



126TACD2021

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. The appeal is on the grounds that the work is original and creative and is generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit. The appeal referred to the presentation in graphic form of an aspect of Irish history and the graphic work should be considered as an "eighth art".
2. The Appellant's authored work in this appeal is a non-fiction book titled [REDACTED] (hereinafter referred to as "the Work"). The Appellant submitted a claim for Artists' Exemption for a determination by the Revenue Commissioners ("the Respondent") under section 195 TCA 1997. The Appellant considered that the Work was a book and non-fiction. The Appellant's claim for exemption was refused by the Respondent on 10th February 2017 stating that the Work did not meet the required criteria set out in the legislation and the guidelines. In particular it was noted in the decision that the Work was a work of non-fiction but it "*does not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines*".
3. The Commissioner notes that the letter from the Respondent is somewhat brief and it might have assisted the Appellant if some further detail as to why the Work did not come within

paragraph 7 of the guidelines had been included. The Commissioner notes the Respondent supplied a detailed Statement of Case to the Tax Appeals Commission (“the Commission”).

4. The Appellant appealed to the Commission on 3rd March 2017. The Appellant has appealed on the basis that it comes within paragraph 7 of the guidelines and is original and creative and has cultural and artistic merit.
5. This case was listed for a hearing which took place on 29th June 2021. The Appellant was represented but there was no attendance at the hearing and no request for an adjournment prior to the hearing or at the hearing. The Commission contacted the Appellant’s representative but no information was forthcoming concerning the non-attendance. As a result the hearing went ahead with the Commissioner hearing the Respondent’s submissions. The Commission wrote to the Appellant following the hearing enquiring if they wished to submit any further information prior to adjudication. The Appellant’s representative confirmed that they did not wish to submit any further information. The Commissioner has considered the Work, the written submissions and the verbal submissions on behalf of the Respondent, which repeated their written submissions in coming to this determination.

Background

6. The Respondent accept that the Work is a book. However, it does not consider that the Work is original and creative as it is not of a creative quality brought into existence by the exercise of the author’s imagination, referred to as the paragraph 4 test. The Respondent also found it failed the paragraph 5 test (it did not have cultural merit in that it did not enhance to a significant degree one or more aspects of national or international culture). The Respondent also found it failed the paragraph 6 test in that it did not have artistic merit in that it did not enhance to a significant degree the canon or work in the relevant category. The Respondent also found it failed the paragraph 7 test in that it was not a work of art history but the Work was about the history of the Catholic Church. 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.
7. The Commissioner has read the Work. The Work is divided into short chapters commencing on the arrival of Christianity to Ireland, moving through the Viking Raiders, the various Tudor conquest, the Reformation, the Cromwell years, the Penal Laws, the Famine, right through to modern times and the history of the various strands of Christianity in Ireland. The church referred to throughout the Work is the Catholic Church. The foreword confirms that [REDACTED] Publishers [REDACTED] “[REDACTED]”. The author is described as a “[REDACTED]”. The Work is a highly illustrated book in the form of graphic art.
8. The Commissioner notes that the graphic art is of high quality and no doubt the Work would appeal to young readers.

Legislation and Guidelines

9. 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.

10. As such, in considering this appeal, the Commissioner is obliged and must ensure, in compliance with section 195(13)(b) TCA 1997 that the Work complies with the guidelines for the time being in force under section 195(12). The Work must satisfy the mandatory requirements of those guidelines, a copy of which is attached at Appendix II for ease of reference.

Submissions

Appellant

11. The Appellant submitted in the appeal that the Work "*is a presentation in graphic form of an aspect of Irish history.*" The notice of appeal stated that graphic work is considered to be an "eighth art". The notice of appeal stated that the Work "*seeks to make available to as wide a readership as possible much modern research on aspects of the history of Ireland*". It referred to the highly attractive, accessible and readable format. The Statement of Case dated 29th January 2019 stated that "*this is a work of Art History* [REDACTED] [REDACTED]). It stated that it produced a unique insight into the subject matter, it was a pioneering work and made a significant contribution to the subject matter by casting a new light on it and also by changing the generally accepted understanding of the work and history of Catholic Ireland. No details were submitted as to how it changed the generally accepted understanding of the work and history of Catholic Ireland. The Statement of Case and outline of legal arguments stated that the Work "meets the criteria as set out in paragraph 7 (criteria for non-fiction work) as laid out in subsection (12)(b)(ii) of section 195 of TCA."
12. The Commissioner notes that the subsection 12(b)(ii) of section 195 referred to in the Appellant's Statement of Case refers to the guidelines. The Commissioner has considered that the Appellant's appeal is that the Work is a work of art history within paragraph 7(2)(a)(ii) or 7(2)(a)(iii) of the guidelines. For completeness, the Commissioner has then also considered if the Work comes within any of the criteria set out in paragraph 7(2) (a) to (e).
13. The Commissioner must be satisfied that the Work satisfies 7(2)(a)(ii) and (iii) of the guidelines being *an arts history or 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*. The Commissioner for completeness considered if the Work came within any section in paragraph 7(a) to (e). As stated above, the Commissioner has read the Work to assess whether it comes within section 195 TCA 1997 and the guidelines.

Respondent – Revenue Commissioners

14. The Respondent submitted that it accepted that the Work is a book that comes within the categories of work listed in section 195(1) TCA 1997 as amended.
15. The Respondent submitted that section 195(12) TCA 1997 states that guidelines may include specifications of the types or kinds of works that are not original or 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.
16. The Respondent also submitted that section 195(12) TCA 1997 further states that the guidelines may specify criteria by reference to which the questions whether works are original

and creative and whether they have or are generally recognised as having cultural or artistic merit are to be recognised.

