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NEW FISCAL MEASURES TO ENCOURAGE CULTURAL PHILANTHROPY

This information bulletin provides a detailed description of the fiscal measures that will be implemented in response to the recommendations made by the Task Force on Cultural Philanthropy in its report submitted to the government on June 11, 2013 to stimulate donations to foster culture.

To increase the number of new donors and patrons of the arts and culture, two fiscal measures will be introduced for individuals who, through significant donations of money, support the mission of cultural organizations.

In addition, to promote culture in everyday life, a measure will be introduced to further encourage taxpayers to give public art works intended for installation in spaces accessible to all or in educational spaces.

Lastly, an additional incentive will be granted to taxpayers who, by donating an immovable, help supply a roof to house artists' studios or cultural organizations.

For information concerning the matters dealt with in this information bulletin, contact the secteur du droit fiscal et des politiques locales et autochtones at 418 691-2236.

The French and English versions of this bulletin are available on the Ministère des Finances et de l'Économie website at: www.finances.gouv.qc.ca.

NEW FISCAL MEASURES TO ENCOURAGE CULTURAL PHILANTHROPY

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Recognition of cultural donations under Québec's tax system

The tax system authorizes many cultural entities to issue tax receipts for donations or gifts they receive from individuals or corporations. Thanks to these receipts, donors may, in the case of individuals, obtain a non-refundable tax credit and, in the case of corporations, a deduction in the calculation of taxable income.

To give rise to a tax credit or a deduction, as the case may be, donations and gifts must be made to recognized cultural entities. In some instances, entities are recognized simply because they are mandataries of the State, such as national museums. In other instances, recognition is granted on an individual basis. Such is the case with charities and cultural or communications organizations.

The tax credit or the deduction for donations to which a taxpayer is entitled is determined on the basis of the total of the amounts each of which represents the eligible amount of a donation¹ it made during a year, which is increased by 25% in the case of a work of art donated to a Québec museum.

However, the total amount that may be included, for the purposes of calculating such tax relief for a given year, generally may not exceed 75% of the donor's income for the year, unless the donation involves cultural property or, where the donee is a Québec educational institution, a musical instrument, in which cases the donor's income for the year becomes the applicable ceiling.

Unlike the deduction for donations granted to corporations that depends on the donor's effective tax rate, the tax credit for donations that may be claimed by individuals is calculated on the basis of two rates. For the first \$200 included in the calculation of this tax credit, the applicable rate is 20%, while the applicable rate on the excess over \$200 is 24%.

Any portion of the eligible amount of a donation that cannot be included in the calculation of the tax credit for donations may be carried over to the subsequent five taxation years. In the case of corporations, the carry-over period is 20 years.

In addition to the tax benefits from the tax credit or the deduction for donations, as the case may be, a taxpayer who donates cultural property to an eligible donee, such as a recognized museum, receives a tax exemption on the capital gain that would normally result from such donation. The same situation applies where a taxpayer donates a musical instrument to a Québec educational institution.

Currently, the tax incentives granted regarding donations to the cultural sector are identical to those granted regarding donations intended for other sectors, excluding targeted measures designed to stimulate donations of cultural property, works of art and musical instruments as well as the measure designed to preserve property with undeniable ecological value.²

1 This amount corresponds to the excess of the fair market value of the donated property over the amount of the advantage, if any, regarding such donation.

2 The donation of property with undeniable ecological value to an eligible donee receives the same tax treatment as that applicable to the donation of a musical instrument to a Québec educational institution.

However, despite the identical treatment, the most recent surveys on donations show that of all the donations Quebecers make in a year, only 3% of the amounts given are directed to cultural organizations.

Accordingly, to increase private investment in culture, a task force³ was set up by the Premier on January 17, 2013.

The Task Force on Cultural Philanthropy was mandated to pinpoint the causes of Québec's lag in the realm of cultural philanthropy and propose, in light of its observations, possible solutions to the government to promote private donations and facilitate access by cultural organizations to assistance measures. To that end, the task force was invited to submit recommendations to the government on the most promising approaches to increase the vitality of cultural philanthropy and promote the creation of a new generation of patrons in Québec.

The Task Force on Cultural Philanthropy filed its report with the government on June 11, 2013.⁴ On the basis of its observations, the task force has proposed focusing on five levers, of which two essentially fall within the fiscal realm.

- *Promote cultural donations*

According to the task force, the promotion of the cultural donations depends on increasing the number of new donors and of major donors.

Accordingly, to create a new generation of cultural patrons, the task force is proposing an additional tax credit of 25% on the portion of not more than \$25 000 of an initial cultural donation of at least \$5 000.

It is also proposing a 30% tax credit for large donors who give cultural organizations \$250 000 or more in the same year or commit to give such an amount over a period of no more than ten years.

- *Put culture at the heart of the city*

The task force is proposing to put culture at the heart of the city through cultural philanthropy. To achieve this objective, it suggests two fiscal measures both of which aim to increase the eligible amount of a donation. The first covers donations of public art works while the second deals with donations of an immovable whose space would be arranged to house artists' studios or cultural organizations.

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3 The task force was chaired by Pierre Bourgie, businessman and patron. The seven other members of the task force were drawn from Québec's business community.

4 TASK FORCE ON CULTURAL PHILANTHROPY, *Nurturing a Philanthropic Culture in Québec*, [Report], Gouvernement du Québec, June 2013. This report is available on the Ministère des Finances et de l'Économie website at [www.finances.gouv.qc.ca](http://www.finances.gouv.qc.ca).

