

Private Treaty Sales

Public purchase: Private treaty sales

1. Private treaty sales to the museums or other bodies listed in Schedule 3 Inheritance Tax Act 1984 frequently offer substantial financial advantages to owners. (A list of the Schedule 3 bodies is appended at the end of this note.) If conditionally exempt property is sold on the open market any Capital Transfer Tax (CTT), Inheritance Tax (IHT) or Estate Duty (ED) exemption is lost and the vendor may also be liable to Capital Gains Tax (CGT) on the sale proceeds. The tax charges can be substantial and the final net amount retained by the seller significantly less than the proceeds of sale. However, sale by private treaty to a body listed in Schedule 3 does not lead to the withdrawal of the conditional exemption or to a charge to CTT or IHT (IHTA, Sections 32(4)(a) and 32A(5)(a)). Nor is there any liability to CGT. Because the vendor receives the proceeds without any liability to tax it is not unreasonable that the acquiring institution should offer, and the vendor 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. This arrangement, which follows the principles recommended by the Waverley Committee*, brings what is known as the "douceur" into the calculation. Under it a tax free private treaty sale for a given value will usually be financially more advantageous to the owner than a sale for the amount on the open market involving a charge to tax, and it will also benefit the public by enhancing a public collection.

Following the enactment of the Finance Act 1998, if an object has not previously been granted exemption from CTT, IHT, ED or CGT and a private treaty sale to a Schedule 3 body is contemplated then it first has to be established that the item concerned is of pre eminent quality. (A definition of pre eminence for this purpose is attached).

* Report of the Committee on the Export of Works of Art etc, September 1952

2. There may be further benefits. If a conditionally exempt item is sold on the open market the sale proceeds are added to the cumulative total of transfers made by the last person who made a conditionally exempt transfer of the item or, in certain circumstances, the cumulative total of the settlor of a settlement which included the item. However, if the property is sold by private treaty to a public collection or body, there will be no increase in either cumulative total. This in turn will be likely to reduce the CTT or IHT liability of the person concerned in relation to his subsequent transfers and where subsequently a chargeable event arises with respect to which he is the relevant transferor, the tax paid thereon can be affected similarly.

3. The method of fixing the special price in private treaty sales is set out below.

(i) Objects

4. If someone is contemplating selling an item by private treaty he or she can consult MLA, the Council for Museums, Archives and Libraries for advice on the public institutions most likely to be interested in acquiring it. Thereafter, the parties negotiate - with the aid of their own advisers if necessary - an agreed value. The Government does not intervene in this process in any way. The potential liability to CGT and CTT or IHT is then calculated on this agreed value (costs of sale, such as professional fees, are not taken into account in the notional tax calculation). The special purchase price is then arrived at in accordance with the "douceur" arrangement mentioned in paragraph 1 above. As a general guideline, the special price would normally be the net value of the object (the market price less the notional tax liability) plus 25 per cent of the value of the tax exemption. However, there will be occasions on which a figure above or below 25 per cent would be appropriate. For example, a higher figure may be necessary to provide an adequate inducement in respect of low value objects and a lower figure may well be reasonable for very high value items.
5. Any institution considering a purchase will always need to know how the negotiations will be affected by the tax position of the vendor. HM Revenue & Customs, Heritage Section should be authorised by the vendor to disclose the potential liability to the purchaser and confirm the exemption.
6. When the market value has been agreed by the parties and the tax(es) applicable to that value deducted therefrom, the difference plus the vendor's share of the tax exemption (the "douceur") is the special price the purchaser has to pay.
7. An illustrative example is attached.
8. Under these arrangements gains accruing on private treaty sales are exempt from CGT and as a result other CGT reliefs are not normally available. Thus, for example, loss relief or rollover relief for the replacement of business assets is not applicable and is not taken into account in working out the special sale price. However in certain circumstances some reliefs (such as the chattels exemption and private residence relief) may still be available and HM Revenue & Customs should be consulted about this.
9. Private treaty sales to the bodies listed in Schedule 3 IHTA 1984 are relieved from VAT (Value Added Tax Act 1983, Schedule 6, Group 11). Information about this is given in VAT leaflet No 701/12/84 which is available from the local VAT office.

