



98TACD2021

**Between:**

**THE APPELLANT**

**Appellant**

and

**THE OFFICE OF THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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### **Introduction**

1. This appeal involves a claim for exemption pursuant to section 195 of the Taxes Consolidation Act as amended ('TCA 1997') and 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 or works is or are generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.
2. The Appellant's authored work is a non-fiction book titled "██████████" (hereinafter referred to as "the Work"). The Appellant submitted a claim for Artists Exemption for a determination by the Revenue Commissioners under of section 195 TCA 1997 in 2019 on the basis that the Work was a book of non-fiction. The Appellant's claim for exemption was refused by the Respondent on 16<sup>th</sup> September 2020 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 dated 16<sup>th</sup> September 2020 that the Work was a work of non-fiction but it "*does not come with the criteria for non-fiction work set out in paragraph 7 of the guidelines*".
3. The Commissioner notes that the letter from the Revenue Commissioners 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. That may have also assisted the Appellant to consider any further submissions as requested by the Revenue Commissioners and/or pursue the appeal to the Tax Appeals Commission. The Commissioner notes the Revenue Commissioners supplied a detailed Statement of Case to the Tax Appeals Commission. However, again the Statement of Case does not provide the Appellant with further detail as to why the Revenue Commissioners did not consider the Work came within paragraph 7 of the guidelines, other than the Revenue Commissioners were not satisfied that the Work could be considered either a biography or an autobiography, within the ordinary meaning of the word. The Work was also examined by the Revenue Commissioners to ascertain if it came within any other categories of work listed in paragraph 7 of the guidelines but they were not satisfied it came within any category listed in paragraphs 7(2)(a) to (e).

4. The Appellant appealed to the Tax Appeals Commission (TAC) on 8<sup>th</sup> January 2020. The Appellant has appealed on the basis that it is chiefly an autobiographical account of the Appellant's experiences in [REDACTED]. The Appellant also appealed on the basis that there is biographical exploration of seminal figures in history of critical thought. Hence, it qualifies under the test of biography and autobiography in guidelines 7(2)(b)(i) and (ii). The Appellant included a helpful document setting out the autobiographical nature of the writing and some examples of the biographical elements claimed within the Work. The document had the headings "examples of autobiographical narrative throughout the book" and "biographical portrait" referring to different well-known figures in different fields.
5. This case is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997 by agreement with the parties. The Appellant submitted a Statement of Case which built on the information submitted in the Notice of Appeal. The Commissioner has also read the Work in full and notes the academic record of the Appellant. The Commissioner has also received a Statement of Case from the Revenue Commissioners and that has also been considered in this determination.

## **Background**

6. The Appellant according to the Work is a [REDACTED]. The Appellant contributes to discussions about science and has written for various publications on science. He was a joint recipient of a science prize in [REDACTED]. The Work is a book to understand the use of critical thinking and scientific methodology and to apply those techniques to decision making. The Work is explained as to how reason and reflection [REDACTED]. There are [REDACTED] chapters in the Work. Each chapter is referenced. The Commissioner found the Work thought provoking and an interesting insight to modern decision making. The Commissioner would recommend the book to others. But the Commissioner's role is not to be a critic or proponent of such publications, albeit interesting and informative they may be. The Commissioner's role is to determine whether they come within the legislation and guidelines to qualify as a Work within section 195 TCA 1997.
7. The Revenue Commissioners accept that the work is a book and that it is original and that it comes within the categories of work listed for consideration in section 195 TCA 1997. However, after examining the Work, the Revenue Commissioners did not find it possible to make a determination for the purposes of exemption from income tax provided for in section 195 TCA 1997.

## Legislation and Guidelines

8. 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 1997.
9. 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*

10. The Appellant submitted that the Work satisfies 7(2)(b)(i) and/or (ii) of the guidelines being an autobiography and/or a biography. As stated above, the Commissioner has read and considered the Work to assess whether it comes within section 195 TCA 1997 and the guidelines.
11. The Appellant submitted that the Work should be considered a combination of chiefly paragraph 7(2)(b)(ii) of the guidelines, as is it an autobiographical account of the Appellant's experiences in [REDACTED]. Further, as part of the narrative of the Work, there are also elements which satisfy paragraph 7(2)(b)(i) in the form of biographical exploration of seminal figures in the history of critical thought relevant to the Appellant's "journey".
12. The Appellant enclosed the suggested autobiographical and biographical extracts from the Work for consideration in the Appeal.

