

HM Revenue & Customs

CAPITAL TAXATION AND THE NATIONAL HERITAGE

This memorandum outlines the scope as at 2017 of the legislation on capital taxation and its effect on the national heritage, and gives guidance on the approach which is adopted in administering its provisions. It incorporates and revises earlier editions of **Capital Taxation and the National Heritage**, also known in its last edition as IR67, published by the Inland Revenue in 1986 with a supplement in 1987, and by HM Treasury in 1983, 1980 and 1977.

If you need further information please contact HM Revenue & Customs, Trusts & Estates, Heritage Team.

Insofar as this memorandum operates as guidance for the staff of the Heritage Team, it is implicit that in any case where they have any doubt they will seek technical or other guidance from within HM Revenue & Customs.

In this memorandum –

- HM Revenue & Customs is abbreviated to HMRC and references to it are in the first person (“we”, “our” etc)
- all statutory references except where shown are to the Inheritance Tax Act 1984 (“IHTA”)
- references to Inheritance Tax or IHT include reference where the context requires to Capital Transfer Tax
- references to conditional exemption include reference where the context requires to the corresponding relief from Capital Gains Tax
- references to “DCMS” include references where the context requires to the Culture Departments of devolved administrations
- references to a spouse include reference where the context requires to a civil partner
- “property” comprehends land, buildings and objects and
- this memorandum also uses the following abbreviations –

AIL	Acceptance in lieu of tax
CE	Conditional exemption or conditionally exempt
CMP	Collections Management Plan
CEO	Conditionally exempt occasion
CET	Conditionally exempt transfer
CGT	Capital Gains Tax
DCMS	Department for Culture Media and Sport (and see also above)
FA	Finance Act
HAO	Historically associated object
HMP	Heritage Management Plan
MF	Maintenance Fund
MLA	Museums Libraries and Archives Council
PET	Potentially exempt transfer
TCGA	Taxation of Chargeable Gains Act 1992
Tribunal	First-tier Tribunal (Tax)
VOA	Valuation Office Agency

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Chapter 1: Introduction

Summary of this Chapter

This Chapter begins with a brief outline of government policy to encourage the preservation of the national heritage for public benefit in private ownership. This includes some examples of steps taken over the years.

It continues by explaining the purpose of the memorandum. This is to set out the IHT exemptions and reliefs for national heritage property, the corresponding reliefs from CGT and, in particular cases, the effect in terms of other taxes.

It concludes with an outline of significant developments since the last edition in 1986.

1.1 Preservation of the heritage – general policy

Buildings of historic or architectural interest, land of historic, scenic or scientific interest, and objects and collections of national, artistic, historic or scientific interest form an integral and major part of the cultural life of this country.

It has been the policy of successive Governments that this national heritage should be conserved and protected for the benefit of the public. They have taken the view that so far as possible property of this kind should remain in private hands and that its owners should be encouraged to retain and care for it and display it to the public.

Where this is no longer possible owners should be encouraged to dispose of it to bodies in this country which have been set up specifically to hold such property in trust for the public.

For more than a century a succession of fiscal and other measures have been introduced to help preserve the heritage. The latter include:–

- The allocation of substantial financial resources to maintain and enhance the collections in our national museums and galleries and to preserve historic buildings and monuments owned by, or in the guardianship of, bodies sponsored by the Secretaries of State. These include English Heritage, the Northern Ireland Environment Agency, Historic Scotland and Cadw.
- Grant aid to owners towards the repair of historic buildings. (Information about these is available from the bodies just listed).
- Establishment of Natural England, the Northern Ireland Environment Agency, Scottish Natural Heritage and the Countryside Council for

Wales. These bodies advise on conservation and their duties include administering grants for the acquisition and management of outstanding scenic, historic and scientific land.

- Grants to the National Heritage Memorial Fund which was set up on 1st April 1980 to assist in the acquisition, preservation and maintenance of outstanding land, buildings and objects. The Fund's trustees have wide discretion to make grants and loans to public and private bodies concerned with preserving the heritage in its widest sense.
- Introduction of successive legislative measures. These include the Wildlife and Countryside Act 1981 (and corresponding provisions in Northern Ireland and Scotland). Among other things, the Act empowers local planning authorities to make management agreements, with payments, for conservation of the natural beauty and amenity of the countryside and, in National Parks, to give grants and loans for that purpose.

1.2 Purpose of this memorandum

This memorandum is written primarily from an IHT perspective but provides coverage of other taxes, especially CGT, where relevant. It describes –

- the capital tax exemptions and reliefs (collectively referred to hereafter as reliefs) available in relation to national heritage property
- the arrangements for dealing with claims for these reliefs
- the arrangements for private treaty sales to national collections and certain other bodies and
- the procedures for offering property in satisfaction of IHT or ED.
- It also describes the income tax arrangements relating to maintenance funds – **Chapter 8** and **Appendices 5** and **6**. And it contains some pointers on the application of the stamp taxes – **8.11, 9.2, 9.3** and **11.1** – and VAT – **#10.8** and **11.1**.
- A number of advisory bodies are referred to in this memorandum. They are listed in **Appendix 9**.

1.3 Developments since last edition

This memorandum supersedes the booklet IR67 published by the Inland Revenue in 1986, the supplement published in 1987, and other Revenue

publications since then. It reflects relevant legislative and other changes made up to [2009].

The memorandum's production by HMRC reflects that S.95, FA 1985, whilst not amending the *wording* of the earlier legislation, transferred to what is now HMRC the former responsibilities of the Treasury for capital tax reliefs for heritage property. This took effect from 25th July 1985.

These functions include:

- Assessing, in conjunction with the advisory agencies, the suitability of property for relief
- Obtaining, in conjunction with the advisory agencies, appropriate undertakings about maintenance and preservation of, and public access to, the heritage property and then formally designating qualifying property
- Monitoring, in conjunction with the advisory agencies, whether the undertakings are subsequently observed
- Approving the terms of maintenance funds set up to support qualifying heritage property and monitoring the activities of those funds
- Related second-order responsibilities within the context of the tax reliefs. These include approving public institutions as recipients of exempt heritage property and approving the temporary export of exempt works of art

Of the changes in the context of the national heritage which have been made since 1987, the most significant were those enacted under the FA 1998 to extend public access rights and to publish the terms of undertakings. This is covered in **#4.5** and **Appendix 1A**.

Other changes include the following:–

- The repeal in 1998 of S.26 (gifts for public benefit) – see **#9.8**.
- The introduction in 1998 of a two-year period within which to claim conditional exemption and directions for maintenance funds – see **#3.5** and **#8.5**
- Changes introduced in 2006 to the method of charging tax following conditional exemption from a ten-yearly charge on settled property – see **Appendix 2, #21**.
- Provision in 2008 for delegated legislation for giving statutory effect to erstwhile extra-statutory concessions (ESCs). SI 2009 No 730 contains three such instances –

- certain foreign-owned works of art etc are **excluded property** for IHT (cf the former ESC F7) – see **#4.10** for the current position
- decorations awarded for valour are **excluded property** for IHT (cf the former ESC F19) see **#4.11** for the current position – and
- CGT was not charged on certain disposals of CE property by private treaty to a Schedule 3 body or in lieu of IHT (this was secured under an unnumbered concession.) – the current position is included in the text generally. The new legislation is contained in S.258, TCGA and accordingly comprehends disposals by companies.

Chapter 2: The Capital Taxes briefly described

Summary of this Chapter

This Chapter provides very brief, general, descriptions of the three capital taxes, Inheritance Tax, its predecessor Estate Duty, and Capital Gains Tax.

2.1 Introduction

There are three capital taxes from which reliefs are available in respect of national heritage property: Estate Duty, Inheritance Tax, which replaced it in 1975, and Capital Gains Tax.

The general operation of IHT and CGT are considered in the IHT and CG Manuals at <http://www.hmrc.gov.uk/manuals/>.

2.2 Inheritance Tax (IHT)

IHT, known as **Capital Transfer Tax** until it was re-named under S.100, FA 1986, was introduced in 1975. It applies to lifetime transfers of value, subject as below, and to all deaths occurring after 12th March 1975. At the time of publication, the thresholds below which tax is not chargeable are:

- £300,000 for 2007/08
- £312,000 for 2008/09
- £325,000 for 2009/10
- £325,000 for 2010/11

S.8A provides for the transfer of any part of the nil rate band that was not used when the first of them died to a surviving spouse or civil partner dying on or after 9th October 2007. See the IHT Manual at **IHTM43001** et seq.

- Most lifetime transfers before 18th March 1986 were chargeable and cumulated for 10 years. Tax was charged at a lesser rate than that applicable to transfers made on, or within three years before, death.
- There were and are several exemptions from IHT on chargeable lifetime transfers. Common examples are that tax is not charged on the first £3,000 of the lifetime transfers which a person makes in any one tax year and transfers between spouses domiciled in the United Kingdom and to United Kingdom charities are exempt.
- There were important changes for lifetime transfers on or after 18th March 1986 –

- the **cumulation period** was reduced from ten to seven years from March 1986
- outright transfers between individuals, termed “potentially exempt transfers” (PETs), became exempt from IHT if the transferor lived on for seven years. Such gifts made within seven years before death are charged at death rates but the charge is tapered where the gift occurs more than three years before death
- special charging rules apply where gifts are made but the donor reserves or enjoys a benefit.

Where settled property is concerned, the IHT régimes described above include the taxation of **transfers into and out of trusts in which there is an interest in possession**. Typically this envisages an individual with a life interest, who is treated as the owner of the settled property. But the PET treatment in this context commenced only on 17th March 1987, under S.96, F(No 2)A 1987.

The PET treatment was also extended to certain “favoured” trusts in which there is no interest in possession. Such trusts include “accumulation and maintenance” (A&M) trusts for minors and those aged 25 and less, and for the disabled.

Transfers into most **trusts in which there is no interest in possession**, typically discretionary trusts, remained chargeable to IHT. So too did transfers out of such a trust, and there is a ten-yearly charge on the settled capital. Settled property so held is known as **relevant property**.

But there was major legislative change under the FA 2006 to the settled property régimes.

For example the general principle of treating the holder of an interest in possession in settled property as owning the underlying property was substantially eroded. In many cases the underlying property is now treated as **relevant property**.

The nature and extent of these changes are explained in the IHT Manual at **IHTM16060** et seq.

2.3 Estate Duty (ED)

ED, which applies to property passing on a death before 13th March 1975, may be relevant on the sale (etc) now of heritage objects which have previously been exempted from ED. The statutory provisions are described in **Appendix 3**.

2.4 Capital Gains Tax (CGT)

CGT is chargeable on gains accruing on the disposal of assets. Where the asset was held on 31 March 1982 the starting point is the value on that date.

In broad terms the amount of a chargeable gain is the difference between the cost of an asset and its value on its disposal.

This differential used to be mitigated by "indexation allowance" which broadly took account of the inflationary element of the gain accruing between March 1982 and March 1998. And the chargeable gain might have been reduced by "taper relief" based on length of ownership between 1998 and the date of the disposal and whether or not the asset was a business asset for taper relief purposes.

From 6th April 2008 these reliefs ceased to apply but the *rate* of tax on the taxable amount of gains, formerly up to 40%, was reduced to a flat rate of 18%.

An individual is entitled to an annual exempt amount in arriving at the taxable amount for any tax year. Only the amount (i.e. total chargeable gains less allowable losses) above this figure is the taxable amount that is charged to CGT.

There are specific reliefs and exemptions that may be due in arriving at the taxable amount before the annual exempt amount, and some of the main ones are described in this paragraph –

- chargeable gains arising on gifts of assets by individuals and on distributions of assets by trustees may in certain circumstances be held over until a subsequent disposal of the asset
- there is no charge to the tax on unrealised gains on assets held by an individual at his death and
- the gain accruing on the disposal of an individual chattel is exempt if the consideration received for it does not exceed the limit from time to time prescribed by S.262, TCGA (see Help Sheet 293 or CG Manual).

Chapter 3: Capital Taxes: Summary of heritage reliefs available

Summary of this Chapter

This Chapter is mainly concerned with **conditional exemption** from Inheritance Tax (IHT) for national heritage property and the corresponding relief from Capital Gains Tax (CGT).

If a person transfers national heritage property, and IHT is chargeable on the transfer, exemption is available from that charge subject to certain conditions:-

- the particular transfer must be eligible for the exemption
- the property must in its nature qualify for the exemption
- the exemption must be claimed, normally within two years
- the new owner must undertake to look after the property in the UK and secure reasonable access to the public, including access without a prior appointment
- if the property is transferred again (otherwise than by sale) the new owner can replace the undertaking to retain the exemption
- on sale or failure to replace the undertaking the exemption will normally end and IHT will then become chargeable
- but there would be no charge (i.e. there would be absolute exemption) for gifts, or sales by private treaty, to certain public bodies, or our acceptance of the property in lieu of IHT.

This Chapter analyses these conditions generally. It explains how and when to claim the exemption and who needs to provide undertakings, and when and how undertakings given might later be varied.

There are then some brief notes on what happens if conditionally exempt property is disposed of, and the associated exemptions from IHT for maintenance funds established for the benefit of national heritage property.

The detail of what sort of property would qualify for the exemption is analysed in Chapters 4, 5 and 6. And the detail of what happens if conditionally exempt property is disposed of, or the conditions for the exemption not observed, is analysed in Chapter 7. Maintenance Funds are considered in Chapter 8.

The corresponding relief from CGT applies if IHT undertakings are given and may be claimed if not. The two-year time limit for IHT does not apply. When the relief applies the chargeable gain is held over. Additionally, there is

outright exemption in the circumstances outlined at the final bullet point above.

There are schemes to assist owners with public funds to maintain and preserve their national heritage property. An exposition is beyond the scope of this memorandum. But this Chapter concludes with a short note on the interaction of public funding with conditional exemption from capital taxes.

3.1 Introduction

We are principally concerned in this Chapter with the generality of conditional exemption (CE) from IHT – **#3.2** et seq – and a corresponding relief from CGT – **#3.21**.

CE is exemption from IHT when there is a transfer of national heritage property. The exemption lasts as long as the transferee looks after it in the UK, allows public access to it, and does not sell or otherwise dispose of it. A tax charge arises if any of the conditions ceases to apply.

(Chapters 4 to 6 examine the categories of property and the terms of their exemption in greater detail, and Chapter 7 examines tax charges.)

The code for IHT (and ED before it) and CGT provides conditional exemption and relief coupled with charging provisions for (material) failure to adhere to the conditions.

Much of the code depends on the opinion (etc) of the Commissioners for HM Revenue & Customs. Whilst this needs to be borne in mind in the administration of the code, in practice it is seldom necessary to trouble the Commissioners in individual cases. Under S.13 Commissioners for Revenue and Customs Act 2005 in general an officer of Revenue and Customs may exercise any function of the Commissioners.

CE and the CGT relief depend inter alia on the Commissioners' opinion of the standard of the property concerned (as to which see **#3.3** below). Since the statute makes no provision there is no appeal (short of judicial review) against a decision to refuse CE on those grounds.

And while the statute provides the general conditions attaching to CE it does not spell out the detail. This must be agreed between us and the claimant. If agreement could not be reached we should have to deny the exemption.

3.2 Conditional exemption from Inheritance Tax

Under S.30(1) and (2) a transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to qualifying national

heritage property (i.e. property capable of designation under one of the categories of S.31(1)).

It is conditionally exempt from IHT – a “conditionally exempt transfer” (CET) – when the property is formally “designated” (see below) following a claim for the purpose and receipt of undertakings given by an appropriate person – usually the new owner.

These undertakings are, broadly, to preserve the property and allow reasonable public access to it. And, in the case of works of art and other objects, not to send it out of the United Kingdom except with our approval.

There are corresponding provisions in S.78, on an occasion when tax would be chargeable under S.65, such as a distribution of settled heritage property which is *relevant property*. Where conditional exemption is agreed the occasion is anointed a “conditionally exempt occasion” (CEO).

And there are provisions in S.79 to exclude heritage property from the scope of the ten-yearly charge imposed by S.64.

Where an exemption claim applies to property gifted which has become chargeable to IHT because of the donor's death within seven years undertakings already in force (in respect of an associated maintenance fund or a CGT exemption claim) are normally accepted for the purposes of IHT and need not be duplicated – S.31(4G).

As is explained below, a breach of the undertakings, or the death of a person treated as beneficially entitled to the property, or a sale or other disposal of the property will normally lead to a loss of the exemption. That is why it is called “conditional”.

The *particular* undertakings which are required vary according to the type of property transferred and are discussed in **Chapters 4 to 6**.

Undertakings **in general** are considered in more detail below at **#3.7** et seq.

3.3 Qualifying national heritage property

“Designation” is available – S.31(1) – for six categories of property:

- (a) any relevant object which appears to [us] to be pre-eminent for its national, scientific, historic or artistic interest – see **Chapter 4**
- (aa) any collection or group of relevant objects which, taken as a whole, appears to [us] to be pre-eminent for its national, scientific, historic or artistic interest – see **Chapter 4**

- (b) any land which in [our] opinion is of outstanding scenic or historic or scientific interest – see **Chapter 5**
- (c) any building for the preservation of which special steps should in [our] opinion be taken by reason of its outstanding historic or architectural interest – see **Chapter 6**
- (d) any area of land which in [our] opinion of is essential for the protection of the character and amenities of such a building as is mentioned in paragraph (c) above – see **Chapter 6**
- (e) any object which in [our] opinion is historically associated with such a building as is mentioned in paragraph (c) above – see **Chapter 6**

It is for the claimant to choose in which category to seek designation. A claim for CE is no less valid for specifying more than one category. For example the claim in respect of a picture might be “under S.31(1)(a) which failing S.31(1)(e)”.

It must however be recognised that designation on one occasion does not guarantee designation – i.e. it would not guarantee CE anew – on another.

For one thing tastes and priorities can change. So too can attribution. None of this would affect the status of CE in being. But a claim for CE anew would clearly have to be assessed on its merits.

Now take the case where Mr X dies leaving his property to A and B in equal shares –

- The property includes adjoining areas of outstanding scenic land which A and B apportion and appropriate between themselves. CE is granted for the land.
- Or it might include a Grade I listed manor house and surrounding amenity land. Following apportionment and appropriation A takes the house and part of the land and B takes the remainder of the land. CE is granted for the house and the land as amenity land.

In each case it would be necessary faced with a claim for CE on the death of A or of B to judge the merit of A’s property in isolation from B’s and vice versa. The result might be that B’s property, on its own, did not meet the criteria for designation.

Note: Special store is put by property falling within subsections (c) to (e) to reflect the importance of preserving historic buildings, their amenity land and historically associated contents as an entity. There are special provisions governing the undertakings when a claim for CE includes amenity land – see **#6.7** et seq below. And there are special

provisions for charging tax on the disposal etc of any part of the entity of what, in that context, are referred to as *associated properties* – see **#7.4** et seq, below.

3.4 When conditional exemption is available

CE is available (but must be claimed – see **#3.5** below) :

- for a transfer made on death (including, as below, a transfer which would have been a PET had the transferor survived for seven years or not reserved a benefit)
- for a transfer other than on death – a lifetime transfer – if
 - the transferor (or his or her spouse or the two between them) has been beneficially entitled to the property for at least the preceding six years or
 - the transferor inherited the property on a death when it was conditionally exempted from IHT – S.30(3)

and provided that

- the transfer is not a PET – S.30(3B) and
- is not an exempt transfer under S.18 (spouses and civil partners) or S.23 (qualifying charities) – S.30(4)
- for a transfer or other event involving relevant property, typically a distribution out of a discretionary trust, if the property has been comprised in the settlement concerned throughout the six years ending with the date of the transfer or event – S.78(1) and
- for a ten-yearly charge on relevant property – S.79(3) – and here the property need not have been comprised in the settlement for any fixed period.
- CE is also available with respect to property where the transferor's death within seven years after making a PET has resulted in a chargeable transfer of that property. The availability of exemption depends on the circumstances at the time of the claim – S.31(1A). (See **#3.6** below as to the position where the property has been disposed of between the dates of the gift and the death of the donor.)
- CE is not in point as respects property passing to the Crown, whether expressly or as bona vacantia. Settled property devolving on the Crown is subject to Crown immunity from IHT. Transfers of non-settled property acquired Crown immunity from IHT with effect from

25th July 1984 – S.108 and para 13 of Sch 21, FA 1984. (Transfers to individual members of the Royal Family are not so excluded and hence neither is the availability of CE.)

- CE is not in point as respects transfers of shares and securities of a company, notwithstanding that the company owns property which would merit designation under S.31. But a company can own CE property. And CE is available for a transfer of value by a close company (in relation to transfers apportioned to its participators) as transfers other than on death.

3.5 Claiming conditional exemption from IHT

CE must be claimed.

The claim must be made within two years after the date of the transfer (etc) but HMRC has discretion to allow a longer period – S.30(3BA), S.78(1A) and S.79(3)(aa).

There used to be an exception to the “two year rule” just described. This related to claims for conditional exemption relating to charges under S.64 arising on or before 17th November 2015. In such cases the property concerned must have been designated, and the requisite undertaking agreed **before** the ten year charge arose. HMRC has no discretion to allow a late claim.

In exercising our discretion we shall be prepared to look favourably on a case where our advisers believe that not to extend the claim period to accommodate the inclusion of particular property would be seriously detrimental to the interests of the national heritage. (Our advisers may either take the initiative by notifying us of their own opinion. Or they may notify us of any approach from the claimant to which on these grounds they are sympathetic. Our advisers will not discuss with claimants the merit of extending the claim period.)

More generally, we should consider a late claim on its merits. But oversight on the part of a claimant or adviser, or a post death variation of inheritance, is not normally by itself an acceptable reason to allow a late claim. Neither is the failure of a claim for another relief.

Indeed if a taxpayer wished to claim agricultural or business property relief, which failing CE, he or she should make a protective claim for CE at the outset. The protective claim would be held in abeyance until and unless the preferred relief proved unavailable.

In order to constitute a claim for CE – and this applies equally to a protective claim along the lines just mentioned – the claimant should within two years after the date of death or transfer:

- provide a statement that exemption is being claimed, specifying the event to which the claim relates
- clearly identify each asset or group of assets covered by the claim
- provide a brief statement of why each asset is considered to qualify for exemption, including confirmation that proposals to provide public access will be made, and
- confirm that there is no present intention to sell the asset(s).

(N.B. – this time limit applies only to claims for CE from IHT. There is no corresponding time limit in connexion with the analogous relief from CGT under S.258(3), TCGA. Specifically it is not a claim subject to the various claims procedures and time limits for CGT but simply an offer and acceptance of an undertaking. Relief is conditional on the undertaking existing.)

The procedures for making a claim are set out in **Appendix 1**.

For completeness, we are prepared to infer a claim for CE where none had been made if property is offered in lieu of tax during two year claim period. But the offeror may override this inference, for the law requires a claim. See also **#11.11** below.

It is possible to withdraw a claim for CE at any stage prior to our “designating” the property. But other than in wholly exceptional circumstances it is not possible to do so afterwards. After designation, S.32/32A unequivocally prescribes different treatment for IHT (as to which see **Chapter 7**). (The exceptional case might include misconception as to ownership of the property before or after the relevant occasion.)

3.6 Failure of potentially exempt transfer: disposal by donee before death of donor

Special rules apply to dealings with putatively national heritage property after a PET but before the death within seven years thereafter of the donor. Under S.30(3C) CE is not normally available if the donee or subsequent transferee had sold the property, but: –

- If the property has been given, or sold by private treaty, to one of the national bodies listed in Schedule 3 or if it has been accepted in satisfaction of IHT – see **#3.18(a)** below – the charge on death is exempted outright without the need for undertakings to be given – S.26A. (It should be noted that this provision does not appear to be apt when the property concerned has been accepted in lieu of ED.)

- If the disposal of the property was otherwise than by sale a claim for exemption in respect of the donor's gift can be made if the existing owner is prepared to give the necessary undertakings.

3.7 Undertakings – general considerations

Outline provisions of undertakings have been given above – **#3.2**. The detailed conditions – the steps to be taken for maintenance preservation and public access – will depend on the particular nature of the property and facts of the case. This is considered in **Chapters 4, 5 and 6**.

But there are some important general points –

- **the duration and futurity of undertakings**
- **the parties to the undertaking**
- **absolute ownership**
- **trusts and minors**
- **foreign element**
- **co-ownership**
- **the duties imposed by the undertaking**
- **replacement of undertakings**
- **variation of undertakings given on or after 30th July 1998 and**
- **variation of undertakings given before 31st July 1998**

and we shall consider them in turn. Some, but not all, emanate from the FA 1998.

3.8 Duration and futurity of undertakings

Undertakings are given until the person (if any) beneficially entitled (for the purposes of the IHTA) to the property dies, or the property is disposed of, whether by sale or gift or otherwise. They look to the future. On either count it is clearly not possible to provide an undertaking in relation to property which has already been sold.

Neither from similar considerations could we accept an undertaking from a person who in practice could not carry out the duties concerned. This might arise through lack of control over the property, resulting for example from a lease or other disposition, or because of theft. Such lack of capacity would quite undermine the integrity of the undertaking. (As to an owner who is abroad see (e) below).

The question of futurity would also be relevant in the context of delay in providing an undertaking. While the matter would turn on its facts, we should not normally accept an undertaking offered only long after the event.

3.9 Parties to the undertaking

In the first place, the requisite undertaking must be given by such person or persons as we think appropriate in the circumstances of the case – S.30(1)(b).

Just as the statutory provisions for undertakings, principally S.31(2) and (4), look to the future, so necessarily we look to the state of ownership and custody in the wake of the event which has prompted the need for the undertaking.

“Person” in this context includes a company, and it is important to secure signatures from the individuals appropriate to that purpose. We must also be satisfied that the person – whether an individual or trustee or company – has the wherewithal to deliver the undertakings concerned.

Undertakings solely from executors or administrators in that capacity are not normally appropriate. We should look to the beneficiary or will trustees or both.

It is also important to take account of any variation within S.142 et seq of the dispositions on death. This entails agreement that the transaction is effective to alter the testamentary etc dispositions for the purposes of the IHTA and, if so, that the appropriate person is identified from the perspective of the varied disposition.

3.10 Absolute ownership

In the simple case where X, who lives in the UK, inherits (say) a picture absolutely X’s undertaking would suffice.

3.11 Trusts and minors

The picture or other property might become held in trust, or for a minor with S.31, Trustee Act 1925 in point. In that case the undertaking would be given by the trustees. They would be joined by any other person who had day-to-day control of it. This might include someone with a beneficial or custodial interest, such as a life tenant or someone, whether a beneficiary or not, who has agreed to house or otherwise look after it.

3.12 Foreign Element

Where the owner of the property is abroad we cannot accept an undertaking from that person alone. In practice it has usually been possible to find a suitable custodian and we have been prepared to accept an undertaking from the owner, joined by the custodian.

That person must appear to us to be appropriate for the purpose, but it would be for the owner to ensure that the custodian took the steps (e.g. to secure public access) set out in the undertaking. The custodian (in that capacity) does not of course take on any prospective liability for tax.

3.13 Co-ownership

In principle there is no bar to CE for an undivided share. If Mr X transfers his undivided share of a picture to Miss Y she as the acquiring co-owner must be joined in her undertakings by the remaining co-owner(s), and cannot plead default by such a co-owner as a defence to a claim for tax.

3.14 Duties imposed by the undertaking

There have been three distinct phases.

- The requirement was originally to "take reasonable steps" for the preservation (etc) of the property and for securing reasonable access to the public
- On and after 19th March 1985 the requirement was "to take such steps as are agreed between [us] and the person giving the undertaking and are set out in it" for the preservation (etc) of the property and for securing reasonable access to the public – S.94 and Para 2(3) of Sch 26, FA 1985
- On and after 1st August 1998 the steps agreed for securing public access must ensure that the access that is secured is not confined to access only where a prior appointment has been made – S.31(4FA) ...
- ... and may include steps involving the publication of the terms of any undertaking or any other information which would otherwise be confidential – S.31(4FB).
- In relation to post-1985 undertakings a practice developed of deferring the agreement of management conditions for outstanding land and buildings and their contents. The undertaking would provide for completion of a mutually satisfactory Heritage Management Plan ("HMP") (as to which see **Chapters 5 and 6**).

- Following representations and consultation with practitioners, we now prefer the greater certainty of completing the HMP prior to designation of the property. This merits delaying CE until an **agreed** HMP is in place unless, exceptionally, that would be plainly unreasonable on the facts of a particular case.
- We should agree (and if necessary set) a reasonable timescale to prepare and agree the HMP, with suitable provision for unavoidable reversals.

3.15 Replacement of undertakings

As at (a) above, undertakings are given until the person (if any) beneficially entitled to the property (for the purposes of the IHTA) dies or the property is disposed of, whether by sale or gift or otherwise.

To avoid a “recapture” charge, e.g. under S.32 (see **Chapter 7**) it might be necessary to claim CE afresh. But simply to replace the earlier undertaking might suffice.

Some examples of preserving CE by replacing an undertaking following a change of ownership, without the need to seek CE afresh, might help:

- If the absolute owner of a CE picture A gives it to B absolutely this is likely to be a PET for IHT. But a replacement undertaking from B is required to preserve the CE status of the picture. That undertaking will also secure relief from CGT under S.258, TCGA to any extent necessary.
- Assume C owns a landed estate, with or without a building designated under S.31(1)(c). C gives D a house and E a plot of land.

In isolation, neither the house nor the plot would merit CE or a public access undertaking beyond the generality already provided for in C’s undertaking. In such a case D and E should confirm that they accept and are bound by the terms of C’s undertakings.

- When Mr F, on death or inter vivos, transfers CE property to Mrs F CE is unavailable – S.30(4). Mrs F must provide a replacement undertaking to preserve the CE already in being.

The position might be more complicated had Mr F had owned but an undivided share. Mrs F must replace his undertaking with one congruent with S.31. If the conditions went further than those the co-owners had consented to then theirs too would have to be uplifted. Otherwise the undertakings collectively would be incompatible.

- The trustees of G's discretionary settlement appoint a CE object to H for a limited interest. It remains relevant property, and so no present claim for IHT arises.

The appointment does not divest the trustees of their interest. But if the care and control of the object passed to H we should require H to join in the trustees' undertakings. For CGT purposes this would not normally be a disposal.

- J's accumulation and maintenance settlement includes a CE object. K would acquire an absolute interest in it on attaining 18.

On K's attaining 18 there is no disposal, and no CGT disposal, by the trustees, but we should require K to confirm that he or she accepts and is bound by the terms of the trustees' undertakings.

- The trustees of L's settlement, who provided the undertaking, retire and new trustees are appointed. The retiring trustees are treated as automatically discharged (save in connexion with an occurrence during their trusteeship). But the new trustees are bound by the earlier undertaking and there is no cause to seek a fresh undertaking from them.

A replacement undertaking must provide for public access consistently with the 1998 prescriptions. This is so even had the earlier undertaking pre-dated them. (Note however that absent a fresh claim for CE mere replacement of an undertaking is not an occasion to test an object of *national etc* interest for **pre-eminence**.)

The statute does not impose a time limit within which to provide a replacement undertaking. But the futurity and need for delivery under the terms of an undertaking clearly imply that there should be no unreasonable delay.

3.16 Variation of undertakings given on or after 31st July 1998

S.35A (and S.79A as respects *relevant property*) and S.258(8A) TCGA provide for variation of the terms of undertakings – to maintain etc and secure public access – given on or after 31st July 1998. This applies both to new and replacement undertakings.

A distillation of the statutory provisions follows, in bold, with added commentary: –

- **Under S.35A(1)/S.79A(1) the terms of an undertaking can be varied at any time by agreement between us and the person bound by it, e.g. the owner.**

The statute does not provide the owner with a means unilaterally to vary an undertaking. We should nevertheless be prepared to consider any such approach, provided that it complies with the statutory requirements and is appropriate to the property concerned.

There is no statutory mechanism for appeal against non-acceptance of the owner's proposals. But we must not withhold our consent unreasonably.

- **Or, under S.35A(2)/S.79A(2) and (3), the terms can be varied unilaterally by us – i.e. without the owner's consent – providing the First-tier Tribunal (Tax) (hereafter "the Tribunal") agrees, six months or more after our proposal, that the variation is just and reasonable in all the (relevant) circumstances. The Tribunal would direct that the variation take effect not less than 60 days thereafter.**

The Tribunal comprises legally qualified judicial officers. They are entirely independent of HMRC.

If we believed a variation to the owner's undertaking had become necessary we should write in explanation. All being well we could agree upon a new formulation, and then vary the undertaking in simple correspondence.

If that were not possible, but our view remained that a variation were necessary, we should have formally to advance our own proposal.

We should hope that the owner would during the ensuing (at least) six months accept our proposal or seek negotiation.

We should not approach the Tribunal mechanically, merely because the six months had elapsed. As long as the owner's approach to the correspondence had been businesslike, and without procrastination, we should allow a reasonable extension for constructive discussion.

On the other hand, we and the owner might agree that it would be more sensible to refer the matter sooner. This might happen where, our differences had been properly identified, but it was clear that agreement by negotiation was not possible.

Where discussions had continued, but we could not reach agreement, we should have to refer to the Tribunal. Our proposal would only take effect if the Tribunal agreed with us that it was just and reasonable in all the circumstances.

The Tribunal could only consider *our* proposal. S.35A/S.79A do not provide for a counter-proposal from the owner.

Nevertheless the hearing is not in practice ex parte. We show the Tribunal our proposal and any subsequent correspondence with the owner. Both we and the owner can argue our respective cases and call expert witnesses.

- **S.35A(3)/S.79A(3) authorise the Tribunal to direct that our proposed variation take effect, though only from not less than 60 days after the direction.**

The Tribunal, if upholding our proposal, would direct that the owner's undertaking be varied accordingly. The variation would take effect only from whatever date, not less than 60 days later, the Tribunal prescribed.

But ...

- **Under S.35A(4)/S.79A(4) the Tribunal's direction does not take effect if, before the date it specifies, we agree with the owner a variation different from that to which the direction related.**

If an owner is unhappy with the Tribunal's decision and seeks mitigation (etc) through negotiation, we should be prepared to listen, particularly to fresh information.

But any alternative solution must be reached before the date specified by the Tribunal. Otherwise, the variation as approved will apply from that date.

If the owner were not prepared to comply with the terms of the varied undertaking, CE would cease on the specified date. IHT would accordingly become chargeable.

For CGT, failure to comply with the Tribunal's direction would be treated as a disposal at market value and the owner would have to include relevant details on the tax return for the year in which the deemed disposal took place or otherwise notify a liability to CGT.

If the Tribunal did not uphold our proposal we should have to consider whether to make a fresh proposal or continue the status quo. That would depend on the facts of the case.

If we felt obliged to make a fresh proposal we should explain our perspective to the owner, and make every effort to reach agreement in discussion. Only if this failed should we consider a fresh formal proposal. In that case, again, the owner would have at least six months to consider them.

There is no statutory right of appeal against the Tribunal's ruling itself. However, either side may be able, on a point of law, to appeal to the Court for a review of the hearing.

Two cases have reached the Tribunal's predecessors, the Special Commissioners. They were heard together as **Re an application to vary the undertakings of A; Re an application to vary the undertakings of B** [2005] STC (SCD) 103. We refer to them as **the A & B cases**. They concerned our proposals to vary undertakings which had been given prior to 1998 – as to which generally see **#3.17** below.

3.17 Variation of undertakings: undertakings given before 31st July 1998

Subject to the next following paragraph, the terms of an undertaking given before 31st July 1998 (an "existing undertaking") may also be varied. Again this needs the owner's agreement or – S.35A(2)/S.79A(2) as, via para 10(1) of Sch 25, FA 1998, they apply to such undertakings – the Tribunal's consent.

This provision for variation applies only where the undertaking is a **relevant undertaking**, under para 10(5) of Sch 25, FA 1998. Broadly a *relevant undertaking* is one which already includes a condition of reasonable public access. It does not include an undertaking given under:

- S.48, FA 1950 (ED exemption for objects of **national etc** interest passing on a death before 13th March 1975)
- S.31(2) Finance Act 1975 (CTT exemption for objects of *national etc* interest passing on a death before 7th April 1976)
- S.84(6), FA 1976 (certain – older – maintenance funds)
- Any CGT provision other than the TCGA

And the provision for variation **with the consent of the Tribunal applies only where a relevant undertaking does not already contain an extended access requirement or a publication requirement.**

Under S.35A(5) an **extended access requirement** is one to take steps to ensure that access is not confined to access with a prior appointment. And a **publication requirement** is one to take steps for the publication of the terms of the undertaking concerned and any other information concerning the property – e.g. that it is CE – which would otherwise be confidential.

Hence if an owner's undertaking once includes provision for access without a prior appointment, or for publication, whilst we can vary the undertaking in that regard **by agreement**, we can no longer invoke the Tribunal.

As mentioned at (i) above, this was tested before a Special Commissioner (the predecessor of the Tribunal) in 2004 in, as we refer to them, **the A & B cases** reported at [2005] STC (SCD) 103.

The Special Commissioner in a comprehensive Decision was unable to uphold the variations proposed by HMRC. But the case afforded helpful guidance on the generality of the issues. There was no appeal by either side.

Facts

The facts of the A and B cases were sufficiently similar to be heard together.

A and B had each inherited some hundreds of CE objects. Each had undertaken to allow public access to the objects by prior appointment and loan them on request for special exhibitions. This had yielded very little viewing.

In 1998, Parliament had legislated for variation of undertakings given before 31st July 1998.

In 2003, HMRC had proposed publicised access without an appointment to (listed) objects at home, or by equivalent loan to a public collection.

Neither A nor B agreed within six months and HMRC approached the Special Commissioner.

A's and B's Contentions

A's and B's cases rested on two separate but related grounds.

The First Ground was that HMRC's proposals to vary their undertakings in force before Budget Day 1998 without their consent could not **as a general principle** be just and reasonable in all the circumstances.

The Second Ground was that **based on the particular circumstances of A and B** HMRC's proposals were not just and reasonable in all the circumstances but excessive.

Decision

In essence while there can be no general objection to a proposal to vary an undertaking agreed before 31st July 1998, the proposal must be just

and reasonable in all the relevant circumstances before the Tribunal can uphold it.

In refusing a direction upholding HMRC's proposed variation –

As regards **the First Ground** the Commissioner decided that the Proposals could not on these general grounds be faulted as not being just and reasonable. He added that everything depended on the circumstances of the particular owner.

But on **the Second Ground** in the particular circumstances of *A* and of *B* the disadvantages that would be imposed on them were disproportionate to the aim of achieving greater public access, and were accordingly neither just nor reasonable.

For those reasons the Commissioner was unable to make directions requiring that the variations contained in the Proposals be made.

As regards **the First Ground**, Parliament had intervened to secure open access. HMRC had to enforce and manage the open access policy. Proposing variations and seeking owners' agreement was part of managing the revised régime.

The Commissioner's rôle, if there were no agreement within six months, was to decide whether it was just and reasonable in all the circumstances to sanction the proposed variation in its totality. It was not to review HMRC's decision or modify its proposals or decide whether the open access policy itself was just and reasonable.

The decision had to balance the competing interests of owners and the public. This did not include Parliament's policy or the administrative conduct of HMRC in seeking to implement it.

As regards **the Second Ground** the Special Commissioner observed (#109) that the legislation had not offered him any guidance. He agreed (#142) that by-appointment access had limitations –

I agree that the by-appointment viewing system presents hurdles in the way of many individuals wanting to inspect the conditionally exempt chattels. An appointment must be made in advance and, unless the individual is quite specific about his interest, he might find it difficult and embarrassing to explain the fact that he just wanted to see everything of artistic interest.

– and suggested how enhanced access to smaller and more easily moveable chattels might work. But it would not be just and reasonable in all the circumstances to sanction HMRC's proposals.

He had to weigh public interest in having the right to view the objects on open access days, and have lists of them and their location, with the impact of all that on their owners.

And he went on (#110 et seq) to list **seven principles** "in no particular order of importance":

- First, the starting point in determining whether the variations contained in any proposal are reasonable must be the position of the owners under their existing undertakings. Are the potential consequences of the proposals likely to be more onerous and excessive than those of the existing undertakings? The more onerous and excessive they are, as compared with the status quo, the more unreasonable the variations contained in the particular proposal may be.
- Second, behind the "just and reasonable" proviso is a strong implication that individuals can depend on as much legal certainty and as little violation of their rights to privacy, etc. as is compatible with the benefits sought by the legislature. Thus, where a person has taken a course of action that binds him in law, such as (for example) paying the IHT on his house while at the same time undertaking to provide by-appointment access to his chattels, it will be unreasonable, if not unjust, to make him open his house.
- Third, Parliament cannot have intended that the implementation of its legislation (which is a "control of use of property" within Article 1P [of the European Convention on Human Rights]) should lead to significantly greater risk to the safety and security of the households in question and of loss or damage to the possessions found there. To do so could be disproportionate.
- Fourth, Parliament must have envisaged that individuals affected by open access proposals should not be exposed to disproportionate and unreasonable costs and inconvenience.
- Fifth, the "just and reasonable" test in section 35A(2)(c) is not a one-way valve that has been installed to relieve the owner. It calls for a consideration of "all the circumstances" which will necessarily include the demands of members of the public. To this end I have attempted to put myself in the position of the reasonable sightseer who is interested in experiencing great works of art.
- Sixth, the amount of tax conditionally deferred by operation of the pre-1998 Act conditional exemption regime cannot of itself be a determining feature in the just and reasonable equation. If the monetary value of a particular conditionally exempt chattel is a reflection of the public interest in it, then the greater the value the greater the case for insisting on public access. But at the same time the monetary value of a collection of chattels should not of itself be

allowed to weigh too heavily. Otherwise, capricious results, based solely on value may follow

- Seventh, it is relevant, in deciding whether it is just and reasonable to implement the open access proposals, to ask whether the owner's existing efforts to stimulate public access (by, for example, arranging special interest visits) have for all practical purposes given as much and as good a quality of access in lieu as would realistically be effected by open access.

Since the **A and B** cases we have had extensive and invaluable discussions with owners and representative bodies. The climate of expectation is, quite properly, that any proposal from us will have due regard to likely public interest and conform with the Special Commissioner's observations.

In practice extending public access and attendant publicity to meet the requirements of the well-known **Heritage Open Days** (and regional equivalents) has in many cases satisfied our requirements.

3.18 Disposal of conditionally exempt property

Once we have designated the property we check periodically whether it remains in the same ownership and whether the owner is observing his or her undertakings. As explained in **Chapter 7** and **Appendix 2**, disposal or a breach of the undertakings might well lead to a loss of the exemption.

In brief illustration, assume X inherited a picture of national heritage quality. We took the statutory undertakings from X and the picture was CE in connexion with the death of the testator.

If X now wanted to part with the picture there would be several options available. Some would involve payment of IHT. Others would not.

(a) No IHT to pay

- X can give the picture to Y who replaces X's undertakings – see **#3.15** above. In this case CE runs on – S.32(5).
- X can give the picture to one of the bodies listed in Schedule 3 – see **Appendix 10**. Gifts and bequests to these bodies are exempt from IHT altogether so that if X does this the CE becomes absolute – S.32(4)(a) and see **Chapter 9**.
- X can sell the picture by private treaty to one of the Schedule 3 bodies, when again CE becomes absolute – S.32(4)(a). Here, the value of the tax exemption is shared between the vendor and the

purchasing body – under an administrative arrangement known as the “douceur” – to arrive at a **special price**.

Further details of how to arrive at the special price are given in **Chapter 10** and illustrative examples are shown in **Appendices 11** and **12**.

- X, if liable for IHT, can offer the picture to the Government in whole or part satisfaction of that liability. If the Government agree to take it this is known as acceptance in lieu of tax (AIL). Further details of AIL are given in **Chapter 11** and illustrative examples are shown in **Appendices 11** and **12**.

(b) IHT to pay

If instead of any of these options, X –

- sells the picture on the open market or
- gives or bequeaths it to somebody who does not replace the undertakings or
- breaches the undertakings in a material respect

X will lose the CE and will have to pay IHT in place of the tax which was not charged on the picture on acquiring it – S.32(2) and (3). Further details of the tax charging arrangements are given in **Chapter 7** and **Appendix 2**, and illustrative examples at **Appendix 13**.

3.19 Property held in trust

In general the arrangements described in **#3.18** above apply also to transfers of heritage property held in trust. Again, the question of tax chargeable on loss of CE is addressed in more detail in **Appendix 2**.

3.20 Maintenance Funds for national heritage property

The owner of an outstanding building, land essential for the protection of the character and amenities of it, or objects historically associated with it, or land of outstanding scenic, historic or scientific interest may want to set up a trust fund – a “Maintenance Fund” (MF) – to provide for the maintenance, repair or preservation of the property and for the provision of reasonable public access to it.

