



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

169TACD2025

Between

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought by [REDACTED] (“the Appellant”) regarding the decision by the Respondent to refuse the Appellant’s application for artists’ exemption as provided for under section 195 of the TCA 1997 (“Artists’ Exemption”).
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing the parties having agreed to same.

## Background

3. On 22 August 2024 the Appellant submitted an application to the Respondent for an Artists’ Exemption based on her written works detailed in the said application (“the Appellant’s Works”). Section 195(13) of the TCA 1997 states that where an application for a determination is made to the Respondent, the Respondent shall not make a determination in favour of a work unless it complies with the guidelines issued in compliance with the prevailing legislation.
4. Section 195(12) of the TCA 1997, provides that 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 (“the Guidelines”), a copy of which is attached at Appendix II for ease of reference. The current version of the Guidelines is effective for all determinations made by the Respondent on or after 30 November 2013.
5. On 25 September 2024, the Respondent advised the Appellant that it was not satisfied that the Appellant’s Works came within the criteria for non-fiction work set out in paragraph 7 of the Guidelines. The Respondent advised that:

*“The criteria used by Revenue to make a determination to grant artists exemption are contained in Section 195 of the Taxes Consolidation Act 1997 and by the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht.*

*I have considered the works submitted by you and I regret that the works do not meet the required criteria set out in the legislation and the guidelines. In particular, as I understand your works to be works of non-fiction they do not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines.*

*However, I am prepared to consider any further submissions you may wish to make in support of how you consider that your works comes within the criteria in paragraph 7 of the guidelines. I am attaching herewith a copy of the guidelines for your convenience.”*

6. On 27 September 2024 the Appellant submitted her Notice of Appeal to the Commission. The grounds of appeal submitted by the Appellant are:

*“I am appealing the Artists Exemption decision reference DTX: [REDACTED] not to grant me an artists exemption in respect of my non-fiction creative personal essays.*

*Having read the 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 I believe my personal essays fall within these guidelines for being awarded an Artist Exemption for them.*

*My personal essays meet the criteria in paragraph 7 of the guidelines. My personal essays are original and creative and have been recognised as having cultural and have artistic merit.*

*In particular my personal essays fall under the Belle-Lettes category (section 7.2 in the guidelines) which is a label for literary works that do not fall into the major categories such as fiction, poetry, or drama.*

*My works are literary personal essays as evidenced by the fact that one of those I submitted in my artist exemption application won first prize in the [REDACTED] creative non-fiction personal essay competition. This competition only accepts essays considered to be original, creative, offering new insights to subject matters and are of literary value.*

*Recently I was awarded an [REDACTED] Award under the [REDACTED] category by the Arts Council to work on a creative personal essay collection and some of the writing I submitted in my award application to the Arts Council are the same as what I submitted for the Artist Exemption scheme. The Arts Council would not have awarded me an Agility award if they did not consider my personal essays to be literary works as this award is specifically for literary works. I am sure that the Arts Council would verify this if you check with them. I am also happy to send you a copy of my [REDACTED] Award application if you wish to see it.*

*Furthermore my personal essays incorporate my insight into subject matter and make a significant contribution to society by casting new light on the themes I write about*

*and change the generally accepted understanding of it, and this is another of your criteria for awarding an artist exemption. Hence I wish to appeal the original decision as I believe my personal essays meet the criteria set out in the Guidelines for the Artist Exemption Scheme.*

*Finally I am a creative writer and already have an artist exemption for both my poetry and fiction writing. My personal essays are original, creative and literary too.”*

## **Legislation**

7. The legislation relevant to this appeal is contained at section 195 of the TCA 1997, a copy of which is attached at Appendix I for ease of reference. A copy of the Guidelines are attached at Appendix II for ease of reference.

## **Submissions**

*The Appellant - Written submissions.*

8. An extract of written submissions is set out below:

*“Artist exemptions are granted for certain artistic works that are original and creative works generally recognised as having cultural or artistic merit. I have previously been granted artist exemptions for my poetry and fiction. On 22 August 2024 I submitted an application for an artist exemption for my creative literary personal essays, noting that they fall within category 7.2 of the 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. On 25 September I received correspondence stating that my application was denied. Category 7.2 refers to Belle-Lettres. A belles-lettre is something that is literary, creative, of artistic merit with features such as such as innovative word use, vivid visual images, and general beauty. My creative personal essays fall within this category. This is evidenced in the supporting documentation where I give an example of some of my creative personal essays published this year. My personal essays are original and creative and have been recognised as having artistic merit. This is also evidenced by the fact that one that one of my personal essays, [REDACTED], won first prize in the [REDACTED] creative non-fiction personal essay competition in [REDACTED] of this year. This competition only accepts essays considered to be original, creative, offering new insights to subject matters and are of literary value. I have included this personal essay in my supporting documentation. You can also read it by clicking on this link: [REDACTED]*

