



Taxation of Artwork Guide

A comprehensive study from 26 countries across the world

COVER

Rodney Graham – Rotating Stand (Red, Blue, Yellow, Green, Orange)

2015/Steel, aluminium, wood, acrylic paint on canvas/Unique

335.3 x 304.8 x 310 cm/132 x 120 x 122 in

© Rodney Graham/Photo: Stefan Altenburger Photography Zürich/Courtesy Rodney Graham and Hauser & Wirth

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Introduction

The question: "What is art?" has been troubling humanity for centuries. The definition of art is debatable and subjective. The concept of art has changed over the centuries and the role of art has developed from aesthetic pleasure to investment objects today. There is no agreement and thus we are left with so many definitions and possibilities when talking about art and business. Contemporary art business is multi-disciplinary, combining legal, economic, political, technological and philosophical aspects of the art world.

The international art market is estimated to have turned over USD 64 billion in business in recent years. Considering its size alone, it is easy to see why the art trade has captured the interest of the investment community. Art is seen as an investment class in many circles and then again, for many, it is considered a disgrace that art is just another form of investment to capitalise on. Works of art can be viewed in multiple ways – they are both to be used by consumers and also give tremendous emotional pleasure at the same time. The value of artwork tends to increase over time, turning them into potential sources of capital gain and diversification. At the same time, art maintains the unique characteristic that it can't be mass produced. Art seems to be an addictive and generic asset class which is proven by various types of current "trends" such as tokenization and fractional owning of art funds and artwork. Turning pure enjoyment of the artwork itself into fractional joy of holding the shares in hypothetical Picasso. Thanks to block chain based apps and platforms, viewing and buying art has become increasingly easy. Online auctions might not have the same energy and buzz as sparkingly catered offline events but investors would still be attracted to socially validating investments.

However, the changes in 2020 due to COVID-19 have been remarkable and have posed great challenges to the international art market. The latest Art Market 2020 report showed that the commercial galleries' trade was down by 36% on average and auction sales had decreased, whilst online sales had increased by 37% and private sales have assumedly plummeted. The full effect of 2020 to the global art market is yet to be seen.

Although it can be said that sales are geographically concentrated in main markets like the US, UK and China, most countries have some sort of art market on their own.

In this respect you are holding in your hands a unique report on the taxation of artwork. Whilst there are publications available explaining artwork taxation in main markets – mostly the US and to some extent the UK and other European countries, a detailed report that covers European countries, the United States of America, Costa Rica, Uruguay, Brazil and also the United Arab Emirates, India, Pakistan, China and Vietnam is one of a kind. Several of these countries have tax systems as colourful and entertaining as their artwork, something that makes reading this report even more interesting.

There are several risks connected with investment into art which are unique to this specific investment class, such as physical damage, risk of ownership, authenticity, provenance and price volatility and taxation. Price volatility issues and the fact that art investments have become accessible to people who have previously felt priced out of the market turns the wealth tax application on art into a philosophical question.

Taxation can also have beneficial effects on collectors as there are tax advantages available for charitable investments into art. In some countries there are regulations in place that enable the paying of taxes in lieu in artwork. Tax questions are central in the art business, entailing remarkable financial risks such as wealth and inheritance taxes, income taxes and even simply incorrectly recorded VAT or sales taxes.

This Taxation of Artwork report deals with income, wealth and inheritance taxes, corporate owners of artwork, VAT and customs duties application. Hopefully, answers and a way forward can be found for questions such as: "Should inheritance or gift taxes be paid on my collection?"; "Should the artwork be obtained through a company or as an individual?"; "Will purchases or sales of artwork be subject to VAT?"; "Am I carrying out occasional or regular transactions with artworks?"; "Which taxes will be due on imported artwork?" from the standpoint of 26 countries.

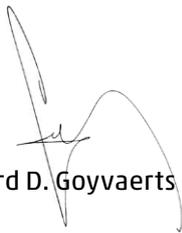
The current report should contribute to the art transactions of collectors by helping them to navigate complicated tax issues around art investments. It should also be valuable reading not only for galleries, private museums, family offices, heirs and beneficiaries but hopefully also for art dealers, consultants, art fairs and artists alike.

WTS Global was established in 2003 and a dedicated WTS Global Private Clients Service Line was initiated in 2017. Members from this Service Line spanning 26 countries contributed to this report.

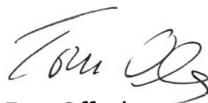
As art markets continue to grow, WTS Global has taken the initiative to build dedicated expertise in this specific industry and to provide cross-border assistance to its private clients, corporate collectors, galleries, foundations and asset managers with regards to the taxation of artwork. This report is the first comprehensive study containing 26 country overviews from WTS Global member firms.

We would like to warmly thank all of the authors who took the time and effort to contribute to this report.

Special thanks also go to Hauser & Wirth who provided us with the artwork preceding each country chapter.



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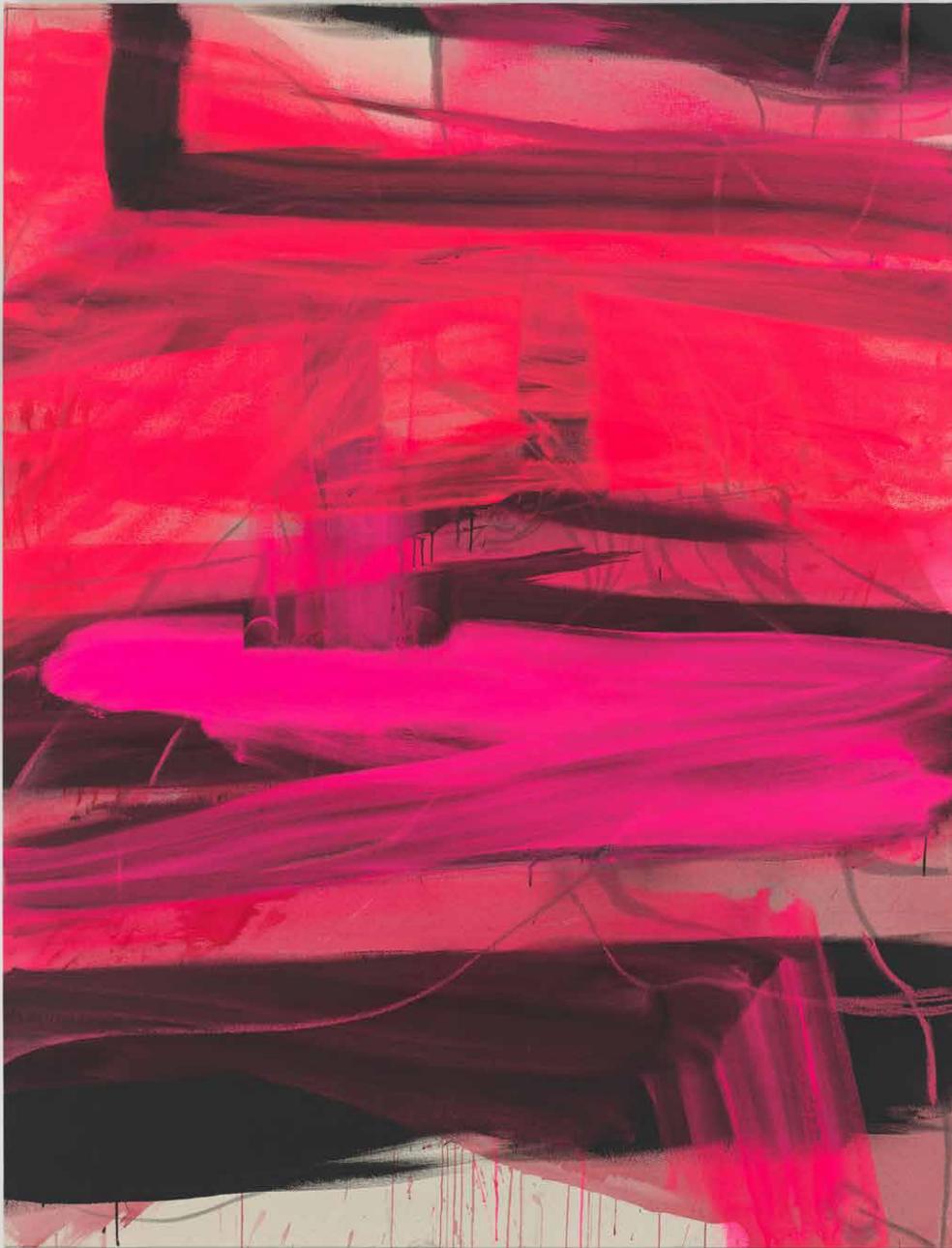
Kärt Anna Maire Kelder

Rita Ackermann – Palladio

2015/Acrylic, spray paint, pastel and pigment on canvas

168.3 x 127 x 3.8 cm/66 ¼ x 50 x 1 ½ in

© Rita Ackermann/Photo: Genevieve Hanson/Courtesy Rita Ackermann and Hauser & Wirth



Austria

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Individuals and resident companies are in general taxable on their worldwide income. Taxable income is the total income from one or more sources, decreased by any special expenses and the losses incurred from these sources. Tax rates on the income of individuals depend on the total income per year. The income tax rate is progressive (except for real estate gains, capital yields and dividends).

Austria does not have a wealth tax.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

The progressive tax rate on the income of individuals is calculated as follows:

- income up to EUR 11,000 per year 0%
- income between EUR 11,000 and EUR 18,000 per year 20%
- income between EUR 18,000 and EUR 31,000 per year 35%
- income between EUR 31,000 and EUR 60,000 per year 42%
- income between EUR 60,000 and EUR 90,000 per year 48%
- income between EUR 90,000 and EUR 1 million per year 50%
- income over EUR 1 million per year 55%.

From 2020, the lower three tariff levels for wage and income tax will be reduced. However, the reform will be extended to three years: in the first step, only the starting tax rate is reduced (from 25% to 20% – already done retrospectively in September 2020 for the whole year 2020), the next two tax rates will follow in July 2022 and July 2023 (from 35% to 30% and from 42% to 40%).

1.3. How are profit and net equity taxed in your country?

Taxable profit is the total income realised from carrying on business activities, whatever the nature of the income or business. As a general rule, the taxable profit of a small business (up to a turnover of EUR 700.000) and special freelance professionals (e.g. lawyers, tax advisors, artists, doctors) is determined on a cash basis. For a larger business, the profit is calculated on an accrual basis of accounting.

The Austrian Corporate Income Tax Act relies on the definition of "income" provided in the Austrian Income Tax Act. Therefore, as long as there are no special clauses in the Corporate Income Tax Act, the general rules of the Income Tax Act apply. One of these special clauses is that the income of a private or public limited company is to be regarded as "business income" in any event, regardless of the nature of the income. Consequently, the valuation has to be done using the net equity comparison method. Net equity is determined based on the Austrian generally accepted accounting principles codified in the Austrian Commercial Code. A private or public limited company is therefore legally required to keep books and records under the Commercial Code. The starting point is always the Austrian generally accepted accounting principles, which are adjusted in some cases by special tax rules to determine the tax base.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

The flat rate of corporate income tax is 25% (but a reduction of the corporate income tax rate to 24% in 2023 and 23% in 2024 has been announced) on any profit earned by a corporation.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

Austrian tax authorities assume that strangers do not give each other presents. Therefore, price agreements between third parties are in general recognized for tax purposes.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

The classification of an art piece as a generally tax exempt private or as a taxable (business) asset is crucial when deciding whether or not the art piece has to be declared in the tax return.

There is no explicit obligation to disclose taxable private art pieces to the tax authorities.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

The taxation from the sale of artworks depends of the classification of an art piece (private or household good in contrast to business asset):

Capital gains resulting from the sale of privately held movable assets are generally tax exempt. However, such assets are also taxed at the progressive tax rate (see point 1.2.) if the period between acquisition and sale does not exceed one year. Reference should be made to the exemption limit of EUR 440 for capital gains within the one year period. However, with an increased number of transactions, the demarcation to commerciality must be observed. The rental of privately held art objects is subject to the progressive income tax rate.

The sale of business assets is always taxed at the progressive tax rate (see point 1.2.) regardless of whether they are qualified as fixed or current assets. An art dealer in the form of a sole proprietor or partnership is subject to income tax at the progressive tax rate and realises income from trade and business. It can be difficult to determine whether the private sphere of the sale of artworks has already been exceeded and the seller is in fact an "art dealer". In the business sphere a loss carry forward is possible compared to a loss resulting from the sale of a privately held art work. The Austrian tax authorities explicitly mention the sale of an art collection as an example of a commercial activity. According to the settled case law of the

Administrative Court, the sale or purchase of collections, which is not carried out "en bloc" but through several individual transactions, is generally assumed to be an entrepreneurial activity. Furthermore, according to the legal decisions the operation of a gallery or the art trade is a typical commercial activity. Even if the gallery is only operated part-time with the participation of family members, the professional actions (in this case: initial conversion costs of EUR 60,000, 30 artists under contract, homepage, exhibitions, fairs, customary sales commission of about 35% of the sales price) testifies that there is no hobbyism.

The income of an artist is classified as income from self-employment. An artistic activity is only seen to be present if a personal, creative activity is developed according to design principles which are characteristic of a (recognised) branch of art or a comprehensive, recognised field of art (painting, sculpture, architecture). Artists and writers can distribute their positive income at the time of initial assessment (in the calendar year in which the first positive income deriving from self-employment as an artist occurs e.g. from the sale of artworks) evenly over the year in which the income was earned and the two previous calendar years. Depending on the level of (other) income in the two previous assessment years, there may be considerable tax advantages, especially if no or only low income was earned in the previous years. Moreover, in Austria artists can freely choose whether they want to deduct the actual business expenses or whether they want to pay a lump sum for business expenses ("basic flat rate"). The business expenses of artists can be calculated at an average rate. The prerequisite is that no books are kept and that the previous year's turnover did not exceed EUR 220,000. The average rate is 12% of the turnover (maximum EUR 26,400 per year). In addition to the average rate of expenses, expenses for external services and compulsory insurance contributions can also be claimed as operating expenses. Furthermore, there is a special artist or writer lump sum. The operating expenses can also be estimated at 12% of the turnover (maximum EUR 8,725 per year). In contrast to the basic flat rate, there is no turnover limit. The catalogue of additional operating expenses that can be deducted is wider than the basic flat rate and includes, among other things, expenses for musical instruments, material for works of art, training costs as well as travel and overnight expenses. A calculation and comparison of advantages

can serve to show whether the artist lump sum is to be recommended. State, appraisal and promotion prizes are exempt from income tax.

An artist, relocating from abroad, might be entitled to favourable tax treatment by retaining the previous foreign tax burden (but at least 15%) on foreign income if the relocation is in Austria's public interest.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Not applicable as Austria does not have a wealth tax.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

There is no Inheritance or Gift Tax. However, gifts (donations) are subject to obligatory notification to the tax authorities. This also applies for secondary residences.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

In case of sales of art pieces by a legal entity, net profits derived from sales are subject to corporate income tax. Expenses in respect of the sale are generally tax deductible.

The flat rate of corporate income tax is 25% (but a reduction of the corporate income tax rate to 24% in 2023 and 23% in 2024 has been announced) on any profit earned by a corporation. If a company suffers a loss or makes a very small profit, the company still has to pay a minimum amount of tax. The annual minimum tax for public limited companies (AG) amounts to EUR 3,500 and for private limited companies (GmbH) to EUR 1,750. The minimum corporate tax can be credited to the corporate

tax the company has to pay when it is profitable in following years.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

The art trading company pays corporate income tax on profits. The profit arising from sales of art pieces can be distributed to the shareholder as a dividend. Dividends to natural persons are taxed with a final withholding tax at a rate of 27.5%.

From a tax point of view there are no general advantages to owning artworks through a legal entity. However, social security and confidentiality considerations may lead to deciding in favour of owning the artworks through a legal entity.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The Austrian VAT Code provides for a reduced rate of 13% to a limited extent. The rules pursuant to Art 103 of the VAT Directive are rather complicated than consumer

friendly. First of all, the reduced rate applies solely on sales of art work performed by artists themselves. Additionally, certain traders enjoy a preferential rate, i.e. those who sell works of art occasionally and have imported the goods, or purchased the work of art directly from the artist or were eligible for an input tax

deduction. The result is that sales by professional art dealers are subject of the standard rate of 20%.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Austria is a Member State of the European Union and has to apply the Unions customs code. In accordance with Reg. 1186/2009/EC and Directive 2009/132/EC imports of art might be eligible for the zero rate. In general, as far as the tax rate for the import VAT is concerned, Austria

applies the reduced rate of 13%, irrespective whether the seller is the artist or a wholesaler. However, if certain conditions are met, the importation of works of art is zero rated. If the importer is a collector of art and the goods imported are not dedicated for a resale and if the work of art is part of an establishment or association which is a beneficiary, the importer is entitled to apply for zero rating. Such an establishment can be a private museum, a gallery and to a certain extent a permanent place which is partly accessible to the public.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

If the domestic tax authorities find out that a taxpayer has undeclared income (e.g. from the sales of art pieces) and no voluntary disclosure has been submitted, criminal tax proceedings are initiated with punishments including fines and imprisonment. Tax fraud of more than EUR 500,000.00 can lead to imprisonment for up to ten years.

Does your country have a non-punishable voluntary disclosure programme?

A successful voluntary disclosure guarantees full immunity from prosecution for tax evasion. In order to be successful, the domestic taxpayer has to declare all undeclared taxable income of the last ten years. He also has to pay the evaded taxes together with interest on arrears. If the voluntary disclosure is submitted on the occasion of a secondary review or a tax audit a penal surcharge of 5% to 30% applies – depending on the evaded tax amount. A voluntary disclosure leads to an exemption from punishment, if all of the following requirements are met:

- Disclosure of the offence.
- Submission of the voluntary disclosure to the competent tax or duty office.
- The offender has not been caught in the very act of committing the tax offence.

- Disclosure of the circumstances relevant for establishing evasion or non-payment/abusive reduction of taxes if the misconduct was connected with a non-payment/abusive reduction of taxes.
- Payment of the evaded tax in accordance with the applicable tax regulations.
- Timeliness, i.e. no acts of prosecution have been carried out yet, the offence has not yet been discovered or at least the offender does not know of any such discovery, etc. The requirement of timeliness is not fulfilled if a voluntary disclosure to the tax authorities has already been made concerning the same tax offence. The person on whose behalf the voluntary report is made is clearly identified.

6. Special provisions regarding taxation of artworks

Trust/foundation

Austrian private foundations are considered as corporate entities for tax purposes and therefore subject to corporate income tax at the standard rate. However, there are several specific tax rules for private foundations. Furthermore, an Austrian private foundation is not allowed

- to engage in commercial activities other than of a purely incidental character,
- to be a personally liable partner of a general or limited partnership and
- to have management functions of a commercial company.

In Austria, all contributions/donations to a private foundation are subject to a foundation entrance tax of 2.5% of the fair market value. Capital gains resulting from the sale of art work is generally tax exempt. However, such assets are also taxed at the corporate income tax rate if the period between acquisition and sale does not exceed one year. Reference should be made to the exemption limit of EUR 440 for capital gains within the period of one year.



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Rodney Graham – Main Street Tree

2006/Chromogenic photograph

228.6 x 186.5 x 5 cm/90 x 73 3/8 x 2 in (framed)

© Rodney Graham/Photo: Tom Van Eynde/Courtesy Rodney Graham and Hauser & Wirth



Belgium

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Belgian individuals are subject to individual income tax. For personal income tax purposes, a distinction is made between four different categories of income. Particular rules apply to each category. The categories are real estate income, movable property income (including dividends, interest and royalties), professional income (including business profits, employment and pension income) and miscellaneous income (including capital gains arising from speculative transactions).

There is no "wealth tax" as such applicable to wealth held by individuals. Although certain taxes are related to a specific equity, such as the tax on securities accounts.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Tax rates vary, depending on the category of income.

Income from real estate is taxed globally together with other earned income, at the progressive rates between 25%–50%.

Income from movable property is in principle subject to a final withholding tax if paid in Belgium. If no withholding tax was levied, a tax equal to the withholding tax rate will be levied through a tax assessment. Withholding tax rate on dividends and interest is 30%. Lower rates are applicable if specific conditions are met.

Professional income is subject to progressive tax rates between 25%–50%. Tax will be increased with a communal surcharge (average rate of 7%).

Miscellaneous income is subject to flat tax rates, depending on the type of income, between 15%–33%.

As mentioned above, there is no wealth tax as such applicable in Belgium. However, transactions with respect to certain shares and securities are subject to a tax on stock exchange transactions. Also the mere holding of an securities account will be taxed at a flat tax rate of 0,15%, which will be imposed on certain qualifying

financial instruments that are held via a Belgian or non-Belgian securities accounts, when a threshold of EUR 500,000 is exceeded.

1.3. How are profit and net equity taxed in your country?

Companies are subject to corporate income tax. The tax base for CIT purposes consists of worldwide income minus certain allowed deductions. It is assumed that all income received by a company is, in principle, professional income/profit.

Non-profit associations and foundations are normally subject to legal entities tax, which pre-dominantly relates to financial investment income (e.g. interest and dividends), real estate income (e.g. lease income), and some miscellaneous forms of income (e.g. capital gains on substantial shareholdings).

There are no rules foreseen for the taxation of net equity.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

As of tax year 2019 (financial years ending 31 December 2018 and later), the general corporate tax rate amounts up to 29%, increased with a 2% crisis tax, which is a surtax, implying an effective rate of 29.58%. SMEs will be able to profit from a decreased rate of 20%, also increased with a 2% crisis tax, implying an effective rate of 20.40% on the first bracket of EUR 100.000,00 profit.

As of tax year 2021 (financial years ending 31 December 2020 and later), the standard CIT rate will be lowered to 25%, without any crisis tax (will be abolished). For SME's, this rate will be kept at 20%, with the crisis tax also being abolished.

There is no separate tax rate determined for legal entities tax purposes. Immovable and movable income shall be subject to withholding taxes and shall be deemed to have been subject to their tax regime. E.g. dividend will be subject to a withholding tax of 30%. In addition, non-profit organisations and private foundations are subject to an annual 'patrimony tax' of 0,17%.

1.5. **What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?**

Valuation methods are subject to very different views, depending on the asset to be valued and the type of valuation. A company can be valued, for example, by means of an income-oriented approach or a market-oriented approach or even another approach.

In general, privately held assets such as art are not taxable and hence there are no specific valuation rules. If a valuation is needed, then either the acquisition value will be taken or the fair market value.

For inheritance tax purposes, the value of an asset is its fair market value or sale value at the time of death. For certain assets is foreseen in specific regulations regarding the valuation (art. 2.7.3.3.2 FTC), e.g. foreign real estate, but this is not the case for work of arts.

For income tax purposes, as mentioned, individuals will not be taxable on the mere holding of works of art. There are thus no specific valuation rules foreseen in this respect. Only upon a speculative sale or in case of professional selling of art, an individual will be taxed on the gains c.q. profit made from the sale. In case of a company holding works of art, in principle, works of art will be valued at the price of acquisition. The mere holding of works of art is not taxable on behalf of companies.

It is important to note that the tax authorities do not accept depreciation of the value of a work of art, since in general, the value of art is deemed not to decrease. However, if the work of art is sold at a lower value than the acquisition value, a loss in value may be accounted for.

2. Taxation of Artwork

2.1. Individuals **Is there an obligation of declaring/disclosing private works of art to the tax or other authorities (list of inventories or the like)?**

Concerning income tax, there is no legal obligation to declare the ownership of private works of art as such. To date, there is no national register yet that specifies which work of art belongs to which individual. However, subject to other regulations such as the look-through taxation or so-called cayman tax, the declaration of a list of assets may be a resulting obligation.

As far as inheritance tax is concerned, the heirs or legatees are obliged to declare works of art when they belong to the estate of the deceased.

2.1.1. Income taxes **Is income generated from the sale of works of art taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).**

If the (non-professional) rental of works of art generates income, this income should be declared as taxable

movable income. Such rental income is taxable at progressive rates, up to 50%.

Capital gains resulting from the sale of privately held movable assets are tax exempt provided that the sale is part of the normal management of private patrimony (i.e. acting with due diligence without taking abnormal risks). Thus, capital gains resulting from the sale of private works of art as part of a normal management of private patrimony, are not taxable in the hands of the natural person.

Whether a transaction is part of the normal management of private patrimony is often a matter of fact. Aspects that can influence the assessment are the speculative and repetitive nature of such transactions.

If the sale of a private work of art is not part of the normal management of private patrimony, the capital gain is taxable as miscellaneous income, which is subject to income tax at the rate of 33%. In such case a capital loss would also be tax deductible. When assessing whether the sale of works of art should be considered as professional income, factual aspects such as the

frequency of sales, the professional activity of the seller, using a VAT number, the financing of the purchased works of art, using split sale techniques, etc. can be taken into account. The use of an offshore company, which potentially leads to the application of cayman tax, is not sufficient to qualify a mere sale as a professional activity.

If the sale of privately held works of art is part of the taxable person's business activity, the income from the sale is taxable as professional income (progressive rates of up to 50%).

The taxable base would then be equal to the difference between the market value of the property at the date of transfer, less the initial acquisition cost and any other costs related to the transfer and the business activity. A self-employed professional art dealer will be subject to the payment of social security contributions. These may also be deducted from the professional income when calculating the personal income tax.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of works of art (e.g. tax-exempt personal belongings/household)?

There is no general wealth tax in Belgium, nor do any specific categories of classification of works of art exist in Belgian tax law.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

We refer to our answer to question 2.1.: there is no legal obligation to declare the ownership of private works of art as such in the personal income tax return. However, subject to other regulations, such as the look-through taxation or cayman tax, the declaration of a list of assets may be a resulting obligation.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

For tax purposes, private works of art as such are valued on the basis of the fair market value.

2.1.3. Inheritance/gift taxes

In case of a gift will there be any tax levied?

If a work of art is donated by a Belgian resident via a registered gift, a flat rate gift tax is in principle due. The tax rates vary according to the region where the donor resides (Flanders, Brussels Capital or Walloon Regions) and the degree of kinship between the donor and the beneficiary:

- Flemish Region: 3% for donations to a spouse, cohabitant and direct forebear or descendant; 7% for donations to any other persons.
- Brussels Capital Region: 3% for donations to a spouse, legal cohabitant and direct forebear or descendant; 7% for donations to any other persons.
- Walloon Region: 3.3% for donations to a spouse, legal cohabitant and direct forebear or descendant; 5.5% for donations to any other persons.

Gift tax is not due "as such", but is levied only as a part of the registration duties and is levied on the fair market value of the donated (movable) work of art.

Gift tax is only due for donations registered in Belgium. Donations of movable property, such as a work of art, made by notarial deed will have to be registered and thus be subject to gift tax (for foreign deeds as of 1 December 2020). Under Belgian civil law, works of art which are movable assets (at least, most of them will be movable assets) can be simply "gifted" at will (traditio de manu), even if the object of art is too heavy or impractical to be displaced (traditio de longa manu). Hence, a notarial deed is not legally required. Obviously, in such a case it is recommended to provide proof in written form (pacte adjoint), although art. 2279 CC states that the mere possession of the work of art is proof by itself. If the donor deceases within a three year period as a Belgian resident, the donated assets will be subject to inheritance tax (see below for applicable rates).

In case of an inheritance will there be any tax levied?

Belgian inheritance tax on movable assets, such as works of art or an art collection, is due upon the decease of a Belgian resident, irrespective of the residence of the recipient heir or legatee.

If the deceased was a Belgian resident, inheritance tax is levied on the net value of all worldwide property, i.e. property situated in or outside Belgium. If the deceased was a non-Belgian resident, "the right of transfer upon death" is only levied on the net value of Belgian immovable property, which by hypothesis will not include works of art or art collections. For works of art or art collections, this means that they will only be subject to inheritance tax in case of inheritance by a Belgian resident.

Please note that individual works of art which do not form part of an art collection and which can be seen as "regular house decoration" will only rarely be individually declared for inheritance taxes, and will fall under the general notion of "decoration" or "huisraad".

For purposes of taxation, the value of an asset is its fair market value or sale value at the time of death. Each work of art must be valued separately.

The tax rates are progressive and vary according to the region (Flemish, Brussels Capital or Walloon Regions) and the degree of kinship between the deceased and the heir or legatee. Depending on the degree of kinship, the tax due is determined per heir or legatee, taking into account the portion of the estate, or globally.

Specifically, for the Flemish region, the part of the estate passing on to a direct forebear or a descendant is split up into immovable and movable property, and both are taxed separately, each heir being taxed individually. The inheritance tax rates can be summarised as follows:

- Flemish Region: 3%–27% for a spouse, cohabitant and direct forebear or descendant; 25%–55% for other persons.
- Brussels Capital Region: 3%–30% for a spouse, legal cohabitant and direct forebear or descendant; 20%–80% for other persons.
- Walloon Region: 3%–30% for a spouse, legal cohabitant and direct forebear or descendant; 20%–80% for other persons.

Since 1985, it has been possible to pay inheritance taxes in Belgium with works of art, subject to an agreement with the tax authorities on the value and the cultural impact thereof. The valuation will be made by a specific committee, which will then report to the income tax authorities or the Patrimonial Documentation (The Administration Measurements and Assessments). However, this possibility is rarely used. For example, in 2018 it was not used a single time.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of works of art taxed?

Considering the fact that all income received by a company is deemed to be professional income, profits derived from sales of works of art will be subject to the corporate income tax. We hereby refer to the answer on question 1.3.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

From a tax point of view there are no advantages to owning an artwork through a company, although some legal proposals are currently being considered to support the contemporary art sector.

The tax authorities believe that, over time, art basically only increases in value and does not lose value. Therefore, depreciation on the value of the works of arts is not accepted for tax purposes. However, if the work of art is sold at a lower value than the acquisition value, a loss in value may be recorded.

In the event of a later sale of the artwork, gains will be taxable.

However, please note that holding art through a Belgian private foundations can be advantageous. Belgian Private Foundations are normally subject to legal entities tax, which predominantly relates to financial investment income (e.g. interest and dividends), real estate income (e.g. lease income), and some miscellaneous forms of income (e.g. capital gains on substantial shareholdings).

There is however no general capital gains tax due by private foundations, so capital gains on works of art cannot be taxed.

The Belgian private foundation was introduced into the Belgian legal system by the law of 2 May 2002, which was recently modified by the law of 23 March 2019. In essence, the Belgian private foundation is a special purpose vehicle, with a separate legal personality, used with the aim of pursuing one or more specific benevolent purposes.

One of the examples given by the Belgian legislator is keeping and maintaining a collection of works of art. Art collectors may want to be sure that the property stays in their family and passes on from generation to generation. At the same time, they want to reduce the tax costs of such transfer to the next generation.

Distributions made by a Belgian private foundation are not subject to inheritance tax, provided that a number of conditions are met. In a number of specific cases, the ruling committee correctly decided that the payments made by a Belgian private foundation

within the framework of its purpose were not subject to inheritance tax, provided that, for example, the board of directors of the Belgian private foundation decided on these distributions in a discretionary manner, within the legal and statutory rules as defined.

In case of a donation to a Belgian private foundation, in Flanders such donation can remain tax exempt. If registered, the donation will be subject to a 5.5% gift tax. In case of a legacy to a Belgian private foundation, in Flanders the rate of inheritance tax is 8.5%.

The tax rates vary according to the region: a donation to a private foundation in the Brussels Capital Region is subject to a gift tax of 7% and a legacy to a private foundation in Brussels Capital Region is subject to an inheritance tax of 25%; in the Walloon Region both gift and inheritance tax is at 7%.

Throughout its existence, the Belgian private foundation is in principle subject to the annual "inheritance tax compensatory charge" (a patrimony tax) of 0.17%. However, this tax is not due if the total value of the assets of the foundation only amounts to EUR 25,000.00 or less.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The Belgian VAT authorities apply a broad interpretation of a "VAT taxable person". Activities related to artwork collections could therefore easily qualify as a VAT taxable activity under Belgian VAT law.

However, the Belgian authorities consider that the mere purchase of artwork as an investment, without the intention to perform any economic activity, could qualify as a transaction outside the scope of VAT in Belgium (administrative decision no. E.T. 19449 dated 06.12.1974).

The latter question would be different if the seller qualified as a "professional dealer", which is a normal VAT taxable business.

If the sale of artwork is only an occasional activity and if there is no intention to carry on a regular sales business of art in Belgium, such an occasional activity should remain out of scope of Belgian VAT. However, this is a factual discussion. If different sales transactions occur shortly after one another, it cannot be excluded that the Belgian VAT authorities could consider the relevant company as a VAT taxable company.

The standard VAT rate in Belgium is 21%. However, the sale of works of art could in principle be subject to the reduced VAT rate of 6%. Here, some conditions as well as some formalities would have to be met.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared works of art and what are the expected consequences?

Both individuals and legal entities, such as corporations and foundations, can apply for a tax regularization, including partnerships and unincorporated associations.

The voluntary disclosure is conceived to be all-inclusive. The taxpayer should disclose all previously non-declared capital and income. He should not limit the disclosure to the income from certain specific tax years. The subject of the disclosure would be all the non-statute-barred income as well as all capital which qualifies as "statute-barred capital". In reality, this will only relate to income and/or capital that should have been declared in the regular tax return(s). No specific provisions relating to works of art are included in the applicable legislation. Different situations might occur, depending on the origin of the funds with which the works of arts are purchased/received.

If e.g. an artwork has been purchased with non-declared income, the purchase price of that artwork should be included in the voluntary disclosure.

When an artwork was inherited from a Belgian resident, but has not been declared in the inheritance tax return of the deceased resident, the value of the artwork at

the date of decease can be included in the voluntary disclosure. The artwork will then be valued at its fair market value or sale value at the time of death. This may be useful when the owner wants to sell the work of art, and may not be able to prove its origin for tax purposes. Clearly, the mere filing of a voluntary disclosure does not affect the origin for civil law purposes.

If the application is accepted, the applicant will be asked to pay the regularization levy, i.e. the taxes due plus a penalty, within 15 days. Upon receipt of payment, a 'regularization certificate' will be issued. That certificate proves that the taxpayer has voluntarily disclosed the income and/or capital.

Practically speaking, the applicant can no longer be exposed to any claims from the tax authorities and he has obtained full immunity for criminal prosecution and money laundering. The application, the payment of the regularization levy or the certificate cannot be used against the taxpayer as an indication for further tax investigations. Clearly, if the work of art has been obtained through other criminal activities, the voluntary disclosure will not remedy those infringements.

