



**ABC on Taxation
For the Artists and the Arts**

**Presented by the
Canadian Conference of the Arts**

Published July 21, 2008

The ABC on Taxation of Artists and the Arts

One area of constant concern to Canadian artists, creators and arts professionals has been federal taxation policies and practices. The CCA has been involved in tax issues for three decades.

This backgrounder is designed to bring the reader up to date on tax policies and practices that have an effect on the arts and culture sector.

Who Makes Tax Policy?

The Minister of Finance is the ultimate source of tax policy. Only the Department of Finance can develop changes to the *Income Tax Act* which then have to be approved by Parliament. The *Canada Revenue Agency* (CRA) then has the responsibility to interpret the provisions within the *Income Tax Act* when assessing the tax returns of individual Canadians. The CRA cannot make changes to existing provisions in the *Income Tax Act*.

The *Canada Revenue Agency* issues a variety of *Interpretation Bulletins* to guide the actions of its officers and to inform tax payers about specific elements of tax policy. The CCA has worked with the CRA in the past to develop *Interpretation Bulletins* that address the taxation situation of artists and arts professionals.

When Canadians dispute a ruling by the *Canada Revenue Agency*, they can refer the matter to the *Federal Court of Canada*. This Court can hear both sides and issue a ruling on the interpretation of tax policy. If the ruling of the Federal Court of Canada is not accepted, the case can be referred to the *Supreme Court of Canada*. The *Supreme Court* will then decide whether or not it will hear the case. When the *Supreme Court* does accept to hear a tax case, its judgment is final. The *Supreme Court* has made it clear in recent cases that it will not overstep the interpretive role of the *Federal Court* in addressing such matters. The *Supreme Court* ruling is final, but the Minister of Finance can propose further changes to the *Income Tax Act* and brings them before Parliament for passage.

How is the Arts and Culture Sector Treated in the Income Tax Act?

Tax measures affecting the arts and culture sector fall into three broad categories;

- taxation of individuals ;
- tax treatment affecting arts and culture organizations ;
- tax incentives for charitable giving and donations of works of art.

1. Taxation of Individuals

Over the years, the Minister of Finance and the Parliament of Canada have added important amendments to the Income Tax Act specifically addressing the situation of artists.

Among them are:

- the ability of professional musicians to deduct the capital costs of musical instruments ;
- the ability of professional musicians of owning and maintaining their musical instruments and the ability of employed artists and arts professionals to deduct 20% of their income to a maximum of \$ 1,000.00 for employment expenses ;
- the ability of artists or their estates to donate work from inventory to certified institutions for a tax credit of their market value ; The market value is determined in both cases by the Cultural Property Export Review Board.

Such provisions are the result of a lengthy process and discussions with the Department of Finance and the support of Parliamentarians.

However, in dealing with the taxation of individuals, certain chronic issues emerge on a regular basis; these usually result from an interpretation by the *Canada Revenue Agency*. Some of the most frequent disputes arise over the following issues:

- Reasonable expectation of profit – the CRA will allow deductions from the income of a self-employed artist or arts professional only if the business that they are pursuing demonstrates a reasonable expectation of profit. This issue has been at the core of many disputes with arts professionals and artists. For some artists, expenses exceed income from their practice for many years, raising the issue of reasonable expectation of profit with the *Canada Revenue Agency*.

- Self-employment status – the *Canada Revenue Agency* regularly disputes the tax status claimed by many self-employed artists, creators and arts professionals. A recent dispute between the *Royal Winnipeg Ballet* and the Minister of National Revenue led to the case being heard by the *Federal Court of Appeal*. This ruling is a landmark victory for self-employed artists, creators and arts professionals as it fundamentally changes the criteria previously used by the *Canada Revenue Agency* to determine self-employment and provides a more modern-day and flexible approach to determining employment status. The decision by the *Federal Court of Appeal* not to appeal the ruling is an encouraging sign that some headway has been made on this issue.

In an attempt to create a uniform understanding of the fiscal situation of some artists, the *Canada Revenue Agency* has developed *Interpretation Bulletins* that address performing artists, visual artists and writers' fiscal situation.

Another area of taxation for self-employed arts professional is the *Goods and Services Tax*. For any tax payer with self-employment income over \$ 30,000.00, registration and payment of the GST is mandatory and the complexity of the GST may seem overwhelming to someone new to this reality.

The tax treatment of grants is another area where the CRA has issued an *Interpretation Bulletin*, more specifically for the grants and prizes offered by the *Canada Council for the Arts*. The information in this *Interpretation Bulletin* can be extrapolated to all other forms of grants and prizes, and in the case of a new category, CRA can be asked for an advance judgment clarifying the tax treatment of the new grant or award.

Tax Treatment of Arts and Culture Organizations

Many arts and culture organizations have been incorporated as non-profit organizations. Furthermore, many of these apply for charitable status, under the *Income Tax Act*, to help in fundraising and, in many cases, to be eligible for funding from Foundations.

To be recognized as a charity by the *Canada Revenue Agency* an organization's mission must be compatible with at least one of the four criteria deeply rooted in British Common Law, namely;

- promotion of education
- propagation of the faith
- relief of poverty
- work for the common good.

In 1991, Parliament addressed a long-standing concern of national arts service organizations by creating a special category within the *Income Tax Act* which would give to qualifying organizations similar privileges as those given to registered charities in the soliciting of gifts and the issuance of tax receipts. These provisions are restricted to national organizations and are very similar to provisions created for *National Registered Amateur Athletic Associations*. [A dispute by an athletic organization](#) with the CRA lead to a case heard by the *Supreme Court of Canada* whose [decision](#) has clarified the interpretation of the *Income Tax Act* for this category of organization.

Arts and culture organizations that are incorporated as not-for-profit or that have charitable status must also deal with the *Goods and Services Tax*. The [rules for not-for-profit organizations and charities](#) are different from the rules for individual tax payers.

Tax Incentives for Charitable Giving and Donations of Works of Art

Registered charitable organizations have the ability to provide donors with [a tax receipt](#) which is credited in an individual's annual income tax return. The margin of credit varies with the amount of the donation.

Through the efforts of the larger charitable sector, [amendments to the *Income Tax Act*](#) have been implemented, allowing donations of appreciated property and investments to charities by both individuals and businesses. The cost of making these gifts was a strong disincentive, due to the donor's obligation to pay the tax on capital gains, based on the appreciation of the asset since its acquisition by the donor. Subsequent changes to the application of the capital gains tax have lightened the burden on the donor and have resulted in a major upswing in gifts of this kind.

Businesses can also purchase Canadian works of visual art and donate them to certified institutions for a [tax credit equal to the market value of the work](#). This permits businesses to acquire works of art to add to the collections of certified museums and galleries across Canada.