



Between

20TACD2024

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal to the Tax Appeals Commission (“the Commission”) concerns the operation of the exemption from income tax of certain earnings of writers, composers and artists (“the artist’s exemption”), which is provided for under **section 195 of the Taxes Consolidation Act 1997** (“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**”).
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 1 September 2022, an application was made by [REDACTED] (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. The Appellant’s business name is [REDACTED].
4. By letter dated 19 September 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 from the Respondent and that has also been considered in this determination.

Background

6. The Appellant is a self-taught artist and commenced creating art in 2016. In 2019, the Appellant commenced selling the Work. The Appellant works mainly with [REDACTED] and [REDACTED] and the Work is created largely through private commissions. The Appellant has exhibited the Work at exhibitions.
7. On 1 September 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. The six images submitted were of framed pictures

incorporating the use of [REDACTED] and [REDACTED] and some contained a note as to the meaning that the Work depicted or the title of the Work.

8. 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.*"
9. 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.
10. On 6 September 2022, the Respondent sought an opinion from the Arts Council as to whether the work submitted by the Appellant met the criteria in the guidelines. The Respondent submits that on 16 September 2022, the Head of Visual Arts in the Arts Council replied to Respondent stating that: "*It is our view that the applicants work does not qualify for the tax exemption scheme under category (d)- a painting or other like picture. Based on the material provided, the works shown in the images appear to have been created primarily for decorative or similar purposes, as outlined in section 8. (v) of the guidelines.*"
11. On 19 September 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 21 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's 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:-

"I am a self-taught artist [REDACTED]. I started doing my art as my way of self-care and through time my style developed. In 2019 I started selling my art. I work mainly with [REDACTED] and [REDACTED] and a lot of my work is through commissions.

When creating my art I consider the shape, depth, texture and layout of the [REDACTED] so as to capture balance and harmony between the mediums. Scale and proportion are considered too so as to achieve a piece that is visually enjoyable and that communicates the meaning behind the piece.

I've exhibited my art in exhibitions organised by [REDACTED] [REDACTED] during the [REDACTED] in 2019, 2020 and 2022. I also exhibited in [REDACTED] [REDACTED] during [REDACTED] in 2022.

Each year I contribute my art to [REDACTED]. I've contributed my art for 2020, 2021, 2022 and 2023.

I took part in a group exhibition in [REDACTED] in [REDACTED] in 2022.

I had a solo exhibition called [REDACTED] in 2022. The latest exhibition I've contributed to is in [REDACTED] in [REDACTED]

Currently my art is for sale in [REDACTED] and [REDACTED], both in [REDACTED] and also the [REDACTED].

I've attached some photos of my work for you to look at. My work is mainly through commissions and I talk with the client to discuss what they would like in the piece or the meaning they would like communicated and because of this each piece is unique.

Member of visual Artist Ireland.

[The Appellant] considers her work are not decorative work, also please see letter from established artist [REDACTED] who believes [the Appellant] creates art pieces "thoughtfully and meticulously composed with an artists eye and a poetic sensibility."

Respondent's submissions

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

"An application dated 1 September 2022, for a determination under section 195(2) TCA 1997, in respect of the appellants work 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 come within a number of listed categories.

2.3 The application in respect of the appellants work was made under category (d), "a painting or other like picture".

2.4 In support of the application, the appellant submitted six images of her work and other supporting material.

2.5 The six images submitted were of framed pictures incorporating the use of [REDACTED]

2.6 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.

2.7 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).

2.8 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.

2.9 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.

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

2.11 On examination of the appellant's application and supporting images under category (d), "a painting or other like picture" it was Revenue's opinion that the appellant's work did not come within the categories of works eligible for a determination under section 195.

2.12 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).

2.13 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,".

2.14 It was Revenue's opinion that the appellant's works were created primarily for a decorative purpose and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines.

2.15 Section 195(2)(a)(ii) provides that Revenue may consult when necessary with any person or body of persons that may be of assistance to them when considering an application for artists exemption.

2.16 Revenue sought an opinion on 6 September 2022 from the Arts Council as to whether the work submitted by the appellant met the criteria in the guidelines.

2.17 The Head of Visual Arts in the Arts Council replied to Revenue on 16 September 2022 stating: "It is our view that the applicant's work does not qualify for the tax exemption scheme under category (d)- a painting or other like picture. Based on the

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

2.18 Having consideration of Revenues view and the Arts Council opinion Revenue determined that they were unable to make a determination under Section 195.

2.19 Revenue issued a letter to the appellant on 19 September 2022 stating that they were unable to make a determination in respect of this work.

2.20 Pursuant to section 195(6), on 21 March 2023 the appellant has appealed the decision of Revenue not to make a determination in respect of the works.”

Material Facts

18. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

18.1. The Appellant is a self-taught artist, creating Work primarily from [REDACTED] and [REDACTED].

18.2. In 2019, the Appellant commenced selling the Work.

18.3. The Work is usually created through private commissions.

18.4. When creating the Work, the Appellant considers the shape, depth, texture and layout of the [REDACTED] and [REDACTED] so as to capture balance and harmony between the mediums. Scale and proportion are considered too so as to achieve a piece that is visually enjoyable and that communicates the meaning behind the piece.

