



58TACD2024

Between:

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**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 of certain earnings of writers pursuant to section 195 of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997") in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (hereinafter the "Guidelines").
2. Section 195 of the TCA 1997 is entitled "*Exemption of certain earnings of writers composers and artists*" (hereinafter the "Artists' Exemption").

## Background

3. The Appellant is a medical doctor specialising in the area of [REDACTED].
4. The Appellant authored a non-fiction book entitled [REDACTED] (hereinafter the "Work").
5. The Work is an illustrated book comprised of [REDACTED] pages, excluding the author's identification page and cover, and is [REDACTED]  
[REDACTED]  
[REDACTED]
6. On 16 March 2023 the Appellant submitted a claim to the Respondent for an Artists' Exemption pursuant to section 195 of the TCA 1997.
7. On 28 March 2023 the Respondent refused the Appellant's claim for an Artists' Exemption on the basis that the Work did not meet the required criteria set out in the TCA 1997 and the Guidelines. In particular, the Respondent indicated that they considered that the Work did not come within the criteria for non-fiction work as set out in paragraph 7 of the Guidelines.
8. On 24 April 2023 the Appellant submitted a Notice of Appeal to the Commission.
9. On 11 December 2023 the parties were notified that, pursuant to section 949U of the TCA 1997, the Commissioner intended to determine this appeal based on the information already provided to the Commission by the parties and without the necessity of an oral hearing. The correspondence gave the parties 21 days from that date to submit a request for an oral hearing. Neither party submitted a request for an oral hearing.
10. This determination, therefore, is made without an oral hearing, pursuant to section 949U of the TCA 1997.

## Legislation and Guidelines

11. The relevant legislation is contained at section 195 of the TCA 1997 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 TCA 1997 to have regard to the Guidelines for the time being in force under section 195(12) of the TCA 1997. 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.

## Submissions

### *Appellant's Submissions*

13. The Appellant submitted the following ground of appeal in her Notice of Appeal:

*"I am appealing this on the grounds criteria for non-fiction works 7 section 2, particularly section D that the work relates to archive which are more than 30 years old, relating to Ireland or Irish people. It is based largely on research archives and incorporates the authors [sic] unique insight into the subject matter, by casting new light on it and by changing the generally accepted understanding of it.*

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]"

14. The Appellant submitted the following at section 3 of her Statement of Case:

*"I am appeal [sic] for artist exemption in view of my book [REDACTED]. I am appealing this on the grounds criteria for non-fiction works 7 section 2 particularly section D. As outlined in my previous appeals letter dated 24<sup>th</sup> April 2023. My unique insight into this arises from [REDACTED]*

[REDACTED]

[REDACTED]

15. The Appellant submitted the following at section 6 of her Statement of Case:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]"

16. The Appellant submitted a copy of the Work in support of her application.

*Respondent's Submissions*

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

- “2.1 *An application dated 16 March 2023, for a determination under section 195(2) TCA 1997, was submitted to Revenue by the appellant.*
- 2.2 *The application was in respect of a work entitled [REDACTED] and was made under category (a), “a book or other writing”.*
- 2.3 *In support of the application the appellant submitted a copy of the work.*
- 2.4 *Section 195(1) states that the scheme shall apply to original and creative works which come within a number of listed categories.*
- 2.5 *It is accepted by Revenue that this work is a book and that it comes within the categories of work listed in section 195(1) TCA 1997.*
- 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 is effective for all determinations made by Revenue on or after 30 November 2013.*
- 2.10 *On examination of the work, [REDACTED] Revenue determined that this book was a work of non-fiction.*
- 2.11 *Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction books and sets out specific categories within which the work must come in order to qualify for a determination.*
- 2.12 *The appellant's application described the work as coming within paragraph 7(2)(c)(ii) of the guidelines, "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".*
- 2.13 *A work cannot meet the requirements of the scheme under paragraph 7(2)(c)(ii) alone, as it must satisfy the condition in paragraph 7(2)(c)(i) also, which requires that the work "is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995".*
- 2.14 *On examination of the work it was Revenue's view that even if the condition set out in paragraph 7(2)(c)(ii) was met the work did not meet the condition set out under paragraph 7(2)(c)(i) as the work is an educational book for children regarding biology and nutrition and was not related to the functions of the Heritage Council, set out in paragraph 7(2)(c)(i).*

2.15 Consideration was given to whether, the work came within any of the other categories listed in Paragraph 7 of the guidelines and Revenue determined that it did not.

