

## Artists' Tax Exemption Scheme (IMRO Website article)

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As a result of the changes in budget 2011, the amount of artists' income which is exempt from Irish income tax has been capped at €40,000.

Income earned by artists, writers, composers and sculptors from the sale of their works is exempt from tax in Ireland in certain circumstances. Section 195, Taxes Consolidation Act, 1997 empowers Revenue to make a determination that certain artistic works are original and creative works generally recognised as having cultural or artistic merit. Accordingly, earnings derived from such works are exempt from income tax from the year in which the claim is made.

Guidelines have been drawn up by the Arts Council and the Minister for Arts, Heritage, Gaeltacht and the Islands, with the consent of the Minister for Finance, for determining for the purposes of Section 195 whether a work is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit. Revenue may, having regard to the Guidelines, consult with a person or body of persons which may be of assistance to them in reaching decisions in relation to Artists Exemption. Revenue can make determinations in respect of artistic works in the following categories:

- a book or other writing; · a play; · a musical composition; · a painting or other like picture and
- a sculpture.

Claimants for Artists Exemption must be resident, or ordinarily resident and domiciled, in the State and not resident elsewhere. However, Revenue is prepared to give advance opinions regarding the exemption to claimants resident abroad. If these claimants receive a favourable advance opinion, they are given a formal determination in respect of Artists Exemption on taking up residence in the State.

Artists, writers, composers and sculptors seeking Artists Exemption should submit a claim form to Revenue together with samples of their work and any supporting documentation in the form of testimonials etc. which they consider appropriate. Such claims should also be accompanied by evidence that their work has been published, produced or sold. The following samples and supporting documents are required for each category:

- a book or other writing - 1 published copy of the book
- a play - a copy of the play together with a production contract
- a musical composition - CDs or cassettes
- a painting or other like picture - 8/10 photographs or slides, evidence of sale (invoices) and CV if available
- a sculpture - as for painting above.

## **Payments to artists which are exempt from tax**

The following payments are exempt from tax from when they are made to an artist whose has received an Artists Exemption:

- Arts Council bursaries
- Cnuas payments made under the Aosdana Scheme
- Payments from the sale of works that are considered eligible under the Artists Exemption scheme
- Advance royalties

Where an artist receives advance royalties that are attributable to the subsequent publication of a book or other piece of writing, he or she must lodge a claim with the Revenue Commissioners in the tax year in which the royalties are paid if the royalties are to be exempt from tax. The artist must provide confirmation from the publisher that the book will be published with his or her claim. A draft copy of the work must also be submitted.

Where a claim is received in the tax year in which the advance is received but a determination has not been granted, any tax liability arising on the advance must be paid. If a determination is subsequently granted, the Inspector of Taxes will review the artist's liability and make any appropriate refund if tax has been overpaid. Advance royalties that were paid before the year of claim are not exempt from tax.

## **Restrictions**

From January 1, 2011 there will be a restriction on the use of reliefs by high income taxpayers. This will include those who qualify for Artist Exemption but will only apply where income is more than €40,000. In that case the amount of relief will be limited to 50% of income.

## **Cultural or artistic merit**

A work has cultural merit if: Its contemplation enhances the quality of individual or social life as a result of its intellectual, spiritual or aesthetic form and content. A work has artistic merit when: Its combined form and content enhances or intensifies the aesthetic apprehension of those who experience or contemplate it.

## **"Original and creative"**

For the purpose of a determination under Section 195 of the Taxes Consolidation Act, 1997, the term "original and creative" encompasses any unique work that is brought into existence for the first time as an independent entity by the use of its creator's imagination. A non-fiction book or other piece of writing will be considered original and creative only if:

· It is an example of one of the following categories of literature (and any combination thereof) coming fully within the terms of the reference of the Arts Council encompassing the subjects of fiction writing, drama, music, film, dance, mime or visual arts and any related commentaries by bona fide artists:

- Arts criticism
- Arts subject works
- Autobiography
- Biography
- Literary translation
- Literary history
- Arts history
- Arts diaries
- Belles-lettres essays
- Cultural dictionaries
- Literary criticism
- Literary diaries

**And** · The essence of the work is the presentation of the author's own ideas or insights in relation to the subject matter and these ideas or insights are so significant that the work would be regarded as a pioneering work casting new light on its subject matter or changing the generally accepted understanding of the subject matter.

**Or** · The publication comes fully within the terms of reference of the Heritage Council, including work that, in its entirety, is a work of archaeology or a publication associated with items or areas of significant heritage value

**Or** · The work is a publication that comes fully within the terms of reference of the National Archives Advisory Council and is a work that relates to archives concerning Ireland that are more than 30-years-old and are based largely on research from such archives.

