



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

31TACD2026

Muireann NicCába

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal relates to a refusal by the Revenue Commissioners (the “Respondent”) of a claim for an exemption from income tax pursuant to section 195 of the Taxes Consolidation Act 1997 (“the TCA 1997”) by the Appellant in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (“the Guidelines”).
2. The Respondent had determined that the Appellant’s work entitled “*Sound Bath*” (“the Work”) did not qualify for the Artists’ Exemption under Section 195(1)(e), a sculpture, as it primarily served a utilitarian function.
3. This appeal proceeded by way of remote hearing on 20 November 2025.

Background

4. Section 195 of the TCA 1997 provides for an exemption from income tax of certain earnings of writers, composers and artists up to €50,000 per annum. This is commonly known as the “Artists’ Exemption”.
5. The Appellant is a self-employed, multi-disciplinary visual artist, creative producer and art facilitator. Her Curriculum Vitae shows her as having worked across a range of art residencies, as having received awards in the art field and that she has created a body of various works which have been displayed and exhibited across Ireland from 2001 to date.
6. The Appellant’s educational qualifications in art includes a Master of Arts (Interactive Media), from the University of Limerick in 2002, a Bachelor of Fine Arts (Mixed Media) from the Limerick School of Art & Design in 2001 and a Diploma in Art & Design, from the Galway-Mayo Institute of Technology (now known as the Atlantic Technological University) in 1999.
7. The Appellant created and presented the Work in May 2023 for the May Sunday Festival (“the Festival”) commissioned by the Greywood Arts organisation (“the Arts Programme”) for which she received a fee.
8. The Work had several different elements. These included an old-fashioned bathtub, which was found by the Appellant, transported, dismantled, repaired and repainted.
9. A particular type of moss species called sphagnum moss was sourced, mixed with buttermilk and painted inside the bath by the Appellant to encourage it to adhere to the sides of the metal bathtub and to grow as a “living, breathing organism” with “healing

qualities”. The moss was then re-fed by the Appellant with misted water and buttermilk every second day to encourage continued growth and adherence to the inside of the bathtub.

10. The Work also included a manilla rope laced through the bathtub plughole to be used for balance and to ease the climbing in and out of the bathtub. It was not filled with water; rather the bathtub’s plughole was left open to prevent rainwater accumulating.
11. The Appellant had also made a rattan backrest that sat on top of the moss and a hand-painted, hand-stitched and wax sealed head cushion.
12. There were steps leading up to the bath, made from wood with the wording “*step in, sit back and relax*” inscribed by using pyrography and the Work was accompanied by a description on a placard nearby and linked the Work to the Festival.
13. The Appellant subsequently bequeathed the Work to the Arts Programme; however, it has since been destroyed inadvertently due to flooding.
14. On 11 December 2024, the Appellant submitted a claim to the Respondent for the Artists’ Exemption in respect of the Work.
15. On 20 March 2025, the Respondent notified the Appellant that it was unable to make the determination that the Work qualified for Artists’ Exemption, on the ground that it was excluded by virtue of paragraph 8(vi) of the Guidelines drawn up pursuant to section 195(12) of the TCA 1997.
16. The Respondent has argued that the Work’s primary function was as an interactive, meditative space designed for relaxation purposes. This is in dispute.
17. On 30 June 2025, the Appellant appealed the Respondent’s decision to the Commission pursuant to section 195(6) of the TCA 1997.
18. On 20 November 2025, at the hearing, the Appellant and her witness, Ms. Jessica Bonnefant (“the First Witness”), Artistic Director of the Arts Programme appeared remotely.
19. The Respondent was represented remotely by Ms. Roseanna Tighe of its Artists’ Exemption Unit. Ms. Karen Moloney another of the Respondent’s officers also attended the hearing.
20. In the Appellant’s application for the Artists’ Exemption submitted in November 2024, the application included the Work as described above and several other works. It was clarified at the remote hearing that the previous works included by the Appellant in this

application were a means to show a sample of her previous works, some from as far back as 2015. As those other works were no longer generating income, the Appellant confirmed at the hearing that she was not seeking an Artists' Exemption in relation to those other works.

21. The Appellant has only sought to appeal the Respondent's decision relating to the Work as identified hereinbefore. Therefore, this determination only considers the Work and not any of the other works submitted in the November 2024 application.

Legislation and Guidelines

22. Section 195 of the TCA 1997, entitled "Exemption of certain earnings of writers, composers and artists", provides, *inter alia*, as follows:

"(1) In this section,

[...]

"work" means an original and creative work which is within one of the following categories—

...

(e) a sculpture.

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

[...]

(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.

[...]

(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** [emphasis added].*

(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”.

23. The Guidelines have been in force since 30 November 2013 and were drawn up under the provisions of section 195 of the TCA 1997, for the purposes of determining whether a work within a category specified in section 195(1) of the TCA 1997 is an original and

creative work and whether it has or is generally recognised as having cultural or artistic merit. The Guidelines provide, *inter alia*, as follows:

[...]

“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.

[...]

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...

[...]

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

Submissions

Appellant's submissions

24. The Commissioner has set out hereunder a summary of the Appellant's submissions contained in her Notice of Appeal dated 30 June 2025 and Statement of Case dated 23 September 2025, which included the following:

"I am writing to respectfully challenge the decision regarding the classification of my installation [the Work] and to provide essential context that I believe is critical to understanding its nature and artistic intent. While I understand that your office must often assess works through frameworks of material value or commercial potential, I wish to clarify that [the Work] is fundamentally a work of conceptual, site-specific, and participatory art. This letter is not about seeking a financial advantage but about ensuring that non-traditional and multidisciplinary artistic practices are accurately recognised within the framework of the Artist Exemption Scheme.

The Nature of the Work:

[The Work] is not a static object or decorative piece. It is a multidisciplinary, three-dimensional sculptural installation that integrates sound, performance, nature, community engagement, and symbolic materials. Each element was deliberately chosen to reflect the work's central theme of healing - a response to both personal and collective experiences, particularly in the aftermath of the COVID-19 pandemic.

