



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

111TACD2026

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This determination concerns an appeal to the Tax Appeals Commission (“the Commission”) by the Appellant against the Respondent’s failure to make a determination in relation to the Appellant’s claim for exemption under section 195 of the Taxes Consolidation Act, 1997, as amended (“the TCA 1997”).
2. The Commission notified the Appellant and the Respondent that the Appeal Commissioner (“the Commissioner”) intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties did so. Accordingly, this appeal is adjudicated without a hearing in accordance with section 949U of the TCA 1997.
3. At the time of notifying the parties that the Commissioner intended to adjudicate on this appeal without a hearing, the parties were also afforded an opportunity to provide any further documentation. Neither party submitted any additional documentation.

Background

4. Section 195 of the TCA 1997 provides for an exemption from income tax in respect of certain earnings of writers, composers and artists. The exemption is known as the artists’ exemption.
5. The maximum amount of income that may be exempted is €50,000 per tax year.
6. On 20 December 2024, the Appellant submitted a claim to the Respondent for the artists’ exemption in respect of a book entitled [REDACTED] (“the Publication”).
7. By correspondence dated 22 January 2025, the Respondent notified the Appellant that it had refused [REDACTED] claim.
8. Pursuant to section 195(6) of the TCA 1997, the Appellant appealed to the Commission against the Respondent’s failure to make a determination in relation to [REDACTED] claim.
9. The Appellant submitted a notice of appeal and accompanying material in support of [REDACTED] appeal. Each party submitted a statement of case.
10. A soft copy of the Publication was also submitted to the Commission.

Legislation and Guidelines

11. The tax legislation relevant to the substantive issue in this appeal is section 195 of the TCA 1997, a copy of which is contained in Appendix I.

12. A copy of the guidelines drawn up by An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands ("the Guidelines") pursuant to section 195(12) of the TCA 1997 is contained in Appendix II.
13. Appendix III contains copies of relevant extracts from the Heritage Act, 1995, as amended ("the Heritage Act 1995").

Evidence and Submissions

Appellant's submissions

14. The Appellant's notice of appeal and statement of case contained similar information. For brevity, the Commissioner has included only an extract from ■■■ statement of case as follows:

"[The Publication] is an original book of non-fiction, all the text was written and conceived solely by myself during the writing process over a period of ■ years. The form and structure of the book, with its ■■■ were also my original creation. In my mind this conforms to the 'original' definition under Section 7(1) of [the Guidelines]. The additional requirement for this book to be creative is both addressed in the text itself as well as the pictorial dimension of the book. ■■■

■■■
■■■
■■■

■■■ *I believe the extent of the images and the nature of the images, together with the aforementioned text, satisfy the creative requirement under Section 7(1) of [the Guidelines].*

The final requirement for cultural or artistic merit is also consider [sic] to have been met on the basis of Section 7(2) (c) (i) [of the Guidelines] as the book is related to functions of the Heritage council as set out under the Heritage Act, 1995, 6(1) and 6(3)(a) as per below extract. The book is specifically written ■■■ to promote interest in, facilitate the appreciation and enjoyment of a piece of the natural heritage (a function of the Heritage Council). The ■■■ meets the definition of the heritage gardens and parks as per the Heritage Act, 1995 (see below extract) being a ■■■ whose plant collection, design, design features, setting style are of significant botanical and aesthetic interest. Furthermore, I believe the work enhances to a significant degree one or more aspects of national or international culture as defined by Cultural Merit in the guidelines. The focus of the work is on a ■■■ that has received significant accolades over the years ■■■

[REDACTED]

[REDACTED] The narrative of the book aims to educate (a function of the Heritage Council) and illustrate to the reader a new development of [REDACTED], that is a naturalistic and a holistic way to manage our [REDACTED], that embraces native floral, supporting fauna and respecting biodiversity.

Functions of Council.

6.—(1) The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.

