



**AN COIMISIÚN UM ACHOMHAIRC CHÁNACH**  
**TAX APPEALS COMMISSION**

Between

11TACD2026



**Appellant**

and

**The Revenue Commissioners**

**Respondent**

---

**Determination**

---

## Contents

Introduction .....	3
Background.....	3
Legislation and Guidelines .....	5
Submissions .....	5
<i>Appellant’s submissions</i> .....	5
<i>Respondent’s submissions</i> .....	7
Material Facts .....	10
Analysis .....	11
<i>The burden of proof</i> .....	11
<i>Statutory interpretation</i> .....	12
<i>Artists’ Exemption – the requirements</i> .....	14
<i>Original and creative (paragraph 4 of the Guidelines)</i> .....	15
<i>Cultural merit (paragraph 5 of the Guidelines)</i> .....	16
<i>Artistic merit (paragraph 6 of the Guidelines)</i> .....	17
<i>Utilitarian / decorative (paragraph 8(v) of the Guidelines)</i> .....	18
<i>Conclusion</i> .....	19
Determination .....	20
Notification .....	20
Appeal .....	21
Appendix I - Section 195 of the TCA 1997 .....	22
Appendix II - Guidelines .....	28

## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) in accordance with section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997) against the decision of the Artists’ Exemption Unit of the Revenue Commissioners (“the Respondent”) to refuse to make a determination that the Appellant was entitled to avail of an exemption from income tax pursuant to section 195 of the TCA 1997.
2. On 30 October 2024, the Appellant duly appealed to the Commission by submitting a Notice of Appeal. On 10 February 2025, the Appellant submitted [REDACTED] Statement of Case (“SoC”) to the Commission. On 14 April 2025, the Appellant submitted [REDACTED] Outline of Arguments (“OoA”).
3. On 7 February 2025, the Respondent submitted its SoC to the Commission. On 30 April 2025, the Commission received the Respondent’s OoA.
4. The Commissioner has considered all submissions from both parties in making this determination.
5. In accordance with the provisions of section 949U of the TCA 1997, and by agreement with the parties, this appeal is determined without a hearing.

## Background

6. The Appellant creates handmade works in picture form using [REDACTED] (“the Works”). The Appellant describes the Works as [REDACTED]. The Appellant has submitted that the Works are created using [REDACTED] [REDACTED] to create the finished [REDACTED] works. The Appellant has stated that the Works are mostly mounted and framed but that [REDACTED] also makes Works that are not framed.
7. On 7 April 2024, the Appellant filed a claim for Artists’ Exemption with the Respondent, pursuant to section 195(1)(d) of the TCA 1997, on the basis that the Works are original and creative and in the category of “*a painting or other like picture*”. The claim was accompanied by the Appellant’s curriculum vitae (“CV”) and photographs of a selection of the Works.
8. The Appellant obtained a Level 8 honours degree in [REDACTED] in [REDACTED] [REDACTED] from [REDACTED] [REDACTED] [REDACTED].

9. The Appellant's CV summarises [redacted] experience working with [redacted]. The CV states the Appellant established [redacted] own [redacted] art studio in [redacted] [redacted] in [redacted]. It goes on to list [redacted] exhibitions [redacted] held in Ireland [redacted] [redacted] at which the Appellant displayed her [redacted] works. The CV lists [redacted] retail outlets in Counties [redacted] at which the Appellants' works have been on sale, including [redacted] [redacted]. The Appellant stated in [redacted] SoC that [redacted] works are currently for sale in [redacted] retail outlets located in [redacted].
10. The Appellant [redacted] [redacted] [redacted] states that commissions are accepted.
11. Most of the photographs of the Works submitted with the claim for Artists' Exemption show mounted and framed [redacted] works depicting [redacted] [redacted]. The Works feature [redacted] [redacted]. In the [redacted] examples, the Works also include [redacted]. The photographs of the mounted and framed Works [redacted].
12. One of the photographs submitted with the claim for the Artists' Exemption is of [redacted] [redacted] [redacted] [redacted].
13. The Appellant has provided demonstrations of her [redacted] work in [redacted] [redacted], both of which were located near to her studio.
14. In its refusal of the Appellant's claim for Artists' Exemption the Respondent stated:

[...]