> The moss-covered bath, placed in a woodland setting, served as a physical and symbolic site of reflection and transformation.

> The moss, a living material, was not merely decorative. It evolved with time, weather, and human interaction, making the piece ephemeral and impossible to reproduce or commodify.

> The sculpture includes a wooden seat, a 3D Form cushion which was both hand stitched, and hand painted also sealed with wax

> The location — [.....] Wood - was an active part of the artwork. The natural soundscape, including the flowing [.....] River, was a collaborator in the piece, creating a living, breathing environment.

> The work invited public interaction. Visitors were encouraged to sit, pause, and reflect - becoming co-creators of the experience.

The installation was ephemeral and unrepeatable, documented through photographs and video/audio recordings Audience engagement was central: visitors sat, reflected, and interacted with the work, making their participation integral to its meaning. The living materials and site-specificity meant the work was ephemeral and unrepeatable, reinforcing its status as a unique artwork rather than a commercial or decorative object.

Its wider context and impact are further supported by my artist statement, press coverage, and festival programme inclusion.

Audience interaction was essential: visitors' presence, reflection, and engagement were part of the work itself and testimonials.

The work was not decorative or created for commercial gain, but an original artistic expression intended for public cultural engagement, further supported by audience feedback and media coverage.

The purpose of the work was conceptual and cultural, designed to engage audiences in reflection and healing. This is evidenced in my artist statement prepared for the festival.

This kind of hybrid, process-based, and participatory work aligns directly with the traditions of conceptual and environmental art, where meaning is not confined to objecthood but emerges through experience, context, and engagement.

Commissioning and Professional Context:

Importantly, [the Work] was not a personal or informal project. It was professionally commissioned as part of a recognised public arts programme [the Art Programme].

A publicly funded and professionally operated arts centre in [location, county], issued a public call for submissions for an art trail during the [...] Festival in [...] Wood.

My proposal was selected by a panel of professional artists, and the work was commissioned with funding from the Arts Council's Festival Investment Scheme. It was presented alongside artworks by other professional artists, and I was paid as an artist for my contribution.

This context provides external validation of the work's artistic merit and relevance. It demonstrates that the piece was created through a professional, peer-reviewed, and publicly supported process, fully in line with the standards expected for Artist Exemption eligibility.

Artistic Influences and Context:

[Previous TAC] cases support the proposition that [the Work] being a three-dimensional assemblage with conceptual and cultural purpose, should be recognised as sculpture under the statutory categories and does not fall within the exclusions.

I respectfully submit that [the Work] meets the statutory tests of originality and artistic/cultural merit, and falls within the category of sculpture under s.195 TCA 1997

While I would not directly compare myself to Marcel Duchamp, I am profoundly influenced by his conceptual legacy. His 1917-piece Fountain redefined public understanding of what constitutes art by repositioning everyday objects within new contexts of meaning. In a similar spirit, [the Work] sought to challenge perception and foster emotional connection. The use of a bath - a domestic object - covered in moss and relocated to a forest setting invited a reassessment of comfort, vulnerability, and renewal. The work asked viewers to slow down, to engage with their surroundings, and to reconnect with themselves and nature.

My practice is also influenced by artists such as Dorothy Cross, whose installations (e.g., Shark Eye) combine natural and symbolic materials to create layered, emotionally resonant experiences. Like Cross, I work across media to create pieces that are conceptually grounded and deeply rooted in place, memory, and the body. The work situates itself within contemporary public and environmental art practice.

Cultural Value and Public Impact:

Crucially, [the Work] was not created for resale or exhibition in a commercial gallery. It was a one-off, site-specific installation, designed to exist for a brief moment in time and to engage the public in direct, embodied, and meaningful ways.

The public was not just the audience; they were active participants. Their presence, responses, and interactions with the piece were essential to its completion. This interactivity, combined with the living nature of the materials, made the work unique and unrepeatable.

The piece resonated deeply with its audience. People who experienced [the Work] still speak to me about the calm and reflection it offered. This kind of lasting impression - an emotional and contemplative experience shared in community - is a central indicator of artistic success. It reflects the very cultural and emotional value that the Artist Exemption is intended to acknowledge.

[...] the spirit of the work: a place of quiet discovery and renewal grounded in nature, far from commercialism or spectacle.

[.....].”

25. The above submissions included a supporting bundle of materials including the Appellant’s Curriculum Vitae and biography including awards from the Arts Council and a City and County Council and holds professional memberships with a number of bodies.
26. The supporting materials also included photographs and audiovisual recordings of the Work, promotional materials, feedback forms, the Festival programme note, a signed artist agreement with the Arts Programme and invoice issued to the Arts Programme.
27. At the remote hearing, the Appellant gave sworn oral testimony which reiterated the above submissions for the most part. Some additions were as follows:

“It’s an original site-specific sculptural installation combining physical, spatial design, environmental arrangement and sound and it’s three-dimensional immersive artwork in which form, space and sensory perception operate together as a sculptural medium”.

“So the context of a found object, it’s often the familiarity of something that we already know of, but how it’s asking you, the audience, to think about it in a different way and it’s a great kind of access tool to draw the general public in, and particularly people that may not think that they’re interested in art, but ... it often draws people in”.