Does your country have a non-punishable voluntary disclosure program?

No.

6. Special provisions regarding taxation of artworks

Belgium applies look-through taxation (referred to as cayman tax) to Belgian tax residents who are the founder or beneficiary of certain foreign legal structures.

Pursuant to this cayman tax, income attributed to the targeted foreign legal structures, such as trusts, foreign foundations or offshore companies, is deemed to be received directly by a Belgian resident or in the hands of the Belgian non-for-profit organization or Belgian private foundation who is the shareholder or founder of the foreign legal structure ("look-through tax").

The result of cayman tax is that all income earned by the foreign legal structure will retain its fiscal qualification (e.g. interest, dividend, capital gain, rent, other) for Belgian tax purposes and will be taxed accordingly in the hands of the founder. Hence, e.g. capital gains resulting from the sale of private works of art as part of a normal management of private patrimony are not taxable in the hands of the natural person. As mentioned above, whether a transaction is part of the normal management of private patrimony is often a matter of fact.

If the sale of a privately held work of art is not part of the normal management of private patrimony, the capital gain is taxable as miscellaneous income, which is subject to income tax at the rate of 33% (cf. supra). This may also apply under cayman tax, yet the mere interposing of the cayman tax entity is not sufficient to achieve a requalification for tax purposes.

When certain conditions are met, distributions from foreign legal structures will also be taxed as a dividend on behalf of the recipient of the distribution. When the foreign legal structure 'attributes' a work of art to the founder or beneficiary, he or she might become taxable on the value thereof by way of a dividend.



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Phyllida Barlow - untitled: dancer; 2018

2018/Bonding, cement, PVA, paint, plaster, plywood, polycotton, sand, spray paint, steel

194.5 x 58.5 x 54.5 cm / 76 3/8 x 23 x 21 1/2 in

© Phyllida Barlow/Photo: Alex Delfanne, All Rights Reserved/Courtesy Phyllida Barlow and Hauser & Wirth



Brazil

1. Legal Framework

1.1.

How are income and wealth taxed in your country?

Brazilian nationals and foreigners who qualify as residents in Brazil for tax purposes will be taxed by the Brazilian individual income tax on a worldwide basis. The applicable rates and payment mechanics will vary depending on the type of income these individuals receive.

Earnings received from Brazilian legal entities

Income tax on earnings received from Brazilian legal entities, including salaries and bonuses, must be withheld and paid by the Brazilian entities on a monthly basis.

Earnings received from other sources

Unlike the income tax on earnings received from Brazilian entities, the tax on earnings received from other individuals or from foreign sources must be calculated and paid directly by the individuals who receive such earnings. The payment must be made on a monthly basis up to the last business day of the month immediately subsequent to that in which the earnings were received. This payment mechanics is commonly referred to as "carnê leão".

Rental income and dividends related to investments abroad must also be included in the "carnê leão", regardless if such earnings are remitted or otherwise transferred to Brazil.

The income mentioned above will be included in the Annual Income Tax Return and the tax withheld or paid will be considered as a credit.

Capital Gains

Tax on capital gains must be calculated and paid by the individual up to the last business day of the month immediately subsequent to that in which the gains were obtained. Capital gains are informed in the Annual Income Tax Return but the tax paid will not be considered as a credit.

Interest Income from Investments Abroad

Interest income from investments abroad are taxed as capital gains.

Wealth

Wealth is presently not taxed in Brazil.

1.2.

What is the range of the applicable tax rates for individuals on income and wealth?

Earnings received from Brazilian legal entities

Salaries and bonuses are taxed at progressive rates varying from 0% to 27.5%, the latter being presently applicable to earnings equal to or exceeding BRL 4,664.68 (approximately EUR 730 – September 2020) per month. The income tax payable will be withheld and paid by the Brazilian entities on a monthly basis. Certain deductions for social security charges and dependents are allowed in the calculation of the withholding tax.

Earnings received from other sources

Earnings received from other individuals or from foreign sources are taxed at the same progressive rates applicable to earnings received from Brazilian entities (0% to 27.5%). Certain deductions for social security charges and dependents will also be allowed in the calculation of the tax (but only in case these deductions have not been used in the calculation of the income tax on earnings received from Brazilian entities).

Capital Gains

Capital gains from the sale of assets, regardless of whether such assets are in Brazil or abroad, are taxed at progressive rates varying from 15% to 22.5%. The taxable gain will be equal to the positive difference between (a) the price or amount obtained with the sale or disposition of the asset and (b) the respective acquisition cost (amount effectively paid). If the asset is abroad, such difference must be calculated (i) in USD if the asset was acquired with resources originally received in foreign currency or (ii) in Reais if the asset was acquired with resources originally received in national currency.

Some exemptions and reductions may apply, such as (i) the exemption on gains when the amount of the assets of the same type sold during the month is equal to or lower than BRL 35,000 (approximately EUR 5,470) or

(ii) the exemption on gains from the sale of properties or disposition of investments maintained outside Brazil and that have been acquired or made in foreign currency prior to the time of characterization of "residency" for Brazilian tax purposes, among others.

Interest Income from Investments Abroad

Interest income from investments abroad are taxed at progressive rates varying from 15% to 22.5%.

Tax Treaties/Offsetting of Taxes Paid Abroad

Earnings and gains received from countries with which Brazil has entered into double taxation treaties are also subject to the applicable provisions of such treaties. These provisions may afford a preferential tax treatment or other tax benefits for eligible individual taxpayers. When double taxation treaties are not applicable, Brazilian income tax laws generally authorize that the tax paid abroad with respect to income taxable in Brazil be credited against the Brazilian income tax, provided that the offsetting of tax is allowed to Brazilian tax residents by the relevant foreign country and that the offsetting does not exceed the tax due on income received from Brazilian sources. Thus, it is necessary to verify if the other country also allows the offsetting of tax and, in this case, it is necessary to obtain a copy of the legislation that allows such offsetting.

1.3. How are profit and net equity taxed in your country?

Profits accrued by Brazilian legal entities are subject to Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL). These federal taxes may be calculated according to two main systems (other systems exist). Some kinds of businesses must enroll with the Actual Profit system, which is also mandatory for companies with annual gross exceeding BRL 78 million (approximately EUR 12 million).

Under the Actual Profit system, IRPJ and CSLL are levied on accounting profits adjusted with the additions and exclusions set forth by tax law.

Under the Deemed Profit system, IRPJ and CSLL are calculated on the sum of (i) the application of certain percentages of the legal entity's gross revenue, which vary according to the legal entity's activities (generally 8% for IRPJ and 12% for CSLL); and (ii) other revenues which are fully added to the taxable bases of these taxes.

Revenues accrued by Brazilian companies are also subject to the levy of Social Contributions on Revenues (PIS/COFINS), according to two different regimes (which, in principle, follow the taxpayer's choice for the Actual or Deemed Profit systems). Under the non-cumulative regime (applicable, in general, to legal entities subject to the Actual Profit system), PIS/COFINS are levied at a combined rate of 9.25% on the total revenues accrued. The legal entity is entitled to certain tax credits.

Under the cumulative regime, PIS/COFINS are levied at a combined rate of 3.65% on the gross revenues accrued. No tax credits are available.

Brazilian law also provides for a "Special Tax Regime for Small Businesses (SIMPLES)", applicable to companies with annual gross revenues up to BRL 4,800,000 (approximately EUR 750,000). Not applicable to certain companies or activities (e.g. corporations, companies with foreign shareholders and companies engaged in consulting services). Companies enrolled in SIMPLES may calculate and pay the IRPJ, CSLL, PIS, COFINS, Social Security Contribution Paid by Employer (CPP) and, depending on the nature of the activities performed, the State VAT (ICMS), Excise Tax (IPI) and the Municipal Service Tax (ISS) by means of a single monthly payment. The rates vary in accordance to the companies' revenues. Companies are not entitled to book tax credits. Companies with foreign quotaholders, or affiliates of foreign companies cannot benefit from SIMPLES.

Brazil does not levy any taxes on net equity.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

IRPJ is levied at a general rate of 15%, plus a surcharge of 10% on taxable income exceeding BRL 240,000 (approximately EUR 37,000). CSLL is levied at a general rate of 9%.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

Assets, including artwork, must be included in the Annual Individual Income Tax Return to be filed with the Brazilian Revenue Service at cost of acquisition (amounts effectively paid by the individual).

Moreover, individual taxpayers who own assets (including artwork) outside Brazil are required to file with the Central Bank of Brazil a Statement of Brazilian Capitals Abroad known as DCBE if these assets have an aggregate value equal to or greater than USD 1,000,000.

The DCBE must be filed by April 5th (or the previous business day if a non-business day) of each following year. Assets must be included in the DCBE by their market value.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

As mentioned in the question 1.5 above, private artworks must be included in the Annual Individual Income Tax Return to be filed with the Brazilian Revenue Service. They will be valued at their cost of acquisition (amounts effectively paid by the individual).

Moreover, individual taxpayers who own artworks outside Brazil are required to file with the Central Bank of Brazil a Statement of Brazilian Capitals Abroad known as DCBE if these assets have an aggregate value equal to or greater than USD 1,000,000. The DCBE must be filed by April 5th (or the following business day if a non-business day) of each following year. In case of artworks, (i) the price recently paid by the individual may be considered or (ii) an appraisal may be issued by an expert on the matter.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Tax on capital gains obtained on the sale of assets (including artworks) must be calculated and paid by the individual up to the last business day of the month immediately subsequent to that in which the payment was received (cash basis).

Regardless of whether such assets are in Brazil or abroad, the gain will be taxed at progressive rates varying from 15% to 22.5%. The taxable gain will be equal to the positive difference between (a) the amount obtained with the sale or disposition of the asset and (b) the respective acquisition cost (amount effectively

paid). If the assets is abroad, such difference must be calculated (i) in USD if the asset was acquired with resources originally received in foreign currency or (ii) in Reais if the asset was acquired with resources originally received in national currency.

Gains from the sale of assets, including artworks, maintained outside Brazil and that have been acquired in foreign currency prior to the time of characterization of "residency" for Brazilian tax purposes will be exempt.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Brazilian tax law does not provide for any categories of artworks. As mentioned below, individuals must declare in their Annual Income Tax Return all assets with acquisition cost higher than BRL 5,000 (approximately EUR 780), regardless of whether the works of art are household goods. The capital gain accrued by individuals arising from the sale of assets (including artwork), which sale price is equal or lower than BRL 35,000 (approximately EUR 5,470), is exempt from income tax in Brazil.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

In Brazil, individuals must declare in their Annual Income Tax Return all assets (including artwork) with acquisition cost higher than BRL 5,000 (approximately EUR 780). Individuals must file the Income Tax Return until the last business day of April of the following year.

Please, see the answer in 2.1 above.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

As detailed above, Brazilian tax law only provides for the valuation of works of art at acquisition cost for individual income tax purposes.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Inheritance and gifts are subject to the levy of Tax on Donation and Inheritance ("ITCMD"). As ITCMD is a state tax, the applicable rate (up to 8%) for movable assets (e.g., works of art) may vary according to the State in which the inventory is processed, in the case of inheritance, and the State in which the donor is domiciled, in case of gifts. The taxable basis generally corresponds to the market value of the assets. In the State of São Paulo, the applicable rate is 4%.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

The taxation of profits arising from the sale of artworks may vary according to the system of taxation chosen by the legal entity and to whether this activity is the main activity of the legal entity.

Under the Actual Profit system, in principle, the capital gain (positive difference between the sale price and the acquisition cost) arising from the sale of artworks is subject to Corporate Income tax (IRPJ) and Social Contribution on Net Profit (CSLL) at the combined rate of 34%. If the works of art are not registered as an investment, Social Contributions on Revenues (PIS/COFINS) would be levied at a combined rate of 9.25% (non cumulative regime) on the revenues accrued from the sale.

Under the Deemed Profit system, Brazilian legal entities, having the buying and selling of artwork as their main activity, must calculate the taxable bases of IRPJ and CSLL (levied at the combined rate of 34%) based on 8%/12%, respectively, of the revenues accrued with the sale, regardless of the acquisition cost. In this case, PIS/COFINS are levied on the revenues from the sale of artworks at a combined rate of 3.65% (cumulative regime).

For legal entities subject to the Deemed Profit system and whose main activity does not include the buying and selling of works of art, the capital gain arising from the sale is subject to IRPJ and CSLL at the combined rate of 34%. PIS/COFINS are not levied on the revenues arising from this sale.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

From a Brazilian tax perspective, it could be more beneficial for an individual to hold artworks through a legal entity. Legal entities subject to the Deemed Profit system of taxation/cumulative regime and whose main activity is the buying and selling of artworks are subject to IRPJ, CSLL and PIS/COFINS at an effective rate of 6.73% on the revenues accrued from the sales.

Meanwhile, as detailed above, any capital gain (positive difference between the sale price and the acquisition cost) accrued by the individual is subject to income tax at progressive rates ranging from 15% to 22.5%.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

Transactions with works of art may benefit from a tax exemption of the State VAT (ICMS) when sold directly by the author/artist. When a company buys an artwork directly from its author/artist and resells it, it can (except for the State of Rio Grande do Sul) benefit from a deemed credit of 50% of the ICMS (even considering the exemption in its acquisition). As the National Fiscal Policy Council authorizes all Brazilian states to grant the exemption, a case-by-case analysis is necessary to check the applicability of the exemption and of the deemed credit in each State. In this scenario, some alternatives to rationalize the tax burden, such as consignment sales, can be analyzed.

The ICMS exemption and credit may also be applied to the import of artworks donated by the author/artist himself or when the artwork is acquired with funds from the Ministry of Culture.

The ICMS rate varies in each state, and is generally 18%. Interstate transactions are generally subject to rates of 7% or 12%.

Currently, the Excise Tax (IPI) is not levied on domestic transactions with works of art (including photographs, paintings, drawings, statues, sculptures etc.).

The preparation of works of art upon request of clients and the services from auction houses are taxed by the municipal Service Tax (ISS), whose rate varies from 2% to 5%.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Export revenues are not taxed PIS and COFINS, and ICMS. Specific rules apply to exports in consignment and temporary exports (for fairs and expositions, e.g.).

The imports are taxed. Import Duty varies from 0% to 16% (4% for paintings, drawings and sculptures). Imports of artworks produced abroad by authors/artists resident or domiciled in Brazil, performed by the authors/artists themselves, are exempt from the Import Duty. Special regimes for temporary imports may apply. Donations of some products of the Chapter 97 of the Harmonized System (i.e. paintings, drawings, statues), destined to public museums or entities declared of public utility are exempt from Import Duty.

The ICMS is due on imports and different rates apply (generally is 18%). A 4% rate usually applies to interstate transactions with imported products.

PIS-Import and COFINS-Import are levied at a 11.75% rate. Donations of some products of the Chapter 97 of the Harmonized System (i.e. paintings, drawings, statues), destined for public museums or entities declared of public utility are exempt.

The Excise Tax (IPI) is not levied on imports of works of art.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

Brazilian individuals may amend the Annual Income Tax Return to include previously undeclared artwork at any time within 5 years of the filing. If the amended information does not give rise to any income tax due, no fines are levied. In case the original funds for the acquisition of the artwork had not being previously declared to the tax authorities, the income tax will be due and penalty and interest shall be charged.

Brazilian legal entities are required to disclose their accounting and tax information in accordance with the Brazilian Federal Revenue Service's standards and systems. If a legal entity fails to disclose information on artwork, it may be subject to fines imposed by tax authorities.

Legal entities and individuals may only amend the returns without any fines, as long as they are not undergoing a tax inspection. If the amendment gives rise to any tax due, legal entities and individuals may benefit from a voluntary disclosure procedure, under which late payment fines might not be due.

Does your country have a non-punishable voluntary disclosure programme?

In 2016, Brazil allowed the temporary repatriation of non-declared capital from abroad (which was reopened in 2017). This programme did not allow the disclosure of works of art held abroad.

6. Special provisions regarding taxation of artworks

Trust/foundation

In Brazil, there are no trusts or foundations specifically for holding works of art.



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Richard Jackson – Duck General

2007/Fiberglass and hardware/167.6 x 91.4 x 60.9 cm/66 x 36 x 24 in

© Richard Jackson/Photo: Stefan Altenburger Photography Zürich

Courtesy Richard Jackson and Hauser & Wirth



China

1. Legal Framework

1.1. How are income and wealth taxed in your country?

China domiciled or non-domiciled individuals having stayed in China for 183 days or more in a calendar year are now defined as Chinese tax residents. Income derived by Chinese tax residents from China and overseas shall be subject to individual income tax (IIT) in China. Income derived by non-tax resident from China shall be taxed for IIT in China.

IIT rates vary from category to category.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Comprehensive income includes wages and salaries, service remuneration, author remuneration and royalties which should be combined for IIT calculation. The progressive rates are from 3%–45%.

Income derived from business operation by sole proprietorship shall be taxed at the progressive tax rate from 5% to 35%.

Income derived from interests, dividends, or income from lease of property, transfer of property and contingent income shall be taxed at the rate of 20%.

1.3. How are profit and net equity taxed in your country?

Profit tax treatment for different legal form is the same except for partnership in China. Partnership is treated as transparent, and profit tax shall be levied on its partners, while other legal forms are subject to Corporate Income Tax (CIT). The taxation base is the profit derived by the enterprise during a calendar year. The enterprise prepays the CIT quarterly. When one year is ended, the enterprise should perform an annual CIT filing by the end of May of next year.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

CIT rate for regular enterprises is 25%. Qualified high tech enterprises can enjoy a preferential CIT rate at 15%. CIT rate for qualified small enterprises with low profit ranges from 5% to 10%.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In general, Chinese tax authorities accept asset appraisal conducted by qualified appraisal institutions which carry out the business independently, objectively and fairly. Industrial guideline for asset appraisal methods is still in the stage of public consultation. Nevertheless, it is still very referential in practice. Asset appraisal methods mainly include market method, income method and cost method.

For the specific area of arts, market method would be more recommended compared with the other two methods but it still lacks legal basis. Market activeness, similarity of references and how close the transaction time of the reference object is to the base date of the appraisal shall be taken into consideration.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

There is no explicit obligation for voluntary or mandatory disclosure to the Chinese tax authorities about owning works of art. Tax is only imposed upon the transfer of artworks.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Royalty:

Income obtained by an author from an auction of an original copy or photocopies of manuscripts of literary works is treated as royalty income and included in the comprehensive income of the year for Individual Income Tax (IIT). The seller prepays the IIT at the rate of 20%, based on the transaction value – RMB 800 or 20% of the value. The seller makes an annual IIT filing during 1 March to 30 June in the following year, and a 3%-45% progressive IIT rate will be applicable.

Income from business operations:

Income from sales of artworks obtained by a professional art dealer, who owns a registered sole-proprietorship enterprise, are deemed to be income of a business operation for IIT purposes. The tax basis is the total income of the dealer (total revenue – reasonable costs recognised by tax authorities for the dutiable period). The tax rate is within a 3%–35% progressive range.

Other situations:

Except for the above two situations, sales of artworks are treated as a transfer of property. The applicable IIT rate is 20%. The tax base is the balance after the original value of the property and reasonable expenses have been deducted from the transaction proceeds.

The original value is determined as follows:

- If the artworks are purchased from a gallery, the original value is the actual payment made for purchasing the works of art.
- If the artwork is obtained from an auction, the original value is the actual payment and taxes borne.
- If it is obtained from inheritance or gift, the original value is the tax paid for obtaining the artwork

For sellers who fail to provide documentation (such as the contract, invoice and etc.) of original values, or the original values are not accepted by the tax authorities, IIT at 3% would be levied based on the transaction value. Transactions with cultural relics returned from overseas can benefit from a preferential IIT rate at 2%.

2.1.2. Wealth taxes

Does your country know any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

China does not enact any rulings on the wealth taxes. In China, owning artworks is not subject to the tax in China. Tax is triggered, if the ownership is transferred (e.g. sales, inheritance or gift).

2.1.3. Gift/Inheritance taxes

In case of an inheritance or gift will there be any tax levied?

For artworks received as a gift, IIT at 20% is levied on the amount of income.

Artworks inherited from the legator with kinship are non-taxable in China. Inheritance received from the legator with no kinship are treated as a gift, and the donee pays IIT on the income.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

The profit obtained from sales of artworks by a legal entity is subject to the applicable tax rate.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

In China, a natural person or a legal entity is not liable to the taxes for owning artworks. If a legal entity sells an artworks, the profit obtained by the legal entity is subject to the CIT and other relevant taxes in China. The private shareholder is subject to the income tax for dividends. The Chinese tax authorities do not offer any tax incentive treatment to the legal entity for sales of artworks. Thus, there is no general advantage of a legal entity to own the artworks.

4. VAT/Customs

When selling or dealing with works of art within your country what other tax implications have to be considered?

VAT applies to sales of the artworks within China. The applicable VAT rate is 13% for general VAT payers or 3% for small-scale VAT payers (such as individual sellers).

Artworks refer to a wide range of works including painting, calligraphy, sculpture, fine jewellery, antiques etc. The Chinese tax authority imposes a consumption tax on high-end consumer goods at specific stages. For example, retailers which sell fine jewellery made of gold, silver, platinum or diamonds in China must pay consumption tax at 5% when retailing them. Artworks made of gemstones, pearls or diamonds (classified into specific 21 HS codes), antique cars and yachts are subject to consumption tax on importation at 10%, 3%–20% depending on displacement of the car and 10% respectively.

Agreements on the transfer of artworks are subject to stamp duty at 0.05% based on the contract value. Both parties to the agreement are liable to the stamp duty.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

For artworks purchased from overseas, a Chinese importer is liable to import duty, import VAT and consumption tax (if any) at the customs. Import duty depends on the HS codes of the artworks. The average customs duty rate on consumer goods including artworks has been reduced from 15.7% to 6.9%. It is worth noting that import duty rates for a series of artworks, including oil paintings (HS 97011019.00) and sculptures of other materials (HS 97030000.90), have been reduced to 1% for most favoured nations.

In case the artworks are imported temporarily for exhibition in China, the foreign owner can apply for a bonded treatment. No tax is then paid in China unless the artworks are sold in China after the exhibition.

The Chinese government exercises a strict control on the exportation of certain artworks. State-owned cultural relics, non-state-owned precious cultural relics and other cultural relics are prohibited from export, except for exhibition in accordance with the relevant law or unless approved by the State Council.



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Mary Heilmann – Untitled
2016/5 hollow silver disks, lacquered
Chain: silver with matte finish
70 x 31 x 1.4 cm / 27 1/2 x 12 1/4 x 1/2 in
© Mary Heilmann/Photo: Thomas Barratt
Courtesy Mary Heilmann, 303 Gallery, and Hauser & Wirth



Costa Rica

1. Legal Framework

1.1. How are income and wealth taxed in your country?

If the taxpayer performs a lucrative activity in accordance with the definitions of the Income Tax Law (ITL), should be declare a tax return including its income and expenses to calculate the taxable base.

If the activity is not lucrative, the tax provision applicable would be the capital gains rules.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Over the wealth there is no taxation, the rules are related to salary in dependency relationship or if it also performs a lucrative activity or receive non-lucrative income (specific rents defined by the law or capital gains).

Ranges if the person performs profit-making activity:

Taxpayer:
Individuals (net income rules)

Range:

- Income up to \$5.606 per year will not be subject to tax.
- On the excess of \$5.606 per year and up to \$8.372 per year, ten percent (10%).
- On the excess of \$8.372 per year and up to \$13.965 per year fifteen percent (15%).
- On the excess of \$13.965 per year and up to \$27.986 per year twenty percent (20%).
- On the excess of \$27.986 per year, twenty-five percent (25%).

1.3. How are profit and net equity taxed in your country?

Refer to question 1.1 in relation to profit.
In regards to the net equity, there is no taxation.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

Corporate income tax:

Legal entities:

Small business (those legal entities whose gross income in the fiscal period does not exceed \$168.776 approx.)

Thirty percent (30%)

- Up to \$83.905 of gross income: 10%
- Up to \$168.776: 20%

Capital gains: tax rate 2.25% over the sale price if the assets were bought before July 1st, 2019; if not the taxable rate would be 15% by the difference of sale price and acquisition cost.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

There are no rules, but can we say that an assessment prepared by a professional or appraiser should be reviewed by the Tax Administration.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

As per the current income tax law, if the taxpayer performs a habitual economic activity selling artworks, there is an obligation to register this activity with the Tax Administration and he must disclose assets, liabilities, equity, income and expenses. There is also an obligation to keep annual accounts.

According to the new charter regarding capital gains, any sale of artworks (even if the taxpayer does not perform a habitual activity) should be declared in a tax return regarding the sale of the assets.

There is no obligation to disclosing/filing private artworks if the taxpayer is an individual and does not perform an economic activity selling artworks.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Before July 1st, 2019 the income is taxable based on self-employment under the principle of habituality. The income received would be subject to the corporate income tax (CIT), tax rate 30%, taxable base: Income minus deductible costs and expenses.

After July 1st, 2019, the sale of artworks would be subject to CIT (assets used in a business activity) or capital gains (assets not used in a business activity)

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

There is no wealth tax in Costa Rica. Only CIT or capital gains tax on the sale of works of art might be applicable as from July 1st, 2019.

The mere buying of artworks does not trigger any tax, as we mentioned above, only if the taxpayer performs an economic activity or sells them in a non-business context, capital gains should be deemed taxable.

There are no specific categories for classification of artworks. The Tax Administration can ask about the origin of the artworks, how they were bought, in order to review if the funds used to buy them were subject to tax.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

If the taxpayer performs a business activity, he should disclose the works of art in his tax return.

After July 1st, 2019, there would be an obligation to declare the sales of the artworks as well.

If the taxpayer is an inactive entity (corporation or Ltd) and owns artworks, there is an obligation to file the value of the asset. The value to use is the original cost, but if there is a lack of information about this it is likely that an appraisal would be used, which can be challenged by the tax administration.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

The value to use is the original cost, but if there is a lack of information about this an appraisal could be used, this can be challenged by the tax administration.

The revaluation of the assets is not allowed for tax purposes. After July 1st, 2019, and under the capital gains chapter, the original cost of the assets would be adjusted using price ratios issued by the Tax Administration.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

After July 1st, 2019, under the new capital gains chapter, an inheritance and donations would be exempt.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

According to the Income Tax Law, if the individual or entity performs an economic activity on a habitual basis, the income received would be subject to corporate income tax (CIT), tax rate 30%, taxable base being income minus deductible costs and expenses.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

In case of self-employment the tax brackets would be 10-15-20-25% based on the net income (gross income minus deductible expenses)

A legal entity has to file a tax return with respect to certain artworks (see above). If an individual holds the works of art, there is no such obligation. There is thus no general advantage for a legal entity to hold works of arts instead of private ownership.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

Under the current VAT Law the artworks would be subject to VAT, if the taxpayer sells the assets in the framework of a habitual economic activity.

After July 1st, 2019 the taxable event is based on the same criteria mentioned above. The tax rate is 13%.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

The export of artworks is not subject to customs taxes or VAT. In case of imports, and depending on the type of the artworks, customs taxes will amount to between 1% and 9%, plus VAT at 13%.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

There is no voluntary disclosure program in place. If there were obligations to file an income tax return for the sale of artworks, there is a reduction of the fines if the Tax Administration issued an adjustment of the income tax.

Does your country have a non-punishable voluntary disclosure programme?

There is no a non -punishable voluntary programme.

6. Special provisions regarding taxation of artworks

There are no special tax provisions.



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Facio&Cañas

Matthew Day Jackson – Unicursal Labyrinth

2014/Oil on panel, stainless steel frame

247.7 x 191.8 x 7.6 cm/97 1/2 x 75 1/2 x 3 in

© Matthew Day Jackson /Courtesy the Matthew Day Jackson and Hauser & Wirth



Denmark

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Individuals who are resident in Denmark or who stay in Denmark for six months consecutively are subject to full tax liability to Denmark. This applies as a general rule for all earned income – personal income (salary etc.) as well as capital income. Furthermore, the rule applies on worldwide income, meaning all income deriving from both Denmark and abroad. However, limitation to full tax liability may apply due to tax agreements between Denmark and other countries.

A limited tax liability to Denmark applies to individuals without residence in Denmark, but with income from Denmark.

There is no wealth tax in Denmark except for property value tax for real estate owners.

The Danish tax system is progressive in relation to both personal income and capital income.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

The Danish taxation system distinguishes between personal income and capital income. All rates and amounts stated below apply for the year of 2022.

Personal income up to DKK 46,600 is tax free due to a personal allowance. Above the allowance and up to DKK 552,000, the income tax rate average is 45.7% which consists of various types of taxes including labor market contribution (in Danish AM-bidrag), church tax and municipality tax and varies depending on the respective municipality tax rates. An additional tax rate of 15% is levied for all personal income exceeding DKK 552,000. However, a maximum tax rate cap of 52,07% applies when labor market contribution is not relevant and 55.9% when paying labor market contribution but no church tax.

Capital income is taxed between 37.7% and 42.7% depending on the income amount.

Capital gains on shares and dividend payments amounting to DKK 55,300 (double for married couples collectively) are taxed at a rate of 27% and any such income above this amount is taxed at a rate of 42%.

Property value tax is 0.92% of the real estate value, and 3% for real estates with value above DKK 3,040,000.

1.3. How are profit and net equity taxed in your country?

Legal entities in Denmark are subject to taxation on all income and may deduct expenses which are related to the operations of the company.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

Legal entities must pay corporate income tax of 22% of their profits.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In general, assets must be valued at its fair market value which is defined as the objective market value of an asset and equals the price which could be received in case of a sale of the asset to a third party on arm's length conditions.

There are various ways to value assets (including art works) and include the latest purchase price, valuation made by an art appraiser or an auditor. The insurance value, databases, gallery catalogues or auction results may give an indication of the value in terms of sales prices for comparable art and may be used if considered relevant.

Please see section 2.1.2 for elaboration of valuation of art works.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

As a main rule, works of art are considered to be tax-exempt household goods. However, if the private individual buys and sells art on a professional level, this is part of his business and in this case the artworks must be included in the tax return of the business that must be prepared each year, including both income and values of the artwork. As mentioned above, there is no wealth tax for individual taxpayers on assets except for real estates.

Furthermore, when an individual dies all assets, including all artwork, and all liabilities are to be included in the estate inventory and in the division of the inheritance between the heirs. Also, if the artwork is transferred as a gift to a child, grandchild, parents etc. (the list is not exhaustive) and the yearly gifts exceed DKK 69,500 (2022), the gift must be declared to the Danish Tax Agency and gift tax levied no later than 1 May in the following the year in which the gift is given.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Capital gains on an individual's sale of artworks which are considered to be household goods are not taxable, and losses are not tax deductible. This is generally the case, regardless of the size of the profit.

On the other hand, if the individual is considered to trade art as a business, any capital gain is taxable. Please see section 3.1. regarding deduction of costs, depreciation and deductible losses depending on whether trading artworks is part of the core business or artworks are purchased for other reasons. Trading of art could be seen as a business, if an individual sells art on a regular basis which could be compared to a small business operation, or if the income is significant.

If the artworks are sold in a speculative manner, any capital gain is taxable. Please be aware that the fact that purchasing the artwork was a good investment does not necessarily mean that it is considered to be

speculation. The term speculation implies that the asset in question was acquired for the purpose of realizing a profit on resale. Both the criterion of intent to resell and the criterion of realizing a profit on the resale must be met when acquiring the art. Speculation can only be established from a tax point of view if both criteria are met. When assessing whether there is a case of speculation, it is necessary to consider whether the asset in question is an asset which would normally be expected to be sold at a profit. Speculation is generally a permanent factor or systematic in nature, and it only occurs in infrequent cases.

If selling artwork is considered a business, any profit is taxed as personal income at a tax rate up to 55,9%. In this case, any losses are generally deductible when the personal income is calculated. Even though selling and buying art is done on a regular basis, it could be seen as a hobby for the individual if in general the "business" is loss-making. In this case, any gains will be taxable while any losses cannot be deducted. These losses may only be brought forward to reduce any future gains made on the artwork "business". Under certain circumstances, it may be possible for a business to opt for a special tax scheme where the business income is separated and only taxed at a tax rate of 22% on an ongoing basis, until the business is no longer active or any income or assets are transferred to the private individual. The difference between 55,9% and 22% is then taxable.

If selling art is classed as speculation, any profit is taxed as personal income but the labour market contribution (in Danish: AM-bidrag) is not relevant. Therefore, the relevant tax rate varies up to 52.06%. As speculation is not considered a business, a loss is only deductible as a deductible expense when computing the taxable income and has a deduction value of approximately 25% of the loss.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

There is no specific category envisaged for personal belongings/household assets in the law. This may lead to difficulties in classification. In general, a household artwork should serve residential purposes and furnish/

decorate the home, and not primarily be held as an investment. If the artwork is not part of the business and not seen as purchased for speculation purposes, the artwork will most likely be seen as personal belongings/household goods. But this must be assessed on a case-by-case basis. Please see 2.1.1.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

Income from artworks which are part of the business/speculation must be included in the tax return. Tax returns are prepared annually and include both income and values of the artwork.

If the artwork is transferred as a gift and exceeds the threshold, the gift must be declared and gift tax levied to the Danish Tax Agency. It is also included in the state inventory when someone dies.

If the artwork is a household good, it is not declared in the tax return.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

In general, any asset, including artworks, must be valued at its fair market value. The fair market value is defined as the objective market value of an asset and equals the price which could be received in case of a sale of the asset to a third party on arm's length conditions. The valuation may be made in a number of different ways, e.g. latest purchase price, valuation made by an art appraiser, or an auditor etc. Also, the insurance value, databases, gallery catalogues or auction results may give an indication of the value in terms of sales prices for comparable art and may be used if considered relevant. It is also possible to request a binding ruling from the Danish Tax Agency on the fair market value. Arguments and documentation that support this valuation must be included. However, the Danish Tax Agency may refuse to issue a binding ruling if they find that they do not have enough grounds to do so.

The valuation is subject to scrutiny (and changes) by the Danish Tax Agency, as they are not bound by an expert valuation. It is possible to insert a tax reservation clause in the sales agreement to the effect that the parties are able to either cancel the sale or follow the valuation

made by the Danish Tax Agency with no unintended tax consequences for the parties. Such tax reservation must be made at the same time as the sale, and it should therefore be part of the sales agreement. The tax reservation is only relevant if the Danish Tax Agency reacts to the transfer.

