AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

77TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This determination concerns an appeal to the Tax Appeals Commission ("the Commission") by the Appellant against the Respondent's failures to make determinations in relation to two claims for exemption under section 195 of the Taxes Consolidation Act, 1997, as amended ("the TCA 1997").

2. The appeal proceeded by way of a remote hearing in private. The Appellant appeared without legal representation, and the Respondent was represented by one of its officers.

Background

3. Section 195 of the TCA 1997 provides for an exemption from income tax in respect of certain earnings of writers, composers and artists. The exemption is known as the artists' exemption.

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

5. On 29 August 2024, the Appellant submitted a claim to the Respondent for the artists' exemption in respect of a picture book entitled [redacted] ("the Publication"). In the application form, the Appellant identified category (a), *"a book or other writing"*, as the appropriate basis for the claim.

6. The Publication was created jointly by the Appellant and another individual, whom the Appeal Commissioner ("the Commissioner") will refer to as the Author, in line with the term used by the Appellant in her oral evidence.

7. Also on 29 August 2024, the Appellant also submitted a claim to the Respondent for the artists' exemption in respect of six visual artworks ("the Artworks"), which she had created. In the application form, the Appellant identified category (d), *"a painting or other like picture"*, as the appropriate basis for the claim.

8. By correspondence dated 27 November 2024, the Respondent notified the Appellant that it had refused her claims.

9. Pursuant to section 195(6) of the TCA 1997, the Appellant appealed to the Commission against the Respondent's failures to make determinations in relation to her claims.

10. The Appellant submitted a notice of appeal and accompanying material in support of her appeal. Each party submitted a statement of case, and the Appellant submitted an outline of arguments.

11. Hard and soft copies of the Publication, along with images of the Artworks, were submitted to the Commission.

Legislation and Guidelines

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

13. A copy of the guidelines drawn up by An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands ("the Guidelines") pursuant to section 195(12) of the TCA 1997 is contained in Appendix II.

Evidence and Submissions

Appellant's oral evidence

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

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

16. In addition, the Appellant's oral evidence included the following, incorporating relevant extracts from the transcript of the hearing:

    16.1. The Appellant created the illustrations in the Publication, and the Author provided the written text in that picture book.

    16.2. The Appellant stated that *"… I know many other illustrators who have worked on picture books as just the illustrator and have gotten the Artists' Tax Exemption for it."*

    16.3. *"… [the Publication] took nine months to work on. It was like a collaborative effort. I was over and back with the publisher, the art director, the author. We really worked on it together. A lot of the work that you can see in the book is very like -- it is mine, you know, they come to me with the writing and then I'm supposed to bring something extra to the visuals, you know, to show emotion, to show the action to young children who can't read yet, but they can read visual language."*

    16.4. *"… with picture books it is really a collaborative effort. You're meant to bring something different to it. You're meant to understand visual language, shape, line, colour design and they are readable by a child which is why it's so important that picture books exist because it gives language to children who don't quite have it yet but they do understand, you know, facial expressions. They do understand* *colour; you know, if there is a scary scene in kind of blacks and whites and red, you know, it's very different to like a bright yellow colourful thing and that expands the child's learning. So, that's I guess my argument with the book, is that illustrators are co-creators. We don't just add like just some nice visuals to sell the book or to just make it look nice. It is actually a language and pictures books would not exist without the pictures."*

16.5. *"… the pieces that I make are made with sketches, with pencil and paper, and then usually water colour or other media; pastels, pencils, et cetera. They're scanned and then I usually work digitally to like fix little things here and there. … then when those tweaks and stuff are done I usually print these as fine art prints and I usually sell them as editions of one hundred, or less sometimes … I come up with the ideas myself. I draw them myself. I think about the concepts myself and, yeah, they're exhibited in recognised galleries and, you know, art institutions."*

16.6. Following the order in which the images of the Artworks were opened during the hearing, the first depicts [redacted]. The Appellant provided the following information:

> *"So that one, it was exhibited. There's an artist called [redacted], I am not sure if I am pronouncing his second name correctly now. But he's a very well known [redacted] illustrator and writer and he died recently. So there was a show to celebrate his work [redacted] And my exploration of that was through transitional objects, which is a theory in psychology where a child has an object on which it projects itself and, you know... Like, you know kids have like a teddy or whatever that you love. So this was an exploration of that and I asked lots of people what their, you know, their toy was as a kid and made this piece then in response it."*

16.7. In respect of the second of the Artworks, which depicts [redacted], and the third of the Artworks which depicts [redacted], the Appellant stated as follows:

> *"So that was one kind created in conjunction with the one with the [redacted] and it was like an exploration of like, you know, mood of day and night, but also*

it was like this kind of I suppose -- it was for a gallery show, [redacted] *and it was, you know, these very simple scenes that people can identify with and like place themselves within it.* [redacted] *So those two were the same, they were like, you know, created together as that kind of concept."*

16.8. In respect of the fourth of the Artworks, which depicts [redacted], the Appellant provided the following information:

> *"So that was also for like the same exhibition and there was like this kind of moving towards like more, like those two other ones were together, and then there was like this one where there is* [redacted] *and how like that changes the way that we interact with the image because, you know, first, you know,* [redacted] *how that changes the way we perceive art and how we perceive the story within it.*
>
> *And yeah, there was just -- like, I did have another two or three pieces to go with that where there was just little bits of like something happening.* [redacted]
>
> *And I wanted to show like how we, you know, change from us as the viewer, our perceptions and our stories of the images change going across the gallery, you know, as you moved around. And yeah, so* [redacted] *was kind of a transition I suppose towards that."*

16.9. In respect of the fifth of the Artworks, which depicts [redacted], the Appellant stated as follows:

> "[redacted]

[redacted] But the small things can often be like more important, more interesting and have more of like an impact when we just take the time to look."

