

## Chattels Fiscal Forum Meeting

19 October 2018 at RICS London

Time 12.30

### Attendees:

Brett Tryner	Cheffins Fine Art
Charles Cochrane	Cochrane Adams Fine Art Agents
Christopher Myers	Gurr Johns
Greg Meadowcroft	Gurr Johns
Clarissa Vallat	Sotheby's
Colin Young	Golding Young & Mawer
William Gregory	Golding Young & Mawer
John Sibbald	Lyon & Turnbull
John Stancliffe	Stancliffe & Glover
Jonathan Law	Cheffins Fine Art
Luisa Romanelli	Christie's
Ruth Cornett	Christie's
Marc Winter	Reeman and Dansie
Mike Neill	Bonham's
Pippa Deeley	Pippa Deeley Auctions
Rhoddy Voremberg	Ferrer & Co
Sarah Lowther	Omnia Art
Susan Orringe	Orringe consulting
Wendy Philips	Sotheby's
Sebastian Duthy	Art Market Research

Tony Spindler	Assets, Residence & Valuation, HMRC
Pat McGurk	Assets, Residence & Valuation, HMRC
Dee Atkin	Assets, Residence & Valuation, HMRC
Tracey Wilson	Assets, Residence & Valuation, HMRC
Rachael Dickinson	Assets, Residence & Valuation, HMRC

### Introduction:

- Tony began by introducing himself, his role and explained the structure of the team.
- Following the integration of IHT, Trusts, International and CGT policy teams into our directorate, Technical & Valuation has been renamed Assets, Residence & Valuations.
- Last year 10 trainees joined SAV. Having undertaken our initial training course 9 of the trainees have stayed with us and joined the general valuation teams. As part of their ongoing development they are now working towards RICS accreditation.
- Tony provided a brief background to how professionalism is assessed within SAV, and the fact all our valuers are expected to achieve RICS accreditation in business valuation.
- To provide some understanding of the work SAV see, Tony provided some statistics:
- On average SAV usually receive around 13,000 valuations a year, mostly share valuations.
- So far, this year, we have generated £330 million yield, which is an increase on previous years, mainly due to one particular large Intellectual Property case.

- General yield for the year is anticipated to be between £180 and £190 million.
- In relation to chattels work, we have received 177 valuations in the year to date and the yield from these contributes to our overall target.

Following the action points from the last meeting, Tony advised;

- No examples of adjustor clauses have been received.
- Concerns regarding the burden on trustees and providing valuations have not been received.
- Tony has taken up the Trust and Estates exceptional handling policy with the deputy director. He believes they have now taken steps to ensure that all large documents submitted are retained or returned to the caseworkers in order to avoid asking for duplicates. As such, moving forward this would hopefully not be an issue. A question was raised about sending the Chattels documents via email. Attendees are aware there is a limit to the amount of attachments allowed in a single email, 5MB. Is there any way to increase this limit? Tony is unable to get this changed. Dee advised, if there are a lot of items it's best to send them in a number of emails. Ruth Cornett asked whether documents can be shared via shared workspace (SW) or a dedicated inbox. In general SAV valuers do not currently have access to SW. However, SAV will soon be moving to Office 365, which has functions that should enable greater digital interaction. Dee and Karen Cebulski have access to shared workspace, and documents can be put through as long as Dee and Karen know they are there.

### **Chattels Rental Rates update**

Pat McGurk gave a brief overview of developments over the past couple of years. At the forum in 2016, SAV had advised that they had conducted research into this topic and uncovered discussion papers from as far back as the 1990s. Their more recent researches had confirmed that there was no specific statutory guidance on the subject and that there was little evidence of a meaningful long-term rental market for works of art.

HMRC's view is that there were some clear pointers as to why the generally adopted rate of 1% was not tenable; such as, the actual market which exists for short-term art rentals (in the region of 8% to 12% on average), and the income tax imposed on the value of the benefit received by an employee's use of company assets, which is charged on 20% of the value of those assets.

Since 2016, SAV had engaged in a consultation process and most of the submissions received argued that 1% was a fair rate. However, in the continuing absence of any clear evidence to support those contentions, SAV had concluded that past agreement of a rate of 1% across the board was not acceptable.

SAV's present position was that if representatives choose to apply a rate of 1% in their clients' returns, they should expect that to be challenged. SAV would be asking for evidence to support that rate, in the same way that they would ask for evidence in support of a value offered for a painting. Each case would be examined on its own individual merits and SAV would request details of the nature of the artwork, the rental terms and such like.

A point was raised about how SAV would consider the issue of insurance rates and related storage costs. Tony replied that various dynamics would come into play. As a simple illustration of SAVs concerns, he explained that one of the points put to SAV for there being no market in art rentals was

the fact that people purchase art to hang on their wall and enjoy the asset, rather than for investment purposes. Yet, by the same token, it was also being claimed that storage costs would be a consideration in owning the art. If the art was being displayed then why would storage costs be an issue? Tony accepted this was a very simplistic observation but it highlighted the sort of valuation issues that would have to be considered.