(3) The Council shall in particular—

(a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,

‘heritage gardens and parks’ includes areas of natural heritage, and gardens and parks whose plant collections, design, design features, buildings, setting, style or association are of significant scientific, botanical, aesthetic or historical interest or which illustrate some aspect of the development of gardening or of gardens and parks;

‘landscape’ includes areas, sites, vistas and features of significant scenic, archaeological, geological, historical, ecological or other scientific interest;”

Respondent’s submissions

15. In its statement of case, the Respondent submitted, among other things, as follows:

“ ...

2.5 It is accepted by [the Respondent] that this work is a book as set out within the categories of work listed in section 195(1) [of the TCA 1997].

2.6 Section 195(12) [of the] TCA 1997 provides for the drawing up of [the Guidelines].

2.7 Section 195(12) [of the] TCA 1997 states that [the 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.

- 2.8 *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 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.*
- 2.9 *The current version of [the Guidelines] is effective for all determinations made by [the Respondent] on or after 30 November 2013.*
- 2.10 *In the [A]ppellant's application, for a determination, it is stated that the book is a work of non-fiction. [The Respondent] would accept this categorisation of the work.*
- 2.11 *Paragraph 7 of [the Guidelines] sets out specific criteria to be applied to non-fiction books and sets out specific categories in which the work must come within in order to qualify for a determination.*
- 2.12 *The [A]ppellant's application stated that the work comes within paragraph 7(2)(e) of [the Guidelines], which refers to 'any combination of (a), (b), (c) or (d)' of paragraph 7(2).*
- 2.13 *Consideration was given to whether [the Publication] came within any of the categories in Paragraph 7(2)(a), (b), (c) or (d)[.]*
- 2.14 *Paragraph 7(2)(a) of [the Guidelines] states '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: (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'.*
- 2.15 *[The Respondent] determined that the [A]ppellants [sic] work was not a work meeting the criteria set out in Paragraph 7(2)(a).*

- 2.16 *On examination of the work under Paragraph 7(2)(b) of [the Guidelines], ‘a biography’ and ‘an autobiography’, [the Respondent] determined the work did not come within the ordinary definition of biography or autobiography.*
- 2.17 *Consideration was given to whether the work met the criteria set out in Paragraph 7(2)(c) of [the Guidelines] which states ‘that the work, in the opinion of [the Respondent] 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’.*
- 2.18 *It is [the Respondent’s] view that it does not relate to National Heritage, as set out in The Heritage Act 1995.*
- 2.19 *Paragraph 7(2)(d) of [the Guidelines] states ‘that the work, in the opinion of [the Respondent], 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’.*
- 2.20 *[The Respondent] determined that the work did not meet the criteria of Paragraph 7(2)(d) [of the Guidelines].*
- 2.21 *The work did not meet the criteria set out in Paragraph 7(2)(a), (b), (c) or (d) of [the Guidelines] therefore it cannot meet the criteria of Paragraph 7(2)(e) [of the Guidelines] which is ‘any combination of (a), (b), (c) or (d)’ of paragraph 7(2).*
- 2.22 *[The Respondent] issued a letter to the appellant on 22 January 2025 stating that they were unable to make a determination in respect of [the Publication] as it was not a work within the categories of work eligible for a determination under section 195 [of the TCA 1997].*

[...]”

Opinion of the Heritage Council

16. At the request of the Appeal Commissioner, the Respondent sought the opinion of Heritage Council in respect of the Publication. The opinion reads as follows:

“[The Publication] [i]s a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995[.]”

The Heritage Act 1995 confirms that the Heritage Council’s remit relates to biodiversity
[REDACTED].

The Act’s definition of ‘national heritage’ specifically includes flora, fauna, wildlife habitats, landscapes, seascapes, geology, heritage gardens, parks and inland waterways. The Act also notes that references in earlier legislation to the former Wildlife Advisory Council are, where appropriate, to be read as references to the Heritage Council. That means biodiversity is not peripheral to the Act: it is expressly inside the statutory concept of heritage.