2.1.3. Inheritance/gift taxes _____
In case of an inheritance or gift will there be any tax levied?

Danish inheritance tax is only relevant if the deceased was domiciled in Denmark at the time he or she passed away and was thus under Danish jurisdiction. Please be aware that the assessment of whether the deceased is domiciled in Denmark is different from the assessment of whether a person is domiciled for tax purposes in Denmark. Danish inheritance tax is also relevant if the deceased had certain assets in Denmark at the time he or she passed away. Such assets are real estate in Denmark or business assets in Denmark. Furthermore, if part of or the entire estate is administered in Denmark, Danish inheritance tax is also relevant.

Inheritance between spouses is tax-exempt. Close family such as children, grandchildren, parents etc. (the list is not exhaustive) pay a 15% inheritance tax on the inheritance. All other heirs pay 36.25%. The estate has a threshold amount of DKK 312,500 (2022) (before the inheritance tax is calculated).

Danish gift tax is always relevant if either the donor or the recipient is domiciled in Denmark at the time the gift is given and therefore under Danish jurisdiction. Please be aware that the assessment of whether the donor or recipient is domiciled in Denmark is different from the assessment of whether a person is domiciled for tax purposes in Denmark. Furthermore, even if neither the donor nor the recipient is domiciled in Denmark, Danish gift tax is relevant if the gift consists of real estate in Denmark or business assets in Denmark.

Gifts between spouses are not subject to gift tax. Close family such as children, grandchildren, parents etc. (the list is not exhaustive), but not siblings, pay a 15% gift tax on the gift. Each year one donor may give a tax-exempted gift to one of the above-mentioned recipients up to a capitalized value of DKK 69,500 (2022). Any gift with a value exceeding this amount is subject to gift tax at 15%.

Any other person, including siblings, receiving a gift will pay income tax on the gift. There is no threshold except the general annual tax-exempt allowance, which is currently a total annual amount of DKK 46,600 (2022)

which can be deducted once in the person's total income. The labour market contribution (in Danish: AM-bidrag) is not applicable to the gift, and therefore the relevant tax rate varies up to 52,06% not including church tax.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes How are profits deriving from the sale of artworks taxed?

If a legal entity sells artworks, the profits derived from the sale are taxable. The corporate tax rate is 22%. It is necessary to make a distinction between a legal entity whose business is the trading of artworks, and a legal entity that is just purchasing art for decoration of the business premises etc. Costs and losses are generally deductible if the business is trading artworks. In the following paragraphs, the rules are explained for purchasing artworks for other purposes.

Legal entities purchasing art cannot usually deduct the costs. The reason is that the value of artwork does not normally deteriorate. There is, however, an exception. To support artists, the tax rules include a special set of rules which under certain conditions allow companies to deduct or depreciate the costs for the purchase of art.

The special rules only apply to original artworks. Artworks include paintings, sculptures, graphics, photographic art, installation art and the like. A distinction is made between artworks which are hung up or mounted, and artworks which are an integrated part of a building.

With regard to graphic and photographic art, special requirements apply, including a requirement that the art should be numbered and signed by the artist and only produced in a limited edition. Reproductions are not included under these rules.

The art must be a first-time buy and must be purchased directly from the artist or a gallery selling the art on commission.

The rules do not apply if the legal entity purchases the art from an artist who is related to or in any other way a party closely related to the owner of the legal entity. In the case of artworks which are hung up or mounted in the entity's premises, a deduction can be made of up to 25% of the costs per year. Artistic decoration of buildings (i.e. the art is an integrated part of the building) can, however, be depreciated by 4% annually.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

The tax rate is lower for a company than for an individual if the individual ends up being taxable on the gains of selling artwork.

Please note that there may be a tax risk for the individual shareholder owning the legal entity which purchases the artworks. If the artwork is not considered to be purchased in the legal entity's interest or for its business purposes, i.e. if the artwork is located in the shareholder's private home or in an office at the legal entity where no customer ever visits, if the purchase of artworks generally generates losses or if proportionately large amounts are spent purchasing art, the individual shareholder could be taxed as receiving a benefit from the legal entity. The taxable amount would most likely be an amount equal to what it would cost to rent such artwork. This income would be taxed as personal income at a tax rate of up to 55.9% (with deductions for the salary cost at the legal entity) or as a dividend with a tax rate at 27/42% (with no deduction in the company).

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The supply of art is subject to VAT at a rate of 25%.

Supplies made by the creator

The first-time supply of artworks by the creator or his/her successors in title is subject to a reduced VAT taxable amount of 20% of the sales price. Example: An artwork has a sales price of DKK 10,000. The reduced VAT taxable amount is 20% of DKK 10,000 = DKK 2,000. The VAT amounts to 25% of DKK 2,000 = DKK 500.

Taxable threshold is DKK 300,000

The artist or his/her successors in title are not liable to register for and pay VAT before the accumulated turnover in the current or previous calendar year has exceeded DKK 300,000. The first supply could be VAT-exempt, even if exceeding the threshold, as only subsequent supplies will be liable to VAT.

Auctions and agents

The above-mentioned VAT rules governing reductions or exemptions on the supplies of art made by the creator are also applicable if such transactions take place during an auction or via a disclosed agent.

If auctions or other transactions are concluded via an undisclosed agent, the intermediary is considered buying and reselling in their own name. Therefore, the exemptions will not apply.

Disclosed agents who have the art in commission must pay 25% VAT on the service rendered.

Trading using the art – margin scheme

As stated, the supply of art is as a main rule subject to VAT. However, businesses may apply the margin scheme on art purchased by non-taxable persons. The margin scheme on art also applies on cross border transactions. The effect of the margin scheme is that the purchaser is not able to recover any VAT amounts (hidden) in the purchase price but calculates the VAT based on the profit (difference between sale and purchase price).

Definition of art

The Danish VAT definition of art is mainly based on Article 311 of the VAT Directive. We note that Denmark has not chosen to narrow the definition, as envisaged in Article 311 (2). However, the actual supply of art should always be further reviewed.

The definition of art (as by definition from a VAT point of view) includes:

- Goods under the CN-code 97 01-97 02,
- Sculptures under CN-Code 97 03 (Provided the art was produced by the artist in a series of no more than 8 examples/copies (exemptions apply)),
- Tapestry etc. under CN-Code 58 05 & CN-Code 63 04 (provided the art was made by hand by the artist and in series of no more than 8 copies), the list is not exhaustive.
- Unique ceramics
- Certain enamel on copper work – and only 8 copies
- Photography signed and up to 30 prints

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Except for the above-mentioned rules, the supply of artwork is generally treated as a supply of goods. This means that normal rules on cross-border supplies apply, e.g. possible zero-rating of IC supplies (Intra-Community supplies, i.e. EU-supplies) is possible.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

It is possible for an individual to make a voluntary disclosure, if it turns out that an income item is taxable after all. In general, an individual may reopen his tax return before 1 May in the fourth year following the relevant income year. The Danish Tax Agency may reopen the assessment during a period of up to 10 years if they find that the individual has acted with gross negligence or intent to commit tax fraud.

Voluntary disclosure means that the individual must contact the Danish Tax Agency on his or her own initiative. Avoidance of tax must not be known to the Danish Tax Agency at the moment of the disclosure. The taxable individual must unconditionally inform and actively help the Danish Tax Agency in order to determine all income. Also, the relevant tax must be paid.

Principally, if the above conditions are met, the individual will generally avoid paying any fines as long as it is considered to be gross negligence at worst. The burden of proof of it not being gross negligence is less strict in case of voluntary disclosure. Tax and interests are still due.

If a voluntary disclosure is not made and the Danish Tax Agency contacts the individual, fines up to an amount equal to the tax to be paid may be imposed if the Danish Tax Agency finds that the individual has acted with gross negligence. If they find that he or she has acted with the intent to commit tax fraud, the fine may be double for part of the avoided tax to be paid and imprisonment may also be the result, depending on the amount of tax to be paid.

Does your country have a non-punishable voluntary disclosure programme?

Denmark has previously had a non-punishable voluntary disclosure programme, but this is no longer in place. However, please see above.

6. Special provisions regarding taxation of artworks

Trust/foundation

The special tax rules applicable for deduction of art works are specified in section 44a of the Danish Act on Depreciation and Amortization. For an elaboration hereof, please see section 3.1.



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Bharti Kher – The Chimera (3)

2016/Wax, concrete, plaster, hessian fibre, brass/Unique

116 x 29 x 29 cm/45 5/8 x 11 3/8 x 11 3/8 in

© Bharti Kher/Courtesy Bharti Kher and Hauser & Wirth



Estonia

1. Legal Framework

1.1. How are income and wealth taxed in your country?

The income of individuals who are tax residents in Estonia is taxed at the state level with flat rate income tax on their world-wide income, irrespective of the origin of the income.

Most items of personal income are taxed on a gross basis, mainly through withholding at source, whereas business income and capital gains are taxed on a net basis subject to certain conditions. The annual basic exemption (non-taxable amount) for resident individuals is up to 6,000 EUR per year, but decreasing depending on the total income amount. Where the taxable income per year exceeds 14,400 EUR, the following formula for calculating the non-taxable amount applies: $6000 - 6000 / 10800 \times (\text{amount of income} - 14400)$. If the total amount of all income items is 25,200 EUR or more in a year, there is no right to the basic exemption at all.

Capital gains on the sale of privately held household goods are tax exempt.

There is no wealth tax or local taxes on income.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Estonia has a proportional (i.e. flat) tax rate of 20%, which applies to all items of income derived by a resident taxpayer.

Dividends received from a company are not taxed on a personal level. Dividends that have been subject to the reduced rate of 14% at the level of the distributing Estonian company will be subject to additional WHT at 7%.

1.3. How are profit and net equity taxed in your country?

Resident companies pay corporate income tax (CIT) on a deferred basis when distributing profits, paying non-business expenses, conferring fringe benefits and making gifts. Business income earned (including

interest, royalties, inbound dividends) is not taxed on its receipt and reinvested profits are not subject to CIT.

This leads to an unlimited carry-forward of losses and unlimited depreciation for tax purposes. A similar tax treatment applies to permanent establishments of foreign entities (including branches).

A reduced CIT rate (14%) applies to regular dividend payments. The amount of the dividend subject to the reduced rate is the arithmetical average amount of the dividends paid in the last three years. Additional 7% personal income tax applies to dividends subject to 14% when distributed to a natural person, but no additional CIT is applied when dividends are distributed to a corporate entity.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

Profit distributions, paying non-business expenses, conferring fringe benefits and making gifts are taxed at 20% on the gross amount.

The reduced CIT rate in the amount of 14% applies to regular dividend payments, in which case the company must withhold an additional 7% from the dividend payments to natural persons.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In general, privately held assets are valued at their fair market value. There is no legislation in this respect, thus the valuation theme entails difficulties and there is no certainty.

The fair market value is defined as the objective market value of an asset and equals the price which could be achieved in case of a sale of the asset in the ordinary course of business. Friendship prices or sentimental values are therefore irrelevant. The fair market value is usually an estimated value or a comparable figure, except for assets subject to regular trade. For the latter, the fair market value is usually available.

When it comes to art pieces, which are usually unique items, there is normally neither a periodic return on the asset nor is there a liquid market with regular trade. The valuation of art pieces can therefore not be conducted by means of a comparable fair market value or purchase price.

It is evident that the valuation of art pieces entails substantial legal uncertainty in Estonia. There is no

certain method used to value the art pieces. In practice, there is the possibility to get an expert opinion, contact databases, gallery catalogues or auction results. All these auxiliary factors may be taken into account in order to determine an art piece's value. Insurance value might be taken in account if there are no other value determining factors present. It is the taxpayer's right to prove another value than the insurance value.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

There is no general obligation to declare or disclose the ownership of private artworks in Estonia. There is no voluntary list of inventories or alike present for disclosing purposes.

If the artwork is sold, the classification of an art piece as (tax exempt) household good or (taxable) investment asset is crucial when deciding whether or not the art piece has to be declared in the tax return.

There are no technical notes available regarding which privately held goods are considered household goods and which are considered assets for investment purposes. An explanation of the tax authorities is available according to which the investment "gold" is a taxable asset because it is not consumable, but currently there is no guidance regarding artworks.

In order to prevent conflicts, it is recommended to declare the sale of art pieces, if they are considered as investment assets, in the annual tax return.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Capital gains resulting from the sale of privately held, movable assets are generally tax exempt. Income from the sale of investment assets is taxable.

There is currently no legal certainty when the art work is considered to be a privately held household good and when an investment asset. The general approach that an investment asset qualifies as non-consumable good does not provide any clarity in terms of art works. If the sale of art work is considered to be for investment purposes then the profit is taxable but the individual can deduct the purchase price and costs related to the sale in the annual income tax return.

The sale of the art work can be considered as income from self-employment if the artist is habitually providing his/hers living by selling own artworks or the individual is selling art works in a way of dealership in art business.

When is an individual considered to be a professional art dealer and what are the consequences under this qualification (e.g. social security, deductibility of losses and expenses etc.)?

If the sale happens as an act of management of private assets and does not exceed the "common" management of assets, i.e. the owner of artwork has made capital gain from a randomly arisen opportunity which has been exploited, the capital gain is generally tax free.

However, if the sale happens to be in the course of carrying on a business by an individual such income from the sale of artworks could be seen as income from self-employment in which case the profits received would be charged with social contributions and income tax.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

According to the Income Tax Act, sale of the household goods is tax free. This may lead to difficult questions regarding the classification of household goods and investment assets.

There are no explanations or technical notes issued by the tax authorities regarding this distinction in Estonia. Based on the explanation given regarding the investment "gold" it can be assumed that the decision as to whether a good classifies as household good or as taxable asset is made on grounds of the function of the good and if the good is "consumable" in everyday life. The value of an art piece or collection should generally not be crucial but it can be referred to and considered by the tax authorities in making the distinction. Household goods are items serving residential purposes in the house, as everyday objects, such as furniture, rugs, paintings. Such household goods are personal belongings that serve the taxable person in everyday life and are not primarily held as a capital investment. This means that an art piece, serving as a decorative object like an item of furniture, may well be a household good, but this is not considered the sole argument that tax authorities would base their opinion on.

Items which are serving capital investment purposes are no longer classified as household goods.

There are no specific criteria of classification used in Estonia, and a case-by-case approach is applied by the tax authorities.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

In general, the classification of an art piece as (tax exempt) household good or (taxable) investment asset is crucial when deciding whether or not the art piece has to be declared in the tax return.

There is no obligation to disclose taxable private art pieces to the tax authorities. In order to prevent conflicts, it is however recommended to declare the sale of art pieces, if they could be considered as investment assets, in the annual tax return.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

In general, privately held assets are valued at their fair market value. There is no legislation in this respect, thus the valuation theme entails difficulties and there is no legal certainty.

The fair market value is defined as the objective market value of an asset and equals the price which could be achieved in case of a sale of the asset in the ordinary course of business. Friendship prices or sentimental values are therefore irrelevant in verifying the fair market value. The fair market value is usually an estimated value or a comparable figure, except for assets subject to regular trade. For the latter, the fair market value is usually available.

When it comes to art pieces, which are usually unique items, there is normally neither a periodic return on the asset nor is there a liquid market with regular trade. The valuation of art pieces can therefore not be conducted by means of a comparable fair market value or purchase price. However, factors like cost or insurance value could become relevant in case of conflicts.

It is evident that the valuation of art pieces entails substantial legal uncertainty in Estonia. There is no certain method used to value the art pieces. In practice, there is the possibility to get an expert opinion, contact databases, gallery catalogues or auction results. All these auxiliary factors may be taken into account in order to determine an art piece's value. It is the taxpayer's right to prove another value than the insurance value or value estimated by the tax authorities.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

The receipt of an inheritance is tax exempt. The sale of the inherited assets is liable to personal income tax. The documented costs related to the inheritance are deductible.

Gifts between natural persons are tax exempt. Gifts made by companies to natural persons are liable to corporate income tax and considered as non-business expenses and taxed accordingly on the corporate level. Gifts received from non-resident companies are taxable unless the taxpayer proves that the tax was paid abroad.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Estonian companies pay CIT on a deferred basis i.e. when distributing profits, paying non-business expenses, conferring fringe benefits and making gifts. Business income earned from the sale of art works is therefore not taxable on receipt but is deferred until the profit distribution. CIT is 20% of the gross payment.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

In case of investment items the benefit arises from the deferred taxation of the companies, whereas the individuals must declare the sale in their annual tax return and consequently pay income tax on the profit.

If a legal entity works in the field of art trade, the risk of the natural person, who has contributed the art pieces to the company, of being classified as self-employed, diminishes.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

Turnover generated by art trade through legal entities is taxable.

The Estonian VAT Act para. 41 enacts special arrangements for imposing VAT on the resale of original works of art.

A taxable person that acquires original works of art with a view to resale and does not use the goods may, upon resale, apply the special arrangement procedure for the calculation of the taxable value on the condition that the taxable person acquired the goods:

- from a person of Estonia or another Member State who is not a taxable person;
- from a taxable person of Estonia or another Member State who did not add value added tax to the price of the goods upon transfer of the goods and who could not deduct input value added tax paid upon acquisition of the goods;
- from a taxable person of Estonia or another Member State, in so far as the resale of original works of art by that other taxable person was subject to value added tax.

If the above-mentioned conditions are met then the taxable value of the supply is the difference between the sales price and purchase price of the goods which has been reduced by the value added tax.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

International art trade entails numerous formal requirements. If art pieces outside of EU are crossing the border to Estonia with the purpose of being displayed in a museum or gallery or for educational purposes, then the import can be arranged tax free, i.e. with no import tax charges.

The import of art pieces from non-EU Member States for purposes other than display in the museum or gallery or for educational purposes is subject to the regular import procedure.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

There is no obligation to declare the art works in Estonia. Currently there is no practise for voluntary disclosure for art works. It means that even if the person volunteers to declare the artworks then there is no special declaration or registry available for such disclosure.

Does your country have a non-punishable voluntary disclosure programme?

Estonia does not have non-punishable voluntary disclosure program available.

6. Special provisions regarding taxation of artworks

Trust/foundation

Currently there are no special regimes such as trusts of foundations applicable to taxation of arts in Estonia.



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Martin Creed – Work No. 2927

2018/Wool/57.7 x 57.9 cm/22 3/4 x 22 3/4 in

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Photo: Todd-White Art Photography/Courtesy Martin Creed and Hauser & Wirth

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France

1. Legal Framework

1.1. How are income and wealth taxed in your country?

French tax residents (FTR) are subject to income tax (IT) on their worldwide income unless otherwise provided by a tax treaty (TT). Non-FTR are subject to IT on their FR source income only (subject to TT). The taxable net income is subject to IT based on a progressive tax rate schedule.

Capital gains (CG) on privately held movable and immovable assets are subject to IT based on flat tax rates. A specific tax regime applies to the sale of artworks.

Private Real estates located in France are subject to wealth tax (WT) based on a progressive tax schedule when their net value exceeds 1'300k€. Artworks are outside the scope of WT.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

IT rates ranges from 11% to 45%. Taxpayers whose "fiscal reference income" exceeds 250k€ (single) or 500k€ (married couple) are subject to an extra taxation which ranges from 3% to 4%

Dividends, interest and CG from the sale of Shares, Bonds and similar Securities (SBS) are in principle subject to (i) a flat income tax of 12,8% plus (ii) social taxes of 17,20%, i.e. an overall taxation of 30%. However, taxpayers may opt for these three types of income to IT at ordinary progressive rates. If such option is made: (i) eligible dividends may benefit from a 40% allowance, i.e. only 60% of the dividends are taxed and (ii) CG from the sale of SBS purchased before 2018 may benefit from a lump-sum base reduction the amount of which depends upon the holding period.

Real estate CG tax rate amounts to 19% plus social contributions (17.2%). Real estate taxable CG exceeding 50k€ is subject to an extra CG tax which ranges from 2 to 6%.

WT rates ranges from 0.5% to 1.50%.

As to non-resident individuals receiving French source income or CG: taxation or tax exemption depends upon the provisions of the relevant tax treaty.

1.3. How are profit and net equity taxed in your country?

Taxable income is the aggregate of the net results of each of the taxpayer's category of income. The net result of each category is basically the gross income less all tax deductible expenses related to such income.

Net equity is not taxable.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

Depending upon the turnover of the company, corporation tax (CIT) rates ranges from 15% to 27,5% (25% as from 2022):

Companies qualifying as Small and Medium Enterprises (SME) whose turnover does not exceed 10M€ are subject to CIT based on their Taxable Profit (TP) at the rates of 15% up to a TP à 38k€ and 26,5% above (25% as from 2022)

Companies whose turnover exceeds 10M€ and is below 250M€ are subject to CIT based on their TP at the rate of 26,5% (25% as from 2022)

Companies whose turnover exceeds 250M€ are subject to CIT based on their TP at the rate of 27,5% (25% as from 2022)

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

Valuation of artworks arises mainly for the purposes of inheritance and gift taxes.

The valuation method of private artworks comprises, in order of preference:

- The net price under a public sale occurring within two years of a death;

- In the absence of a public sale, the highest of the values shown:
1. either in an estimated deed showing the value of the asset on the date of death (e.g. inventory, etc.) issued within five years of the death;
 2. or in an insurance contract;
 3. or in the absence of 1 and 2 above, any detailed and estimated statements made by the taxpayers.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or the like)?

Except for inheritance and gift tax purposes: no declaration/disclosure obligation

By exception, a French taxpayer who is Beneficiary or Settlor of a foreign trust is required to declare the existence of such a trust and reveal each year the assets owned by the trust (including artworks if any) and their value.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Sale of artworks as well as "non-temporary" exportation of artworks outside the E.U by non-professional-individuals who are French tax residents are in principle (with limited exceptions) subject to Capital gain (CG) tax if the sale price or custom value exceeds 5k€.

The taxable sale/exportation is subject to a flat tax of 6% (plus a social tax of 0,5%) based on the sale price/custom value ("taxe forfaitaire sur les objets précieux" – TFOP).

The TFOP is due by the Vendor/Exporter (V/E). However, if an intermediary is involved in the transaction or if the buyer is liable to VAT in France, the latter are responsible for the payment of the TFOP.

Subject to option of the V/E, artworks may be subject to the standard CG tax regime (applicable to the sale of movable assets) provided V/E (i) may prove the purchase date and price of the artwork or (ii) the V/E has been holding the artwork for more than 22 years. Under the standard CG regime:

the gross CG (difference between sale net price and purchase cost) is reduced by a 5% allowance for each year of ownership as from the third year, meaning that CG is tax exempted after 22 years of ownership; the taxable net CG is subject to a flat tax of 19% and to social contributions (17,20%).

When is an individual considered to be a professional art dealer and what are the consequences under this qualification (e.g. social security, deductibility of losses and expenses etc.)?

There is a commercial profession when a taxpayer usually buys artworks with the intention of reselling them. In order to determine whether an individual which sells artworks carries out a professional art dealing activity (i.e. a commercial profession), the tax administration takes into account several criteria, mainly: number, frequency and size of transactions, short time between purchases and sales.

A taxable professional commercial income is equal to the difference between income and expenses incurred during the taxable period (in principle calendar year) and recorded in principle on an accrual accounting basis.

Such professional taxable income is subject to progressive income tax rates (c.f. § 1.2) and social taxes.

If the professional taxpayer is not member of an accredited accounting office which handles and controls his accounts, the taxable income is increased by 15% in 2021 and 10% in 2022 (surcharge cancelled as from 2023).

2.1.2. Wealth taxes

Does your country know any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Artworks owned by individual do not fall within the scope of wealth tax.

Is there any obligation to declare artworks in a tax return?

Artworks owned by individual do not fall within the scope of wealth tax. As a result there is no obligation to declare artworks in a tax return.

As a specific exception, a French tax resident who is Settlor or Beneficiary of a foreign trust holding artworks would be required to file each year a specific declaration mentioning the assets of the trust (including the artworks) and their value.

How are works of art valued for wealth tax purposes?

Artworks owned by individual do not fall within the scope of wealth tax.

As to the valuation of artworks for inheritance and gift tax purposes (see above § 1.5)

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Inheritance tax and gift tax are basically subject to the same tax rules.

There is no French inheritance tax on Estate between spouses and PACS partners (contractual civil union between two adults), but lifetime gifts between them are subject to gift taxes.

There are usually tax allowances on gifts or inheritances.

Inheritance/Gift tax rates are progressive and depend on the degree of kinship, i.e. the further the kinship, the higher the tax rate (from 0% to 60%).

Inheritance tax is to be borne by the heir. Gift tax is in principle borne by the donee but if gift tax is paid by the donor, such payment is not considered as an extra taxable gift.

The taxable value of private artworks is determined as explained above § 1.5

For inheritance tax purposes, furnishings (those used for the adornment of a dwelling) can be valued at 5% of the gross value of the Deceased's other assets. Unless they are placed in collections of galleries or special rooms, paintings, art objects or antiques are considered as furniture and can be included in this flat 5% basis. However, the FR tax administration may use market value if it can prove that furnishings 'value (including artworks) is higher than the flat 5% basis.

Is it possible to pay certain taxes with works of art?

If inheritance tax or gift tax exceeds 10K€, it is possible to pay all or a part of it in kind by the delivery of private artworks ("dation en paiement") subject to a prior agreement of the FR administration.

Payment with artworks made by living artists is in principle excluded, but they may, however, be accepted subject to the authenticity of the proposed work, the level of the artist's international reputation, his level of recognition on the international art market and his standing, the artistic quality and/or historical importance of the work, the absence or rarity of equivalent works in national collections.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are taxed profits deriving from the sale of artworks?

Legal entities' net profits deriving from sales of artworks are subject to corporate income tax (CIT). Expenses in respect of the sales are generally tax deductible.

Is the taxation of legal entities which buy and sell artworks more advantageous compare to the taxation of a professional individual artwork dealer?

When buy and sell is a professional activity, taxation of legal entities appears to be more advantageous:

- Corporations are subject to CIT at rates ranging from 15% to 27,5% (25% as from 2022) and net profits are not subject to social charges provided they are not distributed (dividends being subject in principle to a flat tax of 30% in the name of the recipient individual taxpayer – see § 1.2),
- whereas individual who are professional artwork dealers are subject to (i) Income tax (IT) at rates ranging from 11% to 45% as well as (ii) professional social charges

Moreover, companies subject to CIT (or tax transparent commercial partnerships) can deduct from their taxable income the acquisition cost of original artworks of living artists purchased before 31/12/2022 and recorded as fixed assets (not as inventories), provided that the

artworks remain on display to the public or in a places accessible to employees (except office rooms) during all the fiscal deduction period. The acquisition price is deductible in equal parts from the Company's taxable profit of the purchase year and the four following years (i.e. 1/5th per year). The amount of the deduction cannot exceed a limit calculated as follows: 20k€ or 5‰ of the company's turnover (if higher) less the amount of certain gifts made by the Company to qualified non-profitable organizations which give rise to CIT reduction.

Companies liable to CIT may benefit from a tax reduction equal to 90% of the payments made to contribute to the purchase of:

- Cultural goods that are considered as national treasures and for which the French Administration (FAD) has refused to issue an export certificate and has made a purchase offer;
- Cultural property located in France or abroad whose acquisition would be of major interest to the national heritage from a historical, archaeological and artistic point of view.

Such payments, which are not deductible from the company's taxable income, must have been accepted by the FAD. The tax reduction may not exceed 50% of the amount of CIT due for the year during which the company's contributions occurred.

4. VAT/Customs

When selling and dealing with artworks within your country what VAT issues have to be considered?

In France, to be considered as artworks, the goods should be defined as such under provision of Article 98 of Appendix III of the French Tax Code.

Some transactions related to artworks may benefit from VAT reduced rates (5.5% or 10%).

The VAT rate of 5.5% applies to :

- Importation of artworks from countries outside the EU;

- Intra-Community acquisitions of artworks, by a VAT-taxable person or a non-taxable entity, who had previously imported the artwork in another European Union (EU) Member State;
- Intra-Community acquisitions of artworks which have been supplied to another EU Member State by a VAT-taxable entity not acting as an art-dealer;
- Sale of artworks by the artist or his right holder, unless they can benefit from the free base of VAT regime.

The VAT rate of 10% applies to:

→ Occasional sales performed by companies (other than professional dealers) who, as part of patronage ("mécénat d'entreprise"), have purchased artworks that they have recorded as fixed assets and for which they have had a right to deduct, partially or fully, input VAT.

Under certain conditions, sales of artworks by professional dealers (PROs) are subject to VAT based only on the gross profit margin (i.e. sale price less purchase price) but in that case input VAT is not deductible.

However (if more tax efficient), PROs may choose to apply VAT on the total selling price and deduct input VAT if any. In this situation, the standard VAT rules are applicable to transactions concerning works of art, including intra-Community supplies of goods and intra-Community acquisitions.

When artworks cross the border of your country what needs to be considered regarding VAT/customs?

International artworks trade entails numerous formal requirements:

- For the transportation of an artwork whose value and/or age are below legal threshold: the artwork may leave the national customs territory (France) without any prior authorization;
- If the cultural property leaves France and moves within and outside the EU customs territory, it is required to apply for a certificate (to leave the national customs territory) and an authorization (to leave the EU customs territory) both being issued by the Ministry for Culture and Communication.
- National treasures can only leave France temporarily, with a mandatory return. They are always subject to a Temporary Exit Authorization.

An exemption from the certificate and temporary exit authorization is provided for cultural goods that have been in France for less than two years or those placed under the temporary admission regime. Furthermore, in the case where a work of art is transported by its author, the national and European accompanying documents are not required. With regard to customs formalities, a simplified detailed inventory procedure is available.

There is a flatrate tax on precious objects (TFOP) on exports of works of art. The tax rate is set at 6%.

5. Voluntarily disclosure program

There is no voluntary disclosure program specifically applicable to artworks that have not been declared in France.

6. Special provisions regarding taxation of artworks

There are no specific provisions for the taxation of arts other than those already mentioned in this document.



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- Filiz is an Indirect Tax Partner within Fidal Law Firm.
- She works on every VAT issue (advise, litigation, lobbying) and is deeply involved in Financial/Insurance services, real estate issues, specific VAT regimes (VAT margin/used goods).
- She also has a specific knowledge for indirect taxation in the French overseas departments as well as VAT issue of public bodies.
- She also provide with specific VAT internship session at company's places

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Martin Creed – Work No. 3435, *EVERYTHING IS GOING TO BE ALRIGHT*

2020/Neon/44 x 1250 cm/17 3/8 x 492 1/8 in

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Photo: Sim Canetty-Clarke/Courtesy Martin Creed and Hauser & Wirth

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Germany

1. Legal Framework

1.1. How are income and wealth taxed in your country?

The income of individuals who are resident or have their habitual abode in Germany is taxed at ordinary progressive rates. For income resulting from trade, a municipal trade tax is also imposed. Capital gains from the disposal of privately held assets is tax exempt, at least if held for more than one year or if commodity items are concerned. If items are used to generate income the holding period after which a sale can be tax free is prolonged to ten years. The gain from the sale of assets held for a shorter period is subject to income tax at ordinary tax rates. Losses generated within the taxable holding period may be offset against gains from other speculative transactions. Capital gains and losses generated within a business are generally taxable and can be offset against other income.

The taxation of the net income is progressive, but capped at a maximum rate.

A wealth tax is currently not levied in Germany.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

The rates for income tax vary from 0% to 45%. Above a basic allowance, tax rates start at 14% and rise to 45%. On top of income tax, a solidarity surcharge in the amount of 5.5% is levied (from 2021 progressively only for about the 10% of the population with the highest income).

Investment income and capital gains on privately held securities can, if certain requirements are met, be taxed at a special tax rate of 25% plus solidarity surcharge of 5.5% (also from 2021 onwards).

Trade Tax is levied by the municipalities and varies between the legal minimum of 7% and 31.5%. In 2018, the average tax rate was 14.07%. In bigger cities it ranges between 14% and 17%. Up to a certain level, Trade Tax can be deducted from the income tax.

1.3. How are profit and net equity taxed in your country?

The profit of a legal entity is taxed at the federal level. A private or public limited company is legally required to keep books and records under the Commercial Code. The basis for the profit taxation is the profit and loss statement, to which certain adjustments can be made that differ from the treatment under commercial law, but are allowed from a tax perspective (e.g. losses carried forward, participation exemption for dividends).

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

Tax rates on profits and capital depend on the legal structure.

Corporate income tax is levied at the uniform rate of 15% and is then subject to a solidarity surcharge of 5.5%. Trade Tax at the rates mentioned under 1.2. is also levied, however, it is not deductible from the corporate income tax.

A partnership is viewed as a transparent entity for German income tax purposes and therefore underlies the tax regime which is applicable to the partner (personal income tax or corporate income tax). In the case of commercial partnerships capital gains are always taxable irrespective of the holding periods.

If the legal entity is a corporation a special exemption applies to capital gains from the sale of shareholdings. Capital gains from the sale of all other assets are always taxed at the flat tax rate mentioned above.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In general, privately held assets are valued at their fair market value. There is very little legislation in this respect, thus the valuation entails difficulties and there are considerable federal differences.

The fair market value is defined as the objective market value of an asset and equals the price which could be achieved in case of a sale of the asset in the ordinary course of business according to the nature of the asset. Friendship prices or sentimental values are therefore irrelevant. The fair market value is usually an estimated value or a comparable figure, except for assets subject to regular trade. For the latter, the fair market value is usually available. But when we look at highly individual art works, true valuation is a difficult task. All circumstances which might influence the price have to be considered. Unusual or personal circumstances may not be considered, which is almost impossible in respect of questions of the condition and the comparability of realtime sales.

The complexity of valuing an art collection continues when we consider the different value reached by adding

together all works of art with a discount as against the value of all individual pieces on their own.

In any case, it is strongly recommended that each purchase be appropriately inventoried and that its classification as a work of art worth preserving be obtained from an accredited art expert by means of expert reports. Attention should also be paid to proof of provenance and its authenticity should also be confirmed by an art expert. Thus, each new purchase with proof of purchase and proof of provenance must be kept and documented by stating the date of acquisition, cost, insurance expertise. This also applies to the old stock which the collector wants to amplify with new acquisitions. The archiving of each individual work of the art collection is recommendable, not only for their evaluation.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

In general, there is no such obligation. However, in case of a gratuitous transfer or a transfer for consideration the art piece has to be declared in a tax return.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

The sale of artwork can be taxed/can generate taxable income in Germany. As the normal tax rules apply, the sale of artwork can lead to income (either trade income or so-called miscellaneous income). In general, the sale of a privately held artwork is exempt from income tax. Taxation applies only when sold within a holding period of up to one year or up to ten years (if the artwork has been used to generate income).

