AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

14TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This determination concerns an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against the failure by the Revenue Commissioners ("the Respondent") 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 appeal proceeded by way of a remote hearing in private.

Background

3. 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.

4. The maximum amount of income that may be exempted is €50,000 per tax year.

5. On 29 April 2025, the Appellant submitted a claim to the Respondent for the artists' exemption in relation to her handmade cards with [redacted] attached to the front of each card ("the Works").

6. In the application form, the Appellant identified category (d), "a painting or other like picture", as the appropriate basis for the claim.

7. By correspondence dated 13 May 2025, the Respondent notified the Appellant that it had refused her claim.

8. Later that day, pursuant to section 195(6) of the TCA 1997, the Appellant appealed to the Commission against the Respondent's failure to make a determination.

9. The Appellant submitted a notice of appeal and accompanying material in support of her appeal. In addition, the Appellant submitted a statement of case, and the Respondent submitted a statement of case.

10. In support of her appeal, the Appellant submitted photographs of the Works to the Commission. In two of those photographs, the cards were framed. In the others, some of which depicted multiple cards, they were unframed.

Legislation and Guidelines

11. The 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.

Evidence and Submissions

Appellant's oral evidence

13. The Appellant gave sworn oral testimony on factual matters at the hearing.

14. The oral evidence given by the Appellant was consistent with the information contained in her notice of appeal and statement of case, an extract of which is reproduced below.

Appellant's submissions

15. The Appellant's notice of appeal and statement of case contained similar information. For brevity, the Appeal Commissioner ("the Commissioner") has included only an extract of the Appellant's grounds of appeal contained in her notice of appeal.

16. In the grounds of her notice of appeal, the Appellant submitted, among other things, as follows:

> *"… My application was for my handmade [redacted] artworks, which I understand were declined under paragraph 8(v) of [the Guidelines], on the grounds that they are considered to be decorative or utilitarian. I would like to respectfully explain why I believe this decision should be reconsidered.*
>
> ***My Work: A Picture, Not a Product***
>
> *The pieces I create are not mass-produced cards or souvenirs. Each is a unique, [redacted] [redacted], [redacted]. I see them as visual artworks — like pictures — created for artistic expression.*
>
> *If these same [redacted] were mounted in a frame, I believe they would easily be recognised as 'a painting or other like picture' under Section 195(1)(d) of [the TCA 1997]. The only difference is the format. My artistic choice of working with [redacted] on card does not change the creative essence of the work. I believe other artists working with mixed media, natural materials, or unconventional formats have been granted the Artists' Exemption in the past. Many fine art works are created on paper or card – for instance, original prints, watercolors, or illustrations. Visual artworks can take on non- traditional presentation forms (for example, an artist who might create*

a series of art postcards or art books). My [redacted] – which can be framed or presented as standalone artworks I feel clearly constitute 'pictures.' Each piece presents an image (of [redacted]) akin to a [redacted] collage or mixed-media painting, rather than any kind of functional object.

For example, in a 2023 case (148TACD2023), an artist who created 'biophilic' artworks using preserved moss and plants successfully appealed a refusal. The [Commission] agreed that such works fell into the category of a 'painting or other like picture.' Despite [the Respondent's] argument that they were decorative, the appeal was upheld. The Commissioner [in that case] stressed that the words of the law should be given their ***'ordinary meaning'*** *— and if the public would see the work as a picture or visual art, it qualifies. I believe my [redacted] pieces fall into the same category.*

Original and Creative: My Process

Each of my artworks is an original. I personally select, [redacted] each [redacted], composing them into images that express the unique [redacted] of [redacted]. This is not a production-line craft. Every piece involves creative choices: which [redacted] to use, how to balance colours and textures, how to arrange forms into a visually striking design.

This process is a deeply creative one, comparable to how a painter uses pigment. I don't copy existing patterns or templates. No two pieces are alike. My materials are just different — I use [redacted] and [redacted] instead of oils or watercolours. But the act of creation is the same: making original, imaginative work that didn't exist before.

The Artists' Exemption guidelines describe originality as a unique work of creative quality brought into existence by the exercise of its creator's imagination.' This is exactly what I do.

