



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

17TACD2024

Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This appeal relates to a refusal by the Revenue Commissioners (hereinafter the "Respondent") of a claim for exemption from income tax pursuant to section 195 of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") 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").
2. Section 195 of the TCA1997 is entitled "*Exemption of certain earnings of writers composers and artists*" (hereinafter the "Artists' Exemption")
3. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the TCA 1997.

Background

4. Ms [REDACTED] (hereinafter the "Appellant") is a fine artist and graduate in textiles art and artifact / applied materials [REDACTED]. Since graduating, the Appellant has exhibited her work, [REDACTED]
[REDACTED].
5. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1) of the TCA1997 within two separate categories (d) "a painting or other like picture and (e) a sculpture and submitted an application to the Respondent on 28 April 2022.
6. On 20 May 2022 the Respondent issued a determination in relation to the Appellant's application pursuant to category (d) "a painting or other like picture" indicating that they were satisfied that the Appellant's works which she had submitted in relation to that category fell within that category of section 195 of the TCA1997 and granted the Appellant the Artists' Exemption in relation to those works. That aspect of the Appellant's application therefore does not form part of this determination.
7. Pursuant to the provisions of section 195(2)(a)(ii) of the TCA1997, the Respondent sought an opinion from the Arts Council as to whether, in their opinion, the Appellant's sculpture work for which the Appellant had claimed the Artists Exemption, came within the criteria for the Artists' Exemption scheme.
8. On 15 June 2022 the Arts Council provided its opinion to the Respondent in relation to the Appellant's application which stated:

“It is our opinion that this applicant’s work does not qualify for the tax exemption scheme under category (e) – sculpture.

Based on the material provided, the works shown in the images appear to have been created primarily for utilitarian, decorative or similar purposes, as outlined in sections 8. (v) and 8. (vi) of the guidelines.”

9. On 16 June 2022 the Respondent issued a decision to the Appellant indicating that they did not consider that the Appellant’s work met the required criteria set out in legislation and the Guidelines. In particular, the letter of 16 June 2022 stated that the Respondent considered that the Appellant’s work is utilitarian in nature and is excluded from the Artists’ Exemption scheme under the provisions of paragraph 8(vi) of the Guidelines.
10. The Appellant submitted a Notice of Appeal to the Commission on 17 June 2023.

Legislation and Guidelines

11. The relevant legislation is contained at section 195 of the TCA1997 which is set out in full at **Annex I** of this determination.
12. In considering this appeal, the Commissioner is obliged, in compliance with section 195(13)(b) of the TCA1997 to have regard to the Guidelines for the time being in force under section 195(12) of the TCA1997. In order to qualify for an Artists’ Exemption the Work must satisfy the mandatory requirements of those Guidelines which are set out in full at **Annex II** of this determination.
13. Section 195 of the TCA1997 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 types of works, including “*sculptures*”, by such persons that are both “*original and creative*” and of “*cultural or artistic merit*”.
14. Paragraph 4 of the Guidelines provides that a work shall be classed 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.”

15. Paragraph 5 of the Guidelines provides that a work shall be classed 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.”

16. Paragraph 6 of the Guidelines 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.”

17. Paragraph 8 of the Guidelines provides that the following shall not be regarded as being original and creative and of cultural or artistic merit:-

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

Submissions

Appellant's Submissions

18. The Appellant submitted the following in her Notice of Appeal:

“My Practise is Fine Art. I studied Textiles Art and Artifact/ Applied Materials.

[REDACTED].

My recent pieces can be described as soft sculptures.

They have been classed as utilitarian. They are not, which is why I am appealing the decision.

I will be exhibiting [REDACTED] this year and hope to enter other competitions and exhibitions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

My textiles can be painted, embroidered, stuffed, hung on walls or suspended from the ceiling.

I hope you will reconsider my application. I have tax exemption for my paint practise but I will be exhibiting more sculpture in the immediate future. Thank you for your help with this matter.”

19. The Appellant submitted the following in her Statement of Case:

“I am appealing the decision that my sculpture pieces are utilitarian.