When is an individual considered to be a professional art dealer and what are the consequences under this qualification (e.g. social security, deductibility of losses and expenses etc.)?

If the trade with artwork exceeds a certain threshold (main criteria: independent, repeated activity; intention of making a profit, market participation) an individual might be viewed as professional art dealer, and thus he/she may be liable to pay income tax and trade tax on the earnings. In this situation he/she can generally deduct all income-related expenses and claim losses. Losses can also be carried forward if they cannot be deducted or set off against gains in the same year.

In a general case as mentioned above, the social security system does not apply to individuals engaged in business.

2.1.2. Wealth taxes

Does your country know any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Although a wealth tax exists in Germany, it has not been levied since 1997. So far there has been no political majority for the reintroduction of a wealth tax. However, a reintroduction is part of the programs of various

parties. The next federal parliamentary elections will take place in the fall of 2021.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

Please see above.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Please see above.

2.1.3. Inheritance/gift taxes _____
In case of an inheritance or gift will there be any tax levied?

In Germany, inheritance and gift tax are levied, but there is a tax-exempt amount depending on the relation to the deceased person or donor and certain/partial tax exemptions exist, depending on the object which is donated or passed on. The tax debtor is the transferee in the event of an inheritance, in the event of a donation the donee as well as the donor.

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

German tax law has three main tax exemptions for personal belongings/household items and for usual occasional gifts, and there is also a tax exemption for collections of art work.

There are tax exemptions for personal belongings/household which apply to gifts and inheritances as well as foundations. Movable (luxury) art objects can also be household items, as long as they hang in the premises of the home environment and are objectively suited to serve the private household and life.

Moreover, there is a provision regarding partial or even full tax exemption for real estate or parts of property, works of art, art collections, scientific collections, libraries and archives. But these tax exemptions are limited by a holding period of ten years, during which the conditions for tax exemption must be met at all time.

The partial tax exemption can apply if the preservation of these objects is in the public interest because of their importance for art, history or science, the annual costs usually exceed the income obtained and the objects are made available or will be made available in the future for the purposes of research or popular education in a proportionate scale. The annual costs usually exceed the income obtained, especially if no revenue is generated in relation to the mentioned items.

The full tax exemption can apply, if in addition to the above mentioned criteria, the taxpayer is prepared to subject the objects to the applicable provisions of the preservation of monuments and the objects have been in the possession of the family for at least 20 years or have been entered in a list of nationally valuable cultural property pursuant to the Cultural Property Protection Act.

As another unwritten requirement, the tax authorities require that the works of art be located in the domestic or EU/EEA area during the minimum ten-year holding period.

An art collection within the meaning of the inheritance/gift tax law consists of art objects. This refers to works of fine art such as high-quality paintings, engravings, sculptures, but not to objects of arts and crafts or reproductions. Reproductions are only objects of art if their production itself is an act of artistic creation.

In order to become an art collection, artistic objects of the same kind must be brought together out of artistic or scientific interest or as a hobby and be arranged according to a certain collection-defining leitmotif. However, the selection criteria do not have to be based on strict scientific standards. A numerical limit does not exist, which means that even a small number of individual pieces can be deemed to be a collection, depending on their rarity and their value.

It is recommendable to be able to prove the necessary requirement of the 20-year ownership. In this regard, everything should be documented as early as possible on the basis of evidence, e.g. by original receipts of purchase.

The willingness to mandate works of art under the applicable provisions of monument protection should also be reported in writing to the competent monument authority (authority at the place where the

art collection was located or promptly carried to at the time the tax was incurred). The general formulation of the readiness to comply with the basic requirements of monument protection (i.e. appropriate treatment, conservational care and possibly scientific research) is sufficient. This declaration may also be made by implication, for example by concluding a permanent loan and cooperation agreement with a relevant public or private museum or foundation. It is sufficient to take these measures within six months from knowledge of the acquisition by the acquirer.

Another tax exemption can be claimed for usual occasional gifts (for instance for birthdays, Christmas or weddings). Since "occasional gifts" is an undefined legal concept, any relevant circumstances have to be acknowledged in the specific case. Tax courts have made certain restrictions concerning the maximum value of usual occasional gifts, which has to be considered in relation to the economic capacity of the donor.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done rep. if there is any other obligation of declaration.

For inheritance or gift tax declarations, in general, there is always an obligation to declare and list each item in order to determine the value of the assets.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

In general, privately held assets are valued at their fair market value, whereby determining the fair market value can face difficulties in practice. For more detailed information please see Cf. 1.5.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Profits deriving from the sale of artworks have to be taxed as ordinary income of the corporation with corporate income tax plus solidarity surcharge and trade tax (for details, please cf. 1.2-1.4). Expenses in respect of the sale are in general tax deductible.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

The answer depends on the individual legal entity. In general, private ownership can lead to the advantage that a sale of artwork can be tax-free, whereas a corporation always has to pay tax on undisclosed reserves in the event of a sale.

There are advantages for non-profit foundations (concerning corporate income tax, trade tax, inheritance/gift tax).

With regard to inheritance/gift tax, tax exemptions or a tax remission may apply to certain business assets, holdings in agriculture and forestry and shares in corporations.

From a tax point of view, there are no specific fiscal advantages to owning artworks through a legal entity. However, there may be non-tax reasons, like for instance social security or confidentiality considerations, to hold the artworks through a legal entity.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

VAT implications are only to be considered if art is traded as part of a business activity.

Proceeds of sales and services effected in Germany which exceed the threshold of 22,000 € per year, are subject to VAT under the common system of the EU at a general rate of 19%.

A tax exemption rule is applicable for revenues mainly of museums and similar institutions.

A VAT rate of 7% can apply to the sale of works of art only if the sale is effected by the originator or his/her legal successors. The reduced VAT rate does not apply if the seller is a so-called reseller. However, resellers can benefit from a specific provision according to which only the margin, i.e. the difference between sales price and purchase price, will be subject to VAT.

Besides this, special tax law consequences apply to duty-free warehouses. For instance, there is a duty-free warehouse in Meiningen in Thuringia, from which works of art are sent duty-free for exhibitions and auctions all over the world.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

With regard to VAT, a distinction must be made between transactions inside Germany, inside the EU and outside the EU. Each transaction can have VAT implications. Cross border transactions leaving the EU or entering the EU can lead to import and export sales tax.

Cross border sales within the EU and to third countries are tax-free if certain formal requirements regarding documentation and accounting are met.

Import and export operations have to be declared at Customs. In case of exhibitions taking place abroad only temporarily, it is useful to be able to prove that the works of art that are carried there and back are identical items, so that no import/export sales tax can be assessed. The formal aspect in form of evidence, certificates and forms is essential in VAT and Customs matters.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not proper declared art works and what are the expected consequences?

If an existing declaration/obligation has not been fulfilled, a voluntary disclosure should be considered. In this case, the taxpayer has to make a full declaration and pay full taxes and interest (and in some cases an additional penal surcharge). Depending on the amount, even penal law consequences have to be faced. For further information please cf. below.

Does your country have a non-punishable voluntary disclosure programme?

The voluntary disclosure system is "punishable" in a financial way due to the taxes and interest the taxpayer should have paid to the tax authorities. In some cases, the penalty consists of an additional surcharge. If managed correctly, the voluntary disclosure can be free from penal law charges. If the taxable events are not declared correctly or are detected by the tax authorities prior to the disclosure, a voluntary disclosure nevertheless results in penal and tax law consequences. It is therefore highly recommended to discuss the content of the disclosure and the general conditions (e.g. the type of tax concerned and the assessment periods of the evaded taxes which will be affected) with a specialist lawyer/tax advisor.

6. Special provisions regarding taxation of artworks

Trust/foundation

Concerning trusts and foundations, there are no special provisions re taxation of arts. The transfer of any asset including works of art to a German charitable foundation, however, does not trigger any gift or inheritance tax charges. Furthermore, the donor might be able to claim an income tax deduction when transferring assets to a charitable foundation.



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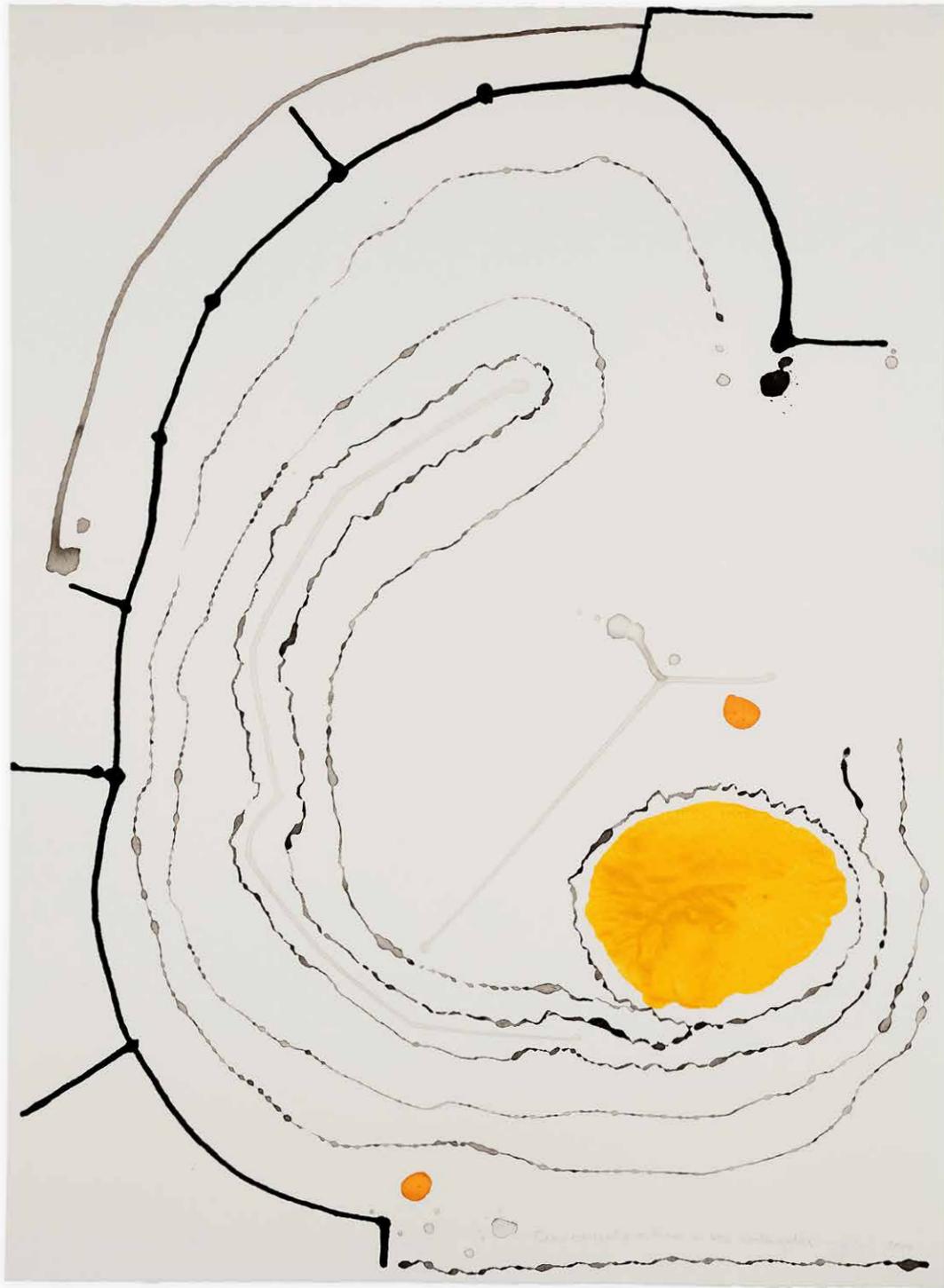
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Anna Maria Maiolino – Untitled, from the Conta-Gotas (Dropper) series

2016/Indian ink on paper/76.6 x 56 cm/30 1/8 x 22 in

87.8 x 68.8 x 3.5 cm/34 5/8 x 27 1/8 x 1 3/8 in (framed)

© Anna Maria Maiolino/Photo: Romulo Fialdini/Courtesy Anna Maria Maiolino and Hauser & Wirth



Hungary

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Income is taxable in Hungary (tax base and deductibility of costs vary according to income types). There is no specific wealth tax system i.e. there is no annual wealth tax on the ownership of tangibles. However, stamp duty can apply if certain tangibles are acquired (e.g. cars, homes, holiday homes, etc.)

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

There is a 15% flat personal income tax rate. In some cases, the so-called simplified public contribution payment ("EKHO") can be chosen (there is an activity list and income threshold for this special taxation type).

1.3. How are profit and net equity taxed in your country?

The profit realized by individuals is taxed at a rate of 15% and in some cases, social security payments can apply

(currently, 15,5% and is expected to decrease further to 13% in 2022).

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

For corporations, the income tax rate is 9%, while there is a 2% local business tax, where the tax base is the net sales revenue decreased by some special items (e.g. material costs, intermediary or subcontractor services). Capital is not taxed, and the disposal of shares can be exempted from Hungarian taxation under certain circumstances.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

Market based valuations performed by third party independent valuers are generally accepted by the tax authority.

2. Taxation of Artwork

2.1. Individuals Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

There is no such obligation in Hungary except for the wealth disclosure forms of parliamentary representatives.

2.1.1. Income taxes Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Income is taxed at a rate of 15% (there are no special taxation for artworks) and the tax base depends on

the facts, if the private person generates income as a sole proprietor or as an independent private person (some costs may be deducted from the revenue). Social security payments may also be due. Generally, if the yearly revenue from sale of tangible properties does not exceed HUF 600,000 (app. EUR 1,600), no tax is payable on the income (even if taxes are due, small portion of taxes does not have to be paid). If the activity is carried out in a commercial manner on a frequent basis then the sale by the private individual will be subject to VAT (HUF 12 million, which is approximately EUR 37,000, can be considered as VAT exempt without the right to deduct input VAT). Additionally, a sole proprietorship, or the above mentioned EKHO taxation may apply.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

There is no such rule in Hungary.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

There is no such obligation in Hungary.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

There is no such rule or guideline in Hungary (methods leading to the market price should be acceptable).

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

A stamp duty is levied on inheritances/gifts in Hungary. Transactions between Direct family members ("first row"), spouses and siblings can be exempted from stamp duty. Stamp duty rates vary between 9% (real estate) and 18% (other tangibles).

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

The general corporate income tax rate (without any special regulation on taxation of artworks) is 9% (plus 2% local business tax levied on a different basis).

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

If the artwork generates royalty income then there is a special system in Hungary making the utilization or realization by using a Hungarian company more beneficial than utilizing it as a private individual.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

If the artwork is not subject to the special EU VAT rules (CHAPTER 4 Special arrangements for second-hand goods, works of art, collectors' items and antiques), the sale is subject to VAT unless the taxpayer is a small taxpayer where the annual VAT exempt (without deduction) turnover is less than HUF 12 million.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Please note that this topic needs to be reviewed on a case-by-case basis, since it is possible that elements of the artwork may attract special treatment (e.g. it contains gold, etc.)

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared artworks and what are the expected consequences?

If the income related to artworks has not been declared and taxes are not settled, the taxpayer can make a self-revision (attracting self-revision interest) before the starting of a potential tax inspection. If the tax shortage is revealed during a tax inspection, the taxpayer can

face a tax penalty up to 50% of the tax shortage or, if it is certified that the income was hidden intentionally, the tax penalty can be 200%.

Does your country know a non-punishable voluntary disclosure programme?

At this moment, there is no such system in Hungary.

6. Special provisions regarding taxation of artworks

Trust/foundation

There are no special provisions regarding the taxation of arts in Hungary.



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Paul McCarthy (b. 1945) – Henry Moore Bound to Fail (Bronze)
2004/Bronze/600 x 410 x 304 cm/236 ¼ x 161 ¾ x 119 ⅝ in
Installation view Hauser & Wirth Somerset, 2016/© Paul McCarthy
Photo: Ken Adlard/Courtesy Paul McCarthy and Hauser & Wirth



India

1. Legal Framework

1.1. How are income and wealth taxed in your country?

- The global income (including capital gains) of any person 'resident' in India is subject to income tax at the federal level by the Central Government of India. In respect of a 'non-resident', income which is sourced in India or is received in India is subject to income tax in India. The State Governments have no power to levy income tax.
- Capital gains on the transfer of privately held movable assets are generally tax exempt. However, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art, even if personally held, attract capital gains tax.
- Prior to 1 April 2015, Wealth Tax at 1% of 'net wealth' was levied on certain assets. However, with effect from financial year 2015-16, Wealth Tax has been abolished in India.
- There is no inheritance tax levied in India.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

The taxation of the total income for individuals is progressive but capped at a maximum marginal rate. Net income up to INR 250,000 is completely exempt from income tax. Thereafter, the rate of income tax is between 5% and 30% (plus applicable surcharge and cess) depending on the total income. The highest income tax rate for individuals earning total income above INR 50 million could be 42.74% (including surcharge and cess).

1.3. How are profit and net equity taxed in your country?

Business profits are taxed on a 'net income' basis, i.e. after allowance of eligible expenditure incurred for undertaking the business activity. The basis for the taxation of business profits is generally the statement of profit and loss, to which certain adjustments are made from a tax perspective (e.g. losses carried forward, different rates of depreciation for taxation purpose, etc).

Similarly, capital gains are subject to income tax after deducting the cost of acquisition and other incidental expenses from the sale consideration for the assets

transferred. There is also a concept of 'indexed cost of acquisition' to provide for the enhanced cost of acquisition based on the inflation prevailing in the country.

There is no concept of taxation on net equity in India.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

The profits of a company are taxed at a rate between 15% and 30% (plus applicable surcharge and cess) depending on various factors such as the nature of the business activity, turnover, availability of certain incentives, etc.

The rates of tax for various other forms of entities differ depending on the type of entity and taxable profits.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

Valuation rules in India differ based on various criteria such as the nature of the asset, whether the person is the buyer of the asset or its seller, etc.

In the case of the transferor/seller of the assets in the nature of archaeological collections, drawings, paintings, sculptures or any work of art, there is no specific requirement of a valuation to be done for computation for capital gains tax purposes. The tax is payable on the gain made based on the actual price realized by the seller.

In the case of the transferee/buyer of the above-mentioned assets, where the fair market value ('FMV') exceeds the amount paid for acquiring such asset, the difference between the FMV of the asset and the amount actually paid for acquisition is taxable in the buyer's hands at the regular rate of tax applicable. The FMV in such case is the estimated price which the asset would fetch if sold in the open market. The valuation can be made by any registered valuer as prescribed under the law.

However, where the asset is purchased from a registered dealer, the invoice value of the asset is the FMV.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

Where total income of an individual exceeds INR 5 million in a financial year, he/she is required to declare the details (including cost) of archaeological collections, drawings, paintings, sculptures or any work of art in his/her Return of Income filed to the Indian tax authorities.

Further, the Return of Income also requires disclosure of any capital assets held outside India by a taxpayer resident in India (irrespective of income threshold).

2.1.2. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Under the Indian domestic income tax law, a work of art is taxed only upon its transfer to/receipt from another person. While the transferor is liable to pay capital gains tax at 20%, the transferee pays tax only where the consideration paid is less than the FMV, and in this case the deemed income is taxed at a progressive rate of tax for individuals.

However, where the transferee receives such asset as a gift (i.e. without any consideration) from certain specified relatives, under a will or as an inheritance, on the occasion of marriage, in contemplation of death of a payer/donor, etc, the same are not to be considered as taxable income in the hands of the recipient of the asset and consequently, no tax is required to be discharged on the same.

While personal effects are not regarded as a capital asset, the law specifically includes archaeological collections, drawings, paintings, sculptures, or any work of art within the area of capital assets which are subject to capital gains tax.

While computing capital gains tax in the hands of the seller, the actual consideration received/accrued is considered as the sale value. From such value, the seller can make a deduction of the actual cost of the asset and any expenditure incurred towards improvement of the asset. Where the asset is passed on to the seller by way of a gift/inheritance, the cost of the asset to the previous owner is deemed to be the cost of the asset and is to be deducted while computing capital gains.

Where the asset has been held by the seller for more than three years prior to the date of such transfer, the resultant gain is taxed at 20% as a 'long-term capital gain'. Gains from assets held for three years or less are termed 'short-term capital gains' and are taxed at the regular rate of tax applicable to the taxpayer in general.

From the perspective of the buyer of the asset, where the FMV exceeds the amount paid for such asset, the difference between the FMV of the asset and the amount actually paid for acquisition is taxable in the buyer's hands at the regular rate of tax applicable.

2.1.3. Wealth taxes

Does your country know any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

As discussed above, Wealth Tax has been abolished in India effective from 1 April 2015.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Under the Indian domestic income tax law, a work of art is taxed only upon its transfer to/receipt from another person. The transferor is liable to pay capital gains tax at 20% for long-term capital gains and at regular rates applicable for short-term capital gains. Further, the transferee pays tax only where the consideration paid is less than the FMV, and in this case the deemed income is taxed at a rate between 22% and 30% (depending upon the turnover, regime adopted, etc. by the corporate entity).

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

While an individual is taxed at a progressive rate i.e. from 5% to 30%, a corporate entity (being the owner of artwork) could be taxed at a rate between 22% and 30% (depending upon the turnover, regime adopted, etc). However, the sale of artwork would be taxed at these rates only if the entity/individual is engaged entirely/predominantly in the business of trading in the same (i.e. artwork held as stock-in-trade). In other cases (i.e. artwork held as investment), the gain would be subject to capital gains tax irrespective of the legal status of the entity.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The Goods and Services Tax ('GST') law does not provide for any specific exemption on the supply of artworks within India and hence, such sale could be liable to GST at rates generally varying from 5% to 28% based on their HSN classification. Further, a person can sell the artworks without payment of GST if the aggregate turnover of such person does not exceed INR 2,000,000 in a financial year. There would also be requirements to comply with e-Way Bill procedures for the movement of artworks within India for exhibition purposes.

In the event that a seller who is located outside India and has no fixed place of business or residence in India sells artworks after importation into India for exhibition purposes, he could be required to obtain a temporary GST registration in order to discharge his GST liability, if any, on such sales. Further, the aforesaid turnover limit of INR 2,000,000 would not apply in this case.

A person from India selling artworks in an exhibition held outside India can claim such sale to be an export, i.e. not liable to GST.

When works of art cross the border of your country what needs to be considered regarding GST/customs?

The import of goods into India attracts customs duty based on their HSN classification and requires the fulfilment of certain import procedures. The general rate of customs duty is 30.98%. A museum or art gallery importing artworks by itself for public exhibition can claim exemption from customs duty, provided that the prescribed procedures are followed and the imported artworks are not sold or traded. Certain specific exemptions from customs duty have also been granted on goods imported into India for display or use at exhibitions, conferences, etc. subject to fulfilment of prescribed conditions such as re-export of such goods within a period of six months, etc.

Hence, if in the event the artworks are sold or not re-exported within the prescribed time limit, then the aforesaid exemptions would be regarded as withdrawn and the customs duty would become payable with interest. The GST element of such customs duty can be used as credit while making payment of GST at the time of the sale of artworks to a person in India.

5. Voluntarily disclosure program

While filing a Return of Income before the Indian tax authorities, there is an obligation upon every entity/individual to declare the value of the archaeological collections, drawings, paintings, sculptures or any work of art held by it/him.

Further, the Return of Income also requires a disclosure of the capital assets held outside India by the taxpayer.

6. Special provisions regarding taxation of artworks

Where the sale of a painting is made by a taxpayer to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Government, the same shall not be regarded as a transfer of a capital asset and accordingly not be chargeable to capital gains tax.

Note: All rates mentioned in this note are headline tax rates (other than VAT and Customs). Depending on the status of the taxpayer, net taxable income, etc. a surcharge ranging from 2% to 37% is levied. An additional health and education cess of 4% is levied over and above the surcharge.

There are no special income tax provisions relating to purchase and sale of artwork in the hands of individuals (other than those specified above and discussed earlier).

In addition, if the sale of artwork is undertaken through any agreement/document, it may be necessary to evaluate the stamp duty implications of the same.



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 - Highly experienced in assisting High Net-worth Individuals (HNI) in strategizing and managing their taxes as well as related compliances
 - Represents clients before revenue authorities in tax compliance and litigation matters at various levels and appellate forums
-

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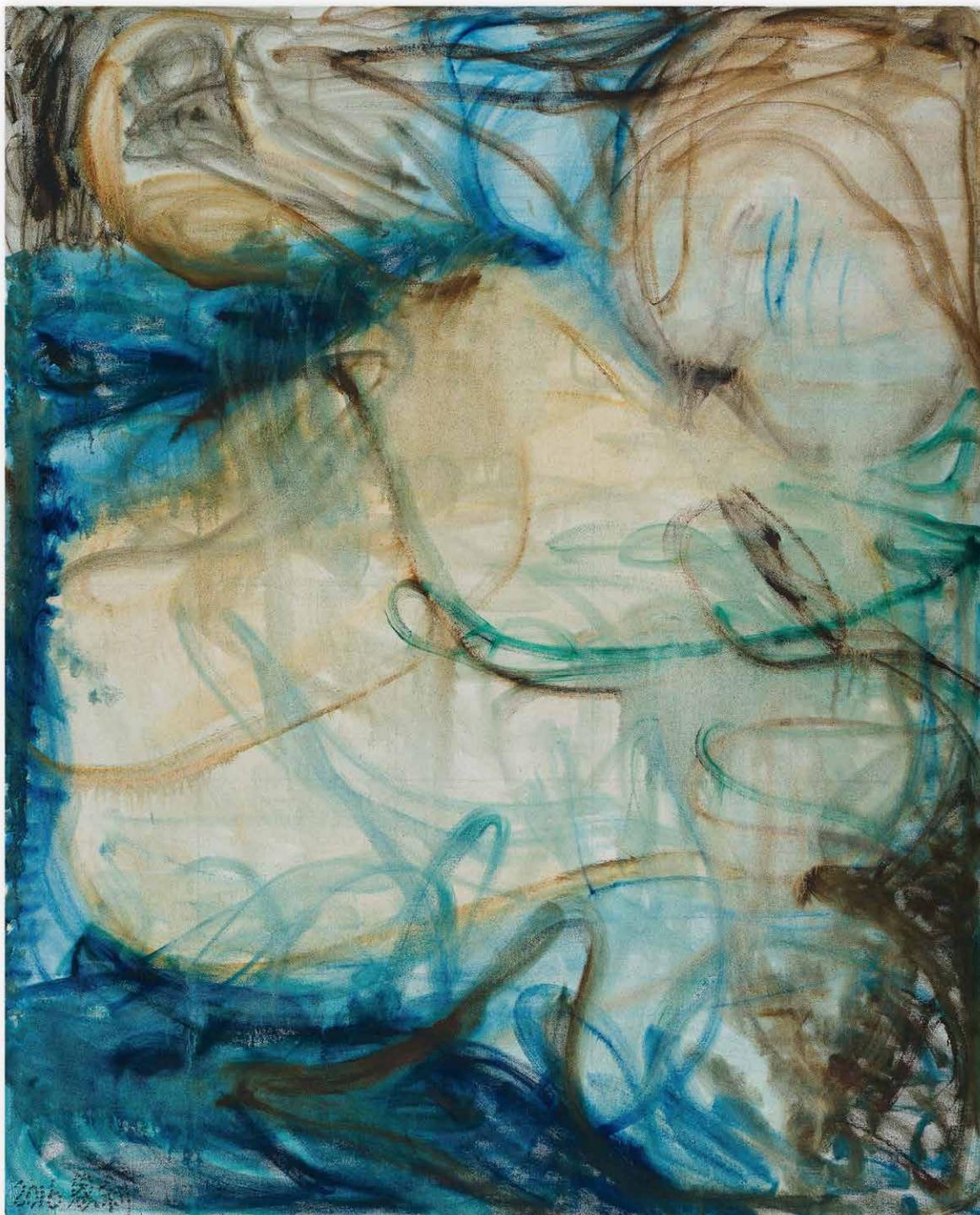


WTS Global in India, Dhruva Advisors.

Zhang Enli – Blue Brushwork

2016/Oil on canvas/249.5 x 199.5 x 4.3 cm/98 ¼ x 78 ½ x 1 ¾ in

© Zhang Enli/Photo: Birdhead/Courtesy Zhang Enli, Hauser & Wirth and ShanghART Gallery



Italy

1. Legal Framework

1.1. How are income and wealth taxed in your country?

The main income tax levied on individuals is the personal income tax (IRPEF). Regional and municipal surcharges apply.

Personal income tax is levied at progressive tax rates. The rates of regional and municipal surcharges depend on the region and on the municipality of residence.

There is no general wealth tax. Real property is subject to a municipal property tax (IMU) and financial assets are subject to annual stamp duty of 0.2%.

Capital gains on privately held and movable assets are generally tax exempt. Assets held outside Italy are subject to the rules of foreign asset disclosure (RW Form).

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

The national income tax for individuals is in a range of between 23% and 43%. The regional income tax rate ranges from 1.23% to 3.33%. The municipal income tax rate ranges from 0% to 0.8%.

1.3. How are profit and net equity taxed in your country?

Italian entities are subject to a corporate income tax (IRES) and to a regional business tax (IRAP).

The taxable base for IRES is determined according to the worldwide taxation principle, on the basis of the accounting profits to which certain adjustments are made under tax rules.

There are different methods of computation for the IRAP taxable base, depending on the nature of the business carried out by the taxpayer. Special rules apply to financial institutions. For sales and manufacturing companies, IRAP is calculated on the "net added value" of production, as defined by the relevant tax rules (but basically derived from the statutory accounts). Provisions for liabilities and risks, as well as extraordinary items,

cannot be taken into account when determining the IRAP taxable base. The labour costs of permanent employees are now fully deductible for IRAP purposes.

There is no tax on the net equity

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

For companies subject to ordinary taxation, the standard rates are 24% for IRES and 3.9% for IRAP. Regions are allowed to increase or decrease the standard IRAP rate by up to 0.92%.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In general, profits and capital gains are determined on the basis of the difference between the sale price and the purchase price. In some cases, income tax rules provide for the alternative reference to market values. This happens, e.g. in the case of a barter, a contribution into an entity, cross-border related party business transactions or the assignment of assets by a company to its shareholders. Market value is also relevant under accounting principles in specific circumstances.

Furthermore, reference to the market value is to be found in inheritance and gift taxation and in customs rules.

The evaluation of artworks poses special difficulties for different reasons: they are usually unique items, there is no liquid market with regular trade and prices are often undisclosed and influenced by personal preferences and individual intentions of collectors. Of course, artworks also do not generate income to which actualisation methods can be applied.

Italian tax administrative practice and case law do not provide any specific guidance. In this scenario, in order to determine the value of an art piece, reliance can be placed upon expert opinions, databases, gallery catalogues and auction results.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

For the individuals (private collector) there is no specific obligation to disclose private artworks to the tax authorities.

However, the Cultural Heritage Code (after the recent reform of art. 1, sub paragraph 175-176 of law n. 124/2017) provides for certain control procedures for the international circulation of artworks (in particular, artworks realized between 50 and 70 years ago are considered of exceptional artistic and historical interest and are subject to special protection acts).

An electronic registry has been established (for control purposes by the administration) dedicated to the usual dealers of antiques and used goods.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

In Italy, the income generated by the sale of artworks is taxed in three different ways depending on how the subject is classified.

In particular:

1. if the subject is an "art dealer" (professionally and normally carries out trade in artworks) the income generated is considered as "business income" (pursuant to article 55 of the TUIR, the income tax law) and is subject to VAT (article 4 of Presidential Decree n. 633/72);
2. if he is an "occasional speculator" the income generated is considered as "other income" (article 67, paragraph 1 of the TUIR) but he is not subject to VAT (as the activity is not usual);
3. if the subject is a "private collector" he will not be subject to any taxation.

In cases 1) and 2), the maximum tax rate (IRPEF) is 43%.

To understand if and how the income is taxable, it is therefore necessary to analyse factual elements such

as the number of sales, their frequency, the ultimate purpose of the sale and the existence of a space for the sale and the marketing of the artworks.

For example, the tax authorities have excluded the commercial nature of income that a non-profit association (which, for Italian income tax purposes, is comparable to an individual) has obtained from the sale of artworks received as donations. In the opinion of the tax authorities, the sale does not constitute a commercial activity (and, as such, is not taxable), since it is not possible to find "the element of intermediation in the exchange of goods but a simple operation of disposal of assets" (see Resolution n. 5/2001).

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

As indicated in the answer to question 2.1. there are no specific reporting obligations. Moreover, in Italy there is no wealth tax.

However, and as mentioned, individuals resident in Italy must declare investments in artworks that are held outside Italy. The section to be filled in in the declaration form is the RW and the value to be declared is the historical cost or the market value.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

In principle there are no specific reporting obligations. However, individuals resident in Italy must declare investments in artworks that are held outside Italy.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

As in Italy there is no general wealth tax, works of art are not taken into account for wealth tax purposes. On the other hand, individuals resident in Italy must declare investments in artworks that are held outside Italy and the value to be declared is the historical cost or the market value.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

As a general rule, if the deceased/donor is resident in Italy, the inheritance and gift tax is due on the assets held in Italy and abroad, while if the deceased/donor is not resident in Italy the tax is due only on the assets held in Italy.

The applicable rates are the following:

- 4% for transfers made in favour of the spouse or relatives in a straight line (ascending and descending) to be applied on the total net value exceeding, for each beneficiary, the threshold of 1 million euros;
- 6% for transfers made in favour of brothers or sisters to be applied on the total net value exceeding, for each beneficiary, the threshold of 100,000 euros;
- 6% for the transfers in favour of other relatives up to the fourth degree, kindred in the collateral line up to third degree, to be applied to the total net value, without any threshold;
- 8% for the transfers to all other parties on the total net value, without application of any threshold.

The tax base of the inheritance and gift tax, as a rule, is the market value of the assets and rights at the time of the transfer of ownership.

For inheritance of artworks, article 9 of the inheritance and gift tax law provides for a lumpsum criterion (including artworks held in private houses by resident individuals).