Considering that the judicious use of fiscal measures can lead to, in the long run, structuring and positive changes for Québec culture, various amendments will be made to the tax legislation to reflect the recommendations of the Task Force on Cultural Philanthropy.

To increase the number of new donors, an additional tax credit of 25% for an initial large cultural donation will be granted for such donations of money made before January 1, 2018. When the measure expires, the government will assess its impact in relation to its objective and consider whether it should be renewed.

The importance of individuals' patronage in funding cultural organizations will be recognized in a new 30% tax credit.

In addition, to promote culture in everyday life, a measure will be introduced to further encourage taxpayers to give public art works intended for installation in spaces accessible to all or in educational spaces.

Lastly, an increase in the eligible amount of a donation of an immovable intended to host artists' studios or cultural organizations will be granted to encourage taxpayers to offer a roof for culture.

## 1. ADDITIONAL TAX CREDIT OF 25% FOR AN INITIAL LARGE CULTURAL DONATION

To increase large donations in the cultural realm, an additional tax credit, of up to \$6 250, will be granted to individuals who make, before January 1, 2018, an initial cultural donation of at least \$5 000.

More specifically, an individual, other than a trust, may receive, for a given taxation year, in addition to the tax credit for donations currently allowed by the tax system, a non-refundable tax credit equal to 25% of the eligible amount of a large donation he makes in the year or in one of the four preceding taxation years, to a registered charity operating in Québec in the field of art or culture, a registered cultural or communications organization, a registered museum, a museum constituted under the *National Museums Act*<sup>5</sup> or to a museum located in Québec and constituted under the *Museums Act*.<sup>6</sup>

However, the eligible amount of a large donation that may be included by a taxpayer for the purposes of calculating such additional tax credit for a given taxation year may not include any portion of such amount that the taxpayer included in the calculation of such tax credit for a prior taxation year or in the calculation of the tax credit for donations allowed under the federal tax system for a prior taxation year for which the taxpayer was not subject to Québec tax.

For the purposes of the tax credit, a donation of money, of up to \$25 000, made in the year, in one or more instalments, will be considered a large donation if the eligible amount of such donation is at least \$5 000.

To that end, a donation of money will be considered to be a donation made in cash, by cheque, credit card or postal money order, or by means of a wire transfer or electronic transfer.

### □ General restrictions

An individual may claim the benefit of the additional tax credit of 25% for an initial large cultural donation solely regarding a single large donation made after the date of publication of this information bulletin and before January 1, 2018, provided proof of such donation can be produced by means of a receipt containing the prescribed information issued by the recipient of the donation.

For greater clarity, to receive the tax credit for a given taxation year, an individual will not be required to attach to his tax return the receipt issued to him. However, he must retain such receipt for the purposes of subsequent audit by Revenu Québec. The length of time such receipt must be kept will be subject to the general rule according to which anyone required to keep records must keep them, as well as any document in support of the information they contain, for six years after the last year to which they relate.

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5 CQLR, chapter M-44.

6 S.C. 1990, c. 3.

Moreover, the eligible amount of a large donation that may be included, for a given taxation year, for the purposes of the calculation of the additional tax credit for an initial large cultural donation, may not exceed 75% of the donor's income for the year. However, if the given taxation year is the one in which the donor dies or the one preceding it, the eligible amount of a large donation that may be included may reach the donor's income for the year.

### ❑ **Special rules in the case of death**

The presumptions currently stipulated in the tax legislation regarding a donation by will<sup>7</sup> or a transfer of money to a donee because of the death of an individual to give effect either to the obligations stipulated in a life insurance policy,<sup>8</sup> or to the donee's right or interest as beneficiary under a registered retirement savings plan, a registered retirement income fund or a tax-free savings account<sup>9</sup> will also apply for the purposes of determining the additional tax credit for an initial large cultural donation.

In addition, an individual who made a large donation in the taxation year of his death, including such a donation he is deemed to have made in such year, will be deemed, for the purposes of the additional tax credit for an initial large cultural donation, to have made it in the preceding taxation year, to the extent that an amount regarding such donation was not included in the calculation of such tax credit for the taxation year of his death. This presumption will apply to individuals whose death occurs after December 31, 2013 and before January 1, 2018.

Moreover, for greater clarity, the additional tax credit for an initial large cultural donation may, for the taxation year in which an individual who makes a large donation dies, be claimed not only in the main tax return filed for such year, but also in any of the separate tax returns filed for such year regarding certain types of income. However, the total of the amounts claimed on account of such tax credit in such returns must not exceed the amount that may be claimed for the year on that account if no separate tax return was filed.

### ❑ **Application details**

#### ■ **Portion of the tax credit not used by a spouse**

To preserve the objective of the new additional tax credit for an initial large cultural donation, the unused portion of such tax credit may not be transferred to a spouse.

However, for greater clarity, each member of a couple may claim the additional tax credit regarding an initial large donation he or she made.

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7 Section 752.0.10.10 of the *Taxation Act* (CQLR, chapter I-3).

8 Section 752.0.10.10.3 of the *Taxation Act*.

9 Section 752.0.10.10.5 of the *Taxation Act*.

### ■ Order of application of tax credits

The tax legislation stipulates the order in which non-refundable tax credits must be applied to give priority to tax credits for which no carry over or transfer is possible.

