

The history and development of tax incentives and export controls for the retention and acquisition of manuscripts, archives and books

Part I of II

The beginnings of Government initiatives in heritage protection go back to the end of the 19th century. In 1894, Sir William Harcourt, in his first budget under the new Premiership of Lord Rosebery, implemented the brainchild of the then Chairman of the Inland Revenue, Sir Alfred Milner, and introduced Death Duties at what was considered to be an exorbitant top rate of 8% for estates valued at over £1m. While this was highly unpopular with the propertied classes, it was Harcourt's attack on the alcohol business with the Local Liquor Control Bill which had wider implications. In 1895 the Liberals were defeated and Harcourt lost his Derby constituency. (More people drank beer than paid Inheritance Tax - in those days, at least.)

Lord Salisbury, the new Tory premier, appointed Sir Michael Hicks Beach as his Chancellor. Although he had opposed the introduction of Death Duties only the previous year, the tax was bringing in rather more than had been predicted and the rhetoric of opposition did not become the policy of Government.

Fears of what would be the consequences of this new tax to the UK's heritage were being voiced at once. Walpurga, Lady Paget, the German wife of a British diplomat who was a regular guest in the country houses of England including Hatfield House, the home of Lord Salisbury, wrote the following, "*Lady Salisbury told me that Lord Salisbury had made over Hatfield and everything else to Lord Cranborne [his son and heir] on account of the fearful death duties. In the meantime all the works of art are going to America and Russia.*"

The taxation of wealthy estates only made worse a problem which had been evident and increasing for decades. The history of the dispersal of great British collections of cultural artefacts goes back at least to the Commonwealth's sale of Charles I's art collection in the mid 17th century. The sale of the Houghton pictures to Catherine the Great in 1779, the 40 day auction in the autumn of 1848 of the contents of Stowe in Buckinghamshire and the sales in the late 1880s of the contents of Hamilton Palace record the decline and fall of the wealth and influence of individual families. But the agricultural depression of the late 19th century had started a pattern of general decline which was set to continue.

Death duties, however, represented something new: a systematic programme which would transfer the wealth of individuals to the Government (and the Nation). It was inevitable it would add to the loss of cultural artefacts in this country.

While Hicks Beach did not consider that he could afford to repeal Death Duties, he was prepared to offer a concession. The Finance Act of 1896 introduced the principle of conditional exemption whereby, "*objects of such*

national or historic interest that they would be purchased or accepted as a bequest by one of the national collections” could be excluded from the taxable element of an estate.

The credit for this landmark piece of legislation has been claimed by the mother of Vita Sackville-West, Lady Sackville. In her diary of 17 April 1896, she wrote, “*Last night Sir Michael Hicks Beach proposed in his budget to abolish death duties on pictures and heirlooms. This will save Knole. He has written to me telling that it was I who made him understand the injustice of the law.*” As Lady Sackville suggested, however, the new legislation was to have its main impact upon buildings and paintings but fortunately the drafting of this tax concession was such that it could be applied to literary papers and to historic manuscripts of a very wide variety. Although the precise wording of the scope of items within the Conditional Exemption regime has been amended several times in the last 120 years, the inclusive nature of that original definition - objects of such national or historic interest that they would be purchased or accepted as a bequest by one of the national collections – has remained an essential part of the scheme.

Conditional Exemption lifted the financial burden and penalty on maintaining ownership of such material and passing it down the generations. It did nothing, however, to encourage such items to pass from private to public ownership and make them accessible to anyone other than their owners. The principle, now an essential element of Conditional Exemption, that in return for the tax deferral the private owner must be prepared to give the quid pro quo of a measure of public access was to be introduced only in the 1970s and then to a rather limited extent. It was only in 1998 that public access became an absolute requirement for the granting of conditional exemption.

The next development in heritage protection came in 1910 when in that year’s Finance Act an embryonic Acceptance in Lieu scheme was introduced. Those liable to pay death duties could discharge their liability by transferring property of cultural importance to the ownership of the nation and it would then be transferred to a suitable public body.