*The criteria used by Revenue to make a determination to grant artists exemption are contained in section 195 of the Taxes Consolidation Act 1997 and in the guidelines drawn up under that section by the Arts Council and the Minister for Culture, Heritage and the Gaeltacht.*

*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 I would*



Each piece of wall art I create is an original [REDACTED] piece. My creative process involves taking my ideas from time spent [REDACTED]

[REDACTED]

After forming the idea of what I wish to create, I will [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Most of my work is mounted on frames but I also make unframed work.

Sales of my [REDACTED] art come from –

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Also exhibitions-

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

I also sell [REDACTED] and commissions.

[...]

The Department of Education and Skills White Paper in 1995 states: Charting our Education Future encourages cultural development in schools. To this end I have given demonstrations of my work to:

[REDACTED]

[REDACTED]

*A visit from an artist creates a sense of identity. This is as true for [REDACTED] as for [REDACTED]. My [REDACTED] particularly resonate with the Irish diaspora [REDACTED]. These [REDACTED] works, when displayed back home, are often topics of discussion, creating an interest in Ireland and Irish culture. Creating an interest in Irish culture is a win-win situation for me, the purchaser and other people who will be encouraged to visit Ireland when they see my original, [REDACTED] pieces.*

*As they are hand-made no two pieces are alike. All are made in my studio [...].*

*My work has artistic merit as they are my interpretation of [REDACTED]*

[REDACTED]

[REDACTED]

21. The Appellant submitted the following arguments in [REDACTED] OoA:

*[...]*

*2. I feel that artwork created from the medium of [REDACTED] is not always recognised as an art form, as it is more often seen as functional from its association with [REDACTED].*

*3. All the work I create is hand-made at my studio [...] with the majority of orders coming from commissions and one-off pieces.*

*4. The pieces I create are inspired by [REDACTED]*

[REDACTED]

[REDACTED]

*Respondent's submissions*

22. The Respondent's SoC stated:

*"2. Outline of relevant facts*

*[...]*

*2.1. An application dated 3 April 2024, for a determination under section 195(2) TCA 1997, was submitted to Revenue in respect of the appellant's work.*

*2.2. Section 195(1) states that the scheme shall apply to original and creative works which come within a number of listed categories.*

- 2.3. *Section 195(1) states that the scheme shall apply to original and creative works [...]*
- 2.4. *The appellant made an application under category (d), “a painting or other like picture”.*
- 2.5. *In support of the application the appellant submitted images of ■■■ work and other supporting material.*
- 2.6. *Upon examination of the works submitted it was Revenues view that the works were excluded by paragraph 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 similar purposes”.*
- 2.7. *It was Revenue’s view that the works were created primarily for decorative purposes.*
- 2.8. *Furthermore, Revenue was not satisfied that the works met the definition of cultural merit or artistic merit contained in the guidelines drawn up under section 195(12) of the Taxes Consolidation Act 1997.*
- 2.9. *Paragraph 5 of the guidelines states “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”.*
- 2.10. *It was Revenues view that the appellants work did not “enhances to a significant degree one or more aspects of national or international culture”.*
- 2.11. *Paragraph 6 of the guidelines states “A work shall be regarded as having artistic merit only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category”.*
- 2.12. *It was Revenues view that the work did not enhance “to a significant degree the canon of work in the relevant category”.*

*[...]”*

23. The Respondent’s OoA stated:

*[...]*

*3. In considering this appeal, the Appeal Commissioners must, in compliance with section 195(13)(b) TCA 97 have regard to the guidelines in force under section*

195(12), and the work in question must satisfy the mandatory requirements of those guidelines.