### *Respondent – Revenue Commissioners*

13. The Revenue Commissioners 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.
14. The Revenue Commissioners 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.
15. The Revenue Commissioners 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.
16. The Revenue Commissioners 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. Further, the current version of the guidelines are effective for all determinations made by Revenue on or after 30<sup>th</sup> November 2013.

17. The Revenue Commissioners determined that the book was a work of non-fiction.
18. The Revenue Commissioners 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 Revenue Commissioners were not satisfied that the Work could be considered to be a biography or autobiography, within the ordinary meaning of the word. The Work was also considered to assess if it came within any other category of work listed in paragraph 7.
19. The Revenue Commissioners 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). No further details were provided as to this reasoning.
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.

### **Analysis**

21. The Work is a book and it is 'original and creative' within the meaning of section 195(1) TCA 1997 as amended and the guidelines issued thereunder. This is agreed by both parties to this appeal. However, the Revenue Commissioners do not accept that Work comes within paragraph 7(2) of the guidelines relating to non-fiction work.
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 of the guidelines.
23. The test to be applied in this case as argued by the Appellant is specifically, whether the Appellant's work constitutes an entitlement to Artists Exemption in accordance with s.195 of the TCA 1997 under one or more of the criteria set out in paragraphs 7 (2)(b) of the guidelines.
24. Paragraph 7(2)(b) of the guidelines states :-  
  
*(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.*
25. The test to be applied is specifically, whether the Work constitutes an autobiography or a biography within the meaning of the said guidelines and if that is so determined that it 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.

26. The Commissioner will firstly consider if the Work comes within the meaning of an autobiography and secondly, a biography or sufficient biographical elements to come within the paragraph 7 guidelines.
27. The Tax Appeals Commission already considered the meaning of ‘autobiography’ in Determination 20TACD2017 citing the Supreme Court dicta in *Inspector of Taxes v Kiernan* [1981] 1 I.R.117, applied by Donnelly J. in *Coleman v Revenue Commissioners* [2014] IEHC 662. The Supreme Court dicta provides as follows:-

*‘Where statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily’*

And

*‘[W]hen the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meaning, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed.’*

28. Section 195 TCA 1997 as amended and the guidelines made thereunder are addressed to the public generally. The word “autobiography” has widespread and unambiguous currency. It is normally accepted that an autobiography is an account of a person’s life written by that person. In determining this appeal, the Commissioner has given the word autobiography its ordinary and natural meaning and what an ordinary member of the public would intend it to have when using it ordinarily.
29. 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 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...”*

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

*“The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, 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.”*

31. 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.”*

32. The Tax Appeals Commission in Determination 20TACD2017 regarded the measurement in a book, of autobiographical content, as a factor which may be considered in the determination of whether a work constitutes an autobiography but suggested that a determination on this basis alone might be unduly reductive. While the actual number of pages of autobiographical material in a book is not conclusive evidence of the character of the work, it is nonetheless an important consideration.

33. An autobiography tells the story of a life. It usually provides the reader with the recollection of the life story or a particular and historical period of the person's life. Individuals can often write several autobiographies representing different chapters in their lives usually from their youth, through passing years, culminating in the latter period of their lives. But the important element is the story of the life which informs the reader of that life and hence the factual details of that life. There is a difference between an autobiography and using events or experiences to ground a work. An autobiography details the facts and historical record of an individual's life. An autobiography tends to have a chronological order and is an historical account of a life. The reader will tend to read an autobiography to get to know the author whereas a reader will be drawn to other types of works by the particular subject matter or the style or particular voice of the author. In this instance, the Commissioner finds that the reader of the Work would be drawn by the subject matter and/or the particular style of the Work. But, it would be a stretch for a reader to have selected this Work on the basis that it was an autobiography of the author's life. It is highly unlikely that any librarian would categorise the Work in the autobiography section of a library or any bookshop would place this book in the autobiography section of the shop.

