



46TACD2021

BETWEEN/

APPELLANT

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal involves a claim for exemption pursuant to s.195 of the Taxes Consolidation Act as amended ('TCA 1997') commonly known as 'Artists' Exemption'.
2. The Appellant's authored work is a work entitled "**REDACTED**" (hereafter referred to as 'the work'). The Appellant submitted a claim for artists' exemption dated 25 September 2019 on the basis that her work was an original and creative work having cultural or artistic merit, for the purposes of s.195 TCA 1997. The Appellant's claim for exemption was refused by the Respondent on 23 October 2019, stating it was unable to make a determination in respect of the work. The Respondent was not satisfied that the Appellant's work came within any of the categories of work listed in section 195(1) of TCA 1997.
3. The Appellant duly appealed to Tax Appeals Commission (TAC) on 6 February 2020.
4. This case is adjudicated without a hearing in accordance with the provisions of s.949U Taxes Consolidation Act (TCA) 1997 by agreement with the parties.

Background

5. The Appellant regards her work as a play and claimed exemption in accordance with section 195(1) (b) as a play. The Respondent did not accept that her work could be classified as a play and regarded the work as being outline directions and choreography for a play.

Legislation and Guidelines

6. The relevant legislation is contained at s.195 of the Taxes Consolidation Act 1997, a copy of which is attached at Appendix I. In considering this appeal, I am obliged, in compliance with s.195 (13) (b) TCA 1997 to have regard to “**The Guidelines**” for the time being in force under s.195 (12). The work in question must satisfy the mandatory requirements of those guidelines, a copy of which is attached at Appendix II.

Submissions

Appellant

7. The Appellant submitted that her work is a dance theatre piece of work.
8. The Appellant submitted a promotional video production of her work which is available at: **REDACTED**.
9. In support of her assertion that the work is a play, the Appellant submitted the original script used for early rehearsals of her work in 2018. She also submitted a more detailed script used for theatre rehearsals in 2019.
10. She provided the opening and closing narrations to support the production based on her choreography book of “**REDACTED**”.
11. The Appellant provided a letter of support from Mr **REDACTED** a recognised drama advisor in support of her appeal. Mr **REDACTED** is a playwright, performer and arts in education practitioner and a former Theatre artistic director.
12. In his letter supporting the appeal he affirms that the script is that of the production premiered in **REDACTED** Theatre in 2019 and is an original work of art of the Appellant. He stated that the work is an immense work of artistic imagination and research on the



part of the Appellant, is novel and ground breaking in form and deserving of recognition as a contemporary work of Irish Art.

Respondent

13. The Respondent submitted that it did not accept that the work is a play and instead regarded the work as being outline directions and choreography for a play.
14. The Respondent submitted that it was not satisfied that the Appellant's work came within any of the categories of work listed in section 195(1), they were not in a position to make a determination in respect of the Appellant's work.

Analysis

15. The Appellant's work is 'original and creative' within the meaning of s.195 TCA 1997, as amended and the guidelines issued thereunder. This is not disputed by the Respondent.
16. The Respondent contends that the work does not qualify as a play and instead regarded it as being outline directions and choreography for a play. Accordingly, the Respondent contended that it failed the test of being a play in section 195(1)(b) TCA 1997, as amended.
17. In order to secure exemption, the work must firstly qualify as a play as per section 195(1)(b) TCA 1997, as amended.
18. After careful consideration of the scripts and in particular the promotional video provided in the Appellant's submissions, I am satisfied that the work is in fact a play. Accordingly, I am satisfied that the work falls with the scope of the exemption as set out in section 195 (1) (b) TCA.
19. Having satisfied the basic test of being a play and so constituting an entitlement to Artists Exemption in accordance with s.195 of the TCA 1997, it is necessary to consider the guidelines for the time being in force under s.195 (12). I am also satisfied that the work in question satisfied the mandatory requirements of those guidelines, a copy of which is attached at Appendix II.
20. In determining the matter of exemption or not from income tax in this case, I have considered the issues raised in relation to the correct interpretation of Revenue statutes



in the decision of Murphy J in *Ó Coindealbháin –v- Gannon* [1986] I.R. 154, where he stated: -

