



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

81TACD2024

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal to the Tax Appeals Commission (“the Commission”) concerns the operation of the exemption from income tax of certain earnings of writers, composers and artists (“the artist’s exemption”), which is provided for under **section 195 of the Taxes Consolidation Act 1997** (“the TCA 1997”) and in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (hereafter “**the guidelines**”).
2. Under **section 195(6) TCA 1997**, an individual may appeal to the Appeal Commissioners. The appeal is on the grounds that the work or works is or are generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.

Background

3. On **13 July 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 entitled [REDACTED] (“**the Work**”).
4. The Appellant is the author of the Work. The Work is a book in the category of non-fiction. The Respondent is in agreement that the Work is a book and is non-fiction.
5. By correspondence dated **31 July 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.
6. On **31 July 2023**, the Appellant duly appealed to the Commission by submitting his Notice of Appeal in relation to the decision of the Respondent not to make a determination in respect of the Work.
7. On **25 April 2024**, a remote hearing of the appeal took place. The Appellant was present and represented himself, with the Respondent being represented by [REDACTED].
8. In support of his appeal, the Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. Included in the documentation supporting the Appellant’s appeal was the Work and correspondence from a Professor of History in University College Dublin (“UCD”) and [REDACTED] Solicitor. The

Commissioner has also received a Statement of Case from the Respondent and that has also been considered in this Determination.

Legislation and Guidelines

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

12. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, both as set out in the Appellant's Notice of Appeal and Statement of Case and the oral submissions made at the hearing of the appeal:-
 - 12.1. The Work captures a historical period of about two years, during which the country was under a number of restrictions as a result of the COVID-19 virus. The Appellant submitted that the Work is about the Gaelic Athletic Association ("GAA") and its people at a time when there were no games, and it describes how the GAA community dealt with that. In addition, it describes the lives of those GAA players at that time. The Appellant gave evidence that the Work is 85,000 words and in preparation for the Work, he travelled the country to conduct 162 interviews with various individuals. The Work can be described as diaries of the time, biographical and about sport, namely the GAA, said the Appellant. The Appellant said the Work is about sporting people in Ireland, London and New York at a time of crisis.

- 12.2. The Appellant said that the Work meets the criteria as set out in paragraph 7(2)(c) of the guidelines. The Appellant made reference to the Heritage Council of Ireland which states on its website that sport is an intangible part of Irish heritage. The Appellant stated that on the website of the Heritage Council of Ireland, under the title “What is Heritage Intangible”, it states “*our customs, sports, music, dance, folklore, crafts, skills and traditions.*” The Appellant submitted that the GAA and heritage are intrinsically linked.
- 12.3. In addition, the Appellant gave evidence that it was his view that the Work could satisfy the criteria in paragraph 7(2)(a) of the guidelines. The Appellant submitted that the Work is used as part of the second year history module in UCD, namely the place of sport in modern society and he made reference to correspondence submitted from a Professor of History at UCD. The Appellant said that it is a snapshot of history and capable of satisfying the criteria for “arts history” and “artists’ diaries” in accordance with paragraph 7(2)(a)(ii) and (iv) of the guidelines.
- 12.4. The Appellant gave evidence that the Work may be described as a biography and satisfies the criteria in paragraph 7(2)(b)(i). The Appellant made reference to the first chapter of the Work entitled “The Virus and the Ventilator” and the correspondence submitted by ██████████. In addition, the Appellant said that the life of Mr ██████████ is intertwined throughout the Work and there is a life story of Ms ██████████. The Appellant submitted that the life of the then Taoiseach, ██████████ is described in the Work, with reference to the GAA.
- 12.5. The Appellant gave evidence that 18 of the 22 chapters of the Work are based on individuals’ lives at that time. The Appellant testified that there are many biographical chapters in the Work. The Appellant said that the Work contains three key biographical components, formed around the memoirs of three people, which were written and compiled after 18 months of research. The Work is a diary of two years of the COVID-19 pandemic and how people coped. The Appellant said the Work draws on stories and testimonies from the then Taoiseach Mr ██████████, Dr. ██████████, Professor ██████████, Government leaders, the Department of Tourism and Sport executives and the people of Ireland as they navigated their way through one of the most difficult periods of Irish life.
- 12.6. The Appellant gave evidence that the Work begins with a timeline, incorporates all the major deadlines and landmarks that the country experienced between March 2020 and the winter of 2022, and describes how the GAA survived the

pandemic. The Appellant submitted that the Work has won an award from the GAA for best publication, capturing a moment and time in Irish life.

