



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

52TACD2026

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This appeal submitted by the Appellant to the Tax Appeals Commission (“the Commission”), concerns the operation of the exemption from income tax of certain earnings of writers, composers and artists (“the Artists’ Exemption”), which is provided for under section 195 of the Taxes Consolidation Act 1997 (“TCA 1997”) and in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (hereafter “the guidelines”).
2. Under section 195(6) TCA 1997, an individual may appeal to the Appeal Commissioners. The appeal is on the grounds that the work or works is or are generally recognised as having cultural or artistic merit or the particular work has cultural or artistic merit.
3. On 16 October 2025, the Appellant duly appealed to the Commission by submitting a Notice of Appeal and accompanying documentation. On 21 December 2025, in accordance with section 949Q TCA 1997, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal and on 22 December 2025, the Respondent submitted its Statement of Case. On 1 March 2026, the Appellant submitted further documentation in relation to her work. The Commissioner has considered all of the documentation submitted by the parties in this appeal.
4. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997. The Appellant confirmed in her Statement of Case that had a hearing been held in this appeal, she wanted the hearing to proceed in private. Therefore, this Determination will be redacted accordingly, prior to its publication, in accordance with section 949AO of the TCA 1997

Background

5. The Appellant is a visual artist and the Appellant’s work includes “*original hand-drawn illustrations, prints, and culturally resonant artwork rooted in Irish identity, humour, and everyday traditions*”.
6. On 9 May 2025, an application was made by the Appellant for a determination from the Respondent under section 195(2) TCA 1997. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (d), “*a painting or other like picture*”, in respect of the Appellant’s artwork (“the Work”). In support of the application, the Appellant submitted images of the Work and other supporting material.

7. By correspondence dated 9 July 2025, the Respondent determined that it would not consider the Work as coming within the categories of work eligible for a determination under section 195 TCA 1997.
8. It was determined by the Respondent that the Work primarily served a decorative function and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines.
9. In its Statement of Case, the Respondent submitted that “[i]t was determined that the appellants work was primarily of record, utilitarian, decorative or other purposes and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines”.
10. On 16 October 2025, the Appellant duly appealed to the Commission by submitting a Notice of Appeal in relation to the decision of the Respondent not to make a determination in respect of the Work.

Legislation and Guidelines

11. The relevant legislation is contained at section 195 TCA 1997, a copy of which is attached at **Appendix I** for ease of reference.
12. As noted in section 195(12) TCA 1997, the Minister for Arts, Heritage, Gaeltacht and the Islands shall draw up guidelines for determining whether a work is within the category of an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. In addition, under section 195(13)(b) TCA 1997 the Appeal Commissioners shall not determine that the work is original and creative or has, or is generally recognised as having, cultural or artistic merit, unless it complies with the guidelines under section 195(12) TCA 1997.
13. As such, in considering this appeal, the Commissioner is obliged and must ensure, in compliance with section 195(13)(b) TCA 1997, that the Work complies with the guidelines for the time being in force under section 195(12). The Work must satisfy the mandatory requirements of those guidelines, a copy of which is attached at **Appendix II** for ease of reference.

Submissions

Appellant's submissions

14. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal, Statement of Case and accompanying documentation:-

"I am appealing to you to reconsider your decision. I write to you on the basis that the work I create requires me to be original and creative as required by the legislation. My work demonstrates individual expression, innovation, and artistic technique. All of my illustrations require my artistic interpretation into each piece. My work is heavily influenced by Ireland, and I have been told that I have a distinct style which distinguishes my work. It has generally been recognised as having cultural and artistic merit. When I am approached to create a piece, my work is conceived and executed with the primary intention of artistic expression. It is designed to explore emotions through creative media. The purpose is to provoke thought and evoke feeling. If I can make the recipient laugh, smile or shed a tear then I feel I have completed something special. In the following page I have uploaded some images, please read the text document that has been uploaded with it

.....

On 9 July 2025, [the Respondent] refused my application for the Artist Exemption under Section 195 of the Taxes Consolidation Act 1997 in respect of income earned from my original illustrated works created. [The Respondent's] refusal stated that the works did not demonstrate sufficient cultural or artistic merit. My work is a visual arts practice specialising in original hand-drawn illustrations, prints, and culturally resonant artwork rooted in Irish identity, humour, and everyday traditions. I create bespoke one off custom images for people also. My work has been made publicly available through online sales and social media publication. I would argue that [the Respondent's] determination is incorrect. My works fall squarely within the statutory category of "a painting or other like picture" and meet the legislative tests of originality, creativity, and cultural or artistic merit. I would argue that just because something might seem familiar to you, it does not mean that it lacks artist merit or that it is not creative. There is an intellectual and creative process behind each piece that I create. Using the use of our Irishisms and how I draw, the work has a narrative or thematic depth that enhances national culture.