The assets are presumed to be included in the hereditary assets "for an amount equal to 10% of the total net taxable value of the estate line" even if not declared or declared at a lower value.

This incentive scheme does not apply if the artworks are stored in places other than the main dwellings (for example, safety vaults); in this case, the ordinary rate is applied to the market value.

If the artworks are subject to restrictions (based on specific provisions of the Cultural Heritage Code) they are exempt from inheritance and donation tax; furthermore, transfers to other particular subjects (e.g. to some kind of charity) are not subject to tax.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

There is no specific provision, so the general rules apply under which it is necessary to distinguish if the purchase and sale of artworks represent the core business of a legal entity or not.

In the first case (core business), artworks are recorded as inventories and the difference between the initial and final inventories is considered part of taxable corporate income, as well as the purchase cost and the sale price.

In the second case (not core business), artworks are recorded as non-current assets. However, under Italian accounting principles, the purchase cost cannot be depreciated, due to the particular and unique nature of the asset and its undefined economic life. At the time of the sale, the legal entity is attributed a taxable

capital gain or deductible capital loss, determined as the difference between the sales price and the non-depreciated cost.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

As mentioned, the sale of artworks carried out by pure collectors does not involve any income taxation. A legal entity would conversely always be taxable.

As a result, the ownership of artworks through legal entities is not advisable for pure collectors from a tax point of view, even if it might be taken into consideration for other reasons (e.g. privacy or asset protection).

For art dealers, a comparison should be made between the personal income tax rates and the corporate income tax rates, also taking into account the taxation of distributed dividends.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

Art pieces can be stored in Customs Warehouses (any premises authorised by the customs authorities) or in Free Ports (duty-free warehouses) for an unlimited period of time. During the storage there is a temporary suspension of VAT and customs duty payments, and it is not subject to other charges related to the import of goods or to commercial policy measures (such as import licenses).

Owners pay no import taxes or duties until the pieces are definitively imported at their final destination.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

The import of art pieces into Italy can cover a wide number of cases. In general, artworks benefit from tax reduction and exemption from customs duties.

For VAT purposes for the importation of art piece, antiques or collectibles, the rate is reduced to 10% instead of 22%. A tabular list of all art pieces that benefit from VAT reduction is attached to Decree Law n.41 of 1995.

The import of art pieces, collectibles or antiques is exempt from customs duty, both for exhibitions or fairs (temporary admission), and in the case of importation for sale. All items listed in HS Nomenclature Chapter 97 are exempt from customs duty.

Some art pieces not included in HS Nomenclature chapter 97 may not benefit from the above and must be assessed on a case-by-case basis. In principle, all the items made entirely by hand, antiques being more than one hundred years old, pieces in a limited edition not exceeding a set number of copies, benefit from the tax reduction and duties exemptions.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

As mentioned in par. 2.1.2, only artworks held outside Italy have to be disclosed in the tax return (through the filing of the RW form) by individuals who are resident in Italy for tax purposes.

If artworks held outside Italy are not properly declared, Italian tax authorities can issue a tax assessment notice to the tax payer, applying penalties equal to a percentage of the value not declared for each tax period (from 3% to 15% if artworks are held in a "white listed" country, from 6% to 30% if artworks are held in a "black listed" country).

The tax payer has the possibility to voluntarily rectify the tax return which was not properly filed, as long as the tax authorities have not notified to him about the beginning of a tax audit on such specific tax period. In this case, a correct tax return has to be filed voluntarily by the tax payer and the ordinary penalties can be reduced from one ninth to one sixth of the minimum provided by the law (i.e. 3% for "white listed" countries and 6% "black listed" countries).

Does your country have a non-punishable voluntary disclosure programme?

There is no specific voluntary disclosure programme in force at the moment (apart from the ordinary one described above), although in the past specific voluntary disclosure laws have been introduced in Italy several times

6. Special provisions regarding taxation of artworks

A tax allowance, so-called Art Bonus, has been introduced by Law Decree n. 83/2014, regarding cash donations to public art institutions. The Art Bonus is equal to 65% of the donation and applies both to individuals and legal entities. Depending on the type of beneficiaries, different maximum limits are provided.

This incentive is aimed at promoting the maintenance, protection and restoration of public art assets, and does not apply to cash donations made in favour of privately owned art works.



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- Member of STEP Italy (Society of Trust and Estate Practitioners)
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Specialization

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 - Tax treaty law
 - Cross border inheritance and gift taxation, ownership structuring, individual tax incentives
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Phyllida Barlow - untitled: venicerackaxle; 2017

2017/Bonding, cardboard, cement, fabric, hessian scrim, PVA, plywood, sand, spray paint, steel, timber

170.5 x 159 x 130 cm/67 1/8 x 62 5/8 x 51 1/8 in

© Phyllida Barlow/Photo: Alex Delffane/Courtesy Phyllida Barlow and Hauser & Wirth



Luxembourg

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Individual taxpayers are considered a Luxembourg tax resident when they have their tax domicile or usual place of abode in Luxembourg.

Luxembourg resident taxpayers are subject to Luxembourg personal income tax on their worldwide income but Luxembourg does not levy any wealth tax on the wealth directly owned by individuals.

Luxembourg personal income is assessed on the income realised by the taxpayer's household during a period corresponding to the civil year. The rate is progressive and applies on the overall net income realized in each of the eight different categories of income provided by the tax law, which are the following:

- Business income;
- Income from agriculture and forestry;
- Income from a liberal profession;
- Employment income;
- Income from pensions and annuity income;
- Income from movable capital;
- Rental income and royalties; and
- Miscellaneous income.

The rules of taxation applicable to certain categories of income (notably employment income and income from movable capital) provide for a taxation by way of withholding tax. Although considered as final in certain cases, these are usually treated as advances on the tax finally assessed.

Individuals who are not tax residents in Luxembourg are only subject to Luxembourg personal income tax on their Luxembourg source income.

Luxembourg does not provide for specific regimes relating to the taxation of art, hence the rules of taxation apply depending on the type of the activity carried.

When a piece of art is "passively" held by an individual, the taxation will usually occur under the "miscellaneous income" category which includes capital gains or under the "rental income" category provided that such rental activity remains non-professional.

However, when the piece of art can be considered as being held in the scope of a business activity, then the rules of taxation of the "business income" category will apply. According to the Luxembourg tax law, this should be the case when the activity is lucrative, carried out in a permanent and independent way, and when it can be viewed as a participation to the general economic life. These four criteria need to be cumulatively met.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Luxembourg income tax for individuals is calculated according to a progressive tax schedule that ranges from 0% to 42%.

Single individuals are taxed in class 1. Married couples or partners are taxed in class 2 and therefore benefit from a reduced rate on their collective income (which corresponds to the rate of the class 1 applicable to half of their income).

Although not exhaustive, the below table is intended to give the reader an idea of the schedule's progressivity (class 1):

€ 11,266 (as from)	8%	€ 45,897	39%
€ 15,009	10%	€ 100,002	40%
€ 26,457	20%	€ 150,000	41%
€ 36,177	30%	€200,004+	42%

A surcharge for the employment fund of 7% or 9% (9% for income exceeding EUR 150.000 in class 1 or EUR 300.000 for taxpayers in class 2) is also levied.

The maximum overall rate amounts to 45.78% (class 1).

1.3. How are profit and net equity taxed in your country?

For Luxembourg corporate income tax purposes, a corporate entity is deemed a Luxembourg tax resident when it has its statutory seat or its central administration in Luxembourg.

Luxembourg resident corporate entities are subject to the Luxembourg corporate income tax ("CIT") and municipal business tax ("MBT") on their worldwide net profits, as reflected in their profit and loss statement, from which certain tax adjustments are made.

Profits realized through a foreign permanent establishment ("PE") are in principle exempt (in presence of a double tax treaty) from Luxembourg CIT and MBT and losses realized through such PE are taken into account for the determination of the Luxembourg CIT/MBT rates.

Corporate entities are also subject to the net wealth tax (NWT) on their unitary value as at the 1st January of the year. The unitary value corresponds roughly to the net asset value with certain adjustments such as the exemption of certain assets (mainly wealth attributable to a foreign PE as well as qualifying participations).

Non-resident entities are only subject to tax on their Luxembourg source income and wealth (Real estate or assets attributed to a Luxembourg PE) located in Luxembourg.

Luxembourg implemented ATAD rules such as interest limitation, general anti-abuse rule, hybrid mismatch, or controlled foreign entities, the tax impacts of which also needs to be carefully monitored.

Luxembourg partnerships are usually considered as tax transparent entities and are not subject to CIT. They are also only subject to MBT when carrying a business activity, or deemed to be carrying a business activity, i.e. when a general partner that is a jointstock company holds more than 5% of the shares in the partnership.

Tax losses carried forward as from 1st January 2017 can be carried forward during a limited period of 17 years.

1.4. --- What is the range of the applicable tax rates for legal entities on profit and capital?

Tax rates on profit and capital depend on the legal structure of the entity.

Profit from resident corporate entities are subject to Luxembourg CIT at the rate of 17% (15% when yearly profits do not exceed 175.000 EUR). Additionally Luxembourg MBT is levied at a rate ranging from 6.75% to 10.5% depending on the city where the company is established.

NWT is levied at the rate of 0,5%. Corporate taxpayers are subject to an annual minimum NWT ranging from 535 EUR to 32.100 EUR depending on the total of their balance sheet.

Taxpayers liable to CIT can however usually reduce their NWT up to the amount of their CIT liability by the creation of a special unavailable reserve to be maintained in their balance sheet during five years.

1.5. --- What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

As a general rule, assets, including pieces of art, have to be valued at their fair market value, corresponding to the price a third-party would agree to pay to acquire such assets.

2. Taxation of Artwork ---

2.1. Individuals ---

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

No, there is no such obligation under Luxembourg tax law.

2.1.1. Income taxes ---

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Non-professional income generated by the sale of artworks is usually subject to the rules of taxation provided for the "miscellaneous income" category.

In case of disposal of a piece of art within 6 months or less following its acquisition by a Luxembourg resident individual, the realised capital gain is taxable at the normal tax rate (i.e. up to 45.78%).

Capital gains, realised upon the disposal of a piece of art more than six months after its acquisition, are not taxable.

However, capital gains realised upon the sale of a piece of art, realised in the scope of a business activity, should be considered as part of the business income and therefore taxed at the normal tax rate (i.e. up to 45.78%).

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

There is no wealth tax in Luxembourg for individuals and this section is therefore not applicable.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

There is no wealth tax in Luxembourg for individuals and this section is therefore not applicable.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

There is no wealth tax in Luxembourg for individuals and this section is therefore not applicable.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

In case of a gift, registered by a Luxembourg notary, the tax varies from 1.8% to 14.4% (1.8% to family members in direct line/4.8% between spouses).

Gifts not registered by a Luxembourg notary ("dons manuels" or gifts realised in front of a notary abroad) are not subject to gift tax in Luxembourg.

Inheritance tax rates range from 0% to 15% (legacies received by family members in direct line or by a spouse or partner are in principle not subject to inheritance tax).

Legacies exceeding a net value of 10,000 EUR are however subject to a surcharge leading to an overall rate of up to 48% (for legacies with a net value exceeding 1,750,000 EUR).

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Profits realised on the sale of artworks by a Luxembourg corporate entity are included in its profits and subject to CIT and MBT at the overall rate of 24.94% for the city of Luxembourg.

Dividends distributed by a Luxembourg corporate entity are usually subject to a 15% withholding tax.

Capital gains upon the transfer of artworks, realized by corporate entities (or individuals in the scope of their business activities) may qualify for a rollover relief under certain conditions, being mainly that:

- the transferred assets qualify as a non-depreciable fixed asset;
- the transferred assets have been held for more than 5 years;
- the sale price is fully reinvested into other fixed assets acquired by the taxpayer (in case of partial reinvestment of the sale price, the rollover relief is to be reduced proportionately);
- the reinvestment must be performed before the end of the second year following the transfer of the artworks.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

Luxembourg corporate (non-tax transparent) entities do not provide sound advantages for the ownership of artworks. They are subject to Luxembourg net wealth tax, which may be more of a disadvantage compared to direct ownership.

Luxembourg partnerships, which are usually tax transparent entities, may be more relevant for that purpose. Indeed, in addition to the fact that they are in principle more flexible from a legal point of view, they are also usually not subject to Luxembourg CIT and NWT.

Depending on the situation of the partners (which are deemed to own the assets of the partnership directly for tax purposes up to their level of interest), such vehicle may be worth considering.

Certain Luxembourg investment funds such as the Luxembourg Specialized Investment Fund ("SIF") also present some advantages. The SIF is only subject to an annual subscription tax of 0.01% of its net asset value. It is however (lightly) regulated and subject to the principle of risk-spreading. Investment in a SIF is reserved for well-informed investors (i.e. professionals and individuals investing at least 125k EUR).

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The purchase of works of art with the intention to resell it at an appropriate moment in the future is an economic activity within the scope of VAT. As regards to VAT, this activity confers on the company/independent individual the status of taxable person. Thus, the following duties/obligations have to be fulfilled:

- To register for VAT in Luxembourg
- To file VAT returns and account for VAT in Luxembourg on the sales of art pieces that take place in Luxembourg

To register for VAT, the taxable person has to submit an initial declaration with the Luxembourg VAT authorities (Administration de l'enregistrement, des domaines, et de la TVA) within fifteen days following the beginning of its VAT taxable activity.

The taxable person supplying pieces of art in Luxembourg as a taxable dealer will be subject to the margin scheme regime in which VAT is charged only on the profit margin and in which the company will not be entitled to recover input VAT paid on related costs.

This profit margin scheme regime is automatically applicable for the pieces of art purchased from non-taxable persons without VAT or purchased from another retailer under the margin scheme. It is applicable with an option if the pieces of art are purchased from the artist or are imported.

Whatever the case, it remains possible to opt for the normal VAT regime in respect of each sale of an individual piece of art. No specific format is required.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

When pieces of art are transported to Luxembourg before their sale, the VAT treatment of the acquisition is as follows:

Transported from another EU country ("Intra-Community acquisition"):

Intra-Community acquisitions of pieces of art are not subject to VAT when the goods are subject to VAT in the country of departure under the margin scheme.

If the pieces of art were not subject to VAT in the country of departure (under the margin scheme), they will be subject to VAT in Luxembourg (normal regime). The VAT will be due by the person making the Intra-Community acquisition of works of arts in Luxembourg. A reduced VAT rate of 8% applies if the piece of art is supplied by the artist or his successors.

It is possible to benefit from a suspension of VAT on pieces of art if they are introduced into the Luxembourg Freeport (see hereafter).

Transported from a non-EU country ("Importation"):

Any VAT due on importation will have to be remitted by the importer. If the importer is registered in Luxembourg, no VAT will be in principle be paid to the Customs Authorities, as the VAT due will be declared and in principle deducted (based on the recovery right) in the VAT return. If the importer is not VAT registered in Luxembourg, VAT will be collected by the Customs Authorities.

The applicable VAT rate on importation of pieces of art is 8%.

The taxable payer may opt for the margin scheme when importing the pieces of art into Luxembourg. The taxable payer must file a formal option with the VAT authorities which will be valid for 2 years. Should this be the case, import VAT is not deductible upon importation of the pieces of art. Should the seller opt for the normal VAT

regime, import VAT paid becomes deductible at the time the goods are supplied under the normal VAT regime.

It is possible to benefit from a suspension of VAT and customs duties on pieces of art if they are introduced into the Luxembourg Freeport. Inaugurated in September 2014, the Freeport in Luxembourg is mostly used for storage, trade of pieces of art, precious metals, wine, jewellery and other valuable goods.

VAT and customs duties are suspended on storage and other additional linked services as long as goods remain at the Luxembourg Freeport. The Luxembourg Freeport is under the supervision of the Luxembourg Customs Authorities, which inspect the goods that enter or exit the Freeport. No regularisation is required if the goods are exported to a non-EU destination. For other cases, an assessment of the conditions of the exit should be made to determine whether VAT needs to be regularised.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

Although such a programme applied during a temporary period lasting from 1 January 2016 to 31 December 2017, Luxembourg does not currently provide any possibility to proceed with a voluntary disclosure.

Does your country have a non-punishable voluntary disclosure programme?

Luxembourg does not have a non-punishable voluntary disclosure programme and any voluntary disclosure may trigger the application of the penalties, including possible criminal penalties, provided for by the law for fiscal offenses.

6. Special provisions regarding taxation of artworks

Trust/foundation

Luxembourg law does not provide specific provisions in this respect.



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Specialization

- Corporate & individual tax
- International tax law
- Structuring of shareholder's interests
- Migration of high net worth individuals from or into Luxembourg

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Phyllida Barlow - untitled: GIG

2014/Fabric, paper, cord

110 x 110 x 110 cm/43 3/4 x 43 3/4 x 43 3/4 in

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Courtesy Phyllida Barlow and Hauser & Wirth



Netherlands

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Individuals, who are (tax) residents of the Netherlands, are in general subject to personal income tax ("PIT") on their worldwide income. Under certain specific conditions, however, resident individuals can, under the so-called 30%-ruling, opt for a maximum period of 5 years to be taxed as non-residents for certain categories of income. Non-residents are only subject to PIT on their Dutch source income.

Whether an individual is a tax resident of the Netherlands, has to be assessed based on all relevant facts and circumstances. Under the case law of the Dutch Supreme Court there is not one decisive factor. One can however state that the following circumstances are considered particularly relevant: the availability of a permanent home, the place where the spouse and (minor) children live and the place with which the personal and economic relations are the closest.

The Dutch PIT system is a scheduler system, that distinguishes three categories of income, divided in so called boxes, that are each taxed differently. In general, the positive or negative income from one box cannot be offset against the income, taxed according to the rules of another box.

Box 1, income from employment and dwellings, includes the income from: (a) present and past employment, (b) business activities as a self-employed entrepreneur, (c) periodical payments and pensions and (d) one's primary residence.

Box 2, income from substantial shareholdings, includes dividends and capital gains derived from substantial shareholdings in resident and non-resident companies. An individual has a substantial shareholding in a company, if he owns 5% or more of the paid-up capital of a company. In certain other situations, such as in the case where an individual holds call options, which entitle him to acquire 5% or more of the shares of a company, there may also be a substantial shareholding. We would always recommend contacting a Dutch tax advisor to ascertain whether one holds a substantial shareholding.

Box 3, income from savings and investments, replaces ordinary taxation of types of income from capital, other than the deemed income from one's primary residence and dividends and capital gains from substantial shareholdings. Taxation of Box 3 is based on a weighted notional yield on net assets, taxed at a flat rate.

In 2021 the first EUR 50,000 of net assets is deemed to yield 1.898%. The net assets in excess of EUR 50,000 but below EUR 950,000 are deemed to yield 4.501% and the net assets in excess of EUR 950,000 are deemed to yield 5.690%. However there is an income threshold of EUR 50,000.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Box 1 income is taxed at progressive rates, in general starting from 37.10% for income up to EUR 68,507 and 49.50% for income in excess of EUR 68,507.

Box 2 income is taxed at a flat rate of 26.9%.

Box 3 income is taxed at a flat rate of 31%.

1.3. How are profit and net equity taxed in your country?

As noted above, the income and wealth of a resident individual is subject to PIT. Legal entities, such as companies, are in principle subject to Corporate Income Tax ("CIT"). In general, the commercial profit and loss statement is the basis for the calculation of the taxable result on which CIT is due.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

In 2021 ordinary companies are taxed at a rate of 15% on profits up to EUR 245,000 and 25% for profits above this amount. As of 2022 companies will be taxed at a rate of 15% on profits up to EUR 395,000 and 25.8% for profits above this amount.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

For Box 3 purposes (and thus for PIT), assets should generally be valued at their fair market value ("FMV") on 1 January of any given year. The notional yield, mentioned

above under paragraph 1.1., will be calculated on this FMV.

Companies subject to CIT are allowed to value their assets at (a) the historical acquisition price or (b) the lower market value (which may result in a deductible write-off).

2. Taxation of Artwork

2.1. Individuals
Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

In general, artwork is exempt from the taxable base of savings and investment (Box 3 of PIT) and therefore does not have to be included in the PIT return, unless the artwork is primarily being held as a form of investment. In determining whether or not the artwork is primarily being held as an investment, all relevant facts and circumstances should be taken into account.

2.1.1. Income taxes
Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

As we have indicated under paragraph 2.1, artworks are subject to PIT (according to the rules for Box 3, see paragraph 1.1. above) if these are being held as a form of investment. Any capital gains arising from the disposal of artworks are considered to be included in the weighted notional yield and are thus not separately taxed.

Please note for completeness however that the actual income (including capital gains) realized on (the disposal of) artworks may under some very specific conditions be subject to PIT under the rules for Box 1. This is for example the case if the artworks are made available (in Dutch: 'ter beschikking gesteld') to a company in which the taxpayer holds a substantial shareholding. Artworks are deemed to have been made available if they hang in the company's office.

Furthermore, should a taxpayer regularly buy and sell artworks in a way that this should be regarded as a trade or business, the income and capital gains could be subject to PIT in box 1.

2.1.2. Wealth taxes
Does your country know any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

We refer to the previous paragraphs. Privately owned artworks are in principle exempt from PIT, provided they are not held as an investment and are not made available to a company in which a substantial shareholding is held.

If the artworks are made available to a third party for cultural and scientific purposes, the exemption may still apply. If a fee is being charged for the lease of the artworks, we would recommend contacting a tax advisor.

Furthermore, please note for the sake of completeness that the exemption for artworks only applies when the individual has full (and legal) ownership of the artworks. The beneficial ownership of artworks, for example via a Dutch foundation, is not tax-exempt. In the Netherlands foundations are regularly used (for example) to ensure that artworks stay within the family.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

We refer to paragraph 2.1.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

As indicated in paragraph 1.5, artworks should be valued at their FMV. According to established case law, the FMV is defined as the price that can be obtained when the product or service is being offered in the most suitable way with the best preparation.

2.1.3. Inheritance/gift taxes _____
In case of an inheritance or gift will there be any tax levied?

Dutch gift tax or inheritance tax is levied on the (worldwide) value received from a person who was resident or deemed to be resident in the Netherlands at the time of the donation or at the time of his or her passing. The place of residence or nationality of the person receiving the value is irrelevant.

As we have indicated in paragraph 1.1, the place of residence of an individual is determined based on all relevant facts and circumstances. Individuals with Dutch nationality are deemed to be residents of the Netherlands for inheritance and gift tax purposes only for a period of 10 years after emigration. For individuals

without Dutch nationality, this period of deemed residency is limited to one year and only applies for gift tax purposes.

The tax rate for receipts in any given calendar year from "fiscal partners" or parents is 10% up to EUR 128,751 (2021) and 20% for amounts in excess of this. For receipts from others than your fiscal partner or parents the tax rates are 30% (up to EUR 128,751) and 40%.

Public Benefit Organisations (i.e. organisations that have obtained the so-called 'ANBI' qualification, which stands for 'Algemeen Nut Beogende Instelling') are exempt from inheritance or gift tax on inheritances and gifts that the institution uses in the public interest.

The receipt of artworks is not exempt from gift or inheritance tax. Please note however, that there are, just as in some other countries in Europe, possibilities to pay to the government (part of) the inheritance tax that is due with (the received) artworks. This facility, which is beneficial because the inheritance tax due is credited with an additional 20% on top of the FMV of the artworks used to pay the assessment, is referred to as the "remission arrangement". The arrangement is available for artworks with a national cultural historical or art historical interest.

3. Taxation of legal entities (as owner of the artworks) _____

3.1. Corporate income taxes _____
How are profits deriving from the sale of artworks taxed?

Some entities such as foundations are only subject to CIT when the entity conducts business activities, therefore it is essential to first determine if the entity which is the owner of the art-works is subject to CIT. If not, one can in general state that the entity is tax transparent for CIT purposes. The assets and liabilities of such an entity (as for example the foundation that does not conduct business activities) are subsequently attributed to the ultimate beneficial owners.

Entities with capital that is divided into shares are fully liable to CIT. The profits that these entities derive from the sale of artworks is taxed with CIT. Expenses incurred in relation to the sale of the artworks are deductible for CIT purposes.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

As there is no exemption applicable to artworks being held by a corporate entity, it is more beneficial to hold the artworks privately, especially when the artwork is not being held as an investment.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The supply of works of art is subject to the Dutch 9% reduced VAT rate, provided that these works of art are supplied by the maker or artist (or a person who must be considered to have taken his place, for instance in case of an inheritance) or a supplier who is entitled to a full deduction of input VAT and who does not apply the special provision of Article 311 et seq of the EU VAT Directive (Articles 28B-28D of the Dutch VAT Act).

Note that if the art is sold through the intermediation of a gallery, the gallery in principle has to apply the general VAT rate of 21% on its intermediation fee.

In case the reduced VAT rate cannot be applied, subject to prior authorization from the competent tax inspector it is possible to apply the special provision of Article 311 et seq of the EU VAT Directive (Articles 28B-28D of the Dutch VAT Act). In that case the VAT is only charged on the profit margin of the supplier. This provision also applies in case of sales through commissionaires or auctions. On the basis of Article 4c of the Ministerial Decree this profit margin is to be determined on the basis of the difference of the total amounts paid and received in the period to which the VAT return refers ("globalisation"). Any VAT paid by the supplier as input VAT cannot be deducted (Article 28e of the Dutch VAT Act).

This provision could also apply on sales through commissionaires or auctions.

On the basis of Article 28f of the Dutch VAT Act, the supplier can opt to apply the normal provision and calculate the VAT chargeable on the basis of the remuneration received for the works of art supplied (Article 8 of the Dutch VAT Act). In that case the supplier can (retroactively) deduct any input paid for the works of art which are supplied by him.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Transactions within the EU

In case works of art are supplied to consignees in other EU Member States then the following applies.

The starting point is that such a supply is subject to the

special provision of Article 311 et seq of the EU VAT Directive (Articles 28B-28D of the Dutch VAT Act). In that case the VAT is levied in the EU Member State of the supplier and levied only on the margin of the supplier. This transaction does not fall under the scope of an intra community transaction (ICT).

It is however possible for the supplier to opt in. In that case the transaction is on the basis of Article 28 of the Dutch VAT Act treated as an ICT (provided that the requirements for such an ICT are met). Such an ICT consists of an intra community supply (ICS) in the EU Member State of the supplier, which is subject to a 0% VAT rate, followed by an intra community acquisition (ICA) in the EU Member State of the consignee. The consignee self-assesses VAT. In the Netherlands such an ICA would be subject to the Dutch 9% VAT rate (Article 9, section 2, sub a of the Dutch VAT Act), provided that the requirements for the application of this reduced VAT rate are met. Otherwise the general VAT rate of 21% applies (Article 9, section 1, of the Dutch VAT Act).

In case a supplier travels from his EU Member State to the Netherlands, the bringing of the goods is only a (deemed) ICT if the works of art are sold here. If the goods are returned to the EU Member State of the supplier, then no (deemed) ICT will have to be declared.

If and when the works of arts are sold by the supplier in the Netherlands, then the bringing of the works of art is considered a deemed supply in the sense of Article 3a of the Dutch VAT Act, subject to the special provision of Article 311 et seq of the EU VAT Directive. The margin of that transaction can be set at an amount of 0. The subsequent supply to the purchaser also falls within the scope of this special provision. It should be noted that with regard to that supply, the general reverse charge provision of Article 12, section 3 of the Dutch VAT Act does not apply. Instead, the supplier must charge Dutch VAT in accordance with the provisions of Articles 28B-28D of the Dutch VAT Act (see also the Ministerial decree of 17 July 2014, no. BLKB 2014/546M).

Transactions with third countries

For the importation and exportation of works of art into and out of the EU the following customs aspects are of importance.

Works of art which are in principle classified in Chapter 97 of the EU Combined Nomenclature are subject to the applicable conditions. This chapter applies to the following items:

- Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 49.06 and other than hand-painted or hand-decorated manufactured articles; collages and similar decorative plaques;
- Original engravings, prints and lithographs;
- Original sculptures and statuary, in any material;
- Postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper), and the like, used or unused;
- Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest; and
- Antiques of an age exceeding 100 years.

All products which are classified under one of the subheadings of this chapter are subject to a 0% import duty rate. In the EU no export duties are levied on the exportation of works of out of the EU.

Importation and exportation of works of art which are considered "cultural objects" may be subject to a license

on the basis of Regulation (EC) no. 116/2009 and its implementing regulation. Such an export license can be applied for in the Netherlands through the 'Centrale Dienst In- en Uitvoer' (CDIU) of Dutch Customs. This regulation not only applies to works of art in the sense of Chapter 97 of the EU Combined Nomenclature, but also to the other 'cultural goods' included in Annex 1 of Regulation (EC) no. 116/2009.

Certain formalities must be performed on importation. An import declaration must be filed; this must be done in name of a person established in the EU. It is possible to engage a logistical service provider, such as a customs broker, to take care of these formalities. On importation, in principle VAT on importation is due, which in the Netherlands is levied at a rate of 9% (Article 20, section 2, sub a, jo. Annex I, sub a.29, of the Dutch VAT Act).

Supplies of works of art out of the EU are subject to the 0% VAT rate of (Article 9, section 2, sub b, jo. Annex II, sub a.2, of the Dutch VAT Act). There are also formalities to be carried out on the exportation of works of art also. In addition to the export license referred to above which may have to be obtained, an export declaration must be filed, which can be done by using a logistical service provider, such as a customs broker.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

When a tax return is not submitted on time or is deliberately submitted incorrectly or incompletely, a fine can be imposed by the tax authorities. In case of gross negligence or an intentional act, the tax authorities can impose a fine of maximum 100% of the tax that was originally due. However, the fine can rise to as much as 300% if it concerns Box 3 assets that should have been included in the PIT return, such as art that is being held as an investment.

Does your country have a non-punishable voluntary disclosure programme?

If the taxpayer submits a complete and correct tax return within two years after he submitted an incorrect or incomplete tax return (or should have submitted the tax return) and before he knows or should reasonably suspect that the tax inspector was or will become aware of the incompleteness or inaccuracy of the return, no fine will be imposed (unless it concerns income from savings and investments that originates from a foreign country). In case of voluntary disclosure after this two-year period, a reduced fine may be imposed, as voluntary improvement provides a reason for mitigation of the maximum amount of the fine.

6. Special provisions regarding taxation of artworks ---

Trust/foundation

We refer to paragraph 2.1.2 As mentioned in paragraph 2.1, artwork does not have to be included in the PIT return, unless the artwork is primarily held as a form of investment or made available to a company in which the taxpayers holds a substantial shareholding.



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Mary Heilmann – Geometric Break

2020/Acrylic on canvas

30.5 x 29.8 x 4.2 cm/12 x 11 ¾ x 1 ⅝ in

© *Mary Heilmann/Photo: Thomas Barratt*

Courtesy Mary Heilmann, 303 Gallery, and Hauser & Wirth



Norway

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Individuals who are resident in Norway for tax purposes will be liable to pay tax to Norway on all assets and income, whether located or earned in Norway or abroad. Tax agreements with other countries may limit taxes to Norway.

The taxation of the net income is progressive, but capped at a maximum rate. Net wealth is taxed at a flat rate of 0.85% of all net assets above NOK 1,500,000.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Net income is taxed at progressive rates, the maximum rate is 46.4%. Net wealth is taxed at a flat rate of 0.85% of all net assets above NOK 1,500,000.

1.3. How are profit and net equity taxed in your country?

The profit of a legal entity was taxed at a rate of 22% in 2019. The net equity of a legal entity is not taxed at the level of the entity but is a part of the owner's net wealth.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

Profit is taxed at a rate of 22%. Capital gain is not taxed under the participation exemption method, however, if ownership is less than 10%/2 years or in low-tax counties (<14.67% tax) the 22% tax applies.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In general, privately held assets are valued at their insurance value, if the assets are not insured the replacement value is used. Normally the insurance or replacement value is equal to the marked value.

The total value is only included as net wealth if assets of more than NOK 1,000,000 are owned. Assets between NOK 1,000,000 and NOK 1,400,000 are valued at 20% of their insurance value and all assets above NOK 1,400,000 are valued at 40% of their insurance value.

2. Taxation of Artwork

2.1. Individuals Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

There is an obligation to give correct and complete information in the tax return, therefore all individuals have to give information regarding the value of their privately held assets. However, a list of the artworks is not necessary.

2.1.1. Income taxes Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Gains from the sale of artworks are not taxed if the art is considered to be part of a person's private assets. If the artworks are sold as a part of a commercial business or the art has been an investment and not for private use, the gains are taxed as income at a rate of 22% (in 2020).

2.1.2. Wealth taxes

Does your country know any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Personal belongings are tax exempt if the value is NOK 1,000,000 or less. See point 1.5 for further information on taxation of personal belongings.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

The value of the art has to be declared in the tax return. This is a personal responsibility for all taxable individuals.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Art is valued at market and insurance value, which the tax authorities presume is the same.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

No, at this point Norway does not have inheritance or gift tax as this was abolished in 2014. A change of parliament in 2021 could change this.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Profits are taxed at a rate of 22% in 2020.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

This depends on whether the artworks are for personal use or a part of a commercial business. Private ownership results in a lower wealth taxation as described above.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The general principle is that 25% VAT is to be charged on all sales of art. However, under specific conditions an exception applies for sales made by the artist or in the name of the artist.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

If a person voluntarily discloses the wealth related to previously not properly declared art works, without any control measures from the tax authorities, the consequence is that the wealth is taxed for the undeclared years up to the last ten years. Penalty tax is not levied if the disclosure is voluntary.

Does your country have a non-punishable voluntary disclosure programme?

