83TACD2026

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This appeal relates to a refusal by the Revenue Commissioners (from here on referred to as the "Respondent") of a claim for exemption from income tax pursuant to section 195 of the Taxes Consolidation Act 1997 (from here on referred to as the "TCA 1997") in accordance with the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht (from here on referred to as the "Guidelines").

2. Section 195 of the TCA 1997 is entitled "Exemption of certain earnings of writers composers and artists" (from here on referred to as the "Artists' Exemption").

Background

3. The Appellant is a [redacted] and a writer who on 23 February 2023 submitted a claim to the Respondent for an Artists' Exemption pursuant to section 195 of the TCA 1997.

4. The submitted application was in relation to original and creative work as defined by section 195(1)(a) of the TCA 1997 under the category "a book or other writing" in relation to the writing of the following:

   4.1. A scholarly and literary introduction to the book "[redacted]" by [redacted]; and

   4.2. A scholarly and literary introduction to the book "[redacted]" by [redacted].

5. "[redacted]" and "[redacted]" are books which were first published in the late 19th Century.

6. The Appellant was contracted to write new non-fiction prefaces for the books (from here on referred to as the "Works").

7. It was the Appellant's application that the Works were non-fiction writing which came within paragraph 7(2)(a) of the Guidelines.

8. On 24 February 2023, the Respondent sought clarification from the Appellant regarding the publication of the Works.

9. On 28 February 2023, the Appellant submitted an offer memo in relation to the publication of "[redacted]" and "[redacted]" to the Respondent.

10. On 1 March 2023, further clarification regarding publication of the Works was provided by the Appellant to the Respondent in the form of an email thread between her and the publishers of the Works as there was no publication contract in place at that point.

11. On 3 March 2023, the Respondent requested the Appellant to submit a copy of both books following their publication.

12. On 18 April 2024, the Appellant submitted a copy of "[redacted]" to the Respondent.

13. On 26 April 2024, the Respondent requested details from the Appellant as to her contribution to the "[redacted]" together with confirmation as to whether the book had been published.

14. On 29 April 2024, the Appellant submitted the publication contract relating to "[redacted]" to the Respondent and advised that she had written a non-fiction preface to the Works which, she stated, were part of a series which invited current writers to introduce classic books. The idea, she stated, was that the current writer would bring their creative insights to the classic text to help engage a new generation of readers.

15. In addition, the Appellant stated that in the cases of "[redacted]." and "[redacted]", she had used her knowledge of, and insight into, nineteenth-century Ireland and women's writing to open up new understandings of the texts and to cast light on the unique literary voice of the authors. She stated that her prefaces make an original case for the importance of race and empire, as well as class, in shaping the authors' vision.

16. As "[redacted]" had not at that point been published, the Respondent requested the Appellant to advise when the book was published.

17. On 7 August 2024, the Appellant submitted a copy of the book "[redacted]" to the Respondent and the Respondent requested that the Appellant notify Revenue when the book "[redacted]" was published.

18. On [redacted] 2024, the Appellant advised the Respondent that both books which contained her prefaces had been published on that date.

19. On examination of the books which contained the Works, the Respondent found that the Works were existing books written by [redacted], with a short preface by the Appellant.

20. It was Respondent's view that the Works were not original as they were existing books which were written by parties other than the Appellant.

21. In addition, it was Respondent's view that the meaning of "work" in the legislation meant that the Artists' Exemption could only be granted where an applicant had created the whole work. As the Appellant had not created the whole work, that is to say had not written the books, the Respondent formed the opinion that the Appellant was not entitled to the Artists' Exemption in relation to the Works, that is to say in relation to the new non-fiction prefaces to "[redacted]" and to "[redacted]", which the Appellant had written.

22. On 14 February 2025, the Respondent issued a decision to the Appellant indicating that it did not consider that the Appellant's works came within the criteria for non-fiction as set out in paragraph 7 of the Guidelines.