16.10. In respect of the sixth of the Artworks, which depicts [redacted], the Appellant stated as follows:

> *"The [redacted] was for another gallery show and it was like, it was about childhood and like... So, my concept kind of was like, you know, you're saying [redacted] is the title I gave it at the time. And it was a kind of how we, you know, grow up and how if you're in that like period, you're not quite an adult, you're not quite a child, you still have this love of, you know, the [redacted] kind of I guess representing the childhood, the imagination, the whimsy and the playfulness. And you know, are you in it or are you not, are you on the outside? And you know, maybe we can have both by, you know, being in both places by way of being able to transition between them and how like important that is."*

16.11. The Artworks were *"created for galleries who, you know, are funded by the Arts Council who, you know, chose me for shows to exhibit and, you know, paid me with money from the Arts Council that the Arts Council granted them for those shows."*

Appellant's submissions

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

> *"I am appealing the decision taken by [the Respondent] to reject my applications for the Artists Exemption, as allowed for under Section 125 [sic] of [the TCA 1997], in the category of 'Category D Visual Arts, Painting or Other Like Picture' and 'Category A, a book or other writing.' I have been a practicing, full-time artist for [redacted] years, since receiving my BA(Hons) from [redacted]. In this time, I have exhibited a huge number of pieces and have been awarded and shortlisted for several major awards. The past [redacted] years of work have meant I have spent countless hours developing my skill and style to where it is today and I work deligently [sic] to continue that progression.*

It is my understanding that to be granted the artists exception, the work in question must first satisfy [the Guidelines]. Following satisfaction of [the Guidelines], [the Respondent] will determine, in line with the Section 195(12) of the aforementioned Act, whether the work is 'original and creative' and 'Having either cultural or artistic merit'. It is only when this two-step test is satisfied that the Artists Exemption may be granted.

I submitted an application for the Artists Exemption in the case of 'Category D Visual Arts, Painting or Other Like Picture' and 'Category A a book or other writing' on the 29th of August 2024. With this application, I submitted my two application forms, sample works, my CV and a PDF file of [the Publication]. I received two responses from [the Respondent] on 27 November 2024 which both stated that an official had 'considered the work submitted by you and I regret that the work does not meet the required criteria set out in the legislation and [the Guidelines]'. The letters go on to describe the appeals process and do not at any point advise the rationale used to determine that the criteria were not met, or even confirm which criteria were not met.

Category D - Visual Arts, Painting or Other Like Picture

I believe my work submitted under this category satisfies the requirement under Section 1(d) of the Guidelines as an original and creative work in the category of 'painting or other like picture'. As every piece of work is created using my own imagination, my own style, techniques, and concepts, I would argue that it immediately meets the criteria in Section 4 of the Guidelines of being original and creative.

It is a well-established requirement that when interpreting legislation, the regular meaning of a word be used unless there are compelling reasons not to do so. … The Merriam Webster dictionary defines a painting as: 'a product of painting; especially: a work produced through the art of painting' and picture as 'a design or representation made by various means (such as painting, drawing, or photography)'.

The pieces submitted are original, conceptually and compositionally, and were created solely on my own. The work which I submitted via email fit the above definitions; any average person who looked at them hanging on a wall would recognise them as a painting or like picture therefore I believe it is clear that this work is an original and creative work as defined by Section 1(d).

I believe that although my work meets the above requirement, my refusal was an exclusion based on Section 8(v) of [the Guidelines] which excludes:

‘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’

This would not be applicable to the work submitted. They were not created for these purposes and were instead either commissioned or created as part of gallery shows and are stand-alone pieces of art printed as limited edition gallery quality giclée prints in editions of 100 or less.

Finally, concerning the requirement that the work, along as being original and creative, have either artistic or cultural merit, through my studio practice, I have developed an identifiable and unique style illustrated by hand using various media including watercolour, gouache, pencil, pastel and digital. As per my CV, submitted in my application, I have been exhibiting visual art since [redacted] *in recognised galleries and institutions nationwide and internationally. My work has won several awards and is part of the* [redacted] *permanent collections. As I have had my work recognised by many established art institutions for a considerable amount of time, I would argue it holds artistic merit.*

<u>Category A - A Book or Other Writing</u>

I believe my work submitted under this category satisfies the requirement under Section 1(a) of the Guidelines as an original and creative work in the category of ‘a book or other writing’. It is a requirement when interpreting legislation that the regular meaning of a word be used. The Merriam Webster dictionary defines a book as ‘a long written or printed literary composition’.

[The Publication] clearly meets the definition of a book. As a work of fiction, the imagery from the book is completely original, every character, background and composition was imagined and drawn by me, meeting the criteria of being original and creative required by Section 4 of the Guidelines.

Once again, as I was not advised of the grounds on which my claim was denied, I am presuming one possibility is that, as a picture book, this work was not regarded as a book under the legislation and [the Guidelines]. Again, if considered within the ordinary meaning of the word ‘book’, this would not be correct and an average person would identify the work as a book.

Alternatively, or possibly additionally, my refusal may have been an exclusion based on Section 8(v) of [the Guidelines] which excludes:

‘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,’

I disagree that illustrations in a children’s book serve either a utilitarian or decorative function. As a picture book, [the Publication] is an incomplete piece of literature without the imagery. It is integral to the art form and vital for promoting literacy in children from a young age and because of this illustrators are considered ‘co-authors’.

Concerning whether the work satisfies the requirement for cultural or artistic merit, the book was shortlisted for the [redacted] *These awards are indicative of works which enhance to a significant degree the canon of work. Picture books would not exist without the images, hence, I would argue is [sic] has creative, cultural and artistic merit.*

For the reasons outlined above, I believe that, on the balance of probabilities, [the Respondent] was mistaken in its determination. I disagree with the decision that the work submitted does not meet the requirements for the Artists Exemption as set out in the legislation and [the Guidelines] and believe that this decision should be reversed by the Commissioner.” (Emphasis in original)

18. The Appellant’s oral submissions were consistent with the information contained in her notice of appeal, statement of case and outline of arguments.

