



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

74TACD2024

[REDACTED]

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**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. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**. 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

4. On **29 April 2023**, an application was made by [REDACTED] (“the Appellant”) for a determination from the Revenue Commissioners (“the Respondent”) under section 195(2) TCA 1997. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (a) “*a book or other writing*”, in respect of the work [REDACTED] [REDACTED] (“the Work”).
5. The Appellant is the author of the Work. The Work is a book in the category of non-fiction. In support of the application, the Appellant submitted the Work to the Respondent for its consideration.
6. By correspondence dated **15 May 2023**, 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 the Work to be a work of non-fiction, which does not come within the criteria for non-fiction work as set out in paragraph 7 of the guidelines.
7. On **17 October 2023**, the Appellant duly appealed to the Commission by submitting her Notice of Appeal in relation to the decision of the Respondent not to make a determination in respect of the Work.

## Legislation and Guidelines

8. The relevant legislation is contained at section 195 TCA 1997, a copy of which is attached at **Appendix I** for ease of reference.
9. 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.
10. 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*

11. 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:-

*"From the letter of refusal dated 12 May 2023: 'I regret that the work does not meet the required criteria set out in the legislation and the guidelines. In particular, as I understand your work to be a work of non-fiction it does not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines.'*

*Having read the criteria for non-fiction work as set out in the Revenue guidelines I believe that the book of ██████████ is eligible for tax exemption for the following reasons:*

*Paragraph 7 of the guidelines states in section 2a(iii) 'that 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' is eligible for tax exemption. The work ██████████ is a work of visual art and comes under this section of the criteria. Each image is unique and could not have been created by anyone else as it draws on personal recollection, experiences and recreates phrases that were said to manipulate and silence me as a child.*

*Paragraph 7 2b (ii) states that the work, in the opinion of the Revenue Commissioners, is a work in one of the following categories: '(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.'*

*The dictionary definition of an autobiography is 'an account of a person's life written by that person.' As a survivor of childhood abuse I have combined hand-stitched phrases onto carefully chosen fabrics and photographed them in a specific site. These photographic works visually write my autobiography/tell my story. This work is unique and makes a significant contribution to the understanding of the long term effects of childhood sexual abuse.*

*The back of the book includes the following descriptive passage: . . . Challenging herself by visiting a house that is a clone of her childhood home, [the Appellant] faces her own emotional turmoil and translates these feelings and memories into a visual language which enables her to express a past that she is unable to articulate in words . . . [the Appellant] has recreated scenes from fragmented memories and utilized photography and stitching as a means of expression. Photographed on film with the abuser's twin lens reflex camera she has converted the male gaze to that of the female child's and has taken back control of the past.*

*This clearly shows that it is an autobiographical artwork."*

#### *Respondent's submissions*

12. 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 29 April 2023, for a determination under section 195(2) TCA 1997, was submitted to Revenue in respect of the appellant's work.*

*The application was in respect of a work entitled [REDACTED]*

*Section 195(1) states that the scheme shall apply to original and creative works which come within a number of listed categories.*

*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.*

.....

*On examination of the book, Revenue determined that this book was a work of non-fiction.*

*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*

*The appellant's application described the work as coming within paragraph 7(2)(a)(iii) of the guidelines – arts subject work.*

*The work was examined by Revenue to see whether it came within paragraph 7(2)(a)(iii) of the guidelines and Revenue determined that the work was not a work in the category of arts subject matter as the work relates to abuse.*

*Revenue examined the work to see whether it came within any of the other categories of work listed in paragraph 7*

*Revenue were not satisfied that the work came within any of the categories of work listed in paragraphs 7(2)(a) to (e) of the guidelines.*

*Revenue issued a letter to the appellant on 15 May 2023 stating that they were unable to make a determination in respect of this work. The letter also invited the appellant to make a submission to Revenue on the reasons she felt her work should be considered as coming within the guidelines.*

