



Australian Government

Department of the Environment,  
Water, Heritage and the Arts

## Cultural Gifts Program

Tax incentives for cultural gifts to  
Australia's public collections



Cover images:

*Spanish Portrait*, Hilda Rix Nicholas c1912, donated to the Newcastle Region Art Gallery

*Turtle wealth spatula*, donated to the National Gallery of Victoria

## Information for donors, tax agents and advisors

Please note that this is general information only and does not constitute legal advice.

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Oological collection donated to the CSIRO

Beetle collection donated to the Tasmanian Museum and Art Gallery

## Making a tax deductible gift to Australia's public collections

The Cultural Gifts Program (CGP) encourages Australians to donate items of cultural significance from private collections to public art galleries, museums, libraries and archives.

Donations made under the program help to develop Australia's public cultural collections and to preserve Australia's cultural heritage for the benefit of present and future generations.

Gifts can range from paintings, books, sculptures, manuscripts and personal papers to jewellery, ceramics—even entire technological, mechanical, scientific or social history collections.

The program is administered in accordance with the gift provisions (subdivision 30-A) of the *Income Tax Assessment Act 1997* (the Act). The Department of the Environment, Water, Heritage and the Arts (the Department) administers the program with the advice of an expert committee, the Committee on Taxation Incentives for the Arts (the committee).

## Tax incentives

Donors are eligible for the following tax incentives under the program:

- The market value of the gift is fully tax deductible, with some exceptions (see 'Limitations on tax deductions').
- Donors can elect to spread the deduction over a maximum of five income years.
- Gifts are exempt from capital gains tax.

Donors may also claim a tax deduction for the cost of valuations obtained specifically for this program.



John Coburn sketchbooks 1970-73, donated to the National Gallery of Australia

## How the program works

Each donation under CGP involves a participating recipient institution, at least two approved valuers, the donor and the committee.

### Recipient institutions

To participate in the program, recipient institutions must be endorsed as a Deductible Gift Recipient by the Australian Taxation Office as a public art gallery, museum or library (including archives) for the purposes of section 30-15(1), item 4 of the Act, as outlined in section 30-100(1).

It is the institution's role to submit the necessary documentation to the CGP Secretariat by the advertised closing date for assessment by the committee. Donors are asked not to submit paperwork directly to the Secretariat.

It is also the institution's role to assist donors in obtaining valuations from approved valuers and assist valuers with information that may help them in their valuations. Institutions should also ensure that valuations are well substantiated and that the information provided accurately reflects the item(s) being donated. If the committee requires further information, it will request that the institution obtain the necessary information.

### Approved valuers

Valuations must be undertaken by valuers who are approved by the Secretary of the Department for the purposes of the program under section 30-210 of the Act. In addition, in accordance with section 30-200, valuations must reflect the GST inclusive market value of the donation either on the day the gift was made, or the day the valuation was made, which should be within 90 days before or after the day the gift was made.

Valuations must be undertaken objectively and independently. It is therefore inappropriate for any donor, or their representative, or any other person to attempt to influence a valuation outcome.

A list of participating institutions and approved valuers is available on the program's website at [www.arts.gov.au/cgp](http://www.arts.gov.au/cgp).

## **Date of donation**

The date of donation is the date the gift is given by the donor and formally accepted by the recipient institution. This date is entered by the institution on the Certificate of Donation. It is this date that determines in which financial year the donor can claim a tax deduction for the gift. This date is also the date of effect of the formal transfer of ownership, custody and control from the donor to the recipient institution.

## **Donor's responsibilities**

It is the donor's responsibility to complete the Certificate of Donation thoroughly and accurately. Each question must be answered, including provenance and acquisition details. It is important that donors include a date of acquisition in order for the committee to determine whether the gift has been donated within 12 months of the donor acquiring it, as there are limitations on the amount that can be claimed as a tax deduction in this case (see 'Limitations on tax deductions').