Respondent’s submissions

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

“…

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

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

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

2.8 *Section 195(13) [of the TCA 1997] states that where an application for a determination is made to [the Respondent], [the Respondent] shall not make a determination in respect of a work unless it complies with [the Guidelines]. This provision is also extended to the Appeal Commissioners and the High Court in the case of appeals.*

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

2.10 *[The Respondent] issued an email to the appellant on 25 September 2024 to request the creative process for the works.*

2.11 *On 26 September 2024 the [A]ppellant replied stating 'All artwork I create is made with a combination of traditional and digital media. I use watercolour, pencil, pastel and inks (and other mediums sometimes) to create layers of the work which I then scan. From there, I compile the layers digitally in Procreate on the iPad and paint digitally. These pieces are then printed as limited edition prints which I exhibit in galleries.'*

2.12 *Having considered the [A]ppellant's application under category (a), 'a book or other writing' [the Respondent] was not satisfied that [the Appellant's] work in this category came within the legislation and [the Guidelines] governing the scheme.*

2.13 *On examination of the [A]ppellant's application under category (d) 'a painting or other like picture' [the Respondent] was not satisfied that [the Appellant's] work in this category came within the legislation and [the Guidelines] for governing the scheme.*

2.14 *In accordance with section 195(2)(a)(ii) [of the TCA 1997], [the Respondent] sought an opinion from the Arts Council as to whether, in their opinion [the Appellant's] work in category (d), a painting or other like picture, came within the criteria for the scheme. The Arts Council expressed the opinion that [the Appellant's] work did not. In particular the Arts Council stated that in their opinion 'the work would be excluded from [the Respondent's] artists' exemption as, unfortunately, the work would not be regarded as having a significant artistic merit that enhances, to substantial degree the canon of work under section (d)* *a painting or other like picture. It is difficult to discern from the samples of work provided a self-directed artistic concern that would have the level of cultural merit of the work would also not satisfy the tax exemption criteria in terms of the quality of form and content as it does not enhance, to a significant degree, one or more aspects of national or international culture.'.*

2.15 Having considered the Arts Council's opinion, [the Respondent] determined that [the Appellant's] works were ineligible for a determination as they did not meet the requirements of the legislation and in particular could not be generally recognised as having cultural or artistic merit within the meaning of cultural and artistic merit contained in [the Guidelines].

2.16 [The Respondent] issued an email to the appellant on 27 November 2024 containing two letters stating that [the Respondent] was unable to make a determination under category (a) 'a book or other writing' and category (d) 'a painting or other like picture' in respect of [the Appellant's] work.

…"

20. The oral submissions made by the Respondent were consistent with the information contained in its statement of case.

21. At the hearing, the Respondent submitted that, as the Appellant did not provide the text within the Publication, the Publication was not written by her. It was stated that this was the basis on which the Appellant's claim in respect of the Publication was refused.

22. In response to a question asked by the Commissioner, the Respondent clarified that it had sought the opinion of The Arts Council only in respect of the Artworks, and not concerning the Publication.

23. The Respondent further submitted that it agreed with the Arts Council's opinion that the Artworks did not have cultural or artistic merit. This was the reason that the Appellant's claim in respect of the Artworks was refused.

24. In response to the Appellant's assertion that *"… I know many other illustrators who have worked on picture books as just the illustrator and have gotten the Artists' Tax Exemption for it."*, the Respondent stated as follows in oral submissions:

"We cannot compare other works. We cannot look at others works. Each application, when it is received, it is looked at on its own merits to see if it meets the requirements of the legislation and the Guidelines. So we cannot compare previous works. There may be differences. There may be different reasons and we are not here and we not

able to discuss other applications. We are prevented from doing that under [section 851A of the TCA 1997] which is taxpayer confidentiality, so that is just one point that I would like to address.”

Material Facts

25. Having considered the material submitted, and having heard the Appellant’s evidence and the submissions of the parties at the hearing, the Commissioner makes the following findings of material fact:

    25.1. On 29 August 2024, the Appellant submitted two claims for the artists’ exemption in respect of the Publication and the Artworks.

    25.2. By way of correspondence dated 27 November 2024, the Respondent notified the Appellant that it had refused her claims.

    25.3. The Appellant is an artist and an illustrator.

    25.4. The Publication is a children’s picture book.

    25.5. The Publication is a work of fiction.

    25.6. The Publication contains a children’s story spanning pages [redacted]. [redacted] pages contains illustrations and text.

    25.7. The Publication was created jointly by the Appellant and the Author.

    25.8. The Appellant created the illustrations in the Publication, and the Author provided its text.

    25.9. Copyright of the text of the Publication is owned by the Author, and the Appellant owns the copyright of the illustrations.

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

    25.11. The Publication is not a work of journalism.

    25.12. The Publication was shortlisted for [redacted] awards.

    25.13. The Appellant is in receipt of royalty income in respect of the Publication.

    25.14. Royalties are split evenly between the Appellant and the Author.

25.15. The Publication is unique and originated in the minds of the Appellant and the Author.

25.16. The illustrations in the Publication are unique and stemmed from the Appellant's imagination.

25.17. The Artworks are unique and originated in the mind of the Appellant.

25.18. The Artworks and illustrations in the Publication were created by the Appellant using a variety of materials, including paper, pencils, watercolour paint, and pastels, and were enhanced digitally.

25.19. The Artworks were created for, and displayed at, gallery exhibitions.

25.20. In respect of the Artworks, the Appellant derives income from the sale of the original works, as well from the sale of fine art limited-edition prints.

