



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

61TACD2025



Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This appeal relates to a refusal by the Revenue Commissioners (hereinafter the "Respondent") of a claim for exemption from income tax pursuant to section 195 of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997") 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. Section 195 of the TCA 1997 is entitled "Exemption of certain earnings of writers composers and artists" (hereinafter the "Artists' Exemption").
3. The oral hearing of this appeal took place on 13 January 2025.

Background

4. [REDACTED] (hereinafter the "Appellant") is a visual artist who on 4 December 2023 submitted a claim to the Respondent for an Artists' Exemption pursuant to section 195 of the TCA 1997.
5. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1)(d) of the TCA 1997 under the category "a painting or other like picture" in relation to the following entitled works:
 - 5.1. [REDACTED]
 - 5.2. [REDACTED]
 - 5.3. [REDACTED]
 - 5.4. [REDACTED]
 - 5.5. [REDACTED]
 - 5.6. [REDACTED]
6. In addition to images of the works, the Appellant submitted a copy of his CV, a copy of a work entitled [REDACTED] and a copy of an invoice from the Appellant to the [REDACTED] dated 10 November 2023 in the amount of €1,600.00.
7. On 8 January 2024, following a request from the Respondent, the Appellant provided detail of his creative process to the Respondent.
8. Having considered the application, the Respondent determined that the Appellant's work primarily served advertising, publicity, information or other similar purposes as set out in paragraph 8(v) of the Guidelines.

9. On 22 March 2024, the Respondent issued a decision to the Appellant indicating that they did not consider that the Appellant's work met the required criteria set out in legislation and the Guidelines.
10. The Appellant submitted a Notice of Appeal to the Commission on 16 April 2024.
11. At the oral hearing, the Appellant confirmed that he was withdrawing his application for the Artists' Exemption in relation to the works:
 - 11.1. [REDACTED]
 - 11.2. [REDACTED]

Legislation and Guidelines

12. The legislation relevant to this appeal is contained at section 195 of the TCA 1997 which is set out in full at **Annex I** of this determination.
13. In considering this appeal, the Commissioner is obliged, in compliance with section 195(13)(b) of the TCA 1997 to have regard to the Guidelines for the time being in force under section 195(12) of the TCA 1997. In order to qualify for an Artists' Exemption the Work must satisfy the mandatory requirements of those Guidelines which are set out in full at **Annex II** of this determination.
14. Section 195 of the TCA 1997 exempts from income tax certain earnings of writers, composers and artists that would otherwise be chargeable to tax under Case II of Schedule D. The exemption relates to types of works, including "*a painting or other like picture*", by such persons that are both "*original and creative*" and of "*cultural or artistic merit*".
15. Paragraph 4 of the Guidelines provides that a work shall be classed 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."
16. Paragraph 5 of the Guidelines provides that a work shall be classed 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."
17. 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.”

18. Paragraph 8 of the Guidelines provides that the following shall not be regarded as being original and creative and of cultural or artistic merit:

“...(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’s Submissions

19. The Appellant submitted the following grounds of appeal in his Notice of Appeal:

“My original application included both character design and [REDACTED]. However, upon further review, I acknowledge that the character design element does not fit the requirements outlined under the Artists Exemption Scheme. Therefore, I would like to appeal solely for the [REDACTED] component.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regarding the exclusion criteria outlined:

- (i)* [REDACTED]
- (ii)* [REDACTED]

(iii) [Redacted text block]

(iv) [Redacted text block]

20. The Appellant submitted the following in his Statement of Case:

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. At the oral hearing, the Appellant submitted that he has a five year education in [REDACTED] and has cultivated a lot of artistic abilities and sensitivities in the years in which he has been working as an artist. He stated that every work which he produces is a unique artistic creation.

22. He stated that, as part of his work, he responds to briefs and open calls to exhibitions from grass roots organisations and, on occasion, from corporations. He stated that his preference is to work with [REDACTED]. [REDACTED]
[REDACTED] His role would be to listen to what was being said and to capture what is happening in the room [REDACTED]
[REDACTED]

Respondent's Submissions

23. The Respondent submitted that, in its view, the works for which the Appellant seeks to claim an Artists' Exemption are works which fall under paragraph 8(v) of the Guidelines, that is to say that the works cannot be regarded as being original and creative and of cultural or artistic merit as they are 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. In particular, the Respondent submitted that the works are for information or other similar purposes and that the works are created for the purposes of creating a record.