‘Heritage gardens and parks’ are named in the statutory definition of national heritage, so conservation, management and enhancement of such gardens are directly within scope. Biodiversity-rich [REDACTED] can therefore fall within the Council’s remit both as [REDACTED] and, separately, through flora/fauna/habitat values.

Under section 6, the Council’s core function is to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage. Because flora, fauna, wildlife habitats, and [REDACTED] are all part of that statutory heritage, the Council’s function plainly extends to those matters. Biodiversity protection [REDACTED] fall within the Council’s subject-matter jurisdiction.

Does the work meet the requirement that it 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[?]

In my opinion, [the Publication] can credibly be said to satisfy the requirement that the work incorporates the author’s unique insight into the subject matter. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

However, I consider the evidence less conclusive on the further requirement that the book is already regarded as a pioneering work that has made a significant contribution by changing the generally accepted understanding of the subject. The available external commentary is strongly favourable: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Nevertheless, on the material presently available, I would express the conclusion with some care: the book strongly demonstrates original insight and a distinctive contribution, but it is harder to state definitively that it has already attained the status of a pioneering work that has altered the generally accepted understanding of the field.

In summary it is my view that the book does not alter the understanding of the subject and therefore does not meet the requirements for tax exemption.

Is the work excluded under Paragraph 8 of the guidelines[?]

[The Publication] is not excluded by paragraph 8 of the Guidelines. Although it contains practical [REDACTED] material, the available text indicates that it is not published primarily for students or as a trade or professional practice aid within paragraph 8(i), nor does it fall within the other excluded categories such as journalism or advertising.

[REDACTED]

[REDACTED]
[REDACTED] (Emphasis in original)

Material Facts

17. Having considered the material submitted, the Commissioner makes the following findings of material fact:

17.1. On 20 December 2024, the Appellant submitted a claim for the artists' exemption in respect of the Publication.

17.2. By correspondence dated 22 January 2025, the Respondent notified the Appellant that it had refused [REDACTED] claim.

17.3. The Publication is a work of non-fiction.

17.4. The Publication contains [REDACTED] pages.

17.5. The Publication contains both text and images.

17.6. The Publication was created by the Appellant.

17.7. The Publication concerns [REDACTED]
[REDACTED].

17.8. [REDACTED]

17.9. [REDACTED]

17.10. [REDACTED] whose design and collection of plants are of significant botanical and aesthetic interest.

17.11. In the Publication, the Appellant brings unique insight into [REDACTED]
[REDACTED]

17.12. The Publication is not published primarily for, or used by, students pursuing a course of study.

17.13. The Publication is not a work of journalism.

17.14. The Publication is unique and originated in the mind of the Appellant.

17.15. The Publication was not created for advertising or publicity purposes.

Analysis

Burden of proof

18. The burden of proof in this appeal rests on the Appellant to establish that the Respondent erred in refusing ■■■ claim for the artists' exemption.

19. In *Menolly Homes Ltd v. The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49, Charleton J. stated at paragraph 22, among other things, that:

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable."

20. Additionally, in *Hanrahan v. The Revenue Commissioners* [2024] IECA 113, the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated, among other things, that:

"97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake. ...

98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; ... Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation. ..."

21. This appeal concerns the interpretation of the legislation and the Guidelines governing the artists' exemption, and their application to the facts of this appeal.

22. The standard of proof applicable in this appeal is the balance of probabilities.

The Commissioner's jurisdiction and role in this appeal

23. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. It is independent of the Respondent.

24. 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.

25. The Court of Appeal's judgment in *Lee v. The Revenue Commissioners* [2021] IECA 18 ("*Lee*") is authoritative as to the Commission's jurisdiction. In *Lee*, Murray J. stated at paragraph 20, among other things, that:

"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by [the TCA 1997], 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 1997] or must arise by necessary implication from the terms of that legislation."

26. While *Lee* concerned assessments raised before the enactment of the Finance (Tax Appeals) Act 2015, and the statutory analysis was therefore based on the older legislation, Part 40 of the TCA 1997, the overarching analysis of Murray J. is applicable to Part 40A of the TCA 1997. This was confirmed in *Express Motor Assessors Limited (in liquidation) v. The Revenue Commissioners* [2021] IEHC 420 ("*Express Motor Assessors Limited*").