Cultural and Artistic Merit

Beyond the visual my art celebrates and preserves the [redacted] of [redacted] — a part of Ireland's natural and cultural heritage. By showcasing these [redacted] in an artistic form, my work helps foster appreciation for our local environment. In an age of climate awareness, connecting people with nature through art is culturally significant.

In that same 148TACD2023 case, the Appeals Commissioner recognised that plant-based artworks had cultural relevance because they resonated with contemporary values of environmental consciousness and brought people closer to nature. I believe *the same reasoning applies here. My art highlights the* [redacted] *and supports the cultural identity of* [redacted] *region.*

[redacted] *art has long been a respected artistic form, and my work continues that tradition in a fresh, modern way. It offers a tactile, natural aesthetic that differs from but complements painting and collage.*

Addressing the Decorative Argument

I fully appreciate that my work can decorate a space. But this is true of nearly all visual art — paintings, sculptures, photographs. Being decorative doesn't disqualify art from being art.

The key point is intention. My intention is to create artistic pieces that express beauty, connection to place, and personal vision. My work is not designed as a utilitarian object, nor is it a commercial product made for advertising or mass consumption.

In the 148TACD2023 determination, the Commissioner [in that case] specifically rejected the idea that visual appeal alone made a work 'merely decorative' The artist's moss artworks, while used in interior design, were recognised as original art because of their creative merit. I believe my [redacted] *artworks deserve the same consideration.*

Furthermore, there are many precedents where non-traditional art forms — including ceramics, installations, and mixed-media works — have been accepted under the Artists' Exemption scheme. For instance, ceramic sculptures and nature-based installations have been granted exemptions despite being 'decorative' in nature, because they were created as artistic expressions.

…

Conclusion

In summary, my [redacted] *artworks are:*

- *Original and creative, as each is an individual artistic composition; using my imagination not utilitarian or copied from existing designs*
- *A visual art form, falling within 'a painting or other like picture';*
- *Culturally significant, reflecting* [redacted] [redacted]*;*
- *Artistically meritorious, contributing to the mixed-media art landscape.*

…" (Emphasis in original)

17. The Appellant's oral submissions were consistent with the information contained in her notice of appeal and statement of case.

Respondent's submissions

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

"…

2.6 [The Respondent] may only make a determination where a work clearly comes within the criteria set out within the legislation and [the Guidelines] governing the scheme.

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

2.8 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.

2.9 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.

2.10 The current version of [the Guidelines] is effective for all determinations made by [the Respondent] on or after 30 November 2013.

2.11 Paragraph 8 of [the Guidelines] states that a work shall not be regarded as original and creative and shall not be recognised as generally having cultural and artistic merit if the works come within a range of criteria set out within subparagraphs (i) to (vi).

2.12 Paragraph 8 (v) [of the Guidelines] refers to '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'.*

2.13 Upon examination of the works and supporting material submitted it was [the Respondent's] view that the works were excluded by paragraph 8(v) of [the Guidelines] as they served a utilitarian function and were created primarily for a decorative or similar purpose.

2.14 Furthermore, [the Respondent] was not satisfied that the works met the definition of artistic merit contained in [the Guidelines].

2.15 Paragraph 6 of [the Guidelines] states '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'.

2.16 It was [the Respondent's] view that the works did not enhance 'to a significant degree the canon of work in the relevant category'.

2.17 [The Respondent's] issued a letter to the appellant on 13 May 2025 stating that they were unable to make a determination in respect of this work.

…"

19. The oral submissions made by the Respondent's officer were consistent with the information contained in its statement of case.

20. The Respondent made further submissions during the hearing. Those submissions are summarised as follows, incorporating relevant extracts from the transcript of the hearing:

    20.1. "*An ordinary person looking at this would see a card, a greeting card.*"

    20.2. The Works primarily serve a utilitarian function, with the Respondent's officer stating "*It is functional. It is a card.*"

    20.3. In response to the Appellant's contention that each of the Works are unique, the Respondent argued that "*this is the work of the [redacted] itself. You know, the fact that no two [redacted] are the same, that is the work of a [redacted] itself, not the Appellant's work.*"

    20.4. The Works' quality of form does not enhance to a significant degree one or more aspects of national or international culture.

