



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

192TACD2024

[REDACTED]

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## **Introduction**

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [REDACTED] ("the Appellant") against the refusal by the Revenue Commissioners ("the Respondent") to make a determination, under section 195 of the Taxes Consolidation Act 1997 as amended ("TCA 1997"), that the Appellant's artwork qualify for artists' exemption. The Respondent refused to make a determination on the basis that the artwork did not come within the categories of work eligible for artists' exemption.
2. The appeal proceeded by way of a hearing on 26 September 2024.

## **Background**

3. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists, and is commonly known as "artists' exemption". The maximum amount of income that can be exempt from income tax is €50,000 per annum.
4. On 20 August 2023, the Appellant claimed artists' exemption in respect of artwork created by her ("the work"), under section 195(1)(d) of the TCA 1997, "a painting or other like

picture". The work consisted of drawings and illustrations that partly comprised the original concept for [REDACTED] ("the programme").

5. On 25 January 2024, the Respondent notified the Appellant that it was unable to make a determination that the work qualified for artists' exemption, on the ground that it did not come within any of the categories of work eligible for artists' exemption.
6. On 21 March 2024, the Appellant appealed the Respondent's refusal to make a determination pursuant to section 195(6) of the TCA 1997. The appeal proceeded by way of a remote hearing on 26 September 2024. The Appellant appeared in person. The Respondent was represented by [REDACTED], Assistant Principal.

## **Legislation and Guidelines**

7. Section 195 of the TCA 1997 provides *inter alia* as follows:

*"(1) ... '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...*

*(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.*

*(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.*

*[...]*

*(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.*

*[...]*

*(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)..."*

8. The guidelines drawn up pursuant to section 195(12) of the TCA 1997 by the Arts Council and the Minister for Arts, Heritage and the Gaeltacht ("the Guidelines") provide *inter alia* as follows:

***"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."*

**Submissions**

*Appellant*

9. The Appellant stated that she is a visual artist. At the time of the creation of the works she was working with [REDACTED] ("the company"). The work consisted of illustrations (gouache paintings) and sketches that the programme was later based on. She created the visual identity and the characters and environments that interested the company, who bought the rights and offered to develop a series.

10. She received her creator's fee in 2023, and submitted an invoice in the amount of [REDACTED] for what was stated to be "[REDACTED]" [REDACTED] [REDACTED] [REDACTED].

11. None of the work consisted of [REDACTED] She had no rights in respect of the subsequent [REDACTED] [REDACTED] [REDACTED]. She could have refused to [REDACTED]

sell the work to the company, [REDACTED]  
[REDACTED].

12. She did not think she would have received payment if [REDACTED] had not been made, but she was not sure. The agreement with the company was from [REDACTED] but she did not receive her payment pursuant to it until 2023.
13. In reply to the Respondent, she stated that the reason she submitted stills of [REDACTED] the programme was that she was overly focused on demonstrating its cultural merit. She was not claiming artists' exemption in respect of the [REDACTED] but in respect of the drawings and illustrations that made up the concept for the [REDACTED] She believed the work had artistic and cultural merit. [REDACTED]  
[REDACTED].  
[REDACTED].
14. The work was her own style and was imaginative. It was partly hand drawn and partly created using a computer. [REDACTED]  
[REDACTED]

#### *Respondent*

15. The Respondent submitted that it was unable to determine that the work qualified for artists' exemption, because it regarded the work as a work of [REDACTED] rather than a "painting or other like picture". The Respondent could only grant the exemption to work coming within the five categories set out in section 195 of the TCA 1997.
16. The Respondent stated that the Appellant had submitted stills [REDACTED] the programme to support her application. It looked to the Respondent that the work was [REDACTED] [REDACTED]. The Respondent requested further information from the Appellant, and noted that the invoice stated that the payment to her was a creator's fee for [REDACTED]. The option agreement with the company was also for [REDACTED].
17. Regarding the work submitted by the Appellant to the Commission (the illustrations and sketches), the Respondent did not accept that they met the artistic and cultural merit tests. The Respondent believed that the work was created with the intention of being used [REDACTED]  
[REDACTED]  
[REDACTED]