Considering that the unused portion of the additional tax credit for an initial large cultural donation may be carried over only for a period of four years and may not be transferred to a spouse, the tax legislation will be amended to stipulate that such tax credit be applied immediately before the tax credit for donations comes into play.<sup>10</sup>

### ■ Individual resident outside Canada throughout a year

An individual who has not resided in Canada at any time in a taxation year and who, during such year or a prior taxation year, was in particular employed in Québec or carried on a business there, may deduct, in calculating his tax otherwise payable for the year, the portion of the additional tax credit for an initial large cultural donation otherwise calculated, represented by the proportion, which may not exceed 1, that exists between his income earned in Québec and his income earned in Canada.

### ■ Individual resident in Canada for part of a year

Where an individual resides in Canada for only part of a given taxation year, the following rules will apply to determine the amount he may deduct, in calculating his tax otherwise payable for the year, on account of the additional tax credit for an initial large cultural donation:

- for any period of the year throughout all of which he resided in Canada, the individual may deduct the amount that can reasonably be considered as entirely attributable to such period, calculated as though such period constituted a whole taxation year;
- for a period of the year during which he resided outside Canada, the amount eligible as a deduction must be calculated as though such period constituted a whole taxation year.

However, the amount the individual may deduct for the year may not exceed the amount that would have been deductible on such account had he resided in Canada throughout such year.

### ■ Determination of the alternative minimum tax

The alternative minimum tax is designed to strike a balance between, on the one hand, the objectives of fairness and funding of public expenditures and, on the other, the objectives of economic development, by ensuring that taxpayers who benefit from tax preferences pay a minimum amount of tax each year.

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10 As a result, the additional tax credit for an initial large cultural donation comes into play after the basic tax credit, the tax credit for minor children engaged in vocational training or post-secondary studies, the tax credit for other dependants, the tax credit relating to the transfer of the recognized parental contribution, the tax credit for a person living alone, for age and for retirement income, the tax credit for experienced workers, the tax credit for union and professional dues (relating to an office or employment), the tax credit for dues and contributions (relating to business income), the tax credit for new graduates working in the remote resource regions, the tax credit for volunteer firefighters, the tax credit for severe and prolonged impairment in physical or mental functions, the tax credit for medical expenses, the tax credits relating to medical care not provided in the region of residence and the tax credit relating to the transfer of tuition fees have been taken into consideration, if applicable, in the calculation of an individual's tax otherwise payable.

The alternative minimum tax applicable to an individual for a taxation year is equal to the excess of an amount representing 16% of the portion, that exceeds \$40 000, of his adjusted taxable income over his basic minimum tax deduction.<sup>11</sup>

After determining the alternative minimum tax applicable for the year, the individual is required to compare it to the tax calculated, for the year, according to rules of the basic tax system and pay the higher of the two taxes.

Currently, for the purposes of calculating the basic minimum tax deduction for a given taxation year, an individual may include an amount deducted on account of the tax credit for donations in the calculation of his tax payable for the year under the basic tax system, provided the amount deducted does not exceed the maximum amount deductible on account of such tax credit in the calculation of his tax payable for the year under the basic tax system.

In this context, the tax legislation will be amended to stipulate that the amount deducted, for a given taxation year, by an individual on account of the additional tax credit for an initial large cultural donation under the basic tax system may be included for the purposes of the calculation of his basic minimum tax deduction for the year only where the amount deducted does not exceed the maximum amount deductible on account of such tax credit in the calculation of his tax payable for the year under the basic tax system.

#### ■ **Large donation made before an individual's bankruptcy**

An individual who is bankrupt may not deduct, in calculating his tax payable for a taxation year during which he is bankrupt, any amount on account of the additional tax credit for an initial large cultural donation for a large donation made before the day of his bankruptcy.

Similarly, no amount may be deducted regarding a large donation made before the day of the bankruptcy in the calculation of an individual's tax payable for any taxation year ending after the time he obtains his absolute discharge.

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11 This deduction allows certain non-refundable tax credits claimed in the basic tax system to be granted.

## 2. TAX CREDIT FOR CULTURAL PATRONAGE BY INDIVIDUALS

To recognize the importance of the patronage role of certain individuals in funding cultural organizations, these individuals may claim, in place of the tax credit for donations and the new additional tax credit for an initial large cultural donation, a non-refundable tax credit calculated at a rate of 30% for substantial donations of money.

This tax credit will essentially target individuals who give a cultural organization a sum of money of at least \$250 000 during a year to meet a specific need for capital and those who undertake to pay such an amount to a cultural organization over a period of no more than ten years to ensure its long-term funding.

### □ Determination of the tax credit

An individual, other than a trust, may receive for a given taxation year a non-refundable tax credit equal to 30% of the total of the patronage donations he made in the year or in one of the preceding five years, to a registered charity operating in Québec in the field of art or culture, a registered cultural or communications organization, a registered museum, a museum constituted under the *National Museums Act* or to a museum located in Québec and constituted under the *Museums Act*.

However, the amount of a patronage donation that may be taken into account by an individual for the purposes of calculating such new tax credit for a given taxation year may not include any portion of such amount that the individual included in the calculation of such tax credit for a prior taxation year or in the calculation of the tax credit for donations allowed under the federal tax system for a prior taxation year for which the taxpayer was not subject to Québec tax.