25.21. The fine art limited-edition prints are numbered in sequence from one to one hundred.

25.22. The Artworks bear the Appellant's signature.

25.23. The main purpose of the Artworks is not functional.

25.24. Neither the Artworks nor the Publication were created for advertising or publicity purposes.

25.25. The Artworks are not primarily of record and were not created primarily for information or decorative purposes.

25.26. Neither the Artworks nor the Publication have resulted in a substantial enhancement of one or more aspects of national or international culture.

25.27. The Artworks' quality of form or content yields a substantial enhancement of the canon of work of visual art.

25.28. The Publication's quality of form or content yields a substantial enhancement of the canon of work of children's books.

Analysis

Burden of proof

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

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

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

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

> *"97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake. …*
>
> *98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; …*
>
> *Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation. …"*

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

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

The Commissioner's jurisdiction and role in this appeal

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

32. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.

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

"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by [the TCA 1997], and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of [the TCA 1997] or must arise by necessary implication from the terms of that legislation."

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

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

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

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

"The jurisdiction of the Appeal Commissioners … under those provisions of [the TCA 1997] in force at the time of the events giving rise to these proceedings and relevant to this appeal … is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of [the TCA 1997]. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of [the TCA 1997] may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether [the Respondent is] precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether [the

Respondent has] acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."

37. During the hearing, the Appellant stated that *"… I know many other illustrators who have worked on picture books as just the illustrator and have gotten the Artists' Tax Exemption for it."*

38. Further, it is noted that the letter from [redacted] dated 6 October 2025, which was provided in support of the Appellant's claim in respect of the Publication, states, among other things, as follows:

> *"Other illustrators of books for children granted artists' exemption under Category 1a include [names of individuals and picture books deleted]. These are all author-illustrators, but in children's picturebooks, the visual element, the illustration, is equally important, if not more so, than the text."*

39. In addressing both points, it is useful to cite paragraphs 33 and 34 of the judgment of Donnelly J. in *Coleman v. The Revenue Commissioners* [2014] IEHC 662 ("*Coleman*"), which concerned a case stated from the Office of the Appeal Commissioners in relation to the artists' exemption, as follows:

> *"33. Undoubtedly [the Respondent] should apply the law in a fair, reasonable and consistent manner. That will be the result of applying the relevant statutory provisions as to tax due or exemption applicable. In my opinion, a commitment to fair, reasonable and consistent application of the law does not permit the clear provisions of a statute to be disregarded in favour of perceived consistency. Thus, the focus must always be on the implementation of the statutory code rather than a comparative analysis of cases. Otherwise, the result is endless comparison of cases in a heedless pursuit of supposed consistency and reasonableness to the exclusion of the actual implementation of the statutory code. Taxpayers' rights will be fully protected in a decision-making system which applies the law regarding the duty to pay tax or the right to avail of exemptions as set out in the statutory code.*
>
> *34. In this case, [the Respondent] and Appeal Commissioner were bound by the provisions of s. 195 of [the TCA 1997] to apply the section and the Guidelines made thereunder. To disapply the clear and ordinary meaning of the words therein in favour of something called a 'similar approach' that it was believed by the Appeal Commissioner that [the Respondent] had taken with respect to Mr. Finlay's book, is wrong in law. In this case, the comparator book was not even one which had been*

viewed as biography – that book had been viewed as fiction. It was the decision to determine that Mr. Finlay's book was fiction that the Appeal Commissioner viewed as 'a fairly free interpretation' of the Guidelines. Neither that book, nor any other book except Foot in Mouth, was before the Appeal Commissioner for determination as to qualification for the artist's exemption. His only function was to consider whether Foot in Mouth qualified under s.195 of [the TCA 1997] and the Guidelines.

40. It follows from the above that the Commissioner's role in this appeal is confined to considering whether the Respondent's failures to make determinations in respect of the Appellant's claims were correct in accordance with section 195 of the TCA 1997 and the Guidelines.

Substantive issues

41. This appeal concerns whether the Appellant is entitled to the artists' exemption in respect of the Publication and/or the Artworks.

42. At the outset, the Commissioner wishes to emphasise that in assessing whether the Publication and the Artworks fall within the parameters of the legislation and the Guidelines, none of his analysis is intended to detract from their inherent quality or the skill involved in creating them.

43. The Commissioner cites with appreciation an extract of the overview of the statutory framework governing the artists' exemption provided by Donnelly J. in *Coleman* as follows:

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

(i) a determination by the Appeal Commissioners…

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

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

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

"…

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

…

The duty of the Court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.

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

…"

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

    "On the basis of the decision in Doorley, the Appeal Commissioner was obliged to give effect to the clear and express terms of the legislation in considering the artist's exemption from income tax. The liability to income tax having been established, that exemption must be brought within the letter of [the TCA 1997] and the Guidelines made thereunder as interpreted by the established canons of construction. There was no basis in law for adopting any other approach to the interpretation of the Act and the Statutes."

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

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

    - The categorisation of the Publication and the Artworks.
    - Whether the Publication and/or the Artworks are excluded from the artists' exemption.
    - Whether the Publication and/or the Artworks are original and creative.
    - Whether the Publication and/or the Artworks meet the cultural merit criteria.
    - Whether the Publication and/or the Artworks meet the artistic merit criteria.
    - Whether the Publication was *"written, composed or executed"* by the Appellant.

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

The categorisation of the Publication and the Artworks

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

    "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."

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

51. It is clear from the line of recent authority, including the Supreme Court judgments in *The People (DPP) v. Brown* [2018] IESC 67 ("*Brown*"), *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 *("Dunnes")*, *Bookfinders Ltd. v. The Revenue Commissioners* [2020] IESC 60 ("*Bookfinders*"), *Heather Hill Management Company CLG and Anor. v. An Bord Pleanála* [2022] IESC 43 *("Heather Hill")* and the Court of Appeal judgment in *Hanrahan*, that the starting point of an interpretative exercise in an appeal of this nature is to consider the ordinary and natural meaning of the wording itself, viewed in context.