Yes

6. Special provisions regarding taxation of artworks

Trust/foundation

None



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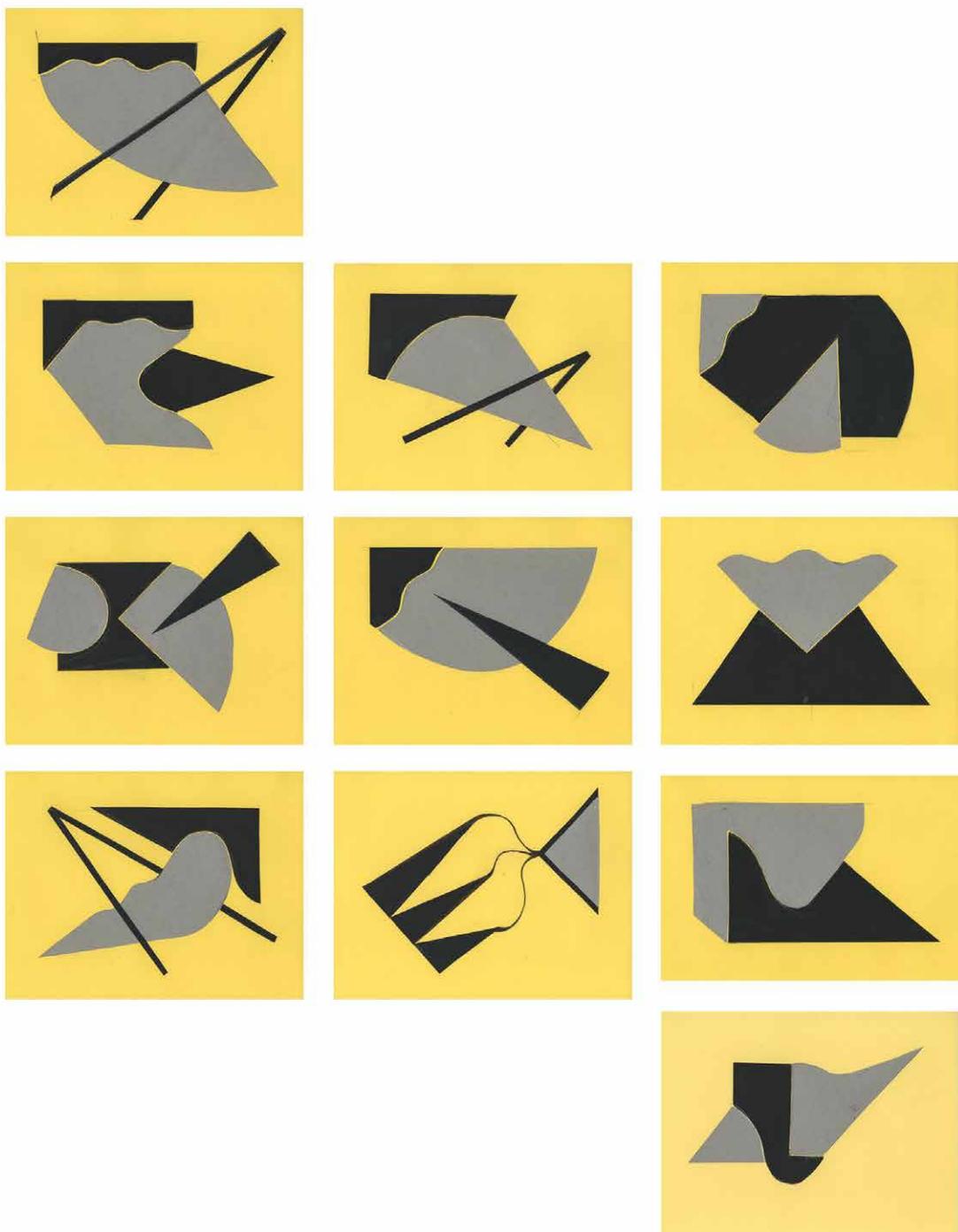
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Geta Brătescu – *Jocul Formelor (Game of Forms)*
2015/Collaged paper, ballpoint pen and graphite on paper (11 parts)
Dimensions variable
© The Estate of Geta Brătescu/Photo: Ștefan Sava
Courtesy the Estate of Geta Brătescu, Ivan Gallery, Bucharest and Hauser & Wirth



Pakistan

1. Legal Framework

1.1. How are income and wealth taxed in your country?

The tax liability of a person is influenced by his/her residential status. A non-resident person is subject to tax in respect of his Pakistan-source income only, whereas a resident person is taxed on his worldwide income. The tax liability is determined by applying the relevant tax rate on the taxable income. The taxable income is the sum of income under all heads of income including Salary, Income from Property, Income from Business and Capital Gains as reduced by the admissible deductions and allowances. There is no tax on wealth.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

The tax rates for individuals are based on a progressive scale ranging from 0% to 35%.

1.3. How are profit and net equity taxed in your country?

Business Profit is subject to Federal Income Tax on the basis of the taxable income of the person. The taxable income is determined after making certain adjustments to the profit according to the accounts (e.g. depreciation and initial allowance, brought forward tax losses, provisions). In case of a company, tax liability may not be lower than 17% of the profit according to the accounts.

Net equity taxation is implicit in the taxation regime for profits i.e. any accretion in the net equity of business not represented by the profits of business are charged to tax as additional income from business.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

For legal entities (Companies), the rate of corporate tax on taxable income is 29%. The tax rate for a Small company is 22% (Tax Year 2021) declining by 1% each year up to tax year 2023.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

There is no special rule governing the value of art work. Generally, the value represents the sum of the following:

- the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired;
- any incidental expenditure incurred by the person in acquiring and disposing of the asset; and
- expenditure incurred by the person to alter or improve the asset. No loss is recognized upon disposal of art work.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

The artwork owned by an individual is required to be declared at its historical cost in the Statement of Assets and Liabilities filed along with the Tax Return.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

The gain on the sale of private artwork is taxed as Capital Gains. If the capital asset is held for more than one year, only 3/4th of the gain is subject to tax. Where artwork is

sold on a commercial basis, the income may be subject to tax under the head Income from Business or Commission, depending upon the facts and circumstances of the sale.

2.1.2. Wealth taxes
Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

There is no Wealth Tax law in force in Pakistan. Therefore, there is no wealth tax leviable on the artwork.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

There is no Wealth Tax law in force in Pakistan. Therefore, there is no wealth tax declaration applicable for the artwork.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

There is no Wealth Tax law in force in Pakistan. Therefore, no valuation method is applicable for artwork for wealth tax purpose.

2.1.3. Inheritance/gift taxes
In case of an inheritance or gift will there be any tax levied?

There is no tax on assets passed on by inheritance or gift from certain relatives (grandparents, parents, spouse, brother, sister, son or a daughter). The cost of the asset is taken at the fair market value prevailing at the time of transfer.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes
How are profits deriving from the sale of artworks taxed?

The profits from the sale of artwork on a commercial basis are subject to Corporate Income Tax

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

In the case of a legal entity classified as a Small Company, a lower corporate tax rate of 22% can be applied. However, the dividend distribution by a small company is subject to tax @ 15% of the gross amount.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

Selling or dealing with artwork on commercial basis is considered as an activity liable to VAT (known as Sales Tax) registration. Sales tax on goods is dealt with under the Sales Tax Act, 1990. The normal rate of sales is tax 17% which is also applicable on sale of the art work.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Export of art work is zero rated for VAT purposes.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

At present, there is no voluntary disclosure program in force for the declaration of undeclared artwork.

Does your country know a non-punishable voluntary disclosure programme?

At present, no non-punishable voluntary disclosure program is in force.

6. Special provisions regarding taxation of artworks

A piece of Artwork is classified as a Capital Asset for the purpose of income tax. No loss is recognized on sale of capital asset representing artwork. Transfer of such asset as a gift received from grandparents, parents, spouse, brother, sister, son or a daughter is exempt from income tax.



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Subodh Gupta – Wash before eating
2018/Oil paint on bronze, ceramic fountain, brass tap/Unique
60 x 45 x 22 cm/23 ⁵/₈ x 17 ³/₄ x 8 ⁵/₈ in
© Subodh Gupta/Courtesy Subodh Gupta and Hauser & Wirth



Portugal

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Resident individuals are subject to Personal Income Tax ("PIT") on a worldwide basis, which means that any income obtained by a resident individual shall be subject to PIT, regardless of its source (Portuguese or foreign). Non-resident individuals are subject to PIT on all Portuguese-sourced income. PIT applies to specific items of income that are expressly set forth under the PIT Code.

Please note, however, that non-resident individuals who transfer their tax residence to Portugal may be eligible for the Non-Habitual Tax Resident Regime ("NHTR"), as long as they have not been considered to be tax resident in Portugal in the preceding five years. This special regime allows for a tax exemption and tax reductions on certain items of income.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

As a general rule, PIT tax rates are progressive, ranging from 14.5% to 48%. For taxable income between € 80k and € 250k an additional surcharge of 2,5% applies whereas for taxable income higher than € 250k an additional surcharge of 5% is also applicable. However, a flat tax rate may apply to certain types of income (e.g. interest and dividends).

Under the NHTR regime, passive income (e.g. dividends, interest and rental income) derived from outside Portugal is fully exempt in Portugal, irrespective of the taxation applicable at source. Foreign-sourced active income may also be fully exempt, and Portuguese-sourced active income may also benefit from a flat rate of 20%, provided some specific conditions are met. In addition, foreign-sourced pension income is subject to tax at a flat rate of 10%.

There is not any wealth tax in force in Portugal.

1.3. How are profit and net equity taxed in your country?

The taxable profits of resident companies are subject to Corporate Income Tax ("CIT"). The taxable profits generally correspond to accounting profits adjusted in accordance with the CIT Code (e.g. non-deductible impairments, excessive depreciation, non-deductible expenses).

Non-resident companies are subject to CIT on all Portuguese-sourced income, according to the categories of income as defined in the CIT Code.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

The taxable profits of resident companies are subject to CIT at a general tax rate of 21%. However, for companies located in the Azores and Madeira the CIT tax rate is 14.7%.

Companies that carry out an agricultural, industrial or commercial activity and that are classified as a small or medium enterprise may benefit from a reduced rate of 17% applicable to a first bracket of up to €25k. Companies located in the Azores and in Madeira that carry out the above-mentioned activities and that are classified as a small or medium enterprise may benefit from a reduced rate of 11.9%.

In addition to CIT, taxable profits are also subject to Municipal Surtax at up to 1.5% (depending on the municipality). State Surtax applies on top of CIT, but only if taxable profits exceed € 1.5m, as follows:

- 3% on taxable profits exceeding €1.5m and up to €7.5m (2.4% in Azores and 2.1% in Madeira);
- 5% on taxable profits exceeding €7.5m and up to €35m (4% in Azores and 3.5% in Madeira); and
- 9% on taxable profits exceeding € 35m (7.2% in Azores and 6.3% in Madeira).

Portuguese-sourced income obtained by non-resident companies is usually subject to a definitive withholding tax, at a fixed tax rate which depends on the type of income.

1.5. **What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?**

There is no specific tax legislation in respect to the valuation of artworks.

However, when it comes to taxation of corporate entities, the CIT Code establishes that income and expenditure deriving from inventory are calculated according to valuation criteria for accounting purposes, namely:

- acquisition cost;
- standard cost;
- selling price less the estimated selling expenses.

Please note that the CIT Code also envisages the possibility of adoption of different valuation criteria, provided that a formal request is submitted to the Portuguese Tax Authorities, explaining the reasoning behind the adopted method.

The above explanation is also applicable to PIT on self-employment income earned by individuals, provided that the individual is taxed on the basis of their organized accounts.

On other hand, the CIT Code establishes that the capital gains derived from the sale of fixed assets correspond to the difference between the sales price and the purchase price less the depreciations and amortization deductible for tax purposes.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

There is no obligation of declaring or disclosing private artworks to any Portuguese authority.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

As a general rule, capital gains derived from the sale of artworks are not subject to PIT.

However, should an individual engage in a professional activity related to the sale of artworks, any capital gains derived from the sales will be qualified as income from self-employment. Income from self-employment obtained by resident individuals is subject to the general progressive tax rates. On the other hand, if such income is obtained by non-resident individuals, it is subject to a definitive withholding tax of 25%.

Please note that any PIT on self-employment income may be fully eliminated pursuant to the applicable Double Tax Treaty ("DTT").

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

As there is not any wealth tax in force in Portugal, not specific categories for the classification of artworks are established in the Portuguese law.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done resp. if there is any other obligation of declaration.

As Portugal does not have any wealth tax, the individuals do not have to submit any wealth tax return. Furthermore, the annual income tax return also does not require individuals to report any artworks.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

As there is not any wealth tax in force in Portugal, there is no specific legislation regarding the valuation of art for wealth tax purpose (the above mentioned in 1.5. only applies to income taxes).

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Portugal does not have an inheritance tax.

However, Stamp Duty at a tax rate of 10% may apply to the gratuitous acquisition of assets located in Portugal, which includes both inheritance and gifts. Spouses, co-habiting partners, descendants and forebears are exempt from Stamp Duty.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

The taxable profits of resident companies are subject to CIT. Non-resident companies are subject to CIT on all Portuguese-sourced income, according to the categories of income as defined in the CIT Code.

Any profits derived from the sale of artwork are included in the taxable profits of resident companies. The taxable profits are subject to CIT at the following tax rates: 21% (resident companies) and 14.7 (companies located in Azores and Madeira).

(For more details, please see 1.3. and 1.4. above).

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

From a tax point of view there are no general advantages to owning artworks through a legal entity, apart from the different taxation regimes applicable to individuals and companies (please see section 1 above). However, if the artwork is indirectly held by an individual through a legal entity, any profits arising from such artwork can be distributed to the individual shareholder as dividends.

Dividends distributed to both resident and non-resident individuals are subject to a definitive withholding of 28%. Resident individuals may, however, benefit from an exclusion from taxation on 50% of the dividend amount, provided that the individual opts for the aggregation of the income.

Please note that any withholding tax on dividends received by non-resident individuals may be reduced pursuant to the applicable DTT.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

VAT is levied on the supply of goods and services located within the Portuguese territory. The general VAT tax rate is 23%, but a reduced rate of 6% may apply to the supply of works of art, as defined in specific legislation. The definition of works of art includes:

- pictures, collages and similar decorative plaques, paintings and drawings, executed entirely by hand by the artist, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvas;
- original engravings, prints and lithographs, being impressions produced in limited numbers directly in black and white or in colour of one or of several plates executed entirely by hand by the artist;

- original sculptures and statuary, in any material, provided that they are executed entirely by the artist;
- tapestries and wall textiles made by hand from original designs provided by artists;
- individual pieces of ceramics executed entirely by the artist and signed by him;
- enamels on copper, executed entirely by hand; and
- photographs taken by the artist.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

VAT is levied on the import of works of art, at a 23% or 6% tax rate, depending on whether it classifies as a work of art according to specific Portuguese legislation (please see above).

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

As Portugal does not have any wealth tax, the above question is not applicable.

Does your country have a non-punishable voluntary disclosure programme?

As Portugal does not have any wealth tax, the above question is not applicable.

6. Special provisions regarding taxation of artworks

There are not specific tax provisions in respect to the taxation of arts.



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Specialization

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 VIEIRA DE ALMEIDA

WTS Global in Portugal, Vieira de Almeida & Associados.

Martin Creed – Work No. 2179, Portrait of Penélope Cruz

2015/Acrylic on canvas

30.5 x 25 x 2 cm / 12 x 9 7/8 x 3/4 in

36.2 x 31.1 x 5 cm / 14 1/4 x 12 1/4 x 2 in (framed)

© Martin Creed. All Rights Reserved, DACS 2021/Photo: Pedro Martinez de Albornoz

Courtesy Martin Creed and Hauser & Wirth/© 2021, ProLitteris, Zurich



Russia

1. Legal Framework

1.1. How are income and wealth taxed in your country?

An individual's tax residency status depends on the number of days spent in Russia in a period comprised of 12 consecutive months. However, according to the current interpretation of the Ministry of Finance of the Russian Federation and the tax authorities, an individual's tax residency status is based on the number of days spent in a particular calendar year in Russia. The days of presence in Russia can be confirmed by the crossborder stamps in an individual's passport(s) used for travelling to/from Russia. Based on the tax authorities' current interpretation of the tax residency rules, an individual spending at least 183 days in Russia in a calendar year is recognized as a tax resident. There are no wealth taxes applicable in Russia. However, there are property taxes levied on the ownership of transport, real estate and land that are not applicable to artworks. Starting from 01.01.2021 the Russian Tax Code (RTC) provides the progressive personal income tax (PIT) for a tax resident. According to the general rule, the income is taxed at the 13%. At the same time, the income exceeding the amount RUB 5 million is subject to increased tax rate of 15%.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Tax residents are subject to taxation in Russia on their worldwide income, at a 13% and 15% (in case of the income exceeding the amount of RUB 5 million) tax rates on most types of income.

A 35% tax rate applies to certain prizes, lottery payments.

If an individual does not meet the presence test mentioned above, he is recognized as a non-resident. Tax non-residents are taxable in Russia at a 30% tax rate on their Russian-sourced income. Russian-sourced income is generally defined as income arising from assets in Russia, or earned in Russia, irrespective of where the income is paid. Dividends received by individuals that are not tax residents of Russia are subject to tax at a rate of 15%, unless otherwise provided by a relevant tax treaty.

1.3. How are profit and net equity taxed in your country?

The following entities are subject to corporate income tax (CIT):

- Resident companies (Russian and foreign enterprises that are tax residents)
- Foreign companies operating through a permanent establishment - The definition of permanent establishment is very similar to the definition given under the Organization for Economic Cooperation and Development (OECD) model tax treaty

The resident companies are subject to tax on their worldwide income. The taxable profit is determined as gross income less deductible expenses incurred, exempt income and depreciation allowances. The gross income, comprising income from

- sale of goods (work and services) and
- non-sales operations such as interest, profit/loss from fluctuation of exchange rates, lease of property, royalties etc.

is determined on an accrual basis. Some companies that fall within the category of Small and Medium Enterprises (SME) can apply a cash basis.

The RTC provides an open list of expenses that are deductible for income tax purposes. Generally, the expenses are deductible if they are i. economically justified; ii. supported by necessary documents; iii. directed at generating taxable income. The RTC lists some of the expenses that are not deductible and that fail to fulfil the aforementioned 3 criteria (for example):

- fines paid to budget due to a breach of tax legislation
- excess part of interest payments that are classified as hidden dividend distributions
- the value of goods transferred free of charge, and expenses related to such transfer.

The net equity is not subject to CIT in Russia.

No separate capital gains tax exists in Russia but gains from selling property and assets is taxed at the usual CIT and PIT rates. Generally, the difference between income from the sale and historical purchase costs is taxable.

1.4. **What is the range of the applicable tax rates for legal entities on profit and capital?**

Russia applies the flat income tax rate for both Russian and foreign legal entities. The basic corporate income tax rate amounts to 20%. Reduced income tax rates may also apply to residents of regions that provide special economic regimes.

The Russian tax law provides for a special tax regime – a simplified tax system – under which income received by entities is taxed at lower tax rates: 6% (8% in case of the income exceeding the amount of RUB 150 million but no more than RUB 200 million and (or) the average number of employees exceeding 100 but no more than 130 in a tax period) - if costs are not deducted or 15% (20% in case of the income exceeding the amount of RUB 150 million but no more than RUB 200 million and (or) the average number of employees exceeding 100 but no more than 130 in a tax period) - if costs are deducted from the taxable income. Legal entities and individual entrepreneurs can voluntarily opt to apply a simplified tax system, subject, however, to certain conditions.

1.5. **What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?**

Russian legislation provides for a variety of ways to evaluate certain assets, depending on the type of tax. For example, the land tax is calculated on the basis of the cadastral value, and where personal income tax is due on income received in kind, the tax base is determined based on the value of the transferred property, work performed, services rendered corresponding to their market price.

Thus, with respect to the sale of assets such as art works, in order to determine the market value of the artwork an assessment is required that is carried out in accordance with the Federal Law "On appraisal activities in the Russian Federation" 135-FZ dated 29.07.1998, Russian and International Valuation Standards.

A formal assessment report is a document having legal force.

Art evaluation activity is not subject to license in Russia. However, evaluators are obliged to be members of a self-regulatory organisation and perform their activity in accordance with the standards stipulated by the Russian laws.

Moreover, if tax deductions are applicable, their value may be determined as the historical (purchase) price of an artwork for the purposes of the tax base calculation.

2. Taxation of Artwork

2.1. Individuals

The Russian tax legislation does not provide for an obligation of an individual to declare or in any other way to disclose information with respect to private artworks to the tax or other authorities.

2.1.1. Income taxes **Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).**

Income generated from the sale of artworks is subject to personal income tax in Russia. Artworks are deemed to be the property of an individual owned by the latter. Income of an individual Russian tax resident, received from the sale of an artwork owned by such individual for more than 3 years, is tax-exempt.

Authors of artworks are entitled to a professional tax deduction in the amount of expenses incurred due to the creation of an artwork and associated with the earning activities.

Alternatively, if such expenses cannot be supported by documents, deductions can be made in the following amounts:

1. Creation of graphical artworks, photographic works for publication purposes, works of architecture and design – 30% of income;
2. Creation of sculpture and monumental-decorative works, decorative and applied art works, easel artworks, theatre and cinema decorations and graphics – 40% of income.

Besides, authors of artworks are entitled to a 5% compensation fee upon sale (resale) of their works by third parties which is subject to taxation at source, with the amount of tax due being transferred to the budget of Russia by the respective withholding agents.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

There are no wealth taxes applicable in Russia.

Under the Russian tax legislation there is no categorisation of private artworks.

However, in cases of cross border transportation, cultural valuables are legislatively classified into certain categories. For instance, cultural valuables included in the register of the Russian Archive Foundation, National Library Foundation, regardless of whether publicly or privately owned, cannot be exported from Russia without their owners' undertaking to return them to Russian territory within a specified period.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

Individuals are generally not obliged to declare artworks in the tax return. However, if income is received from the sale thereof, such income is subject to declaration in the tax return.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Income derived by an individual from the sale of artworks is subject to personal income tax. The general rule of the tax base determination applies: the price of the transaction agreed upon by both parties is deemed to be income. Unless proved otherwise, it is presumed that the price of the transaction is in line with the fair market price level. Fair market price may be determined by a professional evaluator.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Income received by an individual (whether in cash or in kind) by way of inheritance is not subject to taxation in Russia. However, an exception is made with regard to compensation received by the heirs of the authors of scientific, literary or art works. Therefore, inheritance of an actual artwork (in kind) does not lead to any tax implications, whereas the inheritance of a right to receive compensation related to authorship gives rise to an heir's obligation to pay personal income tax.

It should be noted, however, that the execution of the transfer of artworks by way of inheritance gives rise to an obligation to pay a notary fee at the rate varying according to the kinship relationships (or lack thereof) between the transferor and the transferee.

There is no special gift tax in Russia. Gifts received by individuals are subject to general PIT rate 13% (15% in case of value of the present exceeding the amount of RUB 5 million).

Gifts between individuals are tax exempted.

Gifts received by individuals from organizations, valued below RUB 4'000 are tax exempted. Value of the present which exceeds RUB 4'000 is taxed at PIT rate of 13% (15% in case of value of the present exceeding the amount of RUB 5 million).

Gifts received in form of real estate, shares and vehicles are taxable at the rate 13% (15% in case of value of the present exceeding the amount of RUB 5 million), except for gifts received from close family members/relatives.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Income generated by an entity from the sale of an artwork is subject to corporate income tax in Russia. The tax base is determined as the difference between the amount received upon disposal of an artwork and the amount of deductible expenses (e.g. the amount paid upon the acquisition of an artwork). The corporate income tax is applied at the rate of 20%.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

There are no general advantages of a legal entity as an owner of artworks as opposed to private ownership. However, ownership of artworks by an individual, rather than a company, can be more efficient for the purpose of taxation due to a lower tax rate (13% and 15% in case of the income exceeding the amount of RUB 5 million) applicable to income received by individuals in comparison to that levied on income generated by companies (20%) and the individual's right to exempt income from taxation due to possession of an artwork for more than three years.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

Entities selling or dealing with artworks, such as theatres, concert organisations, circuses, libraries, museums, galleries, exhibitions, etc., are exempt from VAT.

Artworks classified as cultural valuables are VAT-exempt upon import into the Russian Federation. VAT exemption is granted upon presentation of a relevant expert opinion.

Artworks that do not qualify as cultural valuables are subject to VAT upon import into Russia.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Prior to an artwork being transported across the border of the Russian Federation (whether temporarily or permanently), documents giving permission to do so must be obtained (stamp duties apply). Under certain legislatively stipulated circumstances, however, issuance of such documents can be denied.

It should be noted that artworks classified as cultural valuables of significant importance are not allowed to be exported from Russia on a non-return basis.

Non-governmental organisations transporting artworks to the territory of the Russian Federation enjoy tax benefits if such artworks are officially qualified as cultural valuables (a relevant expert opinion is required).

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

The Russian tax legislation does not envisage a voluntary disclosure of previously not properly declared art works.

Does your country have a non-punishable voluntary disclosure programme?

There is no non-punishable voluntary disclosure programme in Russia with respect to artworks.

6. Special provisions regarding taxation of artworks

Trust/foundation

Prior to 01.01.2019 artworks were subject to corporate property tax at a maximum rate 2,2% applicable to the average annual value of the artwork. Artworks included in special register (Russian Museum Fund) were exempted from corporate property tax. Starting from 01.01.2019 artworks are not subject to corporate property tax. However, during onsite tax audit, tax authorities can recalculate and charge additional tax if any violations of the tax law take place.



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- Expatriates immigration support (assignment structuring, permitting documents, other)

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Paul McCarthy - The Angel

2018/Bronze, gold leaf

54.6 x 46.4 x 30.5 cm / 21 1/2 x 18 3/4 x 12 in

© Paul McCarthy/Photo: Walla Walla Foundry

Courtesy Paul McCarthy and Hauser & Wirth



Spain

1. Legal Framework

1.1. How are income and wealth taxed in your country?

The Spanish Constitution establishes four levels of political organization within the Kingdom of Spain: Municipalities, Provinces, Autonomous Communities and the State. The first group constitutes the subdivisions of the second, the second group constitutes the subdivisions of the third and the third group constitutes subdivisions of the last.

Spanish tax residents pay income tax and wealth tax on their worldwide net income and wealth respectively. In contrast, non-residents pay income tax and wealth tax on their Spanish-sourced income and wealth.

The income of Spanish resident individuals is divided into two categories of income giving rise to two different boxes or taxable bases: [1] The general tax base, comprising employment income, income from self-employment, income from immovable property and certain capital gains which do not derive from the transfer of goods or rights. [2] The savings base, formed by income from capital investments, income from loans and capital gains arising from the transfer of goods or rights. The income tax is collected by the State but some relevant aspects of its assessment are partially determined by the Autonomous Communities, such as the scale of charge applicable to the general basis and certain tax reliefs. Therefore, the assessment of income tax varies from one Autonomous Community to another.

The net wealth of Spanish residents is taxed at the level of the Autonomous Communities, which are entitled to collect and to determine certain aspects of such tax. The taxpayers are granted a tax allowance on a certain amount of wealth that will not be taxed.

The Spanish-sourced income and wealth of non-residents is taxed at the State level. Nevertheless, regarding wealth tax, non-residents are entitled to apply the wealth tax provisions issued by the Autonomous Community where the major part of their Spanish net assets are located, if more beneficial.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Regarding resident taxpayers, the income tax due on the general tax base is progressive and ranges from 18.50% to 48%. In turn, the tax due on the savings base ranges from 19% to 23%.

The income of non-resident taxpayers is taxed at a flat rate of 24% for residents in a non-EU country and 19% for residents in an EU country.

For wealth tax purposes, the net wealth is taxed at between 0.20% and 3.75%

1.3. How are profit and net equity taxed in your country?

The net profit of a legal entity is taxed at the State level. The taxable basis for the profit taxation is the net profit/loss at year's end, determined according to the Spanish GAAP rules, that is corrected by the provisions set out in the Spanish CIT Act where appropriate (e.g. losses carried forward, non-deductible expenses, etc ...).

The corporation's net equity is not taxable in Spain.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

The general tax rate is 25%. However, certain types of entities are subject to higher or lower tax rates (e.g. non-profit organizations holding art pieces benefit from a 10% tax rate and important exemptions).

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

The Spanish tax authority does not have a valuation method for art pieces and antiques which is generally accepted, however, an appraisal from a competent technician is the most common method used to prove the market value of such pieces before the tax authority.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

The Law on Spanish Historical Heritage (Law 16/1985, 25th June) and its regulation (Royal Decree 111/1986, 10th January) provide for a reporting obligation of the owners of artworks prior to the sale when their economic value exceeds any of the following thresholds:

- 90,151.81€ for paintings and sculptures being less than 100 years old.
- 60,101.21€ for paintings being 100 years old or more.
- 60,101.21€ for collections or sets of art/cultural items or antiques.
- 42,070.84€ for sculptures, reliefs and bas-reliefs being 100 years old or more.
- 42,070.84€ for collections of drawings, engravings, books, documents and musical instruments.
- 42,070.84€ for a piece of furniture.
- 30,050.60€ for carpets, rugs, tapestries and historical fabrics.
- 18,030.36€ for a single drawing, engraving, printed book or manuscript or document in any support or format.
- 9,015.18€ for a musical instrument with historical features and for ceramic, porcelain and crystal pieces.
- 6,010.12€ for archaeological objects.
- 2,404.04€ for ethnographic objects.

The same obligation is imposed on art dealers who, in addition, are obliged to keep a sales book for the artworks described above, which must be legalized with the corresponding administration.

The information to be provided is the description of the art piece(s) and the purchase price if any. At this point it may be of interest that the Spanish Administration has a preferential right on the acquisition of the art pieces listed above when selling them.

The breach of this obligation is punished with a fine of up to 60,101.21€, when it is not considered a criminal offense. From a criminal standpoint, the offence of smuggling is committed when the value of undeclared or incorrectly declared items exceeds 50,000€, giving rise to a punishment of between 1 and 5 years imprisonment

and a fine of 6 times the value of the items. Additionally, the incorrect transfer of the art pieces may lead to their being seized.

These obligations/liabilities do not apply to artworks held by their authors.

The privately held artworks must be disclosed in the wealth tax return under certain circumstances (see point 2.1.2).

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

The sale of (an) art piece(s) by its creator always qualifies as self-employment income for the Spanish Tax Authority, even if the creator is no longer carrying on the artistic activity at the time the art piece(s) is (are) sold. The sale of (an) art piece(s) by a person different than the creator may qualify as a capital gain or as self-employment activity, depending on the circumstances under which the sale(s) is (are) carried out.

If the sale takes place as an act of the management of private assets and does not exceed the "common" management of assets, i.e. the sale occurs as a result of a randomly arisen opportunity which has been seized by the owner, then it is classified as a capital gain to be included in the "savings base", paying income tax at a rate ranging from 19% to 23%.

The capital gain is calculated as the difference between the acquisition cost and the transfer value. The acquisition cost includes the purchase price, taxes, and expenses directly related to the purchase, as well as any investment made to the art piece extending its initial lifetime. In turn, the transfer value is calculated as the sale price minus expenses and taxes directly related to the operation.

Conversely, if the sale of (an) art piece(s) is (are) performed under a predefined plan, using human and material resources implying a relevant amount of capital and a workforce and that bears an economic risk, then it will qualify as income from self-employment. In this case, expenses incurred in the course of the sales,

as well as losses, can be offset against income from the sales activity. In this case, capital gains are included in the general basis income, being subject to tax rates ranging from 18.50% to 48%.

When the selling activity qualifies as self-employment, the entrepreneur must contribute to the Social Security system under the special scheme for self-employed entrepreneurs.

The Spanish Income Tax Act provides for a tax relief of 15% on the investments and expenses made to: [1] Acquire art pieces located abroad under certain registering obligations, [2] Preserve, repair, restore, disseminate and exhibit art pieces qualifying as items of cultural interest pursuant to the Spanish Law on Historical Heritage. The total tax relief cannot exceed 10% of the taxpayer's taxable basis.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

According to the Wealth Tax Act, an artwork means any painting, sculpture, drawing, engravings lithographs and other similar items which are original works. In turn, antiques are defined as furniture and decorative items other than art items and being more than 100 years old. Therefore, any antique which is less than 100 years old will qualify as a household good, and consequently will be exempt from wealth tax.

In addition to the exemption on household goods above, the Spanish Wealth Tax Act provides for the following exemptions:

- Artworks and antiques duly registered with the General Register for Cultural Goods or with the General Inventory for Movable Goods referred to in the Spanish Law on Historical Heritage.
- Artworks and antiques comprising the historical heritage of any Autonomous Community that are duly registered.
- Art pieces and antiques listed in point 2.1 where the thresholds set out by law are not exceeded.
- Art pieces and antiques, as defined in the Wealth Tax Act, when they are loaned to museums or non-profit organizations for their public exhibition. The exemption is granted for the loan time line.
- The artist's own work.

Any piece of art or antiques other than the ones listed above will be liable to wealth tax on disposal. Consequently, from a wealth tax perspective, it is recommended to register the artworks and antiques with the corresponding registers set out in the Spanish Law on Historical Heritage, if possible, in order to obtain the exemption on wealth tax.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Pieces of art and antiques must be valued at the fair market value for wealth tax purposes. The fair market value can be proven by any form of legally admissible evidence.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

The inheritance and gift tax is collected by Autonomous Communities, which are also entitled to determine the rules on very important aspects of the tax assessment, such as credits, tax reliefs, base reductions, the scale of charge, etc. Thus in certain regions, like Madrid, Canary Islands or Andalusia, the impact of inheritance and gift tax is almost zero, because close relatives in those regions are granted a 99% tax relief on the final tax due. By contrast, in other regions like Cantabria or Catalonia the inheritance and gift tax has a strong impact on the assets transferred.

The art pieces and antiques exempt from wealth tax (see point 2.1.2.) benefit from a reduction of 95% on their value when considering them as part of the tax base for inheritance and gift tax. That benefit only applies to children and to the spouse of the deceased persons or donor. Therefore, it is important to register the art pieces and antiques having a value over the thresholds set out on point 2.1. in order to access this important reduction.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

In case an art trade activity is performed through a legal entity, the net sales resulting from the trade are subject to corporate income tax. Expenses in respect of the activity are generally tax deductible.

Regarding legal entities holding art pieces in their balance sheet as an investment (instead of as an inventory), the Spanish tax authority has pointed out in several rulings that amortization does not apply to art pieces and that expenses for conservation, repair and rehabilitation of art pieces must be considered as a major value of the art piece instead of an expense of

the financial year. However, in our opinion, this latter statement must be regarded on a case-by-case basis.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

When an art collection is held by a company, the risk of shareholders of being qualified as self-employed diminishes. In addition, when the net profit from the sale of artworks exceeds 55,000€, then the average tax rate resulting from personal income tax equals the flat tax rate for corporate income tax (25%). Therefore, depending on the amount of the net profit it could be recommendable to incorporate a legal entity to perform the art trade activity (N.B. dividend tax is not taken into account in this calculation).