#### **Conditions for section 195 exemption**

4. Exemption under section 195 TCA 97 applies to an individual who has written, composed or executed, either solely or jointly with another individual an original and creative work generally recognised as having, cultural or artistic merit.

5. For the purposes of the exemption a 'work' means an original and creative work which is within one of the following categories:

[...]

(d) a painting or other like picture

[...]

6. The Appellant's application for a determination from Revenue received 8 April 2024 was made under category (d) a painting or other like picture.

#### **Cultural or Artistic Merit**

7. For the purposes of the section 195 exemption, a work can only be regarded as having cultural or artistic merit, and hence as qualifying for exemption, if it meets either of the tests set out in paragraphs 5 and 6 of the guidelines.

#### **The Paragraph 5 test**

8. Paragraph 5 of the guidelines states that, for the purposes of a determination under section 195, a work shall be regarded as having cultural merit only if by reason of its quality of its form and/or content it enhances to a significant degree one or more aspects of national or international culture.

#### **The Paragraph 6 test**

9. Paragraph 6 of the guidelines states that for the purposes of a determination under section 195, 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.

10. The Respondent does not accept that the work satisfies at least one of [the] tests set out in paragraphs 5 and 6 of the guidelines.

#### **Types of Works Excluded from the Artists Exemption Scheme**

11. Paragraph 8 of the guidelines specifies types of works which shall not be original and creative, and which shall not have, or shall not be generally recognised as having cultural or artistic merit. Paragraph 8 states:

*Notwithstanding anything else in these Guidelines, a work-*

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

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

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

*[...]*

*(v) types or kinds of photographic, drawing, painting or other like works which are primarily of record, or which primarily serve a utilitarian function, or which are created primarily for advertising, publicity, information, decorative or other similar purposes,*

*[...]*

12. *It is submitted that the appellants work is primarily for decorative or other similar purposes and is excluded by paragraph 8(v) of the guidelines. It is submitted that the work cannot be considered original and creative, having or generally accepted as having cultural or artistic merit as it is excluded by paragraph 8(v).*

13. *It is the Respondent's view that the Appellant has failed to demonstrate that [REDACTED] work comes within the categories of work eligible for the artists' exemption and that the Respondent cannot extend the scheme to works which do not come within the categories expressly set out in the legislation and guidelines."*

### **Material Facts**

24. Having reviewed the submissions from both parties the Commissioner makes the following findings of material fact in this appeal:

24.1 The Appellant is a person subject to income tax.

24.2 The Appellant creates the Works using [REDACTED].

- 24.3 The Works created by the Appellant are in the category of “a *painting or other like picture*” as set out in section 195(1)(d) of the TCA 1997.
- 24.4 The Appellant obtained a Level 8 honours degree in [REDACTED] in [REDACTED] from [REDACTED].
- 24.5 The Appellant established her own art studio in [REDACTED] in [REDACTED].
- 24.6 The Works are available framed or unframed.
- 24.7 The Works that are framed are also mounted, titled and signed.
- 24.8 The Works that are not framed are not mounted and are not titled or signed on the face of the Works.
- 24.9 The Appellant has displayed the Works at a number of exhibitions [REDACTED] held at various locations in Ireland during the period [REDACTED].
- 24.10 The Works are for sale in a number of [REDACTED] outlets [REDACTED] in Ireland.
- 24.11 [REDACTED].
- 24.12 The Appellant accepts commissions.
- 24.13 The Appellant has provided demonstrations of [REDACTED] work at [REDACTED] [REDACTED] in the locality of her studio.

## **Analysis**

### *The burden of proof*

25. The appropriate starting point for the purposes of this analysis is to confirm that, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax, or a decision or determination of the Respondent, is incorrect.
26. This proposition is now well established by case law. For example, in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 (“*Menolly Homes*”), at paragraph 22, Charleton J. stated:

*“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.”*

27. The Commissioner considers it useful to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, where he stated:

*"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute [...]."*

*Statutory interpretation*

28. In this appeal the Commissioner is required to interpret the wording of the legislation and the Guidelines. In this context the Commissioner considers it appropriate to summarise the well-established principles of statutory interpretation in the context of taxation statutes.