Respondent's evidence and submissions

13. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case and the oral submissions made at the hearing of the appeal:-

13.1. The Respondent accepted that the Work meets the criteria for a book and that the Work is a non-fiction book, thus paragraph 7 of the guidelines is applicable.

13.2. The Respondent submitted that the Appellant's application described the Work as coming within paragraph 7(2)(c)(ii). The Respondent does not dispute that the Work satisfies the criteria common to each subparagraph in paragraph 7 of the guidelines, that 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*".

13.3. However, the Respondent stated that the Work cannot meet the requirements of the scheme under paragraph 7(2)(c)(ii) alone, but that the Work 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.*" The Respondent submitted that whilst the GAA may be considered something that relates to our national heritage, the subject matter of the Work is not the GAA, rather it relates to individuals who are part of the GAA community.

13.4. The Respondent submitted that consideration was given to whether the Work came within any of the other categories listed in paragraph 7 of the guidelines. However, the Respondent determined that it did not. The Respondent considered paragraph 7(2)(a) of the guidelines, but was of the view that the Work does not relate to the arts and has no literary element to it. The Respondent also considered whether the Work could fall within paragraph 7(2)(b) of the guidelines. However, the Respondent was of the view that the Work is not a biography, as the Work does not contain sufficient detail on the life of any one person. The Respondent said that it does accept that the first chapter of the Work may meet the definition of biography. The Respondent submitted that it accepted that the

Work meets elements of paragraph 7(2)(b) and (d), but there are no elements of paragraph 7(2)(a) or (c) for the purpose of paragraph 7(2)(e) of the guidelines.

- 13.5. Therefore, the Respondent was unable to make a determination in relation to the Work, as it does not fall within the criteria outlined in paragraphs 7(2)(a) – (e) and on 31 July 2023, the Respondent wrote to the Appellant to state that it was unable to make a determination in respect of the Work, as the Work did not come within the criteria for non-fiction work, as set out in paragraph 7(2)(c) of the guidelines.

Material Facts

14. Having read the documentation submitted by the parties in this appeal and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

- 14.1. The Appellant is the author of the Work.
- 14.2. The Work is a book and the Work is non-fiction.
- 14.3. The Work satisfies the requirement in paragraph 7 of the guidelines, such that 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”*.
- 14.4. On **13 July 2023**, the Appellant made an application to the Respondent for a determination under section 195(2) TCA 1997, in respect of the Work.
- 14.5. On **31 July 2023**, the Respondent wrote to the Appellant to state that it was unable to make a determination in respect of the Work.
- 14.6. On **31 July 2023**, the Appellant appealed the decision of the Respondent not to make a determination in respect of the Work.
- 14.7. In preparation for writing the Work, the Appellant travelled extensively throughout Ireland and conducted in or around 162 interviews with individuals.
- 14.8. The Work took two and a half years to complete.
- 14.9. The GAA gave the Appellant permission to use its logo on the Work and provided information to the Appellant to assist him with writing the Work.
- 14.10. In addition to the Work being a non-fiction book, the Work is used as part of the second-year module on the place of sport in modern society, in UCD.

Analysis

15. 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.”

16. 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.”

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

20. 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.
21. 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 considered 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.
22. Paragraph 7 of the guidelines sets out specific criteria to be applied to non-fiction work in accordance with section 195(12)(b)(ii) 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 observes that the Appellant describes the Work as coming within **paragraph 7(2)(c)(ii) of the guidelines**.
23. Paragraph 7(2)(c)(ii) of the guidelines requires that 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.*” The Commissioner notes that it is not in dispute that the Work satisfies this requirement. However, the Respondent points out that the Appellant must also satisfy paragraph 7(2)(c)(i) of the guidelines. The Commissioner clarified with the Respondent whether it was of the view that the Work satisfies this requirement for all paragraphs, as this requirement applies in each of the subparagraphs in paragraph 7 of the guidelines. The Respondent confirmed that it was not in dispute that the Work satisfies this part of the requirement, as prescribed in each paragraph in paragraph 7(2) of the guidelines, but it nevertheless does not meet any of the additional requirements in paragraphs 7(2)(a) – (e) of the guidelines.
24. The Commissioner has considered the requirement set out in paragraph 7(2)(c)(i) of the guidelines, that the Work “*is a work related to the function or functions of the Heritage Council as described in the Heritage Act 1995...*” The Commissioner notes that section 6(1) of the Heritage Act 1995 provides for its functions and states that: “*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.” In addition, subsection (3) provides that: “*The Council shall in particular – (a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage*”. The Appellant argues that the GAA is part of our national heritage, which is a tradition, handed down from our ancestors. The Respondent accepts that the GAA may be considered part of our heritage, but that it does not fall strictly within the functions of the Heritage Act 1995.