## Material Facts

18. Having read the documentation submitted, and having listened to the submissions at the hearing, the Commissioner makes the following findings of material fact:
  - 18.1. The Appellant is a visual artist. She created an artwork consisting of illustrations and drawings ("the work"), which was the concept for [REDACTED] [REDACTED] ("the programme"). At the time of the creation of the work, she was an employee with the company [REDACTED] ("the company").
  - 18.2. [REDACTED], she entered into an option agreement, together with [REDACTED] other individuals, with the company. The Appellant and the [REDACTED] individuals were collectively described as "the Owner" who was "solely entitled to the rights of copyright hereinafter set out in a plot description and character designs entitled [REDACTED] (hereinafter called 'the Work')".
  - 18.3. The agreement provided that the Owner had agreed to grant the company "an Option to purchase certain rights in the Work for the production of [REDACTED] [REDACTED] programmes based on the Work, which Option will be exercised in the event that the necessary finances are available for the said production".
  - 18.4. Also [REDACTED], the Appellant the [REDACTED] other individuals signed a document which stated "We, the undersigned, are the sole joint creators of [REDACTED] [REDACTED]. Our creative ideas are set out in the plot description and character designs attached to this document."
  - 18.5. The Appellant's work did not consist of separate, standalone illustrations, but was an integral part of the concept for the programme.
  - 18.6. The company went on to create the programme [REDACTED]  
[REDACTED]  
[REDACTED].
  - 18.7. In 2023, the Appellant received payment under the option agreement of [REDACTED] On 20 August 2023, the Appellant claimed artists' exemption in respect of the work, on the basis that it was "a painting or other like picture".
  - 18.8. On 25 January 2024, the Respondent refused to determine that the work qualified for artists' exemption. It concluded that the work was not "a painting or other like

“picture” but was a work of [REDACTED] The Appellant appealed the refusal to the Commission.

## Analysis

19. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent’s failure to determine that the work qualified for artists’ exemption was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charlton J stated at paragraph 22 that “*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. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists. Section 195(12) provides for the drawing up of the Guidelines, and section 195(13) provides that the Respondent, and on appeal, the Appeal Commissioners, shall not determine that the work concerned qualifies for artists’ exemption unless it complies with the Guidelines. The current Guidelines have been in force since 30 November 2013.
21. It is settled law that exemptions to taxation must be interpreted strictly. In *Revenue Commissioners v Doorley* [1933] IR 750, Kennedy CJ stated that

*If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.*
22. The Appellant has sought artists’ exemption on the basis that the work was a “painting or other like picture” and this within the scope of section 195. The work consisted of illustrations and drawings that part-comprised the concept for [REDACTED]  
[REDACTED] The Commissioner has considered the examples of the work submitted by the Appellant, as well as the other supporting documentation and the submissions of

the parties, and he regretfully concludes that he is unable to determine that the work qualifies for artists' exemption.

23. The Commissioner accepts that the illustrations and sketches created by the Appellant could, *prima facie*, qualify as paintings or other like pictures. However, the Commissioner is satisfied that a proper consideration of the circumstances in which the work was created, and the option rights subsequently purchased by the company, illustrate that the work does not consist of standalone illustrations and sketches. Rather, the Appellant's work formed an integral part of the concept for the programme.
24. The Commissioner considers that this is demonstrated by the wording of the agreement between the Appellant and other co-creators of the programme, on the one hand, and the company, on the other. Importantly, the Appellant's work is not differentiated from that of the other [REDACTED] co-creators. The "Work", as defined by the agreement, was "*a plot description and character designs* [REDACTED]". Furthermore, the Appellant and other co-creators jointly signed a document which stated that they were "*the sole joint creators of [REDACTED] Our creative ideas are set out in the plot description and character designs attached to this document.*"
25. The Commissioner considers it clear from the above extracts that the plot description and character designs prepared by the [REDACTED] co-creators together formed a "package" that was the concept for the programme. Consequently, the Commissioner finds that the Appellant's work did not consist of separate, standalone illustrations and sketches, but was an integral part of the concept for the programme.
26. Section 195 of the TCA 1997 defines a "work" as "*an original and creative work which is within one of the following categories... (d) a painting or other like picture*". The Commissioner considers that the correct interpretation of that definition is that the work should be a self-contained piece of work which has an independent value and worth in itself. In coming to this view, the Commissioner is mindful of the *dictum* in *Revenue Commissioners v Doorley* 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, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter."*