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

Indirect taxation in the art industry is a tricky business in Spain because it involves two different tax items: [1] "VAT" for B2B and B2C transactions, and [2] "Transfer Tax" for C2C and C2B transactions.

In those sales in which the seller is an individual who is not regarded as a professional art dealer, the purchaser is liable to pay transfer tax regardless of whether it is a legal entity or an individual acting as an art dealer. The transfer tax is managed and collected by Autonomous Communities. Please note that the tax due calculated as a flat tax rate on the market value of the art piece transferred may vary from one Autonomous Community to the other (the tax rate varies from 1% to 8%).

When the seller is an individual professional dealer or a legal entity, the transfer of the art piece is subject to VAT. In this case, the applicable VAT rate varies depending who sells the artwork:

1. If the seller is the author/artist or any other entrepreneur who is not subject to the special scheme for second-hand goods and has the right to deduct 100% of input VAT, the sale will be taxed at the rate of 10% VAT.
2. For sellers under the special scheme for second-hand goods, the sale is subject to 21% VAT.
3. Imports of art pieces, as defined in the VAT Act, are subject to 10% VAT regardless of who the buyer is. In turn, exports are fully VAT exempt.
4. Intra-community sales are fully tax exempt in Spain in B2B operations, and pay subject to Spanish VAT in B2C operations. The intra-community acquisitions are subject to the reverse charge mechanism in B2B operations. This do not apply to sales subject to the special scheme for second-hand goods.

It is important to highlight that the tax treatment described above only applies to the transfer of art pieces. Indeed, the VAT Act states that royalties and any other remuneration earned on any other deal related to intellectual rights are considered as a provision of services. These types of services are VAT exempt.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Exports of art pieces and antiques entail numerous formal requirements, as well as prior administrative permission according to the Spanish Historical Heritage Law and EU regulation 116/2009 when leaving EU territory. In this respect, it is important to point out that according to Spanish internal law, the removal from Spanish territory of any art piece or antiques meeting certain circumstances, including moves to other EU countries, is considered an export, regardless of whether there is a transfer of ownership or not (e.g. moving a painting from Madrid to its owner's holiday home in Capri (Italy) is considered an export and needs prior permission).

Certain art pieces or antiques cannot be exported

The export application to the Spanish authorities for a protected art piece or antiques is deemed by law to be an irrevocable offer for sale to the Spanish Administration at the value declared on the export documentation. The Spanish administration has 6 months' time to accept the offer and one year's time to pay the value declared on export documents.

The rejection of export applications does not mean the offer has been accepted.

Protected art pieces which have been illegally exported are automatically considered the property of the Spanish Administration, which will initiate all legal actions to recover those pieces.

There are three types of exports: [1] Temporary export, meaning art items leave the Spanish territory for a period of time without having the right to sell them, [2] Temporary export with the possibility of selling, meaning art pieces leave the country and the owner is entitled to sell the piece (e.g. transportation of a protected art piece to an international art fair) and [3] final export, meaning art pieces leave the country definitely, regardless of the purpose.

Protected goods for exports within EU countries:

1. Antiques being more than 100 years old.
2. Artworks and antiques duly registered with the General Register for Cultural Goods or with the General Inventory for Movable Goods referred to in the Spanish Law on Historical Heritage.

Protected goods for exports outside EU countries:

1. Art pieces and antiques on points [1] and [2] above.
2. Art pieces and antiques in annex I of EU regulation 116/2009.

Export of protected artworks and antiques is liable to payment of a public fee:

VALUE		
From	up to	Rate
- €	6.010,12 €	5,00%
6.010,13 €	60.101,21 €	10,00%
60.101,22 €	601.012,10 €	20,00%
601.012,11 €	onwards	30,00%

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

The Spanish General Tax Code sets out the procedure for regularizing unpaid taxes that lead to a surcharge system on unpaid taxes instead of the penalty system that happens when regularization is carried out by the tax administration through the different audit procedures existing in the Spanish General Tax Code.

The problem when regularizing undisclosed art pieces or antiques is the difficulty in proving the title by means of which the specific piece was transferred and the

date that happened. Therefore, the value of the piece at the disclosure will most likely be considered as an unjustified capital gain earned in the year disclosure takes place. Consequently, in cases like this, the taxpayer will hardly benefit from rights resulting from the statute of limitations period. For this reason, the decision on conducting a voluntary disclosure and the choice of procedure to execute it must be taken with the assistance of a tax professional.

Does your country have a non-punishable voluntary disclosure programme?

Not applicable.

6. Special provisions regarding taxation of artworks

Trust/foundation

For large collections of art pieces and antiques, Spanish foundations may provide an efficient vehicle to own art collections because:

The conservation, repair, rehabilitation, and exhibition of art pieces fall within the scope of activities that this type of legal entity can perform under the Spanish legislation.

The Spanish CIT Act provides a special scheme under which, broadly speaking, all income earned is tax exempt if it is used to achieve the object of the foundation.

Donations to the foundation entitle the donor to apply for tax relief on a percentage of donations at both, personal and corporate, income tax.



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WTS Global in Spain, ARCO.

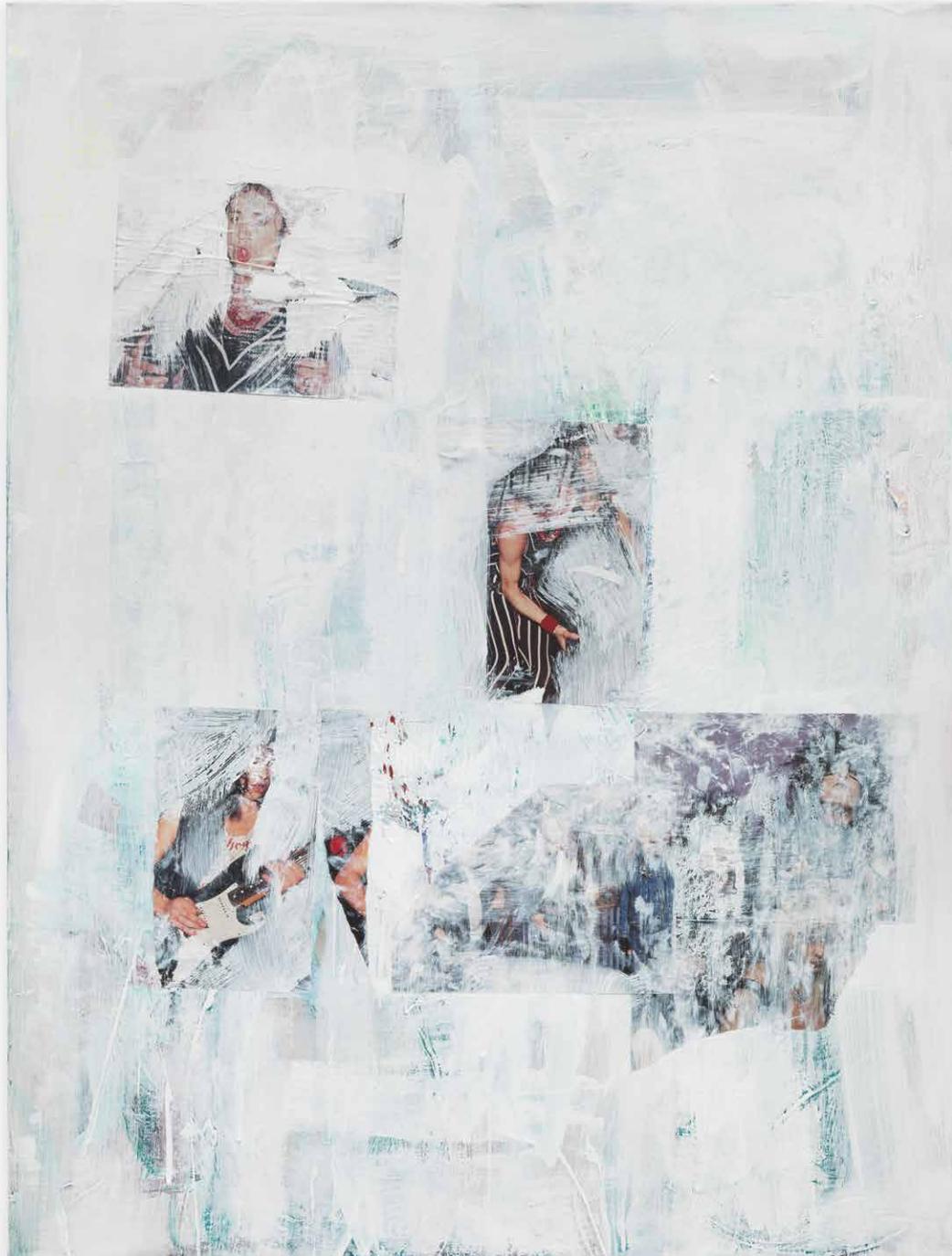
Rodney Graham - *Untitled*

2017/Gesso, paper, acrylic on linen

122.2 x 92 x 2.5 cm / 48 1/8 x 36 1/4 x 1 in

© Rodney Graham/Photo: Stefan Altenburger Photography Zürich

Courtesy Rodney Graham and Hauser & Wirth



Sweden

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Employment income of private individuals who are domiciled or work in Sweden is taxed at the municipality level and the state level. The taxation of employment income is progressive, but capped at a maximum rate. The tax rates vary from municipality to municipality.

Capital gains/income are taxed at the state level only. Capital gains up to 50,000 kr on privately held personal belongings are tax exempt. For capital gains (on personal belongings) exceeding 50,000 kr a general deduction of 25% of the price paid (for the belonging) is granted.

Income from self-employment is taxable at the municipality level and the state level.

Sweden does not levy any tax on wealth.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Tax rates for employment income (as of 2020) with no regards to deductions and tax relief:

- Up to 509,300 kr: approx. 30% municipality tax.
- From 509,300 kr: the above-mentioned municipality tax plus 20% state tax.

Tax rates for capital gains/income:

- Capital gains/income are taxed at a proportional rate of 30%. However, some exceptions apply. Capital gains generated from the disposal of real estate held for housing is subject to an effective tax rate of 22% and capital gains and capital income generated from non-quoted shares is subject to an effective tax rate of 25%. As a general rule, only 70% of capital losses are deductible. However, capital losses deriving from the sale of personal belongings are not deductible.

Tax rates for income from self-employment:

- Normally, the same tax rates apply as for employment income. Social security charges are payable by the individual.

1.3. How are profit and net equity taxed in your country?

The profit of a legal entity is taxed at the state level.

The basis for the profit taxation is the profit and loss account. Certain adjustments can be made that differ from the treatment under generally accepted accounting principles, but are allowed from a tax perspective (e.g. tax losses carried forward, higher depreciation rate on machinery and equipment that are accepted for tax purposes). Also, adjustments must be made for non-deductible expenses.

Sweden does not levy any tax on net equity.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

For ordinary companies (e.g. limited liability companies) (Sw. aktiebolag), the profit is taxed proportionally at a rate of 21.4% (2020). Partnerships are not taxable entities, thus their income is taxed in the hands of the partners.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

Assets should in general be valued at their fair market value. The fair market value of an asset is defined as the objective market value and equals the price which could be achieved in case of a sale of the asset in the ordinary course of business. The fair market value is usually an estimated value or a comparable figure, except for assets subject to regular trade. For the latter, the fair market value is usually available.

Art pieces are in general unique items and there is normally neither a periodic return of the asset nor is there a liquid market with regular trade. The valuation of art pieces can therefore not be ascertained by means of a comparable fair market value. In practice, the following valuation methods exist: the purchase price and the insurance value.

The purchase price is not very conclusive. The development of market-driven prices is often the result of unknown agreements, personal preferences and individualized intentions of the market participants. Furthermore, the purchase price must be reduced by commissions resulting from the sale.

The insurance value does not equal the fair market value in most cases, as the insured value also contains parameters such as replacement costs.

Increasing insurance values are an indicator of increasing market values. There is the possibility to get an expert

opinion, contact databases, gallery catalogs or auction results. All these factors may be taken into account in order to determine an art piece's value.

Since Sweden does not levy any taxes on wealth, issues on the valuation of assets are not commonplace. In the event of the disposal of an artwork by a private individual, the price paid for the artwork is generally considered to be the market value. For legal entities, however, the valuation of an artwork is more relevant since the disposal of an asset below market value could trigger taxation (Sw. uttagsbeskattning).

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

There is no obligation to disclose private artworks to the Swedish Tax Agency.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Capital gains/income:

- Capital gains generated from the sale of privately held personal belongings are tax exempt up to 50,000 kr. For a capital gain (on personal belongings) exceeding 50,000 kr, a general deduction of 25% of the price paid (for the belonging) is granted.
- What constitutes personal belongings is not defined in the Swedish Income Tax Act. Belongings will normally be considered personal if they are predominantly used by the taxable person or his/her family for e.g. decorative purposes. It is the actual use of the assets that is decisive. With regard to artworks, a distinction could be made between an artwork kept as a decorative object (normally a personal belonging) and an artwork stored in a safety deposit (normally not a personal belonging).

→ Income from self-employment:

→

→ Income from self-employment is taxable. To be considered self-employed, the taxable person should, as a general rule, carry on independent commercial operations for profit. Thus, where a private individual carries on independent commercial operations for profit by acquiring and/or selling artworks, he/she could be considered self-employed and taxed as such.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Yes, capital gains generated from the sale of privately held personal belongings are tax exempt up to 50,000 kr. Belongings will normally be considered personal if they are predominantly used by the taxable person or his/her family for e.g. decorative purposes. It is the actual use of the assets that is decisive. For further information, see supra 2.1.1.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

There is no obligation to declare works of art in the annual tax return.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

All assets should in general be valued at their fair market value. The fair market value of an asset is defined as the objective market value and equals the price which could be achieved in case of a sale of the asset in the ordinary course of business. Art pieces are in general unique items and there is normally neither a periodic return of the asset nor is there a liquid market with

regular trade. The valuation of art pieces can therefore not be ascertained by means of a comparable fair market value. In practice, the following valuation methods exist: the purchase price and the insurance value. For further information on the methods, see supra 1.5.

2.1.3. Inheritance/gift taxes _____
In case of an inheritance or gift will there be any tax levied?

Sweden does not levy any tax on inheritance or gifts.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes _____
How are profits deriving from the sale of artworks taxed?

Net profits deriving from the sale of artworks are subject to corporate income tax and taxed at a rate of 21.4% (2020). The classification of the artwork as a capital asset, stock, or machinery and equipment should not be relevant in this connection.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

From a tax perspective, as a general rule it should be more profitable for a private individual who is not self-employed to sell artworks directly than through a legal entity, since income of a legal entity is subject to double taxation (profits of a legal entity and dividends distributed to shareholders are taxed separately).

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The supply of art by an artist is VAT exempt if the taxable amount is below 300,000 kr. The supply of art by an artist is only taxable if the taxable amount exceeds 300,000 kr. The Swedish VAT rate for art sold by the artist or its estate is 12%.

For other supplies of art, the Swedish VAT rate is 25%.

Works of art are also subject to the margin scheme under the VAT Directive. The margin scheme is therefore applicable to taxable dealers' supplies of works of art.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Art pieces crossing the border to Sweden are generally subject to tax. The VAT rate for imported art is 12% in Sweden. The margin scheme is applicable for transactions within the EU. Visual and auditory materials of cultural character can be imported free of import duties whoever the consignee and whatever the intended use of materials is.

Collector's pieces and works of art which are not intended for sale are in some cases exempt from custom duties and VAT when imported into Sweden. The goods are exempt if the importer is a gallery, museum or another institution approved by the Swedish Customs for the purpose of duty-free admission of these goods. Duty-free admission is not allowed if the goods are supplied against consideration from a taxable person.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

As stated above, capital gains generated from the sale of artworks may be taxable. For private individuals, capital gains generated from the sale of privately held personal belongings are tax exempt up to 50,000 kr. That is, income tax is payable if the capital gain exceeds 50,000 kr. A legal entity that sells artworks are subject to corporate income tax by a rate of 21.4% (2020). Capital gains as well as net profits deriving from the sale of artworks should be disclosed in the individual's/company's annual income tax return. In case taxable income has not been disclosed, there is a standard procedure for voluntary disclosure.

The procedure is as follows, if taxable income has not been disclosed in the income tax return - the Swedish Tax Agency may reassess the tax returns and levy a 40% tax surcharge. The statute of limitation is five years (before the year of taxation). If the additional tax is significant a reassessment can lead to prosecution. In these cases, the statute of limitation is ten years.

Where a voluntary disclosure of previously not properly declared income is submitted, no tax surcharge can be levied and there can be no prosecution. The disclosure must be voluntary and thus it must be initiated before the Swedish Tax Agency has initiated a case related to the relevant income and before the Swedish Tax Agency has made public a general check of a certain area to which the relevant income is connected.

It is preferable to make a voluntary disclosure of previously not declared income by submitting a letter to the Swedish Tax Agency. There are no formal requirements as to procedure, but there are recommendations issued by the Swedish Tax Agency on how to disclose income on foreign assets which have previously not been declared properly.

Does your country have a non-punishable voluntary disclosure programme?

Yes, by submitting a voluntary disclosure companies and individuals can avoid tax surcharge and eventual prosecution. For more information, see answer above.

6. Special provisions regarding taxation of artworks

Trust/foundation

Please see answers above. There are no special provisions regarding taxation of arts other than the regulations mentioned.



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Specialization

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 - » Voluntary disclosure of foreign assets
 - » Tax litigation
 - » Cross border transactions
- Tax Compliance & Integrated Tax Services
 - » Expatriates taxation
 - » Establishment in Sweden

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Anna Maria Maiolino – *Na Horizontal (On the Horizontal)*
2014/2016/Copper wire and raku ceramic on metal structure
Ed. 2/3 + 1 AP (unique variant)
282 x 150 x 25 cm/111 x 59 x 9 7/8 in
© Anna Maria Maiolino/Photo: Everton Ballardin



Switzerland

1. Legal Framework

1.1. How are income and wealth taxed in your country?

The income of individuals who are domiciled or work in Switzerland is taxed at the federal, cantonal and communal level, while their net assets (gross assets – debts) are taxed at cantonal and communal level only. Capital gains on privately held, movable assets are generally tax exempt.

The taxation of the net income is progressive, but capped at a maximum rate. The tax rates vary from Canton to Canton.

The taxation of net assets is also progressive and capped at a maximum rate. The Cantons usually allow social deductions on the amount of net assets. Moreover, almost all Cantons grant a tax allowance on a certain amount of wealth that will not be taxed.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

The rates vary from Canton to Canton. For income tax purposes, it is between 12% and 40%. For wealth tax purposes, the net assets are taxed at between 0.1% and 1.0%.

1.3. How are profit and net equity taxed in your country?

The profit of a legal entity is taxed at federal, cantonal and communal level, whereas the net equity is taxed at cantonal and communal level only. The basis for the profit taxation is the profit and loss statement, to which certain adjustments can be made that differ from the treatment under commercial law, but are allowed from a tax perspective (e.g. losses carried forward, higher write-offs that are accepted for tax purposes). Tax rates vary from Canton to Canton. The net equity of a legal entity is taxed on a cantonal and communal level only.

The profit is taxed proportionally on a federal level, whereas on a cantonal and communal level, different systems apply (i.e. proportional, progressive or mixed rates).

The net equity is taxed proportionally, expressed in per mille of the taxable net equity.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

For companies subject to ordinary taxation, the range is between 12% and 24% on the profit before tax.

On net equity, the tax rates vary between 0.07% and 0.52% depending on the canton.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In general, privately held assets are valued at their fair market value. There is very little legislation in this respect, thus the valuation theme entails difficulties and there are considerable cantonal differences.

The fair market value is defined as the objective market value of an asset and equals the price which could be achieved in case of a sale of the asset in the ordinary course of business. Friendship prices or sentimental values are therefore irrelevant. The fair market value is usually an estimated value or a comparable figure, except for assets subject to regular trade. For the latter, the fair market value is usually available.

When it comes to art pieces, which are usually unique items, there is normally neither a periodic return on the asset, nor is there a liquid market with regular trade. The valuation of art pieces can therefore not be conducted by means of a comparable fair market value or a yield formula taking into account capitalized earnings, the standard valuation method in Switzerland. It will become evident that the valuation of art pieces entails substantial legal uncertainty in Switzerland. In practice, the following methods do exist: The (i) purchase price, (ii) insurance value and (iii) other methods.

The purchase price is not very conclusive: The development of a market-driven price is often the result of unknown agreements, personal preferences and individualised intentions of the market participants. Furthermore, the purchase price must be reduced by commissions resulting from the sale.

Due to the complexity of valuation, the Swiss tax authorities mostly take into account the insurance value of the art piece. The insurance value does not equal the fair market value in most cases, as the insured value also contains parameters such as replacement costs (i.e. commissions for auction houses, dealer's margins and the like). Such costs may add up to 50% of the purchase price. Moreover, a surcharge of up to 30% when determining the insurance value is usual in the industry. Due to these specialities of the insurance value, some can-tons envisage the declaration of only 50% of the insurance value.

In many cases the price of an art piece decreases over the years. Increasing insurance values are however an indicator of increasing market values. There is the possibility to get an expert opinion, contact databases, gallery catalogues or auction results. All these auxiliary factors may be taken into account in order to determine an art piece's value. It is the taxpayer's right to prove another value than the insurance value.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or the like)?

In general, the classification of an art piece as (tax exempt) household good or (taxable) asset is crucial when deciding whether or not the art piece has to be declared in the tax return.

There is no explicit obligation to disclose taxable private art pieces to the tax authorities. In order to prevent conflicts, it is however advisable to declare art pieces, if they are considered to be taxable assets, in the yearly tax return. In practice, there is the possibility of declaring art pieces "pro memoria". This means that the art piece is listed with a value, but not taxed. In this respect, cf. the issue of distinction between tax free household goods and taxable assets, at 2.1.2. below.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Capital gains resulting from the sale of privately held, movable assets are generally tax exempt. Income and capital gains from self-employment on the other hand are taxable. It is therefore significant to know if the sale of art pieces is considered as a sale of a private asset or as a sale in the course of self-employment.

When is an individual considered to be a professional art dealer and what are the consequences under this qualification (e.g. social security, deductibility of losses and expenses etc.)?

If the sale happens as an act of management of private assets and does not exceed the "common" management of assets, i.e. the capital gain is made from a randomly arisen opportunity which has been exploited, the capital gain is generally tax free. As the capital gain does not qualify as income, there are no social security contributions owed on the capital gain. Then again, a loss as well as expenses made in the course of the sale cannot be deducted from the taxable income.

If the sale of (an) art piece(s) is however, viewed as a whole, aimed at the earning of capital gains, the tax authorities usually qualify the existence of self-employment. This is particularly the case if the taxable individual acts according to a plan, combines work and capital and bears the economic risk. It is important to mention that self-employment may be assumed even in case of a single sale of one art piece. In case of self-employment, social security contributions are owed on the sales profits, as these qualify as income. Expenses made in the course of a sale and losses can be deducted from the income from self-employment.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

According to the Tax Harmonization Act, household goods are tax free. This may lead to difficult questions regarding the classification of household goods and assets.

The distinction of whether a good classifies as household good or as taxable asset is made on grounds of the function of the good. The value of an art piece is therefore generally not decisive. Household goods are items serving residential purposes and are in the house, that are usual in terms of home furnishing, as in everyday objects, such as furniture, rugs, paintings. Such household goods are personal belongings that serve the taxable person in everyday life and are not primarily held as a capital investment. This means that an art piece, serving as a decorative object, like an item of furniture, may well be a household good. However, the specific circumstances of every single case must be taken into account. Items which are serving living purposes but also serve capital investment purposes are no longer classified as household goods.

The following criteria is used for classification: (i) actual use and purpose, (ii) common furnishing and (iii) character of capital investment. In case of collections, the motive of gathering and owning is usually paramount, especially if financial resources are used to cultivate the collection. In this case, the investment of financial resources in certain items is predominant, even if the items are part of the furnishing (i.e. designer furniture, pictures, paintings, statues) or used personally (i.e. watches, jewellery).

According to a decision of the cantonal court of Zurich, even a single art piece cannot be part of the household if it exceeds a "certain value". There is no strict figure defining the amount of a "certain value". This entails legal uncertainty. In order to be on the safe side, valuable art pieces should generally be declared in the tax return, either as assets (resulting in wealth tax) or pro memoria. There is a point where even an uninformed taxable person should raise doubts regarding an art piece qualifying as tax free household goods. This is the case with items that from an objective point of view are suitable as capital investments.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

Cf. 22–25

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Cf. 1.5

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Inheritance tax and gift tax follow the same methodology in Switzerland, i.e. what applies for inheritance tax also applies for gift tax and vice versa. Inheritance and gift taxes are only levied on the cantonal level. The tax is levied in the canton of the donor's respectively the testator's last domicile (except for real estate located in a different canton). The tax is to be borne by the donee respectively the heir.

If art is either gifted or inherited, the crucial question is in which family relation the donee respectively the heir stands to the donor respectively the testator. In almost all cantons, gifts respectively inheritances to spouses and children are tax free. Therefore, the question of valuation in gift or inheritance cases involving art is often not relevant. However, if art pieces are gifted or pass by inheritance to persons to whom the tax exemption does not apply, the question of the value of the asset arises.

There are usually tax allowances on gifts or inheritances. The applicable tax rate depends on the degree of kinship. The more distant the kinship, the higher the tax rate (from 0% to 55%).

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

In case of sales of art pieces through a legal entity, net profits deriving from sales are subject to corporate income tax. Expenses in respect of the sale are generally tax deductible.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

If a legal entity works in the field of art trade, the risk of the natural person, who has brought the art pieces into the company, of being qualified as self-employed, diminishes. The domicile of the legal entity may be

chosen in a low-tax canton. Whilst a natural person would possibly have to declare personally owned art pieces as assets and pay wealth tax on such value, the art trading company declares them in its balance sheet but pays taxes on profit and capital. The profit arising from sales of art pieces can be distributed to the shareholder as a dividend. Dividends are preferentially taxed in case of a participation in the legal entity (if at least 10%). No social security contributions are owed on dividend payments.

From a tax point of view there are no general advantages to own artworks through a legal entity. However, social security and confidentiality considerations may lead to the conclusion of owning the artworks through a legal entity.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The Swiss Federal VAT Act contains an exemption for art pieces made by painters or sculptors (art. 21 para. 2 ciph. 16 SFVA). The exemption applies for art pieces that were originally made by the artist by hand and that are in the form of pure art, i.e. the art piece's purpose is solely to be looked at. Serial products or pieces in the form of commodities (e.g. vases, plates, lamps and the like), on the other hand, are not exempted and sales of these are treated as taxable supply of goods. In case an art piece is reproduced by the artist and the art series is, from the outset, a limited edition, numbered and signed by the artist, such art series are exempted as well (exemption from the exemption).

Turnover generated by art trade through legal entities is not covered by the exemption of art. 21 para. 2 ciph. 16 SFVA. Such turnover is taxable.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

International art trade entails numerous formal requirements. If art pieces are crossing the border to Switzerland with the purpose of being exhibit in a museum, the import can be arranged tax free, i.e. with no import tax charges.

If an artist intends to import his or her art pieces (as by definition from a VAT point of view as described above) into Switzerland, due to the exemption no Swiss VAT liability results for the artist. For art imports, it is important that the art pieces being imported have not yet been sold at the point in time of the border crossing. In practice, not only artists import art, but also gallerists, art mediators and auction houses. It is advisable for such intermediaries to have a signed power of attorney from the artist in order to guarantee that the border crossing remains import tax free.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

Switzerland knows the institute of the non-punishable voluntary disclosure one can use once in a lifetime. Tax fraud can be reported to the tax authorities without the consequence of a punishment.

The person making use of the non-punishable voluntary disclosure must contact the tax administration of his or her own accord. Furthermore, the avoidance must not be known by the tax authorities in the point in time of the disclosure. The taxable person must unconditionally inform and actively help the tax authorities in order to determine all income and wealth. The taxable person

must seriously endeavour to pay the taxes resulting from the disclosure. In case these conditions are all met, the disclosure does not entail a punishment. However, supplementary taxes and default interest are still owed.

It is important to note that when a tax authority discovers a piece of art which has been considered, even in good faith, as a household good, but is then classified as an asset, the non-punishable voluntary disclosure does not apply as the notification has not been made of the taxable person's own accord.

Does your country have a non-punishable voluntary disclosure programme?

Cf. above

6. Special provisions regarding taxation of artworks

N/A



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Specialization

- Bruno Bächli provides national and crossborder tax advice, supporting private clients, entrepreneurs and medium-sized companies in their tax planning.
 - This includes in particular tax-related succession and inheritance planning as well as all asset-related matters (e.g. securities, real estate, and works of art).
 - Bruno Bächli published in the series "Inherit and Bequeath (Erben und Vererben)" the volume "Estate planning and inheritance tax (Nachlassplanung und Erbschaftssteuer) with the Schulthess Publication House. The publication is aimed at professionals who advice in the area of estate planning.
 - Bruno Bächli advises clients also in respect of complex international social security matter.
-

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David Zink Yi – ROMA 395-4

2006/Lambda-Print on Alu-Dibond

132 x 104 cm/52 x 41 in

© David Zink Yi/Courtesy David Zink Yi and Hauser & Wirth



United Arab Emirates

1. Legal Framework

1.1. How are income and wealth taxed in your country?

At present, there is no personal income and wealth tax in the UAE.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Not applicable

1.3. How are profit and net equity taxed in your country?

Currently, the UAE does not have any federal corporate tax regime. Taxation is determined on Emirate-by-Emirate basis (UAE is a federation of seven Emirates) and in practice the corporate tax regime is only enforced in respect of corporate entities engaged in the production of oil and gas or extraction of natural resources. Further, some of the Emirates have their own specific banking tax decrees, which impose corporate tax on branches of foreign banks.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

With respect to branches of foreign banks the tax is imposed at the rate of 20% and on companies engaged in the production of oil and gas, the tax rates are around 55%.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

'Internation Accounting Standard (IAS) 16 – Property, plant and equipment', as is applicable in the UAE, outlines the accounting treatment for most types of property, plant and equipment (PPE). PPE is initially recorded at its cost, subsequently valued either using a cost or revaluation model and depreciated so that the depreciable amount is allocated on a systematic basis over its useful life.

2. Taxation of Artwork

2.1. Individuals Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

None

2.1.1. Income taxes Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Not applicable

2.1.2. Wealth taxes Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Not applicable

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

Not applicable

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Not applicable

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Not applicable

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Such profits are not taxed.

Are there any general advantages of a legal entity as owner of artworks instead of private ownership?

None

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

The UAE introduced VAT with effect from 1 January 2018 at the standard rate of 5%. Accordingly, the import, buying or selling of artworks within the UAE would attract VAT at 5%. Zero-rating relief is available when exporting the artwork outside the UAE.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

There are no special rules with respect to artworks under the UAE VAT and customs regime.

The import of artworks would attract 5% customs duty along with 5% import VAT. In case the goods are merely passing through and not being imported into the mainland, then no such customs duty and VAT implications would arise.

In case the goods are being temporarily imported for exhibition, display, etc, the goods can be imported under the customs duty suspension scheme available for such temporary imports.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

Does your country have a non-punishable voluntary disclosure programme?

Not applicable

As there is no income or general corporate tax, no such voluntary disclosure scheme exists.

6. Special provisions regarding taxation of artworks

Trust/foundation

None



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Specialization

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Phyllida Barlow - untitled: pinkspree; 2018
2018/Filler, PVA, paint, plywood, sand, spray paint, timber
259 x 280 x 226 cm/102 x 110 ¼ x 89 in

© Phyllida Barlow/Photo: Genevieve Hanson/Courtesy Phyllida Barlow and Hauser & Wirth



Ukraine

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Wealth taxes are not levied in Ukraine.

There are just certain property taxes (like on land, real estate above certain level, luxury cars), which are applied as local [municipal] taxes.

Income for personal income tax purposes is not well defined; and what is considered as income is basically defined on casual level by listing in the Tax Code.

In case the tax is received from a person responsible by law for assessing and withholding the personal income tax (like national employer), the tax is applied at source of income.

For all other cases principally, the income shall be declared by submitting annual tax return next year with self-assessment and remitting then the tax.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Personal income tax for individuals is applied generally at the flat rate of 18% plus surcharge 1,5% for army support. Thus, in total tax burden for individuals is in total 19,5%. Special tax rates are applied to certain types of income.

There is no Wealth Tax in Ukraine.

1.3. How are profit and net equity taxed in your country?

There is no taxation of net equity.

Profits are taxed generally actually when received. Taxable profit for corporate income tax is defined as the accounting profits with some further adjustments for the cases directly listed in the Tax Code. the main tax payable by all companies resident in Ukraine and permanent establishments of non-resident companies.

CPT is paid on the total taxable income of the Company, which is determined as the company's financial result before tax calculated under applicable accounting standards (either Ukrainian accounting standards, or International Financial Reporting Standards (IFRS)), and adjusted according to the requirements of the Tax Code of Ukraine.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

As per the general rule, the tax rate for CPT for the year 2019 is 18%. There are several exemptions from the aforementioned general rule such as profits from insurance activity which are taxed at the rate of 3%, profits from long-lasting life insurance agreements, which are taxed at the rate of 0%, profits of non-residents of Ukraine originating from Ukraine, which are taxed at the rates of 0%, 4%, 6%, 12%, 15% or 20%, and profits from lotteries or gambling are taxed at the rate of 10%.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

No valuation is required for artworks in general for the tax purposes.

Just for artworks being recognized as cultural valuables (artworks created 50 years ago and more, although matching other criteria) the state valuation is required by law in case of deals, in order to define their condition, year of creation, acknowledgment of an author, its cultural value, etc. In case of deals with such artworks the state may have preemptive rights for purchase at the fair price (valuation).

Cross-border deals might be subject to TP control in certain cases.

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

The Tax Code of Ukraine does not contain any obligation to disclose private artworks to the tax authorities.

At the same time, the Law of Ukraine 'On Preventing Corruption' requires certain categories of individuals specified in this Law (namely, public figures, public servants and their close individuals [not only family members but also individuals living together with aforementioned persons, sharing a household and having common rights and responsibilities of family nature, including individuals who live together with aforementioned persons however, not married to them], who meet the requirements set forth in the Law) to disclose, inter alia, movable valuables with value exceeding certain level (currently approximately equal to EUR 6,500).