27. In *Express Motor Assessors Limited*, Stack J. stated at paragraph 32, among other things, that:

"The jurisdiction being exercised by the Appeals Commissioner under s.949AK and 949AL [of the TCA 1997], therefore, does not appear to differ in substance from that considered by the Court of Appeal in [Lee], and that judgment is therefore applicable to this case."

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

"The jurisdiction of the Appeal Commissioners ... under those provisions of [the TCA 1997] in force at the time of the events giving rise to these proceedings and relevant to this appeal ... is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of [the TCA 1997]. 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 1997] 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 [the Respondent is] precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether [the Respondent has] 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.”

29. In this appeal, the Commissioner's role is confined to considering whether the Respondent's failure to make a determination in respect of the Appellant's claim was correct in accordance with section 195 of the TCA 1997 and the Guidelines.

Substantive issues

30. This appeal concerns whether the Appellant is entitled to the artists' exemption in respect of the Publication.
31. The Commissioner wishes to emphasise that in assessing whether the Publication comes within the parameters of the legislation and the Guidelines, none of his analysis is intended to detract from the quality or skill involved in creating it.
32. The Commissioner cites with appreciation an extract of the overview of the statutory framework governing the artists' exemption provided by Donnelly J. in *Coleman v. The Revenue Commissioners* [2014] IEHC 662 (“*Coleman*”) as follows:

“6. Section 195 of [the TCA 1997] is less than straightforward in the manner in which it is drafted. Nonetheless, the relevant parts can be distilled. Subsection 1 defines ‘work’ as meaning an ‘original and creative work’ within certain defined categories, ... Subsection 2 details that the exemption from income tax provided by the section applies to a ‘work’ which has ‘cultural or artistic merit’. The Guidelines drawn up under subs.12 (a) of [the TCA 1997] are for the purposes of determining whether a work is original and creative and whether it has or is generally recognised as having cultural or artistic merit. Subsection 13 (a) provides that [the Respondent] shall not determine that a work is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the Guidelines for the time being in force under subsection 12. Subsection 13(b) provides that subs. 13 (a) shall with any necessary modifications, apply to, inter alia:-

- (i) *a determination by the Appeal Commissioners...*
- (ii) *to the extent necessary, to the determination by the High Court of any question of law arising and specified in the statement of a case for the opinion of the High Court, by the Appeal Commissioners*

7. ... [The Guidelines] represent the applicable law. Indeed, under the terms of s. 2 of the Interpretation Act 2005 these Guidelines come within the definition of a statutory instrument."

33. As the Appellant seeks to avail of an exemption from tax, the Commissioner has had regard to the dictum of Kennedy C.J. in the Supreme Court case of *The Revenue Commissioners v. Doorley* [1933] 1 IR 750. He stated, among other things, as follows:

"...

I wish, before stating my own opinion on the question before us, to refer to one or two matters proper for consideration on the interpretation of taxing statutes, always, however, remembering that we are here concerned with the construction of an exempting clause in a taxing statute.

...

The duty of the Court, as it appears to me, is to reject an 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, 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.

I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without

doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.

...

34. In addition, the Commissioner refers further to *Coleman* wherein Donnelly J. stated at paragraph 30, among other things, that:

“On the basis of the decision in Doorley, the Appeal Commissioner was obliged to give effect to the clear and express terms of the legislation in considering the artist’s exemption from income tax. The liability to income tax having been established, that exemption must be brought within the letter of [the TCA 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.”

35. Accordingly, for the Appellant to succeed in ■■■ appeal, the artists’ exemption must be brought within the letter of section 195 of the TCA 1997 and the Guidelines as interpreted by the established canons of statutory construction.

36. It is accepted by the Respondent that the Publication is a non-fiction book. The Commissioner is satisfied that the same categorisation is correct.

