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# Gifts of pre-eminent objects and works of art to the nation:

response to consultation

December 2011

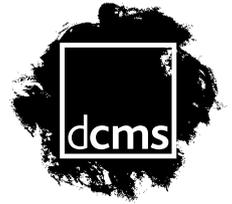




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# 1

## Introduction

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**1.1** The Government announced at Budget 2011 that a consultation would take place on a scheme that would provide a tax reduction to people who, during their lifetime, donate works of art or historical objects of pre-eminent importance to the nation.

**1.2** The scheme forms part of a wider package of measures also announced at Budget 2011, to support philanthropy, encourage charitable giving and reduce the administrative burdens on charities. The aim of this new scheme is to stimulate lifetime giving by encouraging taxpayers to donate pre-eminent objects, or collections of objects, to the nation. In return, donors will receive a reduction in their tax liability based on a set percentage of the value of the object they are donating. The Government anticipates that this new scheme will appeal to owners of objects and collections who want to see them placed in appropriate institutions during their lifetime, and to be held for the future enjoyment of the public.

**1.3** A consultation paper, Gifts of pre-eminent objects and works of art to the nation<sup>1</sup> was published on 29 June 2011 and the consultation closed on 21 September 2011. The consultation sought views on a number of areas such as:

- who should be eligible to apply under the new scheme;
- how to define “pre-eminent” and how these objects will qualify for the new scheme;
- acceptance of offers;
- which institutions will be eligible to receive objects;
- how objects should be allocated to institutions;
- what conditions should attach to objects allocated to institutions;
- how the tax reduction should be calculated; and
- whether there should be a cap on the amount of tax reduction per object or per donor (or both).

**1.4** There were a number of policy areas that were out of scope for the consultation such as

- whether an object could be donated to a charity or other body instead of to the nation;
- limiting the annual cost of the scheme;
- the basis for computing the tax reduction as a set percentage of the value of the object (and not, for example, the donor’s marginal rate of tax); and
- limiting the scope of the scheme to pre-existing objects and moveable objects.

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<sup>1</sup> [http://www.hm-treasury.gov.uk/d/consult\\_gifts\\_of\\_art.pdf](http://www.hm-treasury.gov.uk/d/consult_gifts_of_art.pdf)

## General Responses

**1.5** We received 54 written responses from museums, galleries, archives, auction houses, representative bodies, legal/accountancy firms and from devolved administrations. In addition to these written responses a number of meetings took place with a working group set up to discuss the broad principles of the scheme. A list of respondents to the consultation is contained at Annex A. The consultation team wishes to thank all those who responded to the consultation. We recognise the time and effort that went into the contributions we have received and as a result this feedback has been used in the further development of the scheme.

# 2

## Responses

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**2.1** This chapter summarises the responses received during the consultation. It should be read in conjunction with the consultation document in order to put the comments into context. The consultation document focused on a number of design issues on which it sought views.

### General comments

**2.2** Overall respondents welcomed the scheme and the opportunity to comment on the details of the proposal. Most of the respondents felt that the scheme was heading in the right direction but they expressed concerns about some of the details of the scheme particularly in relation to ownership and the implementation of a funding limit. Museums, galleries and libraries were pleased that this scheme was being proposed and felt that it could encourage a more culturally diverse range of objects being donated. Some suggested that in the long term this scheme could increase the attractiveness of the UK as a cultural tourism destination.

**2.3** Several of the respondents recognised

- the need to keep the scheme as simple as possible so that the administrative burden was kept to a minimum for the donor, panel and government departments;
- that the issue of funding was difficult in the current economic environment;
- that this was a new scheme and it could be helpful to review its progress and balance over the first few years.

**2.4** Most of the concerns regarding this policy centred on a few key issues.

- Ownership of the objects – most of the respondents were concerned that many potential donors would not use this scheme if the nation retained ownership of the objects donated. Museums also commented that it would prove difficult to build up appropriate relationships with donors to encourage them to use the scheme.
- Implementation of an annual funding limit to apply to both this scheme and the Acceptance in Lieu (AiL) scheme – the majority of respondents were concerned that such a limit could result in items being lost to the nation, impact on the successful operation of the existing Acceptance in Lieu Scheme and, as there would be an element of competition between the two schemes for the same funding, it could potentially dissuade donors from considering the scheme.
- The rate of the proposed tax reduction – the consultation paper had suggested a rate of 25 per cent for illustrative purposes. Most felt that the rate would be too low and many made comparisons to programmes run in other countries and the rates they apply.
- Not all owners of pre-eminent objects have high enough incomes to use the tax reduction in one year - many respondents suggested there should be the option of rolling unused amounts of the tax reduction forwards or backwards.
- Allocation of an item – most respondents felt that the donor should be able to place a binding condition on where the item should be held and displayed.

