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International Art Collecting — Investment and Succession Strategies

By Marla Wasser, Tammy Anklewicz, and David Kerzner

As any art collector understands, buying art is deeply personal and can be a rewarding venture on many levels. As with any important investment, there are also responsibilities. Unfortunately, it is beyond the scope of this short article to enumerate all of the pertinent acquisition, tax, and succession issues that may arise in connection with each family's unique relationship with their collection. Knowing this, we have put together a few thoughts that we hope you will find interesting and will stimulate you to pursue your own research as you collect. This article touches on three subject areas: acquisitions; dispositions on death; and cross border tax planning.

I. ACQUISITIONS

With the growing number of specialized art websites (including galleries, auction houses, art pricing sites and more), the art market is now truly a global affair, which makes collecting more exciting, but also more daunting. Buying art can be a serious investment, similar to investing in real estate or equities. Art collectors are now adding art advisors to their inner circle of specialized lawyers and financial advisors, recognizing their value within the complex process of acquiring and investing in art.

Research

Get to know the artists or genre that you want to collect, and educate yourself by subscribing to websites (e.g. Blouin ArtInfo at www.artinfo.com), reading art-related books, speaking with experts, and going to gallery and museum exhibitions. Consider using travel as an opportunity to visit new galleries and educate yourself on up-and-coming artists.

Condition

Never buy a piece of art unless you or someone you trust in the art industry has personally inspected the work. The condition of the artwork is the

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Switzerland as a Strategic Country for Canadians to Expand Business Activities in Europe

By Patricia Guerra and Barbara Stillhart-Zimmermann

Notwithstanding the recent attacks Switzerland has been confronted with lately from the U.S. and its European neighbours (mainly Germany and France) regarding undeclared accounts held in its banks and low tax rates granted to individuals and corporations, Switzerland clearly remains a privileged jurisdiction. Located in the heart of Europe, Switzerland offers to the foreign investor not only a stable democracy, economic stability and a well developed infrastructure, but also an excellent financial services sector, banking secrecy and an advantageous tax system.

In times of financial crisis and national deficits, some governments seem to think that mere tax increases targeting wealthy individuals, will simply flush the needed cash into the treasure chest of the country. Meanwhile, governments seem to ignore the theory of the laffer curve which describes the relationship between the rate of taxation and the resulting levels of government revenue. A 0% tax rate leads to 0% government revenue – the higher the tax rate, the higher the revenue; but only up to a certain percentage. If such percentage is exceeded, the effect of raising further tax is counterproductive – the individual will no longer have any incentive to work (and earn) more, or the tax payer will find a way to avoid paying taxes, e.g. sidestepping into a grey market area or relocating to a more tax advantageous jurisdiction, such as, amongst others, Switzerland.

Switzerland is, historically, a country where many wealthy non-Swiss nationals have relocated. According to Mercer's yearly rating of the cities with the highest quality of living, Zurich and Geneva are always among the top five in the world. In 2012, Zurich ranked in second place (after Vienna, Austria). Social and political stability, a safe environment, good public schools and the central location in the heart of Europe with convenient travel options, make Switzerland a very attractive place to live. For Canadian nationals, however, it may be hard to find a better country to live than Canada. The 2012 Legatum Prosperity Index Table Rankings ranks Canada sixth in the overall country ranking, while Switzerland ranks ninth. Nevertheless, The Economist, in a November 2012 article "The lottery of life – Where to be born in 2013" gave Switzerland the highest score and placed it as the number one country providing the best opportunities for a healthy, safe and prosperous life in the years ahead.

All of the above taken into account, Switzerland still is a top country to relocate to within Europe, or to be used strategically for Canadians to expand commercial ties throughout Europe. Switzerland's economy is highly sophisticated, stable and very open to global trade opportunities. Know-how is a key driver of the economy. Canada and Switzerland enjoy a strong and diverse commercial relationship that covers the full spectrum of trade, investment and innovation, with a strong focus on the latter two areas. In addition, Switzerland offers attractive and competitive tax rates for corporations.

