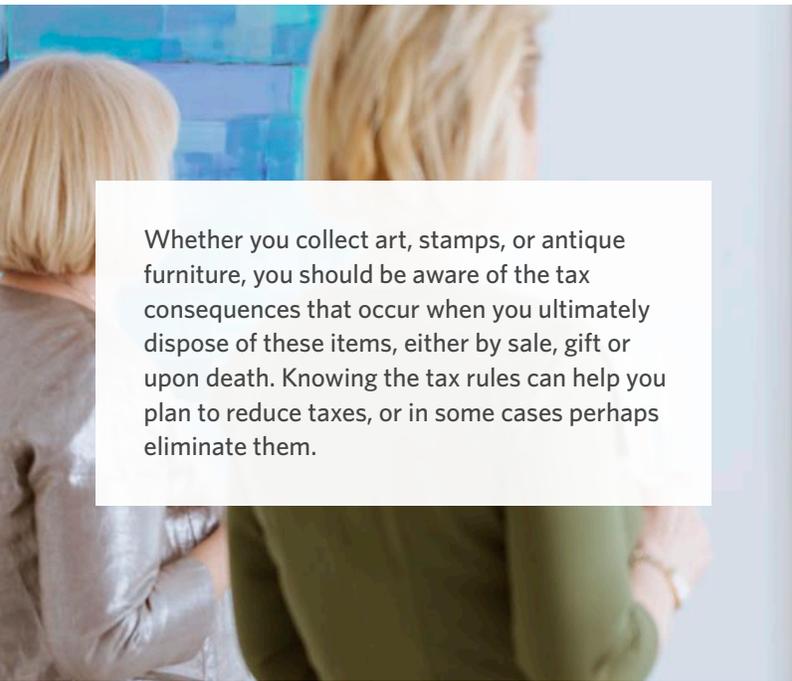




THE TAX TREATMENT OF ART AND OTHER COLLECTIBLES

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Whether you collect art, stamps, or antique furniture, you should be aware of the tax consequences that occur when you ultimately dispose of these items, either by sale, gift or upon death. Knowing the tax rules can help you plan to reduce taxes, or in some cases perhaps eliminate them.



Personal Use Property

Under the tax rules, where an item is used primarily for your personal use or enjoyment, it is called “personal use property.” Many collectibles will fall into this category. When you ultimately dispose of the item, or if it is still held at the time of your death, a capital gain (or loss) may arise. When calculating this gain or loss, if the cost of the property was less than \$1,000, then it is bumped up to \$1,000. Similarly, if the amount you received for it at the time of disposal is less than \$1,000, then your proceeds for tax purposes are also bumped up to \$1,000. Effectively, this means that no capital gain will arise should you sell personal use property for less than \$1,000. Capital losses on personal use property, however, are deemed to be nil, unless the item falls into the special category of “listed personal property,” which is discussed below.

EXAMPLES

Sally sells an antique coin for \$2,100 which she purchased for \$850. Because she paid less than \$1,000 for the coin, the cost for purposes of calculating the gain (loss) on the sale is increased to \$1,000. She is therefore deemed to have an adjusted cost base (or ACB) of \$1,000 and when compared to the selling price of \$2,100, she will report an \$1,100 capital gain for tax purposes.

Ramone owns a classic car that he purchased in 2016 for \$155,000. Ramone sells the car in 2021 for \$125,000. Ramone will realize a loss of \$30,000 [$\$155,000 - \$125,000$] on the sale. But, because this is the sale of personal use property, the capital loss will be deemed to be nil and cannot be used to offset any capital gains. Note that the antique car is not “listed personal property,” as described below.

Listed Personal Property

The following items are considered to be “listed personal property”:

- prints, etchings, drawings, paintings, sculptures or other similar works of art;
- rare folios, manuscripts or books; and
- jewelry, coins, and stamps.

If you dispose of listed personal property at a loss, then the loss can be offset against other capital gains, but *only* against those gains arising on the disposition of other listed personal property. Any such losses can also be carried back for three years or forward for seven years — but, even in those years, may only be used to offset gains from the disposition of other listed personal property.

EXAMPLE

Assume Bob sells a painting for \$650,000 which he purchased for \$400,000. He realizes a \$250,000 [$\$650,000 - \$400,000$] capital gain on the sale. If, in the same year he also sells a sculpture for \$120,000 which he purchased for \$200,000, he will realize a capital loss of \$80,000 [$\$200,000 - \$120,000$]. This capital loss can offset the capital gain from the painting Bob sold so that he has a net listed personal property gain of \$170,000 [$\$250,000 - \$80,000$]. This \$80,000 loss, however, could not be used to offset a capital gain from anything other than listed personal property. If Bob didn't have any listed personal property gains in 2021, he could carry the loss back three years or forward seven years to be applied against any listed personal property gains in those tax years.



Sets of Collectibles

Special rules apply where the collectible you own is considered to be part of a set of items, and you only dispose of part of a set to one person. A group of items are treated as a set where they would ordinarily be disposed of together, and are generally thought of as belonging together. Often their value as a set is greater than the total value of the individual pieces. For instance, a group of different stamps that were issued by one country at the same time or over a short period of time will generally be treated as a set. Where this occurs, the set is deemed to be one single personal use property, and the \$1,000 minimum cost and proceeds will be shared by all of the properties in the set. This rule is in place to prevent someone from selling parts of a set in a series of transactions, and then using the \$1,000 minimum cost for each transaction to reduce the overall gain for tax purposes.