**2.5** As a result of further development work and the feedback received through this consultation the Government has made the following changes to the scheme

- 1 The total annual limit for the new scheme and the existing Acceptance in Lieu scheme will be increased from £20m to £30m.
- 2 Objects will still need to be gifted to the nation. However, in most cases ownership will be transferred permanently to the receiving institution, subject to a number of conditions. Donors may state a preference as to which institution the item is allocated but this will not be binding.
- 3 Individual and corporate donors will initially be able to participate in the scheme. Those operating in the capacity of a personal representative or as a trustee will not.
- 4 The tax reduction will be set at 30 per cent of the value of the object for individual donors and at 20 per cent for company donors.
- 5 Individuals donating under the scheme will be able to spread their tax reduction across up to five tax years (including the year the offer of the gift is registered). The details of how the tax reduction is to be applied must be agreed as part of the offer process. Once the offer is final it cannot be renegotiated. Company donors must use the tax reduction in the accounting period in which the offer is registered.
- 6 Non-domiciled and not ordinarily resident donors who use the remittance basis of taxation who give an object under this scheme, where the object is derived from untaxed foreign income or gains, will not be subject to tax when the object is remitted to the UK.
- 7 Where an object is subject to a Conditional Exemption inheritance tax (IHT) charge and the object is given to the nation under this scheme, the IHT that would otherwise become due will not be payable.
- 8 Where an object is subject to a deferred Estate Duty charge and is given to the nation under this scheme the Estate Duty that would otherwise become due will not be payable. However, because the rates of Estate Duty were high, in order to ensure there is a significant element of philanthropy in relation to such a gift, the donor will not receive a tax reduction.

## The questions asked in the consultation paper prompted the following responses.

### Question 1: Should the new scheme accept gifts only from individual donors? If so, why? Or should the new scheme be open to other donors including corporate bodies? Why?

#### Responses

#### There were 43 responses to this question

**2.6** The majority of respondents thought that the scheme should be open to as many donors as possible and there was a particular emphasis on allowing corporate bodies to participate. It was suggested that if corporate bodies could donate items through this scheme significant business archives could be made available to the public. Some respondents commented that some owners of historic houses may have transferred property and contents into limited companies for the purposes of running the property as a visitor attraction. Other companies may have chosen to invest in works of art or antiques and small publishers, literary agents, theatre companies, and others, might find the new scheme attractive.

**2.7** A number of respondents advocated including as many types of donor as possible as this could potentially increase the quality and number of donations. These respondents did however highlight the tension between broadening the scheme and the pressure on the funds available for both this and the AIL scheme.

**2.8** Some respondents thought that including companies at this stage would over complicate the scheme. Others felt that the scheme should be about lifetime giving and that allowing corporate donations under the scheme did not sit well with that objective.

**2.9** Many of the respondents said that individual creators of pre-eminent objects should be allowed to donate their objects under the scheme.

**2.10** Fewer comments were made as to whether trusts and personal representatives should be able to participate in the scheme. A number of the respondents recommended that the scheme should be open to these donors and provided examples of where objects were held in trusts for reasons of asset protection and family succession planning. Other respondents agreed in principle that trusts and personal representatives should be able to donate objects through the scheme. However, they felt in practice that trusts would be unlikely to make donations under the scheme owing to the constraints on trustees making donations out of trust assets, and that legislation might be passed that would rarely if ever be used.

**2.11** Other suggestions made by respondents were that the Government should consider extending the scheme to corporate donations of cash towards the purchase of pre-eminent works, and also that there should be a separate scheme for large companies to prevent this scheme from being dominated by donations from major company collections.

#### Government response

Based on the feedback received through the consultation process the Government has decided that as well as individual donors, companies will be able to donate an object to the nation under this scheme. There is uncertainty about the demand for the scheme and extending the scheme to other types of donors such as trustees and personal representatives would require more complicated legislation that may not be necessary. The Government has therefore decided not to extend the scheme to trustees and personal representatives.

## Question 2: How many donors do you think might be interested in the new scheme?

### Responses

There were 27 responses to this question

**2.12** Some respondents felt that the scheme as proposed in the consultation paper did not provide a sufficiently large enough incentive to increase the number of donors or donations already made without a Government incentive. Others felt that having to share limited annual funding with the Acceptance in Lieu scheme would deter some donors from donating through the scheme.