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

21. In considering whether the work the subject of this appeal satisfies the requirements for exemption, I must have regard to the decision of Kennedy CJ in *Commissioners of Inland Revenue –v Doorley* [1933] 1 I.R. 750, where he stated: -

“The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”

22. I have also taken into consideration a more recent event, in a case stated by the Appeal Commissioners to the High Court in relation to the artists’ exemption. Donnelly J in *Coleman –v- Revenue Commissioners* [2014] IEHC 662 held that: -

“On the basis of the decision in Doorley, the Appeal Commissioner was obliged to give effect to the clear and express terms of the legislation in considering the artist’s exemption from income tax. The liability to income tax having been established, that exemption must be brought within the letter of the Act of 1997 and the Guidelines made thereunder as interpreted by the established canons of construction. There was no basis in law for adopting any other approach to the interpretation of the Act and the Statutes.”



23. I have carefully read the script, viewed the video of the produced work and I have determined that the work is a play. I have considered the tests and criteria for exemption under the guidelines for the time being in force under s.195 (12). The work is an excellent and interesting read and the video of the performed work confirms my views in the matter of its entitlement to exemption.

24. I have determined that the work is eligible for exemption under the legislation and guidelines in force under s.195 (12) for Artist's Exemption.

Determination

25. The artist exemption legislation and guidelines set out a series of technical legal tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, I determine that the work "**REDACTED**" satisfies the requisite legal tests for exemption and I determine that the Appellant is entitled to avail of the exemption pursuant to s.195 TCA 1997.

26. This appeal is determined in accordance with s.949AL TCA 1997.



CHARLIE PHELAN
APPEAL COMMISSIONER
2 FEBRUARY 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 949I, within the period of 30 days after the end of the relevant period] on the grounds that –



(a) the work or works is or are generally recognised as having cultural or artistic merit,

or

(b) the particular work has cultural or artistic merit, as the case may be.

(7) The Appeal Commissioners shall hear and determine an appeal made to them under subsection (6) as if it were an appeal against an assessment to income tax and, subject to subsection (8), the provisions of the Income Tax Acts relating to such appeals and to the rehearing of such an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(8)(a) On the hearing of an appeal made under subsection (6), the Appeal Commissioners may

(i) after consideration of –

(i) any evidence in relation to the matter submitted to them by or on behalf of the individual concerned and by or on behalf of the Revenue Commissioners, and

(ii) in relation to a work or works or a particular work, the work or works or the particular work, and

(ii) after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them,

determine that the individual concerned has written, composed or executed, as the case may be, either solely or jointly with another individual –

(a) a work or works generally recognised as having cultural or artistic merit, or

(b) a particular work which has cultural or artistic merit,

and, where the Appeal Commissioners so determine, the individual shall be entitled to relief under subsection (3)(a) as if the determination had been made by the Revenue Commissioners under clause (I) or (II) of subsection (2)(a)(ii), as the case may be.

(9) For the purposes of the hearing or rehearing of an appeal made under subsection (6), the Revenue Commissioners may nominate any of their officers to act on their behalf.

(10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.



(11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.

(12)(a) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

(b) Without prejudice to the generality of paragraph (a), a guideline under that paragraph may –

(i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and

(ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.

(13)(a) Where a claim for a determination under subsection (2) is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under subsection (12) for the time being in force.

(b) Paragraph (a) shall, with any necessary modifications, apply to –

(i) a determination by the Appeal Commissioners under subsection (8) on an appeal to them under subsection (6) in relation to a claim mentioned in paragraph (a), and

(ii) a rehearing by a judge of the Circuit Court of an appeal mentioned in subparagraph (i) and, to the extent necessary, to the determination by the High Court of any question of law arising on such an appeal or rehearing and specified in the statement of a case for the opinion of the High Court, by the Appeal Commissioners or, as the case may be, a judge of the Circuit Court.

(14) Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first





published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.

(15) On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under subsection (12) for the time being in force.

(16)(a) The Revenue Commissioners may publish, or cause to be published, the name of an individual who is the subject of a determination under subsection (2).

(b) Publication under paragraph (a) may, as appropriate, include the title or category of the work of an individual."



Appendix 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.”*