Material Facts

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

    21.1. On 29 April 2025, the Appellant submitted a claim for the artists' exemption in relation to the Works.

    21.2. By way of correspondence dated 13 May 2025, the Respondent notified the Appellant that it had refused her claim on the ground that the Works were excluded from the artists' exemption under paragraph 8(v) of the Guidelines.

    21.3. The Appellant has not sold any of the Works.

    21.4. The Works are handmade.

    21.5. The Works take the form of cards with [redacted] attached to the front of each card, with a [redacted] annotation reading [redacted] each card.

    21.6. The Works are not created using paint.

    21.7. The Works do not bear the Appellant's name or signature.

    21.8. An envelope is provided with each of the Works.

    21.9. Each of the Works can be opened, in the same manner as a greeting card.

    21.10. The Appellant intends to sell some of the Works unframed, and others framed.

    21.11. The Works are unique and originate from the Appellant's imagination.

    21.12. Each of the Works' [redacted] are selected by the Appellant using her imagination, ability and skill.

    21.13. The main purpose of the Works mounted on frames is not functional.

    21.14. The main purpose of the Works not mounted on frames is functional.

    21.15. The Appellant creates the Works with a primary artistic purpose.

    21.16. The Works enhance the local culture of [redacted] region.

    21.17. The Works do not result in a substantial enhancement of one or more aspects of national or international culture.

    21.18. The Works' quality of form or content do not yield a substantial enhancement of the canon of work of [redacted] art, including [redacted] art.

Analysis

Burden of proof

22. The burden of proof in this appeal rests on the Appellant, who must establish that the Respondent erred in refusing her claim for the artists' exemption in relation the Works.

23. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners and Anor.* [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."

24. Additionally, in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"), 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. …"

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

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

Substantive issue

27. This appeal concerns whether the Appellant is entitled to the artists' exemption in relation to the Works.

28. At the outset, the Commissioner wishes to emphasise that his role in this appeal is confined to assessing whether the Works fall within the parameters of the legislation and the Guidelines. In that regard, none of his analysis is intended to detract from the inherent quality of the Works or the skill involved in creating them.

29. 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 [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."

30. 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* [1933] 1 IR 750, in which 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, ie 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.

…"

31. In addition, the Commissioner refers further to *Coleman*, which concerned a case stated from the Office of the Appeal Commissioners in relation to the artists' exemption, wherein she stated at paragraph 30, among other things, as follows:

"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."

32. Accordingly, for the Appellant to succeed in her 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.

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

- The categorisation of the Works.
- Whether the Works are excluded from the artists' exemption.
- Whether the Works are original and creative.
- Whether the Works meet the cultural merit criteria.
- Whether the Works meet the artistic merit criteria.

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

The categorisation of the Works

35. Section 195(1) of the TCA 1997 states, among other things, as follows:

"'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."

36. The five categories are not defined in the statutory framework governing the artists' exemption. Accordingly, in this appeal, an interpretative exercise is required to ascertain their meaning and then determine whether the Works come within any of the categories.

37. It is clear from the line of recent authority, including the Supreme Court judgments in *The People (DPP) v. Brown* [2018] IESC 67 ("*Brown*"), *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 ("*Dunnes*"), *Bookfinders Ltd. v. The Revenue Commissioners* [2020] IESC 60 ("*Bookfinders*"), *Heather Hill Management Company*

CLG and Anor. v An Bord Pleanála [2022] IESC 43 ("*Heather Hill*") and *Hanrahan*, that the starting point of an interpretative exercise in an appeal of this nature is to consider the ordinary and natural meaning of the wording itself, viewed in context.

38. The Supreme Court's judgment in *Inspector of Taxes v. Kiernan* [1981] 1 IR 117 is authority for the principle that, in an appeal of this nature, the wording of the five categories "*should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily*". That judgment is further authority for the view that "*when the word which requires to be given its natural and ordinary meaning is a simple word which has widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use.*" The authorities cited in the preceding paragraph make clear that when giving the words such meaning, they must be viewed in context.

