



142TACD2023

Between

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This appeal concerns the refusal of the Revenue Commissioners (“the Respondent”) to make a determination that the Appellant is entitled to avail of the exemption from income tax on earnings received in respect of his book “[REDACTED]” (“the work”).
2. This appeal is determined without a hearing under section 949U of the Taxes Consolidation Act 1997 (“the TCA 1997”).

Background

3. The Appellant is an author and [REDACTED] psychologist. [REDACTED]
[REDACTED]
[REDACTED] “[REDACTED]”
[REDACTED]
[REDACTED].
4. The work is divided into two parts, first “[REDACTED]” and second “[REDACTED]”
[REDACTED]. In part one, the Appellant addresses the importance and

consequences of letting go of certain mind-sets, habits and emotions. Chapters therein include “ [REDACTED] ”, “ [REDACTED] [REDACTED] ” and “ [REDACTED] [REDACTED] ”. Part two, in advising how to awaken one’s true self and “ [REDACTED] [REDACTED] ” includes chapters such as “ [REDACTED] ”, “ [REDACTED] [REDACTED] ” and “ [REDACTED] [REDACTED] ”.

5. As the Appellant makes clear from the outset of the work, he uses his own experiences in life from childhood to adulthood to give insight to his readers as to how they may best live their own. Furthermore, throughout the book the author also gives insight to the reader on matters of human psychology and habits generally that may have an impact on their happiness and their ability to live a life of fulfilment. The work, especially in the chapters in its second part, contains guidance to its reader, often in bullet pointed form and often concerning approaches to mindfulness and meditation aimed at fostering positive thinking and an understanding of one’s own thoughts.

6. The Appellant submitted an artist’s exemption claim to the Respondent on 16 April 2021. On 21 April 2021, the Respondent issued a decision whereby it refused to make a determination deeming the Appellant entitled to the income tax exemption claimed. In particular, the Respondent held:-

“[...] the work does not meet the required criteria set out in legislation and the guidelines. In particular, as I understand your client’s work to be a work of non-fiction it does not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines.”

7. The Appellant appealed this decision to the Tax Appeals Commission on 21 November 2021.

Legislation and Guidelines

8. The primary legislation and guidelines applicable to this appeal are set out in full in Appendices 1 and 2 to this Determination. What follows hereunder is a summary of their effect.

9. Section 195 of the TCA 1997 exempts from income tax certain earnings of writers, composers and artists that would otherwise be chargeable to tax under Case II of Schedule D. The exemption relates to works by such persons that are both “*original and creative*” and of “*cultural or artistic merit*”.

10. Section 195(12) of the TCA 1997 prescribes that the Arts Council and the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media of Ireland shall together draw up guidelines so as to determine what constitutes a work that is original and creative and of cultural or artistic merit. The guidelines drawn up in accordance with this obligation list the various types of work that may fall within the exemption. Included among these are works of autobiography that:-

“[incorporate] 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.”

Submissions

Appellant

11. The Appellant submits that his work is a work which is primarily autobiographical that sets out his *“unique insights into various experiences in his life.”* The Appellant accepts that the work *“blurs the lines between an Autobiography and Self-Help”*, but contends, in effect, that the parts of the book designed to provide help to the readers are all rendered from the telling of his own life story in a manner that sheds new light on it. The Appellant makes the point in his statement of case that approximately 70% of the work is taken up with the expression of this life story. The Appellant submits that the work is an autobiography which is thus both original and creative and is of cultural or artistic merit. As a consequence, it falls within the scope of section 195 of the TCA 1997 and the relief sought should be allowed.

Respondent

12. The Respondent submits that the work constitutes a book that is a self-help book that does not fall within any of the categories described in the guidelines and, as a result, the income earned therefrom by the Appellant is not subject to relief from tax under section 195 of the TCA 1997.

Material Facts

13. The material facts that are agreed are:-

- the Appellant is the author of a book entitled [REDACTED]

14. The core factual issue in dispute that must be determined is whether the work falls within the category of an autobiography that may be described as a pioneering work shedding new light on the subject matter. In the Commissioner's view the work falls within a category of book the purpose of which is to provide guidance to others in the conduct of their lives. A regular description of this type of work, which may be something of a misnomer, is that of "self-help" and the Commissioner finds as a fact material to the determination of this appeal that the work at issue is, in essence, instructional or educational in nature. While the work contains numerous sections that are autobiographical its does not, to the Commissioner's mind, fall to be described as an autobiography as the term is understood by reference to its natural and ordinary meaning (i.e. an account by a person of their own life).

Analysis

15. The question arising from the foregoing findings of fact is whether a self-help book that has as its main point of reference the author's own life falls within the scope of the relief from taxation provided under section 195 of the TCA 1997.
16. In answering this question, the Commissioner considers the judgment of the Supreme Court in *Revenue Commissioners v Doorley [1933] IR 750* to be of assistance. There, the Court held that where the legislature impose a tax, the taxing provision in question should be interpreted strictly so that no charge is created by use of oblique or slack language. However, applying the same logic Kennedy CJ (within whom Murnaghan and Fitzgibbon JJ agreed) also held as follows in relation to the interpretation of a legislative provision *exempting* a taxpayer from a charge that they would otherwise fall within:-

"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from the tax must be given expressly and in clear and unambiguous terms within the letter of the statute as interpreted with the assistance of the ordinary canons for the construction of statutes. 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 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 possible".

17. From this it is clear that the term “autobiography” has to be given a strict reading. In the Commissioner’s view to include a work that comprises autobiographical elements but is, at its heart, an instructional book designed to give help to its reader in the conduct of their life, would be to delimit the area of the exemption beyond what was intended in the making of the legislation. To do so would be contrary to the law as specified by the Supreme Court in *Doorely*.
18. The Commissioner wishes to emphasise in the clearest terms that the above findings of fact and law are in no way to be taken as comment on the merit of the work itself. On the contrary, the Commissioner considers it to be both engaging and perceptive, especially on matters of mindfulness. The question, however, is whether it is a specific type of work that the legislature has opted to make exception for in relation to the charging of tax on earnings that the Appellant has accrued thereon. Whether for good or ill, the answer is to the Commissioner’s mind that it has not so opted and the work is of a kind falling outside the scope of the exemption created. Accordingly, the Respondent’s refusal to make a determination under section 195 of the TCA 1997 allowing the Appellant to avail of the exemption must stand.

Determination

19. The Commissioner determines that the work, being one that does not fall within the category of autobiography, falls outside the scope of the exemption provided under section 195 of the TCA 1997. The Commissioner therefore finds that the decision of the Respondent must stand and is affirmed.
20. This appeal has been determined in accordance with section 949AL of the TCA 1997. This determination contains full findings of fact and law. Any party dissatisfied with the determination has the right to appeal on a point or points of law only within a period of 42 days from receipt of this Determination in accordance with the provisions of the TCA 1997.



Conor O’Higgins
Appeal Commissioner
05 September 2023

APPENDIX 1

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

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(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

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(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 2

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

Introduction

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

General

1. Section 195(1) provides that a “work” for the purposes of the Section must be both an original and creative work in one of the following categories, namely:

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

2. To secure exemption under Section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.

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

Original and Creative

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

Cultural Merit

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

Artistic Merit

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

Criteria for Non-fiction Work

7. (1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of Section 195, by reference to which the questions whether a work, being a nonfiction book or other nonfiction 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.”