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

For individuals the sale of artworks is subject to taxation with PIT and Military Tax under the general rules set forth for taxation of the sale of movable property.

Income is defined for this case as the contract sales price, but not less than the valuation when it is required under the law. There are no deductions envisaged for the cost of purchase or the like.

Applicable personal income tax rate is 5% plus 1,5% army support surcharge, thus 6,5% in total.

If respective operations are a part of entrepreneurial activity, then they are taxed at the standard 18% PIT rate plus 1,5% surcharge. Yet, in such case the tax is basically on gain on sale, i.e., the cost of the artwork is allowed for deduction.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Not applicable in Ukraine

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

In general no obligation to declare.

Just for certain categories of public figures, their family members etc. there is obligation to declare all valuable items above certain value (currently approx. Euro 6 500) per item.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Valuation shall be done by licensed assessor when it is required by law. Market price is normally accepted, with some rare exemptions.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Gifts and inheritance are treated basically similarly for the tax purposes.

The inheritance or gift of artworks from the family members of the first degree of relation (children, parents, spouse) or second degree of relation (siblings, grandparents, grandchildren) is not taxed.

In case of inheritance or gift of artworks from other persons, PIT at the rate of 5% plus 1,5% of army support surcharge.

In case of inheritance or gift of artworks received from or by a non-resident of Ukraine, irrespective of the relations between the testator and donor, the PIT at the rate of 18% and Military Tax at the rate of 1.5% applies.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

The Tax Code does not provide any specific rules regarding the taxation of the sale of artworks.

Therefore, generally gain on sale (as the difference between the sales price and the book value) is included into the taxable profits.

Not-for-profit organizations may be exempted from tax on these operations provided that they are within the main scope of their statutory activity, the profits are not distributed and are used exclusively for financing statutory activity of this organization.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

Not really

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

When selling by individuals, no VAT is applicable.

In case of sale through specialised art-dealers, auctions, VAT is charged just on commission of that dealer.

Sales by businesses are normally subject to VAT provided that the seller is VAT-registered person.

Several categories of artworks may be exempted from VAT, yet it is rather exemptional approach that is rare relevant for usual operations.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Although there is a general rule that artworks exported under the customs regime of export VAT rate at 0% applicable to export transactions, this may not be applied by the dealer under the margin scheme of VAT taxation. However, the tax legislation provides for export of artworks in export customs' regime with the VAT tax privilege, which results in exemption from VAT taxation.

The state valuation is obligatory for the export of artworks that may be considered as cultural valuables (created 50 years and more ago plus several other categories).

Usually, in order to export artworks, the certificate confirming the right to export an art piece from the territory of Ukraine must be provided to the customs authorities.

It should be noted that the export of certain types of artworks (listed in the State Register of National and Cultural Inheritance, National Archive Foundation, Museums Foundation of Ukraine) is prohibited.

VAT taxation of imports of artwork follows the general rules, based on the contract value of such artworks, however, not lower than its customs value, defined according to the Customs Code of Ukraine including customs duties and fees paid upon their importation.

Therefore, importation is normally subject to VAT.

However, the Tax Code of Ukraine provides for special rules with regard to the importing of artworks under certain codes of Ukrainian Classification of Goods of Foreign Economic Activity (Group 97 which stands for artworks), produced 50 years ago and more, which are exempted from VAT taxation.

Moreover, such artworks under certain codes of Ukrainian Classification of Goods of Foreign Economic Activity (Group 97), produced 50 years ago and more, regardless of their value and the mode of crossing the border of Ukraine performed by the citizens of Ukraine, are subject to specific written reporting.

There are a number of formalities which must be applied to the import of artworks, such as the provision of documents confirming the right to import such goods, duly legalized in the country of issuance.

Also, if there is a necessity to establish whether the artworks imported correspond with requirements set forth for VAT exemption, experts might be appointed.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

No special rules apply.

Does your country have a non-punishable voluntary disclosure programme?

There are just discussion for the moment that something like this shall be introduced. No such programme already in place for the moment.

6. Special provisions regarding taxation of artworks

Trust/foundation

Not yet really developed in Ukraine. Just at the starting phase.



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Rodney Graham – *Betula Pendula Fastigiata (Sous-Chef on Smoke Break)*
2011/Painted aluminum lightbox with transmounted chromogenic transparency
243 x 182 x 18 cm/95 5/8 x 71 5/8 x 7 1/8 in
© Rodney Graham/Courtesy Rodney Graham and Hauser & Wirth



Uruguay

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Individuals and legal entities are subject to tax on their Uruguayan-sourced income. Income tax is only applied at the national level. Uruguayan tax residents are also subject to income tax regarding certain kinds of income generated abroad.

Income tax is levied upon Uruguayan-sourced labour income (i.e. income derived from activities conducted or services rendered in Uruguay).

In relation to capital income, income tax is applied depending on the characterization of the income. For non-residents, income tax is levied upon Uruguayan-sourced capital income. For Uruguayan tax residents income tax is also triggered on foreign-sourced capital income derived from deposits, loans and placements of capital or credit with entities abroad.

Wealth tax is levied in Uruguay at the national level. Individuals who own assets located in Uruguayan territory on 31 December each year which are valued at above the non-taxable minimum, must pay a wealth tax thereon at progressive rates.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Income tax on income from labour is applied at progressive rates ranging from 0% to 36% for Uruguayan tax residents, depending on the income level, and at 12% for non-residents.

In relation to capital income, income tax is applied at flat tax rates between 7% and 12% depending on the characterization of the income.

Wealth tax is applied at 0.5% to 0.8% for tax residents and non-residents having an asset that generates income tax in Uruguay.

For those non-residents who are not non-resident income tax payers, the rate applied is 0.7% to 1.5%.

1.3. How are profit and net equity taxed in your country?

Uruguayan-resident companies and permanent establishments of foreign companies are taxed on their Uruguayan-sourced income. In addition to the taxes on such a corporation's profit, distributions from the corporation to both Uruguayan-resident individuals and foreign shareholders would also be subject to withholding tax, applicable on the income subject to corporate income tax.

The taxed profits accumulated by the company since entry into effect of the Business Income Tax that are older than three years will be presumed to have been distributed (notional dividends) within the third month after year end.

Net equity located in Uruguay at fiscal year end is subject to net worth tax

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

The rate is 25% on the net fiscal income of the entity, and withholding tax on the distribution is at a rate of 7%.

Foreign companies with no permanent establishment in the country are subject to Uruguayan income taxes on their Uruguayan-sourced income at a general rate of 12%, applicable on gross income

Legal entities are subject to the net worth tax at a rate of 1,5% on net assets located in Uruguay at fiscal year end.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

For legal entities, valuation of assets is generally linked to cost of acquisition and valuation of an expert generally is not accepted. In the case of individuals, valuation of an expert is accepted for certain assets including art..

2. Taxation of Artwork

2.1. Individuals

Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?

There is no legal obligation to disclose private artworks.

In fact, the value of art works can be computed on a notional basis and without taking into account their real market value.

The law establishes that any taxpayer of the wealth tax who has real estate must determine a notional amount corresponding to the furnishing included in the property/s (including works of art).

According to that notional regime, the value of the furnishing or "ajuar" will be calculated as 10% or 20% of the total taxed assets, with deduction of the admitted liabilities.

Despite this, it is established that individuals domiciled abroad who own properties in Uruguay but who do not reside there, or do so sporadically, have to have their works of art appraised by an expert for purposes of the wealth tax.

2.1.1. Income taxes

Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

Yes. The sale of artworks triggers a tax equivalent to 2.4% of the price of the sale. In fact, the law establishes a way of applying the income tax in which the net income obtained from the sale of the artwork is assumed to be 20% of the price, and personal income tax at 12% is applied to that percentage.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

Yes. For purposes of paying the wealth tax the artworks are included in a category that includes the personal belonging/households, collections, documents

and books. This category denominated as "ajuar" is determined on a notional basis as a percentage of the other assets of the individual subject to the wealth tax.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

No.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

For purposes of wealth tax applicable to individuals, artworks are included in a category that includes personal belonging/households, collections, documents and books, denominated as "ajuar" in Spanish.

If the taxpayer owns real estate in Uruguay, it will have to compute the "ajuar" as a taxable asset and it will include the artworks. The ajuar is calculated on a notional basis as the 10% or 20% of the net value of the other assets subject to wealth tax after deducting certain liabilities.

Individuals domiciled abroad who own properties in Uruguay but who do not reside in the country, or do so sporadically, they do not have to compute the "ajuar" as a taxable asset. In such case, if the individual owns artworks in Uruguay, he would have to compute the artworks as taxable assets for the wealth tax for the market value determined by an expert.

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

There is no inheritance tax. The donation or transfer for no consideration made by an individual of artwork located in Uruguay triggers a tax of 2.4% on the value of the artwork.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

The rate is 25% on the net fiscal income of the entity; for obtaining the net income the company will be able to compute the total acquisition price if the seller was taxed at an income tax rate equal to 25% or higher.

As a general rule, all expenses necessary to obtain the taxable income are deductible when determining net income. However, regulations establish that an expense is only deductible if it constitutes income for the other party (resident or non-resident) which is subject to business or personal income tax. These expenses are deductible by multiplying the expense by the ratio of the maximum rate applicable to income of the other party over 25% corresponding to the IRAE rate.

The remittance of dividends deriving from such transactions will be subject to a 7% withholding income tax.

Foreign companies with no permanent establishment in the country are subject to Uruguayan income taxes on their Uruguayan-sourced income at a general rate of 12%. In the case of the sale of artworks, the tax rate is applicable on a notional income of 20% of the transfer price, which derives on an effective tax rate of 2,4% on the transfer price. If the non-resident entity is in a low or no tax jurisdiction included in a list issued by the tax authority, the effective tax rate would be 7,5% on the transfer price of the art work.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

No. Furthermore, from a tax perspective it is more beneficial to be a physical person than a legal entity, so there are no advantages for legal entities as owners of art works.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

None. Artworks are exempted from the VAT.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

No VAT is applicable on the import or export of artworks. Regarding custom duties applicable on the import of artworks, same are applied on the value of the materials that form part of the artwork not taking into consideration the intangible value of the artwork.

Note that for the export of artwork it is necessary to obtain an authorization of the Commission of Cultural Patrimony of the Nation. If the artwork is considered of cultural interest for the country based on the value of the piece, the scarcity of similar pieces or any other similar circumstance that shows the singularity of the artwork, the Commission can forbid the departure of the artwork from the country.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared artworks and what are the expected consequences?

There is no specific procedure for voluntary disclosure of previously not declared artworks. If an individual/legal entity wants to voluntarily declare artwork not properly declared in the past, he/it will have to file the correspondent tax return including the artwork and pay the correspondent taxes. The non-inclusion of a property in a declaration and the corresponding non-payment of

applicable taxes do not generate criminal consequences, but there are economic sanctions applicable for late payment of the tax (fine of 20% plus interest capitalized every four months).

Does your country know a non-punishable voluntary disclosure programme?

There is no non-punishable voluntary disclosure programme in Uruguay for the declaration of artworks not properly declared.

6. Special provisions regarding taxation of artworks

There are no special provisions re taxation of arts, other than the ones already mentioned above.



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Specialization

- Tax planning
 - Preservation and passing on of property
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-

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FERRERE

David Zink Yi – Neusilber (New Silver)
2015/Stainless Steel/Unique
Each 353 x 100 x 95 cm/139 x 39 ³/₈ x 37 ³/₈ in
© David Zink Yi/Photo: Aaron Schumann/Courtesy David Zink Yi



United States of America

1. Legal Framework

1.1. How are income and wealth taxed in your country?

The United States has federal, state, and local tax jurisdictions. Income taxes are imposed at the federal, and the majority of states, and some local levels. In addition to income taxes the government imposes an estate tax on the transfer of the estate of a deceased person. A gift tax applies to transfers of property during a person's life. Furthermore, many states have enacted sales, estate and gift tax provisions.

U.S. Persons are subject to U.S. income taxation on their worldwide income. The term "U.S. Person" includes U.S. individuals, U.S. corporations, and U.S. trusts. An individual is a U.S. Person if he or she is either a U.S. citizen, regardless of residence, or a U.S. Resident, regardless of citizenship. A U.S. Resident for income tax purposes is a lawful permanent resident, or an individual who meets the "substantial presence" test.

A U.S. resident for estate and gift tax purposes (e.g. wealth transfer taxes) is a person whose primary residence, or domicile, is in the U.S.

Persons who are neither U.S. citizens nor U.S. Residents ("Non-U.S. Persons") are also subject to U.S. income tax, due to their income effectively connected to U.S. sources such as investment income (e.g. dividends, rent and interest) or sale of U.S. real property. Non-U.S. Persons are also subject to income tax at the same graduated rates as U.S. Persons on their income earned in connection with the conduct of a trade or business in the U.S.

Estates of Non-U.S. Persons are subject to U.S. estate tax only on U.S. situs assets (e.g. real property situated in the U.S., tangible personal property situated in the U.S., and shares of stock in U.S. corporations).

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Income tax rates graduate at the federal and state levels for individuals. For individuals, the federal ordinary income tax rates are progressive and range from 10%

to 37%. Individual state income taxes are imposed in 43 states. 7 states levy no income tax at all. The state income taxes vary between flat and progressive tax regimes at rates ranging from 2% to 13.3%.

The tax rate of net capital gains from the sale of capital assets depends on the amount of time the capital assets are held by the taxpayer. Net capital gains from assets held for one year or less are taxed at ordinary income tax rates. Net capital gains from assets held for longer than one year are taxed at 20% on the federal level. However, certain capital assets that are considered "collectibles" are taxable at a maximum rate of 28%. Collectibles include, but are not limited to, works of art, rugs, antiques, precious metals and stamps.

In addition, taxpayers with significant investment income may be subject to the net investment income tax. This tax applies to investment income above a threshold amount and carries a federal tax rate of 3.8%.

The federal estate and gift tentative tax rate is currently 40%. There are several credits against the tentative tax, the most important of which is a unified credit which can be thought of as providing for an exemption amount with respect to the sum of the taxable estate and taxable gifts during lifetime.

1.3. How are profit and net equity taxed in your country?

For U.S. income tax purposes, businesses generally fall within two categories of taxation, those that are treated as a separate taxpayer ("Corporations"), and those that are tax transparent ("pass-through entities"). Corporations pay tax on their net taxable income at the rates described below. In addition, shareholders are taxed upon a distribution of taxable corporate profits (e.g. dividends). Hence, entities taxed as a corporation create a double layer of taxation on income in the U.S.

The equity owners of the pass-through entities must include their allocated share of the business's profit into their own respective taxable income calculation. If the pass-through entity owner is an individual, such income will be taxed only once at the individual income tax rates.

Pass-through entities include sole proprietorships, partnerships, and eligible corporations that elect to be taxed under sub chapter S of the Internal Revenue Code ("S corporations").

1.4. **What is the range of the applicable tax rates for legal entities on profit and capital?**

The nominal federal corporate rate is a flat 21% on the profit before tax. Corporate income taxes are levied in 44 states within a range of 2.5% to 12%. There are no preferential capital gains tax rates for corporations. Conversely, pass-through entities do not pay an entity level tax except for certain state and local entity level taxes.

1.5. **What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?**

The required standard of value for U.S. tax purposes is fair market value, which deems a transaction between an assumed willing buyer and assumed willing seller. Actual transactions of assets, if at arm's length, can be used as an indication of fair market value.

For charitable giving purposes, the donor must obtain a qualified appraisal of value of any tangible personal property (including artwork) that is ultimately donated for which there is not a readily ascertainable fair market value.

For estate and gift tax purposes, a qualified appraisal of value on the date of death or the date of the gift is not technically required under U.S. tax law. However, asset valuations assessed by taxpayers for estate and gift tax purposes are often challenged by the Internal Revenue Service ("IRS"). A qualified appraisal of value by a qualified appraiser can reduce, but not eliminate, the possibility of the IRS successfully challenging a valuation used by a taxpayer.

In general, privately held assets are valued at their current fair market value. Art is defined as a collectible under the Internal Revenue Code. Due to the complexity of valuation, the IRS mostly considers recent sale values and/or recent appraisals from a qualified appraiser. The Art Advisory Panel of the IRS provides insight to the Art Appraisal Services. The Panel's objective is to assist the IRS through the evaluation of art appraisals submitted to the IRS for tax purposes.

2. Taxation of Artwork

2.1. Individuals **Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or alike)?**

For U.S. tax purposes, there are no explicit obligations of a taxpayer to disclose ownership of assets to the tax authorities before the death of the taxpayer.

If a tax return is required to be filed for a deceased taxpayer, generally the gross estate would include all property (including artwork) in which the decedent held an interest.

2.1.1. Income taxes **Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (e.g. capital gains tax/income from self-employment).**

First, a determination must be made as to whether the taxpayer is a dealer, an investor, or a collector of art. The

distinction will determine whether expenses related to maintaining a collection of art are able to be deducted by the taxpayer.

An art dealer is someone engaged in the trade or business of selling works of art, primarily to customers. All income from the sale of art by a dealer is considered ordinary income taxable up to a maximum rate of 37%. In addition, the art dealer will pay self-employment tax on the profits from the sale of art. Expenses incurred by the art dealer in the ordinary course of business are deductible against gross income. In addition to the federal taxes, art gains are subject to applicable state and local personal income taxes.

An investor is someone who buys and sells works of art primarily for investment, rather than for personal use and enjoyment or as a trade or business. An investor is likely to keep the art in storage rather than hanging it on his or her walls. A key consideration is whether the

taxpayer is engaged in the investment activity with the primary objective of making a profit. The investor pays 28% on the net gain as long as the work of art was held for a least one year. The investor may add to the basis of a purchased work of art the expenses related to sale of that artwork. In addition to the federal taxes, art gains are subject to applicable state and local personal income taxes.

A collector is someone who buys and sells works of art primarily for personal pleasure and is neither a dealer nor an investor. Although net sales of artwork sold by collectors are taxed at the capital gains rate of 28%, they may not deduct or capitalize expenses related to the sale. In addition to the federal taxes, art gains are subject to applicable state and local personal income taxes.

In general, an art dealer can deduct the ordinary and necessary business expenses incurred in the trade or business. However, an investor or collector of art cannot deduct art related expenses. In addition to expenses incurred, losses from the sale of an artwork generally cannot be deducted by a collector.

2.1.2. Wealth taxes _____
Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

As of 2019 there is no annual wealth tax in the U.S. for individual income tax purposes. A work of art may be considered a collectible with an attainable market value that would be subject to estate and gift taxes if the owner is a U.S. person. As stated above, the selling of appreciated works of art would be subject to federal and state income taxes as well as local sales and use taxes.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done and if there is any other obligation of declaration.

As stated earlier, for U.S. tax purposes, there are no explicit obligations of a taxpayer to disclose ownership of assets to the tax authorities before the death of the taxpayer.

If a tax return is required to be filed for a deceased taxpayer, generally the gross estate would include all property (including artwork) in which the decedent had an interest.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, e.g. at cost, insured value, market price?

The required standard of value for U.S. tax purposes is fair market value, which deems a transaction between an assumed willing buyer and assumed willing seller. Actual transactions of assets, if at arm's length, can be used as an indication of fair market value.

For charitable giving purposes, the amount of the deduction depends on whether the work of art is long term capital gain property, short term or ordinary income property. In addition, the deduction for capital gains property depends on the use of the property. If the donor establishes that the property will be reasonably expected to be put to a related use by the charity, the deduction will be based on the fair market value of the artwork. If the contributed property is not related to the charity's exempt purposes or function, the deduction is limited to the cost basis of the artwork.

2.1.3. Inheritance/gift taxes _____
In case of an inheritance or gift will there be any tax levied?

There are two parts to the Unified Gift and Estate Tax system in the U.S., the estate tax and the gift tax. The estate tax is a tax on the transfer of the estate of a deceased person. The tax applies to property that is transferred in accordance with a will or according to the state laws of intestacy. The gift tax applies to transfers of property during a person's life.

If a person transfers artwork as a gift to an individual or trust, the donor needs to be charged rent by the donee or trust if the donor continues to hold the art for his or her own personal use and enjoyment. The rent charge is a complex analysis as there is great uncertainty as to the fair market value of the use and enjoyment of the art. If the rental value is below market value, the value of the artwork can be included in the donor's gross estate. If the rental value is above market value, the donor is making an annual gift to the donee or trust. In addition to the gift and estate tax issues there are also sales tax implications on rental arrangements that need to be considered.

In addition to the federal estate and gift tax many states have enacted similar taxes.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

Corporate income tax is imposed in the U.S. at the federal, most state, and some local levels on the taxable income of entities treated for tax purposes as corporations. All income, including gains that are realized from the sale of artwork, are subject to the same federal 21% tax rate. Certain deductions available to individuals may be limited at the corporate level (e.g. charitable deductions). Due to the nature of double taxation on profits, corporations are rarely created to hold artwork.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

There are both tax and non-tax advantages of using a legal entity as owner of artworks instead of a private ownership. A common pass-through entity in the U.S. is a Limited Liability Company ("LLC"), which is a U.S.-specific form of a private limited company. It is a business structure that combines the pass-through taxation of a partnership or sole proprietorship with the limited liability of a corporation. In addition, holding artwork through an LLC may allow a taxpayer to transfer a fractional interest of an artwork in a tax efficient manner by transferring interests in the entity to a desired donee. When valuing an interest for transfer purposes in an entity that owns the art collection rather than in the art collection itself, valuation discounts may be available to reduce the value of the entity. The IRS closely scrutinizes discounts, so retaining a qualified appraiser is required.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

In the U.S., there is no current federal VAT on goods or services. Instead, a sales and use tax is employed by most states. Sales tax is payable when tangible property (e.g. art) is purchased within a certain state, and use tax is payable when it is purchased out of a state with the intent to use it in that particular state. The use tax complements the sales tax to ensure that tax is paid either in the state of purchase or the state of use.

Generally, art dealers must register with the state sales tax department, obtain a resale certificate and resale numbers from the state in which the dealer is doing business. An art dealer will not pay sales or use tax when purchasing a piece of artwork but will rather collect

sales or use tax upon resale. Sales tax must be paid by the buyer (e.g. an investor or collector) and collected by the seller (e.g. a dealer, investor, or collector) unless (1) the property is sold to a buyer for delivery out of the state or (2) is purchased by a dealer exclusively for resale. State sales and use tax laws vary and it is essential that a tax advisor be utilized to ensure compliance with the required jurisdictions.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

Currently, in the U.S. there is no federal VAT on artworks that cross the borders, rather sales tax is imposed. Customs reports the importing of art and other tangible property to state and local tax authorities.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

Taxpayers interested in disclosing violations of tax reporting requirements should seek the counsel of a U.S. law firm that specializes in federal and state voluntary disclosure programs.

Does your country have a non-punishable voluntary disclosure programme?

As stated above, taxpayers interested in disclosing violations of tax reporting requirements should seek the counsel of a U.S. law firm that specializes in federal and state voluntary disclosure programs.

6. Special provisions regarding taxation of artworks

Taxation of Art for Trusts

Trusts can be used with increasing frequency by both collectors and dealers for a variety of purposes including asset protection, estate planning and charitable giving.

If a taxpayer bequeaths art to a trust at their death, the estate tax will be due based on the fair market value of the property at the time of their death. If the taxpayer makes a transfer of artwork to a trust during their lifetime, they will be responsible for a gift tax on the value of the artwork unless the trust is revocable. In such a case, an estate tax is applied (in lieu of the gift tax) on the value of the artwork in trust upon the taxpayer's death.

Although using trusts for art succession planning may provide advantages over outright gifts, they present a number of unique considerations. A trust does not have the ability to carry forward unused charitable deductions, whereas an individual can carry forward the unused deduction up to five years. Also, the income tax brackets for trusts are less favourable than those afforded to an individual taxpayer and this should be considered when holding income generating property in certain trusts.

Taxation of Art for Foundations

Foundations are exempt from income tax, but most are subject to a one or two percent "excise tax" on investment income. Donations of works of art to a qualified foundation potentially entitle a taxpayer to deduct the artwork's full fair market value.

When donating artwork, it must be considered long-term capital property to qualify for a tax deduction. In order to claim an artwork's current fair market value as the value of the charitable deduction, the artwork must be held for longer than one year.

The donor must also fit the classification of an art collector or investor as defined by the IRS in order to claim an appreciated fair-market-value tax deduction. If the donor is an art dealer or an artist, the donor is only entitled to deduct the lower of its fair market value on the date of contribution or its cost basis on charitable donations of artwork. The IRS code treats artists differently when they donate artwork they have created. In these situations, the artwork is always considered ordinary income property (that is, it is not a capital asset), and therefore, the deduction is limited to the cost basis of the art which is determined by the cost of the materials to create the artwork.



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Takesada Matsutani – Red-Sun-P

1972/Acrylic on canvas

201.3 x 157.8 x 4.4 cm / 79 1/4 x 62 3/8 x 1 3/4 in (framed)

© Takesada Matsutani/Photo: Christopher Burke

Courtesy Takesada Matsutani and Hauser & Wirth



Vietnam

1. Legal Framework

1.1. How are income and wealth taxed in your country?

Corporate income is taxed under the law on Corporate Income Tax. Personal income is taxed under the law on Personal Income Tax.

Vietnam has imposed withholding methods on Corporate Income Tax, Personal Income Tax and Value Added Tax.

There is no general tax on wealth up to now. A land tax is imposed on the non-agricultural use of land.

1.2. What is the range of the applicable tax rates for individuals on income and wealth?

Non-resident individuals being employees are taxed at 20% on their Vietnam-sourced income, regardless of where it is paid. For business income, the rate is 1% to 5%.

Resident individuals are taxed on their worldwide income with a progressive rate of up to 35%.

No tax is imposed on wealth. The tax on land use ranges from 0.03% to 0.15% on the land use price.

1.3. How are profit and net equity taxed in your country?

The profit of corporations is taxed under the system of Corporate Income Tax, the profit of business individuals under the system of Personal Income Tax. No tax on net equity is imposed.

1.4. What is the range of the applicable tax rates for legal entities on profit and capital?

Corporations are taxed at 20% on their profit. In certain cases tax reductions or exemptions can be achieved. No tax is applied on the capital. A license tax of around 150 USD is applied per year for each corporation.

1.5. What kind of valuation is generally accepted in respect of certain assets (such as art) by the tax authorities?

In civil transactions, the assets are generally valued by agreement between the contracting parties or as determined by a third person at the request of the parties following the principle of market prices. Where the law stipulates that the price must conform with the regulations of the authorized State agency, the agreements between the parties on the price of assets must comply with such regulations.

2. Taxation of Artwork

2.1. Individuals Is there an obligation of declaring/disclosing private artworks to the tax or other authorities (list of inventories or the like)?

There is no regulation imposing an obligation of disclosing/declaring a privately owned artwork to a state authority. The obvious exception is the case where a relic, antique, or national treasure has been found on the territory of Vietnam i.e. on the mainland, islands, internal waters, territorial sea, exclusive economic zone and continental shelf. That must be reported to the Director of the Culture - Sports and Tourism Department.

Where income is received in the form of royalties from artistic and scientific works, the declaration on Personal Income Tax will have to refer to the related artworks.

2.1.1. Income taxes Is income generated from the sale of artworks taxed in your country? If yes, please indicate how (i.e. capital gains tax/income from self-employment).

The tax rate for income from capital investments is 5%, the income from transferring artwork will be taxed at 5% as a copyright transfer, the tax rate for business income is 1% to 5%.

2.1.2. Wealth taxes

Does your country envisage any specific categories of classification of artworks (e.g. tax-exempt personal belongings/household)?

No. There are no categories of classification of artworks as personal belongings/household.

Is there an obligation to declare works of art in the tax return? Please indicate how this is done or if there is any other obligation of declaration.

No. Artworks are not considered as a special category for tax purposes.

How are works of art valued for tax purposes in your country? Are there any common and accepted valuation methods, i.e. at cost, insured value, market price?

Artworks may either valued as the object of business income or as income from copyrights.

Works of art may be valued at either (i) market prices of these assets or (ii) like assets of the same kind (if any).

2.1.3. Inheritance/gift taxes

In case of an inheritance or gift will there be any tax levied?

Income from an inheritance or gift is taxed at 10%. The amount exceeding 10 million VND (around 450 USD) per case is taxable.

If the artwork is real estate and passes by inheritance/is given as a gift to husband/wife, parent/child including parents- and children-in-law, grandparents and grandchildren or siblings, no tax is imposed.

3. Taxation of legal entities (as owner of the artworks)

3.1. Corporate income taxes

How are profits deriving from the sale of artworks taxed?

The profit of the company is taxed in the same way whether the traded goods are artworks or not. The general tax rate is 20% on the profit.

If the company is not licensed to perform the business done, the related costs cannot be claimed as deductible expense.

Are there any general advantages of a legal entity as owner of artworks instead of a private ownership?

A private person being a foreigner will not easily obtain a license for trading artwork (or any other product) in Vietnam. For a compliant handling of all activities, setting up a legal entity is recommended. If the intention is limited to buying in Vietnam and exporting, no legal entity in Vietnam is required.

4. VAT/Customs

When selling or dealing with works of art within your country what VAT implications have to be considered?

When selling, the seller usually will have to add VAT onto the invoiced amount. The following are not subject to VAT according to Art 5 No. 15 Law on VAT: "Publication, importation and distribution of newspapers, magazines, specialized newsletters, political books, textbooks, teaching materials, law books, technical and scientific books, books printed in languages of ethnic minorities, propaganda pictures, photos and posters, including in the form of disks, tapes and electronic databases; and printing of money."

Tax rates are: general rate 10%, reduced rate 5% for "Cultural activities; exhibitions; ...artistic performances; film, books" and 0% for exportation.

When works of art cross the border of your country what needs to be considered regarding VAT/customs?

For exportation, the VAT rate zero applies. For importation, usually the VAT rate of 10% applies

Applicable customs tariffs depend on the type of goods and the origin.

Temporary import for re-exportation is possible and in that case no VAT and no customs duty will be applied, but the handling must be done very carefully.

5. Voluntarily disclosure program

What is the procedure in a voluntary disclosure of previously not properly declared art works and what are the expected consequences?

No special regulations regarding artworks exist.

Taxpayers having committed tax offenses ("violators"), whether deliberately or unintentionally, incur administrative penalties.

Does your country have a non-punishable voluntary disclosure programme?

No. Vietnam does not follow the concept of a non-punishable voluntary disclosure.

6. Special provisions regarding taxation of artworks

Vietnam law allows the foundation of various types of not-for-profit organizations. Regulations are complex, the structure of these organizations can only partially be compared to a Trust or Foundation in other countries. However, these not-for-profit organizations will enjoy

tax reductions or exemptions. For certain projects of collecting and trading artworks, it might be considered using such organizational form and benefit from reduced taxation or achieve tax exemption.



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About Hauser & Wirth

Hauser & Wirth was founded in 1992 in Zurich by Iwan Wirth, Manuela Wirth and Ursula Hauser, who were joined in 2000 by Partner and President Marc Payot. A family business with a global outlook, Hauser & Wirth has expanded over the past 29 years to include outposts in Hong Kong, London, New York, Los Angeles, Somerset, Gstaad, St. Moritz, Southampton (NY), Menorca, and Monaco. The gallery represents over 80 artists and estates who have been instrumental in shaping its identity over the past quarter century, and who are the inspiration for Hauser & Wirth's diverse range of activities that engage with art, education, conservation and sustainability.

Hauser & Wirth has built a reputation for its dedication to artists and support of visionary artistic projects worldwide. Since its earliest days, the gallery has mounted historically significant exhibitions. The inaugural exhibition in 1992 took place at Hauser & Wirth's first gallery, located in the first-floor apartment of an Art Deco villa in the heart of Zurich; it united mobiles and gouaches by Alexander Calder with sculptures and paintings by Joan Miró. Since then, the gallery has continued to forge an academically rigorous, ambitious program of historic exhibitions, providing a natural home for a number of major 20th-century European and American artist estates. These include Louise Bourgeois, The Estate of Philip Guston, The Eva Hesse Estate, Allan Kaprow Estate, Mike Kelley Foundation for the Arts, The Estate of Jason Rhoades, Dieter Roth Estate and The Estate of David Smith.

Hauser & Wirth is widely admired for a sympathetic approach to restoring historic buildings and giving them a new lease of life as contemporary art spaces that invigorate surrounding communities. From the conversion of its first permanent venue in the former Löwenbräu brewery building that became Hauser & Wirth Zürich in 1996, the gallery has developed and sensitively restored existing structures that respond to their environments, connecting international art

with local culture through architecture. In recent years, the gallery has renovated Durslade Farm, a collection of dilapidated farm buildings in rural Somerset, into worldclass art center Hauser & Wirth Somerset, as well as redeveloping a 100,000 sq. ft. former flour mill, the Globe Mills complex, in downtown Los Angeles in 2016. In 2018, Hauser & Wirth Los Angeles was awarded Los Angeles Conservancy's highest honor, the Chair's Award, which recognizes the importance of preserving the historic places in Los Angeles. In 2020, Hauser & Wirth opened its first purpose-built gallery space at 542 West 22nd Street in New York's West Chelsea art district. In July 2021, the gallery opened a 1,500 sq.m. art center on Menorca after a two-year conservation project, sensitively repurposing existing historic buildings on the island with architect Luis Laplace.

As a publisher specializing in books on modern and contemporary art, Hauser & Wirth has published over 120 titles in its quarter-century history of exhibitions, projects and research. Hauser & Wirth's publishing activity, brought together under Hauser & Wirth Publishers, consists of monographs, artists' books, historic exhibition catalogues, collections of artists' writings and catalogues raisonnés. Hauser & Wirth Publishers works with academics and curators to bring current, leading research to its readers.

A commitment to education underpins the Hauser & Wirth exhibition roster. Every show is accompanied by a series of lectures, interactive seminars, innovative workshops, and special events developed for a range of ages and target audiences. These programs are intended to inspire creativity and foster a passion for contemporary art, nature and architecture within all areas of the community. In Somerset, the gallery has created strong links with local schools, universities and charities, and also provides courses for adults and special interest groups. Hauser & Wirth Somerset welcomes around 100 school groups every year.

About WTS Global

With representation in over 100 countries, WTS Global has already grown to a leadership position as a global tax practice offering the full range of tax services and aspires to become the preeminent non-audit tax practice worldwide. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices. The Private Clients Global Service Line consists of dedicated experts from 60 countries.

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local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

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For more information please see: wts.com

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