



31TACD2021

BETWEEN/

[APPELLANT]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

[1] Section 195 of the Taxes Consolidation Act, 1997 provides for the exemption of certain earnings of writers, composers and artists, which is commonly known as ‘*artists’ exemption*’. This is an appeal pursuant to section 195(6) as the Revenue Commissioners failed to make a determination under section 195(2)(a)(ii) in respect of a book titled [redacted]. Section 195(6) provides that an individual may appeal to the Appeal Commissioners on the grounds that the work is generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.

Background

[2] The Appellant is the author of a book titled [redacted]. The Appellant made a claim to the Revenue Commissioners for artists’ exemption. On 30 January 2019, the Appellant was notified that the Revenue Commissioners failed to make a determination under section



195(2)(a)(ii) in respect of his book. The decision of the Revenue Commissioners on the claim made by the Appellant was:

“I refer to your client’s claim for artists exemption in category (a) a book or other writing, in respect of the work [redacted].

The criteria used by Revenue to make a determination to grant artists exemption are contained in section 195 of the Taxes Consolidation Act 1997 and in the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht.

I have considered the work submitted by your client and I regret that the work does not meet the required criteria set out in the legislation and the guidelines. In particular, as I understand your client’s work to be a work of non-fiction it does not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines.”

[3] A Notice of Appeal was received by the Tax Appeals Commission on 13 August 2019.

Legislation

[4] Section 195 of the Taxes Consolidation Act, 1997 is reproduced at Appendix A.

[5] The guidelines drawn up under section 195(12) of the Taxes Consolidation Act, 1997 by An Comhairle Ealaíon (the Arts Council) and the Minister for Arts, Heritage and the Gaeltacht are reproduced at Appendix B.



Submissions on behalf of the Appellant

[6] The Appellant submits that his book is a story of his life's work; the book is an autobiography. The Appellant submits that the requirements in section 195 are satisfied as his book is an original and creative work and is generally recognised as having cultural or artistic merit. The Appellant submits that the criteria in paragraph 7(2)(b) of the guidelines are satisfied as his book is an autobiography and incorporates his unique insights into the subject matter, is regarded as a pioneering work and makes a significant contribution to the subject matter by casting new light on the Appellant or by changing the generally accepted understanding of the Appellant. The Appellant submits that the criteria in paragraph 7(2)(c) of the guidelines are satisfied as his book is related to national heritage in that the book gives a unique insight into [redacted] which are central to Irish culture and incorporates his unique insights into the subject matter, is regarded as a pioneering work and makes a significant contribution to the subject matter by casting new light on the subject matter or by changing the generally accepted understanding of the subject matter.

[7] In the Notice of Appeal given on 12 August 2019 and in the Statement of Case provided on 7 November 2019, the Appellant refers to paragraph 7(2)(b) of the guidelines and makes the following submission:

[redacted]

[8] In the Notice of Appeal given on 12 August 2019 and in the Statement of Case provided on 7 November 2019, the Appellant refers to paragraph 7(2)(c) of the guidelines and makes the following submission:

[redacted]

[9] The Appellant concludes his submission:

“This book is my life’s work. I could only write it on the back of the life I have lived and the sacrifices I have made. It is my story of [redacted].”

[10] The Appellant highlighted certain material in his book which he submitted was unique including:

[redacted]

[11] At the hearing, the Appellant stated that the book was about his life in [redacted]. It was not an academic book and did not include academic references. It was his life and his experiences that led him to create the [redacted]. The Appellant stated that he is known for the [redacted] and has delivered seminars on [redacted] in Ireland and abroad. The Appellant stated that he has been involved in [redacted] his entire adult life.

[12] As regards paragraph 7(2)(b) of the guidelines, the Appellant agreed that the ordinary meaning of ‘autobiography’ is an account of a person’s life written by that person. The Appellant stated that his book was not an ‘out and out’ autobiography within the ordinary meaning of the word. The Appellant stated that the subject matter of the book is [redacted]. The book would be located in the [redacted] section of a bookstore, similar to any other [redacted] autobiography. The Appellant submits that the book is an autobiography as [redacted] is his life. As regards paragraph 7(2)(c) of the guidelines, the Appellant submits that the book is related to national heritage as the book is rooted in [redacted] which are central to Irish culture. The Appellant submits that his book satisfies the criteria in the guidelines as a combination of paragraph 7(2)(b) and 7(2)(c), which is provided for in paragraph 7(2)(e). The Appellant submits that he qualifies for exemption under section 195 as his book is an original and creative work and is generally recognised as having cultural or artistic merit.

