



Between

148TACD2023

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This appeal involves a claim for exemption pursuant to section 195 of the Taxes Consolidation Act 1997 as amended (hereinafter “the TCA 1997”) and in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (hereafter “the guidelines”), commonly known as “Artists Exemption”.
2. Under section 195(6) TCA 1997, an individual may appeal to the Appeal Commissioners. The appeal is on the grounds that the work or works is or are generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.
3. On 5 October 2022, an application was made by ██████████ (hereinafter “the Appellant”) for a determination from the Revenue Commissioners (hereinafter “the Respondent”) under category (1)(d) of the guidelines, a painting or other like picture.
4. By letter dated 13 October 2022, the Respondent determined that it would not consider the work as coming within the categories of work eligible for a determination under the scheme and would consider that the work is decorative in nature and excluded under Section 8(v) of the guidelines (hereinafter “the Work”).

5. This case is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997, by agreement with the parties. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant's Notice of Appeal. The Commissioner has also received a Statement of Case and Outline of Argument from the Respondent and that has also been considered in this determination.

Background

6. The Appellant is a biophilic artist, producing Work that is handcrafted with real preserved [REDACTED], [REDACTED] and plants that have gone through a process that makes them stay green and fresh for years with no maintenance needed.
7. The Appellant displays the Work on her website, offering a collection of different styles of biophilic art. The Appellant states that [REDACTED] art is a relatively new practice that differs from the standard [REDACTED] walls made by garden centres, where the [REDACTED] and plants are applied to the wall with no artistic design or creative process.
8. On 5 October 2022, the Appellant submitted to the Respondent an application for a determination under **section 195(2) TCA 1997**, in respect of the Work. The application in respect of the Work was made under **category 1(d) of the guidelines**, "*a painting or other like picture*". In support of the application, the Appellant submitted six images of the Work and other supporting material.
9. The Respondent submits that on examination of the Appellant's application and supporting images under category 1(d), "*a painting or other like picture*", it was the Respondent's opinion that the Work did not come within the categories of works eligible for a determination under section 195 TCA 1997, as the Work was a type of work excluded under **Paragraph 8 (v) of the guidelines** namely, "*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.*"
10. The Respondent submits that it determined that the samples of the Work submitted by the Appellant were created primarily for decorative purposes and, therefore, could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines.
11. On 13 October 2022, the Respondent corresponded with the Appellant to inform the Appellant that it was unable to make a determination in respect of the Work.
12. On 6 March 2023, the Appellant duly appealed to the Commission, the decision of the Respondent not to make a determination in respect of the Work.

Legislation and Guidelines

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

Submissions

Appellant' submissions

16. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

16.1. *"I am a biophilic artist, producing work that is handcrafted with real preserved [REDACTED] and plants that have gone through a process that makes them stay green and fresh for years with no maintenance needed.*

[REDACTED] art is a relatively new practice that differs from the standard [REDACTED] walls made by garden centres where the [REDACTED] and plants are applied to the wall with no artistic design or creative process behind. While the materials used may at times be the same, my work goes through a creative process inspired by nature's organic patterns, shapes and fractals to create something unique and mesmerizing to the eye.

As you can see from my website [REDACTED] I offer a collection of different styles of biophilic art, from contemporary designs created through different [REDACTED] colors and textures to woodland-inspired sceneries. As an example, my best-selling [REDACTED] art called [REDACTED] [REDACTED] requires a certain level of skill

set as well as a high degree of creativity and imagination to produce. The work is inspired by natural phenomena and fractal art, it evokes particular emotions and invites people to look at things from different perspectives. The originality, creativity, the cultural and artistic merits recognized in this work are the very same criteria used to define a work of art under Section 195 (12) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme.

The uniqueness and creativity of my work is much appreciated by my customers (I currently have commissions booked for several months). I also have many customers' reviews and recommendations (available on my Google and Facebook pages) supporting my work and the way it is perceived by the public as a work of art. The Minister ██████████ T.D. ██████████ is one of my followers on Instagram and supports many of my posts with likes and comments.

I strongly believe that my work, due to the uniqueness of the materials and techniques used, poses some difficulties in its definition under the main artistic categories, nonetheless, it should be recognized for its artistic merits going beyond the "decorative" use as stated in the refusal letter (which would be applicable to the work of a commercial green wall installation). I appeal to your best judgment to have my work recognized for its artistic merit and for the response to the artist exemption application to be reviewed and approved.

#1 the consideration of her work (by an international art gallery) under the category of visual art, mixed media. (At this regard, please review the email titled ██████████ - ██████████ considered as fiber_mixed media" where the ██████████ Gallery confirms that ██████████ is considered as a fiber, which falls under the mixed media art category).