28. The Appellant’s First Witness, the Artistic Director of the Arts Programme also gave sworn oral testimony and provided additional context around how the Work had been selected from the range of entries received. The witness stated that typically the pieces of work chosen by the panel to be exhibited at the Festival, from all of the submissions received, were selected based on the experience of the applicant, their previous works, the feasibility of the work and the Applicant’s artistic training.
29. The First Witness stated at hearing: *“The majority of artists that we work with tend to have a degree or an advanced degree in the arts. However, we would consider non formal education as well. You know there’s lots of ways of gaining training in the arts and by doing different workshops, doing different programmes, doing residencies but I’d say the majority of the artists that we’d work with would have usually a degree or some kind of formal training.”*
30. When asked by the Commissioner at the hearing about the selection process for the pieces to be exhibited at the Arts Festival, the First Witness stated: *“I can’t remember the exact number of applications, but probably two to three times more applications than*

we had places in the trail. We would have evaluated against the criteria set out in the call and the criteria that we submitted to the Arts Council to receive our funding and we were actually quite impressed with [the Appellant's] proposal, because it was really clear, really well thought out between a concept that was detailed and even timeline, [the Appellant] really took us through how [the Appellant] was going to explore the concept and create the installation work in a way that gave us confidence that you would be able to deliver something valuable to the art trail in the time period that was allowed".

31. The Appellant's First Witness stated at hearing when discussing feedback from the public; *"I thought what a success, like that was your intention and here's someone articulating that that's their experience and then actually, the next weekend, I was doing another tour and I actually came across that same woman who had returned to [the Work] to experience it again on her own without the tour and I think that just showed the kind of success of that engagement piece of the process".*
32. The Appellant also furnished the Commissioner with a supporting written statement by a second individual, Mr. Danny McCarthy ("the Second Supporter") who lectures in Art at an Irish university, is an external assessor for bodies providing art education and sits on a number of boards of art programmes and is also an artist who has exhibited nationally and internationally. The Respondent did not object to the statement being admitted and the statement has been taken into consideration by the Commissioner.
33. This statement expressed:

"I am writing to provide a formal statement of support for [the Appellant] in relation their Artist Exemption Appeal. I do so as a witness who has worked with and observed their artistic practice at close range, and I can attest to the professional, original, and culturally significant nature of their work.

[The Appellant] has consistently demonstrated a high level of artistic merit across multidisciplinary practice. [The Appellant's] work engages deeply with themes of human–nature connection, environmental awareness, and multisensory experience.

Through innovative combinations of sound, visual media, and immersive installation, they create meaningful public encounters that encourage audiences to reflect, connect, and care.

Over the years, I have witnessed the quality, integrity, and impact of their practice. [The Appellant's] projects are consistently developed to a professional standard and have been presented, commissioned, or supported by reputable arts bodies, cultural organisations, and public programmes. Their contributions to the cultural landscape

are both valuable and distinctive. In my professional opinion, [the Appellant] meets the criteria for the Artist Exemption Scheme. [The Appellant's] body of work is original, creative, and of significant cultural value. I therefore strongly support their appeal and respectfully request that their application be given full and favourable consideration.

I have served on the boards of National College of Art and Design, National Sculpture Factory (Founder Director), Triskel Arts Centre (Founder Director), Sculpture Society of Ireland, Visual Arts Association, Sirius Arts Centre, Midleton Arts Festival, Sonic Vigil and several others. I have exhibited extensively both in Ireland and internationally and I have works in the National Collection, Crawford Gallery, Limerick City Gallery, Arts Council of Ireland to name but a few. I have acted as External Accessor in the Crawford College of Art and the Limerick College of Art on numerous occasions. I currently lecture on the MA course in Sound and Experimental Practice in UCC.”

Respondent's submissions

34. The Commissioner has set out hereunder a summary of submissions made by the Respondent in its Statement of Case, dated 1 September 2025.

“[.....]

2. Outline of relevant facts

This is an appeal by [the Appellant] in respect of the failure of Revenue to make a determination under section 195 of Taxes Consolidation Act 1997, In respect of some of her artistic works.

2.1 An application for a determination under section 195(2) TCA 1997, in respect of the appellants work, was submitted to Revenue on 11 December 2024.

2.2 Section 195(1) states that the scheme shall apply to original and creative works which are generally recognised as having artistic or cultural merit and come within a number of listed categories.

2.3 The application in respect of the appellants work was made under category (d), “a painting or other like picture” and category (e), “a sculpture”.

2.4 In support of the application, the appellant submitted images of her work and other material.

[.....]

2.6 Revenue may only make a determination where a work clearly comes within the criteria set out within the legislation and the guidelines governing the scheme.

[....]

2.8 Section 195(12) TCA 1997 states that guidelines may include specifications of the types or kinds of works that are not original or creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose. The section further states that the guidelines may specify criteria by reference to which the questions whether works are original and creative and whether they have or are generally recognised as having cultural or artistic merit are to be recognised.

2.9 Section 195(13) states that where an application for a determination is made to Revenue, that Revenue shall not make a determination in respect of a work unless it complies with the guidelines. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.

2.10 The current version of the guidelines is effective for all determinations made by Revenue on or after 30 November 2013.

2.11 The images submitted by the appellant in relation to her application under category (e), "a sculpture" were for the works [.....] and [the Work].

[.....]

2.13 Section 195(1) states that the scheme shall apply to original and creative works in one of the following categories:

[.....]

e) a sculpture.

[.....]

2.15 Revenue examined the work and found they were types of work involving trail walks, walking tours and meditative experiences.

2.16 Paragraph 8(vi) of the guidelines excludes "types or kinds of works of sculpture which primarily serve a utilitarian function".

2.17 It was Revenue's view that the works [the Work] was excluded by paragraph 8(vi) of the guidelines, as they serve a utilitarian function.

[.....]

2.20 Revenue issued a letter to the appellant on 22 January 2025 stating that they were unable to make a determination in respect of the works submitted for category (e), “a sculpture”.

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

[.....]”

