



17TACD2022

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') 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 Tax Appeals Commission ("the Commission"). The appeal is on the grounds that the work is original and creative and is generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.
2. The appeal hearing took place remotely with attendance by both the Appellant and the Respondent remotely. The Appellant's work in this appeal is an illustrated book (with original drawings) and music titled [REDACTED] (hereinafter referred to as "the Work"). The Appellant submitted a claim for Artists' Exemption for a determination by the Revenue Commissioners ("the Respondent") under section 195 TCA 1997. The Appellant considered that the Work was a book with music and drawings and it was original and creative.
3. The Appellant's claim for exemption was refused by the Respondent on 23<sup>rd</sup> October 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 that the exemption is not given in cases where the applicant is responsible for editing or translation of a work. The Respondent considered it to be 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".

4. The Appellant appealed to the Commission on 6<sup>th</sup> April 2021. The Appellant has appealed on the basis that it comes within paragraph 7 of the guidelines and is original and creative and has cultural and/or artistic merit. The Appellant stated that the Work must be looked at in a holistic way, not just the words, their importance notwithstanding, but the aggregate of the words, the art, the voice, the artistry, all combined to create an original and dynamic, artistic and cultural vehicle for both enjoyment and for propagating the Irish language.
5. This case was listed for a hearing which took place on 30<sup>th</sup> September 2021. The Appellant was unrepresented but was articulate and knowledgeable about the Work and the guidelines. The Respondent also attended the hearing, also remotely via video link. The Commissioner has considered the Work, the written submissions and the verbal submissions on behalf of the Appellants and the Respondent, in coming to this determination.

## Background

6. The Respondent accepts that the Work is a book. The Respondent examined the book and “*determined that this book was a work of non-fiction*” (Statement of Case). The Respondent found that it was a children’s activity book and the Appellant is credited as being [REDACTED] of the Work with another individual credited as [REDACTED]. The Respondent did not appear to consider that section 195 TCA 1997 refers to several contributors to the Work as having written, composed or executed a particular work.
7. The Respondent noted that the Work comprised of a collection of traditional Irish children’s songs. The Respondent, however, does not explain how a collection of traditional songs brings it within the category of non-fiction. By their very nature, songs are fictional, as they are derived from imagination and stories. The word non-fictional according to dictionary definitions means informative or factual or writing about real events or facts, rather than stories that have been invented. The songs in the Work are invented and are stories (not factual events). The artwork is original and cannot by its very nature amount to being “non-fiction”. Hence, the Respondent has not applied the Work under the correct category and hence applied the correct tests to the Work in arriving at its decision.
8. The Commissioner has read the Work and listened to the music. This Work is highly unusual and innovative. It is not just “a book”. It is an illustrated book of the words to music but is also the music. The music that accompanies the words is recorded as part of the Work. The intention is that a child presses the requisite button on the Work and will hear singing and the words in the Work sung back to them. The Commissioner does not find it is an activity book, as described by the Respondent, unless the action of learning music and the accompanying words is an activity.
9. The Commissioner notes that the graphic art in the Work is of high quality, is original and resembles water colour painting or is in fact water colours transcribed onto the Work. There is no doubt the Work would appeal to young readers/listeners. The Work would also appeal to either the deaf or blind community due to the visual and audio means of communication. The Commissioner enjoyed the Work and would recommend it to any children to assist in their learning of the National Language. The Work is aimed at children, albeit the Commissioner gets the sense that due to the graphics and layout it is aimed at relatively junior children. No doubt it would have a use in a classroom setting to assist in the teaching of children the National Language and to assist in making language accessible and fun.
10. At the hearing, the Appellant gave evidence that he had taken songs that already existed and changed the wording to ensure they were simplified for children. In addition, the arrangement of original songs had been changed, again to simplify and appeal to children. In addition, the Appellant had also composed some additional music in the songs and had produced original

tunes. The technology was innovative and accessible for children. The Respondent confirmed that they were not aware of this information when they made their decision. They confirmed that it “*coloured their view*” but not sufficiently to change their decision.