### ■ Patronage donation

For the purposes of the tax credit for cultural patronage, a patronage donation made in a given taxation year will be considered to be a donation – other than a donation whose eligible amount has been included, for the year or for a prior taxation year, for the purposes of calculating the tax credit for donations or the new additional tax credit for an initial large cultural donation – of money made in the year and after the date of publication of this information bulletin, in one or more instalments, if, as the case may be:

- the eligible amount of the donation is at least \$250 000;
- the donation is made in accordance with a promise of donation registered with the Minister of Culture and Communications and the eligible amount of the donation is at least \$25 000.

To that end, a donation of money will be considered to be a donation made in cash, by cheque, credit card or postal money order, or by means of a wire transfer or electronic transfer.

### ■ Registered promise of donation

The Minister of Culture and Communications will be charged with setting up a register of promises of donation giving rise to the tax credit for cultural patronage.

At a donor's request, the Minister of Culture and Communications must record in such register a promise of donation if the following conditions are satisfied:

- the promise of donation was made to an eligible donee for the purposes of the tax credit for cultural patronage after the date of publication of this information bulletin;
- the promise of donation stipulates that the donor undertakes to make a donation to the donee of an eligible amount of at least \$250 000 over a period of no more than ten years, at the rate of a donation of an eligible amount of at least \$25 000 in each of the years covered by the promise;
- the donor provides the Minister with a certificate, signed by an individual authorized by the donee to acknowledge receipt of donations, for the eligible amount of the donation covered by the promise.

The Minister of Culture and Communications must send to the Minister of Revenue, no later than the last day of February of each year, a document reproducing the entries made in the register before the end of the preceding year.

### □ General restrictions

An individual may claim the benefit of the tax credit for cultural patronage for a given taxation year regarding a patronage donation only if proof of such donation can be produced by means of a receipt containing the prescribed information issued by the donee and, where the patronage donation is made under a promise of donation, if he provides the Minister of Revenue with the registration number of such promise.

For greater clarity, to receive the tax credit for a given taxation year, an individual will not be required to attach to his tax return the receipt issued to him. However, he must retain such receipt for the purposes of subsequent audit by Revenu Québec. The length of time such receipt must be kept will be subject to the general rule according to which anyone required to keep records must keep them, as well as any document in support of the information they contain, for six years after the last year to which they relate.

Moreover, for the purposes of calculating the tax credit for cultural patronage of an individual for a given taxation year, the total of the individual's patronage donations that may be included must not exceed, where added to the amount of the individual's qualified total charitable gifts for the year included for the purposes of calculating the tax credit for donations, 75% of the individual's income for the year. However, if the given taxation year is the one in which the individual dies or the one preceding it, the total of the patronage donations that may be included may reach an amount corresponding to the excess of the individual's income for the year over the amount of the individual's qualified total charitable gifts for the year included for the purposes of calculating the tax credit for donations.

### □ Consequences of failure to honour a promise of donation

Where a promise of donation made by an individual to a donee has been registered and during a given taxation year covered by the promise of donation, the individual did not make a donation of money to the donee or, if he did make one, the eligible amount of all of such donations was less than \$25 000, the promise of donation will be deemed, for the purposes of the tax credit for cultural patronage:

- not to be, as of the given taxation year, a registered promise of donation if, at the end of the preceding taxation year, the eligible amount of all of the donations of money already made by the individual to the donee under his promise of donation was at least \$250 000;
- not to be, as of the given taxation year, a registered promise of donation if the given taxation year is included in the calendar year during which the individual becomes bankrupt;
- never to have been registered if, at the end of the preceding taxation year, the eligible amount of all of the donations of money already made by the individual to the donee under his promise of donation was less than \$250 000, unless the individual died during the given taxation year;
- never to have been registered if the given taxation year is the first year covered by the promise of donation.

In the event that an individual received, for a given taxation year, the tax credit for cultural patronage regarding a donation made under a promise of donation subsequently deemed never to have been registered, a portion of the tax incentive granted to the individual for the year regarding such donation will be recaptured.

More specifically, where the given taxation year is one for which the Minister of Revenue may re-determine tax, interest and penalties and issue a new assessment, the individual's tax for such year must be re-determined as though the eligible amount of any donation made under such promise and included in the calculation of the amount deducted for the year on account of the tax credit for cultural patronage had been included in the individual's total charitable gifts for the year for the purposes of calculating the tax credit for donations.

Otherwise, the individual must pay, for a given taxation year during which he failed, for the first time, to honour a promise of donation and because of such failure the promise of donation is deemed never to have been registered, a special tax equal to the total of the following amounts:

- 6% of all of the amounts each of which corresponds to the eligible amount of a donation made under the promise of donation that was included in the calculation of an amount deducted for a taxation year prior to the given taxation year on account of the tax credit for cultural patronage;

- an amount equal to all of the amounts each of which corresponds to the amount of interest<sup>12</sup> that would have been determined, regarding a taxation year prior to the given taxation year, for a period beginning May 1 of the year following such prior taxation year and ending before the beginning of the given taxation year, if the Minister of Revenue had been able to re-determine the individual's tax for such prior taxation year.

### ❑ **Special rules in the case of death**

The presumptions currently stipulated in the tax legislation regarding a donation by will<sup>13</sup> or a transfer of money to a donee because of the death of an individual to give effect either to the obligations stipulated in a life insurance policy,<sup>14</sup> or to the donee's right or interest as beneficiary under a registered retirement savings plan, a registered retirement income fund or a tax-free savings account<sup>15</sup> will also apply for the purposes of determining the tax credit for cultural patronage.