Submissions on behalf of the Revenue Commissioners

[13] The Revenue Commissioners were satisfied that the book came within the category of ‘a book or other writing’ in section 195(1) and was an original and creative work within the meaning of section 195 and the guidelines. The Revenue Commissioners submit that as the book is a non-fiction work the Appellant must satisfy the criteria in paragraph 7(2) of the guidelines in light of the requirement in section 195(13) that the Revenue Commissioners (and the Appeal Commissioners on appeal) must not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit, unless the work complies with the guidelines drawn up by the Arts Council and the Minister for Arts, Heritage and the Gaeltacht.

[14] In the Outline of Arguments provided by the Revenue Commissioners on 16 December 2019, it was submitted:

“Conditions for section 195 exemption

4. *Exemption under section 195 TCA 97 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.*
5. *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).*
6. *The first of the five categories in section 195(1) is ‘a book or other writing’. The Respondents accept that [redacted] is a book and that it is ‘original and creative’ within the meaning of section 195 and the guidelines thereunder.*

Cultural or Artistic Merit

7. *For the purposes of the section 195 exemption, a work can only be regarded as having cultural or artistic merit, and hence as qualifying for exemption, if it meets either of the tests set out in paragraphs 5 and 6 of the guidelines.*

The Paragraph 5 test

8. *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

9. *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.*
10. *The Respondents accept that the work satisfies at least one of the tests set out in paragraphs 5 and 6 of the guidelines.*

Criteria for Non-fiction work

...

13. *The Respondents accept that there is a small amount of autobiographical material in the Appellant's work, however it is submitted that many of the examples listed in the appellants Statement of Case contain no autobiographical material. Instead these examples show details of the appellants philosophies and methodologies on [redacted]. It is submitted that the total sum of the autobiographical material contained in the book is insufficient to regard the book as an autobiography.*



14. *The term autobiography is not defined in either the primary legislation or the guidelines. 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. In 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 guidelines governing the scheme are a statutory provision by virtue of section 2 of the Interpretation Act 2005.*
15. *In the foreword of the book on page viii, the appellant writes [redacted]. On page xii of the foreword the appellant writes [redacted]. It is the respondents case that this book is fundamentally about [redacted] and the above material accurately summarises the subject matter of the book.*
16. *It is submitted that this book does not come within the ordinary meaning of autobiography. It is submitted that the appellant does relate a small amount of information regarding his life, however it is submitted that these are not in sufficient detail or extensive enough to qualify the work as an autobiography. It is the Revenue view that these are introduced to the book to enhance the appellant points and philosophies about [redacted].”*

[15] At the hearing, the Revenue Commissioners clarified that, contrary to the position described in the Outline of Arguments, the Revenue Commissioners were not satisfied that the book had cultural or artistic merit as the criteria in paragraph 7(2) had not been satisfied by the Appellant. As regards paragraph 7(2)(b) of the guidelines, the Revenue Commissioners submit that the ordinary meaning of ‘autobiography’ is an account of a person’s life (or a particular period of that person’s life) written by that person. The



Revenue Commissioners submit that the Appellant's book is not an account of the Appellant's life (or a particular period of the Appellant's life). There is very limited personal information about the Appellant in the book. The Revenue Commissioners submit that the information about the Appellant's life is not described in sufficient detail to qualify the book as an autobiography. The subject matter of the book is [redacted]. The Revenue Commissioners submit that as the book is not an autobiography, it is not necessary to consider the remaining requirements in paragraph 7(2)(b).

[16] As regards paragraph 7(2)(c) of the guidelines, the Revenue Commissioners submit that the book does not relate to a function of the Heritage Council. The Revenue Commissioners submit that while [redacted] is a part of Irish culture, it is not a subject matter related to a function of the Heritage Council which is described in section 6(1) of the Heritage Act, 1995 as: "*The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.*" The Revenue Commissioners submit that as the book is not related to a function of the Heritage Council, it is not necessary to consider the remaining requirements in paragraph 7(2)(c).

[17] The Revenue Commissioners submit that the Appellant has not demonstrated that the book meets the criteria to be eligible for artists' exemption as the Appellant has not demonstrated that the book comes within the criteria for non-fiction work set out in paragraph 7(2) of the guidelines.

Analysis and Findings

[18] Section 195 provides for the exemption of certain earnings of writers, composers and artists. Section 195(3) describes an entitlement to have the profits or gains arising from the publication, production or sale of a work disregarded for income tax purposes. As the



person is seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in **Revenue Commissioners -v- Doorley** [1933] IR 50 must be considered. It was stated by Kennedy C.J.:

“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.”

The principle was reaffirmed in the judgment of Donnelly J. in **Coleman -v- Revenue Commissioners** [2014] IEHC 662, which was a case stated by the Appeal Commissioners to the High Court in relation to artists’ exemption, wherein it was stated:

“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.”