Settlers can claim exemption from IHT on the transfer of funds into such a trust fund by applying for a “para 1 direction” – S.27 and para 1 of

Schedule 4. The direction in effect confers HMRC's "approval" of the fund and the trusts on which it is held, and confers favourable tax treatment on the assets of the settled fund.

The direction can be claimed before or – S.27(1A) – within two years after the transfer of funds into the trust.

Further particulars as respects maintenance funds are given in **Chapter 8** and **Appendix 5**.

3.21 Relief from Capital Gains Tax

If the conditions for CE are satisfied, a corresponding relief from CGT is available in the first three cases described at **#3.18** above.

Property cannot be accepted in lieu of CGT – the fourth case at **#3.18**. But as explained below no CGT is charged if property is accepted in lieu of IHT (although the notional CGT charge is taken into account in the *douceur* calculation as explained in **Chapter 11** and illustrated in **Appendices 11** and **12**).

The relief from CGT takes two forms:

(a) Outright exemption is available:

- For gifts or bequests to a Schedule 3 body – see **Appendix 10** – if the property has been or could be designated under S.31 – S.258(2)(a), TCGA
- For private treaty sales to a Schedule 3 body (see **#3.18** above) if the property has been or could be designated under S.31 – S.258(2)(a), TCGA.
- For property accepted in lieu of IHT if it has been or could be designated under S.31 – S.258(2)(b).

(b) Deferment of charge is available: –

- For gifts to a qualifying charity (see **#3.22** below) or to a Schedule 3 body where outright exemption is not available because the property is not the subject of current heritage undertakings.

The asset is treated as passing for a consideration such as to give neither a gain nor a loss – S.257(2), TCGA.

- For gifts of property for which CE from IHT has been or could be allowed and heritage undertakings mentioned at **#3.2** above and

described in **Chapters 4 to 6** below are given – S.258(3) and (4), TCGA.

The asset is treated as passing for a consideration such as to give neither a gain nor a loss.

If –

- the asset is transferred again without once more qualifying for relief, or
 - it is sold otherwise than by private treaty to a body within Schedule 3, or
 - the conditions of the undertakings are breached in a material respect – S.258(5) and (6)
 - the owner is deemed to have disposed of the asset at its market value. So the amount of the chargeable gain will be based on both the gain up to the CE occasion, and the increase in value since.
- For gifts of property for which **holdover relief** is claimed – S.260, TCGA. This is available in certain defined circumstances (see Help Sheet 295) when property is given by one individual to another, or transferred into or out of settlement.

In the cases of gifts between individuals and of transfers from a settlement to an individual, relief has to be claimed by both of them. But in the case of gifts by an individual into trust, including a maintenance fund, or transfers between settlements, by the transferor only.

When there is a subsequent chargeable disposal by the asset's new owner, the allowable costs of acquisition consist of the value at acquisition by him less the gain held over. If that disposal is itself a transfer qualifying for the relief, the gain can be held over again.

3.22 Charities

The owner of heritage property might wish to transfer it into a charitable trust – e.g. a preservation trust. The general law of charities would apply to such a trust and it might benefit from favourable tax treatment. Save as referred to in **Chapter 9** below, discussion of this is beyond the purview of this memorandum. *See also IHTM11101 et seq.*

3.23 Conditional Exemption and payment from public funds

It sometimes happens that a payment from public funds is available in connexion with a particular element of national heritage property. Such payments might e.g. support repairs to historic buildings or enable particular management of land such as to protect endangered species or conserve wildlife habitats.

Schemes involving such payments will have their own codes of eligibility. They might depend on the circumstances of the applicant and the scheme's criteria.

In practice not all such codes extend total eligibility to those who benefit from CE. Our understanding of the rationale is that some schemes operate under a long-standing practice – colloquially **Treasury Rules** – which prohibit assistance from public funds towards an objective the applicant is already obliged to secure. (It is this which some have in mind when they refer to “double (or dual) funding”).

Natural England have published a helpful leaflet in this context, NE161 – **Environmental Stewardship Inheritance Tax**. It is available at <http://naturalengland.etraderstores.com/NaturalEnglandShop/Product.aspx?ProductID=a68c1d76-ca22-42fa-aa69-ea83ae7ad440>.

Issues regarding eligibility of outstanding land for public funds are discussed further in **#5.11**.

(Whilst eligibility for CE takes no account of payments from public funds the fact is that some scheme rules blackball those with CE. In practice we can only tell those who seek our intervention that we are in no place to question, still less overrule, a scheme's administrator.)

Chapter 4: Conditional exemption from Capital Taxes: Works of art and other objects of “national scientific historic or artistic interest”

Summary of this Chapter

This Chapter concerns the eligibility for CE of works of art and other objects of national, scientific, historic or artistic interest. The exemption is available for objects individually and where appropriate for collections and groups.

Objects, collections and groups must be **pre-eminent for their national, scientific, historic or artistic interest**. *Pre-eminence* is considered in Chapter 11, where it is relevant too for objects we accept in payment of IHT. In practice we take advice from the Museums, Libraries and Archives Council.

The conditions of exemption are retention in the UK, preservation of the object, securing public access and publicising the existence of the exemption and the public access arrangements. Owners must provide us with undertakings that they will abide by these conditions.

Aside from CE as such there are two special exemptions. These are for works of art etc in foreign ownership and for decorations such as medals awarded for valour or gallant conduct. The Chapter closes with an outline of these.

4.1 Eligible objects

The objects eligible for conditional exemption, for transfers and other events on and after 17th March 1998 – S.31(1)(a) and (aa) – are

- any relevant object and
- any relevant collection or group of relevant objects, taken as a whole

which we designate – see **#3.3** above – to be pre-eminent for its *national etc* interest.

S.31(5) defines a relevant object as

- (a) a picture, print, book, manuscript, work of art or scientific object, or
- (b) anything not falling within paragraph (a) above that does not yield income.

Whilst colloquial references to this limb of CE frequently allude to **chattel** it is important not to overlook the statute’s use of **object**. Thus it is that the exemption can comprehend ceilings, fireplaces and staircases. The fact that such objects might be fixtures, perhaps needing listed building consent for their removal, is not, in itself, a material consideration.

Under S.31(5) *national* interest includes interest within any part of the UK.

Pre-eminence is not defined in the statute but the expression has been familiar in the context of **acceptance in lieu** – see **Chapter 11** – since 1956.

In practice, we seek advice from the Museums Libraries and Archives Council (MLA). They appoint expert advisers before their Acceptance in Lieu Panel (“the AIL Panel”) decides whether the object meets the test of pre-eminence. In any case where the subject of a claim for CE is an archive then, in addition to seeking advice from MLA, we refer to the National Archives (NA) for comment.

An inspection of the property is normally necessary. That might take some time, especially if the exemption claim covers a number of different items requiring advice from different experts.

It sometimes happens that property the subject of a CE claim is also offered in lieu of tax. It is clearly sensible to “telescope” the processing of the CE claim and the offer. (See also **#11.15**.)

4.2 Collections and groups

Collections and groups are not defined in the statute. But again these terms are familiar in the context of **acceptance in lieu** – see **Chapter 11**. They have their roots in S.46, FA 1973.

That year, Parliament considered whether the class of property eligible for acceptance in lieu should embrace not only a **pre-eminent** object, but also a **pre-eminent** collection. In debate the question arose what if there were a **pre-eminent** group of objects which formed less than the entirety of the collection. To answer this Parliament enacted that the class should now include a **pre-eminent** “collection or group”.

We aim for a practical, commonsense view of what constitutes a **pre-eminent** collection or group, guided as necessary by the AIL Panel. An individual object or collection or group of objects, not pre-eminent in its own right, would not become so solely by association with other objects in different ownership.

From now on, references in this Chapter to an object includes references to a collection or group unless the context otherwise requires.

4.3 Conditions for exemption

Before CE can be given, the appropriate person(s), usually the owner, must undertake with respect to the object: –

- To keep it permanently in the UK and not to remove it temporarily except for an approved purpose and period – S.31(2)(a)
- To take agreed steps to preserve it and ...
- ... to secure reasonable public access to it – S.31(2)(b)
- The steps to secure public access to it must ensure that the access that is secured is not confined to access only with a prior appointment – S.31(4FA) and
- Subject to exclusion for confidential documents – see #4.5 below – the steps to secure public access to an object may include publication of the terms of the undertaking or any other information about the object which would otherwise be confidential – S.31(4FB).

The terms of these undertakings are drafted by our Heritage Team. Where the undertakings have been given, their performance will be closely monitored.

4.4 Temporary Export of conditionally exempt objects of national etc interest

There can be several reasons for the owner of a CE object to wish to take or send it abroad. In any such case the owner must secure our agreement to the purpose and period of the export.

Any application for our approval to send an object abroad temporarily should be directed to our Heritage Team.

In many cases the purpose and period of export will be a public exhibition, e.g. loaning a Hogarth as part of an exhibition in Madrid.

Unless there is any reason to suppose that the export would be deleterious to the condition of the object there would normally be no reason for us not to respond accommodatingly. In a case of doubt we should seek advice from MLA or the relative national collection (or both).

There would be no bar to such an export in terms of public access. Access would clearly be enjoyed by visitors to the exhibition, and public access, in its statutory context, is not confined to access in the UK.

In other cases, the owner of the work might wish to sell it. A dealer or auctioneer might decide that the work would achieve more effective

exposure to the marketplace by exhibiting it publicly in an overseas location.

That location might well be an overseas branch of its own organisation. We could agree to the purpose and period of the export provided that the export did not jeopardise the very existence of the work – not something to be taken for granted – and that it did not interfere with whatever public access arrangements underlying the CE were in force.

Still further cases might arise where the owner wishes to emigrate from the UK, temporarily or permanently. Without prejudice to the merits of any particular case, an application in this context is unlikely to succeed.

Those who require an **export licence**, as in the case of objects more than 50 years old, should apply to the Export Licensing Unit of MLA. MLA advises that applications for an export licence should be made a month prior to the date of exportation.

At the request of MLA we ask owners, if a conditionally exempt item is being permanently exported outside the UK, to give MLA three months prior notice. The Reviewing Committee on the Export of Works of Art may take into account any failure to provide the three months notice if it recommends to the Secretary of State that the item meets the Waverley criteria (i.e. is a national treasure) and it suggests a period during which the decision to issue an export licence is deferred. This period is there to allow a UK purchaser to make a matching offer.

Further details of the export licence procedures can be found at **#10.9** below and on MLA's website at http://www.mla.gov.uk/programmes/cultural_property/export_licensing.

4.5 Reasonable public access and publication of the terms of the undertaking

Successive Governments have taken the view that where CE has been given the public should have reasonable access to the object concerned. CE cannot be granted unless reasonable access is ensured.

This includes provision for publicising the access arrangements. Claimants should say how they intend to fulfil the undertaking to provide such access and to publicise it.

There is however an important exception. S.31(3) allows exclusion from the public access and publicity requirements of any documents which, for personal or other reasons, we agree ought to be treated as confidential.

The ways in which the public access and publication conditions can be satisfied are considered in detail at in **Appendix 1A** but a broad outline is as follows.

4.6 Public Access

Broadly speaking, public access to CE objects should be available without a prior appointment on at least a certain number of days each year. Outside this “open access” period viewing can be restricted to occasions where a prior appointment has been made. In some cases viewing may be at a public museum or gallery.

The access arrangements may include provision for a reasonable entry charge. (See also **#11, Appendix 1A**)

Our Heritage Team should be consulted before altering any agreed arrangement for public access. S.35A provides for the variation of an undertaking by agreement, but any unilateral change might jeopardise the exemption.

4.7 Publication of the terms of the undertaking

The nature of publication will turn on the facts of the case.

While the material for publication is for discussion and agreement, there are no grounds to seek publication of personal particulars. The provisions for access and publication go to the object, not its owner.

4.8 Loans to public collections and the Government Indemnity Scheme

Loans to public collections may be covered by the Government Indemnity Scheme to relieve the borrower of the need to take out commercial insurance. Further information is available from MLA at http://www.mla.gov.uk/website/programmes/cultural_property/govt_indemnity_scheme/00gis.

4.9 Special cases

There are two categories of object which are accorded special relieving treatment. Although this falls outside the scheme of CE it is convenient to mention them here.

4.10 Foreign owned works of art – S.5(1)(b) and S.64(2)

Claims for IHT normally arise under S.4(1) on the estate of a person immediately before his or her death, and under S.64(1) on relevant property comprised in a settlement immediately before its ten-year anniversary.

These claims do not extend to foreign-owned works of art situated in the UK only for one or more of the purposes of public display, cleaning and restoration. This reflects a longstanding judgement that the public interest would not be served if foreign owners of works of art were unwilling to send them to the UK for these purposes for fear of a potential IHT charge.

Foreign-owned here means that the person beneficially entitled is domiciled outside the UK or, if the property is comprised in a settlement, the settlor was domiciled outside the UK when it became so comprised.

In this context our practice is to treat *work of art* as apt to include anything within the definition of a **relevant object** contained in S.31(5). There is however no question of imposing a quality standard, such as “pre-eminence”.

This status can be invoked with a rider to any IHT account or in correspondence addressed to our Heritage Team. We should need a description of the property and the circumstances by reference to the statute in which the normal claim for tax is displaced.

4.11 Decoration for valour or gallant conduct – S.6(1B) and (1C)

Decorations awarded for valour or gallant conduct, and which have never been disposed of for consideration in money or money’s worth, are “excluded property”. Hence they are not subject to IHT.

This reflects that these decorations can attain significant values, with the possibility that beneficiaries who wish to keep them for personal or sentimental reasons cannot afford to pay the tax on them.

The particular decoration (as distinct from a group of which it might form a part) must satisfy both conditions. It must have been awarded for valour or gallant conduct, although not necessarily in a military context or by a United Kingdom body. And it must never have been disposed of for consideration in money or money’s worth.

While it may be clear that a particular decoration was for gallantry (e.g. the Victoria Cross) some are not clear cut (e.g. the Order of the Bath or decorations awarded during the Napoleonic Wars). Others (e.g. campaign

and general service medals) clearly do not qualify. But there is no question of imposing any quality standard, such as "pre-eminence".

The decoration does not have to have remained in the family of the original recipient. And it does not have to be a medal. Other decorations might include a piece of silverware or a presentation sword. The important thing is that it must demonstrably have been awarded for valour or gallant conduct.

The status of "excluded property" can be invoked with a rider to the IHT account. This should contain a description of the decoration, the circumstances in which it was awarded, and confirmation that, prior to the chargeable occasion, it had never been disposed of for consideration in money or money's worth. (A subsequent sale e.g. during the administration of an estate would not affect that status as respects the death or other occasion under consideration.)

This treatment is broadly similar to S.268, TCGA. This provides that a gain shall not be a chargeable gain if accruing on the disposal by any person of a decoration awarded for valour or gallant conduct acquired otherwise than for consideration in money or money's worth.

Chapter 5: Conditional exemption from Capital Taxes: Outstanding land

Summary of this Chapter

This Chapter is concerned with the eligibility for CE of land which is outstanding for its scenic, scientific or historic interest.

The conditions of exemption are maintenance of the land and preservation of its character, securing public access and publicising the existence of the exemption and the public access arrangements. Owners must provide us with undertakings that they will abide by these conditions.

Our natural heritage advisers in the relevant part of the UK inspect the land. They then report to us and advise us over the detail of the undertakings. There is a list of these bodies in Appendix 9.

The Chapter closes with some observations regarding public funding. This includes reference to the possibility that funding would be available for **enhancement** of CE land, but not for **maintenance already required** under the owner's undertakings.

5.1 Eligible land: general

CE may be given for land which we designate – see **#3.3** above – as of **outstanding scenic, historic or scientific interest** – S.31(1)(b). These three categories include botanical, horticultural, silvicultural, arboricultural, agricultural, archaeological, physiographic and ecological features, and man-made landscapes.

Buildings erected and scheduled monuments on outstanding land may qualify on their own merits as outstanding buildings – see **Chapter 6**. Where they do not the exemption for the land will nonetheless comprehend the buildings which stand on it, provided that they do not detract from the scenic, historic or scientific interest of the land. If the building did so detract then the exemption would comprehend neither the building nor the land it stood on.

Where there is a village within an area of outstanding land the components of the village might constitute buildings outstanding in their own right or simply buildings comprehended by the CE of the land itself.

Alternatively, and as indicated at **#6.4** below, there might be an outstanding building – e.g. a manor house – and the rest of the village might constitute all or part of the essential amenity land in relation to that building.

But it should be noted that there is no provision to designate a village per se.

5.2 The advisory agencies

In reaching our opinion of whether the land is of outstanding interest we seek the views of the relevant advisory bodies, see **Appendix 9**.

We consult the appropriate territorial advisory bodies on the built and natural heritage on every claim, and the more specialised bodies when silvicultural, arboricultural, botanical or horticultural considerations are involved.

Where land meets the requirements for exemption on more than one count (e.g. both scenic and scientific grounds) or the claim for CE includes an outstanding building as well, appropriate undertakings will be required to protect all the qualifying interests, regardless of the basis on which the claim was made.

In such cases the advisory bodies will liaise with one another. To minimise delay and duplication of effort, the built or natural heritage advisory body, as appropriate in the circumstances of the case, will act as **lead agency** and provide composite recommendations for the purposes of providing advice on the new claim.

If the claim is successful and the property is designated, the relevant advisory bodies will monitor their own specific interests as equals. We ask the advisory agencies to liaise with each other during monitoring and we support them in this for example by synchronising quinquennial inspections.

As regards land of outstanding interest our advisers are Natural England, the Northern Ireland Environment Agency, Scottish Natural Heritage, and the Countryside Council for Wales.

Advice on suitable criteria for assessing landscape value in England and Scotland is given in "Landscape Character Assessment Guidance for England and Scotland" (The Countryside Agency, Scottish Natural Heritage, 2002). This notes that criteria may include landscape quality (including condition and intactness), scenic quality, rarity and representativeness (including landscape character), conservation interests (wildlife, earth science, archaeological, historical and cultural interests), wildness, cultural associations and consensus.

5.3 Scenic land

An area of land will be judged to be outstanding for its scenic interest only if it has qualities well in excess of scenic land of its general type.

A starting point for consideration will be if the land is

- in one of the National Parks in England or Wales
- in the Broads in England,
- in a designated Area of Outstanding Natural Beauty in England, Wales or Northern Ireland or
- in a National Scenic Area or Garden or Designed Landscape in Scotland.

Nevertheless within these identifiable areas there may be land which will not meet the high standards applicable to CE. Conversely there may be some land outside such areas which will qualify.

The exemption for the land will comprehend buildings on the land, and trees and underwood, provided that they do not detract from the scenic interest. If they did so detract then the exemption would not comprehend them or the land they stood or grew on.

5.4 Scientific land

Land may be of outstanding scientific interest because of its flora (natural or cultivated), fauna, geological or physiographical features.

Subject to the appropriate conditions being met – see **#5.6** below – and the scientific quality of the land being confirmed at the time of the exemption claim, land qualifies for CE if it is within a Site of Special Scientific Interest appropriately notified under S.28, Wildlife and Countryside Act 1981 or S.3, Nature Conservation (Scotland) Act, or in a National Nature Reserve, or in an Area of Special Scientific Interest appropriately declared in Northern Ireland.

Some land outside these identified areas might qualify for exemption if it is of the requisite standard.

The exemption for the land will comprehend buildings on the land, and trees and underwood, provided that they do not detract from the scientific interest. If they did so detract then the exemption would not comprehend them or the land they stood or grew on.

5.5 Historic land

In order to qualify as being of outstanding historic interest land must have a very special historic significance in national or international terms. For

example, it might be judged to be outstanding because of its association with a particularly important historic event – such as a battle.

Earthworks, archaeological sites or archaeological landscapes which have been scheduled as ancient monuments will clearly be eligible for consideration for CE, but each case will need to be considered on its merits.

The exemption for the land will comprehend buildings on the land, and trees and underwood, provided that they do not detract from the historic interest. If they did so detract then the exemption would not comprehend them or the land they stood or grew on.

5.6 Conditions for exemption

Before CE can be given for qualifying outstanding land, the appropriate person(s), usually the owner, must undertake: –

- To take agreed steps for the maintenance of the land and the preservation of its character and ...
- ... for securing reasonable public access to it – S.31(4).
- The steps to secure public access to it must ensure that the access that is secured is not confined to access only with a prior appointment – S.31(4FA) and
- The steps to secure public access may include publication of the terms of the undertaking or any other information about the land which would otherwise be confidential – S.31(4FB)

In practice, detailed management prescriptions can be incorporated into the general undertakings. But increasingly, in English and Scottish cases, owners and managers of outstanding land and buildings, and their contents, with our approbation, prefer to incorporate them into a Heritage Management Plan (HMP). The HMP is then incorporated referentially into the undertaking. (See also **#3.14** above.)

More information about HMPs is available from Natural England's leaflets NE63 and NE64, available on their website at <http://naturalengland.etraderstores.com/NaturalEnglandShop/product.aspx?ProductID=630a2a85-25ed-4ba5-90d7-71cfb84e19f4>.

Either way, the management prescriptions will reflect the advice from the relevant advisory agencies, and will aim to preserve the scenic, scientific or historic qualities justifying CE. They will include provisions: –

- To manage those features and aspects of the outstanding land that contribute to its significance in order to maintain the land and preserve its character.

(These features and aspects may include material features such as trees and woods, flora and fauna, hedges, walls, specified man-made relics or structures or intangible aspects such as views, distinctiveness, wildness etc)

- In addition to obtaining any statutory consents to consult specified advisory bodies with regard to proposals for change or development which would adversely affect the scenic, scientific or historic interest
- To afford reasonable public access for walking and, if appropriate, riding on existing rights of way and permissive paths, supplemented where necessary by new access of either type.

(Prescriptions in this connexion could not of course dilute any statutory access provision such as under the Countryside and Rights of Way Act 2000 and the Land Reform (Scotland) Act 2003.)

For some land of outstanding scientific interest, it may be appropriate to impose restrictions on public access. This might be for health and safety reasons, e.g. during the shooting season, or for the sake of wildlife during the breeding season – when it might well be necessary to have a strict prohibition on dogs except on leads.

Access to the interiors of buildings standing on the land, but not CE on their own merits, would not usually be appropriate.

The terms of these undertakings are drafted by our Heritage Team. Where the undertakings have been given, their performance will be closely monitored.

The relevant advisory agencies – see **Appendix 9** below – will be prepared to advise owners on appropriate management practices, including the desirability or otherwise of proposed changes which might have a significant effect on the eligibility of the land.

5.7 Woodlands

Land qualifying as of outstanding scenic, historic or scientific interest, or as essential to protect an outstanding building – see **#6.2** below) – often includes woodlands which are an integral or primary part of the interest justifying CE.

In such cases, undertakings will be sought, requiring the management, thinning, felling and replanting of the woodlands to take account of the need to maintain the qualities for which the exemption has been granted.

Such prescriptions, agreed with the advisory bodies, can be incorporated into the undertakings or, preferably, feature in a HMP.

(If the woodland is already being managed under one of the Forestry Commission's grant-aid schemes, it might be appropriate to incorporate the plan of operations agreed between the Commission and the woodland owner, varied as necessary, into the undertakings or HMP.)

Incidental sales of timber would not breach these undertakings.

Ancient semi-natural woodlands which are, or could be, properly included on the Inventories of Ancient Woodland kept by Natural England and Scottish Natural Heritage will be eligible for consideration for CE on scientific as well as scenic or historic grounds. Each case will need to be considered on its merits.

Other woodlands on ancient woodland sites, including plantations, would not normally be expected to qualify on scientific grounds, but may be accepted if they satisfy the criteria relating to land of outstanding scenic or historic interest.

5.8 The separate relief from Inheritance Tax for woodlands

For completeness, in the context of woodlands passing on a death, there is a separate IHT relief. It is not available in connexion with other chargeable occasions. It may be claimed as an alternative to CE – S.S.125 to 130, IHTA – and is described in detail at IHTM04371 et seq.

5.9 Reasonable public access

Successive Governments have taken the view that where CE from tax has been given the public should have reasonable access, along the lines already indicated at **#5.6** above, to the land concerned.

CE cannot be granted unless reasonable access is ensured. This includes provision for publicising the access arrangements.

Claimants should say how they intend to fulfil the undertaking to provide such access and to publicise it.

The access arrangements may include provision for a reasonable entry charge.

Our Heritage Team should be consulted before altering any agreed arrangement for public access. S.35A provides for the variation of an undertaking by agreement, but any unilateral change might jeopardise the exemption.

5.10 Publication of the terms of the undertaking

The nature of the publication will turn on the facts of the case.

We should seek a commitment that enables us to publicise the location of the property and the access arrangements.

There should also be a commitment to provide a copy of the undertaking and any ancillary documents on request. Ancillary documents would include any map, schedule or HMP, or a suitably detailed summary of the HMP where its bulk would make copying inappropriate.

Other steps for publication might include notification to national and local tourist bodies, national parks authorities etc.

While the material for publication is for discussion and agreement, there are no grounds to seek publication of personal particulars. The provisions for access and publication go to the property, not its owner.

5.11 Maintenance and preservation – enhancement – public funds – see also #3.23 above

In return for CE the owner of the outstanding land must undertake to maintain it and to preserve its character. The law is quite clear, therefore, that maintenance and preservation is a requirement. What is properly characterised as enhancement is not.

It is not always a simple matter to distinguish one from the other. This might have particular resonance in the context of public funding from an agri-environment etc scheme. This might be so where the scheme's rules would ordinarily permit funding for maintenance and suitable enhancement, but not for maintenance which the landowner was already obliged to carry out, e.g. pursuant to CE.

The following example of Natural England's approach is offered, entirely without prejudice of course to any assessment by or on behalf of a body administering such a scheme.

Suppose that, following a disposal of CE land, the new baseline condition survey reported an enhanced condition of the land compared to the original condition survey by virtue of publicly-funded work done by the previous owner.

If that previous owner had accepted public funds, e.g. agri-environment scheme payments, for switching from arable farming to grassland, where did the new owner stand with the grassland prescription without agri-environment scheme payments?

The new owner would take over an estate where grassland was now the status quo. That is what the new baseline survey would record. So the new owner would have to maintain the land and preserve its character as grassland, and Treasury Rules would now preclude agri-environment scheme payments for maintenance of the grassland.

A new owner who would not or could not afford to do so might not properly undertake to maintain the land (as grassland) and preserve its character – and so could not obtain CE. Or, the lack of agri-environment scheme payments for maintaining the grassland could mean that it would become financially undesirable (or impossible) to continue the (presumptively) good work, leading to a breach of undertaking.

Pausing there, as above, the requirement of a new undertaking is to **maintain** the land and **preserve its character**.

What has to be **maintained** is, as a general proposition, the land in the condition it was in when the new owner acquired it. This is what the baseline survey should report.

The significant **character** of the land to be preserved would be found by considering its history. If its character (taking its use into account) had been unchanged over many generations this would likely determine the character to be preserved. Where the land had seen different uses, it would be a matter for judgement which of its present and past uses was or were appropriate.

Where land evinced use beyond the parameters now considered appropriate the baseline survey would make this clear. The HMP would contain prescription for reverting to acceptable use. (Examples might include removal over time of inappropriate coniferous woodlands, or farming operations on land traditionally laid out to grass.)

On a different point, sometimes land evinces neglect. Its symptoms have to be treated in order bring the land up to the standard for CE. Hence the baseline survey would report the condition of the land as it ought to be to meet that requirement. And the HMP would show the steps necessary within a stated timescale to “catch up” with the neglected maintenance. (Examples might include overgrown woodlands or hedgerows, dilapidated roofs etc.)

Preparing the HMP before fiscal designation allows these issues to be teased out. New owners know the extent of the commitment necessary

before entering into undertakings. All this would form part of Natural England's report to us.

This would allow flexibility in defining an owner's obligations for the purposes of CE. This flexibility might facilitate greater scope to identify specific management prescriptions in the baseline survey and HMP as voluntary enhancements. This in turn might lend greater scope for funding the management of the land consistently with Natural England's recommended best practice.

In other words, management prescriptions that are identified as voluntary enhancements are eligible for agri-environment scheme funding under Treasury Rules whereas management prescriptions identified as mandatory requirements are not.

Natural England have published a helpful leaflet in this context, NE161 – **Environmental Stewardship Inheritance Tax**. It is available at <http://naturalengland.etraderstores.com/NaturalEnglandShop/Product.aspx?ProductID=a68c1d76-ca22-42fa-aa69-ea83ae7ad440>.

Whatever as regards public funding, our concern is with CE. The importance – of ensuring that undertakings securely include those actions necessary to maintain the land, preserve its character and provide reasonable public access – cannot be over-emphasised.

Chapter 6: Conditional exemption from Capital Taxes: Buildings of outstanding historic or architectural interest, essential amenity land and historically associated objects

Summary of this Chapter

This Chapter is concerned with the eligibility for CE of outstanding historic buildings, land essential for the protection of their character and amenities and objects historically associated with them.

The conditions of exemption are maintenance repair and preservation of the building, essential amenity land and historically associated objects, securing public access and publicising the existence of the exemption and the public access arrangements. Owners must provide us with undertakings that they will abide by these conditions.

Our built heritage advisers in the relevant part of the UK inspect the property. They then report to us and advise us over the detail of the undertakings. There is a list of these bodies in Appendix 9.

Where a claim for CE includes essential amenity land undertakings will be necessary not only as regards that land but also from the owner of the outstanding building and any other land we regard as essential amenity land. The aim here is to maintain repair and preserve the particular "heritage entity", and secure public access to it.

6.1 Eligible buildings

CE is available for a building which we designate – see **#3.3** above – as of **outstanding historic or architectural interest** – S.31(1)(c).

If a particular building is listed in England and Wales as Grade I or II*, or is a Scheduled Monument, or Grade A in Northern Ireland and Scotland, that is prima facie indication – though not a guarantee – that it will be accepted as outstanding for IHT purposes.

In reaching our opinion of whether the building is outstanding interest we seek (as territorially appropriate) the views of English Heritage, the Northern Ireland Environment Agency, Historic Scotland, and Cadw, which will in turn consult the relevant Historic Buildings Council. The body concerned may provide a copy of its advice to us to the claimant.

We interpret **building** consistently with these bodies. The term is apt to embrace not only detached castles, houses, stables, barns etc, but such as statuary and sundials. Indeed a semi-detached or terraced house is capable of falling within its purview.

Where a building meets the requirements for exemption, but the claim for CE includes outstanding land as well, appropriate undertakings will be required to protect all the qualifying interests, regardless of the basis on which the claim was made. In such cases the advisory bodies will liaise with one another.

To minimise delay and duplication of effort, the built or natural heritage advisory body, as appropriate in the circumstances of the case, will act as **lead agency** and provide composite recommendations.

6.2 Essential amenity land

CE is available for land which we designate – see **#3.3** above – as land essential for the protection of the character and amenities of an outstanding building is also eligible for CE – S.31(1)(d).

The factors to be taken into account here include the need to protect the views from an outstanding building (e.g. to landscaped parkland) the views of and approaches to it and the need to prevent undesirable development close to it.

The “essential” in “essential amenity land” must be viewed initially from the perspective of the claimant. That an expert might regard a larger area than that in claim as “essential” amenity land cannot in itself preclude CE for the smaller area.

In such a case the claimant might be pleased to augment the initial CE claim – within the time limit for doing so. But that might not be possible if, say, the claimant could not provide undertakings over the rest of the larger area or it belonged to a third party. But see also **#6.7** below.

CE for the amenity land will comprehend trees and underwood provided that they do not detract from the qualifying interest. If they did so detract then the exemption would not comprehend them or the land they stood or grew on.

We seek advice on CE claims for essential amenity land in the same way as for the outstanding building itself.

6.3 Amenity land need not be adjoining land

There is no need for amenity land to adjoin (i.e. actually abut onto) an outstanding building in order to qualify for CE. This aspect is considered further at **#6.7** below.

6.4 Buildings on essential amenity land

Buildings on essential amenity land qualify for CE in their own right if they meet the standards set out in **#6.1** above.

Otherwise, CE granted to such essential amenity land will nonetheless comprehend the buildings on it provided that they do not compromise the protection of the character and amenities of the outstanding building. If they did so detract then the exemption would not comprehend them or the land they stood on.

Where there is a village comprising an outstanding building – e.g. a manor house – and the rest of the village constitutes all or part of the essential amenity land in relation to that building, CE is available accordingly.

Alternatively, and as indicated at **#5.1** above, a village might fall within an area of outstanding land, and its components might include buildings outstanding in their own right or simply buildings comprehended by the CE of the land itself.

But it should be noted that there is no provision to designate a village per se.

6.5 Historically associated objects

CE is available for objects which we designate – see **#3.3** above – as historically associated with an outstanding building – S.31(1)(e).

Whilst colloquial references to this limb of CE frequently allude to *chattel* it is important not to overlook the statute's use of *object*. Thus it is that the exemption can comprehend ceilings, fireplaces and staircases. The fact that such objects might be fixtures, perhaps needing listed building consent for their removal, is not, in itself, a material consideration.

The fact that an object belongs to the same historical period as the building is not in itself sufficient. It must have a close association with a particular building and make a significant contribution, whether individually or as part of a collection or a scheme of furnishing, to the appreciation of that building or its history.

The object need not necessarily be of UK origin. Neither would it be expected that every item should be contemporary with the building as changes will have taken place which reflect the individual taste of different owners.

If an object has been in or associated with a building for less than 50 years then, it is unlikely to qualify as a HAO; but this is very much a rule

of thumb which should yield to specific judgement. And it certainly should not be inferred that an object which had been on the premises for 50 years would on those grounds alone qualify for CE.

It is difficult to be prescriptive in this connexion but an example of a less-than-fifty years object might be a drawing relating to the development of the building concerned.

We take advice in relation to such objects as for the outstanding building itself. In any case where the subject of a claim for CE is or includes an archive we also ask the National Archives (NA) for comment.

For further guidance please see Appendix 15.

6.6 Conditions for exemption – undertakings – general

Before CE can be given, the appropriate person(s), usually the owner, must undertake with respect to the property: –

- To take agreed steps for the maintenance, repair and preservation of the outstanding building and any essential amenity land and historically associated objects and ...
- ... for securing reasonable public access to it and ...
- ... in the case of historically associated objects, for ensuring their continued association with the outstanding building – S.31(4)
- The steps to secure public access to it must ensure that the access that is secured is not confined to access only with a prior appointment – S.31(4FA) and
- The steps to secure public access may include publication of the terms of the undertaking or any other information about the land which would otherwise be confidential – S.31(4FB)

In practice, detailed management prescriptions can be incorporated into the general undertakings.

But increasingly, particularly in English cases, owners and managers of outstanding land and buildings, and their contents, with our approbation, prefer to incorporate them into a Heritage Management Plan (HMP). The HMP is then incorporated referentially into the undertaking.

(See also **#3.14** above.)

More information about HMPs is available from Natural England's leaflets NE63 and NE64, available on their website at

<http://naturalengland.etraderstores.com/NaturalEnglandShop/product.aspx?ProductID=630a2a85-25ed-4ba5-90d7-71cfb84e19f4>

Either way the management prescriptions will reflect the advice from the relevant advisory agency.

They will include provision in addition to obtaining any statutory consents to consult specified advisory bodies, for the avoidance of harm, with regard to proposals for change or developments which might jeopardise the CE status of the building or amenity land concerned.

Management prescriptions may extend also to scheduled monuments. As a general proposition they may include provision for preserving outstandingness or to avoid or desist from action which might put it at risk. Particular cases and specific judgements will turn on their facts.

The terms of these undertakings are drafted by our Heritage Team. Where the undertakings have been given, their performance will be closely monitored.

6.7 Conditions for exemption – undertakings – peculiarities re essential amenity land: “supportive undertakings”

In the case of essential amenity land there is a further condition – S.31(4A) to (4F).

CE depends not only on the undertakings outlined in the preceding paragraph for the land itself but also on corresponding **supportive undertakings** in respect of:–

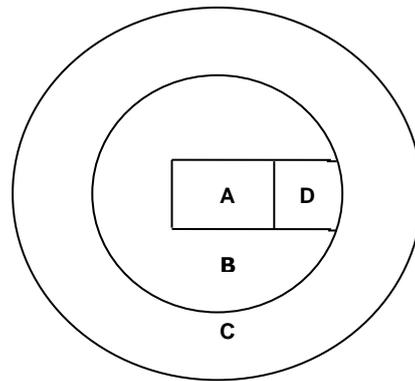
- the outstanding building whose character and amenities the land protects;
- any other qualifying essential amenity land which lies between the outstanding building and the area of land for which exemption is sought; and
- any other qualifying essential amenity land which, in our opinion, is **physically closely connected** with either that claimed area of land or the outstanding building.

There might be no difficulty where A owns the outstanding building and all the essential amenity land. But the need for supportive undertakings is much more readily understood where the outstanding building and the various tracts of amenity land are owned by different people. The more so if say the claim for CE extended only to a tract of amenity land.

Let us assume that A owns the outstanding building and that B and C own inner and outer concentric rings of essential amenity land around it.

A claim for CE by C would be dependent on **supportive undertakings** from both A and B – S.31(4A) to (4F). If A or B refused to provide a supportive undertaking C’s claim would fail. (A, in particular, might be reluctant to provide such an undertaking if the building were not already open, without prior appointment, to the public.)

Now assume that (as shown aside) A owns the outstanding building and B, C and D own qualifying essential amenity land around and beside it. Assume too that in our opinion D’s land is **physically closely connected**.



A claim for CE by C would depend on supportive undertakings from A and B and D.

And a claim for CE by D would depend on supportive undertakings from A and B, and from C if in our opinion C’s land was physically closely connected.

6.8 When “supportive undertakings” are necessary

Supportive undertakings for the outstanding building and any intervening land between that building and the area of land for which CE is sought are indispensable.

Similar undertakings for other nearby land would not be necessary unless, in our opinion as informed by the advisory agencies, it were **physically closely connected**.

These supportive undertakings are a vital component of the claimant’s case and, as indicated at **#6.11** below, it is for the claimant to secure them from the relevant parties.

6.9 Why “supportive undertakings” are necessary

The intention behind the scheme of undertakings is to establish and preserve security and continuity of amenity of an appropriate heritage entity with the outstanding building as its focal point.

In many cases the setting of the building is crucial to its full appreciation. Often it was specifically designed to provide striking views of the building or to complement its style with appropriate surrounding landscape.

Whether by specific design or by the simple process of sympathetic integration over the years, a building and its surrounding landscape often form an entity in heritage terms of which the whole is greater than the sum of its component parts.

The object of including **physically closely connected** land (which is not specifically defined) within the scope of undertakings is to further this general aim. It allows us, where our advisers deem it appropriate, to add related land which can create or enhance a viable heritage entity, and public access to it. Regard will be had to its relationship to the land for which CE is claimed and to the outstanding building.

This is not then a charter to require *supportive undertakings* indiscriminately. Rather it is a means to secure that such undertakings are not limited, inappropriately, to intervening land – cf. the example at **#6.7** above, where the land claimed gave only a view of, and access to, the back or side of an outstanding building.

CE is accordingly available for parts of an entity whether that entity is in divided or single ownership.

6.10 Replacement undertaking necessary for property already conditionally exempt

Where **supportive undertakings** are required for property which is already currently CE, the existing undertakings must be replaced.

If in the example at **#6.7** above the owner of the building A had claimed, and been granted, CE prior to C's claim, the latter could succeed only if A was prepared to agree to the wider area becoming subject to inter-dependent undertakings.

6.11 "Supportive undertakings" when the entity is in divided ownership

Where the entity is in divided ownership, separate undertakings are required in respect of each component part.

The responsibility for obtaining the **supportive undertakings** rests with the person seeking CE for the relevant amenity land.

CE is not denied to an owner of part of an entity merely because some or all of the remainder of that entity is owned by a body, such as the

National Trust, a charity or a company. But CE would depend on appropriate **supportive undertakings** from that body.

6.12 When a “supportive undertaking” is not required

Supportive undertakings are not required, where CE is claimed for essential amenity land, in respect of objects historically associated with the (or an) outstanding building.

And they are neither relevant nor necessary when CE is claimed for an outstanding building, or for historically associated objects, alone.

6.13 Reasonable public access

Successive Governments have taken the view that where CE has been given the public should have reasonable access, along the lines already indicated at **#6.6**, to the land concerned. CE cannot be granted unless reasonable access is ensured. This includes provision for publicising the access arrangements. Claimants should say how they intend to fulfil the undertaking to provide such access and to publicise it.

The access condition will depend on the nature of the property, not the category of designation. For example designation might be sought under S.31(1)(b) for outstanding land on which stands a Grade I listed building. Or designation might be sought for that building under S.31(1)(c). Either way the terms of access will go to the nature of the Grade I building.

Our advisers in the relevant territory within the UK guide us as respects the degree of public access considered reasonable there. This will vary from property to property depending on factors such as features of interest, size, location, contents and other individual circumstances. There is, therefore, no hard and fast rule.

Our practice has been refined and distilled over many years. Hence it is well-established now that, as a *general* guide –

- we seek access to the interior of a smaller building on at least one day a week plus public holidays during the spring and summer months amounting to 28 days (or 25 if appropriate in Northern Ireland Scotland and Wales) each year but
- for some buildings, it might be appropriate to seek fewer days’ access (or none at all) to the interior. Such buildings might include those of specialised interest, or whose structure, contents or decoration would suffer from excessive internal access. They might also include those whose historic interiors had been removed or destroyed or were of no

intrinsic interest. The decision to allow more limited access is dependent solely on the nature of the building while

- for larger buildings likely to attract, and be capable of handling, larger numbers of visitors anything up to 156 days' internal access might be appropriate.

In the context of access a day is taken to be at least 4 hours between 10am and 5pm. When considering the appropriate level of access the personal circumstances of the owner or those upon whom the management of the access depend cannot be taken into consideration.

(In certain cases, those of very specialised – and hence limited – interest, our practice afforded access only with a prior appointment. That practice ceased with the enactment of the Finance Act 1998.)

Access to amenity land will depend on the nature of the land, its use and individual circumstances.

Our Heritage Team should be consulted before altering any agreed arrangement for public access. S.35A provides for the variation of an undertaking by agreement, but any unilateral change might jeopardise the exemption.

As indicated at **#3.16** above we take a constructive approach to a request for variation. And certainly cases must turn on their merits. But the access recommendations of our advisers will have had regard to the building and all its appurtenances. More particularly they will have had to be approved by the relevant Historic Buildings Council.

Clearly any case for permanent change should be well-grounded.

6.14 Public opening and planning considerations

It should be noted that opening a historic house to the public for the first time, or extending the annual period of such opening, may constitute a change of use requiring the consent of the local planning authority.

6.15 Reasonable entry charge

The arrangements for the public access may include provision for a reasonable entry charge.

6.16 Publication of the terms of the undertaking

The nature of the publication will turn on the facts of the case.

We should seek a commitment that enables us to publicise the location of the property and the access arrangements.

There should also be a commitment to provide a copy of the undertaking and any ancillary documents on request. Ancillary documents would include any map, schedule or HMP, or a suitably detailed summary of the HMP where its bulk would make copying inappropriate.

Other steps for publication might include notification to national and local tourist bodies, national parks authorities etc.

While the material for publication is for discussion and agreement, there are no grounds to seek publication of personal particulars. The provisions for access and publication go to the property, not its owner.

Chapter 7: Failure to observe undertakings and dealings with conditionally exempt property: Capital Tax consequences

Summary of this Chapter

If the owner of CE property disposes of it or materially breaches the agreed conditions the exemption usually ends and IHT becomes chargeable.

But it is possible to dispose of the property otherwise than by sale and preserve the exemption if the new owner agrees to take on the conditions of the exemption.

It is also possible to make the conditional exemption absolute. This would occur if the CE property were sold by private treaty, or given to an approved public body such as a museum or gallery, or accepted by us in payment of IHT.

Special rules apply where CE depends not only on undertakings from its owner but also from the owner of an "associated property". For example if X owns CE essential amenity land and depends on undertakings from Y who owns the outstanding building then a sale of that building by Y would jeopardise X's CE.

For CGT any held over gain would become chargeable unless one of the exemptions above applied.

Appendix 2 deals with how to calculate the IHT charge, while any consequential charge in relation to a Maintenance Fund (see Chapter 8) is considered in Appendix 5. And Appendix 7 considers what happens when CE property is lost or destroyed.

7.1 Inheritance Tax: General principles

CE from IHT by definition is not absolute. If the owner of the property dies, or sells or otherwise disposes of it, or materially breaches the conditions of the exemption then the prospective claim for IHT ripens into a **chargeable event** – S.32/32A.

The tax charge operates by reference to the death or other occasion whence the exemption stemmed. (There are special provisions where there is more than one such occasion, see **Appendix 2** below.)

S.32(1) and S.32A(2) provide that if there has been a CET of any property tax shall be charged on the first occurrence thereafter of a chargeable event with respect to the property.

The ensuing provisions of S.32 govern whether or not a disposition is a chargeable event in relation to CE property. They also afford avenues to

preserve the exemption. S.32A does the same thing where there are **associated properties** – see **#7.5** below.