In addition, an individual who made a patronage donation in the taxation year of his death, including such a donation he is deemed to have made in such year, will be deemed, for the purposes of the tax credit for cultural patronage, to have made it in the preceding taxation year, to the extent that an amount regarding such donation was not included in the calculation of such tax credit for the taxation year of his death. This presumption will apply to individuals whose death occurs after December 31, 2013.

Moreover, the tax credit for cultural patronage may, for the taxation year in which an individual who makes a patronage donation dies, be claimed not only in the main tax return filed for such year, but also in any of the separate tax returns filed for such year regarding certain types of income. However, the total of the amounts claimed on account of such tax credit in such returns must not exceed the amount that may be claimed for the year on that account if no separate tax return was filed.

### ❑ **Application details**

#### ■ **Portion of the tax credit not used by a spouse**

An individual may transfer any unused part of the tax credit for cultural patronage for a given taxation year to his spouse.

#### ■ **Order of application of tax credits**

The tax legislation stipulates the order in which non-refundable tax credits must be applied to give priority to tax credits for which no carry over or transfer is possible.

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12 This interest must be calculated at the rate set pursuant to the first paragraph of section 28 of the *Tax Administration Act* (CQLR, chapter A-6.002).

13 Section 752.0.10.10 of the *Taxation Act*.

14 Section 752.0.10.10.3 of the *Taxation Act*.

15 Section 752.0.10.10.5 of the *Taxation Act*.

In view of the fact that the unused portion of the tax credit for cultural patronage may only be carried over for a period of five years, the tax legislation will be amended to stipulate that such tax credit will come into play immediately after the application of the tax credit for donations.<sup>16</sup>

#### ■ Individual resident outside Canada throughout a year

An individual who has not resided in Canada at any time in a taxation year and who, during such year or a prior taxation year, was in particular employed in Québec or carried on a business there, may deduct, in calculating his tax otherwise payable for the year, the portion of the tax credit for cultural patronage otherwise calculated, represented by the proportion, which may not exceed 1, that exists between his income earned in Québec and his income earned in Canada.

#### ■ Individual resident in Canada for part of a year

Where an individual resides in Canada for only part of a given taxation year, the following rules will apply to determine the amount he may deduct, in calculating his tax otherwise payable for the year, on account of the tax credit for cultural patronage:

- for any period of the year throughout all of which he resided in Canada, the individual may deduct the amount that can reasonably be considered as entirely attributable to such period, calculated as though such period constituted a whole taxation year;
- for a period of the year during which he resided outside Canada, the amount eligible as a deduction must be calculated as though such period constituted a whole taxation year.

However, the amount the individual may deduct for the year may not exceed the amount that would have been deductible on such account had he resided in Canada throughout such year.

#### ■ Determination of the alternative minimum tax

The tax legislation will be amended to stipulate that the amount deducted, for a given taxation year, by an individual on account of the tax credit for cultural patronage under the basic tax system may be included for the purposes of the calculation of his basic minimum tax deduction<sup>17</sup> for the year only where the amount deducted does not exceed the maximum amount deductible on account of such tax credit in the calculation of his tax payable for the year under the basic tax system.

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16 As a result, the tax credit for cultural patronage comes into play after the basic tax credit, the tax credit for minor children engaged in vocational training or post-secondary studies, the tax credit for other dependants, the tax credit relating to the transfer of the recognized parental contribution, the tax credit for a person living alone, for age and for retirement income, the tax credit for experienced workers, the tax credit for union and professional dues (relating to an office or employment), the tax credit for dues and contributions (relating to business income), the tax credit for new graduates working in the remote resource regions, the tax credit for volunteer firefighters, the tax credit for severe and prolonged impairment in physical or mental functions, the tax credit for medical expenses, the tax credits relating to medical care not provided in the region of residence, the tax credit relating to the transfer of tuition fees, the additional tax credit for an initial large cultural donation and the tax credit for donations have been taken into consideration, if applicable, in the calculation of an individual's tax otherwise payable.

17 This deduction allows an individual to take into account, in the calculation of the alternative minimum tax, certain non-refundable tax credits claimed in the basic tax system.

## ■ Patronage donation made before an individual's bankruptcy

An individual who is bankrupt may not deduct, in calculating his tax payable for a taxation year during which he is bankrupt, any amount on account of the tax credit for cultural patronage for a patronage donation made before the day of his bankruptcy.

Similarly, no amount may be deducted, in calculating the individual's tax payable for a taxation year ending after the time he obtains his absolute discharge, regarding a patronage donation made before the day of his bankruptcy.

### 3. INCREASE IN THE ELIGIBLE AMOUNT OF A DONATION OF A PUBLIC ART WORK

Traditionally, public art is defined as art that encompasses works of art of a permanent nature, often of large size or of an environmental type, installed in a space accessible to the public for the purposes of commemoration, embellishment of a space or integration into the architecture or environment of public buildings and sites. While shaping the urban landscape, public art works offer a new perspective on culture and heritage and make art accessible to all.

To further encourage taxpayers to give art works intended to be installed in public spaces or places reserved for education, the eligible amount of a donation of a public art work, whose fair market value, other than in the case of cultural property, has been certified by the Minister of Culture and Communications,<sup>18</sup> may be increased for the purposes of the calculation of the tax credit or the deduction for donations, as the case may be.

