Lowensteins

THE FEDERAL BUDGET 2015

ARTWORKS AND THE NEWLY ANNOUNCED ACCELERATED DEPRECIATION FOR SMALL BUSINESS ENTITIES

18 May 2015

The Federal Budget 2015: Art and Accelerated Depreciation.

The Federal Budget announcement on accelerated depreciation for small business has already seen a number of galleries promoting the sale of art as part of business assets.

Small business accelerated depreciation.

As from the 12 May 2015 to 30 June 2017, small businesses (with the annual turnover of less than $2,000,000) can claim a complete write-off of business assets, with an individual threshold of $20,000 for each asset, provided those assets are used in business and there is a nexus between the business and the acquisition.

Does this accelerated depreciation apply to art?

Based on written advice which we received in 2009 from the ATO in relation to the then investment allowance, which in principle is similar to the current announcement, as well as verbal advice received from the ATO, we are confident that this accelerated depreciation ruling also applies to acquisition of artworks, subject to certain conditions.

These include:

- Artworks should be in a tangible form and able to be moved from one location to another;
- Artworks must be purchased with a dominant purpose of being displayed on business premises; and
- Artworks must be created by professional artists registered with an ABN.

Under the above conditions we feel that artworks can be claimed under the accelerated depreciation provisions.

However, is this advisable?

Generally, it is considered that art is an investment and falls under the category of "collectibles". It is generally accepted that art is not depreciated as a business asset (despite it being listed as such).

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By opting to claim the full 100% write-off, artworks acquired will be depreciated as business expenses. This will mean that the business will forego the right for these works to be treated as collectibles and consequently the Capital Gain Tax provisions will not be able to be utilised to reduce any tax on the gain. Instead, all profits and losses will be subject to normal income tax.

For example, artwork acquired for $10,000, and then sold after five years for $15,000.

If an eligible business acquired an artwork as a business asset, there will be an immediate tax deduction of $10,000, which at the assumed tax rate of 30%, $3,000 will be saved immediately. When the artwork is sold, income tax will become payable on the full $15,000, which at the assumed tax rate of 30% will be $4,500. This equates to an end tax cost of $1500

If acquired as a collectable, there will be no tax consequences until the artwork is sold, at which stage Capital Gains of $5,000 will be realised, and assuming a tax rate of 30%, Capital Gains Tax of $750 will be payable.

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If acquired as a collectable, there will be no tax consequences until the artwork is sold, at which stage Capital Loss is incurred, which can be off-set against other Capital Gains from other collectibles (to the value of $750).

Can the work be gifted under the Cultural Gifts Program at a later stage?

Please note that while the artwork could still be gifted under the Cultural Gifts Program, due to the accelerated depreciation process, the gift would not provide a tax benefit.

It is imperative that before acquiring a work of art as a business asset, proper advice should be sought from taxation or legal professionals for the above issues to be thoroughly considered.

Tom Lowenstein