**2.13** Other respondents commented that the scheme would attract writers wanting to be able to make arrangements for their archives during their lifetimes, and if this scheme provided the donors with the right incentives such donors would actively participate in this scheme. Other respondents considered the scheme could appeal to several hundred potential donors. They also noted that many companies have significant collections and would be attracted to the scheme if the right incentives were in place. Other respondents suggested that this scheme could provide owners of pre-eminent collections with a way of protecting their collections without having to break them up and sell them.

**2.14** Other comments from respondents suggested that the current wording of the scheme indicated a strong pre-disposition towards art, manuscripts and furniture and that the Government should emphasise the importance of heritage both in the Acceptance in Lieu scheme and the proposed new scheme to reflect the full scope of the UK's cultural history.

#### Government response

As the guidance is developed the Government will ensure that there is a clear understanding that this scheme has a wide cultural application and is about more than works of art. The Government will keep the scheme under review, and this will be one of the issues that will be monitored to see if any changes to the scope of the scheme are needed.

## Question 3: Do you agree that pre-eminent objects should be defined for the new scheme in the same way as for the existing IHT AIL scheme? If you don't agree, what criteria or guideline would you add to, or exclude from, the list, and why?

### Responses

There were 43 responses to this question

**2.15** The majority of responses agreed that the definition of pre-eminence used in the Acceptance in Lieu scheme should apply to this scheme and that there is sufficient flexibility in the existing definition for it to apply to gifts under this scheme. Some of the respondents also stated that to have different definitions would make it harder to manage the two schemes.

**2.16** Some respondents felt that there may be a case for reviewing the definition after the scheme becomes operational owing to the uncertainty as to what objects might be offered under the scheme. Several respondents felt that although it would be right to use the current definition the expert panel would need to ensure that it was capable of dealing with new formats of objects that would form part of more recent pre-eminent collections. Other respondents commented that local pre-eminence is a factor in the existing Acceptance in Lieu criteria and would like the new scheme to ensure that due prominence is given to local factors so that regional museums with designated collections can be major beneficiaries of the scheme.

**2.17** One respondent suggested that the opportunity should be taken to specify archives rather than just manuscripts within the definition and another respondent commented that steps should be taken to ensure that this scheme was not perceived as being entirely focused on art, suggesting the new scheme should be renamed “Gifts of Pre-Eminent Heritage Objects to the Nation.”

**2.18** A few respondents suggested that a new definition could be introduced that was more closely aligned to the old conditional exemption test of “museum quality” (works of a suitable standard for local or regional museums) that was removed in 1998. They felt such a definition would increase the number of lower value, but still significant, objects that could be accepted. However, they acknowledged that there would be a real risk of causing confusion with two tests, resulting in practical problems and increased administrative costs. Other respondents suggested there should be a minimum value for objects offered under the scheme to ensure that the administrative costs in establishing pre-eminence are not disproportionate to the value of material gifted.

**2.19** One respondent suggested that, bearing in mind the increase in devolved powers over the last few years, the definition and processes of both schemes should formalise the Scottish representation on the panel that recommends allocation and including Scottish factors in the selection criteria for expert advisers.

#### **Government response**

Based on the comments and feedback received the Government has decided to apply the Acceptance in Lieu definition of a pre-eminent object for the new scheme. This will ensure consistency across the two schemes.

### **Question 4: What kind of objects might persons be interested in donating under this new scheme?**

#### **Responses**

#### **There were 32 responses to this question**

**2.20** Those who responded to this question expected that a very broad range of material would be donated, ranging from high value objects that are pre-eminent in their own right to low value objects whose heritage and cultural value derives from their association with a particular place.

**2.21** Respondents felt that, depending on the level of the incentive, living artists might make use of the scheme possibly resulting in a greater proportion of modern and contemporary works being offered than under the Acceptance in Lieu scheme. One respondent cautioned that it would be important to accept such objects only from artists who have already achieved “blue chip status” to ensure the objects would continue to be seen as pre-eminent in the longer term. A small number of respondents suggested that the scheme should be widened in scope to include the donation of shares in a family company set up to preserve historic objects or buildings.

