

Chattels Fiscal Forum Meeting

22nd September 2020 via Teams

Time 1pm

Attendees:

Mary Axon	MA	Mary Axon Fine Art
Charles Cochrane	CC	Cochrane Adams Fine Art Agents
Keith Graham	KG	Haines Watts (Westbury) LLP
Mike Neill	MN	Bonham's
Ruth Cornett	RC	Christie's
Wendy Philips	WP	Sotheby's
Clarissa Vallat	CV	Sotheby's
Felix Hale	FH	Sotheby's
Luisa Romanelli	LR	Christie's
Colin Young	CY	Golding Young & Mawer
William Gregory	WG	Golding Young & Mawer
Gavin Strang	GS	Lyon & Turnbull Ltd
John Stancliffe	JS	Stancliffe & Glover Ltd
Marc Winter	MW	Reeman and Dansie
Rhoddy Voremburg	RV	Farrer & Co
Robert Waterson	RW	RPC
Sarah Lowther	SL	Omnia Art Ltd
Veronika Lukasova-Duthy	VLD	Art Market Research
Sebastian Duthy	SD	Art Market Research
Susan Orringe	SO	Orringe Consulting
Charles Golding	CG	RICS Tangible Assets Valuation Associate Director
Charlie Maxwell	CM	Gurr Johns Ltd
Simon Cooper	SC	Gurr Johns Ltd
William Boize	WB	Gurr Johns Ltd
Russell Varney	RV	Gurr Johns Ltd
Mark Peters	MP	Gurr Johns Ltd
Joanne Beard	JB	HMRC SAV
Shona Crump	SC	HMRC SAV
Karen Cebulski	KC	HMRC SAV
Dee Atkin	DA	HMRC SAV
Neil Adey	NA	HMRC SAV
Mike Wilson	MW	HMRC SAV
Evelyn Schmidt	ES	HMRC SAV
Ciara Murphy	CM	HMRC SAV
Carol Mellis	CM	HMRC SAV
Tracy Coe	TC	HMRC SAV
Simon Kirsop	SK	HMRC Heritage Team WMBC Assets

1. Introductions

Jo Beard, HMRC welcomed everyone to the first ever digital fiscal forum. JB is Assistant Director, and head of the general valuation teams in SAV. She took over from Barry Roland who retired earlier this year. JB has had a lot of experience of various roles in SAV, including general valuation and Intellectual Property. JB suggested that as there are a lot of people on the line, we should forgo personal introductions, however all free to ask questions, so could delegates at that time state their name and their company and have microphone on mute if necessary.

2. Update on Shares and Assets Valuation and HMRC – Jo Beard

SAV provides a valuation service to the whole of HMRC – we have work referred to us by our compliance colleagues but we also look at Post Transaction Valuation Checks for Capital Gains Tax purposes and valuations of options over shares or shares issued under tax advantaged share schemes

In addition to the valuation of chattels we also value unquoted shares (our main area of work), goodwill and other forms of IP, boats, planes, Lloyds underwriting interests and bloodstock.

There are 32 Valuers in total in the main valuation team. 7 trainee valuers joined SAV last year, 6 have stayed and joined the valuation teams and are working towards their RICS Accreditation. All Valuers are required to obtain RICS accreditation in business valuation to either Associate or Member level. SAV values this to show our professionalism.

12,000 valuation requests were received last year. All SAV are currently working from home and have been since March and there is no date for return as yet. This is working well, valuers have stepped up to the challenge and are working digitally.

JB expressed disappointment we were unable hold the forum in person but hoped the digital format will work well. Feedback on the format will be sought after the forum.

3. Ivory treatment for tax purposes

Ruth Cornett (Christie's). Although The Ivory Act passed into law in December 2018, it has yet to get Royal Assent. How should we value items which will be caught by prohibition on trading but need to be valued for tax purpose? Under the new regulations there are objects that do not meet the criteria for sale which Christie's would not be able to sell. However, these items still need to be valued so how should these items be handled for valuation?

Dee Atkin of SAV responded by saying SAV would have to be pragmatic and consider what the legislation says at the date of valuation. DA noted that there have been sales post the 2018 Ivory Act but these items would appear to qualify as they are considered exceptional items. If the legislation says there is a ban on the sale of smaller, non-exceptional items then

we would reflect that in the value, the valuation could then perhaps be zero. As with all cases it really does depend on the circumstance at the date of valuation and the legislation in place at that date.

