



04TACD2018

BETWEEN/

NAME REDACTED and NAME REDACTED

Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal 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 Appellants' co-authored work is a non-fiction book titled **[title redacted]**. The Appellants submitted a claim for artists' exemption in 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 Appellants' claim for exemption was refused by the Respondent in March 2016 and the Appellants duly appealed.

Legislation and Guidelines

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

Background/Submissions

4. To succeed in a claim for artists' exemption, the work must first 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.
5. Paragraph 7(2)(b) 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 is a work in one of the following categories:
 - (i) *a biography,*
 - (ii) *an autobiography,*
6. Paragraph 7(2)(b) also requires 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 the person or by changing the generally accepted understanding of the person, ...*'.
7. The Appellants claim an entitlement to the exemption in respect of their non-fiction work **[title redacted]** on the basis that this work comprises an autobiography in accordance with paragraph 7(2)(b) of the guidelines.
8. The Respondent contended that the Appellants' work was a cookery book and not an autobiography. The Respondent submitted that it was 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. The Respondent accepted that the work did not fall within paragraph 8 of the guidelines and was not excluded on that basis and therefore, the matters in contention between the parties related to satisfaction of the legal tests contained at section 7(2)(b) of the guidelines.
9. The Respondent submitted that in refusing the exemption, there was no intention to disparage the Appellants' work in any way and that the matter of entitlement to the exemption, being a technical one, required the Appellants to demonstrate compliance with all relevant legal tests.



Evidence

10. Mr. A, the first named Appellant, commenced his evidence by reading pages **[page numbers redacted]** of the book into evidence. This excerpt, titled **[sub-title redacted]** provided that the object of the book was to inspire readers to eat more fruit, vegetables and wholefoods, and to make meals based around these. The narrative described the kinds of food the authors ate throughout their lives: **[excerpt redacted]**. They indicated that their attitude to food during their college years was carefree but that they gradually became interested in health and fitness and then spent time in different countries where they further developed their interest in food. They subsequently applied their interest in health to business, setting up a shop which later expanded to cafes, online courses and books. It concludes; **[excerpt redacted]**.
11. The Appellants refer to their philosophy and healthy living movement as a **‘[phrase redacted]’**. Mr. A stated that the Appellants started the business to create social change and that the recipes in the book are tools the readers can live by. He stated that the Appellants hope their story will inspire others.
12. He stated that; *‘This book was really a means for us to share our message and to try and inspire people to eat healthier and be better versions of themselves. It was always, it was to try and share our story and really try to catalyse a change, a positive change because that’s what it has always been about, the business.’*
13. In answer to the question of *‘what do you say to the suggestion that this is just a cookbook?’* he stated *‘It was going to be our story and to try and inspire people to eat better. ... But... one step lead to another and it ended up being a full colour book, a food book, but right from the start I was always writing a philosophy book, that’s what I thought it was. It was a book that was about sharing our message, our story, our story of transformation to try and inspire the reader to be a better version of themselves and to be a healthier version of themselves because health, the healthcare in Ireland is such a burden on the economy and I think health is so central to all of our happiness.’* He continued *‘it’s the story of transformation and our own story and a ‘you can do it’ type message’* He stated *‘I know it’s called a cookbook because it has to fit into some category but it was never that for me and [name redacted] when we wrote it.’*



14. Under cross-examination Mr. A was asked to explain his understanding of 'a cookbook' or 'a cookery book' to which he stated: 'My own one, it's a food book that has recipes in it.' He accepted that approximately 30 pages out of a total of **[number redacted]** pages related to the Appellants' story however, he stated that his book was not a cookbook because, while there were over 100 recipes in it, 'it was a book that was written about health and happiness'. He stated that the recipes were included as the book had to have some practical tools for people to use and that the recipes were the tools within the book 'to become a better version of yourself'.
15. He argued that the high sales achieved in relation to the book was evidence that it was 'not limited to a cookbook'. When Counsel for the Respondent put it to Mr. A. that the quantum of sales was irrelevant to the character of the book, he stated that he did not have any comment to make in relation to that.
16. Counsel for the Respondent brought Mr. A. through a number of reviews of the book which the Appellants had furnished as part of their respective statements of case. The reviews described and characterised the book as a cookbook.
17. Mr. A. was asked whether he accepted that being shortlisted for the **[redacted]** cookbook of the year was positive, as this was a prestigious award. The Appellant was asked whether this was an indication that the book was considered a cookbook. He stated that it was a food book which was 'very autobiographical in nature'. He stated that 'It tells our story and it is recipes that underpin it.' He was asked by Counsel for the Respondent whether it had been shortlisted for any awards in relation to autobiographies, to which he answered that to his knowledge, it had not been.
18. The Respondent submitted that page **[redacted]** of the book acknowledged that it was a cookbook. Page **[redacted]** of the book contains the following passage; **[excerpt redacted]**.
19. As cross-examination drew to a close, Mr. A. was asked by Counsel for the Respondent, where one might find this book in a book store. Mr. A. answered that it would be on the bestsellers shelf or, he hoped, in the window. When asked whether it would be in the autobiographies section he stated that he did not know.



