

EUROPEAN ASSOCIATION FOR
PHILANTHROPY & GIVING EAPG



ACROSS CAUSES
ACROSS SECTORS
ACROSS BORDERS

Encouraging the giving
of

works of art and chattels

EAPG Round Table

24th June 2010

Host: Simon Weil, Partner Bircham Dyson Bell

Discussion Panel

Simon Weil, Chair

Partner, Bircham Dyson Bell, & Chair EAPG

Ceris Gardner

Partner, Maurice Turnor Gardner

Sir Nicholas Goodison

Susan Johnson

Director, Heritage & Taxation Advisory Service Christie's

Gerry McQuillan

Acquisitions, Export and Loans Unit, Museums Libraries
and Archives

Sally Wrampling

Head of Policy & Research, The Art Fund

Giving of Works of Art and Chattels

Recent research indicates that traditional recipients of charitable donations, such as the arts and religious organisations, are likely to receive less support in the future. Is this, when combined with the UK's deficit and the consequent increased pressures on the public purse, creating the opportunity to revisit the existing measures for giving objects and exploring more ambitious approaches?

Giving of Works of Art & Chattels

In 2004, The Goodison Review stated that *the success of museums, galleries and libraries depends upon the quality of their collections, and that gifts and acquisitions are an essential part of ensuring that this remains the case.* Goodison noted that *it is prudent for the nation to acquire outstanding objects at today's prices, because their rarity causes their value to rise.* Whilst the UK has a number of measures aimed at encouraging owners to transfer important objects to public collections and to make them more publicly accessible, the question arises, given the current and future economic climate facing the UK, as to whether enough is being done to encourage a culture of philanthropy, particularly with private owners and donors?

- How does the present regime work? For owners, museums and galleries, advisors and intermediaries, and auction houses
- Is there still confusion and ignorance about the options available to owners?
- Are the measures currently available consistent? Has one measure been more successful than the others in encouraging owners of important cultural assets to 'give to the nation'?
- Looking to the future, particularly given the bleak state of public finances, are these measures going to be enough to help maintain and develop our cultural heritage and world leading cultural institutions, or are more ambitious solutions or *douceurs* required? For example, full income tax relief on gifts of chattels and works of art, life-time legacies, charitable lead trusts and charitable remainder trusts.

Discussion Summary (1)

- All panellists felt it was important to keep the discussion alive.
- Sir Nicholas Goodison said he would make the same fiscal recommendations again, were he to be writing his Review today, including:
 - new tax reliefs to tempt life-time gifts of pre-eminent cultural objects, parallel to the reliefs available on stocks, shares and land, using the long established Acceptance –in-lieu (AiL) procedures.
 - Extend the AiL concessions to all forms of tax due on estates
 - Permit forward AiL deals during life time
 - Review again the rules for ‘in situ’ arrangements to make sure they do not deter giving
 - Reverse the 1998 revision of the conditional exemption rule so that items exempted previously on grounds of ‘museum quality’ remain exempted
 - Extend Private Treaty arrangements to corporations
 - Increase the National Heritage Memorial Fund’s annual grant to at least £20m
- He would like to add two further recommendations:
 - A further look at the possibility of using Trusts to facilitate private gifts. Sir Nicholas Goodison remained sceptical about these, seeing them as an unnecessarily complicated way of achieving the ends that he aimed at, but acknowledged that, had time allowed in 2003, he would have covered the subject
 - The abolition of most of the detailed requirements imposed on public collections by HM Revenue and Customs in the administration of ‘benefits’ offered to patrons, supporters and friends, replacing them with simpler guidelines and reliance on auditors. He had submitted a detailed paper on this bureaucratic maze to HM treasury without response.

