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## FROM BEDKNOBS AND BROOMSTICKS TO FINE ARTS AND FURNISHINGS: DEVELOPMENTS IN CONDITIONAL EXEMPTION CLAIMS FOR HISTORICALLY ASSOCIATED OBJECTS

The exemption for works of art has been with us in one form or another since 1896, only two years after Estate Duty appeared on the Statute Book. Both practitioners and the various bodies on the 'official side' are therefore relatively familiar with the legislation and the way in which it is implemented, the current incarnation taking the form of section 31(1)(a) and (aa) of the Inheritance Tax Act 1984. There is, however, a second category of chattels for which conditional exemption may be claimed, and these are defined – if that is not too strong a word – at IHTA s 31(1)(e):

any object which in the opinion of the Treasury is historically associated with such a building as is mentioned in paragraph (c) above.

And para (c) reads:

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; and...

These objects are generally known as Historically Associated Objects (HAOs) and will be so abbreviated in this article.

In ten years with the Heritage Team at HM Revenue & Customs I became very familiar with claims for HAOs and worked closely with the National Collections Team at English Heritage, based in York. Since joining Christie's, however, it has been my experience that while practitioners are relatively familiar with claims for pre-eminent chattels, they are less so with claims for historical association. Further, there have been some significant developments in this area in recent years to the extent that a practitioner who had made a

successful claim ten or even five years ago would find that its treatment by HMRC and English Heritage now would show some significant differences.

This article seeks to outline the criteria for and handling of such claims at present although, at the time of writing, they have themselves recently become the subject of further discussion among the HMRC Heritage Team, its advisers (including English Heritage and Arts Council England) and its stakeholders (including the Historic Houses Association (HHA), the Heritage Lawyers Group and the major auction houses). Clearly, therefore, this article will need to be followed by a Part Two in a future issue when I hope to report on the outcome of those deliberations.

In Part One I will examine:

- the background to the legislation
- the outline requirements for a claim
- the role and strategy of English Heritage especially with regard to Collections Management Plans (CMPs)
- the 'monitoring' regime for HAOs.

In Part Two, I will look at:

- the criteria for historical association
- public access and publicity compared to that for pre-eminent chattels
- tax charges and associated property – whether the sale or disposal of a single item in an HAO collection may bring about the fall of the exemption on the entirety
- a summary of the regimes for pre-eminent chattels and HAOs.

### EARLY CLAIMS FOR HISTORICAL ASSOCIATION AND CURRENT GUIDANCE

Finance Act 1975 extended the protection afforded by conditional exemption to outstanding buildings and to collections of objects historically associated with them. In the 1970s and 1980s many owners took advantage of the new legislation to claim CE on their houses and contents and, following high profile sales such as that at Mentmore, HMRC and its advisers English Heritage implemented the claims

enthusiastically. Now, 30 years on, re-exemption is being sought for some of these collections. After three decades of experience in implementing the legislation, the procedures for making claims have become more established, leading to much quicker resolution. On the other hand, some practitioners have detected unwillingness on the part of the 'official side' to step outside criteria which make no appearance in the statute and originally started life as guidance or 'rules of thumb'.

For example, I was involved last year in a claim for, among other things, the library in a country house going back nearly two hundred years. The entire collection was described in a single line in the schedule attached to the undertakings signed in the early 1980s. This was not at all uncommon at the time but HMRC and English Heritage have, in more recent times, taken the perhaps not unreasonable view that they will not designate property for exemption until they know what it is. Owners seeking exemption or re-exemption for historically associated collections must therefore be prepared to offer documentation to a professional standard in which each item is described and catalogued. In the case of re-exemptions it can be a long and complex task to identify what was exempted a generation ago in order to present a new claim, and, indeed, for an owner to establish just what he or she owns!

Because HAOs must be linked with an 'outstanding' building and the assessment of the exemptions on those buildings is the responsibility of English Heritage, it is that body (or the equivalent body in the other home country advisory agencies) which also has the task of advising HMRC regarding claims for HAOs. This is the background to what some may see as the formidable documentary requirements set out in the English Heritage publication *Historic House Collections: Drawing up a Collections Management Plan: Guidance notes*.<sup>1</sup> The publication of these notes in 2010 was the culmination of a process lasting several years in which the views of English Heritage developed and their requirements changed, sometimes more than once, as I (and the owner's agents) discovered during the handling of one particularly large claim.

The notes cover:

- the inventory that is required to document the collection
- the Collections Care Plan for, in the words of the statute, 'the maintenance, repair and preservation of the property' and 'keeping it associated with the building concerned'
- public access
- future development of the collection.

Potential claimants under the Historical Association heading need to be aware, therefore, that the lodging of the claim is only the start of the tax deferral process. To maintain the exemption the collection will need to be curated in a professional manner and inspections will be carried out to ensure that it is. This aspect is discussed below.

#### REQUIREMENTS FOR THE CLAIM

In considering whether to make a claim under Section 31(1)(e) there are four requirements to bear in mind:

- an 'outstanding building'
- a collection that is 'historically associated' with it
- a plan to conserve the collections
- the provision of public access and the publicity thereof.

It is essential to appreciate that the potential HAOs must be located at 'a building of outstanding architectural or historical interest' and almost invariably displayed therein or very nearby. The criteria for such a building are assessed by English Heritage as those listed Grade 1 or 2\*. This is the architectural counterpart to pre-eminent chattels.

