

Payment of tax by means of donation of heritage items. FA95 s176; FA96 s139 1003.—(1) (a) In this section—

“the Acts” means—

- (i) the Tax Acts of Part 6, Chapter 2 of Part 18 and Chapter 4 of this Part),
 - (ii) the Capital Gains Tax Acts, and
 - (iii) the Capital Acquisitions Tax Act, 1976 , and the enactments amending or extending that Act,
- and any instruments made thereunder;

“approved body” means—

- (i) the National Archives,
- (ii) the National Gallery of Ireland,
- (iii) the National Library of Ireland,
- (iv) the National Museum of Ireland,
- (v) the Irish Museum of Modern Art, or
- (vi) in relation to the offer of a gift of a particular item or collection of items, any other such body (being a body owned, or funded wholly or mainly, by the State or by any public or local authority) as may be approved, with the consent of the Minister for Finance, by the Minister for Arts, Heritage, Gaeltacht and the Islands for the purposes of this section;

“arrears of tax” means tax due and payable in accordance with any provision of the Acts (including any interest and penalties payable under any provision of the Acts in relation to such tax)—

- (i) in the case of income tax, corporation tax or capital gains tax, in respect of the relevant period,
- or

- (ii) in the case of gift tax or inheritance tax, before the commencement of the calendar year in which the relevant gift is made,

which has not been paid at the time a relevant gift is made;

“current liability” means—

- (i) in the case of income tax or capital gains tax, any liability to such tax arising in the year of

assessment in which the relevant gift is made,

(ii) in the case of corporation tax, any liability to such tax arising in the accounting period in which the relevant gift is made,

(iii) in the case of gift tax or inheritance tax, any liability to such tax which becomes due and payable in the calendar year in which the relevant gift is made;

“designated officer” means—

(i) the member of the selection committee who represents the appropriate approved body on that committee where the approved body is so represented, or

(ii) in any other case, a person nominated in that behalf by the Minister for Arts, Heritage, Gaeltacht and the Islands;

“heritage item” has the meaning assigned to it by subsection (2) (a);

“market value” has the meaning assigned to it by subsection (3);

“relevant gift” means a gift of a heritage item to an approved body in respect of which no consideration whatever (other than relief under this section) is received by the person making the gift, either directly or indirectly, from the approved body or otherwise;

“relevant period” means—

(i) in the case of income tax and capital gains tax, any year of assessment preceding the year in which the relevant gift is made, and

(ii) in the case of corporation tax, any accounting period preceding the accounting period in which the relevant gift is made;

“selection committee” means a committee consisting of—

(i) the Chairperson of the Heritage Council,

(ii) the Director of the Arts Council,

(iii) the Director of the National Archives,

(iv) the Director of the National Gallery of Ireland,

(v) the Director of the National Library of Ireland,

(vi) the Director of the National Museum of Ireland, and

(vii) the Director of the Irish Museum of Modern Art,

and includes any person duly acting in the capacity of any of those persons as a result of the person concerned being unable to fulfil his or her duties for any of the reasons set out in paragraph (b) (ii);

“tax” means income tax, corporation tax, capital gains tax, gift tax or inheritance tax, as the case may be, payable in accordance with any provision of the Acts;

“valuation date” means the date on which an application is made to the selection committee for a determination under subsection (2) (a).

(b) (i) The selection committee may act notwithstanding one or more vacancies among its members and may regulate its own procedure.

(ii) If and so long as a member of the selection committee is unable through illness, absence or other cause to fulfil his or her duties, a person nominated in that behalf by the member shall act as the member of the committee in the place of the member.

(2) (a) In this section, “heritage item” means any kind of cultural item, including—

(i) any archaeological item, archive, book, estate record, manuscript and painting, and

(ii) any collection of cultural items and any collection of such items in their setting,

which, on application to the selection committee in writing in that behalf by a person who owns the item or collection of items, as the case may be, is determined by the selection committee, after consideration of any evidence in relation to the matter which the person submits to the committee and after such consultation (if any) as may seem to the committee to be necessary with such person or body of persons as in the opinion of the committee may be of assistance to them, to be an item or collection of items which is—

(I) an outstanding example of the type of item involved, pre-eminent in its class, whose export from the State would constitute a diminution of the accumulated cultural heritage of Ireland, and

(II) suitable for acquisition by an approved body.

(b) On receipt of an application for a determination under paragraph (a), the selection committee shall request the Revenue Commissioners in writing to value the item or collection of items, as the case may be, in accordance with subsection (3).

