the work must also have either cultural merit or artistic merit, or both as set out in paragraphs 5 and 6 of the guidelines. The Appellant considered that her work meets these tests. The Respondent has also accepted that the work satisfies at least one of the tests set out in these paragraphs of the guidelines.
29. 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. However, to succeed in a claim for artists' exemption, the work the subject of this appeal must first fall within paragraphs 7(1) and then satisfy the criteria in paragraphs 7(2) as set out for works of non-fiction books of the guidelines.
30. The work falls within the paragraph 7(1) but in my view and in the views of the parties to this appeal, it can be only considered to qualify for the determination sought in this appeal under the criteria set out in paragraph 7(2)(b)(ii) of the guidelines. The book cannot be considered under the other criteria laid down in paragraphs 7(2)(a), (c), (d) or (e) of the guidelines
31. The test therefore to be applied is specifically, whether the Appellants' work constitutes an autobiography within the meaning of the said guidelines.
32. 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.'

33. Section 195 TCA 1997 as amended and the guidelines made thereunder are addressed to the public generally. 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. In determining this appeal, I have given the word autobiography its ordinary and natural meaning.
34. In determining the matter of exemption or not from income tax in this case I have considered the issues raised in relation to the correct interpretation of Revenue statutes in the decision of Murphy J in Ó Coindealbháin –v- Gannon [1986] I.R. 154, where he stated: -

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

35. In considering whether the work the subject of this appeal satisfies the requirements for exemption, I must 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.”

36. I have also taken into consideration a more recent event, 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.”

37. In this case, the work includes some background and anecdotes about the author, her relationships and her family. The Appellant submitted that the work is an account of the author’s personal story, that includes references to her life and personal experiences. The work included some personal autobiographical detail but the tests in paragraph 7(b) of the guidelines also requires that: -

- a. that incorporates the author’s unique insight into the subject matter and
- b. is regarded as a pioneering work and
- c. also makes a significant contribution to the subject matter by:
 - i. casting new light on the person or
 - ii. by changing the generally accepted understanding of the person.

38. I have considered that the tests determined in 37 a. and 37 b. are satisfied insofar as the work incorporates the author’s own and unique insight into the subject matter of living with anxiety and that the work can be said to be pioneering and casts new light on the subject, in describing her own unique experiences in how she found a way of managing her personal anxiety.

39. The final issue to be considered is whether the work 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.*

40. 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.

41. The Respondent accepted that there is an amount of autobiographical material in the Appellant's work but noted that some of the pages listed in the Appellants statement of case contain very little autobiographical material. The Respondent contended that the total sum of autobiographical material contained in the book is insufficient to regard the book as an autobiography.

42. The Appellant has pointed to the following pages to support the contention that the work is of an autobiographical nature:

Pages: REDACTED

43. I have carefully read and considered the book and I have re-read the pages that the Appellant submitted in support for the contention that the book could be regarded as an autobiography wherein the reader could determine that the work makes a significant contribution to the subject matter by:

- i. casting new light on the person or
- ii. by changing the generally accepted understanding of the person.

44. 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 self-help guide and not of an autobiography. The author provides an amount of detail from her own experience of anxiety and uses that to illustrate the indications, steps to be taken, things to avoid, etc. I cannot see anything in the book that could enable the Respondent to decide that the work should be determined to be an original and creative work, having cultural or artistic merit, for the purposes of the exemption from income tax provided by section 195 of the TCA 1997 as amended.

45. 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 that 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

46. 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.

CHARLIE PHELAN
APPEAL COMMISSIONER
10 JUNE 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.”*