It is perhaps worth noting at this point that listing criteria are based primarily on architectural criteria and only incidentally on historical ones. Thus a modest Grade 2 building and its contents of considerable historic interest – for example a property such as Elgar's birthplace and contents assembled by the composer and his family – would not presently qualify for exemption under historical association. It may therefore be argued

that the statute is not being implemented as Parliament intended, though it should be acknowledged that, so far as I am aware, few if any collections of outstanding historic interest have been dispersed as a result. Whether that position will change as a result of the current discussions will have to wait until Part Two.

On the other hand, the ownership of the building and the collection do not have to be identical. The HMRC Heritage website displays a number of privately owned collections located at National Trust properties, for example.

Having identified those objects that might qualify as 'historically associated', the next thing is to draw up a detailed inventory, consider how the objects are to be conserved and public access provided. As indicated above, the criteria for historical association are currently the subject of discussion and so will be examined in Part Two.

Before going further, however, it may be worthwhile to discuss the role of English Heritage in the process and its approach to CMPs since it advises HMRC on both the initial claim and the subsequent maintenance of it. The Guidance in respect of CMPs is designed specifically for owners of Historic Houses since particular factors relate to the buildings in which the objects are located – not least that the building is lived in and the objects may actually be in use!

On receipt of the claim documentation the English Heritage National Collections team (or equivalent body in the other home country advisory agencies) will arrange to visit the owner at his house and conduct a basic conservation and risk audit. Because most collections comprise a large quantity of objects, this will normally be on a sample basis. English Heritage will then produce an indicative risk assessment and condition audit on a sample of the objects as the basis of their report to HMRC. If relatively few objects are in point then they may proffer specific advice, but otherwise they may recommend that the owner commission a CMP. On the whole, it will be for the owner to commission suitable advice. EH can refer them to a Preventative Conservator experienced in producing historic

house CMPs (a list of which can be found on the following Conservation Register website: [www.conservationregister.com/Plcon-CollectionsCarePlan.asp](http://www.conservationregister.com/Plcon-CollectionsCarePlan.asp) However, CMPs are by no means recommended in every case.

The initial condition audit and risk assessment is then used to create a Conservation Care Plan which is implemented over a period of years. The whole document is designed to look at the Collection from a holistic point of view in the same way that a surveyor would be employed to create a preventative conservation strategy for a building.

The Guidance Notes (and the English Heritage officials with whom I have worked) explain that the basis of the English Heritage strategy is prevention. They find that some owners pursue conservation strategies which may be rigorous but are often reactive and do not always address the most significant risks, whether in the environment or as a result of disaster. They emphasise that a preventative rather than a reactive or interventionist strategy will almost always be more cost-effective, although they admit that it does require a capital outlay up front. They also acknowledge that the measures they recommend must be proportionate to the size and nature of the building and its collection.

Ultimately, the question as to whether to go down the conditional exemption route is one the owner must judge. Many of the larger collections, such as those in National Trust properties, will already benefit from professional curatorial skills. The owners of others, perhaps in houses that are not open to the general public, may be more used to a traditional approach based upon their own knowledge of the objects and the building.

Nevertheless, while the costs of commissioning and implementing a CMP may appear unwelcome, given that owners may be faced with, say, opening their house to the general public, it is a process that may offer an opportunity to explore problems that might not otherwise have come to light.

Clearly, therefore, all owners of HAOs and aspiring claimants should read the EH Guidance Notes on the subject.

## THE COLLECTION INVENTORY

In its standard letter about the requirements for making a claim for a historically associated collection HMRC (vice EH) asks for

1. A copy of an inventory in an electronic spreadsheet format 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. This should be accompanied by a floor plan with room names consistent with those used in the inventory showing the route visitors would take; and
2. A spreadsheet listing all the items in the claim which English Heritage can use to populate their own database. The fields required are: Owner's Identification Number; Room/Location; Category; Description; Dimensions; Condition; Conservation Treatment or Repair; Cross-reference; Photo.

The letter continues:

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 inspections. 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.

Two points arise here:

- the request for photographs to support the inventory which is self-explanatory; and
- the provisions of the 'monitoring' regime.

Owners of important buildings and landscapes that have been designated for conditional exemption will be familiar with the inspections carried out by HMRC's advisers in the form of English Heritage, Natural England and their equivalents in Scotland, Wales and Northern Ireland. On the other hand, once pre-eminent items have been designated for conditional exemption, HMRC will simply issue a brief questionnaire every five years or so.

For their part, owners of collections of HAOs will receive an inspection by curators from EH every five years and be expected to show how the CMP is being implemented and developed for the future.

It should therefore be noted that while the criteria for historical association might permit any number of bed knobs and broomsticks—and other low value items—to be included in the claim, owners should bear in mind that the costs of documenting and maintaining the exemption may outweigh the value of the tax deferral.

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## IN PART TWO...

We hope that decisions will have been reached in respect of the criteria for historical association and I shall discuss these. I will also cover the aspects of publicity, associated property, tax charges and provide a summary.

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1. The Guidance on this subject is available from the English Heritage website [www.english-heritage.org.uk/publications/historic-house-collections-management-plan/drawing-up-collections-management-plan.pdf](http://www.english-heritage.org.uk/publications/historic-house-collections-management-plan/drawing-up-collections-management-plan.pdf)