35. The Respondent’s officer’s oral submissions at the remote hearing were consistent with the above submissions. The Respondent clarified at the hearing that it was not its argument that the Work could be used as a bathtub in the typical, traditional sense, for cleanliness, but that rather what it meant by “utilitarian function” was that it was a meditative, interactive, performative space which could be used by the public.
36. The Respondent stated at the hearing; “[I]t formed part of a trail walk, and it was a meditative experience. You're invited to sit in, step in, sit back, relax and listen to nature's soundtrack and enjoy the expansive sky view. There's a cushion in the back and it makes it comfortable to sit and relax in, and it allows public participation, and this would be considered utilitarian. The purpose of the work is for the public to engage, to sit in, to relax. It primarily serves the function of relaxation and engagement with nature. Therefore, it's utilitarian and paragraph 8(vi) of the guidelines excludes types or kinds of works of sculpture which primarily serve a utilitarian function”.
37. The Respondent further asserted at the hearing: “Interactive pieces, in Revenue's view, primarily serve a utilitarian function. The bath is a vehicle to allow a person to engage again, to lie back, engage, listen to nature and take time to reflect. So, it's used as part of an experience, which is, again, utilitarian and the particular site that the bath is placed in, it aids the reflective nature of the work, and again that is utilitarian”.
38. The Respondent did not make any substantive points on the artistic or cultural merit criteria in its submissions. When queried by the Commissioner at the hearing regarding the Respondent’s perspective on this point, the Respondent stated in order for the cultural or artistic merit test to be met, “[the Work] must enhance to a significant degree the canon of work in the relevant category for artistic merit or enhance to a significant degree one more aspect of national or international culture for cultural merit.... when you look at the ordinary meaning of 'enhance to a significant degree', Revenue would question does the artwork do that”.

Material Facts

39. Having reviewed all the documentation submitted, and having listened to the submissions at the hearing, the Commissioner makes the following findings of material fact:
- 39.1. The Appellant is an artist, having received awards, held artist residencies and having created and displayed a body of various artworks across Ireland from 2001 to date.
 - 39.2. The Appellant's formal education at third-level educational bodies was in art.
 - 39.3. The Appellant responded to a call for artworks by the Arts Programme to be submitted for consideration to be exhibited at the Festival. This Work was created for the purposes of display at the Festival.
 - 39.4. The Work was a three-dimensional, modern art, sculpture. The sculpture was comprised of a bathtub, that was not filled with water but in which moss was inserted and encouraged to grow and accompanied by a handmade headrest, backrest, a rope to help the climbing in and out and by wooden steps inscribed by means of pyrography with the words "*step in, sit back and relax*".
 - 39.5. The Appellant received an artist's fee for the Work in 2023. The Appellant bequeathed the Work to the Arts Programme however, subsequently the Work was inadvertently destroyed.
 - 39.6. On 11 December 2024, the Appellant sought an Artists' Exemption from the Respondent in relation to the Work being a sculpture in accordance with section 195(1)(e) of the TCA 1997.
 - 39.7. On 20 March 2025, the Respondent issued correspondence informing the Appellant that it had failed to make a determination that the Work being a sculpture qualified for Artist's Exemption, under section 195(1)(e) of the TCA 1997. It was later explained that the exemption was not granted on the ground that the Work primarily served a utilitarian function in accordance with the exceptions laid down in paragraph 8(iv) of the Guidelines. No further explanation was provided.
 - 39.8. On 30 June 2025, the Appellant appealed the Respondent's decision to the Commission.

- 39.9. At the remote hearing on 20 November 2025, the Respondent argued that the utilitarian function of the Work was as an interactive, meditative space designed for relaxation purposes.
- 39.10. The primary function of the Work was artistic; it did not primarily have a utilitarian function.
- 39.11. The Work is a unique, original work and was brought into existence by the exercise of the Appellant's own imagination.
- 39.12. The Work does not meet the specific elements of the cultural merit test as set out in the Guidelines. While the Work may enhance a specific aspect of national culture regarding the use of moss for natural healing, the Work in its quality and/or form does not enhance the national culture to a significant degree.
- 39.13. The Work does meet the components of the artistic merit test as laid down in the Guidelines. The Work does enhance to a significant degree the canon of work in biophilic, interactive art involving found objects.

Analysis

Burden of proof

40. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent's failure to determine that the Work qualified for Artists' Exemption was incorrect, on the balance of probabilities.
41. This legal principle was confirmed by Mr. Justice Charleton in the High Court case of *Menolly Homes Limited v Appeal Commissioners* [2010] IEHC 49 ("*Menolly Homes*"), where he stated at paragraph 22 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."*
42. This appeal must consider the Work in relation to the tests set out in legislation under section 195(12) of the TCA 1997 and the Guidelines to determine whether the Appellant is entitled to the Artists' Exemption. There are four limbs which must be considered in relation to a work: the categorisation of the work; whether the work falls within an exception to the exemption as set out in paragraph 8 of the Guidelines; whether the work is original and creative and whether the work has cultural or artistic merit in accordance with the thresholds laid down.

Statutory Interpretation

43. Statutory interpretation is required when considering the wording of the various tests to meet the requirements for the Artists' Exemption. Kennedy C.J. in *Doorley v The Revenue Commissioners* [1933] IR 750 considered the application of statutory interpretation in accordance with tax exemptions, wherein he stated at page 766, *inter alia*:

"If it is clear that a tax 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.

[...]

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."

44. More recently, Mr. Justice McKechnie in *Dunnes Stores v Revenue Commissioners & Ors* [2019] IESC 50, held at paragraph 63 that:

"[I]f the words used are plain and their meaning self-evident, then save for compelling reasons to be found within the instrument as a whole, the ordinary, basic and natural meaning of those words should prevail."

45. Therefore, the Commissioner has considered the plain and ordinary meaning of the words in context and as used in the tests as set out in section 195 of the TCA 1997 and the Guidelines, in accordance with their definitions in the Oxford English Dictionary.

Categorisation

46. In accordance with section 195 of the TCA 1997, for a work to meet the requirements for the Artists' Exemption, it must be a work that is original and creative and one which falls within one of a number of categories. Category (e) relates to sculptures and that is the category which is relevant for this appeal.
47. It is not in dispute that this Work was a sculpture. The Commissioner can understand how viewed through a more limited, historic lens that the Work may not have traditionally

been viewed as a sculpture, however the meaning of sculpture as a concept in addition to the forms, techniques and materials used in sculpture has changed over time to encompass a much broader variety of works including found or ready-made items. The Commissioner agrees that the Work constituted a sculpture.

