



84TACD2024

Between

RACHEL MACMANUS

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by Rachel Macmanus (“the Appellant”) against the failure by the Revenue Commissioners (“the Respondent”) to make a determination, under section 195 of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), that the Appellant’s artworks qualify for artists’ exemption. The Respondent refused to make a determination on the basis that the artworks were created primarily for decorative purposes.
2. The appeal proceeded by way of a hearing on 8 May 2024.

Background

3. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists, and is commonly known as “artists’ exemption”. The maximum amount of income that can be exempt from income tax is €50,000 per annum.
4. On 15 August 2023, the Appellant claimed artists’ exemption in respect of six artworks created by her (“the works”), under section 195(1)(d) of the TCA 1997, “a painting or other

like picture". The six artworks were pieces of outdoor art painted by the Appellant in public spaces in Ennis, Co Clare. On 28 August 2023, the Respondent notified the Appellant that it was unable to make a determination that the works qualified for artists' exemption, on the ground that they were excluded by virtue of paragraph 8(v) of the guidelines drawn up pursuant to section 195(12) of the TCA 1997 by the Arts Council and the Minister for Arts, Heritage and the Gaeltacht ("the Guidelines").

5. On 14 September 2023, the Appellant appealed the Respondent's failure to make a determination pursuant to section 195(6) of the TCA 1997. The appeal proceeded by way of a remote hearing on 8 May 2024. The Appellant appeared in person. The Respondent was represented by Roseanna Tighe, Assistant Principal.

Legislation and Guidelines

6. Section 195 of the TCA 1997 provides *inter alia* as follows:

"(1) ... 'work' means an original and creative work which is within one of the following categories:...(d) a painting or other like picture...

(2) (a) This section shall apply to an individual...

(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.

[...]

(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.

[...]

(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)...*

7. The Guidelines provide *inter alia* as follows:

“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.

[...]

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 paragraphs (i) to (vi) below...

(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes...”

Submissions

Appellant

8. In written submissions, the Appellant stated *inter alia* that:

“My work has cultural and historical relevance and is site specific. An example of this is the image submitted of the mural painted to commemorate Tom Steele, Irish political activist and close friend of Daniel O’ Connell. The piece is located in De Valera Park, Ennis and depicts two scenes from his life. The information was researched in Clare Library Archives. Each of my murals, including this one mentioned, has a barcode attached so as viewers can scan this and access the link to Clare Arts Website where more details of each work can be read about.

[...]

Another site-specific piece which was submitted to you is of 2 similar paintings, of horse heads looking out over stable walls, located in Bindon Street Carpark, Ennis. The doors which these paintings are located upon, (all sites owned and maintained by Clare County Council and painted upon with their permission) date back to a time when the carpark was a coach and carriage parking space. The owners would park and access their homes via the wooden doors which led to passage ways beneath the road and up into the cellars of their homes. Again, information accessible via the barcodes beside the murals, initiated by Clare Arts Office.

[...]

One more example is of an electrical box painted on Club Bridge, at the top of harmony Road, Ennis. It is entitled Don’t tell me to smile. On the other side is another painting titled Not as tough as I act. These works are painted in this particular location as 4 large secondary schools are located within close proximity. The pupils travel past the location on a daily basis. The piece Don’t Tell me To Smile is about the social and cultural expectations placed on teenage girls. The piece on the other side, Not as tough as I act, is about how teenage boys are often considered to be withdrawn and aggressive, when in reality they have a vulnerabilities and worries like anyone else. These pieces were specifically placed here so as to connect with the pupils and to

remind the rest of us that they are the adults of tomorrow who will inherit a damaged planet.

[...]

To deem my work as merely decorative would indicate that it is of wall paper status, with no cultural significance or historical relevance. The works are not created merely to make an electrical box look pretty, or to put nice colours on a wall.

They are carefully thought out and considered, with consideration given to the site and the context, as explained above. I am interested in creating multi layered artworks that visually enhance a space but also culturally and historically contribute to it.

I would argue that all paintings seek to be visually enhancing, or decorative to a degree and to judge one as more or less visually enhancing than the next is subjective to the individual.

I have a degree in Visual Communication from NCAD and a Masters in Fine Art from the Open College of the Arts, UK. All my work is original and conceptualised, created and painted by me.”