34. The Commissioner has read the Work. It traverses between recollections of different world events and memories and their application to differing philosophical and scientific theories and findings. The Work does not have sufficient characteristics to make a finding that it is an autobiography. It does not detail facts and historical records in a sequential and chronological order. It is centred on a topic namely critical thinking and experiences relating to that topic and moves back and forth in time. The structure of the Work is in ■ parts relating to different themes relating to critical thinking/decision making/theories rather than the Appellant's life story. All memories will by their very nature give an indication of the life that the author has

led. But an autobiography is a particular genre that informs the reader about the story of a life and that life's story.

35. The Work does not come within the definition of an autobiography in that it does not clearly and explicitly set out the life story or even a part of the life story of the author. It is a collection of memories that relate to the certain particular events and scientific thinking to ground the Work's findings on critical thinking and decision making. The context and experiences of the Appellant have confirmed his findings. That is distinct from what would be considered as an autobiography. The reader would be attracted to the Work if they were interested in science, decision making, psychology or the style of the writing or the voice. But they would not learn about the life of the author from an historical or chronological view and would not have considered they were reading his autobiography. The Work is not an autobiography in the ordinary meaning of the word.
36. The Commissioner has found that the Work does not come within the definition of autobiography. As such, the Commissioner will then consider if it comes within the definition of a biography within paragraph 7(2)(b). A biography would be known as a book of the story of the life of a person written by someone else. Again, the fundamental feature is that it is a life story. The Work features many scientists and their theories from Galileo, Kelvin, Faraday, and Boyle to philosophers such as Karl Popper and social scientist Karl Marx to psychiatrist Charles Arthur Mercier. There are many prominent individuals referred to and/or their theories discussed. But whilst the Work has some factual historical references to these many individuals, it would be a stretch for the reader to consider that they were reading a biography on these individuals and reading about their lives. The portraits of these prominent thinkers and scientists in the Work are to illustrate the Appellant's theories and support his views. Whilst they may feature factual details about these prominent individuals they are not a biography of them.
37. Paragraph 7 of the guidelines envisage a book which is a biography about an individual and that book then provides a unique insight into that person's life, is pioneering and makes a significant contribution by casting new light on the person or changing the generally accepted understanding of the person. But to reach a consideration of the second elements of the paragraph 7(2)(b) criteria, the Work must come within a biography. This Work whilst it includes some portraits of well-known individuals does not come within that definition given its ordinary and natural meaning. Anyone selecting this Work would not have considered they were purchasing a biography of Kelvin, Popper or any other figure highlighted. They may well have considered that they learnt more about these individuals, their experiences and their theories. But, not their life stories as would be the understanding of a biography. Again, the Work would not be categorised in the biography section of a library or a bookshop. It does not concentrate on a person and their life, which is the ordinary understanding of a biography.
38. As the Commissioner has found that the Work is neither an autobiography nor a biography, the Commissioner does not need to consider the second element required in terms of the tests set out in paragraph 7(2)(b) of the guidelines which also require: -
  - a. that the work incorporates the author's unique insight into the subject matter and
  - b. is regarded as a pioneering work and
  - c. also makes a significant contribution to the subject matter by:
    - i. casting new light on the person or
    - ii. by changing the generally accepted understanding of the person.
39. As explained above, the Work falls short of the characteristics of an autobiography and/or a biography. In the Commissioner's view the character and essence of this Work is that of a book about critical thinking and decision making which draws on some personal experience

and other scientists/philosophers to ground the Work. It is an informative and interesting read and the Appellant is an expert in his field. But that does not mean it qualifies for this tax exemption as per section 195 TCA 1997.

40. For completeness, the Commissioner has considered if the Work comes within any other paragraph of the guidelines but finds that it does not do so. Hence, again it fails the non-fiction tests as set out in the guidelines and of which the Tax Appeals Commission is bound to have consideration.

#### **Determination**

41. 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) (b) 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 interesting and informative and wishes the Appellant all good fortune with its sales.

42. This appeal is determined in accordance with section 949AL TCA 1997.



**Marie-Claire Maney**  
**Appeal Commissioner**  
**Chairperson**  
**31<sup>st</sup> May 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.”*