[19] In general terms, to be entitled to the exemption from tax under section 195, a work must be (a) an original and creative work, and (b) have cultural or artistic merit. Section 195(12) provides that the Arts Council and the Minister for Arts, Heritage and the Gaeltacht must draw up guidelines for the purposes of determining whether a work is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. Section 195(12) provides that the guidelines may specify criteria by reference to which the questions whether a work is original and creative and has cultural or artistic merit are to be determined. Section 195(13) provides that the Revenue Commissioners (and the



Appeal Commissioners on appeal) must not determine that the work is original and creative and has cultural or artistic merit unless the work complies with the guidelines for the time being in force. The guidelines are structured to include a description of ‘original and creative’ at paragraph 4, a description of ‘cultural merit’ at paragraph 5, a description of ‘artistic merit’ at paragraph 6, criteria for non-fiction work at paragraph 7 and types of works excluded from the artists’ exemption scheme at paragraph 8.

[20] The guidelines specify criteria for non-fiction work. Therefore, if the work being considered is non-fiction, the work must satisfy the criteria in paragraph 7 in determining the questions whether the work is original and creative and has cultural or artistic merit. The interplay between the criteria for non-fiction in paragraph 7 and the descriptions in paragraph 4, paragraph 5 and paragraph 6 is less than straightforward. If a work satisfies the criteria in paragraph 7(2) does this mean the work satisfies the description of ‘original and creative’ in paragraph 4? If a work satisfies the criteria in paragraph 7(2) does this mean the work satisfies the description of ‘cultural merit’ in paragraph 5 or ‘artistic merit’ in paragraph 6? Within paragraph 7, the criteria specified in paragraph 7(2)(a), 7(2)(b), 7(2)(c) and 7(2)(d) includes requirements that the work: (i) incorporates the author’s unique insights into the subject matter; (ii) is regarded as a pioneering work; (iii) makes a significant contribution to the subject matter by (I) casting new light on the subject matter or (II) changing the generally accepted understanding of the subject matter. Therefore, if a non-fiction work satisfies the criteria in paragraph 7(2) does this dispense with a separate consideration of paragraph 4, paragraph 5 and paragraph 6, in that, if the non-fiction work satisfies the criteria in paragraph 7(2) does this mean the book is considered as original and creative and has cultural or artistic merit? In my view, the starting point for a non-fiction work is an examination of the criteria in paragraph 7(2). If a non-fiction work satisfies the criteria in paragraph 7(2), it would mean, in my opinion, particularly in light of the wording in paragraph 7(1), that the book is original and creative and has cultural or artistic merit.

[21] Section 195(1) defines ‘work’ as meaning an ‘original and creative work’ within certain defined categories, one of which is ‘a book or other writing’. In this appeal, the



book titled [redacted] comes within the category of ‘a book or other writing’. The question arising is whether the book is ‘original and creative’? Paragraph 4 of the guidelines states that ‘*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.*’ In the Outline of Arguments provided by the Revenue Commissioners on 16 December 2019, it was submitted that the book, [redacted], was an original and creative work within the meaning of section 195 and the guidelines.

[22] Section 195(2) refers to a determination that a work is generally recognised as having ‘cultural or artistic merit’. The question arising is whether the book has ‘cultural or artistic merit’? Paragraph 5 of the guidelines states that ‘*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.*’ Paragraph 6 of the guidelines states that ‘*a work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.*’ In the Outline of Arguments provided by the Revenue Commissioners on 16 December 2019, it was submitted that the book, [redacted], satisfied at least either paragraph 5 or paragraph 6 of the guidelines.

[23] The book the subject matter of this appeal is non-fiction. Therefore, in considering the questions of whether the book is ‘original and creative’ and has ‘cultural or artistic merit’, the criteria specified in paragraph 7 of the guidelines must be examined. Having read the book, I would view the book as being practical and insightful which was amplified by the use of plain language; the layout of the book was innovative, particularly the visual representation of the narrative by way of diagrams; and the use of acronyms and the succinct summation of principles was imaginative. However, the Appellant must demonstrate that his book satisfies the criteria specified in paragraph 7(2) of the guidelines. The Appellant submits that his book satisfies the criteria in paragraph 7(2)(b) and/or paragraph 7(2)(c) or a combination of (b) and (c).

[24] As regards paragraph 7(2)(b) of the guidelines, the Appellant must demonstrate that his book is an ‘autobiography’ and meets the remaining requirements described therein. The criteria in paragraph 7(2)(b) includes that the work, in the opinion of the Revenue Commissioners, is an autobiography. In construing ‘autobiography’, the word must be given its ordinary and natural meaning. This follows the Supreme Court judgment in *Inspector of Taxes -v- Kiernan* [1981] 1 IR 117, wherein Henchy J. stated:

“... if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given its ordinary or colloquial meaning.