29. The principles to be applied to statutory interpretation were set out by McDonald J. in the High Court case of *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") at paragraph 74:

*"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioners [2020] IESC 60.*

*Based on the judgment of McKechnie J. the relevant principles can be summarised as follows:*

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

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that:*

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

*[...]"*

30. The approach to statutory interpretation as set down in *Perrigo* is authoritative. The judgment provides a framework for interpreting the legislation and Guidelines in this appeal.

31. The Commissioner considers the recent case of *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 (“*Heather Hill*”) to be relevant to the statutory interpretation principles to be applied in this case.

32. In *Heather Hill*, Murray J. stated at paragraph 108:

*“It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose - it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed.”*

33. In interpreting the legislation and Guidelines in this appeal, the Commissioner is satisfied that a literal interpretative approach must be taken, and the words must be given their ordinary, plain and natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, in accordance with the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

34. As 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 is relevant here. In his judgment in that case, Kennedy C. J. stated, at page 766:

*“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.”*

35. More recently, in a case stated 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.”*

*Artists’ Exemption – the requirements*

36. As set out in the legislation and Guidelines section of this determination (see above), section 195(12) of the TCA 1997 provides for the drawing up of guidelines for the Artists’ Exemption scheme by the Arts Council and the then Minister for Arts, Heritage and the Gaeltacht. That section states that those 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.
37. The Guidelines in Appendix II were drawn up in accordance with section 195(12) of the TCA 1997 and are effective for all determinations made on or after 30 November 2013.
38. Section 195(13) of the TCA 1997 states that, when 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 Tax Appeal Commissioners in appeals taken pursuant to section 195(6) of the TCA 1997.
39. Section 195(1) of the TCA 1997 provides that the scheme shall apply to original and creative works which come within the listed categories. One of the categories of work listed under that section is that of “*a painting or other like picture*” (category (d) in the listed categories).
40. It is accepted by both parties that the Appellant’s works, as submitted with the claim for Artists’ Exemption, fall within the category “*a painting or other like picture*” as specified in section 195(1)(d) of the TCA 1997. The Commissioner is satisfied that the Works submitted for consideration fall within this category.
41. To secure exemption under section 195 of the TCA 1997, the Works must be determined to be both original and creative and must have, or be generally recognised as having, either cultural or artistic merit. It is incumbent on the Commissioner to determine if the Works of the Appellant meet the mandatory requirements, as set down in the legislation and Guidelines, of being both “*original and creative*” and of “*cultural or artistic merit*”.
42. In accordance with section 195(13)(b) of the TCA 1997 the Commissioner shall not determine that the Works are “*original and creative*” and have, or are generally recognised as having, either “*cultural or artistic merit*” unless the Works comply with the Guidelines issued under section 195(12) of the TCA 1997.

43. The relevant paragraphs of the Guidelines that must be considered are paragraphs 4, 5, 6 and 8(v) of the Guidelines. The analysis of each of those paragraphs is set out below.

44. Paragraph 4 of the Guidelines states that a work shall be classified as “*original and creative*”:

*“[...] only if it is a unique work of creative quality brought into existence by the exercise of the creator’s imagination.”*

45. Paragraphs 5 and 6 provide when a work shall be classified as having “*cultural merit*” or “*artistic merit*” respectively.

46. Paragraph 5 of the Guidelines provides that a work shall be classified 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.”*

47. Paragraph 6 of the Guidelines states that a work shall be regarded as having “*artistic merit*”:

*“[...] only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category.”*

48. Paragraph 8 of the Guidelines provides a list of the types of work that shall not be regarded as being original and creative and having, or generally recognised as having, cultural or artistic merit. The list includes the following exclusion, at subparagraph 8(v):

*“types 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”.*

49. The Commissioner wishes to stress at this point in the analysis that her determination in this appeal is not an observation or comment on the inherent quality of the Works or the Appellant’s skills and talent. The Commissioner must determine if the Works fall within the legislation and Guidelines.