.....

My illustrated works clearly fall within the statutory category and meet the legislative tests. My drawings are my interpretation of the times we are in. I aim to bring a smile or a laugh to the recipient, it merely began as a hobby because I love to draw. [The Respondent's] own published guidance (Tax Briefing and Part 07-01-10) confirms that income earned by visual artists from the sale of their works is exempt where the work meets the statutory criteria. Accordingly, the statutory framework requires [the Respondent] to assess: Whether the work is original and creative, Whether it falls within a statutory category (here: "a painting or other like picture"), Whether it is generally recognised as having cultural or artistic merit, Whether it has been made available to the public.

.....

TAC emphasised that [the Respondent] must assess: the originality of the work, the creative input of the artist, whether the work is generally recognised as having cultural or artistic merit. The work must be evaluated on the content and nature of the work itself, not merely its commercial purpose or format. This principle is directly relevant to my work, where [the Respondent] appears to have misclassified the works as "decorative" rather than assessing their artistic and cultural qualities. It is stated that originality and creativity are factual matters requiring examination of the artist's process and skill. Cultural or artistic merit can arise from cultural commentary, humour, folklore, or engagement with national identity. [The Respondent] must consider evidence of public recognition, including reviews, and public engagement on my artwork. The work must be assessed holistically, not dismissed as "decorative" without evaluating its artistic and cultural context. These principles strongly support my illustrations, where I blend the actual illustration with Irish cultural motifs, language, humour, and folklore - all of which contribute to cultural merit."

Respondent's submissions

15. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:-

“2.1 *An application for a determination under section 195(2) TCA 1997, in respect of the appellants work was submitted to [the Respondent], on 9 May 2025.*

.....

2.3 *The application in respect of the appellants work was made under category (d), "a painting or other like picture".*

.....
2.4 *In support of the application, the appellant submitted images of her work.*

.....
2.10 *On examination of the appellant's work, under category (d), "a painting or other like picture" it was Revenues opinion that this work does not come within the categories of works eligible for a determination under section 195*

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) 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 *It was determined that the appellants work was primarily of record, utilitarian, decorative or other purposes and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines.*

2.14 *[The Respondent] issued a letter to the appellant on 9 July 2025 stating that that they were unable to make a determination in respect of her work.*

2.15 *Pursuant to section 195(6), the appellant has appealed the decision of [the Respondent] not to make a determination in respect of her work."*

Material Facts

16. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

16.1. The Appellant is a visual artist.

16.2. The Appellant's work includes "*original hand-drawn illustrations, prints, and culturally resonant artwork rooted in Irish identity, humour, and everyday traditions*".

16.3. On 9 May 2025, an application was made by the Appellant for a determination from the Respondent under section 195(2) TCA 1997.

- 16.4. Specifically, the application was made in accordance with section 195(1) TCA 1997, in relation to category (d) “*a painting or other like picture*”, in respect of the Appellant’s artwork (“the Work”).
- 16.5. In support of the application, the Appellant submitted images of the Work and other supporting material.
- 16.6. By correspondence dated 9 July 2025, the Respondent determined that it would not consider the Work as coming within the categories of work eligible for a determination under section 195 TCA 1997.
- 16.7. The Respondent determined that the Work “*was primarily of record, utilitarian, decorative or other purposes and therefore could not qualify for a determination by virtue of paragraph 8 (v) of the guidelines*”.
- 16.8. On 16 October 2025, the Appellant duly appealed to the Commission by submitting a Notice of Appeal in relation to the decision of the Respondent not to make a determination in respect of the Work.

Analysis

17. In circumstances where the Appellant is seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in *Revenue Commissioners v Doorley* [1933] IR 750 must be considered. The Commissioner has had regard to the dictum of Kennedy C. J. at page 766, wherein he stated that:

“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, except 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.”