The provisions of S.32/32A are adapted by S.78(3) where there has been a CEO.

7.2 Conditional exemption preserved

Death or disposal then does not necessarily herald either the irretrievable loss of CE, or a ripened claim for IHT. The CE accorded in connexion with the earlier chargeable occasion can be preserved, and the ripening of the prospective claim for IHT thereby postponed, if:

- there is a change of ownership on death or otherwise, in a chargeable transfer which is itself CE – S.32(5)(a)/32A(8)(a) – or
- ownership changes without there being a CET or CEO, but the undertakings previously given are replaced by the new owner – S.32(5AA)/32A(6) and (8A).

One example is where one spouse transfers CE property to the other. Here there is no chargeable transfer, and no possibility of a claim for CE. But the transferee can replace the transferor's undertaking.

Another is a chargeable transfer of CE property, say to the trustees of a **relevant property** settlement. The transferee can replace the transferor's undertaking but pay tax on the value then transferred.

The statute does not impose a time limit within which to provide a replacement undertaking. But the futurity and need for delivery under the terms of an undertaking clearly imply that there should be no unreasonable delay.

The CE accorded in connexion with the earlier chargeable occasion can – under S.32(4)/32A(5) – be made absolute, and the prospective claim for IHT thereby extinguished, if:

- the property is given or bequeathed, or sold by private treaty, to a body listed in Schedule 3 (see **Chapters 9 and 10** and **Appendix 10**) – S.32(4)(a)/32A(5)(a) – or
- the property is disposed of in pursuance of S.230, i.e. offered and accepted in lieu of IHT (see **Chapter 11**) – S.32(4)(b)/32A(5)(b)

If the death of the person beneficially entitled to the property is thus to avoid becoming a chargeable event the arrangement must be effected by the personal representatives (or the settlement trustees or person next entitled) within three years thereafter.

In practice, we “telescope” CE within the three-year period where we know that there are active negotiations for a sale by private treaty to a Schedule 3 body or acceptance in lieu of IHT. And there is of course no temporal limitation where the arrangement is effected in any other way.

We do not regard an **appropriation or allotment** of CE property in satisfaction of a legatee’s entitlement as a chargeable event, provided that the legatee does not repay an equivalent value in money.

But the **sale of a share** of CE property, whether to someone else entitled to share in it or otherwise, is a chargeable event with respect to the share – see further at **#7.3** below.

An arrangement whereby the owner of CE property *exchanges* it for other property, whether CE or not, is a disposal and hence a chargeable event. The tax charge can of course be avoided with a replacement undertaking from the person who receives the CE property – cf. the second bullet above.

7.3 Conditional exemption lost – chargeable events

Under S.32(2) and (3)/32A(3) and (4), CE is lost, and IHT becomes chargeable, if there is a **chargeable event**. Under S.32 there is a chargeable event where: –

- First, the undertakings given at the time the exemption was granted are breached in any material respect – S.32(2)/32A(3).

We should expect to offer one opportunity to remedy matters within a reasonable time-frame, provided it were feasible, before taking steps to withdraw the exemption in the case of a (first) breach which was recent, and not of long-standing, and where in our opinion it resulted from genuine error rather than casual or deliberate disregard of the obligations conferred by the undertakings.

Our practice here recognises that the purpose of the legislation is to foster the protection of national heritage property in private hands (cf. **#1.1** above) but within the statutory constraints. And it is bolstered by a “monitoring” process, in which our advisory bodies have an important rôle.

Turning away someone who had a right to view is a very different proposition from failing to maintain a landscape or historic house. One can be addressed from a lay perspective. The other requires expert intervention and supervision. In each case the desired outcome is remedy rather than breach.

We should nevertheless not normally offer such an opportunity in relation to a subsequent or persistent breach of undertaking.

If there is a breach of a CGT undertaking, for CGT purposes the owner is treated as having disposed of the asset at market value giving a chargeable gain or loss. The owner is then deemed to reacquire the asset at the same value giving the acquisition cost when calculating the gain or loss on a later disposal, S.258(5)(b), TCGA.

A breach of an IHT undertaking does not in itself give rise to a CGT disposal. If the breach of a CGT undertaking also gives rise to an IHT charge by reference to the breach, the amount of the CGT chargeable is deducted from the value of the asset for IHT purposes, S.258(8).

- Secondly, the person beneficially entitled to the property dies or the property is disposed of, whether by sale or gift or otherwise, in any way other than those listed in **#7.2** above – S.32(3)/32A(4).

In most cases identifying a chargeable event will be straightforward. But the following merit mention: –

- There is usually no doubt about the date of a sale. But occasionally the normal terms of an auction sale are altered by agreement.

One example might concern a prospective overseas bidder. The bidder might agree with the vendor and the auction house that on a successful bid title would not pass and the proceeds of sale would become payable only on grant of an export licence.

Another might be where there is agreement for payment in instalments and that title would not pass until the final instalment had been paid.

It might be expected that the sale would not occur until title had passed. But any case evincing complications of this sort must be judged on its facts.

- A lease granted over CE property is not a disposal. And granting a lease is not **in itself** a chargeable event.

Nevertheless, care is needed to divine whether the creation of the lease, while not in itself a disposal of the underlying CE property, so undermines the integrity of the lessor's undertakings as to amount to a failure to observe them in a material respect. Much the same might be said for a hiring or custody agreement over CE objects.

- Similar considerations apply where CE property is mortgaged (in the case of real and leasehold property) or pledged (in the case of an object).

- Where there is a disposal of a share of CE property there is a chargeable event with respect to that share.

Assume disposal by Mr X of his share to his co-owner Y or to a third party. Or disposal by Mr X of a fraction of his wholly-owned property to Z.

In each case we should regard the references in S.32(1) to a **CET of any property** and to **on the first occurrence after the transfer** as referring collectively to the disposal of the share.

A chargeable event would be avoided, other than where the disposal was by sale, by a replacement undertaking from the donee. Equally, in the second case, consideration would have to be given to the integrity of Mr X's undertakings in the wake of the disposal.

- A disposal of part of the outstanding land designated under S.31(1)(b) is a chargeable event. Whether the claim for tax would extend to all the designated land or only to the part disposed of would depend on the facts of the case.

Assume the disposal of a small cottage or a plot of land. The retained land might itself merit designation, and the disposal might not affect the integrity of the undertakings over it. In that case the present claim for tax should be limited to the value or net proceeds of sale of the part disposed of. The prospective claim would then attach to the retained part.

Similarly, disposal might occur of part of a pre-eminent collection or group. If the retained part were itself a pre-eminent collection or group then similarly the present claim should be limited and the prospective claim adjusted.

Any case of doubt should be referred for technical consideration.

Whether an event such as described above would constitute a **transfer of value** (or other chargeable occasion) would depend on the facts of the case.)

The method of charging tax is considered at **Appendix 2** below.

For CGT purposes the treatment depends on the nature of the disposal. If the disposal occurs on the death of the owner this is not treated as a disposal for CGT purposes. The assets the deceased was competent to dispose of are deemed to be acquired by his or her personal representatives at market value at the date of death, S.62(1), TCGA.

If assets are distributed to beneficiaries under the terms of a will or the intestacy rules those beneficiaries acquire the assets at market value at the date of death, S.62(4), TCGA.

If the disposal or part disposal is a sale the owner is treated as having sold the asset at its market value, S.258(5)(a), TCGA, if there is a CGT undertaking in force. If the sale also gives rise to an IHT charge the amount of the CGT chargeable is deducted from the value of the asset for IHT purposes, S.258(8).

If the disposal or part disposal is not a sale, for example an exchange, a gift or the grant of a lease, the normal CGT rules apply. If the disposal is not an arms length bargain S.17, TCGA applies and the disposal is deemed to take place at market value.

7.4 Associated properties

There are special rules for associated properties.

7.5 Associated properties: definition and purpose – the heritage entity

The term **associated properties** is defined in S.32A(1).

Where there is, as in S.31(1)(c) to (e), an outstanding building **and either**

- an area (or areas) of essential amenity land *or*
- an object or objects historically associated with that building *or*
- both

they are associated with each other – they are **associated properties**. They need not all be CE.

The object here is to establish and foster the heritage entity comprising the historic house and its amenity land – cf. **#6.7** above – and its historically associated contents, and to discourage its break-up.

Hence any event which breaks up that entity – such as a disposal of, or failure to observe or to replace undertakings, in relation to the whole, or even only a part, of that entity – can give rise to a tax charge on each of the (CE) associated properties comprised within it.

(But there are necessary exceptions to this general proposition – see **#7.7 to 7.9** below.)

7.6 Dealings with associated properties: “supportive undertakings”

Subject to the excepting provisions considered at **#7.7 to 7.9** below, S.32A(3) and (4) provide the basis of claims for tax on failure to observe undertakings and on death or disposal. As just observed, this tax charge is limited to the associated properties which are CE.

The tax charge can nevertheless arise from an event in relation to a part of the entity which is not itself CE, but in respect of which there are **supportive undertakings** (see **#6.7** above). But a tax charge cannot arise from an event affecting an associated property if no undertakings exist in respect of it.

This somewhat complicated position can be illustrated by the following example:

Suppose A owns the outstanding building, and B and C own inner and outer concentric rings of qualifying amenity land around it. B’s (inner ring) property (though not A’s or C’s) is CE, facilitated by A’s **supporting undertakings** over the outstanding building. No supportive undertaking over C’s (outer ring) land was needed to secure CE for B’s land.

A then breaches the supportive undertakings over the outstanding building, e.g. by denying public access to it.

No tax charge falls on A with respect to the outstanding building because it is not CE. A tax charge does however arise with respect to B’s amenity land, which is CE, even though B was not responsible for the denial of access to the outstanding building.

But no tax charge would arise with respect to B’s land on a sale of C’s land. This is because C’s land is not part of the entity protected by undertakings.

Similarly, the disposal of objects historically associated with a CE outstanding building would not give rise to a tax charge with respect to the building or its amenity land unless the objects were themselves CE and hence subject to undertakings in their own right.

(As mentioned at **#6.12** above the statute does not require **supportive undertakings** over historically associated objects to facilitate CE for the outstanding house and its amenity land.)

Continuing the above example: –

Suppose now the death of D, who had owned objects which, though not CE, are historically associated with A's building. D bequeaths them to E.

D's death does not occasion a tax charge on A, whose property is not CE, or on B, whose property is CE but is not *associated* with D's objects. (Neither of course does a tax charge fall on C, whose land is neither CE nor part of the entity protected by undertakings.)

On the other hand, had both A's building and D's objects been CE, and E would not replace D's undertaking, D's death would give rise to a tax charge on A's building and B's land. Again, C's land is unaffected.

7.7 Disposal of associated properties to Schedule 3 bodies or in lieu of tax

A disposal of CE associated property to a Schedule 3 body or by way of acceptance in lieu of tax turns the **conditional** exemption of that property into **absolute** exemption – cf. **#7.2** above.

S.32A(6) provides that, where the disposal is of only part of the CE associated property or properties, the disposal gives rise to a tax charge on the remainder, unless the earlier undertakings are replaced by the recipient body in respect of the property or part which it receives.

Similarly, the receiving body would have to replace any earlier **supportive undertakings** to prevent a charge on CE property which remains in private hands.

The reasoning here is that, notwithstanding its status, the acquiring body has become a part owner of a continuing heritage entity. By providing replacement undertakings, and replacement **supportive undertakings**, it acknowledges this. The acquiring body would not thereby assume any prospective liability for tax. But those who retained ownership of the undisposed of CE property within the same entity would thereby retain their tax exemption.

Subsequent disposal by the acquiring body of all or any of the property it had so acquired, or failure to observe its undertakings, would occasion a tax charge on the retained CE property, unless that charge could itself be negated as at **#7.2** above. This is analogous with the example at **#7.6** above.

7.8 Replacement by a purchaser of a vendor's undertakings

Continuing the theme of supporting the heritage entity, S.32A(9) provides that the sale of the whole or part of any associated property will not give

rise to a tax charge with respect to the rest of the heritage entity if the purchaser replaces the vendor's undertakings or **supportive undertakings**.

There will however be a charge in respect of the property sold if that property has been conditionally exempted and the sale would have been a chargeable event – i.e. the sale was not a **tax-free** sale as described at **#7.2** above.

7.9 Disposals etc which do not materially affect the heritage entity of the associated properties

In mitigation of the foregoing tenets, S.32A(10) recognises that dealings with property comprised in a heritage entity ought not **necessarily** to deprive the entity of its CE status.

Hence a failure to observe an undertaking or disposal of all or part of a CE associated property or one subject to a **supportive undertaking** (though not the death of its owner) might not undermine the integrity of the heritage entity.

If we consider that failure to observe an undertaking or disposal has **not materially affected** the heritage entity, we can restrict the tax charge to the property or part concerned, thus preserving whatever degree of exemption applies to the rest of the entity. Consistently with the foregoing provisions any such charge would apply only to CE property.

In applying this provision to individual cases we shall consider all the relevant factors in the light of the advice of appropriate advisory bodies. Of relevance e.g. will be whether what remains after the chargeable event might qualify for CE as a viable heritage entity on its own merits.

Sale of historically associated objects would similarly have to be assessed on its merits. But the sale of one or two teaspoons might be imagined not materially to have affected an entity comprised of a landed estate.

7.10 Quantum of charge

The way in which IHT on these chargeable events is calculated is explained in **Appendix 2**.

7.11 Effect on a maintenance fund

Where CE property is supported by a maintenance fund (as described in **Chapter 8**) the loss of CE could also lead to an IHT charge on the assets of the fund (see **Appendix 5**).

7.12 Capital Gains Tax

The no loss no gain treatment for CGT purposes, where an asset is disposed of and an undertaking is given, means that if and when the asset is sold there will in effect be a charge equal to the gain during the first owner's period of ownership plus any gain arising since its acquisition by the second owner **unless** the sale was by private treaty to a Schedule 3 body (see **Chapter 10** and **Appendix 10**).

Although indexation allowance is abolished for disposals after 5th April 2008, under S.56(2) TCGA any indexation allowance relating to a disposal before 6th April 2008 by the first owner is taken into account in computing the no loss/no gain and because it is converted into part of the cost of the asset it is preserved.

The tax which is payable by the vendor is calculated as illustrated in **Appendix 14**.

7.13 Theft, loss, destruction or damage to heritage property

Please refer to **Appendix 7**.

Chapter 8: Maintenance funds

Summary of this Chapter

The foregoing chapters have considered conditional exemption ("CE") from capital taxes for national heritage property. This chapter concerns trust funds ("maintenance funds") to help with its maintenance preservation and repair.

A Maintenance Funds (MF) attracts special reliefs and exemptions as long as it is set up on terms we approve. Any property eligible for CE can benefit from a MF other than objects of national etc interest.

If we can approve the terms of the trust we give a "direction" to that effect. Transfers of property into a MF are then exempt from IHT (subject to provisions to prevent tax avoidance). This direction excludes the MF from the normal IHT charges on settled property.

The main conditions are that –

- the fund must be used to benefit the heritage property for at least six years
- it must comprise appropriate assets and not be excessive for its purpose
- income must be used similarly or paid to an approved body and
- the trustees include a trust corporation or member of a professional body.

And there are stipulations if the fund ceases to be held on the MF trusts during the six-year period or the earlier death of the settlor.

Capital and income may then be withdrawn in accordance with the thus-approved trusts and powers in the settlement deed. Payments for heritage purposes will not normally result in payment of IHT. Payments for non-heritage purposes normally will, but certain exemptions are available.

We are entitled to see the MF trust accounts and may with notice withdraw our direction if we conclude that it no longer warranted.

The Chapter concludes with a note of how Income Tax, Capital Gains Tax and Stamp Duty apply to MFs.

8.1 Introduction

In this context a maintenance fund (MF) means a fund settled on trusts to maintain repair and preserve outstanding land, buildings and their historically associated contents, and to facilitate public access to them. Unless the context denotes otherwise the expression assumes that the MF is one which meets the criteria prescribed by S.77 and Schedule 4.

This Chapter and **Appendix 5** deal with the special IHT arrangements under those provisions which apply to MFs appointed by us to maintain and preserve qualifying heritage property.

And there is a brief summary of the position as regards income tax, CGT and stamp duty at **#8.11** below.

8.2 Purpose of maintenance funds and the scope of this chapter

MFs reflect the desirability of keeping outstanding land and buildings, with their amenity land and historically associated contents, together and in private ownership (rather than to be taken over by the State). They offer encouragement to owners to set aside capital both to keep their property in a good state of repair and to make provision for a reasonable measure of public access to it.

This Chapter explains

- which categories of heritage property qualify for endowment from a MF – **#8.3**
- the IHT relieving provisions for funds entering and for the time being comprised in a MF – **#8.4**
- the entry conditions for a MF – **#8.5**
- what happens during the existence of a MF and when property leaves it for non-heritage or for heritage purposes – **#8.6** to **#8.8** and
- our powers in relation to MFs – **#8.10**.

Appendix 5 describes the IHT charges that can arise when property leaves a MF for non-heritage purposes.

References in this Chapter and in **Appendix 5** to **para such-and-such** are references to the relevant paragraph of Schedule 4.

8.3 What sort of property can be supported by a maintenance fund?

Under para 3(2) a MF may qualify for the special arrangements if it is set up for the benefit of specified categories of property. These categories are those eligible for designation for CE under S.31(1)(b) to (e), namely:

- land of outstanding scenic, scientific or historic interest (which can include gardens which are outstanding by reason of their horticultural, arboricultural or historic interest)

- a building which is outstanding by reason of its architectural or historic interest
- land which is essential for the protection of the character and amenities of that building (which may include its garden)
- objects historically associated with such a building

Any such eligible property is “qualifying property” under para 3(2) if it is designated under S.31(1)(b) to (e) – or their predecessors (S.34(1), FA 1975 and S.77(1)(b) to (e), FA 1976 – and the requisite undertaking has been given.

In other words the property to be maintained by the MF must be of the standard acceptable for designation for CE, and undertakings to maintain and allow public access must be in place. (See **#3.3** and **#3.7** above as respects designation and undertakings for CE and generally but also **#8.6** below.)

Divided ownership does not preclude designation for the purposes of a MF but co-owners must be prepared to provide undertakings suitable to the circumstances of the case. This will be a matter for judgement based on the facts of the particular case concerned.

There is no bar either to ownership by a company.

If property to be supported by the MF is not already CE then all is not lost for, under para 3(3), we may designate it if it meets the appropriate tests for CE described in **Chapters 5** and **6** and its owner provides appropriate undertakings. The property concerned will then be treated as though it were CE for MF purposes, but not otherwise.

8.4 Summary of the special IHT arrangements for property entering and for the time being comprised in a maintenance fund

If a MF satisfies the necessary entry conditions, which are described in detail at **#8.5** below, then: –

(a) Funds entering a maintenance fund

Subject as below –

- Under S.27 the transfer of funds into the MF settlement is exempt from IHT

- S.57(5) enables the application of S.27 on the termination of an interest in possession inter vivos or on death where the funds (being **non-relevant property**) remain in settlement but become held on MF trusts
- S.57A removes the tax charge on the death of a life tenant if within two years thereafter any of the settled funds (being **non-relevant property**) become held on MF trusts. The period is extended to three years where court proceedings are necessary
- Para 16(1) removes the exit charge under S.65 where **relevant property** becomes held on MF trusts
- Under para 17(1) a distribution to an individual of settled property which is **relevant property** is exempt from IHT if that individual within a **permitted period** (of 30 days) resettles the property on MF trusts. There is a corresponding period of two years after a death on which property ceased to be relevant property.

(There is similar provision for MF trustees themselves to distribute capital to an individual who transfers it to a new MF. This is discussed at **#8.6(c)** below).

It should be noted in passing that the donee of a PET would not avoid the claim for IHT in **that** connexion if the donor died within seven years after the transfer.

These exemptions must, in effect, be claimed. This is achieved by applying for a **direction** under para 1 in relation to the property comprised, or to be comprised, in the MF – see **#8.5** below as to directions.

Let us consider this in relation to S.27. Under S.27(1) the direction must either have effect at the time of the transfer or be given after that time.

Whilst securing a direction before transferring property into a MF settlement might offer comfort, this is not a necessary step to secure the application of S.27. Besides it is not always feasible – e.g. a transfer of property into settlement by will.

Either way, S.27(1A) imposes a time limit where the direction is applied for only after the transfer. The limit is two years after the date of the transfer. We have discretion to allow a longer period but, as explained at **#3.5** above, the circumstances in which we can exercise it are limited.

S.27(2) and S.56 limit the scope of the exemption – and the potential for tax avoidance – by excluding certain kinds of transfer.

The exemption would not be available for a transfer into the MF **by an individual** (including where the individual had been entitled to an interest in possession in and treated as owning settled property) if –

- the transfer did not take immediate effect, or
- it depended on conditions which were not satisfied within 12 months, or
- it was defeasible (e.g. it could be revoked) or
- the transfer was of less than the transferor's interest in the property or
- the property was given for a limited period or,
- the transfer was of an interest in possession in settled property and the settlement had not come to an end (unless S.57(5) applies) or
- the transfer into an existing MF resulted in (or from) the trustees of the fund acquiring a reversionary interest by purchase or
- property was transferred into the MF in exchange for a reversionary interest which did not form part of the estate of the person acquiring that interest.

The other exempting provisions (S.57A and para 16 as above) contain caveats appropriate to their own circumstances.

(b) Funds for the time being comprised in a maintenance fund

Under S.58(1)(c) the property for the time being comprised in the MF is not **relevant property**. Hence it avoids the IHT ten-yearly and exit charges under S.64 and S.65. (There is nevertheless a charging régime – see **#8.6** below and **Appendix 5**.)

8.5 Conditions to be satisfied for the arrangements to apply

Part I of Schedule 4 sets out these conditions.

(a) the para 1 direction

Para 1 introduces the concept of a *direction* (hereafter a **para 1 direction**) in relation to settled property. And "para 1 direction" comprehends as far as necessary corresponding directions under the earlier provisions of S.84(1), FA 1976 and S.93(1), FA 1982.

The property must be held on trusts which satisfy certain necessary conditions – see below – i.e. approved MF trusts.

It is the existence of a para 1 direction which enables the special tax arrangements to operate.

Subject to the time limit under S.27(1A) – see **#8.4(a)** above – para 1(1) obliges us **on a claim made for the purpose** to give a para 1 direction in respect of settled property which already satisfies the necessary conditions.

Para 1(2) enables us to give a para 1 direction in respect of property which its owner proposes to transfer into a MF settlement if, following the transfer, the necessary conditions would be met.

Since we could not know whether those conditions would be met, we are prepared to test them – in “worthwhile” circumstances. (It would ill become us otherwise to spend a lot of public money and time on such a venture). Hence we should need:

- evidence that the property to be endowed aspired realistically to the required quality standards – cf. **#8.3** above
- a draft trust instrument so that we could test the trusts and powers against the statutory requirements – see **Trust Conditions** below
- to be satisfied that the prospective settlor intended to settle a significant sum – on today’s values at least £10,000 – see also **Character and Amount** below – and
- diligent prosecution – we are not obliged to give a para 1 direction and should not throw good public money after bad if the applicant failed to provide timely responses. Instead we should simply put our papers away (and regard any renewed application from the same applicant with due circumspection).

(And for completeness, para 1(3) treats a direction given under earlier, superseded, legislation as a para 1 direction.)

(b) The para 2 general conditions

Para 2 sets out the conditions necessary for a para 1 direction:

Under para 2(1)

- we must be satisfied that the trusts governing the settled property meet certain conditions – para 2(1)(a)(i) – see **Trust Conditions** below

- we must be satisfied that the property (to be) included in the fund is of a character and amount appropriate for the purposes of those trusts – para 2(1)(a)(ii) – see **Character and Amount** below.
- we must approve the trustees of the MF – para 2(1)(b)(i)
- those trustees must include either a trust corporation, a solicitor, an accountant, or a member of such other professional body as we may allow in the case of the property concerned – para 2(1)(b)(ii) and ...
- ... be resident in the United Kingdom at the time the para 1 direction is given – para 2(1)(b)(iii).

Under para 2(2) the trustees are regarded as resident in the UK if the general administration of the fund is ordinarily be carried on there and a majority of them or of each class of them are resident there. And the residency of a trust corporation for this purpose follows the treatment for Corporation Tax.

(c) the para 3 trust conditions

Para 3(1) stipulates the trusts on which the property (*capital and income*) must be held.

(i) Capital

The trusts must provide that none of the capital can – para 3(1)(a)(i) – be used during the first six years from when it was transferred (or added) to the MF otherwise than for:

- the maintenance, repair or preservation of the heritage property (as defined in the trust instrument)
- making provision for public access to it
- the maintenance, repair, preservation or reasonable improvement of the property held in the MF itself and
- defraying the expenses of the trustees

(see **#8.7** to **8.8** below).

They must also provide – para 3(1)(b) – that if the property ceases to be held on those trusts before the end of the six-year period, or before the earlier death of the settlor, the capital (which would include any accumulations during that period) cannot devolve

otherwise than on one of the bodies listed in Schedule 3 (see **Appendix 10**) or a heritage charity.

Under para 3(5A) the reference to the settlor includes reference to an erstwhile life tenant where property became held on MF trusts by virtue of S.57(5) or S.57A – see **#8.4(a)** above.

Under para 3(4) a heritage charity is one which is wholly or mainly concerned with the maintenance, repair or preservation for public benefit of (broadly speaking) national heritage property.

(ii) Income

As regards income, those trusts must provide – para 3(1)(a)(ii) and (c) respectively – that

- any income arising during the six-year period which is not applied as with capital, and which is not accumulated, must go to one of the bodies listed in Schedule 3 (see **Appendix 10**) or to a heritage charity and
- any income whenever arising (and hence including accumulations) cannot after the end of the six-year period be applied other than for (as under **Capital** above) maintenance etc or to a heritage charity.

(iii) The MF Trustees' Powers

It is difficult to be prescriptive in relation to powers because cases must turn on their own facts. That said, some general comments might assist: –

- Clearly it is important to ensure that the trust instrument does not contain powers which could be exercised so as to override the trust conditions just outlined, or to infringe the statutory requirements generally.
- We could not approve a power to amend the terms of the trust instrument (without, say, our approval).
- A power which at first sight seems excessive may be reined in by an overriding circumscription, e.g. that it may not be exercised inconsistently with the purposes of the trust instrument, or so as to infringe the terms of Schedule 4, etc.
- A power to reimburse the settlor or owner of the endowed property is unexceptionable provided that it does not extend beyond expenditure previously authorised by the trustees (excepting in an

emergency) and which the trustees had power to authorise within the terms of Schedule 4.

- Under general law trustees must act unanimously unless expressly authorised otherwise, and any such power is permissible provided that the majority includes the professional trustee or trust corporation.
- Powers allowing the settlor or owner of the endowed property to exercise control over the MF are not consistent with Schedule 4.
- Powers to make interest-free loans, provide rent-free accommodation or otherwise divert fund income from the maintenance etc of the endowed property are not permissible.
- Other powers of investment etc should be considered in the context of the case concerned.

Our long-standing practice aims to rationalise the underlying purpose of Schedule 4 to facilitate the maintenance, preservation and repair of and public access to national heritage property.

In general we should find non-income producing assets not to be **of a character appropriate** – see **Character and Amount** below. But we need not object where the investment power could be expected to result in a reasonable contribution of income for the maintenance of the property, having regard to the circumstances of that property.

Other powers such as to become involved in partnerships or company flotation could result in loss of control over the activities of the MF and so are prima facie doubtful

- A power to appoint new trustees is unobjectionable in itself, but since the appointment of a trustee we felt unsuitable might give grounds for us to withdraw the relevant para 1 direction the settlor might wish to stipulate that the power should be exercised with our consent.

(iv) The Trust Instrument – drafts and precedents (a digression)

We examine the (draft) trust instrument in the light of the foregoing remarks and consult our Solicitor's Office where appropriate. It will almost always be appropriate to consult the Solicitor's Office unless the instrument followed a precedent we had accepted as such.

Experience suggests that some firms have several clients who are (or might become) settlors of maintenance funds. In order to save time

and costs for all concerned we are happy to regard an instrument we have once approved as a precedent.

(v) The Trust Fund: “character and amount appropriate”

As we have seen, para 2(1)(a)(ii) restricts the scope of a para 1 direction to property which we are satisfied is of **a character and amount appropriate** to the purposes of MF trusts in terms as above.

Where **character appropriate** is concerned, we take this to include propensity to produce an income, but not necessarily investment in a high-yielding portfolio. There is e.g. a long tradition of providing a para 1 direction for agricultural land.

Assets whose own maintenance might make excessive demands on the fund are not of an appropriate character. Neither are assets which provide no income, such as chattels and, unless they had a clear history to the contrary, unquoted securities. Shares in an Estates Company too would have to be judged according to the facts.

Where **amount appropriate** is concerned, we expect to have regard to other sources of upkeep available to the owner. This does not imply any kind of means test. But clearly we should take account of resources stemming such as from a fully repairing lease or grant aid from public funds.

Whilst **amount appropriate** might imply optimal funding, we do not interpret it in that way. Certainly we must endeavour to prevent over-endowment, otherwise funds could find undeserved shelter from the settled property charges. With this in view our examination of the amount to be settled includes consultation with the Valuation Office Agency.

On the other hand we do not necessarily refuse a para 1 direction for a fund too small fully to achieve that objective.

As intimated above, it would be an inappropriate use of public funds to indulge applicants in the costly process of testing suitability for a MF without proper provisos. But if an applicant clearly demonstrated serious intent, evidenced by willingness to commit a significant sum and to provide a sensibly-drafted trust instrument, we should exercise our power under para 1(2) to provide a direction if all the relevant conditions were met. We are happy to proceed with a small initial fund (of not less than £10,000 by today’s values – as above).

8.6 Developments: withdrawals of capital – IHT charges and exemptions – added property – lapse and replacement of undertakings

We are concerned now with the IHT position as regards –

- (a) capital taken out of a maintenance fund
- (b) the IHT charging provision – para 8
- (c) exceptions from charge – paras 9 and 10
- (d) additions to the endowed property
- (e) lapse and replacement of undertakings.

Taking these in turn: –

(a) Capital taken out of a maintenance fund

When capital is taken out of the MF for a purpose connected with the heritage, including timely resettlement in a new MF, there will be no charge to IHT – as there normally would be when property is distributed from a discretionary trust.

What constitutes use for a purpose connected with the heritage is considered at **#8.7** et seq below.

Subject to the terms of the trust deed, capital may be withdrawn from a MF for any purpose whatsoever (i.e. including any non-heritage purpose) after it has been in the fund for a period of six years or, in the case of funds settled during the settlor's lifetime, on the death of the settlor before that six year period expires.

There is corresponding provision where property subject to a para 1 direction had entered the MF from an interest in possession trust via S.57(5) or S.57A. And as regards S.57(5) capital may similarly be withdrawn if **the former life tenant** dies during the six year period.

Occasions when capital taken out of the MF for a purpose unconnected with the heritage, e.g. for the personal benefit of the settlor or anyone else, are subject to the IHT charging régime in Part II – paras 8 to 15A – of Schedule 4. (The last, para 15A, modifies the general rules to cater for property which entered the MF from an interest in possession trust by virtue of S.57(5) or S.57A.)

Let us now consider these provisions.

(b) The IHT charging provision – para 8

Para 8(1) defines the constituency by reference to property complying with the conditions of para 3(1) and the subject of a para 1 direction – see **#8.5** above.

Para 8(2)(a) then imposes a tax charge when property ceases to be within that constituency, save where it is applied for the maintenance etc of the trust's heritage object(s) or its devolution on a heritage charity.

Para 8(5) and (6) contain anti-avoidance restrictions on the exemption in para 8(2)(a) for the devolution of property on a heritage charity.

Para 8(2)(b) imposes a tax charge on any disposition effected by the MF trustees (other than for maintenance etc or – para 8(3) – simply a bad bargain) which reduces the value of their MF portfolio.

For the rates of tax Para 8(4) directs us to paras 11 to 15 – and these are considered with examples at **Appendix 5** below.

The intervening paras 9 and 10 provide for exceptions to the charge under para 8.

(c) Exceptions from charge –

There are two excepting provisions: –

(i) Resettlement within the “permitted period” – para 9

It sometimes happens that it would suit the MF trustees or the non-heritage beneficiaries (or both) to terminate the settlement, wholly or in part, but for an appointee (say) to resettlement it.

Para 9(1) prevents the tax charge that would otherwise have arisen under para 8(2)(a) in relation to funds that are resettled within a **permitted period** in a new MF approved by us.

The **permitted period** under para 9(2) is usually 30 days after the appointment or other distribution. But this is extended to two years where the occasion of the claim under para 8 was the death of the settlor or, under para 15A(3), the former life tenant.

By virtue of para 4(1), no new six-year restriction – see **#8.5** above at **Capital** – will apply to the resettled property.

But para 4(2) secures the principle. Any unexpired portion of the six-year period in relation to the first fund, whether following the death of the settlor or former life tenant or otherwise, will transfer to the second (and any subsequent) fund.

The charge is not avoided where the resettlement of funds is effected by someone who had purchased them – para 9(3).

Neither is it avoided to the extent that the value of the funds leaving the first settlement exceeds the value of the funds in the hands of the resettlement trustees – para 9(4) and (5).

(ii) Reverter to settlor etc – para 10

Para 10(1) excludes from charge under para 8(2)(a) property to which the settlor or his or her spouse becomes beneficially entitled. There is a similar exclusion for property to which the settlor's widow or widower becomes beneficially entitled within two years after the settlor's death.

In each case when the recipient becomes beneficially entitled he or she must be domiciled in the UK – para 10(8).

Para 10(2) and (3) make similar provision to para 9(4) and (5) as above for taxing excess value.

Para 10(4) and (5) prevent avoidance of the tax charge where the recipient had purchased an interest in the settlement.

Para 10(6) prevents avoidance of the charge where the funds concerned were derived from **relevant property**.

And para 10(7) prevents avoidance of the charge where the funds concerned were resettled, via para 9, and hence avoided an earlier charge under para 8(2)(a).

Para 15A(4) adapts this if the property entered the MF from an interest in possession trust and was not then relevant property. The exemption does not apply if the former life tenant was then dead.

Otherwise, and subject to the exceptions above, it does apply if the recipient is:

- the former life tenant or
- (subject as below) the former life tenant's spouse or, within two years after that life tenant's death, his or her widow or widower

In the latter case the exemption applies only if on the termination of the former life tenant's interest in possession the recipient would have become beneficially entitled to the property had it not passed into the MF.

(d) Additions to the endowed property

There is no bar (as long as the settlement permits) to adding to the property endowed by an approved MF. If the added property were eligible for designation in its own right no difficulty would arise.

Sometimes the proposed addition would not so qualify on its own merits. But the property already designated, with the addition, might together merit designation. In that case we may designate that totality and accept fresh undertakings in relation to it.

There is a further important point here. Assume that the original and the added property were in different ownerships.

Designation of the totality for the purposes of the MF would not confer eligibility for designation of the added property in its own right. Hence if the owner of the added property died or disposed of it CE would not be available because on its own it does not meet the standard.

(e) Undertakings – lapse and replacement

It might occur that the owner of endowed heritage property dies or transfers it by sale or gift or otherwise. The original undertaking would lapse. If it lapsed without replacement we should have to withdraw the para 1 direction. (See **#8.10** as to withdrawal of a para 1 direction.)

There is no provision in Schedule 4 expressly requiring a replacement undertaking. A replacement would be forthcoming de facto if the transfer were a CET or a CEO. Otherwise, we should accept one from the new owner, or withdraw the para 1 direction if he or she declined to provide it.

The terms of the replacement undertaking, other than one given in connexion with CE, should at least replicate the terms of the previous one. In terms of public access it should include provisions compatible with the prescriptions of the FA 1998.

8.7 Developments: application of capital and income for heritage purposes – no IHT charge under para 8(2)

In considering what **purposes connected with the heritage** means in practice we must have in mind first that the decisions of trustees of the MF are constrained by the terms of the trust instrument.

Secondly, as a general proposition, a payment by the trustees which contributes to the maintenance repair and preservation of national heritage property or public access to it is likely to be on the right side of the line. Less so might be a payment which on a proper construction

contributed rather to the property-owner than to the maintenance of the property.

Here are some examples for general guidance but the position will depend on the precise circumstances of individual cases.

- Maintenance etc of the heritage property: structural repairs

Structural repairs to the heritage property will normally qualify as expenditure for purposes connected with the heritage. But structural alterations will do so only in so far as they are necessary to preserve the existing property and are not going further.

Hence e.g. the provision of a new roof for a house would generally qualify. Expenditure on the acquisition of new heritage property would not.

- Maintenance etc of the heritage property: running repairs

Running repairs and maintenance costs, though not rates and taxes, will normally qualify. These might include: –

- In the case of an outstanding building, preservation of the stonework and fabric, internal redecoration and general maintenance.
- Such costs as heating lighting etc will qualify to the extent that they can be shown to be necessary either to maintain or preserve the building or its historically associated contents or as a consequence of public access.
- For buildings which are not designated as outstanding, but which stand on outstanding land or essential amenity land, expenditure is allowed solely for external and structural maintenance.
- In the case of land, measures for maintenance and preservation such as bracken control, scrub clearance where appropriate, woodland management with regard to age and species effect, provision for the replacement of mature trees – e.g. in parkland, by successor planting of appropriate species – fencing, maintenance of hedges, hedge banks and walls, and upkeep of ditches and drainage
- In the case of gardens, the cost of seeds, plants, materials, implements and the repair and heating costs of greenhouses
- In the case of historically associated objects, cleaning and appropriate restoration of pictures, repairs to tapestries, curtains, carpets, clocks, furniture and

– The wages e.g. of gardeners.

- Public access to the heritage property

Expenditure on public access qualifies as expenditure for purposes connected with the heritage. This might include the provision (including consistently with e.g. the Disability and Health and Safety legislation) and upkeep of e.g. car parks and public lavatories, the wages of guides and attendants and special fire precautions.

Lighting, heating and security costs and the upkeep of roads and drives will qualify to the extent that they are made necessary by public access.

- Maintenance etc of the property in the fund

Generally, all expenses necessary for prudent management will qualify. Thus in a case where the property in the fund is an agricultural estate, this will allow the trustees to make both capital and revenue expenditure on repairs and maintenance of the property in the fund.

- Improvement of the property in the fund

This covers improvements made in order to generate a higher income for the fund, e.g. the purchase of additional farm land, as well as those which are conducive to the good management of the trust assets, e.g. the renovation of farm workers' cottages or the construction of a new silo.

The improvements must however be **reasonable having regard to the purposes of the trust** and should therefore be undertaken only after proper provision has been made for the maintenance etc requirements of the heritage property.

- Expenses of the trustees re assets comprised in the maintenance fund

These expenses include the administrative costs incurred by the fund – for example payment of professional fees, rates and taxes for which the trustees are properly liable in respect of the fund's property and income.

8.8 Miscellaneous

In the case of an outstanding house, the **insurance** of the building itself, and of any historically associated contents, will qualify, as will the cost of the public liability insurance in relation to access by the public.

The trustees may also – see **#8.5** above – pay income or capital to a national heritage body or heritage charity.

8.9 Loss or damage to heritage property

If heritage property supported by a MF is lost or destroyed, this is likely to lead to the withdrawal of the para 1 direction to the extent of that property, with consequent tax charges – see **Appendix 7** at **#6**.

The extent of any such withdrawal should take account of any other property which under the trust instrument the MF does or might endow.

On the other hand damage to the heritage property might be susceptible of repair. Cases would turn on their facts. But in the absence of a failure in a material respect to observe the undertaking to maintain etc, withdrawal of a para 1 direction is less likely.

8.10 Our powers in relation to maintenance funds

After a MF has been set up and a para 1 direction – see **#8.5** above – has issued in respect of property transferred into it, then:

- Under para 7, we may take any necessary steps to enforce the trusts of the fund. And we have the same powers in connexion with the appointment, removal etc of the trustees as any beneficiary under the trusts.
- Under para 5, we may, by notice in writing, withdraw a para 1 direction – see **#8.5** above – if the facts concerning the fund or its administration cease to warrant the application of the special tax arrangements described in this Chapter.

This might happen e.g. where the trustees' powers of accumulation or investment were exercised in a manner inconsistent with the purposes of the fund or the owner of the heritage property failed materially to observe the statutory undertakings.

By analogy with **#7.3**, first bullet, we should expect to offer one opportunity to remedy matters if that were feasible before taking steps to withdraw the direction in the case of a (first) occurrence which was recent, and not of long-standing, and where in our opinion it resulted from genuine error rather than casual or deliberate disregard of the obligations relative to the purposes of the trust or undertakings. We should not expect to offer such an opportunity in relation to any subsequent occurrence.

In the event of a para 1 direction being withdrawn, there would be charges to IHT and income tax – see **#8.11** – subject to any available exemption or relief.

- Para 6 provides for the trustees to furnish us with such accounts and other information as we may reasonably require. We believe that there should be independent examination of larger funds, normally without the necessity for audit.

In summary we shall expect each year, with appropriate certification:

Maintenance Fund with gross income over £25,000

- Independent examination of accounts
- Balance sheet
- Detailed statement of income and expenditure
- Report on the activities of the fund describing its operations during the year

Maintenance Fund with gross income under £25,000

- Balance sheet
- Simple statement of income and expenditure
- Brief report on the activities of the fund describing its operations during the year

For the avoidance of any doubt, if an audit were carried out **at the behest of the trustees** this would constitute the independent examination for that year.

See also **Appendix 6**.

Adequate records of any accumulations of income should be maintained because, in the event of charges on the fund – see **#8.11** – it would be necessary to establish how its income had been taxed, what income had been accumulated and how the accumulations had been applied.

8.11 Other Taxes

As foreshadowed at **#8.1** above, this is a brief summary of the position as regards MFs for IT, CGT and stamp duty.

Income Tax

1. Property entering a MF

There are no IT requirements or benefits associated with the setting up of a MF.

2. Income arising during the currency of a para 1 direction: Ch 10 S.507 to S.517, Income Tax Act 2007 ("ITA")

(a) The position in general

Although the income of the fund accrues to the settlement trustees it is taxed as the income of the settlor under S.624, Income Tax (Trading and Other Income) Act 2005 if the settlor is alive and has, for the purposes of that provision, retained an interest in the trust property comprising the MF.

The trustees may however elect under S.508(1), ITA for the income to be taxed on them at the special trust rates, which are the trust rate currently 40% and the dividend trust rate currently 32.5%.

The higher rates of tax applicable to a settlor's income and the special trust rates are currently the same. Hence the benefit of making such an election would be somewhat limited.

(IT is charged on the trustees' gross income less allowable trust management expenses, while if it were charged on the settlor's income it would extend to the gross amount. Also, making an election under S.508 also prevents a charge on an occupier of the property on that benefit. An election would also shift the practical burdens associated with IT onto the trustees.)

If, perhaps exceptionally, the settlor had not retained an interest in the trust property comprising the MF then the income of the MF would fall to be taxed solely at the special trust rates.

(b) Funds applied for approved heritage purposes

Application of funds for approved heritage purposes would normally be neutral for IT.

(c) Funds applied otherwise than for approved heritage purposes

Withdrawal for non-approved heritage purposes – e.g. for someone's personal benefit – would give rise to a charge to IT under S.512(1), ITA 2007 unless the income were treated as the income of the settlor.

This charge extends to so much of the income of the MF, including any accumulations, as had hitherto borne IT only at the special trust rates (or their predecessors), and had not been applied for approved heritage purposes.

If £X is appointed to A in 2010, and the trustees had elected, the IT charge would extend at the differential rate to all the income going back to the date of the settlement except insofar as it had been applied for approved heritage purposes. Then, if £Y is appointed to B in 2013 the IT charge would extend at the differential rate to the income arising from 2010 to 2013.

In practice no tax would actually be payable unless the special trust rates were lower than the contemporary higher rates.

(d) Funds applied by way of distribution to an individual who re-settles on approved MF trusts

No charge to IT arises when property is distributed to an individual who within 30 days (or, when appropriate, two years) resettles it on a new MF for which we give a para 1 direction. This applies only when the whole of the MF is resettled. A distribution of less than the whole of the MF would not qualify for this exemption.

It should also be noted here that the charge to CGT may be held over – S.260(2)(c) and (f), TCGA. However if the settlor has an interest in the settlement as defined in S.169F, TCGA, the election under S.508(1) must be in force for the year and continue for the following six years. Otherwise there is a clawback charge under S.169C, TCGA.

(e) Reimbursement from MF income of a settlor who is operating a business

The MF trustees might be authorised to apply trust income to reimburse the settlor for sums he or she has expended in the maintenance etc of the heritage property in the course of a trade or UK property business. Under S.511, ITA 2007 any such reimbursement would not reckon towards the settlor's business profits as long as the trustees had *not* elected under S.508(1) above.