More specifically, the eligible amount of a donation of a public art work will be increased by 25% regarding a donation made:

- either to the State, unless the donation is made to an educational institution that is a mandatory of the State,<sup>19</sup>
- or to a municipality in Québec or to a municipal or public body performing a function of government in Québec – other than a school board<sup>20</sup> – if, according to the certificate issued by the Minister of Culture and Communications, the work is acquired by the municipality or the body in accordance with its policy of acquisition and conservation of public art works.<sup>21</sup>

In addition, so that places of education can offer an environment in which art is valued, the eligible amount of a donation will be increased by 50% regarding a donation of a public art work that, according to the certificate issued by the Minister of Culture and Communications, is acquired for installation in a place accessible to students and whose conservation may be ensured,<sup>22</sup> if the donation is made to any of the following entities:

- an educational institution that is a mandatory of the State;
- a school board governed by the *Education Act* or by the *Education Act for Cree, Inuit and Naskapi Native Persons*;

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18 Where the public art work is cultural property mentioned in the third paragraph of section 232 of the *Taxation Act*, the rules that currently apply to the determination of the fair market value of such property for the purposes of the calculation of the tax credit or the deduction for donations, as the case may be, must be applied.

19 The donation of a public art work made to an educational institution that is a mandatory of the State (for example, the École nationale de police du Québec and the Institut de tourisme et d'hôtellerie du Québec) will be covered by a separate measure.

20 The donation of a public art work made to a school board governed by the *Education Act* (CQLR, chapter I-13.3) or by the *Education Act for Cree, Inuit and Naskapi Native Persons* (CQLR, chapter I-14) will be covered by a separate measure.

21 The issuing of this certificate will be governed by the *Act respecting the sectoral parameters of certain fiscal measures* (CQLR, chapter P-5.1).

22 See the preceding note.

- a registered charity whose mission is education and that is:
  - either an educational institution established under a statute of Québec, other than such institution that is a mandatary of the State,
  - a college governed by the *General and Vocational Colleges Act*,<sup>23</sup>
  - a university-level institution mentioned in one of paragraphs 1 to 11 of section 1 of the *Act respecting educational institutions at the university level*,<sup>24</sup>
  - or an accredited private educational institution for the purposes of the grant under the *Act respecting private education*.<sup>25</sup>

### □ General restrictions

To benefit from an increase in the eligible amount of a donation of a public art work, for the purposes of the calculation of the tax credit or deduction for donations, as the case may be, for a given taxation year, the donor must attach to its tax return for the year a copy of the certificates issued to it by the Minister of Culture and Communications regarding the donated work.

Moreover, according to the existing tax legislation, where an individual or a corporation, as the case may be, donates an art work to a Québec museum, the eligible amount of such donation must be increased by one quarter of such amount for the purposes of calculating the tax credit or the deduction for donations, as the case may be.<sup>26</sup>

In this context, it will be stipulated that the eligible amount of the donation of an art work to a Québec museum may not be increased by more than 25% where the donated work is a public art work.<sup>27</sup>

### □ Certification of the fair market value of a public art work

To obtain a certificate for the fair market value of a public art work that was donated to an eligible donee, a taxpayer must, unless the work is cultural property,<sup>28</sup> apply for such certificate in writing to the Minister of Culture and Communications.

A taxpayer who is considering making a donation of a public art work to an eligible donee may also send a written request to the Minister to set the fair market value of the work he is considering donating.

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23 CQLR, chapter C-29.

24 CQLR, chapter E-14.1.

25 CQLR, chapter E-9.1.

26 Sections 716.0.1.1 and 752.0.10.15.1 of the *Taxation Act*.

27 For example, the three museums constituted under the *National Museums Act* – namely the Musée national des beaux-arts du Québec, the Musée d'art contemporain de Montréal and the Musée de la civilisation – are also, as mandataries of the State, eligible donees for the purposes of the 25% increase in the eligible amount of a donation of public art work.

28 See note 18.

The Minister of Culture and Communications must set with diligence the fair market value of the public art work mentioned in the request and must so advise in writing the taxpayer who has donated or is considering donating such work.

However, the Minister will not act on a request made to him more than three years after the end of the taxpayer's taxation year during which the donation of the public art work was made.

Where the Minister of Culture and Communications has advised a taxpayer of the fair market value of a public art work he has donated or is considering donating, the following rules will apply:

- upon receiving a written request from the taxpayer no later than 90 days after the day when he was thus advised, the Minister must with diligence either confirm the fair market value or re-set it and so advise the taxpayer in writing;
- the Minister may, at any time and at his own initiative, re-set the fair market value of the work and so advise the taxpayer in writing;
- the re-set fair market value will be deemed to replace all those previously set or re-set regarding the work, as of the date where the fair market value of the work was set for the first time.

In addition, where the Minister either sets the fair market value of the work or re-sets such fair market value, and the work is donated, he must issue the taxpayer who donated the work a certificate for the fair market value of the work thus set or re-set. A copy of such certificate must be sent to the donee and to the Minister of Revenue.

In the case where the Minister of Culture and Communications has issued more than one certificate regarding the same work, the last certificate issued will be deemed to replace all those previously issued, as of the date the first certificate was issued.

Where the Minister of Culture and Communications has confirmed or re-set the fair market value of a public art work donated by a taxpayer, such determination of the work's fair market value may be appealed to the Court of Québec. Such appeal must be lodged within the 90 days following the day when the Minister issues the certificate confirming or re-setting the fair market value of the property.