(ii) Land and buildings

10. Private treaty sales of outstanding land and historic buildings can be made to any of the bodies listed in Schedule 3 IHTA 1984. The views of the District Valuer are sought by HM Revenue & Customs on the market valuation proposed by the owner or executor. Once the market valuation has been agreed the approach will be similar to that for objects, except that, because neither buildings nor land can normally be exported, 10 per cent rather than 25 per cent of the value of the tax exemption will normally be used in the calculation of the special price.

11. Paragraphs 5-9 apply equally to private treaty sales of land and buildings.

Public purchase: Illustrative example

Calculation of the price, with "douceur" (usually 25%), at which objects can be sold to a public body by private treaty.

Agreed current market value (say)		£100,000
Tax applicable thereto:-		
CGT @ 18% on gain element, assumed to be £40,000	£7,200	
ED, CTT or IHT exemption granted on a previous conditionally exempt transfer, now recoverable @ 40% on £92,800 (i.e. market value less CGT)	<u>£37,120</u>	
Total tax	£44,320	<u>£44,320</u>
Net after full tax		<u>£55,680</u>
Add back 25% of tax (the "douceur")		<u>£11,080</u>
Price payable by a purchaser, all retained by vendor		<u>£66,760</u>

HM Revenue & Customs writes off the total tax of £44,320.

The vendor has £11,080 more than if he had sold the object for £100,000 in the open market and paid the tax.

Pre-Eminence

For objects now to qualify under the provisions of Section 31(1)(a) 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, Cardiff or Belfast 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.

TABLE 3: SCHEDULE 3 BODIES (Inheritance Tax Act, 1984; Schedule 3)

1. The National Gallery
2. The British Museum
3. The National Museums of Scotland
4. The National Museum of Wales
5. The Ulster Museum
6. 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 Treasury
7. Any museum or art gallery in the United Kingdom which exists wholly or mainly for that purpose and is maintained by a local authority or university in the United Kingdom
8. Any library the main function of which is to serve the needs of teaching and research at a University in the United Kingdom
9. The Historic Building and Monuments Commission for England
10. The National Trust for Places of Historic Interest or Natural Beauty
11. The National Trust for Scotland for Places of Historic Interest or Natural Beauty
12. The National Art Collections Fund
13. The Trustees of the National Heritage Memorial Fund
14. The National Endowment for Science, Technology and the Arts
15. The Friends of National Libraries
16. The Historic Churches Preservation Fund
17. English Nature
18. Scottish Natural Heritage Section
19. Countryside Council for Wales
20. Any Local Authority
21. Any Government department (including the National Debt Commissioners)
22. Any university or university college in the United Kingdom
23. A health service body, within the meaning of Section 519A of the Income and Corporation Taxes Act 1988

Since the 1984 Act, the following 'similar national institutions' are, with the approval of the Treasury or the Board, also included in the list of bodies within Schedule 3:

24. British Library
25. Fleet Air Arm Museum
26. Geological Museum
27. Imperial War Museum
28. Lambeth Palace Library
29. London Museum
30. National Army Museum
31. National Galleries of Scotland
32. National Library of Scotland
33. National Library of Wales
34. National Maritime Museum
35. National Museums and Galleries on Merseyside
36. National Portrait Gallery
37. National Postal Museum
38. National History Museum
39. Portsmouth Naval Museum
40. RAF Museum
41. Royal Botanic Gardens, Kew
42. Royal Marines Museum
43. Science Museum
44. Submarine Museum
45. Tate Gallery
46. Tower Armouries
47. Ulster Folk Museum
48. Victoria and Albert Museum
49. Wallace Collection