3. Withdrawal of a para 1 direction

Withdrawal of the para 1 direction (see **#8.10** above) would give rise to a charge to income tax under S.512(1), as described at 2(c) above.

Capital Gains Tax and Stamp Duty

1. Property entering a MF

The charge to CGT on property entering a MF may be held over. Property transferred into a MF, by an individual or by the trustees of a settlement can be made the subject of an election by the transferor to

hold over any capital gain arising at that time under S.260(2)(c) and (f), TCGA.

However if the settlor has an interest in the settlement as defined in S.169F, TCGA, the election under S.508, ITA 2007 must be in force for the year and continue for the following six years. Otherwise there is a clawback charge under S.169C, TCGA.

2. Property taken out of a MF

For CGT, whether the assets are distributed in specie to another trust (including a maintenance fund) or to an individual, any chargeable gain may be held over (S.260(2)(c) and (f), TCGA). In the latter case, the election must be made by both transferor and transferee.

And the liability to stamp duty will be restricted to a single charge of fixed transfer duty of £5.00.

(If S.260 does not apply it is possible that the capital gain can be subject to hold-over relief under S.165 (business assets). Further details are available in Help Sheet 295 at <http://www.hmrc.gov.uk/helpsheets/2008/hs295.pdf>.)

Holdover relief can therefore be claimed when e.g. property is distributed to an individual who resettles it within 30 days – or two years if the distribution occurs on a death – on another MF.

And the charge to stamp duty would be restricted to one payment of £5.00.

When capital is taken out of the fund for a purpose unconnected with the heritage, e.g. for the personal benefit of the settlor or anyone else, the normal CGT consequences follow, i.e. the charge may be held over as above

And stamp duty could be chargeable depending on the circumstances.

Chapter 9: Gifts to qualifying charities, for national purposes or for public benefit

Summary of this Chapter

This Chapter, with Chapters 10 and 11, considers the national heritage incentives for owners who wish to make gifts and bequests of non-heritage property, or who no longer wish to retain their CE property.

This Chapter is concerned with the tax exemptions for gifts and bequests to –

- qualifying charities
- public collections and other bodies established for national purposes and
- preservation trusts (provisions, now repealed, for gifts for public benefit).

There is comprehensive commentary at IHTM11101 et seq as regards the exemption from IHT for charities, and the exclusions from these exemptions for anti-avoidance purposes. So these aspects are not considered here.

The principal concern in this chapter is with the exemption for gifts and bequests for national purposes, and their recipients, the “Schedule 3 bodies”. These bodies are listed in **Appendix 10**.

The chapter closes with, for completeness, brief mention of the former exemption for gifts for public benefit. This exemption became unnecessary with the removal in 1983 of the ceiling for charitable gifts and bequests. The relevant provisions were later repealed.

9.1 Introduction

As explained in the introduction to this memorandum, the policy of successive Governments has been to encourage the retention of heritage property in private hands so far as possible and for its owners to care for it and to allow the public to see it.

Chapters 3 to 8 have described the tax reliefs which have been designed with this aim in view.

But if owners of heritage property decide to dispose of it, Government policy is to encourage disposal to a body whose aim is to look after the nation’s heritage.

These bodies – for a list of them see **Appendix 10** – are those which fall within Schedule 3 and which, for convenience, are from now on referred to collectively as **Schedule 3 bodies**.

Over the next three Chapters –

- This one describes the treatment of **gifts** etc of national heritage (and other) property to qualifying charities and Schedule 3 bodies.

Then, as alternatives to selling national heritage property in the open market:

- **Chapter 10** describes the advantages of **selling** to a Schedule 3 body **by private treaty** and
- **Chapter 11** describes the advantages of offering it **in lieu of IHT and ED**.

The exemptions from IHT described in this Chapter for gifts to qualifying charities and to Schedule 3 bodies are subject to (anti-avoidance) exceptions specified in S.23(2) to (6), and S.25(2). These exceptions, and qualifying charities generally, are considered at IHTM11101 et seq.

9.2 Gifts and bequests to qualifying charities

Gifts and bequests to qualifying charities, including those concerned with the national heritage, are exempt from IHT – S.23 – and are not chargeable to CGT – S.257, TCGA – or stamp duty, stamp duty land tax or stamp duty reserve tax.

The exemption from IHT for qualifying charities is considered at IHTM11101 et seq.

A gift or bequest of CE property would however bring the exemption to an end and tax would become chargeable. That would be so unless the receiving body were also a Schedule 3 body or its officers provided an undertaking to replace the donor's or testator's. (See **Chapter 7**.)

9.3 Gifts and bequests to Schedule 3 bodies

Subject to certain anti-avoidance provisions (see **#9.1**) gifts and bequests of any property to Schedule 3 bodies are exempt from IHT – S.25. And there is exemption from CGT under S.257 and 258(2)(a), TCGA.

In contrast, as a general rule, gifts and other transfers made below market value otherwise than by way of a bargain at arm's length are treated for CGT purposes as made for a consideration equal to market value. It follows that CGT may be payable in these circumstances as well as IHT.

There is also relief from CGT on sales made to Schedule 3 bodies below market value. Where exemption is not sought by means of the special

rules relating to private treaty sales (see **Chapter 10**) full relief will be due for any element of gift. But if the sale price exceeds the vendor's acquisition cost, the excess is chargeable to CGT – S.257(1) and (2), TCGA.

Transfers to the Trustees of the National Heritage Memorial Fund and to those Schedule 3 bodies that are charities are free of stamp duty/stamp duty reserve tax.

Transfers to these bodies and to the Historic Buildings and Monuments Commission for England (English Heritage), the National Endowment for Science, Technology and the Arts, the Trustees of the British Museum and the Trustees of the Natural History Museum are exempt from stamp duty land tax.

A gift or bequest of CE property to a Schedule 3 body would bring the exemption to an end but tax would not become chargeable. Neither need the receiving body replace the donor's or testator's undertakings. Instead the "conditional" exemption becomes "absolute". (See **#7.2.**)

As mentioned in **#9.1** and above, the question of **sales by private treaty** to a Schedule 3 body is considered in **Chapter 10**. The generality and categories of Schedule 3 bodies is considered below.

9.4 Schedule 3 bodies

The nature of the tax reliefs associated with Schedule 3 bodies is such that the categories of body to which they apply are strictly limited. Nevertheless Schedule 3 can and has been augmented by legislation and by executive decision, and some of its constituents are classes rather than named bodies. There are four broad categories:

- (a) National institutions which exist wholly or mainly for the purpose preserving for public benefit collections of historic, scientific or artistic interest
- (b) Government departments and local authorities
- (c) Universities and university colleges: libraries the main function of which is to serve the needs of teaching and research at a university and museums and art galleries maintained by a local authority or university
- (d) Other heritage bodies most of which meet one of the following criteria: –
 - (i) It is wholly or almost wholly maintained from public funds

- (ii) It is established by Act of Parliament and holds heritage property inalienably
- (iii) It does not hold heritage property itself but transfers such property to institutions falling within categories (a) or (b) above.

The exception is the Historic Churches Preservation Trust.

In general it is relatively easy to decide whether a body falls within categories (a) (b) or (c) above. But in cases of doubt the following may be noted.

9.5 National institutions

The characteristics which a body would need to satisfy before it could be regarded as falling within this category are:

- it is not a body conducted for profit
- the members of its governing body are appointed in such a way that they may be regarded as being in some way representative of the public – e.g. by the appropriate Ministers
- it exists wholly or mainly for the purpose of preserving for public benefit a collection of historic, scientific or artistic interest and
- it makes its collection directly accessible to the general public on a regular basis.

9.6 Government departments etc

It might seem difficult to conceive of any dispute arising over a body's status under this category. But care is necessary when considering whether the body concerned really is a government department. This might particularly be so as regards the devolved administrations.

We have to date accepted that "the Scottish Ministers" falls within this category. Other cases would need to be considered on their merits.

9.7 Universities etc

Some difficulties may arise over the definition of a university or university college and over what is meant by the expression "maintained by" in relation to museums and galleries.

There is no statutory definition of a university college. But we have followed a working definition provided by the then Department of Education and Science who would only recognise a body as being a university or university college if either:

- it received grants from the University Grants Committee (or was a college of a body which did) or
- it was established by Royal Charter or Act of Parliament and awarded degrees in its own right.

With regard to **maintained by** we have accepted that a reasonable minimum level of support from the local authority or university would be 25%. We have also accepted that the notional value of support in kind (provision of free accommodation) should be taken into account in calculating the amount of support received.

The removal in 1983 of the limit of gifts and bequests to charitable bodies under S.23 has obviated the need for most bodies to seek Schedule 3 status.

Applications for Schedule 3 status are considered by HM Treasury and are entertained only if the body concerned falls within one of the categories in (a) – (c) above. Such applications should be made to HMRC in the first instance.

9.8 Gifts and bequests for public benefit

Exemption from IHT used to be available for gifts of certain types of heritage property, and endowment funds, to a body not established or conducted for profit – typically a heritage preservation trust. And there was a parallel relief from CGT.

The exemption and relief were subject to appropriate undertakings from the receiving body and to a direction from us – S.26 and S.258(1), TCGA – but they became otiose in 1983 when the limit of the exemption of gifts and bequests to UK charities was removed.

S.26 and S.258(1) were finally repealed in 1998.

Unlike conditional exemption there is no prospective claim for tax on disposal of the property concerned, or on breach of the undertakings given.

The undertakings given to secure those exemptions which were agreed during the currency of the legislation nevertheless remain enforceable. And the need for any relevant permission (e.g. to sell or otherwise dispose of property) remains in place.

Chapter 10: Public purchase: private treaty sales

Summary of this Chapter

Private treaty sales are sales between a seller and buyer which, unlike say an auction, are not public sales. The proceeds of a private treaty sale to a Schedule 3 body (see **Appendix 10**) of property which is conditionally exempt, or would qualify for exemption, might be free from capital taxes.

In practice the seller shares the benefit of this exemption with the purchasing body.

The procedure is for the seller and buyer to agree the value of the property. They then calculate the tax which would have been payable had the private treaty sale been a public sale and subtract that notional tax from the agreed value. Finally they add 25% (in the case of an object) or 10% (in the case of land or a building) of that notional tax to the net figure.

This results in a "special price" which is what the seller receives. Hence the seller of an object receives the sale proceeds net of notional tax plus a "douceur" of 25% of the tax which would otherwise have been payable. And the purchasing body pays the full agreed value less 75% of that notional tax.

HM Revenue & Customs plays no part in deciding the valuation of the property being sold. Our rôle is to calculate the special price based on the valuations agreed between the seller and buyer. For this reason the seller should authorise us to disclose any relevant matters to the buyer.

Neither in sharing the benefit of the tax exemption are the percentages fixed at 25 (or 10) and 75 (or 90). They too are for agreement between the parties.

Apart from capital taxes VAT is not usually payable either. There is a note of where to find more information about VAT.

The chapter closes with a note of the special circumstances which might arise when an object is offered for public sale but the Secretary of State defers the buyer's application for an export licence. In these circumstances a private treaty sale to a UK institution might be possible.

10.1 Introduction

Private treaty sales of national heritage property to bodies established for national purposes may be free from capital tax charges.

10.2 Terminology

The term **private treaty sale** here is not a technical term. It simply means a sale which, unlike (say) an auction, is not a public sale. In the context of this Chapter, it envisages a sale of national heritage property of requisite standard to a body within Schedule 3 (see **Appendix 10**).

Note: the range of bodies is more limited when the private treaty sale is of an object which is exempt from ED – see the proviso to S.40(2), FA 1930.

The requisite standard embraces all property currently CE or exempt from capital taxes on heritage grounds under earlier legislation. It also embraces property which, though not currently exempt, would meet the current standard of eligibility (as to which see **#3.3**).

In the latter case, if a private treaty sale were in prospect we should consult our advisers according to the nature of the property. They would provide us with an informal opinion of whether the property met the standard for CE. Our advisers and the relevant standards are considered in **Chapters 4 to 6** above.

10.3 The tax advantages of a private treaty sale

A private treaty sale will forestall claims for capital taxes providing certain conditions are met. Moreover it might frequently offer a substantial financial advantage to the selling owner.

If CE property is sold in the open market any IHT or ED exemption is lost and the vendor may also be liable to CGT on the sale proceeds. The tax charges can be substantial and hence the final net amount retained by the seller significantly less than the proceeds of sale.

However, by virtue of S.32(4)(a)/32A(5)(a) (and the proviso to S.40(2), FA 1930 for ED) a private treaty sale does not lead to the withdrawal of CE or to a charge to IHT. Rather the **conditional** exemption becomes **absolute**. Neither is there any liability to CGT.

While the vendor receives the proceeds without any liability to tax it is not unreasonable that the acquiring institution should be prepared to offer more than the value of the property net of the tax the vendor would have paid. And it is similarly not unreasonable for the vendor to be prepared to accept a lower price than would prevail if the proceeds were taxable.

In this way the vendor and the acquiring institution share the value of the tax exemption. An administrative arrangement designed to reflect this and to enable both parties to negotiate on a firm basis has been in existence for many years.

These arrangements follow the principles recommended by the Waverley Committee's **Report of the Committee on the Export of Works of Art [etc]** in September 1952. They bring what is commonly called the **douceur** – sweetener – into the calculation.

In essence, the acquiring institution pays the agreed market value net of the tax the vendor would have had to pay, sweetened by an agreed percentage of that tax. We call this **the special price**.

Clearly, under these arrangements, a tax free private treaty sale at a given value is likely to leave the vendor better off than a taxable sale at the same value in the open market.

They will also benefit the purchasing institution and hence the public by enhancing a public collection at a lower cost than would have been possible in the open market.

(Note: these arrangements and the tax advantages would not apply if a Schedule 3 body purchased at a **public** sale, e.g. at auction. The benefit was limited under S.31, FA 1958 (and its successors) to sale by private treaty.)

10.4 Possible further benefits for the vendor

There may be further tax benefits for the vendor, for example –

- If a CE item is sold in the open market the sale proceeds are added to the cumulative total of transfers made by the last person who made a CE transfer of it or, in certain circumstances, the cumulative total of the settlor of a settlement which included the item – see **Appendix 2**.

However, if the property is sold by private treaty there will be no increase in either cumulative total. This in turn can reduce the vendor's IHT liability in relation to subsequent transfers.

- Moreover, if the vendor V owned other CE property then on a later chargeable event where V was also the relevant transferor V's cumulative total would exclude the proceeds of the private treaty sale.
- Assume the death of W who bequeathed an important work of art to X. If X sold it by private treaty shortly after W's death CE could thereby be agreed in one "telescoped" operation.

X would not have to enter into undertakings to preserve and allow public access. There would be no prospective claim for tax by reference to W's death. And any earlier prospective claim – possibly for ED and at a very high rate – would be extinguished.

- A gift by Y of an important work of art to Z might be a potentially exempt transfer. If so S.26A would render it an exempt transfer if Z undertook a private treaty sale within seven years after that gift.
- If the gift by Y were a chargeable transfer then if Z sold it by private treaty shortly afterwards CE could thereby be agreed in relation to the transfer in one “telescoped” operation – comparably with X’s circumstances as above.

10.5 Purchase by a body within Schedule 3 IHTA on behalf of a non-Schedule 3 body

A private treaty sale of property of requisite standard to a Schedule 3 body is not a chargeable occasion for IHT or CGT. We have confirmed that this can also apply where that body then passes dominion or even ownership to a non-Schedule 3 body. That of course depends on the other body’s suitability and on its preserving the property for public benefit.

Implicit here is that the transaction secures that albeit briefly the Schedule 3 body beneficially owns the property before passing it on.

10.6 The method of fixing the special price in private treaty sales

If someone is contemplating selling an item by private treaty he or she can consult MLA for advice on the public institutions most likely to be interested in acquiring it.

Thereafter, with the aid of their own advisers if necessary, the parties negotiate and agree current (and if necessary historic) values. The Government does not intervene in this process in any way.

We then calculate the notional liability to CGT and IHT on the basis of this agreed value (costs of sale, such as professional fees, are not taken into account in the notional tax calculation) to reach the special price. This entails the **douceur** arrangement mentioned in **#10.3** above.

As a general guideline, the special price would normally be the net value of the property (the agreed market value less the notional tax liability) plus a percentage of the value of the tax exemption, 25% in the case of an object, and – because they cannot normally be exported – 10% in the case of land and buildings.

There might be occasions on which a figure above or below that percentage would be appropriate. Each case will turn on its facts and on the negotiations between vendor and purchaser..

Any institution considering a purchase will always need to know how the negotiations will be affected by the tax position of the vendor. The vendor should therefore authorise us to disclose the potential liability to the purchaser and confirm the exemption.

When the vendor and purchaser have agreed the market value of the property, and deducted the taxes, the difference plus the vendor's share of the tax exemption the **douceur** is the special price the purchaser has to pay.

Illustrative examples are given at **Appendices 11** and **12**.

10.7 Capital Gains Tax

Under these arrangements gains accruing on private treaty sales are exempt from CGT. The Waverley philosophy of sharing the benefit of the tax exemption is less straightforward here than in the context of simply calculating IHT or ED on the proceeds of tax-exempt objects.

The figure to be attributed to the CGT which the vendor would have borne in a corresponding sale in the open market is essentially notional. As a result it would be inappropriate to take into account all the "real" CGT reliefs which feed into "real" CGT computations. Examples include loss relief and the annual exemption.

Other "real" reliefs, such as the chattels exemption and private residence relief stand somewhat differently and these will normally be taken into account.

Prospective vendors and their agents are welcome to consult us in cases of doubt.

A vendor's tax affairs might even militate against private treaty sale. This would depend on the arithmetic, for which the vendor must take responsibility. A completed sale could not be unravelled on discovery that the vendor had not benefited financially from the process.

10.8 Value Added Tax

Private treaty sales to Schedule 3 bodies – listed in **Appendix 10** – are relieved from VAT (Value Added Tax Act 1994, Schedule 9, Group 11). Information about this is given in VAT Notice 701/12 – **Disposal of Antiques, works of art etc., from historic houses** which is available from the local VAT office of HMRC.

10.9 Foreign Element

It sometimes happens that an important and famous work of art comes to auction and the successful bidder is overseas. The matter is likely to feature in press reports of the high price fetched, and national despondency over the prospective loss to the UK of a highly prized work.

Important cultural objects, especially in the area of archaeological and archival material, may have a small monetary value but high cultural importance.

Now, an overseas bidder and the auctioneer will commonly agree in such a case that, despite a successful bid, title would not pass from the vendor unless the bidder obtained an export licence. (And of course a vendor and purchaser might make similar provisions in a private treaty sale.)

The Reviewing Committee on the Export of Works of Art (RCEWA) may recommend to the Secretary of State that a decision on whether to grant an export licence is deferred to allow bids from within the UK. The applicant for the licence does not have *carte blanche* to reject any such bids.

To avoid unfairness a bid from within the UK must constitute "a matching offer". To this end RCEWA, under its published guidance, recommends a "fair market price". The applicant need not accept less (or indeed an offer at any level). But refusal may result in a decision by the Secretary of State to refuse to grant a licence.

The fair market price will commonly include not only the applicant's successful bid but also elements we normally exclude when calculating a *douceur*, such as buyer's premium and other costs, see **#10.6**.

This is because RCEWA's objective is to make sure that the matching offer from within the UK doesn't lead to financial loss to **anyone** – owner, vendor, auctioneer, dealer etc.

Let us assume now that a matching offer has been made by a UK institution which is a body within Schedule 3 to the IHTA – "the Schedule 3 Gallery". The agents for the vendor, as usual when reporting a proposed private treaty sale, should present their calculations of the tax which would have been payable had the sale been in the open market.

The accompanying material should show that the Secretary of State, on the advice of RCEWA, had fixed the fair market price at £X (being the applicant's successful bid plus such additional elements as any buyer's premium and VAT on that, etc).

We then decide whether the calculations are correct – in principle as well as arithmetically – and the sale free from taxes (IHT/ED/CGT.)

On the first question, we do not become involved in valuation. But the calculation should normally ignore costs etc – see **#10.6** above – and hence the inclusion of the buyer's premium and VAT are at first blush inappropriate, even if the Schedule 3 Gallery had to meet them.

On the other hand, these elements might be part of RCEWA's fair market price, i.e. simply elements of the amount which the Schedule 3 Gallery has to pay **to the vendor**, and not sums which it would pay to the auctioneer or in VAT to HMRC. Looked at in this light, that composite whole is much more readily identifiable with a standard calculation, and hence eligible for a douceur.

(It is understood that in practice the VAT element might not be payable, or it might be recoverable by the purchasing institution. If VAT is not payable or is recoverable then it should be omitted from the douceur calculation. The position should be ascertained from the relevant VAT office by the parties to the transaction.)

The second question is rather simpler. The legislation simply provides that a sale to a Schedule 3 body, of which the Schedule 3 Gallery is one, is free from tax provided only that the sale is by private treaty. Any question of the douceur is entirely administrative – see **#10.3** above.

In the result, we can respond to a relevant enquiry along the lines that:

... on the understanding that the Schedule 3 Gallery will purchase [the work] by private treaty from your client ... for the sum of £X (the fair market price), we can confirm that we have no questions on your calculations, and that the sale would be free from IHT/ED/CGT.

The foregoing remarks apply similarly where the applicant for the export licence is the owner of a work, as distinct from the overseas bidder as above.

Chapter 11: Acceptance of property in lieu of tax

Summary of this Chapter

A person who is liable for Inheritance Tax and interest on it may offer property in full or part payment instead of cash. Acceptance is at our discretion but subject to the agreement of the relevant Culture Minister.

“Property” here includes land and buildings. In practice land and buildings would not normally be acceptable unless they were outstanding in terms of the natural or built heritage.

It also includes two categories of object. The first comprises objects (and collections) pre-eminent for their national, scientific historic or artistic interest. The second is of objects which might be of lesser quality but which are kept in important (and usually public) qualifying buildings.

We take advice on the quality and value of property offered. We consult the Museums, Libraries and Archives Council (MLA) as regards objects. And we consult the relevant Culture department and the Valuation Office Agency as regards land and buildings.

The maximum amount of tax and interest which the property if accepted can satisfy is called “the special price”. We calculate this as with private treaty sales (Chapter 10). Hence we agree the value of the property, and as our acceptance of it is not normally subject to capital taxes, we share the benefit of that exemption with the person making the offer. But unlike the private treaty sale calculation the percentages are fixed at 25 (or 10) and 75 (or 90).

We do not retain ownership of property accepted in lieu of tax. Once agreement has been reached to accept the offer, the Secretary of State will make a direction handing ownership to a suitable body.

It is important to note that if the special price exceeds the tax liability we do not “give change”. In that case the person making the offer may withdraw it or forgo the excess, or make a “hybrid” offer (see below).

Offers need not be unqualified, however. The chapter closes with an outline of qualified offers –

- offer with a non-binding wish as to allocation (a precatory offer)
- offer with a binding condition as to allocation (conditional offer)
- conditional offer with – *separate* – provision for the recipient to make any excess of value over liability (hybrid offer)
- offer of an object on condition that it remains on the premises (in situ offer) and
- offer of a selection or succession of objects (multiple offer)

11.1 Introduction

It is possible to pay IHT and ED in kind by tendering national heritage property in lieu of cash, providing certain conditions are met. Property is acceptable if it is land, buildings or objects within S.230 – see **#11.12** below.

Our advisers at the Museums Libraries and Archives Council (MLA) might be able to assist offerors in deciding what might be the most upon appropriate **object** to offer. Consultation with them at an early stage might well avoid problems caused by the offer of unsuitable objects.

The **value** at which property we accept reckons in satisfying a fiscal liability is usually the **special price**. This usually derives from the open market value of the property as at the date it was offered or, less commonly but at the offeror's option, the date on which we accept it. See **#11.27** below.

Where property is accepted in lieu of IHT neither CGT – S.258(2)(b), TCGA – nor stamp duty land tax nor VAT is charged (Value Added Tax Act 1994, Schedule 9, Group 11). Details of the VAT relief are given in VAT leaflet No 701/12 **Disposal of Antiques, works of art etc., from historic houses** which is available from the local VAT office of HMRC.

11.2 Acceptance in lieu of IHT: general principles – S.230(1)

Under S.230 and S.9, National Heritage Act 1980 the Commissioners for HM Revenue and Customs may, if they think fit –

with the agreement of the Secretary of State ...

on the application of ...

any person liable to pay IHT or interest payable under S.233 ...

accept any property to which S.230 applies ...

in satisfaction of the whole or part of it.

And under S.231 a person who has the power to sell property in order to raise tax may if circumstances so require agree to our accepting it in satisfaction of tax and interest.

Let us now examine the elements identified above, first re S.230 and then S.231.

11.3 "With the agreement of the Secretary of State ..."

The Secretary of State means the Secretary of State as that expression is used in S.230 and the National Heritage Act 1980. It is a generic term apt to cover all the Secretaries of State in the UK government.

These provisions together secure that we may accept property in lieu of tax with the agreement of the relevant heritage Minister, who will also decide upon the future ownership of the property.

In practice the functions of the Secretary of State are (usually) exercised by –

- In **England** –

for **objects** accepted in lieu an appropriate person within MLA – the Contracting Out (Functions in relation to Cultural Objects) Order 2005 (SI 2005 No 1103) and

for **land and buildings** the Minister for the Arts within the Department for Culture Media and Sport.

The **contracting out** rules do not extend beyond England and hence ...

- In **Northern Ireland** the Minister with responsibility for the Arts in Northern Ireland
- In **Scotland** the Minister for the Arts in the Scottish Parliament and
- In **Wales** the Minister for the Arts in the National Assembly for Wales.

There are however certain exceptions: –

- Where there is a **Scottish interest** the functions of the Ministers may be exercised separately.

There is a Scottish interest where the property concerned is located in Scotland or where the offeror of that property has expressed a wish or imposed a condition for its display by or transfer to an institution in Scotland – S.230(6) and (7)

- There is a similar exception where there is a **Welsh interest**. And where there is both a Welsh interest and another interest the functions are exercisable concurrently by the Assembly and the Secretary of State – The National Assembly for Wales (Transfer of Functions) Order 2004 (SI 2004 No 3044).

In practice the local Minister *agrees* to acceptance where there is a relevant territorial interest. We have not so far encountered a case where there is more than one such territorial interest.

11.4 “On the application of ...”

The application – offer – in lieu of tax need not be complicated. There are no forms for completion. Neither, subject as below regarding **any person liable to pay tax**, are there any time limits. An offeror need normally do no more than write to us offering the property concerned in lieu of the tax in question, with the first two (or three) particulars set out at **#11.14** below.

For the offer to be constituted it must be capable of acceptance. It would not be capable of acceptance if the offeror had not produced a description and valuation, or was not, in fact, prepared to part with the property, pending other matters, if and when we and the Secretary of State had once agreed to accept it.

An offeror can withdraw or replace the offer at any time as long as we have not accepted it. An offeror might wish e.g. to offer an alternative item of property, or to substitute a conditional offer for an unconditional offer. This is quite permissible (see **#11.27**).

Unless and until property offered has been accepted the application would remain no more than that. To avoid doubt correspondence might be marked **Subject to Acceptance**.

11.5 “Any person liable to pay tax or interest”

The IHTA provides for liability and it is usually quite clear who is liable for tax and interest. But in the case of property passing under a will or intestacy the legal personal representatives must seek endorsement of their status from the Court, by obtaining a grant of representation (or, in Scotland, confirmation).

The need for a grant does not in itself obviate liability. Hence it is quite in order for those named as executors in a will, or the relevant kin in the case of an intestacy, to offer property to us in lieu of tax. If they did so, we should acknowledge and register the offer in our records, but decline to deal with it prior to a grant.

It is not, of course, possible for us to accept property in lieu of tax payable by legal personal representatives prior to the issue of a grant. Such an individual could not provide a valid receipt. Hence personal representatives must not, in anticipation of acceptance of property in lieu thereof, attempt to reduce the tax they pay prior to the grant.

A person who is **not** liable to pay tax or interest is not competent to make an application to offer property in lieu. We construe a **person liable** in this context as including a person who **bears** the tax or interest. Two – quite disparate – examples of lack of competency deserve mention: –

- **The offer must be within the offeror’s competency.** Assume a testator has specifically bequeathed an important work of art. Now, unless the testator had provided to the contrary, the bequest would be free of tax, and the tax on the testator’s free estate generally would come from residue. In such circumstances the legatee would not in that capacity be liable for tax or interest. Hence that legatee could not offer that work of art in lieu unless he or she were also the residuary beneficiary.

Equally the trustees of a settlement could not offer property in lieu of tax in a testator’s free estate or vice versa, again unless the same person(s) bore the two strands of tax.

In practice however it is often possible to put the liable persons (or those who would bear the tax) in a position competently to offer in lieu, typically by re-direction under S.142 or S.144.

- **There must be a liability in lieu of which to offer.** If the tax and interest due had once been paid in full then an offer of property in payment would no longer be competent. But we will entertain such an offer where
 - all the tax has been paid solely in order to obtain the grant or confirmation, provided that at or within three months after the time of payment we are notified of the possibility that an offer in lieu of tax will be made or
 - we are holding money on account of a liability to pay tax or interest; as the money is held to the payer’s order, the liability remains unpaid.

11.6 “Any property to which S.230 applies”

In this regard –

- The **categories** of property S.230 permits us to accept are considered at **#11.12** below.

Suffice it to say here that the statute does not authorise acceptance of less than the whole of any item of property. We could not normally consider an offer e.g. of a one-half share in a building or of a work of art.

But where X and Y co-own an item of property and each is liable for IHT they may between them offer their respective shares and we can accept those offers and with them the entirety of the property concerned.

We do not exclude acceptance of freehold land which is tenanted.

- The property offered need not be subject to a tax exemption. Neither need it be part of the estate (or other property) the subject of the claim for tax in lieu of which it is offered.

11.7 Acceptance of property under a power to sell: S.231

It might occur that someone liable for tax and interest has power to sell property to fund it. That property is eligible for acceptance under S.230, but the instrument governing its ownership does not contain a power to offer it in lieu.

For example there was doubt whether a tenant for life under the Settled Land Act 1925 could validly offer in lieu property vested in him or her without falling foul of S.38 of that Act, and the regulation in S.39(1) requiring a sale for cash.

Any such doubt was removed by the enactment of S.32, FA 1958, which now finds expression in S.231.

That provision treats the agreement with us to accept the property in lieu, pursuant to S.230 – save for the nature of the consideration, its receipt and application – as a sale under the power to sell. The conveyance or transfer takes effect accordingly.

Where the property so accepted was then subject to CE its acceptance is not a chargeable event by virtue of S.32(4)(b)/S.32A(5)(b). And S.231(3) prevents any claim for tax under paras 1(4) or 3(4) Schedule 5 where the property had been exempt under S.31 or S.34, FA 1975.

Any case where S.231 is or might be in point should be referred for technical advice.

11.8 Acceptance in lieu of Estate Duty

There are provisions similar to S.230 and S.231 for the acceptance of property in whole or part satisfaction of ED and interest thereon. There is no provision in fiscal legislation for acceptance in lieu of any other tax or duty. (See also **para 7 of Appendix 3.**)

11.9 Advantages of acceptance of property in lieu of tax

Acceptance of heritage property in lieu of tax (AIL) has financial advantages for the vendor similar to those of a private treaty sale – see **Chapter 10**. And the amount of tax and interest acceptance can satisfy – the **Special Price** – is calculated similarly. See also **#11.27** below.

In some cases AIL might be more convenient or attractive than a private treaty sale. Where objects have an especially close association with an important historic building, the Secretary of State may allow them to remain where they are even after they have been accepted – see **#11.33** below.

11.10 HMRC does not “give change”

It should be noted that if the **Special Price** exceeds the offeror’s present liability to tax and interest that excess under S.230 can neither be reimbursed in cash nor deposited against any future liability. In common parlance, **we cannot give change**. (See also **#11.16** below.)

11.11 Inferring a claim for conditional exemption

Where we receive an offer in lieu within two years after an IHT occasion, we are prepared to infer a claim for CE from that IHT – other than under S.79(3) – if none had been made. But the offeror may override this inference, for the law requires a claim. See also **#3.5** above.

11.12 Which categories of property may be accepted in lieu of IHT?

The categories of property which may be accepted in lieu of IHT are as follows: –

- Land (which, by virtue of the Interpretation Act 1978, includes buildings and any other structures and land covered by water) – S.230(2)
- Any objects which are or have been kept in any building – S.230(3) – if:
 - (i) the building is being or has been accepted in lieu of tax or ED
 - (ii) the building or any interest in it belongs to the Crown or the Duchy of Lancaster or the Duchy of Cornwall or a Government department, or it is held for the purposes of a government department

(iii) the building is under the guardianship of the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979 or of the Department of the Environment for Northern Ireland under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 or

(iv) the building belongs to a body listed in Schedule 3 (see **Appendix 10**)

and it appears to the Secretary of State desirable for the objects to remain associated with the building

- Any object or collection or group of objects which the Secretary of State is satisfied is pre-eminent for its national, scientific, historic or artistic interest – S.230(4).

National interest includes interest within any part of the UK, and in determining whether an object or collection or group of objects is pre-eminent, regard shall be had to any significant association it has with a particular place.

11.13 Pre-eminence

The **pre-eminent** standard of objects under S.230(4) (as above) is the same as for CE (see **#4.1** above). Any object which is acceptable in lieu of tax on grounds of pre-eminence automatically qualifies for CE. (See also **#11.11** and **#11.27**.)

By parity, an object assessed for CE as pre-eminent prima facie qualifies for acceptance in lieu. But –

- present assessment of pre-eminence for CE does not guarantee such an assessment on a future occasion and
- acceptance does not depend solely upon pre-eminence, and should not be assumed.

11.14 Particulars which should accompany an offer in lieu of tax

Offers of property in lieu of tax should be addressed **to us** – HMRC/IHT – and not to our advisers at MLA.

The offer is aimed primarily at payment of fiscal liability. We (not MLA) must decide first of all whether an offer is competent. (It is of course perfectly in order, and might well assist, if the offeror when writing to us provided a **copy** for MLA.)

The following is a list of the particulars we need to deal with an offer of property in lieu of tax. It is predicated on an offer of an object or objects but we should need analogous particulars, together with the identity of the recipient, where the offer was of land or buildings or an in situ offer (see **#11.33**) –

- confirmation of the persons making the offer and the capacity in which they are making it – executor, trustee etc
- a detailed description of each object offered with a valuation as at the date of the offer
- a note of any wish or condition attaching to the offer, e.g. as to allocation to a particular gallery or museum
- four copies (of which three of which are for MLA) of a folder comprising the particulars set out in their website at http://www.mla.gov.uk/what/cultural/tax/~media/Files/pdf/2008/ail_detailed_guidance_notes_apr08. These particulars will include a full description of the property offered, justification of its valuation, and suitable images
- the name address and telephone number of the person with whom to arrange an inspection
- the current location of each object offered
- a calculation of the tax credit – the **Special Price** – which would be generated by acceptance of the offer
- completion of a due diligence (spoliation) questionnaire, a copy of which is reproduced in **Appendix 8**.

11.15 “Telescoping” an offer in lieu and claim for conditional exemption

It sometimes happens – cf. **#4.1** above that property offered in lieu is also the subject of a CE claim. It is clearly sensible to “telescope” the processing of the CE claim and the offer. (See also **#11.11** and **#11.27**.)

11.16 Competency of the offer

When we receive an offer of property in lieu of tax we check to ensure its competency – see **#11.5** above.

We should also check the offeror's estimate of the special price against his or her liability. We do not refuse to accept property of excessive value. But it would be appropriate, where there appeared to be objects of lower value at the offeror's disposal, to enquire whether an alternative offer would be more suitable. This is not least because we do not offer reimbursement of the difference between the value of the property accepted and the amount of the offeror's liability – see **#11.10** above. (See also **hybrid offers** at **#11.32** below.)

We should be no less wary if an offeror makes successive offers. It is essential to keep in touch with the liability in the estate or other case concerned, lest we find that we have a surfeit of objects or other property offered – or, worse still, accepted. As unlikely as this regrettable hypothesis might sound, it has been known!

On another occasion an offeror sought our assistance in valuing objects for which CE had been claimed. This was to contrive a trimmed or augmented CE claim and thence a tax liability to match exactly the special price of property offered in lieu.

Whether in these or in any other circumstances there can also be no question of our becoming involved in agreeing the values of prospectively CE property. Exercises of that sort are for the offeror, not for us.

11.17 Seeking expert advice

Once we are content with the competency of the offer we consult MLA in respect of objects. With offers of land and buildings we consult DCMS and its counterparts in the devolved administrations.

MLA in turn in consultation with experts advise on the quality and current, and where necessary historic, valuations of the objects advanced by the offeror and advise the Secretary of State whether the offer should be accepted.

With land and buildings similar steps are taken by DCMS, the VOA and the respective land and buildings advisers.

(The valuation objective is to achieve an agreed valuation that is fair to the offeror and to the Nation. On occasion it has resulted in a valuation higher than that advanced by the offeror.)

The procedures for seeking expert advice, and the criteria applied, up to and including acceptance are set out in the ensuing paragraphs of this Chapter. There is a brief (and necessarily general) chronology on the next page –

Land & Buildings

- An offer is made (to us) with suitable supporting particulars including a willing ultimate recipient
- DCMS approves (or not) the offeror's proposed ultimate recipient
- We obtain a descriptive report from the VOA
- We pass that report to DCMS
- DCMS confer with land and buildings agencies who advise on the acceptability of land etc offered (with any recommendation to augment or reduce the area of land concerned)
- DCMS recommend acceptance (or rejection) **in principle** to the Secretary of State
- DCMS report to us agencies' views and the Secretary of State's agreement in principle to accept (or not)
- We discuss with the offeror any differences in extent between what is offered and what we'd be prepared in principle to accept
- We ask the VO to negotiate value(s) as at the relevant date(s)
- DCMS if necessary instruct solicitors as regards conveyancing, and to copy their correspondence to us
- The VO reports to us with agreed value(s)

Objects

- An offer is made (to us) with suitable supporting particulars (including where there is an in situ condition of acceptance a willing ultimate recipient- see **#11.19** below)
- We consult MLA as to the suitability of the objects for acceptance and of any condition as to allocation, and to negotiate agreed values
- The AIL Panel recommend acceptance (or rejection) of the objects (and any condition) to the Secretary of State, and report agreed values
- We draft memoranda of acceptance
- The offeror and HMRC exchange memoranda
- MLA settle allocation of the objects and draft a Direction under S.9, National Heritage Act 1980 (the S.9 Direction)
- The Secretary of State signs the S.9 Direction.

Land & Buildings

Objects

- We relay the agreed value(s) to DCMS and the conveyancing solicitors
- The conveyancing solicitors or DCMS draft the Direction under S.9, National Heritage Act 1980 (the S.9 Direction) and the transfer or conveyance
- The offeror, HMRC, and the ultimate recipient execute the transfer or conveyance
- The Secretary of State signs the S.9 Direction.

11.18 Land and buildings eligible for acceptance – S.230(2)

The **land** we might accept in lieu of tax would normally be of outstanding scenic, scientific or historic interest. Other land may however be accepted, e.g. land with a high amenity value or land which has a close link with a historic building.

The **douceur** arrangement however only applies on the acceptance of land of outstanding interest such as would merit CE – see **#11.27** below.

The **buildings** we might accept in lieu of tax would normally be of outstanding architectural or historic interest. They would generally have to be capable of being used for the public benefit.

As with land, the **douceur** arrangement only applies on the acceptance of buildings of outstanding interest such as would merit CE.

11.19 Offeror of land to nominate a suitable recipient

Land and buildings will normally be accepted only if the offeror nominates a suitable and willing recipient. The recipient need not be a Schedule 3 body. Indeed a body wholly or nearly entirely funded by central government would not be suitable. If such a body were anxious to acquire the property a private treaty sale would be more appropriate.

But suitable recipients might include the National Trusts, national park authorities, local authorities or charitable organisations such as the local nature conservation trusts.

The recipient must be prepared to give an undertaking not to dispose of the property without the consent of the Secretary of State.

11.20 Advice as regards quality and value

DCMS takes advice on the quality of the land and buildings, the suitability of potential recipients and any appropriate undertakings the recipient should provide as regards management and public access from the relevant body or bodies listed in **Appendix 9**.

We take advice on the valuation of the land from the Valuation Office Agency.

11.21 Objects associated with a building – S.230(3)

In view here are objects, of any description, which the Secretary of State considers desirable to remain associated with a building in which they are or have been kept. We may accept them with the building, or separately where the associated building is already in public etc ownership – see **#11.12** above.

We take advice on whether such objects should be accepted and on their valuation from MLA who consult appropriate expert advisers. The **douceur** arrangement would apply only to objects which fall within S.31(1)(a), (aa) or (e) – see **#11.27** below.

The normal expectation is that, should the object concerned be accepted in lieu of tax, it would be on public display in the building with which it was to remain associated. Offerors should not attach a condition as to allocation which is incompatible with this.

11.22 Guidelines on suitability for acceptance of objects associated with a building

MLA have long adopted, as a framework of reference for offerors and for their own independent expert advisers, the following guidelines in deciding whether it is, or is not, desirable for the object to remain associated with a particular building: –

- (i) The significance of the object (or group of objects) in relation to the building within which it is to be displayed.**

The object, either singly, or as part of a group, should be a significant element of the internal decoration of the property and play an important role in the understanding of the building with which it is associated.

If the property is of recent origin, the object will be contemporary with the building but, for those of greater age, the object can be associated either with the origin of the building or with a significant period of its history.

If the object or collection is already in the house, which would be expected in most cases, the question will be asked: would its removal from the house be a significant loss to the public's appreciation of the property?

If the item or collection spent a significant time in the house but was removed at an earlier date, the question to be asked is whether its return to the house would add significantly to the public's appreciation and understanding of the property?

(ii) The period that the object (or group of objects) has spent in the property for which it is being offered.

The normal requirement will be that the object or collection can be shown to have spent the greater proportion, if not all of its life, in the property with which it is associated.

In certain circumstances, where this is lacking, but where the building is famous for a particular resident or owner or for a particular period of its history, the object may have such a close association with the person or period, that this normal requirement may be overridden by consideration of the object's significance in relation to the person or period.

(iii) Are there any exceptional circumstances which would point to the desirability of the object (or group of objects) being accepted although the normal requirements are not met.

In issuing this guidance as to what will be considered as "associated", it is not intended that this should become restrictive. There may be situations where the desirability of maintaining the association outweighs the normal requirements. Such situations are likely to be infrequent, but might involve objects which have been introduced relatively recently into an older property which has been restored to as close an approximation to its original condition as the historical evidence allows.

11.23 Pre-eminent objects – S.230(4) and (5) – and guidelines

We may accept objects and collections and groups in lieu of tax which the Secretary of State considers pre-eminent for their national, scientific, historic or artistic interest.

National interest includes interest within any part of the United Kingdom, and in determining whether an object or collection or group of objects is pre-eminent, regard shall be had to any significant association with a particular place.

MLA have long adopted the following guidelines as a framework of reference for offerors and their own independent expert advisers.

(i) Does the object have an especially close association with our history and national life?

This category includes foreign as well as British works, for example gifts from foreign sovereigns or governments and objects that have been acquired abroad in circumstances closely associated with our history. It includes objects closely associated with some part of the United Kingdom, or with the development of its institutions and industries. Some objects which fall under this category will be of such national importance that they deserve to enter a national museum or gallery. Others may well be of a lesser degree of national importance, though they will be nonetheless significant in a local context. This category will also include works which derive their significance from a local connection, and which may therefore qualify as a pre-eminent addition to a local authority or university museum.

(ii) Is the object of especial artistic or art-historical interest?

This category, like (iii) below, includes objects deserving of entering a national museum or gallery as well as other objects which may not be pre-eminent in a national museum or gallery in London, Edinburgh or Cardiff, but will be pre-eminent in local authority or university museums or galleries elsewhere which do not already possess items of a similar genre or a similar quality.

(iii) Is the object of especial importance for the study of some particular form of art, learning or history?

This category includes a wide variety of objects, not restricted to works of art, which are of especial importance for the study of, say, a particular scientific development. The category also includes objects forming part of an historical unity, series or collection either in one place or in the country as a whole. Without a particular object or group of objects both a unity and a series may be impaired.

(iv) Does the object have an especially close association with a particular historic setting?

This category will include primarily works of art, manuscripts, furniture or other items which have an especially close association with an important historic building. They will fall to be considered pre-eminent by virtue of the specific contribution they make to the understanding of an outstanding historic building. Thus, the category may include paintings or furniture specially commissioned for a particular house or a group of paintings having an association with a particular location.

Note: As indicated at **#11.28** below, the ultimate recipient of an object accepted in lieu of tax on grounds of pre-eminence is decided by the Secretary of State, with advice from MLA. Where the claim to pre-eminence is based on local or specialised interest it might not always be a simple matter to discern the particular strain of pre-eminence or indeed to find an appropriate recipient.