Primarily Utilitarian Function

48. Paragraph 8 of the Guidelines states that a work shall not be deemed an original and creative work and shall not be recognised as generally having cultural or artistic merit where it falls within one of the exemptions in subparagraphs (i) - (vi) of that paragraph.
49. Paragraph 8, subparagraph vi is the relevant subparagraph in this appeal and states; *"types or kinds of works of sculpture which primarily serve a utilitarian function"*. The Oxford English Dictionary (Seventh Edition, paperback) defines *"utilitarian"* as *"useful or practical, rather than attractive"* and *"primarily"* as *"to a great or the greatest degree; for the most part, mainly"*.

Bathtub

50. It was not in dispute that Work did not have a utilitarian function as a bathtub, as it was not filled with water, and was not primarily used for sanitation. The Commissioner agrees and does not intend to discuss this aspect further.

Interaction

51. The Respondent has argued that the Work's primary function was as an interactive, meditative space designed for relaxation purposes. This is in dispute.
52. The Respondent stated at the hearing that *"You're invited to sit in, step in, sit back, relax and listen to nature's soundtrack and enjoy the expansive sky view. There's a cushion in the back and it makes it comfortable to sit and relax in, and it allows public participation, and this would be considered utilitarian. The purpose of the work is for the public to engage, to sit in, to relax. It primarily serves the function of relaxation and engagement with nature"*.
53. Much was made by the Respondent of the instructions *"step in, sit back and relax"* inscribed in the steps leading to the main feature of the Work. The Respondent asserted that the fact that the steps had these words inscribed meant that it should be regarded as an interactive and meditative experience with the primary focus being relaxation. The Respondent at the hearing stated *"The bath is a vehicle to allow a person to engage again, to lie back, engage, listen to nature and take time to reflect. So, it's used as part"*

of an experience, which is, again, utilitarian and the particular site that the bath is placed in, it aids the reflective nature of the work, and again that is utilitarian”.

54. The Appellant in her rebuttal stated *“I had the intention of the relaxing, but I can never impose it on people. So, everyone is going to have a different interpretation of the experience that they have when they look at the work or experience the work”*. The Appellant submitted that whilst some attendees at the Festival interacted with the Work and climbed in, others while intrigued did not climb in or physically interact with the Work due to age, infirmity or personal preference. Others returned a second time to view the work as it caught their imagination, despite not interacting with the Work physically with their bodies. Therefore, it would seem that not all visitors interacted physically with the Work but still observed the Work.
55. The Oxford English Dictionary defines *“art”* as *“the expression of creative skill in a visual form such as painting or sculpture”*. In discussion at the hearing about other modern, well known art sculptures including Dame Tracey Emin’s *“The Bed”* and Marcel Duchamp’s *“Fountain”*, the Respondent outlined that *“those works; you don’t engage with them. They’re there to be looked at, reflected. They’re not utilitarian. There’s no engagement, it doesn’t have another function. It is there simply as an artwork, whereas the function of [the Work] is to step in, sit back, relax, listen to nature, engage with nature.”* The Commissioner disagrees with the Respondent’s argument that artwork which may have functional aspects should be viewed as only providing a utilitarian function and finds that while the Work did not have a single function, its primary function was artistic.
56. The Commissioner considers that the traditional view, that art is more likely to be exhibited in museums or galleries or white spaces and cannot be touched, has changed and it is now widely accepted that sculptures can be exhibited in public spaces and in unexpected locations and with that, the implied *“no touching”* rule has faded somewhat. The Respondent asserted *“The installation is designed to be practical. It has a practical nature. Again, to engage with the public, to allow them to relax, engage, meditate, reflect on nature. That practical function means it’s utilitarian.... Relaxing and feeling healing shows it’s utilitarian.”*
57. The Commissioner disagrees with the Respondent on this point and notes that although the Work herein could be interacted with, climbed into or viewed from afar, this does not mean that the Work primarily serves a utilitarian function. The Commissioner considers that the Work was not useful or practical. From photographs, it does not seem particularly comfortable, it was weather dependent and an added rope was needed to

assist climbing in and out of the bathtub. The moss was damaged from human and natural interaction and had to be re-fed every second day and repositioned.

58. The wording on the steps was included in order to encourage interaction as it was thought people attending the Art Festival would be afraid to touch the Work without direct instruction, given the Work would be viewed as art, and even with those written instructions and verbal encouragement by the Appellant, some visitors still did not physically interact with the Work, for a variety of reasons.

Meditative Space

59. Regarding the Respondent's argument that the Work was a meditative space, the Oxford English Dictionary defines "*meditative*" as "*involving or absorbed in focused thought or deep reflection*". Depending on the number of visitors attending the Festival for which the Work was commissioned by the Arts Programme, the Commissioner considers that the walking trail is likely to have been busier than usual and less likely to provide a quiet, reflective, meditative space as commonly understood to constitute a meditative zone or to allow deep thought.
60. The Commissioner considers that art can have many purposes or aims, including emotive ones, inspirational ones, meditative ones, thought-provoking or even thought-arresting ones. In the Commissioner's experience, those that are minded to meditate tend to meditate in private settings generally or when they have formed an intention to sit down and meditate and set time out from their day to do so. It seems less likely that someone would choose to meditate on a whim, when coming across an unexpected space whilst out walking or attending an arts festival, where a place may be busier or noisier than usual and therefore it would not necessarily seem to be very practical to engage in focused thought or deep reflection.
61. However, the Commissioner also recognises that some people may argue that meditation can be undertaken anywhere, at any time, with no need for anything other than one's own mind and an intention. The Commissioner finds that while it may have provided a meditative space for some visitors depending on their individual preferences and style of meditative practice, the Commissioner does not agree that the primary purpose of this Work was to serve as a meditative space.
62. Further, the Commissioner does not agree the meditative aspect was of the "greatest degree" of importance to the Work (in line with the Oxford English Dictionary's definition of 'primarily', as outlined above) rather, it was perhaps an element of the overall piece

and a discretionary one at that. The primary function was not useful or practical, but artistic.