**2.22** Respondents felt the key to getting donors to come forward and make the scheme a success would be in how it was promoted and to ensure that the incentive is appropriate. It was also felt that promotion of the scheme would be important in ensuring potential donors realise that a wide range of cultural objects and collections will fall within the scheme provided they can meet the criteria for pre-eminence. For example, people may not necessarily realise that their archives and manuscripts would be considered to be objects under the scheme. Respondents were also keen that any promotion to donors ensured that they were aware that items may be pre-eminent in a local or regional context and will **not** necessarily be judged by reference to the UK as a whole.

### Government response

Officials will work closely with relevant bodies and organisations to ensure that the guidance is clear for everyone, particularly potential donors. The guidance will make clear that objects can be deemed as pre-eminent in a local or regional context.

This scheme is predominantly about encouraging lifetime giving of pre-eminent objects while bolstering the UK's cultural heritage. The Government considers widening the scheme to include gifts of shares in a family company set up to preserve historic objects or buildings would fall outside the spirit of the scheme and complicate it unnecessarily.

### Question 5: If you think the new scheme should not be operated on a first come, first served basis, please explain why. If not on a first come, first served basis, how do you think the expert panel should prioritise the offers of gifts of pre-eminent objects if the value of gifts is over the annual limit?

#### Responses

#### There were 41 responses to this question

**2.23** There were a range of responses on whether a first come, first served approach or setting specific points in the year, creating a pool of offers, to assess offers of gifts under the scheme would be the best approach.

**2.24** Some of those respondents who were in favour of a first come, first served approach commented that, given the alternatives, the first come, first served approach appeared to be the least complex option. It would also be better aligned to the process for considering offers under the Acceptance in Lieu scheme. However those respondents who said that this was their preferred approach recognised the risk of the annual limit being used up on a small number of high value items earlier in the year.

**2.25** Respondents suggested a number of potential ways to mitigate the impact of the first come, first served approach. For example, the expert panel could indicate to potential donors who were applying later in the year whether there would be funding available for the object and, if an application could not be accepted in that year, considering whether the donor's offer should be prioritised in the next year. Other suggestions included allowing the tax reduction to be carried backwards or forwards to manage the limit more effectively and to increase the funding for the scheme. Some of the respondents who suggested increasing the funding available for the scheme recognised the difficulty of doing this in the current economic climate.

**2.26** Other respondents felt that a first come, first served approach lacked flexibility and felt that there would be a risk that important objects may be lost if the scheme were over-subscribed early in the year. Many respondents were concerned that a first come, first served approach could have a detrimental effect on the current Acceptance in Lieu scheme, which could mean less important objects being accepted instead of more important objects offered later in the year, simply because of the accident of timing.

**2.27** Some respondents advocated a pooling of offers either at set points in the year or once a year to allow a more flexible and strategic approach to the expert panel's considerations. Some respondents felt that this would allow the panel to acquire the best pre-eminent objects being offered either through the Acceptance in Lieu scheme or the new scheme to encourage gifts of pre-eminent objects.

**2.28** A number of respondents noted that both options had pro and cons. For example, some donors may not wish to wait for the opening of a new pool. On the other hand, people may put

in their offers as soon as the new tax year begins to ensure that their application is considered. A common observation from respondents was that both options of first come, first served and a pooling system run the risk of there being insufficient funds to accommodate high-value objects.

### Government response

Strong cases have been made for both approaches and as respondents have indicated there are advantages and disadvantages to each approach. The process for considering offers will be set in guidance. At present the Government is minded to apply initially a first come, first served approach while gauging demand for the scheme.

## Question 6: Which institutions should the objects be loaned to? Should this differ from the institutions that can currently be allocated objects under the existing IHT AIL scheme, and if so, why?

### Responses

There were 24 responses to this question

**2.29** The majority of respondents felt that the current list of institutions which could be allocated items under the AiL scheme is broad enough for the successful implementation of this scheme.

**2.30** A number of respondents had some specific comments in regard to archives and manuscripts. In particular, they felt that archive and manuscript material should be available for study, not just display and so allocations of such material to museums or historic properties that are not able to offer such facilities may not always be appropriate. Respondents also commented that any record repository approved by The National Archives or appointed as a Place of Deposit for Public Records should be eligible, together with any institution which has subscribed to its Standard for Record Repositories. Other respondents also commented that local authority record offices, university libraries and special collections departments should also be included. One respondent also suggested that, in Scotland, the “Recognised Collections<sup>1</sup> and the National Collections” should also be included on the list of institutions where items could be allocated.

**2.31** A number of respondents suggested that the allocation of items should not necessarily be based on the number of people that may visit a specific institution but should be allocated to institutions associated with the type of the objects being displayed, so that they can be appreciated in their historic and cultural context.

