AN COIMISIUN UM ACHOMHAIRC CHANACH

TAX APPEALS COMMISSION

101TACD2026

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

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 (from here on referred to as 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*" (from here on referred to as the "Artists' Exemption").

Background

3. On 4 December 2023, the Appellant submitted a claim to the Respondent for an Artists' Exemption in relation to original and creative work as defined by section 195(1)(a) of the TCA 1997 under the category "*a book or other writing*" in relation to the following works:

   3.1. "[redacted]" which is a book authored by the Appellant; and

   3.2. "[redacted]" which is an exhibition leaflet authored by the Appellant

4. Both items at 3.1 and 3.2 will, from here on, be referred to collectively as the "Works".

5. It was the Appellant's application that the Works were non-fiction which came within paragraph 7(2)(d) of the Guidelines.

6. In his application, the Appellant submitted that the Works are based on archives which are over 30 years old which relate to both Ireland and Irish people and are based on work from those archives, incorporating his own unique insight into the subject matter.

7. On 21 March 2024, the Respondent issued a decision to the Appellant indicating that it did not consider that the Appellant's works came within the criteria for non-fiction as set out in paragraph 7 of the Guidelines.

Legislation and Guidelines

8. 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.

9. 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.

10. 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 book or other writing"*, by such persons that are both "*original and creative"* and of "*cultural or artistic merit".*

11. Paragraph 7 of the Guidelines is entitled "*Criteria for Non-fiction Work*" and specifies the criteria by reference to which the questions whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is, generally recognised as having, cultural or artistic merit are to be determined as being:

    "(2)…

    > *(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,*
    >
    > *…"*

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

    "(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,

    …"

Submissions

Appellant's Submissions

13. The following is a summary of the Appellant's submissions.

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

> *"I am appealing against the decision not to grant Artist Exemption for my dual project, consisting of a historical exhibition titled '*[redacted]*' and it accompanying book* [redacted]*.' In summary, my reasons are:*
>
> *1 - Precedent of previous successful applications for Artist Exemption for similar projects;*
>
> *2 - Compliance with section 7(d) of the Artist Exemption Guidelines; and*
>
> *3 - Overall policy context.*
>
> *I have successfully applied for Artist Exemptions for historical exhibitions in the past. These have been on* [redacted] *and on* [redacted]*, and their subject matter, sources and format have been very similar to the current one for which artist exemption was refused. I have been awarded Artist Exemption on four previous historical exhibitions:*
>
> > [redacted]
> >
> > [redacted]
> >
> > [redacted]
> >
> > [redacted]
>
> [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

2- Compliance with paragraph 7(d) of the Artist Exemption Guidelines

I believe strongly that both the exhibition and the book falls within the scope of section 7(d) of the Artist Exemption Guidelines.

> *a. It relates to archives which are over 30 years old relating to Ireland or Irish people.* [redacted]
>
> *The archives consulted are* [redacted]. [redacted] *This strongly reinforces the point*

that the archives which the project is based on relates to Ireland and to Irish people.

b. It is based largely on research from such archives. Both the book and exhibition are based entirely on primary source research from the above listed archives.

c. Incorporates the author's unique insight into the subject matter.

The legal test for any work to meet the criteria of paragraph 7(2)(d) of the Artist Exemption Guidelines are that:

1.) That the work incorporates the author's unique insight into the subject matter and;

2.) is regarded as a pioneering work and;

3.) makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.

I believe that my current project meets all three criteria.

Author's unique insight

My unique insight into the subject of [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

A pioneering work

The approach I took to this project is new and innovative and needs to be viewed in its proper context. Both halves of the project need to be read in tandem with each other. [redacted]

[redacted]

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

[redacted]

[redacted]

By contrast, my project shows [redacted]

In addition, [redacted]

4. Policy context

[redacted]

[redacted]

Conclusion

I believe strongly that my work meets the criteria for Artists Exemption on the grounds of precedent of previous applications and that it complies with the Guidelines, particularly paragraph 7(d). It contains my unique perspective on the topic; it is a pioneering work that takes a fresh and innovative approach to the subject; and it changes the previously held perception of the topic by bringing new facts to light and providing exact and precise detail on them. It considerably expands the understanding of the [redacted] *I would be grateful if the decision not to grant Artist Exemption could be reviewed and ultimately reversed."*