23. A remote oral hearing of the appeal took place on 15 January 2026.

24. At the oral hearing, the Appellant confirmed that she wished for this appeal to be held in private. As a result, the publication of this determination shall be made in a way that, in so far as it is possible, does not reveal the identity of any person whose affairs were dealt with on a confidential basis during the proceedings concerned in compliance with section 949AO(4) of the TCA 1997.

Legislation and Guidelines

25. The legislation relevant to this appeal is contained at section 195 of the TCA 1997 which is set out in full at **Annex I** of this determination.

26. In considering this appeal, the Commissioner is obliged, in compliance with section 195(13)(b) of the TCA 1997 to have regard to the Guidelines for the time being in force under section 195(12) of the TCA 1997. In order to qualify for an Artists' Exemption the Works must satisfy the mandatory requirements of those Guidelines which are set out in full at **Annex II** of this determination.

27. Section 195 of the TCA 1997 exempts from income tax certain earnings of writers, composers and artists that would otherwise be chargeable to tax under Case II of Schedule D. The exemption relates to types of works, including "*a book or other writing*", by such persons that are both "*original and creative*" and of "*cultural or artistic merit*".

28. Paragraph 4 of the Guidelines provides that a work shall be classed 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."*

29. Paragraph 5 of the Guidelines provides that a work shall be classed 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."*

30. Paragraph 6 of the Guidelines provides 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."*

31. Paragraph 7 of the Guidelines is entitled "*Criteria for Non-fiction Work*" and specifies the criteria by reference to which the questions whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined, following consultation with the Arts Council, as being:

(2)…

(c) 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,

…"

32. Paragraph 8 of the Guidelines provides that the following shall not be regarded as being original and creative and of cultural or artistic merit:

"…(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,"

Submissions

Appellant

33. The following is a summary of the Appellant's submissions made both in writing and orally at the hearing of this appeal.

34. The Appellant submitted the following in her Statement of Case:

"In February 2023, I applied for Artists' Exemption for two books for which I was commissioned to write new scholarly and literary introductions: [redacted]' and '[redacted]' for literary fiction publishers [redacted].

In the February 2025 determination and refusal letter[redacted], the Officer stated "I have 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. In particular, as I understand your work to be a work of non-fiction it does not come within the criteria for non-fiction work set out in paragraph 7 of the guidelines".

My work was a scholarly and literary introduction to two novels by Irish authors [redacted]. This work falls under the Revenue Guidelines 7(2)(a)(vii) for literary criticism and 7(2)(a)(viii) for literary history. My work also meets the requirement at para 7 that the work "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".

In the case of '[redacted]' and '[redacted]', I used my knowledge of and insight into nineteenth-century Ireland and women's writing to open up new understandings of the texts and cast light on the unique literary voice of *[redacted]. I made an original case for the importance of race and empire as well as class in shaping their vision.*

This unique insight and contribution to the subject matter are evidenced by the fact that I was commissioned by [redacted] to do the work and, when it was published, I was interviewed for RTÉ Arena [redacted] and was invited to discuss the books and my introductions at the West Cork Literature Festival [redacted]. I was also asked by the Irish Times to write about the literary history of the books and my new editions [redacted]. The new editions were also chosen as books of the year by the Irish Examiner [redacted]

I would also like to note that Revenue previously approved under 7(2)(a)(vii) and 7(2)(a)(viii) scholarly and literary introductions which I did for other works. The circumstances and the cases are the same so it is difficult to understand why these new scholarly and literary introductions were treated differently."

35. At the oral hearing the Appellant submitted that the Works come within the category of other non-fiction writing which is creative and original and which have, or are generally recognised as having, cultural or artistic merit pursuant to paragraph 7(2)(a)(vii) literary criticism and to paragraph 7(2)(a)(viii) literary history of the Guidelines.

36. She stated that she had been engaged and paid by the publishers to write new introductions to the books which are novels by 19th Century Irish women writers. She stated that she was engaged to bring her unique contribution and a new understanding to the books.