**2.32** Other comments from respondents included the need for a donor to be able either to nominate an institution or express a non-binding wish on where the object should be held. Respondents also highlighted the need for the scheme to be well advertised so that potential donors will be encouraged to consider nominating smaller museums in areas which have a connection with an object.

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<sup>1</sup> ‘Recognised Collections’ are held by local authorities, universities and independent trusts, funded by the Scottish Executive and managed by the Museums Galleries Scotland.

### Government response

The Government has decided to continue to allocate objects to institutions that are currently allocated objects under the Acceptance in Lieu scheme. This will help the panel to operate the new scheme alongside the current Acceptance in Lieu scheme. The Government is conscious that the new scheme may attract a range of objects, particularly contemporary items and archives and may need to assess whether the current list of institutions is broad enough to accommodate these objects to best effect for the benefit of the public.

### Question 7: Do you agree the expert panel should follow the AIL process when it asks for applications from interested institutions for the allocation of an object? If not, what processes should be used?

#### Responses

There were 37 responses to this question

**2.33** The majority of respondents strongly felt that the expert panel should follow the existing process for Acceptance in Lieu and, in most cases, that the Acceptance in Lieu panel should be used for both schemes. There were a range of reasons for this including consistency, efficiency and clarity. Many of the respondents were familiar with the Acceptance in Lieu process and the general operation of the AiL panel. They suggested that the existing panel may need more support and a broader pool of experts to draw upon to deal with the increase in offers and the different type of objects that may be offered under the scheme, particularly contemporary objects. One respondent also commented that there was a need to ensure that all devolved countries of the UK were fairly represented in the administration and outcomes of the new scheme.

**2.34** A number of respondents noted that donors would want to state where their object would be allocated. A number of examples were provided where living artists have given items to specific institutions because of their connection to that particular place. Respondents felt that where a donor expresses a wish that a specific institution should hold the object, the panel should uphold that wish. The respondents considered the panel should only seek applications from institutions to hold the object if the donor did not express a preference.

**2.35** One respondent suggested that the expert panel should accept objects on its own behalf rather than recommend approval to the Secretary of State for Culture Media and Sport, or other Minister, this would result in quicker decisions which would provide greater certainty for donors.

### Government response

The Government has decided that the new scheme will be administered using broadly the same processes that are used for the Acceptance in Lieu scheme. In particular, the processes will be managed by the Acceptance in Lieu panel, appropriately expanded to deal with more contemporary objects, using the Acceptance in Lieu processes for determining pre-eminence and allocating objects to institutions. This will make the best use of the people who are already familiar with the cultural and heritage environment and will ensure consistency between the two schemes. The Secretary of State for Culture, Media and Sport, or the relevant Minister in Scotland, Northern Ireland or Wales, will make the final decision on whether to accept an object, based on the recommendation of the expert panel.

## **Question 8: What other conditions should be attached to the lending of objects? What level of public access should there be? How should public access be ensured?**

### **Responses**

**There were 41 responses to this question**

**2.36** There were a range of views expressed by respondents. All respondents agreed that public access will be important.

**2.37** Some respondents thought the general conditions the Acceptance in Lieu panel would normally use would be appropriate. Others suggested that the general conditions should be the bare minimum and should be improved upon. One respondent suggested that there should be a specific requirement that the institutions will make the objects available to the general public for viewing. They felt that at least 150 days of public access each year would be appropriate. Another respondent felt that 100 days would be reasonable because museums with large collections cannot always guarantee permanent display of objects and this should not disadvantage them if the object is most appropriate for their collection.

**2.38** One respondent stated that the level of public access should be a matter of individual negotiation though there would need to be evidence of a genuine desire by the host organization to ensure reasonable access throughout the year. Another respondent stated that public access was a priority but did not want the scheme to impose constraints and restrictions on the operation of bodies that have been established with access as part of their core purpose. They were concerned that additional requirements could be prohibitively burdensome and bureaucratic to comply with and monitor.

**2.39** In relation to archives and manuscripts a number of respondents suggested that physical access could be provided by regular public display or by straightforward access to an existing and well established regularly open study room or open store.

**2.40** A number of respondents noted that the definition of public access should not be too limited to the concept of an object being "on display" in a world that is becoming increasingly digital / virtual and that there are other ways of making an object accessible.

**2.41** The majority of respondents noted that there could be tension between conservation and public access and that any condition in relation to public access would need to give institutions the flexibility to protect fragile items on a case by case basis.