In any such case we encourage the offeror to provide from the outset as much relevant detail as possible of the local or regional interest or association which forms the basis of the claim.

11.24 Acceptance: recommendation to the Secretary of State – memoranda of acceptance (objects) or conveyance or transfer (land and buildings) – direction

Once the necessary advice has been obtained and recommendations put forward, it is for the Secretary of State to decide whether to agree that the property offered qualifies for acceptance in lieu of tax and to approve its valuation.

Once property has been accepted (see below) and passed into the ownership of the ultimate recipient (see **#11.28** below) there can be no reversal or withdrawal of the offer.

The relevant department will publicise the acquisition and the tax settled (but will not identify the offeror or any other confidential detail) via a press release.

The mechanics as respects first **objects** and then **land and buildings** are as follows.

11.25 The mechanics of acceptance: objects

With objects, we ask MLA's **Acceptance in Lieu Panel** to agree the valuation with the offeror. This exercise includes, if necessary,

consideration of historic values. The Panel, then (if appropriate) recommend acceptance to the Secretary of State.

If the Secretary of State accepts the recommendation we then prepare a memorandum of acceptance. The memorandum will be signed by the offeror, and a counterpart by two of the Commissioners of HM Revenue & Customs. Then the two counterparts are exchanged.

The memorandum records the IHT (or ED) liability, that the offeror is liable to pay it, and identifies the property offered. It also records any condition reserved by the offeror and stipulates when the offer is to be accepted. Prior to acceptance the property would usually remain the property of the offeror and at his or her risk.

Acceptance usually occurs once the Secretary of State has given a direction allocating the property to its ultimate recipient and the property is received by that body in satisfactory condition.

But it may be sooner e.g. where the property is already on loan to the ultimate recipient body or is to remain in situ (see **#11.33** below) and the in situ agreement has been executed.

Where the property was offered without a condition as to allocation MLA will identify a suitable recipient. If that body cannot take the property straightaway, e.g. because of a programme of refurbishment, there would be a temporary direction allocating it elsewhere during the interval..

11.26 The mechanics of acceptance: land and buildings

Where land and buildings are concerned we ask the VOA to agree the valuation with the offeror. We report the outcome to DCMS.

If the Secretary of State accepts the recommendation DCMS will instruct solicitors to make all necessary enquiries leading to a conveyance or transfer of the property to the ultimate recipient body.

We should be kept in touch with the solicitors' correspondence so that we can give any appropriate guidance or take any appropriate action. It is not possible to provide specific guidance here for everything depends on the facts of the particular case. The sorts of difficulties which can arise can range from simple inaccuracy over the boundary of the land offered to the belated discovery of a claim to adverse possession.

Once the conveyance or transfer is ready for execution the Direction will normally issue at once. Otherwise the conveyance or transfer would record the particulars of the offer, similarly to the memorandum of acceptance of an offer of an object.

11.27 The amount of tax and interest to be satisfied from acceptance of the offer

Once the Secretary of State agrees (or agrees in principle) to our acceptance of the offer, and with agreement on the market valuation of the property, we can calculate the amount of tax and any interest which acceptance of the property can satisfy.

As observed at the beginning of this Chapter, and pursuant to S.233(1A), the acceptance price can be based on the value of the property

- at the date of offer or
- at the date of acceptance.

If the **offer date** valuation were adopted we may arrest the accrual of interest on unpaid IHT or ED from that date. Our practice – see Statement of Practice SP6/87 which issued on 8th April 1987 – is to assume offers to be made on the *offer date* basis, with attendant remission of interest, unless the offeror gives notice to the contrary.

With this remission of interest, it is important to be quite clear about the constitution of the offer. This has been considered to some extent at **#11.4** above. In most cases the property offered would be clearly identified and valued, and any wish or condition clearly reserved.

But if the offeror decided to substitute one item of property offered for another, or to insert or alter a condition, that would constitute a new and different offer. The **offer date** then would normally fasten to that new offer. (“Normally” because if the substitution of property were at the behest of MLA rather than the offeror, or the offeror simply withdrew a condition, we may adhere to the original offer date.)

The offeror’s option will normally remain open until the property is formally accepted but we might review this in the face of procrastination. We might give notice that we are no longer be prepared to accept the item on the offer date basis.

Indeed, in the face of procrastination, we might decide not to proceed with the offer at all.

As foreshadowed at **#11.9** above, the calculation is similar to the calculation of the special price paid in a private treaty sale (see **Chapter 10**), taking advantage of the **douceur** arrangement where appropriate. But we use fixed percentages of the notional tax: 25% in the case of objects and 10% in the case of outstanding land and buildings.

It is important to remember in this context that the **douceur** arrangement is based on sharing the benefit of a tax exemption. In other words there could be no *douceur* if the acceptance did not follow after a

tax exemption carrying its own prospective claim for IHT/ED (or CGT or both). Hence –

- it could only be in point in relation to the acceptance of an object within S.31(1)(a)/(aa) or (e) and to land and buildings of outstanding interest within S.31(1)(b), (c) or (d) – any property which was accepted but which did not meet the relevant criterion would not be eligible for a *douceur*.
- it would not be in point where CE itself was not in point, e.g. where the offer is of property comprised in residue which passes to the testator's surviving spouse or to a qualifying charity
- whilst in certain circumstances – see **#11.11** above – we are willing to **infer** a claim for CE from IHT, neither CE nor the *douceur* would be in point if the offeror wished to eschew CE.

Illustrative examples of the **special price** calculation are given in **Appendices 11** and **12**.

11.28 Allocation of property accepted in lieu of tax and interest

Land and buildings and objects offered with an "in situ" condition will normally be accepted only if the offeror identifies an appropriate recipient in advance – see **#11.19** and **#11.33**.

Objects accepted because of their association with a building which has also been accepted or which is already in public ownership will normally be allocated to the owner of the building. Allocation of these objects and of **pre-eminent** objects will be decided by the Secretary of State who will take advice from MLA and, as respects archives, from the National Archives.

The Secretary of State decides upon the ultimate recipient of objects in accordance with S.9, National Heritage Act 1980. That recipient need not be a Schedule 3 body.

Where the offer was made without condition of allocation MLA invite applications from interested institutions or bodies through advertisements on its website www.mla.gov.uk or, in the case of archives, the National Archives advertise in the **Times Literary Supplement**.

11.29 Special cases

Whilst most offers in lieu remain simple and straightforward in their terms, the underlying need to foster the interests of the national heritage

has spawned some more elaborate arrangements – see **#11.30 et seq** below.

11.30 Precatory offers

Offerors will sometimes overlay an offer with an express wish or condition that if accepted the property pass to a particular body.

The precatory offer need not detain us for very long. MLA would accommodate the offeror's wishes where possible. But they may recommend allocation elsewhere if national heritage interests so require.

11.31 Offers conditional as to Allocation etc

The conditional offer is less simple.

Where the condition is solely as to allocation

If an offer were subject to a condition as to allocation then MLA, as with a precatory offer, would give it the utmost consideration.

If MLA felt able to recommend acceptance of what had been offered, but could not endorse the condition as to allocation, it would normally be for the offeror to accede to MLA's judgement or to withdraw the offer. ("Normally" because the decision lies ultimately with the Secretary of State.)

Difficulties might arise if an offeror made an offer but then decided to impose a new (or a different) condition.

As we have seen above – at **#11.27** – the date and status of an offer has a bearing on valuation and the accrual of interest on unpaid tax. The effect of a new or different condition would be to withdraw and replace the earlier offer with a new offer.

If an offeror simply withdraws a condition we regard the status of the original offer as unchanged.

11.32 "Hybrid offers"

The term **hybrid offer** is essentially a colloquialism borne from the superficial appearance of combining acceptance in lieu with a private treaty sale. What it amounts to is this.

Let us assume that at an offeror's disposal is, typically, a **pre-eminent** object which a particular public body ("the museum" – which need not be

a Schedule 3 body) would like to acquire. But its monetary value significantly exceeds the offeror's liability for IHT or ED.

At one time the offeror would necessarily have forgone the difference or retracted the offer. The **hybrid** evolved as a means for the nation to acquire a great work and the offeror to gain suitable compensation – despite our being unable to “offer change”.

The process starts with an offer conditional on allocation to the museum. In return for the offeror's stipulation the museum agrees, subject to acceptance, to pay a sum to the offeror. MLA considers whether the condition of allocation is acceptable. Assume that it is.

In the result, we accept the whole of the object in lieu of tax and interest – for, as mentioned at **#11.6** to accept anything less would be unlawful – while the offeror recoups some or all of the shortfall between liability for tax and interest and the object's special price.

It might occur that, perhaps in consequence of an over-estimate of the amount of IHT payable, an unconditional offer becomes a hybrid offer. Consistently with **#11.27** above, the hybrid offer would be a new offer with attendant consequences.

In its nature the hybrid offer is potentially complicated and subject to dependencies. Both we and MLA are happy to discuss the mechanics in advance of such an offer.

Quantification of the sum payable to the offeror by the museum is essentially a matter for those parties.

Typically it might constitute the difference between the special price – the maximum tax and interest that could be satisfied by acceptance – and the offeror's actual liability. And provision might be made for adjustment if the tax liability were later found to have increased or decreased.

That indeed should be our response to the museum if it asked us what sort of sum it should consider earmarking for the purpose. And we should expect the offeror formally to permit us to provide the museum with relevant information, such as how much tax and interest was payable by the offeror, if it so requested.

(While the point has been illustrated with an object and a museum the arrangement may be no less apt for land and buildings.)

11.33 Offers where acceptance is conditional upon an object's remaining in situ

It sometimes happens that objects offered in lieu have a significant association with a particular setting. In such a case the offer might be conditional upon their remaining in situ. An "in situ" offer in practice usually envisages retention in a building or other property in private ownership.

It is important not to view this as a question of having one's cake and eating it. If e.g. the objects were designed especially for a particular historic building it might be in the interests of the national heritage for them to remain in situ, and prejudicial to that interest if they did not.

We refer any such question to MLA, who take expert advice and advise on the appropriateness of the in situ condition.

If an object were to be accepted subject to an in situ condition then, apart from its meeting the relevant criterion: –

- Its ownership and responsibility for it would on acceptance pass to an appropriate public body. With this in view offers subject to an in situ condition must identify a suitable institution willing in principle to take ownership should the offer proceed before we can refer them to MLA. A suitable institution would normally be one with accreditation with MLA.
- The owner of the building in which it remained would have to enter into an agreement in terms acceptable to the Secretary of State. The agreement would include provision for the care and maintenance and preservation of the object for the public benefit, for and a sufficiency of public access to it.

11.34 Multiple offers

It sometimes happens that several objects are at the disposal of an offeror who is uncertain which best to offer. Ideally the offeror would have time, before interest started to accrue on unpaid tax, to consult MLA and so develop a suitable strategy. Where this was not feasible, the offeror might offer a **shopping basket** of objects available concurrently or serially.

A **concurrent** offer might stipulate that MLA has a free hand to decide which objects should be accepted in lieu, with due regard to the extent of the offeror's liability. In such a case – with reference to **#11.27** above – we could accept that all objects were offered on the same date.

The date of a **serial** offer would constitute the offer date for the first object. The offer date of the second object would be the date that the first offer failed, and so on.

Where the constitution of a multiple offer is revised to accommodate MLA's recommendations we do not regard this as a new offer – cf **#11.27** above.

Appendix 1: Making and handling of claims for conditional exemption

- 1.** Claims for CE should be timely – see **#3.5** above as to requirements and timeliness. If it were not feasible to intimate the claim for CE on the IHT account it should be addressed to us at the site – in Nottingham, Edinburgh or Belfast as the case may be. All claims for CE are then dealt with in Nottingham.

The CGT relief under S.258(3) applies if the requisite undertaking is given by the person considered to be appropriate. There is no provision for making a claim.

Taxpayers and their agents should address any correspondence concerning the possibility of relief under S.258(3) and a CGT undertaking to us at Nottingham. This should include –

- an explanation of the transaction giving rise to the disposal† and
- the names addresses and income tax references of the relevant parties.

We shall deal with the relief **but refer any uncertainty regarding the CGT effects of the transaction itself to the tax office concerned.** We shall also notify the outcome to that office, which will note the held over gain in connexion with the relevant taxpayer's affairs.

† To qualify for relief the disposal must be one of the following:

- (i) A gift by an individual to an individual
- (ii) A gift in settlement
- (iii) An occasion on which S.71(1) TCGA applies, namely where an individual or the trustees of another settlement becomes absolutely entitled as against the trustee.

The first two will usually be clear to staff versed in IHT, the third perhaps less so. Any case of doubt should be raised with the disponent's tax office.

- 2.** The prospective ten-yearly charge on certain settled property apart – see para 20 of **Appendix 2** below – claims for CE are apt only once an occasion of charge for IHT or CGT has arisen.

However subject to availability of resources, the advisory bodies, might be prepared (but are not obliged) to offer an **informal** view of whether land or a building is of outstanding interest (etc) as under S.31(1)(b), (c) or (d). This might also go to the extent of any land to be included.

It must be emphasised that any opinion offered in this way is preliminary and informal in nature. It would not in any way commit either the advisory body or ourselves, or in any way affect the statutory responsibility for designation.

- 3.** A timely claim for CE which meets the requirements set out at **#3.5** above is the first of a two-stage process. The second stage is to ask the claimant for relevant information (along the lines of the model letters CE(i) and CE(ii) reproduced at **Appendix 8.**)

Appendix 1A: Note on conditional exemption in the wake of the Finance Act 1998: – access – publication – viewing by appointment

Foreword

1. The Finance Act 1998 imposed requirements for public access to and the publication of information about property for which conditional exemption from tax is claimed.

The requirements apply to those – to whom for simplicity we shall refer to as “owners” – who enter into new undertakings after 30th July 1998. Such owners may not provide public access **solely** by prior appointment, and must publicise the terms of their undertakings.

This Note offers guidance on our approach to these developments. We recognise that it is not exhaustive, that our approach will evolve from the cases we see, and that cases will turn on their own facts.

2. Part I of this Note provides guidance specifically on public access undertakings post-1998. We are concerned with:
 - Objects, groups and collections **pre-eminent** for their **national, scientific, historic or artistic interest** where conditional exemption is claimed or the chargeable occasion occurred after 30th July 1998
 - Objects of **national, scientific, historic or artistic interest** where conditional exemption was claimed and the chargeable occasion was before 31st July 1998 but the undertaking in return for the exemption is given on or after that date and
 - Either category of object where after 30th July 1998 the former owner has disposed of an exempt object, group or collection but the new owner wishes to replace the undertaking.

“Object”, “group” and “collection” are technical terms taken from the legislation. For brevity, we shall now refer to them collectively as “works” or “works of art” unless the context requires us to use these technical terms.

And we shall refer to the period after 30th July 1998 as “post-1998”.

3. Part II of this Note provides guidance specifically on the publication post-1998 of undertakings and publicity generally. In **Appendix 8** there are model undertakings and entries for our web site.
4. Part III, in recognition that access with a prior appointment continues to play an important part in the CE arrangements both pre- and post 1998, provides guidance specifically as to good practice in that context.

Part I: Public access post-1998

The law

5. S.31(2), Inheritance Tax 1984 provides that

the requisite undertaking is that, until the person beneficially entitled to the property dies or the property is disposed of, whether by sale or gift or otherwise – ...

(b) such steps as are agreed between [HMRC] and the person giving the undertaking, and are set out in it, will be taken for the preservation of the property and for securing reasonable access to the public.

S.31(4)(FA), enacted in 1998, adds that

For the purposes of this section, the steps agreed for securing reasonable access to the public must ensure that the access that is secured is not confined to access only where a prior appointment has been made.

It is this provision for post-1998 undertakings which secures access without a prior appointment. We call this “open access”. And as the law makes clear, the undertaking is to last until the death of the owner (if any) or the disposal of the work whether by sale or gift or otherwise.

Policy and interpretation

6. Other than for the statutory need for open access, we do not follow a prescriptive approach. Instead, we interpret the legislation broadly as normally requiring an acceptable quality and quantity of access on an annual basis, in the context of – see **#7(b)** below – an undertaking sufficiently robust for its purpose and period.

General approach

7. The following matters are of relevance here –

- (a) The statute provides that anyone who claims CE must do so normally within two years after the relevant chargeable occasion. And the “appropriate persons”, commonly the owners, must be willing to give suitable undertakings. The undertakings must make provision for open access, and the work of art must meet the **pre-eminent** standard.
- (b) The undertaking, as at **#5** above, is to last until the death of the owner (if there is one) or until the work of art is (earlier) disposed of by sale or gift or otherwise.

So whilst the undertaking must contain express access arrangements within defined parameters, those arrangements must correspondingly be workable from the outset. We should fail in our duty if we agreed access terms which collapsed in a manner we should clearly have foreseen.

But this need not imply rigidity. Agreements can contain contingency provisions if the primary access agreed collapses – see **#9** and the example at **#13(d)** below. And there is provision to vary the terms of an undertaking by agreement.

Our approach would be to accommodate an owner's reasonable alternative proposals provided that there were no interruption to access and no delay in their commencement.

- (c) Hence, when they claim the exemption, owners should have weighed up whether the work is likely to meet the standard and to have at least rudimentary, workable, arrangements in place to secure reasonable public access, including open access for the period covered by the undertaking.

In then advancing the claim for CE, they imply that the work meets or at least seriously aspires to **pre-eminence**, and their access proposals should reflect this.

- (d) **Pre-eminence** is not in point where a new owner has merely to replace an undertaking given before 30th July 1998, but open access nevertheless is.
- (e) As well as **pre-eminence**, the likely public appeal of the work of art will be an important factor in determining suitable access. Other factors might include the circumstances affecting the work of art – vulnerability to the elements, normal location, and the context of that location. (The owner's **personal** circumstances are not of primary interest when exemption is claimed. Owners need to have weighed the benefits of the tax exemption and its attendant requirement to provide open access with any personal considerations.)

Access to works of art: owners' initial access proposals

- 8.** It is our responsibility to agree the steps for preservation and for securing reasonable access but it is our advisers at the Museums, Libraries and Archives Council (MLA) who consider pre-eminence.

In seeking at least rudimentary access arrangements before we refer items to MLA, our aim is to strike a sensible balance. On the one hand we do not want owners, especially where access depends on co-operation from others, to have to provide an undue amount of detail. But on the other we do need demonstrative evidence of an owner's serious intention to enter

into and be bound by a suitable access arrangement before we devote public money to testing the claim for CE.

On this footing we seek as follows: –

- **Claimants whose works of art are already in historic houses open to the public, either their own or elsewhere, or the subject of existing suitable loan arrangements with museums or galleries.**

In such cases there is no reason why owners, with the help of this guidance, should not be able to make acceptable proposals to us at the time of the claim. We will then refer to MLA for a decision on pre-eminence.

- **Owners claiming exemption for a range or large number of items not presently on display in a historic house open to the public or in a public museum or gallery.**

The position here might depend on whether the owner has a home suitable to open to the public (or can secure access at some other building).

We expect these owners to have decided, with the aid of this guidance, whether they intend to display the items at their homes on terms acceptable to us or to arrange for display elsewhere. We would expect well-formulated proposals for display elsewhere with the borrowing organisations prepared to take the items on terms acceptable to us, even if the detail remains to be finalised.

- **Owners claiming exemption for just one or a handful of probably disparate items neither normally kept nor presently on display in a historic house open to the public or in a public museum or gallery.**

As we outline below, we look for these items to be displayed long term or on a regular basis in a public museum, gallery or historic house open to the public. Such an owner when claiming exemption will, before we refer to MLA, have to demonstrate interest from a museum, gallery or from the owner of a historic house to display the items on a long term or regular basis.

Owners whose homes are not the sort of buildings that open to the public might want to offer open access at home. This might be because they do not want routinely to part with their works of art or are having difficulty in finding museums or galleries willing to commit themselves to such arrangements.

We might be able to agree to this to supplement the sort of loans for special exhibitions we describe below. But we would need to be satisfied

that the at-home arrangements and the steps the owner intends to take to seek out such exhibitions on an ongoing basis would properly deliver the access requirements. There is an example at # **13(h)** below.

When referring to MLA we will advise them of the intended access arrangements. We would expect them to comment if they have any concerns about the impact on preservation, if they feel that what is being offered is insufficient or, under the third bullet point above, if they are aware of any galleries etc that might be interested in displaying the items.

If and when **pre-eminence** is established the remaining details (if any) of the access arrangements can then be agreed and set down among the owner's undertakings.

Access arrangements to works of art: in general

9. Following the 1998 changes we consider, in general, that a successful claim for CE depends upon the availability of open access to the public for the duration of the undertaking broadly along all or any of the following lines:

- at the owner's home, if it is already open to the public or it would be suitable for displaying the items, or
- at another suitable building that opens to the public or
- at a suitable public museum, gallery or other similar institution or concern.

This access should be for a suitable period and time each year, and without the need for a prior appointment. We would not expect this annual period to be less than a month or so (or, where it suited an owner and an institutional borrower, a corresponding triennial arrangement.) Only in very exceptional circumstances could we accept that gaps of three or more years are reasonable.

With regard to the workability of the arrangement for the period covered by the undertaking, owners who own a building suitable to open to the public will be able to undertake accordingly.

Those who depend on someone else's building, or who loan to institutional borrowers, will not have the same degree of control. In these circumstances undertakings may need to include a default provision and owners will need to take care to make new arrangements in good time to avoid any hiatus in the open access arrangements year on year.

That said, where owners loan to public institutions, and commit themselves not to terminate the loan, we would allow a reasonable interval if the borrower terminated it.

Access as just described should normally be supplemented with: –

- access with a prior appointment at other times
- willingness to make loans to public collections for special exhibitions, and
- willingness to provide curators with images to help them in mounting exhibitions.

This supplementary access would not normally be necessary where the work of art were kept in a House owned by e.g. the National Trust or in a privately-owned House that opened during most of the year. Neither would it be necessary where the work of art were on continuous long-term loan to a public collection.

Where images are concerned: –

- The image need not be to a high specification. It is merely to help the curator decide whether it would be suitable for exhibition.
- An institution wishing to exhibit an object should be allowed to photograph it.
- The institution should have free use of the photograph for non-commercial purposes and inclusion in its catalogue of the exhibition. (We cannot advise in matters of copyright etc save that owners and curators should be alert to the possibility of third party rights.)

Access to works of art: particular cases

10. While the generality outlined above will cater for many cases, some qualifications are necessary: –

- **Sets – e.g. a dinner service or silver.** It would be quite acceptable to display a representative selection with access to the remainder by arrangement.
- **Archives.** Please refer to the First Addendum to this Appendix.
- **Other manuscripts and drawings.** We would expect owners to be willing to display these works (or a representative sample page in the case say of a medieval missal or other collection) for short periods, where conservation considerations permit, or to loan them to suitable public institutions.

- **Printed books.** Owners will normally meet the condition if the public can see the books' spines on the shelves in the Library of a house which opens to the public, with more detailed access by prior appointment under proper invigilation.

But some further degree of display might be appropriate, analogously with the medieval missal or collection mentioned above. Where books are not displayed in such a library, the owner should arrange a loan to a public institution.

To broaden publicity for the presumptively scholarly interest in these works we ask owners to allow publication of their titles in either or both of two catalogues.

These are the **English Short Title Catalogue** (ESTC) and the **Incunable Short Title Catalogue** (ISTC). The former covers all books printed in English up to 1800. The latter covers all books printed before 1501. Each is run by the British Library. Owners should also be willing to allow the British Library to carry out physical inspection on request.

- **Articles kept in a house open to the public but not on the public route.** Provided we can agree that this is with good reason, owners may either
 - secure access by rotation of them onto the public route; or
 - arrange for special tours; or
 - secure access by request on days when the House is open

in each case with appropriate enabling publicity.

Access to works of art: supplementary matters

11. Considered here are issues which have arisen in practice –

- **Charges.** Reasonable charges for access and images (when provided under the terms of the undertaking) are permissible. We leave what is reasonable to the owner's judgement, based on the experience the visitor will receive and any comparable charges elsewhere.

Where possible owners should make clear to intending visitors the amount of any such charge (and what it covers if it is anything over and above the entrance charge).

We do not discuss charges in any more detail, although we do consider individual cases if it appears that a member of the public has been asked to pay an **un**reasonable charge.

For example an owner might seek to recoup the costs of allowing viewing. These might be quite heavy if, say, the object concerned is in storage. It is clearly inappropriate to pass on all these costs.

- **Visitors' identity particulars.** It is always open to owners and the public to agree among themselves upon what sort of identification, if any, a visitor should produce.

Our own position has long been that, in the context of **access with a prior appointment**, an owner may ask for suitable identity but to seek references would be to go too far.

The intending visitor must be prepared to produce identity particulars if asked to do so by the owner. These identity particulars ought not to go beyond two of the following:

- first a passport, or a driver's licence, such as to indicate the individual's identity; and
- secondly a credit card statement or utility or other statement of account such as to indicate the individual's name and address.

Owners or their agents should make clear to intending visitors which of these particulars to bring with them.

Owners and intending visitors may agree, but there should be no **requirement**, to provide these particulars in advance. (We have not felt able to accept the proposition that visitors should post particulars beforehand. That would be too burdensome. There has also been mention of the proposed national identity card. But it is premature yet to consider that.)

Instead, in common with institutions such as the British Library and with the acquiescence of the National Trust, we believe that it is reasonable for visitors to arrive with two forms of identity. One would identify the visitor, the other his or her address. Indeed we understand that financial and other institutions adopt a broadly similar approach.

The mode – passport, utility bill etc – should be agreed in advance. This recognises that some do not hold a passport or a driving licence.

With **open access**, owners should not normally seek identity particulars. The exception might be where open access is at what is really the owner's private residence (as distinct, say, from a House that routinely opens to the public) and this access is provided as a fall back position if exhibition loans do not materialise (see example at 13(h) below).

Closed circuit television (CCTV) cameras may be used consistently with the requirements of the general law (e.g. that the public are made aware of their existence).

We believe that our approach here is in line with the major organisations that open to the public such as the National Trust and English Heritage.

- **Loans for special exhibitions: insurance.** Owners are entitled to be satisfied before making a loan to a public collection that it is suitably insured. They may also look to the borrower for condition reports beforehand and afterwards.

Apart from that, all questions of insurance are essentially for the owner, not the Revenue. Loans to some public collections are within the Government Indemnity Scheme (GIS). Owners can consult the relevant pages of the web site of MLA on www.mla.gov.uk .

- **Access via loans to Government Ministers etc.** Loans for example to Government Ministers or Departments, British Embassies, Town Halls or publicly owned buildings such as Clarence House would not normally qualify as open access.

This sort of arrangement would not be acceptable unless the uninvited public either had free access to a space clearly set aside for the purpose or the borrower had given a clear commitment that they would nevertheless gain admission without appointment. We should need to be able to publish unambiguous details on our web site. An arrangement which involved taking a work of art out of the United Kingdom would not be acceptable.

- **Access at distant or remote locations.** A remote location would not necessarily be unacceptable, especially if that were the normal location of the work of art. It might well be unacceptable if the remoteness was contrived to reduce the amount of access. We should be unlikely to accept in such circumstances that moving a work of art say from Edinburgh to the Western Isles secured reasonable public access.
- **Use of electronic images.** Images of exempt items *on a website* cannot replace open access but can be used to complement it. For example owners may want to construct their own web pages with a link to our website. This might help both owners and the public and we will discuss in individual cases the part it can play in meeting the supplementary access requirement.
- **Other legislation etc.** There are other legislative provisions in which we have no direct interest but compliance with which is implicit in reasonable public access. These pertain for example to health and safety and persons with a disability.

On the latter the former Disability Rights Commission is now part of the Equality and Human Rights Commission. It has a web site www.equalityhumanrights.com and telephone helplines 0845 604 6610, 5510 and 8810 for England, Scotland and Wales respectively. The Northern Ireland Human Rights Commission's website is at www.nihrc.org and telephone 028 9024 3987.

The Historic Houses Association publishes a leaflet (free of charge to its members). The Association's web site is at www.hha.org.uk and their telephone number is 020 7259 5688.

Administrative issues

12. We do not anticipate lengthy correspondence and negotiations during which, after all, there would be neither public access nor tax paid.

We have set out our expectation that an owner claiming exemption would do so willing and prepared to meet his or her access obligations. But we accept that, sometimes, an owner who is quite happy to allow suitable access in principle will encounter practical difficulties. Due diligence on the owner's part and keeping us informed of progress, future actions and likely timescales will usually see this kind of case to a satisfactory conclusion.

On the other hand, it would not be acceptable if an owner, after claiming CE, appeared reluctant to pursue the claim, or generally evinced an air of procrastination. If we could not reach agreement upon access within what we considered an appropriate period, we should have to give written notice that we were no longer prepared to consider the exemption claim and proposed to charge tax instead.

We think that it would be reasonable to give such notice for example if:

- more than six months had elapsed after we first acknowledged the claim for exemption and even the rudimentary access arrangements (see **#8** above) had not been settled or
- more than six months had elapsed after our agreeing **pre-eminence** and the detailed access arrangements were still not concluded

but we would not give this sort of notice where we were confident that the owner was pursuing matters diligently and constructively, and with a reasonable chance of a suitable and successful conclusion. And any decision on our part not to allow exemption on these grounds could be the subject of a formal determination and appeal if necessary.

Examples

13. We have based the suggestions and the access arrangements in these examples on cases and enquiries we have encountered in practice but apart from this they are entirely fictitious.

(a) Access in a large House or Castle with a short public opening season.

Mr A occupies the family seat Blackacre, a Grade A listed building in Scotland. The walls are hung with portraits of ancestors and other leading figures by Raeburn, Ramsay and others and there are many other important works. Several have been exempt from death duties in previous decades and there are many individual candidates for **pre-eminence** as well as **groups** and **collections**. A's late father had for some years opened Blackacre House to the public on 25 or 30 selected days each year during the spring and summer. It now attracts thousands of visitors each year. A wants to continue public opening.

Mr A is willing to agree, by analogy with Historic Scotland's recommended opening times for comparable properties in Scotland, open access in Blackacre House on 25 days each year during the spring and summer months. He will provide dates in the Autumn for the year ahead. Visitors would see the works of art as long as they were on the visitor route.

The 25 days' open access – the usual period stipulated by Historic Scotland – at Blackacre is quite acceptable.

But we should want the arrangement to include access with a prior appointment at other times. With this we should also seek accommodation of reasonable requests for loans to public collections and requests for images from the curators of public bodies for exhibition purposes.

We should have to ask that works of art not on the visitor route be placed on it. If that were not possible, for aesthetic or practical reasons (or both), there would have to be other arrangements for the exemption claim to remain tenable. For example there could be separate tours on all or some of the open days, or visitors on those days could see them, given suitable pre-publicity, "on request". Again "by appointment" arrangements should operate at other times.

(b) Access in a large House or Castle with a long public opening season.

Mrs B is similarly placed at Whiteacre, save that all works of art are on the public route. But she wishes to open Whiteacre House throughout the spring, summer and autumn, some nine months in all. She is quite happy to allow public access to all the works of art throughout that time, but is unwilling to accept a by-appointment arrangement

during the three remaining months. She is adamant that she needs these months for rest and for maintenance of the Whiteacre Estate.

This sort of arrangement would be quite acceptable. The span of open access in this case is generous and certainly wide enough for us to dispense with a routine by-appointment system. We should however seek (though perhaps not require) willingness to allow access for scholarly purposes and willingness to loan and provide images to curators of public collections.

(c) A special plea for access only by prior appointment.

Mr C owns one, or at any rate no more than half-a-dozen, paintings or portraits. Each might be pre-eminent in its own right (and not just as a constituent of a **group** or **collection**). Of working age, he lives privately with his young family without full-time servants in a small manor house Greenacre not far from town. The paintings might or might not hang on his walls. Mr C tells us that it would not be feasible to open his house to the public: there would not be room; it would be intrusive; and the security risks would be too great. Besides, the Greenacre House itself is not exempt from tax and he would have no other reason to have the public anywhere near it. Surely we could agree to access only by prior appointment?

We have no option but to decline. The law enacted in 1998 simply does not permit access only with a prior appointment. Mr C must reconsider his position or abandon his claim for exemption. He might do worse than follow the example of Miss D, next.

(d) Access through loans to public institutions and commercial organisations.

Miss D is similarly placed though perhaps a little older and living with a cousin. In response to our enquiry about how she would provide open access to support her claim for conditional exemption she had contacted several public collections. After one or two reversals she had reached provisional agreement with the local authority Art Gallery. They would display one of her paintings for one month each year. The neighbouring local authority Art Gallery agreed to display a further painting for three months in each of every third year. The National Trust was pleased to accept a portrait on "permanent loan" for display at Redacre House. Finally, a local auctioneer agreed to display the remaining painting each May for the foreseeable future. Miss D now seeks our views.

This is quite a mixture.

We should have no difficulty with the arrangements with the local authority galleries, subject to access by appointment when the

paintings were not on loan. We should again seek an undertaking to meet reasonable requests for loans and providing images to curators of public collections.

If the loans were not indefinite we should need Miss D to confirm that she would not terminate the arrangement. Or she would need to be on notice that doing so without replacing that arrangement with one acceptable to us, with de minimis interruption to access without prior appointment, would lead to a recapture charge. If the borrower terminated the loan we should allow a reasonable time to put in hand an acceptable replacement.

And as it is an indefinite loan we could agree the National Trust deal.

The arrangement with the auctioneer is unlikely to provide a suitable setting for display and looks unlikely to stand the test of time. It is open-ended, but we cannot sensibly expect a commercial concern to adhere to it indefinitely. Their primary concern is not after all to preserve and display the national heritage.

If the venue were found suitable the agreement would need to cover what would happen if this arrangement comes to an end. An undertaking to arrange, in the event of the arrangement with the auctioneer falling down, for the item to be exhibited at a museum or gallery one month every year or for three months in every three years would be acceptable.

(e) Short-term access proposals only: the need for a long-term commitment.

Ms E seeks conditional exemption in respect of one painting. The local authority-run City Museum had many items it had not the space to display but reluctantly agrees to display this painting for one month at least in the following year. Ms E trenchantly declines our entreaties to make an arrangement to comprehend future years' access, insisting that she will find alternative means in good time.

Ms E's suggested access does not go far enough. As we have said at **# 7** above, even if she will not spell out the detail, her undertaking will need to reflect that, for the period it covers, she will find appropriate means to achieve the access standard, and within defined parameters.

(f) Access to Archives; access to works of art by reviewable loan to a public collection.

Mr F owns a family archive and some complementary pieces of furniture. He offers access to the archive by loaning it indefinitely to the local County Record Office. He offers access to the furniture on

“permanent loan” (reviewable every three years – but states that he will not be the one to terminate the loan) to the local authority’s Museum.

The archive arrangement is with a public Record Office and indefinite and as such is entirely acceptable. But we would expect the owner to make suitable arrangements with the Record Office in line with the First Addendum to this Appendix (q.v.). Access to the material itself would then be at the County Record Office by arrangement.

With the furniture, as Mr F will not terminate the loan arrangement with the public collection we can accept it. If the public collection itself decides to terminate its borrowing we should then need F to come up with a suitable replacement arrangement within a reasonable period of time. (Note: Mr F could have declined to agree not to terminate the loan. He could instead have undertaken that should he terminate it he would, without more than a de minimis break implement other new and satisfactory arrangements.)

(g) Access through bespoke arrangements with a public collection.

Ms G owns a collection of ten nineteenth century paintings. Her family already has a good relationship with a University Institute. She agrees with them either that the Institute would conduct the public, at a reasonable cost, on tours to her home on 28 days in August each year or that it would exhibit three paintings each year for six months at a time. There would be by-appointment access at other times. The Institute already has images.

Either of these arrangements would be entirely acceptable provided that the owner allows by appointment access at other times and is willing to make loans for other exhibitions and provide images to curators of public collections.

(h) Access “at home”: whether “reasonable public access”.

Mr H has inherited some paintings or other (pre-eminent) works of art. He lives in a modest dwellinghouse unsuitable for opening to the public. He is willing to arrange loans to museums or galleries of his choosing and even to have open access at home. But he is unwilling routinely to part company with the works of art for a month each year to a public collection.

Something along these lines would meet part of the requirements of the conditional exemption legislation in that public access would not be confined to access with a prior appointment. Whether it would **secure reasonable access to the public** is another matter.

Generally, access at an owner's home in these circumstances suits neither the owner nor the public. The owner has to consider all the security and practical issues in providing access without prior appointment.

We suspect that the public interest too is much better served if access is provided in public galleries or museums where they can be seen with other fine works. We therefore look for such items to be displayed long term or regularly in museums or galleries.

Where however owners have difficulties in museums or galleries committing themselves to such arrangements we will be looking for the owner to agree to a suitably proactive rôle in seeking exhibitions. In these cases access at the residence will be required to supplement this, both with and without appointment, without appointment as a fall back position if exhibition loans do not materialise.

Once we had settled the detail of Mr H's arrangement and formally agreed the exemption, we should have to monitor its viability by asking him for details of how much access the arrangement delivered each year.

We could then agree to continue the arrangement if we felt it delivered sufficient access. If it did not, or Mr H felt that he could not sustain it, we could agree to vary it. Failing agreement we could propose a variation and seek the independent Tribunal's agreement to it if Mr H would not accept it.

Part II: Publication of undertakings and publicity in general

General Approach

- 14.** The publication of undertakings is linked with access both in the legislation and practically. The 1998 legislation provides for the terms of post 1998 undertakings to be publicised and for the terms of earlier undertakings to be publicised if it is just and reasonable to do so. These terms include where and when the items can be seen without an appointment.

Whilst the 1998 legislation does not spell out how the publicity is to be given it was made clear at the time that our website would be central. Compliance with the publication requirement therefore requires a suitable reference on our website database at www.ir.gov.uk/heritage. Our practice is to agree the terms of this publicity at the same time as we agree the terms of the undertakings themselves.

We divide the database into three sections.

- One section is for **Works of Art**. This section provides **individual** descriptions of exempt works of art. Our research indicates that curators, specialists and enthusiasts mainly use this part.
- The second section is for **Land Buildings and their Contents**. This section provides entries of exempt land and buildings and is designed for the public with a more general historic or artistic interest. Each entry includes a **generic** description of the tax exempt historic contents of the exempt buildings, including works of art, much in line with the approach used by the National Trust.
- The third section, **Collections of works of art and other objects** is similar to the second but is for collections of objects, including works of art, that are in a building which is not itself tax exempt. ("Collection" here has its natural meaning as distinct from the technical meaning described in **#2** above.)

The material for publication

15. In more detail, the owner's undertakings must secure publication via our website of the following material:

- **Generally**

Particulars of the property and the terms of maintenance etc and public access.

- **For a work of art – object, group or collection – exempted as pre-eminent in its own right post 1998.**

An entry in the Works of Art section of the web-site database comprising: –

- a full description of the object, group or collection
- the county (though not the full address) in which it can normally be seen
- viewing details including the dates the public can see it and, if applicable, the museum, gallery or other venue for its display
- a contact point for information, for by appointment access and for loans for special exhibitions

Each object, group or collection has to be fully described in this part of the web-site, the entries cannot be restricted or diluted, e.g. by removing the location from the description of a painting or the name of a family member from the description of a portrait. Reasonable access to the public depends on a full description and museum and gallery

curators require a full description when considering items for exhibitions.

We nevertheless appreciate that a full description of a group or collection might be unwieldy. Where appropriate, we shall expect owners, on request, to provide enthusiasts, curators, students and the public with a list of the works making up the group or collection.

In addition there is a hyperlink to other works of art in the same ownership. For the public this hastens the process of establishing what they can see in a given trip. It also potentially saves owners and the public from several meetings for viewing where one would suffice.

For security reasons we do not insist upon the location, at which items are displayed, being shown in the entry on this part of the website.

- **Collections or a range of works of art**

But the public need to know where they can see collections of works of art and we achieve this by an entry on the **Land Buildings and their Contents section or the Collections of works of art and other objects** sections of the website database. These entries comprise: –

- (where appropriate) individual entries of exempt land and buildings
- **generic** descriptions of the collections of exempt objects – the tax exempt historically associated contents (if any) and works of art
- where and when these collections can be viewed (or where to assemble to undertake a tour of them)
- a contact point for information.

These **generic** descriptions normally seek to draw attention to the best or most attractive artists or pieces, rather than describing them individually. E.g. A **collection of family portraits including works by Raeburn and Reynolds** or **A collection of fine 18th Century French furniture**. Much the sort of thing, in other words, that would appear in publications such as **Hudson's**. The entry will also highlight any historical significance and important sitters for exempt portraits.

Historically associated contents are not listed individually on the website but owners will make the details available to the public either on request or by a list at the building at which they are displayed.

Publication is also necessary otherwise than via our website. This includes providing copies of the undertaking, without personal particulars, for the public on request, informing relevant tourist bodies of what is available, and providing contact details.

“Undertaking” is usually defined to include ancillary papers such as schedules, maps and HMPs. But there needs to be a sense of proportion. Providing copies of **all** of this material might be time-consuming and expensive without commensurate benefits.

Unless a member of the public insisted on copies, and was prepared reasonably to meet the cost, we believe that a detailed summary would suffice. Draft undertakings should reflect this.

The need for up-to-date material

- 16.** It is important that the particulars on our web site are kept up-to-date. We look to owners to decide upon and provide updated details to us showing the following year’s arrangements normally when providing copy for the relevant publication (such as **Hudson’s**) or by the end of October each year.

A failure to update the publicity is a breach of the owners undertaking and this could result in loss of the tax exemption and a resulting claim for tax.

Other publicity requirements post 1998

- 17.** For items exhibited in museums or galleries or displayed in houses which themselves are open to the public, the publicity for these attractions, together with our web-site publicity, is sufficient. For items e.g. displayed in houses not normally open to the public, further publicity will be necessary – in the local press or at a local tourist information centre and in a national publication or guide.

Owners who have undertaken to do so will also provide, at a reasonable charge, images for museum and gallery curators, enthusiasts, students etc. They will also provide to the public, if requested, a copy of the undertaking redacted for anonymity, a reasonable charge can also be made for this.

Part III: Access by prior appointment: good practice

- 18.** The 1998 legislation applies to undertakings after 30th July 1998. Many, as well as providing for open access, contain provision for viewing tax-exempt objects with a prior appointment. Many *pre-* 1998 undertakings provide for access **only** by prior appointment. What study there has been suggests that most appointments have been for scholarly rather than recreational purposes. Whether this will remain the case with better publicity for the Conditional Exemption scheme, time will tell. In any event the system must work properly. What follows applies to by-appointment access generally – both to post- and pre-1998 arrangements.

19. The public will select items for viewing by appointment from the information on the HMRC web-site. We shall have agreed the nature and extent of this information and the manner of its publication with the owner. The information available to them is one or more of the following:-

- A generic description of a collection or range of exempt items from the **Land, Buildings and Collections** part of the web-site and
- Individual exempt items from
 - the **Works of Art** part of the web-site, those belonging to the same owner linked so the public can ask to see them all in one visit.
 - lists provided by the owner where collections are covered by a generic entry on the web-site and individual items are not entered.

From this information the public can ask to see individual items, a range of items or all of the items belonging to an owner.

20. In addition to descriptions of the exempt items, the web-site shows the broad geographical location in which the item maybe viewed and the contact details for arranging an appointment. The contact maybe the owner or an agent, solicitor etc nominated by the owner. The public can simply make contact by, for example, the telephone, fax or letter (or, if offered by the owner, e-mail), identify themselves, and agree upon a mutually convenient time and place for viewing. (The question of identity is considered at **#11** above.)

21. The contact point should arrange the appointment there and then if possible, or as soon as reasonably practicable if arrangements have to be made with the owner. In particular if a member of the public seeks an appointment over the telephone the agent should not respond by seeking the same request in writing. But it is in order, once details of the appointment have been agreed, for the agent to ask the member of the public to write to confirm them.

22. The owner does not have to provide access at the location the item is normally kept. It can be shown within the county shown on our web-site or elsewhere if both parties agree. Owners do not have to be present. But the location chosen must be reasonable and when a viewer wants to see more than one item or a whole collection they should, if reasonably possible, be available to be seen in one visit.

23. Owners should normally allow viewing on the day requested by the prospective viewer or offer a choice of viewing between 10am and 4pm on any one of at least three weekdays and two Saturdays or Sundays within the following four weeks.

24. Access is for the general public, not just for specialists and enthusiasts.

A member of the public should not be refused access unless the owner has a positive reason to believe a caller is wasting their time or provides a real risk to their, or their household's, security. (In that case the owner may wish to confer with HMRC before making any commitment).

If viewing is provided at the owner's home, the owner is entitled to be satisfied, by asking for identification, that the visitor is the person who made the appointment (see **#11** above). But owners or their agents should not seek references or cross question the public as to why they want to see the exempt items. They should not be off-putting. Their conduct should be consistent with the undertaking to provide reasonable public access.