Tax depreciation

Since your personal-use property is not used to earn income from a business or property, capital cost allowance, (“CCA” or depreciation for tax purposes), cannot be claimed. There may, however, be situations where you purchase a collectible not merely for your personal use and enjoyment. For instance, art may be purchased for the purpose of being displayed in your place of work. In this case, the art would not generally be considered to be personal use property, and CCA may be claimed so long as it is otherwise permitted. In most cases, however, CCA may only be claimed on Canadian art. In addition, the cost of the art must be reasonable in relation to the value of the business itself. For instance, the CRA may not view a claim of CCA to be a reasonable expense on a painting with a value of \$800,000, where the value of your business, without taking into account the artwork, is, say, \$700,000.

Trusts for Minors

You may choose to hold collectibles in a trust where your children are the beneficiaries. If you contribute a collectible item to a trust, you are generally deemed to have disposed of the item at its fair market value, and you may realize a capital gain or loss at that time; however, any capital gains arising should the trust later dispose of the property will not be attributed back to you and can be distributed and taxed in your child(ren)’s hands. You may wish to utilize the trust structure so that the trustee can maintain control over the item and decide whether it should be held or sold. As with any trust, it is important to accurately document the trust terms, such as the powers of the trustee and when and how the trust property is to be distributed. You should obtain legal advice on how to establish and maintain the trust.

One issue to take into consideration is the “21 year rule.” To prevent indefinite postponement of tax on capital gains accruing on property (including collectibles) in a trust, the tax law creates a “deemed disposition” of trust assets every 21 years, which could result in taxes owing on the accrued capital gain.¹ The tax can be delayed by transferring trust assets to the beneficiaries, which can be done at the trust’s ACB of the property. This is often referred to as “rolling” the property out of the trust to the beneficiaries at the tax cost.

Depending on the age of the beneficiaries of the trust, you may not be comfortable with them receiving the trust property in 21 years. For instance, if a trust beneficiary is currently two years old, you must decide if you are willing for the property to be owned and under their control at age twenty-three, or risk paying the capital gains tax in the trust on the 21st anniversary, rather than distributing the property to the beneficiary to avoid the tax hit on the deemed disposition.



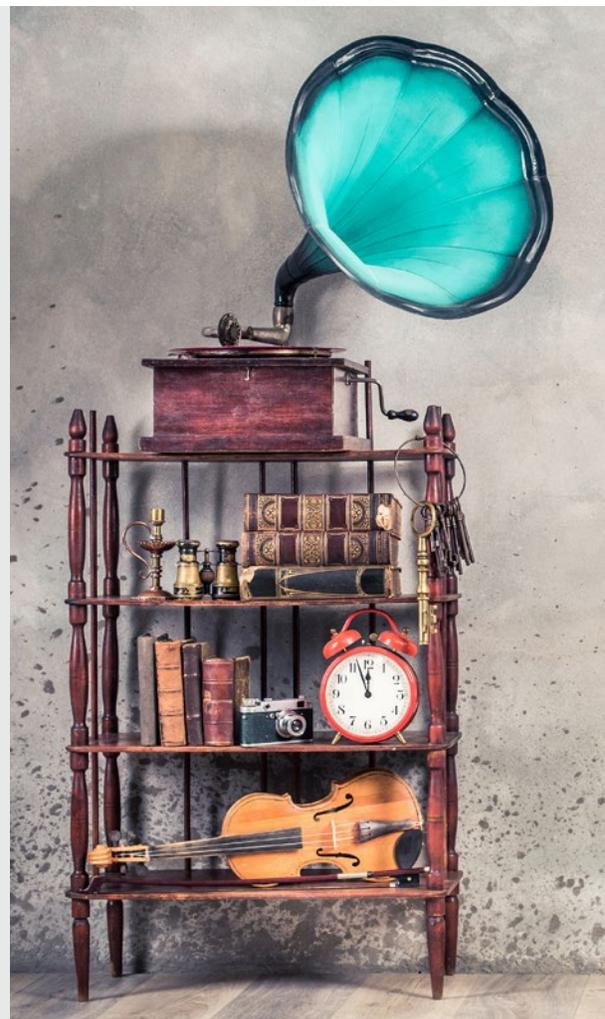
Donations

If you donate collectibles personally, the donation will usually be eligible for the charitable donation tax credit. If the item donated is certified to be “certified cultural property” by the Canadian Cultural Property Export Review Board (the “CCPERB”) and the gift is made to a Canadian entity that has been designated by the Minister of Canadian Heritage, then an additional tax benefit is that any resulting capital gain will not be subject to tax. Only a designated organization receiving the donation can apply to the CCPERB for certification of an item.

The CCPERB describes cultural property² as “artistic, historic, or scientific objects” in different categories such as

- Archaeological objects, fossils and minerals;
- Ethnographic material culture (including Aboriginal, Metis and Inuit objects);
- Military objects;
- Applied, decorative or fine art;
- Musical instruments;
- Audiovisual collections (film, video, new media and digital); and
- Textual and graphic records and audio-visual recordings of archival material.

If you are donating personal use property that has the potential for certification by the CCPERB, consider discussing a potential application for certification with the recipient organization.



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¹ Certain trusts are excluded from this rule, including spousal, alter-ego and joint-partner trusts.

² Historically, for an article to be certified, it must have been found to be of “outstanding significance and national importance.” Generally, this meant that it must have had either a close association with Canadian history or national life, aesthetic qualities, or value in the study of the arts or science. This requirement was removed effective March 19, 2019 in the 2019 federal budget. For details, see our 2019 Budget Summary here which can be found online at https://www.cibc.com/content/dam/personal_banking/advice_centre/tax-savings/2019-federal-budget-en.pdf.

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