**2.42** Respondents also suggested a range of other conditions:

- Recipient organisations should be required to offer interpretation of the object or work of art as well as give access to it, so that audiences can learn from the object as well as see it in a public institution;
- Objects should be kept to an acceptable standard;
- For archives and manuscripts, on-line catalogues should be kept through a library's own website or through Access to Archives, the Location Register or other co-operative sites as this will help to disseminate information about donated manuscripts and archives;
- Conditions should follow the standards of care as set out in the Accreditation Scheme for Museums in the United Kingdom;
- The recipient museum should agree to meet all reasonable loan requests for public display in temporary exhibitions from other accredited museums; and

- Archives or objects gifted to the nation under the proposed scheme should not be allowed to be sold, transferred or otherwise disposed of, by the allocated institution. If an institution finds itself unable or unwilling to care for a donated archive and makes it inaccessible to the public, the archive should be surrendered and reallocated.

### Government response

Given the range of responses on this issue, the Government has decided that the conditions applied to objects donated under this scheme will mirror those under the Acceptance in Lieu scheme.

## Question 9: What rate of an object's value do you think would be sufficient to encourage donors to give objects to the nation, and why?

### Responses

There were 41 responses to this question

**2.43** Respondents generally felt that the proposed reduction of 25 per cent based on the market value of the object was too low. Respondents have commented that the tax reduction needs to be sufficiently large to encourage new donations, rather than to just confirm an existing wish to donate an item to the nation. A number of respondents also suggested that a lower rate of tax reduction was likely to be a disincentive to donors, especially as some will be aware of more generous rates available in other countries. Some respondents provided examples of other countries that provide a higher rate for the donation of cultural objects.

**2.44** A number of respondents suggested that the rate of reduction should be the same as is available when listed shares are donated to charities. Some respondents also suggested that the tax reduction should be aligned with the rate of relief on gifts of money under Gift Aid. Other suggestions included linking the tax reduction to the donor's marginal rate of tax, which the respondents assumed would be the higher or additional rate of tax of 40 per cent or 50 per cent. Respondents noted Sir Nicholas Goodison's 2004 Review which recommended that if a relief is given then it should be set at the donor's highest marginal rate of tax.

**2.45** A number of respondents commented that applying a tax reduction based on a donor's marginal tax rate would be more complex and for this reason favoured a flat reduction percentage. Other respondents commented that though a marginal rate would be more complex to administer this was not an insurmountable issue.

**2.46** When considering what percentage of the value of the object as a tax reduction would be attractive to donors, respondents' views ranged from 30 – 75 per cent. One respondent said that the 25 per cent already suggested was a good starting point however this was heavily caveated and they suggested that the percentage would need to be reviewed on a regular basis. They also felt that in exceptional cases, a higher rate should be offered. The respondent who suggested the rate of 75 per cent, based this view on the need to provide a strong incentive to persuade donors to feel that they are getting sufficient financial return on their gift rather than relying too heavily on the 'warm glow' of philanthropy.

**2.47** Many of the respondents recognised that increasing the percentage of the tax reduction would lead to the scheme exhausting its funds earlier than if it was set at a lower rate. However some respondents considered that it would be preferable for the scheme to be a success from the outset and be potentially over-subscribed.

### Government response

The Government accepts that there must be enough of an incentive to encourage more donations above and beyond what would normally have been given to institutions without the tax reduction. To achieve this the Government has decided, in addition to exempting the gift of the object from capital gains tax, to:

- increase the tax reduction for individuals to 30 per cent;
- allow individual donors to spread the tax reduction across up to five tax years – the terms of the reduction will be agreed during the offer process and, once agreed, will be irrevocable;
- drop the charge to inheritance tax that would otherwise arise on the gift of objects that are subject to a conditional exemption charge;
- drop the charge to Estate Duty that would otherwise arise on the gift of objects where there is a deferment of Estate Duty. However a tax reduction will not be given. An Estate Duty charge can range from between 40 per cent and 80 per cent of the market value of an object. If the Estate Duty is set at 80 per cent and the donor was also given a tax reduction of 30 per cent of the value of the object, that donor would not be making a philanthropic gift of the object and this is not in line with the policy objective of this scheme.

**Question 10: If people other than individuals are eligible to make a donation under the new scheme, for example corporate bodies, should a different rate of reduction be used? If so what should the rate or rates be, and why?**

### Responses

There were 32 responses to this question

**2.48** There were varying views in regards to this question. A number of respondents suggested, for simplicity, that the rates should stay the same. Other respondents suggested that if the scheme was open to corporate donors then, as they pay a lower rate of tax than individuals, they should have a lower incentive of 15 per cent. Others suggested the rate should be 25 per cent to ensure that there is a sufficient incentive for companies to donate their corporate archives.