18. More recently, in a case stated by the Appeal Commissioners to the High Court in relation to the Artists’ Exemption, Donnelly J. in *Coleman v Revenue Commissioners* [2014] IEHC 662 held that:

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

19. Section 195(12) TCA 1997 provides for the drawing up of guidelines for the Artists' Exemption scheme by the Arts Council and the then Minister for Arts Heritage and the Gaeltacht. Section 195(12) 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.
20. Section 195(13) states that where an application for a determination is made to the Respondent, that 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.
21. The current version of the guidelines is effective for all determinations made by the Respondent on or after 30 November 2013.
22. Section 195(1) TCA 1997 provides that the scheme shall apply to original and creative works which come within a number of listed categories. To secure exemption under Section 195 TCA 1997, the work must be determined by the Respondent 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.
23. It is clear from the Respondent's submissions that it considered that the Work "*was primarily of record, utilitarian, decorative or other purposes*" and, therefore, could not qualify for a determination by virtue of paragraph 8(v) of the guidelines.
24. 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) as follows:-

"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 –
.....*

(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.”

A painting or other like picture

25. Before proceeding to consider the test to be applied and paragraph 8 of the guidelines, the Commissioner must consider whether the Work falls within paragraph 1(d) of the guidelines, that the work is a “painting or other like picture”.
26. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“Perrigo”), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 at paragraphs 63 to 72 and were reaffirmed recently in the decision in *Bookfinders Ltd v The Revenue Commissioners* [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;
.....”*

27. The Commissioner considers that the words “*painting or other like picture*” should be given the meaning which an ordinary member of the public would intend them to have when using the words ordinarily and that the words “*Painting or other like picture*” are simple words, which are unambiguous. Consequently, the Commissioner is satisfied that the Work is “a painting or other like picture”, which is widely termed by the legislature, such that it cannot be said that the Work is not an “a painting or other like picture”. The Commissioner is satisfied that the Work falls within paragraph 1(d) of the guidelines.

Original and Creative

28. The Commissioner will now consider if the Work meets the tests as set out in the guidelines, namely that the Work is “original and creative” and the Work has, or is generally recognised as having, either “cultural or artistic merit”. In order to succeed in a claim for exemption, the Work must be determined to be work which is both original and creative and work which has, or is generally recognised as having, either cultural or artistic merit. Thus, the Commissioner is satisfied that the test is twofold. The Commissioner has considered the photographs of the Work submitted by the Appellant depicting amongst other things, [REDACTED]. In addition, the Commissioner has considered the Appellant’s most recent submission of the Work.
29. For the purposes of the exemption under section 195 TCA 1997, a work can only be regarded as being original and creative, if it meets the test set out in paragraph 4 of the guidelines. Paragraph 4 of the guidelines provides that for the purposes of a determination under section 195 TCA 1997, “*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.*” The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Work satisfies the test set out in paragraph 4 of the guidelines.
30. The Commissioner has considered the Work herein and the Commissioner is satisfied that the Work satisfies the test set out in paragraph 4 of the guidelines as the Work is “*a unique work of creative quality brought into existence by the exercise of its creator’s imagination.*” It is clear to the Commissioner that the Work being original hand-drawn illustrations and prints is original and creative.

Cultural or Artistic Merit

31. Were originality and creativity the only requirements that had to be met to avail of the exemption, the Commissioner would find in the Appellant’s favour. However, the legislation, which the Commissioner is bound to follow, requires that a second condition be met, namely that the works have either cultural or artistic merit. It must also be repeated that section 195(13) of the TCA 1997 requires the Commissioner to adhere to the guidelines drawn up by the Minister and the Arts Council, which elaborate on what is meant by “cultural merit” and “artistic merit”.
32. In relation to cultural or artistic merit, paragraph 5 and 6 of the guidelines are relevant. Paragraph 5 of the guidelines state that “*a work shall be regarded as having cultural merit only if by reason of its quality of its form and/or content it enhances to a significant degree*

one or more aspects of national or international culture". Paragraph 6 of the guidelines state 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."

33. The Commissioner notes that it is not accepted by the Respondent, by virtue of paragraph 8(v) of the guidelines that the Work satisfies the tests set out in paragraphs 5 and 6 of the guidelines. The Respondent submits that the Work fails the tests as outlined in paragraph 4, 5 and 6 by virtue of paragraph 8(v) of the guidelines.
34. With regard to what is to be held to have cultural merit, the guidelines prescribe that the Work must enhance "*to a significant degree*" one or more aspects of national or international culture. In the Commissioner's view, the Work submitted in accompaniment to the appeal does not suggest that it has such an enhancing effect. Following a request from the Commissioner, on 1 March 2026, the Appellant submitted examples of the Work that she submitted had cultural merit. On the evidence of the Work proffered in support of the Appellant's appeal, the Commissioner finds that the Work does not enhance "*to a significant degree*" one or more aspects of national or international culture. The Commissioner considers that whilst the most recent Work submitted has references to Irish culture, the evidence adduced by the Appellant does not suggest that the Work enhances national or international culture to a significant degree.
35. With regard to whether the Work is of artistic merit, the guidelines prescribe, in similar fashion, that the Work must only be so defined if it enhances "*to a significant degree the canon of work in the relevant category*". The Commissioner has considered the Work and is of the view that the Work does not enhance to a significant degree the canon of work. The Commissioner has considered the meaning of the word "enhance" and notes that it is defined in the Collins English Dictionary as meaning "*to improve its value, quality, or attractiveness*." In addition, the Commissioner has considered the meaning of the word, "significant" and notes that it is defined in the Collins English Dictionary as meaning "A *significant amount or effect is large enough to be important or affect a situation to a noticeable degree*". Further, the Commissioner notes that the definition of "canon of work" as contained in the Cambridge English Dictionary is "*the writings or other works that are generally agreed to be good, important, and worth studying*". In the Commissioner's view, the Appellant's Work submitted in support of this appeal does not suggest that it had such an enhancing effect. Moreover, no evidence has been submitted by the Appellant which tends to suggest that the Work is generally agreed to be good, important and worth studying.