24. In support of this position the Respondent pointed to the Appellant's email of 8 January 2024 wherein he stated:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Material Facts

25. The following material facts are not in dispute in this appeal and the Commissioner accepts same as material facts:

25.1. The Appellant is a [REDACTED].

25.2. On 4 December 2023, the Appellant submitted a claim to the Respondent for an Artists' Exemption pursuant to section 195 of the TCA 1997.

25.3. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1)(d) of the TCA 1997 under the category "a painting or other like picture" in relation to the following entitled works:

25.3.1. [REDACTED]

25.3.2. [REDACTED]

25.3.3. [REDACTED]

25.3.4. [REDACTED]

25.3.5. [REDACTED]

25.3.6. [REDACTED]

25.4. The works submitted by the Appellant are paintings or other like pictures.

25.5. In addition to images of the works, the Appellant submitted a copy of his CV, a copy of a work entitled [REDACTED] and a copy of an invoice from the Appellant to the [REDACTED] dated 10 November 2023 in the amount of €1,600.00.

25.6. On 22 March 2024, the Respondent issued a decision to the Appellant indicating that they did not consider that the Appellant's work met the required criteria set out in legislation and the Guidelines.

25.7. The Appellant submitted a Notice of Appeal to the Commission on 16 April 2024.

25.8. At the oral hearing, the Appellant confirmed that he was withdrawing his application for the Artists' Exemption in relation to the works:

25.8.1. [REDACTED]

25.8.2. [REDACTED]

26. The following material fact is at issue in the within appeal:

26.1. The works are 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.

27. The appropriate starting point for the examination of material facts is to confirm that in an appeal before the Commissioner, the burden of proof rests on the Appellant, who must

prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 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”.

28. The standard of proof applicable in an appeal to an Appeal Commissioner is the balance of probabilities.
29. The Commissioner has considered the submissions received from both parties to this appeal, whether written, oral or documentary.

The works are 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.

30. It is not in dispute between the parties, and the Commissioner has accepted as a material fact, that the works submitted by the Appellant are paintings or other like pictures.
31. The Commissioner has considered the Appellant’s submissions in relation to the works and notes that the Appellant has stated in his Notice of Appeal that:

- 31.1. [REDACTED] does not primarily serve educational or professional purposes, such as textbooks or instructional materials. Its focus is on artistic expression and narrative enrichment rather than instructional content.
- 31.2. [REDACTED] is not published in newspapers, magazines, or online platforms primarily for journalistic purposes. Its purpose lies in [REDACTED] rather than journalistic reporting.
- 31.3. The works were not commissioned solely for promotional or commercial use. Their aim is to convey narratives and evoke emotions rather than promote products or services.
- 31.4. [REDACTED] does not primarily serve utilitarian or decorative purposes, such as records, advertising, or decorative pieces. Its purpose is to convey narratives and stimulate emotional responses, rather than serving utilitarian or decorative functions.

31.5. The Appellant submitted that [REDACTED] fosters inclusivity by providing an accessible medium for communication, particularly beneficial for individuals with conditions like [REDACTED].

31.6. In addition, he submitted that, [REDACTED] serves as a powerful tool for addressing contemporary issues in Ireland in an inclusive manner, offering a platform for diverse voices and perspectives to be heard and understood.

32. At the oral hearing the Appellant stated the following:

[REDACTED]

33. The Commissioner then asked the Appellant to set out what typically happens when he is creating a work. In response the Appellant stated the following:

[REDACTED]

¹ Transcript, page 7, lines 7 – 21.

[REDACTED]
[REDACTED]²

- 34. Having considered the Appellant's submissions and his evidence, the Commissioner is of the opinion that the Appellant's works are primarily of record and that they are created for information or other similar purposes.
- 35. The Appellant has described a process whereby he distils information which is being presented and/or communicated to him by people [REDACTED]. He then produces a visual output (the works) with the intention of expressing the emotions or the sensibilities of what was taking part [REDACTED] with the purpose of communicating the events, opinions and/or emotions [REDACTED].
- 36. The Commissioner accepts the Appellant's evidence and submissions and, as a result, the Commissioner must, based on the Appellant's own evidence and submissions, find that the works are types or kinds of paintings or other like works which are primarily of record and which are created primarily for information or other similar purposes. The Commissioner considers that the works were created for the purpose of creating an artistic record [REDACTED].
- 37. Therefore the Commissioner finds as a material fact that the Appellant's works are types or kinds of paintings or other like works which are primarily of record and which are created primarily for information or other similar purposes.
- 38. For the avoidance of doubt the Commissioner accepts and finds the following as material facts in this appeal:
 - 38.1. The Appellant is a visual artist.
 - 38.2. On 4 December 2023, the Appellant submitted a claim to the Respondent for an Artists' Exemption pursuant to section 195 of the TCA 1997.
 - 38.3. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1)(d) of the TCA 1997 under the category "a painting or other like picture" in relation to the following entitled works:
 - 38.3.1. [REDACTED]
 - 38.3.2. [REDACTED]

