



AC Ref: 17TACD2016

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. The case involves a claim for exemption pursuant to section 195 of the Taxes Consolidation Act as amended ('TCA 1997') commonly known as '*artists' exemption*'.
2. The Appellant's work is a non-fiction book titled '**[TITLE REDACTED]**' published in 2015. The Appellant submitted a claim for artists' exemption on **[DATE REDACTED]** 2015 on the basis that their work was an original and creative work having cultural or artistic merit, for the purposes of section 195 TCA 1997. The Appellant's claim seeking the exemption was refused by the Respondent on **[DATE REDACTED]** 2016 and the Appellant duly appealed that refusal.
3. The Appellant requested an adjudication without a hearing, which was acceded to in accordance with the provisions of s.949U TCA 1997.



Legislation

4. The relevant legislation is contained at section 195 of the Taxes Consolidation Act 1997, a copy of which is attached at **Appendix I**.

Guidelines

5. In considering this Appeal, I am obliged, in compliance with section 195(13)(b) TCA 1997 to have regard to the guidelines for the time being in force under s.195(12). The work in question must satisfy the mandatory requirements of those guidelines, a copy of which is attached at **Appendix II**.

Submissions

6. The Appellant claims an entitlement to the exemption in respect of their non-fiction work **‘[TITLE REDACTED]’**. The Appellant submits that their work satisfies the tests set out pursuant to paragraph 7 of the guidelines. To succeed in a claim for exemption, the work must meet the following tests;
 - i. The work must fall within one or more of the categories set out per paragraph 7(2)(a)(i)- (ix) or, within paragraphs 7(2)(b), 7(2)(c), 7(2)(d), or 7(2)(e) of the guidelines; and
 - ii. The work must be determined to be original and creative and to have cultural or artistic merit in accordance with paragraph 7(2) of the guidelines.
7. The Respondent submits that in refusing the exemption, there is no intention to disparage the Appellant’s work in any way but submits that the matter of entitlement to the exemption is a technical one, requiring the Appellant to demonstrate compliance with all relevant legal tests. The Respondent submits



that it is not possible to interpret section 195 TCA 1997 and the guidelines for the time being in force thereunder, so as to grant the exemption in respect of the Appellant's work.

ANALYSIS

8. The Appellant's book is an entertaining and enjoyable read. It comprises humorous commentary and observation by the author on Irish traditions, people, places, aspects of Irish social history and Irish culture. The commentary and insights comprise the author's own observations, interpretations, humour, and imagination.

Category tests

9. Paragraph 7(2)(d) of the guidelines specifies criteria in respect of which a non-fiction work may satisfy the relevant tests in accordance with subsection 12(b)(ii) of section 195 TCA 1997 and provides that the work in question *'...relates to archives which are more than 30 years old relating to Ireland or Irish people, is based largely on research from such archives....'*
10. There can be no doubt that the work relates to Ireland and to Irish people but the matter which arises for consideration is whether the work "*relates to archives...*". The word '*archive*' is commonly understood to relate to public records of an historical nature. In my view, the content of **'[TITLE REDACTED]'** could be said to relate to the social and cultural history of Ireland and thus it appears to me that the work could be said to relate to archives of this nature. However, the guidelines do not specify any particular type of archive and I do not take the view that the meaning of '*archives*' in the guidelines relates only to research of a scholarly nature in the national archive



or the national library or equivalent institution. There is no reason why research which relies on newspaper clippings, radio or television programmes or magazine articles cannot comprise research of an ‘archive’ for the purposes of paragraph 7(d) of the guidelines. The stipulation in the guidelines that the archive be “*more than 30 years old*” means the material in the archive will undoubtedly take on a historical character. The majority of factual, social and cultural references in ‘[TITLE REDACTED]’, relate to matters in excess of 30 years vintage. For the minority of matters which reference more recent facts, events or traditions (i.e. not in excess of 30 years vintage) I do not believe that their inclusion in the work adversely affects the application of paragraph 7(2)(d) from the Appellant’s point of view and in relation to these items I apply the maxim; *de minimis non curat lex*.

Original and creative and cultural or artistic test

11. Paragraph 7(2)(d) also requires that the work “*...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 ...*”

12. This legal test can be broken down as follows;

1.) That the work incorporates the author’s unique insight into the subject matter

and

2.) is regarded as a pioneering work



and

- 3.) makes a significant contribution to the subject matter
by casting new light on it

or

by changing the generally accepted understanding of it

Whether the work incorporates the author's unique insight into the subject matter

13. The subject matter of this book is the author's humorous take on various matters of Irish social and cultural history. The book's narrative, a commentary on the various Irish traditions, factual matters, people, events etc, is observed and written by the author. In my view it cannot be denied that the work incorporates the author's unique insight into the subject matter. The unique insight of the author is provided in relation to each of the many cultural references in the book. Thus I determine that the work satisfies this part of the test.

Whether the work is regarded as a pioneering work

14. The Appellant has contended that the work is to be regarded as a pioneering work in accordance with this part of the test. In my view there is a high quotient of originality present in the work, much of it humorous and cleverly observant. The stipulation in the guidelines that a work is to be regarded as 'pioneering' is an exceptionally high legal threshold however, in my view, the extremely high level of originality present in this book is satisfies this part of the legal test.



Whether the work makes a significant contribution to the subject matter by casting new light on it or by changing the generally accepted understanding of it

15. The subject matter of this book is the author's humorous take on various matters of Irish social and cultural history. There is little doubt that the work has cultural quality and merit within the meaning of the legal test set out in the guidelines. thus I determine that the work meets part 3 of the test

Conclusion

16. The artist exemption legislation and guidelines sets out a series of legal tests which must be satisfied by an Appellant in order for the exemption to be allowed. In this case I determine that '[TITLE REDACTED]' meets the requisite legal tests and thus I determine that the exemption pursuant to s.195 TCA 1997 is available to the Appellant. The appeal is thus determined in accordance with s.949AL TCA 1997.

APPEAL COMMISSIONER

October 2016



APPENDIX I

Section 195 of the Taxes Consolidation Act 1997 (Exemption of certain earnings of writers, composers and artists)

[(1) In this section—

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

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

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

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

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

[(i) who is —

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

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

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



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

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

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

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

(3)(a) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, [subject to *paragraphs (aa)* and *(b)*]³, 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 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 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.

(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.