52. In considering whether the Publication comes within the meaning of "*a book or other writing*", the Commissioner notes – and has found as material findings of fact – that the Publication is a children's picture book, and that it contains a children's story spanning pages [redacted].

53. Having considered the Publication, applying the principles of statutory interpretation enunciated in *Brown*, *Dunnes*, *Bookfinders* and *Heather Hill*, the Commissioner is satisfied that it comes within the meaning of a book. The fact that it is a children's picture book does not alter the Commissioner's view as to its categorisation.

54. As regards the Artworks, the Commissioner has found as a material finding of fact that they were created by the Appellant using a variety of materials, including paper, pencils, watercolour paint, and pastels, and were enhanced digitally.

55. While the Appellant used paint in the creation of the Artworks, given the use of pencils and pastels, and the fact that the Artworks were digitally enhancement, the Commissioner does not consider the Artworks to be paintings.

56. The Commissioner must also address whether each of the Artworks are an "*other like picture*". While the expression "*other like picture*" is broad, the Commissioner does not consider it to be ambiguous.

57. Having regard to how the Artworks were created and having considered images of them, the Commissioner is satisfied that each of the Artworks come within the meaning of "*other like picture*". This aligns with the opinion given by the Arts Council.

<u>Whether the Publication and/or the Artworks are excluded from the artists' exemption</u>

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

> *"Notwithstanding anything else in these Guidelines, a work-*
>
> *(a) shall not be an original and creative work, and*
>
> *(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit*
>
> *if, in the opinion of the Revenue Commissioners following, where appropriate, consultation with the Arts Council, it is a work of any of the types or a combination of the types, specified in subparagraphs (i) to (vi) below –*
>
> *(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) …

(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

[…]"

59. The Publication is a children's picture book and is a work of fiction. It is not published primarily for, or used by, students pursuing a course of study. In addition, it is not excluded from the artists' exemption by virtue of paragraph 8(i)(II) of the Guidelines.

60. Further, it is not a work of journalism and was not created for advertising or publicity purposes.

61. Accordingly, the Publication is not excluded from the artists' exemption by virtue of paragraph 8 of the Guidelines.

62. The Commissioner has found as material findings of fact that (i) the Artworks were not created for advertising or publicity purposes, (ii) the Artworks are not primarily of record and were not created primarily for information or decorative purposes, and (iii) the main purpose of the Artworks is not functional.

63. It follows that the Artworks are not excluded from the artists' exemption pursuant to paragraph 8 of the Guidelines.

Original and creative

64. Paragraph 4 of the Guidelines states as follows:

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

65. The Commissioner has found as a material finding of fact that the illustrations in the Publication are unique and stemmed from the Appellant's imagination. He has also found that the Publication is unique and originated in the minds of the Appellant and the Author. Accordingly, the Publication is original and creative.

66. As regards the Artworks, the Commissioner has found as a material finding of fact that they are unique and originated in the mind of the Appellant. It follows that the Artworks are original and creative. This aligns with the opinion given by the Arts Council.

Cultural merit

67. In considering whether the Publication and/or the Artworks have cultural merit, the Commissioner is required do so through the prism of the Guidelines. The same approach must be applied to considering artistic merit.

68. As authority for this proposition, the Commissioner refers to paragraph 114 of the judgment of McKechnie J. in *Brown,* as follows:

"On this note, however, I would caution strongly against the use of dictionary definitions for words that have legislatively prescribed legal definitions unless the context makes it clear that the same is appropriate. Murnaghan J. must surely be correct when he said 'where a statute such as…defining its own terms and makes what has been called its own dictionary, a court should not depart from the definitions…and meanings assigned…' to the statutory definition. (Mason v. Heavy [1952] I.R. 40 at 47)."

69. Paragraph 5 of the Guidelines states as follows:

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

70. Having considered the Publication, the Commissioner is satisfied that neither national nor international culture are engaged by it.

71. The Commissioner considers that the Artworks have cultural reference. However, he is not persuaded that their relevance is sufficient to demonstrate an enhancement of national or international culture. This aligns with the opinion provided by the Arts Council.

72. It follows that neither the Publication nor the Artworks have cultural merit.

Artistic merit

73. Paragraph 6 of the Guidelines states as follows:

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

74. In determining whether the Publication has artistic merit, the Commissioner has considered the three letters of support from [redacted], which were adduced in evidence by the Appellant.

75. In addition, it is noted the Publication was shortlisted for [redacted] awards, [redacted] notable accolades.

76. The Commissioner has found as a material finding of fact that the Publication's quality of form or content yields a substantial enhancement of the canon of work of children's books. It follows that the Publication meets the artistic merit criterion.

77. In respect of the Artworks, firstly, it is acknowledged that the Arts Council's opinion stated that *"… [the Artworks] would not be regarded as having significant artistic merit that enhances, to substantial degree the canon of work under section (d) a painting or other like picture."*

78. It is appropriate to note that, in her oral evidence, the Appellant provided a more detailed account of her creative process than was contained in her application to the Respondent. That process combined personal experience, audience awareness and considered artistic choices. Further, she explained the background to each of the Artworks, which was not addressed in her claim for the artists' exemption. The Appellant also stated that the Artworks were created for, and displayed at, gallery exhibitions. All of this affected the level of information available to the Respondent and, in turn, the Arts Council when it considered whether the Artworks satisfied the criteria for the artists' exemption.

79. The Commissioner believes that it would have been advisable for the Appellant to have provided a similar level of detail to the Respondent at first instance, rather than leaving it to the appeal stage.

80. While neither the Respondent nor the Commissioner is bound to accept the opinion of the Arts Council when determining whether a work comes within the criteria for artists' exemption, the Commissioner acknowledges that the Arts Council has particular expertise in the area and that its opinion was based on a consideration of the Artworks.

81. However, although the Arts Council was in possession of the Appellant's curriculum vitae and an overview of how the Artworks were created, importantly, it did not have the benefit of the additional information adduced in oral evidence at the hearing of this appeal by the Appellant.