#2 the artistic merits of her work recognized by several International art curators and art magazine editors. These would make her work applicable to the artist exemption as per Section 2 of the artist exemption guidelines ("To secure exemption under section 195, a work must be [...] generally recognised as having, either cultural or artistic merit.")

At this regard, the appellant's work has won 2 Finalist Awards as part of International Juried Art competitions; it has been included in several online art exhibitions; it has been featured in art magazines and has received several invitations to international art exhibitions.

As it relates to Section 2 of the Artists' Exemption Guidelines "To secure exemption under section 195, a work must be [...] generally recognised as having, either cultural or artistic merit", the appellant's work has been generally recognized as having artistic merit by several international art curators, art magazines and received invitations to international art exhibitions. Please find details below:

The appellant's work has won 2 Finalist Awards as part of Juried Art competitions:
- Finalist Award - "5th COLOR", 2023 Juried Art Competition by Teravarna Art Gallery, Los Angeles, California, USA.

- Finalist Award - "Shades of Green 2023", International Juried Visual Arts Competition by [REDACTED] Gallery, Scottsdale, Arizona, USA.

The appellant's work has been included in several online exhibitions such as: - "5th COLOR" International Juried Art competition by Teravarna art gallery [REDACTED] - "Shades of Green 2023" juried art competition by [REDACTED] Gallery [REDACTED] - "Abstract" art exhibition 2023 by the Light Space & Time online art gallery. [REDACTED]

The appellant's artistic work and her artist's profile has been published by respected magazines: - An artist feature will be published in the [REDACTED] edition of "Artist Closeup" contemporary art magazine (out on June 1st 2023) [REDACTED]

A feature on her artistic work and original style will be published by "The Journal of biophilic design" in their Issue 5 dedicated to Creativity (please verify the appreciation for the appellant's creative work by the Journal's editor in the email attached). [REDACTED]

The recognition of the appellant's artistic merits is further supported by several invitations to international art exhibitions from international art curators:

- Invitation for a Solo Exhibition at Teravarna Art Gallery, Los Angeles, USA.

- Invitation to exhibit at the 8th Grand Prix of Contemporary Art 2023 in Milan, Italy sent by art curator Elena Ferrari.

- Invitation to exhibit at "Woman Essence Show" in Berlin by Musa International, Palermo, Italy".

Respondent

17. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case and Outline of Arguments:-

- 17.1. An application dated 5 October 2022, for a determination under section 195(2) TCA 1997, in respect of the Work was submitted by the Appellant.
- 17.2. Section 195(1) TCA 1997 states that the scheme shall apply to original and creative works which are generally recognised as having artistic or cultural merit and come within a number of listed categories.
- 17.3. The application in respect of the Work was made under category (d), "a painting or other like picture". In support of the application, the Appellant submitted six images of her work and other supporting material
- 17.4. Section 195(13) TCA 1997 states that where an application for a determination is made, the Respondent 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.
- 17.5. The current version of the guidelines is effective for all determinations made by the Respondent on or after 30 November 2013.
- 17.6. On examination of the Appellant's application and supporting images under category (d), "a painting or other like picture", it is the Respondent's opinion that the Work did not come within the categories of works eligible for a determination under section 195 TCA 1997.
- 17.7. It is the Respondent's opinion that the Work was a type of work excluded under Paragraph 8 (v) of the Guidelines. Paragraph 8 (v) refers to "*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*".
- 17.8. It was determined that the samples of the Work submitted by the Appellant were created primarily for decorative purposes and therefore, could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines.

- 17.9. On 13 October 2022, the Respondent wrote to the Appellant stating that it was unable to make a determination in respect of the Work.
- 17.10. The term “painting or other like picture” is not defined in the legislation, therefore in construing the meaning, the words must be given their ordinary and natural meaning. This follows the Supreme Court judgement in *Inspector of Taxes -v- Kiernan* [1981] 1 IR 117.
- 17.11. The words “painting or other like picture” should be given the meaning which an ordinary member of the public would intend them to have when using them ordinarily. “Painting or other like picture” are simple words which are unambiguous. It is submitted that the Appellant’s work, which she describes as “██████ art”, does not come within the ordinary meaning of the term “painting or other like picture.”
- 17.12. As the Appellant is seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in *Revenue Commissioners -v- Doorley* [1933] IR 50 must be considered.

Material Facts

18. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
- 18.1. The Appellant is a biophilic artist.
- 18.2. The Work is handcrafted with real preserved ██████ ██████ and plants that have gone through a process that makes them stay green and fresh for years with no maintenance needed.
- 18.3. In accordance with the Appellant’s website, the Appellant offers a collection of different styles of biophilic art, from contemporary designs created through different ██████ colours and textures to woodland-inspired sceneries.
- 18.4. In accordance with the Appellant’s website, the Appellant offers custom made biophilic wall art and interior décor.
- 18.5. The Work is a painting or other like picture.
- 18.6. The Appellant’s Work has won 2 Finalist Awards as part of Juried Art competitions.
- 18.7. The Appellant’s Work has been included in several online exhibitions.

