



34TACD2022

Between

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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### **Introduction**

1. This appeal involves a claim for exemption (hereinafter referred to as the “Artists’ Exemption”) pursuant to section 195 of the Taxes Consolidation Act 1997 (hereinafter the “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”).
2. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the TCA 1997.

### **Background**

3. The Appellant’s authored work (hereinafter referred to as “the Work”) is a non-fiction book titled [REDACTED] (hereafter referred to as “the Work”). The Work is comprised of three sections: the first is a section written by the Appellant setting out her life story in chronological order, the second is a [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]. In addition the Appellant illustrated the Work [REDACTED] which are contained throughout the Work.

4. The Appellant submitted a claim for an Artists' Exemption in January 2021 to the Revenue Commissioners (hereinafter "the Respondent") pursuant to section 195 of the TCA 1997. The Appellant's claim for an Artists' Exemption was refused by the Respondent by way of undated letter in February 2021 on the basis that the Work did not meet the required criteria set out in the TCA 1997 and the Guidelines. The Appellant appealed this decision to the Commission on 9<sup>th</sup> April 2021.

### **Legislation and Guidelines**

5. The relevant legislation is contained at section 195 of the TCA 1997, a copy of which is attached hereto at Appendix I. In considering this appeal, the Commissioner is obliged, in compliance with section 195(13)(b) of the TCA 1997 to have regard to the Guidelines for the time being in force under section 195(12) of the TCA 1997. In order to qualify for an Artists' Exemption the Work must satisfy the mandatory requirements of those guidelines, a copy of which is attached hereto at Appendix II.

### **Submissions**

#### Appellant's Submissions

6. In support of her appeal the Appellant submits that the Work qualifies for an Artists' Exemption pursuant to section 195 of the TCA 1997 and complies with the Guidelines under the following categories:
  - i. Paragraph 5 of the Guidelines "*Cultural Merit*" which provides that "*A work shall be regarded as having cultural merit only if by reason of its quality of form and/or content it enhances to a significant degree one or more aspects of national or international culture.*" The Appellant submits the following in support of this element of her claim:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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ii. Paragraph 6 of the Guidelines “*Artistic Merit*” which provides 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.*” The Appellant submits the following in support of this element of her claim:

*“The book contains █ original illustrations by me that help lend to the flow and intimacy █ within my autobiography and █”*

iii. Paragraph 7(2)(b)(ii) of the Guidelines which “... specifies criteria, in accordance with subsection (12)(b)(ii) of section 195 of the TCA 1997, by reference to which the questions whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined” as follows: “... *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*” The Appellant submits the following in support of this element of her claim:

*“The first part of the book autobiographical. It follows*

A series of seven thick black horizontal bars of varying lengths, decreasing in length from top to bottom. The bars are evenly spaced and extend across the width of the frame.

*The work completed in this book is currently being used in sectors of Sociology, Women's Studies, Irish History and various modules in universities nationwide and international, including Trinity College, NUIG, UCC, Queens Belfast. The sole purpose of this book is not for students pursuing a course of study, however it has been used as reference and curriculum on history and social and policy change."*

- iv. Paragraph 7(2)(c) of the Guidelines which provides 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,*" The Appellant submits the following in support of this element of her claim:

*"This autobiography and [REDACTED] lends to the Heritage Act 1995; our history, language, and customs. [REDACTED]*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]."

- v. Paragraph 7(2)(d) of the Guidelines which provides 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,*" The Appellant submits the following in support of this element of her claim:

*"[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]*

[REDACTED]  
[REDACTED].