82. It is clear to the Commissioner that the Appellant invested a significant amount of time and thought into the creation of the Artworks. Further, the Commissioner considers the Artworks to be aesthetically pleasing. He is also satisfied that their creation required considerable artistic ability and skill.

83. The Commissioner also considers it significant that the Artworks were created for, and displayed at, gallery exhibitions.

84. In addition, the Commissioner recognises that the Artworks are multi-layered. They may be appreciated aesthetically, but may also resonate with viewers for other reasons, such as nostalgia or their association with a period of personal transition, such as the development from childhood to adolescence, or from adolescence to adulthood. This emerged from the Appellant's evidence, which the Commissioner accepts. It may not have been apparent without the benefit of that evidence.

85. Further, in the case of the first of the Artworks, a viewer may also appreciate that it celebrates the life and work of a famous artist and illustrator. The Commissioner's view in this regard is supported by the circumstance that the work was created in response to an exhibition to celebrate the life of that person, following their death. Again, this may not have been apparent without the benefit of the Appellant's evidence.

86. Taking the foregoing matters into account, and having considered the images of the Artworks in the light of the Appellant's oral evidence, the Commissioner is satisfied that the Artworks' quality of form or content yields a substantial enhancement of the canon of work of visual art. It follows that the Artworks meet the artistic merit criterion.

Whether the Publication was "written, composed or executed" by the Appellant

87. In accordance with section 195(2)(a) of the TCA 1997, for the Appellant to avail of the artists' exemption, the Publication must have been *"written, composed or executed, as the case may be"* by the Appellant *"either solely or jointly with another individual"*.

88. It is not in controversy that the Publication was a joint creation of the Appellant and of the Author, and the Commissioner has found as a material finding of fact that the Publication was created jointly by the Appellant and the Author.

89. The Respondent disputes that the Publication was *"written, composed or executed, as the case may be"* by the Appellant.

90. In oral submissions, the Respondent submitted that, as the Appellant did not provide the text within the Publication, the Publication was not written by her. It was stated that this was the basis on which the Appellant's claim in respect of the Publication was refused.

91. The Commissioner must be candid and acknowledge that the interpretation advanced by the Respondent is conceivable. However, as set out below, he does not consider it to be correct.

92. In approaching this interpretative exercise, while the Commissioner makes no criticism of the Respondent for the argument advanced, the Commissioner is also cognisant of the dictum of O'Donnell J. in paragraph 77 of *Bookfinders*, where he stated, among other things, that *"[i]t is also important to avoid the error of reading the Act backwards through the prism of the particular dispute involved in the proceedings …"*

93. In *Bookfinders*, O'Donnell J. stated, among other things, that:

"48. It is noteworthy from the outset, and even during a period associated with the strictest construction of revenue law, that the courts have recognised that the purpose of the provision, if discernible, is a helpful guide towards its interpretation, and indeed that the ordinary tools of statutory interpretation do apply to taxation statutes. …

49. Kennedy C.J. [in Doorley] also quoted with approval the judgment of Horridge J. in Newman Manufacturing Company v. Marrable [1931] 2 K.B. 297, that the judge was entitled to, and ought to, 'look at the <u>object</u> of the section' (emphasis added) when construing the provision. …"

94. In *Heather Hill,* Murray J. stated at paragraph 109, among other things, that:

"What, in fact, the modern authorities now make clear is that with or without the intervention of [section 5 of the Interpretation Act 2005], in no case can the process of ascertaining the 'legislative intent' or the 'will of the Oireachtas' be reduced to the reflexive rehearsal of the literal meaning of words, or the determination of the plain meaning of an individual section viewed in isolation from either the text of a statute as a whole or the context in which, and purpose for which, it was enacted."

95. Applying the principles of statutory interpretation enunciated in *Brown*, *Dunnes*, *Bookfinders* and *Heather Hill*, the Commissioner is required to view the words *"written, composed or executed, as the case may be"* in context and have regard to the purpose for which section 195 of the TCA 1997 was enacted.

96. It is noted that section 195 of the TCA 1997 is entitled *"[e]xemption of certain earnings of writers, composers and artists."*

97. It is clear that the objective of section 195 of the TCA 1997 and the Guidelines is to confer an entitlement to avail of the artists' exemption on individuals who have, whether solely or jointly, created a *"work"*, which is defined in section 195(1) of the TCA 1997.

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

"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."

99. It is plausible to interpret *"written, composed or executed, as the case may be"* in section 195(2)(a) of the TCA 1997 as meaning that *"a book or other writing"* must have been *"written",* and not *"composed or executed"*.

100. However, on the proper construction of the expression *"written, composed or executed, as the case may be"*, it should not be interpretated in so restrictive a manner. Rather, the use of the words "*as the case may be"* mean that regard must be had to the work that is the subject of the claim for the artists' exemption.

101. The words *"written, composed or executed"* are not defined in section 195 of the TCA 1997 or the Guidelines. Therefore, the Commissioner must consider their ordinary and natural meanings.

102. In *Brown*, McKechnie J. stated at paragraph 95 that:

"Of course, the task of ascribing ordinary meaning is not as simple as it first appears. What is meant by the 'ordinary' or 'natural' meaning of a word may differ depending on whether one consults a dictionary or the man on the street. Words may have legal meanings but also 'ordinary' meanings. The natural meaning of a word can also vary greatly depending on the context in which it appears. 'Context' in this regard may require the one interpreting the legislation to consider the immediate context of the sentence within which the word is used; the other sub-sections of the provision in question; other sections within the relevant Part of the Act; the Act as a whole; any legislative antecedents to the statute/the legislative history of the Act, including on occasion Law Reform Commission or other reports; and perhaps even the mischief which the Act sought to remedy. With each avenue of remove, the natural meaning of the word may, or may not, begin to shift. As eloquently put by Black J. in People (Attorney General) v. Kennedy [1946] I.R. 517 ('People (AG) v. Kennedy'):

'A small section of a picture, if looked at close-up, may indicate something quite clearly; but when one stands back and views the whole canvas, the close-up view of the small section is often found to have given a wholly wrong view of what it really represented.