63. The Commissioner has considered the Appellant's explanations of the Work, photographs, audiovisual recordings, the written documents and oral submissions provided by the Appellant and the Witness at the hearing and the Supporter in his written statement and the rebuttal by the Respondent; the Commissioner is satisfied that the Work is not excluded from the Artists' Exemption by virtue of paragraph 8(vi) of the Guidelines as it did not primarily serve a utilitarian function.

Original and Creative Test

64. The third limb of the test which must be considered is whether the Work meets the criterion of "*original and creative*" as outlined in paragraph 4 of the Guidelines.
65. The Commissioner has considered the Appellant's submissions on the conception of the Work and its central themes of healing and reflection and how that interfaced with the creative process.
66. The process involved the mixing of the sphagnum moss species with buttermilk to make a "*moss milkshake*" which was then painted by hand onto the bathtub and encouraged to grow, by feeding the moss with more buttermilk, and misted with water to maintain the moss over the ten days of the festival. The texture, volume and porosity of the moss also aided "*sound absorption*" creating a "*cocooning effect*".
67. The Commissioner can appreciate the consideration given to all the materials used (and their symbolism), some of which were found, ready-made objects which were re-purposed, dismantled and re-painted, as already discussed. The Work combined biodiversity and nature with the other man-made items as a form of biophilic art.
68. The Appellant also experimented with various methodologies for inscribing the wording on the steps and there was also the purposeful, intentional placing of the Work on a shaded bridge over the river so that a person sitting in the bathtub would hear two distinct sounds in their left and right ears simultaneously, intricate birdsong and the cascading river.
69. The Commissioner notes the Appellant explained that the Work was meant to be temporary in nature and the Appellant's reliance on the sound specifically coming from the nearby river being a part of the Work. The Appellant continued to explain that as the area had experienced significant rainfall in the two years prior, the subsequent increase in the volume and flow of the water in the nearby river created a unique, sound

experience which could not easily be repeated. The Appellant explained in her oral testimony; *“The living materials and site specificity meant the work was ephemeral and unrepeatabe, reinforcing its status as a unique artwork rather than a commercial or decorative object”*. The creativity of the Work is also evident in the title of the Work being a play on words and the Appellant outlined how the use of humour was also employed in creating the Work.

70. The Commissioner is therefore satisfied that the Work is a unique, original work of creative quality, and brought into existence from the Appellant’s own imagination as outlined in paragraph 4 of the Guidelines and therefore this limb of the test has been met.

Cultural or Artistic Merit Test

71. The final limb of the test which must then be considered, is whether the Work has or is generally recognised as having either *“cultural or artistic merit”* in accordance with paragraphs 5 and 6 of the Guidelines and section 195(13) of the TCA 1997.

72. The Commissioner notes that the use of the word **“or”** in the drafting of the Guidelines is disjunctive and provides for two separate tests. The Commissioner therefore considers that only one of either the cultural merit or artistic merit test is required to be met. For completeness, the Commissioner will discuss both strands.

73. The Oxford English Dictionary defines the key words in these tests as follows:

“Cultural” is defined as *“relating to the culture of a society”; “relating to the arts and to intellectual achievements”*.

“Artistic” is defined as *“having relative skill relating to art or artists”*.

“Merit” is defined as *“excellence”, “a good point or quality”; “deserves something”*.

“National” is defined as *“relating to a nation”*.

“Enhance” is defined as *“to raise in degree, heighten, intensify”*.

“Significant” is defined as *“important or large enough to given effect or be noticed”; “having a meaning that is not directly stated”*.

“Degree” is defined as *“the amount, level or extent to which something happens or is present”*.

“Canon” is defined as *“a general rule or principle by which something is judged.”*

Cultural Merit Test

74. The cultural merit test states that the Work must enhance, by its quality of form and/or content, *“one or more aspects of national or international culture”* to a significant degree.
75. The Commissioner notes the Appellant’s submissions that the Work had multi-factorial inspiration including the historic use of moss in Ireland, where people collected moss from moss depots, washed and dried the moss and the iodine found therein was used as an anti-septic and natural healing resource.
76. The Appellant, in her submissions, linked the historic use of moss’s “natural healing powers” in bygone wartimes to one of the themes of the Work being the “national need for healing” following the trauma occasioned by the Covid-19 global pandemic and its impact on persons in Ireland. The Appellant in oral testimony stated, *“The purpose of the work was conceptual and cultural, designed to engage audiences in reflection and healing”*. The Appellant noted at the hearing that in her art educator role, she has witnessed the ongoing impact of the pandemic on young school children following the pandemic.
77. The Appellant in oral testimony stated, *“The work was not decorative or created for commercial gain, but an original artistic expression intended for public cultural engagement, further supported by audience feedback and media coverage”*. The Commissioner appreciates the theme of healing in a post-pandemic era can be linked to the historic use of moss in Ireland and the focus on cultural engagement by the Appellant, however the Commissioner is not satisfied these alone are sufficient to meet the cultural merit test.
78. The Appellant’s Second Supporter in his written statement, stated that *“[The Appellant’s] contributions to the cultural landscape are both valuable and distinctive. Her body of work is original, creative, and of significant cultural value”*, however the Second Supporter did not explain how the Work has significant cultural value.
79. The Respondent did not make any substantive submissions on the cultural merit criterion in its own submissions. When this was queried by the Commissioner, the Respondent confirmed that in its view the Work did not meet the cultural merit test but did not elaborate on this point, as its argument was grounded on the basis the Work was a sculpture which had a primarily utilitarian function.
80. The Commissioner has considered the various submissions, both oral and written by the parties, the theme of healing, the use of moss, the emergence of biophilic art and the cultural engagement element of the Work. The Commissioner is not satisfied that

the sum of these is sufficient to demonstrate that the quality and/or form of the Work enhances the national culture of Ireland or international culture to a significant degree.