17. The Respondent submitted that section 195(13) states that where an application for a determination is made to Revenue, that Revenue shall not make a determination in respect of a work unless it complies with the guidelines. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.
18. The Respondent determined that the Work was a work of non-fiction for children which gives an historical account of the Catholic Church in Ireland.
19. The Respondent submitted that Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction books and sets out specific categories, which the Work must come within, in order to qualify for a determination. The Respondent submitted that it was not satisfied that the Work came within any of the categories of work listed in paragraphs 7(2)(a) to (e). The Respondent was also not satisfied that the Work was original and creative as required under section 195 and as defined by paragraph 4 of the guidelines.
20. The Respondent submitted that it was unable to make a determination in respect of the Work, for the purposes of the exemption from income tax provided by section 195 TCA 1997. The Respondent confirmed these submissions at the hearing.

Analysis

21. The Work is a book. This is agreed by both parties to the appeal. The Appellant submits that it is a book on arts history. The Respondent considers it is a non-fiction book for children which gives an historical account of the Catholic Church in Ireland. However, the Respondent does not accept that Work comes within paragraph 7(2) of the guidelines relating to non-fiction work. In addition, the Respondent does not accept that the Work is original and creative.
22. To succeed in a claim for exemption, the Work must first fall within paragraphs 7(1) of the guidelines and then satisfy the criteria in paragraphs 7(2) as set out for works of non-fiction books of the guidelines.
23. The test to be applied in this case as argued by the Appellant is specifically, whether the Work constitutes an entitlement to Artists' Exemption in accordance with section 195 of the TCA 1997 under one or more of the criteria set out in paragraphs 7(1) and (2)(a) of the guidelines. Paragraph 7(1) and (2)(a) states:

(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.

24. The test therefore to be applied is whether the Work comes within paragraph 7(2)(a). The Commissioner has examined the Work and unfortunately it does not come within paragraph 7(2)(a). It is not arts' history and does not come within the subject matter contained in paragraph 7(2)(a)(iii). The Work is a book relaying the author's viewpoint on the history/evolution of the Catholic Church. The title is even the "[REDACTED]". The foreword also states it is the story of the Catholic Church. The term "story" is used rather than history as many of the events are matters of faith. For example, the book itself refers to "according to other stories that may not be true, [REDACTED]". It also states "according to legend, [REDACTED]". In paragraph 7(2)(a)(ii) it refers to the work being arts history. This means that the work must relate to the history of some form of art. The story of the Catholic Church in Ireland does not come within a form of art. Paragraph 7(2)(a)(iii) sets out the subject matters that come within this paragraph but the Work does not come within this subsection either.
25. The Commission has considered 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.'

26. Section 195 TCA 1997 as amended and the guidelines made thereunder are addressed to the public generally. The expression "arts history" must be given its natural and ordinary meaning. For the Commissioner and the general public this would mean that the work is setting out history relating to a form of art. The ordinary and natural meaning of "art" would not include religion. It is important that the Commissioner does not expand the criteria of the guidelines. In paragraph 7(2)(a)(iii) the public would understand this section to mean that the Work has a subject matter set out namely visual arts, theatre, literature, music, dance, opera, film, circus or architecture. The story of the evolution of the Catholic Church, namely a specific religion does not come within those categories.

27. 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 taxation 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...”

28. In considering whether the Work, the subject of this appeal, satisfies the requirements for exemption, the Commissioner 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, except 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.”

29. 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.”

30. The Commissioner, even if the Work came within the criteria of paragraph 7(2), would not consider that it is pioneering work that casts new light on the area. The various sections whilst beautifully illustrated do not cast new light on the story of the Catholic Church in Ireland. For completeness, the Commissioner has also considered if the Work comes within paragraph 7(2)(e) which states 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 those archives, incorporates the author’s unique insight into the subject matter, and is regarded as pioneering work that makes a significant contribution to the subject matter by casting new light on it or changing the generally accepted understanding of it*”.

31. The Commissioner has examined the Work but there is no evidence that the Work is based on archives and no submissions were promulgated in relation to any archives. There is no reference to archives in the Work. The onus is on an appellant to demonstrate why they come within this exemption. The Work refers to the advice of the clergy for the additional

contemporary sections of the book but there is no reference to any access to archives or study of same. In addition, there is no evidence that the Work incorporates the author's unique insight and is regarded as pioneering work that makes a significant contribution to the subject matter by casting new light on it or changing the generally accepted understanding of it. The Work contains information that many generations were informed about the Catholic Church. Again, the onus is on an appellant to submit information to substantiate their submissions that they have challenged the general understanding of a subject or cast new light on the subject. There is no evidence that the Work is pioneering with respect to understanding of this subject. As such, the Work does not also meet this criteria.

32. The Commissioner has for completeness considered if it comes within any of the categories set out in paragraphs 7(2)(a) to (e) but finds that it does not.
33. Hence, it fails the non-fiction tests as set out in the guidelines and of which the Commission is bound to have consideration.

Determination

34. 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 not satisfy the requisite tests, in particular paragraph 7(2) of the guidelines and hence determines that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997. That said, the Commissioner found the Work beautifully illustrated and a succinct story of the Catholic Church in Ireland which parents may well find useful for their children.
35. 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.



Marie-Claire Maney
Appeal Commissioner
Chairperson
30th August 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 Ealaion 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.”