### **Works that are not considered to be "original and creative"**

The following types of work will not be regarded as "original and creative":

- A book or other piece of writing that is published primarily for or that is or will be used primarily by students pursuing a course of study or people engaged in any trade, profession, vocation or branch of learning as an aid to professional or other practice in connection with the trade, profession, vocation or branch of learning.
- An article or series of articles published in a newspaper, magazine, book or elsewhere - except a book that consists of a series of articles by the same author connected by a common theme and that is therefore capable of existing independently in its own right.
- Types or kinds of plays that are written for advertising purposes and do not exist independently in their own right by reason of quality or duration.
- Types or kinds of musical compositions that are written for advertising purposes and do not exist independently in their own right by reason of quality or duration.
- Adaptations, arrangements, and versions of musical compositions by a person other than a bona fide composer who is also actively engaged in musical composition.
- Types or kinds of photographs or drawings (other than a set or sets of photographs or drawings that are collectively created for an artistic purpose) that are mainly of record, that serve a utilitarian function or that would not exist independently in their own right by reason of quality or by reference to their potential for inclusion as part of an art exhibition.
- Types or kinds of objects that are primarily functional in nature, objects produced by processes other than by hand or objects produced by hand by people other than those actively engaged as bona fide artists in the field of visual arts.

As can be seen in order to identify whether an artist qualifies for Artist exemption or not can be a complex matter; furthermore quantifying the tax relief has also become more complex as a result of new measure is being introduced with effect from 1 January 2007 which will limit the use of tax breaks by those with high incomes.

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## **Artists Exemption Information and Guidelines**

As published by the Revenue Commissioners on their official website –

<http://www.revenue.ie/en/tax/it/reliefs/artists-exemption.html>

Section 195 Taxes Consolidation Act 1997 empowers the Revenue Commissioners to make a determination that certain artistic works are original and creative works generally recognised as having cultural or artistic merit.

The first €40,000 per annum of profits or gains earned by writers, composers, visual artists and sculptors from the sale of their work is exempt from income tax in Ireland in certain circumstances.

The €40,000 limit was introduced in the tax year 2011.

Guidelines have been drawn up by the Arts Council and Minister for Arts Sport and Tourism, with the consent of the Minister for Finance, for determining for the purposes of Section 195 whether a work is an original and creative work and whether it has, or is generally recognised as having cultural or artistic merit. The Revenue Commissioners may consult with a person or body of persons, such as The Arts Council, which may be of assistance to them in reaching decisions in relation to Artists Exemption.

The scheme provides that the Revenue Commissioners can make determinations in respect of artistic works in the following categories only:

1. a book or other writing
2. a play
3. a musical composition
4. a painting or other like picture
5. a sculpture

Claimants for Artists Exemption must be resident or ordinarily resident and domiciled, in the State and not resident elsewhere. The Revenue Commissioners are prepared to give advance opinions regarding a work of prospective claimant's resident abroad. In the event that a favourable advance opinion is given, the prospective claimant will be advised to make a formal application for a determination on taking up residence in the State and meeting the necessary residence requirements.

### **How to Obtain a Determination**

Writers, composers, visual artists and sculptors seeking Artists Exemption should submit a claim form to the Revenue Commissioners together with samples of their work and any supporting documentation in the form of testimonials etc which they consider appropriate. Such claims should be also accompanied by evidence that their work has been published, produced or sold.

Any income earned from a work before the tax year in which the claim is made will not be exempt.

Claims for Artists Exemption should be made on pdfClaim form Artist 2 (PDF, 273KB). A determination granted on the basis of this claim form will cover the particular work or works submitted with the claim as well as all future qualifying works in the same category, provided they fall within the guidelines.

Depending on the category in which artists exemption is being claimed the following items should be submitted in support of a claim

1. a book or other writing - 3 published copies of the book
2. a play - a copy of the script along with a signed production contract
3. a musical composition - CDs or cassettes on which claimant must be accredited
4. a painting or other like picture - 8-10 good quality photographs of work together with evidence of sale i.e invoices and a brief CV of artistic career to date
5. a sculpture - as at (d) above.

#### **Advance opinion for Non- Residents**

Revenue will give an advance opinion to individuals resident abroad. In the event that the individual becomes resident in the State and is not resident elsewhere, a formal determination will then be made

#### **Advance Royalties**

Where a taxpayer receives advance royalties, which are attributed to the subsequent publication of a book or other writing, a claim must be made with the Revenue in the tax year in which the royalties are paid if the royalties are to be exempt. Confirmation from the publisher that the book will be published must accompany the claim.

Where a claim is received in the tax year in which the advance is received, but where a determination has not been granted, any tax liability arising on the advance must be paid. If a determination as to exemption is subsequently granted, the Inspector of Taxes will review the taxpayer's liability and make any appropriate refund if tax has been overpaid.