Respondent

37. It is the Respondent's position that a preface to a book is generally a work of non-fiction. In addition, the Respondent submitted that a preface is not a work within the meaning of section 195 of the TCA 1997.

38. The Respondent submitted that the Cambridge English Dictionary defines a "preface" as being:

"*…an introduction at the beginning of a book explaining its purpose and thanking people who helped the author.*"

39. The Respondent submitted that the Collins English Dictionary defines a "preface" as being:

"*… an introduction at the beginning of a book which explains what the book is about or why it was written.*"

40. The Respondent submitted that a preface is not a standalone work, further submitting that a book is the non-fiction writing which falls within the meaning of work for the purposes of section 195 of the TCA 1997.

Consultation with the Arts Council

41. At the oral hearing, the Commissioner enquired of the Respondent whether it had consulted with the Arts Council prior to forming an opinion on the Appellant's Works as provided for in paragraph 7(2)(a) of the Guidelines. The Respondent confirmed that no consultation with the Arts Council had been undertaken, stating that it does not always consult with the Arts Council because of the volume of applications which it receives. It was submitted that it would not be feasible for the Respondent to consult with the Arts Council in every appeal and that it usually forms its opinions based on previous opinions which it has received from the Arts Council.

42. Section 195(13) of the TCA1997 provides that:

"(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."

43. Paragraph 7(2)(a) of the Guidelines provides that when considering whether a work comes within the criteria for non-fiction work:

"(2) The criteria are:

(a) that the work, in the opinion of the Revenue Commissioners, <u>following consultation with the Arts Council</u>, 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" (emphasis added)

44. As the Respondent had not consulted with the Arts Councill prior to forming its opinion on the Works, the Commissioner consulted with the Arts Council in relation to the Works and on 24 April 2026, the Arts Council informed the Commissioner that its view was that the Works meet the eligibility test for the Artists' Exemption and that they fall into the categories contained in the Guidelines at paragraph 7(2)(a)(vii) literary criticism and paragraph 7(2)(a)(viii) literary history.

45. As such, it was the Arts Council's view that the Works meet the eligibility test for the Artists' Exemption.

Material Facts

46. The following material facts are not in dispute between the parties and the Commission makes the following findings of material fact in this appeal:

46.1. The Appellant is a [redacted] and writer who on 23 February 2023 submitted a claim to the Respondent for an Artists' Exemption pursuant to section 195 of the TCA 1997.

46.2. The submitted application was in relation to original and creative work as defined by section 195(1)(a) of the TCA 1997 under the category "a book or other writing" in relation to the writing of the following:

46.2.1. A scholarly and literary introduction to the book "[redacted]" by [redacted]; and

46.2.2. A scholarly and literary introduction to the book "[redacted]" by [redacted].

46.3. The books "[redacted]" and "[redacted]" are books which were first published in the late 19th Century.

46.4. The Appellant was contracted to write new non-fiction prefaces for the books.

46.5. On [redacted] 2024, the Appellant advised the Respondent that both books which contained her prefaces had been published on that date.

46.6. On 14 February 2025, the Respondent issued a decision to the Appellant indicating that it did not consider that the Appellant's works came within the criteria for non-fiction as set out in paragraph 7 of the Guidelines.

46.7. It is the opinion of the Arts Council that the Works meet the eligibility test for Artists' Exemption and that they fall into the categories contained in the Guidelines at paragraph 7(2)(a)(vii) literary criticism and paragraph 7(2)(a)(viii) literary history.

Whether the Work satisfies paragraph 7(2)(a) of the Guidelines:

47. The application form dated 23 February 2023 was submitted on the basis that the Works are non-fiction writing came within paragraph 7(2)(a)(vii) and 7(2)(a)(viii) of the Guidelines.