If one could pick out a single word or phrase and, finding it perfectly clear in itself, refuse to check its apparent meaning in the light thrown upon it by the context or by other provisions, the result would be to render the principle of ejusdem generis and noscitur a sociis utterly meaningless; for this principle requires frequently that a word or phrase or even a whole provision which, standing alone, has a clear meaning must be given a quite different meaning when viewed in the light of its context.' (p. 536)"

103. In *Dunnes*, McKechnie J. stated at paragraph 63, among other things, that:

"… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that."

104. Where it is appropriate to give a word the meaning that *"the man on the street"*, as McKechnie J. put it in *Brown*, would attribute to it, the Supreme Court's judgment in *Inspector of Taxes v. Kiernan* [1981] IR 117 is authority for the proposition that "*when the word which requires to be given its natural and ordinary meaning is a simple word which has widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use.*"

105. In *Brown*, at paragraph 117, McKechnie J. acknowledged *"[t]hat is not to say that recourse to a dictionary may not sometimes be necessary."* He did so after earlier stating at paragraph 111 as follows:

"I do not therefore believe that it was necessary to import a definition of 'assault' from an external source, as was done in Dolny. ***<u>Dictionaries can undoubtedly act as aids to interpretation. As acknowledged above, a dictionary is an obvious source for the 'ordinary' meaning of a word. However, dictionaries are not authoritative repositories for the interpretation of words contained in a legislative enactment. The definition of a word may vary as between dictionaries, or editions of the same dictionary – though perhaps of limited significance in daily life, even a subtle change may have important ramifications when read into a statute. More importantly, dictionaries cannot supply the context – I use that word in its broadest sense – which is so necessary for the proper construction of an Act of the Oireachtas.</u>*** *That this is so is reflected by the judicial pronouncements in this*

jurisdiction warning against over-reliance on dictionary definitions in statutory interpretation (see, for example, the judgment of Henchy J. in Inspector of Taxes v. Kiernan [1981] I.R. 117 at p. 122 and the judgment of Keane C.J. in Sinnott v. The Minister for Education [2001] 2 I.R. 545 at p. 637). With that said, it is undoubtedly the case that the use of dictionaries in statutory interpretation is somewhat inconsistent, and one would not have to look too far to find influential judgments which have done just that (see, for example, the judgment of Ó Dálaigh C.J. in Rahill v. Brady [1971] I.R. 69 at pp. 82-83)." (Emphasis added)

106. Returning to the present case, the Commissioner has considered dictionary definitions of *"written"*, *"composed"* and *"executed"*.

107. The online Oxford English Dictionary provides the following definitions:

<u>Written</u>

"That is composed, recorded, preserved, or mentioned in writing; committed to paper or another medium; expressed in letters, words, etc. Also: that is in writing, esp. as opposed to being spoken or (less frequently) printed."

<u>Composed</u>

"Music. To invent and put into proper form."

"To put together (parts or elements) so as to make up a whole; spec. in artistic use, To arrange artistically the elements of a landscape or painting."

"To construct artistically."

<u>Executed</u>

"To carry out the design for (a product of art or skill); to produce as an artist or skilled workman; to perform (a musical composition)."

108. The online Merriam-Webster Dictionary provides the following definitions:

<u>Written</u>

"made or done in writing"

<u>Composed</u>

"to create by mental or artistic labor"

"to formulate and write (a piece of music)"

Executed

"to make or produce (something, such as a work of art) especially by carrying out a design"

109. In the present case, as explained above, the Publication is a picture book.

110. With or without recourse to the dictionary definitions above, in the context of section 195 of the TCA 1997, the Commissioner is satisfied that it is most appropriate to describe the Publication as having been *"executed"* by the Appellant.

111. Accordingly, on the Commissioner's interpretation of section 195 of the TCA 1997 and the Guidelines, it follows that the Publication was *"written, composed or executed, as the case may be"* by the Appellant.

Summary and conclusion

112. In summary, the Commissioner has determined that the Publication and the Artworks are works for the purposes of the artists' exemption. He has also found that the Publication and the Artworks are original and creative, and have artistic merit, but do not meet the criteria for determining cultural merit.

113. The Commissioner has found that the Publication was executed by the Appellant.

114. The Appellant is entitled to the artists' exemption in respect of the Publication and the Artworks.

Determination

115. Having considered the evidence adduced and the material submitted by the parties, for the reasons set out above, the Commissioner determines that the Respondent was incorrect to refuse the Appellant's claims for the artists' exemption in respect of the Publication and the Artworks. Accordingly, the Respondent's failures to make determinations are varied; the Appellant is entitled to the artists' exemption in respect of the Publication and the Artworks.

116. 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.

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

Notification

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

Appeal

119. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Conor Walsh
Appeal Commissioner
26 May 2026

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

"(1) In this section -

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

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

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

(a) a book or other writing;

(b) a play;

(c) a musical composition;

(d) a painting or other like picture;

(e) a sculpture.

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

(i) who is -

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

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

(ii) (I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may be, either solely or jointly with another individual, a work or

works generally recognised as having cultural or artistic merit, or

(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.

(b) The Revenue Commissioners shall not make a determination under this subsection unless -

(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under paragraph (a)(ii)(II)) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and

(ii) the individual complies with any request to him or her under subsection (4).

(3) (a) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, subject to paragraphs (aa) and (b), be entitled to have the profits or gains arising to him or her from the publication, production or sale, as the case may be, of a work or works in relation to which the Revenue Commissioners have made a determination under clause (I) or (II) of subsection (2) (a) (ii), or of a work of the individual in the same category as that work, and which apart from this section would be included in an assessment made on him or her under Case II of Schedule D, disregarded for the purposes of the Income Tax Acts.

