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Management

# the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC FAMILY OFFICE SERVICES

## Donations of art: What to consider when planning for your collection

Please contact us for more information about the topics discussed in this article.

Do you own works of fine art that you've collected over time? Are you thinking it might be time to donate one or several pieces to charity? Or would you like to donate pieces through your estate on your passing? With these questions in mind and given that art, in its many different forms (for example, physical works of art, musical compositions, literary works, etc.), has been growing in importance as an investment, it should be included in any art collector's estate and/or charitable giving plans.

In some cases, while pieces of art are highly valued by the owner, there may be situations where family members are either not interested in or not in a position to manage and care for an inherited art collection. Instead, you may be thinking about donating your art to a charity during your life or at death<sup>1</sup>. Keep in mind that donating artwork and other collectibles is not as simple as a cash donation to charity. Advanced planning and careful reflection before donating your collection will increase the likelihood that these special pieces can continue to provide joy to others for years to come.

If you're considering donating a work of art, there are two main factors to consider: finding the right charity and planning for taxes, both of which are explored in this article. It is also suggested that you consult with the charity, your own qualified tax and/or legal advisor, and art appraiser — as well as possibly even hire an art advisor before making your donation — as the structure of the donation, valuation of the art and tax rules can be quite complex.

1. **Note:** This article discusses the rules for donations of art owned by collectors; different rules apply for donations of art by artists or dealers.

## Finding the right charity for your work of art

### Will the charity accept your art donation?

When beginning this planning process, an initial aspect to examine is what charity may be best positioned to receive your donation. While a museum or gallery might be the first idea that comes to mind, depending on the piece, another charity may be better suited. Consider questions such as:

- Is there a local charity you really care about and that needs art to fill its walls (e.g. hospitals, hospices, soup kitchens, or after-school programs)?
- Does the imagery of your piece(s) align with the target beneficiary of the organization? For example, an organization that offers homework and mentorship support to young people might seek out artwork that highlights a similar age group engaging in the kinds of activities they provide or encourage.

As part of planning, you should talk to the charity to ensure they're willing and able to accept the art as a donation. Some charities are only able to accept cash donations under their gift acceptance policy. If they are allowed to accept the art, the charity may have limited resources available for the proper display, storage, insurance and possible restoration of art.

If you're donating to an art gallery, museum or other cultural institution, be aware that there will likely be a formal review process before they will accept the art. This review often includes evaluating the quality of the artwork; assessing its aesthetic, historical and educational characteristics; and determining whether it would fit into their collection. They will also conduct due diligence to ensure the authenticity of the artwork and that all legal and ethical standards are met.

### Under what terms are you willing to donate the piece?

If the charity does agree to take your art as a donation, you may also wish to decide what your intentions are for their ownership of the art. For example, do you want the charity to have complete, no-strings-attached ownership (to display or sell it)? If this is acceptable to you, then after ensuring the charity can accept the gift, you could simply transfer ownership to them in exchange for a donation tax receipt, knowing the charity will put the art (or the proceeds of its sale) to the best use. If you'd rather the art form be a part of the charity's art collection, to be maintained and displayed by them, you should have a legal agreement in place with the charity that outlines the terms (and restrictions) of your gift. For example, if the donated art was going to a museum, gallery or other cultural institution, you may want them to promise

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an exhibition of the art, a printed catalogue, donor attribution and/or public outreach programs related to the donation/exhibition.

Alongside your gift of art, you may also want to consider including a cash donation that would support the charities' programming, and care for the piece or collection (including storage, insurance, proper display, upkeep and maintenance) to help ensure that the impact of your art donation is far-reaching and long-lasting.

## Planning for taxes

Before making any donation, you should explore with your qualified tax advisor whether there are any tax consequences to your donation. A donation of art may trigger capital gains taxes which would reduce the benefit of the donation receipt to you. You may also want to have a valuation done by a certified art appraiser (the charity should be contacted to ensure they agree to the appraiser and valuation method used, as this is also necessary for them when giving you a donation receipt); it's also a good idea to have a copy of the bill of sale or other proof of purchase price when consulting with your qualified tax advisor.

