



## ICAEW TAX REPRESENTATION

### GIFTS OF PRE-EMINENT OBJECTS AND WORKS OF ART TO THE NATION

Comments submitted in September 2011 by ICAEW Tax Faculty in response to the joint consultation document *Gifts of pre-eminent objects and works of art to the nation* published in June 2011 by HM Treasury, HMRC and Department for Culture, Media and Sport

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# GIFTS OF PRE-EMINENT OBJECTS AND WORKS OF ART

## INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document *Gifts of pre-eminent objects and works of art to the nation* published jointly by HM Treasury, HMRC and Department for Culture, Media and Sport on 29 June 2011 at [http://www.hm-treasury.gov.uk/d/consult\\_gifts\\_of\\_art.pdf](http://www.hm-treasury.gov.uk/d/consult_gifts_of_art.pdf).
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. On 6 July 2011 we attended a meeting with HMRC in which we were able to put forward some key comments and concerns and discuss aspects of the discussion document.
4. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

## WHO WE ARE

5. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
6. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
7. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

## KEY POINT SUMMARY

8. Key points:
  - We welcome the scheme as part of the Government's measures to encourage charitable giving across the whole of society and at all life stages.
  - We have a number of concerns which may undermine the scheme's attractiveness to both the donors and the recipients of the objects.
  - We consider that an annual tax reduction cap, whether on the item donated or on the donor, could lead to less valuable objects being donated.
  - We are concerned that a tax reduction of 25% is not sufficient when a prospective donor could obtain greater relief under Gift Aid by selling an item and donating the net proceeds, after capital gains tax (CGT), to a charitable body. We suggest that a tax reduction of 36% would make the scheme more attractive.
  - We suggest the Government should consider a form of Gift Aid relief for chattels which are 'gifted to the nation'.

- We agree that the scheme should be open to as many potential donors as is possible so support the idea that it should be open to corporate bodies and trusts as well as to individuals.
- We consider that the requirement that inheritance tax (IHT) or estate duty (ED) on an object, currently deferred under a conditional exemption, would become payable when the object is gifted is a major flaw in the proposals and will undermine the scheme's attractiveness.
- We also consider that this requirement is perverse given the arrangements currently in place for 'private treaty sales' and the Acceptance in Lieu (AIL) scheme.
- We suggest that consideration be given to waiving the IHT/ED where conditional exemption was previously granted.
- We suggest that non-domiciles gifting an item currently held outside the UK should not be charged to tax on its remittance to the UK.
- We consider that the aims of the scheme will be best met by the expert panel considering all offers, whether under this scheme or AIL, at one time. This will enable the selection of the most pre-eminent objects.
- We suggest that the tax reduction available could, if not utilised fully in the year it is granted, be carried forward to later years.

## MAJOR POINTS

9. We welcome this initiative as part of the wider package of measures to encourage a culture of philanthropy across society. We also welcome the underlying aim of the proposals, namely to keep important objects and works of art in the UK and available to the public.
10. We do, however, have a number of concerns around some aspects of the scheme as currently outlined. These features may undermine its attractiveness both to donors and to prospective recipients of the objects being donated.
11. We are concerned that if the proposals in paras 2.34-35 are enacted, where there is an annual tax reduction cap on each item donated of £1 million and a cap of £2 million on each individual donor, that donors may not consider making larger gifts worthwhile. A less valuable object suggests that the item may not be so pre-eminent and thus less attractive to the nation.
12. Rather than donating under the proposed scheme, donors who are higher rate or additional rate taxpayers may recognise that it is tax advantageous to sell assets and make a Gift Aid donation of the net proceeds after CGT to their chosen charity in order for them to acquire suitable objects.
13. This alternative approach is attractive because, aside from the tax advantage, the donor has greater control over where their gift goes (as they may choose the charity to benefit; under the proposed scheme we understand that assets are to be gifted and allocated centrally although the donor may indicate a preference for the ultimate destination of the object).
14. The graph at Appendix 2 suggests that, from a tax perspective, the only potential donors who would opt to donate under the 25% credit proposal, rather than selling the asset and making a gift of the net proceeds, are those who pay tax at the basic rate, and those higher rate taxpayers whose unrealised gains in the asset(s) represent more than around 90% of the market value.
15. It can be seen from the graph that the maximum proportion of the gift that would be funded by a donor paying capital gains tax at 28% under a sale of the asset and gift of the proceeds is 78% (i.e. the donor has no CGT base cost). At the other end of the spectrum, the minimum proportion of the gift that would be funded by the donor would be 50% (i.e. the donor pays no CGT and obtains 50% tax relief on the donation).

