



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

[REDACTED]

and

THE REVENUE COMMISSIONERS

80TACD2024

80TACD2024

Appellants

Respondent

Determination

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9. This determination, therefore, is made without an oral hearing, pursuant to section 949U of the TCA 1997.

Legislation and Guidelines

10. The relevant legislation is contained at section 195 of the TCA 1997 which is set out in full at **Annex I** of this determination.
11. 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.
12. Sections 5 and 6 of the Heritage Act 1995 (as amended) are set out in full at **Annex III** of this determination.

Submissions

Appellant's submissions

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

"My work comes within the criteria in paragraph 7 of the guidelines.

It is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995.

The functions of the Heritage Council are primarily established by the Heritage Act, 1995. Its mandate is inter alia to: Promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of, the national heritage;

My Book, [REDACTED], certainly promotes interest, education and knowledge of our natural wildlife heritage.

The second ground of appeal relates to the section of the guidelines outlined below:

(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,

This book, by emphasising the quirky and interesting details of a selection of Irish Wildlife certainly incorporates my unique insight into the subject matter. There are no

other such books on Irish Wildlife written in such a way as to promote enjoyment of the natural heritage among children between the ages of [REDACTED] and indeed of many adults too. The Heritage Council want people to be interested in, knowledgeable about and appreciative of our natural environment. I submit that those who read this book certainly will be. The knowledge they acquire here will facilitate their enjoyment of our natural heritage and maybe even encourage them to realise its importance.

So it is a novel approach and thus a pioneering work. What other books are like it on the Irish Market?"

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

"I applied for Artists exemption in category (a) a book or other writing, in respect of the work [REDACTED]."

This exemption was not granted as the artists exemption unit of Revenue decided in this case that the work did not meet the required criteria set out in the legislation and the guidelines.

I submitted a Notice of Appeal to the Tax Appeals Commission and was informed by the commission on 27 Feb that the appeal had been accepted.

I am appealing the decision for the following reasons:

Paragraph 7(2)(c) of the Artists Exemption guidelines states that in order to receive an exemption:

(c) that the work, in the opinion of the Revenue Commissioners following consultation with the Heritage Council

(i) is a work related to the function or functions of the Heritage Council as described in the Heritage Act 1995.

Section 6 of this Heritage Act states inter alia:

(3) The Council shall in particular-

(a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage.

My book [REDACTED] certainly promotes education, interest and knowledge of our natural heritage – a very important part of our National Heritage.

(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.

By writing in such a novel and informative way about Irish wildlife I am altering for the better the appreciation, enjoyment and generally accepted understanding of it.

Also my two earlier books, [REDACTED] and [REDACTED], were granted exemptions and for these very reasons.”

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

Respondent’s submissions

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

“2.1 An application dated 14 November 2023, for a determination under section 195(2) TCA 1997, was submitted to Revenue in respect of the appellant’s work.

2.2 The application was in respect of a book entitled “[REDACTED]”, being a work relating to wildlife in Ireland.

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

2.4 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.

2.5 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).

2.6 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.

2.7 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.

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

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

2.10 *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.*

2.11 *The appellant's application described the work as coming within paragraph 7(2)(c)(i) of the guidelines, "a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995".*

2.12 *The functions of the Heritage Council are contained in section 6 of the Heritage Act 1995 which states "The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage" which includes "flora, fauna, wildlife habitats".*

2.13 *The work was examined by Revenue to see whether it came within paragraph 7(2)(c)(i) of the guidelines and Revenue determined that the work was related to the functions of the Heritage Council and in particular section 6(3), The Heritage Act 1995 - "The Council shall in particular – (a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage".*

2.14 *For Revenue to issue a determination, under section 195, it is not sufficient for a work to satisfy the criteria of paragraph 7(2)(c)(i) alone, it must also meet the criteria of paragraph 7(2)(c)(ii) "incorporates the authors 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".*

2.15 *Revenue were not satisfied that the work met the criteria set out in paragraph 7(2)(c)(ii) of the guidelines.*

2.16 *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.*

2.17 *Revenue issued a letter to the appellant on 10 January 2024 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.

2.18 Pursuant to section 195(6), on 23 January 2024 the appellant appealed the decision of Revenue not to make a determination in respect of the work.”

Material Facts

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

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

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

18.1. The Work satisfies paragraph 7(2)(c) of the Guidelines;

19. The Commissioner has examined the material fact at issue.

20. 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) of the Guidelines:

21. The application form dated 14 November 2023 was submitted on the basis that the Work came within paragraph 7(2)(c) of the Guidelines.

22. 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 relevant 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, ..."

23. The Commissioner must first consider whether the Work is related to a function or functions of the Heritage Council as described in the Heritage Act 1995.

24. Section 5 of the Heritage Act 1995 established the Heritage Council. 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 relevant things of a relevant interest (within the meaning of section 2 of the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023,) monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways."

25. Section 6(3) of the Heritage Act provides:

"The Council shall in particular—

(a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,

(b) co-operate with, engage with, advise and support, public authorities, local communities and persons in the promotion of the functions of the Council, and

(c) promote the coordination of all activities relating to the functions of the Council."