25. It is the case that the Commissioner must interpret and apply the necessary legislative provisions in this appeal. Paragraph 7(2)(c)(i) of the guidelines clearly state that the Work must be a work related to a “*function or functions of the Heritage Council*”, as described in the Heritage Act 1995. The Commissioner has considered the Heritage Act 1995 as part of this appeal, as referred to in paragraph 24 of this Determination. The Commissioner is of the view that the GAA is not related to a function or functions of the Heritage Council, as set out in section 6 of the Heritage Act 1995. The functions of the Heritage Council are specifically defined in section 6 of the Act and do not relate to the GAA or more generally, sport. Therefore, the Commissioner must find that the Work does not satisfy the criteria set out in paragraph 7(2)(c)(i) of the guidelines, as the Work is not a work that is related to “*the function or functions of the Heritage Council as described in the Heritage Act 1995...*” Thus, the Commissioner is satisfied that the Work does not satisfy the criteria in paragraph 7(2)(c) of the guidelines.
26. Nonetheless, the Commissioner is of the view that this finding does not mean on a general basis that the GAA is not part of Irish heritage or that it is not a tradition passed down through generations of Irish people. The Commissioner’s decision relates solely to her statutory consideration of the functions of the Heritage Council as defined by Section 6 of the Heritage Act 1995. The Commissioner cannot read words into a legislative provision and must give the words their plain and ordinary meaning. In determining this appeal, the Commissioner has given the words in section 6 of the Heritage Act 1995 their ordinary and natural meaning. The Commissioner is thus mindful of the summary of the principles that emerge from the decisions from the Judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 and the judgment of O’Donnell J. in the Supreme Court in *Bookfinders v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue*

Commissioners, the Minister for Finance, Ireland and the Attorney General [2020] IEHC 552 (“Perrigo”) at paragraph 74:

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

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

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that;

.....”

27. The Commissioner is further mindful of the decision of Murray J. in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General [2022] IESC 43 (“Heather Hill”)* which establishes that to a certain degree it might be said now that the “literal” and “purposive” approaches to statutory interpretation are no longer hermetically sealed. Murray J. at paragraph 108 of his decision in *Heather Hill*, states that:

*“it is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose- it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular *Dunnes Stores* and *Bookfinders* – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed”*

28. It is further argued by the Appellant that the Work is capable of satisfying the criteria set out in paragraph 7(2)(a) of the guidelines. The Commissioner considered the arguments of both parties in this regard and the Commissioner felt that the Respondent was correct in its argument, such that the Work did not relate to the arts or literature, which would

entitle the Work to a determination in accordance with the criteria outlined in paragraph 7(2)(a) of the guidelines. Thus, the Commissioner is satisfied that the Work does not satisfy the criteria in paragraph 7(2)(a) of the guidelines.

29. Furthermore, the Appellant submitted that the Work is also capable of satisfying the criteria as set out in paragraph 7(2)(b)(i) of the guidelines, which provides that the Work is a biography. Section 195 TCA 1997 and the guidelines made thereunder are addressed to the public generally. The word “biography” has widespread and unambiguous currency. It is normally accepted that a biography is an account of a person’s life written by another.

30. In this regard, the Commissioner has consulted the Oxford Dictionary to assist her with the meaning of the word “biography”. The Oxford Dictionary defines “biography” as having three definitions, two of which the Commissioner considers relevant herein, as follows:

“1. A written account of the life of an individual, esp. a historical or public figure; (also) a brief profile of a person’s life or work. Later more generally: a themed narrative history of a specific subject in any various written or recorded or visual media.

2. The process of recording the events and circumstances of another person’s life, esp. for publication (latterly in any various written, recorded or visual media); the documenting of individual life histories (and later, other forms of thematic historical narrative), considered as a genre of writing or social history.”

31. In addition, the Commissioner consulted the Collins English Dictionary for the definition of “biography”, to ensure there was no other meaning to this unambiguous word, used in common parlance. The Commissioner notes that the Collins English Dictionary defines “biography” as “*an account of their life, written by someone else*” and “*the branch of literature which deals with accounts of people’s lives.*” In determining this appeal, the Commissioner has given the word “biography” its ordinary and natural meaning, in accordance with the principles enunciated in the Judgements of the superior courts referred to above.