37. In considering the substantive issue, the matters that fall to be determined are as follows:

- Whether the Publication is excluded from the artists’ exemption.
- Whether the Publication meets the criteria set out in paragraph 7 of the Guidelines.

38. The Commissioner now considers each of those matters in turn.

Whether the Publication is excluded from the artists’ exemption.

39. Paragraph 8 of the Guidelines states, among other things, as follows:

“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 Respondent] 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,*

[...]”

- 40. The Publication is not published primarily for, or used by, students pursuing a course of study. In addition, it is not excluded from the artists’ exemption by virtue of paragraph 8(i)(II) of the Guidelines.
- 41. Further, it is not a work of journalism and was not created for advertising or publicity purposes.
- 42. Accordingly, the Publication is not excluded from the artists’ exemption by virtue of paragraph 8 of the Guidelines. This is aligned with the opinion provided by the Heritage Council.

Whether the Publication meets the criteria set out in paragraph 7 of the Guidelines.

- 43. Paragraph 7 of the Guidelines sets out the criteria to be applied to non-fiction work in accordance with section 195(12)(b)(ii) of the TCA 1997, by reference to which the question of whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit is to be determined.

44. The Commissioner notes that the Appellant considers the Publication to come within paragraph 7(2)(c) of the Guidelines.

45. Paragraph 7(2)(c) of the Guidelines states as follows:

“that the work, in the opinion of [the Respondent] 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”.

46. Section 6(3) of the Heritage Act 1995 states, among other things, that:

“The Council shall in particular—

(a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,

[...]”

47. Section 6(1) of the Heritage Act 1995 provides that national heritage includes *“heritage gardens and parks”*.

48. As defined in section 2(1) of the Heritage Act 1995, heritage gardens and parks *“includes areas of natural heritage, and gardens and parks whose plant collections, design, design features, buildings, setting, style or association are of significant scientific, botanical, aesthetic or historical interest or which illustrate some aspect of the development of gardening or of gardens and parks”*.

49. The Commissioner has found that [REDACTED] whose design and collection of plants are of significant botanical and aesthetic interest. It follows that [REDACTED] comes within the meaning of *“heritage gardens and parks”*.

50. Having considered the Publication, the Commissioner is satisfied that it is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995. The basis for this is that it relates to the Heritage Council’s mandate to *“promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage”* as prescribed by section 6(3) of the Heritage Act 1995.

51. In considering whether the Publication incorporates the Appellant's unique insight into the subject matter, it is noted that the Heritage Council's opinion states, among other things, that it *"can credibly be said to satisfy the requirement that the work incorporates the author's unique insight into the subject matter."*
52. Having considered the Publication and the other material provided in support of the appeal, the Commissioner is satisfied that the Publication incorporates the Appellant's unique insight [REDACTED]
53. It remains to consider whether the Publication *"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"*.
54. The following extract from the Heritage Council's opinion is relevant:

"However, I consider the evidence less conclusive on the further requirement that the book is already regarded as a pioneering work that has made a significant contribution by changing the generally accepted understanding of the subject. The available external commentary is strongly favourable: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Nevertheless, on the material presently available, I would express the conclusion with some care: the book strongly demonstrates original insight and a distinctive contribution, but it is harder to state definitively that it has already attained the status of a pioneering work that has altered the generally accepted understanding of the field.

In summary it is my view that the book does not alter the understanding of the subject and therefore does not meet the requirements for tax exemption."

55. While neither the Respondent nor the Commissioner is bound to accept the opinion of the Heritage Council when determining whether a work comes within the criteria for artists' exemption, the Commissioner acknowledges that the Heritage Council has expertise in the area and that its opinion was based on a consideration of the Publication and [REDACTED] reviews of it.