(c) The selection committee shall not make a determination under paragraph (a) where the market value of the item or collection of items, as the case may be, as determined by the Revenue Commissioners in accordance with subsection (3), at the valuation date—

(i) is less than £75,000, or

(ii) exceeds an amount (which shall not be less than £75,000) determined by the formula—

$£750,000 - M$

where M is an amount (which may be nil) equal to the market value at the valuation date of the heritage item (if any) or the aggregate of the market values at the respective valuation dates of all the heritage items (if any), as the case may be, in respect of which a determination or determinations, as the case may be, under this subsection has been made by the selection committee in any one calendar year and not revoked in that year.

(d) (i) An item or collection of items shall cease to be a heritage item for the purposes of this section if—

(I) the item or collection of items is sold or otherwise disposed of to a person other than an approved body,

(II) the owner of the item or collection of items notifies the selection committee in writing that it is not intended to make a gift of the item or collection of items to an approved body, or

(III) the gift of the item or collection of items is not made to an approved body within the calendar year following the year in which the determination is made under paragraph (a).

(ii) Where the selection committee becomes aware, at any time within the calendar year in which a determination under paragraph (a) is made in respect of an item or collection of items, that clause (I) or (II) of subparagraph (i) applies to the item or collection of items, the selection committee may revoke its determination with effect from that time.

(3) (a) For the purposes of this section, the market value of any item or collection of items (in this subsection referred to as “the property”) shall be estimated to be the price which in the opinion of the Revenue Commissioners the property would fetch if sold in the open market on the valuation date in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property.

(b) The market value of the property shall be ascertained by the Revenue Commissioners in such manner and by such means as they think fit, and they may authorise a person to inspect the property and report to them the value of the property for the purposes of this section, and the person having custody or possession of the property shall permit the person so authorised to inspect the property at such reasonable times as the Revenue Commissioners consider necessary.

(c) Where the Revenue Commissioners require a valuation to be made by a person authorised by them, the cost of such valuation shall be defrayed by the Revenue Commissioners.

(4) Where a relevant gift is made to an approved body—

(a) the designated officer of that body shall give a certificate to the person who made the relevant

gift, in such form as the Revenue Commissioners may prescribe, certifying the receipt of that gift and the transfer of the ownership of the heritage item the subject of that gift to the approved body, and

(b) the designated officer shall transmit a duplicate of the certificate to the Revenue Commissioners.

(5) Subject to this section, where a person has made a relevant gift the person shall, on submission to the Revenue Commissioners of the certificate given to the person in accordance with subsection (4), be treated as having made on the date of such submission a payment on account of tax of an amount equal to the market value of the relevant gift on the valuation date.

(6) A payment on account of tax which is treated as having been made in accordance with subsection (5) shall be set in so far as possible against any liability to tax of the person who is treated as having made such a payment in the following order—

(a) firstly, against any arrears of tax due for payment by that person and against an arrear of tax for an earlier period in priority to a later period, and for this purpose the date on which an arrear of tax became due for payment shall determine whether it is for an earlier or later period, and

(b) only then, against any current liability of the person which the person nominates for that purpose,

and such set-off shall accordingly discharge a corresponding amount of that liability.

(7) To the extent that a payment on account of tax has not been set off in accordance with subsection (6), the balance remaining shall be set off against any future liability to tax of the person who is treated as having made the payment which that person nominates for that purpose.

(8) Where a person has power to sell any heritage item in order to raise money for the payment of gift tax or inheritance tax, such person shall have power to make a relevant gift of that heritage item in or towards satisfaction of that tax and, except as regards the nature of the consideration and its receipt and application, any such relevant gift shall be subject to the same provisions and shall be treated for all purposes as a sale made in exercise of that power, and any conveyances or transfers made or purporting to be made to give effect to such a relevant gift shall apply accordingly.

(9) A person shall not be entitled to any refund of tax in respect of any payment on account of tax made in accordance with this section.

(10) Interest shall not be payable in respect of any overpayment of tax for any period which arises directly or indirectly by reason of the set-off against any liability for that period of a payment on account of tax made in accordance with this section.

(11) Where a person makes a relevant gift and in respect of that gift is treated as having made a payment on account of tax, the person concerned shall not be allowed relief under any other provision of the Acts in respect of that gift.

(12) (a) The Revenue Commissioners shall as respects each year compile a list of the titles (if any),

descriptions and values of the heritage items (if any) in respect of which relief under this section has been given.

(b) Notwithstanding any obligation as to secrecy imposed on them by the Acts or the Official Secrets Act, 1963 , the Revenue Commissioners shall include in their annual report to the Minister for Finance the list (if any) referred to in paragraph (a) for the year in respect of which the report is made.