Advance royalties paid in the year before a claim is made are not exempt. The normal accounting rules concerning the recognition of income will apply.

#### **Grants/Awards/Prizes**

These are generally taxable as income. Whether they qualify for the exemption is determined by whether they are related to a category of work of the artist that comes within the artists exemption scheme or related to work of the artist that is outside the scope of the scheme, subject to a combined annual cap of €40,000 from the tax year 2011.

\* Arts Council Bursaries when paid directly to the individual by the Arts Council

\* Cnuas payments made under the Aosdana Scheme.

\* Payments from the sale of qualifying works abroad which fall within the Guidelines

\* Residencies when paid directly to the individual by the Arts Council for the purposes of producing a qualifying work. (Residencies which relate to teaching art or similar type practice do not qualify for exemption.

### **Right of Appeal**

A claimant has a right of appeal if the Revenue Commissioners do not make a determination in relation to the claim within six months of the claim being made. The appeal must be made by notice in writing to the Revenue Commissioners and it must be made within 30 days after the end of the six month period.

The normal provisions of appeal in relation to the hearing/rehearing of appeals and the stating of cases for the High Court apply

### **Income Levy and Universal Social Charge**

Artists Exemption provides only for an exemption from income tax. Artists exempt income for the years 2009 and 2010 is subject to the Income Levy at the appropriate annual rates. From the tax year 2011 the artists exempt income is subject to the Universal Social Charge at the appropriate annual rates.

### **PRSI ,VAT and the High Earners Restriction**

In certain circumstances artists exempt income may be subject to PRSI, VAT and the Higher Earners Restriction.

### **Freedom of Information**

In the event of an individual receiving a favourable determination the individuals name and the type/title of their work will be published on the Revenue website in accordance with the Freedom of Information Acts

Determinations made since 1st April 2002 are published on the revenue website under: Artists Exemption - Individuals who received a favourable determination in the period since 1 April 2002 - Section 195 TCA, 1997

Determinations made in the period 21st April 1998 to 31st December 2001 are at: pdfArtists Exemption - Individuals who received a favourable determination during the period 21 April, 1998 to 31 December, 2001 - Section 195 TCA, 1997 (PDF, 440KB)

### **Forms**

There are two forms as outlined below:

\* pdfClaim form Artist 2 (PDF, 273KB)

\* pdfApplication form Artist 3: advance opinion for non-resident (PDF, 266KB)

### **Claim Forms and Information:**

Office of the Revenue Commissioners, Income and Capital Taxes Division,(Artists Exemption Unit),  
1st Floor, New Stamping Building, Dublin Castle, Dublin 2,Ireland.

Tel: + 353 1 6475000 Ext.: 48011, 48684 or 48224

Fax: +353 1 6799287

e-mail: [direct-taxes-admin@revenue.ie](mailto:direct-taxes-admin@revenue.ie)

### **Guidelines**

1. Guidelines were drawn up in 1994 to determine whether works falling to be considered under Section 195, Taxes Consolidation Act, 1997 are original and creative works and whether they have, or are generally recognised as having, cultural or artistic merit.

2. Section 195, Taxes Consolidation Act, 1997 provides that a work for the purpose of the Section is an original and creative work in one of the following categories:

1. a book or other writing;
2. a play;
3. a musical composition;
4. a painting or other picture;
5. a sculpture.

Revenue may determine such a work to have, or to be generally recognised as having, cultural or artistic merit.

3. In broad terms, therefore, in order to secure exemption under Section 195, a work has to be both original and creative and to have either cultural merit or artistic merit.

4. In order to be granted a determination under Section 195, it is not necessary for a work to have both cultural and artistic merit - the presence of either quality is sufficient.

5. In applying these guidelines, Revenue may, as provided for in Section 195, consult with such person or body of persons as may, in their opinion provide authoritative assistance to them in establishing whether a work is a qualifying work for the purposes of Section 195

6. A work has cultural merit if its contemplation enhances the quality of individual or social life by virtue of that work's intellectual, spiritual or aesthetic form and content.

7. A work has artistic merit when its combined form and content enhances or intensifies the aesthetic apprehension of those who experience or contemplate it.

8. For the purpose of a determination under Section 195, Taxes Consolidation Act, 1997 the term "original and creative" encompasses any unique work which is brought into existence for the first time as an independent entity by the exercise of its creator's imagination.

9. A non-fiction work in category (a), a book or other writing, will be considered original and creative only if,

1. It comes within one of the categories cited in Appendix A, and

2. The essence of the work is the presentation of the author's own ideas or insights in relation to the subject matter, and the ideas or insights are of such significance that the work would be regarded as a pioneering work casting new light on its subject matter or changing the generally accepted understanding of the subject matter.

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