48. Section 7 of the Guidelines sets out the criteria to be applied to non-fiction work in accordance with section 195(12)(b)(ii) of the TCA 1997, by reference to which the questions of whether a work, being a non-fiction book or other non-fiction writing, is original and creative and whether it has, or is generally recognised as having, cultural or artistic merit are to be determined. The relevant criteria in relation to books as set out in section 7(2)(a) of the Guidelines 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,

…"

49. As set out above, the Commissioner consulted with the Arts Council in compliance with the Guidelines and the Arts Council informed the Commissioner that it was its opinion that the Works meet the eligibility test for Artist's Exemption and that they fall into the categories contained in the Guidelines at paragraph 7(2)(a)(vii) literary criticism and paragraph 7(2)(a)(viii) literary history.

50. Having read the Works, the Commissioner is satisfied, and finds, that they fall into the categories contained in the Guidelines at paragraph 7(2)(a)(vii) literary criticism and paragraph 7(2)(a)(viii) literary history.

51. Having so found, the Commissioner must now move to consider whether the Works incorporate the author's unique insight into the subject matter and are regarded as pioneering works that make a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.

52. Having considered the Work relating to the scholarly introduction / preface to "[redacted]" in full, and having considered the opinion of the Arts Council, the Commissioner is satisfied, and finds, that it does incorporate the author's unique insight into the subject matter and is regarded as a pioneering work which makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.

53. The preface sets out the backgrounds of [redacted]

54. The Work is presented in a manner which, the Commissioner finds, is informative and which casts new light on the authors and on "[redacted]".

55. The Commissioner has further considered the Work relating to the scholarly introduction / preface to "[redacted]" in full, and having consulted with the Arts Council, the Commissioner is satisfied, and finds, that it does incorporate the author's unique insight into the subject matter and is regarded as a pioneering work which makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.

56. The preface sets out in detail the backgrounds of [redacted]

57. The Work is presented in a manner which, the Commissioner finds, is informative and which casts new light on the authors and on "[redacted]".

58. The Commissioner has considered the Respondent's contention that a preface is not a work within the meaning of section 195 of the TCA 1997 and does not agree with this submission. Having read both prefaces, and consulted with the Arts Council, the Commissioner is satisfied that each Work is a standalone piece of writing which incorporates the author's unique insight into the subject matter and is regarded as a pioneering work which makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it.

59. As a result, the Commissioner finds that the Works fall within the provisions of section 7(2)(a) of the Guidelines and in particular within the provisions of paragraph 7(2)(a)(vii) literary criticism and paragraph 7(2)(a)(viii) literary history.

Analysis

60. 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 CJ 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.*"

61. 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.*"

62. As a result, the Commissioner must apply the provisions of section 195 of the TCA 1997 in this appeal.

63. Section 195(13)(a) of the TCA 1997 states that, where an application for a determination is made to Revenue, Revenue shall not make a determination in respect of a work unless it complies with the Guidelines. This also applies to the Commissioner as set out in section 195(13)(b)(i) of the TCA 1997.

64. The Commissioner has already found as material facts that the Works fall within the provisions of paragraph 7(2)(a)(vii) literary criticism and paragraph 7(2)(a)(viii) literary history.

65. It therefore follows that, as the Works come within the provisions of section 195 of the TCA 1997 and the provisions of section 7(2)(a) of the Guidelines, the Commissioner must, and does, find that the Appellant is entitled to exemption from tax of certain earnings of writers pursuant to section 195 of the TCA 1997 in relation to both Works.

Determination

66. For the reasons set out above, the Commissioner determines that the Appellant in this appeal has succeeded in showing that she is entitled to exemption from tax of certain earnings of writers pursuant to section 195 of the TCA 1997 in relation to both Works.

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

Notification

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

Appeal

69. 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.

Clare O’Driscoll
Appeal Commissioner
29 May 2026

Annex I

<u>Section 195 of the TCA 1997:</u>

“(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 an other 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.

(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.

(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."

Annex 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 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."