The amount certified by the Minister of Culture and Communications or determined by a court, as the case may be, on account of the fair market value of a public art work will be deemed to represent, for the donee, the fair market value of the work at the time of the donation.<sup>29</sup>

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29 This presumption will be made for the purposes of paragraph *a* of section 422 and section 436 of the *Taxation Act*.

In addition, subject to the special rules covering the donation of a capital property<sup>30</sup> or the donation by an artist of a work of art he created,<sup>31</sup> such amount will be deemed to represent, for the taxpayer donating the work, both the fair market value of the work at the time of the donation for the purposes of determining the eligible amount of the donation and its proceeds of disposition.<sup>32</sup>

In this regard, the tax legislation will be amended to stipulate that the Minister of Revenue may make an assessment, new assessment or supplemental assessment of the tax, interest and penalties payable required for any taxation year to give effect to a certificate issued by the Minister of Culture and Communications or a decision of a court resulting from an appeal lodged.

## □ Non-application of certain restrictive rules

### ■ Donation of a work of art to a charity

Currently, where a taxpayer donates a sculpture or a work of art of the same nature to a registered charity, other than an organization that acquires the work in the course of its primary mission, the taxpayer is deemed, for the purposes of calculating the tax credit and the deduction for donations, as the case may be, not to have donated such work of art, unless the donee alienates it before the end of the fifth calendar year following the one in which the donation was made.

While the primary mission of charities that are recognized educational institutions is not conservation, the exhibition and display of public art works, it remains the case that this form of art can contribute to the educational mission of such institutions by awakening interest among young people in the arts and culture and their thirst to learn more in this regard.

Accordingly, the tax legislation will be amended to stipulate that the donation of a public art work to a registered charity that is a recognized educational institution for the purposes of the increase in the eligible amount of a donation of public art work will not be subject to the restriction relating to donations of a work of art.

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30 Sections 716 and 752.0.10.12 of the *Taxation Act*.

31 Section 752.0.10.13 of the *Taxation Act*.

32 For greater clarity, the amount certified by the Minister of Culture and Communications or determined by a court, as the case may be, will be deemed to be the amount of the fair market value otherwise determined for the purposes of sections 716, 752.0.10.12 and 752.0.10.13 of the *Taxation Act*. These legislative provisions allow a taxpayer who makes a donation of a capital property or of a work of art he created, to set, subject to certain limits, the amount that must be considered as both the fair market value of the donated property for the purposes of determining the eligible amount of the donation and the proceeds of disposition of the property.

**■ Donation of a work acquired with a view to being given**

Briefly, the tax legislation stipulates that the fair market value of property that is donated is deemed, for the purposes of determining the eligible amount of a donation, to correspond to the real fair market value of the property or, if lower, its cost for the donor where the property was acquired by the donor as part of a gifting arrangement that constitutes a tax shelter and, unless such donation is made following the death of the donor, where the property was acquired either less than three years before the time of the donation or less than ten years before such time if it is reasonable to conclude that one of the main reasons for acquiring the property was to donate it to a recognized donee.

However, such presumption does not apply, among others, to a donation of cultural property or, if the donation is made to a Québec museum, a work of art.

In this regard, the donation of a public art work will be added to the list of donations excluded from the application of the presumption if the donation is made to a donee recognized for the purposes of the increase in the eligible amount of a donation of public art work.

**□ Application date**

This new measure will apply regarding the donation of a public art work made after the date of publication of this information bulletin.

#### 4. INCREASE IN THE ELIGIBLE AMOUNT OF A DONATION OF AN IMMOVABLE FOR CULTURAL PURPOSES

Artists and craftsmen frequently locate their studios in immovables that are no longer used for industrial purposes, since these immovable offer large spaces that are easy to adapt to the various techniques of creation and, if they are awaiting rezoning, affordable rent.

The presence of artists and craftsmen frequently contributes to a neighbourhood's revitalization. However, this phenomenon may be accompanied by a real estate boom and gentrification. The artists who participated in the neighbourhood's renewal may be forced to leave it, either because they are evicted from the buildings they occupy in particular because the buildings are converted into residential lofts, or because they are no longer able to afford rising rents. They must then be relocated to neighbourhoods not yet affected by the real estate boom. This situation also affects many cultural organizations.

Accordingly, to give a roof to culture, the eligible amount of a donation of an immovable located in Québec capable of housing artists' studios or one or more cultural organizations, including the land on which it is located and the portion of the adjoining land that can reasonably be considered as facilitating the use and enjoyment of the immovable, hereunder called "eligible immovable", whose fair market value has been certified by the Minister of Culture and Communications, may be increased by 25% for the purposes of the calculation of the tax credit or the deduction for donations, as the case may be.

To benefit from this increase, the eligible immovable must be donated to a municipality in Québec, a municipal or public body performing a function of government in Québec, a registered charity operating in Québec for the benefit of the community, such as the Société d'habitation et de développement de Montréal, or operating in the realm of arts or culture, a registered cultural or communications organization or to a registered museum.

##### ❑ Building capable of housing artists' studios

To be considered a building capable of housing artists' studios, the Minister of Culture and Communications must have issued a qualification certificate<sup>33</sup> for the building indicating that:

- the building is acquired by an eligible donee who intends to develop local essentially destined to become artists' studios that will be offered for rent at affordable prices;
- the building's floor space that can be outfitted as artists' studios covers an area of at least 1 000 square meters (10 764 square feet);
- the building's geographic location makes it a suitable place for outfitting artists' studios;<sup>34</sup>
- the outfitting of the building into artists' studios is a realistic project that can contribute to the installation and long-term viability of artists' studios in an urban setting.