Charles asked why SAV would consider looking at a financial asset, such as Gilts, when considering the appropriate rate for a personal asset. Charles and several other members of the Forum expressed the view that comparison of gilt returns, or any other investment, and chattels rentals is inappropriate.

Tony responded by advising that Gilts was only one of several benchmarks which SAV might look at in determining an appropriate rate, in any given case.

### **The relationship between values and information submitted for conditional exemption (CE) and acquisition valuations for capital gain tax (CGT)**

Dee started with the issues which arise when a value was not ascertained due to conditional exemption, and how this can affect current CGT acquisition valuations. Predominantly we are looking at the open market value as at 31 March 1982. We are seeing occasions where the taxpayer or their agents are attempting to either drastically change the value submitted and/or change the information available.

It must be remembered that when Conditional Exemption was originally being sought there was an IHT charge under consideration and the taxpayer and their agent had a legal obligation to provide accurate information and an open market value of the item, because should CE not be accepted the item would have been instantly taxable under IHT

When applying for exemption, the parties would have submitted a contemporaneous valuation based on information that was known at that time including relevant sales and this valuation should be the basis of the acquisition date valuation for CGT. SAV realise difficulties could arise when different valuers have been involved in the report for Conditional Exemption and then for the CGT acquisition valuation. Any new information that may have come to light in the intervening years would have to have been available or could have been made available when Conditional Exemption was claimed.

A discussion followed regarding the constant reattribution of some paintings. SAV's view was that if a painting/work of art was believed to be 'circle of' when conditional exemption was granted but later fully attributed, then the acquisition value would be based on 'circle of', because this is what the asset was believed to have been at that time. Dee confirmed that if a work of art was re-attributed from full attribution to "Circle of" or similar, the Taxpayer could, for CGT purposes, make a claim for a capital loss.

Following a meeting with HMRC's internal penalties people, SAV was left in no doubt about the strict approach to be applied. The view of the penalties team was that a contemporaneous legal document had been presented to HMRC. Information presented in that contemporaneous document should not now be disputed, in light of information that either could not have been available or was not provided at the earlier date.

Tony reinforced Dee's comments by reiterating his observations in previous years regarding the introduction of agent penalties. HMRC had definitely become far more proactive in considering

penalties. However, he was keen to emphasise that such issues would relate to a small minority of cases, with detailed examination of the behaviours that led to the inaccuracy. In reality most taxpayers/agents were trying to do the right thing and pay tax due, so in the vast majority of cases penalties would not be an issue.

### **Questions and topic's raised by attendees**

1. What are the requirements for probate valuations and related information?

SAV expects the following;

- If a sale has taken place or is imminent then the hammer price will be relevant,
- Adjustments for market movement between the date of valuation and sale will need to be taken into account
- If no sale has taken place nor due to take place, then comparable sales around the date of valuation will be considered. The full details of all comparable sales considered will need to be provided
- Full details of the item, including full artist name, the medium, size etc.
- Any damage or alterations that have been made should be declared at the outset
- Provenance
- If jewellery we will also ask for 4C's as well as comparable sales
- If wine, we're looking at the vintage and storage conditions.
- Images of the item in question are very important and will be a great help with the initial risk assessment of any item.
- However with the current scanning situation in HMRC, SAV may ask again for any images that have previously been provided.

When considering the sale price in relation to the open market value we consider the hammer price and not the premium price.

A mid-auction estimate is not always appropriate. If there is a range of values for comparable items, SAV would expect you to consider where in that range the item in question sits, i.e. by comparing the merits of the item to the comparable sale pieces.

If a sale takes place many years after the date of death then there could be a CGT liability if the sale exceed the chattels exemption limit – currently £6,000

In general when we are considering the Open market value, we look at auction house results and not websites like Ebay.

2. An update on the implementation of the trust reporting rules

Tony referred the question to WMBC. They have responded below as follows

- The project to make final amendments to the Trust Registration Service is now underway. This will allow trustees and agents to update details relating to a trust on the register when the circumstances of the trust or persons associated with it change.
- We do not yet have confirmation of when these amendments will be complete, but will be providing regular updates in the Trusts and Estates Newsletter on progress and the final completion date.

## 6. Any other business

- The venue for next year could possibly be Nottingham. A decision will be made next year.
- If you would like to visit our office in Nottingham, please contact Tony Spindler or Dee Atkin. A chance to meet the heritage team could possibly be arranged in the same visit.

### Action points

Tony. Speak to Trusts & Estates to ensure *original* Chattels documents are sent to SAV.