32. Having read the Work submitted in this appeal, the Commissioner is satisfied that the Work includes a number of biographical accounts. It is the case that some chapters of the Work are devoted entirely to the life of one individual, such as Mr ██████, while other chapters deal with more than one individual. In addition, there are other individuals’ lives weaved throughout the Work. The Commissioner is of the view that there can be no doubt that the Work is of a biographical nature having regard to the accounts in the Work. The Commissioner notes that the Respondent accepts that chapter one of the Work has the

potential to be of a biographical nature, but that the balance of the Work does not contain sufficient detail on the lives of the individuals in the Work to be considered a biography.

33. The Commissioner is satisfied that there is no requirement, in either section 195 TCA 1997 or the guidelines, which sets out what percentage or proportion of a non-fiction book must be biographical, in order to satisfy paragraph 7(2)(b)(i) of the guidelines. Moreover, there is no requirement for a biography to deal with a person's life from beginning to end. The Commissioner notes that the Work is somewhat of an outlier in that it describes the historical lives of certain individuals in a certain setting (their connection to the GAA) during a unique time in history. The Appellant submits that this is a snapshot of time during the COVID-19 pandemic only. The COVID-19 pandemic was a unique historical event for all those who lived through it. The Commissioner is in no doubt that many historical books will be written about the 21st Century pandemic which will include the biographies of those who participated in the various aspects of this unique historical event. The Commissioner is mindful of the definition of the word biography which is "*The process of recording the events and circumstances of another person's life*". The Commissioner does not accept the Respondent's argument in respect of the detail of the Work being a bar to her finding that the Work is biography. The Commissioner finds that a substantial part of the Work herein, comprises individuals' lives during a certain, unique and distinct period of time and thus, permits the Commissioner to determine that the Work is a biography satisfying the criteria as set out in paragraph 7(2)(b)(i) of the guidelines. The Commissioner appreciates that other publications which discuss individuals may not meet the threshold of a biography in relation to those individuals and accepts that chapters which detail various individuals' lives may not necessarily meet the threshold of a "biography". But the Commissioner is satisfied that due to the unique nature of the Work and the particular historical circumstances, it meets the threshold.

34. Moreover, and whilst not determinative, the Commissioner notes that the Work was recently nominated for a GAA award and in that context the Work was described as follows:

"There's a saying in Croke Park that reminds us that although the GAA is about games, in truth it is about people. [The Appellant's] latest book on Gaelic games brings this right home.

Some might have felt it was too traumatic and too soon to tackle the issue of covid so close to the worst of its lockdowns and death tolls.

But the counter argument is that now is the time to record how we really feel, not some far away shore when the passing of time has had an impact on our true thoughts and

recollections. This approach has been vindicated by [the Appellant's] ability to tell the 2020-2021 period through a collection of compelling stories focusing on different people who had their own individual trials and tribulations and were part of the collective effort.

There are plenty of previously unknown anecdotes here about just how close the GAA came to shut down and the various dilemmas that raged, including one tense Central Council meeting in 2020 when a phone call from Government pledged the funding needed to stage the Championships.

These are bolstered by a series of deeply personal and moving accounts of people navigating their way through the crisis. People like Antrim's ██████████ who spent 16 days in a coma in intensive care battling the virus, the simple act of kindness that was ██████████ round of phone calls and when at a time that the global message was to stay apart to save lives, GAA clubs and communities found a way to become closer than ever and the games become a symbol of resistance and a memory of what the world could be like."

35. Therefore, the Commissioner finds 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, is incorrect.
36. 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 satisfies the requisite tests, in particular paragraph 7(2)(b)(i) of the guidelines. Hence, the Commissioner finds that the Appellant is entitled to avail of the exemption pursuant to section 195 TCA 1997.
37. Of note and for completeness, the Commissioner notes that it was submitted by the Respondent that if the Work is used primarily for students pursuing a course of study and that there is correspondence to support this, then the Work may fall within the exclusions, as set out in paragraph 8 of the guidelines. The Commissioner is not satisfied based on the evidence adduced and the submissions made, that the Work is used primarily or will be used primarily for students pursuing a course of study and the correspondence submitted by the Appellant from the Professor of History in UCD does not support the argument made by the Respondent. The Work would be primarily read for pleasure and read by those interested in those people profiled and their interaction with the pandemic and the GAA and the Commissioner finds it incidental that the Work is used in an academic setting.

Determination


38. 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 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, in circumstances where the Work satisfies the requisite test in accordance with paragraph 7(2)(b)(i) of the guidelines.
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
1 May 2024

Appendix I

The provisions of Section 195 of TCA 1997, as they were as of the date of the application for exemption, provide 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

Guidelines drawn up under Section 195(2) 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 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

(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.