18.8. The Appellant's Work has been included in several art magazines.

18.9. The Appellant has received invitations to international art exhibitions, in relation to the Work.

Analysis

19. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* ("Menolly Homes") [2010] IEHC 49, at paragraph 22, Charleton J. stated

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".

20. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charlton J. in *Menolly Homes*, wherein he states that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

21. In circumstances where the Appellant is seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in *Revenue Commissioners -v- Doorley* [1933] IR 50 must be considered. The Commissioner has had regard to the dictum of Kennedy C. J. at p. 766, wherein he stated that:

"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."

22. 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.”

23. Section 195(12) TCA 1997 provides for the drawing up of **guidelines** for the Artists Exemption scheme by the Arts Council and the then Minister for Arts Heritage and the Gaeltacht. 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.
24. Section 195(13) states that where an application for a determination is made to the Respondent, that the Respondent 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.
25. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.
26. It is clear from the Respondent’s submission, it considers that the Work was created primarily for decorative purposes and, therefore, could not qualify for a determination by virtue of **paragraph 8(v) of the guidelines**.
27. Paragraph 8 of the guidelines states that a work shall not be regarded as original and creative and shall not be recognised as generally having cultural and artistic merit if the works come within a range of criteria set out within subparagraphs (i) to (vi) as follows:-

“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 –

.....
(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.” [Emphasis added]

28. Before proceeding to consider the test to be applied and paragraph 8 of the guidelines, the Commissioner must consider whether the Work falls within paragraph 1 of the guidelines. The Commissioner is satisfied that the Work is “*a painting or other like picture*” in accordance with **paragraph 1(d) of the guidelines**. The Respondent urged the Commissioner to consider the dicta Henchy J. in the Supreme Court judgement in *Inspector of Taxes -v- Kiernan* [1981] 1 IR 117 wherein he stated that:

“...if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in either a narrowed or an extended connotation, or as a term of art, then in the absence of internal evidence suggesting the contrary, the word should be given its ordinary or colloquial meaning. “...when 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 from his own experience of its use”

29. The Commissioner agrees with the Respondent’s submission that the words “painting or other like picture” should be given the meaning which an ordinary member of the public would intend them to have when using the words ordinarily and that the words “Painting or other like picture” are simple words which are unambiguous.

30. However, the Commissioner does not agree that the Work, described as “ art”, does not come within the ordinary meaning of the term “painting or other like picture”. From the Commissioner’s consideration of the Work, including consideration of the Appellant’s website and various links provided to the Work, the Commissioner observes that the Work is created in a frame and intended to be hung on a wall. Therefore, the Commissioner is satisfied that the Work falls into the category of “painting or other like picture”, which is widely termed by the legislature, such that it cannot be said that the Work is not an “other like picture”. The Commissioner is satisfied that the Work falls within paragraph 1(d) of the guidelines.

31. The Commissioner will now consider if the Work meets the tests as set out in the guidelines, namely that the Work is original and creative and the Work has, or is generally

recognised as having, either cultural or artistic merit. In order to succeed in a claim for exemption, the Work must be determined to be Work which is both original and creative and Work which has, or is generally recognised as having, either cultural or artistic merit.

32. For the purposes of the exemption under section 195 TCA 1997, a Work can only be regarded as being original and creative, if it meets the test set out in paragraph 4 of the guidelines. **Paragraph 4 of the guidelines** provides that for the purposes of a determination under section 195 TCA 1997, *“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.”*
33. The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8 of the guidelines that the Work satisfies the test set out in paragraph 4 of the guidelines.
34. In relation to Cultural or Artistic Merit, paragraph 5 and 6 of the guidelines are relevant. Paragraph 5 of the guidelines states that *“a work shall be regarded as having cultural merit only if by reason of its quality of its form and/or content it enhances to a significant degree one or more aspects of national or international culture”*. Paragraph 6 of the guidelines states that *“a work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.”* For the purposes of this Appeal, paragraph 6 is relevant.
35. The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Appellants works satisfy the tests set out in paragraphs 5 and 6 of the guidelines. Therefore, the Respondent submits that the Work fails the test as outlined in paragraph 4, 5 and 6 by virtue of paragraph 8(v) of the guidelines.
36. The Commissioner has considered the website of the Appellant and the supporting documentation. The Commissioner is satisfied that the Work is *“a unique work of creative quality brought into existence by the exercise of its creator’s imagination”* having regard to the nature of the Work and the Commissioner notes the submission of the Appellant that *“my work goes through a creative process inspired by nature’s organic patterns, shapes and fractals to create something unique and mesmerizing to the eye”*. The Commissioner is satisfied having considered the Work, that the Appellant satisfies the test under paragraph 4 of the guidelines.
37. In addition, the Commissioner has considered the meaning of biophilic art from open source material. The Appellant’s own website documents that the Appellant studied biophilic design and *“how it helps people reduce stress and improve their well-being by living closer to the natural world in the built environment”*. Further,