RC said it is an awkward situation when valuing smaller items and old Estate Duty exempt items that due to legislation can't be sold and therefore the duty never becomes due.

DA SAV – Regardless of the tax regime, if an item is given a nil value then the tax will be nil. As we are all aware the Appeal in May 2020 was unsuccessful so there have been no changes to the 2018 Act and we will have to consider the legislation in place at the date of valuation and take it from there.

4. Valuation of chattels owned by a Trust that are on a 50 year loan to the National Trust with no opportunity to remove chattels or sell them

Mike Neill (Bonhams). MN acknowledged it is a niche query; how do you value items on loan when there is a restriction on use of a particular item? The National Trust take things on long term loan, so how do we value if there is restriction on ownership or use?

Simon Kirsop, WMBC Assets Heritage Team, said there are a number of cases where Conditionally Exempt objects have remained in National Trust properties and there are agreements in place. An example is a house owned by a trust, and the contents were subject to a lease of 399 years when transferred to a relevant property trust. The value given was low because of the lease. WMBC Assets Heritage Team are aware of a number of cases but are not concerned so much with valuation. SK deferred to SAV on that issue.

DA from SAV added that S.160 IHTA would be in point, so open market value would apply but we would probably have a discount. If something can't be accessed for say, 50 years, then a higher discount which could possibly be up to 90% but if just 1 year left on the lease then we could be looking at a lower discount say 5 – 10% perhaps. However, DA reiterated that each case would be considered on its own merits.

Wendy Philips, Sotheby's said she agreed with what had been said but this is not necessarily a valuer's area of expertise. It may be that advice from an actuary would be required. Could HMRC provide a guide on discounts?

Mike Neil said that for clarification; are we saying that the range of discount could theoretically be anything from 95% to almost zero.

Shona Crump of SAV added that we would look at whatever lease agreement had been put in place and scrutinise the terms and conditions at a particular date. With regard to a guide on discounts it would be difficult to put in writing as each case would be different.

JB of SAV agreed each case must be considered on its merits. We could not be prescriptive and give blanket discounts. All depreciatory factors, apparent at the date of valuation, would be taken into account.

Charles Cochrane suggested looking to the property market to see if comparisons could be made. SC of SAV advised she could see there would be similarities but SAV do not get involved in property valuations so we would not tend to look to the property market for comparators.

WP asked how SAV would work out the discount. Did they for example use actuaries?

DA advised that she had in the past consulted with the Actuaries Team and this approach would be considered, if necessary, in any suitable cases.

5. Possible approach to the valuation of stocks of contemporary art where there is no clear market, including 'editions' particularly if these are as yet not produced or are in digital format e.g. video films

Keith Graham (Haines Watts). KG works primarily in the contemporary art field with art dealers and wondered how we value art for fiscal purposes. Contemporary artists can command a price but establishing a price is difficult if the artist is not publicly known ie there is no secondary market. As a subsidiary question he was interested in the approach to 'unproduced' editions particularly in the case of for instance Video art where there may be a master file, so 1 is produced but another 9 editions may be committed but not actually generated. Not only is there is not much of a market to find suitable comparables but the works do not even physically exist.

SC of SAV advised that she'd be interested in the views of the external delegates as SAV has seen few examples.

William Gregory said we would have to provide an open market value but, in his view, a large number of editions put on the market would depress the market. Looking at multiple limited editions, would the willing buyer and seller scenario still apply and would this flooding of the market depress the value? WG acknowledged though that the release of limited editions is usually carefully managed to avoid such a scenario.

RC commented that S160 IHTA deals with the issue of flooding the market – we cannot assume the price will be reduced because all editions were placed on the market at the same time.

DA of SAV confirmed this. The statute says we have to envisage the willing buyer and seller. If there's demand for a particular artist then the price is very likely to go up.

DA also said that if we are considering the death of a contemporary working artist, Business Property Relief *might* be due and we would not have to consider a value for IHT purposes, although we may need to consider it further down the line for CG purposes. When asked whether we would value such editions as a "set" DA of SAV advised we would not – they would be valued as individual items.

And on the subject of how you might put a value on work by an artist who has not sold much in the market or in recent years, DA commented that it is not unusual for items to be valued that haven't been sold in the secondary market for a long time; SAV has seen this lack of secondary market even with some Old Masters.

WP acknowledged the difficulty when there is no secondary market.

RC agreed there may be no secondary market. Where an item is sold by a dealer (which may be the case with new and upcoming contemporary artists) they may try to achieve a price higher than an open market value. RC commented that a discount to the dealer's price would have to be applied to reflect open market value for S.160 purposes. The values would be lower if no secondary market.