That at least was the theory. The Inland Revenue, however, was rather attached to the idea of tax being paid in pounds, shillings and pence. Neither a painting, nor a manuscript fitted neatly into the accounting ledgers of Somerset House. The powers had been given to the Commissioners of Inland Revenue to accept cultural property in lieu of death duties but they resolutely refused to exercise them unless somebody came forward to make good the loss of hard currency that such an acceptance would represent. So, for the next 37 years the scheme remained virtually unused.

It was in 1946 that the Acceptance in Lieu (AIL) scheme became a feasible mechanism for bringing cultural property into public ownership. Hugh Dalton, the then Chancellor of the Exchequer announced that £50m was to be set aside from the sale of war surplus as a memorial for those who had died in the War. This was used to establish the National Land Fund. The interest from this sum would be used to recompense the Inland Revenue for the loss of tax that the acceptance of offers in lieu gave rise to.

Progress, yes, but there was a catch. The Land Fund's role was precisely what its name suggests – a fund to acquire land and any buildings that happened to be on that land. Chattels, that is, moveable property, (which, of course, includes archives, books and manuscripts) was not within the scope of the Fund's remit. So in the years immediately following the 1946 announcement, AIL was responsible for acquiring for the public benefit such houses as Cotehele in Cornwall, Penrhyn Castle in North Wales along with 40,000 acres of surrounding land stretching up into Snowdonia, Petworth in Sussex and Saltram in Devon.

Two events in the 1950s were to lead to a widening of the scope of AIL. While Petworth had been transferred to the Trust's ownership in 1947, the contents had remained the property of the 3rd Lord Leconsfield. On his death in 1952, his estate incurred very heavy death duties. It seemed that the only way that they could be met was for the executors to sell much of the contents of Petworth. A little earlier in 1950, the death of the 10th Duke of Devonshire, had resulted in massive death duties falling on the Trustees of the Chatsworth Settlement.

The solution to the situation at Petworth was a 1953 amendment to the AIL legislation allowing, for the first time, chattels to be accepted in lieu where they were associated with buildings already in public ownership, principally those that themselves had been accepted in lieu. The chattels were then allocated to the properties with which they were associated.

While that solved the Petworth issue, Chatsworth required a different solution as that house remained in private ownership. The Government's plan for Chatsworth was for it to become a 'national museum' with the Victoria and Albert Museum taking on responsibility. In order for this to come about another extension to the AIL scheme was introduced in 1956 to allow chattels to be accepted in lieu on account of their aesthetic or historic importance and allocated to national public collections. While the scheme for Chatsworth to become a national museum foundered, it was from Chatsworth that the first group of chattels to include a manuscript was accepted in lieu and allocated to a national collection. This was the Benedictional of Saint Aethelwold, a masterpiece of 10th century Anglo-Saxon illumination written by the scribe Godeman for St Æthelwold, Bishop of Winchester which is now one of the treasures of the British Library.

Further extensions to the AIL scheme came in the mid 1960s allowing items to be accepted and then allocated to **regional** museums. In 1973 a further amendment permitted the acceptance not just of individually pre-eminent items but also of collections. At the same time the definition of what could be accepted was expanded from "works of art" to "any picture, print, book, manuscript, scientific object or other thing". This paved the way for whole archives to come into public ownership and the first such acceptance was of the Blenheim papers, principally those of John and Sarah Churchill, 1st Duke and Duchess of Marlborough, which were allocated to The British Library.

The last major amendment to the scheme was in 1998. 88 years after AIL's introduction, the need to repay the Inland Revenue for the tax 'lost' was abandoned. It is now simply written off. Since then the scheme has flourished. In the eight years before this change, objects valued at just under £63m were accepted. By comparison, in the eight years since that change to 2006, £213m of cultural property entered public collections via AIL; and since 2006 to date objects worth just under £340m. Of this just over £16m was for archives, just over £1.1m for books and just over £11m for manuscripts.

This makes it the largest single means of acquisition for the UK's museums, libraries and archival repositories.

The last few years has seen the development of the AIL scheme into the area of almost contemporary literary manuscripts. In 2002 the typescripts of the novelist Anthony Powell, including those for his twelve novel sequence *A Dance to the Music of Time* were accepted in lieu and allocated to the British Library. Since then literary papers by the poet and William Blake scholar Kathleen Raine and the Scottish 20th century poet, George Bruce have been accepted, as well as the photographic archives of the travel writers Wilfred Thesiger and Robert Byron. Also the literary archive of J G Ballard, the medals and awards of Harold Pinter. Also Griesbach musical material relating to the Court of King George III and the Vincent Novello Album.