11. The Commissioner has considered the Work in a holistic way, as suggested by the Appellant. It is not possible to divide up the Work, as it is an illustrated book which plays music and which accompanies the wording in the Work. It all works together. It is important that the Commissioner does not “get stuck in the past” but appreciates that the medium of art and culture changes with technology. This Work is utilizing the best of technology to augment the art and cultural aspects of it.
12. The Commissioner is satisfied that there is sufficient originality in the changed wording of the songs, the arrangement of the songs and the additional composition alongside the original art in the Work, to warrant that it is original and creative. It is original in that it is a new form of art namely a book that can play music alongside the words in the book. It is creative in that there is original and creative artwork and the music and wording are creative. The format of the Work is also creative in that it combines the written and oral in traditional and technological formatting.
13. The Commissioner finds that the Work is a combination of all three genres listed in section 195(1) in that it is a book, a musical composition and a series of small paintings. The Commissioner further finds that the Work can be solely or jointly composed or executed with another individual under section 195(2)(ii)(II). The Commissioner notes that in the guidelines that work does not come within the artists’ exemption under paragraph 8(b)(iv) if it comes under “*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.*” The Commissioner has considered this paragraph but does not consider that it applies in this appeal. The Commissioner considers that the arrangement, adaptation and new musical composition and wording is of sufficient musical significance, that this paragraph is not applicable in this appeal. In addition, the Work also combines new wording and the artwork.

### **Legislation and Guidelines**

14. 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.
15. 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.
16. As stated above, the Commissioner has read and listened to the Work to assess whether it comes within section 195 TCA 1997 and the guidelines.

### **Submissions**

*Appellant*

17. The Appellant submitted in the appeal that the Work is a type of book that has never been published in the Irish language. The presentation of the material and mode of the engagement of the reader are key to the originality of the book. The Appellant further submitted that it is the presentation as a whole that marks this out as creative and original work. The artistic merit arises from the combination of the originality, creative artwork and presentation of the material and the quality of the recordings, accompaniment and singing. The Appellant asked that the Work be considered in a holistic way.
18. The Appellant submitted that it was a pioneering work in the field of Irish language and culture. The Appellant referred to section 195 in the Appellant's Notice of Appeal. At the hearing, the Appellant confirmed that the wording of the songs had been adapted for ease for children, the music had been arranged, again to assist children and he had composed new music in the songs.

*Respondent – Revenue Commissioners*

19. The Respondent submitted that it accepted that the Work is a book that comes within the categories of work listed in section 195(1) TCA 1997 as amended. The Respondent submitted that it was a work of non-fiction.
20. The Respondent submitted that section 195(12) TCA 1997 states that guidelines may include specifications of the types or kinds of works that are not original or creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose.
21. The Respondent also submitted that section 195(12) TCA 1997 further states that the guidelines may specify criteria by reference to which the questions whether works are original and creative and whether they have or are generally recognised as having cultural or artistic merit are to be recognised.
22. The Respondent submitted that section 195(13) states that where an application for a determination is made to Revenue, that Revenue shall not make a determination in respect of a work unless it complies with the guidelines. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.
23. The Respondent determined that the Work was a work of non-fiction for children. The Respondent submitted that the Work was a children's activity book and the Appellant was credited as being ██████████ of the Work, with another individual credited as ██████████. They recognised the Work comprised a collection of traditional Irish children's songs but as the Appellant was not credited as the composer of the songs and only ██████████ of the Work, they did not consider that it met the requirement of paragraph 4 of the guidelines.
24. The Respondent submitted that Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction books and sets out specific categories, which the Work must come within, in order to qualify for a determination. The Respondent submitted that it was not satisfied that the Work came within any of the categories of work listed in paragraphs 7(2)(a) to (e). The Respondent was also not satisfied that the Work was original and creative as required under section 195 and as defined by paragraph 4 of the guidelines.
25. The Respondent submitted that it was unable to make a determination in respect of the Work, for the purposes of the exemption from income tax provided by section 195 TCA 1997. The Respondent confirmed these submissions at the hearing.