*[REDACTED] Recently I was awarded an [REDACTED] Award under the [REDACTED] category*

(specifically in the sub-category: creative non-fiction, memoir) by the Arts Council to work on a creative personal essay collection and some of the writing I submitted in my award application to the Arts Council is the same as what I submitted in my artist exemption application. The Arts Council would not have awarded me an [REDACTED] award for this work if they did not consider my personal essays to be literary works which have creative and artistic merit, as the [REDACTED] award is specifically for literary works that have creative, cultural and artistic merit. I have searched the Artist Exemption list at this link:

[REDACTED]  
[REDACTED] to see if there are similar non-fiction personal essays to mine that have been granted artist exemptions in the past and they are. Two notable examples are the personal essay collections, 'Constellations' by Sinead Gleeson and 'Notes to Self' by Emilie Pine. My personal essays are similar in style and creativity to these and have as much creative, cultural and artistic merit as they have. To conclude I should be granted an artist exemption for my creative personal essays for the following reasons: • They have been recognised in prestigious competitions as being literary, original, creative and of artistic merit • They are recognised by the Arts Council as being literary, creative, of artistic merit and original works as evidenced by the fact they have awarded me an [REDACTED] Award to work on my collection of personal essays • Similar works to mine as stated above have been granted exemptions.

..... My personal essays are original and creative and have been recognised as having cultural and have artistic merit. In particular my personal essays fall under the Belle-Lettes category (section 7.2 in the guidelines).”

#### *The Respondent - Written submissions*

#### *9. An extract of the Respondent’s submissions is set out below:*

*“1. Statutory provisions being relied on Section 195 of the Taxes Consolidation Act 1997 (TCA 1997) and guidelines drawn up under section 195(12) for the Artists Exemption scheme by the Arts Council and the then Minister Arts Heritage and the Gaeltacht.*

#### *2. Outline of relevant facts*

*This is an appeal by [REDACTED] in respect of the failure of Revenue to make a determination under section 195 of Taxes Consolidation Act 1997 in respect of her work.*

*2.1 An application dated 22 August 2024, 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 written works and was made under category a – “a book or other writing”.*

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 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 works, Revenue determined that they were works 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)(a)(v) of the guidelines - belles-lettres essays.

2.12 The work was examined by Revenue to see whether it came within paragraph 7(2)(a)(v) of the guidelines or any of the other categories of work listed in paragraph 7.

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

*2.14 Revenue issued a letter to the appellant on 25 September 2024 stating that they were unable to make a determination in respect of her 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.*

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

### **Material Facts**

10. Having read the documentation submitted, the Appeal Commissioner (“the Commissioner”) makes the following findings of material fact:

- 10.1. on 22 September 2024, the Appellant submitted an application to the Respondent for Artists’ Exemption based on the Appellant’s Works;
- 10.2. on 25 September 2024, the Respondent advised the Appellant that based on the Appellant’s Works she was not eligible for Artists’ Exemption as the said works did not meet the required criteria for works of non-fiction as they did not come within the criteria set out in paragraph 7 of the Guidelines;
- 10.3. on 27 September 2024, the Appellant submitted her Notice of Appeal to the Commission.

### **Analysis**

11. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997. In this regard, the jurisdiction of a Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 (“*Lee*”) wherein Murray J. stated at paragraph 20:

*“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation”.*



12. The Commissioner refers further to *Lee*, wherein Murray, J. stated at paragraph 76:

*“The jurisdiction of the Appeal Commissioners ..... is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.”*

13. The Commissioner also refers to the judgment of *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

*“ ..... Applying the rationale of the jurisprudence summarised and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions ...”*

14. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, (“*Menolly*”) wherein 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”.*

15. The Commissioner also refers to paragraph 12 of the case of *Menolly*, wherein Charleton, J. stated:

*"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."*

16. The Commissioner refers to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, ("*Doorley*"), in which Kennedy C.J. stated:

*"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."*

17. Further the Commissioner refers to *Doorley* at page 765 in which Kennedy C.J. stated:

*"The duty of the Court, as it appears to me, is to reject any a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms on the alleged subject of taxation".*

18. Further the Commissioner refers to *Doorley* in which Kennedy C.J. stated:

*"For no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to acts of parliament so far as they can be applied without violating the proper character of taxing acts to which I have referred."*

19. The Commissioner has also had regard to the High Court judgment of *Coleman v Revenue Commissioners* [2014] IEHC 662, in which Donnelly, J. stated:

*"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."*

20. All material submitted to the Commission has been assessed by the Commissioner before making this determination.
21. Section 195(12) of the TCA 1997 requires that guidelines are drawn up for the purposes of determining whether a work within a category specified in section 195(1) is “an original and creative work” and whether it has, or is generally recognised as having, “cultural or artistic merit”.
22. Section 195(13)(a) of the TCA 1997 provides that the Respondent shall not determine that a work meets those criteria unless it complies with the Guidelines. Section 195(13)(b) of the TCA 1997 provides that section 195(13)(a) shall apply to a determination by the Appeal Commissioners in an appeal to them under section 195(6) of the TCA 1997. It is therefore clear that in determining whether a work meets the criteria for exemption under section 195 of the TCA 1997, the Commissioner is statutorily obliged to apply the Guidelines.
23. Section 195(12)(b)(ii) of the TCA 1997 provides that the Guidelines may specify criteria for assessing whether a work is original or creative or whether it has or is generally recognised as having, cultural or artistic merit.
24. In assessing this appeal, the Commissioner is obliged and must ensure, in compliance with section 195(13)(b) of the TCA 1997 that the Appellant’s Works comply with the Guidelines for the time being in force under section 195(12) of the TCA 1997. The Appellant’s Works must satisfy the mandatory requirements of those Guidelines.
25. It is noted that paragraph 1 of the Guidelines states that section 195(1) of the TCA 1997 provides that a “work” for the purposes of the section must be both an original and creative work in one of the listed categories. It is noted that one of the listed categories is “(a) of a book or other writing”.
26. It is noted that paragraph 2 of the Guidelines provides that to secure exemption under section 195 of the TCA 1997 a 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.
27. It is noted that paragraph 3 of the Guidelines provides that in making a determination under section 195 of the TCA 1997 the Respondent 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.

28. It is noted that paragraph 4 of the Guidelines provides that 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.
29. It is noted that paragraph 6 of the Guidelines provides that 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.
30. It is noted that paragraph 7 of the Guidelines specifies criteria, in accordance with subsection (12)(b)(ii) of section 195 of the TCA 1997, to assess whether a non-fiction writing work is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit. The criteria are set out at subsection 2 of paragraph 7 of the Guidelines which provides *inter alia* (a) that the work, in the opinion of the Respondent;

*"...following consultation with the Arts Council, is a work in one or more of the following categories:*

*(v) belles-lettres essays,*

*.....*

*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"*

31. The Appellant submits that her Works are works which are generally recognised as having cultural or artistic merit. In the Appellant's Notice of Appeal, the Appellant submits *inter alia* that:

*"[I]n particular my personal essays fall under the Belle-Lettes category (section 7.2 in the guidelines) which is a label for literary works that do not fall into the major categories such as fiction, poetry, or drama.*

*My works are literary personal essays as evidenced by the fact that one of those I submitted in my artist exemption application won first prize in the [REDACTED] creative non-fiction personal essay competition. This competition only accepts essays considered to be original, creative, offering new insights to subject matters and are of literary value.*

*Recently I was awarded an [REDACTED] Award under the literature category by the Arts Council to work on a creative personal essay collection and some of the writing I*

*submitted in my award application to the Arts Council are the same as what I submitted for the Artist Exemption scheme. The Arts Council would not have awarded me an [REDACTED] award if they did not consider my personal essays to be literary works as this award is specifically for literary works. I am sure that the Arts Council would verify this if you check with them. I am also happy to send you a copy of my [REDACTED] Award application if you wish to see it. ....*

*Furthermore my personal essays incorporate my insight into subject matter and make a significant contribution to society by casting new light on the themes I write about and change the generally accepted understanding of it, and this is another of your criteria for awarding an artist exemption.”*

32. The Commissioner notes that the Appellant was awarded an [REDACTED] Award under the literature category by the Arts Council for her work on a creative personal essay collection which was comprised in the application to the Respondent.
33. It is noted that the Guidelines provide that to secure exemption under section 195 of the TCA 1997, a 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.
34. It is noted that the Guidelines provide that 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. The Commissioner having assessed all the material before the Commission, notes that the Appellant was awarded an [REDACTED] Award under the [REDACTED] category by the Arts Council for her work on a creative personal essay collection which was comprised in the application to the Respondent. The Commissioner finds that the Appellant's Works are a work which is both original and creative as it is a unique work of creative quality brought into existence by the exercise of its creator's, the Appellant's imagination.
35. It is noted that the Guidelines provide *inter alia* that in order for a work to secure exemption under section 195 of the TCA 1997 it must be original and creative and be a work which has, or is generally recognised as having, either cultural or artistic merit. It is noted that the Guidelines provide *inter alia* that 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. The Commissioner notes the Appellant was awarded an Agility Arts Award under the literature category by the Arts Council for her work on a creative personal essay collection. The Commissioner finds that in consideration of the Appellant receiving

the aforementioned award that the Appellant's Works do enhance to a significant degree the canon of work in the relevant category.