DA of SAV agreed it was difficult but SAV would ask questions to determine the circumstances and again, each case would be considered on its own merits.

KG asked about items that had not been produced yet? Do the same things apply? When an artist produces an Edition they commit to a certain number of prints. It sits in a master file and if there is demand others may be produced.

SC of SAV suggested that this may be similar to circumstances where we are valuing a right to do something in the future.

CC suggested that the Gallery at Southampton University has a large collection of contemporary videos and may be able to offer advice.

DA of SAV confirmed that SAV are aware of this and that she has contacted them before on a case.

JB of SAV commented that whilst several delegates had expressed a view, it seemed from the discussion there was not one definitive answer and, as such, as much information as possible should be provided when a valuation of such items is submitted so the value and the circumstances can be given full consideration.

6. The status and nature of the Fiscal Forum and the minutes thereof

Charles Cochrane (Cochrane Adams Fine Art Agents) brought this item to the agenda. He has spoken to other practitioners who are of the opinion that the minutes from the forum are being used in disputes on cases and invited Wendy Philips to give an overview.

WP said the forums are a useful discussion arena to give both HMRC and professionals involved in the valuation of art the opportunity to discuss points of view. It is also a useful platform for HMRC to report back policy or approaches to valuation. It must be remembered though that those attending the Chattels Fiscal Forum do not represent the whole of the art valuation community.

The minutes go on the internet and there should be no room for misunderstanding. For example, it can be useful to look at the minutes but the conclusion from the discussions at the forum may have been that there was no consensus or there may have been disagreement between the profession and HMRC on a particular subject. WP mentioned rental rates as an example where the profession and HMRC disagree. There might be silence to something HMRC says, but that doesn't necessarily denote agreement. It was suggested that the minutes should reflect where there are disagreements or where consensus cannot be reached. WP said that it was important that delegates challenge draft minutes and that she would like to encourage her fellow professionals to say if they don't agree.

A suggestion was made that when the minutes 'go live' on gov.uk, they are flagged as not setting out an agreement between HMRC and practitioners but as a reflection of the subjects discussed.

WP also echoed what CC had said about the fiscal forum minutes being quoted in negotiations as being HMRC's stated policy.

JB of SAV responded that minutes should always be a reflection of what has been discussed. If something is mis-reported, we will try to correct that but we do rely on delegates feeding back on the draft minutes. Some things may get missed in translation, but we do our best to reflect what has been said and highlight where there has been disagreement or consensus was not reached.

CC asked if the minutes could be completed quickly to give ample chance for comment. JB agreed to have them circulated as quickly as possible.

Rhoddy Voremburg asked them to be circulated quickly to give everyone ample opportunity for comment. He also made the point that it would be useful if both parties' sides were stated to make clear where no conclusion had been reached.

Robert Waterson echoed all that had been said and suggested that the gov.uk site where the minutes to forum are published should better describe what the aims of the forum are. In particular he felt it should be made that what is said at the forum is not a statement of practice or binding on participants.

JB of SAV said HMRC would look into that. SAV want the forum to be useful to all parties and we will aim to reflect both sides to a discussion as clearly as we can.

DA of SAV added that they are only put out publicly after people have had a chance to comment on them and a draft will be sent to all attendees. We do of course need a cut off for changes, not once it is published. CC suggested that the practitioners may need longer to look at them as there a larger number of them.

JB of SAV commented that the forum has grown and is seen as useful for external practitioners to share their ideas, in fact many agenda items were suggested by external attendees. HMRC would like to ensure the forum remains relevant and continues to be useful. With that in mind HMRC will endeavour to get the minutes out as soon as possible after the forum and provide a reasonable deadline for comment.

CC asked that if we all agree on something at the forum, what does it mean for HMRC and the practitioners? JB of SAV said the minutes can only reflect current thinking or understanding within HMRC and the art valuation world. We acknowledge that things do evolve and change and if, *in relation to a valuation being carried out*, it is felt the forum minutes no longer reflect the position it would be for practitioners (or indeed HMRC) to set out their reasons for adopting a different approach.

7. Chattels Rental Rates

Mary Axon (Mary Axon Fine Art) is looking for pointers on how to arrive at an appropriate rental rate for chattels. She has seen previous forum minutes and it seems that HMRC are reluctant to give advice. She has found it difficult to find comparables and whilst some big numbers are mentioned she has been unable to find any justification for them.