## Analysis

26. The Work, as explained above is unique in that it is a combination of artwork, music and the words of songs. It comes within section 195(1)(a), (c) and (d). The Commissioner must determine that the individual has written, composed or executed, either solely or jointly with another individual and the Work as having cultural or artistic merit (section 195(8)). The guidelines assist the Commissioner in determining the definition of these words (cultural and artistic merit). The Commissioner finds that the Work is original and artistic.
27. Paragraph 4 of the guidelines outlines that the 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”. The Commissioner is satisfied that the Work is original and creative. It is a unique work and that uniqueness is demonstrated by the fact it is the first time such a work has been in front of the Commission, namely an Irish book of children’s songs adapted and with musical singing incorporated in the Work to listen to along with the words. The Commissioner is satisfied it came into existence by the exercise of the creator’s imagination. The Appellant came up with the concept and has created the Work himself. Along with [REDACTED] [REDACTED] it has sprung and originated from his imagination.
28. In addition, the Commissioner must also consider if the Work has cultural merit under paragraph 5 of the guidelines. Cultural merit is considered “*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.*” The Work is a quality combination of art, music and words. It is a unique commodity for children to learn the National Language. The Work only has to have cultural or artistic merit and does not need to have both. 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.*”
29. The Commissioner considers that the Work has also artistic merit due to the quality of its form and its content enhances to a significant degree the canon of work in the relevant category. The Work adds to a significant degree the preservation and extension of Irish children’s songs. The Work is by its very nature simple in nature and tone and content as it is directed towards children. But there is nothing in the guidelines or section 195 TCA 1997 that means a work/book/song/drawing must be sophisticated. The drawings are simple but beautifully crafted and match each song. The songs are beautifully sung and played and adapted and added to in the Work.
30. The Commissioner notes that it is important that artists are not discouraged from keeping up with technological advances in assisting their art and the use of new methods to assist the promulgation of the National Language and the cultural heritage of the State should not be discouraged. The Appellant has found a method through art and technology to assist and promote the National Language and cultural life and heritage of the State. This is to be commended. In addition, the Appellant has found a way of preserving and adding to cultural songs, of cultural and national heritage through the oral tradition. The oral tradition has a strong lineage in the State and this is being preserved and added to by the use of technology in the Work.
31. The Commissioner has considered if the Work comes under the definition of a non-fiction book but this is not applicable in this case. The Work is original and creative and represents fictional work, in that the music, drawings and songs are all from someone’s imagination and fictional in nature. They are not factual, as is the nature of songs, illustrations and music. Therefore, the Respondent’s consideration of non-fictional work under the guidelines is not applicable. Paragraphs 7(1) and (2)(a) of the guidelines state:

(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.*

32. The Work does not come within a non-fictional book and hence that test is not applicable. The Commissioner has examined if it could come within any of those categories but they are not applicable.

33. The Commission has considered the Supreme Court dicta in *Inspector of Taxes v Kiernan* [1981] 1 I.R.117, applied by Donnelly J. in *Coleman v Revenue Commissioners* [2014] IEHC 662. The Supreme Court provides as follows:-

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

And

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

34. In determining the matter of exemption or not from income tax in this case the Commissioner has considered the issues raised in relation to the correct interpretation of taxation statutes in the decision of Murphy J in *Ó Coindealbháin –v- Gannon* [1986] I.R. 154, where he stated:-

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

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

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

36. 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.”*

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

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

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

39. As such, the Commissioner finds that the Work comes within the ordinary, basic and natural meaning of the words “a book”, “a musical composition” and “a painting”. The Work contains all three of those matters. The Commissioner also considers that due to the ordinary, basic and natural meaning of non-fiction (i.e. based on factual matters), the Work does not come

within that meaning but is a fictional work due to it being illustrated artwork, songs and music. They all derive from the imagination and are not factual matters or based on factual material.