2.16 Revenue issued a letter to the appellant on 29 March 2023 stating that they were unable to make a determination in respect of the work [REDACTED] as the work did not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines.

2.17 Pursuant to section 195(6), on 24 April 2023 the appellant appealed the decision of Revenue not to make a determination in respect of the work.”

### **Material Facts**

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

- i. The Work is a book pursuant to section 195(1)(a) of the TCA 1997.

19. The following material facts not at issue in the within appeal:

- i. The Work satisfies paragraph 7(2)(c)(ii) of the Guidelines;
- ii. The Work satisfies paragraph 7(2)(d) of the Guidelines

20. The Commissioner has examined the material facts at issue.

21. The appropriate starting point for the examination of material facts is to confirm that in an appeal before the Commissioner, 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 Work satisfies paragraph 7(2)(c)(ii) of the Guidelines:**

22. The application form dated 16 March 2023 was submitted on the basis that the Work came within paragraph 7(2)(c)(ii) of the Guidelines.



23. Section 7 of the Guidelines sets out the criteria to be applied to non-fiction work in accordance with section 195(12)(b)(ii) of the TCA 1997, by reference to which the questions of 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. The criteria in relation to books as set out in section 7(2)(c) of the Guidelines are:

*“7(2) The criteria are:*

*...*

*(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,*

*...”*

*(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,*

*...”*

24. The Commissioner has considered the Work, the submissions made by the parties and paragraph 7 of the Guidelines and finds that the Work does not satisfy paragraph 7(2)(c) of the Guidelines, that is to say that the Work:

- i. is not related to a function or functions of the Heritage Council as described in the Heritage Act 1995, and
- ii. does not incorporate the author’s unique insight into the subject matter and is not 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.

25. The Commissioner makes this finding for the following reasons:
26. Section 5 of the Heritage Act 1995 established the Heritage Council.
27. Section 6 of the Heritage Act 1995 is entitled "*Functions of Council*" and section 6(1) sets out the functions of the Heritage Council as follows:  
*"The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways."*
28. The Work is entitled [REDACTED] and is, by the Appellant's own description, a book which  
*"... explain(s) [REDACTED] as a result of the research into [REDACTED] that has been done in the last 50 years."*
29. The Appellant has not submitted any evidence or made any submission which establishes that the Work is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995 in compliance with paragraph 7(2)(c)(i) of the Guidelines.
30. Having reviewed the Work, the Commissioner finds that there is nothing in the Work which relates to the function or functions of the Heritage Act 1995, that is to say there is nothing in the Work which satisfies paragraph 7(2)(c)(i) of the Guidelines.
31. The use of the word "*and*" at the end of paragraph 7(2)(c)(i) of the Guidelines means that a work must satisfy both paragraphs 7(2)(c)(i) and (ii) of the Guidelines in order to come within the criteria for non-fiction work. In order to satisfy paragraph 7(2)(c)(ii) of the Guidelines the Work must have related to a function or functions of the Heritage Council as described in paragraph 7(2)(c)(i) of the Guidelines. It did not.
32. As a result of the above, the Commissioner finds as a material fact that the Work does not satisfy paragraph 7(2)(c)(i) or paragraph 7(2)(c)(ii) of the Guidelines therefore does not satisfy the criteria for non-fiction Work as set out in the Guidelines.