16. Compared with this range, the proposal under which the donor funds 75% of the gift regardless of their marginal tax rate is relatively unattractive.
17. We appreciate that the Government's expectation is that tax relief will not be the main factor in deciding whether to make a gift under the scheme. If, however, there already is an alternative route that gives a similar outcome, at marginally less cost in most circumstances, then we suggest that consideration should be given to options to make the current proposal more appealing.
18. Our initial recommendation, based on the calculations at Appendix 2, would be to consider increasing the credit from 25% to 36%, such that the donor funds 64% of the gift, midway between the maximum of 78% and the minimum of 50% under the sale and Gift Aid alternative.
19. An alternative solution would be for the government to enact a form of Gift Aid relief for chattels which would be available solely for gifts of chattels to the nation. We accept that such a scheme is likely to be more expensive than the proposed scheme, not only in administration costs but also in the additional tax relief paid under Gift Aid (and revenue lost through falling CGT payments). It would also be difficult to limit the quantity and value of gifts made that qualify for tax relief.
20. A major concern for us is the suggestion, at para 2.5, that a gift of a pre-eminent object will trigger the payment of IHT previously deferred under a conditional exemption. This paragraph only makes reference to IHT, however if it is also intended to refer to an Estate Duty charge that has been deferred then the proposals are very unattractive. Estate Duty will be charged on the current value of the object at the marginal rate prevailing at the date of death, which in some circumstances will be in excess of 90%. It is also not clear in these circumstances whether the proposed relief is related to the value of the object or the net value after IHT/ED.
21. If there is no relief for the deferred IHT or ED the capital tax liability may outweigh the tax relief offered under the scheme. If works of art/objects are being given to the nation for the public benefit there will be an expectation that there should be no charge to tax. Where ED applies the exemption will date from the 1970s and in normal circumstances, ie assuming that the conditions for deferral continue to be met, it would be unlikely that the Exchequer will ever receive the money, as the ED is capable of indefinite deferment (as is the IHT).
22. We ask that consideration be given to waiving the IHT/ED that would become payable on the gift to ensure that such pre-eminent objects come into public ownership.
23. We would also point out that there was no public access requirement for chattels conditionally exempted before 6 April 1976, although one may have been given. This is therefore an opportunity for many of these objects/works of art to be available to the public for the first time.
24. In our view it is perverse for this scheme to exist alongside that for 'private treaty sales' which enables an individual to sell an object to a public collection and receive an exemption for the CGT and/or IHT which would be payable (s 231 IHTA 1984). In addition to receiving the net price after the calculation of the potential tax liability the seller also receives a 'douceur', typically 25% of the tax exempted.
25. A similar 'douceur' arrangement exists under the AIL scheme, whereby 25% of the tax that would have been payable is remitted to the estate.
26. We are also concerned about the position of non-domiciles who wish to gift an object that is currently outside the UK. In this situation the importation and subsequent gift of an asset will, if the individual is on the remittance basis of taxation, result in a UK tax liability. Non-domiciles have long been extremely generous benefactors and a tax credit of 25% may not be generous

enough given that the marginal rate of income tax is 50%. We suggest that consideration be given to removing the remittance charge where there is a 'gift to the nation'.

27. We note that there is to be a limit on the total amount of tax reductions available between the new scheme and the existing AIL scheme combined and Table 2.A at para 2.30 assumes that the £20 million limit will be split equally between the two schemes, although we note at para 2.28 that this split is still to be decided. We do not consider that the new scheme should be on a first come, first served basis nor do we think it appropriate that the annual limit should be split equally. The priority should be to acquire for the nation the most pre-eminent objects, whether this is by gift or in settlement of an IHT liability. The best way to achieve this is by the expert panel considering all offers made in a year at a set point after the tax year and deciding at that point what offers to accept and which to reject.
28. In support of this suggestion we have compared the value of the objects obtained under a 25% tax reduction in Table 2.A and the value of objects accepted under the AIL scheme, shown at Appendix B. The proposed scheme offers the potential for more valuable objects to pass into public ownership at the same cost to the Exchequer and while value will not always indicate a more pre-eminent object, in many cases it will do so.
29. We also suggest that if the annual limit for the schemes is not reached in any tax year that there be provision to carry forward any unused amounts, so that in later years a particularly valuable object might be obtained.
30. We see no problem, as is suggested at para 2.17, in donors being unable to finalise their tax affairs until after the end of the tax year, particularly if it was made possible for the tax reduction to be utilised in the year of the offer being made, or carried forward to later years, by way of an election by the donor.