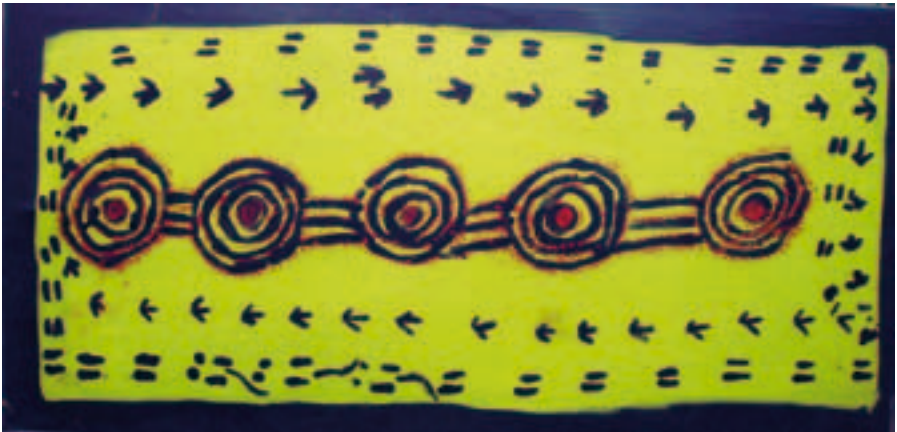
If there is more than one owner of the gift, each donor's details must be included on the Certificate of Donation and all owners must sign the certificate. In addition, all donors' names must appear on all other paperwork, including the Valuation Certificates. A second party may not sign on behalf of the donor unless there is a Power of Attorney in place, in which case a certified copy must be included in the paperwork.

## Committee on Taxation Incentives for the Arts

Once the donation is submitted, the committee has the following responsibilities:

- to review valuations of gifts to ensure that they reflect current GST market value. The committee reserves the right to request further information on valuations;
- to certify gifts conforming with the relevant requirements of the program; and
- to advise the Commissioner of Taxation on aspects of gifts which may assist in his/her determinations or the exercise of his/her discretionary powers.

The committee meets to assess donations. Closing dates for acceptance of donations for the committee meetings are posted on the program's website [www.arts.gov.au/cgp](http://www.arts.gov.au/cgp).



*Kangaroo and Emu*, Cliff Reid 2006, donated to the Charles Darwin University

## How the program works

In summary the process for a CGP donation would generally be as follows.

Donor and recipient institution negotiate a potential gift.

Institution determines that the gift conforms with its collection policy and formally accepts the gift into its permanent collection.

Institution and/or donor arranges two valuations from approved valuers.

Valuations should be done within 90 days of the date of donation so they reflect the current market value.

Institution submits the following documentation to the program's Secretariat by the advertised closing date for assessment:

- Checklist for Institutions—to be completed by the institution
- Certificate of Donation—to be completed by the donor and the institution
- Donation Summary/Statement of Significance—to be completed by the institution
- Two completed Valuation Certificates from approved valuers
- Quality colour images of the item(s) except for printed, manuscript, library and archival materials
- Original and two collated copies of all documents are required.

Committee assesses the donation and, if necessary, requests further information.



Where the committee has requested further information and:

- (a) that information is received, the committee will assess the information and either:
  - (i) where the committee is satisfied that the average of the valuations represents the GST inclusive market value of the donation on the day it was made—accept that the donation complies with the program requirements; or
  - (ii) where the committee is not satisfied that the average of the valuations represents the GST inclusive market value of the donation on the day it was made – forward the donation to the Commissioner of Taxation for determination; or
- (b) the valuer declines to provide the information requested, and the committee is not satisfied that the average of the valuations represents the GST inclusive market value of the donation on the day it was made, the committee will refer the donation to the Commissioner of Taxation for determination.



Where the Commissioner of Taxation has made a determination of the GST inclusive market value of the gift, that amount will be the amount that the donor may deduct for the gift, and not the average of the valuations that the donor obtained from the approved valuers.



Once the donation is certified as meeting program requirements, the documentation is stamped and sent to the donor for his/her tax records and a copy of the committee's letter is sent to the institution for its information.



Shoes from the Springfield Collection, donated to the National Museum of Australia

Paper Dolls, Joan Pitman c1931, donated to the Tasmanian Museum and Art Gallery

## Acknowledgement

Donors can be satisfied that their gift is making an important contribution to Australia's public cultural collections. They also have the option of choosing how their gift is acknowledged when it is on display at the institution. Donors may elect to be named in the acknowledgement or may ask that it be acknowledged in the memory of another person.

Institutions must acknowledge the donation of a gift under the CGP. Where a donor does not express a preference, the institution must use the acknowledgement at section 3(j)(i) of the Certificate of Donation.

## Apportionment of deductions

Donors may elect to spread a deduction over a maximum of five income years, however the deduction of a gift cannot add to or create a tax loss. The donor must complete an Apportionment Election form and lodge it with the CGP Secretariat prior to lodging their return. Apportionment must be specified in percentage points, beginning in the income tax year in which the gift was made ie based on the date of donation on the Certificate of Donation. The apportionment cannot exceed 100 per cent of the donation. The donor can elect to vary this amount at any time for the income year where a tax return has not been lodged by lodging a new Apportionment Election form.