As also mentioned at **#11** above, closed circuit television (CCTV) cameras maybe used consistently with the requirements of the general law (e.g. that the public are made aware of their existence).

25. All cases turn on their own particular facts. But some examples of possible pitfalls when providing access by appointment might be helpful: –

(a) The owner is concerned at a request for viewing by a number of visitors together.

We expect owners to tell us of foreseeable difficulties so that our web site publicity could carry the message for example "due to limited space, groups of no more than five persons". Beyond that an owner may seek to fragment particularly large groups by offering appointments for an acceptable numbers of visitors at a time.

(b) The owner fears what he or she considers to be an unwholesome visitor because of the latter's gauche or semi-literate style.

Access is for the general public, not just for specialists and enthusiasts. But viewing does not have to be at the owner's residence. It may be arranged at other premises in the county shown on our web site and owners are not obliged themselves to be present.

(c) The owner wishes to make a charge.

Owners may make a reasonable charge (see **#11** above) **to view the object**. This charge does not extend to fees for third parties for their time and facilities. For example, if an owner wants to show the item at his or her solicitor's or bank manager's office, the charge must not include the legal or banking fees associated with the viewing.

(d) The owner does not want the public to take photographs or handle an object.

The public should not take photographs or handle an object without the prior agreement of the owner.

(e) The public cannot reach the owner's nominated public contact point. That individual or his or her firm: "know nothing about the matter"; "the person has left the firm"; or "is on holiday"; or "will (but ad infinitum fails to) return the call". Or the nominated contact point cannot reach the owner.

Prima facie this is denying the public's entitlement to access. It is the owner's responsibility to ensure that the public can make contact at the point given on our web-site and can arrange an appointment. If they fail to do so we will investigate the circumstances and if appropriate accept suitable assurances for the future. In the absence of such assurances or a subsequent failing we will claim the tax on the current value of the items concerned.

The appointment system, and indeed public access and hence the conditional exemption scheme itself, depend on good communication, especially where there is an intermediary. The benefits to owners evaporate if their agents fail in their duties or communication between the owner and the agent breaks down.

It goes without saying that cases turn on their own particular facts, but the public's contact point is no more than the owner's nominee. Owners must ensure that their agents are properly briefed and that they make suitable arrangements to cover absences. Owners cannot hide behind their agents if things go wrong for it is the owner who has undertaken to take the steps that secure reasonable public access.

(f) An appointment is not possible because the object is [temporarily] unavailable for viewing

An item might be on short-term loan to a public collection or undergoing cleaning, restoration etc. In this case the owner or contact point should say so, providing details of any loan, and tell the public when appointments can resume.

If the object is moved to another private location or misplaced the owner should so inform us. Failure to do so might constitute failure to take sufficient steps to maintain and preserve the work of art or to secure public access, or both.

(g) Viewing is frustrated by holiday arrangements.

Holidays can intrude in several ways.

We have already considered the case where owners or agents are absent without cover.

Members of the public might wish to view an object which is conveniently close to their holiday destination. It would be prudent to seek the appointment well in advance to avoid disappointment. The four-week period – see **#23** above – would not help them if by then they had returned home.

Owners too take holidays, and their absence might coincide with the public's preferred visiting time. The owner can suggest something within the four-week period but again that might not assist the holidaymaker who might by then have returned home.

If the public leave it until the last minute to seek an appointment there might be nothing reasonably to be done. But where they have sought the appointment well in advance the owner should accommodate the date requested by the prospective viewer save where this would not be reasonably possible.

(h) The owner or the public breaks an appointment.

As a rule owners should not break appointments without very good reason. Otherwise, they run the risk that they will breach their access undertakings and hence be liable for tax. This does not mean that owners might not try to reach agreement with the public to agree another date.

We trust that the public would keep appointments or at least be courteous enough to give notice to the owner to arrange a different date. Failure to do so is not normally grounds for the owner to deny access in the future.

(i) Acting in accordance with the invitation on our web site, someone tells us with details that they think they have been denied reasonable access.

We will examine any such assertion very carefully. If we conclude that there has been a breach of an owner's access undertaking, we will seek its remedy. Where that is not possible, or if the owner has transgressed before, we will claim tax on the current value of the object or objects concerned.

Whether a tax claim arises with respect to a particular object or extends to all the tax exempt objects belonging to that owner depends on what had occurred.

If someone had asked to view an exempt object, one of 20 belonging to the owner, and the owner's conduct denied access solely to that object the claim for tax would just to that item. But if, for example because the owner or agent were continuously incommunicado, the denial of access clearly extended further, so too would the claim for tax.

- 26.** No doubt there are many other possible reasons for owners or the public to find fault with each other. Our web site invites the public to tell us if they feel short-changed. We should also be glad to hear from owners and their advisers where an owner is unsure how best to proceed.

ADDENDUM

(The notes contained in this Addendum have been settled between HMRC and The National Archives.)

Access to Archives on Private Premises

1. Conditionally exempt archives: access on private premises – a checklist

- (a) Subject to what follows it will be sufficient to give public access to exempt archive material normally kept at private premises on a view by appointment basis at reasonable times throughout the year.
- (b) Contact details of how access can be arranged should be submitted for inclusion in The National Archives' on-line catalogue Discovery and the contact details will be incorporated in the 'Find An Archive' section of Discovery. A repository code will be allocated where this does not already exist. These should also be posted via the HM Revenue & Customs (HMRC) website as a hyper-link. If the archive derives from family ownership of a historic house, these details should also feature on the house's website (if one is available), or on the owner's other publicity material.

In order to avoid any misunderstandings later, owners and the public are encouraged to discuss matters such as

- the material which is available
- the extent of any research a professional archivist might undertake before the visit and
- the fees and charges payable.

Where the services of a professional archivist are retained, or other staff are paid for producing documents or supervising readers, these charges may include fees payable to cover the cost reasonably incurred in providing material for study and invigilated access.

- (c) A collection level description (as a minimum) should be drawn up as soon as possible. This is in any case necessary to substantiate the claim for conditional exemption. It would be useful to post collection level descriptions (or at least a suitable précis) on the websites of historic houses, where they exist, and this information would also normally be posted on the HMRC website.

Model collection-level descriptions for the archives or papers of families, estates and individuals are published in the Historical Manuscripts Commission (HMC)'s Guides to Sources for British History (The Stationery Office, 1980 –2003). The National Archives has published a template for on-line cataloguing of family and estate papers that sets out the standards required for inclusion in The National Archives catalogue Discovery. In the

first instance excel catalogues can be submitted directly to 'Manage Your Collections' (MYC) for inclusion and indexing in Discovery, but if only Word formats are available these can be submitted to Archives Sector Department for inclusion in Discovery.

The staff of Archives Sector Development (ASD) Department at The National Archives) can also advise on the production of collection-level descriptions and cataloguing programmes. Enquiries should be sent to Archives Sector Development, The National Archives, Ruskin Avenue, Kew, Richmond, Surrey TW9 4DU – and at asd@nationalarchives.gsi.gov.uk.

In appropriate cases the undertakings required will provide for the production of a full descriptive catalogue of the archive to appropriate national standards. This will be on the basis that when each section of this catalogue is complete a copy will be provided for inclusion in The National Archives on-line catalogue Discovery – although interim lists will be welcome in the meantime. It is accepted that depending on the size of the archive in question the production of such a detailed catalogue may take some years to complete.

- (d) In cases where the archive is normally kept on private premises usually open to the public, and where suitable facilities exist, a selection of documents of interest to the general public should be exhibited during the normal opening times of the house. Examples might include material that is visually attractive or with immediate historical resonance because it mentions a famous name or historical event.

Exhibition of individual documents should not be for longer than three months at a time, with suitable protection from excessive light levels and damaging environmental conditions and with appropriate invigilation, security and environmental monitoring in order to ensure the permanent preservation of conditionally exempt material for the benefit of future generations. Particular care should be taken in exhibiting illuminated material and appropriate expert advice should be sought.

In cases where provision of such facilities for the exhibition of documents is impractical, arrangements for a rotating exhibition of them at a suitable location elsewhere would be an acceptable alternative.

The virtual exhibition of scanned images of documents on an appropriate website is also encouraged to maximise access. Further advice about national standards for security can be obtained from the Museums Libraries and Archives Council's security adviser and on standards for exhibition from staff of ASD at The National Archives.

- (e) For the purpose of direct examination and more detailed study of the documents advance notice should be given. Notice is necessary to ensure that any restrictions on access for reasons of preservation (or confidentiality where this has been agreed with HMRC under S.30(3),

Inheritance Tax Act 1984) can be communicated to researchers to avoid wasted visits so that study facilities, appropriate invigilation and timely document production can be arranged and to enable appropriate advice and assistance to be provided.

- (f) Material which may be unfit for production owing to damage or fragility must at the very least be stabilised to allow production of a surrogate wherever possible. In keeping with the undertaking to take suitable steps for the preservation of the material, a longer-term strategy for the conservation of deteriorated material should be drawn up to the reasonable satisfaction of ASD staff at The National Archives. Identifying this material, and the tenets of the conservation strategy, is of course, part of the conditional exemption process. Any publicity about access would need to explain that, in agreement with HMRC, certain papers would only be available in surrogate form, save to ASD staff or other professional advisers.
- (g) Standard guidance specifying the broad terms and conditions under which documents are made available should be produced. A suitable template is reproduced at (j) below.
- (h) Constant invigilation of researchers is required while original documents are being used. This is to ensure the security and appropriate handling of archives and manuscripts in line with best practice.
- (i) Researchers are not entitled to microfilm or photograph exempt archive material without the express permission of the owner.

SMITH CASTLE ARCHIVES TRUST

We aim to ensure that your visit will be both useful and enjoyable. We shall do our best to facilitate your research but we are sure you will appreciate that we are not able to carry out your own work for you.

Guidance and Ground Rules

Like all institutions that offer access to original manuscripts and rare books, we have ground rules in place as guidance to assist our visitors. We seek your co-operation in observing them, as failure to do so may unfortunately result in withdrawal of access to the collections. They are designed to ensure the security and preservation of the materials in our care and to enable readers to work in a safe and pleasant environment. In this way we aim to conform to existing best practice for storage, preservation, handling and access to archives of all kinds.

General Conduct

- All readers should sign the Visitors Book daily.
- All personal belongings should be left outside the Document Study Area.
- Only loose papers and pencils should be taken into the Document Study Area.
- The use of pens and sharp instruments (such as scissors) is not permitted.
- Smoking, drinking and eating (even of sweets) and the use of mobile phones and personal stereos are not allowed in the Document Study Area.
- Readers should be as quiet as possible and take care to avoid disturbing other users of the Document Study Area.
- If you wish to use a laptop computer please contact us in advance to check that appropriate facilities are available.

Production and Handling of Documents and Books

- Documents will not be produced if they are in a fragile condition, closed by statute, or are commercially or otherwise confidential.
- The number of documents issued at any one time will be at our discretion.
- No original documents or related items from the collections may be removed from the Document Study Area.
- Pencils only should be used for making notes.
- In order to ensure their preservation for the future, documents and books should be handled with the greatest care and should be neither marked nor leant upon.
- Where available, we ask that surrogate copies of documents should be consulted, unless in our opinion good grounds exist for study of the originals.

- Documents should be kept in the order in which they were issued and any defect or damage should be reported to us.
- Readers are asked to follow all guidance offered by the Archivist as to the physical handling of documents and books.
- Tracing of documents can only be permitted at our discretion and with suitable protective measures in place.

Emergency Procedures

- Visitors are asked to familiarise themselves with procedures used in the event of an emergency such as a fire.
- Should an emergency occur, visitors should without hesitation follow the instructions of our staff charged with implementing these procedures. This is to ensure the safety of all and to minimise risks to the collections.

2. Access on the premises of local authority record offices, universities or other special repositories

These bodies have their own arrangements for access which might in some respects override the comments above. But the comments above at 1(b) and (c) regarding publicity apply equally, save for exclusion of the references to historic houses.

Appendix 2: Conditional exemption: Inheritance Tax charges on loss of exemption – the mechanics – S.S.33, 78 and 79, Inheritance Tax Act

Introduction

1. This Appendix supplements Chapters 3 and 7.

Those Chapters explained the availability of CE under S.30 and 31 and its loss through a **chargeable event** under S.32/32A.

This Appendix explains the mechanics of a ripened tax charge under S.33, 78 and 79, and the effect on cumulation under S.34.

In essence: –

- whereas, as we have seen at **#3.18(b)** above, a tax charge arises under S.32/32A when CE property is sold, or its owner dies or otherwise disposes of it without replacement of the statutory undertakings, or where the statutory undertakings are not observed in a material respect
- now, S.33 prescribes
 - the amount on which tax should be charged, referred to here as **the value for tax** – S.33(1)(a), (3) and (4), see **#2 to 4** below and, ...
 - ... by deeming a person – the **relevant person** – S.33(5) and (6), see **#5** below ...
 - ... to have made a chargeable transfer to fix the **rate** of tax – S.33(1)(b), (2) and (2A), see **#6** and **7** below

with additional provision to mitigate the effects of concurrent ripened tax charges – S.33(7) and (8) – see **#11 to 14** below

- and S.34, recognising the cumulative infrastructure of IHT, adds the value for tax under S.33 to the appropriate cumulative total of chargeable transfers – see **#9** below.

This Appendix also explains how these rules are adapted for property held in trust – see **#15** et seq.

Conditionally exempt property owned by individuals

Value for tax

2. The general rule, under S.33(1)(a), is that the value for tax is the open market value of the property (see S.160) at the time it ceases to be CE.

The commonest manner of losing CE status is nevertheless a non-gratuitous sale at (or as at) arm's length, and typically at auction. In that case the value for tax is the *net* proceeds after the costs of sale – S.33(3) augmented by **Tyser-v-Attorney General** [1938] Ch 426. (**Tyser** concerned the sale of an object and an analogous claim for ED.)

Where CE status is lost because of a sale or breach of undertaking, and a CGT undertaking is in force, there is a deemed disposal for CGT purposes under S.258(5) TCGA. Where there is an IHT charge then, under S.258(8) TCGA, in determining the value of the asset for IHT purposes an allowance is made for the CGT chargeable. By contrast, where the chargeable event is the death of the owner, the normal death exemption for CGT under S.62(1) TCGA applies.

Where only a part of the property benefited from CE, e.g. an undivided share in a picture, S.33(4) confirms that the value for tax should be proportionately reduced.

3. The extent to which the value for tax is attributable to clearly identifiable capital additions or improvements to the property made by its owner since we last accorded CE will in practice be omitted from the value for tax when a chargeable event occurs.

(This stems from an assurance given by the Chief Secretary to the Treasury in Committee during a debate concerning two amendments to what is now S.33, and which were in consequence withdrawn. The text of the debate is at **Hansard**, 29th June 1976 at columns 1389 et seq.)

Unavailability of certain IHT Reliefs – Agricultural (APR) and Business Property (BPR); “Taper” Relief

4. When CE ceases to apply, neither APR nor BPR is available to reduce the value for tax. This is so whether or not either or both would have been available at the time or times we accorded CE.

The reason for denying these reliefs is that they are predicated on **value transferred by a transfer of value**. The occasion of charge under S.32 is not a **transfer of value** but a **chargeable event**. There is no provision in the statute to extend the relief from the one to the other.

The taper relief for PETs which prove to be chargeable transfers arises out of a special provision contained in S.7(4) and (5). Whilst S.33 reaches into S.7(1) and (2) it does not reach into subs (4) and (5).

The Relevant Person

5. Having established the value for tax as above, the next stage is to identify the **relevant person**.

Under S.33(5) the **relevant person** is someone who has previously made a conditionally exempt transfer (CET) of the property concerned. And tax on a chargeable event is calculated by reference to the circumstances of that person: –

- If there has been only one CET of the property within the 30 years before the chargeable event, then the **relevant person** is that transferor – S.33(5)(a) and (b)
- If there have been two or more CETs within the 30 year period, we select one of those transfers, and the *relevant person* will be the person who made that transfer – S.33(5)(c). (In practice we select whichever transfer results in the largest amount of tax being payable.)

S.33(6) excludes from consideration in this context any CETs – and any private treaty sale or acceptance in lieu of tax – which took place before a previous chargeable event.

The rate of tax

6. Having established the value for tax and the **relevant person**, as above, the last stage is to fix the **rate** of tax.
7. If the **relevant person** is alive S.33(1)(b)(i) applies.

We deem that person at the time of the chargeable event to have made a chargeable transfer of the value for tax. Under this fiction we take into account all chargeable transfers made by that person within the seven years before the chargeable event. Then we charge at the rate under S.7(2), i.e. one half of the rate charged in connexion with a person's death.

We do not re-visit this – S.33(2A) – even if PETs made by the **relevant person** become chargeable on his or her death.

If the **relevant person** is dead S.33(1)(b)(ii) applies.

We add the value for tax to and as the top slice of the value of that person's estate on death. The rate then depends on whether the relevant person's CET was on death or inter vivos.

If on death then under S.33(2)(a) we charge at the rate under S.7(1), i.e. the rate charged in connexion with a person's death. If inter vivos, including by **gift with reservation**, then under S.33(2)(b) we charge at the half rate under S.7(2).

(For the avoidance of any doubt, para 41 of Schedule 19, FA 1986 secures this outcome even where the **relevant person** had died before 18th March 1986).

Liability for the tax

8. Who is liable for the tax depends on the circumstances in which it becomes payable.

Under S.207(1) and (2A), if tax becomes payable because an undertaking has been broken or the owner has died and there has been no fresh undertaking, the liability falls on the person who would have been entitled to receive the proceeds of the sale if the property had then been sold. Normally, therefore, an owner in breach of undertaking will be liable to pay the tax.

Under S.207(2) and (2B), if the chargeable event is a disposal by sale or gift or otherwise, the person liable is the person by whom or for whose benefit the property is disposed of.

For CGT purposes the charge can only be on the person who sells the asset or is the owner when the undertaking is breached.

Effect on cumulation

9. Under S.34(1) when a chargeable event occurs, the value for tax is normally added to the cumulative total of chargeable transfers made by the person who made the last CET of the property. This happens whether or not that person is the **relevant person** whose circumstances determined the rate of tax payable on the chargeable event itself.

If that person is alive this of course has the potential to affect the rate of tax payable on any future transfers which he or she might make.

If that person is dead, the value for tax is treated under S.34(2) as part of his or her estate for the purpose of calculating the rate of tax on any later chargeable event for which he or she is treated as the relevant person.

There is a special rule, however, under S.34(3) and (4). If

- the person who made the last CET is not also the relevant person and,
- at the date of the chargeable event or within the previous five years, the property has been comprised in a settlement made within 30 years before that date and
- any settlor of that settlement had made a CET of the property within that 30 year period

the sale proceeds etc are added to that settlor's cumulative total (instead of to the cumulative total of the person who made the last CET).

It should be noted however that, by virtue of S.78(6) S.34 does not apply where the last CET of the property subject to the chargeable event has been followed by a CE occasion (CEO) – see **#17** below.

10. There is a detailed example of the working of these rules in **Appendix 13**.

Concurrent ripened tax charges

11. The corollary of every CE granted with respect to property is a prospective claim for IHT on sale etc.

Hence if A had on death made a CET to B and B later made a chargeable transfer of the CE property to C, who did not claim CE or provide an undertaking, there could be two charges to tax: –

- on the transfer from B to C, under the normal IHT rules and
- on the ripening of the prospective claim in relation to the CE on the transfer from A to B.

12. S.33(7)(a) mitigates the effect of these concurrent charges. We tax the transfer from B to C in the normal way, but credit that tax against the tax payable on the withdrawal of the CE on the transfer from A to B.

13. If following the chargeable transfer by B to C, C had renewed the undertaking, B's transfer would still be a chargeable transfer but not now a chargeable event. In these circumstances S.33(7)(a) is clearly inapplicable but S.33(7)(b) provides for the tax paid on B's transfer to be credited against the tax payable on the next chargeable event.

14. S.33(8) displaces S.33(7) in the context of PETs.

If, in the example at **#11** above, the transfer from B to C had been a PET, and C had not been prepared to provide undertakings, that transfer would have been a chargeable event in relation to the earlier transfer from A to B.

Alternatively, had C provided an undertaking but later sold the property, there would have been a chargeable event by reference to the sale.

Under S.33(8), in either of these cases, we should credit the tax chargeable against the tax due if the PET from B to C became a chargeable transfer.

Property held in trust: interest in possession – S.49(1) in point

15. If a person has an interest in possession, e.g. a life interest, in settled property, and S.49 is in point it would treat that person for the purposes of IHT as if he or she were beneficially entitled to the property.

Thus as life tenant Mr A would be treated as making a transfer of the property when he died or when his interest came to an end in his lifetime.

If the settled property met the relevant heritage criterion CE would be available with respect to it on the same lines as for transfers of property held outright.

Property held in trust: "Relevant Property"

16. There is in general a charge to IHT under S.65 when settled property ceases to be **relevant property**.

This might happen when a distribution of capital is made to a beneficiary absolutely or when an interest in possession in a fund which is relevant property terminates on the death of the life tenant and the remainderman takes absolutely.

If the property in question met the relevant heritage criterion CE from this charge to tax might be available with respect to it under S.78 – a **conditionally exempt occasion** (CEO).

Conditionally exempt occasions

17. In general the rules explained above for CETs apply to CEOs, but there are certain differences: –

- Under S.78(1) the heritage property concerned must have been comprised in the settlement throughout the six years preceding the occasion of charge
- Under S.78(2) a CEO comprehends CE granted analogously by reference to earlier IHT legislation and
- S.78(3) to (5) adapt referentially the charging and mechanical provisions of S.S.32/32A and 33.

In short, then, the régime for CE in relation to relevant property is much the same as for non-relevant property: –

- under S.78(1)(a) and (1A) on a chargeable occasion we can on receipt of a timely claim grant CE with respect to heritage property which has been comprised in the settlement for at least six years and which meets the relevant criterion under S.31 ...
- ...provided – S.78(1)(b) – that we receive suitable undertakings in the same terms as under S.31
- for each grant of CE there is a prospective claim for tax on cesser of CE

- S.78(3) secures that S.32/32A provide for chargeable events in relation to CEOs as for CETs and that ...
- ... S.33(1)(a), (3) and (4) apply to find the value for tax on cesser of CE after a CEO as after a CET and that ...
- ... the arrangements in S.33(7) to credit tax against concurrent and future claims to mitigate the effects of concurrent ripened charges apply in the context of CEOs as for CETs and
- the liability provisions of S.207(1) to (2B) apply as for CETs.

The Relevant Person

18. However, the provisions as respects *the relevant person* – S.33(5) and (6) – and the rate of tax – S.33(1)(b) – are altered significantly.

S.78(3) provides that where S.33(5) identifies the **relevant person** as a person who made a CET, that reference in the context of a CEO should be to the settlor of the settlement in question. (If there is more than one settlor we can select whichever would lead to the highest tax yield.)

There is special provision where that settlor died before 13th March 1975 as noted at **#19** below.

The rate of tax

19. Having established the value for tax – see **#2 to 4** above – and that the **relevant person**, as above, is the settlor, or whichever of multiple settlors we select, the last stage is to fix the *rate* of tax.

As below, this depends on whether the (selected) settlor is alive or dead and whether either of two **variants** under S.78(4)(a) and (b) are in point.

If the (selected) settlor is alive S.33(1)(b)(i) applies.

We deem the (selected) settlor at the time of the chargeable event to have made a chargeable transfer of the value for tax. Under this fiction we take into account all chargeable transfers made by our settlor within the seven years before the chargeable event. Then we charge at the rate under S.7(2), i.e. one half of the rate charged in connexion with a person's death.

There is no provision to prevent our re-visiting the calculation – cp. S.33(2A) and **#7** above – if PETs made by our settlor become chargeable on his or her death. This is because S.33(2A) is not imported into S.78.

If the (selected) settlor is dead S.33(1)(b)(ii) applies, modified by S.78(4) as below.

We add the value for tax to, and as the top slice of the value of, that settlor's estate on death. The rate then depends on whether the settlement was created on the settlor's death or inter vivos.

S.78(4) provides that if the settlement had been created on death then we charge at the rate under S.7(1), i.e. the rate charged in connexion with a person's death. If inter vivos, then we charge at the half rate under S.7(2).

(For the avoidance of any doubt, para 41 of Schedule 19, FA 1986 secures this outcome even where the *relevant person* had died before 18th March 1986).

The **variants** are these. The rate of tax is reduced –

- to 30% of what it otherwise would be where the CE occasion occurred before the first ten-year anniversary of the settlement to fall after the property in question became comprised in it, or
- to 60% of what it otherwise would be where the CE occasion occurred after the first but before the second such anniversary.

Where the relevant person is a settlor who died before 13th March 1975 the rate of tax is found from a recasting of S.33(1)(b)(ii) in S.78(5). The recasting takes into account the modifications as immediately above under S.78(4).

In the result we add the value for tax to, and as the top slice of, the value on which ED was chargeable when that settlor died. The rate then depends on whether the settlement was created on the settlor's death or inter vivos.

If the settlement had been created on death then we charge at the rate under S.7(1), i.e. the rate charged in connexion with a person's death. If inter vivos, then we charge at the half rate under S.7(2).

For the avoidance of any doubt, for practitioners have sometimes enquired, the rate of tax is found under S.7(1) or (2) as the case may be contemporaneously with the chargeable event. There is no question of using the (often much higher) rates of ED in force when the settlor died.

Effect on cumulation

20. The provisions of S.34, which apply where a chargeable event follows a CET – see **#9** above – are not extended to the régime for CEOs.

It should be noted too that, by virtue of S.78(6), S.34 does not apply where the last CET of the property subject to the chargeable event has been followed by a CEO.

Relevant Property – Ten-yearly charge to tax

21. Relevant property is subject to a charge to tax under S.64 on each tenth anniversary of the date of creation of the settlement concerned. Property which qualifies as national heritage property may be excluded or exempted from this charge as well.

CETs and CEOs are not in point here, but S.79 offers a self-contained parallel régime. This includes its own prospective claim for tax on a chargeable event. Any such tax is chargeable at a time-based flat rate. It is also noteworthy that there is no temporal qualification. This contrasts with the six-years' ownership necessary for a (lifetime) CET and CEO.

The operation of S.79 is described below.

Property CE on or before becoming comprised in the settlement – exclusion from the charge under S.64 – S.79(1) & (2)

If the property was conditionally exempt from IHT or ED on or before the occasion when it entered the settlement then, under S.79(1), as augmented by S.79(10) and para 4(3) of Sch 6, it will automatically be excluded from any ten-yearly charge to tax which falls due before a chargeable event occurs.

(The reference to exemption from ED is a reference to S.40, FA 1930. Exemption under S.20, FA 1896 would not activate S.79(1).)

S.79(2) provides a corresponding exclusion if relief from CGT under S.258, TCGA (or its predecessors) was given on or before the occasion on which the property entered the settlement.

CE anew for property already comprised in the settlement – S.79(3)

If heritage property is not so excluded under S.79(1) or (2), the trustees can seek CE from the ten-yearly charge under S.79(3). If granted, the exemption until sale etc would apply to all future ten-yearly charges.

But – and this is a significant departure from the régime for CET/CEOs – S.79(3) requires that designation and the requisite undertakings be completed **before** the charge arises.

It is important for the trustees to make their claim well in advance so that the formalities can be completed in time.

Indeed, discussion following the enactments in 2006 for IHT and settled property brought into sharp focus the possibility that designation of property before a ten-yearly charge, under S.79(3), might not be feasible. We are prepared in suitable cases to consider a request for a *dry run* during the subsistence of an interest in possession within the pre-2006 code. **Suitability** would depend on the facts of the case.

Any such case should be referred for immediate technical guidance.

Prospective claim for tax – S.79(3)

If property is CE under S.79(3) there is a corresponding prospective charge to IHT on what, in the context of a CET/CEO, would be a chargeable event under S.32/32A. (This prospective charge would be extinguished under S.79(4) if the property concerned were then the subject of a CEO.)

Value for tax – S.79(5) & (5A)

If the prospective claim ripened, the value for tax would be found under S.79(5) and (5A) as for a CET/CEO – see **#2** and **17**. There would be no **relevant person** or deemed chargeable transfer.

Rate of tax – S.79(6) to (7C)

Instead, under S.79(6), the charge is at a tapered flat rate up to a maximum of 30%.

Under S.79(7) to (7C) the rate is calculated by reference to the shorter of two prescribed periods each ending on the day before the chargeable event: –

- the period prescribed by S.79(7A), which is the period beginning with the latest of
 - the day on which the settlement commenced
 - the date of its last ten-year anniversary to fall before the day on which the property became comprised in the settlement
 - the date of its last ten-year anniversary to fall before the day on which the property was designated under S.31 on a claim under S.79 and
 - 13th March 1975

and

- the period prescribed by S.79(7B), which is the number of **relevant property days** in the period beginning with the latest day under S.79(7A) above.

(And under S.79(7C) a day is a **relevant property day** if at any time on that day the property was relevant property.)

The rate of tax is

- 0.25% for each of the first forty complete successive quarters in the relevant period
- 0.20% for each of the next forty
- 0.15% for each of the next forty
- 0.10% for each of the next forty
- 0.05% for each of the next forty

and hence a maximum rate of 30 per cent is reached after 50 years.

Acquisition of heritage property from settled funds – rate adjustment for the S.64 charge – S.79(8) & (9)

S.79(8) and (9) are anti-avoidance provisions.

They envisage settled funds which would be subject to a forthcoming ten-yearly charge but have been reinvested in heritage property. They apply where the heritage property became comprised in the settlement only during the ten years preceding the first ten-year charge from which it is excluded under S.79(3).

In such a case the cumulative rate-building components for that ten-yearly charge must include the value of the consideration given for the heritage property.

Mitigation of concurrent ripened claims for tax – S.79(9A) & (9B)

S.79(9A) and (9B) provide mitigation where there are concurrent ripened tax charges.

Suppose a picture were comprised in a settlement. It was not CE but met the relevant criterion for designation. It was comprised in a settlement in which L had an interest in possession and under S.49 L was deemed to own it. Later, when L died, the picture became **relevant property**. A claim for IHT arose on L's death and we agreed to CE under S.30.

But there would also in due course be a ten-year charge on the relevant property comprised in the settlement. S.79(1) could not operate to exclude the picture. Although it had become CE before the charge would arise it had not met S.79(1)'s requirement to be CE **on or before the**

occasion on which it became comprised in the settlement. Hence the trustees claimed and we agreed to CE under S.79(3).

One consequence of this was that there were now two prospective claims for tax, the one under S.32, the other under the charging part of S.79(3).

Where this happens S.79(9A) and (9B) reduce the charge yielding less tax to nil, so that we pursue only the charge yielding more. If the yield of each charge were the same then each would apply but only as to one-half of the amount which would otherwise be charged.

Liability

Under S.207(3) the persons liable for the tax include the trustees of the settlement.

Appendix 3: Estate Duty: exempt objects, claims, special rules and interest; acceptance of property in lieu

1. ED applied to property which passed on a death before 13th March 1975. The code contained provision for exemption of objects of "national etc" interest. There was no such exemption for land, buildings and historically associated contents, and no equivalent to the IHT provisions for maintenance funds.

Although ED ceased to apply in 1975, the prospective claims spawned by the exemption of objects of "national etc" interest remain on foot. Para 4 of Sch 6 adapts the old provisions to the IHT environment.

Paras 2 to 6 of this Appendix contain a brief summary of the old provisions and the adapting provisions.

There is also a brief résumé at **para 7** of the provisions for acceptance of property in lieu of ED.

Exemption from ED for objects of "national etc" interest"

2. The original provisions for exemption were contained in S.20, FA 1896, as extended.
 - Under these provisions the exemption lasts until, and the prospective claim thus ripens, on sale – unless that claim has already ripened or otherwise been extinguished, e.g. on the death of the owner for ED is chargeable only on the last death on which the object passed.

The claim for ED extends to the value on the death of the person whose death gave rise to the exemption. The rate is found from the aggregate value of all objects so exempt treated as an estate by itself.

The rate table is that which applied on the death which gave rise to the exemption.

S.44, FA 1921 provides for absolute exemption if the sale were by private treaty to certain national institutions. (It should be noted that this class is smaller than that contained in Schedule 3.)

The 1896 code was superseded for deaths after 29th July 1930 by S.40, FA 1930, onto which S.48, FA 1950, S.31, FA 1965 and S.39, FA 1969 were engrafted.

- Under S.40(2) the prospective claim ripens similarly on sale but extends to the net sale proceeds (or to the open market value if the sale were not on arm's length terms).

- Under s.40(2A) to (2C) on or after 15th September 2016 an existing prospective claim for ED will ripen in the event of a loss of an object exempt under s.40(2) (or s.2, FA(NI) 1931 – see also para 6 below). This will be so in connection with the loss of any such object on any date after 31st July 1930 (30th July 1931 in Northern Ireland). The one exception to this will be where before 15th September 2016 the object has been reported to HMRC as being lost. In respect of a loss occurring on or after 15th September 2016 a claim is founded on S.40(2A), whilst for a loss occurring before that date the reference in s.40(2C) to the delivery of an account in relation to a loss before 15th September carries with it the implication that s.40(2A) founds a claim for Duty. With regards to accounting for such charges:
 - Where such a loss occurred on or after 15th September 2016 the owner of the missing object will furnish an account within one month of the date of the loss or within one month of when they became aware of the loss, s.40(2A), (2B) and (2C)(b)
 - Where such a loss occurred before 15th September 2016 but that loss was only notified to HMRC after that date a claim for duty will arise, S40(2A),(2B) and (2C) FA 1930. In such circumstances the owner of the missing object(s) will be accountable for the duty and must furnish an account within one month of the date when they became aware of that loss, S40(2B) and (2C)(a) FA 1930. This is the case even though the loss may well have occurred some considerable time before the coming into force of these provisions (15th September 2016).

In both cases the claim extends to the open market value of the object(s) at the date of loss or when the owner became aware of the loss s.40(2F). It is appreciated that this might present difficulties, especially where no detailed valuation exists. However in such circumstances a best estimate should be provided based on the description available.

Loss includes theft and destruction by fire but does not include a loss which HMRC are satisfied was outside the owner's control. In practice duty will not be claimed in connection with the loss of an object as long as the owner had taken reasonable steps for its preservation. Should an object have been reported lost and a charge for ED levied and paid then, should the object be recovered, it is open to the owner to seek a repayment of ED. This will, of course, revive the potential claim.

The rate is that applicable to the net value of the estate of the person whose death gave rise to the exemption. That value does not include

the value of the exempt objects. Neither would it include the value of any reversionary interest which had since then fallen into possession.

The rate table is that which applied on the death which gave rise to the exemption.

There is no provision to mitigate the rate when the object had been the subject of a dutiable gift inter vivos. This is so even though, but for the exemption, duty would have been charged at a reduced rate under S.64, FA 1960.

By virtue of the proviso to S.40(2) the exemption would become absolute on sale by private treaty to certain national institutions. (It should be noted that this class is smaller than that contained in Schedule 3.)

- S.48, FA 1950 introduced for deaths occurring after 28th July 1950 the necessity for an undertaking.

The new owner had to undertake to retain the object in the UK unless we gave permission otherwise, to take reasonable steps for its preservation, and to allow limited access – for inspection for preservation or research – to anyone we authorise for the purpose. (Evidently such access has never occurred, presumably because neither its availability nor details of the exempt objects are published.)

On an inter vivos transfer of an exempt object the undertakings “ran with” the object to the transferee who was then similarly bound. In strictness this is so even where the recipient is a body within the proviso to S.40, FA 1930.

Failure to observe the undertaking in a material respect would ripen the prospective claim for ED. The claim would extend to the open market value of the object at that time.

- S.31, FA 1965 introduced a relief from CGT analogous with the exemption from ED. And it adapted the operation of S.48, FA 1950. A transferee inter vivos would have to replace the transferor’s undertaking if the transferor had provided it after 5th August 1965.

Failure to replace an undertaking would have the same consequences as failure to observe its terms. In strictness this is so even where the recipient is a body within the proviso to S.40, FA 1930. (Furthermore, perhaps curiously, under the provision as originally enacted, it would not merely ripen a prospective claim for ED or CGT. It would also give rise to a claim for ED even in the absence of a prospective claim.)

But there was (and remains) no question of varying, comparably with the provisions of S.35A, an undertaking given for ED or (prior to the commencement of S.258,TCGA) for CGT.

S.31 also provided for deduction from the dutiable value of any CGT chargeable on the same occasion.

- S.39, FA 1969 made further changes in relation to deaths after 15th April 1969.

S.39(4) introduced a variant to the claim and value for ED. If claims for ED arise at different times on two or more exempt objects which formed a set ED is charged as if each such claim had arisen at the time of the first. But this rule does not apply to disposals to persons who are neither acting in concert nor connected with each other.

More significantly, S.39(3) adapted the rate of ED when the prospective claim ripened. The rate is found from adding to the net value of the estate (as before) the value of the object now dutiable. ED is then charged at the average rate. This means that if (say) three exempt objects were sold then three separate calculations would be necessary.

Each such calculation would entail adding the respective net sale proceeds to the rest of the estate in order to ascertain the rate in each case. (The rest of the estate includes any object exempt on a death after 15th April 1969 which had become subject to a claim for ED under S.40(2) within three years after the death – the now spent S.39(2), FA 1969 – but the duty charged on the rest of the estate is not increased.)

Again the rate table would be that which applied on the death which gave rise to the exemption.

Owners occasionally seek to opt out of the conditions for exemption in return for payment of ED based on current values. The relevant law and policy preclude this. We can only claim ED on sale etc as above.

Special rules

- 3.** Special rules may apply when an object exempt from ED under S.40, FA 1930 is sold (etc.) after 6th April 1976. The way in which this property is taxed depends on what has happened since the ED exemption was granted:
 - If before the sale there had been a CET on a death after 6th April 1976 and before 17th March 2016 then under para 4(2) we charge IHT.
 - If before the sale there had been a CE lifetime transfer after 6th April 1976 and before 17th March 2016 then under para 4(2) we may elect

to charge either IHT or ED, and in practice we impose whichever charge would yield more.

- If before the sale there had been a CE transfer on or after 17th March 2016 then under para 4(2) we may elect to charge either IHT or ED, and in practice we impose whichever charge would yield more. This is the case whether the CET was a lifetime transfer or one on a death.
- Where an exempt object –
 - is transferred inter vivos, or on a death on or after 17 March 2016, whether it then becomes CE or not, or
 - it passes on a death after 6th April 1976 and does not then become CE,

then the prospective claim for ED remains on foot.

Hence if before the sale but after 6th April 1976 there had been a chargeable transfer, either inter vivos or on a death, of an object which was exempt from ED under S.40, FA 1930 but which did not then become CE, then under para 4(4) we charge ED. In other words, the IHT charge does not extinguish the prospective ED liability. But any IHT paid on the transfer will be allowed under para 4(3) as a credit against the ED payable on the sale.

For the avoidance of doubt where an ED exemption has been extinguished by the granting of CE on a death before 17th March 2016 then upon a sale of that object on or after 17th March 2016 IHT will be chargeable.

The special rules described in this paragraph do not apply where the exemption was under S.20 FA 1896.

Interest on ED

4. Interest on ED is normally charged from the date of the sale or material breach of undertaking. But at auction the standard conditions of sale might provide for payment of the proceeds only some days later. For many auction houses the period is 35 days. Where the sale is at auction therefore interest on ED is similarly calculated as from 35 days after the sale.

Any such interest may not exceed the amount of ED payable.

Exemption for settled property passing on the death of a surviving spouse

5. Para 2 of Sch 6 continues the exemption from ED of settled funds which have borne ED on the death of one spouse and then passed on the death of the surviving spouse who was not competent to dispose of them.

To the extent that such a fund included exempt objects this exemption is clearly unavailable. Where CE is taken on the death of the surviving spouse no difficulty arises.

But where CE is not taken then under para 4(4), as above, the prospective claim for ED remains open. On subsequent sale, we should usually charge ED in the estate of the first spouse and allow a credit under para 4(3) for the IHT paid on the death of the survivor.

Occasionally, however, the rate of ED is lower than the rate of IHT in the second spouse's estate. In practice we may, instead of allowing the credit under para 4(4), accept that the payment of ED facilitates the exemption under para 2, and hence repay the IHT paid in the surviving spouse's estate.

Northern Ireland

6. The rules enacted in 1896 applied to Great Britain and Ireland. But constitutional changes led to a separate code for Northern Ireland, with locally-set *rates* of duty, in the shape of S.2, FA(Northern Ireland) 1931.

The provisions of S.2 resembled S.40, FA 1930, and subsequent developments of the law were largely *pari passu* with those in Great Britain as above. This includes, by virtue of para 4(5) of Sch 6, the **special rules** mentioned above. But there were important differences:

- The proviso to S.2 envisaged sales to a body approved by the Ministry of Finance. The provision was restricted in 1958 (as in Great Britain) to sales by private treaty.

The power to approve was exercised on few occasions but became subject to the Northern Ireland Constitution Act 1973. Any case of a private treaty sale of an object subject to a prospective claim under S.2 should be referred for technical advice.

- The question of undertakings is understood to be academic in Northern Ireland. Although undertakings, introduced in Great Britain under S.48, FA 1950, were added to the code in 1972, there are no extant undertakings and hence no prospective claims on their breach.

Acceptance in lieu of ED

7. The provisions for acceptance in lieu of ED are contained in –

- S.56, F(1909-10)A 1910 (land and buildings) for Great Britain and Northern Ireland

- S.30, FA 1953 (objects which are or have been kept in certain buildings) for Great Britain and
- S.34, FA 1956 and S.46, FA 1973, (objects pre-eminent for their “national etc” interest”) for Great Britain.

These provisions collectively, with S.32, FA 1958, are similar to the IHT provisions of S.230 and S.231.

In addition S.30, S.34 and S.46 secure absolute exemption from ED when we accept in lieu of ED an object currently exempt under S.40, FA 1930.

There are parallel provisions for Northern Ireland under S.1, F(Miscellaneous Provisions)A (Northern Ireland) 1954 and Article 10, Finance (Northern Ireland) Order 1972 and Article 5, Finance (Miscellaneous Provisions) (Northern Ireland) Order 1973.

In practice nowadays offers are largely confined to objects which are or have been kept in certain buildings and to pre-eminent objects. The material as regards offers of such objects in lieu of IHT, in **Chapter 11**, applies here in much the same way.

Offers of any other property, and any case of doubt, should be referred at once for technical advice.

Appendix 4: Inheritance Tax and transfers on deaths between 13th March 1975 and 6th April 1976 (“the 1975 régime”): exempt property, claims and special rules; acceptance of property in lieu

- 1.** The 1975 régime was the immediate predecessor of the **conditional exemption** régime. It applies only to deaths on or after 13th March 1975 and before 7th April 1976. The IHT provisions to exempt other categories of disposition and for maintenance funds would be enacted only later.

Although the 1975 régime ceased to apply in 1976, the prospective claims spawned by the exemption of property during its currency remain on foot. S.35 and Sch 5 adapt the 1975 régime to the current IHT environment.

- 2.** The 1975 régime is contained in S.S.31 to 34, FA 1975. The categories of property eligible for exemption were much as now.

The statutory undertakings were similar as regards land and buildings and historically associated contents. But public access to objects of national etc interest was modelled on the ED provisions noted at **para 2** of **Appendix 3**, above.

However, Para 5 of Sch 5 is concerned with replacement undertakings, which must be in line with the current requirements under S.31. This imports the need for public access without a prior appointment and publication of the terms of the undertaking. These requirements are considered at **Appendix 1A** above.

The chargeable events now set out in paras 1 and 3 of Sch 5, and the exceptions from charge, are also much as now. But see **#3** below.

The rules which provide for a charge on a CE entity of outstanding building, qualifying amenity land and historically associated objects when there is a chargeable event in respect of any part of it differ in certain detailed respects. But the basic principle is the same. Under para 3(1), (3) and (5) of Sch 5 a chargeable event in respect of any part occasions a charge on the whole, subject to the **materially affected** rule explained at **#7.9**.

The value for tax is usually the net sale proceeds if the sale was on arm's length terms or else the value of the property at the time of the chargeable event.

Under para 2(3) and (4) there is a variant to the value for tax. If tax becomes chargeable at different times on two or more exempt **objects** which formed a set at the time of death, tax is charged as if all the chargeable events had occurred at the time of the first. This rule does not,

however apply if the chargeable events are disposals to persons who are neither acting in concert nor connected with each other. Neither, under para 14 of Sch 7, does it apply if the first chargeable event occurred before the end of 1984.

CGT chargeable on the same occasion is deductible from the value for tax.

The provisions for finding the rate of tax more closely resemble those under the FA 1969 for ED than those now current.

The rate of tax is the average rate, found by adding the value for tax **of the object or other property in question** to the rest of the estate – there is no provision for cumulation. This means that if (say) three exempt objects were sold then three separate calculations would be necessary.

