

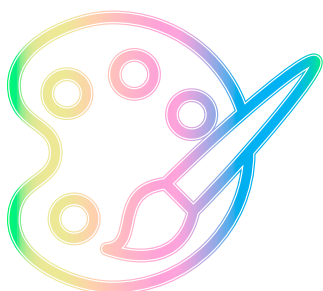
SAVING HERITAGE ASSETS FOR THE NATION, WHILST SAVING TAX – THE TAXATION OF HERITAGE ASSETS



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The Arts Council recently published its 'Cultural Gifts Scheme & Acceptance in Lieu Annual Report' for 2021/22 that details fifty varied and remarkable objects of cultural significance, worth £57m, that have been 'saved for the nation' for the public to enjoy. They included the Judith Kerr archive and a letter from Jane Austen, both of which were the subject of the acceptance in lieu ("AIL") scheme.

AIL enables taxpayers – usually executors or trustees – to give certain types of assets to qualifying public institutions (e.g. museums and art galleries) in payment of inheritance tax ("IHT"). In principle, AIL means that everyone wins: taxpayers can discharge their IHT liability without needing to sell assets, the Government secures valuable and culturally significant assets for the nation, and the public benefits through being able to access those items.



AIL is available where individuals own what are known as a 'national heritage assets'. As the Arts Council's 2021/22 report illustrates, national heritage assets are not limited to Old Masters or great houses. They can include land, buildings, a book or manuscript, or scientific object (or a collection), or anything else considered pre-eminent for its national, scientific, historic or artistic interest.

An asset is considered 'pre-eminent' if:

1. It has an 'especially' close association with our history and national life;
2. It is of especial artistic or art-historical interest;
3. It is of especial importance for the study of a particular form of art, learning or history; or
4. It has an especially close association with a particular historical setting.

To encourage taxpayers to take advantage of AIL (instead of selling assets and paying IHT with the proceeds) the Government gives taxpayers a financial inducement, called a 'douceur', which is 25% of the tax payable (or 10% for land).

The way in which the scheme operates is best demonstrated with an example. Say, executors hold a 'pre-eminent' painting worth £1m. In that case, £400k of IHT (at 40%) is due on it. If the executors had chosen to sell the painting on the open market and use the proceeds to pay the IHT, they would have been left with £600k. However, under AIL, the executors secure an extra tax credit of £100k, meaning that they receive a total credit of £700k to set against the IHT on the rest of estate. Ultimately, the beneficiaries will therefore get an extra £100k.



National heritage assets must be offered for AIL within two years of the relevant taxable event (typically a death). A suitable asset must be identified first, the value of the asset is then determined, and then an application is made to the Arts Council's

AIL panel who decide if the asset is pre-eminent and if they agree the value the taxpayer has given for it.

Following the panel's recommendation, the final decision is made by the Secretary of State for Digital, Culture, Media and Sport. If accepted, the asset is allocated to a public institution.

AIL is not the only relief available for national heritage assets:

- **Private treaty sale:** This is like an AIL, except the asset is sold to a public institution that then pays the taxpayer an amount calculated on the same basis. The price is negotiated between the taxpayer and institution. Using the example above, the executors would receive £700k of cash. This route is useful when the tax credit from an AIL would exceed the total IHT, because you do not get 'change' from an AIL. A private treaty sale ensures that any excess remains with the taxpayer as cash proceeds.
- **Conditional exemption:** Owners can defer IHT on national heritage assets indefinitely, provided they undertake with HMRC to keep the assets in the UK, preserve them, and allow 'reasonable public access'. Often grand homes are open to the public because there has been a taxable event in the family's past; rather than paying IHT then, items would have been put on public display.

What is 'reasonable public access' must be agreed with HMRC and will depend on the type of asset. It could involve lending an object to a museum or gallery or, if an asset remains in situ (or is not moveable) in a large building that can accommodate many visitors, anything up to 156 days' access might be deemed appropriate.

The exemption is 'conditional' because a breach of the undertakings (usually a sale) results in withdrawal of the exemption and the deferred IHT falling due. If assets pass on death, or as a gift, new owners can renew the undertakings to avoid loss of the exemption.

- **Cultural gifts scheme:** Introduced in 2013 to encourage taxpayers to give national heritage assets to public institutions during their lifetimes. A proportion of the value of the asset donated to the nation is given as a tax credit, e.g. if you were to give away a £100k asset, £30k could be deducted from your income tax or capital gains tax bill.

What next?

As different art forms develop it may be that new types of asset qualify as national heritage assets. Following the surge of investment in digital art and non-fungible tokens (which saw the digital artist Beeple sell a non-fungible token of his work for a record-breaking \$69m in 2021), discussion could even turn to whether such works might qualify.

In recent years a spotlight has also been shone on the connection between national heritage assets and their links with slavery, or objects originating from previous British colonies. This has already permeated into charity law through the new Charities Act 2022 and could begin to influence the availability of tax reliefs for national heritage assets.

As such, any individuals or trustees holding such assets would be wise to investigate the history of the assets they hold, paying attention to links with slavery or previous British colonies. Any potential issues could then be flagged and considered before a taxable event arises.

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