



19TACD2022

Between:

**THE APPELLANTS**

**Appellants**

and

**THE OFFICE OF THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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### **Introduction**

1. These appeals 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. The Appellants both wrote and compiled the journal referred to below and so their appeals were consolidated and heard at the same time. The appeal hearings took place remotely with attendance by both Appellants. The Appellants presented as totally committed to assisting in the development of children. The Appellants were honest, committed, hard-working, charming individuals who had evidently spent considerable time researching and compiling the journal referred to below. They were commended by the Commissioner for their dedication. The Commissioner's decision is not in any way a critique of the Appellant's work but the Commissioner has to consider the particular work within the constraints of section 195 of the TCA 1997.
2. The Appellants' work in this appeal is a book titled [REDACTED] (hereinafter referred to as "the Work"). The Appellants submitted a claim for Artists' Exemption for a determination by the Revenue Commissioners ("the Respondent") under section 195 TCA 1997. The Appellants considered that the Work was a book and it was original and creative. The Appellants' claim for exemption was refused by the Respondent on

8<sup>th</sup> July 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 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 Appellant appealed to the Commission on 30<sup>th</sup> July 2020. The Appellants have appealed on the basis that it is comes within paragraph 7 of the guidelines and is original and creative and has cultural and artistic merit.
4. This case was listed for a hearing which took place on 30<sup>th</sup> September 2021. The Appellants were unrepresented but were 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 the Appellants and the Respondent, in coming to this determination.
5. Following the hearing, the Appellants submitted a research paper from University of Ireland, [REDACTED] dated [REDACTED] 20[REDACTED], which evaluated the benefits of the Work on children. The report found that the Work was *“perceived to have been very helpful to children in terms of improving important aspects of their wellbeing, their outlook on life and their family/social relationships.”* The Commissioner commends the Work for its positive influence on children.

## **Background**

6. The Respondent accepts that the Work is a book. The Respondent found it failed the paragraph 5 test (it did not have cultural merit in that it did not enhance to a significant degree one or more aspects of national or international culture). The Respondent also found it failed the paragraph 6 test in that it did not have artistic merit in that it did not enhance to a significant degree the canon or work in the relevant category. The Respondent also found it failed the paragraph 7 test in that it was work of non-fiction. It concluded that the Work was a children’s activity and learning book. After examining the Work, the Respondent did not find it possible to make a determination for the purposes of exemption from income tax provided for in section 195 TCA 1997. The Respondent concluded that the content of the Work and the introduction to the Work confirmed their conclusion. On page [REDACTED] it states “... we have included lots of really cool game and activities for you and your buddy.” On page [REDACTED], it states, “The purpose [REDACTED] [REDACTED] is to establish simple weekly fun acts of gratitude which positively impact on a child’s development.”
7. The Commissioner has read the Work. The Work is a [REDACTED] journal which the child is asked to work through, complete and understand. It consists of suggested activities, sections to be completed (such as writing a thank you letter), and suggested acts (such as random acts of kindness). The tenet of the Work is matters that a child should be grateful for and to note for which they should express gratitude.
8. The Commissioner notes that the graphic art is of high quality and no doubt the Work would appeal to young readers. The Commissioner enjoyed perusal of the Work and would recommend it to any young children. The Work is aimed at children between 4 and 10 years of age, albeit it appeared more applicable for those children at the lower end of that spectrum. The Work no doubt has educational benefits. It is very colourful and well-presented.

## **Legislation and Guidelines**

9. The relevant legislation is contained at section 195 of the TCA 1997, a copy of which is attached at Appendix I for ease of reference. As noted in section 195(12) of the TCA, the Minister for Arts, Heritage, Gaeltacht and the Islands shall draw up guidelines for determining

whether a work is within the category of an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. In addition, under section 195(13)(b) the Appeal Commissioners shall not determine that the work is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under section 195(12) of the TCA.

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

## **Submissions**

### *Appellant*

11. The Appellants submitted in the appeal that the Work is "*fictional work, the material presented within this submission is both original, and creative. This can be evidently seen as this work contains a number of children's stories that are original in nature, and clearly demonstrate a strong creative element throughout.*"
12. The Appellants pointed to other authors and children's novels as evidence that their Work came within the artist exemption definition. At the hearing the Appellants took the Commission through the poem and short story in the Work along with the activities.
13. The Commissioner must be satisfied that the Work satisfies 7(2)(a)(ii) and (iii) of the guidelines being *an arts history or arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture*. The Commissioner for completeness considered if the Work came within any section in paragraph 7(a) to (e). As stated above, the Commissioner has read the Work to assess whether it comes within section 195 TCA 1997 and the guidelines.

### *Respondent – Revenue Commissioners*

14. The Respondent submitted that it accepted that the Work is a book that comes within the categories of work listed in section 195(1) TCA 1997 as amended.
15. The Respondent submitted that section 195(12) TCA 1997 states that guidelines may include specifications of the types or kinds of works that are not original or creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose.
16. The Respondent also submitted that section 195(12) TCA 1997 further states that the guidelines may specify criteria by reference to which the questions whether works are original and creative and whether they have or are generally recognised as having cultural or artistic merit are to be recognised.
17. The Respondent submitted that section 195(13) states that where an application for a determination is made to Revenue, that Revenue shall not make a determination in respect of a work unless it complies with the guidelines. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.
18. The Respondent determined that the Work was a work of non-fiction for children.