**2.49** It was also suggested that the rate offered should mirror the treatment of cash and listed shares. One respondent suggested that companies should be encouraged to use existing tax reliefs for gifts to charity wherever possible in order to reduce demand on the scheme.

### Government response

The Government recognises that corporate donors pay a lower rate of tax compared with most of the individual donors who are likely to participate in this scheme. As with the rate for individual donors a balance needs to be struck to provide an incentive to corporate donors and therefore corporate donors will receive a tax reduction under this scheme of 20 per cent of the value of the object donated in the accounting period in which the offer is registered.

**Question 11: Should the tax reduction available on each individual object be capped? If so, what should the cap be, and why?**

**Question 12: Should a cap be placed on the amount of tax reduction available per donor? If so, what amount?**

**Question 13: What difference do you think it would make if there was no cap on the overall relief available under the new scheme?**

Responses

There were 34 responses to these questions

**2.50** The majority of respondents felt that there should not be a cap on the tax reduction available in relation to an individual object or to a donor. Most respondents felt that any cap would discourage gifts of the highest quality, which would be detrimental to the success of the scheme. Some respondents noted that the lack of a cap on the tax reduction for a single gift or donor could lead the available funds under the scheme to be exhausted on a small number of items or being monopolised by a few major donors. That in turn could lead to donors becoming discouraged and deciding to sell their objects instead of donating them. It was suggested that, although the scheme should not operate any cap in relation to objects or donors, this should be reviewed when demand for the scheme could be better gauged.

**2.51** Respondents were concerned that if the new scheme is to share an annual limit with the Acceptance in Lieu scheme, and if that limit is not increased, or made flexible, the potential uncertainty may also have an impact on offers under the Acceptance in Lieu scheme. There was particular concern that some living writers, or their beneficiaries after their death, may decide to sell their archives rather than gamble that there would be funding available under the Acceptance in Lieu scheme.

**Government response**

The Government accepts that a cap on the tax reduction available either on an individual object, or to an individual donor, could dissuade donors, discourage gifts of the highest quality and be potentially difficult for the expert panel to manage. The Government has therefore decided that there will be no limits on the tax reduction available for each object or each donor.

**Question 14: Are there any other ways of accommodating gifts of very high value?**

Responses

There were 26 responses to this question

**2.52** Respondents suggested a range of options in answer to this question. One suggestion was whether it might be possible to have a hybrid scheme where part of the value of a heritage asset was sold and part donated, similar to what could happen under the Acceptance in Lieu scheme. It was noted that this option may not be possible as the premise of this scheme is for the donor to gift an item to the nation.

**2.53** The majority of respondents highlighted the benefits of giving donors the opportunity to carry forward any unused tax reduction to future years. Respondents commented that some donors are asset rich but cash poor and this would be a big incentive in donating objects of importance and/or of high value.

**2.54** Another suggestion was that there should be no limit on the funding for this scheme and the Acceptance in Lieu scheme or, if this was not possible, that there should be some flexibility so that in exceptional circumstances objects of high national importance can be accepted even where the funds have been exhausted for that year.

**2.55** Some respondents suggested that the funding limit should be managed over a 5 year rolling period to provide more flexibility for the panel.

#### **Government response**

The Government has decided that whilst the new scheme to encourage gifts of pre-eminent objects will share the overall annual limit with the existing IHT AIL scheme, the total annual limit will be increased from £20m to £30m. Also that individual donors will be allowed to spread the tax reduction they receive under the scheme across up to five years following registration of the object under the scheme.

**Question 15: Impact on individuals and households – the Government would welcome information from advisers or their representative groups about how likely they are to promote this measure and what they expect the take up and the value of the objects donated might be.**

#### **Responses**

**There were 28 responses to this question**

**2.56** The respondents who did respond to this question felt that the scheme would need to be publicised widely to ensure that owners of all heritage assets are attracted by the scheme. In particular they were concerned that owners of archive collections might not realise their collections would be eligible to be donated under the scheme. One respondent stated that the scheme is very welcome and has the potential to be successful so long as institutions are in a position to build up and strengthen existing relationships between themselves and owners, and to bolster the climate of philanthropy. However they felt that institutions would be more likely to invest in the promotion of this scheme if they were likely to obtain permanent additions to their collections as a result.