### **Determination**

40. 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 satisfies the requisite tests, namely that it is a Work which is a book, a musical composition and a series of paintings/pictures/original illustrations. The Work is original and creative. In addition, the Work has cultural and/or artistic merit. It is supporting the promulgation of the National Language, in an original and unique format and hence is making a significant contribution to the enhancement of that subject matter, namely the use of the language and the associated music. As such, the Commissioner finds in the favour of the Appellant, who succeeds in his appeal.
41. This appeal is determined in accordance with section 949 TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Marie-Claire Maney  
Appeal Commissioner  
Chairperson  
16<sup>th</sup> December 2021



## Appendix I

The provisions of Section 195 of TCA 1997, as they were as of the date of the application for exemption, provided as follows: -

*“(1) In this section...*

*“work” means an original and creative work which is within one of the following categories:*

- (a) a book or other writing;*
- (b) a play;*
- (c) a musical composition;*
- (d) a painting or other like picture;*
- (e) a sculpture.*

*(2)(a) This section shall apply to an individual –*

*(i) who is —*

*(I) resident in one or more Member States, or in another EEA state, and not resident elsewhere, or*

*(II) ordinarily resident and domiciled in one or more Member States, or in another EEA state, and not resident elsewhere, and*

*(ii) (I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may be, either solely or jointly with another individual, a work or works generally recognised as having cultural or artistic merit, or*

*(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.*

*(b) The Revenue Commissioners shall not make a determination under this subsection unless*

*(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under paragraph (a)(ii)(II)) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and*

*(ii) the individual complies with any request to him or her under subsection (4).*

*(3)(a) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, subject to paragraphs (aa) and (b), be entitled to have the profits or gains arising to him or her from the publication, production or sale, as the case may be, of a work or works in relation to which the Revenue Commissioners have made a determination under clause (I) or (II) of subsection (2)(a)(ii), or of a work of the individual in the same category as that work, and which apart from this section would be included in an assessment made on him or her under Case II of Schedule D, disregarded for the purposes of the Income Tax Acts.*

*(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of paragraph (a) shall not exceed €40,000 for the year of assessment 2011 and each subsequent year of assessment.*

*(b) The exemption authorised by this section shall not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under clause (I) or (II) of subsection (2)(a)(ii) in respect of which the Revenue Commissioners make a determination referred to in clause (I) or (II) of subsection (2)(a)(ii), as the case may be.*

*(c) The relief provided by this section may be given by repayment or otherwise.*

*(4)(a) Where an individual makes a claim to which subsection (2)(a)(ii)(I) relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may be specified in the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under subsection (2)(a)(ii)(I).*

*(b) Where an individual makes a claim to which subsection (2)(a)(ii)(II) relates, the individual shall –*

*(i) in the case of a book or other writing or a play or musical composition, if the Revenue Commissioners so request, furnish to them 3 copies, and*

*(ii) in the case of a painting or other like picture or a sculpture, if the Revenue Commissioners so request, provide, or arrange for the provision of, such facilities as the Revenue Commissioners may consider necessary for the purposes of a determination under subsection (2)(a)(ii)(II) (including any requisite permissions or consents of the person who owns or possesses the painting, picture or sculpture).*

*(5) The Revenue Commissioners may serve on an individual who makes a claim under subsection (3) a notice or notices in writing requiring the individual to make available within such time as may be specified in the notice all such books, accounts and documents in the individual's possession or power as may be requested, being books, accounts and documents relating to the publication, production or sale, as the case may be, of the work in respect of the profits or gains of which exemption is claimed.*

*(6)(a) In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim*

*is first made in respect of that work or those works or the particular work, as the case may be.*

*(b) Where –*

*(i) an individual –*

*(I) has made due claim (in this subsection referred to as a “claim”) to the Revenue Commissioners for a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and*

*(II) as respects the claim, has complied with any request made to the individual under subsection (4) or (5) in the relevant period,*

*and*

*(ii) the Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to the claim in the relevant period, the individual may [appeal to the Appeal Commissioners, in accordance with section 949], within the period of 30 days after the end of the relevant period] on the grounds that –*

