

Give and take

The acceptance in lieu scheme has many benefits and could have many more if extended to living donors, says *Robert Coram James*

The acceptance in lieu (AIL) scheme is one of the most important means this country has of retaining its cultural heritage. It is directly responsible for securing for the benefit of the nation numerous world-class works of art. In the last ten years alone, the scheme has brought over £220m worth of heritage items into the cultural sector, ensuring important works of art are prevented from leaving the country and public collections are strengthened.

AIL can also be of great financial benefit to taxpayers by allowing the transfer of qualifying items into public ownership in settlement of inheritance tax (IHT) liability. The scheme is considered a very attractive incentive to donors, not only because of the tax savings, but also because of the public recognition and philanthropic associations with high-profile donations.

Firmly rooted

The scheme has its origins in the Finance Act 1910 and is governed by the Inheritance Tax Act 1984 (sections 230–231). It is administered by the Museums, Libraries and Archives Council (MLA), which appoints the AIL panel, consisting of around ten people, and is currently chaired by Jonathan Scott CBE.

The panel's main responsibilities are to consider the suitability of the items offered, decide their market value, make recommendations to the board of the MLA and to the culture/ heritage ministers and inspect any items being offered in lieu. To help them reach these decisions, they will consult independent



Adequately eminent?

The criteria for the pre-eminence of works of art under the acceptance in lieu scheme is:

- that the object has an especially close association with our history and national life;
- that it is of especial artistic or art-historical interest;
- that it is of especial importance for the study of some particular branch of art, learning or history;
- that it has an especially close association with a particular historic setting.

expert advisers, usually museum or gallery curators, archival specialists, scholars and independent valuers.

In order to be considered for the scheme, an item has to be judged 'pre-eminent', in other words, it must be of particular historical, artistic, scientific or local significance, either individually or collectively or in association with a particular building.

The criteria for pre-eminence (see box) is based on the 'Waverley criteria',

established in 1952 by the Waverley committee, on which the British export control system is based.

The offer of an object must be made by those liable to pay the tax due and must be able to prove unencumbered title. Offers should be made in the first instance to the Capital Taxes Heritage Team who will formally refer it to the AIL panel. A professional valuation of the item should be included, which must provide a thorough description of the object, together with photographs, evidence of legal title and details of the occasion which gave rise to the payment of tax.

Any single item, collection or group can be offered as long as it is of pre-eminent heritage quality, with a whole range of items varying in value falling

within its scope. Works by living artists David Hockney, Frank Auerbach and Howard Hodgkin have been accepted, with lesser value items such as furniture, silver, classic cars and manuscripts also being approved.

Added sweetener

The main benefit of the AIL scheme to taxpayers is the tax credit that is generated by the acceptance of the offer. The estate receives not only the

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full market value, out of which the inheritance tax is paid, but also what is known as a 'douceur', in which the government reduces the amount of tax due by 25 per cent. On average an object is worth 17 per cent more if it is offered in lieu of tax than if it is sold on the open market at the same price. This is the main incentive to tax payers and is seen as an attractive alternative to selling through auction with all the associated costs.

Of course, if an item is offered for sale at auction, there is always the chance that it will exceed all expectations and sell over the odds. The Chinese Qianlong Dynasty vase that sold for a hammer price of £43m in a small provincial saleroom last November is proof that this can happen, albeit rarely.

The AIL panel guarantees that objects will be looked after well and

“Acceptance in lieu is a system under which absolutely everybody benefits and, if extended to living donors, looks set to benefit many more in the future”

used for the public benefit. Occasionally they will be allowed to remain in situ or be passed on privately, in which case the object is legally state owned and effectively out on loan. However, most commonly it is actually transferred to the Inland Revenue and institutions will bid for it with the Heritage Minister deciding to which it will be sold.

Of course, those who benefit most out of the scheme are the UK's museums, galleries and libraries, which receive important objects, often at little or no cost. Numerous public collections have been strengthened through the scheme with countless world-class works of art, most of which are available for the general public to view.

The question of an object's value is perhaps the most significant and possibly



Visible women *The Proscribed Royalist, 1651*, by Sir John Everett Millais is now on display in Birmingham after the government accepted the painting in lieu of inheritance tax

contentious issue. According to the AIL panel, all efforts are made to ensure a fair price is paid, which is based on the market price at the time of the offer. If comparable objects have been sold at auction, or by known private sales through dealers or agents, then agreeing a value is usually straightforward. Of course, there are cases where nothing similar has been sold in recent years because of the rarity of the object and it therefore may be harder to assess an accurate market value.

The panel spends a great deal of time testing the expert advisers' opinions on price and strives to be scrupulously fair to the offeror. They have a duty to do justice to both the offeror and the nation and seeking a bargain is not a consideration.

Extension bridge

The scheme has been extended in recent years with the so-called 'hybrid' offer in lieu, with objects of greater value than the tax bill to be settled being eligible for financial assistance from various institutions, such as the Art Fund, to make up the difference. This precedent was set when the nation acquired

Picasso's *Weeping Woman* from the collection of Sir Roland Penrose, whereby part of the value was accepted in lieu of the tax due on Sir Roland's death and part of the value was provided in cash by the Tate Gallery assisted by the National Art Collections Fund and the National Heritage Memorial Fund.

Another example was in 2003, when the trustees of the Sutherland estates offered a Titian to the nation in lieu of inheritance tax, with the condition that it should be allocated to the National Galleries of Scotland. The acceptance of this important painting could have settled up to £14m of tax. As the actual liability was only £2.4m, the balance of the price was met by a combination of a major grant of £7.6m from the Heritage Lottery Fund, £0.5m from the National Arts Collection

Fund and a Special Grant of £2.5m from the Scottish Executive. The National Galleries of Scotland was itself able to raise £1m.

A work of art can be surrendered in lieu of IHT due but, through some anomaly, not for capital gains tax (CGT). Many have argued for an extension of the scheme to allow living donors to have a similar tax benefit through income tax and capital gains tax relief during their lifetime, as is the case in France, Australia and the US.

Despite the recession, the scheme is flourishing, with 36 cases being approved last year and £10.8m in tax settled. The importance of AIL on the arts cannot be understated; the tax benefits are substantial and it has been a highly effective means of acquiring art for the nation. It is a system under which absolutely everybody benefits and, if extended to living donors, looks set to benefit many more in the future. ■

Robert Coram James is the founder of art and antique valuer Coram James that specialises in valuations of chattels for tax, divorce and insurance