² Transcript, page 8 - 9

38.3.3. [REDACTED]

38.3.4. [REDACTED]

38.3.5. [REDACTED]

38.3.6. [REDACTED]

38.4. The works submitted by the Appellant are paintings or other like pictures.

38.5. In addition to images of the works, the Appellant submitted a copy of his CV, a copy of a work entitled [REDACTED] and a copy of an invoice from the Appellant to [REDACTED] dated 10 November 2023 in the amount of €1,600.00.

38.6. On 22 March 2024, the Respondent issued a decision to the Appellant indicating that they did not consider that the Appellant's work met the required criteria set out in legislation and the Guidelines.

38.7. The Appellant submitted a Notice of Appeal to the Commission on 16 April 2024.

38.8. At the oral hearing, the Appellant confirmed that he was withdrawing his application for the Artists' Exemption in relation to the works:

38.8.1. [REDACTED]

38.8.2. [REDACTED]

38.9. The Appellant's works are types or kinds of paintings or other like works which are primarily of record and which are created primarily for information or other similar purposes.

Analysis

39. In order to become eligible for the Artists' Exemption, works must satisfy a two stage test in that (i) they must be original and creative and (ii) they must have cultural merit or artistic merit. This is provided for in section 195 of the TCA 1997.

40. Paragraph 8 of the Guidelines is entitled "*Types of Works Excluded from the Artists Exemption Scheme*" and states that:

"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 –

...

(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.”

41. As the Commissioner has found as a material fact that works are types or kinds of paintings or other like works which are primarily of record and which are created primarily for information or other similar purposes, the Commissioner must therefore determine that the works are not original and creative work, and cannot be generally recognised as having, cultural or artistic merit for the purposes of section 195 of the TCA 1997.
42. As a result, the Commissioner must determine that the works fall within the provision of paragraph 8 of the Guidelines and are therefore excluded from the Artists' Exemption scheme.

Determination

43. For the reasons set out above, the Commissioner determines that the Appellant in this appeal has not succeeded in showing that he is entitled to the Artists' Exemption pursuant to section 195 of the TCA 1997. The Appellant has, therefore, not succeeded in his appeal.
44. It is understandable that the Appellant will be disappointed with the outcome of his appeal.
45. The Commissioner wishes to reiterate that the outcome of this appeal in no way reflects on the quality of the Appellant's works or the skills or craftsmanship required to produce the works.
46. The Appellant was correct to check to see whether his legal rights were correctly applied.
47. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular, sections 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

48. 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

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



Clare O'Driscoll
Appeal Commissioner
11 February 2025

Annex I

Section 195 of the TCA 1997:

“(1)In this section—

“work” means an original and creative work which is within one of the following categories:

- (a) a book or other writing;*
- (b) a play;*
- (c) a musical composition;*
- (d) a painting or other like picture;*
- (e) a sculpture.*

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

(i) who is—

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

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

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

(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.

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

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

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

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

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

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

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

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

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

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

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

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

(6) (a) In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim is first made in respect of that work or those works or the particular work, as the case may be.

(b) Where—

(i) an individual—

(I) has made due claim (in this subsection referred to as a "claim") to the Revenue Commissioners for a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

(II) as respects the claim, has complied with any request made to the individual under subsection (4) or (5) in the relevant period,

and

(ii) the Revenue Commissioners fail to make a determination under clause (I) or (II) of subsection (2)(a)(ii) in relation to the claim in the relevant period,

the individual may appeal to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the end of the relevant period on the grounds that—

(A) the work or works is or are generally recognised as having cultural or artistic merit, or

(B) the particular work has cultural or artistic merit,

as the case may be.

(8) (a) On the hearing of an appeal made under subsection (6), the Appeal Commissioners may—

(i) after consideration of—

(I) any evidence in relation to the matter submitted to them by or on behalf of the individual concerned and by or on behalf of the Revenue Commissioners, and

(II) in relation to a work or works or a particular work, the work or works or the particular work,

and

(ii) after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them,

determine that the individual concerned has written, composed or executed, as the case may be, either solely or jointly with another individual—

(A) a work or works generally recognised as having cultural or artistic merit, or

(B) a particular work which has cultural or artistic merit,

and, where the Appeal Commissioners so determine, the individual shall be entitled to relief under subsection (3)(a) as if the determination had been made by the Revenue Commissioners under clause (I) or (II) of subsection (2)(a)(ii), as the case may be.