I submitted too many images. There was a back and forth exchange of emails requesting images and I mistakenly sent some images of a utilitarian quality. This was to show the types of products I sell as opposed to my sculpture.

My sculptures are soft sculptures they are made from fabric and wire.”

20. On 31 July 2023 the Appellant made the following submission to the Commission:

*“My 2022 [REDACTED] graduation piece which was chosen [REDACTED]
[REDACTED] for an exhibition [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].”*

The email I received 16 June 2022 was based on the photographs I was asked to submit by [REDACTED], who was most helpful but, in hind sight I feel there was too many images.

As a recent fine art graduate I am honing my submission skills. I realise soft sculpture has a broad context and is difficult to define.

*I would ask that my application be based on my work since graduating and not the original submission with the multiple images of my studio work submitted to [REDACTED]
[REDACTED].”*

21. The Appellant submitted images of the sculptures on which her application was based in support of her appeal. The images depict:

i. [REDACTED]

ii. [REDACTED]

[REDACTED]

Respondent's Submissions

22. The Respondent submitted the following in its Statement of Case:

"2.1 An application dated 28 April 2022 for a determination under section 195(2) TCA 1997 in respect of the appellant's works was submitted to Revenue.

2.2 Section 195(1) states that the scheme shall apply to original and creative works which are generally recognised as having artistic or cultural merit and which come within a number of listed categories.

2.3 The application in respect of the Appellant's works and was made under category (d), "a painting or other like picture" and under category (e), "a sculpture".

2.4 In support of her application, the Appellant submitted a number of images of samples of her work and other supporting material.

2.5 Revenue may only make a determination where a work clearly comes within the criteria set out within the legislation and the guidelines governing the scheme.

2.6 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 (referred to hereafter as the guidelines).

2.7 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. The section further states that the guidelines may specify criteria by reference to which the questions whether works are original and creative and whether they have or are generally recognised as having cultural or artistic merit are to be recognised.

2.8 Section 195(13) states that where an application for a determination is made to Revenue, that Revenue shall not make a determination in respect of a work unless it complies with the guidelines. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.

2.9 The current version of the guidelines are effective for all determinations made by Revenue on or after 30 November 2013.

2.10 Having considered the appellant's application under category (d), a painting or other like picture, Revenue were satisfied that the Appellant's works in this category came within the legislation and the guidelines governing the scheme and issued a determination in respect of those works on 20 May 2022.

2.11 In accordance with section 195(2)(a)(ii), Revenue sought an opinion from the Arts Council as to whether, in their opinion the appellants works in category (e), a sculpture, came within the criteria for the scheme. The Arts Council expressed the opinion that

the Appellant's works did not. In particular the Arts Council stated that in their opinion the sculpture works primarily serve a utilitarian function.

2.12 Paragraph 8(vi) of the guidelines states that a work of sculpture which primarily serves a utilitarian function shall not, for the purposes of the scheme, be an original and creative work and shall not be generally recognised as having artistic or cultural merit.

2.13 Having considered the Arts Council's opinion, Revenue determined that the Appellant's works in the category "a sculpture" primarily serve a utilitarian function and were therefore ineligible for a determination as they were excluded from the scheme under paragraph 8(vi) of the guidelines.

2.14 A letter issued to the appellant on 16 June 2022 stating that Revenue were unable to make a determination in respect of these sculpture works."

2.15 Pursuant to section 195(6), on 17 June 2022 the appellant has appealed the decision of Revenue not to make a determination in respect of the works."

Material Facts

23. The following material facts are not at issue in the within appeal and the Commissioner accepts same as material facts:

- i. The Appellant is a fine artist and graduate in textiles art and artifact / applied materials.
- ii. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1) of the TCA1997 within the categories (d) "a painting or other like picture and (e) a sculpture and submitted an application to the Respondent on 28 April 2022.
- iii. The Appellant submitted a number of images of samples of her work in support of her application.
- iv. On 20 May 2022 the Respondent issued a determination in relation to the Appellant's application pursuant to category (d) "a painting or other like picture" indicating that they were satisfied that the Appellant's works fell within that category of section 195 of the TCA1997 and granted the Appellant the Artists' Exemption in relation to those works.