**2.57** Those respondents who were accountants, agents or representative bodies for these groups commented that they / their members would advise clients of the availability of the scheme as part of the general advice they give. However, given the rate of the tax reduction on offer and the concern that inheritance tax on conditionally exempt objects and Estate Duty on certain objects would become payable they expected few people would make donations through the scheme.

**2.58** The majority of respondents stressed the importance of clear guidance from HMRC, DCMS or ACE to help organisations and agents promote this scheme and one respondent noted that "... it would be helpful to attract wide interest if promotional information is clear about how devolution of cultural matters is addressed at all stages of the scheme."

#### **Government response**

See question 16.

**Question 16: Impact on business and the third sector – the Government would welcome information from advisers or their representative groups on the impact of this measure on charities, museums and other institutions.**

**Responses**

**There were 21 responses to this question**

**2.59** Many of the respondents who answered this question felt that they did not have sufficient evidence to predict the impact of the scheme. Some respondents referred to the Acceptance in Lieu scheme, saying the standard of care of archive material has improved as a result of the conditions attached to the allocation of objects under the scheme. There was a hope that this scheme may have a similar impact.

**2.60** Other suggestions were that the scheme could have a significant impact on the range and quality of objects and art available for the public to enjoy. In the longer term this would increase the attractiveness of the UK as a cultural tourism destination, with associated benefits for the economy. The respondent noted that the level of funding for the scheme would have a significant effect on the impact on the scheme and if there was too little funding this would result in the scheme having a minimal impact.

**2.61** Some respondents referred to living artists and authors who, if the incentive was set at the right level, may offer their archives to the nation, and greatly enrich the resources of the UK's national and university libraries and record offices.

**2.62** One respondent noted that there would be the potential for the value of historical archives to be recognised more widely. However this could lead to a greater perception of the value of archives which could lead to a need for increased security around archives to prevent theft.

**Government response**

The Government greatly appreciates the information that respondents have provided and will work with the various bodies to provide clear and simple guidance that can be used to promote this scheme. The Government will also monitor the scheme and its effectiveness, and will continue to work with various groups to make this a successful philanthropic scheme.

# 3

## Next steps

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**3.1** Draft clauses covering the implementation of this scheme to encourage gifts to the nation of pre-eminent objects will be included in Finance Bill 2012, and explanatory notes giving further details of the draft legislation are being published at the same time as this document <http://www.hmrc.gov.uk/budget-updates/march2011/index.htm>. Draft guidance providing an outline of the scheme and how it will be operated is also being published and can be found on the DCMS website. The Government would welcome your comments on the draft legislation by 10 February 2012 and these can be sent by email to:

`budgetexternal.mailbox@hmrc.gsi.gov.uk`

or by post to:

Consultation on gifts of pre-eminent objects  
Room G67  
100 Parliament Street  
London  
SW1A 2BQ





# List of stakeholders consulted

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## The consultation team received written responses from the following:

Acceptance in Lieu Panel

Archives and Records Council Wales

Art Fund

Arts and Business

Arts Council England

Association of Independent Museums

Bircham Dyson Bell

Bodleian Libraries

Bootle Hadfield

British Art Market Federation

British Library

British Museum

Charity Tax Group

Christie's

Chartered Institute Of Taxation

Contemporary Art Society

Courtauld Institute

Crowe Clark Whitehill

CyMAL: Musuems Archives and Libraries Division of the Welsh Government

Deloitte

European Association for Philanthropic Giving

Estates Business Group (Tax Committee)

Edward Manisty

Federation of Museums & Art Galleries of Wales

Finers Stephens Innocent

Heritage group of lawyers

Historic Houses Association

Institute of Chartered Accountant in England and Wales  
Institute of Historic Building Conservation  
Institute Of Fundraising  
KPMG  
Law Society  
London Society of Chartered Accountants  
Mishcon de Reya  
Museums Association  
Museums Galleries Scotland  
National Galleries of Scotland  
National Gallery  
National heritage memorial fund and heritage memorial fund  
National Library of Scotland  
National Maritime Museum  
National Museum Directors' Conference  
National Trust  
Scottish Government  
Sir Nicholas Goodison  
Society of London Art Dealers  
Sotheby's  
Society of Trust and Estate Practitioners  
TATE  
The National Archives  
Toby Harris  
Turcan Connell  
UK Literary Heritage  
Wellcome Trust

### **HM Treasury contacts**

This document can be found in full on our website: <http://www.hm-treasury.gov.uk>

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