(aa) The amount of the profits or gains for a year of assessment which an individual shall be entitled to have disregarded for the purposes of the Income Tax Acts by virtue of paragraph (a) shall not exceed €50,000

for the year of assessment 2015 and each subsequent year of assessment.

(b) The exemption authorised by this section shall not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under clause (I) or (II) of subsection (2)(a)(ii) in respect of which the Revenue Commissioners make a determination referred to in clause (I) or (II) of subsection (2)(a)(ii), as the case may be.

(c) The relief provided by this section may be given by repayment or otherwise.

(4) (a) Where an individual makes a claim to which subsection (2)(a)(ii)(I) relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may be specified in the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under subsection (2)(a)(ii)(I).

(b) Where an individual makes a claim to which subsection (2)(a)(ii)(II) relates, the individual shall -

(i) in the case of a book or other writing or a play or musical composition, if the Revenue Commissioners so request, furnish to them 3 copies, and

(ii) in the case of a painting or other like picture or a sculpture, if the Revenue Commissioners so request, provide, or arrange for the provision of, such facilities as the Revenue Commissioners may consider necessary for the purposes of a determination under subsection (2)(a)(ii)(II) (including any requisite permissions or consents of the person who owns or possesses the painting, picture or sculpture).

(5) The Revenue Commissioners may serve on an individual who makes a claim under subsection (3) a notice or notices in writing requiring the individual to make available within such time as may be specified in the notice all such books, accounts and documents in the individual's possession or power as may be requested, being books, accounts and documents relating to the publication,

production or sale, as the case may be, of the work in respect of the profits or gains of which exemption is claimed.

(6) (a) In this subsection, "relevant period" means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim is first made in respect of that work or those works or the particular work, as the case may be.

(b) Where -

(i) an individual -

(I) has made due claim (in this subsection referred to as a "claim") to the Revenue Commissioners for a determination under clause (I) or (II) of subsection (2) (a) (ii) in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

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

and

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

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

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

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

as the case may be.

(7) [deleted]

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

(i) after consideration of -

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

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

and

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

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

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

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

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

(b) [deleted]

(9) [deleted]

(10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.

(11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.

(12) (a) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in subsection (1) is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

(b) Without prejudice to the generality of paragraph (a), a guideline under that paragraph may -

(i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and

(ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.

(13) (a) Where a claim for a determination under subsection (2) is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under subsection (12) for the time being in force.

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

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

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

(14) Where a determination has been or is made under clause (I) or (II) of subsection (2)(a)(ii) in relation to a work or works of a person, subsection (3)(a) shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the

guidelines under subsection (12) for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.

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

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

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

Appendix II – Guidelines drawn up by An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands.

*"**Introduction***

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

General

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

   (a) a book or other writing,

   (b) a play,

   (c) a musical composition,

   (d) a painting or other like picture,

   (e) a sculpture.

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

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

Original and Creative

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

Cultural Merit

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

Artistic Merit

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

Criteria for Non-fiction Work

7. (1) This paragraph specifies criteria, in accordance with subsection (12)(b)(ii) of section 195, by reference to which the questions whether a work, being a nonfiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined.

(2) The criteria are:

(a) that the work, in the opinion of the Revenue Commissioners, following consultation with the Arts Council, is a work in one or more of the following categories:

(i) arts criticism,

(ii) arts history,

(iii) arts subject work, being a work the subject matter of which is, or is any combination of, visual arts, theatre, literature, music, dance, opera, film, circus or architecture,

(iv) artists' diaries,

(v) belles-lettres essays,

(vi) literary translation,

(vii) literary criticism,

(viii) literary history,

(ix) literary diaries,

that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(b) that the work, in the opinion of the Revenue Commissioners, is a work in one of the following categories:

(i) a biography,

(ii) an autobiography,

that incorporates the author's unique insight into the subject matter and is regarded as a pioneering work and also makes a significant contribution to the subject matter by casting new light on the person or by changing the generally accepted understanding of the person,

or

(c) that the work, in the opinion of the Revenue Commissioners following consultation with the Heritage Council,

(i) is a work related to a function or functions of the Heritage Council as described in the Heritage Act 1995, and

(ii) incorporates the author's unique insight into the subject matter and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it,

or

(d) that the work, in the opinion of the Revenue Commissioners, relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives, incorporates the author's unique insight into the subject matter, and is regarded as a pioneering work that makes a significant contribution to the subject matter by casting new

light on it or by changing the generally accepted understanding of it,

or

(e) any combination of (a), (b), (c) or (d) above.

Types of Works Excluded from the Artists Exemption Scheme.

8. Notwithstanding anything else in these Guidelines, a work-

(a) shall not be an original and creative work, and

(b) shall not have, or shall not be generally recognised as having, cultural or artistic merit

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

(i) a book or other writing published primarily for, or which is or will be used primarily by-

(I) students pursuing a course of study, or

(II) persons engaged in any trade, business, profession, vocation or branch of learning as an aid to trade or business related practice, or to professional, vocational or other practise in connection with a trade, business, profession, vocation or branch of learning,

(ii) any work of journalism, published in a newspaper, journal, magazine, or other similar medium or published on the internet or on any other similar medium,

(iii) any writing, visual or musical work, or other like work, created for advertising or publicity purposes,

(iv) any arrangement, adaptation or version of musical composition, or other like work, which is not of such musical significance as to amount to an original composition,

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

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

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

The above Guidelines were drawn up by An Comhairle Ealaíon and the Minister of Arts Heritage and the Gaeltacht, with the consent of the Minister for Finance, in accordance with section 195(12) of the Taxes Consolidation Act 1997 and are effective for all determinations made by the Revenue Commissioners on or after 30 November 2013. *”*