Discussion Summary (2)

- Gerry McQuillan began by briefly describing the last 100 years of the Acceptance in Lieu (AiL) scheme.
 - AiL began in 1909-10 Finance Act, a year of constitutional crisis and almost no budget – similarities to the present day are uncanny.
 - Very little happened with the scheme until after the war, when £50m was set aside in the National Land Fund. This occurred at the same time as the development of national parks. The National Trust received on behalf of the nation, several great houses, including their contents, such as Petworth and Ickworth.
 - In 1957 chattels were accepted on their own and offered to national museums and galleries, the British Library and regional collections for example. This changed the scope of the Act.
 - Overall the scheme has worked well
 - 1,000 offers in lieu in last decade. £15-20m in year with £10-£15m tax written-off.
 - AiL keeps important assets in the UK.
- Next 100 years.
 - Whilst AiL seen as working well it needs to be built upon to encourage philanthropy
 - Full market value offset against IHT model, similar to Australia, Canada, and USA – Offset value at time of giving
 - Assessing value has been seen as an issue however we have a proven mechanism of the AiL panel assessing value and making offers acceptable to donors – this model could be used.
 - Is there the political will to do this?

Discussion Summary (3)

Ceris Gardner echoed the points of previous speakers and said that the opportunity of tax reliefs in a donor's lifetime was vital to encouraging a culture of philanthropy.

- It seems that the 'Big Society' will inevitably cause a 'push/pull' to occur. If we want to encourage more involvement through philanthropy and volunteering then there need to be some additional incentives: during life.
- Charitable Remainder Trusts are very popular in the United States and it would be good to explore their advantages and disadvantages for the UK market as Sir Nicholas mentioned. Our current trust mechanism is costly to the donor who has to bear a 20% up-front cost to establish a Trust and further tax charges throughout the life of the Trust. And, is taxed again on death if he/she still has them hanging on their wall.
- AiL does have a mechanism to value works of art and chattels – perhaps this could be extended and applied during a person's life rather than after?
- Nominal tax relief: how can we extend this relief on gifts of assets including chattels and works of art to encourage giving?
- It might appear fundamental but people like to know what is happening in their life-times. They want to experience the joy of giving and of being actively engaged with the organisations that they have decided to support.
- NPC train advisors to be able to feel confident in having discussions with their clients about philanthropy and giving and to explore the different ways one can give.
- What we need is a mix of models that people can choose to use.

Discussion Summary (4)

Sally Wrampling stated that people do already give.

- We need to encourage the lifetime giving of art – either by extending AiL to allow income tax relief, or extending the income tax relief on gifts of assets to cover chattels.
- Either of these could work as a trigger to develop a culture of philanthropy
- Australia, France and Canada have very interesting programmes that encourage giving, particularly art, to the nation. We need to explore these options for the UK.
- Life-time legacies. We need to review and develop this in the UK. However, art needs to have an appropriate home; we need to have a mechanism to ensure museums, galleries or similar Schedule 3 bodies receive these works.
- Since 2003 in France, companies have been able to transfer works of art to the state or buy national treasures for the nation in return for corporate tax relief. Corporate involvement should also be reviewed as many firms have collections, especially art and archives. AXA have used this scheme to contribute over 40m Euros. A similar scheme could be developed in the UK or we could adopt a scheme under which corporations could transfer existing collections into the public domain.
- We need schemes that will trigger a step change in the culture of giving. Fiscal incentives should not be the be all and end all.
- We also need to build a culture of asking and thanking donors. Stewardship of donors in the UK tends to be very poorly handled. It is about building relationships with collectors (or donors) over time and thanking them professionally and appropriately.
- We could also encourage peer pressure. One or two major collectors who have committed to giving in a public way need to lead others to do the same. Signalling that this is good, it is the right thing to do..

Discussion Summary (5)

Susan Johnson focussed on the Substantial Donor Rules.

- § The Substantial Donor Rules (see Susan's slide presentation attached) can disincentivise some philanthropists and their families.
- § The tax relief for the donor:
 - § Inheritance Tax
 - § Capital Gains Tax
 - § Income Tax (cash and property but not works of art)
- § Creating public access can be an issue
- § Finding additional sources of income can be difficult
- § Some wealthy established families know that they are custodians for the future and are considering a range of options including building their own galleries to house and show the work.
- § We need to develop schemes that create opportunities to preserve our heritage, especially for those who have been doing so for 500 years. Must it always be done following death?
- § There are also burdens attached to receiving gifts: secure public access; maintenance and preservation costs, fundraising (if established separate charitable trusts).
- § Substantial donor legislation (March 2006). £25,000 or £150m in 6 years. Includes spouse, siblings, forebears, descendants, trusts and companies associated with that person. This is extremely difficult for some organisations to manage. Can it be simplified?