9. In oral submissions at the hearing, the Appellant began by outlining her qualifications in art. She stated that she was unhappy with the description by the Respondent of the works as “decorative”. She stated that all art could be described as decorative to an extent, but that it was inaccurate to describe the works as solely or primarily decorative. The works were public art, created by the Appellant using outdoor acrylic paints. “Street art” is made with aerosol cans, whereas the Appellant uses paint and brushes.
10. The Appellant stated that the works were created in conjunction with local bodies, and that she would never create public art unless it was sanctioned and agreed with the relevant authorities. All of the works were subject to rigorous research. The public nature of the works allowed for them to be viewed by a wide spectrum of the public, unlike some galleries. When an artist places their work in a public setting, it changes who the artist will work with and who will access the work.
11. The works were site-specific and relevant to their locations on a historical and geographical basis. The works were multi-layered – they could be appreciated purely visually, but if people wanted to find out more about what was being depicted they could do so.
12. Following engagement with the Respondent’s representative, Ms Tighe, it was confirmed that the Appellant had submitted six artworks to the Respondent, which are the subject

of this appeal. The Appellant made the following submissions in respect of each of the works:

- 12.1. A genderless image of a fire fighter that is located on Kilrush Road corner in Ennis. This piece was commissioned by Clare Arts Office following a request from the Fire Service. The piece replaced a mural of a member of An Garda Síochána that the Appellant had previously painted but that was repeatedly vandalised. This piece was painted to honour the work done by the Fire Service.
- 12.2. An image of a teenage schoolgirl called “Don’t tell me to smile”, which was located on Harmony Row, Ennis, near to a number of schools. It was anticipated that the students would pass by the mural, which was painted on an electricity box. It represented the Appellant’s own history as a teenage girl, when she was repeatedly told to smile. It sought to represent the societal pressures on teenagers, as well as the flawed world that was being passed on to them. It was painted in red to represent power and anger. The Appellant had received positive feedback from teenage girls when she was painting the piece.
- 12.3. An image of a horse on a doorway, located in Bindon Street Car Park. The horse looked out towards a wall behind which were large houses. In the late 1800s/1900s, drivers of horse-drawn carriages used a tunnel behind the doorway for access to the houses opposite. The Appellant had learned this from an engineer working with Clare County Council, and had confirmed it through research in Ennis library. Different audiences appreciated the image in different ways – small children liked the horse, whereas it could help others to learn about the history of the area.
- 12.4. This image was on the opposite side of the electricity box to the second piece, described above. It was called “Not as tough as I act” and represented a teenage boy holding a toy duck. It aimed to represent the vulnerability that teenage boys experience but feel they can’t show. It was painted in green to represent peace as well as Ireland.
- 12.5. A mural located on a pump-house box in De Valera Park, Ennis. This was socially, culturally and environmentally site-specific. It depicted Tom Steele, a landlord and ally of Daniel O’Connell, sitting on Steele’s Rock, which was located nearby. Steele was known for sitting on the rock and staring out at a house on the opposite side, where a certain woman lived; however, she had no interest in him. He left Ireland and subsequently returned, when he became known for driving a hearse with six plumed horses around the town – this was depicted on

the other side of the box. This mural was hand-painted and took six months to finish.

- 12.6. A mural called “Tree of Life” on a wall in Merchant’s Square, Ennis. The premises was a vegan health shop and therefore the image was suitable for the site. It was modelled on the Celtic Tree of Life and depicted a number of species of animals that are classified as endangered in Ireland. It was hand-painted and sought to highlight the beauty of Irish nature. Many schoolchildren had been brought to view the piece.
13. All of the works had been commissioned by Clare Arts Office, who would identify suitable sites for public art. The Appellant would then make a proposal to Clare Arts, who would decide whether or not to commission the piece. The purpose of the works was to enhance the cultural environment in Ennis.
14. Regarding the Respondent’s contention that the works did not satisfy the “artistic merit” requirement, the Appellant stated that this was highly subjective and that it was very difficult to universally grade the quality of a piece of art. However, given the amount of time the works took to create, the research that went into them, as well as her seven years of formal training in fine art and the feedback received from the public, the Appellant believed that the works satisfied the requirement that they have artistic merit. The Appellant stated that she was extremely careful and structured in how she made her work, and did not want to be associated with substandard work.
15. In response to the Respondent’s submissions, she stated that the newspaper article referred to was only relevant to Dublin, and that the same criteria were not applied in Clare. Clare Arts Office’s public scheme applied a different framework to Dublin City Council. Regarding the Respondent’s submission that the first image was not creative because it had been commissioned, this was akin to saying that any portrait that was commissioned could not be classified as original and creative. All of the Appellant’s works were created for artistic reasons.

