

## **Moving Forward: Suggestions to improve the export and tax systems in the UK**

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**Summary:** In this essay, Anastasia Tennant, offers two pragmatic improvements to the UK's export and tax systems. Through increasing the accessibility of funds for institutions seeking to buy objects of national importance and improving the existing Maintenance Funds system, the UK's heritage could be further future proofed.

### **'Where do we go from here?'**

During the conference 'The World Reborn: How heritage was saved after the Second World War, and the lessons for today' in May 2025, I was asked to sit on a panel considering the way forward in terms of the rules around the preservation of historic properties and export licensing. We looked at the current fiscal measures available for the preservation of historic houses, and whether these were sufficient and well advertised, and we also considered ways of improving the overall export licensing system. All of this was done with a view to the dual anniversary we were celebrating at the event: 75 years since the Gowers Report and the commissioning of the Waverley Committee. The general consensus on the panel was that the systems remain adequate, though there is some room for improvement.

I would like to consider two issues in this respect. The first relates to the export licensing system and the lack of funds for acquisitions of national treasures by UK institutions, something which is rather critical to the operation of the entire Waverley system. The second relates to the tax reliefs available for the maintenance of historic buildings.

I would like to propose possible solutions for each of these shortcomings:

#### **1. Make use of fiscal measures to encourage philanthropy**

When it comes to the export licensing system, it has become very difficult for UK institutions to raise the money needed to make offers to purchase objects of national importance for the nation. One suggestion is to encourage more corporate philanthropy by giving tax incentives to companies/corporations to save national treasures that are at risk of being exported like the French system does. In brief, the French state encourages philanthropy with generous fiscal incentives. Its 2003 Law on Philanthropy, Associations and Foundations known as the 'Loi Aillagon' 2003-709 of 1st August 2003 amended Article 238 bis 0 A of the French General Tax Code to add an additional fiscal incentive to encourage firms to buy 'national treasures' on behalf of the state.

It provides a tax reduction equal to 90% of the payments made by legal entities subject to corporation tax to buy cultural assets which have been found to be national treasures, for which an export licence has been refused and for which a pre-emption offer has been made by the French government. It also provides a fiscal incentive for payments made for the purchase of cultural goods located in France or abroad whose acquisition would present a major interest for the national estate from a historical, artistic or archaeological standpoint, which obviously extends beyond exports. This is conditional on the reasoned opinion of a commission which is composed equally of state representatives and qualified persons and chaired by a member of the Conseil d'Etat. Perhaps, should our system be updated in this way, a similar role could be taken on by the Reviewing Committee.

Beyond export controls in France, there is a separate tax relief for corporate institutions or individuals donating to charitable foundations, including art foundations. Businesses receive a tax reduction equal to 60% of the gift subject to an annual giving limit of 0.5% of the company's turnover. If that limit is exceeded the business has 5 tax years in which to use the tax reduction.

Where a business buys for itself property denied an export licence, 40% of the cost may be deductible provided that the property is held for ten years and kept at a public institution during that period. This is something that could also be incorporated into the UK system.

Another source of funding for UK institutions might be from charitable remainder trusts. These are popular in the USA and a major source of funding for US charities but there is no equivalent in the UK. Briefly, these are a type of irrevocable trust that provide income for the donor or other beneficiary for a specified period, after which the remainder of the trust passes to charity (US Tax Code Section 664; Reg. 1.664-1). The gift of the remainder to charity qualifies for a charitable contribution deduction. If the trust is created *inter vivos*, the donor claims the deduction for income tax and gift tax; if the trust is created on death, then the donor's estate receives the deduction.

## **2. Improve the system for Maintenance Funds for historic buildings**

There is also room for improving the current provision for the endowment of historic land and buildings available under the provisions of Schedule 4 of the Inheritance Tax Act 1984; these endowments are known as Maintenance Funds. Broadly speaking these are a specific form of trust the endowments of which are to be used solely for the maintenance, repair, preservation, and the

facilitating of public access to, property which meets the tests set out in section 31(b) – (e) IHTA 1984, that is land of scenic or scientific interest, historic buildings and their contents and land necessary to preserve the setting of an historic building. Transfers into such settlements are free of Inheritance Tax but there are drawbacks in relation to Income tax outlined below. The scheme is administered by HMRC.

Maintenance Funds reflect the Government's longstanding policy, which finds its source in the Gowers Report of 1950, that it is desirable to keep outstanding land and buildings, with their amenity land and historically associated contents, together and in private ownership (rather than to be taken over by the state at considerable expense to the public purse). Maintenance Funds offer encouragement to the private custodians of the heritage property to set aside capital to keep the property in a good state of repair and to make provision for public access to it. It is the funds for the preservation of the heritage assets that enjoy the tax reliefs; it is not the owners.

This innovative concept, as Lord Mansfield said in debate in The House of Lords on 9th March 1977, 'of an entity consisting of a property—a house, if you like—with its contents and adjoining land being free from capital taxation, funded, at least for a period, by a capital source which is extraneous to it but at the same time part of it, is an important step forward and I give the Government every credit for it'. He identified two issues with it at that time: one, which related to Capital Gains Tax, was rectified by section 169D of the Finance Act 2013; the other still persists today. It relates to the income tax treatment of the proceeds from showing the historic property and the income derived from the Maintenance Fund. Lord Mansfield recommended that at least both of these should be available to meet the costs of the enterprise and proper maintenance and repairs of the heritage property before tax.

They are not. In some cases where, e.g., the person or entity that set up the endowment ceases to be the owner of the historic building, the income is taxed twice, once in the Maintenance Fund and again in the hands of the owner of the building. The issue, therefore, is that nearly half the income generated from Maintenance Funds is paid in tax and so this amount is not available for its intended purpose of keeping the Treasury-designated historic property, which is the beneficiary of the trust, in good repair and open to the public (see also Lord Richard Inglewood's paper from the conference).

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To avoid this double income tax problem, every time the owner of the heritage building changes, there has to be the added administrative and bureaucratic burden of a termination of the trust and a re-settlement of it by the new owner.

The result is that there are very few Maintenance Funds in existence and little incentive for new ones to be established (according to an estimate by Historic Houses, the number is between 135 and 150). With the current drive for tax simplification, it may be an opportune time for the tax treatment of these Funds to be looked at again and refined to encourage greater use of them in future for the benefit of our nationally important heritage to maintain that heritage in the public interest and alleviate the burden on e.g. the National Trust.