Artistic Merit Test

81. Paragraph 6 of the Guidelines outlines the second, independent limb of the fourth test and states that a work shall be regarded as having artistic merit *“only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category”*.
82. The Commissioner has read and heard representations by the Appellant and her two contributors to the Appeal who have significant experience in the art field, as outlined already.
83. The Respondent did not make any substantive submissions on the artistic merit criterion. When questioned on this point at the hearing by the Commissioner, the Respondent confirmed that in its view the Work did not meet the artistic merit test as the Work fell within the legislative exception of being a sculpture having a primarily utilitarian function. The Respondent further stated that in order for the cultural or artistic merit test to be met *“[the Work] must enhance to a significant degree the canon of work in the relevant category for artistic merit or enhance to a significant degree one more aspect of national or international culture for cultural merit.... when you look at the ordinary meaning of 'enhance to a significant degree', Revenue would question does the artwork do that”*. However, the Respondent did not provide any further arguments expanding on that point or any arguments which countervailed the Appellant's assertions of the Work's artistic merit.
84. The Commissioner has considered a number of factors with varying weight when considering if the artistic merit test has been met and discusses these below under various headings for ease.

The Appellant's background

85. The Appellant is working and practising as an artist. She has a Diploma, Bachelor of Art and Master of Art degrees specialising in interactive and mixed media. She has furnished a long list of art related training she has undertaken since 2008. The Appellant also engages in providing ongoing arts facilitation work with schools.
86. The Appellant has displayed a range of artworks across a variety of disciplines at several exhibitions around Ireland since 2001. The Appellant has been recognised by her peers and other professional artists as contributing to the art field. The Appellant's

Second Supporter wrote “[*The Appellant*] has consistently demonstrated a high level of artistic merit across multidisciplinary practice. [*The Appellant’s*] work engages deeply with themes of human–nature connection, environmental awareness, and multisensory experience....Through innovative combinations of sound, visual media, and immersive installation, they create meaningful public encounters that encourage audiences to reflect, connect, and care”.

87. The Appellant won an “Agility Award” from the Arts Council for 2023/2024 and was awarded an arts bursary from Waterford City and County Council in 2019. She has held two artist residencies and holds professional memberships with Visual Artist Ireland, Mór Artists Collective, Artlink and Creatives Associates Community of Practice. She has received an Artists’ Exemption from the Respondent for other types of work.
88. Based on the foregoing, the Commissioner finds that the Appellant has demonstrated a lengthy engagement with the art world and has created many artworks, thereby meeting the definition of artistic as having “relative skill relating to art or artists” as defined in paragraph 73 of this Determination. The Appellant’s Second Supporter supported the contention that the Appellant creates work of artistic merit and has stated “*Over the years, I have witnessed the quality, integrity, and impact of their practice. Their projects are consistently developed to a professional standard and have been presented, commissioned, or supported by reputable arts bodies, cultural organisations, and public programmes*”.

Concept of the Work

89. The Appellant has explained the conception of the original idea and the themes driving the Work. The Appellant in her testimony stated “*the artistic decisions were made in kind of spatial arrangement, sensory design, environmental integration, audience movement. This also creates like a unique kind of immersive encounter consistent with contemporary sculptural practice*”. The Commissioner appreciates the artistic imagination underlying the concept of the Work.
90. The Commissioner recognises the merit of the work undertaken by the Appellant in transporting, repairing and painting the bathtub and in creating the various accoutrements to form the Work. The Commissioner appreciates the symbolism of the old, found object of the restored bathtub, with its traditional animal claw-shaped feet, hand-painted gold, combined with natural materials of manilla rope, rattan and wood and the sourcing and use of sphagnum moss species to create a unique sculpture.

91. The Commissioner also values the creative process undertaken by the Appellant in investigating and experimenting with a variety of methods by which to encourage the moss to adhere and grow on the metal bathtub. The Appellant had to pivot, adapt and manage the various creative and structural challenges as they arose including using pyrography to inscribe the wording on the wooden steps when the initial concept to cultivate moss in the shape of words on the steps did not turn out as planned.
92. The Commissioner appreciates the Appellant's creativity displayed in choosing the precise and proper location in the forest for the Work to incorporate two distinct sounds from the natural world, melodic birdsong, and the rushing, swollen river. The Commissioner appreciates the ingenuity in the title of the Work being a clever play on words.
93. The Commissioner understands the concept the Appellant was intending to convey to be the importance of slowing down, looking inward, reconnecting with oneself and appreciating the beauty, simplicity and healing powers of nature in the post Pandemic world. The themes are thought-provoking, resonant and the Commissioner can see the value in such themes in this era of busyness, constant connectivity and rapid technological evolution.
94. The Commissioner finds that the combination and symbolism of the various elements of the Work, the overall form of the Work being a three-dimensional immersive sculpture, the particular placement in the forest and how the Work was presented, together show artistic merit and adds to the canon of work in this specific emerging field of re-positioning traditional found objects in new contexts, incorporating biophilic art.

How the Work was Selected

95. The Work in question in this appeal came about as a response to an open call for submissions by the Arts Programme for their annual Art Festival which was issued "*through mediums like Visual Artists Ireland and the Cork County Council Arts Newsletter*" as confirmed by the First Witness, not to the general public.
96. The Festival was publicly funded by the Arts Council following several criteria having to be met by the Arts Programme. The Appellant stated in her oral submissions that "*there was professional recognition, the work has been validated by the professional arts sector, selected from a public open call issued by [the Arts Programme], assessed and chosen by a panel of professional artists*". The Appellant's First Witness at the hearing explained the criteria used by the panel when deciding on which works to accept, included but were not limited to the applicant's previous art works, the quality, scale and

feasibility of the proposed work. This was assessed on the applicants' previous artistic experience and art training following a review of the applicants' Curricula Vitae, submissions and samples of previous works.