Each such calculation would entail adding the respective net sale proceeds to the rest of the estate in order to ascertain the rate in each case. (The rest of the estate includes any property exempt under the 1975 régime for which there was a chargeable event within three years after the death – the now spent S.33(2) and 34(7), FA 1975 – but the tax charged on the rest of the estate is not increased.)

The rate table would be that which applied on the death which gave rise to the exemption, not those in force at the date of the chargeable event.

Special Rules

3. Similarly to the position for ED (see **Appendix 3** above) special rules may apply when an object exempt under the 1975 régime is sold (etc) after 6th April 1976. And similarly the way in which this property is taxed depends on what has happened since the 1975 exemption was granted.
 - If before the chargeable event there had been a CE transfer on a death after 6th April 1976 and before 17th March 2016 then we charge under S.32/32A.
 - If before the chargeable event there had been a CE lifetime transfer after 6th April 1976 and before 17th March 2016 where the CET was otherwise than on death we may charge under S.32/32A or under the 1975 régime, and in practice we impose whichever charge would yield more.
 - If before the chargeable event there had been a CE transfer on or after 17th March 2016 then we may elect to charge under S.32/32A or under the 1975 régime and in practice we impose whichever charge would yield more. This is the case whether the CET was a lifetime transfer or one on a death.

- Where an object exempt under the 1975 régime –
 - is transferred inter vivos, or on a death on or after 17 March 2016, whether it then becomes CE or not, or
 - it passes on a death after 6th April 1976 and does not then become CE,

then the prospective claim under the under the 1975 régime remains on foot provided the appropriate replacement undertakings are given (see **para. 2** above).

Under S.35(3) any IHT paid on the transfer will be allowed as a credit against the tax payable on the sale.

For the avoidance of doubt where an FA 1975 exemption has been extinguished by the granting of CE on a death before 17th March 2016 then upon a sale of that object on or after 17th March 2016 IHT will be chargeable.

Interest on IHT

4. Interest is charged under S.233 in the normal way. There are no special considerations analogous with those for ED described at **para 4** of **Appendix 3**.

Acceptance in lieu of IHT

5. IHT is not chargeable in respect of property exempt under the 1975 régime if we accept it in lieu of IHT. This is secured by paras 1(4) and 3(4) of Sch 5.

Those provisions make clear that in this context acceptance is not treated as a disposal.

Appendix 5: Maintenance Funds: Inheritance Tax charges

Introduction

- 1.** This Appendix augments **Chapter 8** by explaining in what circumstances there may be charges to IHT on the assets of a MF under para 8, and how these charges are calculated. (There is a brief note of the issues arising in relation to other taxes at **#8.11** above.)

As in **Chapter 8** references to **para such-and-such** are references to the relevant paragraph of Schedule 4.

- 2.** We have seen at **#8.4** above that there are several means to endow a MF without incurring a charge to IHT and freedom from the normal settled property charges while the MF is in being.
- 3.** We have also seen, at **#8.5(c)** above, that restrictions apply during the first six years after any property has been put into a MF, or until the death within that period of the settlor of the fund (or the former life tenant as the case may be).

The fund and any income from it may be applied only for an approved heritage purpose. That is, they may be applied towards the maintenance etc of the heritage property, the maintenance or reasonable improvement of the assets of the fund, or the trustees' expenses. Otherwise they may be paid to a body listed in Schedule 3, or to a heritage charity.

Such applications do not result in any charges to IHT by virtue of para 8(2)(a).

Tax treatment of property when it ceases to be held on the trusts of a maintenance fund

- 4.** After the period of six years, or after the death of the settlor (or former life tenant) within that period, capital may be taken out of the fund for any purpose permitted by the trust instrument. But when this happens there may be a charge to IHT depending mainly on the identity of the recipient.

Here are some examples to illustrate the detailed rules:-

- **Capital paid out for an approved heritage purpose – #3 above**

There is no IHT charge, unless the recipient is a heritage charity or body which had previously directly or indirectly purchased an interest under the settlement in question – para 8(2) and (5).

- **Capital paid out to an individual who within 30 days after the payment (or, if the payment occurs on the death of the settlor or**

former life tenant, within two years after the death) puts it into a new maintenance fund to which a para 1 direction applies

By virtue of para 9 there is no IHT charge unless

- (i) the individual had directly or indirectly purchased the property in question – para 9(3) or
- (ii) the benefit to the new fund is less than the loss to the old fund – para 9(4) and (5).

• **Capital paid out to the settlor or to his or her spouse, or to the settlor's widow or widower within two years after the settlor's death**

By virtue of para 10 there is generally no IHT charge unless

- (i) the recipient is not domiciled in the UK – para 10(8) or
- (ii) the recipient has purchased (directly or indirectly) an interest under the settlement – para 10(4) or
- (iii) before entering the MF, the property was held in another settlement (either a discretionary trust or another MF) and there was no full charge to tax when the property left that settlement – para 10(6) and (7) or
- (iv) the benefit to the recipient is less than the loss to the MF – para 10(2) and (3).

Para 15A(4) adapts this if the property entered the MF from an interest in possession trust and was not then relevant property. The exemption does not apply if the former life tenant was then dead.

Otherwise, and subject to the exceptions above, it does apply if the recipient is:

- the former life tenant or
- (subject as below) the former life tenant's spouse or, within two years after that life tenant's death, his or her widow or widower

In the latter case the exemption applies only if on the termination of the former life tenant's interest in possession the recipient would have become beneficially entitled to the property had it not passed into the MF.

• **Capital paid out to non-heritage charities or other exempt bodies**

There will generally by virtue of S.76 be no charge to IHT when capital is paid out to qualifying charities or to the bodies listed in **Appendix 10**. But there are exceptions, e.g. if the recipient charity etc had purchased an interest under the MF settlement.

- **Capital paid out to anybody else**

This is charged to IHT at the appropriate rate, as explained at **#5** below. Under para 8(3) the value for tax is the amount by which the value of the property in the MF is reduced as a result of the event giving rise to the charge. This value is grossed up at the appropriate rate if the tax is paid out of the assets remaining in the fund.

- **Withdrawal of the para 1 direction at any time (i.e. whether before or after the six year period has expired)**

If we withdraw a para 1 direction, IHT is charged on the property comprised in the MF at the date when the direction ceases to apply. This is secured under paras 5 and 8(1) and (2).

- **Dispositions by trustees**

Para 8(2) and (3) provide that IHT is charged when the trustees of a MF make a disposition, or deliberately fail to exercise a right, which reduces the value of the property comprised in the fund.

There will be no charge however where the property was applied for an approved heritage purpose – see **#3** above – or if the disposition was broadly of a commercial nature.

And S.16 precludes a charge if the disposition was the grant of an agricultural tenancy of agricultural property in the UK, the Channel Islands or the Isle of Man for full consideration.

- **Loss of conditional exemption of property supported by a maintenance fund**

It is implicit in paras 3(1), (2) and (3) that tax may be charged on the assets of a MF if the CE were lost (or would be lost had the property been CE). Such a state of affairs would compromise the integrity of the para 1 direction and, clearly, be grounds to withdraw it (cf. **#8.10** above).

The rate of tax

5. Where tax is chargeable under para 8, as described above, para 8(4) indicates that the rate of tax charged is to be found from paras 11 to 15. Which of these prescriptions applies depends upon how the property concerned had become comprised in the MF settlement.

- **Para 11** sets the rate where the property had been transferred, free of tax or at a reduced tax charge, from a **relevant property** settlement, whether directly or via an individual within the **permitted period**.

Tax is charged at a tapered flat rate. It is calculated by reference to a period counted in complete quarters – periods of three months – and known as **the relevant period**.

Under para 11(3) it is the shortest of three periods ending with the date of the charge, namely: –

- since the last ten-year anniversary of the *relevant property* settlement before the property (last) ceased to be **relevant property** or
- since it (last) became **relevant property** before it (last) ceased to be **relevant property** or
- since 13th March 1975.

The rate of tax under para 11(2) is

0.25%	for each of the first forty complete successive quarters in the relevant period
0.20%	for each of the next forty
0.15%	for each of the next forty
0.10%	for each of the next forty
0.05%	for each of the next forty

and hence a maximum rate of 30 per cent is reached after 50 years.

- **Para 12** sets the rate where the property had been transferred into the MF from any other source, e.g. by way of transfer from outright ownership.

The rate of tax is the higher of: –

- The first rate**, found under para 13. This is a tapered rate similar to that under para 11, as above, but calculated by reference to the period ending with the date of the charge since the date on which the property entered the MF and
- The second rate**, found under para 14. This is a rate determined by reference to the tax position of the settlor of the MF settlement at the time the charge arises.

(By virtue of para 14(4) and (5) if the property concerned had been comprised in one or more earlier MFs as well as the current one we may choose among their settlors who is the (relevant) settlor for rate purposes. In practice we choose the one whose tax position yields the most tax.)

If the relevant settlor is then alive, para 14(1) and (9) direct that **the second rate** is the effective rate from the rate table in S.7(2), i.e. one-half of the death rate, which would have applied to a chargeable transfer made by him or her at that time of an amount equal to the value for tax.

If the relevant settlor is dead when the charge arises, the **second rate** is the effective rate calculated as though the value for tax had been added to the value transferred on his or her death and had formed the highest part of that value.

Here, para 14(2), (or (3)) and (9) direct that the rate table under S.7(2) is applied unless the settlement was made on death, in which case the table under S.7(1) applies.

In establishing **the second rate**, para 14(6) and (7) provide for the cumulation of any previous tax charges within the seven years preceding the current charge where the settlor was one and the same.

Para 15A(6) to (10) adapt these rules if the property entered the MF from an interest in possession trust and was not then relevant property.

The general effect is to substitute the former life tenant and his or her circumstances for those of the settlor.

- **Para 15** concerns property which entered the MF régime via an exempt transfer under S.84, FA 1976, i.e. before the provisions for a para 1 direction were enacted (in 1982). Under para 1(3) any such property is treated as being subject to a para 1 direction.

Para 15 brings this property within the scope of the charge under para 8 and the rate provisions of paras 11 to 14. It achieves this by treating it as having become subject to para 8 as from the date of the exempt transfer.

Agricultural and Business property reliefs

6. Under S.2(3) references in the IHT Act 1984 to chargeable transfers include references to occasions on which tax is chargeable under Schedule 4.

Accordingly APR and BPR are capable of applying to property paid out of MFs, the latter if the trustees are themselves running a business.

Liability for tax

7. Under S.201(1) the persons liable for the tax include the trustees of the MF.

Appendix 6: Maintenance Funds: Annual Trust Accounts

Background

Para 6 of Schedule 4 to the Inheritance Tax Act 1984 provides thus –

Information

- 6.** Where a direction under paragraph 1 above has effect in respect of property, the trustees shall from time to time furnish the Treasury with such accounts and other information relating to the property as the Treasury may reasonably require.

We believe that on the whole a system of scrutiny, one which suitably adapts the accounting requirements for charities, will suffice.

We expect to receive an annual balance sheet, statement of income and expenditure, and a report of the fund's activities. We do not (routinely) seek audited accounts. Rather we seek "independent examination" unless – exceptionally – the circumstances suggested that to call for an audit was both desirable and reasonable.

Independent Examination

We understand that, unlike the IHT legislation, the accounting requirements for charities are not uniform across the United Kingdom. The system which operates in England and Wales is of independent examination, with audit only for the largest funds.

Whilst it is not for us to set accounting standards, the statute imposes on us a duty to entertain reasonable expectations where the provision of information is concerned.

We believe that in almost all cases independent examination, so long as it deals adequately with risks we perceive as endemic in the context of maintenance funds, would realistically meet those expectations.

Hence/

Hence in summary our expectation each year, with appropriate certification, will be thus:

Maintenance Fund with gross income over £25,000

- Independent examination of accounts
- Balance sheet
- Detailed statement of income and expenditure
- Report on the activities of the fund describing its operations during the year

Maintenance Fund with gross income under £25,000

- Balance sheet
- Simple statement of income and expenditure
- Brief report on the activities of the fund describing its operations during the year

For the avoidance of any doubt, if an audit were carried out at the behest of the trustees this would constitute the independent examination for that year.

Addressing risk: guidance for examiners

As a guide – independent examiners should

- State whether or not any matter has come to their attention which gives them reasonable cause to believe that in any material respect:
 - accounting records have not been kept or
 - the accounts do not accord with those records
- State whether or not any matter has come to their attention in connexion with the examination to which, in their opinion, attention should be drawn in the report in order to enable a proper understanding of the accounts to be reached
- Indicate appropriately where it has become apparent during the course of the examination that
 - there has been any material expenditure or action which appears not to be in accordance with the IHT legislation or the trust instrument (or both) or
 - any information or explanation requested in respect of the examination has not been provided.

Instances of the former might include whether:

- the trustees include a trust corporation, solicitor, accountant or other professional as HMRC might allow under para 2(1)(b)(ii), Sch 4, IHTA

- any disposal or other disposition had taken place of (any of) the qualifying heritage property
- any payment of capital settled during the preceding six years had been made otherwise than to meet costs envisaged by para 3(1)(a)(i)
- any other payment of capital had been made otherwise than to meet costs envisaged by para 3(1)(a)(i), save in accordance with the terms of the trust instrument
- any income or accumulations (or both) had been applied otherwise than as above or to a body within Schedule 3, IHTA, or to a charity “qualifying” under para 3(4)
- any capital or income (or both) had been paid to the settlor or anyone connected (within the meaning of the Taxes Acts) to the settlor
- any acquisition made or disposal had been effected in terms otherwise than in arm’s length bargains between persons not connected (as above) to one another

The independent examiner should also perform the following procedures.

Understanding the purpose of the trust

The examiner should form an understanding of the IHT maintenance fund legislation and the purpose of the trust as set down in the trust instrument. The examiner should understand too the organisation, accounting systems, activities and nature of the trust’s assets, liabilities, incoming resources and application of resources in order to plan the specific examination procedures appropriate to its circumstances.

This should include:

- reviewing the trust instrument to ensure that the trustees are complying with its objectives, powers and obligations
- discussion with the trustees
- review of the minutes of trustees' meetings and
- obtaining details of the accounting records maintained and the methods of recording financial transactions.

Comparison of accounts and accounting records

The examiner should compare the trust accounts with the trust’s accounting records in sufficient detail to provide a reasonable basis on which to decide

whether the accounts are in accordance with the accounting records. The procedures should include:

- agreement of entries in the accounts with supporting records
- test checks of entries from the books of prime entry to the nominal ledger
- a review of bank reconciliations and control accounts.

The examiner should review the accounting records with a view to identifying any material failure to maintain records. Accounting records that are kept in respect of the trust, should be sufficient to show and explain all its transactions. These records should be readily available and capable of providing, at any time, the information from which the financial position of the trust could be ascertained. There should be a record of the date and nature of all receipts and expenditure. There should also be a record of the assets and liabilities of the trust, and information about the dates of acquisition and disposal of assets.

Analytical procedures should be performed to identify unusual items or disclosures in the accounts. The procedures can be performed by comparing the accounts with budget forecasts (if any) and previous year accounts, and by considering whether the entries in the accounts are consistent with the examiner's knowledge of the objectives and activities of the trust.

The examiner should address any concerns arising from the analytical procedures to the trustees. If the explanations received are unsatisfactory, additional detailed procedures may be performed to address the examiner's concern.

Procedures should be performed by the examiner to ensure that the accounting policies of the trust are appropriate and have been correctly applied.

The independent examiner's certificate

Where the independent examiner can give an unqualified report we might therefore expect the certificate to state as follows:

“In connexion with my examination, no matter has come to my attention:

- which gives me reasonable cause to believe that in any material respect the prepared accounts do not accord with the accounting records; or
- to which, in my opinion, attention should be drawn in order to enable a proper understanding of the accounts to be reached; or

- which, in my opinion, indicates that there has been any material expenditure or action which is not in accordance with the IHT legislation or the Trust instrument (or both)”

Where the independent examiner provides a qualified report we may enquire into the reasons behind the qualification. If the enquiry does not result in a satisfactory explanation this might create circumstances in which, as above, an audit was both desirable and reasonable.

Who might undertake independent examination?

For the sake of independence the examiner should not be

- a trustee
- a person closely involved, by virtue of employment or otherwise, with the administration of the trust
- anyone connected (within the meaning of the Taxes Acts) to the settlor.

Independent examination is a less rigorous process than an audit. Normally the independent examiner is not required to undertake testing of the trust's transactions and procedures. We make no *stipulation* regarding the qualifications and experience of an independent examiner. But trustees need to bear in mind that if the accounts are not readily intelligible we could all waste time and money as we examine them. They must bear in mind too the serious consequences of delivering accounts that mislead, or which misrepresent the trust's dealings and financial position.

We **recommend** that the examiner of a trust with an income of not more than £100,000 per annum should have relevant accounting experience, and that the examiner of a trust with an income of over £100,000 should in addition be a qualified accountant.

Appendix 7: Capital Tax consequences of theft, loss or destruction of or damage to conditionally exempt heritage property

1. It is not possible to cater here for all eventualities. Owners of heritage property stolen, lost, destroyed or damaged should contact us at the earliest opportunity. We can then discuss the individual circumstances and reach an appropriate resolution.

This Appendix meanwhile outlines the capital tax consequences in **general** terms.

Inheritance Tax (and Estate Duty)

2. The theft, loss (subject as below), destruction of or damage to CE property – an object, building or land – would not normally constitute a chargeable occasion for IHT. This is so whether insurance monies are received or not.

There would however be a claim for IHT (or ED where an undertaking had been given under S.48, FA 1950) – by reference to the open market value of the property, not the insurance proceeds – if the loss etc had resulted from a clear breach of an undertaking.

It therefore does not matter for immediate purposes whether any attempted restoration of the property revives its heritage quality. And a subsequent sale (otherwise than one by private treaty to one of the bodies listed in **Appendix 10**) the property would be no less a chargeable event.

On the other hand the undertaking to take reasonable steps to preserve an object all too clearly cannot comprehend simply losing it. In such a case we should claim IHT (or ED). A chargeable event should be presumed midway between the present and the occasion when last the owner or his or her agent confirmed possession of the object.

Whilst we do not claim IHT on insurance proceeds any dealings with an insurer might affect the prospective claim for IHT (or ED) in the event of recovery of a stolen CE object. Inevitably any such consequences would flow from the facts of the case, and not least the terms of the insurance policy. For this reason it is not possible to set them down in the abstract.

In assessing the facts of any case it is important to bear in mind that the purpose of the legislation is to foster the national heritage. Subject to the foregoing reservations, a resolution which tends to preserve the object for public benefit is to be preferred to one which does not.

Capital Gains Tax

3. The rules for CGT are different.

There are four provisions of TCGA that may need to be taken into account. Further guidance is available in the Capital Gains Manual, available at www.hmrc.gov.uk/manuals. References below to paragraphs in that manual begin with "CG".

S.24(1), TCGA deals with the occasion of the entire loss, destruction, dissipation or extinction of an asset. This is a disposal of the asset for CGT purposes. See further CG 13118 onwards.

S.24(2), TCGA provides that where an asset has become of negligible value, the owner of that asset may make a claim to be treated as disposing of the asset for a consideration equal to the amount specified in the claim. See further CG13118 onwards.

S.22(1), TCGA deems a disposal to occur where a capital sum is derived from an asset even if the payer does not acquire anything in return. In particular, compensation for damage or loss of an asset and capital sums received under a policy of insurance for damage or loss of an asset are specifically included in S.22(1). See further CG12940 onwards.

S.23, TCGA provides for relief in certain cases if compensation or insurance money is used in restoring or replacing an asset. See further CG15700 onwards.

Associated properties – see #7.4 et seq

Inheritance Tax

4. Turning to the implications for associated properties, the position is as follows.

If a building were totally destroyed any historically associated objects might well have been destroyed with it, leaving essential amenity land as the ancillary associated property potentially affected. But what follows applies both to land and such objects.

For IHT, where the destruction of the house involves no breach of an undertaking, neither its loss nor the receipt of insurance monies is a **disposal**. Hence no claim for tax arises on remaining supporting property, providing the undertakings originally given in respect of it continue to be observed.

A charge would of course arise in the normal way if an undertaking were breached, or when the property was sold or otherwise changed ownership. If that event were also a chargeable transfer CE would be available only if the property then qualified for exemption in its own right.

Capital Gains Tax

5. For CGT purposes there is a deemed disposal of the supporting amenity land under S.258(7), TCGA only if the destruction of the house means an end to the (CGT) undertaking. But the termination of an IHT undertaking has no effect for CGT unless there is also a CGT undertaking.

Maintenance funds

6. Presumptively the theft, loss or destruction of the heritage property would lead to the withdrawal of the para 1 direction, with any consequent tax charges.

But if we were able to conclude, having consulted the relevant heritage advisory body, that a sufficiency of the heritage property had survived, there would be no reason to withdraw the para 1 direction except to the extent that the fund were now excessive having regard to its purpose.

7. If the owner used insurance monies to replace what had been lost with further heritage property, and wished to endow that property with a maintenance fund, a new trust might be necessary. If so, resettlement of some or all of the old maintenance funds on new maintenance fund trusts would not give rise to a tax charge if the provisions of para 9 were met – see **#8.6** above.

(A new fund **would** be necessary if the property lost or destroyed were named as the only property to be endowed. But in practice many MF trust instruments provide flexibility.)

Appendix 8: Model documents

The models which appear on the following pages of this Appendix have evolved with practice and experience. They are no more than that and text will depend on the facts and circumstances of the particular case.

Here is a list: –

Conditional Exemption

- CE(i) Works of Art and other objects of national etc interest: initial letter
- CE(ii) Outstanding land, and outstanding buildings and their essential amenity land and historically associated objects: initial letter
- CE(iii) Works of Art and other objects: model undertaking etc
- CE(iv) Land, buildings etc: model undertaking etc

Acceptance in lieu of Inheritance Tax and Estate Duty

- AIL(i) Initial response to a projected offer in lieu
- AIL(ii) Registration of an offer in lieu
- AIL(iii) The *Due Diligence* form
- AIL(iv) Memorandum of Acceptance (objects)

CE(i) Model letter re Works of Art and other objects of national etc interest: initial letter requesting information

Conditional Exemption for Objects under Section 31(1)(a) and (aa) Inheritance Tax Act 1984

I refer to your/your client's claim for conditional exemption from IHT/CGT which I shall be considering at our reference above.

Please provide the following information for each of the objects in the claim:

- i) a full descriptive valuation including a statement of why the object meets the pre-eminent quality standard (see attached);
- ii) the name, full address and telephone number of the person whom our advisors should contact to inspect the objects, with a note of each object's current location and confirmation that it will be made accessible to our advisers during their visit;
- iii) details, if known, including any Capital Taxes Office reference of any current exemption of the object from Estate Duty, Capital Transfer Tax, Inheritance Tax or Capital Gains Tax;
- iv) the owner's full name, address, telephone number and National Insurance number;
- v) details of how the owner of the object proposes to preserve the object;
- vi) details of the proposals for providing public access to the object and publicising such access (see attached);
- vii) confirmation that you/the owner will authorise us to disclose or publicise information and undertakings relating to the exemptions including details of the agreed public access arrangements (but not personal particulars);
- viii) confirmation that the object is not to be sold;
- ix) three recent colour photographs of professional quality, taken with appropriate lighting and, if possible a jpg of at least 300dpi by email or on a disk that would enable an expert to make an assessment as to pre-eminence (these are required by our advisers and will not be published)
- x) confirmation that the owner will not remove the object from the United Kingdom without HMRC's prior approval; and
- xi) whether the object is to be offered in lieu of tax.

For items being claimed as forming part of a pre-eminent group or collection under S31(1)(aa), please provide the information above and also indicate which objects are considered to form the group or collection, and explain why that group is considered to be pre-eminent.

Once the above information is to hand I shall be able to give further consideration to the claim. If you have any questions please contact me.

Pre-Eminence

For objects to qualify under the provisions of Section 31(1)(a) or (aa) Inheritance Tax Act 1984 they must be of pre-eminent quality which is the standard used for acceptances in lieu of tax. For an object to be considered pre-eminent it must fall within one of the following categories:

1. Does the object have an especially close association with our history and national life?

This category includes foreign as well as British works, for example gifts from foreign sovereigns or governments that have been acquired abroad in circumstances closely associated with our history. It includes objects closely associated with some part of the United Kingdom, or with the development of its institutions or industries. Some objects that fall under this category will be of such national importance that they deserve to enter a national museum or gallery. Others may well be of a lesser degree of national importance, though they will nonetheless be significant in a local context. This category will also include works which derive their significance from a local connection, and which may therefore qualify as a pre eminent addition to a local authority, university or independent museum.

2. Is the object of especial artistic or art-historical interest?

This category, like (3) below, includes objects deserving of entering a national museum or gallery as well as other objects which might not be pre-eminent in a national gallery or museum in London, Edinburgh or Cardiff but which will be a pre-eminent addition to a local authority, university or independent museum or gallery elsewhere which does not already possess items of a similar genre or quality.

3. Is the object of special importance for the study of some particular form of art, learning or history?

This category includes a wide variety of objects, not restricted to works of art, which are of special importance for the study of, say, a particular scientific development. This category also includes objects forming part of an historical unity, series or collection either in one place or the country as a whole. Without a particular object or group of objects both a unity and a series may be impaired.

4. Does the object have an especially close association with a particular historic setting?

This category will include primarily works of art, manuscripts, furniture or other items that have an especially close association with an important historic building. They will fall to be considered pre-eminent by virtue of the specific contribution they make to the understanding of an outstanding historic building. Thus the category may include paintings or furniture specially commissioned for a particular house or a group of paintings having an association with a particular location.

Public Access

Open public access must be given for all claims made after 31st July 1998, access solely by appointment with the owner or his/her agent is no longer acceptable. We would expect the object(s) to be available for access by appointment when not on public show. Furthermore details of the exemption will be publicised on our website www.visitUKheritage.gov.uk (though not the name of the owner(s))

CE(ii) Outstanding land, and outstanding buildings and their essential amenity land and historically associated objects: initial letter requesting information

Claim for conditional exemption: designation of property under S.31(b) to (e), Inheritance Tax Act 1984

1. Please indicate under which of the categories of S.31(1) your clients wish the property for which conditional exemption is claimed (or any part of it) to be designated, and furnish particulars justifying the claim that the property meets the standard in question.

In the case of outstanding land (S.31(1)(b)) those particulars should please include a description of the landscape type and main features such as relief, geology, water and the main tree species.

2. Please also provide: –
 - (i) the name, full address and telephone number of the person whom our advisers should contact to inspect the property
 - (ii) details, if known, of the occasion concerned if the property has previously been exempted from Estate Duty, Capital Transfer Tax, Inheritance Tax or Capital Gains Tax and the previous exemption is still in force, including any HM Revenue & Customs reference
 - (iii) the owner's name, full address and other contact details
 - (iv) details of how it is proposed to maintain and preserve the property
 - (v) proposals for providing and publicising public access to the property (which, in the case of an outstanding building, save in exceptional circumstances, should include access without prior appointment on at least [25/28] days each year during the spring and summer months with at least ten days falling on weekends and the spring and summer bank holidays)
 - (vi) confirmation that you/the owner will authorise us to disclose or publicise information and undertakings relating to the exemptions including details of the agreed public access arrangements
 - (vii) confirmation that there are no present plans to sell the property
 - (viii) confirmation that the owner would not remove from the relevant outstanding building an object claimed to be historically associated with it without HMRC's prior approval

3. Please further provide six copies of a map of 1:10,000 on ordnance survey base, clearly marked with (as appropriate): –
- (i) the boundary of the land on which exemption is being claimed
 - (ii) the location of
 - any scheduled monuments and listed buildings claimed under Section 31(1)(c), with a note of the scheduling status of each scheduled monument (quoting the relevant County, Site and Monuments Record Reference number, if possible) and the listing status of each building, and their approximate age and construction materials, and any relevant and available plans and supporting historical information) and
 - any other monuments and buildings standing on land for which exemption is being claimed which, though not eligible in their own right, are not considered to detract from the qualifying interest of the land
 - (iii) all public rights of way differentiating between footpaths and bridleways
 - (iv) any site listed by any national or regional body (e.g. Natural England) as of special scientific, woodland or other environmental interest
 - (v) any nature reserve
 - (vi) any woodlands on e.g. Natural England's Inventory of Ancient Woodland (describe their age and species and indicate whether subject to any Forestry Commission Scheme)
 - (vii) any other contiguous land in the same ownership
 - (viii) where the claim is for designation as essential amenity land under S.31(1)(d) – details of, as the case may be, the outstanding building and any additional essential amenity land over which "supportive undertakings" are or might be required (and supporting particulars as above)
 - (ix) any land subject to tenancy or other burden.
4. Please provide (for our advisers' use and not for reproduction) up to date photographs of the exteriors of the outstanding building(s) to show the principal elevations and photographs of all the principal rooms together with photographs that show clearly the relationship between any essential amenity land being claimed (Section 31(1)(d)) and the outstanding building including views to and from the outstanding building(s).

Please also provide photographs to identify the other buildings standing on land included in the claim for conditional exemption.

Historically associated objects – S.31(1)(e)

5. Please provide suitable details of any objects which are being claimed as falling within the provisions of Section 31(1)(e) as historically associated with a building falling within the terms of Section 31(1)(c).

To qualify for exemption the object must have a close association with a particular building and make a significant contribution, whether individually or as part of a collection or a scheme of decoration, to the appreciation of that building or its history. The object need not necessarily be of United Kingdom origin. Neither might every item be contemporary with the building as changes will have taken place which reflect the individual taste of different owners.

6. To enable our advisers to locate these objects and apply these tests, please provide: –
- (i) A copy of an inventory containing a full and accurate description of each object (including a full catalogue of any books) on a current room-by-room basis, including measurements where appropriate and a note of current condition. (A floor plan with room names consistent with those used in the inventory showing the route visitors would take would also be most helpful.)
 - (ii) A brief statement explaining this close association and significant contribution to the appreciation of the building or its history. This might be backed up for example by quotations from past inventories, sales catalogues and invoices, estate papers, family histories as well as historical photographs.
 - (iii) Confirmation that each object will remain in that building in a room which would be open to open to the public when the building itself is open (or commentary on some other appropriate manner of public access).
 - (iv) A note of any object which is or might be a fixture and removal would require Listed Building Consent
 - (v) A photograph of the building in which the objects are located.
 - (vi) If possible the copy of the inventory should be in digital format please.

Once this information is to hand I will be in a position to refer matters to [the appropriate advisory body].

7. We refer at 8 below to the need for photographs of any objects for which conditional exemption applies, once it is agreed. Nevertheless it would help considerably, in our advisers' assessment of your clients' claim, if photographs could be made available, with the inventory, now.
8. It is important to note that if your clients' exemption claim as respects historically associated objects were successful then, as with other categories of heritage property, we and our advisers would need to "monitor" the resulting prospective claims for tax.

In the case of historically associated objects this would include periodic formal site inspection. Subject as above, we do not need to trouble you for photographs of the objects at this stage. But, as you might appreciate, a photographic record, coupled with a record of movement of particular objects, say from one room to another, would assist not only in monitoring the undertaking to maintain preserve and repair, but in future practicalities – for both your clients and our advisers.

For these reasons provision of a photographic record, within an agreed period (e.g. two years after the date of designation) and maintaining a record of any movement of them, would be a condition of the exemption.

We need not explore the detail of this at this stage, but if you have any immediate questions or concerns please let me know.

Please note that open public access without prior appointment will be required to all property granted conditional exemption and this would include historically associated objects.

I look forward to hearing from you but in the meantime should you have any questions please do not hesitate to contact me.

CE(iii) Model undertakings and web site entries based on the illustrative but fictitious "Northanger Abbey": objects of national etc interest.

**DP000/2/00A
The Late General Tilney**

Undertakings under S.31(2) Inheritance Act 1984

1. I, **Henry Tilney**, have applied for designation under S.31(1)(a) and (aa), Inheritance Tax Act 1984 ("the 1984 Act") of the objects, groups and collections listed in the attached Schedule ("the Works of Art"). This is for the purpose of claiming conditional exemption from Inheritance Tax under S.30 of the 1984 Act in the estate of the late General Tilney who died on 31 July 2010.
2. In this document, which together with the Schedule are collectively referred to as "the undertaking", I hereby undertake as follows.
3. I undertake with respect to each of the Works of Art that during my lifetime or until it is earlier disposed of whether by sale or gift or otherwise: –
 - (a) to keep it permanently in the United Kingdom and not to remove it temporarily except for a purpose and a period approved by HM Revenue & Customs ("HMRC")
 - (b) to take reasonable steps for its preservation
 - (c) to take the following steps to secure reasonable access to the public:
 - (i) to allow the public to view each of the Works of Art without a prior appointment at Northanger Abbey, Gloucestershire[±] on 28 days each year ("the access days") between Easter and the end of September, including weekends and bank holidays
 - (ii) to notify HMRC Inheritance Tax ("HMRC/IHT") of the access days for each forthcoming year no later than the end of the preceding October
 - (iii) at all other times to make each of the Works of Art available either to the public to view with a prior appointment or to curators of appropriate public collections on loan for special exhibitions
 - (iv) to provide images of all or any of the Works of Art on request to curators of public collections or direct them to a place where such images are available; and in either event to notify them

that these Works of Art are available for loan in accordance with sub-paragraph (iii) above.

- (d) to take the following steps to publicise the terms of the undertaking:
- (i) to allow reasonable details of the arrangements, including where and when access without a prior appointment is available, to be published by HMRC on its web site, or in any successive publishing medium, and via any other appropriate website and in any other reasonable manner it sees fit
 - (ii) to provide, at reasonable cost, a copy of the undertaking, without personal particulars, to any member of the public who requests it
 - (iii) to provide details to local tourist information centres of the arrangements for access on the access days
 - (iv) to provide HMRC/IHT with details of a person or firm the public and curators can contact with a view to arranging visits, appointments and loans, and obtaining further particulars and keeping HMRC/IHT informed of any change in these particulars.
4. To provide, at HMRC/IHT's request, any information that HMRC might reasonably require in order to ensure that the terms of this undertaking are being observed, including as far as feasible the dates of public access and the numbers attending.
5. To notify HMRC/IHT immediately in the event of a disposal of all or any of the Works of Art whether by sale or gift or otherwise, and of any material change to any relevant circumstance.

I have read the attached Notes to the Undertaking which do not themselves form part of this undertaking.

Signed by

Henry Tilney

On (date)

† **Note:** these provisions clearly envisage the availability of building suitable to afford public display. Without that availability public access would more likely be by way of loan to a public collection. In that case the provisions might read thus –

- (c) to take the following steps to secure reasonable access to the public:

- (i) each picture will be on loan for display at the Northanger Gallery ("the Gallery"), Northanger, NO1 1AA ("the loan arrangement")
 - (ii) if the loan arrangement is terminated by the Gallery, I shall agree with HMRC alternative arrangements for providing the public with access to each picture. I understand that, in such an eventuality, my failure to institute suitable alternative arrangements within a reasonable period of time to secure public access to each picture without prior appointment would constitute non-observance of this undertaking in a material respect. In that event, a claim for Inheritance Tax would arise under Section 32 of the 1984 Act.
 - (iii) I understand that if, notwithstanding the undertaking contained in paragraph 3(c)(i) above, the loan arrangement is terminated by me, my failure to institute a fully comparable arrangement or present HMRC with an acceptable alternative, with anything more than a de minimis interruption to public access without prior appointment, will constitute non-observance of this undertaking in a material respect. In that event, a claim to Inheritance Tax will arise under Section 32 of the 1984 Act.
 - (iv) to provide images of all or any of the Works of Art on request to curators of public collections or direct them to a place where such images are available; and in either event to notify them that these Works of Art are available for loan in accordance with sub-paragraph (iii) above.
- (c) to take the following steps to publicise the terms of the undertaking:
- (i) to allow reasonable details of the arrangements, including where and when access without a prior appointment is available, to be published by HMRC on its web site, or in any successive publishing medium, and via any other appropriate website and in any other reasonable manner it sees fit
 - (ii) to provide, at reasonable cost, a copy of the undertaking, without personal particulars, to any member of the public who requests it
 - (iii) to provide HMRC/IHT with details of a person or firm the public and curators can contact for further particulars and keeping HMRC/IHT informed of any change in these particulars.

Notes to the Undertaking

These Notes do not form part of the Undertaking.

1. Where property or an object is conditionally exempt under S.30, Inheritance Tax Act 1984 ("the 1984 Act") a chargeable event with respect to it would occur under S.32:-
 - on the death of a person beneficially entitled to it; or
 - on its disposal, whether by sale or gift or otherwise unless the sale were by private treaty to a body within Schedule 3 to the 1984 Act, or the donee otherwise than by sale provided a suitable replacement undertaking; or
 - if the Commissioners for HM Revenue & Customs (HMRC) are satisfied that there has been failure in a material respect to observe the terms of the undertaking.
2. Under S.216(7) of the 1984 Act, if you are liable for tax chargeable under S.32, you must deliver an account to HMRC/IHT before six months have expired from the end of the month in which the chargeable event occurred. If your account is late then, under S.245 of the 1984 Act, we may levy a penalty of £100. This rises to £200 if it is more than 6 months late, and we may levy a further penalty of up to £3,000 if it is over 12 months late.
3. If you need our approval under S.31(2)(a) of the 1984 Act for the temporary export from the United Kingdom of a conditionally exempt object please apply to us in writing. Our address is shown at paragraph 7 below. Please apply as early as possible and well in advance of any arrangements for transit.
4. In the case of an object of cultural interest that is more than 50 years old ("an antique") you may need an export licence before you may export it from the United Kingdom.
 - (i) The Export Control Act 2002 and The Export of Objects of Cultural Interest (Control) Order 2003 (Statutory Instrument 2003 No. 2759) prohibits the export of most objects of cultural interest to any destination outside the United Kingdom, including the Channel Islands (but not the Isle of Man) without an export licence. If you intend to export any such object whose value equals or exceeds the relevant limits for export you should apply for a licence from the Museums, Libraries and Archives Council (MLA) at The Acquisition, Export and Loans Unit, Museums, Libraries and Archives Council, Wellcome Wolfson Building, 165 Queen's Gate, South Kensington, LONDON, SW7 5HD (Please address any enquiries about export licences to MLA – and not to us.) Details of what constitutes an object of cultural interest and the relevant financial limits can be found at www.mla.gov.uk/programmes/cultural_property/export_licensing

- (ii) MLA asks that owners of objects conditionally exempt from capital taxation give three months' notice of an intention to sell. This notice should go to MLA at their address above. The Reviewing Committee on the Export of Works of Art may take into account any failure to do so if it recommends to the Secretary of State that the item meets the Waverley criteria (i.e. is a national treasure) and it suggests a period during which the decision to issue an export licence is deferred. This period is there to allow a UK purchaser to make a matching offer
5. If we are satisfied that you have failed in a material respect to observe any of the terms of your undertaking, we may withdraw the conditional exemption. This would give rise to a charge to Inheritance Tax. We shall from time to time seek information from you to ensure that the terms of your undertaking are being observed.
 6. It is open to either of us from time to time to approach the other to agree to vary the terms of your undertakings. Neither of us can make a variation unilaterally but we may seek the consent of the First-tier Tribunal that a variation we propose is just and reasonable in all the circumstances.
 7. To ensure that our records are accurate, please notify us as soon as possible of any alteration to any information given in connexion with the application for conditional exemption, the undertaking or the particulars shown on our Web Site. Our Web Site address is www.visitUKheritage.gov.uk and our postal address is HM Revenue & Customs, Capital Taxes, Heritage Team, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham NG2 1BB.

This is a fictitious example of what the public would see on the "Works of Art" section of our web site after searching for paintings and selecting "A View from Northanger Abbey" by J Austen.

Works of Art: Detailed Result

Unique ID: 12345

Category: Paintings & Miniatures

Access Details:

- (i) the public may view this painting without a prior appointment on 28 days each year between Easter and the end of September, including weekends and bank holidays; the dates for 2010 are Sundays and Mondays from 31st May to 30th August inclusive.
- (ii) the public may view this painting at all other times by prior appointment;
- (iii) this painting might from time to time be loaned to a suitable public collection. The arrangements at (i) and (ii) would lapse during the currency of any such loan.

Contact Name: A Agent

Contact Address: Agent's House, AG1 1AA

Contact Reference: A/AA

Telephone No: Atown 1234

E-mail: AA@Agent.com

Description: J Austen: A view from Northanger Abbey, 24cm by 48cm, oil on canvas

[Undertakings](#)

This is a link to the principal undertakings, as below (q.v.)

[Other Linked Exempt Items](#)

This link will "bring up" the other Works of Art, not shown in this example.

Works of Art: Principal Undertakings

Unique ID: 12345

- Principal Undertakings:**
1. To keep the painting permanently in the United Kingdom and not to remove it temporarily except for a purpose and a period approved by HM Revenue & Customs (HMRC);
 2. to take reasonable steps for its preservation;
 3. to take the following steps to secure reasonable access to the public:
 - (i) to display the painting at Northanger Abbey without a prior appointment on 28 days each year ("the access days") between Easter and the end of September, including weekends and bank holidays;
 - (ii) to notify HMRC/Inheritance Tax ("HMRC/IHT") of the access days for each forthcoming year no later than the end of the preceding October;
 - (iii) at all other times to make the painting available either to the public to view by prior appointment or to curators of appropriate public collections on loan for special exhibitions;
 - (iv) to provide images of the painting on request to curators of public collections or direct them to a place where such images are available; and in either event to notify them that the painting is available for loan in accordance with sub-paragraph (iii) above.
 4. to take the following steps to publicise the terms of the undertaking:
 - (i) to allow reasonable details of the arrangements, including where and when access without a prior appointment is available, to be published by HMRC on its web site, or in any successive publishing medium, and via any other appropriate website and in any other reasonable manner it sees fit;
 - (ii) to provide, at reasonable cost, a copy of the undertaking, without personal particulars, to any member of the public who requests it;

- (iii) to provide details to local tourist information centres of the arrangements for access on the access days;
 - (iv) to provide HMRC/IHT with details of a person or firm the public and curators can contact with a view to arranging visits, appointments and loans, and obtaining further particulars and keeping HMRC/IHT informed of any change in these particulars;
5. To provide, at HMRC/IHT's request, any information that HMRC might reasonably require in order to ensure that the terms of this undertaking are being observed, including as far as feasible the dates of public access and the numbers attending.
 6. To notify HMRC/IHT immediately in the event of a disposal of the painting whether by sale or gift or otherwise, and of any material change to any relevant circumstance.

CE(iv) Model undertakings and web site entries based on the illustrative but fictitious example of Northanger Abbey: outstanding land, and outstanding buildings and their amenity land and historically associated objects.

Undertakings under section 31(4), Inheritance Tax Act 1984

1. I, Henry Tilney, as beneficial owner of property ("the Property") comprising
 - the Grade I listed building Northanger Abbey, Gloucestershire[‡]
 - the land surrounding it and outlined in green ("the Green Land") on the attached map ("the Map") and
 - the land outlined in blue ("the Blue Land") on the Map

and of the historically associated objects ("the Objects") in the attached schedule ("the Schedule")

have applied for designation under S. 31(1)(b),(c), (d) and (e), Inheritance Tax Act 1984 ("the 1984 Act") for the purpose of claiming conditional exemption under S.30 of that Act, in relation to the death of General Tilney on 31 July 2010.

2. In this document which, together with the Map, the Schedule, and the Heritage Management Plan ("the HMP") referred to below, is referred to as "the Undertaking", I undertake as follows.
3. I undertake with respect to the Property and each of the Objects that during my lifetime or until any earlier disposal whether of all or any of the Property or of all or any of the Objects or both, whether by sale or gift or otherwise:
 - (a) To take the following steps for maintenance repair and preservation:
 - (i) To take the steps agreed and set out in the HMP for the maintenance repair and preservation of Northanger Abbey, the Green Land and each of the Objects having full regard to its historic and architectural interest of Northanger Abbey.
 - (ii) To take the steps agreed and set out in the HMP to maintain the Blue Land and preserve its character including contributing buildings and monuments and to meet all relevant statutory requirements with respect to them.
 - (iii) In addition to obtaining any statutory consents to consult Natural England or English Heritage ("the Agencies") or both over proposals for the following works within the Property where such works may affect the fiscal designation status:

- the demolition of the whole or part of any outstanding or contributing building or structure;
 - all significant new building or engineering works;
 - significant alterations to any outstanding or contributing building or structure;
 - any significant change of use;
 - the significant amendment or review of any plans which are required to accord with the HMP, and any significant departure from its aims or other provisions.
- (iv) To review the HMP with either or both of the Agencies as appropriate at intervals of five years or thereabouts and to revise and update its prescriptions insofar as may reasonably be necessary and consistently with the relevant Agency's current guidance.
- (v) To keep each of the Objects at or otherwise associated with Northanger Abbey and, where necessary managing the environment of the rooms in which they are located.
- (vi) To maintain the existing network of public rights of way on the Green Land and on the Blue Land.
- (b) To take the following steps to secure reasonable access to the public:
- (i) To provide access to the exterior and, via the Visitor Route agreed with English Heritage, to the principal rooms of Northanger Abbey and access to the Abbey ruins and gardens on 28 days each year ("the access days") between Easter and the end of September including weekends and bank holidays.
 - (ii) To display each of the Objects on the access days in a room open to the public. Where the books in the Library are concerned this will amount to viewing their spines on the shelves. Access to the contents of each book will be available only by prior appointment and under properly invigilated conditions.
 - (iii) To notify HM Revenue & Customs ("HMRC") of the access days for each forthcoming year no later than the end of the preceding October.
 - (iv) In addition to access via existing public rights of way, to provide permissive footpaths open from [date] to [date] every year. These paths will run along the southern carriage drive through Northanger Park from South Lodge for 250 metres northwards.