*Pursuant to section 195(6), on 22 November 2023 the appellant appealed the decision of Revenue not to make a determination in respect of the work.”*

## **Material Facts**

13. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
  - 13.1. The Appellant is the author of the Work.
  - 13.2. The Work is a book and the Work is non-fiction.
  - 13.3. On **29 April 2023**, the Appellant made an application to the Respondent for a determination under section 195(2) TCA 1997 in respect of the Work.
  - 13.4. On **15 May 2023**, the Respondent wrote to the Appellant to state that it was unable to make a determination in respect of the Work.
  - 13.5. On **17 October 2023**, the Appellant appealed the decision of the Respondent not to make a determination in respect of the Work.

## Analysis

14. 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 page 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.”*

15. 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.”*

16. 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.
17. 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.
18. The current version of the guidelines is effective for all determinations made by the Respondent on or after **30 November 2013**.

19. Section 195(1) TCA 1997 provides that the scheme shall apply to original and creative works which come within a number of listed categories. To secure exemption under Section 195 TCA 1997, the Work must be determined by the Respondent 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.
20. The Respondent accepts that the Work is a book and that it comes within the categories of work listed in section 195(1) TCA 1997. It is therefore not in dispute between the parties that the work is a “*book or other writing*”. On examination of the Work, the Commissioner notes that the Respondent considers the Work to be that of non-fiction. The Commissioner has considered the Work, in addition to the parties’ submissions in this appeal. The Commissioner is of the view that the Work is both a book and is non-fiction. Therefore, **paragraph 7 of the guidelines** entitled “**Criteria for Non-fiction Work**” is engaged in this appeal, in circumstances where the Work is a non-fiction book.
21. Paragraph 7 of the guidelines sets out specific 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 question 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 is to be determined. The Commissioner notes that the Appellant describes the Work as coming within **paragraph 7(2)(a)(iii) of the guidelines**.
22. Paragraph 7(2)(a)(iii) of the guidelines provides that a work is “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.....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.”
23. The Appellant submits that the Work meets the test as outlined in paragraph 7(2)(a)(iii) of the guidelines. The Commissioner has considered the Appellant’s submission that the Work is a work of visual art and that “*[e]ach image is unique and could not have been created by anyone else, as it draws on personal recollection, experiences and recreates phrases that were said to manipulate and silence me as a child*”. The Respondent does not consider that the Work falls within paragraph 7(2)(a)(iii) of the guidelines, as the Work is not a work in the category of “arts”, as the Work relates to the Appellant’s experience of childhood sexual abuse.
24. The Appellant submits that the Work draws on her own personal experience and recollection. The Commissioner does not disagree with the Appellant’s submission in this



regard. However, the Commissioner is not satisfied that the Work is “arts subject work” in accordance with paragraph 7(2)(a)(iii) of the guidelines. In determining this appeal, the Commissioner has given the word “arts” its ordinary and natural meaning. In the Judgement in *Coleman v Revenue Commissioners* [2014] IEHC 662, Donnelly J. in the High Court considered the decision in *Inspector of Taxes v Kiernan* [1981] 1 I.R.117 wherein Henchy J. in the Supreme Court stated that:

*“Where statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily.*

*[t]hirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use.”*

25. It is clear from the ordinary and natural meaning of the words in paragraph 7(2)(a)(iii) of the guidelines that the word “arts” is work which relates to “*visual arts, theatre, literature, music, dance, opera, film, circus or architecture*”. The Commissioner is satisfied that the Work is not visual art and the Commissioner is satisfied that given the subject matter of the Work, it does not fall within the category of arts.
26. Moreover, paragraph 7(2)(a)(iii) of the guidelines also requires that the Work “*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*”. The Commissioner has considered this requirement of the test as set out in paragraph 7(2)(a)(iii) of the guidelines. The Commissioner is not satisfied that the Work meets the test as outlined, as the subject matter of the Work relates to experiences of childhood sexual abuse. Whilst the Work may incorporate the Appellant’s unique insight into the subject matter, it cannot be said that it is pioneering work and makes a significant contribution to the subject matter by casting new light on it or changing the generally accepted understanding of it. The Commissioner is satisfied that the entire test as set out in paragraph 7(2)(a)(iii) of the guidelines must be met in order to be granted the exemption which the Appellant seeks. The Commissioner finds that the Work does not meet the test as set out in paragraph 7(2)(a) of the guidelines and the Respondent was correct in its decision in that regard.
27. The Commissioner notes that the Appellant also contends that the Work falls within **paragraph 7(2)(b)(ii) of the guidelines** which provides that the work is “*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”.*