### Respondent's Submissions

7. The Respondent's submissions in this appeal were short and take the form of an "Outline of Relevant Facts" which in reality sets out the facts of the appeal, the relevant law and the reasons for the Respondent's refusal of the Artists' Exemption relating to the within appeal.
8. The Respondent sets out, *inter alia*, that it accepts that the Work is a book and that it comes within the categories of works listed in section 195(1) of the TCA 1997.
9. The Respondent submits that the Work does not satisfy the Guidelines and therefore does not qualify for an Artists' Exemption.
10. The Respondent submits that the Work is a [REDACTED]  
[REDACTED]. The Respondent submits that on the front cover of the Work it states that [REDACTED]  
[REDACTED]. They submit that they were not satisfied that the Work met the requirements of paragraph 4 of the Guidelines which sets out that in order to qualify for the Artists' Exemption the Work must be "*Original and Creative*".
11. The Respondent also submits that they examined the Work to see whether it came within any of the categories listed in paragraph 7 of the Guideline and they submit that they were not satisfied, on examination of the Work, that it came within any of the categories listed at paragraph 7(a) to (e) of the Guidelines. No reasons were set out by the Respondent as to why or how they had come to this position.

### **Material Facts**

12. The following material facts are at issue in this Appeal:
  - i. The Work is a book pursuant to section 195(1)(a) of the TCA 1997.
  - ii. The Work satisfies paragraphs 4, 5 and 6 of the Guidelines;
  - iii. The Work satisfies paragraph 7 of the Guidelines.
13. The Commissioner has examined the material facts at issue.

**The Work is a book pursuant to section 195(1)(a) of the TCA 1997:**

14. It is not in dispute between the Parties that the Work is a book pursuant to section 195(1)(a) of the TCA 1997. The Commissioner accepts that the Work is a book pursuant to section 195(1) of the TCA 1997. Therefore this material fact is accepted.

**The Work satisfies paragraphs 4, 5 and 6 of the Guidelines:**

15. The Appellant submits that the Work satisfies paragraphs 4, 5 and 6 of the Guidelines. The Respondent does not accept that the Work satisfies paragraph 4 of the Guidelines and has not made any submissions in relation to paragraphs 5 and 6 of the Guidelines.

16. Paragraphs 4, 5 and 6 of the Guidelines relate to whether a work is original and creative, is of cultural merit and of artistic merit. The Commissioner has considered section 195 of the TCA 1997, the Guidelines and this material element of the Appellant's claim and considers that paragraphs 4, 5 and 6 of the Guidelines, as they relate to books, relate to works of fiction. As the Work the subject matter of the within appeal is a work of non-fiction, paragraphs 4, 5 and 6 do not apply to the Work. Therefore this material element of the Appellant's claim is not accepted.

**The Work satisfies paragraph 7 of the Guidelines:**

17. Paragraph 7 of the Guidelines sets out the criteria to be applied to non-fiction work in accordance with section 195(12)(b)(ii) of the TCA 1997, by reference to which the questions of whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined. The criteria as set out in the Guidelines are:

*“7(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."

18. The Commissioner has considered the Work, the submissions made by the Parties and paragraph 7 of the Guidelines and finds that the Work satisfies paragraph 7(b)(ii) of the Guidelines, that is to say that the Work is an autobiography. The Commissioner makes this finding for the following reasons:

19. The Work is divided into three main sections:

i. Section 1 of the Work is entitled [REDACTED] and is [REDACTED] pages in length.

This section of the Work sets out [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED].

ii. Section 2 of the Work is entitled [REDACTED] and is

[REDACTED] pages in length. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

iii. Section 3 of the Work is entitled [REDACTED] and is [REDACTED] pages

in length. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

20. The Commissioner has considered whether Section 1 of the Work incorporates the author's unique insight into the subject matter in satisfaction of paragraph 7(b)(ii) of the Guidelines and is satisfied that the Work does so in that [REDACTED]

[REDACTED] [REDACTED], [REDACTED]

[REDACTED], [REDACTED]

[REDACTED].

21. The Commissioner has further considered whether Section 1 of the Work 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 in satisfaction of paragraph 7(b)(ii) of the Guidelines. The Commissioner is satisfied that Section 1 of the Work does so for the following reasons:

- i. The Work as a whole, and Section 1 of the Work, is regarded as a pioneering work. The Commissioner accepts that the Work is regarded as a pioneering work on the basis that [REDACTED]  
[REDACTED] and that the Work is used in sectors of Sociology, Women's Studies, Irish History and in various modules in universities nationwide and international, including Trinity College, NUIG, UCC and in Queen's University Belfast.
- ii. Section 1 of the Work makes a personal, detailed and significant contribution to the subject of [REDACTED]  
[REDACTED] by casting a new light on the Appellant and her life experiences.