56. In support of this appeal, the Appellant has provided copies of [REDACTED] reviews in respect of the Publication. Although those reviews are complimentary of the Publication, the Commissioner does not consider them sufficient evidence to demonstrate that the Publication casts new light on the subject matter or by changing the generally accepted understanding of it. Nor, in the Commissioner's view, do the Appellant's submissions establish that conclusion.
57. Having considered the Publication and the additional material submitted by the Appellant, the Commissioner accepts that creating the Publication required considerable ability, skill and time. However, he is not satisfied that the Publication *"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"*. This is consistent with the opinion given by the Heritage Council.
58. The Commissioner has also considered whether the Publication comes within any of the other categories of non-fiction work set out in paragraph 7(2) of the Guidelines. He is satisfied that it does not.
59. It follows from the above that the Appellant is not entitled to the artists' exemption in relation to the Publication. Consequently, the appeal cannot succeed. However, the Commissioner wishes to emphasise again that he is in no way questioning the ability and skill that went into creating the Publication.

Determination

60. Having considered the material submitted by the parties, for the reasons set out above, the Commissioner is satisfied that the Respondent was correct to refuse the Appellant's claim for the artists' exemption under section 195 of the TCA 1997. Accordingly, the Respondent's refusal to make a determination in relation to the Appellant's claim for the artists' exemption stands.
61. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL 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.
62. The Commissioner recognises that this determination may be disappointing for the Appellant. The Commissioner is, however, bound to interpret and apply the provisions of the legislation as enacted by the Oireachtas and as further developed in the Guidelines.

Notification

63. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular sections 949AJ(5) and 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

64. 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.

A handwritten signature in black ink, appearing to read 'Conor Walsh', with a long, sweeping horizontal stroke above the name.

Conor Walsh
Appeal Commissioner
13 August 2026

Appendix I – Section 195 of the TCA 1997 – Exemption of certain earnings of writers, composers and artists.

“(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 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 is first made in respect of that work or those works or the particular work, as the case may be.*

(b) *Where -*

(i) *an individual -*

(I) *has made due claim (in this subsection referred to as a "claim") to the Revenue Commissioners for a determination under clause (I) or (II) of subsection (2) (a)*

(ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

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

and

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

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

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

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

as the case may be.

(7) *[deleted]*

- (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.*
- (b) *[deleted]*
- (9) *[deleted]*
- (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 by An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands.

“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.”

Appendix III – Extracts from the Heritage Act 1995.

- Section 2(1) of the Heritage Act 1995 states, among other things, that:

“In this Act—

...

‘heritage gardens and parks’ includes areas of natural heritage, and gardens and parks whose plant collections, design, design features, buildings, setting, style or association are of significant scientific, botanical, aesthetic or historical interest or which illustrate some aspect of the development of gardening or of gardens and parks;

[...]”

- Section 5 of the Heritage Act 1995 provides as follows:

“(1) The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

(2) There shall stand established on the establishment day a body to be known as An Chomhairle Oidhreachta or, in the English language, The Heritage Council to perform the functions conferred on it by this Act.

(3) The Council shall be a body corporate with perpetual succession and power to sue and be sued in its own name and to acquire, hold and dispose of land.

(4) In the exercise of its functions in relation to the acquisition, holding and disposal of land the Council shall comply with such directions as may be given to it by the Minister in consultation with the Minister for Finance.

(5) The Schedule shall apply in relation to the Council.”

- Section 6 of the Heritage Act 1995 states that:

“(1) The functions of the Council shall be to propose policies and priorities for the identification, protection, preservation and enhancement of the national heritage, including monuments, archaeological objects, heritage objects, architectural heritage, flora, fauna, wildlife habitats, landscapes, seascapes, wrecks, geology, heritage gardens and parks and inland waterways.

(2) References to the National Monuments Advisory Council, the Historic Monuments Council or the Wildlife Advisory Council in any enactment or instrument made thereunder shall, where appropriate, be construed as references to the Council.

(3) The Council shall in particular—

- (a) promote interest, education, knowledge and pride in, and facilitate the appreciation and enjoyment of the national heritage,*
- (b) co-operate with, engage with, advise and support public authorities, local communities and persons in relation to the functions of the Council, and,*
- (c) promote the coordination of all activities relating to the functions of the Council.”*