36. It is noted that regulation 7 of the Regulations provides *inter alia* that the criteria to be met under subsection (12)(b)(ii) of section 195 of the TCA 1997 for non fiction work. Regulation 7 of the Regulations provides that the criteria for whether a work, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit and that the work, in the opinion of the Respondent following consultation with the Arts Council, is a work in one or more of the following categories, one of the categories being *belles-lettres* essays, and that it 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.
37. The Commissioner finds that the Appellant's Works are works of non fiction and are in the category of *belles-lettres* essays. The Commissioner notes that the Appellant was awarded an Agility Arts Award under the literature category by the Arts Council for her work on a creative personal essay collection. The Commissioner finds that in consideration of the Appellant receiving the aforementioned award that the Appellant's Works 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.
38. For the reasons set out in the preceding paragraphs the Commissioner finds that the Appellant has satisfied and met the requirements in the Guidelines and the prevailing legislation to be granted the statutory exemption the subject of the within appeal.
39. For the reasons set out in the preceding paragraphs the Commissioner finds that the Appellant has met the burden of proof in establishing that the Respondent was not entitled to refuse her application for Artists' Exemption.
40. The Commissioner finds having assessed all the material and submissions before the Commission that the Appellant's appeal is successful.

### **Determination**

41. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is successful and the Appellant shall be entitled to relief under section 195(3)(a) of the TCA 1997 as if the determination had been made by the Respondent under section 195(2)(a)(ii)(l) of the TCA 1997.

42. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL(1) and 949U 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.



Leonora B. Doyle  
Appeal Commissioner  
17 April 2025

## Appendix I

*Section 195 of the Taxes Consolidation Act 1997 provides:*

*(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. [Emphasis added]*

*(2) (a) This section shall apply to an individual –*

*(i) who is —*

*(I) resident in one or more Member States, or in another EEA state, or in the United Kingdom, and not resident elsewhere, or*

*(II) ordinarily resident and domiciled in one or more Member States, or in another EEA state, or in the United Kingdom, and not resident elsewhere, and*

*(ii) (I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may be, either solely or jointly with another individual, a work or works generally recognised as having cultural or artistic merit, or*

*(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the*



*individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.*

*(b) The Revenue Commissioners shall not make a determination under this subsection unless –*

*(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under paragraph (a)(ii)(II)) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and*

*(ii) the individual complies with any request to him or her under subsection (4).*

*(3) (a) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, subject to paragraphs (aa) and (b), be entitled to have the profits or gains arising to him or her from the publication, production or sale, as the case may be, of a work or works in relation to which the Revenue Commissioners have made a determination under clause (I) or (II) of subsection (2)(a)(ii), or of a work of the individual in the same category as that work, and which apart from this section would be included in an assessment made on him or her under Case II of Schedule D, disregarded for the purposes of the Income Tax Acts.*

*(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of paragraph (a) shall not exceed €50,000 for the year of assessment 2015 and each subsequent year of assessment.*

*(b) The exemption authorised by this section shall not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under clause (I) or (II) of subsection (2)(a)(ii) in respect of which the Revenue Commissioners make a determination referred to in clause (I) or (II) of subsection (2)(a)(ii), as the case may be.*

*(c) The relief provided by this section may be given by repayment or otherwise.*

(4) (a) *Where an individual makes a claim to which subsection (2)(a)(ii)(I) relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may be specified in the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under subsection (2)(a)(ii)(I).*

(b) *Where an individual makes a claim to which subsection (2)(a)(ii)(II) relates, the individual shall –*

*(i) in the case of a book or other writing or a play or musical composition, if the Revenue Commissioners so request, furnish to them 3 copies, and*

*(ii) in the case of a painting or other like picture or a sculpture, if the Revenue Commissioners so request, provide, or arrange for the provision of, such facilities as the Revenue Commissioners may consider necessary for the purposes of a determination under subsection (2)(a)(ii)(II) (including any requisite permissions or consents of the person who owns or possesses the painting, picture or sculpture).*

(5) *The Revenue Commissioners may serve on an individual who makes a claim under subsection (3) a notice or notices in writing requiring the individual to make available within such time as may be specified in the notice all such books, accounts and documents in the individual's possession or power as may be requested, being books, accounts and documents relating to the publication, production or sale, as the case may be, of the work in respect of the profits or gains of which exemption is claimed.*

(6) (a) *In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim 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.*

*(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.*

## **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. [Emphasis added]*

*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. [Emphasis added]*

*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.* [Emphasis added]

### **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. [Emphasis added]

### **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, [Emphasis added]

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.**