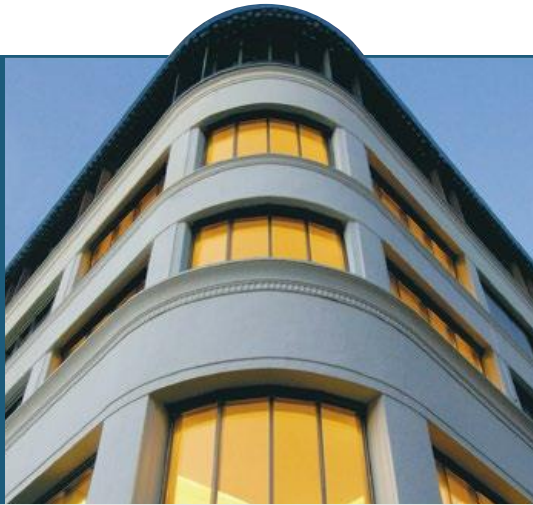


LALIVE



**How and where to structure an art collection?  
How to best pass on a collection through generations?**

**Pure Love of Art versus Mere Investment**  
IBA Art, Cultural Institutions and Heritage Committee

**Sandrine Giroud**

London, 26-27 March 2015

# Switzerland



*Lake Geneva*, Ferdinand Hodler

## Facts: wealth management (1/2)

- World's largest wealth management center (Deloitte, 2015)
- Switzerland represents **8%** of world's import of art and antiquities (TEFAF 2014)
- One of the world's largest free ports



*Guillaume Tell*, Ferdinand Hodler

## Facts: wealth management (2/2)

- Civil law in German, French and Italian
- Matrimonial law
  - ▶ Several regimes available
  - BUT principle of clean break
- Inheritance law
  - ▶ Forced heirship rules
- International and foreign law-friendly
  - ▶ Choice of law for wedding contract (Art. 52 PILA) or inheritance (Art. 90 PILA)
- Established forum and dispute resolution mechanisms



*The Truth*, Ferdinand Hodler

## Facts: art

- 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
- Cultural Property Transfer Act
- Cultural Property Protection Act
  - ▶ First State to provide “refuge” to endangered cultural property
- Washington Conference Principles and Terezin Declaration
- Special tax regime for artworks (e.g. import/export, wealth tax, gain tax, *dation en paiement*)

# Legal vehicles available to hold art in Switzerland

- **Direct ownership** structured through
  - Wedding contract
  - Will and contract of succession
- **Companies** ▶ Swiss and foreign
- **Foundations** ▶ Swiss and foreign
- **Trusts** ▶ foreign BUT recognized (Hague Trust Convention)

## Swiss foundations (1/3)

- Established by the **endowment of assets** for a **particular purpose**
  - Public interest/charities ▶ **tax-exempted**
  - Private interest (e.g. family foundations) ▶ **taxable**
- Created by public deed or by testamentary disposition
- Full transfer of ownership
- May be challenged by the founder's heirs or creditors equivalently as a gift
- Supervised by the State authority (Confederation, canton, commune) to which they are assigned

## Swiss foundations (2/3)

- Public foundations/charities **if**
  - Public interest
  - Irrevocability of the transfer of assets
  - Effective activity
  - No remuneration to board members



## Swiss foundations (3/3)

- **Funding**
  - ▶ *Werner Coninx* collection
  
- **Determination of beneficial ownership**
  - ▶ Succession of *Margret Krainer*
  
- **Provenance**
  - ▶ Kunstmuseum Bern Foundation & *Gurlitt's* legacy

# Due diligence

## ■ Legal due diligence

- **Collecting**: ownership, authenticity, provenance, condition, export & import, tax, applicable law & forum, financial investment
- **Structuring**: matrimonial & inheritance law, legal or financial vehicles, legal purpose, qualified operators, supervision, sustainability
- **Transferring**: scope of the legal rights transferred, requirements, tax impact

## ■ Good governance & best practices

- **Operational structure**: supervision, checks & balances
- **Financial viability**: sufficient financial resources to fulfill the donor's will
- **Clear objectives**: e.g. unity of the collection, peaceful enjoyment, public exhibition

# Tax regime: individuals

	Federal	Cantonal & municipal
Wealth	N/A	<b>Tax</b> <ul style="list-style-type: none"> <li>▶ Exemption for art as decoration v. investment</li> <li>▶ GE: historic exemption of artistic and scientific collection</li> </ul>
Income	<b>Tax</b>	<ul style="list-style-type: none"> <li>• Ordinary management of personal wealth ▶ <b>no tax</b></li> <li>• Transaction in a business capacity ▶ <b>tax</b> (18-45%)</li> </ul>
Donations	<ul style="list-style-type: none"> <li>• N/A</li> <li>• public institutions ▶ <b>tax deductible</b> (+20% donor annual taxable income)</li> </ul>	<ul style="list-style-type: none"> <li>• direct heirs ▶ <b>tax</b> (+- 5%) but most cantons N/A</li> <li>• third parties ▶ <b>tax</b> (+30% up to 50%)</li> <li>• public institutions ▶ <b>tax deductible</b> (GE/ZH +- 20% donor annual taxable income; BL 100%)</li> <li>• SZ: N/A</li> </ul>
Inheritance	N/A	<ul style="list-style-type: none"> <li>• Idem donations</li> <li>• SZ, LU: N/A</li> <li>• GE, VD, JU ▶ <i>dation en paiement</i></li> </ul>

# Tax regime: individuals

- **Criteria:** planned and systematic trades ▶ duration of holding before sale ▶ number of transactions ▶ nexus with the taxpayer's occupation ▶ use of special/professional knowledge ▶ use of partnership ▶ use of third party funding ▶ reinvestment of the proceeds and gain ▶ realized gain
- **Examples**
  - ZH: **Giovanni Giacometti** (CHF 150,000)
  - BE: **Wine collection** (CHF 200,000 – CHF 400,000)
  - VD: **Poster collection** (CHF 300,000/year)

## *Dation en paiement*

- Cultural objects may be accepted as payment of the inheritance and donation taxes
- Agreement between the cantonal tax authorities and the taxpayer is necessary



*The Frustrated Souls*, Ferdinand Hodler

## Tax regime: legal structures

Tax	Swiss public foundation (charities)	Swiss private foundations	Foreign foundation	Trust
<b>Endowment</b>	N/A	N/A	<ul style="list-style-type: none"> <li>Controlled</li> <li>Non-controlled</li> <li>Effective seat in Switzerland</li> </ul>	<ul style="list-style-type: none"> <li>Revocable</li> <li>Irrevocable</li> </ul>
<b>Income</b>	Exempted upon request	<b>Tax</b> (5-30%)		
<b>Capital</b>	Exempted upon request	<b>Tax</b> (0.8%)		
<b>Donations</b>	Exempted upon request	<b>Tax</b>		
<b>Inheritance</b>	Exempted upon request	<b>Tax</b>		