- v. Pursuant to the provisions of section 195(2)(a)(ii) of the TCA1997, the Respondent sought an opinion from the Arts Council as to whether, in their opinion, the Appellant's sculpture work for which the Appellant had claimed the Artists Exemption, came within the criteria for the Artists' Exemption scheme.
- vi. On 15 June 2022 the Arts Council provided its opinion to the Respondent in relation to the Appellant's application which stated:

"It is our opinion that this applicant's work does not qualify for the tax exemption scheme under category (e) – sculpture.

Based on the material provided, the works shown in the images appear to have been created primarily for utilitarian, decorative or similar purposes, as outlined in sections 8. (v) and 8. (vi) of the guidelines."
- vii. On 16 June 2022 the Respondent issued a decision to the Appellant indicating that they did not consider that the Appellant's work met the required criteria set out in legislation and the Guidelines. In particular, the letter of 16 June 2022 stated that the Respondent considered that the Appellant's work is utilitarian in nature and is excluded from the Artists' Exemption scheme under the provisions of paragraph 8(vi) of the Guidelines.
- viii. The Appellant submitted a Notice of Appeal to the Commission on 17 June 2023.

24. The following material fact is at issue in this appeal:

- i. The works which the Appellant submitted to the Respondent fall within section 195(1)(e) of the TCA1997, a sculpture.
- ii. The works which the Appellant submitted to the Respondent are original and creative pursuant to paragraph 4 of the Guidelines.
- iii. The works which the Appellant submitted to the Respondent have artistic merit pursuant to paragraph 6 of the Guidelines;
- iv. The works which the Appellant submitted to the Respondent primarily serve a utilitarian function.

25. 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*, [2010] IEHC 49 (hereinafter “*Menolly Homes*”), 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”.

The works which the Appellant submitted to the Respondent fall within section 195(1)(e) of the TCA1997, a sculpture:

26. The Commissioner has considered all of the submissions received from the Appellant and the Respondent, both written and oral, received in considering this material fact.
27. Having considered the submissions received from both Parties and the images which the Appellant has submitted in support of this appeal, the Commissioner is satisfied that the works the subject matter of this appeal are sculptures.
28. The Commissioner has considered the meaning of “sculpture” which is defined by the Cambridge dictionary as “*The art of creating objects out of material such as wood, clay, metal, or stone, or a work of art of this type*”. The Commissioner also notes that the Tate Galleries of Modern Art defines “sculpture” as “*Three-dimensional art made by one of four basic processes: carving, modelling, casting, constructing.*”¹ The Commissioner has considered both definitions of “sculpture in coming to this determination.
29. The Commissioner has considered work (1) and notes that it is a three-dimensional textile work which is constructed [REDACTED]
[REDACTED]. [REDACTED]
The work is displayed by hanging from the ceiling using thin, clear plastic string. The base of the sculpture lies on a large, white circular disc. In addition, the Appellant has submitted that this work has been exhibited. This is not contested by the Respondent.
30. On the basis of the information submitted, none of which is contested, and the images received, the Commissioner is satisfied that work (1) is a three-dimensional art made by

¹ <https://www.tate.org.uk/art/art-terms/s/sculpture>

one of four basic processes: carving, modelling, casting, constructing and is therefore satisfied that it is a sculpture.

31. The Commissioner has considered work [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

32. On the basis of the information submitted, none of which is contested, and the images received, the Commissioner is satisfied that work (2) is a three-dimensional art made by one of four basic processes: carving, modelling, casting, constructing and is therefore satisfied that it is a sculpture.

33. The Commissioner is satisfied, and finds as a material fact, that the work the subject matter of this appeal are sculptures within the meaning of section 195(1)(e) of the TCA1997.

The works which the Appellant submitted to the Respondent are original and creative pursuant to paragraph 4 of the Guidelines:

34. In considering this material fact, the question which arises for the Commissioner in this appeal is whether the works which the Appellant has exhibited as part of her appeal are original and creative as defined by paragraph 4 of the Guideline which states:

“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.”