*Original and creative (paragraph 4 of the Guidelines)*

50. The Commissioner has considered the Appellant’s submissions on the inspiration for ■■■ work, ■■■ creative process developed over ■■■ years of working with the materials in ■■■ studio to produce the Works, ■■■ skills and ■■■ clearly extensive knowledge of the materials. The Commissioner is satisfied that the Works presented are unique, of creative quality and brought into existence by the exercise of the Appellant’s imagination.

Therefore, the Commissioner concludes that the Works are within the definition of “*original and creative*” laid down in paragraph 4 of the Guidelines.

51. However, originality and creativity are not the only requirements that must be met to qualify for the Artists’ Exemption. The legislation requires that a second condition must be met before the Artists’ Exemption can apply. The Works must have either “*cultural or artistic merit*”.
52. Pursuant to section 195(13) of the TCA 1997 the Commissioner must adhere to the Guidelines that elaborate on the meaning of “*cultural merit*” and “*artistic merit*”.

*Cultural merit (paragraph 5 of the Guidelines)*

53. The Works must enhance “*to a significant degree*” one or more aspects of national or international culture to satisfy the “*cultural merit*” test in paragraph 5 of the Guidelines.
54. The Commissioner notes the Appellant’s submissions that the Works are inspired by [REDACTED]. The Appellant submitted that [REDACTED] work has been purchased by international visitors to Ireland and when it has been displayed in homes and buildings abroad, it has been a focal point for discussions about Ireland. The Appellant stated the demonstrations [REDACTED] has given of [REDACTED] work in [REDACTED] indicate that [REDACTED] work has cultural merit. The Commissioner notes that the Appellant did not submit testimonials on the Works to the Commission.
55. Having regard to the principles of statutory interpretation affirmed by McDonald J. in *Perrigo*, and confirmed in the more recent case of *Heather Hill*, the Commissioner finds that the words “*enhances to a significant degree*”, contained in paragraph 5 of the Guidelines, are plain and their meaning is self-evident, such that a literal interpretation of the words is sufficient.
56. The Commissioner has considered the meaning of the word “*enhance*”. The Oxford English Dictionary (“the OED”) defines the word as meaning “*to raise or increase in price, value, importance, attractiveness*”.
57. The word “*significant*” is defined in the OED as meaning “*sufficiently great or important to be worthy of attention; noteworthy; consequential, influential*”.
58. The OED definition of the word “*culture*” is “*refinement of mind, taste, and manners; artistic and intellectual development*”. The word “*merit*” is defined in the OED as meaning “*claim or title to commendation or esteem, excellence, worth*”.
59. The Commissioner has considered the submissions by the Appellant that the Works appeal to those who enjoy, and wish to be reminded of, [REDACTED] and that

they are therefore of cultural merit. In addition, the Commissioner has considered the submissions by the Appellant that [REDACTED] has demonstrated her work for the purpose of education [REDACTED] and that this supports the contention that the Works have cultural merit.

60. These submissions provide support for the popularity of the Works with the Appellant's customers, the association of the Works with [REDACTED], and the Appellant's efforts to educate and give something back [REDACTED]. However, the Commissioner is satisfied that these submissions do not of themselves support a claim that the Works, by reason of their quality of form and/or content, enhance to a significant degree one or more aspects of national or international culture. The Commissioner finds that the images of the Works submitted do not show that they have such an enhancing effect on national or international culture to the significant degree required to meet the test in paragraph 5 of the Guidelines.
61. Furthermore, the Commissioner is satisfied that the Appellant has not submitted any support for the contention that the Works that are in the form of [REDACTED] [REDACTED] satisfy the national or international "*cultural merit*" requirement. The Commissioner is satisfied that that example of the Works does not satisfy the "*cultural merit*" test under paragraph 5 of the Guidelines.
62. Therefore, the Commissioner finds that the Works, do not, by reason of their quality of form and/or content, enhance to a significant degree one or more aspects of national or international culture. Therefore, the Works do not satisfy the "*cultural merit*" test laid down in paragraph 5 of the Guidelines.