39. When viewed in context, the Commissioner is satisfied that the wording of the five categories is simple, in common use, and not ambiguous.

40. Applying the principles of statutory interpretation enunciated in *Brown*, *Dunnes*, *Bookfinders* and *Heather Hill*, the Commissioner is satisfied that no further rules of interpretation are required; the wording of the five categories is plain and self-evident, viewed in context.

41. In considering whether the Works come within the meaning of "*a painting or other like picture*", as contended by the Appellant, the Commissioner notes – and has found as a material finding of fact – that the Works are not created using paint. The Commissioner is satisfied that the Works are not paintings.

42. The Commissioner must also consider whether any of the Works are an "*other like picture*". While the expression "*other like picture*" is broad, the Commissioner does not consider it to be ambiguous.

43. Having considered the photographs of the Works, the Commissioner is satisfied that a distinction should be made between the Works that are framed ("the Framed Works") and those that are not ("the Unframed Works"). This is the case even though the Appellant creates the Works with a primary artistic purpose.

44. In respect of the Framed Works, they are mounted in frames. Unless they are removed from those frames, they cannot be opened in the same manner as a greeting card. In addition, they are intended to be hung on a wall or placed standing up on a surface. Accordingly, notwithstanding the fact that an envelope is provided with each of the Works,

the Commissioner is satisfied that the Framed Works come within the meaning of "*other like picture*", therefore coming within the category "*a painting or other like picture*".

45. In reaching this conclusion, the Commissioner has drawn on his own experience when considering the meaning that an ordinary member of the public would consider that wording to have.

46. Regarding the Unframed Works, they are not mounted in frames. The Commissioner has found as material findings of fact that each of the Works can be opened in the same manner as a greeting card, and that envelope is provided with each of the Works.

47. The Commissioner is satisfied that the Unframed Works do not come within the meaning of "*other like picture*" and consequently do not come within the category "*a painting or other like picture*". In reaching this conclusion, again, the Commissioner has drawn on his own experience when considering the meaning that an ordinary member of the public would consider that wording to have.

48. The Commissioner has also considered whether the Unframed Works come within the meaning of the remaining categories in section 195(1) of the TCA 1997. The Commissioner is satisfied that the Unframed Works cannot be regarded as coming within any of those categories, having applied the principles of statutory interpretation enunciated in *Brown*, *Dunnes*, *Bookfinders* and *Heather Hill*.

<u>*Whether the Works are excluded from the artists' exemption*</u>

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

…

(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian

function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes

…"

50. Having regard to the Works and the Appellant's intent, the Commissioner is satisfied that they are not created primarily for advertising, publicity, information, decorative or other similar purposes. This remains the position notwithstanding that they are aesthetically pleasing. The Commissioner is satisfied that visual appeal alone does not render a work to be primarily for decorative purposes.

51. Having assessed the Framed Works, the Commissioner is satisfied that they are not primarily of record. He is further satisfied that they do not primarily serve a utilitarian function, having found as a material fact that their main purpose is not functional.

52. The Commissioner is also satisfied that the Framed Works do not come within the meaning of any other subparagraphs of paragraph 8 of the Guidelines, given his earlier finding in respect of the categorisation of the Works.

53. It follows that the Framed Works are not excluded from the artists' exemption by virtue of paragraph 8(v) of the Guidelines.

54. In respect of the Unframed Works, while the Commissioner has found that they do not come within any of the relevant categories, if he is wrong about this, he would have found that the Unframed Works are excluded from the artists' exemption by virtue of paragraph 8(v) of the Guidelines, on the basis that the Unframed Works primarily serve a utilitarian function. In that respect, he found as a material fact that their main purpose is functional. That remains the case irrespective of Appellant's artistic intent when creating them.

55. Accordingly, it remains to be considered whether the Works are original and creative, and have, or are generally recognised as having cultural or artistic merit. The Commissioner does so in respect of both the Framed Works and the Unframed Works, in the event that he is wrong in law in respect of his categorisation of the Works or analysis concerning paragraph 8 of the Guidelines.