35. Having considered the submissions received from both Parties and the images which the Appellant has submitted in support of this appeal, the Commissioner is satisfied, and finds as a material fact, that the works the subject matter of this appeal are original and creative pursuant to paragraph 4 of the Guidelines in that it is a unique work of creative quality brought into existence by the exercise of the Appellant’s imagination.

36. The works submitted by the Appellant are unique in nature and the Commissioner is satisfied that both work (1) and work (2) have been brought into existence by the exercise of the Appellant’s imagination. In particular, the Commissioner notes that work (2) was brought into existence to capture a particular moment in time and represents the landmark time in human history which was the [REDACTED]

37. The Commissioner notes that the Appellant is a fine artist and graduate in textiles art and artifact / applied materials [REDACTED]. The Commissioner further notes that, since graduating, the Appellant has exhibited her work, [REDACTED]
[REDACTED]; [REDACTED]
[REDACTED]

38. The Commissioner therefore finds that the Appellants works are original and creative.

The work which the Appellant submitted to the Respondent has “artistic merit” pursuant to paragraph 6 of the Guidelines:

39. Paragraph 6 of the Guidelines deals with “artistic merit” and 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.”

40. In considering this aspect of the Appellant’s claim, the Commissioner notes that the definition of “canon of work” as contained in the Cambridge dictionary is *“the writings or other works that are generally agreed to be good, important, and worth studying”*.

41. Having considered the submissions received from both Parties and the images which the Appellant has submitted in support of this appeal, the Commissioner is satisfied, and finds as a material fact, that the work the subject matter of this appeal has artistic merit pursuant to paragraph 6 of the Guidelines and that its quality of form enhances to a significant degree the canon of work of sculpture. In particular, the Commissioner notes that the work was chosen to be exhibited as part of a larger exhibition which took place in [REDACTED]
[REDACTED]

The works which the Appellant submitted to the Respondent primarily serve a utilitarian function:

42. Paragraph 8 of the Guidelines is entitled *“Types of Works Excluded from the Artists Exemption Scheme”* and provides:

“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,

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

43. In considering this aspect of the Appellant’s claim, the Commissioner notes that the definition of “utilitarian” as contained in the Cambridge dictionary is “*designed to be useful rather than decorative*”.
44. The Commissioner notes that the Arts Council provided its opinion to the Respondent on 15 June 2022 in relation to the works and stated that it considered that:
- “Based on the material provided, the works shown in the images appear to have been created primarily for utilitarian, decorative or similar purposes, as outlined in sections 8. (v) and 8. (vi) of the guidelines.”*
45. The Commissioner notes that paragraph 8(v) of the Guidelines concerns “*types or kinds of photographic, drawing, painting or other like works*” and as a result, the Commissioner does not consider that this section applies to the Appellant’s works which the Commissioner has already found as a material fact are sculptures.
46. The Commissioner notes that the Arts Council did not have the benefit of the same images and information relating to the Appellant’s works when forming its opinion.
47. The Commissioner notes that the Appellant has submitted that work (1) is not wearable, does not have head or arm-holes and is 8 feet tall. The Commissioner notes that the Appellant’s claims in this regard are not contested by the Respondent.
48. The Appellant has submitted that work (2) is not wearable [REDACTED].

The Commissioner further notes that work (2) is not wearable [REDACTED]
[REDACTED]
[REDACTED]

████████████████████ Work (2) was brought into existence to capture a particular moment in time and represents the landmark time in human history which was the ██████████. The Commissioner notes that the Appellant's claims in this regard are not contested by the Respondent.

49. Having considered the above, the Appellant's works, to the Commissioner's mind, cannot be used as clothing or for any other function. As a result, the Commissioner finds as a material fact that the works are not utilitarian in nature.