19. The Respondent submitted that Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction books and sets out specific categories, which the Work must come within, in order to qualify for a determination. The Respondent submitted that it was not satisfied that the Work came within any of the categories of work listed in paragraphs 7(2)(a) to (e). The Respondent was also not satisfied that the Work was original and creative as required under section 195 and as defined by paragraph 4 of the guidelines.
20. The Respondent submitted that it was unable to make a determination in respect of the Work, for the purposes of the exemption from income tax provided by section 195 TCA 1997. The Respondent confirmed these submissions at the hearing.

### Analysis

21. The Work is a book. This is agreed by both parties to the appeal. The Appellants submit that it is a fictional book. The Respondent considers it is a non-fiction book for children. However, the Respondent does 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 either be a work of fiction and satisfy those tests of fictional work, being original and creative and secondly, *has, or is generally recognised as having, cultural or artistic merit*. Alternatively, if it falls within the category of non-fiction it must come within first fall within paragraphs 7(1) of the guidelines and then satisfy the criteria in paragraphs 7(2) as set out for works of non-fiction books of the guidelines.
23. The Commissioner has considered if the Work should be regarded as either fiction or non-fiction. The Commissioner agrees with the Respondent that it is a work of non-fiction. There is a small element of fictional writing within the Work in the poem and short story. But, the predominant theme of the Work is completion of activities, namely coming within the category of non-fictional.
24. The Commissioner agrees that it is a work book for children to either colour in, read from or generally undertake the exercises. The Commissioner notes that there is the story time called [REDACTED] on [REDACTED] and also the [REDACTED] poem on [REDACTED]. But these do not bring the Work sufficiently within what would be viewed as "fiction". The Commissioner notes that the message on the inside cover confirms that "*included is lots of really cool games and activities for you and your buddy.*" The Commissioner also notes that the children will find stickers inside the Work. The instructions in the Work confirm that the journal "*consists of weekly fun activities and games*". The Commissioner notes that the "*child is encouraged to do the activities on a weekly basis and parents get involved to make it a fun family exercise.*" The Commissioner notes the study from [REDACTED]. The Work has a very laudable aim to assist children and the study from [REDACTED] confirms the benefit. But that does not bring it within the definition of fiction. The Commissioner notes the references to other books by the Appellants that were successful in achieving artists' exemptions. But they related to a story book with a central character and a beginning, middle and end to the fictional narrative. The Work does not have that fictional narrative.
25. The Commissioner has therefore considered the Work as a book of non-fiction. Dealing with the Work as a book on non-fiction the Commissioner has examined the Work.
26. The test to be applied is whether the Work constitutes an entitlement to an Artists' Exemption in accordance with section 195 of the TCA 1997 under one or more of the criteria set out in paragraphs 7(1) and (2)(a) of the guidelines. Paragraph 7(1) and (2)(a) states:

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

(2) *The criteria are:*

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

- (i) arts criticism,*
- (ii) arts history,*
- (iii) arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture,*
- (iv) artists' diaries,*
- (v) belles-lettres essays,*
- (vi) literary translation,*
- (vii) literary criticism,*
- (viii) literary history,*
- (ix) literary diaries,*

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

27. The test therefore to be applied is whether the Work comes within paragraph 7(2)(a). The Commissioner has examined the Work and unfortunately it does not come within paragraph 7(2)(a). It does not come within the subject matter contained in paragraph 7(2)(a). The Commissioner has examined if it could come within any of those categories but it fails the normal and usual meaning of those categories.

28. 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.'*

29. Section 195 TCA 1997 as amended and the guidelines made thereunder are addressed to the public generally. The expressions within them must be given its natural and ordinary meaning. For the Commissioner and the general public the Work does not come within any

of those categories. It is important that the Commissioner does not expand the criteria of the guidelines.

30. 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...”*

31. 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.”*

32. 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.”*

33. The Commissioner finds that the Work does not come within any of the categories of non-fictional work. As such, the Work does not also meet this criteria. The Commissioner has considered if it comes within any of the categories set out in paragraphs 7(2)(a) to (e) but finds that it does not. Hence, it fails the non-fiction tests as set out in the guidelines and of which the Commission is bound to have consideration.

34. The Commissioner has for absolute certainty considered that if the Work did come within the definition of fiction, as defined in section 195 TCA 1997, would it meet the test set out within that section of the TCA 1997. Unfortunately, even if the Work was considered a work of fiction, the Commissioner would be unable to grant it artists’ exemption. The Work has to meet the criteria of having cultural and artistic merit. Even if it was able to come within that category,

the Commissioner could not find that it has sufficient cultural or artistic merit. Whilst it is a lovely book for children, the Work is not sufficiently distinguished to have cultural or artistic merit, such that it would satisfy the relevant section in the TCA 1997. The Work does not satisfy the definitions set out in the guidelines with respect to cultural or artistic merit. But in any event, the Commissioner finds that it is a work of non-fiction.

### **Determination**

35. The artist exemption legislation and guidelines set out a series of tests which must be satisfied by the Appellants in order to avail of the exemption. In this appeal, the Commissioner determines that the Work does not satisfy the requisite tests, in particular paragraph 7(2) of the guidelines and hence determines that the Appellants are not entitled to avail of the exemption pursuant to section 195 TCA 1997. That said, the Commissioner found the Work beautifully illustrated and a very useful journal and workbook for children. The Commissioner appreciates that the Appellants will be disappointed by this decision. This decision is a technical decision on the TCA 1997 and is not a critique of the Work. The Commissioner would recommend this [REDACTED] journal to any child and hopes that the Appellants have success with it.
36. 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.”*