36. The Artists' Exemption legislation and guidelines set out a series of tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, the Commissioner determines that the Work does not satisfy the requisite tests. Therefore, the Commissioner must find that the Appellant is not entitled to avail of the exemption pursuant to section 195 TCA 1997. The Commissioner therefore determines that the Appellant is not eligible for the Artists' Exemption pursuant to the provisions of section 195 of the TCA 1997, in respect of the Work the subject matter of this appeal.
37. The Commissioner wishes to state that the outcome of this appeal in no way reflects on the quality of the Work or the skills required to produce the Work. The definitions and categories specified in the guidelines would exclude many a work done by a capable and skilled person. It is no criticism of the Appellant's Work whatsoever where the Commissioner finds that the Work does not meet the necessary test to avail of the exemption. The Commissioner can see that the Work is original and creative and the product of a skilled artist.

Determination

38. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary evidence, as well as the submissions from both parties, the Commissioner has concluded that the Appellant has not succeeded in discharging the burden of proof in relation to this appeal to show that the Work comes within the categories of works eligible for a determination under section 195 TCA 1997.
39. The Commissioner determines that the decision of the Respondent to refuse to make a determination, that the Appellant is entitled to avail of the Artists' Exemption on the taxation of earnings from the Work submitted as part of this appeal, shall stand.
40. The Commissioner appreciates that this determination is likely to be disappointing to the Appellant. The Commissioner wishes only to repeat again that the reasons given in no way reflect on the quality of the Appellant's Work or the skills of craftsmanship.
41. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

Notification

42. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) 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) TCA 1997. This notification under section 949AJ 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

43. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
13 March 2026

Appendix I

The provisions of Section 195 TCA 1997, as they were as of the date of the application for exemption, provided as follows: -

(1) In this section...

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

(a) a book or other writing;

(b) a play;

(c) a musical composition;

(d) a painting or other like picture;

(e) a sculpture.

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

(i) who is —

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

(II) ordinarily resident and domiciled in one or more Member States, or in another EEA state, 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 11 is first made in respect of that work or those works or the particular work, as the case may be.*

(b) *Where –*

(i) an individual –

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

or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

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

and

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

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

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

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

as the case may be.

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

(i) after consideration of –

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

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

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

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

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

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

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

- (10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.*
- (11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.*
- (12) (a) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.*
- (b) Without prejudice to the generality of paragraph (a), a guideline under that paragraph may –*
- (i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and*
- (ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.*
- (13) (a) Where a claim for a determination under subsection (2) is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under subsection (12) for the time being in force.*

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

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

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

(14) Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.

(15) On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under subsection (12) for the time being in force.

(16) (a) The Revenue Commissioners may publish, or cause to be published, the name of an individual who is the subject of a determination under subsection (2).

(b) Publication under paragraph (a) may, as appropriate, include the title or category of the work of an individual.

Appendix II

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

Introduction

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

General

1. Section 195(1) provides that a “work” for the purposes of the Section must be both an original and creative work in one of the following categories, namely:

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

2. To secure exemption under Section 195, a work must be determined by the Revenue Commissioners to be a work which is both original and creative and a work which has, or is generally recognised as having, either cultural or artistic merit.

3. In making a determination under Section 195, the Revenue Commissioners may, as provided for in that Section, consult with such person or body of persons as may, in their opinion, be of assistance to them.

Original and Creative

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

Cultural Merit

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

Artistic Merit

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

Criteria for Non-fiction Work

7. (1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of Section 195, by reference to which the questions whether a work, being a nonfiction book or other nonfiction 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.