**The Work satisfies paragraph 7(2)(d) of the Guidelines:**

33. The application form dated 16 March 2023 was submitted on the basis that the Work came within paragraph 7(2)(c)(ii) of the Guidelines. The Appellant has submitted in her Notice of Appeal that the Work comes within paragraph 7(2)(d) of the Guidelines. The Commissioner has considered this claim.

34. The criteria in relation to books as set out in section 7(2)(d) of the Guidelines are:

*“7(2) The criteria are:*

*...*

*(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,*

*...”*

35. As already set out, the burden of proof lies with the Appellant to establish that the Work comes within the provisions of the Guidelines and in particular within the provisions of paragraph 7 of the Guidelines.

36. The Appellant has not submitted any evidence or made any submission which establishes that the Work:

- i. relates to archives which are more than 30 years old relating to Ireland or Irish people,
- ii. is based largely on research from such archives,
- iii. incorporates the author’s unique insight into the subject matter, and
- iv. 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.

37. The Commissioner notes that in her Notice of Appeal the Appellant states that:

██  
██  
██  
██

[REDACTED]

[REDACTED]

[REDACTED]

38. The Commissioner further notes that the Appellant submitted the following at section 3 of her Statement of Case:

[REDACTED]

[REDACTED]

39. The submissions made by the Appellant do not, in the Commissioners consideration, tend to establish that the Work comes within the criteria set out by paragraph 7(2)(d) of the Guidelines.
40. As a result of the above, the Commissioner finds as a material fact that the Work does not satisfy paragraph 7(2)(c)(i) or paragraph 7(2)(c)(ii) of the Guidelines and therefore does not satisfy the criteria for non-fiction Work as set out in the Guidelines.
41. For the avoidance of doubt the Commissioner accepts the following as material facts in this appeal:
- i. The Work is a book pursuant to section 195(1)(a) of the TCA 1997;
  - ii. The Work does not satisfy paragraph 7(2)(c)(i), paragraph 7(2)(c)(ii) or 7(2)(d) of the Guidelines and therefore does not satisfy the criteria for non-fiction Work as set out in the Guidelines.

### **Analysis**

42. 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.”*

43. 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.”*

44. As a result, the Commissioner must apply the provisions of section 195 of the TCA 1997 in this appeal.
45. Section 195(13)(a) of the TCA 1997 states that, where an application for a determination is made to Revenue, Revenue shall not make a determination in respect of a work unless it complies with the Guidelines. This also applies to the Commissioner as set out in section 195(13)(b)(i) of the TCA 1997.
46. The Commissioner has already found as a material fact that the Work does not satisfy the criteria for non-fiction work as set out in the Guidelines. It therefore follows that, as the Work does not satisfy the Guidelines, the Commissioner finds that the Appellant is not entitled to a determination that she is entitled to exemption from tax of certain earnings of writers pursuant to section 195 of the TCA 1997.

#### **Determination**

47. For the reasons set out above, the Commissioner determines that the Appellant in this appeal and has not succeeded in showing that she was entitled to a determination that she is entitled to exemption from tax of certain earnings of writers pursuant to section 195 of the TCA 1997.
48. The Commissioner accepts without reservation that the Appellant is an expert in her field of medicine. That the Appellant is an expert in her field of medicine is not what was under appeal in this appeal, rather the question for the Commissioner to determine was whether the Work satisfied the provisions of section 195 of the TCA 1997 and whether the Appellant was entitled to an exemption from tax of certain earnings of writers provided for in that section.
49. It is understandable that the Appellant will be disappointed with the outcome of her appeal. This is an unfortunate situation for the Appellant. The Commissioner found the Work a professional and informative book. This legal determination is in no capacity a judgment on the merit of the Work but is a determination that it does not meet the legal test with respect to Artists' Exemption as set out above. The Appellant was correct to check to see whether her legal rights were correctly applied.

50. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular, sections 949U and 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**

51. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) of the TCA 1997 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 shall not receive any other notification of this determination by any other methods of communication.

### **Appeal**

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



Clare O'Driscoll  
Appeal Commissioner  
21 February 2024

## **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.”*