Original and creative

56. Paragraph 4 of the Guidelines states as follows:

"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."

57. The Commissioner has found as material findings of fact that the Works are handmade, unique and originate from the Appellant's imagination. He has also found that each of the Works' [redacted] are selected by the Appellant using her imagination, ability and skill.

58. Consequently, in respect of the Framed Works, he is satisfied that they are original and creative.

59. Regarding the Unframed Works, as the Commissioner has found that they are excluded from the artists' exemption by virtue of paragraph 8(v) of the Guidelines, he is precluded from determining that the Unframed Works are original and creative.

60. If the Commissioner is wrong in finding that the Unframed Works are excluded from the artists' exemption on that basis, he would have been satisfied that they are original and creative.

Cultural merit

61. Paragraph 5 of the Guidelines states as follows:

> *"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."*

62. The Appellant has submitted a copy of an email sent to her by a person known to her, to whom she had gifted some of the Works. While it is complimentary of the Works and states that the person intended to "*frame mine as a memory of my time in your beautiful country*", the email is personal in nature.

63. The Commissioner considers that the Works enhance the *local* culture of [redacted] region. However, he is not satisfied that this is sufficient to demonstrate an enhancement of national culture, and it appears clear that international culture is not engaged by these works. The email referred to above does not alter the Commissioner's view on this.

64. Furthermore, while he also recognises the cultural relevance of [redacted] art, the Commissioner is not satisfied that its relevance is sufficient to demonstrate an enhancement of national or international culture.

65. As the Commissioner has found as a material finding of fact that the Works do not result in a substantial enhancement of one or more aspects of national or international culture,

it follows that the Works do not meet the cultural merit criteria. For the avoidance of doubt, this is the position for both the Framed Works and the Unframed Works.

Artistic merit

66. Paragraph 6 of the Guidelines states as follows:

> *"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."*

67. The Commissioner considers the Works to be aesthetically pleasing. He is also satisfied that their creation required considerable artistic ability and skill. However, in the Commissioner's view, he is not satisfied that this is sufficient to demonstrate a significant enhancement of [redacted] art, including [redacted] art. Further, having considered the photographs of the Works, he is not satisfied that they have such an enhancing effect.

68. In reaching this conclusion, the Commissioner notes that no objective, independent evidence, such as nominations for awards or testimonials, has been provided. The email referred to above does not alter the Commissioner's view on this, given that it is personal in nature.

69. As the Commissioner has found as a material finding of fact that the Works' quality of form or content do not yield a substantial enhancement of the canon of work of [redacted] art, including [redacted] art, it follows that the Works do not meet the artistic merit criteria. For the avoidance of doubt, this is the position for both the Framed Works and the Unframed Works.

70. In addition, for the Unframed Works, as the Commissioner has found that they do not come within the meaning of the remaining categories in section 195(1) of the TCA 1997, they cannot enhance "*to a significant degree the canon of work **in the relevant category**.*" (Emphasis added)

Summary and conclusion

71. For ease of reference, in respect of the Framed Works, the Commissioner has determined that they come within the meaning a work for the artists' exemption. He is also found the Framed Works are original and creative, but do not meet the criteria for determining cultural or artistic merit.

72. In respect of the Unframed Works, the Commissioner has concluded that they do not come within the meaning a work for the artists' exemption. He has also determined that he is precluded from determining that the Unframed Works are original and creative. He

has also concluded that they do not meet the criteria for determining cultural or artistic merit.

73. For the reasons set out above, the Appellant is not entitled to the artists' exemption in relation to the Works. Consequently, it follows that 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 Works.

Determination

74. Having considered the evidence adduced and all 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.

75. Accordingly, the Respondent's refusal to make a determination in relation to the Appellant's claim for the artists' exemption stands.

76. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

77. The Commissioner recognises that this determination will 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.

78. The Commissioner acknowledges and appreciates the professional and courteous manner in which both parties conducted this appeal.

Notification

79. 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

80. 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.

Conor Walsh
Appeal Commissioner
9 January 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 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.

(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.**"*