



**Goodison Review: Saving Art for the Nation Consultation**

**Consultation Response: HM Treasury, October 2003**

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NESTA – the National Endowment for Science, Technology and the Arts - was established by the National Lottery Act in 1998, as the UK's first National Endowment. The Act tasked us with:

- Helping talented individuals – or groups of individuals – in the fields of science, technology and the arts to achieve their potential;
- Helping people turn inventions or ideas in the fields of science, technology and the arts into products or services – which can be effectively exploited and the rights to which can be adequately protected;
- Contributing to public knowledge and appreciation of science, technology and the arts.

NESTA's work is delivered through our three core programmes – Invention and Innovation, Fellowships and Education. These set out to do the following:

**Invention and Innovation** – to help talented individuals, micro-businesses and small teams to develop and protect their original ideas into products, services, or techniques with commercial, cultural and social potential;

**Fellowship** – to provide exceptional people with the time, space and resources to pursue their creative goals, explore, experiment, break new ground and develop their talent;

**Learning** – to support inventive ideas in teaching and learning, aiming to foster creative ability and public appreciation of, science, technology and the arts;

We will also be launching a number of new initiatives in the coming months. In responding to this consultation, NESTA is not best placed to comment on the detail of all of the issues raised. However, NESTA welcomes the terms of the review and the important opportunity that it presents to ensure that art can be saved for the nation.

## **NESTA Response**

As a supporter of creativity and innovation, NESTA believes that it would be enormously beneficial if a follow-on review could be carried out to consider the potential benefits that could be brought to the nation by enabling a system for gifting intangible assets, including Intellectual Property Rights. This document sets out the thinking behind this view, and suggests a way in which it could be administered in practice.

## **Intellectual Property Rights**

- The term Intellectual Property Rights encompasses a wide range of assets. For the purposes of this consultation, there are two broad areas that need to be borne in mind. These are:
  - Artistic endeavours – books, plays, music, films, with their related copyrights
  - Commercial endeavours – industrial and commercial products and processes, with their related know how and protection such as patents.

These two categories do of course overlap. The key attribute is that all activities of this type have the potential to produce income.

We believe that the extension of the scope of the review to include gifting of intellectual property is most relevant to two areas of Government support for works of art.

These are:

- The power to accept property in lieu of (primarily) inheritance tax (AIL)
- Income and corporation tax relief on gifts to charities and other relevant bodies of quoted shares and land.

In NESTA's view, there would be a number of advantages in extending these reliefs, which would be of benefit to the UK as a whole. These would include:

- Further encouragement of gifts to charities and other relevant bodies.
- Encouragement of the retention of IPRs in the UK, and their exploitation in this country; and
- An emphasis on the Government's recognition of the value of intellectual capital.

We believe, in addition, that an extension of these initiatives to cover intellectual Property Rights would be of minimal cost to the Exchequer.

### **Acceptance in lieu**

NESTA proposes that the principle of acceptance in lieu should be extended to cover non-tangible assets including intellectual property rights. This system would allow an income stream from intellectual property rights, for example royalties payable to an author or recording artist, to be offered in lieu of inheritance tax.

### **Tax Relief on Gifts to Charities and similar bodies.**

Since April 2000, individuals have been able to obtain income tax relief for the gift of quoted shares and securities to charities. This provision was extended in Finance Act 2002 to include gifts of land.<sup>1</sup> The stated objective of these reliefs was simply to encourage and facilitate charitable giving. The relief, when coupled with the Capital Gains relief already available for gifts to charities, enables a donor to make a gift to a charity that is worth significantly more to the charity than it costs to the donor.

There is evidence already available that the shares relief has been used to a useful extent by donors, partly because of what might be termed as the excellent cost/benefit ration for the donor. (In simple terms a gift of shares worth 100

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<sup>1</sup> For the purposes of this paper, the term "Charity" is used to refer also to a group of bodies (of which NESTA is one) which, though not charities themselves, share the public characteristics of charities and have been extended the same tax advantages.

could have an effective cost to the donor of as little as 20, given income tax relief of 40 and CGT relief of up to 40).

It is proposed that a similar relief against income tax be established for gifts of IPR to charities and other similar bodies. As well as encouraging and facilitating giving to charities, this should have the additional benefit of encouraging such rights to remain in the UK for future exploitation. Indeed this could be made a condition of the relief, providing such a stipulation was not inconsistent with European Statute. Again, a potential donor who sees that selling IPR would produce a net return of perhaps 40% of its value after taxes might well be influenced to donate the property to a charity – especially if the donor was already wealthy and would consider donating the net proceeds of the sale.

### **Valuation**

For both of NESTA's proposed changes, one of the key issues to be addressed is that of how to assess the value of the Intellectual Property being gifted. In principle it is possible to value IPR, as with any other property. However, the valuation of something dependent on an income stream can be difficult where that income stream is not established.

The simplest approach for the Government would probably be to require a potential donor to get an acceptable valuation. This is consistent with the ethos of self-assessment, and would reduce administration costs. To give protection to the Inland Revenue and a simple route for the donor, we suggest that the Inland Revenue should accredit a limited number of appropriate bodies, to give valuations of IPR. There might be one or two key bodies for each area of IPR.

### **Costs/Benefits of the Scheme**

NESTA believes that the administration costs of the proposed changes would be minimal.

The Acceptance In Lieu (AIL) procedures are in many ways self funding. Instead of receiving inheritance tax, the Exchequer takes IPRs, which have a value and provide an income stream. Presently the State forgoes the relevant tax and receives value in its place in the form of a work of art. As proposed the situation would be the same in so far as value in the form of IPRs would be received in place of tax forgone. In addition, however, the State would in this case be in receipt also of a future income stream.

The tax cost for donations to charities and other bodies would be in terms of income tax and corporation tax foregone. There would clearly be a cost to the Exchequer, the amounts of which are hard to predict.

One possible way of limiting this cost might be to put a maximum on the allowable relief for a year for a taxpayer. This could be in terms of a monetary amount, a proportion of total income/corporation tax or a proportion of taxable income. Excess relief would then be available for spreading forward into future years or back into previous ones. This would also deal with the problem that the available relief for an individual donation might eliminate a taxpayer's income tax liability for the year and indeed exceed it. Creators of IPRs often have sporadic

income and the trigger for any gift is likely to be an unusually high income in a particular year though there is no guarantee that the year of donation would be the same as the year of high income.

However, taken in the round, these costs would be balanced by:

- the increased income stream to charities (not subject to tax but available for spending);
- the reduced government spend on items which could then be dealt with by charities as a result of the additional funds available;
- the increased employment and consequent tax and national insurance contributions as a result of exploitation of the IPR within the UK.

It is impossible to judge hypothetically whether the cost to the Exchequer would be more or less than the other benefits. However, the increased general value to the voluntary sector and the possibility of additional tax revenue would certainly go a long way to balance the cost to the Exchequer in tax relief. Moreover, these changes would allow the Government to emphasize its commitment to the voluntary sector and also to the need to the importance of Intellectual Property and other intangible assets.

#### **For the future**

NESTA is a body with a track record in supporting individuals wishing to exploit their Intellectual Property Rights across science, technology and the arts. NESTA is also prominent in supporting the knowledge economy and would be well placed to comment and advise on the development of the regulatory framework that supports and controls that economy within the UK. We would be extremely keen to work closely with the Treasury, DCMS and others in the future to ensure that we make the most of the intellectual property being generated in this country.