



120TACD2021

Between:

THE APPELLANT

Appellant

and

THE OFFICE OF THE 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') in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (hereafter referred to as the guidelines), commonly known as 'Artists' Exemption'. Under section 195(6) an individual may appeal to the Appeal Commissioners following a decision by the Revenue Commissioners ("the Respondent"). The appeal is on the grounds that the Appellant's works of art are sculptures under the section 195(1)(e) TCA 1997. The statutory provisions and the guidelines are set out in Appendix I and II to assist the parties.
2. The Appellant applied for Artists' Exemption in 2020 in respect of a series of pieces of what the Appellant deems to be sculptures, defined as "the Works" and as classified in the bundle of documents referred to at the hearing. The Respondent refused the Appellant's application and on 29th October 2020 wrote to the Appellant on the basis that the Works submitted by the Appellant appeared to be of "*fabricated objects that serve primarily as a decorative function*". They noted that "*installations are not a category of work eligible for the scheme*".
3. The Commissioner notes that the letter from the Respondent is somewhat brief and it might have assisted the Appellant if some further detail was provided as to why the Works did not come within the TCA 1997. The Appellant was informed by the Respondent of her right to appeal to the Commission.

4. The Appellant appealed to the Tax Appeals Commission (“the Commission”) on 4th November 2020. The Appellant has appealed on the basis that her work qualifies as sculptures and comes within the TCA 1997 and the guidelines. The hearing took place on 30th June 2021. The Commissioner commended the Appellant for the considerable work in putting together the documentation, which included a copy of the Respondent’s listing of previous decisions on artists’ exemption claims, photocopies of various angles and stages of her work, her curriculum vitae, a considered explanation of the meaning of her work, other work considered, sculptures and the various bursaries and prizes awarded to the Appellant. The Appellant also included her profiles in Art Reveal Magazine, and various press releases in relation to her exhibitions. The Appellant also supplied some historical documentation in relation to the history of sculpture and the definition of the term “sculpture” and its historical context.

Background

5. The Appellant has a first class degree in Sculpture from [REDACTED] of Art and Design. She has a Masters of Art Degree in I-Media from [REDACTED]. The Appellant is a professional artist and has been recognised as such by her peers and the arts community. She is a member of Visual Artist Ireland and provided a copy of her membership card. She has also been recognised as a professional artist by the Arts Council of Ireland and was awarded a bursary by the Arts Council in [REDACTED]. She has also been awarded smaller grants by [REDACTED] Arts Council and the Royal Hibernian Academy. She had been exhibited in different arts venues and profiled as an artist in various magazines. These were all exhibited as part of her appeal. The Commissioner is satisfied that the Appellant is a professional artist and is trained in sculpture, as confirmed in her undergraduate degree.
6. The Commissioner has read the Appellant’s bundle of supporting material. The Commissioner has also examined the clear photographs of the Works. The Works are explained in detail in the documentation. In addition, the Commissioner took evidence from the Appellant in relation to the composition and meaning of the Works, in particular the art entitled, “[REDACTED]”, “[REDACTED]”, and “[REDACTED]” and “[REDACTED]”.
7. It was clear from the evidence the Appellant gave at the hearing that the Works are her own work and come from her own imagination. They entail taking household objects and working on them to produce an original item. For example, it was explained that the work entitled “[REDACTED]” [redacted description of the work and explanation of the themes it explores]. In terms of the work, “[REDACTED]”, the Appellant explained [redacted description of the work and explanation of the themes it explores]. The Commissioner found this work arresting and thought provoking. It resembled a statue but the human form was notable by its absence. Hence, it invoked death and hence the title “[REDACTED]” resonated. The Appellant confirmed that this art work had invoked a considerable response from the public in the same way it has invoked a response from the Commissioner.
8. The Appellant also explained the work “[REDACTED]” [redacted description of the work and explanation of the themes it explores].

The Appellant explained the work "[REDACTED]" in the catalogue. *[Redacted description of the work and explanation of the themes it explores]*.

9. The Commissioner was able to understand the Works and found them thought provoking. The Commissioner also considered the enclosed literature on the history of sculpture provided by the Appellant. The Commissioner has also taken into account the usual meaning of the word "sculpture" and what the general public would consider they would be viewing if they attended an arts gallery and these Works were displayed.

Legislation and Guidelines

10. The relevant legislation is contained at section 195 of the TCA 1997, a copy of which is attached at Appendix I for ease of reference. As noted in section 195(12) of the TCA, the Minister for Arts, Heritage, Gaeltacht and the Islands shall draw up guidelines for determining whether a work is within the category of an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. In addition, under section 195(13)(b) the Appeal Commissioners shall not determine that the work is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under section 195(12) of the TCA.
11. As such, in considering this appeal, the Commissioner is obliged and must ensure, in compliance with section 195(13)(b) TCA 1997 that the Works complies with the guidelines for the time being in force under section 195(12). The Works must satisfy the mandatory requirements of those guidelines, a copy of which is attached at Appendix II for ease of reference.