There is no need for the donor to complete an Apportionment Election form if they wish to claim the full deduction in the year that the gift was made, ie Year 1 on the election form.



Child's surcoat with third rank badge c1825, donated to the Art Gallery of New South Wales

## Limitations on tax deductions

It is important to note the following limitations imposed by the Act.

- Testamentary gifts do not qualify for a tax deduction under the Cultural Gifts Program. The term 'testamentary gift' not only applies to those gifts specifically bequeathed under a will or those made by trustees in pursuance of any requirement placed on them by a will, but also to any gifts made by trustees out of the corpus of the estate. Consequently, donations by executors of deceased estates do not qualify for deduction (subdivision 30-A). However, such gifts are exempt from capital gains tax (section 118-60).
- The Commissioner of Taxation may reduce by a reasonable amount the deductible amount if conditions are attached to the gift that prevent the institution having full custody, control or clear title (section 30-220).
- The Commissioner of Taxation may also disallow a deduction if the donor receives any advantage of a material nature as a result of the gift (such as free or discounted entry or membership fees).
- If the item is
  - donated within 12 months of its acquisition by the donor (other than by inheritance);
  - acquired by the donor for the purpose of making the donation; or
  - acquired subject to an agreement that it would be gifted

the amount of the deduction to be claimed is restricted to either the item's current GST inclusive market value or the purchase price, whichever is the lesser (subsection 30-215(3), item 3).

- If an artist or dealer makes a gift which is part of their trading stock, the deduction will be restricted to the cost of acquiring or producing the item(s) (refer subsection 30-215(3), items 1 and 2).

If the donation is not trading stock, that is, it is from the donor's personal collection, the donor must demonstrate to the satisfaction of the Commissioner of Taxation that the item(s) were not held for commercial gain.



Treadle powered omnicycle 1870s–80s, donated to Museum Victoria

## Donations of trading stock

Below is an example where an artist donor donates an item from their trading stock:

Jane, a professional artist, donates a painting from her trading stock to the National Gallery of Australia. The certified value is \$4,000. The cost of creating the painting was \$1,000. Jane is able to claim \$4,000 as a tax deduction. However, Jane must also declare the \$4,000 in her assessable income. This in effect results in no tax benefit. Jane can claim a deduction of \$1,000 (cost of creation) as a business expense.

## Transfer from trading stock to personal collection

In order for an artist to donate from his/her personal collection an item that was previously held for commercial gain, it is necessary for the artist to “account” for this transfer on their tax return. The following example should assist in clarifying what is required:

- An artist decides that an item that had been offered for sale will no longer be exhibited, and the work is moved to another part of the studio so that it will no longer be for sale. This work had cost the artist \$200 to produce (eg paint, canvas, frame).
- The income tax provisions would treat this transfer as the artist having “bought” the item from the business at cost (\$200). Thus the artist would need to “account” for the transfer by including \$200 in his/her assessable income. However the artist would **not** be able to also claim a business expense deduction for the costs incurred in producing the work because the item had been “sold” from trading stock for the artist’s personal use.



Illustrations by Bob Graham, donated to the Lu Rees Archives, University of Canberra

## **Donations from personal collection**

It is assumed that, if the donor is in the business of creating art/craft, the items being donated have at some stage been part of the donor's trading stock and that the above transfer has been undertaken for items to now be held in the artist's personal collection. If this is not the case the donor must be able to demonstrate to the Commissioner of Taxation why the items were never part of the trading stock of the business.

If the transfer described in the example above has been carried out, the donor's tax benefit could fall within one of the following categories:

### ***Item held in personal collection for less than 12 months***

If the transfer was effected less than 12 months prior to the donation being made, the amount the artist donor could claim would be the lesser of the market value as endorsed by the committee and the cost of creation (in the example above, \$200), reduced by the amount of any input tax credit which the artist would have claimed in respect of the item.

### ***Item held in personal collection for 12 months or more***

If the transfer was effected more than 12 months prior to the donation being made, the tax deduction entitlement in this case is the full market value as per the average of the valuations.

However the donor would need to be able to substantiate (not retrospectively) that:

- the item was removed from trading stock on a particular date; and
- an amount was included in the donor's assessable income; and
- the item has been held in the donor's personal collection for more than 12 months.

## Contact us for more information

Detailed information about the Cultural Gifts Program is available on our website:

**[www.arts.gov.au/cgp](http://www.arts.gov.au/cgp)**

Please do not hesitate to contact our program officers at:

### **Secretariat**

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