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

"I believe that my work meets the criteria for Artists Exemption on the grounds of precedent of previous applications and that it complies with the Guidelines, particularly paragraph 7(d). It contains my unique perspective on the topic; it is a pioneering work that takes a fresh and innovative approach to the subject; and it changes the previously held perception of the topic by bringing new facts to light and providing exact and precise detail on them. It considerably expands the understanding of [redacted]

[redacted]

I have laid out my case under the three headings below:

1. *Precedent of previous successful applications for Artists Exemption;*
2. *Compliance with section 7(d) of the Artist Exemption Guidelines; and*
3. *Overall policy context.*

1 - Previous successful applications

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Therefore, my most recent project – the combination of the exhibition with an accompanying book – is a much more ambitious and comprehensive one than the previous four, all of which have been given Artists Exemption. Its scope is broader, it uses previously unseen material and (by producing a book) has created a lasting contribution to study of [redacted] *at a local level by unearthing new information that had not been known. Both the exhibition and the book need to be considered together as a single project which takes the high-level national trends present* [redacted] *In addition, and as stated above, it was written to conform with previous exhibitions, all of which had been granted the Artists Exemption. The decision to refuse it in this case is, I feel, inconsistent with previous decisions to award the exemption.*

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

2 - Compliance with paragraph 7(d) of the Artist Exemption Guidelines

I believe strongly that both the exhibition and the book falls within the scope of section 7(d) of the Artist Exemption Guidelines.

a. ***It relates to archives which are over 30 years old relating to Ireland or Irish people.*** *The project draws upon a wide array of state, local and private archives relating to* [redacted]

[redacted] *This strongly reinforces the point that the archives which the project is based on relates to Ireland and to Irish people.*

b. ***It is based largely on research from such archives.*** *Both the book and exhibition are based entirely on primary source research from the above listed archives.*

c. *Incorporates the author's unique insight into the subject matter.*

The legal test for any work to meet the criteria of paragraph 7(2) of the Artist Exemption Guidelines are that:

1.) That the work incorporates the author's unique insight into the subject matter and;

2.) is regarded as a pioneering work and;

3.) makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.

I believe that my current project meets all three criteria.

Author's unique insight

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

A pioneering work

The approach I took to this project is new and innovative and needs to be viewed in its proper context. [redacted]

[redacted]

[redacted]

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

[redacted]th [redacted]

[redacted][1] [redacted]

[redacted]

[redacted]

3- Overall policy context

[redacted]

[redacted]

Attachments

[redacted]

[redacted]

[redacted]

16. At the oral hearing, the Appellant stated that the Works are pioneering works in terms of their form and content. The Works, he stated, are part of a project which consisted of an exhibition and a timeline book which must be seen as a single, two-part, project. The book, he stated, provides additional context to the information contained in the exhibition leaflet.

17. The Works, he stated, comply with paragraph 7(2)(d) of the Guidelines in that they:

    17.1. relate to archives which are more than 30 years old relating to Ireland or Irish people;

    17.2. are largely based on research from those archives;

    17.3. incorporate his unique insight into the subject matter; and

    17.4. are regarded as pioneering works that make a significant contribution to the subject matter by casting new light on it.

Respondent's Submissions

18. The following is a summary of the Respondent's submissions.

19. The Respondent submitted that it accepts that the book and exhibition material are works of non-fiction.

20. The Respondent submitted that it accepts that the Works fall within the category of paragraph 7(2)(d) of the Guidelines in that it accepts that the Works are based on archives that are more than 30 years old and relate to Ireland or Irish people and were based largely on research from these archives.

21. It is the Respondent's position that the Works do not incorporate the author's unique insight into the subject matter and are not regarded as pioneering works that make a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.

22. The Respondent disagreed with the Appellant's view that the Works should be considered as a two-part project and submitted that it had considered the Works as individual pieces of work when coming to its decision.