Respondent

16. In written submissions, the Respondent stated *inter alia* that

“Revenue may only make a determination where a work clearly comes within the criteria set out within the legislation and the guidelines governing the scheme...On examination of the appellant’s mural work, under category (d), “a painting or other like picture” it is Revenue’s opinion that this work does not come within the categories of

works eligible for a determination under section 195...It was determined that the appellants work primarily served a decorative function and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines...Furthermore, paragraph 6 of the guidelines states that “A work shall only 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.” It is Revenue’s view that the appellants work cannot be considered artistic, within the meaning of the guidelines, as the work does not enhance to a significant degree the canon of work in the relevant category.”

17. In oral submissions, Ms Tighe stated that a lot of the detail provided by the Appellant during the hearing had not been provided when the application was originally made. She gave an outline of the provisions of section 195 of the TCA 1997 as well as the Guidelines. She stated that the Respondent considered that the works were excluded under paragraph 8(v) of the Guidelines, as they were murals that were created as part of a scheme run by county councils for decorative purposes.
18. In this regard, she referred to an Irish Times article from 6 September 2022¹ which concerned the Dublin Canvas project. This demonstrated that the aims of the project were utilitarian, as it sought to prevent graffiti on electricity boxes. The Dublin Canvas project was also open to applicants who were not professional artists. However she accepted that the article concerned Dublin and did not necessarily apply to Clare. The Respondent also considered whether the works satisfied the “artistic merit” test in the Guidelines, and was not satisfied that they did. The Respondent had not considered the “cultural merit” test; however, while the Appellant’s submissions demonstrated that the works were of cultural relevance, it was not clear that they enhanced to a significant degree one or more aspects of national or international culture.
19. Ms Tighe also submitted that the first piece (i.e. the fire fighter) did not meet the requirement that it be original and creative, as it did not come from the Appellant’s own imagination but was commissioned. She argued that the primary intention behind the works was to decorate the relevant spaces in Ennis – while there might be cultural references within the works, these may not have been noticed by the people passing by.

Material Facts

20. Having read the documentation submitted, and having listened to the submissions at the hearing, the Commissioner makes the following findings of material fact:

¹ <https://www.irishtimes.com/culture/art/2022/09/06/how-to-paint-a-traffic-utility-box-on-an-irish-street-corner/>

- 20.1. The works under appeal are six murals painted by the Appellant in public spaces in Ennis, Co Clare.
- 20.2. The Appellant had claimed artists' exemption in respect of the works. The Respondent had refused the application on the ground that the works were created primarily for decorative purposes.
- 20.3. The works were created by the Appellant to be site-specific and were relevant historically and/or geographically to their locations.
- 20.4. The works were commissioned by Clare Arts Office, part of Clare County Council, as part of its program of encouraging street art.
- 20.5. The Appellant is a professional artist with undergraduate and postgraduate qualifications in art.
- 20.6. The works were primarily pieces of art that utilised public spaces (i.e. electricity and pump-house boxes). While they had a decorative function, this was not their primary purpose.
- 20.7. The works were original and creative, and had artistic merit. However, they did not meet the requirement of cultural merit under the Guidelines.

Analysis

21. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent's failure to determine that the works qualified for artists' exemption was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*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.*"
22. Section 195 of the TCA 1997 provides for the exemption from income tax of certain earnings of writers, composers and artists. Section 195(12) provides for the drawing up of the Guidelines, and section 195(13) provides that the Respondent, and on appeal, the Appeal Commissioners, shall not determine that the work concerned qualifies for artists' exemption unless it complies with the Guidelines. The current Guidelines have been in force since 30 November 2013.
23. This appeal concerns six artworks, which are murals painted by the Appellant on electricity and pump-house boxes in public spaces in Ennis, Co Clare. The Appellant had

claimed artists' exemption under section 195(1)(d) of the TCA 1997: "*an original and creative work which is within one of the following categories:..(d) a painting or other like picture*". The Respondent declined to make a determination that the works qualified for artists' exemption, on the ground that they were excluded by virtue of paragraph 8(v) of the Guidelines. In its submissions to the Commission in this appeal, the Respondent also contended that the works did not satisfy the requirement of artistic merit in the Guidelines.