Then across the park northwest for 100 metres to enter Northanger Woods SSSI for 300 metres, emerging to run westwards across Home Farm Meadows for 500 metres before joining public footpath FP8. This is shown by the green dotted line on the Map.

(v) To publicise access by:

- erecting and maintaining a notice board at the entrance to the property including a map of the permissive paths and public rights of way;
- posting an entry in a publication of national circulation, such as Historic Houses, Castles and Gardens or Hudson's Historic Houses and Gardens;
- notifying VisitBritain of the arrangements.

(c) To take the following steps to publicise the terms of the Undertaking:

- (i) To allow reasonable details of the arrangements, including where and when access without a prior appointment is available, to be published by HM Revenue & Customs ("HMRC") on its website, or in any successive publishing medium, and via any other appropriate website and in any other reasonable manner it sees fit.
- (ii) To provide, at reasonable cost, a copy of the Undertaking, (or a detailed summary to include suitable reference to the steps for maintenance preservation and repair of the property and the historically associated objects set out in the HMP) without personal particulars, to any member of the public who requests it.
- (iii) To provide details to local tourist information centres of the arrangements for access on the access days.
- (iv) To provide HMRC with details of a person or firm the public and curators can contact with a view to arranging visits, appointments and loans, and obtaining further particulars and keeping HMRC informed of any change in these particulars.

4. I will send an annual report to HMRC, at or around the time of the anniversary of the date of designation, or such other date as we might from time to time agree. This report will give details of the year's action to maintain, repair and preserve the property and of the record of public access.
5. I will notify HMRC immediately possession of the property is relinquished whether by sale, gift or otherwise, and of any change to any relevant circumstance.

I have read the attached Notes to the Undertaking which do not themselves form part of this undertaking.

Signed

Henry Tilney

On (date)

This is a fictitious example of what the public would see on the "Land, Buildings and their contents" section of our web site after searching for properties and selecting Northanger Abbey.

Land, Buildings and their contents: Detailed Result

Country: England
Name of Property: Northanger Abbey
Description: Northanger Abbey and Works Of Art
Access Details: Directions: on the A00 midway between the A000 and the B0000 25m south of Atown.

Northanger Abbey and its contents are open to the public on Saturdays, Sundays and Mondays from the Spring Bank Holiday until the August Bank Holiday inclusive. Information about other opening times and activities can be found at www.northanger-abbey.org.uk.

Northanger Abbey contains an extensive collection of portraits and other material associated with the Tilney family including works by Hogarth and Paul Sandby and memorabilia of Jane Austen.

ACCESS – 2011

Sundays and Mondays from 31st May to 30th August inclusive.

OS Grid Ref: AA 000 000
Contact Name: A AGENT
Contact Address: AGENT'S HOUSE, ATOWN, AG1 1AA
Telephone No: Atown 1234
Email: AA@Agent.com

[Undertakings](#)

This is a link to the principal undertakings in relation to Northanger Abbey not shown in this example.

[Map Image](#)

This is a link to the map of Northanger Abbey, not shown in this example.

AIL(i) Initial response to a projected offer in lieu

Offer in Lieu of Tax (Subject to Acceptance)

[This model pre-supposes a straightforward offer of “pre-eminent” objects. Appropriate changes would be necessary as regards other objects, or land or buildings, or less straightforward offers.]

In order that further consideration may be given to the proposed offer please supply the following information:

- i) Confirmation of the persons making the offer and the capacity in which they are making it (eg Executors of the deceased etc.),
- ii) A detailed description of each object offered together with a valuation as at the offer date
- iii) A note of whether the offer is to be conditional (e.g. upon allocation of the object(s) to any particular gallery, museum, or similar institution) or whether a wish for allocation applies (a wish is an indication of preferred destination and will, save in exceptional circumstances be adhered to)
- iv) in relation to each object offered a justification of its valuation, e.g. through comparable auction sales, and an explanation of why it is considered to be **“pre-eminent for its national, scientific, historic or artistic interest”** (the statutory standard required of property to be considered for acceptance in lieu of tax),
- v) three recent colour photographs of professional quality, taken with appropriate lighting and, if possible a jpg of at least 300dpi or tiff by email or on a disk that would enable an expert to make an assessment as to pre-eminence (these are required by our advisers and will not be published).(This does not apply in the case of paper archives).
- vi) the name address and telephone number of the person to whom applications to inspect the objects(s) should be made,
- vii) the current location of each object offered.
- viii) Please also provide your calculation of the tax credit (the ‘Special Price’) which will be generated by the offer. This is calculated by taking the open market value of the item being offered and subtracting any IHT which is due in the estate of the deceased, 25% of that tax is then added back to arrive at the special price. This is the amount which can be used against other liabilities of the offerors in the estate and equates to 70% of the agreed gross value subject to any reduction on account of notional Capital Gains Tax. (We can return to the CGT issue later if it becomes relevant).

- ix) Completion of a due diligence questionnaire (enclosed) prepared by the Museums, Libraries and Archives Council (MLA) and which must be sent in all cases where property is offered in lieu of tax. Please return it to me, duly completed, so that I can pass it on to MLA when I seek advice from them.
- x) Please state whether the property being offered has been the subject of an exemption from capital taxation in the past and if so the official reference and name of the estate in which it was exempted.

If the offer is accepted, interest on unpaid tax will cease to accrue from the Offer Date, being the latest date on which all the particulars at i), ii) [and if applicable iii)] have been provided.

Please note that while i), ii) & iii) are sufficient to constitute an offer, the information at iv) to ix) is essential for us to process it through to acceptance. We will expect you to provide that information in a timely fashion and any failure to do so could result in us deciding not to proceed with the offer.

Further advice on that which is needed by our advisers to consider an offer can be found at www.mla.gov.uk and entering "offer in lieu" in the Search box.

Please also note:

- (a) Acceptance will depend upon agreement that the property is within the terms of S. 230 IHTA, ministerial discretion and acceptability of cost to the Exchequer.
- (b) There can be no recompense in cash for any excess of value of property accepted in lieu of tax over the offeror's liability for tax and interest.
- (c) Of administrative necessity, we shall (in confidence) communicate details of the offer, the special price (or, if less, the amount of liability to be satisfied if the offer were accepted) to The Museums, Libraries and Archives Council (MLA) **[and DCMS in situ cases]**..
- (d) Any acceptance would be announced by MLA **[or Scottish Executive, Welsh Assembly etc....]** in a Press Release.

Acceptance will not occur unless and until Memoranda of Acceptance have been agreed and exchanged, the Secretary of State has given a direction under S.9, National Heritage Act 1980, and the property has been physically transferred to the body named in that Direction. Until then our correspondence will be "subject to acceptance" and the property at your clients' risk.

AIL(ii) Registration of an offer in lieu

Offer in Lieu of Tax (Subject to Acceptance)

Thank you for your letter of ___ and its enclosures. I will be dealing with this matter and have registered the offer as having been made on ___, the date of your letter. Interest on inheritance tax will cease to run from the date of the offer. On the open market values provided the tax credit will be £___.

Please also note:

- (a) Acceptance will depend upon agreement that the property is within the terms of S. 230 IHTA, ministerial discretion and acceptability of cost to the Exchequer.
- (b) Acceptance of the Scheduled Property by the Commissioners will satisfy the Offerors' present liability up to a maximum of the Special Price (of £___) there can be no reimbursement by HMRC of any amount by which their liability falls short of that figure.
- (c) Of administrative necessity, we shall (in confidence) communicate details of the offer, the special price (or, if less, the amount of liability to be satisfied if the offer were accepted) to The Museums, Libraries and Archives Council (MLA) **[and DCMS in in situ cases]**.
- (d) Any acceptance would be announced by MLA **[or Scottish Executive, Welsh Assembly etc....]** in a Press Release.
- (e) Acceptance will not occur unless and until Memoranda of Acceptance have been agreed and exchanged, the Secretary of State has given a direction under S.9, National Heritage Act 1980, and the property has been physically transferred to the body named in that Direction. Until then our correspondence will be "subject to acceptance" and the property at your clients' risk.
- (f) **[omit if chattels case]** Contracts and exchange thereof are not appropriate. Acceptance will not therefore occur unless and until we have approved and agreed the terms of the transfer or conveyance to [N]. Until then our correspondence will be "subject to acceptance" and the property at your clients' risk.

I note a/no condition and/or wish attaches to the offer.

AIL(iii) The Due Diligence form

Ownership History

The recent spate of ownership cases in the USA and Europe by descendants of Holocaust victims has highlighted the issue of provenance. Now, more than ever, there is a need to reduce the risk of objects with defective title entering the collections of national and non-national museums.

In making a recommendation to the appropriate authorities (in England, the Secretary of State for Culture and counterparts in Northern Ireland, Scotland and Wales), the Acceptance in Lieu Panel must show that it has exercised due diligence in establishing the provenance of works offered in lieu. The most effective way to achieve this is for the Panel to obtain information about the ownership history of an object, particularly with regard to the years 1933-45.

We should be grateful therefore if you would complete, to the best of your knowledge, the following questionnaire, and sign and date it at the bottom of the page.

Questionnaire

1. Do you have written confirmation from the executors (or other relevant persons) that they have unencumbered title to the object and are able to transfer that title? YES NO
If so, please supply the original, signed confirmation.
2. Can you confirm that there are no third party claims against the object? YES NO
3. Can you confirm, to the best of your knowledge, that no claims are likely to exist? YES NO
4. When was the object acquired?
5. Can you supply proof of the original acquisition of the object (i.e. bill of sale, letter, early photographic or documentary evidence or early publication in a reputable source etc.)? If so, please supply a copy of the evidence available. YES NO
6. If it was acquired after 1933, are you able to supply proof of the ownership history between 1933 and 1945? If so, please supply a copy of the evidence available. YES NO
7. If the object was obtained abroad, was it brought to the UK before 1970? YES NO
8. If the object was obtained from abroad after 1970, do you have an export licence from the country of origin? YES NO
If so, please supply a copy of the licence.

Signed:.....Date:.....

Failure to answer any of the questions or to supply information will not necessarily mean that an offer will be rejected.

AIL(iv) Memorandum of Acceptance (objects)

Memorandum of Acceptance

1. In this memorandum:

“The Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

“Acceptance” means the acceptance of the offer of property in satisfaction of a tax liability in accordance with section 230 of the Inheritance Act 1984 but not, for the avoidance of any doubt, of the transfer of that property and any associated risk to the Commissioners.

“Direction” means a direction issued pursuant to section 9(1), (3) or (4) of the National Heritage Act 1980.

“Secretary of State” means Secretary of State as that expression is used in the National Heritage Act 1980 ¹as modified pursuant to Section 77(2), Deregulation and Contracting Out Act 1994 by The Contracting Out (Functions in Relation to Cultural Objects) Order 2005, SI 2005 No.1103.

2. A claim for Inheritance Tax² arose on 31 July 2010 in connexion with the death of General Tilney.
 3. The person(s) liable for that tax include Henry Tilney and Frederick Tilney (“the Offerors”) as executors and trustees of the late General Tilney’s will.
 4. The Commissioners have agreed with the Offerors to accept the painting described in the Schedule to this Memorandum (“the Painting”) in satisfaction of all or part of that tax and interest thereon up to a maximum of £1,500,000 (“the Special Price”).
 5. HM Revenue & Customs Trusts and Estates in a letter dated 30 January 2011 to Austen & Co has explained that although acceptance of the Painting by the Commissioners will satisfy the Offerors’ present liability up to a maximum of the Special Price (of £1,500,000) there can be no reimbursement by HMRC of any amount by which their liability falls short of £1,500,000. This is understood by the Offerors and they shall offer no objections to the arrangements in pursuance of this Memorandum.
- 5A. It is a condition of acceptance of the Painting by the Commissioners that it will be disposed of or be transferred to the Northanger Gallery.³

¹ The modification should be included except where the property offered is land or buildings, or there is an *in situ* element, or there is a NI, Scottish or Welsh element.

² Or Estate Duty, as the case may be.

³ Had the condition also stipulated retention of the painting *in situ* at Northanger Abbey this paragraph would have continued: “but shall be retained *in situ* at Northanger Abbey under the terms of an agreement dated 25 January 2011”.

6. Acceptance will occur when the Commissioners receive a copy of this Memorandum duly signed by or on behalf of the Offerors but the Painting will remain the property of the Offerors and at their risk until the Secretary of State has given a Direction and the property has been duly received by the person nominated in that Direction as the transferee in a condition which is satisfactory to the transferee.⁴

⁴ The terms of this paragraph would need suitable alteration if e.g. the painting were already situate at the Northanger Gallery or if the Secretary of State had already given a direction.

Appendix 9: The Advisory Bodies

Category	England	N Ireland	Scotland	Wales
Objects, collections and groups of national etc interest	Arts Council England	Arts Council England*	Arts Council England*	Arts Council England*
	The National Archives	The National Archives	The National Archives	The National Archives
Outstanding land	Natural England	Northern Ireland Environment Agency	Scottish Natural Heritage	Natural Resources Wales
Historic Buildings, amenity land and historically associated objects	Historic England	Northern Ireland Environment Agency	Historic Environment Scotland	Cadw

The bodies listed here will, where appropriate, call upon expertise from other bodies.

*Following the abolition of the Museums, Libraries and Archives Council the Panel responsible for Acceptances in lieu, Conditional Exemption etc. is now administered by Arts Council England for the whole of the UK.

Appendix 10: Bodies listed in and approved under Schedule 3, Inheritance Tax Act

The statute, as amended from time to time, provides for the following: –

The National Gallery

The British Museum

The National Museums of Scotland

The National Museum of Wales

The Ulster Museum

Any other similar national institution which exists wholly or mainly for the purpose of preserving for the public benefit a collection of scientific, historic or artistic interest and which is approved for the purposes of this Schedule by the Commissioners for HM Revenue & Customs

Any museum or art gallery in the United Kingdom which exists wholly or mainly for that purpose and is or was maintained by a local authority or is maintained by a university in the United Kingdom

Any library the main function of which is to serve the needs of teaching and research at a university in the United Kingdom

The Historic Buildings and Monuments Commission for England

The National Trust for Places of Historic Interest or Natural Beauty

The National Trust for Scotland for Places of Historic Interest or Natural Beauty

The National Art Collections Fund

The Trustees of the National Heritage Memorial Fund

The National Endowment for Science, Technology and the Arts

The Friends of the National Libraries

The Historic Churches Preservation Trust

Commission for Rural Communities

Natural England

Scottish Natural Heritage

Countryside Council for Wales

The Marine Management Organisation

Any local authority

Any Government department (including the National Debt Commissioners)

Any university or university college in the United Kingdom

A health service body, within the meaning of S.986, Corporation Tax Act 2010

* * *

And the following **similar national institutions** have been **approved**: –

British Library	National Portrait Gallery
Fleet Air Arm Museum	National Postal Museum
Geological Museum	Natural History Museum
Imperial War Museum	Portsmouth Naval Museum
Lambeth Palace Library	RAF Museum
London Museum	Royal Botanic Gardens, Kew
National Army Museum	Royal Marines Museum
National Galleries of Scotland	Science Museum
National Library of Scotland	Tate Gallery
National Library of Wales	Tower Armouries
National Maritime Museum	Ulster Folk Museum
National Museums and Galleries on Merseyside	Victoria and Albert Museum
	Wallace Collection

The function of giving approval rests with HM Treasury.

Appendix 11: Public purchase: Illustrative example

WORKS OF ART

This example illustrates the calculation of the *special price*. This is the amount

- payable by the public body to the vendor in a sale by private treaty or
- the maximum amount of IHT (or ED) and interest which the object could satisfy if we accepted it in lieu of tax

with the **douceur**.

In the case of a private treaty sale the **douceur** is usually 25% but subject to negotiation.

Where the object is currently CE (or exempt from ED) it is eligible for this treatment. Otherwise, or where it is the subject of an offer in lieu of tax, it must meet the relevant quality criterion current at that time.

And in the case of an offer in lieu, the **douceur** is fixed at 25%.

Agreed current market value at 1st July 2010	<u>£</u> 300,000
Less value 31st March 1982	<u>25,000</u>
Chargeable gain	<u>275,000</u>
<u>Tax:</u>	
CGT	275,000 x 28% 77,000
IHT (market value less CGT)(300,000 – 77,000) x 40%	<u>89,200</u>
Total tax payable	<u>166,200</u>
Amount due to vendor after notional tax	133,800
Plus douceur of 166,200 x 25%	<u>41,550</u>
Amount due to vendor with the douceur	<u>175,350</u>

We accordingly forgo tax of £166,200 (£77,000 + £89,200). The vendor is clearly significantly better off by selling the object to a public body by private treaty than selling it for £300,000 in the open market and paying tax. And the public body acquires the object for £124,650 less than its open market value.

Appendix 12: Public purchase: Illustrative example

LAND AND BUILDINGS

This example illustrates the calculation of the **special price**. This is the amount

- payable by the public body to the vendor in a sale by private treaty or
- the maximum amount of IHT (or ED) and interest which the property could satisfy if we accepted it in lieu of tax

with the **douceur**.

In the case of a private treaty sale the *douceur* is usually 10% but subject to negotiation.

In the case of an offer in lieu of tax the **douceur** is fixed at 10%.

If the property is the subject of an offer in lieu of tax, it need not meet the criteria for CE. But to the extent that it does not neither CE nor the *douceur* is available.

Agreed current market value at 1st July 2010		<u>£</u> 300,000
Less value 31st March 1982		<u>25,000</u>
Chargeable gain		<u>275,000</u>
<u>Tax:</u>		
CGT	275,000 x 28%	77,000
IHT (market value less CGT) (300,000 – 77,000) x 40%		<u>89,200</u>
Total tax payable		<u>166,200</u>
Amount due to vendor after notional tax		133,800
Plus <i>douceur</i> of 166,200 x 10%		<u>16,620</u>
Amount due to vendor with the <i>douceur</i>		<u>150,420</u>

We accordingly forgo tax of £166,200 (£77,000 + £89,200). The vendor is clearly significantly better off by selling the property to a public body by private treaty than selling it for £300,000 in the open market and paying tax.

And the public body acquires the property for £149,580 less than its open market value.

Appendix 13: Chargeable events: calculations of Estate Duty and Inheritance Tax

These examples seek broadly to illustrate the ED/IHT charges on sale etc of exempt heritage property in each of four distinct legislative phases.

They began in 1896, 1930, 1969, straddling ED and the first year of IHT (known then as Capital Transfer Tax) and 1976.

1. S.20, FA 1896 (as amended)

- The exemption from ED was available only on death.
- The exempt property was not aggregable with the rest of the estate of its late owner but formed an estate by itself.
- The prospective claim for ED is on cesser of exemption on sale only.
- The claim extends to the value for ED on the death of the late owner.
- The rate of ED is the rate applicable to the estate by itself.

Example 1

A died in 1928 leaving a dutiable estate of £200,000 plus a painting by Poussin then worth £15,000 and a Titian then worth £25,000. Each painting was accorded exemption under S.20.

The Poussin was sold in 2010 for £25,000,000.

The rate of ED is the rate applicable to an estate of £40,000 (i.e. the estate by itself comprising the two exempt paintings) found from the table applicable to a death in 1928. That rate is 12%, and the ED payable on the value of the Poussin as at A's death is £1,800.

2. S.40, FA 1930

- The exemption from ED was available only on death.
- The exempt property was not aggregable with the rest of the estate of its late owner.
- The prospective claim for ED is on cesser of exemption. Originally on sale only, its scope widened under S.48(3), FA 1950 to include breach of an undertaking. It further widened under S.31(7), FA 1965 to include failure on the part of a lifetime transferee to replace such an undertaking.
- The claim on sale extends to the net proceeds (or open market value at that time in the case of sale at an undervalue). The claim otherwise extends to the open market value as at the date of the event. S.31(8), FA 1965 (and its successors) expressly authorise deduction for CGT chargeable on the same occasion.

- The rate of ED is normally the rate applicable to value of the late owner's estate with which the exempt property would have been aggregated had it not been exempt.

Example 2

B died in 1958 leaving a dutiable estate of £150,000 plus a Riesener writing table which was accorded exemption under S.40.

The table was sold at auction in 2010. The proceeds, after deducting the costs of sale and the CGT chargeable on the vendor's chargeable gain, amounted to £2,000,000.

The rate of ED is the rate applicable to an estate of £150,000 (i.e. the estate of the late owner excluding the table) found from the table applicable to a death in 1958. That rate is 50%, and the ED payable is £1,000,000.

3. S.39, FA 1969 / S.32, FA 1975

- The exemption from ED/IHT was available only on death.
- The exempt property was not at that time aggregable with the rest of the estate of its late owner.
- The prospective claim for ED/IHT is on cesser of exemption, namely on sale, or on breach of an undertaking, or on failure on the part of a lifetime transferee to replace such an undertaking.
- The claim on sale extends to the net proceeds (or open market value at that time in the case of sale at an undervalue). The claim otherwise extends to the open market value as at the date of the event. S.31(8), FA 1965 (and its successors) expressly authorise deduction for CGT chargeable on the same occasion.
- The rate of ED/IHT is the effective rate applicable to –
 - the value of the late owner's estate with which the exempt property would have been aggregated had it not been exempt, **augmented by ...**
 - ... the sale proceeds or open market value of **the property in question.**

Example 3

C died in August 1971 leaving a dutiable estate of £250,000 plus a George I silver porringer and a bracket clock by Thomas Tompion, which were accorded exemption under S.40 and which passed to C1.

- (i) C1 sold the clock at auction in November 1974. The proceeds, after deducting the costs of sale and the CGT chargeable on C1's chargeable gain, amounted to £10,000.

The rate of ED is the effective rate applicable to an amount of £260,000 (i.e. C's estate excluding the porringer and the clock augmented by the net sale proceeds of the clock). It is found from the table applicable to a death in August 1971. ED payable on an estate of £260,000 is

On the first £150,000	79,000
On the remaining £110,000 at 70%	<u>77,000</u>
	<u>156,000</u>

The effective rate is 60% and the ED payable £6,000.

- (ii) C1 emigrated with the porringer in 2004. We had not given our approval for the purpose and period of export and C1 declined to return it. The porringer was then valued at £8,000. There was no question of deducting any costs and the export did not occasion a claim for CGT. Hence the claim for ED extended to £8,000.

The rate of ED is the effective rate applicable to an estate of £258,000 (i.e. C's estate excluding the porringer and the clock augmented by the value of the porringer). It is found from the table applicable to a death in August 1971. ED payable on an estate of £258,000 is

On the first £150,000	79,000
On the remaining £108,000 at 70%	<u>75,600</u>
	<u>154,600</u>

The effective rate is 59% and the ED payable £4,793.80.

4. S.S.32, 33, 78 and 79, IHTA 1984 (consolidating S.S.78, 79 and 80 – 82A, FA 1976)

- The exemption from IHT is available for transfers not only on death but also in lifetime (CETs) and from settled property which is **relevant property** (CEOs) and on settlements' ten-year anniversaries.
- The exempt property is not at the time of the death or other chargeable occasion aggregable with any other property chargeable on the same occasion.
- The prospective claim for IHT is on a chargeable event, namely on death of the person beneficially entitled, on sale, on breach of an undertaking,

or on failure on the part of a lifetime transferee to replace such an undertaking.

- The claim on sale extends to the net proceeds (or open market value at that time in the case of sale at an undervalue). The claim otherwise extends to the open market value as at the date of the event. S.258(8), TCGA 1992 and its predecessors expressly authorise deduction for CGT chargeable on the same occasion.
- The rate of IHT depends on circumstances, see **Appendix 2** above and the examples in 4A to 4C below.

4A CETs

- First assume a lifetime CET and that the relevant person is the transferor
 -
 - if the relevant person is alive the rate on a chargeable event is one-half of the contemporary rate as for a chargeable transfer then by the relevant person (see Example 4 below) or
 - if the relevant person is dead the rate on a chargeable event is one-half of the contemporary rate which would have applied if the value for tax had been added to the value transferred on the individual's death and formed the highest part of it (see Example 5 below).

Example 4

In 2001 D transferred a Sèvres bowl onto discretionary trusts. The transfer was a CET. D then made chargeable transfers of £500,000 in May 2003. In July 2008 the trustees sold the bowl at auction. The proceeds, after deducting the costs of sale and the CGT chargeable on the vendor's chargeable gain, amounted to £200,000.

The rate of IHT is the rate applicable to a deemed chargeable transfer by D in July 2008 of £200,000. It is found from the contemporary table. The total for rate is £700,000, comprising the sale proceeds of £200,000, plus the cumulated total of £500,000. Hence –

On the first £312,000	Nil
On the remaining £388,000 at 20%	77,600
	<u>77,600</u>
Subtract the tax at the rate as in July 2008 on the transfers of £500,000 in May 2003	<u>37,600</u>
IHT payable on the sale proceeds of £200,000 is	<u>40,000</u>

Example 5

As in Example 4, D in 2001 transferred the Sèvres bowl onto discretionary trusts. The transfer was a CET. In July 2008 the trustees sold the bowl at auction. The proceeds, after deducting the costs of sale and the CGT chargeable on the vendor's chargeable gain, amounted to £200,000.

Unlike Example 4, D had made no earlier chargeable transfers but had died in December 2007. The value transferred on his death had been £600,000.

The total for rate is £800,000 comprising that £600,000 and the proceeds of sale of the bowl. Hence –

On the first £312,000	Nil
On the remaining £488,000 at 40%	195,200
	<u>195,200</u>
Subtract the tax at the rate as in July 2008 on the "death" transfer of £600,000 viz	<u>115,200</u>
IHT notionally chargeable on the sale proceeds of £200,000 is	<u>80,000</u>

But since IHT is chargeable at **one-half** of the contemporary rate the amount due is £40,000.

- Now assume a CET made **on death**, and that the relevant person is the individual who had died.
 - the rate on a chargeable event is the contemporary rate which would have applied if the value for tax had been added to the value transferred on the individual's death and formed the highest part of it.

Example 6

E died in 2005 leaving an estate of £600,000 not including Blackacre, which was the subject of a CET. Under E's will it passed to F. In May 2008

a chargeable event occurred as F withdrew public access from Blackacre. It was then valued at £2,000,000. (No claim for CGT arose on this occasion.)

The rate of IHT is the rate as in May 2008 applicable to the value of Blackacre added to and forming the highest part of the value of E's estate. The total for rate is accordingly £2,600,000. Hence –

On the first £312,000	Nil
On the remaining £2,288,000 at 40%	<u>915,200</u>
	915,200

Subtract the tax at the rate as in May 2008 on E's estate of £600,000	<u>115,200</u>
IHT chargeable on the sale proceeds of £2,000,000 is	<u>800,000</u>

- As explained at **para 5 of Appendix 2** above, where there have been two or more CETs in the 30 years up to the chargeable event we treat as the relevant person the person whose circumstances would yield the most tax.

It might be expected that a CET on death would yield more than a CET during the transferor's lifetime. Tax would be calculated as in Example 4, 5 or 6 as appropriate.

- Where after a CET, the heritage property is the subject of a chargeable transfer any IHT paid on that chargeable transfer is allowable as a credit – see **para 11 of Appendix 2** above.

If the chargeable transfer is also a chargeable event the tax on the chargeable transfer is credited against the tax on that chargeable event. If not, it is credited against tax chargeable on the next chargeable event.

These credit arrangements are unlikely as the law stands to feature very significantly in a wholly IHT context, as shown in Examples 7A and 7B below. The effect can be starker in a mixed ED and IHT context as shown in Example 7C.

Example 7A: where the chargeable occasion is also a chargeable event

G died in 1977 leaving an estate of £600,000 not including some "museum standard" pictures which were the subject of a CET. Under G's will they passed to H. H died in May 2007 leaving them to J. On H's death CE was not available as they were neither **pre-eminent** nor **historically associated** with an outstanding building. And J decided not to preserve the CE in G's estate.

H left a substantial estate. The value of the pictures totalled £200,000 and in the event £80,000 in IHT was chargeable.

H's death, since J had omitted to preserve CE in G's estate, was also a chargeable event with respect to the pictures. Their value for tax (as above) was £200,000.

The rate of IHT as regards the chargeable event in G's estate is the contemporary rate applicable to that value added to and forming the highest part of the value of G's estate. The total for rate is accordingly £800,000. Hence –

On the first £300,000	Nil
On the remaining £500,000 at 40%	<u>200,000</u>
	200,000
Subtract – tax at the contemporary rate on G's estate of £600,000	120,000
credit of tax paid on the pictures in H's estate	<u>80,000</u>
	<u>200,000</u>
After the credit the IHT chargeable on the value of £200,000 is	<u>Nil</u>

Example 7B: where the chargeable occasion is not a chargeable event

Assume now that J had replaced H's undertaking, and thus preserved the CE for the pictures in G's estate. But in May 2008 J was obliged to sell them. The proceeds after deduction of CGT and costs amounted to £250,000.

The rate of IHT as regards the chargeable event in G's estate is the rate as in May 2008 applicable to that value added to and forming the highest part of the value of G's estate. The total for rate is accordingly £850,000.

Hence –

On the first £312,000	Nil
On the remaining £538,000 at 40%	<u>215,200</u>
	215,200
Subtract – the tax at the rate as in May 2008 on G's estate of £600,000	115,200
credit of tax paid on the pictures in H's estate	<u>80,000</u>
	<u>195,200</u>
After the credit the IHT chargeable on the sale proceeds of £250,000 is	<u>20,000</u>

Example 7C

Assume the same facts as in Example 7B, save that G had died in **1967**.

In that case the rate of ED is the rate applicable **in 1967** to the sale proceeds at G's estate rate of 70%. Hence –

ED at 70% of £250,000	175,000
Subtract "credit" of tax paid on the pictures in H's estate	<u>80,000</u>
After the credit the ED payable on the sale proceeds of £250,000 is	<u>95,000</u>

4B CEOs

Much of what has been said about CETs applies also to CEOs. The principal difference is that the relevant person, rather than a transferor, is the settlor of the settlement. (We select the settlor, if there is more than one, according to the higher, or highest, tax yield.)

The rate of tax is found from the contemporary table at the time of the chargeable event. It is one-half of the contemporary rate if the settlement were made inter vivos and at the full rate if on death.

In certain circumstances the resulting rate is reduced. It is reduced to 30% of what it otherwise would otherwise be where the chargeable event occurs before the settlement's first ten-year anniversary. And it is 60% of what it otherwise would be where the chargeable event occurs between the first and second anniversaries.

Example 8

J settled a fund on discretionary trusts in December 1988. The trustees of the fund purchased a Chippendale bureau in January 1999. They distributed it to K in August 2005 (a CEO) and K sold it in July 2008. The sale proceeds after CGT and costs amounted to £200,000. In July 2008 J had made chargeable transfers during the preceding seven years totalling £300,000.

The rate of IHT is the rate applicable to a deemed chargeable transfer by J in July 2008 of £200,000. The CEO occurred before the first ten-year anniversary of the settlement to fall after the bureau became comprised in it. The rate is accordingly *reduced* to 30% of one half of the rate as in July 2008.

The total for rate is £500,000, comprising the sale proceeds of £200,000, plus J's cumulated total of £300,000. Hence –

On the first £312,000	Nil
On the remaining £188,000 at 20%	<u>37,600</u>
	37,600
Subtract the tax at the rate as in July 2008 on the transfers of £300,000	<u>Nil</u>
IHT notionally chargeable on the sale proceeds of £200,000 is	<u>37,600</u>

The contemporary rate of tax is thus 18.8%. This is reduced (as above) to 30% of 18.8% and hence the rate chargeable is 5.64%. IHT chargeable on the sale proceeds of £200,000 is £11,280.

(Had the settlement been created on J's death it would have been necessary in the rate calculation in this example to substitute for 20% the full contemporary rate of 40%, and so on.)

Where the relevant person is a settlor who died before 13th March 1975 the rate of tax is still found from the contemporary table at the time of the chargeable event. And it is still one-half of the contemporary rate if the settlement was created inter vivos and at the full rate if on death. But the total for rate includes the amount on which ED was chargeable when the settlor died instead of the cumulative total of a settlor who was alive on that date.

Example 9

L died in 1968 leaving an estate valued for ED purposes of £500,000. L had created a discretionary trust in December 1958. The trustees purchased a Chippendale bureau in 1987. In a CEO they distributed it to M in 2005 and M sold it in July 2008. The sale proceeds after CGT and costs amounted to £200,000.

The total for rate is £700,000, comprising the sale proceeds of £200,000, plus £500,000 as the value of L's estate for ED purposes. There is no rate reduction because the CEO occurred after the second ten-year anniversary of the settlement to fall after the bureau became comprised in it. Hence –

On the first £312,000	Nil
On the remaining £388,000 at 20%	<u>77,600</u>
	77,600
Subtract the tax at the rate as in July 2008 on the value of L's estate for ED purposes of £500,000	<u>37,600</u>
IHT chargeable on the sale proceeds of £200,000 is	<u>40,000</u>

(Had the settlement been created on L's death it would have been necessary in this example to substitute for 20% the full contemporary rate of 40%, and so on.)

4C CE on a ten-year anniversary

Where property is CE by virtue of S.79(3) the circumstances of the tax charge are analogous with chargeable events. But the method of charging tax is quite different. It is a time-based flat rate charge, as explained at **para 21 of Appendix 2** above.

Example 10

The trustees of a settlement created by N on 30th March 1965 purchased a de Lamerie wine cooler at auction in 1991. We designated it under S.31 in 1994 and it was CE from the ten-year charge in 1995. On 2nd May 2008 the trustees sold it at auction. The proceeds after CGT and costs amounted to £750,000.

There is no question of building a total for rate. Instead we first establish the **relevant period**. We then apply the rate developed over that period to the value for tax, in this case the net sale proceeds. Hence –

Under S.79(7) the relevant period begins on 30th March 1985 and ends on 1st May 2008.

Under S.79(6) the rate developed over that period is

0.25% for the 40 complete successive quarters from 30th March 1985
0.20% for the 40 complete successive quarters from 30th March 1995 and
0.15% for the 12 complete successive quarters from 30th March 2005,

giving a total of 19.8%.

IHT chargeable at 19.8% of £750,000 is £148,500.

Appendix 14: Chargeable event: calculation of Capital Gains Tax

A purchased a picture at auction in June 1989 for £1,000,000.

A died in 1996 bequeathing it to B. This was neutral for CGT but a CET for IHT. The value of the picture then was later found to have been £2,500,000

In 1999 B gave the picture to C. This was also a CET for IHT. Consequently for CGT the relief under S.258(3)(a), TCGA applied.

Then in 2008 C sold the picture at auction. The sale gave rise to claims for CGT and IHT. The proceeds of sale after deducting allowable costs was £10,000,000.

CGT is charged on the gain over the period from A's death in 1996 to the sale. As the value on A's death was £2,500,000 the gain amounted to £7,500,000. There were no other available allowances.

The rate of CGT is a flat rate of 28% on the gain of £7,500,000. Hence the tax payable is £2,100,000.

Appendix 15: Historical Association of objects with Outstanding Buildings

Introduction

As outlined at 6.5 above under section 31(1)(e) of the Inheritance Tax Act 1984 ('IHTA') objects may qualify for conditional exemption on the grounds of historical association with a building which itself merits exemption for its outstanding historic or architectural interest (section 31(1)(c)). The following guidelines which set out how HMRC applies the legislative provision are for claimants and their advisers and those advising HMRC in relation to claims.

Background

As referred to above the relevant legislation is found in Section 31(1) IHTA 1984:

"(c) any building for the preservation of which special steps should in the opinion of the Treasury be taken by reason of its outstanding historic or architectural interest;

(e) any object which in the opinion of the Treasury is historically associated with such a building as is mentioned in paragraph (c) above."

A brief gloss on this legislation is provided above which gives the following advice (6.5, page 56-7) on objects claimed under section 31(1)(e):

"The fact that an object belongs to the same historical period as the building is not in itself sufficient. It must have a close association with a particular building and make a significant contribution, whether individually or as part of a collection or a scheme of furnishing, to the appreciation of that building or its history.

The object need not necessarily be of UK origin. Neither would it be expected that every item should be contemporary with the building as changes will have taken place which reflect the individual taste of different owners.

If an object has been in or associated with a building for less than 50 years then, it is unlikely to qualify as a HAO; but this is very much a rule of thumb which should yield to specific judgement. And it certainly should not be inferred that an object which had been on the premises for 50 years would on those grounds alone qualify for CE.

It is difficult to be prescriptive in this connexion but an example of a less-than-fifty years object might be a drawing relating to the development of the building concerned.

We take advice in relation to such objects as for the outstanding building itself. In any case where the subject of a claim for CE is or includes an archive we also ask the National Archives (NA) for comment.”

The legislation makes clear that the suitability of the object claimed for Conditional Exemption under the provisions of Section 31(1)(e) is dependent on it being associated with a building which falls within the terms of Section 31(1)(c) IHTA 1984.

For an object to qualify for exemption it is necessary that it has a demonstrable historical association with a building of outstanding historic or architectural interest. It is the building which will determine the suitability of the object and the importance of the building can rest on either its architectural or its historic importance, or of course both, and both are considered when consideration is given to the assessment of outstandingness.

The purpose of the conditional exemption legislation is to preserve the historic entity of building and contents.

Assessing a Claim

It is necessary that those wishing to claim Conditional Exemption on the grounds of historical association show that the objects or objects concerned have demonstrable historical link with the building concerned. As the object takes its exemption from the building it is to the building that association must be demonstrated and it must make a significant contribution to an appreciation of the building and its history.

Objects may make a significant contribution, whether individually or as part of a collection or a scheme of decoration, to an understanding of the growth and development of a building or they may be relevant to the biographies of previous owners and occupants or their families. Unless the connection is in some way specific to the building, normally through the objects having been kept there for a deliberate purpose and for a substantive period of time, they will not qualify as their association cannot be made clear. Consequently, as can be seen, the bases for a claim can be many and set out below are some general principles which our advisers consider when assessing a claim.

Historical

One of the first questions must be a purely time based one - how does an object become historically associated with a building? As the term 'historically' was deliberately chosen by Parliament then an object must demonstrate that it and the building with which it is claimed as being associated with are historically linked - i.e. that association is not of recent date. As indicated at 6.5 above the period over which such a link may form is considered to be fifty years. Indicating a specific period in this way has allowed claimants a certain level assurance that if an object can be proved to have been in an appropriate

building in excess of this period then provided that this can be demonstrated and it contributes to the understanding of the building or its history then it would qualify for Conditional Exemption.

An expectation that an object should have been present for fifty years might exclude material which is important to the entity of building and contents in illuminating some aspect of its importance and history. Consequently HMRC considers the evidence provided as to, first and foremost, whether an object has an association that is historic, as required by statute, and then whether it makes a positive contribution to the understanding of the building.

Contribution

As outlined above to demonstrate association the object or group of objects must make a contribution to the understanding of the building or its history. Objects in situ for a length of time will have come to form part of the building's character, atmosphere and interest. Without them that character, atmosphere and interest will certainly change and is likely to be compromised or diminished. Each object might individually be only a modest part of that effect but, collectively, assemblages of furnishings and other possessions make up a complex and unique impression. Together they form an entity which is a product of the building's history. However, not all objects of such longstanding will necessarily play a role in this. Some may have been in storage or at least out of sight and use all that time and make little or no contribution to appreciating the building or its history.

Whilst it would be impossible to provide an exhaustive list of what might be admissible, the following are likely to be included:

- Objects with a direct relevance to the appreciation of the building, such as original architect's drawings or models, pictures of the interiors, topographical views or landscape paintings of the building in its setting, historic photographs or records of construction and repair. These will provide evidence of its early appearance and development, perhaps illustrating features or decoration now gone.
- Objects with a direct relevance to the appreciation of the history of the house in a wider sense, as a place to live and work, or a place where significant events took place. Portraits of previous owners and occupants and archival material relating to their lives in the building might fall into this category where there is a demonstrably historical association with the building.
- While objects which are of recent manufacture as well as having been present for fewer than fifty years will be unlikely to be considered historical and to make a significant contribution to the appreciation of the building or its history, exceptions might be objects which have a direct relevance to the appreciation of the building, such as paintings or

drawings of the building which stand as a record of its appearance during the last fifty years. These will provide lasting evidence of what may already have been or soon will be overlain by weathering, alteration or addition.

- Objects with a direct relevance to the appreciation of the history of the building in a wider sense, as a place to live and work, or a place where significant events took place. Archival material relating to a major event which took place at the building may qualify.

Objects which may qualify will need to demonstrate, even for those items of some rarity and quality, that their association is in some way historical and that they make a significant contribution to the appreciation of the building or its history. Replicas of lost, missing or destroyed objects may qualify if they are essential to an appreciation of the building or its history.

Discontinuous Association

Other objects may have a staggered or intermittent association, as is often the case with inherited possessions which travel between different members of the family and their respective homes. These circumstances would not rule out a claim but to qualify it would normally be expected that the building with which the historical association is claimed should have been the setting for the object for the longest part of its history, but there may be cases where objects have been brought to the building after a longer period elsewhere, for example following the sale or demolition of another family house. Nevertheless, the association must be historical and, in total, normally at least fifty years.

Similarly objects may have been lost or sold and then found, given or bought back. The original loss or sale may itself be a significant episode in the building's history, for example where a major theft or auction took place, as may be the subsequent process of reacquiring the objects, especially if they had a particular relevance for the building, for example having been bought, designed or made for it in the first place.

Examples

Applying the practice outlined above to some specific examples, however it should be borne in mind these are for guidance only

Works of Art

- *Works of art illustrating aspects of or changes to the house itself, made at the time of the change in question, brought to the house within the last 50 years*
- *Watercolours, painted at the time, of significant scientific experiments carried out in the house and for which the house is noted*

- *Works of art commissioned by the owner specifically for the house, such as sculpture, paintings or ceramics, so that they complement the architectural character of the house and existing collection*

The first two examples relate to objects which, whilst they have been present for less than 50 years might be considered to be historically associated with the building. The first example is likely to qualify as it relates to some physical aspect of the primary property. The second is also likely to qualify because it relates to a significant event which took place in the property. The third is not likely to qualify: however laudable the aim of building such a collection the stated attributes of these objects are not the attributes sought by the statute and they would not therefore seem to fall within the terms of Section 31(1)(e). If conditional exemption was to be sought then Section 31(1)(a) or (aa) would be more appropriate

Additions to collections

- *An item, or items added to a specific collection, such as a collection of porcelain, thus enhancing the cultural value of the whole collection*
- *Books added to a library with relevance to the existing library*
- *A set of tapestries bought to replace others sold a considerable time ago*
- *Objects, such as family paintings, portraits, silver and furniture, brought to the house from another house owned (or sold) by the same family, particularly - but not only - objects typical of the style that would have been contained in the historic house.*

In the first three examples, the objects would not be likely to qualify. Cultural value is not a concept recognised by 31(1)(e); with regards to the books the association here seems to be with other books rather than the building; while the replacement tapestries do not appear to demonstrate any historical association with the building. With regard to the fourth example, such objects brought to the building would be assessed by reference to their historical association with the outstanding building and the contribution they make to its appreciation. Neither their past ownership, nor their style, would be relevant.

Portraits

- *A portrait of a previous owner of the house, painted at the time, brought to the house or returned to the house*
- *Portraits of less than fifty years old of the current owners of the house*
- *Commissioned group portraits, less than fifty years old, of estate or house employees, showing the nature of employment on the estate at the time*

With regards to the portrait of the previous owner it looks likely to qualify provided it had an association with the house. The objects defined by the latter two bullet points would be likely to qualify provided the association is with the building.

In Summary

As outlined above there are two complementary elements to be considered by our advisers when assessing a claim for Conditional Exemption under the terms of Section 31(1)(e) IHTA 1984. The object or group of objects must make a significant contribution to the understanding of an outstanding building and/or its history. The association must be historic as that is what is required of the statute and without imposing any hard or fast rule 'historic' is seen as having been present for at least fifty years. However, this period is a guide and there are a number of instances where the presence of objects for this period would not be of itself sufficient or a presence for less than this period would not exclude an object from Conditional Exemption.