97. The Commissioner asked the First Witness to elaborate on what she meant by training and she responded "*The majority of artists that we work with tend to have a degree or an advanced degree in the arts. However, we would consider non formal education as well. You know there's lots of ways of gaining training in the arts and by doing different workshops, doing different programmes, doing residencies but I'd say the majority of the artists that we'd work with would have usually a[n] [art] degree or some kind of formal training*".
98. The Appellant's First Witness at the hearing outlined the number of applications to the Arts Programme seeking selection for exhibition at the Art Festival and how the panel found that the Appellant's work would deliver 'something of value' (meeting the Oxford English Dictionary definition of 'merit' outlined at paragraph 73 above), stating:
- "...probably two to three times more applications than we had places in the trail. ...we were actually quite impressed with [the Appellant's] proposal, because it was really clear, really well thought out ... how [the Appellant] was going to explore the concept and create the installation work in a way that gave us confidence that [the Appellant] would be able to deliver something valuable to the art trail in the time period that was allowed".*
99. The Appellant in her oral testimony noted "*The decision [by the Respondent] does not reflect the professional selection, commissioning and public funding evidencing artistic merit*". On the basis of the evidence, it seems that the Work was viewed by the panel of art experts engaged by the Arts Programme to evaluate the applications, as having artistic merit in that it was of good quality and 'deserving of something' such as being showcased in the Festival and offered an artists' fee. The panel decided the Work was 'important enough to be noticed' and it was selected for exhibition even though the panel received two or three times more applications than there were places available This demonstrates that the panel believed that the Work would add value to their Art Festival. It is also worth noting that the Work was exhibited alongside other artworks by other professional artists.

Impact and Intention

100. Positive feedback was received for the Work from the youth artists group who were invited to view the exhibited works before the general public, the Arts Programme

members and selection panel and members of the public who viewed the Work at the Festival. The First Witness explained how she felt when a member of the public, realised independently that two distinct sounds could be heard from each ear whilst engaging with the Work. The First Witness highlighted this as an example saying; *“I thought what a success, like that was your intention and here's someone articulating that that's their experience and ...I actually came across that same woman who had returned to [the Work] to experience it again on her own without the tour and I think that just showed the kind of success of that engagement piece of the process”*.

101. In the Commissioner's opinion, the Work was thought-provoking, unusual and not something across which she has come before. The Commissioner accepts that “found” or “ready-made objects” are a well-established form of modern art. The Appellant stated *“So the context of a found object, it's often the familiarity of something that we already know of, but how it's asking you, the audience, to think about it in a different way and it's a great kind of access tool to draw the general public in, and particularly people that may not think that they're interested in art, but ... it often draws people in”*.

102. The Commissioner appreciates that artists each have their own creative process, are informed by their own life experiences and have a variety of themes or concepts they want to express. Modern art can take a wide variety of forms which perhaps may be surprising, unexpected or not the norm. The Commissioner can understand how coming across this Work in the forest during the Festival would be a memorable event in the minds of the attendees, thought-provoking and perhaps conversation-generating. The Commissioner finds that the engagement aspect does not negate the artistic element. The Appellant explained *“Whether I'm looking at an artwork hanging on the wall, which I know is an easier thing to decipher as being a work of art, that artwork's purpose is always to engage with the viewer. So, although they're physically not entering the painting with their hand or finger, they're looking at the artwork. The artwork can evoke different feelings.”*

103. The Commissioner understands that the Work engaged with environmental and conceptual art traditions. The Appellant has asserted in response to the Respondent's argument about engagement that *“Yes, the intention I wanted was people to engage with it, but that is what every artist wants. Every artist wants the viewer to engage with their artwork and engagement is about questions. It's about questions about what is the artist doing there? Why do I feel this when I look at that? Why am I drawn back to the same art gallery to look at another painting or the same painting I've seen several times?”*

104. The Commissioner gives significant weight to the concept and intention explained by the Appellant; to the creative process and to the final product displayed at the Festival.
105. To a lesser extent, the Commissioner has considered the experience and art education of the artist, the selection process undertaken by the experienced panel for the Work to be showcased at the publicly-funded Festival, the artistic experience and professional opinions of the Appellant's two contributors, the fact that the Appellant received an artists' fee and a written artist agreement from the Arts Programme, and the positive feedback from members of the public who attended the Festival.
106. For the above reasons, the Commissioner finds that the artistic merit test has been met. On the basis that it is an "or" test, the Commissioner is satisfied the cultural or artistic merit test has been met by this Work.
107. For the reasons set out above, when considering all four limbs of the tests, the Commissioner finds the Work meets the relevant legislative criteria laid down in Section 195 of the TCA 1997 and the corresponding Guidelines.
108. In summary, the Work is a sculpture, which category of work can qualify for the Artists' Exemption in accordance with Section 195(12) of the TCA 1997. The Commissioner disagrees that the Work is a sculpture primarily serving a utilitarian purpose (being a meditative space) which is an exception under paragraph 8(vi) of the Guidelines. The Commissioner is satisfied that the Work also falls within the definition of "*original and creative*" under paragraph 4 of the Guidelines in that the concept of the Work is original and has come from the Appellant's own imagination. Finally, the Commissioner is satisfied that the Work meets the "*artistic merit*" requirements in paragraph 6 of the Guidelines in that the Work enhances to a significant degree the canon of work in the relevant area.

Determination

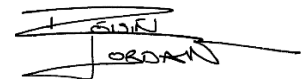
109. In the circumstances and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was incorrect in failing to determine that the Work that is the subject of this appeal qualified for Artists' Exemption under section 195 of the TCA 1997 and the Guidelines, and she determines that it does so qualify.
110. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

111. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

112. 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 'Róisín Jordan', with a horizontal line drawn through it.

Róisín Jordan
Appeal Commissioner
27 January 2026