23. In relation to the book, the Respondent submitted that it accepts that:

    23.1. it is a work of non-fiction;

    23.2. which was based on archives that are more than 30 years old; and

    23.3. relates to Ireland or Irish people.

24. However, the Respondent submitted that the book does not incorporate the Appellant's unique insight into the subject matter. This, it was submitted, was on the basis that the book:

    24.1. lists historical facts; and

    24.2. contains no narrative to aid the reader;

    24.3. does not contain the Appellant's unique insight to draw together the information set out in the book.

25. In relation to the exhibition work, it was submitted that an exhibition does not fall within the provisions of section 195 of the TCA 1997. The leaflet, it was submitted, is a brief summary of the exhibition panels and of the book. It was submitted that some of the items contained in the exhibition and the exhibition leaflet are copies of items which were contained in exhibitions which the Appellant had previously written.

26. As a result, the Respondent submitted that it had determined that the Work did not comply with the Guidelines and in particular did not comply with paragraph 7(2)(d) of the Guidelines.

Material Facts

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

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

    27.2. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1)(a) of the TCA 1997 under the category " *a book or other writing* " in relation to the Works.

    27.3. The Works submitted by the Appellant fall within the provisions of section 195(1)(a) of the TCA 1997 and are a book or other writing.

    27.4. The Works are works of non-fiction.

    27.5. The Works are based on archives that are more than 30 years old.

    27.6. The Works relate to Ireland or Irish people.

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

    28.1. Whether the Works fall within paragraph 7 of the Guidelines.

29. The Commissioner has considered the submissions received from both parties to this appeal, whether written, oral or documentary.

Whether the Works fall within paragraph 7 of the Guidelines;

30. Paragraph 7 of the Guidelines is entitled "*Criteria for Non-fiction Work*" and states that:

    "(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:

    …

(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,

…"

31. The Commissioner has already found as material facts, and it is agreed between the parties, that:

    31.1. The Works relates to archives which are more than 30 years old relating to Ireland or Irish people; and

    31.2. The Works are based on research from such archives.

32. The Commissioner has read the Works and has considered them as separate, standalone documents on the basis that the letter accompanying the application submitted by the Appellant specifically stated that the application related to two works.

The book

33. The book, as the title suggests, is a timeline of [redacted] which, as stated in the introduction to the book [redacted]".[1] The substantive part of the book, excluding the foreward and the introduction, is 208 pages in length.

34. The introduction, written by the Appellant author, is three pages in length and sets the scene for the book outlining, in brief, the state of [redacted] nationally during the period of the book and emphasises that, whilst the book is not a complete history of the [redacted], the approach of using a timeline as the basis for the book, allows the reader *"…to see the impact of high-level national events playing out on the ground in local areas*.".[2]

35. The substantive book itself does not contain commentary or narrative written by the Appellant and is comprised of chapters divided into years which set out specific notable dates in those years with brief factual descriptions of events on those dates.

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[1] Introduction, paragraph 1
[2] Introduction, paragraph 1.

36. The chapter in relation to [redacted] is comprised of information relating to six dates in that year: 11 April, 13 June, 28 September, 30 November, 12 December and 14 December. Each date entry is very short outlining a particular event which occurred on such dates. In addition, two pictorial articles from publications in July [redacted] and February [redacted] are reproduced in this two page chapter.

37. This format continues for each of the years [redacted] inclusive which include descriptions of notable occurrences on specific dates in each of those years along with reproductions of publications and notable documents which relate to those years.

38. The Commissioner has considered whether the book incorporates the Appellant's unique insight into the subject matter and having carefully considered the contents of each of the chapters of the book, the Commissioner cannot see evidence of the Appellant's unique insight contained in the substantive part of the book. Whilst the Commissioner has no doubt about the level of detailed research and work which the Appellant must have carried out in order to produce this document, the Commissioner notes that each date entry sets out a factual event which occurred on such dates without comment or insight from the Appellant.

39. Having considered the book, for the reasons set out above, the Commissioner finds as a material fact that it does not fall within the provisions of paragraph 7 of the Guidelines in that it does not incorporate the Appellant's unique insight into the subject matter.