26. The Commissioner has considered whether the Work relates to the functions of the Heritage Council. The Work is entitled "**[REDACTED]**" and its contents page sets out the various chapters as being:

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

27. The Commissioner notes that the chapter entitled "[REDACTED]" addresses the types of [REDACTED] that are found in Ireland and their feedings habits. In addition, the Commissioner notes that the chapter entitled "[REDACTED]" addresses the several plants in Ireland that [REDACTED].
28. Having read the Work, the Commissioner is satisfied, and finds, that it is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995 pursuant to section 7(2)(c)(i) of the Guidelines in that it relates to "*flora, fauna, wildlife habitats*" as set out in section 6(1) of the Heritage Act 1995.
29. In addition, the Commissioner notes that the book is written in a format which promotes interest, education, knowledge and pride in, and facilitates the appreciation and enjoyment of the national heritage as provided for in section 6(3) of the Heritage Act 1995.
30. As a result, the Commissioner finds that the Work falls within the provisions of section 7(2)(c)(i) of the Guidelines. Having so found, the Commissioner must now move to consider whether the Work falls within the provisions of section 7(2)(c)(ii) of the Guidelines, that is to say whether the Work 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.
31. Having considered the Work in full, the Commissioner is satisfied, and finds, that the Work does incorporate 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. The reasons for this finding are as follows:
- 31.1. The Work relates to flora, fauna and wildlife habitats found in Ireland;
 - 31.2. The Work is presented in both word and illustrated format and is aimed at young children;

31.3. The Work contains facts and observations which are presented from the author's unique insight into the subject matter. For example, the chapter entitled "[REDACTED]" begins with the following paragraph:

"[REDACTED]
[REDACTED]
[REDACTED]"

31.4. That chapter then goes on to set out information in relation "cuckoo spit". The Commissioner considers that this contains the Appellant's unique insight into the subject matter given her background as a biologist, environmental and wildlife consultant over many years.

31.5. The chapter entitled "[REDACTED]" begins with the following paragraph:

"[REDACTED]
[REDACTED]
[REDACTED]"

31.6. That chapter then goes on to set out information in relation to various insect eating plants found in Ireland. The Commissioner considers that this contains the Appellant's unique insight into the subject matter given her background as a [REDACTED]

31.7. The Work is presented in a manner which, the Commissioner finds, is informative and casting new light on the subject of flora, fauna and wildlife habitats found in Ireland

32. As a result, the Commissioner finds that the Work falls within the provisions of section 7(2)(c)(ii) of the Guidelines.

33. The Commissioner therefore finds as a material fact that the Work falls within the provisions of sections 7(2)(c)(i) and 7(2)(c)(ii) of the Guidelines.

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

34.1. The Work is a book pursuant to the provisions of section 195(1)(a) of the TCA 1997;

34.2. The Work falls within the provisions of sections 7(2)(c)(i) and 7(2)(c)(ii) of the Guidelines.

Analysis

35. 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.”

36. 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.”

37. As a result, the Commissioner must apply the provisions of section 195 of the TCA 1997 in this appeal.
38. 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.
39. The Commissioner has already found as material facts that the Work is a book pursuant to section 195(1)(a) of the TCA 1997 and that the Work falls within the provisions of sections 7(2)(c)(i) and 7(2)(c)(ii) of the Guidelines.
40. It therefore follows that, as the Work comes within the provisions of section 195 of the TCA 1997 and the provisions of section 7(2)(c) of the Guidelines, the Commissioner must,

and does, find that the Appellant is eligible for a determination that she is entitled to exemption from tax of certain earnings of writers pursuant to section 195 of the TCA 1997.

41. The Commissioner notes that the Work is a book written for and aimed at children. Whilst such books are written in a different format and style to an adult book, this should not, and does not, diminish their general standing.

Determination

42. For the reasons set out above, the Commissioner determines that the Appellant in this appeal and has 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.
43. 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

44. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

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



Clare O'Driscoll
Appeal Commissioner

30 April 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 an other 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.”

Annex III

Sections 5 and 6 of the Heritage Act 1995

“5 (1) The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

(2) There shall stand established on the establishment day a body to be known as An Chomhairle Oidhreachta or, in the English language, The Heritage Council to perform the functions conferred on it by this Act.

(3) The Council shall be a body corporate with perpetual succession and power to sue and be sued in its own name and to acquire, hold and dispose of land.

(4) In the exercise of its functions in relation to the acquisition, holding and disposal of land the Council shall comply with such directions as may be given to it by the Minister in consultation with the Minister for Finance.

(5) The Schedule shall apply in relation to the Council.

6. *(1) The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including relevant things of a relevant interest (within the meaning of section 2 of the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023,) monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.*

(2) References to the Wildlife Advisory Council in any enactment or instrument made thereunder shall, where appropriate, be construed as references to the Council.

(3) The Council shall in particular—

(a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,

(b) co-operate with, engage with, advise and support, public authorities, local communities and persons in the promotion of the functions of the Council, and

(c) promote the coordination of all activities relating to the functions of the Council.”