### The general rule

If you donate a work of art, there will be a deemed disposition when it's donated to a charity (including a museum, a university, an operating charity, etc.). If the art has increased in value since you bought it, the donation may generate a taxable capital gain. **Note:** *When you make a donation, Alternative Minimum Tax (AMT) may apply if you're in the higher income tax brackets. Please consult with your qualified tax advisor prior to making any donations, as the calculation they would perform to determine your income tax benefit/effect of the donation is quite complex.*

### Exceptions to the general rule

If there's a tax exemption that your work of art falls under, there would be no capital gains included in your income; instead, 100% of the donation tax receipt would be available to offset other income taxes.

**Donations of art valued at under \$1,000** — *There's an exemption from capital gains taxes if the donated art is worth less than \$1,000.*

**Donations of “certified cultural property”** — *There may be an exemption from capital gains taxes if the donated art has been designated as “certified cultural property.”*

Certified cultural property is a special category of art and objects that are certified by The Canadian Cultural Property Export Review Board to be of outstanding significance. The Board has complete discretion on what objects they will certify as cultural property. Examples of property that have received this certification include, an Inuit sculpture, dinosaur fossils, a Group of Seven painting, and a Victoria Cross medal.

There are tax incentives in place to encourage the transfer of these objects of outstanding significance from private hands to public collections — a tax exemption for capital gains, and a donation tax receipt which can be used to offset up to 100% of net income for donations made during your lifetime (as opposed to the 75% offset limit for other donations).

To qualify for the increased tax benefits, the donor must have the following:

**1. An agreement with a “designated cultural institution” for the property to be donated.**

To be designated as a “cultural institution,” the institution must be in Canada and have demonstrated that they have the capacity to ensure the long-term preservation of the cultural property and will make the works of art available to the public. There are over 250 cultural institutions (including museums, public authorities, Indigenous governing bodies, libraries, universities and archives) that have received this official designation by the Canadian Minister of Canadian Heritage.

**2. Certification from the Canadian Cultural Property Export Review Board.**

The certification process can be quite lengthy, with both the art’s provenance and value subject to scrutiny.

- Further information on the review process can be found on the [Canadian Cultural Property Export Review Board](#) website.
- A list of designated institutions (and the types of property they are designated for) can be found on the Government of Canada website, under [Designated organizations – Movable Cultural Property](#).

**Some considerations for gifts from your estate**

A donation made through your Will is available to offset up to 100% of the income taxes in your estate, as long as the assets are physically donated to the charity within five years of your death and your estate was a Graduated Rate Estate (also known as a “GRE” — for more information

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on GRE’s, please ask your RBC advisor for a copy of the Navigator article on testamentary trusts, where this concept is discussed in further detail). The donated art would be valued by the charity and receipted at the time your executor (liquidator in Quebec) transfers the art to them.

It may be challenging for your executor to make the donation during this five-year window, as they must first obtain a grant of probate (required for them to make the charitable gifts from your GRE estate) and the charity must go through the proper gift acceptance process. In addition, an unexpected estate donation can sometimes be rejected by a charity if they lack the resources to care for it or it doesn’t fit within their space, even though the charity may be interested in receiving the art. A solution may be to contact the charity proactively when you’re planning your estate to see if they’re interested and able to accept the donation of art.

You may also want to make a gift of cash or securities through your estate to provide the charity with funds to properly care for the donated artwork over the longer term. To be certain the art will be accepted, you may want to consider donating the art, (and any funds to care for the art) during your lifetime. By starting these discussions during your lifetime, you can also negotiate with the charity around how they will treat the gift. These planning conversations are fundamental in keeping with all parties’ expectations and avoiding unpleasant surprises.

A donation of a treasured piece of art can be a wonderful legacy to leave to your favourite cause, if the donation is planned properly. To ensure that both you and the charity are pleased with the results and the process, careful pre-planning and consultation with appropriate, qualified professionals is suggested. A successful donation can result in tax benefits to you, and many years of enjoyment by the visitors to the charity.

*This article may contain strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal and/or insurance advisor before acting on any of the information in this article.*



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