the Commissioner observes that the Appellant's Work has won 2 Finalist Awards as part of International Juried Art competitions, has been included in several online art exhibitions, has featured in art magazines and has received several invitations to international art exhibitions. It is evident to the Commissioner that the Appellant's work is supported in the art world. The Appellant submits that [REDACTED] art is a new and emerging area. Therefore, the Commissioner is satisfied that the Work enhances to a significant degree the canon of work in the area of biophilic art. In this regard, the Commissioner notes the Appellant's submission that [REDACTED] *art is a relatively new practice that differs from the standard [REDACTED] walls*".

38. In light of this, the Commissioner finds that the work satisfies the test as set out at paragraph 6 of the guidelines, namely that the work is "*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 Commissioner does not agree with the Respondent's determination that the Work is decorative in nature only.
39. The Work can be considered "a painting or other like picture" and the Commissioner considers that the documentary evidence submitted illustrates that the Work is original and creative and that it has artistic merit such that "*its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.*"
40. The Commissioner notes that the Appellant's website states that "*We offer custom-made biophilic wall art and interior décor..... Our award-winning [REDACTED] wall art elevates any interior with its mesmerizing look.*" It is not for the Commissioner to judge the merits of the art itself, but to consider if the test as set out in the legislation and guidelines herein is satisfied, such that the Appellant is entitled to an exemption to tax. The Commissioner has no doubt that the Appellant's work is aesthetically pleasing, of high quality and quite beautiful in its form, but the Commissioner considers that the Work may be somewhat borderline in terms of satisfying the test to be applied. Nevertheless, in light of the interest that the galleries and media have in the Work, the Commissioner is satisfied that on balance the Work meets the test, as set out above. Moreover, the Appellant was in a position to demonstrate that the Work had won awards.
41. Finally, the Commissioner is mindful that the Work as a biophilic artist "*..... helps people reduce stress and improve their well-being by living closer to the natural world in the built environment*". With the current global focus on climate change and environmental protection, the Commissioner is satisfied that biophilic design, including biophilic art is important. The Commissioner observes from open source material that "*Biophilic design is a concept used within the building industry to increase*

occupant connectivity to the natural environment through the use of direct nature, indirect nature, and space and place conditions. Used at both the building and city-scale, it is argued that this idea has health, environmental, and economic benefits for building occupants and urban environments, with few drawbacks".¹

42. The artist exemption legislation and guidelines set out a series of tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, the Commissioner determines that the Work does satisfy the requisite tests, in particular paragraphs 4, 5, and 6 of the guidelines. Hence, the Commissioner finds that the Appellant is entitled to avail of the exemption pursuant to section 195 TCA 1997.

Determination

43. 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 this appeal, such that the Work comes within the categories of works eligible for a determination under section 195 TCA 1997.
44. As a result, the Commissioner determines that the Appellant is entitled to an exemption pursuant to section 195(3) of the TCA 1997.
45. This appeal is hereby determined in accordance with Part 40A TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine
Appeal Commissioner
11 September 2023

¹ https://en.wikipedia.org/wiki/Biophilic_design

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

(b) Where –

(i) an individual –

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

(II) as respects the claim, has complied with any request made to the individual under subsection (4) or (5) in the relevant period, and (ii) the Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to the claim in the relevant period, the individual may [appeal to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the end of the relevant period] on the grounds that –

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

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

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

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

(i) after consideration of –

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

(ii) in relation to a work or works or a particular work, the work or works or the particular work, and (ii) after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them,

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

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

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

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

(9) For the purposes of the hearing or rehearing of an appeal made under subsection (6), the Revenue Commissioners may nominate any of their officers to act on their behalf.

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

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

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

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

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

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

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

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

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

(ii) a rehearing by a judge of the Circuit Court of an appeal mentioned in subparagraph (i) and, to the extent necessary, to the determination by the High Court of any question of law arising on such an appeal or rehearing and specified in the statement of a case for the opinion of the High Court, by the Appeal Commissioners or, as the case may be, a judge of the Circuit Court.

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

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

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

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

Appendix II

Guideline drawn up under Section 195(2) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle 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 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 16

(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.