

Coronavirus and UK tax-exempt artworks and heritage assets

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CATEGORY:
ARTICLE



HMRC has recently published updated guidance on temporary changes to HMRC's Conditional Exemption Tax Incentive Scheme due to coronavirus. With museums, art galleries, cultural institutions and heritage properties having closed during lockdown, a major issue for owners of artworks, objects or heritage properties which qualify under the scheme has been how to fulfil their obligations to grant access to the public. In normal times, a breach of an agreement to provide access to the public could result in a tax charge. The guidance from HMRC provides much needed answers on how to deal with public access requirements during the coronavirus outbreak.

Generally, the qualifying asset should be available to the public to visit on at least a certain number of days per year without a prior appointment, as agreed by HMRC. Outside this 'open access' period, viewing can be restricted to prior appointment only. For artworks and other objects, the public access requirement can be satisfied by granting access in situ but some owners may find it more straightforward to loan their artwork or object to a public museum or gallery. This option could be more secure and it may be easier to produce publicity material jointly with a gallery or museum. It is sometimes possible to make the loan for an extended period to satisfy the public access requirement for a number of years.

If the public access requirements agreed with HMRC are breached, it can result in the tax that has been deferred in relation to the asset becoming payable. In the light of the difficulty in granting public access in the current circumstances, the new guidance from HMRC on temporary changes to the scheme should put owners' minds at rest.

Closing or delaying the opening of a property

The owners of a national heritage property should follow the relevant public health authority's social distancing guidance. HMRC has confirmed that it will not consider that the owner of a national heritage property will have breached their agreement if the property is closed or its opening is delayed to later in 2020. This will apply even if it means that the property will not be open for the full period covered by the agreement with HMRC or will not open at all in 2020.

When government advice changes, HMRC expects the property to be open later in the year to make up for any lost days, if possible.

Objects on loan to other organisations that close due to government advice

If an object is on loan to a museum, gallery or other venue which is closed due to the coronavirus, this will not be treated as a withdrawal of public access to the object and as a breach of the agreement with HMRC. This will apply even if the object is not on show at all in 2020.

Objects that can only be seen by appointment

Owners of objects that can only be seen by appointment are not expected to grant access until government advice on social distancing changes.

Advertising, publicity and promotional material

One of the requirements of an agreement with HMRC under the scheme may be to produce publicity or promotional material. If this is not possible under the current circumstances, it will not be considered a breach of the agreement. HMRC clarify that it has no objection if publicity or promotional material states that access to a property may be subject to change or cancellation, depending on the developing circumstances.

Although the guidance from HMRC is reassuring, owners of conditionally exempt assets should follow government advice and keep the situation under review. For example, museums and galleries in England were given permission to reopen from 4 July 2020 with reduced numbers and strict safety guidelines. Owners must ensure that the requirements for conditional exemption are met as far as is possible in line with HMRC's guidance, which may be updated as the situation evolves.

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