28. The Appellant submits that the dictionary meaning of “autobiography” is an account of a person’s life written by that person. The Appellant states that as *“a survivor of childhood abuse I have combined hand-stitched phrases onto carefully chosen fabrics and photographed them in a specific site. These photographic works visually write my autobiography/tell my story. This work is unique and makes a significant contribution to the understanding of the long term effects of childhood sexual abuse.”*
29. Furthermore, in her notice of appeal the Appellant submits that the back cover of the Work clearly illustrates that this is an autobiographical artwork, in circumstances where the description on the back of the Work states that *“Challenging herself by visiting a house that is a clone of her childhood home, [the Appellant] faces her own emotional turmoil and translates these feelings and memories into a visual language which enables her to express a past that she is unable to articulate in words . . . [the Appellant] has recreated scenes from fragmented memories and utilized photography and stitching as a means of expression. Photographed on film with the abuser’s twin lens reflex camera she has converted the male gaze to that of the female child’s and has taken back control of the past. This clearly shows that it is an autobiographical artwork.”*
30. Section 195 TCA 1997 and the guidelines made thereunder are addressed to the public generally. The word “autobiography” has widespread and unambiguous currency. It is normally accepted that an autobiography is an account of a person’s life written by that person. The Commissioner has consulted the Oxford Dictionary as to the definition of the word “autobiography”, which describes it as a noun and which defines the word as *“An account of a person’s life given by himself or herself, esp. one published in book form.”* The Commissioner is satisfied that the Appellant is correct in her understanding of the meaning of the word “autobiography”. In determining this appeal, the Commissioner has given the word “autobiography” its ordinary and natural meaning.
31. The Commissioner notes that the Work includes some personal autobiographical detail and it incorporates the author’s unique insight into the subject matter. Nevertheless, the test as outlined in paragraph 7(b) of the guidelines, similar to paragraph 7(a) of the guidelines, also requires that the work *“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”.*

32. The Commissioner carefully read and considered the Work that the Appellant submitted in support of her appeal. However, the Commissioner finds that the Work falls significantly short of the characteristics of an autobiography. Moreover, the Commissioner is not satisfied that the Work is a pioneering work and that it 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, in accordance with the test as outlined in paragraph 7(b)(ii) of the guidelines.
33. 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 7 of the guidelines. Hence, the Commissioner finds that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997.
34. The Commissioner must therefore determine that the Appellant is not eligible for the Artists' Exemption pursuant to the provisions of section 195 TCA 1997, in respect of the Work, the subject matter of this appeal.
35. The Commissioner wishes to state that the outcome of this appeal in no way reflects on the quality of the Appellant's Work or the skills or craftsmanship required to produce the Work. The definition of artistic and cultural merit would exclude many a work done by a capable and skilled person. It is no criticism of the Appellant's Work whatsoever where the Commissioner finds that the Work does not meet necessary test to avail of the exemption.

### **Determination**

36. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary evidence and submissions, the Commissioner has concluded that the Appellant not has succeeded in discharging the burden of proof in relation to this appeal to show that the Work comes within the categories of works eligible for a determination under section 195 TCA 1997.
37. 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 Work submitted as part of this appeal, must stand affirmed.
38. 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 or craftsmanship.


39. 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**

40. 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 of the 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**

41. 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  
25 April 2024

## 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.*