... when 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 from his own experience of its use. “

[25] Accordingly, the word ‘autobiography’ should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily. ‘Autobiography’ is a simple word which has a widespread and unambiguous currency. In my view, the ordinary and natural meaning of ‘autobiography’ is an account of a person’s life (or a particular era of that person’s life) written by that person. Applying this approach, and having carefully read the book, I am not satisfied that the book the subject matter of this appeal could be said to be an autobiography within the ordinary and natural meaning of the word. The book contains some information relating to the Appellant’s life which may be viewed as autobiographical, however, this is not sufficient to make the book an autobiography. A numerical measurement of the autobiographical content of a book is not determinative of whether a book is an autobiography, however, it is a factor to be considered. In my view, having regard to the contents of the book and the submissions of the parties, it is a book on [redacted]. The Appellant gave evidence that his book was not

an ‘out and out’ autobiography and he described the subject matter of the book as [redacted]. The information on the back cover of the book states:

[redacted]

[26] For the reasons outlined above, I determine that the book titled [redacted] does not satisfy the criteria in paragraph 7(2)(b) of the guidelines as the book is not an autobiography. In those circumstances, it is not necessary to consider whether the book meets the remaining requirements described therein that the work: (i) incorporates the author’s unique insights into the subject matter; (ii) is regarded as a pioneering work; (iii) makes a significant contribution to the subject matter by (I) casting new light on the person or (II) changing the generally accepted understanding of the person.

[27] As regards paragraph 7(2)(c) of the guidelines, the Appellant must demonstrate that his book is related to a function of the Heritage Council and meets the remaining requirements described therein. The criteria in paragraph 7(2)(c) includes that the work, in the opinion of the Revenue Commissioners following consultation with the Heritage Council, is a work related to a function(s) of the Heritage Council as described in the Heritage Act 1995. There is no evidence that the Revenue Commissioners consulted the Heritage Council regarding the book the subject matter of this appeal. The functions of the Heritage Council are set out in section 6 of the Heritage Act, 1995 (as amended by the Heritage Act, 2018)

“(1) *The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.*

- (2) *References to the National Monuments Advisory Council, the Historic Monuments Council or the Wildlife Advisory Council in any enactment or instrument made thereunder shall, where appropriate, be construed as references to the Council.*
- (3) *The Council shall in particular –*
- (a) *promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,*
 - (b) *co-operate with, engage with, advise and support public authorities, local communities and persons in relation to the functions of the Council, and,*
 - (c) *promote the coordination of all activities relating to the functions of the Council.”*

The Appellant submits that the book is rooted in [redacted] which are central to Irish culture. Undoubtedly, the [redacted] are an important part of Irish culture, however, for the criteria in paragraph 7(2)(c) to be satisfied the book must relate to a function of the Heritage Council as described in the Heritage Act, 1995 (as amended). The Appellant has not demonstrated that his book relates to a function of the Heritage Council.

[28] For the reasons outlined above, I determine that the book titled [redacted] does not satisfy the criteria in paragraph 7(2)(c) of the guidelines as the book does not relate to a function of the Heritage Council. In those circumstances, it is not necessary to consider whether the book meets the remaining requirements described therein that the work: (i) incorporates the author’s unique insights into the subject matter; (ii) is regarded as a pioneering work; (iii) makes a significant contribution to the subject matter by (I) casting new light on the subject matter or (II) changing the generally accepted understanding of the subject matter.

[29] In all the circumstances, I find the Appellant has not brought himself ‘*within the letter of the Act of 1997 and the Guidelines made thereunder as interpreted by the established canons of construction*’ to be entitled to the exemption from tax under section 195.



Determination

[30] Based on a review of the facts and a consideration of the evidence, materials and submissions of the parties, I determine that the Appellant is not entitled to the exemption under section 195 of the Taxes Consolidation Act, 1997 for the book [redacted]. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

14 DECEMBER 2020

APPENDIX A

195. Exemption of certain earnings of writers, composers and artists

- (1) In this section –
‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;
‘EEA state’ means a state which is a contracting party to the EEA Agreement;
‘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 or in the United Kingdom, and not resident elsewhere, or
 - (II) ordinarily resident and domiciled in one or more Member States, or in another EEA state or in the United Kingdom, 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 €50,000 for the year of assessment 2015 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.

...

- (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.

...



- (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 determination by the High Court under *section 949AR*.
- (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 B

Guidelines drawn up under Section 195 (12) 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 non-fiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit 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.

The above Guidelines were drawn up by An Comhairle Ealaíon and the Minister of Arts Heritage and the Gaeltacht, with the consent of the Minister for Finance, in accordance with section 195(12) of the Taxes Consolidation Act 1997 and are effective for all determinations made by the Revenue Commissioners on or after 30 November 2013.