ANALYSIS

20. The Appellants' book is an informative and enjoyable read. It is colourful and compact and it contains over one hundred recipes as well as background information regarding how the authors became passionate advocates for healthy living and in relation to how they set up and grew the business.
21. The first matter to be determined relates to the category 7(2)(b) test, specifically, whether the Appellants' work constitutes '*an autobiography*' within the meaning of the guidelines.
22. This Commission considered the meaning of '*autobiography*' in Determination 20TACD2017 citing the Supreme Court dicta in *Inspector of Taxes v Kiernan* [1981] 1 I.R.117, applied by Donnelly J. in *Coleman v Revenue Commissioners* [2014] IEHC 662. The Supreme Court dicta provides as follows;

'Where statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily'

And

'[W]hen the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meaning, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed.'

23. The word "*autobiography*" is a simple word which has widespread and unambiguous currency. Both parties agreed that an autobiography was an account of a person's life written by that person.
24. The Appellants furnished, as part of their respective statements of case, several favourable reviews and newspaper excerpts. Many of these excerpts referred to and



characterised the book as a cookbook. An excerpt from the **[newspaper redacted]** on **[dated redacted]** 2014 quoted the first named Appellant referring to the book as a 'cookbook'. Some years later, in an extract from **[newspaper redacted]** on **[dated redacted]** 2016 the second named Appellant is quoted as referring to the book as '*a philosophy book with recipes*'.

25. Mr. A. in evidence referred to his book on several occasions as a '*food book*'. He stated that it was marketed as a cookery book but that it was not a cookery book. He accepted that approximately 30 pages out of a total of **[number redacted]** pages contained narrative which related to the Appellants' story. He accepted that the book had been shortlisted for cookbook awards.
26. This Commission in Determination 20TACD2017 regarded the measurement in a book, of autobiographical content, as a factor which may be taken into account in the determination of whether a work constitutes an autobiography but suggested that a determination on this basis alone might be unduly reductive. While the actual number of pages of autobiographical material in a book is not conclusive evidence of the character of the work, it is nonetheless an important consideration.
27. In this case, the narrative in question is approximately 30 pages out of a total of **[number redacted]** pages. The book comprises over 100 recipes and in my view, this content is character-forming of the work. The book also contains many stylish and colourful photographs of the food produced by these recipes. The autobiographical content of this work is minimal in comparison to the recipes (and related photographs) which form the greater part of the content of this work by far. The recipes, food photography and styling of the book typify a cookbook and indeed the Appellants accept that the book was marketed as such.
28. I do not believe it is unusual for cookery book authors to include narrative in relation to their own brand of food philosophy and how this may have impacted their recipes and in my view, the narrative in this book which relates to the clean-eating, healthy-living philosophy of the authors, provides the reader with an understanding of the recipes created by the Appellants and their emphasis on well-being. However, it falls short of characterising the book as an autobiography. In my view the character and essence of this work is that of a cookery book and not of an autobiography.



29. I determine that **[title redacted]** does not satisfy the requisite legal tests contained in the guidelines, in particular paragraph 7(2)(b), because it does not constitute an autobiography. As a result, it is not necessary to consider whether the Appellants' work satisfies the second part of the paragraph 7(2)(b) test namely, whether 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 the person or by changing the generally accepted understanding of the person, ...*'.

Conclusion

30. The artist exemption legislation and guidelines sets out a series of technical legal tests which must be satisfied by an Appellant in order to avail of the exemption. In this appeal, I determine that **[title redacted]** is not an autobiography and does not satisfy the requisite legal tests, in particular paragraph 7(2)(b) of the guidelines and I determine that the Appellants are not entitled to avail of the exemption pursuant to s.195 TCA 1997. This appeal is determined in accordance with s.949AL TCA 1997.

APPEAL COMMISSIONER

April 2018

The parties to this appeal have not requested the Appeal Commissioner to state and sign a case for the opinion of the High Court

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]²

(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.]⁵

(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]⁶ on the grounds that –

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

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

as the case may be.

[...]

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

(i) after consideration of –

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

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

and

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

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

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

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



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

[...]

[...]

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

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

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

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

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

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

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

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



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

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

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

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

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

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

APPENDIX II

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

Introduction

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



General

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

(a) a book or other writing,

(b) a play,

(c) a musical composition,

(d) a painting or other like picture,

(e) a sculpture.

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

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

Original and Creative

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

Cultural Merit



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

Artistic Merit

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

Criteria for Non-fiction Work

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