*Artistic merit (paragraph 6 of the Guidelines)*

63. The Commissioner will now consider if the "*artistic merit*" test set down in paragraph 6 of the Guidelines is satisfied in this case. As set out above, paragraph 6 of the Guidelines states that a work shall be regarded as having artistic merit "*only if its quality of form and/or content enhances to a significant degree the canon of work in the relevant category*".
64. When the Commissioner considers the Guidelines, having regard to the principles of statutory interpretation affirmed by McDonald J. in *Perrigo* and confirmed in *Heather Hill*, the Commissioner finds that the words "*enhances to a significant degree*" and "*canon of work*" contained paragraph 6 of the Guidelines are plain and the meaning is self-evident. Therefore, a literal interpretation of the words is appropriate.
65. The OED definitions of the words "*enhance*" and "*significant*" have been set out above.

66. The Commissioner notes the Cambridge Dictionary definition of the term “*canon of work*” as meaning “*the writings or other works that are generally agreed to be good, important, and worth studying*”. This is helpful in the interpretation of the term as used in paragraph 6 of the Guidelines.
67. The Appellant has submitted details of the exhibitions [REDACTED] held, [REDACTED] the [REDACTED] outlets in which [REDACTED] work is for sale, [REDACTED] the acceptance of commissions for [REDACTED] works, and the demonstrations [REDACTED] given in [REDACTED]. The Commissioner notes that the Appellant did not submit testimonials on the Works for the Commissioner to consider.
68. The Commissioner is satisfied that the Appellant’s submissions are supportive of classifying the Works as being of high quality and appealing to the members of the general public interested in purchasing original and creative works. However, the Commissioner finds that the submissions do not suggest that the Works have a significantly enhancing effect on the collection of works, in the relevant category of painting or other like picture, that are generally agreed to be good, important and worthy of study.
69. Therefore, the Commissioner finds that the Works, by reason of their quality of form and/or content, do not enhance to a significant degree the canon of work in the relevant category, that being painting or other like picture. Therefore, the Works do not satisfy the “*artistic merit*” test laid down in paragraph 6 of the Guidelines.
70. This definition of “*artistic merit*”, as contained in paragraph 6 of the Guidelines, can have the effect of excluding many a good work created by a capable and skilled person. It is no criticism whatsoever of the Appellant or [REDACTED] work to find, as the Commissioner does here, that the Works submitted as part of the Notice of Appeal do not enhance the broad canon of paintings or other like pictures to the “*significant degree*” necessary to qualify for the Artists’ Exemption.

*Utilitarian / decorative (paragraph 8(v) of the Guidelines)*

71. The Respondent submitted that the Works would not qualify for the Artists’ Exemption, even where the tests, as laid down in paragraphs 4 to 6 of the Guidelines, were met, as the Works fall under the general exclusion from the Artists’ Exemption as laid down in paragraph 8(v) of the Guidelines.
72. Paragraph 8 of the Guidelines provides a list of the types of work that “*shall*” not be regarded as being “*original and creative*” and as having, or generally recognised as

having, “*cultural or artistic merit*”. The list includes the following types of work, at paragraph 8(v):

*“types 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”*

73. The Respondent submitted that the Works primarily serve a utilitarian function and are created primarily for decorative purposes.
74. The Commissioner has already concluded that the Works do not qualify under the “*cultural merit*” or “*artistic merit*” requirements as set out in paragraphs 5 and 6 of the Guidelines. Therefore, the Commissioner is satisfied that she is not required to consider the general exclusion in paragraph 8(v) of the Guidelines. However, the Commissioner is not convinced that the Works primarily serve a utilitarian function or are created primarily for decorative purposes. The Commissioner is aware that this has no impact on the outcome of the appeal as she has already determined that the Works do not meet the “*cultural merit*” or “*artistic merit*” requirements and therefore do not fall within the Artists’ Exemption in the first place.