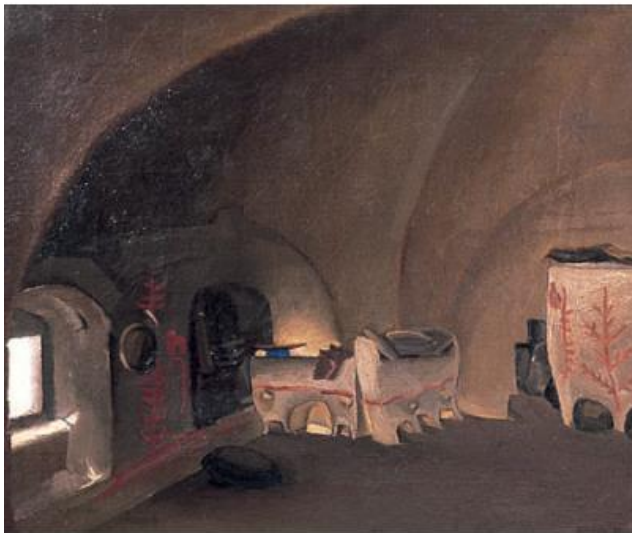
Discussion Summary (6)

The open debate:

- Chattels – should include everything?
 - potential issues with accessioning more items, and access. Most museums have approximately 5% of their collections on display at any one point in time. It is very difficult for some to accept and show additional works.
 - We should have a broader definition to include all items given to a charity?
 - There is an issue of de-accessioning – we have a limited culture of disposal in the UK.
- Charitable lead trusts and charitable remainder trusts should be explored. The argument that the reservation of benefit is breached doesn't wash, as Gift Aid already does this.
- We need to develop a culture, engender the practice of giving from a young age.
- Offer tax reliefs for gifts in kind
- Donors need to understand the need for quality and they wish to have some control – it is something they want to do during their lifetime.
- Donors also need to understand that beneficiaries, such as museums have issues to manage upon receipt of a gift: there are costs associated with the gift such as: storage, conservation, cataloguing, and long-term sustainability (including accessioning and de-accessioning)
- We definitely need to simplify the complexity of giving. It is evident that some of the current mechanisms run counter to the desire to simplify.
- We do have to take concerns of abuse of any mechanism seriously. At the moment it is estimated that 10% of Gift Aid claims are fraudulent. We do need to find ways of reducing this.
- Similarly valuations have the potential for abuse – so we need to find ways of mitigating against such abuse occurring.
- We need to be better at asking and thanking donors
- We also need to focus on philanthropy – as a public good – something important and generous to do.

Encouraging the giving of works of art and chattels

24 June 2010



**Three paintings by David Bomberg
(1890-1957), Pallant House**

Part of the Wilson Gift



Two photographs by Diane Arbus

ARTIST ROOMS part-gifted to Tate and the National Galleries of Scotland by Anthony d'Offay



David Reekie, *Something of a Relationship III*



Junko Mori,
An Anemone Blossom



Artichoke Parachute Ring and Cherry Earrings by Nora Fok

**Donated by Judith and Sir Nicholas Goodison
to the Fitzwilliam Museum, Cambridge**



Alfred Sisley's *Un sentier aux Sablons* (A path at Les Sablons), 1883
Donated by the Sara Lee Corporation to the National Gallery of Australia



Sculpture by Sir Anthony Caro: *Sidestep* (1971)
Donated by Tom and Sue Quirk to the Heide Museum of Modern Art, Victoria



Scenes from the 1995 film *Muriel's Wedding*

Costumes donated by the Producer, Lynda House, to ScreenSound Australia



Ingres' *Portrait of the Duke of Orleans*
Acquired by AXA for the Musée du
Louvre, Paris



Nicolas Poussin's *La fuite en Egypte* (1657)

Acquired for the Musée des Beaux-Arts, Lyon, with AXA's help



CHRISTIE'S

**HERITAGE & TAXATION
ADVISORY SERVICE**

Why gift an art collection or historic house to Charity?