24. It is settled law that exemptions to taxation must be interpreted strictly. In *Revenue Commissioners v Doorley* [1933] IR 750, Kennedy CJ stated that:

"If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. 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, excepts 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."

25. The Respondent did not dispute that the works came within the scope of section 195(1)(d), i.e. "*a painting or other like picture*". However, it must be determined whether the works are excluded by virtue of paragraph 8(v) of the Guidelines, which excludes, *inter alia*, paintings or other like works which are created primarily for decorative purposes. If the Commissioner determines that this exclusion does not apply, it will then be necessary to determine whether they satisfy the requirement of artistic merit under the Guidelines. Alternatively, if they do not satisfy the artistic merit requirement, they may meet the requirement of cultural merit.
26. Before considering the evidence before him, the Commissioner believes it is appropriate to note, as commented by the Respondent's representative at the hearing, that the Appellant provided a much more detailed basis for her contention that the works qualified for artists' exemption at the hearing herein than she did with her original application to the Respondent. The Commissioner believes that it would have been advisable for her to provide a similar level of detail to the Respondent at first instance, rather than leaving it to the appeal stage.

27. Having said that, it was clear to the Commissioner that the Appellant had invested a large amount of time and thought into the creation of the works. She explained how each of the six works was relevant to its location, on a historical and/or geographical basis, and that she had carried out a considerable amount of research for the works.
28. The Commissioner accepts the submission of the Appellant that the works were multi-layered, in that it is possible for members of the public to enjoy them on a purely aesthetic level, while others may appreciate the cultural/historical references. The Commissioner considers that this goes to suggest that the works are more than purely, or mainly, decorative. He is of the view that a painting that was mainly decorative in nature would have the primary purpose of providing an aesthetically pleasing view, and public art that had a primarily decorative purpose would aim to “prettify” the area in which it was located. The Commissioner agrees that this was part of the purpose behind the Appellant’s works; however, he is satisfied, from hearing her explanation of the process behind the works’ creation, that the primary purpose of the works was to create aesthetically pleasing art that was also site-specific, intellectually stimulating and thought-provoking.
29. The Commissioner considers that his view of the works is supported by the program under which it appears the works were commissioned. While not explicitly stated so by the Appellant, it seems to the Commissioner that the works were commissioned pursuant to Clare Arts Office’s PRISM Street Art Programme. This is because each of the works is listed on the Clare Arts Office’s website as street art created under that programme².
30. The website further states³ that

“In 2022 Clare Arts Office successfully introduced PRISM, a pilot project in Ennis, to create new artworks in the County town. A number of works were created throughout the town by local, national and international artists.

In 2023 Clare Arts Office expanded the PRISM scheme countywide and saw works created in Tulla, Killaloe, Ennistymon and Shannon as well as in Ennis.

The 2024 PRISM scheme is now open and we welcome high quality proposals featuring partnerships with professional artists that will animate the county over the summer months.”

31. The Commissioner considers that the above quote demonstrates that the purpose of the PRISM project is to encourage the creation of high quality street art throughout Clare by

² <https://clarearts.ie/artworks/>

³ <https://clarearts.ie/projects/prism-street-art-project/>

professional artists. In passing, the Commissioner notes that the Appellant stated at the hearing that she did not classify the works as street art but as public art. However, the works are explicitly listed as “street art” on the Clare Arts Office’s website. In any event, the Commissioner does not consider that anything fundamental turns on this distinction, as the terms “street art” and “public art” are not used in section 195 or the Guidelines, and “street art” is not necessarily excluded from the scope of the artists’ exemption.

32. In its submissions at the hearing, the Respondent had referred to an Irish Times article about “Dublin Canvas”. The Respondent acknowledged that this did not directly apply to the Clare Arts programme, but sought to draw equivalences between them. The Commissioner has viewed the Dublin Canvas website⁴ and is satisfied that it is distinguishable from the Clare programme. Firstly, it seems clear that the primary focus of Dublin Canvas is indeed decorative. This is because its website states that it is aimed at improving the look of electricity boxes:

“Completed artwork brightens up and turns these once dull, heavily tagged boxes into beautiful works of art, transforming Dublin into a walking gallery of public art... By their very nature, each box is located at traffic junctions making them highly visible to pedestrians, cyclists and motorists. Dublin is a very beautiful City, however, sometimes and in certain areas, it can do with a helping hand. By participating in the project, you can help to transform selected boxes into works of art, helping to brighten up Dublin. The primary objective of Dublin Canvas is simply to ‘Colour in the County.’” (emphasis added)