#### *Conclusion*

75. To be eligible for the Artists’ Exemption, as set down in the legislation, the Works must satisfy a two-stage test that they are “*original and creative*” and have “*cultural or artistic merit*”.
76. The appeal, against the decision of the Respondent to refuse to make a determination that the Works are subject to the Artists’ Exemption, is brought pursuant to the appeal provision in section 195(6)(b) of the TCA 1997. It is incumbent on the Commissioner when considering the legislation to also consider the accompanying Guidelines when making her findings.
77. For the reasons set out above, the Commissioner finds that the Works fall within the definition of “*original and creative*” under paragraph 4 of the Guidelines but that the Works do not satisfy the “*cultural merit*” or “*artistic merit*” requirements in paragraphs 5 and 6 of the Guidelines.
78. Therefore, the Commissioner determines that the Appellant is not eligible for the Artists’ Exemption pursuant to the provisions of section 195 of the TCA 1997, interpreted in conjunction with the Guidelines, in respect of the Works that are the subject matter of this appeal.

79. The Commissioner finds that she is not required to consider the general exclusion in paragraph 8(v) of the Guidelines in this case, as the “*cultural merit*” or “*artistic merit*” requirements set down in paragraphs 5 and 6 of the Guidelines have not been met.
80. The Commissioner restates that the outcome of this appeal in no way reflects on the quality of the Works or the skills required to produce them. The Commissioner’s findings are not in any way a criticism of the Works or the Appellant’s expertise. The findings are that the Works do not meet the necessary tests to avail of the Artists’ Exemption as laid down in the legislation and the Guidelines. The scope of the legislation and the Guidelines have the effect of excluding many examples of original and creative work. The Commissioner considers the Works to be attractive and striking, particularly the Works depicting [REDACTED] and she wishes the Appellant success in [REDACTED] creative endeavours.

### **Determination**

81. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that [REDACTED] is entitled to the Artists’ Exemption pursuant to section 195 of the TCA 1997. Therefore, this appeal is denied. The Respondent’s decision, to refuse to make a determination for Artists’ Exemption under section 195 of the TCA 1997, shall stand.
82. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner emphasises that this determination is based on the analysis of the legislation and the Guidelines, and their application to the facts of this case. The Appellant was right to check the relevant law was correctly applied in [REDACTED] case and was prudent to do so in all the circumstances.
83. This Appeal is determined in accordance with Part 40A of the TCA 1997 and, in particular, section 949AL and section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

84. 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**

85. 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.



Suzanne Carter  
Appeal Commissioner  
6 January 2026

## Appendix I - Section 195 of the TCA 1997

### 195. 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.

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

(i) after consideration of—

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

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

and

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

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

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

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

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

- (10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.
- (11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.
- (12) (a) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in *subsection (1)* is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.
- (b) Without prejudice to the generality of *paragraph (a)*, a guideline under that paragraph may—
- (i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and
  - (ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.
- (13) (a) Where a claim for a determination under *subsection (2)* is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under *subsection (12)* for the time being in force.
- (b) *Paragraph (a)* shall, with any necessary modifications, apply to—
- (i) a determination by the Appeal Commissioners under *subsection (8)* on an appeal to them under *subsection (6)* in relation to a claim mentioned in *paragraph (a)*, and
  - (ii) a determination by the High Court under *section 949AR*.

- (14) Where a determination has been or is made under *clause (I) or (II) of subsection (2)(a)(ii)* in relation to a work or works of a person, *subsection (3)(a)* shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under *subsection (12)* for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.
- (15) On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under *subsection (12)* for the time being in force.
- (16) (a) The Revenue Commissioners may publish, or cause to be published, the name of an individual who is the subject of a determination under *subsection (2)*.
- (b) Publication under *paragraph (a)* may, as appropriate, include the title or category of the work of an individual.

## **Appendix II - Guidelines**

### **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.**