

Briefing Note

Cultural Gifts Scheme

The Finance Act 2012 introduced a tax incentive to promote gifts of heritage to the nation or for public benefit. The Cultural Gifts Scheme opened for applications in March 2013 and runs, alongside the existing Acceptance in Lieu (AIL) Scheme which covers gifts in lieu of Inheritance Tax.

The Scheme

The Cultural Gifts Scheme provides a way of settling tax by barter rather than by payment in monetary terms. It is designed to encourage lifetime donation by individuals with a liability to UK Income Tax or Capital Gains Tax, or by a company with a liability to UK Corporation Tax. The essential purpose of the Cultural Gifts Scheme is to permit individuals and companies to offer to donate property to the nation in order to obtain a tax reduction.

How do you apply?

Applications to have a gift considered under the Cultural Gifts Scheme are made directly to the Acceptance in Lieu Panel (the Panel) and not to HM Revenue & Customs (HMRC). The Panel consists of members with backgrounds in the arts and is supported by a range of specialist advisers. Where the Panel is satisfied that the requirements of the scheme have been met and it wishes to accept a donation, it will make a recommendation to the relevant Minister (which, in the case of Scottish items, will be the Scottish Ministers). Once an offer has been accepted, HMRC will be advised of the donation and will apply the relevant reduction to the offeror's tax bill. There is a pre-printed form available for the making of offers to the Panel.

Any late payment interest or penalties which arise during the negotiation period will be treated as though they had never arisen, assuming that the gift is accepted. However, the negotiation period does not stop interest accruing and, if the application is unsuccessful, the liability with accrued interest will need to be paid. It is therefore advisable to make an offer well in advance of the payment due date where possible.

What can be offered?

The scheme applies to pictures, prints, books, manuscripts, works of art, scientific objects, objects kept in and associated with significant buildings, or any other object, where the item, or the collection as a whole, is pre-eminent for its national, scientific, historic or artistic interest.

The property offered for donation must be pre-eminent, as determined by the Panel. The legislation does not define pre-eminence but the Panel uses four criteria when assessing offers:-

1. Does the object have an especially close association with our history and national life?
2. Is the object of especial artistic or art-historical interest?
3. Is the object of especial importance for the study of some particular form of art, learning or history?
4. Does the object have an especially close association with a particular historical setting?

It is not necessary for the item offered to meet all four criteria, and the Panel will also take into account any significant association that the object or collection has with a particular place within any part of the UK. As well as pre-eminence, the Panel will also consider the condition of the item and whether the valuation is fair. Where the Panel disagrees with the valuation they will enter in to negotiations with the offeror and they may argue that the value should be increased as well as decreased.

The Cultural Gifts Scheme is open to objects only and it is also acceptable for living artists to offer their own work (although care should be taken as donation of a professional artist's own work can trigger an automatic charge to tax which will need to be discussed with HMRC). An offeror can make their donation conditional upon the item going to an institution of their choice, or remaining in situ provided that the institution in question is an eligible one in terms of the Panel's rules. The Panel does have regard to these conditions but, to improve chances of success, unconditional offers or those expressing only preferences are advised, unless the property has strong connections with its intended home.

Sometimes an offeror may have more than one item which could satisfy their tax liability. Ideally, there would be sufficient time before payment is due to consult with the Panel as to what it would prefer to accept. If time is short it is possible to offer what is known as a 'shopping basket' from which the Panel can pick items, giving consideration both to the size of the liability and the quality of the items.

How is the item valued?

The item's value is the price which it could reasonably be expected to reach on the open market. No account is taken of the costs of negotiating the donation or transferring the item, and the calculation is based on the value of the item at the date that the offer is registered regardless of when negotiations conclude. While the donor will submit a valuation and negotiations can be entered into, it is for the Panel to determine the value to be attributed to the item or items.

The value of the tax reduction available per person (or entity) is, in the case of Income Tax and Capital Gains Tax, 30% of the agreed value, and 20% in the case of Corporation Tax.

How is the tax credit applied?

It is HMRC's policy 'not to give change' where the value of the item exceeds the tax liability due. However, a person (but not a company) has the option under the Cultural Gifts Scheme of spreading the tax reduction they receive over five tax years beginning with the year in which the offer is registered. Careful consideration needs to be given to any such arrangement though as once a five year allocation schedule has been agreed, it cannot be amended, even if the donor's tax liability in a particular year differs from that which had been anticipated. This can mean that part of the benefit is lost if there is insufficient tax to set the credit against. For companies, the tax credit may only be applied to offset the tax liabilities generated in the accounting period in which its offer was registered.

Donors can specify whether the tax reduction is to be applied to Income Tax or Capital Gains Tax first to ensure that the relief is applied in the most tax efficient way possible.

How much tax can be offset?

Applications to the Cultural Gifts Scheme are considered on a first come, first served basis with reference to the date that the initial offer is first registered. The joint annual budget for AIL and the Cultural Gifts Scheme is £30 million for each tax year from 6th April 2014 to 5th April 2019. This is an increase from the original annual budget of £30 million when the scheme was first introduced. It is important to note that this budget refers to the tax waived and not the value of the items donated.

Who can use the scheme?

The Cultural Gifts Scheme is open to all, although many items offered to the nation in lieu of tax in the past have, unsurprisingly, come from important historic collections. Based on recent AIL experience, more works of modern art are being offered and modest, but culturally significant items, have also been offered such as medals and scientific instruments.

However, items donated must not be owned jointly (or in common) with others, and title would need to be transferred into one name before such an item could be considered. Individuals using the scheme must be acting in a private capacity and be legally and beneficially entitled to the object. Trusts, trustees and personal representatives will not be eligible to participate in the scheme.

The Cultural Gifts Scheme represents an important tax incentive to those who wish to gift chattels to the nation or for public benefit. For more advice on the scheme or how to make an offer to the Panel, contact Gavin McEwan or email us for more information at charities@turcanconnell.com.

This note is intended as a brief commentary on the Cultural Gifts Scheme. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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