(10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.

(11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.

(12) (a) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

(b) Without prejudice to the generality of paragraph (a), a guideline under that paragraph may—

(i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and

(ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.

(13) (a) Where a claim for a determination under subsection (2) is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under subsection (12) for the time being in force.

(b) Paragraph (a) shall, with any necessary modifications, apply to—

(i) a determination by the Appeal Commissioners under subsection (8) on an appeal to them under subsection (6) in relation to a claim mentioned in paragraph (a), and

(ii) a determination by the High Court under section 949AR.

- (14) *Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.*
- (15) *On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under subsection (12) for the time being in force.*
- (16) (a) *The Revenue Commissioners may publish, or cause to be published, the name of an individual who is the subject of a determination under subsection (2).*
- (b) *Publication under paragraph (a) may, as appropriate, include the title or category of the work of an individual.”*

Annex II

“Guidelines drawn up under Section 195 (12) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by An Comhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht.

Introduction

These Guidelines have been drawn up under the provisions of section 195 of the Taxes Consolidation Act 1997 for the purposes of determining whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having cultural or artistic merit.

General

1. *Section 195(1) provides that a “work” for the purposes of the section must be both an original and creative work in one of the following categories, namely:
 - (a) a book or other writing,
 - (b) a play,
 - (c) a musical composition,
 - (d) a painting or other like picture,
 - (e) a sculpture.*
2. *To secure exemption under section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.*
3. *In making a determination under section 195, the Revenue Commissioners may, as provided for in that section, consult with such person or body of persons as may, in their opinion, be of assistance to them.*

Original and Creative

4. *A work shall be regarded as original and creative only if it is a unique work of creative quality brought into existence by the exercise of its creator’s imagination.*

Cultural Merit

5. *A work shall be regarded as having cultural merit only if by reason of its quality of form and/or content it enhances to a significant degree one or more aspects of national or international culture.*

Artistic Merit

6. *A work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.*

Criteria for Non-fiction Work

7. (1) *This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of section 195, by reference to which the questions whether a work, being a nonfiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined.*

(2) *The criteria are:*

(a) that the work, in the opinion of the Revenue Commissioners, following consultation with the Arts Council, is a work in one or more of the following categories:

- (i) arts criticism,*
- (ii) arts history,*
- (iii) arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture,*
- (iv) artists' diaries,*
- (v) belles-lettres essays,*
- (vi) literary translation,*
- (vii) literary criticism,*
- (viii) literary history,*
- (ix) literary diaries,*

that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(b) that the work, in the opinion of the Revenue Commissioners, is a work in one of the following categories:

(i) a biography,

(ii) an autobiography,

that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on the person or by changing the generally accepted understanding of the person,

or

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

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

(ii) incorporates the author's unique insight into the subject matter and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(d) that the work, in the opinion of the Revenue Commissioners, relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives, incorporates the author's unique insight into the subject matter, and is regarded as a pioneering work that makes

a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(e) any combination of (a), (b), (c) or (d) above.

Types of Works Excluded from the Artists Exemption Scheme.

8. Notwithstanding anything else in these Guidelines, a work-

(a) shall not be an original and creative work, and

(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit

if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below –

(i) a book or other writing published primarily for, or which is or will be used primarily by-

(I) students pursuing a course of study, or

(II) persons engaged in any trade, business, profession, vocation or branch of learning as an aid to trade or business related practice, or to professional, vocational or other practise in connection with a trade, business, profession, vocation or branch of learning,

(ii) any work of journalism, published in a newspaper, journal, magazine, or other similar medium or published on the internet or on any other similar medium,

(iii) any writing, visual or musical work, or other like work, created for advertising or publicity purposes,

(iv) any arrangement, adaptation or version of musical composition, or other like work, which is not of such musical significance as to amount to an original composition,

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

(vi) types or kinds of works of sculpture which primarily serve a utilitarian function.

The above Guidelines were drawn up by An Comhairle Ealaíon and the Minister of Arts Heritage and the Gaeltacht, with the consent of the Minister for Finance, in accordance with section 195(12) of the Taxes Consolidation Act 1997 and are effective for all determinations made by the Revenue Commissioners on or after 30 November 2013.”