Submissions

Appellant

12. The Appellant submitted that the Works satisfies section 195(1)(e) of the TCA 1997 being a sculpture and paragraph 1 of the guidelines. The Appellant maintains that the Works are both original and creative and which have, or are generally recognised as having, either cultural or artistic merit. The Appellant submitted that the Works are sculptures and represent different aspects of abuse situations in respect of individual relationships and in respect of the citizen and the State. The Appellant submitted that she is a professionally recognised artist and her work has cultural and artistic merits, as evidenced by the coverage of the Works and the exhibitions and the various bursaries from art organisations.

Respondent – Revenue Commissioners

13. The Respondent submitted that it accepted that the Works are installations and hence are not a category of work eligible for the scheme. The Respondent came to the view that installations are not a category of work that come within the category of work eligible for a determination. The Respondent submitted that as the Appellant's Works were not sculptures, it did not need to consider whether they were original, creative and generally recognised as having cultural or artistic merit.

14. The Respondent relied on the case of *Inspector of Taxes v Kiernan* [1981] 1 IR 117 and the use of the ordinary meaning of words used ordinarily. As such, they submitted that the Works would not be viewed ordinarily as sculptures by the ordinary person.

Analysis

15. The Commissioner in this case must establish that the Works come within the definition of sculpture in section 197(1)(e) TCA 1997. The Commissioner has viewed the Works in a series of photographs and the Appellant has explained the Works to the Commissioner. The Commissioner is satisfied that the Appellant's Works are original to her and creative. The Commissioner is also satisfied that the Works are considered as cultural and having artistic merit. The Appellant has been exhibited and her Works have been examined and commended by artistic critics and publications. She has also been granted bursaries for her Works. She has a first class honours degree in Sculpture and Design and a Masters Degree also in this field.
16. The test therefore to be applied is whether the Works comes within section 195(1)(e), namely do the Works come within the ordinary definition of a sculpture. The Commissioner does not consider that the Respondent's letter of rejection that the Works were fabrications having a decorative function only as helpful. All art has usually only a decorative function. That is the point of any art. It is not usually a functional item but its "function" is to be decorative and to inspire the viewer.
17. The Commissioner has to consider if the Works are sculptures within the ordinary, natural and plain meaning of the word.
18. The Commissioner is mindful of 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 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.'

19. Section 195 TCA 1997 as amended and the guidelines made thereunder are addressed to the public generally. The word "sculpture" has widespread currency. It is normally accepted that a sculpture is a three dimensional portrayal of an idea. In determining this appeal, the Commissioner has given the word sculpture its ordinary and natural meaning. The Commissioner does not consider that the Respondent's conclusion that the Works are installations is helpful. Installations is not the term referred to in the TCA 1997. In addition, the Respondent confirmed at the hearing that some installations have been deemed to be sculptures, whereas others have not. But, no further guidance was provided as to what the different types of installations would be and the differentiating factors. The Commissioner

considers that other matters outside the scope of the TCA 1997 are not helpful. The Act refers to “sculpture” and so that is what has to be considered.

20. In determining the matter of exemption or not from income tax in this case the Commissioner has considered the issues raised in relation to the correct interpretation of 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...”

21. In considering whether the Works, the subject of this appeal, satisfies the requirements for exemption, the Commissioner 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.”

22. The Commissioner has also taken into consideration the 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.”

23. The Supreme Court case of *Bookfinders Limited v Revenue Commissioners* [2020] IESC 60 (“Bookfinders”), and the cases of *McGrath v McDermott* [1988] IR 258 and *Dunnes Stores v Revenue Commissioners & Ors* [2019] IESC 50 (“Dunnes Stores”) all deal with statutory interpretation and the meaning of words found in statutory provisions. The judgments in *Bookfinders* set out clear guidance on the interpretation of taxation statutes. O’Donnell J at paragraph 39 stated:

“it is worth emphasising that the starting point in any exercise in statutory interpretation is, and must be, the language of the particular statute rather than any pre-determined theory of statutory interpretation.”

24. The Commissioner notes that the *Bookfinders*' judgment should be engaged when there is an issue of ambiguity or imprecision. It could be reasonably interpreted by the Commissioner as regret by O'Donnell J regarding his obiter comments in *Revenue Commissioners v O'Flynn Construction & others* [2011] IESC 47 (paragraph 41-42) as being on reflection "unnecessary, incautiously expressed". He confirmed that he was wrong to use the term "purposive" and was incorrect to suggest that the Interpretation Act mandated such an approach in respect of taxation legislation. He did confirm at paragraph 47 of *Bookfinders* that his correction should not mean that the interpretation of tax statutes cannot have regard to the purpose of the provision, or that the manner in which the court must approach a taxation statute is to look solely at the words, with or without the aid of a dictionary, and on the basis of that conclude that, if another meaning is capable of being wrenched from the words taken alone, the provision must be treated as ambiguous, and the taxpayer given the benefit of the more beneficial reading. He stated very clearly:

"Such an approach can only greatly enhance the prospects of an interpretation which defeats the statutory objective, which is, generally speaking, the antithesis of statutory interpretation."