In relation to books special considerations apply. The Panel draws a distinction between items that are important for study (e.g. a literary archive) and those that are merely useful for study (e.g. a working library of textbooks). It is likely to recommend the former for acceptance but not the latter. Where it is claimed that the books are associated with a building in public ownership (rather than pre-eminent) the books 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 they are associated: their removal from the house would be a significant loss to the public's appreciation of the property. Examples include the libraries at Nymans and Scotney Castle, both National Trust properties.

The Panel will need to know if there is something that makes these otherwise common books of added interest beyond any other copy that would be available to the public; whether the fact that they were collected by X makes them of outstanding importance over and above any other copies of the same book; do they reveal some particular insight into X, add to our understanding of X as an historic personage by virtue of their association to X and provide some insight into the history of the times in which case they would probably meet the criterion.

Examples of printed books that have been accepted in lieu as pre-eminent include the Godman reference books on Islamic Ceramics because of their association with the Godman Collection of Islamic pottery which was accepted in lieu in the early 1980's; Vita Sackville West's books at Sissinghurst; the Neville Maskelyne, Astronomer Royal in the 18th Century, books where the manuscript annotations added significance to the printed editions and exceptionally rendered the library as a whole important; the first edition of

Spinoza's *Tractatus Theologico-Politico*; and, most recently the Hobson bookbinding archive, a rich source of, and important for the study of, historical and artistic bookbindings; and the Lock collection of Thomas Hardy memorabilia which included first editions of Hardy's novels and poetical works inscribed by him.

Printed books/libraries recommended as pre-eminent for conditional exemption since 2005 include the Selbourne Library in the context of Birmingham University Library; the Fermor-Hesketh library which was considered pre-eminent as an assembly of natural history works; just under 1,600 inscribed books in the library at Chartwell including *The Seven Pillars of Wisdom* inscribed to Winston Churchill from the author; and c.10,500 volumes mostly dated post 1761 at Arundel Castle. General and miscellaneous libraries are unlikely to pass the pre-eminence test and claims to defer capital taxes on them might lie under historical association with an outstanding historic building which are evaluated by English Heritage.

The AIL scheme is beneficial for offerors, because a greater proportion of the value of the material being offered can be applied to paying the tax bill than if the same item was sold and the proceeds applied to discharging the tax liability. If books valued at £100,000 is sold to raise cash to pay a tax bill, the taxman takes 40% of the proceeds, leaving only £60,000. The same material offered in lieu settles £70,000 of tax. In addition, in negotiating the AIL value, the costs are normally less than those incurred in auction fees and in agreeing what is a fair market price, buyer's premium is taken into account with the value of this benefiting the offeror and not the auctioneers.

The AIL system is a proven and effective way of bringing literary material into British repositories. The one drawback is of course that an offer can only be made against inheritance tax so usually after death.

To address this in 2012 the Finance Act introduced the Cultural Gifts Scheme – a lifetime giving scheme for both individuals and companies. The Scheme came into operation in the Spring of 2013 and the first thing to be donated under it were the lyrics and letters of John Lennon now at the British Library.

The main outlines of the Scheme are admirably straightforward. It enables UK taxpayers (individuals and companies) to donate important works of art and other heritage objects (including collections and groups) to be held for the benefit of the public or the nation. In return, donors receive a tax reduction based on a set percentage of the value of the item they donate: 30% for individuals and 20% for companies.

For individual donors the 30% reduction may be set against the individual's income and/or capital gains tax bill for the year in which the donation is made or in any or all of the subsequent four years. For companies the 20% tax reduction can be set against their corporation tax in the accounting year in which the gift is registered.

As property accepted under this scheme also has to be pre-eminent (which for the purposes of the CGS also includes association) its evaluation of both

quality and value has been entrusted to the Acceptance in Lieu (AIL) Panel which has many years' experience of making similar assessments in respect of property offered in lieu of inheritance tax.

[Export controls and tax efficient privately negotiated sales to follow]