DA of SAV advised that there is ongoing SAV/Technical liaison on the subject. The point has been covered in previous forums and SAV have expressed the view that as there are lots of different assets that could be involved, furniture, vintage cars, paintings etc, suggesting a fixed rate that would apply to all would be difficult. Certain assets would have very different rates, and it depends what is happening in the market. DA said that it was often said there is no commercial market for the rental of chattels but she has been dealing with a share valuation case where the company's main activity is that of rental of art work. The agent for that company had argued that this was not a niche market, the suggestion being there were other companies involved in the same activity. Whilst negotiations were continuing on that case it was interesting to note that there may be market comparables.

SAV's view is that there is no blanket fixed rate for every chattel.

MA suggested that, leaving specific items aside, chattels aren't really rentable and while she appreciates there isn't a blanket rate, is there a range?

RC suggested that when it comes down to a financial transaction between parties, what other return would a landlord look to receive? What were the rates of furnished versus unfurnished property? She suggested that people would rather rent unfurnished so demand for the rental of chattels and the values thereof might be considered to be low. Interest rates are low, especially since March this year, and there are very few comparators so anything a landlord charges above the interest rates is a bonus.

CV agreed that determining an appropriate rate is really difficult. Interestingly she has heard that a large UK high street retailer are looking to start a furniture rental business but that will obviously be for new items and therefore not comparable to the assets we would be considering.

DA of SAV spoke briefly about liaison with the HMRC technical team on the subject of rental rates. Robert Waterson asked if notes or advice would be issued, and if there would be any consultation. DA said If any changes do come out of the SAV/technical liaison these will be shared with the profession in due course.

CC suggested that MA could look to what the National Trust and museums do. They don't tend to pay a rental but do pay some costs.

DA of SAV added that the National Trust practice has been brought to the attention of the technical team as well as museum loans.

It was acknowledged that the profession and HMRC held differing views on this subject and would no doubt be subject to further discussion in the future.

8. Any other Business

Clarissa Vallatt – 1982 base date valuations – CV acknowledged this had been discussed at the previous Chattels Fiscal Forum but is there anything to report on changing the 1982 rebasing date? JB of SAV advised that she was not able to say if this matter was under consideration but she appreciates that it is a long time ago now and it can sometimes be hard to get information or find supporting evidence.

JB of SAV asked delegates what they might be considered an appropriate date and commented that deciding on an appropriate year would be a difficult task.

CV responded that just because it is difficult is not a reason not to do it. JB of SAV agreed.

MA suggested a 25 year rolling period but SC of SAV thought this could disadvantage some taxpayers if a 'bad' year. SAV valuers are not policy people so not something we can really comment on in any greater detail.

WP agreed that it is a long time ago, nearly 40 years now, and most of the experts used would be retired.

Might be difficult for smaller practitioners to find information. It was suggested that the date could be brought into line with digital platforms say 1991.

Sebastian Duthy said that their AMR database goes back to 1982 and before.

JB of SAV agreed platforms were available at a cost.

Colin Young – Confusion on IHT forms

There seems to be some confusion over what items need adding to the IHT407 form, in particular whether items under £500 and/or £1,500 need to be valued separately and included in the Return. Seems there are mixed messages coming out of HMRC. Could the message be made clearer?

JB of SAV commented that SAV would follow up with WMBC Assets to check whether the guidance is clear enough.

SO echoed what CY said; there seems to be confusion on what valuations are required to be undertaken; those over £500 or £1,500 or do they value all?

SC of SAV said we would aim to also clarify the message given from the IHT Helpline.

Closing comments:

JB of SAV said she hoped everyone found the forum useful. It seems to have worked well and the technology had not let us down. JB confirmed that SAV will ask for feedback and circulate the draft minutes as soon as possible.

Action Points:

1. HMRC will issue the draft minutes as soon as possible
The draft minutes were issued and comments received with minor amendments which have now been taken into account.
2. Dee Atkin will keep practitioners informed on progress of discussions with Technical about Chattels Rental Rates where possible
3. Shona Crump will follow up with WMBC Assets on the wording of the IHT 407 form and check the message being given by IHT Helpline on the completion of form IHT 407
A reminder has been issued to all helpline staff to clarify that ALL household and personal goods items should be included on the IHT407, and that box 4 on page 4 is the catch-all for those items with a value under £1,500 in boxes 1 to 3, as well as all other items including every day household items.
4. HMRC will check the wording on gov.uk to see if further clarification about the aims of the forum is needed.
This point is being investigated