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

*or*

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

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

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

*(i) after consideration of –*

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

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

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

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

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

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

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

- (9) *For the purposes of the hearing or rehearing of an appeal made under subsection (6), the Revenue Commissioners may nominate any of their officers to act on their behalf.*
- (10) *For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.*
- (11) *Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.*
- (12)(a) *An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.*
- (b) *Without prejudice to the generality of paragraph (a), a guideline under that paragraph may –*
- (i) *consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and*
- (ii) *specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.*
- (13)(a) *Where a claim for a determination under subsection (2) is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under subsection (12) for the time being in force.*
- (b) *Paragraph (a) shall, with any necessary modifications, apply to –*
- (i) *a determination by the Appeal Commissioners under subsection (8) on an appeal to them under subsection (6) in relation to a claim mentioned in paragraph (a), and*
- (ii) *a rehearing by a judge of the Circuit Court of an appeal mentioned in subparagraph (i) and, to the extent necessary, to the determination by the High Court of any question of law arising on such an appeal or rehearing and specified in the statement of a case for the opinion of the High Court, by the Appeal Commissioners or, as the case may be, a judge of the Circuit Court.*
- (14) *Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.*

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

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

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

## **Appendix II**

*Guideline drawn up under Section 195(2) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle Ealaion and the Minister for Arts, Heritage and the Gaeltacht.*

### **Introduction**

*These Guidelines have been drawn up under the provisions of Section 195 of the Taxes Consolidation Act 1997 for the purposes of determining whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.*

### **General**

1. *Section 195(1) provides that a “work” for the purposes of the Section must be both an original and creative work in one of the following categories, namely:
  - (a) a book or other writing,
  - (b) a play,
  - (c) a musical composition,
  - (d) a painting or other like picture,
  - (e) a sculpture.*
2. *To secure exemption under Section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.*
3. *In making a determination under Section 195, the Revenue Commissioners may, as provided for in that Section, consult with such person or body of persons as may, in their opinion, be of assistance to them.*

### **Original and Creative**

4. *A work shall be regarded as original and creative only if it is a unique work of creative quality brought into existence by the exercise of its creator’s imagination.*

### **Cultural Merit**

5. *A work shall be regarded as having cultural merit only if by reason of its quality of form and/or content it enhances to a significant degree one or more aspects of national or international culture.*

### **Artistic Merit**

6. *A work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.*

### **Criteria for Non-fiction Work**

7. (1) *This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of Section 195, by reference to which the questions whether a work, being a nonfiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined.*

(2) *The criteria are:*

(a) *that the work, in the opinion of the Revenue Commissioners, following consultation with the Arts Council, is a work in one or more of the following categories:*

(i) *arts criticism,*

(ii) *arts history,*

(iii) *arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture,*

(iv) *artists' diaries,*

(v) *belles-lettres essays,*

(vi) *literary translation,*

(vii) *literary criticism,*

(viii) *literary history,*

(ix) *literary diaries,*

*that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,*

*or*

(b) *that the work, in the opinion of the Revenue Commissioners, is a work in one of the following categories:*

(i) *a biography,*

(ii) *an autobiography,*

*that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on the person or by changing the generally accepted understanding of the person, or*

(c) *that the work, in the opinion of the Revenue Commissioners following consultation with the Heritage Council,*

(i) *is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995, and*

(ii) *incorporates the author's unique insight into the subject matter and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,*

or

*(d) that the work, in the opinion of the Revenue Commissioners, relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives, incorporates the author's unique insight into the subject matter, and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it, or*

*(e) any combination of (a), (b), (c) or (d) above.*

### **Types of Works Excluded from the Artists Exemption Scheme.**

8. *Notwithstanding anything else in these Guidelines, a work-*

*(a) shall not be an original and creative work, and*

*(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below –*

*(i) a book or other writing published primarily for, or which is or will be used primarily by-*

*(I) students pursuing a course of study, or*

*(II) persons engaged in any trade, business, profession, vocation or branch of learning as an aid to trade or business-related practice, or to professional, vocational or other practise in connection with a trade, business, profession, vocation or branch of learning,*

*(ii) any work of journalism, published in a newspaper, journal, magazine, or other similar medium or published on the internet or on any other similar medium,*

*(iii) any writing, visual or musical work, or other like work, created for advertising or publicity purposes,*

*(iv) any arrangement, adaptation or version of musical composition, or other like work, which is not of such musical significance as to amount to an original composition,*

*(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes,*

*(vi) types or kinds of works of sculpture which primarily serve a utilitarian function.”*