The exhibition leaflet

40. The Commissioner has also considered whether the exhibition leaflet falls within the provisions of paragraph 7 of the Guidelines.

41. Having read the exhibition leaflet, the Commissioner notes that it is a standalone document which accompanied an exhibition which was organised and commissioned by [redacted].

42. The leaflet is six pages in length, excluding the cover pages. The six pages are entitled:

[redacted]

[redacted]

43. Each of the pages contains contextual narrative in relation to the particular topic of the page and also contain reproductions of newspaper publications and photographs of notable persons relating to the topic.

44. The Commissioner has considered whether the leaflet incorporates the Appellant's unique insight into the subject matter and having carefully considered the contents of each of the leaflet's pages, the Commissioner cannot see evidence of the Appellant's unique insight. Whilst the Commissioner has no doubt about the level of detailed research and work which the Appellant must have carried out in order to produce the leaflet, the Commissioner notes that much of the content is factual in nature and, whilst informative, the Commissioner does not consider that evidence of the Appellant's unique insight into the subject matter can be found in the leaflet.

45. Having considered the leaflet, for the reasons set out above, the Commissioner finds as a material fact that it does not fall within the provisions of paragraph 7 of the Guidelines in that it does not incorporate the Appellant's unique insight into the subject matter.

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

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

    46.2. The Appellant submitted an application for the Artists' Exemption in relation to original and creative work as defined by section 195(1)(a) of the TCA 1997 under the category " *a book or other writing* " in relation to the Works.

    46.3. The Works submitted by the Appellant fall within the provisions of section 195(1)(a) of the TCA 1997 and are a book or other writing.

    46.4. The Works are works of non-fiction.

    46.5. The Works are based on archives that are more than 30 years old.

    46.6. The Works relate to Ireland or Irish people.

    46.7. The Works do not fall within the provisions of paragraph 7 of the Guidelines in that they do not incorporate the Appellant author's unique insight into the subject matter.

Analysis

47. In order to become eligible for the Artists' Exemption, the Works to which this appeal relate must satisfy the provisions of paragraph 7 of the Guidelines. This is provided for in section 195 of the TCA 1997.

48. Paragraph 7 of the Guidelines is entitled "*Criteria for Non-fiction Work*" and specifies the criteria by reference to which the questions whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is, generally recognised as having, cultural or artistic merit are to be determined as being:

> *"(2)…*
>
> > *(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,*
> >
> > *…"*

49. The Commissioner has already found as material facts that, whilst the Works are works of non-fiction, are based on archives that are more than 30 years old and relate to Ireland or Irish people, they do not fall within the provisions of paragraph 7 of the Guidelines in that they do not incorporate the Appellant author's unique insight into the subject matter.

50. It therefore follows that the Works do not come within the provisions of section 195 of the TCA 1997 and as a result, the Commissioner must find that the Appellant is not entitled to an exemption from tax of certain earnings pursuant to section 195 of the TCA 1997 in relation to the Works.

51. The Commissioner notes that the Appellant has indicated that he has previously been granted the Artists' Exemption for previous exhibitions which he stated were similar in format and in research methods. The Commissioner notes that the jurisdiction of an Appeal Commissioner is limited to considering the appeal and in this case the refusal by the Respondent to grant the Artists' Exemption to the Works the subject matter of this appeal.

52. In his judgment in in *Lee v The Revenue Commissioners* [2021] IECA 18, Murray J. confirmed that:

"From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, <u>their jurisdiction is focussed on the assessment and the charge</u>." (emphasis added)

53. Therefore, the Commissioner must focus on the particulars of this appeal on their own merits. The Commissioner has no access to the details of previous grants of the Artists' Exemption to the Appellant and has focussed on the specifics of this appeal in coming to her determination.

Determination

54. 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.

55. It is understandable that the Appellant will be disappointed with the outcome of his appeal.

56. 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 required to produce the Works.

57. The Appellant was correct to check to see whether his legal rights were correctly applied.

58. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular, section 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

59. 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

60. 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
8 July 2026

Annex I

Section 195 of the TCA 1997:

"(1)In this section—

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

"EEA state" means a state which is a contracting party to the EEA Agreement;

"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 or 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."