50. For the avoidance of doubt the Commissioner accepts the following as material facts in this appeal:

- i. The Appellant is a fine artist and graduate in textiles art and artifact / applied materials.
- ii. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1) of the TCA1997 within the categories (d) "a painting or other like picture and (e) a sculpture and submitted an application to the Respondent on 28 April 2022.
- iii. The Appellant submitted a number of images of samples of her work in support of her application.
- iv. On 20 May 2022 the Respondent issued a determination in relation to the Appellant's application pursuant to category (d) "a painting or other like picture" indicating that they were satisfied that the Appellant's works fell within that category of section 195 of the TCA1997 and granted the Appellant the Artists' Exemption in relation to those works.
- v. Pursuant to the provisions of section 195(2)(a)(ii) of the TCA1997, the Respondent sought an opinion from the Arts Council as to whether, in their opinion, the Appellant's sculpture work for which the Appellant had claimed the Artists Exemption, came within the criteria for the Artists' Exemption scheme.
- vi. On 15 June 2022 the Arts Council provided its opinion to the Respondent in relation to the Appellant's application which stated:

"It is our opinion that this applicant's work does not qualify for the tax exemption scheme under category (e) – sculpture.

Based on the material provided, the works shown in the images appear to have been created primarily for utilitarian, decorative or similar purposes, as outlined in sections 8. (v) and 8. (vi) of the guidelines.”

- vii. On 16 June 2022 the Respondent issued a decision to the Appellant indicating that they did not consider that the Appellant’s work met the required criteria set out in legislation and the Guidelines. In particular, the letter of 16 June 2022 stated that the Respondent considered that the Appellant’s work is utilitarian in nature and is excluded from the Artists’ Exemption scheme under the provisions of paragraph 8(vi) of the Guidelines.
- viii. The Appellant submitted a Notice of Appeal to the Commission on 17 June 2023.
- ix. The works are sculptures within the meaning of section 195(1)(e) of the TCA1997.
- x. The works which the Appellant submitted to the Respondent are original and creative pursuant to paragraph 4 of the Guidelines.
- xi. The works which the Appellant submitted to the Respondent have artistic merit pursuant to paragraph 6 of the Guidelines.
- xii. The works which the Appellant submitted to the Respondent do not primarily serve a utilitarian function.

Analysis

- 51. Having received the Appellant’s submissions, and having made the findings of material fact as set out in paragraph 50 of this determination, the Commissioner does not agree with the view expressed by the Arts Council that the work was created primarily for utilitarian, decorative or similar purposes, as outlined in paragraphs 8(v) and 8(vi) of the Guidelines.
- 52. The Commissioner has found that the work is a sculpture pursuant to section 195(1)(e) of the TCA1997. In addition, the Commissioner has found that the work is original and creative pursuant to the provisions of paragraph 4 of the Guidelines and is of artistic merit pursuant to the provisions of paragraph 6 of the Guidelines. The Commissioner has further found as a material fact that the works do not primarily serve a utilitarian function.
- 53. Having considered all matters in this appeal and having made the findings of material fact in this determination, the Commissioner is satisfied that the Appellant’s work falls within

the provisions of section 195 of the TCA1997 and is entitled to the Artists' Exemption contained in section 195 of the TCA1997.

Determination

54. For the reasons set out above, the Commissioner determines that the Appellant in this appeal has succeeded in showing that she is entitled to the Artists' Exemption as contained in section 195 of the TCA1997. The Appellant has succeeded in her appeal.

55. This appeal is determined in accordance with Part 40A of the TCA1997 and in particular, sections 949AL and section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA1997.

Notification

56. This determination complies with the notification requirements set out in section 949AJ of the TCA1997, in particular section 949AJ(5) of the TCA1997 and section 949AJ(6) of the TCA1997. For the avoidance of doubt, the Parties are hereby notified of the determination under section 949AJ of the TCA1997 and in particular the matters as required in section 949AJ(6) of the TCA1997. This notification under section 949AJ of the TCA1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The Parties shall not receive any other notification of this determination by any other methods of communication.

Appeal

57. Any party dissatisfied with the determination has a right of appeal on a point or points of law only to the High Court within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Clare O'Driscoll
Appeal Commissioner
29 November 2023

Annex 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 another 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.”

Annex 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 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.*

(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.”