Tax rates for corporations

Taxes for corporations in Switzerland are levied at federal, cantonal and communal level. At the cantonal and communal level, the rates vary from canton to canton and from community to community. Depending on the type of activity engaged in by a Swiss company (such as holding or trading), special and privileged tax regimes may be available for cantonal/Municipal income tax purposes.

Holding companies end up with an effective income tax rate of 7.8% (on all income other than dividend income and capital gains, which are tax exempt).

Another advantageous tax rate is offered for companies conducting only administrative activities in Switzerland (e.g. headquarters of multinationals, trading companies or companies holding intellectual property), so-called "domiciliary companies". All or at least the major part of their commercial activities must be performed abroad. All cantons grant a specific tax status to such companies and the overall combined income tax rate may be as low as 8.5%.

Even if a Swiss company is ordinarily taxed, the effective combined federal, cantonal and communal income tax rates may be as low as approximately 12%.

Regardless of the tax status of a Swiss company, dividend income and capital gains on participations are generally subject to Swiss tax. However, an exemption is available, which can result in up to 100% of the income from participations being exempt from Swiss tax. For the participation exemption to apply, the

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following requirements must be met: (i) for dividends: investment must amount to at least 10% of equity or have a market value of at least CHF 1 million; (ii) for capital gains: investments sold must amount to at least 10% of equity (CHF 1 million) and a minimum one year holding period applies. The participation exemption applies irrespective of the nature of the underlying income, i.e. there are no subject-to-tax rules or restrictions for passive income. This exemption, among other attributes, makes Switzerland a very attractive holding location.

Switzerland has Double Taxation Treaties with over 80 other countries, including Canada. The general effect of the treaties for non-residents from treaty countries is that they can obtain a partial or total refund of tax withheld by the Swiss paying company. As to the Double Taxation Treaty between Canada and Switzerland, the Swiss withholding tax rate may be reduced to 5% if the shareholding in the Swiss company is at least 10%. No withholding tax is levied on royalties paid to foreign beneficiaries.

Last but not least, unlike many other countries, Switzerland does not have any CFC rules.

Working in Switzerland

An individual working in Switzerland must have a residence permit, which normally includes a work permit. It is usually fast and easy to obtain approval for permits for individuals coming from EU and EFTA countries. For individuals coming from outside the EU/EFTA region, the approval for permits is subject to additional conditions. However, Swiss authorities will usually be flexible in granting permit to non EU/EFTA nationals if such permits are negotiated as a package with the establishment of a business in Switzerland. Generally, it is possible to negotiate the tax package together with the work permit and to include any possible benefits for expatriates in an advance binding corporate tax ruling.

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Travelling: The Medical Expense Tax Credit Rules

By Vinay Khosla, Tax Partner, Bateman MacKay LLP

Taxpayers who are stricken with illness may sometimes be faced with significant medical costs which can result in financial and emotional hardship. The Canada Revenue Agency can be far from sympathetic towards such circumstances and is not averse to litigating with taxpayers notwithstanding their difficult situation. Such lack of sympathy is evident in the recent court decision in *Jordan v. R.*[1].

In *Jordan v. MNR*, the taxpayer's spouse, Mrs. Jordan (age 48) was struck by an aneurysm which resulted in brain damage. Mrs. Jordan currently resides in a long-term care facility. After the aneurysm, Mrs. Jordan was required to be transported from her hometown of Weyburn, Saskatchewan to a hospital in Regina approximately 120 kms away. Subsequently, she was released into a rehabilitation centre in Regina. Weyburn did not have the appropriate medical facilities to treat her condition. Mrs. Jordan spent approximately six months between the hospital and rehabilitation centre in Regina. During this time period, Mr. Jordan made daily trips between Weyburn and Regina to assist with his spouse's recovery. In his 2010 income tax return, Mr. Jordan claimed a medical expense tax credit of $11,730 for motor vehicle expenses and $3,468 for meal expenses in Regina. These expenses were incurred in respect of 102 round trips between Weyburn and Regina. The Minister disallowed the medical expense tax credits associated with 101 of those 102 round trips.

Paragraph 118.2(2)(h) of the *Income Tax Act* allows for the medical expense tax credit for "reasonable travel expenses…incurred in respect of the patient and, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells…".

The Minister's position in this case was that the tax credit only applies to travel expenses of an accompanying person if they are

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