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OVERVIEW OF TAX INCENTIVES TO ENCOURAGE THE ACQUISITION OF ARTWORK CREATED BY LOCAL ARTISTS

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When you invest in artwork you must have knowledge, time and patience just as you do when you invest in real estate or the stock market; however, in addition to diversifying your wealth, buying artwork is a pleasurable experience. But above and beyond the profitability aspect, investing in a work of art depends on your preference for a painting or a particular artist, on your knowledge of the artist and his works and, obviously, on his reputation.

The Quebec and Canadian governments have recognized the importance of encouraging the Canadian art market and its creators and they have implemented tax incentives intended to promote the purchase of Canadian artwork and encourage donations to museums and public institutions.

The principal measures adopted by the governments to assist the cultural industry and, more specifically visual arts, are summarized below.

Encouraging purchases of Canadian artwork

Buying artwork, paintings, etchings, sculptures, drawings, photographs, etc. is considered as an amortization expense for corporations or individuals who operate a business. It qualifies as a tax deduction provided that certain criteria are met.

The artwork must have been created by a Canadian artist and must be related to the business's commercial activities, for example, it must be exhibited in a place of business where it will be seen by clients. If the purchase meets these criteria, the buyer is entitled to a declining deduction of 33% of the cost of purchasing the artwork (class 8.1) at the provincial level and of 20% (class 8) at the federal level. Some works of art are, however, excluded and do not qualify for a tax credit, more specifically works having a value of less than \$200 or created prior to the 1900s – created over 100 years ago.

Moreover, if the buyer is a GST and QST registrant, he can recover the taxes paid at the time of purchasing the artwork by claiming input tax credits. Lastly, if the work is rented instead of being purchased, the rental expenses are also deductible as long as the expense was made for business purposes.



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Preserving our cultural heritage

The owner of a work of art who wishes to sell it has several options. He must also take into account the tax incentives related to his donation.

– Sale of artwork by an investor

When an investor sells a work of art, the capital gain at the time of sale is taxable and is added to the investor's income for the current year as a taxable capital gain (50% of the difference between the sale price and the purchase price).

Moreover, amortization recovery will apply if the work was purchased for the purpose of earning income. In such a case, the amortization expense deducted earlier will be added to the investor's business income if the resale value of the work is higher than the original purchase price.

– Brief overview of charitable donations

The rules relating to charitable donations provide that a donor is entitled to a tax credit of 48% of the value of the donation in excess of \$200. Businesses can deduct from their income an amount equal to the eligible portion of the donation.

The donation amount that an individual or a business is entitled to in any one year may not exceed 75% of net income. The excess can be carried forward over the following five years – in Quebec, businesses can elect to carry forward over the following 20 years.

– Eligible Organizations

Eligible organizations are registered charities, Canadian sports associations, municipalities, the United Nations, foreign universities designated by decree, recognized foreign and governmental charitable organizations. In Quebec, other institutions are recognized, such as registered museums and cultural organizations. Museums must however have a federal registration number in order for the donor to be entitled to a tax credit when he files his federal income tax.

– Donating artwork

The donation amount will be equal to the market value of the work. If it has appreciated over the years, the investor must declare the capital gain and amortization recovery, if applicable, at the time of the donation to a charitable organization. The donor must have owned the property for at least three years, otherwise the value of the donation will be equal to the lesser of the acquisition cost or the market value of the work.

Moreover, in Quebec, the charitable organization must resell the donated work within the following five years, otherwise no receipt may be given. In Quebec, these rules do not apply if the work is donated to a registered museum, to a municipality or to the government.

– *Gift of certified cultural property*

If the artwork qualifies as cultural property, the donation does not generate a capital gain for the donor, the amount of the donation will not be limited to 75% of net income as is the case for other charitable donations and the rule regarding the three-year minimal ownership does not apply.

The market value of the donated work will be determined by the Canadian Cultural Property Export Review Board. The donor must obtain a certificate issued by the latter organization and by the *Commission des biens culturels du Québec*.

In Quebec if the work has been donated to a Quebec museum, the donation amount will be increased by 25% in the tax credit calculation for individuals and in the deduction calculation for businesses.

Lastly, in Quebec when an investor donates a work of art or cultural property, but retains the right to use the donated property, the donation amount will be determined as a percentage of the market value of the work. This percentage is determined according to the age of the donor or the duration of the usage right. For example, for a 10-year usage right, the value of the donation will be equal to 87% of the market value of the work.

Conclusion

Investing in artwork can offer attractive tax deductions, not to mention that you and your clients will have the pleasure of seeing the artwork exhibited in your place of business. Lastly, if you choose to invest in the works of Canadian artists, you will gain substantial benefits when you sell the artwork.

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