The Commissioner considers that it would constitute an impermissible enlarging of the operation of the exemption to include within the definition of "a painting or other like picture" a concept for [REDACTED] which included illustrations. He also

considers that a concept for [REDACTED] could not come within the scope of the other categories of “work” set out in section 195(1).

27. The Commissioner is fortified in his view by the wording of section 195(3), which provides *inter alia* that

*“An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall...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 ... disregarded for the purposes of the Income Tax Acts.”*

The Commissioner considers it clear that the “profits or gains” arising to the Appellant, on the “sale” of the option to the company, arose in respect of the entirety of the concept for the programme. The company did not purchase the Appellant’s illustrations; it purchased the concept for the programme which included her illustrations. Consequently, the Commissioner considers that there was no profits or gains arising to the Appellant from the work under appeal *per se*; rather, the profits or gains arose on foot of the sale of the option on the concept for the programme.

28. Consequently, the Commissioner determines that the work does not come within the scope of the exemption. Even if he is wrong about this, and the work could properly be classified as a “*painting or other like picture*” as defined by section 195(1), he would determine that the work would not satisfy the artistic or cultural merit tests prescribed by the Guidelines. The definitions of those tests are set out at paragraph 8 above.

29. For the avoidance of doubt, the Commissioner is fully satisfied that the programme itself, [REDACTED] have both artistic and cultural merit. The programme [REDACTED] has clearly been created with great skill and care, [REDACTED]

[REDACTED] However, it is important to note that the Commissioner is not saying that he would determine that the programme would qualify for artists’ exemption, as the programme does not come within the categories of “work” defined by section 195(1); simply that the programme has artistic and cultural merit.

30. However, the work under appeal herein is not the programme itself, but the illustrations and sketches created by the Appellant that formed part of the concept for the programme. The Commissioner considers that the work is aesthetically very pleasing and is clearly

the product of a skilled artist. However, he does not consider that it could be said to enhance “*to a significant degree one or more aspects of national or international culture*” (cultural merit) or “*to a significant degree the canon of work in the relevant category*” (artistic merit). This is, in truth, unsurprising, as the work constitutes preliminary illustrations and sketches that were more fully developed during the creation of the programme. Consequently, he does not agree that the work meets either the artistic merit or cultural merit tests. For completion, he does consider that the work is original and creative.

31. In conclusion, therefore, the Commissioner does not consider that the work under appeal comes within the scope of “work” as defined by section 195(1) of the TCA 1997, and therefore he determines that the work does not qualify for artists’ exemption. Even if the work did potentially come within scope, the Commissioner would not consider that it satisfied either the cultural merit or artistic merit test.
32. The Commissioner appreciates that this determination will be disappointing for the Appellant. He wishes to stress that he is no way questioning the artistic ability and skill that went into creating the work. He acknowledges the very significant achievement in co-creating the programme, [REDACTED] However, the Commissioner is obliged to interpret and implement the legislative provisions as enacted by the Oireachtas and as further developed in the Guidelines, and therefore, for the reasons set out herein, the appeal is unsuccessful.

### **Determination**

33. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing to determine that the work that is the subject of this appeal qualifies for artists’ exemption under section 195 of the TCA 1997, and its refusal to so determine stands.
34. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

35. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section

949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

36. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Simon Noone  
Appeal Commissioner  
30 September 2024