22. The Commissioner further notes that had Section 1 of the Work been submitted as a stand-alone book it would be found to be an autobiography for the purposes of paragraph (7)(b)(ii) of the Guidelines. The Commissioner finds that the inclusion of Sections 2 and 3 into the Work does not dilute the quality of the autobiography contained in Section 1 of the Work.

23. Having considered all of the above, the Commissioner is satisfied that the Work is an autobiography as set out in paragraph 7(b)(ii) of the Guidelines. Therefore this material fact is accepted.

24. Therefore the following are the material facts which the Commissioner has accepted:

- i. The Work is a book pursuant to section 195(1)(a) of the TCA 1997.
- ii. The Work satisfies paragraph 7 of the Guidelines.

## **Analysis**

25. The Commissioner has had regard to the dictum of Kennedy C. J. in the case of *Commissioners of Inland Revenue v Doorley* [1933] 1 IR 750 at p. 766 where he stated:

*“The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax*

*thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”*

26. More recently, in a case stated by the Appeal Commissioners to the High Court in relation to the artists' exemption, Donnelly J in *Coleman –v- Revenue Commissioners* [2014] IEHC 662 held that:

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

27. The Commissioner notes that there is no requirement set out in either section 195 of the TCA 1997 or in the Guidelines which sets out what percentage or proportion of a non-fiction book must be autobiographical in order to satisfy paragraph 7(b)(ii) of the Guidelines. The Commissioner notes that section 1 of the Work comprises approximately one-third of the entirety of the Work and finds that this forms a substantial part of the Work and allows the Commissioner to find that the Work is an autobiography.

28. Having found that the Work is a book pursuant to section 195(1)(a) of the TCA 1997 and that the Work satisfies paragraph 7 of the Guidelines, the Commissioner further finds that the Appellant is entitled to an Artists' Exemption in respect of the Work pursuant to section 195(3) of the TCA 1997.

### **Determination**

29. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary evidence as well as the submissions from both Parties, the Commissioner has concluded that the Appellant has succeeded in discharging the burden of proof in relation to this appeal.

30. As a result, the Commissioner determines that the Appellant is entitled to an exemption pursuant to section 195(3) of the TCA 1997.

31. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949U thereof.



Clare O'Driscoll  
Appeal Commissioner  
18<sup>th</sup> February 2022

## Appendix I

Section 195 of the TCA 1997:

*“(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, or in the United Kingdom, and not resident elsewhere, or*

*(II) ordinarily resident and domiciled in one or more Member States, or in an other EEA state, or in the United Kingdom, and not resident elsewhere, and*

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

*(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation*

*to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.*

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

- (i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under paragraph (a)(ii)(II)) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and*
- (ii) the individual complies with any request to him or her under subsection (4).*

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

*(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of paragraph (a) shall not exceed €50,000 for the year of assessment 2015 and each subsequent year of assessment.*

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

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

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

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

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

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

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

(6) (a) *In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim is first made in respect of that work or those works or the particular work, as the case may be.*

*(b) Where—*

*(i) an individual—*

*(I) has made due claim (in this subsection referred to as a "claim") to the Revenue Commissioners for a determination*

*under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and*

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

*and*

*(ii)the Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to the claim in the relevant period,*

*the individual may appeal to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the end of the relevant period on the grounds that—*

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

*(B)the particular work has cultural or artistic merit,*

*as the case may be.*

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

*(i) after consideration of—*

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

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

*and*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) *a determination by the High Court under section 949AR.*

(14) *Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.*

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

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

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

## **Appendix II**

*“Guidelines drawn up under Section 195 (12) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.*

### ***Introduction***

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

### ***General***

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

3. *In making a determination under section 195, the Revenue Commissioners may, as provided for in that section, consult with such person or body of persons as may, in their opinion, be of assistance to them.*

***Original and Creative***

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

***Cultural Merit***

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

***Artistic Merit***

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

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

7. *(1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of section 195, by reference to which the questions whether a work, being a 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.*

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