- **Tax relief for donor**
 - Ø **Inheritance Tax**
 - Ø **Capital Gains Tax**
 - Ø **Income Tax**
- **Public Access**
- **Additional sources of income**

Issues for the receiving Charity

- **Secure public access**
 - Ø **Planning consents**
 - Ø **Health and Safety**
 - Ø **Security**
- **Maintenance/Preservation**
- **Administration**
- **Fundraising**
- **Substantial donor legislation**

Issues for the receiving Charity

Substantial donor is a person who makes:

- **Relievable gifts to a charity of at least £25,000 in a period of 12 months in which the tax year wholly or partly falls; or**
- **Relievable gifts of at least £150,000 in a period of 6 years in which the tax year wholly or partly falls**
- **Substantial Donor includes spouse, siblings, ascendants, descendants, trusts and companies associated with that person.**

Potential taxation of charity's income.

Issues for the receiving Charity

Relievable gifts – for example:

- **Gifts of real property (S587B & S587C ICTA1988)**
- **Gifts of chargeable assets (S257 TCGA1992)**
- **Gifts of plant and machinery (S63 CAA2001)**
- **Gifts of trading stock (S108 ITTOIA 2005)**

Issues for the receiving Charity Substantial donor legislation

Transaction	Exception
The sale, exchange or letting of property by a charity to a substantial donor	No exception, even where land is sold for full arms length value satisfying section 36 of the Charities Act 1993.
The sale or letting of property to a charity by a substantial donor	Transaction excepted if it takes place in the course of a business carried on by the substantial donor, on terms which are no less beneficial to the charity than an arm's length transaction, and is not part of an arrangement to avoid tax. Paradoxically, a sale at undervalue to a charity is not a transaction caught by the rules, benefiting the charity.
The provision of services by a charity to a substantial donor	Transaction excepted if the services are provided in the course of the actual carrying out of a primary purpose of the charity, on terms which are no more beneficial to the donor than those on which services are provided to others.
The provision of services to a charity by a substantial donor	Transaction excepted if it takes place in the course of a business carried on by the substantial donor, on terms which are no less beneficial to the charity than an arm's length transaction, and is not part of an arrangement to avoid tax.

Issues for the receiving Charity

Substantial donor legislation

Transaction	Exception
The exchange of property between a charity and a substantial donor	No exception (however, a disposal at an undervalue to a charity, to which s587B ICTA 1988 or s257 TGCA 1992 applies, shall not be a transaction to which this legislation applies).
<p>The provision of financial assistance^[1] by a charity to a substantial donor</p> <p>^[1] “Financial Assistance” includes: the provision of a loan, guarantee or indemnity; Shari’a-compliant financial products, or “alternative finance arrangements” (as defined by section 46 of FA 2005); charitable grants to beneficiaries.</p>	No exception, even if the grant, loan, etc... is on an arm’s length basis.
The provision of financial assistance to a charity by a substantial donor	Transaction excepted if the assistance is on terms which are no less beneficial to the charity than might be expected from an arm’s length transaction, and the assistance is not part of an arrangement to avoid any tax.
Investment by a charity in the business of a substantial donor	Transaction is excepted if the investment takes the form of a purchase of shares or securities listed on a recognised stock exchange.

What are the alternatives?

- **Creation of a trust**

- Ø **Inheritance Tax**

- § **Conditional exemption**

- § **Public access**

- § **Heritage management plans**

- § **business property relief**

- Ø **Capital Gains Tax**

- Ø **S102 FA1986**

What are the alternatives? cont'd

- **Maintenance Fund**
 - Ø **Inheritance Tax**
 - Ø **Capital Gains Tax**
 - Ø **Income Tax**
- **Fundraising/Grants**
- **Acceptance in lieu scheme**