33. On the other hand, the PRISM programme is designed to encourage the creation of artworks in public spaces in Co Clare. It is not limited to electricity boxes, but can also involve artworks, such as those under consideration in this appeal, created on pump-house boxes, outside doors and walls. The Commissioner concludes that, unlike the Dublin Canvas project, the works under appeal were not created with the primary focus of improving the look of electricity boxes, but instead are pieces of art that are created on and utilise public spaces such as electricity boxes, walls etc.
34. Secondly, the Commissioner considers it significant that Dublin Canvas is not limited to professional artists, as the Clare PRISM programme is. The Dublin Canvas website states that

“To date, we have had a collection of artists from all age groups - students to retirees, from all walks of life - barristers to baristas, a mixture of nationalities and a wide variety

⁴ <https://www.dublincanvas.com/about>

of art disciplines. Graphic designers, illustrators, stencil artists, fine artists, street artists and landscape artists to name but a few.”

35. The Commissioner considers that the fact that the Dublin programme is open to non-professional artists is further indication that it is not primarily focused on encouraging the creation of art *per se*, but is instead aimed at improving the look of electricity boxes. In contrast, the Clare Arts PRISM programme is explicitly limited to professional artists. The Appellant stated that she had seven years' formal education in art, including a BA in Visual Communications and a Masters in Fine Art, and that she utilised this education in the creation of the works. The Commissioner considers that the Appellant's educational background is a further indication that the primary purpose of the works was more than merely decorative, but rather that they are multi-layered works of public art created in site-specific locations in Ennis, Co Clare.
36. Consequently, for the above reasons, the Commissioner is satisfied that the works were not created primarily for decorative purposes, and therefore paragraph 8(v) of the Guidelines is not applicable. For the avoidance of doubt, and for the same reasons, he is also satisfied that the works were not created primarily for utilitarian purposes either.
37. Therefore, it is necessary to consider whether the works satisfy the artistic merit test in the Guidelines, i.e. if their quality of form and/or content enhances to a significant degree the canon of work in the relevant category. The Commissioner does not disagree with the Appellant that this is a rather subjective test. However, having regard to the visually striking and appealing nature of the works, together with their historical and/or geographical relevance to their location, as well as the multiple layers of meaning encoded within them, and also having regard to the Appellant's professional education and expertise, as well as the obviously high degree of skill and care that went into their creation, the Commissioner finds that the works do satisfy the artistic merit test in respect of paintings or other like pictures, and in particular in respect of paintings created in a public space.
38. Furthermore, the Commissioner has considered the submission of the Respondent, as stated at the hearing, that the Appellant's first image (i.e. the fire fighter) does not satisfy the requirement that the work be original and creative, because it was created by the Appellant on foot of a commission. The Commissioner does not find this argument persuasive. He agrees with the Appellant that this argument seems to preclude any artwork that has been commissioned from satisfying the requirement of being original and creative, and that this would result in some of the most famous portraits in history being found to lack creativity and originality. It seemed to the Commissioner that, while the

image was commissioned by Clare Arts Council, it was still designed and created by the Appellant. The Commissioner did not understand that, for example, she merely replicated a photograph or other image when painting the mural. Consequently, the Commissioner finds that the first image does satisfy the requirement of being original and creative.

39. Finally, the Commissioner has considered whether the works could satisfy the cultural merit test, i.e. if their form or content enhances to a significant degree one or more aspects of national or international culture. He considers that the works clearly enhance to a significant degree the *local* culture of Ennis. However, he is not satisfied that this is sufficient to demonstrate an enhancement of the *national* culture, and it appears clear that the international culture is not engaged by these works. Therefore, he declines to find that the works satisfy the requirement of cultural merit set out in the Guidelines.
40. However, as he has found that the exclusion set out in paragraph 8(v) of the Guidelines does not apply to the works, and as he has further found that the works satisfy the requirement of artistic merit set out in the Guidelines, he determines that the works do qualify for the artists' exemption pursuant to section 195 of the TCA 1997. Consequently, the appeal is successful.

Determination

41. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was incorrect in failing to determine that the works that are the subject of this appeal qualify for artists' exemption under section 195 of the TCA 1997, and he determines that they do so qualify. Therefore, the Respondent's failure to determine that the works qualify for artists' exemption does not stand.
42. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 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

43. 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

44. 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.



Simon Noone
Appeal Commissioner
13 May 2024