## **RESPONSES TO SPECIFIC QUESTIONS**

**Q1: Should the new scheme accept gifts only from individual donors? If so, why? Or should the new scheme be open to other donors including corporate bodies? Why?**

31. We agree with the view that it is preferable to open up the new scheme to as many potential donors as possible. There are a large number of objects owned by trusts and corporate bodies and by extending the scheme to them it will provide an incentive to gift objects to the nation, as well as increasing the pool available.

**Q2: How many donors do you think might be interested in the new scheme?**

32. We have serious concerns on the limited number of donors that will be interested in the scheme as currently proposed for a variety of reasons. We refer you to paras 11, 12, 20 and 26 above.

**Q3: Do you agree that pre-eminent objects should be defined for the new scheme in the same way as for the existing IHT AIL scheme? If you don't agree, what criteria or guideline would you add to, or exclude from, the list, and why?**

33. We agree that the definition of pre-eminent objects should be as for the current AIL scheme.

**Q4: What kind of objects might persons be interested in donating under this new scheme?**

34. We envisage that the full range of objects as listed in the definition noted above would be donated, although see paras 11 and 27 above in connection with the effect that imposing monetary limits might have on the pre-eminence of the objects.

**Q5: If you think the new scheme should not be operated on a first come, first served basis, please explain why. If not on a first come, first served basis, how do you think the expert panel should prioritise the offers of gifts of pre-eminent objects if the value of gifts is over the annual limit?**

35. We favour the alternative approach set out in para 2.16 for the reasons given at paras 27 and 28 above.

**Q6: Which institutions should the objects be loaned to? Should this differ from the institutions that can currently be allocated objects under the existing IHT AIL scheme, and if so, why?**

36. We are content for the same provisions as currently apply for the AIL scheme to apply for this scheme.

**Q7: Do you agree the expert panel should follow the AIL process when it asks for applications from interested institutions for the allocation of an object? If not, what processes should be used?**

37. We agree that the expert panel should follow the AIL process.

**Q8: What other conditions should be attached to the lending of objects? What level of public access should there be? How should public access be ensured?**

38. We are happy for the same level of public access as is required under the AIL scheme.

**Q9: What rate of an object's value do you think would be sufficient to encourage donors to give objects to the nation, and why?**

39. As noted above, see para 12 we are concerned that it might be more tax advantageous for an individual to sell the asset and then make a cash gift to an institution under the Gift Aid regime. This could result in pre-eminent objects leaving the UK.

40. In our view the rate should be sufficient to encourage a gift to be made under the new scheme. Appendix 2 suggests that this should be 36%.

**Q10: If people other than individuals are eligible to make a donation under the new scheme, for example corporate bodies, should a different rate of reduction be used? If so what should the rate or rates be, and why?**

41. The rates should be adjusted to have the same net effect for the donor.

**Q11: Should the tax reduction available on each individual object be capped? If so, what should the cap be, and why?**

42. We do not consider that there should be a cap on the tax reduction available for the reasons given at paras 11 and 27 above.

**Q12: Should a cap be placed on the amount of tax reduction available per donor? If so, what amount?**

43. See our reply to Q11.

**Q13: What difference do you think it would make if there was no cap on the overall relief available under the new scheme?**

44. We consider that if there was no cap on the overall relief available that not only would more objects be gifted but that such objects would be more likely to be judged pre-eminent.

**Q14: Are there any other ways of accommodating gifts of very high value?**

45. In a situation where an object was of very high value then some form of the 'hybrid' offer adopted under the current AIL scheme might be appropriate.

46. We would also suggest that if in a fiscal year the monies available to the scheme were unused that they be carried forward to the next fiscal year. Increasing the fund available in subsequent years might enable it to accommodate gifts of very high value and a pre-eminence greater than is possible with the cap.

**Q15: Impact on individuals and households - the Government would welcome information from advisers or their representative groups about how likely they are to promote this measure and what they expect the take-up and the value of the objects donated might be.**

47. We would expect our members to advise clients of the availability of the scheme as part of the general advice given. If there were to be some relief, or a waiver, of conditionally deferred IHT or ED then we would expect the take-up to increase, together with the value of the objects donated.

**Q16: Impact on business and the third sector – the Government would welcome information from advisers or their representative groups on the impact of this measure on charities, museums and other institutions.**

48. We have no information to offer in this regard.

**E** [paula.clemett@icaew.com](mailto:paula.clemett@icaew.com)

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### THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <http://www.icaew.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguide-4-99-towards-a-better-tax-system.ashx> ).