25. The Commissioner has also regard to the jurisprudence to McKechnie J, (para 63) in *Dunnes Stores* that :

"if the words used are plain and their meaning self-evident, then save for compelling reasons to be found within the instrument as a whole, the ordinary, basic and natural meaning of those words should prevail."

26. The Commissioner also considered the helpful summary of the jurisprudence relating to interpretation of taxation statutes as recently set out by McDonald J in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("Perrigo") and the step-by-step considerations in statutory interpretation.

27. In considering those helpful cases, the Commissioner has considered the plain, ordinary and basic and natural meaning of the word "sculpture" as found in the TCA 1997 in relation to Artists' Exemption. The Commissioner is also entitled to consider the wording with the help of a dictionary if that is required and also to have cognisance of the purpose of the statutory provision to aid that interpretation in line with common sense and the dicta in *Bookfinders*. The Commissioner has also considered what the art world, who know about such matters, consider a sculpture. In all considerations, there was no divergence. The public would consider a sculpture to be a three dimensional representation of an idea, the dictionary confirms same and the various Tate Modern and the Irish Museum of Modern Art also confirm same. There is no divergence of interpretation or ambiguity.

28. A sculpture is a three dimensional representation of an idea. The Tate Modern define it as a three dimensional art made by one of four basic processes; carving, modelling, casting, constructing. The Irish Museum of Modern Art has a publication explaining the definition of sculpture called "What is Sculpture?". In that publication it states:-

"The Irish Museum of Modern Art is the national cultural institution for the collection and presentation of modern and contemporary art in Ireland. IMMA exhibits and collects modern and contemporary art by established and emerging Irish and International artists."

29. The same publication at page 6 states :

“Sculpture is the term used to describe three-dimensional artworks. Traditionally, sculpture was created using permanent materials such as stone, metal, clay, ceramic or wood although works made from durable material such as stone were more likely to survive over time whereas sculptures made of wood such as TOTEM POLES were less likely to survive. Contemporary sculpture can be made from any kind of material: stone, metal, light, sound, found objects, people or even the site itself. It can also comprise no materials. Sculptures can be permanent such as the monumental sculptures and statues honouring famous people and events, situated in prominent positions in city spaces. They can also be EPHEMERAL, TEMPORARY, PERFORMATIVE or TRANSIENT depending on the artist’s intentions, the context in which the sculpture came about and its purpose.”

30. The Commissioner has examined the Works and is satisfied that they are three-dimensional artworks. The piece entitled “██████████” is not an installation but is a three-dimensional construction which stands alone and is constructed and shaped and made into a three dimensional structure from a ██████████ and layers of paint, so that it reminds one of a carved piece of stone. The material for a sculpture is immaterial. The general public would consider that art work “██████████” a piece of sculpture. The other works are also sculptures in that they are three-dimensional representing an idea and made from different materials. In particular the piece “██████████” is constructed out of materials and is a ██████████ changed to represent loss. An installation is dependent on the surroundings but this piece of art is stand alone and would work in any environment.
31. The purpose of the Artists’ Exemption was to assist recognised artists, (who tend to be lower paid), and support the arts in Ireland due to Ireland’s unique heritage. The Commissioner has no doubt that the reasonable ordinary member of the public would consider they were viewing sculptures. The Appellant’s work is modern art and so it is not in the traditional sense a sculpture, such as stone carving. But, as the usage of words change with the times, so does the understanding. The public and the Commissioner would be reasonable in understanding that the Works are modern sculptures. The Commissioner is satisfied that based on the evidence provided of the exhibitions, the listings in artistic journals and the bursaries provided that the Works are considered to have artistic and cultural merit. The Commissioner could on viewing them understand why the arts community appreciate them.
32. The Commissioner finds that the Respondent was incorrect to refer to installations in the letter of rejection to the Appellant and there is no definition of installations in the legislation. It is important that the Respondent do not have “blanket” views on what constitutes a sculpture and each application for exemption under the Artists’ Exemption scheme is considered on its own merits. The Respondent confirmed that it did not consider if the Works had artistic and cultural merit, as it did not consider that they passed the first hurdle of being sculptures.

Determination

33. The artist exemption legislation and guidelines set out a series of tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, the Commissioner determines that the Work does satisfy the requisite tests, in particular paragraph 7(2)(e) of the guidelines and section 195(1)((e) and hence determines that the Appellant is entitled to avail of the exemption pursuant to section 195 TCA 1997. The Appellant is successful in her appeal and is therefore entitled to the Artists’ Exemption. The Commissioner thanks the parties for their preparation for the hearing. The Commissioner commends in particular the Appellant who represented herself for the exemplary preparation for the hearing, which aided the hearing and the subsequent decision.

34. This appeal is determined in accordance with section 949AL TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

A handwritten signature in blue ink, appearing to read 'Marie-Claire Maney', with a stylized flourish at the end.

Marie-Claire Maney
Appeal Commissioner
Chairperson
13th July 2021

Appendix I

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 949], 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 II

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.”