18.5. The Work has been exhibited in exhibitions organised by [REDACTED] [REDACTED] in 2019, 2020 and 2022.

18.6. In 2022, the Work had a solo exhibition called [REDACTED] [REDACTED].

18.7. In 2020, 2021, 2022 and 2023, the Appellant contributed the Work to [REDACTED] [REDACTED].

18.8. The Appellant submitted a number of images of samples of her work in support of her application;

18.9. On 16 September 2022, the Head of Visual Arts in the Arts Council replied to Respondent stating that: *“It is our view that the applicants work does not qualify for the tax exemption scheme under category (d)- a painting or other like picture.*

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

18.10. The Work falls within the category of “*painting or other like picture*” as set out in section 195(1)(d) of the TCA1997.

Analysis

19. The main issues that arise in this appeal are whether the Work that gives rise to the Appellant’s claim for artist’s exemption, meets the mandatory requirements that the Work be “*original and creative*” and of “*cultural or artistic merit*”.

20. 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”.

21. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton 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...”

22. 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.”

23. 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.”

24. 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.
25. 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.
26. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.
27. 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**.
28. 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]

29. 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, that the work is a “painting or other like picture”.
30. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“Perrigo”), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in *Bookfinders Ltd v. The Revenue Commissioner* [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

.....”

31. The Commissioner considers 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. Consequently, the Commissioner is satisfied that

the Work is “*a painting or other like picture*” in accordance with **paragraph 1(d) of the guidelines**.

32. 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.
33. 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.*” 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.*” The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Appellant’s Work satisfy the tests set out in paragraphs 5 and 6 of the guidelines. 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.
35. The Commissioner has considered the Work submitted by the Appellant and the supporting documentation, including the images of the Work submitted in support of the Appellant’s appeal. The Appellant submits that the Work is primarily created through private commissions and that the Appellant speaks with clients “*to discuss what they would like in the piece or the meaning they would like communicated and because of this each piece is unique*”. The Commissioner is satisfied that on balance, to her eye, the Work is unique, possessed of a creative quality and born out of the Appellant’s own imagination.

36. The Commissioner is satisfied having considered the Work that the Appellant satisfies the test under paragraph 4 of the guidelines, namely that the Work is “*a unique work of creative quality brought into existence by the exercise of its creator’s imagination.*”
37. Were originality and creativity the only requirements that had to be met to avail of the exemption, the Commissioner would find in the Appellant’s favour. However, the legislation, which the Commissioner is bound to follow, requires that a second condition be met, namely that the works have either cultural or artistic merit. It must also be repeated that section 195(13) of the TCA 1997 requires the Commissioner to adhere to the Guidelines drawn up by the Minister and the Arts Council, which elaborate on what is meant by “*cultural merit*” and “*artistic merit*”.
38. With regard to what is to be held to have cultural merit, the guidelines prescribe that the Work must enhance “*to a significant degree*” one or more aspects of national or international culture. In the Commissioner’s view the images of the Work produced in accompaniment to the appeal do not suggest that they have such an enhancing effect. On the evidence of the work proffered in support of the Appellant’s appeal, the Commissioner finds that the Work does not enhance “*to a significant degree*” one or more aspects of national or international culture.
39. With regard to whether the Work is of artistic merit, the guidelines prescribe, in similar fashion, that the Work must only be so defined if it enhances “*to a significant degree the canon of work in the relevant category*”. The Commissioner is of the view that the Work does not enhance to a significant degree the canon of work.
40. The Commissioner has considered the meaning of the word “enhance” and notes that it is defined in the Collins dictionary as meaning “*to improve its value, quality, or attractiveness.*” In addition, the Commissioner has considered the meaning of the word, “significant” and notes that it is defined in the Collins dictionary as meaning “*A significant amount or effect is large enough to be important or affect a situation to a noticeable degree*”.
41. Further, 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*”. No evidence has been submitted by the Appellant which tends to suggest that her works are generally agreed to be good, important and worth studying. In the Commissioner’s view the images of the Appellant’s Work submitted in support of this appeal do not suggest that they have such an enhancing effect.

42. The definition of artistic merit would exclude many a work done by a capable and skilled person. It is no criticism of the Appellant whatsoever to find, as the Commissioner does as a fact material to the determination of this appeal, that the works exhibited as part of the Notice of Appeal do not enhance the broad canons of painting and sculpture to the “*significant degree*” necessary to avail of the exemption.
43. In coming to her decision, the Commissioner also notes that on 6 September 2022, the Head of Visual Arts in the Arts Council replied to Respondent stating that: “.....*Based on the material provided, the works shown in the images appear to have been created primarily for decorative or similar purposes, as outlined in section 8. (v) of the guidelines.*”
44. 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 not satisfy the requisite tests, in particular paragraph 6 of the guidelines. Hence, the Commissioner finds that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997.

Determination

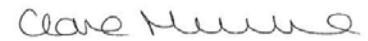
45. The Commissioner determines that the decision of the Respondent to refuse to make a determination that the Appellant is entitled to avail of the artist’s exemption on the taxation of earnings from the works submitted as part of this appeal must stand affirmed.
46. The Commissioner appreciates that this determination is likely to be disappointing to the Appellant. The Commissioner wishes only to repeat again that the reasons given in no way reflect on the quality of the Appellant’s work or the skills of craftsmanship.
47. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

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

49. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
01 December 2023

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.