33 The issuing of the qualification certificate will be governed by the *Act respecting the sectoral parameters of certain fiscal measures*.

34 For instance, the building is located along a city's artistic thoroughfares or byways.

To that end, the expression “artist’s studio” will mean non-residential premises occupied by one or more artists or craftsmen and outfitted so that they can create, produce, rehearse or carry out an action therein for the purpose of achieving an artistic work or pieces of art.

### □ **Building capable of housing cultural organizations**

A building will be considered a building capable of housing one or more cultural organizations if, as the case may be, it:

- is a building regarding which the Minister of Culture and Communications has issued a qualification certificate<sup>35</sup> certifying that is acquired by an eligible donee who plans to developing essentially premises therein that will be offered for rent at affordable prices to registered charities operating in the realm of the arts or culture, registered cultural or communications organizations or to registered museums and that the outfitting of the building to that end is realistic project;
- is, where the eligible donee is either a registered charity operating in the realm of the arts or culture, a registered cultural or communications organization or a registered museum, acquired by the eligible donee with a view to carrying out all or part of its activities therein.

### □ **General restriction**

To benefit from an increase in the eligible amount of a donation of a building capable of housing artists’ studios or one or more cultural organizations, for the purposes of the calculation of the tax credit or deduction for donations, as the case may be, for a given taxation year, the donor must attach to its tax return for the year a copy of the certificate relating to the fair market value of the eligible immovable issued to him by the Minister of Culture and Communications regarding the donated eligible immovable and, if applicable, the eligibility certificate issued by the Minister regarding the building.

### □ **Certification of the fair market value of an eligible immovable**

To obtain a certificate of the fair market value of an eligible immovable that was donated to an eligible donee, a taxpayer must, unless the immovable is a cultural property,<sup>36</sup> apply for such certificate in writing to the Minister of Culture and Communications.

A taxpayer who is considering making a donation of such an immovable to an eligible donee may also send a written request to the Minister to set the fair market value of the immovable he is considering donating.

The Minister of Culture and Communications must set with diligence the fair market value of the immovable mentioned in the request and must so advise in writing the taxpayer who has donated or is considering donating the immovable.

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35 See note 33.

36 Where the immovable is cultural property mentioned in the third paragraph of section 232 of the *Taxation Act*, the rules that currently apply to the determination of the fair market value of such property for the purposes of the calculation of the tax credit or the deduction for donations, as the case may be, must be applied.

However, the Minister will not act on a request made to him more than three years after the end of the taxpayer's taxation year during which the donation of the immovable was made.

Where the Minister of Culture and Communications has advised a taxpayer of the fair market value of an immovable he has donated or is considering donating, the following rules will apply:

- upon receiving a written request from the taxpayer no later than 90 days after the day when he was thus advised, the Minister must with diligence either confirm the fair market value or re-set it and so advise the taxpayer in writing;
- the Minister may, at any time and at his own initiative, re-set the fair market value of the immovable and so advise the taxpayer in writing;
- the re-set fair market value will be deemed to replace all those previously set or re-set regarding the immovable, as of the date when the fair market value of the immovable was set for the first time.

In addition, where the Minister either sets the fair market value of the immovable or re-sets such fair market value, and the immovable is donated, he must issue the taxpayer who donated the immovable a certificate for the fair market value of the immovable thus set or re-set. A copy of such certificate must be sent to the donee and to the Minister of Revenue.

In the case where the Minister of Culture and Communications has issued more than one certificate regarding the same immovable, the last certificate issued will be deemed to replace all those previously issued, as of the date the first certificate was issued.

Where the Minister of Culture and Communications has confirmed or re-set the fair market value of an immovable donated by a taxpayer, such determination of the immovable's fair market value may be appealed to the Court of Québec. Such appeal must be lodged within the 90 days following the day when the Minister issues the certificate confirming or re-setting the fair market value of the property.

The amount certified by the Minister of Culture and Communications or determined by a court, as the case may be, on account of the fair market value of an eligible immovable will be deemed to represent the fair market value of the immovable at the time of the donation for the donee<sup>37</sup> and, subject to special rules bearing on the donation of a capital property both the fair market value of the immovable at the time of the donation and the proceeds of its disposition for the taxpayer that donated the immovable.<sup>38</sup>

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37 This presumption will be made for the purposes of paragraph *a* of section 422 and section 436 of the *Taxation Act*.

38 For greater clarity, the amount certified by the Minister of Culture and Communications or determined by a court, as the case may be, will be deemed to be the amount of the fair market value otherwise determined for the purposes of sections 716 and 752.0.10.12 of the *Taxation Act*, which allow a taxpayer who donated a capital property to set, subject to certain limits, the amount that must be considered as both the fair market value of the donated property for the purposes of determining the eligible amount of the donation and the proceeds of disposition of the property.

In this regard, the tax legislation will be amended to stipulate that the Minister of Revenue may make an assessment, new assessment or supplemental assessment of the tax, interest and penalties payable required for any taxation year to give effect to a certificate issued by the Minister of Culture and Communications or a decision of a court resulting from an appeal lodged.

**□ Application date**

This new measure will apply regarding the donation of an eligible immovable made after the date of publication of this information bulletin.